GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SECOND SPECIAL PUBLIC HEARING

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FRIDAY
AUGUST 1, 2008

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The Second Special Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:43 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Vice Chairman
MARY OATES WALKER Board Member
SHANE L. DETTMAN Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Specialist

The transcript constitutes the minutes from the Second Public Hearing held on August 1, 2008.

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

10:42 a.m.

CHAIRPERSON MILLER: This hearing will come to order. This is, I guess I'll characterize it as the Second Special Public Hearing of the Board of Zoning Adjustment of the District of Columbia on August 1, 2008.

My name is Ruthanne Miller, I'm the Chair of the BZA. And joining me today is our Vice Chair Mr. Mark Loud to my right, and Mary Oates Walker and Shane Dettman to my left, Board Members. And next to Mr. Dettman are Mr. Clifford Moy and Ms. Beverley 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.

We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please be advised that this proceeding is being recorded 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.

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

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located to my left on the table near the door and on the witness tables. Upon coming forward to speak to the Board, please, give both cards to the reporter sitting to my right.

The order of procedure for appeals, which is what we're hearing today is:

(1) Statement and witnesses of

the applicant;

(2) The Zoning Administrator or other Government official's case Department;

(3) Case for the owner, leasee or operator of the property involved if not the appellant;

(4) The Advisory Neighborhood Commission within which the property is located;

(5) Intervenor's case if permitted by the Board;

(6) Rebuttal and closing statement by appellant;

Pursuant to Sections 3117.4 and 3117.5 of the Zoning regulations, the following time constraints will be maintained:

The applicant, persons and parties, except an ANC, in support, including witnesses, 60 minutes collectively;

Appellees, persons and parties, except an ANC, in opposition, including witnesses, 60 minutes collectively;

Individuals 3 minutes.

These time restraints do not include cross examination and/or questions from the Board. Cross examination of witnesses is permitted by the appellant parties.

The ANC within which the property is located is automatically a party in special exception or variance or appeal case.

Nothing prohibits the Board from placing reasonable restrictions on cross examination, including time limits and limitations on the scope of cross examination.

The record will be closed at the conclusion of each case, except for any material specifically requested by the Board. The Board and the staff will specify at the end of the hearing what is expected and the date when the persons must submit the evidence to the Office of Zoning. After the record is closed, no other information will be accepted by the Board.

The Sunshine Act requires that the Public Hearing in each case be held in the open before the public. The Board may, consistent with it's Rules of Procedure and the Sunshine Act, enter Executive Session during or after the Public Hearing on a case for purposes of reviewing the record or deliberating on the case.

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

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

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponement, continuance or withdrawal or

whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with a case today or if you believe that the Board should not proceed, now is the time to raise such a matter.

Does the staff have any preliminary matters?

MS. BAILEY: No, Madam Chair.

CHAIRPERSON MILLER: If not, then let's proceed with the agenda.

And would all individuals wishing to testify today please rise to take the oath.

(Witnesses sworn.)

MR. GREEN: Madam Chairman, if I might be heard on a preliminary matter.

CHAIRPERSON MILLER: Since it involves this case, why don't we call the case and then we'll get to you.

MR. GREEN: Certainly, ma'am.

CHAIRPERSON MILLER: Okay. Thank you.

MS. BAILEY: Madam Chair, this is

the continuation -- this is an appeal and it's continued from July 15th, and it's the appeal of Stephanie Wallace No. 17747, pursuant to 11 DCMR § 3100 and 3101 from a September 28, 2007 of the Zoning Administrator to deny the issuance of a building permit allowing the reconstruction of a portion of a pre-existing one-family dwelling at premises 5013 Belt Road, N.W. The property is zoned R-1-B. It's located in square 1756 on Lot 64.

And just very briefly, Madam Chair, as I indicated this is a continuation and based on my notes what the Board will be presented today is a continued cross examination of the appellant, the case of DCRA, the Zoning Administrator, presentation by ANC 3E, intervenor's case and there are two and rebuttal and closing by the appellant.

CHAIRPERSON MILLER: Thank you, Ms. Bailey.

Okay. Mr. Green, you have a preliminary matter?

1 MR. GREEN: Yes, Madam Chairman.
2 First of all, good morning. And I'd like to
3 thank Madam Chairman and the staff for
4 providing us comfortable accommodations so
5 that we can -- I'm talking about the seating.
6 CHAIRPERSON MILLER: Did they
7 change the seating?
8 MR. GREEN: Yes, it's very
9 comfortable.
10 CHAIRPERSON MILLER: Oh, great.
11 MR. GREEN: The chairs are very
12 comfortable. And I thank you very much for
13 that.
14 On another matter, I would like to
15 ask that the Board consider this: That the
16 witnesses, those that give testimony before
17 this body be separated my counsel. My proposal
18 is simply that the witness be placed at the
19 right hand side of the dias near the court
20 reporter.
21 As Madam Chairman and the Board
22 know from the last time, witness testimony was

tainted and contaminated by testimony coming from lawyers. Lawyers are not the witnesses to events. Lawyers are discussing other things and asking questions and making points of law.

What we had the last time that led to this tainting and contamination of testimony was the interference of not only lawyers, but others in the audience; people who may or may not have been under oath.

Now to avoid this sort of thing I would suggest strongly, and it would also prevent the continuing objections that I've had throughout this proceeding, that the witness, that is the individual that is giving testimony at the time, be separated from counsel.

Now, this does not mean that an individual who is a party cannot sit with counsel during the process. But when they are acting as a witness they should not be sitting near their lawyer.

CHAIRPERSON MILLER: Before we

hear from the others, not that I want to spend too much time on preliminary matters, but I understand your concern. And there was a lot of consultation last week -- last time. And that was reflected in the record, but I understand your concern about feeding. It seemed as if they may be feeding answers going on.

So you're okay with that when your witness is testifying? Because in the past, you know, there's sometimes been some consultation between the witness and the counsel. But you're comfortable with that?

MR. GREEN: Well, with regard to Mr. Zoning Administrator sitting to my right--

CHAIRPERSON MILLER: Right.

MR. GREEN: -- he has agreed to be separated from me. And I think that I ask the same of the appellant.

CHAIRPERSON MILLER: Why don't we hear from the others quickly?

MR. SIMMONS: I would support the

motion. I believe that it would be very much in accordance with judicial practice and the practice of other boards that the witness be the witness and it be the witness' testimony and only the witness' testimony. If the witness doesn't know an answer or can't remember the answer, then the record can reflect that. And perhaps at another appropriate time another witness could respond to the question.

But certainly because of the continuing objections. And my concern as an intervenor that the objections were very well founded, I support the motion.

CHAIRPERSON MILLER: Okay.

MR. BROWN: And I take exception to the alleged contamination that occurred. I've been doing this since 1987 and the practice of how we're configured and the relationship between the Board, the witnesses and their attorneys is a well established practice that, quite frankly, has served us

all pretty well over time.

I object. I think the ability for me to assist my witnesses and my client is very minimal and doesn't lead to any kind of contamination of the record. And quite frankly, one of the things that occurs, and you've all been here long enough, there's a fair amount of give and take that goes on between the Board and the witnesses and even counsel. And there were objections raised to questions that were directed to me personally.

And I think we've made a lot to do about nothing here, and we ought to continue along as we've done in the past quite successfully. And if there's an occasion where the Board thinks there perhaps I or some other counsel overstepped their bounds, I would suspect the Board would be quick to tell me so or the other people involved.

So that's my objection.

COMMISSIONER FRUMIN: Madam Chairwoman, from my perspective the key is

that he not be advising witnesses while they're testifying.

I have to say I'm a little troubled by his statement that his ability to do it minimal and that if it comes up, you should catch it after the fact. In cross examination if he gives an answer to the witness and they give that answer, if you object after the fact it still has defeated our opportunity cross examine the witness, not him.

So I think separating the witness, it may be an extraordinary procedure here, but if that's what's necessary to keep counsel for the appellant from advising the witness during the course of cross examination, it may be necessary. You cannot allow him to advise the witness during the course of cross examination. Doing that defeats our right to cross examination, which is a key right that we have.

CHAIRPERSON MILLER: Okay. This

is what I think. I hear your concerns. My view would be not to change the course at this point unless it appears that we continue to have a serious problem.

So I think that your concerns have been heard. And I'll try to be more vigilant that I don't want to see attorneys feeding witnesses answers. And let's see how it goes.

I would also say that it's probably hard for you all to appreciate that out there. But we realize when certain things are going on and that does go to the weight of certainly the information that's being given to us if it's being fed by counsel.

So, anyway let's see how it goes.

Also I would say, Mr. Green, that I mean that that's an interesting point that the Board might want to consider in general. But I don't we're going to change courses midstream right this minute unless there continues to be a real need. Okay.

Any other preliminary matters?

MR. SIMMONS: Yes, Madam Chair, there is. And I do this with great respect and with regret. But because my wife's medical condition remains very tenuous, her back and her knee remain in bad shape, we have a note from her doctor that she is on disability at the present time and is not able to be here. I must respectfully request a continuance until sometime in September so that she could be present and testify. Basically for the same reasons that we spoke about before, her unique knowledge and things of that nature.

Like I say, she is physically unable to be here today. I've mentioned that I'd be making this motion to all the parties. I know they'll make their own positions known to you. I'm happy to show you the information from the doctor, if you would like.

CHAIRPERSON MILLER: I'm sorry to hear that your wife's going that still.

I just want to make sure I understand the motion. Are you requesting

that the whole hearing be postponed or are you requesting that we just have a continuation to hear your wife's testimony in the fall?

MR. SIMMONS: Well, I was actually making the former. But since you've raised the latter possibility, that certainly would be an option so that she could be and she could ultimately be able to testify.

The original purpose of the motion was simply a continuance so that she could be here and participate in all respects. But, Madam Chair, your suggestion that perhaps another session sometime in the fall where she could be present and testify and we otherwise go forward today is an interesting possibility.

CHAIRPERSON MILLER: Okay. I mean, it isn't a suggestion, per se. But it's trying to understand what you're asking for. Because my understanding -- that's what I thought you were going to be asking for. Because when we left off last time and she

1 couldn't be here, we talked about well we
2 didn't know if she was going to be well enough
3 by hearing date, but I thought you were
4 planning on going forward with the rest of the
5 case no matter what. And then we were going to
6 see what was going to happen with your wife's
7 testimony. So just so they know what they're
8 responding to, also.
9 MR. SIMMONS: Right. Pardon me
10 for interrupting.
11 CHAIRPERSON MILLER: Yes.
12 MR. SIMMONS: I believe we all
13 anticipated, including Mary, that she was
14 going to be physically able to be present
15 today. Certainly that was her intent, that was
16 my intent. And, frankly speaking for myself,
17 I'm just sorry she can't be. Because, you
18 know, she's physically in that much pain and
19 inability to move around. So it sort of hurts
20 on both levels. But that's the fact.
21 I mean, she had hoped to be and we
22 had planned on her being present today.

1 Thank you, Madam Chair.
2 CHAIRPERSON MILLER: How's the
3 prognoses for the fall look?
4 MR. SIMMONS: We don't know.
5 CHAIRPERSON MILLER: You don't
6 know?
7 MR. SIMMONS: We just don't know.
8 I don't want to put her medical condition too
9 much on this record.
10 CHAIRPERSON MILLER: Yes, okay.
11 MR. SIMMONS: It's a public
12 record. Let me just say that she's in a very
13 serious amount of back pain and knee pain.
14 More severe she says, and I see no reason to
15 disagree because of what I've observed in how
16 she moves and seems to feel and speaks, she
17 says it's worse than it's ever been.
18 CHAIRPERSON MILLER: and I just
19 want to ask one more question and then the
20 others can respond. Can you give us a proffer
21 as to what she would be testifying to?
22 MR. SIMMONS: I can. It would be

1 much more be events that I personally did not
2 observe. Certain things that occurred at the
3 property that I did not see certain
4 conversations that she had with people that I
5 was not present at.
6 So there would be things that she
7 would able to speak about that I cannot
8 testify to. And I'm not sure to the extent
9 that the witnesses here may or not be able to
10 testify to. But certainly from my perspective
11 she has information that I do not.
12 CHAIRPERSON MILLER: All right.
13 Let me hear from others before I say anything
14 else.
15 MR. BROWN: Mr. Green, you can
16 forward.
17 CHAIRPERSON MILLER: Mr. Brown, go
18 ahead.
19 MR. BROWN: Yes. Remaining
20 extremely sympathetic to Ms. Grumbind's health
21 and Mr. Simmons, I've got to object.
22 One, we're ready to proceed. The

1 Board's here under extraordinary circumstances
2 that really they've made a personal commitment
3 to hearing this case.
4 Also, the proffer that Mr. Simmons
5 tried to make was so weak and absent of any
6 kind of details about these things that Ms.
7 Grumbind saw and conversations. And certainly
8 without more details, but even with details
9 I'm not so sure that what she's potentially
10 bringing to the table is really relevant to
11 where we're at in this case.
12 You know, we're appealing an
13 Zoning Administrator's decision and process
14 that went through permitting in DCRA, which
15 Ms. Grumbind was not a party to any of those.
16 And her observations about the site and who
17 said who when really without more don't seem
18 to get anywhere close to the relevance
19 threshold.
20 There's been no proffer. We've had
21 two weeks. Certainly an affidavit, some sort
22 of proffer of her testimony. Because this was

a very real likelihood. I don't think I'm surprised by this. And nothing. And so that we're kind of -- the Board more so than anybody because my view was that her testimony is going to be entirely irrelevant. But the Board is in the dark and being forced to make an important decision. And the obligation I think was on the intervenors to provide something for the Board to evaluate, and they haven't. And I think we need to move on without Ms. Grumbind.

And I think the goal for the Board today was to conclude this hearing, not to keep it open. Certainly the harm to my client having to spill over into September and beyond is catastrophic, as we've discussed before.

So I don't think there's any reason based on what's been put before us for not going forward in her absence. You know, the intervenor has an obligation to put forward something, and they haven't.

So that's it --

1 CHAIRPERSON MILLER: Well, Mr.
2 Brown, I kind of understand what you're
3 saying. And, you know, we'd weigh good cause
4 against prejudice to a party. And I know
5 you've mentioned that there would be financial
6 prejudice. Do you want to be any more
7 specific? I mean, and that's kind of general,
8 too, it would be catastrophic. I mean --
9 MR. BROWN: Well, as I mentioned
10 at the last hearing, my client's been put on
11 notice of foreclosure by her lender in this
12 property. The clock is ticking. And that
13 clock continues to run. We're 15 days further
14 along than last time. We're talking about
15 adding at minimum 30 days onto that. And, you
16 know, these things once the process starts,
17 these things move along at a time table where,
18 you know, if we get together again in mid-
19 September and Ms. Grumbind still isn't
20 available and we go on, October comes along
21 and conceivably it's too late for my client.
22 Because the foreclosure proceedings have taken

1 their course.

2 And I don't know the exactly time

3 table. But, I mean, the clock is running. It

4 was running the 15th. It's running now. And at

5 the minimum we're talking about September if

6 we don't act on this case, or at least

7 conclude this case and then whatever else may

8 need to be done until a decision making mode.

9 And certainly in our case we tried

10 to make a fairly -- not a fairly, a very

11 focused concise case that really Ms. Grumbind

12 as a third party outsider, she may be

13 interested, but she wasn't part of any of this

14 process and I don't think can add anything

15 really of that much relevance. For that

16 matter, as we look at what we're going to do

17 today, we need to be very careful to kind of

18 protect the Board's resources and time as well

19 as anybody here to not allow ourselves to go

20 too far afield. And I think this is a warning

21 sign of what could be danger ahead as we look

22 ahead.

1 There's I think an interest on
2 some people to broaden this into a who said
3 who to what outside the context of the zoning,
4 which is what we're here about. There are a
5 lot of other things that happened here which
6 we could debate endlessly but the Board could
7 care less about.
8 CHAIRPERSON MILLER: Okay. I got
9 your point. Okay.
10 Mr. Green? Comment?
11 MR. GREEN: The Government has no
12 opposition to the request of Mr. Simmons.
13 CHAIRPERSON MILLER: Any other
14 comments from the other intervenors?
15 Mr. Jeffries is with us. Okay.
16 I'd like to welcome Mr. Jeffries from the
17 Zoning Commission.
18 MR. SIMMONS: Madam Chair, just a
19 brief reply, if I may.
20 We disagree with Mr. Brown's
21 concept of relevance. The issues raised in
22 this case include an argument that the

Government is estoppel from denying their fifth request for a building permit. And that raises a host of subissues among many other things that are relevant to this case because they do reflect upon the course of the conduct and the course of actions of the people involved in this case. Not just the developer, but the contractor as well.

That being said, I would also note that while foreclosure may or may not be in the future, or imminent future, the financial hardship seems to be extenuated in this case insomuch as Ms. Wallace has informed us that she is going out of town, in fact to Europe for the first half of September, at least, on what I assume must be a fairly expensive vacation. So --

CHAIRPERSON MILLER: Mr. Simmons, Mr. Simmons. Okay. That's going to be far afield.

I think let me just say this: I'm pretty sure I know that the Board is intending

to hear this case today. So that was the first part of it. So let's just get that off the table. Because this isn't a surprise, unfortunately, and we were anticipating I think what I said before. Basically that, you know, we would at least hear the case today and conclude everything that we could.

Then I think we can put this other decision off maybe until the end of the case to see. At that point, I thought it would just be going to that estoppel issue, so that's only one issue in the case, in any event. Finish everything else. We're get to the estoppel issue and then maybe at that point you can make a more specific proffer than what's been made at this point. And then we can decide what the options are.

You know, it could be sorry. It could be we'll hear that in fall. It could be submitted by affidavit. I could be, I don't know. But you all can think about that and we can think about that in the back of our minds.

1 Having heard what we've heard, I
2 think we should pretty much start the case or
3 we'll never finish it, right? Okay. Anybody
4 disagree.
5 Okay. So, that's what we'll do.
6 We'll hold that one question in abeyance.
7 So as Ms. Bailey said, the
8 applicant completed their case and DCRA
9 crossed the applicant. So now we're at
10 intervenor's cross -- I mean not applicant,
11 appellant. Intervenors cross of appellant of
12 the testimony that was presented at the
13 hearing.
14 COMMISSIONER FRUMIN: Madam
15 Chairwoman.
16 CHAIRPERSON MILLER: Yes.
17 COMMISSIONER FRUMIN: I didn't
18 give my name and address the first time I
19 spoke. Matthew Frumin, 4709 Albermarle Street
20 and representing the ANC.
21 I wonder if I could start the
22 cross of appellant and her contractor?

CHAIRPERSON MILLER: That's all with the other intervenors? Okay.

COMMISSIONER FRUMIN: Thank you very much.

So if I can start with Ms. Wallace.

COMMISSIONER JEFFRIES: Can you get close to that mike, please? Thank you.

COMMISSIONER FRUMIN: The intervenors had prepared a set of exhibits and I wonder if wouldn't be useful first to distribute those exhibits so they could be referenced.

CHAIRPERSON MILLER: Wait a minute. Crosses on her testimony, not on intervenor's exhibits.

COMMISSIONER FRUMIN: Okay. All right. Ms. Wallace, the papers filed on your behalf indicate that the original budget for construction of this project was approximately $500,000, is that correct?

MS. WALLACE: I think so.

COMMISSIONER FRUMIN: And you indicated that you paid around $500,000 for the original property, is that correct?

MS. WALLACE: That's correct, yes.

COMMISSIONER FRUMIN: So it was your expectation that you were undertaking an investment on the order of a million dollars between the purchase of the property and construction improvements?

MS. WALLACE: Correct.

COMMISSIONER FRUMIN: And would you consider that a pretty serious investment?

MS. WALLACE: Yes.

COMMISSIONER FRUMIN: How many years have you been in the real estate and construction business?

MS. WALLACE: Well, I used to work for a company in New York and I was more of a marketing design consultant. And this purchase of this I did my own projects. My first house that I did was 2003. And this was my second purchase as a -- as a -- you know,

an investor.

COMMISSIONER FRUMIN: And the record includes a copy of the STEPHCO website. And that website and the description.

MR. BROWN: Objection. I don't think the record includes, at least that I'm aware of, includes the website. Maybe I'm wrong.

COMMISSIONER JEFFRIES: You're not on the mike.

MR. BROWN: Oh, I'm sorry. And maybe my memory is failing me, but I'm not so sure the record -- I mean, it's certainly in their exhibits that they want to introduce. But I'm not so sure that the record as it exists at this moment includes something about her website. Correct me if I'm wrong.

MEMBER WALKER: I remember it.

CHAIRPERSON MILLER: Ms. Walker remembers it.

MR. BROWN: Okay.

COMMISSIONER FRUMIN: Yes. And

this is the website STEPHCO that you hold yourself out in public through. And it says: "Stephanie Wallace has been in the real estate and construction and development for over 20 years."

MS. WALLACE: Yes. I know what it says. I wrote it.

COMMISSIONER FRUMIN: But here your description is --

MS. WALLACE: Because it's two different things here. I didn't own the property when I worked for the corporation in New York. Here I own the property. So, it made it a little different.

I bought my house in '99 and renovated that. And that's when I decided maybe -- well, actually in 2003 is when I decided maybe I should do this for a living. I was doing something else at the time.

COMMISSIONER FRUMIN: Well, the website also reflects a description of a beautiful house in Washington, D.C. that you

remodeled.

MS. WALLACE: That's correct. That's my home.

COMMISSIONER FRUMIN: Then you have another project in Bethesda.

MS. WALLACE: That's the one that I purchased and renovated in 2003 when I explained that I had met Allen Premo.

COMMISSIONER FRUMIN: And then we have another one in Chevy Chase.

MS. WALLACE: Well, that's the same --

CHAIRPERSON MILLER: Do you have a question?

COMMISSIONER FRUMIN: Well, I just questioned her --

MS. WALLACE: They're the same house.

COMMISSIONER FRUMIN: All right. How many years of experience does your contractor, Mr. Premo, have?

MS. WALLACE: You'd have to ask

him.

COMMISSIONER FRUMIN: Well, I actually believe your affidavit says that he has 40 -- 40 --

CHAIRPERSON MILLER: Why are you asking what's in the affidavit?

COMMISSIONER FRUMIN: Because I'm going to the question of Ms. Wallace had experience on this area, she was embarked on a serious investment and she could be expected to exercise reasonable care and diligence. And first I wanted to established that it's a serious investment. Second that she has experience in the area to which she calls into question.

CHAIRPERSON MILLER: Okay. Okay. That's okay. But I mean if you have an answer in the affidavit, I mean you have the answer unless you're challenging her affidavit.

COMMISSIONER FRUMIN: Well, there have been contradictions in testimony at various points in this case, and I want to pin

it down. Because different things have been said at different times.

Going to the last point I mentioned, Ms. Wallace, given your combined experience in the construction and real estate business and the experience of your contractor, could your team be expected to exercise reasonable care and diligence in executing this project?

MR. SIMMONS: I object to the question.

CHAIRPERSON MILLER: Is that a cross? Is that cross? That doesn't sound like a cross.

COMMISSIONER FRUMIN: I want her-- one of the questions here, as Mr. Simmons said, is a question of unclean hands. And the question is could she be expected to exercise reasonable care. Does she believe that she had an obligation to exercise reasonable care. If she doesn't believe that she had an obligation to exercise reasonable care, it tells you

1 something about the attitude that she brought
2 to this case.
3 CHAIRPERSON MILLER: All right. Do
4 you believe you had an obligation to exercise
5 reasonable care?
6 MS. WALLACE: I don't really
7 understand what -- what -- truly, I'm a little
8 confused what your question. Can you put it --
9 can you rephrase it for me? Do -- I have an
10 obligation to myself to -- I don't know. I
11 don't understand the question. I think you
12 need to rephrase it.
13 COMMISSIONER FRUMIN: Do you have
14 any obligation to the process, frankly? Do
15 you have an obligation to the neighborhood?
16 MS. WALLACE: Of course. I have an
17 obligation to the process. Of course.
18 COMMISSIONER FRUMIN: All right.
19 Thank you very much.
20 MS. WALLACE: This is my
21 livelihood.
22 COMMISSIONER FRUMIN: In your

1 counsel's filing on a reply statement on
2 casualty and notice related appeal, your
3 counsel says -- and this goes to the question
4 -- is on the question of casualty, but he
5 says: "It is entirely irrelevant whether at
6 the time she purchased the property Ms.
7 Wallace knew or should have known of
8 catastrophic structural damage that existed or
9 the cause of that damage."
10 Now, is it your opinion on this
11 case generally that whether or not you knew or
12 should have known at the time that you
13 purchased this property that there was
14 catastrophic structural damage to the original
15 house is irrelevant?
16 MR. BROWN: I don't even
17 understand the question.
18 CHAIRPERSON MILLER: It sounds
19 like you're asking her a legal question.
20 COMMISSIONER FRUMIN: What I'm
21 getting to the attitude that she brought to
22 this process. Because the ANC and the

neighbors are contending that the attitude that you brought to this process was cavalier. Now Ms. Wallace says no, I was very responsible. I diligently at every step of the way pursued this project. And I'd like to know from her whether -- and her attorney says in one context it doesn't matter, it couldn't matter if she knew or should have known that the original house had catastrophic structure from the onset. And I'd like to know if that's her attitude, which will go the question of how she approached this throughout and whether or not there's traction to the argument of unclean hands.

CHAIRPERSON MILLER: Okay. Separate the two. Because, you know, one is her attorney making a statement that something might be irrelevant to a legal argument. So she shouldn't having to respond to that.

You want to ask if she had a cavalier attitude towards something?

COMMISSIONER FRUMIN: Well, I'd

1 like to know her attorney also says that, and
2 this in Appellant's supplemental pre-hearing
3 statement --
4 MR. BROWN: Madam Chairman --
5 CHAIRPERSON MILLER: Let me just
6 hear the question.
7 COMMISSIONER FRUMIN: The equities
8 and fundamental fairness completely favor Ms.
9 Wallace who has been a victim of her
10 compliance with the directions and permits
11 approved by DCRA. Now she's claiming that the
12 equities and fundamental fairness are entirely
13 on her side, completely favor.
14 Now what her attitude going
15 throughout this process was is relevant to
16 those equities. He put in front of you that
17 the equities favor her. I wonder if her
18 attitude was it did not matter whether I knew
19 on day one that this house suffered from --
20 CHAIRPERSON MILLER: Okay. Is
21 that your question?
22 COMMISSIONER FRUMIN: Yes.

CHAIRPERSON MILLER: Did you hear that?

MS. WALLACE: Ask me the question again.

COMMISSIONER FRUMIN: Did it matter to you, and does it matter to this case, that if you knew or should have known that the original house suffered from catastrophic structural damage?

MS. WALLACE: Well, it certainly matters because that's why we're here. I believe that what my attorney wrote was that I got a permit to do everything that I did. And so I believe that was what his point in that document was.

I would never have purchased this property had I know there was catastrophic damage to the structure.

COMMISSIONER FRUMIN: It doesn't matter if you knew or should have know --

MS. WALLACE: Well, at this particular point we have a permit. We had a

permit to do what we did.

COMMISSIONER FRUMIN: So --

MS. WALLACE: The city agreed that there was structural damage. So we're already well beyond that.

I can't turn -- if you have a time travel machine, I would love to step in it and go back and never purchase this property. Trust me.

COMMISSIONER FRUMIN: No, that's not the question. The question is does it matter if you knew or should have known right from the beginning that this building had catastrophic --

MS. WALLACE: I said -- I answered that already.

COMMISSIONER FRUMIN: I didn't think you answered that. I think you --

MR. BROWN: She answered it. Hurry it up.

CHAIRPERSON MILLER: What are you trying to say? You're trying to did it matter

to her whether or not that the house was infested with termites or something?

COMMISSIONER FRUMIN: No. What I'm saying is if from day one when she purchased this house --

CHAIRPERSON MILLER: Yes.

COMMISSIONER FRUMIN: -- if she knew or should have known that it suffered from catastrophic structural damage, would it matter to this case? Would it matter to the story, to the equities? Because if she had known from day one if her claim is it doesn't matter, I knew or I should have known but I got permits.

CHAIRPERSON MILLER: Okay. This is a opportunity really for questions about facts, not legal conclusions. So, you know, if you wanted to ask her didn't she know that there were termites when she bought the house, or didn't she think she was obligated to check it out; something like that. But not any legal conclusion question.

1 COMMISSIONER FRUMIN: Okay. As I
2 said, I had wanted to get to her on this
3 because I think that that does go to these
4 other questions of equities. But I'll press on
5 then.
6 If I can ask you, Ms. Wallace, to
7 take Appellant's hearing exhibits, and there's
8 Tab 10 at page 1.
9 CHAIRPERSON MILLER: Is there an
10 exhibit number on the document you're
11 referencing?
12 COMMISSIONER FRUMIN: Exhibit 10.
13 I guess I used tab --
14 MR. BROWN: Madam Chair, it's the
15 bound volume that we provided. Ten. Am I
16 correct?
17 COMMISSIONER FRUMIN: Yes.
18 MR. BROWN: Ten.
19 MS. WALLACE: That's it up there
20 on the board, too.
21 COMMISSIONER FRUMIN: And here
22 there's a box in the center of the document,

total lot coverage of existing residence plus new additions equals 1780 square feet, which is 3.95 percent of the 4500 square foot lot. And the maximum allowed was 40 percent, which would have allowed you to go to 1800 square feet or one more foot back on the lot.

And what you've come up with is pretty darn close to the limit. And how do you come that you came to propose that you would build so close to the limit? For example, did you discuss with your architect what the limits were and instruct him or her to building to the limits? Is it a consequence that you were this close?

VICE CHAIRMAN LOUD: Mr. Frumin -- am I pronouncing it correctly?

COMMISSIONER FRUMIN: Frumin.

VICE CHAIRMAN LOUD: Frumin. To be honest with you, I can't follow the questions because there is so many questions in a single question. That were she to venture an answer, I'm not sure which of the

1 questions she's answering.
2 So I would just like to help you
3 formulate more direct cross questions by
4 perhaps asking one question at a time,
5 allowing her answer and then building from
6 there.
7 But, honestly, there were so many
8 questions in that question and there's been
9 sort of a series of those kinds of questions
10 that it gets to be difficult to understand her
11 response.
12 MR. SIMMONS: And I would like the
13 record to reflect at this point that counsel
14 is conferring the witness. And I certainly
15 object to that.
16 CHAIRPERSON MILLER: I don't
17 it's--
18 MR. SIMMONS: It influences the
19 witness' answer.
20 CHAIRPERSON MILLER: Well, there's
21 a question pending that -- otherwise we're
22 going to have to do the separation question.

MR. BROWN: Madam Chair, I'm trying to determine whether my client is the right person to be asking this question, which I think is --

MS. WALLACE: I met with the architect. Regarding a discussion of the lot area coverage, is that what your question was? I did not have a discussion with the architect regarding that specific point. I didn't -- I'm not sure when we bought it and started the design, I was totally aware of that.

COMMISSIONER FRUMIN: So is it just a coincidence that the proposal that you came up with is so close to the limit?

MS. WALLACE: You'd have to ask the architect.

COMMISSIONER FRUMIN: Okay. If you go to Tab 2, which I guess is Exhibit 2 and at page 2. The first permit shows the present gross floor area of building is 1,019 square feet and the proposed gross area for the addition of the final building is 3419

feet. That suggests that the building was going to triple -- that there was going to be an addition of 2400 square feet, over 2.3 times the size of the old house. Was that the plan?

MS. WALLACE: That's what it says on the application.

COMMISSIONER FRUMIN: Can we just go back to Tab 20, Exhibit 10 and page 2 -- page 3.

MS. WALLACE: Three. RA-2.

COMMISSIONER FRUMIN: Yes. RA-2. I believe at the hearing last time you testified that this document reflected what the new house would look like after the project was all done, or the front of the new house would look like after the project was already done?

MS. WALLACE: Well, actually this document was used to explain permit number four and the demolition process. However, the front, existing front elevation is what the

front of the house would look like after completion, more or less. There's actually going to be a front porch on it, and the front door's moved a little bit.

COMMISSIONER FRUMIN: So there are a variety of notes on this document that, for example, starting from the top. Remove existing fuel chimney structure up through line 4. Enlarged rooms. Remove original siding and roofing to match new addition. Remove existing residence front entry door for new glass French door. Also narrow existing entry--

CHAIRPERSON MILLER: Mr. Frumin, can you get to the point. I'm going saying that because we have to finish today. So, I mean, you can't possibly read this whole diagram.

COMMISSIONER FRUMIN: Okay. Well, my point is is that on that document there are a lot of things that were going to be done to the old house in the process of this

construction. And I wanted to establish that from the notes on the document.

CHAIRPERSON MILLER: Do you have a question? Because that's what this is about.

COMMISSIONER FRUMIN: And the question is given all of the things that they were going to do to the old house, Ms. Wallace, did you ever consider at the time of purchase and the development of the plans tearing the old house down and starting from scratch?

MS. WALLACE: Never.

COMMISSIONER FRUMIN: And why not?

MS. WALLACE: Because it was a great old house.

COMMISSIONER FRUMIN: Have you examined the structural integrity of the house?

COMMISSIONER FRUMIN: No.

CHAIRPERSON MILLER: Can I ask her question? Why didn't you examine the structural integrity of the house?

MS. WALLACE: I -- that's not what you usually do when you buy a house in a hot real estate market.

CHAIRPERSON MILLER: I mean, maybe before you bought it you didn't have time, is what you said. It was a bidding war.

MS. WALLACE: Correct.

CHAIRPERSON MILLER: But after you bought it, did you examine the structural integrity of the house?

MS. WALLACE: Well, after, yes. There has definitely been structural engineers looking at the structural integrity of the house as we went on. I don't have all of the -- I sort of testified to that. Allen would be better to talk about that.

COMMISSIONER FRUMIN: But in the period between the time that you purchased the house and you developed these plans, the plans that included making all kinds of changes to the original house, did you look at the structural integrity of the house to see

whether or not it was going to be able to survive that process?

MS. WALLACE: I'm not really sure exactly what the engineer looked at when he did his drawings at that particular time. I don't recall. You could ask Allen.

CHAIRPERSON MILLER: You need to speak into the mike, please.

MR. SIMMONS: I object to the answer as nonresponsive. The question was what Ms. Wallace did, not what a structural engineer did.

MS. WALLACE: Well, I would be hiring the structural engineer. And I don't recall. If you would like, I can confer with Allen and --

CHAIRPERSON MILLER: I mean her answer then would probably be no she relied on a structural engineer or the architect and asked them when they did it. That's what I understand the answer to be.

COMMISSIONER FRUMIN: But she's

unaware of any investigation having -- are you aware of any investigation of having been made of the structural integrity of the building at that point?

MS. WALLACE: I'm not aware.

COMMISSIONER FRUMIN: Did you discuss with anybody at the time that you developed your plans your rights if the old house stayed in place as opposed to if it was removed?

MS. WALLACE: No. Removing the house was never an issue.

COMMISSIONER FRUMIN: Okay. All right.

Once you commenced the building process, it didn't go smoothly. And you testified that after the plumbing was taken off, the back of the house was damaged and you had to remove the back. And at that point you discovered that there was severe termite damage. And at that point how much if your construction financing, that's March 2005, how

much of your construction financing had you expended?

MS. WALLACE: I don't recall off the top of my head at that point. Again, I can confer with Allen and see if he can remember how much we had spent on the initial demolition at that time. I don't recall the exact figure.

COMMISSIONER FRUMIN: But at that point you had not dug a foundation, you haven't done any framing, you haven't done any excavation. What fraction or approximately how much?

MS. WALLACE: Because I really, off the top of my head, cannot guess. But a small number compared to the whole if that's what you're trying to get at it.

COMMISSIONER FRUMIN: That is what I'm trying to get at.

Madam Chairman, I would if I could, like to have the opposition's exhibits distributed so that documents that are already

in the record, not to refer to documents that are not in the record, for the convenience of the Panel and for the convenience of the witness they can be front of everybody as I ask about them.

CHAIRPERSON MILLER: You can pass them out. That's fine. However, I just want to remind you the purpose of cross is to ask questions about what the witness testified to. Not to have the witness be your witness and address your documents.

COMMISSIONER FRUMIN: This goes to things that she's testified to and issues that have been put into play. So if we can distribute them?

Okay. If I can have you refer to Tab 10, which is the Lemoine Exhibit L7 and is attached to Mr.Lemoine's statement.

Does this picture --

MR. BROWN: Madam Chair, I don't believe my witness testified to this.

CHAIRPERSON MILLER: I understand.

I think what he's going to go to is something she testified to and used this photo. Is that right? I don't think that's a problem if that's what you're going to do.

COMMISSIONER FRUMIN: Yes. In general she has a litany of what's happened. She testified to a litany of what happened along the way. And I want to ask her to look at this photo, which came up and was shown at the last hearing as well. It's just being presented her.

I want to ask her about when she saw this, whether or not she considered it was important to do any kind of structural evaluation to see whether or not there was a risk to the front of the house.

COMMISSIONER JEFFRIES: Exactly, by the way, what am I looking at Exhibit L7?

CHAIRPERSON MILLER: You have to establish, you know, when was this and what is this.

COMMISSIONER FRUMIN: Exhibit L7

is a picture taken of the back of the house.

CHAIRPERSON MILLER: Who took the picture? We went through this last time.

COMMISSIONER FRUMIN: Mr. Lemoine.

CHAIRPERSON MILLER: Mr. Lemoine took the picture. And when is it?

COMMISSIONER FRUMIN: In April of 2005.

COMMISSIONER JEFFRIES: Of the existing home?

COMMISSIONER FRUMIN: This is the existing home in April of 2005. And so the question is, well one, does that reflect the existing structure after the demolition of the back half of the house in March 2005?

MS. WALLACE: I believe so.

COMMISSIONER FRUMIN: And you have noted that you had not previously done a termite inspection or you weren't --

MS. WALLACE: Can I ask one -- can I just interrupt two seconds?

COMMISSIONER FRUMIN: Yes, sure.

MS. WALLACE: This picture was taken by Mr. Lemoine, is that what you're saying?

COMMISSIONER FRUMIN: Yes.

MS. WALLACE: He walked onto to my property and took this photograph, is that what you're saying? I'm just curious how did Mr. Lemoine trespassed on my property to take this picture? I mean -- just we can let it go. I just --

CHAIRPERSON MILLER: Yes.

MS. WALLACE: All right. Go on.

COMMISSIONER FRUMIN: But you acknowledge this is what the property looked at as of April 2005. And the testimony had been that you were unaware of structural and termite damage at this point, and until this point. But when the property looked like this did it occur to you that you should investigate whether or not the front of the house would survive the project that you were pursuing?

MS. WALLACE: There's a few questions in there. And I think Allen would be better to answer that. He was -- he's more knowledgeable about the on site choices. If that's the right -- the decision making process of this. He informed me at different points, and I don't really -- it would be better for him to answer the question.

COMMISSIONER FRUMIN: I'm happy to ask Mr. Premo that question as well. But at the time did you ask Mr. Premo whether or not there was any reason to be concerned?

MS. WALLACE: I don't recall.

COMMISSIONER FRUMIN: And given that there was this catastrophic damage to the back and there was the kind of thing that you see here relating to the front, and you were planning on a million dollar investment, why wouldn't you have asked him about it?

COMMISSIONER FRUMIN: Well, I said I didn't recall. Maybe I did. I don't recall was my answer.

As I did -- one other thing as I did mention last time in my testimony or in the cross examine, these two -- this particular original structure was actually at some point in its life two structures. The piece that we took off was an addition to this very small piece in the very front according to the floor joists. So they weren't -- I think you could somewhat summarize that one would not effect the other. But again, that's a more technical question for Allen.

COMMISSIONER FRUMIN: But, I mean, termites -- why would you think if there was termite damage on the back at the time of construction differed, why wouldn't termites go to the other structure?

MS. WALLACE: I don't really know what termites do or don't do.

COMMISSIONER FRUMIN: And if there was damage to the back because it had been sitting in water and there had been rotting, why wouldn't that concern also apply to the

1 front?

2 CHAIRPERSON MILLER: Is that

3 established? We're supposed to draw that from

4 this picture or what?

5 COMMISSIONER FRUMIN: Well, she's

6 saying --

7 MS. WALLACE: It's a better

8 question. Those kind of questions are really

9 better if you want an accurate answer, to ask

10 Allen.

11 COMMISSIONER FRUMIN: All right.

12 But I'm also wanting to get to this was your

13 million dollar investment and to what extent

14 were you watching over this process to make

15 sure that the thing that you wanted to do

16 could be done?

17 MS. WALLACE: Well, at that point

18 in 2005 we were still pushing forward with our

19 original plan. And I'm not sure that I really

20 thought that there would be a problem with the

21 front. I wanted to keep the house. That was

22 the whole intention. I did not want to knock

1 down the back of the house. We were replacing
2 it exactly the same way that it was there,
3 just with new wood that wasn't rotted.
4 You know, I think we just kept --
5 each step just kept throwing another wrench
6 into the process. I don't -- you know,
7 hindsight's a wonderful thing.
8 COMMISSIONER FRUMIN: Well,
9 hindsight is a wonderful thing, but March
10 2005/April 2005 is a point in this process at
11 which you made very little investment and
12 you're put on notice by this situation that
13 there's a serious problem. And I'm wondering
14 whether or not --
15 MR. BROWN: He's testifying.
16 CHAIRPERSON MILLER: I think the
17 question was asked and answered also.
18 COMMISSIONER FRUMIN: Okay. My
19 next question, in getting the second permit
20 you were authorized to underpin a portion of
21 the existing building. And do you know what
22 underpinning entails?

MS. WALLACE: I'd rather you ask Allen that.

COMMISSIONER FRUMIN: You know, in your affidavit at page 3 paragraph 16 you state that underpinning occurred. So I'm just wondering if it's included in your affidavit if you know what it means?

MS. WALLACE: I mean, I have a general understanding of it. I believe it's some sort of foundation work to tie in the old and the new house. But, again, I -- that's why I have Allen. He knows. I design the pretty pictures, he builds the building, you know.

COMMISSIONER JEFFRIES: Excuse me. Madam Chair, I want to just step in here a minute. Mr. -- I'm sorry, your name?

COMMISSIONER FRUMIN: Frumin.

COMMISSIONER JEFFRIES: Frumin.

There seems to be some disconnect here as to, you know, exactly what you think her role is as a developer, the kinds of

things that she should have top of knowledge understanding about.

I mean, I just want to make certain that -- I mean, she continues to respond, you know, I don't recall, I don't know. You know, she's asking to go to other people. I guess I'm just trying to understand what are you trying to get from her.

I mean, is there some confusion as to what her role as a developer is and what she should know or be responsible for?

COMMISSIONER FRUMIN: You know, I don't think I would ask her about the underpinning issue, it's in her affidavit. And the first question was do you know what it means. I mean, she put it in her affidavit, so I'm curious to know -- I thought it was fair game to ask her about it.

I'll ask Mr. Premo about it as well or I can move on and ask him. But it was in her affidavit.

CHAIRPERSON MILLER: Could you

refresh our recollection as to where her affidavit is in the record so we can follow you?

COMMISSIONER FRUMIN: It's again-- it's in these exhibits and it's 20.

COMMISSIONER JEFFRIES: The yellow one?

COMMISSIONER FRUMIN: Yes, this is the yellow one. And it's paragraph 16. And it says: "The permit was issued. And the idea was to substitute and to allow underpinning of the existing structure to remove the replaced damaged wood." And I wonder if she --

CHAIRPERSON MILLER: What paragraph is that, Mr. Frumin?

COMMISSIONER FRUMIN: Paragraph 16.

MR. BROWN: Madam Chair, I mean the affidavit making a factual statement, it's not a treatise on underpinning. And so --

MS. WALLACE: I also -- it says it right in building permit number two. So I'm

just repeating what building permit number two stated. Sorry.

BOARD MEMBER DETTMAN: Can I just make one statement, Mr. Frumin? Because throughout your questioning I'm failing to see the relevance of a lot of your questions.

You asked about the lot occupancy and why they were pushing 40? Because they're allowed to by matter of right.

You pointed us to the gross floor area proposed. It's because the FAR allows that.

And now you're pointing us to the statement of underpinning.

And I'm just -- personally I think it's hurting you. Because I'm failing to see the relevance, whether or not she knows what underpinning is or not.

So I guess I'm saying you go to get to the point.

COMMISSIONER JEFFRIES: Well, we've got to move on here. Because it's

really -- I would agree. I mean it just seems like there's a disconnect. I mean, if you can ask her a direct question, she answers. You know, just move on to the next question.

COMMISSIONER FRUMIN: Well if I'm hurting my case, then I want to stop doing this. But I want to tell you why I asked those questions, which is I want to show that she had to have known from the outset that preserving the old house was important to her rights to have the five foot side yards. That her goal was to build the biggest house she could. She's entitled to build the biggest house she could. Her goal was to have the five foot side yards. It does not make sense for her to have preserved the old house unless it was to get the zoning advantages that came from it. That's what I'm trying to establish--

CHAIRPERSON MILLER: That may be your argument, and we've seen that argument in your pleadings. But your questions aren't

leading to that.

COMMISSIONER JEFFRIES: Yes. The bread crumbs are not lining up here. I can't get there because -- I mean, I know the point you're trying to make. But the applicant, I mean she's not in a position. I mean her attitude and all these things, it doesn't -- and I'm not an attorney and I'm failing to see where you're going.

I know where you want to go, but it just doesn't seem like you're making your case.

CHAIRPERSON MILLER: Let me say one other thing. Because I think that she made an important statement that may be an umbrella and you don't need to keep asking these questions. She said I left the on site issues to Allen and do the pretty pictures. Okay. So no matter how many times you're going to ask about the, you know, didn't you know this, didn't you think about this on site it seems like her response, and you can

correct me if I'm wrong, is no she really relied on Allen.

So don't waste time, you know, getting the same responses. I think that's what--

COMMISSIONER FRUMIN: That's why I'm saying, there might be a disconnect in terms of your understanding of what the role of a developer would be. And it's varies levels. I mean, some developers are very, very active with the architecture, some are very active with construction management and so forth. But, you know, perhaps you should just get a clear understanding of exactly what her role was, what she did, what she was responsible for, whatever. But, you know --

MR. BROWN: Madam Chair, can I also -- because I mean I think the Board's point is well taken. And she's responded to it in several formats unequivocally. The question is essentially did you intent to retain the original structure or did you intend to tear

it down. And her answer was never. She intended to keep the original structure. So she's answered that question about as clearly as humanly possible.

COMMISSIONER JEFFRIES: Deducing attitudes, it's just all -- I need facts. You got to point me to something.

CHAIRPERSON MILLER: Let me say this: You know, it's difficult you know because people come into these proceedings and they're not necessarily attorneys and it's very difficult sometimes to fashion questions the way you're supposed to fashion them on cross. But our point is, you know you may have some good arguments or points well that she should have know or blah, blah, blah but they're not necessarily going to be elicited on cross. Okay. That may not be the right forum.

Ask a few questions, and then you're going to get to put on your case.

COMMISSIONER FRUMIN: Okay. Well,

I want to be is effective. And so if you're telling me that I'm losing, then I don't want to be losing you.

I do want to know at various point along the way whether or not given the circumstances she at least had concern about the viability of this project and asked Mr. Premo about it. So I will truncate my questions and go to this is at the time -- we're now at the time of the second permit. And at least what I'm hearing from Ms. Wallace is even with the back of this house looking like this, at least at her level she was not yet concerned about her million dollar investment and doesn't recall asking Mr. Premo about the viability of the project.

CHAIRPERSON MILLER: Well, is that a question or -- okay. But I don't --

MS. WALLACE: But you're stating something that you claim I said, which is not true.

COMMISSIONER FRUMIN: Well, at

1 this point in April 2005 -- I'm asking now
2 here we are April 2005, we're looking at
3 Exhibit L7, there's two pictures there at
4 Exhibit L7. And the question -- and I think
5 we've established that these are pictures of
6 the house and as it looked after the back had
7 been taken off. And the question if you view
8 the only relevant question is looking at this
9 at this point did you ask Mr. Premo about
10 whether or not the front of the house was
11 likely to survive this project?
12 MS. WALLACE: I cannot recall an
13 exact conversation. But I have to imagine that
14 we discussed it.
15 MR. SIMMONS: Objection.
16 Speculation.
17 COMMISSIONER FRUMIN: Well --
18 CHAIRPERSON MILLER: Wait. Okay.
19 I don't think that we're going to allow
20 objections from attorneys who aren't the
21 witness' attorney.
22 COMMISSIONER FRUMIN: I'm sorry.

1 You're saying you assume you must have and do
2 you--
3 MS. WALLACE: I cannot recall a
4 specific conversation regarding this.
5 MR. BROWN: She's answered this
6 question at least three times.
7 COMMISSIONER FRUMIN: I know she
8 has. But she --
9 CHAIRPERSON MILLER: But is your
10 answer you think you probably had a
11 conversation, you just don't recall it?
12 MS. WALLACE: I just don't
13 remember a specific --
14 COMMISSIONER FRUMIN: She did not
15 recall.
16 MS. WALLACE: -- conversation
17 about is this going to fall down if we do
18 something to it. I -- we kept going forward
19 with our plan to keep the original house. I --
20 it was never, ever a consideration to take the
21 house. So at this point we never considered
22 taking down the front of the house. So our

1 intention was to do what we had to do to keep
2 the front of the house because that was the
3 intention all along. So I would not have had
4 a conversation about taking down the entire
5 house. That came when Allen met with Mr. Chin.
6 COMMISSIONER FRUMIN: But the
7 question was seeing the status of it, were you
8 concerned? It might have been your intention
9 that you wanted to preserve the front of the
10 house. But were you concerned that I might not
11 be able to and therefore, ask Mr. Premo
12 whether or not it's going to be a problem?
13 COMMISSIONER JEFFRIES: So your
14 question there is?
15 COMMISSIONER FRUMIN: Given the
16 circumstances in March 2005 --
17 COMMISSIONER JEFFRIES: Right.
18 COMMISSIONER FRUMIN: -- did she
19 ask Mr. Premo whether there was any reason to
20 be concerned?
21 COMMISSIONER JEFFRIES: And then
22 for the fourth or fifth time can you respond

1 to that?

2 MS. WALLACE: Yes. For the fourth

3 or fifth time, I cannot remember any specific

4 conversation, but I'm sure that it was in

5 discussion as we were moving forward.

6 COMMISSIONER FRUMIN: But, please,

7 because you're telling me she's answered. But

8 she just said I don't recall a specific

9 conversation, but it must have happened. So

10 she's not --

11 CHAIRPERSON MILLER: Okay. Wait.

12 We keep hearing different things. Let's just

13 calm down and just let me ask you.

14 I thought you said something like

15 can't you -- you were concerned when Allen

16 spoke to Mr. Chin or something.

17 MS. WALLACE: Right.

18 CHAIRPERSON MILLER: I didn't know

19 what that means.

20 MS. WALLACE: Right. But that was

21 in 2007.

22 CHAIRPERSON MILLER: That was

2007. Okay.

COMMISSIONER FRUMIN: But what she--

CHAIRPERSON MILLER: See, you asked different things. You asked did she talk to Mr. Premo or was she concerned. Which question are you asking?

COMMISSIONER FRUMIN: No. My question was given the circumstance at this point did she ask Mr. Premo whether or not there was any risk that she wasn't going to be able to execute her plan. And in candor what she said is I don't recall, but we must have. That's what she just said. Now that --

MS. WALLACE: Do you remember every conversation you had in April 2005? I mean, I'm sure we discussed it. I cannot give you a specific conversation that we had regarding it.

MR. SIMMONS: I will again objection. This is speculation on the part of the witness.

MS. WALLACE: Why don't we ask Mr. Premo if he recalls, and then maybe that would help, or if you'd let me talk to him --

MR. BROWN: Well, let's move on. I'm feeling Mr. Jeffries pain as well. I mean, we need to move on.

COMMISSIONER JEFFRIES: To me she's answered the question. She said she does not recall. She assumed that perhaps she could have had it, but she doesn't know. I don't know what else you can pull out of her, I guess that's what I'm trying to get at.

COMMISSIONER FRUMIN: Part of what troubles is the I don't recall but it must have happened. I'll ask Mr. Premo about it when I get to Mr. Premo.

CHAIRPERSON MILLER: You know, that seems to go your case, you know. So you can just leave it there. That's troubling that she doesn't recall.

COMMISSIONER FRUMIN: Yes.

CHAIRPERSON MILLER: You don't

have to keep pressing her, you know, over and over again for the same answer. That's all we're saying. That's troubling, fine.

COMMISSIONER FRUMIN: Thank you.

CHAIRPERSON MILLER: I'm not saying it's troubling. I mean I'm saying to you it is troubling, whatever. But -- you know what I'm saying? You've gotten to your point.

COMMISSIONER JEFFRIES: But you do have to understand, though, you know in situations such as this I mean asking people about very specific conversations several years ago, you know, some people might not be able to recall those conversations, some might absolutely recall them. And it just sort of depends. So just -- I just don't know how much more you can get out of this, this particular line of questioning.

COMMISSIONER FRUMIN: Well, I'm moving on.

COMMISSIONER JEFFRIES: Yes.

COMMISSIONER FRUMIN: I'm moving

on.

At the time of the application for the fourth permit, in your affidavit you state in paragraph 21 that on November 2nd, one day after the house was under roof that your contractor went to DCRA for the first time to talk about the demolition of the front of the house. Is that correct?

MS. WALLACE: I think it's should be December 2nd.

CHAIRPERSON MILLER: Are you reading from a certain paragraph that the Board can follow?

COMMISSIONER FRUMIN: Paragraph 21.

CHAIRPERSON MILLER: Oh.

COMMISSIONER FRUMIN: On or about November 1. Paragraph 20 recites that from October 23rd to November 1, 2006 the rear addition was completed. The house was put under roof.

MS. WALLACE: Well, that's when

the picture was taken, but you didn't -- you have to -- again, this is an Allen Premo question. If I put it in here and it's a mistake, I'll have to -- I need to confer with Allen. I --

MR. BROWN: Or ask Allen the question, Mr. Premo the question.

MS. WALLACE: Yes. I -- I mean, I understand it's in my affidavit but I don't -- my -- my notes have Allen meeting with DCRA regarding the demolition January 17,. 2007. So--

MR. SIMMONS: Objection. Are we reading from notes that are on the record or personal notes?

MEMBER WALKER: You've got to speak into the mike so we can get you on the record, please.

MR. SIMMONS: I'm sorry. I'm sorry.

Are we reading from personal notes or are we reading from something that's on the

record, or we reading from something that's been prepared to help her testimony?

MS. WALLACE: I'm reading my --

CHAIRPERSON MILLER: Yes, let her answer. Go ahead.

MS. WALLACE: I was reading my personal notes. I mean, I have copies for anybody if they want them. But I was reading my personal notes.

So this is in error. I believe that paragraph 21 is in error.

CHAIRPERSON MILLER: And what should it be?

MS. WALLACE: Again, it would be best to ask Allen and this is me -- Allen telling me stuff. But January 17th was his first meeting with DCRA.

CHAIRPERSON MILLER: January 17th?

MS. WALLACE: 2007.

CHAIRPERSON MILLER: 2007? Okay.

COMMISSIONER FRUMIN: But your affidavit says November 2nd --

MS. WALLACE: I'm saying it's incorrect.

CHAIRPERSON MILLER: She's correcting it. She's correcting it.

MS. WALLACE: Yes.

CHAIRPERSON MILLER: You asked about a statement and she said no it's wrong, and she corrected it.

COMMISSIONER FRUMIN: Who wrote the affidavit?

MS. WALLACE: Is that a question?

COMMISSIONER FRUMIN: Yes. Ms. Wallace, who wrote the affidavit?

MS. WALLACE: My attorney.

COMMISSIONER FRUMIN: And in every timeline -- did you read it before you signed it?

MS. WALLACE: I did, but I made a mistake.

COMMISSIONER FRUMIN: And in every timeline that your counsel has submitted --

COMMISSIONER JEFFRIES: Is this a

1 question? Is this a question right now?
2 COMMISSIONER FRUMIN: Well,
3 actually it's a fairly serious change of
4 facts. Because what's happened --
5 MS. WALLACE: No --
6 CHAIRPERSON MILLER: But you can
7 testify when you do your case.
8 MS. WALLACE: Madam Chairman --
9 CHAIRPERSON MILLER: Yes, it's
10 been -- what?
11 MR. BROWN: She's reporting
12 something that Mr. Premo did. So why don't we
13 ask Mr. Premo the question?
14 CHAIRPERSON MILLER: No. I
15 don't--
16 MR. BROWN: Well, I mean, or he
17 can --
18 CHAIRPERSON MILLER: No. It's up
19 to -- no. He is right now cross examining Ms.
20 Wallace. And when he's finished with Ms.
21 Wallace, then we can go to another witness, I
22 believe.

MR. GREEN: Madam Chairman?

CHAIRPERSON MILLER: What? Yes, Mr. Green?

MR. GREEN: Yes. I hate again to be the buller of the will, but I'm noticing that Mr. Premo and Ms. Wallace, who is the witness, seem to be conferring. He's nodding his head and she's pointing to something. This goes back to my original objection. It's a continuing objection. And I'm going to object as long as this continues.

We can't have this. Who is testifying?

MS. WALLACE: I was just conferring a date that you all brought up and you want me to answer, which I cannot without conferring with Allen. And I just was conferring.

CHAIRPERSON MILLER: Okay.

MS. WALLACE: The proof for that is--

MR. GREEN: It proves the

objection.

CHAIRPERSON MILLER: Excuse me. I think if there's going to be these conferences and it's going to be a comfort level with them without separating you, you're going to have to put on the record may I take a moment and confer with Mr. Premo, is there an objection to that. Okay?

COMMISSIONER JEFFRIES: And, Madam Chair, and also what she could quite possibly do is just answer the question I don't recall, I don't know. Okay.

CHAIRPERSON MILLER: I agree.

COMMISSIONER JEFFRIES: You know, so that we can move on.

CHAIRPERSON MILLER: Exactly.

MS. WALLACE: Okay. Sorry.

CHAIRPERSON MILLER: Exactly. Feel free just to stop right there.

MS. WALLACE: Okay.

CHAIRPERSON MILLER: Do we have a lot more cross?

COMMISSIONER FRUMIN: I just have a little bit more, and it may be that much of what I have for Ms. Wallace will just have to be held over for Mr. Premo.

I want to ask some questions about the application for the fourth permit. And I wonder, Ms. Wallace, whether you played any role in apply for that permit and reviewing the drawings that were used to apply for that permit?

MS. WALLACE: We had a permit services company at that point. I did meet with them once or twice, but again Mr. Premo was involved in that part of the process.

COMMISSIONER FRUMIN: And did you review the drawings at all before the application for that permit?

MS. WALLACE: Well, the drawings were the same. They were marked up drawings from the original building permit. I don't know that I saw this -- these. Because I believe the turnover was relatively fast. But

I don't recall.

COMMISSIONER FRUMIN: And what was that service organization that you used?

MS. WALLACE: Mr. Permit.

COMMISSIONER FRUMIN: Mr. Permit? Okay. All right. Then I will ask Mr. Premo, who was likely closer to that process about the drawings.

CHAIRPERSON MILLER: And that completes your cross of Ms. Wallace?

COMMISSIONER FRUMIN: It does not--

CHAIRPERSON MILLER: No. We're not going to go back and forth because we haven't even begun, and we're not going until 11:00 tonight. I think we need to be very systematic that this your opportunity to ask Ms. Wallace. Finish your questions with her, then you ask Mr. Premo.

COMMISSIONER FRUMIN: Okay.

CHAIRPERSON MILLER: There are going to be intervenors who are going to be

asking questions as well, and DCRA. So there's going to be plenty opportunity for some of the questions you might not have thought of to be asked.

COMMISSIONER FRUMIN: Well, I had one last question for Ms. Wallace. In the notice of directly related appeal, and I'll acknowledge that this may -- I may get even more of a pushback on this question. So let me tell you that in that filing of the notice of directly related appeal Ms. Wallace made statements about things that had been proposed. And I want ask about those statements that she made about things that had been proposed because I think that they go to whether or not she stands by the filing goes to her credibility and goes to her claim of hardship.

CHAIRPERSON MILLER: Could you bring our attention to the pleading you're talking about?

COMMISSIONER FRUMIN: Yes. The

notice of directly related appeal at page 9.

CHAIRPERSON MILLER: Where is that? Is that in your submission that you gave us in the yellow binder?

COMMISSIONER FRUMIN: No. No.

CHAIRPERSON MILLER: No?

COMMISSIONER FRUMIN: But I --

MR. BROWN: Madam Chair, can I interject --

COMMISSIONER JEFFRIES: These are statements that she made and you are disputing these statements?

COMMISSIONER FRUMIN: Well, I'd like to hear her confirm the statements and the seriousness of the statements --

COMMISSIONER JEFFRIES: But these statements are on record, right? These are part of the record.

COMMISSIONER FRUMIN: Yes. They're in her attorney's filing.

I have a copy of the relevant pages which I could hand out so they are

easily --

CHAIRPERSON MILLER: It's Exhibit 40? I really can't tell without hearing your question whether it's going to be appropriate or not. So you've brought our attention to Exhibit 40. And does Ms. Wallace have a copy of Exhibit 40 in front of her?

COMMISSIONER FRUMIN: Here is --

MR. BROWN: What are referring to?

CHAIRPERSON MILLER: I don't know, but at least you have Exhibit 40. It's somewhere and something to do with the statement.

MR. BROWN: I have everything. But, again, I want to --

CHAIRPERSON MILLER: Well, does she?

MR. BROWN: No, she does not.

CHAIRPERSON MILLER: Well --

MR. BROWN: We need to clarify what we're talking about and then --

CHAIRPERSON MILLER: Well, let's

1 get it before her, Exhibit 40, and then we can
2 hear the question and then we'll see what
3 we're talking about.
4 MS. WALLACE: Well, it's before me
5 enough.
6 COMMISSIONER FRUMIN: Okay.
7 Starting at the second sentence there's a
8 reference while reserving your rights under
9 the pending amended appeal, Ms. Wallace has
10 made several proposals to DCRA based on
11 existing rear addition including
12 reconstruction of the original 1933 structure,
13 but with eight foot side yards --
14 MEMBER WALKER: I'm sorry, Mr.
15 Frumin, what page?
16 CHAIRPERSON MILLER: I can't see
17 what you're reading.
18 COMMISSIONER FRUMIN: Page 9.
19 CHAIRPERSON MILLER: For us to get
20 it in front of us. I didn't know where you
21 were.
22 MEMBER WALKER: Okay. I think we

have the wrong document because we don't have a page 9. How is the document titled, please?

COMMISSIONER FRUMIN: It's the -- it's Stephanie Wallace's reply statement on casualty and notice of directly related appeal.

MR. BROWN: Well, that's not the document he's referring to.

COMMISSIONER FRUMIN: No, no. That's an existing filing. I --

MR. BROWN: I know. But that's not the one you were referring us to previously.

But I have to object to the relevance first because the Board has rejected the amendment to the appeal. And when you met on the 15th you rejected and denied my motion to amend the appeal to include what he's talking about.

She certainly did not testify, I don't believe, to it in her direct because the directly related appeal had been denied at that point. So I'm not so sure, even if we

1 got on the right piece of paper that it's
2 relevant.
3 VICE CHAIRMAN LOUD: Which exhibit
4 number is that piece of paper. It's not 40.
5 COMMISSIONER FRUMIN: It's not an
6 exhibit. It's a --
7 MEMBER WALKER: It's Exhibit 47,
8 Mr. Loud.
9 VICE CHAIRMAN LOUD: Forty-seven.
10 Thank you.
11 COMMISSIONER FRUMIN: The Board's
12 Exhibit 47.
13 MR. SIMMONS: I think they mean
14 docket number 47. I'm sorry. I think they
15 mean docket number 47.
16 MEMBER WALKER: No. I meant it's
17 the Board's Exhibit 47.
18 CHAIRPERSON MILLER: I think in
19 all fairness, you know, we can hear the
20 question, but I can understand Mr. Brown's
21 concern where you're going to some legal
22 pleading that we are not considering in this

case. Is that how we would characterize it as we didn't accept the directly related appeal? I forget. What was the directly related appeal to? I forget.

COMMISSIONER FRUMIN: It was related to the claim of a rejection of the -- by DCRA of their application for approval for two alternative proposals.

CHAIRPERSON MILLER: Oh, yes, yes. Okay. Okay.

COMMISSIONER FRUMIN: And then part of what makes it relevant is that what they did in that is put forward a characterization of settlement proposals. And they claim that there were two things out there that might be done. And my question, if I can read the passage and then ask the question. If you think it's inappropriate, you can think it's inappropriate.

COMMISSIONER JEFFRIES: Well, Madam Chair, do we think it's appropriate? I mean, I'm --

CHAIRPERSON MILLER: What he's doing, it's hard for me to make a good ruling without --

COMMISSIONER JEFFRIES: Okay. It won't even get started unless -- I mean, if this is something that we've rejected, then why are we --

MR. BROWN: And it also goes to things that are occurring in 2008, not back and during the time frame that's relevant to this appeal. I mean, it's happening, you know--

CHAIRPERSON MILLER: Yes. Let's just hear what the question is. Because I just can't rule without hearing the question.

COMMISSIONER FRUMIN: Okay. And the question is on page 9 your quote from the document is while reserving your rights under the pending amended appeal Ms. Wallace made several proposals to DCRA based on the existing rear addition, including reconstruction of the original 1933 structure

1 but with eight foot side yards, and otherwise
2 in compliance with the applicable area
3 restrictions, height, lot occupancy and rear
4 yard. Similarly, Ms. Wallace proposed to
5 replace the existing rear addition and
6 demolish the 1933 structure with an entirely
7 new structure meeting all applicable
8 requirements including eight foot side yards.
9 And my question is that albeit it
10 option two, and that you would demolish the
11 existing rear addition and do a new structure
12 with eight foot side yards, albeit it option
13 two and it's not your first choice, is it an
14 option to which you could abide?
15 MR. BROWN: It's totally
16 irrelevant to our procedure.
17 CHAIRPERSON MILLER: What's it
18 relevant to?
19 COMMISSIONER FRUMIN: It's
20 relevant because it goes to credibility. She
21 proposed two things as alternatives. And I
22 want to know if this was a serious proposal

that she would do this and second, to the extent that you rule against her, she claims that there would be an enormous hardship for that. But if this was a proposal, then that hardship was an hardship that she was willing to embrace anyway.

So the question is, is was this a serious proposal and does she stand by it. And if not, why was it there? And if so, what does that say about the hardship that would befall her if you rule in favor of DCRA?

CHAIRPERSON MILLER: Mr. Brown, would you like to say something or no?

MR. BROWN: It was a discussion --

CHAIRPERSON MILLER: I don't want you testify.

MR. BROWN: No, no. But, I mean she was --

CHAIRPERSON MILLER: Are you objecting to the question or what?

CHAIRPERSON MILLER: Yes, I've objected to it because it's not relevant to

anything we're discussing now. I mean, it's a discussion that's occurring in mid-spring of 2008. It's not relevant to anything that occurred in this case that's before the Board which is, you know again, events that are occurring in 2006/2007 --

CHAIRPERSON MILLER: You know what? Can I say something? Because we're going to be here all day if this goes on like this. But I don't think she should have to answer this kind of question.

I think this is something, a legal document. And if you want to use it as what she said she could do in your arguments, fine. I don't think it's appropriate to be questioning her on do you really believe, you know, is written in a document that you filed. I don't think we need to go there.

VICE CHAIRMAN LOUD: Madam Chair?

CHAIRPERSON MILLER: Yes.

VICE CHAIRMAN LOUD: I'd just like to echo that. And wonder if we might place

some limitations around cross so that unless, you know, as you indicated, unless there's a real reason to go into the pleadings on cross, that we just not allow it. And the cross be limited to what was brought out in direct or what's reasonably related to what was brought out in the direct.

But pleadings prepared by the attorney should be off limits on cross.

CHAIRPERSON MILLER: I agree. They are what they are and the attorney's under oath and the witness is under oath. So unless you're questioning something as not being true, I think that's the limit.

COMMISSIONER FRUMIN: Well, it is the question.

CHAIRPERSON MILLER: Okay. Then--

COMMISSIONER FRUMIN: But that's all right. I will drop it because I think we need to move on.

That finishes for me with Ms. Wallace. I don't know --

1 CHAIRPERSON MILLER: I want to
2 finish. I want to go each party finish,
3 period. That's what we did with DCRA. They
4 did all the witnesses --
5 MR. SIMMONS: May we get a five
6 minute break, please?
7 CHAIRPERSON MILLER: Okay.
8 MR. SIMMONS: Thank you.
9 (Whereupon, at 12:11 p.m. off the
10 record until 12:28 p.m.
11 CHAIRPERSON MILLER: Okay. We're
12 back on the record continuing the cross by the
13 ANC.
14 And we want to make a few
15 comments. We need to be realistic. And, you
16 know, we're the judges of the case. And the
17 kind of prolonged fishing expedition kind of
18 questions, as we said, don't help a case. And
19 so what we want to try to do is, you know,
20 just advise a little bit further about the
21 purpose of cross and how it should be.
22 It is not to question a witness

about pleadings. It should be, you know, short, concise, to the point. This isn't a court where you lay long foundation. If you want to say, you know, shouldn't you have known this, this and this when you saw something on day one? Just one question, quick to the point. Because otherwise we're going to be here until midnight, and we've done that. And we've done that in another case. We did 11:00 in your case, we did midnight on other case and it's not a good idea. It's not good. We don't want to aim for that.

We don't want to, you know, fringe on cross, on the ANC's cross. On the other hand, we have another party in opposition who is going to be doing cross as well.

So the rules do allow us to do reasonable restrictions. It says even on cross even time, and we don't want to go there yet because I don't want to be arbitrary and set it time.

So just ask, you know, what are the few key questions you want to get at in cross and then we should be able to keep moving.

So a long winded compound question with three different questions in it is not going to work.

You know, we got some points out of the cross, but you know it was a very long time.

Anything else anyone wants to add on that?

VICE CHAIRMAN LOUD: I think we talked about it a little bit earlier, Madam Chair, in terms of limiting cross to what was brought out on direct or what's directly and reasonably related to what's brought out on direct. And, for example, excluding any kinds of questions that are based on pleadings, motions, those kinds of documents.

I think under our 3117.3(k) that the presiding officer, the Chair, is

1 authorized to restrict unduly repetitious or
2 irrelevant testimony. And I think we'll be
3 looking, as we sort of discussed earlier, to
4 seeing the applicability of that rule to our
5 proceedings moving forward.
6 Under 3117.4 the presiding officer
7 is authorized to place reasonable restrictions
8 on cross examination, including some of the
9 things that we talked about in terms of
10 compound questions and things like that. And
11 Madam Chair to her credit has not done that to
12 give everyone an opportunity to fully address
13 their case. But those are things that we're
14 going to have pay more attention to if we're
15 going to be able to get and give every party
16 an opportunity to move this case forward.
17 So that's all I wanted to add to
18 it. And I'll certainly be taking a look at
19 3117.4 and 3117.3(k) as we move forward this
20 afternoon.
21 CHAIRPERSON MILLER: And I do want
22 to say that I understand that, you know, a lot

of people come in, the parties, and they're not attorneys. And so, you know, we have to tell them. And so, you know, it's not a big criticism. We just want to have the next hour go, you know, more efficiently if possible.

COMMISSIONER FRUMIN: Madam Chairwoman, one for good or ill, I am an attorney.

CHAIRPERSON MILLER: An attorney. Oh. Are you a litigator?

COMMISSIONER FRUMIN: I'm not a practicing attorney at the moment. But I am an attorney. I am cognizant of the fact that I am not being particularly effective with the Board at this time, and it obviously concerns me.

What I would like to do is allow Mr. Simmons to do the cross and reserve only the right for ten or 15 minutes if there are things that he hasn't covered that I think should be covered for me to do with Mr. Premo. And, hopefully, that would expedite this

1 process for everyone concerned and still--
2 CHAIRPERSON MILLER: Okay. So
3 he's going to go first on Mr. Premo, is that
4 what you're saying?
5 COMMISSIONER FRUMIN: Well he
6 would now pick up with Ms. Wallace and then go
7 first on Mr. Premo.
8 CHAIRPERSON MILLER: Okay.
9 COMMISSIONER FRUMIN: And I would
10 reserve just --
11 CHAIRPERSON MILLER: And let me
12 say, too, because I certainly didn't want to
13 insult you that you're an attorney. But we
14 often have the same problems with attorneys
15 because they're used to, you know, having a
16 long time in the courts and the foundation
17 being laid, and all this kind of stuff. So,
18 you know, it's people really. It's
19 inexperience with our proceedings and our time
20 constraints and our --
21 COMMISSIONER FRUMIN: No presumed
22 offense. My goal is to make this go as well

and to be as effective as I can. And I think if we can do it in this other way where Mr. Simmons goes with Ms. Wallace and then if he goes with Mr. Premo, and hopefully I will have very little if it at all for Mr. Premo. And we can make the day go more smoothly.

CHAIRPERSON MILLER: Would that be it for the intervenors, or Mr. Lemoine -- that's your name, right?

MR. LEMOINE: Yes.

CHAIRPERSON MILLER: Yes. Are you--

MR. LEMOINE: No. I would be asking.

CHAIRPERSON MILLER: This is it for the --- Okay. Okay. That's fine. Okay.

Any objection?

MR. BROWN: No. I'm all in favor of efficiency. I just think we need to be sure to maintain the separateness of the ANC, you know, as a quasi-governmental body is in fact not the same as the intervenors who are

private individuals. There seems to be a kind of by conversation and sharing of documents, kind of a blending of the two. And I think it's important to keep them, in our own minds, separate.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: Thank you very much, Madam Chair.

Ms. Wallace, I'd like to address my questions to you first, if I may.

You brought the house you said in March or April of 2004?

MS. WALLACE: Yes.

MR. SIMMONS: How many times did you visit the house before you signed on the dotted line?

MS. WALLACE: Twice, I believe.

MR. SIMMONS: And once was with Mr. Premo?

MS. WALLACE: Yes.

MR. SIMMONS: You made no structural inspection of the house at that

point before purchase, correct?

MS. WALLACE: Correct.

MR. SIMMONS: When you got the house, the contract for the house was as is?

MS. WALLACE: Correct.

MR. SIMMONS: There was no termite inspection conducted, correct?

MS. WALLACE: Correct.

MR. SIMMONS: You did not request one, did you?

MS. WALLACE: No.

MR. SIMMONS: Did you request a structural inspection?

MS. WALLACE: No.

MR. SIMMONS: Between the time of your purchase and the time you submitted your first building permit application -- let me rephrase.

When did you submit your first building permit application? Do you recall the date?

MS. WALLACE: Well I have it here.

MS. WALLACE: Approximately is fine. I'd rather you testified from memory.

MS. WALLACE: Early August, I believe, 2005.

MR. SIMMONS: All right.

CHAIRPERSON MILLER: Can I make a comment? I understand Ms. Wallace's concern about remembering in her head every exact date. So if she's referring to her chronology, I don't see why that would be a problem.

MR. SIMMONS: Well, we don't know how the chronology was prepared.

MS. WALLACE: It's the chronology that is my -- whatever.

CHAIRPERSON MILLER: Is it in the record?

MS. WALLACE: Yes. It's in the record.

CHAIRPERSON MILLER: It's in the record. Okay.

MR. SIMMONS: But was it prepared by Ms. Wallace or someone else?

1 MS. WALLACE: By my attorney.
2 MR. SIMMONS: Then I will object
3 to it. This is not Ms. Wallace's own
4 testimony. The chronology is one prepared by
5 her attorney, not by her. But for the moment
6 she's testified that she was approximately
7 August of 2005 when she submitted the first
8 building permit application. So my question
9 would go --
10 CHAIRPERSON MILLER: This is for
11 the Board's -- because the Board's going to go
12 back and look at these facts.
13 The chronology is attached to
14 what?
15 MR. BROWN: It appears in almost
16 every filing that I've made on behalf of the
17 appellant. Most recently I think it appears in
18 the pre-hearing statement that was submitted
19 on July 1st.
20 MEMBER WALKER: That is Exhibit
21 46.
22 MR. BROWN: Yes. Supplemental

pre-hearing statement, July 1st.

MS. WALLACE: I could give you the exact application right here. It's 7/20.

CHAIRPERSON MILLER: Could I ask about this chronology, though? Just for our purposes when we go back to review the chronology, which we often do in cases like this, I'm sure we will, did you carefully look at these dates and do you adopt them as an accurate chronology even though your attorney prepared them?

MS. WALLACE: Yes. I mean, we did -- there is one mistake that was brought to our attention earlier. And I understand where the mistake -- how the mistake occurred?

CHAIRPERSON MILLER: That's that November 2, 2006?

MS. WALLACE: Correct.

CHAIRPERSON MILLER: Okay.

MR. BROWN: Madam Chair?

CHAIRPERSON MILLER: Yes.

MR. BROWN: Of the first half

dozens questions Mr. Simmons asked, I think they've all been previously asked and answered.

CHAIRPERSON MILLER: You know what Mr. Simmons, though, went really fast through them, right to the point, so --

MR. BROWN: Okay. Well, I didn't interrupt him. But I mean I'm cognizant of we're still going over old ground.

MR. SIMMONS: Some foundation is needed for where I'm going. And, as the Chair said, I'm trying to move as rapidly through these points as possible.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: Thank you.

From the time you purchased the house until July, the date of your first building permit application, did you visit the property?

MS. WALLACE: Yes.

MR. SIMMONS: How many times?

MS. WALLACE: I don't -- I don't

recall.

MR. SIMMONS: Did you conduct any structural investigation of the property during that time?

MS. WALLACE: Not that I'm aware.

MR. SIMMONS: Did you conduct any termite investigation during that time?

MS. WALLACE: No.

MR. SIMMONS: Did you conduct any ground water investigation during that time.

CHAIRPERSON MILLER: Mr. Simmons? I'm sorry.

MS. WALLACE: No.

CHAIRPERSON MILLER: I got distracted for one second. Could you tell me what time you're talking about "during that time?"

MR. SIMMONS: I'm talking the period --

COMMISSIONER JEFFRIES: Yes, the period?

CHAIRPERSON MILLER: Yes. The

period of time --

MR. SIMMONS: The period is from the purchase of the house until the date of the filing of the first building permit application. I'm looking at Exhibit 1, which Ms. Wallace referred to in the yellow bound book. And there are two dates which show either 7/20/04 or 8/9/04. It's that time period from April until July or August that I'm referring to.

COMMISSIONER JEFFRIES: Oh, so it's not between April 2004 and December 2004?

MR. SIMMONS: That's the next period I'm going to ask about.

COMMISSIONER JEFFRIES: Oh, okay.

MR. SIMMONS: If you will, sir.

COMMISSIONER JEFFRIES: Okay.

MR. SIMMONS: Okay. With that building permit application you submitted the architectural plans?

MS. WALLACE: Correct.

MR. SIMMONS: And those are the

drawings that are in your binder at number 10. And correct me if I'm wrong, I understand that 10 is the revision of the drawings that you submitted with the first application?

MS. WALLACE: Right. Number 10 is a revised drawing applying to permit number four based on the original drawings.

MR. SIMMONS: Okay. So the original drawings -- so 10 is the original drawings plus the notation of revised and plus the notation of the boxes that you put on there, is that correct?

MS. WALLACE: I guess you could say that, yes.

COMMISSIONER JEFFRIES: When you're saying "Number 10," you're saying Tab 10.

MS. WALLACE: Tab.

MR. SIMMONS: Tab 10 of Appellant's. Yes, sir.

COMMISSIONER JEFFRIES: Okay. Okay.

MR. SIMMONS: That's the wide sheet of the --

COMMISSIONER JEFFRIES: Right. Okay.

MR. SIMMONS: Okay. Okay. Between the time that you applied for the permit and the time that work first began on the property, did you visit the property?

MS. WALLACE: I don't -- I don't recall.

MR. SIMMONS: Okay. Did you conduct any ground water studies during that time period?

MS. WALLACE: I -- I didn't.

MR. SIMMONS: Did you conduct any termite studies during that period?

MS. WALLACE: No.

MR. SIMMONS: Did you conduct any structural studies during that period?

MS. WALLACE: I don't really know what structural studies you're referring to. We had to have structural drawings for the

blueprints.

MR. SIMMONS: All right. Let me rephrase --

MS. WALLACE: And again, that's an Allen Premo question.

MR. SIMMONS: Thank you for the clarification. I am asking you whether you -- we'll ask it in two parts to make it simpler, I hope.

First, did you conduct any studies of the structural soundness, integrity of the building itself during that time period?

MS. WALLACE: I did not.

MR. SIMMONS: Did you instruct anyone to do so during that same time period?

MS. WALLACE: I don't recall.

MR. SIMMONS: Okay.

MS. WALLACE: I would ask Allen. He might have done it. That's what he does. I don't do that part.

MR. SIMMONS: Okay. What was the first work actually done on the property?

MS. WALLACE: To my knowledge, the first work done on the property was the demolition.

MR. SIMMONS: Are you aware that some two months before the demolition of the back portion of the house actually began work was done on the roof of the building?

MS. WALLACE: No, I don't --

MR. SIMMONS: You are not aware of that?

MS. WALLACE: I don't -- I don't -- not that I recall.

MR. SIMMONS: Do you recall any telephone calls from neighbors questioning you about roofing material being taken off and workers trespassing on property?

MR. BROWN: The relevance of this?

MR. SIMMONS: It's entirely relevant. We're trying to establish when the work began and what was done, and what was done to preserve the structure at that time.

MS. WALLACE: I recall

conversations regarding trespassing and roofing. I did not -- did not recall the date of that.

MR. SIMMONS: And that was before the demolition of the back half of the --

MS. WALLACE: I thought it was during the demolition. Again, I was not on site. We could ask -- defer to Mr. Premo on that particular point.

MR. SIMMONS: Okay. So you were not on site when roofing material was taken off, correct?

MS. WALLACE: Correct.

MR. SIMMONS: You were not on site when the demolition of the back portion of the house occurred?

MS. WALLACE: Correct.

MR. SIMMONS: Were you on site when the foundation was poured?

MS. WALLACE: No.

MR. SIMMONS: Were you on site when the excavation took place for the

foundation?

MS. WALLACE: No. I mean, I visited the site periodically. But I was not on site for all of those things. No.

MR. SIMMONS: I'm asking about specific events. Were you on site when the rear addition was actually framed in?

MS. WALLACE: During the whole period it was framed?

MR. SIMMONS: It was a period of how many days? Do you know?

MS. WALLACE: I can refer to my list.

MR. SIMMONS: If you'd like to.

MS. WALLACE: The -- October 23rd to November 1st.

MR. SIMMONS: Were you present at the site during any of that time?

MS. WALLACE: Did I visit the site during that time?

MR. SIMMONS: Yes.

MS. WALLACE: I don't recall.

Probably.

MR. SIMMONS: But your answer is you don't recall?

MS. WALLACE: Correct.

MR. SIMMONS: Were you present at the site during the days under permit -- what you allege under permit number four when the front portion of the building was demolished?

MS. WALLACE: No. I mean, I don't recall. I don't recall every time I visited the site. And I was not there during --

MR. SIMMONS: That's not my question. My question is were you present when the front portion of the building was demolished in March of 2007?

MS. WALLACE: I don't recall. I don't think so. I don't recall. I could confer with Allen.

MR. BROWN: It's not necessary.

MR. SIMMONS: You personally took down the papers to apply for the first building permit?

MS. WALLACE: Correct.

MR. SIMMONS: Who filled out the actual paperwork, the paper application for the first permit? And if you'd like, I'll refer you to Exhibit 1 of the yellow bound exhibit book?

MS. WALLACE: I -- that's -- I did.

MR. SIMMONS: That's your handwriting?

MS. WALLACE: Yes.

MR. SIMMONS: Okay. Who prepared -- what was submitted with that?

MS. WALLACE: The drawings.

MR. SIMMONS: And you did not prepare those, correct?

MS. WALLACE: Correct.

MR. SIMMONS: Was that an architect engineer?

MS. WALLACE: an architect. Martin Sizzler.

MR. SIMMONS: Did Mr. Premo have

anything to do with that submission?

MS. WALLACE: What do you -- I don't understand the question.

MR. SIMMONS: Do you know whether the architect and Mr. Premo conferred at all in putting together the papers that were used to apply for the building permit?

MS. WALLACE: I mean, this particular application is my handwriting, so I did this. As far as the drawings, yes, Mr. Premo was -- talked to the architect. Again, you could ask him. He's sitting right there.

MR. SIMMONS: Believe me I will, but I wanted to know whether you know. I was asking you about the --

MS. WALLACE: Well, he was -- he was in a meeting with Martin Sizzler and myself. I'm sure he met Mr. Sizzler at the site.

MR. SIMMONS: So now your answer is you did meet with the architect engineer, correct?

MS. WALLACE: Yes. I never said I didn't meet with him.

MR. SIMMONS: And the plan was to put an addition on this house, is that correct?

MS. WALLACE: Correct.

MR. SIMMONS: And that's what the architectural drawings and plans show, is that correct?

MS. WALLACE: Correct.

MR. SIMMONS: Did you ask Mr. Sizzler to make any investigation as to whether the house that was currently on the site was of sufficient structural soundness that you could make that addition?

MS. WALLACE: I did not ask him that.

MR. SIMMONS: Did you ask Mr. Sizzler to make any investigations of the ground water situation such that putting up an addition would be appropriate?

MS. WALLACE: I did not.

MR. SIMMONS: Did you ask him to make any termite investigation?

MS. WALLACE: No.

MR. SIMMONS: How many times did you meet with Mr. Sizzler?

MS. WALLACE: I don't remember.

MR. SIMMONS: More than once?

MS. WALLACE: Yes. More than once, less than ten.

MR. SIMMONS: So the first building permit is the building permit for the addition, is that correct?

MS. WALLACE: Correct.

MR. SIMMONS: All right. Your understand is, is it not, that when the -- strike that.

I believe you testified a moment ago that your understanding of the process was that the demolition of the back portion of the house was the first construction event, am I correct?

MS. WALLACE: No, no, no. The

interior demolition of the existing structure was the first construction.

MR. SIMMONS: And when did that occur? Do you remember?

MS. WALLACE: No.

MR. SIMMONS: Did that occur before the demolition of the back portion of the house in early March 2005?

MS. WALLACE: I just said I don't remember.

MR. SIMMONS: When that interior demolition took place, were you present on the site at any time?

MS. WALLACE: I -- I do -- I remember walking through the house. I don't recall -- I don't recall exactly what dates.

MR. SIMMONS: Once or more than once?

MS. WALLACE: I -- I just said I don't recall. But I -- I was there.

MR. SIMMONS: Did you see it after walls had been taken out, interior walls had

been removed?

MS. WALLACE: Yes.

MR. SIMMONS: Pardon me?

MS. WALLACE: Yes.

MR. SIMMONS: When you saw the interior walls removed, did you ask Mr. Premo or anyone else about the structural integrity of the building?

MS. WALLACE: No.

MR. SIMMONS: Did you ask Mr. Premo or anyone else about termite damage, if there was any?

MS. WALLACE: No.

MR. SIMMONS: Did you ask Mr. Premo or anyone else about water damage, if there was any?

MS. WALLACE: No.

MR. SIMMONS: Did any of them make any comments to you regarding any of those three topics?

MS. WALLACE: Not that I recall.

MR. SIMMONS: Okay. The first

building permit was for the addition, correct?

MS. WALLACE: Correct.

MR. SIMMONS: All right. Work began under the first permit, and I believe that you then said that interior demolition occurred, and then let me make sure I got the timeline in order please. The next thing that would have happened would have been the work for the rear demolition of the existing house, correct?

MS. WALLACE: Say that -- say that again.

MR. SIMMONS: All right.

MS. WALLACE: Again, I'm going to reiterate. I was not on site everyday. These are better asked questions to Mr. Premo. I will do my best, but my accuracy is --

MR. SIMMONS: All right. I believe the record reflects from direct testimony earlier that when the back portion of the original house was examined, the plumbing stack had a problem. The house was wobbly. Do

you recall that testimony.

MS. WALLACE: Yes, but that's not what the testimony was.

MR. SIMMONS: But you do recall that testimony?

MS. WALLACE: I recall my testimony, but that's --

CHAIRPERSON MILLER: Excuse me.

MS. WALLACE: -- not what my testimony said.

CHAIRPERSON MILLER: Were you referring Ms. Wallace's testimony. It's not clear what --

MR. SIMMONS: I'm sorry.

MS. WALLACE: I didn't say there was a problem with the plumbing stack. I never said that.

MR. SIMMONS: All right. I believe there was some testimony to the effect that the plumbing stack was removed?

MS. WALLACE: Yes. In -- during the demolition of the rear of the house, the

plumbing stack was removed as it needed to be, and that's when the structural integrity of the back of the house became an issue.

MR. SIMMONS: And that's when, as they say -- was that part of the house wobbly or was it the front part of the house that later was wobbly?

MS. WALLACE: The back -- the back part of the house where -- where the plumbing stack was wobbly.

MR. SIMMONS: All right. And at that point it is your understanding that the back portion of the house was demolished, correct?

MS. WALLACE: Well --

MR. SIMMONS: Was taken down?

MS. WALLACE: Yes, the back part of the house was taken down after the house was -- was wobbly. I have to use my nontechnical terms.

MR. SIMMONS: That's fine.

MS. WALLACE: And we worried that

it would fall down.

MR. SIMMONS: Okay. When the plumbing stack problem arose, did someone inform you of that problem?

MS. WALLACE: Mr. Premo.

MR. SIMMONS: And what did you instruct him at that time?

MS. WALLACE: We discussed the -- at that particular time our decision was to take down the house because we were worried it was going to fall down.

MR. SIMMONS: And that was a discussion and a decision jointly made by you and Mr. Premo, correct?

MS. WALLACE: Correct.

MR. SIMMONS: Did you instruct him to go down to DCRA and to see if a permit was required?

MS. WALLACE: No.

MR. SIMMONS: Do you know whether he did so?

MS. WALLACE: He did not.

MR. SIMMONS: And, in fact, after you took the back portion of the house down a stop work order was issued, correct --

MS. WALLACE: Correct.

MR. SIMMONS: -- working beyond the scope?

MS. WALLACE: Correct.

MR. SIMMONS: Did you visit the property after that stop work order was issued?

MS. WALLACE: Yes.

MR. SIMMONS: When?

MS. WALLACE: I don't know.

MR. SIMMONS: All right. When you visited the property after the demolition occurred and the stop work order was issued in early March 2005 what did you see?

MS. WALLACE: When I visited the house after -- say that question again. Sorry.

MR. SIMMONS: When you visited the house after the demolition of the rear part of

the building occurred in March of 2005 --

MS. WALLACE: Yes.

MR. SIMMONS: -- and the stop work order was issued in March of 2005 what did you observe?

MS. WALLACE: The front half of the existing house.

MR. SIMMONS: Did you walk through the front half of the existing house?

MS. WALLACE: I don't recall.

MR. SIMMONS: Did you enter -- do you remember whether you even entered the front part of the existing house?

MS. WALLACE: I -- I don't remember.

MR. SIMMONS: Did you ask Mr. Premo to investigate whether the front part of the existing house was structurally sound?

MS. WALLACE: I don't think so. I don't recall. But we've already been over this.

MR. SIMMONS: All right. Let's go

1 back now a little bit earlier. Do you recall
2 a meeting with neighbors in April of 2005?
3 MS. WALLACE: I remember the
4 meeting. I can't remember -- I don't remember
5 the date regarding use of your easement?
6 MR. SIMMONS: That's the meeting
7 I'm questioning.
8 MS. WALLACE: Yes.
9 MR. SIMMONS: You do recall such a
10 meeting?
11 MS. WALLACE: Absolutely.
12 MR. SIMMONS: I will represent to
13 you that it occurred in April of 2005.
14 MR. BROWN: Madam Chair, I object.
15 I'm not so sure: (1) I don't believe you
16 testified to this on your direct. And --
17 MR. SIMMONS: I'll connect up,
18 Madam Chair.
19 MR. BROWN: Well, but a meeting
20 with the neighbors, I'm not so sure I see any
21 potential relevance to what we're talking
22 about here.

CHAIRPERSON MILLER: Let me hear-- you're going to make a connection?

MR. SIMMONS: I'm going to connect up within about four short questions, if you will allow me.

CHAIRPERSON MILLER: All right. Let's see.

MR. SIMMONS: Thank you.

You do recall that meeting, correct?

MS. WALLACE: Yes.

MR. SIMMONS: That meeting occurred partially at my house and partially on the site, is that correct?

MS. WALLACE: Yes.

MR. SIMMONS: You recall that among the things talked about at that meeting were the plans for the property?

MS. WALLACE: Yes. I believe -- I believe I brought the plans or pictures.

MR. SIMMONS: All right. All right. We'll address that part later.

Do you remember standing with me at the curbside of the property by our easement that day?

MS. WALLACE: No. I mean --

MR. SIMMONS: But you do remember we walked over to the property, correct?

MS. WALLACE: Vaguely, yes. I mean I remember more sitting around your dining room table talking about using your easement and repairing it for you when we were done as that was the major purpose of that meeting.

MR. SIMMONS: But we did walk to the property, correct?

MS. WALLACE: I'm taking your word on it.

CHAIRPERSON MILLER: Are you making the connection?

MR. SIMMONS: I'm asking you if you recall.

CHAIRPERSON MILLER: Are you getting to the connection? Because this does

seem --

MR. SIMMONS: I'm trying to connect up, yes.

CHAIRPERSON MILLER: -- to have nothing to do with what she testified to.

MR. SIMMONS: Do you recall that we walked over to the site?

MS. WALLACE: I believe we did. I truly -- if you give me -- keep going, and maybe it will --

MR. SIMMONS: All right. Did we walk along the easement and did we discuss ground water and a spring through the back yard?

MS. WALLACE: I recall you -- you or one of the neighbors mentioning that there was a water table. The -- the guy at the very end of the block had a lot of water in his basement. I don't know what his name was. He was the -- on the corner.

MR. SIMMONS: All right. So water and the water table were discussed at that

meeting, is that correct, in your recollection?

MS. WALLACE: Well, I don't know the word -- I -- I maybe used the word water table because now I understand it. But then I recall being told that there was basement issues from your neighbor.

MR. SIMMONS: And it was due to water flowing downhill was the discussion, is that correct?

MS. WALLACE: That was my understanding.

MR. SIMMONS: And in spite of that conversation between there and the time of the actual excavation for the basement and the cave in that occurred the following year, you conducted no ground water studies, correct?

MS. WALLACE: to my knowledge that's correct.

MR. SIMMONS: Who wrote the application for the second building permit?

MS. WALLACE: I don't know. Can I

take a look at it? Do we have it?

MR. SIMMONS: I don't know if we do. But certainly feel free.

MS. WALLACE: I don't know.

CHAIRPERSON MILLER: Aren't all the permits in the record?

MR. BROWN: The permits are, but not necessarily the applications.

CHAIRPERSON MILLER: Oh, the application. Oh.

MR. BROWN: The permit is, but not the application.

MS. WALLACE: I can't remember when -- I believe we hired Mr. Permit around number two. I cannot honestly remember -- Can I confer with Allen?

CHAIRPERSON MILLER: Well, let him answer the question.

MR. SIMMONS: It's exhibit -- let me refer you to Exhibit 3 of your exhibits, which is the building permit itself.

MS. WALLACE: Okay.

MR. SIMMONS: And perhaps that will help you answer my question.

Do you recall if the building permit application underlying this permit was written by you or by someone else?

MS. WALLACE: I'm -- I'm assuming -- I'm using that word, that it's Mr. Smith as he is the agent on this permit.

MR. SIMMONS: You have no recollection --

COMMISSIONER JEFFRIES: Excuse me. Ms. Wallace, do you -- Okay. Go ahead.

MS. WALLACE: I can't remember if I filled out the application and then I hired Mr. Smith or if I hired him before we submitted the application. I'm pretty sure he did the application.

If you'd let me ask Allen, we could probably figure it out.

COMMISSIONER JEFFRIES: No. See, that's the point. He's asking you direct questions.

MS. WALLACE: Okay.

COMMISSIONER JEFFRIES: I mean, you have to answer these questions.

MS. WALLACE: All right. Then I truly don't remember who filled it out.

COMMISSIONER JEFFRIES: If you don't remember, you don't remember.

MS. WALLACE: I don't remember.

COMMISSIONER JEFFRIES: It's yes or no or you don't remember.

MS. WALLACE: Okay. I don't remember.

COMMISSIONER JEFFRIES: Okay.

MR. SIMMONS: All right. Let's look at that second permit for a moment. The date of issuance is October 4, 2005, is that what it shows?

MS. WALLACE: Yes.

MR. SIMMONS: Okay. And it's described as a revision to an earlier building permit, and that earlier building permit is the addition permit we talked about?

MS. WALLACE: Yes.

MR. SIMMONS: And that involved deleting the structural drawings S1, which were not adequate for the project and substituting new structural drawings, correct?

MS. WALLACE: That's what it says.

MR. SIMMONS: All right. Now let's focus down in the section called Conditions and Restrictions. Do you see that section?

MS. WALLACE: Yep.

MR. SIMMONS: Okay. There's a carry over sentence that starts with "Entirely on owner's land" et cetera, et cetera, et cetera?

MS. WALLACE: Yes.

MR. SIMMONS: Okay. Was that in response to the concerns about trespass on the easement, do you know?

MS. WALLACE: I do not know.

MR. SIMMONS: Do you know who put that language in?

MS. WALLACE: Patrick --

MR. SIMMONS: Strike that. Let me reask the question this way. Do you know whether that language was contained in your building permit application?

MS. WALLACE: I don't know.

MR. SIMMONS: Okay. Now the next sentence --

MS. WALLACE: I believe it's on every permit, no? Isn't it always on the owner's land entirely?

MR. SIMMONS: Have you seen any other permit in this series of permits or in any other permit that you have done in which the written language that's inserted into these forms says anything like "entirely on owner's land?"

MS. WALLACE: I don't know. I just assumed the permit was on the owner's land.

MR. SIMMONS: That's not my question. Have you seen any building permit--

MS. WALLACE: I don't know. You

1 want me to look?

2 MR. SIMMONS: I'm asking do you do

3 you recall ever seeing any building permit

4 either in connection with this project or any

5 other that in the language that you insert in

6 the boxes says entirely on owner's land or

7 something similar to entirely on owner's land?

8 MS. WALLACE: I -- I don't know.

9 MR. SIMMONS: That's not my

10 question.

11 MR. BROWN: She's answered she

12 doesn't know.

13 VICE CHAIRMAN LOUD: Counsel, can

14 you moved on? She's been asked that question

15 several times. She said I don't know several

16 times.

17 MR. SIMMONS: Thank you, sir.

18 I'll be glad to move on.

19 The next sentence on there is the

20 one I'd like you to focus on in the next few

21 questions, please.

22 MS. WALLACE: Okay.

MR. SIMMONS: That sentence, would you read that sentence into the record, please? The one that starts with the word "remove?"

MS. WALLACE: "Remove and replace damaged wood in accordance with the structural plans to preserve the integrity of the project."

MR. SIMMONS: All right.

MS. WALLACE: Keep going?

MR. SIMMONS: No, that's fine.

MS. WALLACE: Okay.

MR. SIMMONS: That's fine.

I'd like to know what wood you removed and replaced under this permit?

MS. WALLACE: We removed the back half of the structure and replaced it.

MR. SIMMONS: So your view is that this permit permitted you to take down the back portion of the structure completely and replace it?

MS. WALLACE: Yes, that's what

this permit --

MR. SIMMONS: Is that how you read this?

MS. WALLACE: -- that's what this permit was. We had a stop work order and this is what we did to fix it. That's what you do. When you get a stop work order, you cure the problem. That's what this permit is.

MR. SIMMONS: You don't read this permit as making repairs to the existing --

MR. BROWN: She's answered the question.

MR. SIMMONS: This is cross, if I may.

MR. BROWN: But she answered the question. She just --

CHAIRPERSON MILLER: He's asking a different, a slightly different question. And, you know, she can answer yes or no, I don't know.

MS. WALLACE: I can't -- ask it again. Ask -- what was the question.

MR. SIMMONS: Could this not be read as to repair the structure rather than to demolish the structure and replace?

MS. WALLACE: It doesn't say repair. It says remove.

MR. SIMMONS: Does remove -- in your view remove means demolish, is that correct?

MS. WALLACE: Right. It means make go away.

MR. SIMMONS: Not my question. Does remove mean demolish?

MS. WALLACE: If that's what the--

MR. BROWN: She's answered the question.

MR. SIMMONS: No, she has not. My question is does remove mean demolish? A simple question.

MS. WALLACE: I believe in this circumstance, yes, that's what it means. It doesn't say repair. It says remove.

MR. SIMMONS: But it doesn't say

demolish either, does it?

CHAIRPERSON MILLER: Let's not argue about it.

COMMISSIONER JEFFRIES: She answered.

MR. SIMMONS: All right. That's fine.

At the time this permit was issued until work under it was actually stopped some time later, did you conduct any studies of the structural integrity of the building?

MS. WALLACE: Not that I recall.

MR. SIMMONS: Did you conduct any groundwater?

MS. WALLACE: Not that I recall.

MR. SIMMONS: Did you conduct any termite studies?

MS. WALLACE: Not that -- no.

MR. SIMMONS: Okay. May I have just a moment, please?

CHAIRPERSON MILLER: I just want to ask a basic question. Why didn't you

conduct any of those studies for termites, for water damage, for anything like that?

MS. WALLACE: I don't --

CHAIRPERSON MILLER: Or is that for Mr. Premo?

MS. WALLACE: Yes.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: Let me ask the question, a slight different follow up question. Did you instruct Mr. Premo to do any of those studies?

MS. WALLACE: No. I did not instruct him.

MR. SIMMONS: And this was a significant project for you, wasn't it?

MS. WALLACE: Yes.

MR. SIMMONS: It involved a large amount of money ultimately, correct?

MS. WALLACE: Yes.

MR. SIMMONS: Who drafted the application for the third building permit? And I will refer you to Exhibit 4 of your

exhibit book for the permit itself?

CHAIRPERSON MILLER: Can you repeat that? You'll refer us to what?

MR. SIMMONS: Exhibit 4 of Appellant's exhibit book, please.

MS. WALLACE: I believe Mr. Permit. Also, James Smith was the owner of the company Mr. Permit.

MR. SIMMONS: So to your knowledge he drafted the permit application, is that correct?

MS. WALLACE: That's my understanding.

MR. SIMMONS: And this permit application was filed in -- I'm sorry. Do you know the date on which the permit application was filed approximately?

MS. WALLACE: No. Is it on there?

MR. SIMMONS: The permit itself, if you can look at number 4, is the date of that permit April 21, 2006, is that correct?

MS. WALLACE: Yes. Yes. But I

1 don't know when the application was, and I
2 don't have a copy of that.
3 MR. SIMMONS: Okay. The
4 excavation for the foundation was conducted
5 under which building permit?
6 MS. WALLACE: This is the building
7 permit -- well, the excavation was building
8 permit number one.
9 MR. SIMMONS: All right. Let's
10 talk about the excavation for a moment. When
11 did that occur?
12 MS. WALLACE: Again, really,
13 better to ask Mr. Premo. I pick kitchen
14 cabinets. Okay. I don't -- I really was not
15 there at all during the excavation.
16 MR. SIMMONS: All right.
17 MS. WALLACE: He would know all of
18 your answers. I --
19 MR. SIMMONS: Well let me ask you
20 a --
21 MS. WALLACE: Yes.
22 MR. SIMMONS: -- couple of

1 questions. And in your testimony earlier, and
2 correct me if I'm wrong, was that when the
3 excavation was done and then it filled up with
4 water, is that correct?
5 MS. WALLACE: That's my
6 understanding.
7 MR. SIMMONS: That's your
8 understanding.
9 MS. WALLACE: And it was in
10 November.
11 MR. SIMMONS: Of what year?
12 MS. WALLACE: I believe that --
13 was it -- excavation of the rear addition,
14 November 29th, so it's 2005.
15 MR. SIMMONS: All right. Were you
16 on site when the excavation was done?
17 MS. WALLACE: No. I already
18 testified to that.
19 MR. SIMMONS: All right. Did you
20 become aware that when the excavation was done
21 the sides of that excavation caved in?
22 MS. WALLACE: Yes.

MR. SIMMONS: When did you become aware of that?

MS. WALLACE: I don't know the date.

MR. SIMMONS: Did you become aware that that cave in effected land both belonging to Ms. Grumbind and myself and to Mr. Lemoine?

MS. WALLACE: I was -- yes. I mean I'm aware of the Lemoine. I'm not -- I'm not -- I can't recall about the driveway side, the easement side.

MR. SIMMONS: All right. But you do recall that a cave in occurred, is that correct?

MS. WALLACE: Yes. My understanding --

MR. SIMMONS: That's all I asked you.

Do you know whether any shoring was put in place before the excavation was done?

MS. WALLACE: I don't know the

exact order. I know shoring was done. I do not know when it was done.

MR. SIMMONS: So you cannot testify that it was done before the actual excavation?

MS. WALLACE: I cannot.

MR. SIMMONS: All right. And the cave ins occurred before it filled with water, is that correct?

MS. WALLACE: I -- I wasn't there. I -- I don't know. I don't know exactly how. I was --

MR. SIMMONS: Well, would you deem this a significant event in the history of this property?

MS. WALLACE: Yes.

MR. SIMMONS: And you were not on site to see it?

MS. WALLACE: No. It was Thanksgiving. I was with my family.

MR. SIMMONS: Were you here in town?

MS. WALLACE: No.

MR. SIMMONS: Did you come back to town to see this?

MS. WALLACE: Yes.

MR. SIMMONS: When?

MS. WALLACE: I don't know. I'd have to look at a calendar. And I don't know.

MR. SIMMONS: Was it -- was it within a few days or was it a few months later?

MS. WALLACE: I would say days to weeks later.

MR. SIMMONS: And you said it filled with water, correct?

MS. WALLACE: That's my understanding.

MR. SIMMONS: What efforts did you make to pump that water out?

MS. WALLACE: My understanding, we had a pump that pumped the water out. Again, Allen Premo would be the better person to answer that question.

MR. SIMMONS: Are you aware that a violation notice was issued in 2006 for standing water?

MS. WALLACE: Yes.

MR. SIMMONS: What efforts did you make after that notice of violation was issued to correct the standing water problem?

MS. WALLACE: More pumps. The new pump. Again, Mr. Premo would be better to answer that question.

MR. SIMMONS: Did you instruct Mr. Premo to bring in more pumps?

MS. WALLACE: I -- I don't recall the conversation.

MR. SIMMONS: Let me refer you to Exhibit 17 of the yellow bound exhibit book, please.

MR. BROWN: Madam Chair, that's still not in the record and it wasn't part of her direct testimony.

MR. SIMMONS: This is perfectly appropriate on cross, Your Honor. It's an

exhibit that goes directly to the issue we're speaking about.

CHAIRPERSON MILLER: Are you talking about Exhibit 7 --

MR. SIMMONS: Seventeen.

CHAIRPERSON MILLER: Oh, 17.

MR. SIMMONS: Of the yellow bound book. Yes. Do you have that?

MS. WALLACE: Yes.

MR. SIMMONS: Okay.

MR. BROWN: I renew my objections. It's not in the record yet. I've never seen it before. And it certainly wasn't part of her direct testimony.

This is why, quite frankly, where we are in this process. And, you know, I question the relevance and the timing of the questions on this. And we need to move on.

CHAIRPERSON MILLER: Well, I somewhat agree. This isn't like a photo that we're using for reference.

MR. SIMMONS: Well, then turn to

page 2 of the exhibit, please.

Ms. Wallace?

MS. WALLACE: Yes, okay.

MR. SIMMONS: Does this photo adequately reflect the poured foundation with water standing in it?

MS. WALLACE: It appears to.

MR. BROWN: But again the relevance to this to her direct testimony. I mean I don't want to tell the intervenors how to put their case on. But we're here on cross examination of my client. And I don't -- and again, I don't see the relevance.

CHAIRPERSON MILLER: Mr. Simmons, you want to talk about the relevance to the direct testimony.

MR. SIMMONS: Sure, I would love to. I would love to.

The direct testimony here has been that building permits were complied with, relied on and acted upon. This goes to the fact not only that they were not, but that

there were continuing series of problems and violations which goes directly to the question of equities under the issue of the estoppel, which has been raised in this case by Appellant.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: We are entitled to show through cross whether or not Appellant has acted as she has claimed, with good faith and in reliance throughout.

MS. WALLACE: I want to answer our question. I can -- we did our best, and ongoingly did our best to get that water out. You think I want -- we wanted this to occur, this much water? We did our best.

Again, you'd have to ask Mr. Premo--

MR. SIMMONS: I will ask Mr. Premo. I'm asking you.

MS. WALLACE: I wasn't --

MR. SIMMONS: What efforts you know of?

MS. WALLACE: We pumped and pumped and pumped and broke pumps and bought more pumps. All I ever heard was we're pumping, we're back pumping, filled again. We would pump it and it would fill it up. We would pump it and it would fill up.

COMMISSIONER JEFFRIES: Excuse me. Mr. Simmons, I have a question. Are you saying by looking at this photograph that speaks to the Appellant not acting in good faith? I mean, I'm trying to understand.

MR. SIMMONS: I was simply using it as an illustration of the water problem at that point, Your Honor.

COMMISSIONER JEFFRIES: It's just the water?

MR. SIMMONS: Yes, sir.

COMMISSIONER JEFFRIES: You're just trying to show us the water problem?

MR. SIMMONS: That's correct.

COMMISSIONER JEFFRIES: But you're not trying to show any intent on her part or--

MR. SIMMONS: No. With that photograph, no. But certainly the first page of this exhibit that was exemplary of the violation issued for the standing water, and that it was abated. And that's what this exhibit is for and as to her efforts in good faith in abating that problem.

Maybe I should ask the following question: Did you go down to DCRA and inform them of the standing water problem?

MS. WALLACE: I did not go down.

MR. SIMMONS: Did you instruct anyone to go down to DCRA and tell them about the standing water problem?

MS. WALLACE: I did not send anyone down.

MR. SIMMONS: But you did become aware of a violation that ultimately was issued, correct --

MEMBER WALKER: Mr. Simmons, for the record, can you tell us when this photograph was taken?

CHAIRPERSON MILLER: And who took it?

COMMISSIONER JEFFRIES: And probably photos after that to show -- anyway, on and on.

MR. SIMMONS: This picture was taken by Ms. Grumbind. I do remember that I--

MR. BROWN: This picture is undated and it's not in the record yet. And, again, this is why we're not making any progress here.

MS. WALLACE: It does say it was abated right in the thing.

MR. SIMMONS: That was my point.

CHAIRPERSON MILLER: Okay. All right. Fine. Let's just --

MS. WALLACE: We -- we had a problem --

CHAIRPERSON MILLER: It was a visual, and let's move on. It will be in the record, I'm sure, will it not?

MR. SIMMONS: Thank you. Thank

you.

CHAIRPERSON MILLER: I don't know why it's not in the record. We're all looking at it. And I think it's in the record.

MR. SIMMONS: And for the record, then I will submit all of the yellow exhibit book for the record, formally move its admission. We can testify as to individual exhibits as we need to later on.

CHAIRPERSON MILLER: You don't need to. I mean it's a filing. So -- okay, let's move on.

MR. SIMMONS: Thank you very much, Madam Chair.

Let's then when we're talking about the excavation and the cave in, let's flip over to Exhibit 18 for a moment, please. You see an orange fence there, is that correct?

MS. WALLACE: Yes.

MR. SIMMONS: Was that the construction fence that you had in place on my

side of the property at the time of the excavation and the cave in?

MS. WALLACE: Well, I believe it's -- I think it's called a soil -- if I could ask him --

MR. SIMMONS: Well, I want to know what you know. I'll ask Mr. Premo later.

MS. WALLACE: I don't know your term "construction fence." I don't know what that means. Is that a -- is that a specific kind of fence. Is that -- I don't know what that terms means "construction fence."

MR. SIMMONS: Well, my question is, is this the fence that was in place at the time?

MS. WALLACE: I believe so.

MR. SIMMONS: Do you have any reason to doubt that it was in place? Do you reason to believe that any other fence was in place?

CHAIRPERSON MILLER: Well, she answered that she thinks this was what you're

presenting it to be, correct?

MS. WALLACE: Yes.

MR. SIMMONS: You're not aware of any other fence of any kind in place at that time?

MS. WALLACE: Well, I'm looking at the picture. But --

MR. SIMMONS: All right. Let me move on then. Did you ever place a six foot high fence around the property?

MS. WALLACE: Currently there -- I think there could be a six -- I don't know how tall exactly. There's a chain link fence around the property currently.

MR. SIMMONS: And that was installed when?

MS. WALLACE: Three months ago, two months ago. I don't know the exact date.

MR. SIMMONS: Three months ago would take us to approximately April or May of 2008, correct?

MS. WALLACE: Correct.

MR. SIMMONS: There was no six foot high fence around the property at anytime prior to that, was there?

MS. WALLACE: I don't know. I'm telling you when I know about --

MR. SIMMONS: Do you know -- I'm sorry. And excuse me for interrupting. Did you instruct anyone to put a six foot high or chain link fence or any other kind of fence around that property prior to May of 2008?

MS. WALLACE: Not that I recall.

MR. SIMMONS: And on any of your visits to the property did you see any such fence prior to May of 2008?

MR. SIMMONS: I -- I don't recall.

MR. SIMMONS: Was there such a fence in place at anytime during the period after January 1, 2008 until you installed this fence in May of 2008?

MS. WALLACE: Was there a six foot tall fence --

MR. SIMMONS: Yes.

MS. WALLACE: -- prior to the Long fence?

MR. SIMMONS: Yes.

MS. WALLACE: Not that -- not that I know of. There was some fencing. I can't -- again, it would be best to ask Mr. Premo. There was some fencing that was taken down by vandals or someone, but I don't know how tall it was and exactly the dates of that.

COMMISSIONER JEFFRIES: Mr. Simmons, I'm sorry. I'm just -- I don't understand the point of some of the questions in this.

MR. SIMMONS: The point goes back to the point I was making with the Chair a moment ago, Mr. Jeffries, of the actions in good faith, of the reliance on the permits of the attempts to comply, of the equities of the situation.

COMMISSIONER JEFFRIES: So this is a cumulative thing. You know, you think it is--

MR. SIMMONS: It is to some extent, sir. But it's also to the point that the second building permit required that the structural integrity of the building be maintained. Here what's happened is it will be my contention later, and certainly through my testimony later, that no action was taken to keep vandals from coming in and doing things to harm the structural integrity of the building, for example. And that's one of my points in raising this fence matter, Your Honor.

And I'm prepared to move one.

COMMISSIONER JEFFRIES: Okay.

MR. SIMMONS: Thank you very much, Mr. Jeffries.

Now the third building permit as you understand it was to raze the existing structure by four feet and to raise your addition by four feet?

MS. WALLACE: I'm sorry. Yes, I believe that's what it. To -- to put in --

it's to revise the structural foundation drawings that were done because of the water table. And then to raise the house out of the ground so that the house would sit above the water table?

MR. SIMMONS: And that was by approximately four feet, right?

MS. WALLACE: Correct.

MR. SIMMONS: And it was your intent that the addition, therefore, would be four feet higher than originally planned?

MS. WALLACE: I can't -- I don't remember exactly how high -- how high it was planned originally. My --

CHAIRPERSON MILLER: Excuse me. Could you bring our attention to where the third building permit is in the filing.

MR. SIMMONS: Certainly.

CHAIRPERSON MILLER: So we can all see what it says.

MR. BROWN: Madam Chair, in the Appellant's exhibit it's at Tab 4.

Appellant's exhibits it's Tab 4.

MR. SIMMONS: And do you have Tab 4 in front of you?

MS. WALLACE: Yes,

MR. SIMMONS: Okay. Thank you. And this permit is dated 4/21/06, correct?

MS. WALLACE: Yes.

MR. SIMMONS: And in the description of work the last portion reads, and let me quote it and you tell me if I'm quoting it correctly. "This permit revision will raise the house up by approximately four feet." Is that correct.

MS. WALLACE: That's what it says.

MR. SIMMONS: All right. Your understanding was that now the addition of the house would be four feet higher than originally planned, is that right? That's your understanding.

MS. WALLACE: Okay. Yes.

MR. SIMMONS: Yes?

MS. WALLACE: Yes. Yes.

MR. SIMMONS: Okay. And it's your understanding that the existing portion of the house, the part that was remaining on the site would also be raised up by four feet, is that correct?

MS. WALLACE: Correct.

MR. SIMMONS: All right. From the time period 4/21/06 to January '07 when you brought in a structural engineering report did you make any efforts to determine -- strike that.

Did you consider the possibility of raising up the original remaining portion of the house before putting on the addition?

MS. WALLACE: I -- I-- I don't know. That's an Allen Premo question.

MR. SIMMONS: I asked if you know. Do you --

MS. WALLACE: I don't know. I don't know.

MR. SIMMONS: Do you know if Mr. Premo undertook any investigations as to

whether the front portion of the house was of sufficient structural integrity during that time period that it could be raised up by four feet?

MS. WALLACE: I don't know what he did exactly.

MR. SIMMONS: Did you instruct him to do so?

MS. WALLACE: I don't recall.

MR. SIMMONS: So as far as you know that that chronology that we've sort of been talking our way through you have conducted the excavation, we have discussed how there was some collapse, we've discussed the water. The next thing that happened was this building permit number three and it was pursuant to this building permit that you built the addition -- the foundation for the addition and part of the original portion of the house that had been demolished, is that correct?

MS. WALLACE: I believe -- yes.

This is the new foundation with the Helical Piers. That with all -- that's what this building permit went to was the wet site.

MR. SIMMONS: Then was necessitated because of the ground water issue that you've discussed?

MS. WALLACE: Yes.

MR. SIMMONS: Okay. Between March of 2005 and the time of this building permit application, we're dealing with approximately one year. Can you tell us what steps you took to protect the existing house from the elements?

MS. WALLACE: I'm not really sure.

MR. SIMMONS: Do you know whether a tarp was put over the roof?

MS. WALLACE: I -- I don't know.

MR. SIMMONS: Do you know whether the back portion of the house to the point where the demolition had occurred had been completely sealed off?

MS. WALLACE: I believe there was

some sealing, but I can't -- I'm not sure that it's completely sealed off.

MR. SIMMONS: All right. Let me refer you then to the yellow bound binder. And I will ask you to look briefly at Exhibit 10 of the yellow bound binder, please.

Okay. Now you personally did not take this picture, correct?

MS. WALLACE: Correct.

MR. SIMMONS: Does this accurately reflect what you recall of the back portion of the house looking like in April of 2005?

MS. WALLACE: Ah --

MR. SIMMONS: Or were you present at any point in April of 2005?

MS. WALLACE: I don't remember.

MR. SIMMONS: You have no reason--

MS. WALLACE: It looks like -- it looks like an accurate picture.

MR. SIMMONS: So you have no reason to challenge the accuracy of that picture --

MS. WALLACE: Yes.

MR. SIMMONS: -- or the following picture?

MS. WALLACE: No.

MR. SIMMONS: Or the following picture?

MS. WALLACE: No.

MR. SIMMONS: Okay. And if you'll allow me to belabor the obvious, none of those pictures show the back portion of the house entirely sealed up, do they?

MS. WALLACE: That's correct.

MR. BROWN: Madam Chair. I mean I'll note that none of those pictures are dated.

MR. SIMMONS: We've got counsel testifying again.

CHAIRPERSON MILLER: I know. I know. But I mean, you know I think that she's saying they're an accurate reflection, so that's fine. But on the other hand, this is the intervenor's case in here. So, you know,

I just wonder to how much time I really should allow you to be asking your questions about your exhibits.

MR. SIMMONS: Well, it's perfectly appropriate cross. We're going to --

CHAIRPERSON MILLER: But, you know, this is basic and she's not contesting it. I just think we need to move quickly.

MR. SIMMONS: All right. I'll be glad to move on. And I guess I would refer you also to the Exhibit 13 just briefly,

In our prior hearing this picture, I believe, was mentioned a moment. Do you have any reason to doubt that this was an accurate picture at the time it was taken?

CHAIRPERSON MILLER: Do we know what the time it was taken was?

MR. SIMMONS: That was going to be my next question. You don't know when this picture was taken, do you?

MS. WALLACE: No.

MR. SIMMONS: All right.

MS. WALLACE: I didn't take the picture.

MR. SIMMONS: All right.

COMMISSIONER JEFFRIES: Mr. Simmons, the impression that I have, I think you've succeeded in -- I mean, the impression that I have is that Ms. Wallace, you know there were certain aspects of this overall project that she was on top of and then a lot of the other aspects perhaps she wasn't. And so I'm just trying to figure out -- it seems like you've made your case, but perhaps you haven't. But --

MR. SIMMONS: I'll move on.

COMMISSIONER JEFFRIES: -- because so many of the questions that you're asking, she's just not in a position to answer them. And it tells me, sort of, I get the impression of sort of the kind of developer she was in this process. Again, there's lots of different types of developers. And so I think the case has been -- the point has been made --

MR. SIMMONS: Thank you.

COMMISSIONER JEFFRIES: -- that she -- and I'm not trying to say anything derogatory towards you.

MS. WALLACE: No, I understand. I mean I guess I should have -- at some point Allen and I should have testified to our duties on the job and our duties are different. And so many of the questions fall under his realm.

You can ask me anything you want about paint color, floor color, you know every speck of that house I could tell you about. But structural stuff, who talked to what inspector, that's not my job.

COMMISSIONER JEFFRIES: Yes.

CHAIRPERSON MILLER: But that's Mr. Jeffries' point.

MS. WALLACE: Yes.

CHAIRPERSON MILLER: We really get that, and you're not contesting it.

And do you need, Mr. Simmons, for

your case to hammer it through every single activity that went on, every single permit, every -- you know?

MR. SIMMONS: Certainly we don't. I've got a couple of more quick points I'd like to make along this line, and then I'll move on to other matters, if I may.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: So give me a few more questions of indulgence.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: I am trying to be as expeditious and efficient as I possibly can be. I understand --

COMMISSIONER JEFFRIES: And you're doing a good job in terms of what you're trying to do. But it seems like you've done it. But you want to continue.

MR. SIMMONS: I do.

COMMISSIONER JEFFRIES: Okay.

MR. SIMMONS: Understanding --

COMMISSIONER JEFFRIES: Okay.

MR. SIMMONS: -- the downside of it, I would like to just make a few more questions on this sort.

COMMISSIONER JEFFRIES: Okay.

MR. SIMMONS: And then move forward very quickly.

Ms. Wallace, did you become aware of a posting by DCRA on or about June 30, 2006 stating that the structure was unsafe? And I believe this was before the addition went up. Strike that. Let me try to make this simpler.

The foundation for the addition and the addition were constructed in approximately November 2006, am I correct?

MS. WALLACE: If I can refer to my cheat sheet here. Excavation, November. And the addition was framed in October to November, yes, 2006. And November '05 was the excavation.

MR. SIMMONS: All right.

MS. WALLACE: They were a year--

MR. SIMMONS: I'd like to go back

in time a little bit, and pardon my doing this out of sequence. To June of 2006. After the excavation --

MS. WALLACE: June of '06, yes.

MR. SIMMONS: Yes. I want to make sure that we've got the sequence correct here. This is after the excavation and before the foundation was poured and the addition was framed in. Is that correct in terms of time?

MS. WALLACE: Yes, I believe so.

MR. SIMMONS: Did you become aware that a notice of violation for unsafe structure was posted on or about June 30 of 2006?

MS. WALLACE: I'm not really sure I recall this.

MR. SIMMONS: I'm referring now to Exhibit 12 in the yellow bound binder. You don't recall seeing this, do you?

MS. WALLACE: I don't recall seeing this.

MR. SIMMONS: Do you remember Mr.

Premo or anyone else bringing this to your attention?

MS. WALLACE: I can't -- I -- I don't remember.

MR. SIMMONS: Let me ask you then, just turn to the second page of that exhibit.

MS. WALLACE: Yes.

MR. SIMMONS: Do you recall ever seeing the house looking like it looked on the second page of that exhibit?

MS. WALLACE: Yes.

MR. SIMMONS: All right.

MS. WALLACE: Generally, yes.

MR. SIMMONS: Just a very few more questions along this line.

Are you familiar with a notice of violation published on July 17th, 2007 regarding trash, overgrown vegetation and open accessibility.

MS. WALLACE: Yes.

MR. SIMMONS: All right. And I will refer you please to Exhibit 16 in the

yellow bound book. It that the notice of violation?

MS. WALLACE: Right. I don't -- I have not seen this. I don't know. I had -- there was something on -- posted on the job site. I don't know what this --

MR. SIMMONS: All right. But you are aware of something at that time period I just asked about?

MS. WALLACE: Right. And we cleaned up the site and we put up the fence, as per the notice.

MR. SIMMONS: When did you put up the fence?

MS. WALLACE: I said to you, I don't remember the exact date. A couple of -- three months ago, I don't know. I might--

MR. SIMMONS: All right. I'm talking about the period of 2000 --

MS. WALLACE: I might be able to find my notes, actually.

MR. SIMMONS: All right.

MS. WALLACE: If you want me to.

MR. SIMMONS: All right. But I'm talking about a notice of violation in 2007.

MS. WALLACE: Oh, I thought you said -- this year. Sorry.

MR. SIMMONS: No. I'm sorry. And that's why I wanted to ask you again --

MS. WALLACE: My dates are -- okay. Okay. Thank you.

MR. SIMMONS: -- to make sure that we're -- yes, I want to be sure we're correct in our understanding. I don't want you to --

MS. WALLACE: Then I don't know this. I'm not recalling this notice. I recall the one that happened earlier this year.

MR. SIMMONS: All right. I'll make this brief. There was a notice in 2008 regarding, vegetation and fencing, and you complied with that notice?

MS. WALLACE: Yes. The 2008.

MR. SIMMONS: And that was 2008.

And other than this project, have you done any others in the District of Columbia requiring building permits?

MS. WALLACE: Yes.

MR. SIMMONS: How many?

MS. WALLACE: Besides my own home, one other.

MR. SIMMONS: Before this project?

MS. WALLACE: I purchased it after this project. And finished it and sold it after -- while we were doing all of this.

MR. SIMMONS: Who did the -- let's turn to Exhibit 20 of the yellow bound binder for just a moment. In fact, before we do that, at one of our earlier hearings in this matter you made it clear that at the time of that hearing no physical portion of the original house remained, is that correct?

MS. WALLACE: That's correct.

MR. SIMMONS: All right.

MS. WALLACE: I know there's another mistake in my affidavit, which has

been pointed out and cleared up in the very first hearing here in April.

MR. SIMMONS: All right. And your testimony was that you read this affidavit before you signed it?

MS. WALLACE: Yes.

CHAIRPERSON MILLER: Okay. Let's not badger the witness. But could you fresh our recollection as to where that mistake is so that we're sure that we have it corrected in our records?

This isn't the November 2nd date? This is another error?

MR. BROWN: This was discussed two hearings ago.

MS. WALLACE: Yes. This was a funky wording that I interpreted as one thing, and it was actually another thing when I read it.

MR. SIMMONS: All right. But you didn't notice --

CHAIRPERSON MILLER: No, but I

just wanted to -- wait. No, it's okay. But I just want to know --

MS. WALLACE: Which -- yes -- where it is.

CHAIRPERSON MILLER: Because we're going to go back over the affidavit, I'm sure.

MS. WALLACE: Okay. Which --

MR. SIMMONS: Number 23.

CHAIRPERSON MILLER: Number 23.

MR. SIMMONS: Paragraph 23 on page 4.

MS. WALLACE: Right. Number 23 is the one that the way I read it when I signed it because I have this the way I look at things, but then when I reread it, I understood the confusion.

CHAIRPERSON MILLER: I guess my question is should we change something so to correct it? Or is there something wrong with it, or there is not something wrong with it?

MS. WALLACE: Well, the wording --

MR. SIMMONS: Let me ask.

CHAIRPERSON MILLER: No.

MS. WALLACE: The wording of it is just a little confusing -- it's a little confusing. There is no part of the original 1933 structure. However, the rebuild of the back of the 1933 structure and the addition is existing. And I think when I read it, you know, on the computer I just was -- I was interpreting it as saying what I thought it said and not necessarily what it may be clearly stated. And that was brought -- like I said, brought up in April and I tried to explain it.

MR. SIMMONS: I understand.

MS. WALLACE: Yes.

MR. SIMMONS: But can you tell me why the word "not" was underlined?

MS. WALLACE: I cannot.

CHAIRPERSON MILLER: I just want to say something also. You know, it's 1:30 and Ms. Wallace has been questioned for along time. And so if you -- I think we will take a

break soon. But if you get to the point where you feel like you're so hungry or tired that it's hard to answer the questions well, let us know.

MS. WALLACE: I'd like to preserver and at least --

CHAIRPERSON MILLER: Okay. That's fine. I just wanted to --

MS. WALLACE: As long as you guys aren't --

CHAIRPERSON MILLER: Okay. I just wanted to let you know you had that option.

MS. WALLACE: Thank you. I appreciate that. Thank you.

CHAIRPERSON MILLER: Okay. Okay. Mr. Simmons.

MR. SIMMONS: Thank you. I'll try to wrap up as rapidly as I can. And if you'll indulge me a moment or two to look at my notes.

At paragraph 15 of your affidavit you indicate that your contractor took

measures to brace the remaining structure of the single-family house. What measures did you instruct him to take?

MS. WALLACE: I didn't instruct him to take any measures. I don't -- that's what Allen does.

MR. SIMMONS: What efforts did he undertake?

MS. WALLACE: I -- why don't you--

MR. SIMMONS: What efforts do you-- you're --

MS. WALLACE: I don't know. You need to ask him.

MR. SIMMONS: But you state in your affidavit, correct, that your contractor took measures?

MS. WALLACE: Correct.

MR. SIMMONS: How do you know that he took measures?

MS. WALLACE: He told me.

MR. SIMMONS: Did he tell you what measures he took?

MS. WALLACE: I don't recall.

MR. SIMMONS: Do your recall whether at the time you considered those measures expensive or inexpensive?

MS. WALLACE: I don't recall.

MR. SIMMONS: Did you see what efforts were made to brace the remaining structure?

MS. WALLACE: I don't -- I don't know what -- no. I'm not sure.

MR. SIMMONS: How much --

MR. GREEN: Madam Chairman, I hate to interrupt. But I think it's obvious that counsel is conferring again with the witness.

Now I'm putting on the record my continuing objection. And I ask the Chair to please do something about this.

CHAIRPERSON MILLER: That's okay. That's okay. Yes. It's it on the record that he's conferring. But I don't know whether he's saying, you know, if you don't know, just say you don't know. If he's something like that,

he's not having a whole long conversation. She was finished with the question. So, I don't know --

MR. GREEN: As Madam Chairman knows--

CHAIRPERSON MILLER: -- if that's not allowed, to tell you the truth.

MR. GREEN: But as Madam Chairman knows, in court you don't do that. The judge will intervene and say something.

CHAIRPERSON MILLER: Well, I understand.

MR. GREEN: The lawyer don't --

MR. SIMMONS: I join the objection.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: The witness is the witness and the witnesses on the witness stand in court or here, and the witness is not helped by counsel whispering in the witness' ear. If the witness knows the answer, the witness states the answer.

CHAIRPERSON MILLER: Okay. Mr. Brown?

MR. SIMMONS: The witness rule precludes any conference with counsel while the witness is testifying, including during breaks.

MR. BROWN: I was inquiring about my client's well being. There was no substance to it.

MS. WALLACE: After the question.

MR. BROWN: Yes. I mean --

COMMISSIONER JEFFRIES: Ms. Wallace, can you work with everyone here. By simply asking -- answering the question.

MS. WALLACE: Yes.

COMMISSIONER JEFFRIES: Yes or no, or you don't know, or you don't -- and just --

MS. WALLACE: I'm trying. I'm trying.

COMMISSIONER JEFFRIES: Yes. I know this is tough. Because it just will be very helpful. I know there's lots of

1 questions that Mr. Simmons is asking you that
2 you don't have any -- you have no experience
3 with.
4 MS. WALLACE: Yes.
5 COMMISSIONER JEFFRIES: But you
6 don't even have to say well that's something
7 that--
8 MS. WALLACE: Okay.
9 COMMISSIONER JEFFRIES: Just yes,
10 no.
11 MS. WALLACE: Okay. Yes, no, got
12 it. Or you don't recall.
13 COMMISSIONER JEFFRIES: Okay.
14 MS. WALLACE: Okay.
15 COMMISSIONER JEFFRIES: Okay.
16 Because we can move on.
17 CHAIRPERSON MILLER: You don't
18 even have to say anymore, you know, ask Mr.
19 Premo.
20 COMMISSIONER JEFFRIES: None of
21 that.
22 CHAIRPERSON MILLER: Say yes, no,

I don't know.

MS. WALLACE: Okay.

COMMISSIONER JEFFRIES: Because quite frankly, so much of this is -- we're just -- Okay.

MR. SIMMONS: This has been a long process for you.

CHAIRPERSON MILLER: This is the problem when people are concerned about what they're conferencing. So let's try to not do that.

MR. SIMMONS: Thank you, Madam Chair. I appreciate it. We'll try to wrap up here fairly quickly. And this has been a long process for you, hasn't it?

MS. WALLACE: Yes.

MR. SIMMONS: And a long process for the neighbors as well, hasn't it?

MS. WALLACE: I'm sure.

MR. SIMMONS: You met with the neighbors in fact on -- in fact, you made a presentation to the ANC on approximately March

13th of this year, didn't you?

MS. WALLACE: Yes.

MR. SIMMONS: And you said at that meeting you had no real experience as a developer, didn't you?

MS. WALLACE: I'm not sure I used those exact words.

CHAIRPERSON MILLER: I know, is this relevant to -- it's not cross. She didn't say that on cross here.

MR. BROWN: On direct you mean.

CHAIRPERSON MILLER: Sorry. What?

MR. BROWN: She did not testify to that on direct. And we've gone through a lengthy questioning of her about her -- the length and breadth of her qualifications.

MR. SIMMONS: Let me try to move on and wrap up fairly quickly.

CHAIRPERSON MILLER: Yes. I think -- yes.

COMMISSIONER JEFFRIES: You've been wrapping up for about ten or 15 minutes.

I don't know. You have a different definition of wrapping up than some, I guess. But ---

MR. SIMMONS: Well, I always think of wrapping up as two or three minutes and I always get proved wrong. So, with my apologies, sir, I --I really am trying to do just that.

CHAIRPERSON MILLER: Plus, she's had double questions, you know. She already had the ANC. So it's been a long time.

MR. SIMMONS: I understand. Let's try to do a quick more quick things and then try to wrap up.

Look at Exhibit 22 of the exhibit book for a moment, please?

MS. WALLACE: I'm looking at it.

MR. SIMMONS: Thank you. Is that an accurate picture of the house at the time you purchased it? Is that what the house looked at in 2004?

MS. WALLACE: Yes. Yes.

MR. SIMMONS: Okay. Flip over to

Exhibit 23, please. And this has got some handwritten notes 6/9/06. And it an address. To your knowledge, is this what the house looked at on the date stated there, 6/9/06?

MS. WALLACE: Sure. Yes.

MR. SIMMONS: All right. And that's true of all the pages of Exhibit 23?

MS. WALLACE: I can really testify to the dates because I didn't take the pictures. But they look accurate as pictures-- I mean, I don't know.

MR. SIMMONS: I'm asking you --

CHAIRPERSON MILLER: What date did you give, Mr. Simmons?

MR. SIMMONS: The date on there is June 9, '06. And my question to the witness does this appear --

MS. WALLACE: I was not there on June 9, '06.

MR. SIMMONS: Does this appear to you to be an accurate representation of the state of the house in approximately June of

'06?

MS. WALLACE: I wasn't there in June of '06. I mean, I wasn't there that day. So I can't really testify to that.

MR. SIMMONS: I'm not asking about the day. I'm asking you about the --

MR. BROWN: She has answered the question.

MR. SIMMONS: She has not. My question is I'm asking about the period of June '06. Can you --

CHAIRPERSON MILLER: Can I ask you just for curiosity, why do you need her to answer that question?

MR. SIMMONS: I'm sorry?

CHAIRPERSON MILLER: If this is a picture, if you authenticate it in your case as to this is how the house looked on June 9th '06, why are you asking her to authenticate it?

MR. SIMMONS: All right. We'll move on.

Let's flip to Exhibit 24 for just a moment.

All right. Is that --

MS. WALLACE: I'm looking at it. Yes.

MR. SIMMONS: Thank you.

Is that an accurate representation of the condition of the site at the present time?

MS. WALLACE: Yes.

MR. SIMMONS: All right. Let's look back please, if you will. I would like you to just briefly glance through the photographs in number 3. These photographs will be introduced and authenticated later, but assume for the moment that I'm going to represent to you that these are pictures of some of the homes in the immediately surrounding area. I'd like you to look at those pictures briefly.

MR. BROWN: Objection. Relevancy of it.

MR. SIMMONS: The relevancy is that Ms. Wallace has stated that she was trying to do something that fit in with the neighborhood and in fact, has produced photographs in her own case in chief to that effect. What we're trying to establish here is in fact her testimony is not correct in that the house does not fit in with the area. So this is impeachment testimony.

CHAIRPERSON MILLER: Why is it impeachment testimony? I mean if you --

MR. SIMMONS: Because it shows that I'm impeaching her prior testimony that the house she was building fit in with the neighborhood. I'm trying to demonstrate that it does not.

CHAIRPERSON MILLER: Why does she have to testify about these houses?

MR. SIMMONS: I can do that on my direct certainly. Because --

CHAIRPERSON MILLER: Yes, I think you should do it on your direct.

COMMISSIONER JEFFRIES: And also it's hard -- I mean this stuff needs to be shown in context. So it's hard --

MR. SIMMONS: I'm trying that.

COMMISSIONER JEFFRIES: Okay. Yes, I'm interested to hear how you're going to make this case.

MR. SIMMONS: All right. I'll deal with that in my case in chief, sir. Thank you.

All right. Let's turn now please, and I'll try wrap it up again, quickly. Turn to Exhibit 10 of your exhibit book.

MR. BROWN: Our or yours?

MR. SIMMONS: Yours, please, sir. The white one, this one. Okay.

You've testified that these are the plans submitted with building permit application number four, am I correct?

MS. WALLACE: Correct.

MR. SIMMONS: And they are the same as the plans for building permit number one other than they are marked "Revised" and

that certain boxing in and handwritten notes are placed on them, is that also correct?

MS. WALLACE: Correct.

MR. SIMMONS: All right. Who prepared these? I'm sorry. Who put the notations on these plans, the letter "R" for revision? Who physically did that?

MS. WALLACE: It is my understanding Mr. Premo.

MR. SIMMONS: All right. And do you recognize Mr. Premo's handwriting?

MS. WALLACE: I mean -- I mean I'm not a handwriting expert, but I --

MR. BROWN: I don't see the relevance.

MR. SIMMONS: Give me just -- may I have a moment, please?

Would you look above the word "site plan," you see some handwritten words, correct?

MS. WALLACE: Yes. Yes.

MR. SIMMONS: Does that appear to

be Mr. Premo's handwriting?

MS. WALLACE: Yes.

MR. SIMMONS: Thank you.

All right. Now, in the application for the fourth building permit, that permit never used the word "raze," R-A-S-E did it?

MS. WALLACE: I don't have the application in front of me, but no. And we didn't raze anything.

MR. SIMMONS: Did you provide any of the information for the fourth building permit application?

MS. WALLACE: Did I personally?

MR. SIMMONS: Yes.

MS. WALLACE: No.

MR. SIMMONS: Who did?

MS. WALLACE: Mr. Premo.

MR. SIMMONS: And in fact, just so that we nail this down, or what was demolished or razed, whatever word we use under this fourth building permit, was in fact the only

portion of the original structure that remained, is that right?

MS. WALLACE: It was demolished.

MR. SIMMONS: We'll leave the semantics aside. That's what I was trying to get to with my question.

MS. WALLACE: Well, I don't want to. Yes. I'm not leaving the semantics aside. There is still a building standing there. It wasn't razed. It was demolished as per building permit number four.

MR. SIMMONS: Does the permit itself ever use the word "raze?"

MS. WALLACE: No, not that I know of. If I could -- can I -- would you like me to read you the building permit?

MR. SIMMONS: You may if you would like, or I'm more concerned about the building permit application right now.

COMMISSIONER JEFFRIES: Madam Chair --

MS. WALLACE: Okay. Well, do we

have that.

COMMISSIONER JEFFRIES: -- I'm starting to get a little hungry here.

CHAIRPERSON MILLER: Yes. I want to remind Ms. Simmons also that DCRA did some cross examination on this point I remember very well.

MR. SIMMONS: Maybe this is a good time to break. I think I am done. I may have only one or two questions.

CHAIRPERSON MILLER: Why don't you ask your one or two questions? Because we want to be done with this line of questions.

MR. SIMMONS: All right. I will conclude at this point.

Thank you very much.

CHAIRPERSON MILLER: I guess this is a good time for a lunch break.

MR. BROWN: Have we concluded the cross examination of Ms. Wallace?

CHAIRPERSON MILLER: Ms. Wallace, yes.

MEMBER WALKER: If you could turn on your mike, please?

CHAIRPERSON MILLER: Yes. No, he didn't reserve Ms. Wallace. The ANC was reserving Mr. Premo.

MR. BROWN: Well, Mr. Lemoine is a party, an intervenor.

CHAIRPERSON MILLER: I thought Mr. Lemoine said he didn't have a separate cross.

MR. LEMOINE: I have no questions.

CHAIRPERSON MILLER: Ms. Wallace is finished, except for redirect, you know.

And I would anticipate, what I would hope, Mr. Premo wouldn't take as long since we've already -- we're clear like what area Mr. Premo has expertise in now. But, okay. So why don't we take a lunch break. Let's just figure out how long we want to take.

(Whereupon, at 1:50 p.m. the Public Hearing was adjourned, to reconvene this same day at 2:39 p.m.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2:39 p.m.

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

I believe we're at the stage where the neighbors and the ANC are going to be interviewing Mr. Premo.

Let's see if we can kind of move through this at a good pace, because DCRA is the Appellee and we haven't even gotten to them yet. So let's try not to have any conferences that then raise objections, et cetera.

So, okay.

COMMISSIONER JEFFRIES: And also, Madam Chair --

CHAIRPERSON MILLER: Yes.

COMMISSIONER JEFFRIES: -- we should add that we still have not eaten up here. So, we will probably take a break at some point again. Because the food did not come.

CHAIRPERSON MILLER: Right. It didn't work out the way we thought. But we thought you all needed a break and we thought we were going to. Anyway, soon. So anyway, so our next break will be after Mr. Premo.

Okay. Let's go.

MR. SIMMONS: If you'd like to break when the food arrives, please just say so.

CHAIRPERSON MILLER: Okay. Well, we're hoping that they may coincide.

MR. SIMMONS: All right. Let's hope.

VICE CHAIRMAN LOUD: Excuse me for one quick second. Before we start, we're going to go into intervenor's case?

CHAIRPERSON MILLER: No.

VICE CHAIRMAN LOUD: Where we going then?

CHAIRPERSON MILLER: This is intervenor's cross of Mr. Premo, the last witness of the applicant.

VICE CHAIRMAN LOUD: All right. Okay.

MR. SIMMONS: Except for Mr. Ford. I might have a few questions.

CHAIRPERSON MILLER: Oh, Mr. Ford?

MR. SIMMONS: Yes.

MR. BROWN: Mr. Ford's here.

CHAIRPERSON MILLER: Okay.

VICE CHAIRMAN LOUD: Okay.

MR. SIMMONS: We'll have just a couple of three questions of Mr. Ford.

CHAIRPERSON MILLER: Okay. Okay.

VICE CHAIRMAN LOUD: All right. Thank you.

MR. SIMMONS: All right. Mr. Premo, you were the prime contractor on this project?

MR. PREMO: Correct.

MR. SIMMONS: How did you know Ms. Wallace?

MR. PREMO: From doing prior with her.

MR. SIMMONS: What projects were those?

MR. PREMO: I did a project on Middleton Drive in Bethesda.

MR. SIMMONS: What did that project consist of?

MR. PREMO: And addition on the back of an exiting house.

MR. SIMMONS: So that was a full scale piece of construction as well, correct?

MR. PREMO: Correct.

MR. SIMMONS: And that's what you intended here was a full scale addition?

MR. PREMO: Correct.

MR. SIMMONS: Had you ever done any projects in the District of Columbia before?

MR. PREMO: Yes, years ago.

MR. SIMMONS: How many years ago?

MR. PREMO: I couldn't tell you. It's been a long time.

MR. SIMMONS: More than ten years?

MR. PREMO: Some of them. Yes.

MR. SIMMONS: Some of them or all of them?

MR. PREMO: I can't really recall.

MR. SIMMONS: How many projects did you ever do in the District?

MR. PREMO: I wouldn't know exactly. I don't keep records of that.

MR. SIMMONS: Were you on site everyday at 5013 Belt Road during the days that actual work took place?

MR. PREMO: No.

MR. SIMMONS: What kinds of days were you on site?

MR. PREMO: When I would go by and do site visits.

MR. SIMMONS: Who would do the actual work?

MR. PREMO: Whoever the subcontractor on site at the time.

MR. SIMMONS: Were you on site when the property was surveyed?

MR. PREMO: I don't -- there have been times that I might have been there when the survey worker -- some survey work was being done.

MR. SIMMONS: Do you remember being present when any of the initial surveys and surveying stakes were placed?

MR. PREMO: No.

MR. SIMMONS: Do you remember being present when any of the interior demolition that Ms. Wallace referred to was done?

MR. PREMO: I might have driven by to check it.

MR. SIMMONS: You might have -- I'm sorry?

MR. PREMO: I might have driven by to check it.

MR. SIMMONS: But not go inside?

MR. PREMO: I may have gone in to check it.

MR. SIMMONS: Do you remember

specifically visiting during any of the times interior demolition took place?

MR. PREMO: I don't remember.

MR. SIMMONS: The other projects that you did in the District of Columbia earlier, were those renovations, additions or what? Do you recall?

MR. PREMO: Well, I was working for other people, but most of them were commercial work.

MR. SIMMONS: And you were a subcontractor in those situations?

MR. PREMO: Yes.

MR. SIMMONS: So you were not responsible for obtaining building permits, correct?

MR. PREMO: Correct.

MR. SIMMONS: And you were not responsible for ensuring compliance with construction code, is that correct?

MR. PREMO: Correct.

MR. SIMMONS: And you were not

1 responsible for ensuring compliance with
2 zoning code, is that correct?
3 MR. PREMO: Correct.
4 MR. SIMMONS: This was the first
5 project in the District in which you were the
6 prime contractor?
7 MR. PREMO: Correct.
8 MR. SIMMONS: When did Ms. Wallace
9 first speak to you about this project?
10 MR. PREMO: I guess after she
11 found a site that she liked that she thought
12 we might be able to do something with.
13 MR. SIMMONS: And you'd worked
14 with her how many times before?
15 MR. PREMO: Well, as I answered,
16 I'd worked with her on one previous project.
17 MR. SIMMONS: I'm sorry. You did
18 tell me. Excuse me.
19 Your first conversation with her,
20 tell us what each of you said just briefly,
21 please?
22 MR. PREMO: About what?

MR. SIMMONS: About this particular piece of property?

MR. PREMO: I couldn't recall.

MR. SIMMONS: Did she ask you whether she should buy it?

MR. PREMO: Well, I'm sure she brought me in there to look at it.

MR. SIMMONS: All right. Tell us what you saw when you first -- when you looked at the property that first time?

MR. PREMO: It was a really neat old house.

MR. SIMMONS: What was it built of?

MR. PREMO: It had dutch slap siding on a wood frame. It had neat little overhangs. And it was just a -- wood windows. It was just a nice house.

MR. SIMMONS: Basically a wood frame structure, would that be accurate?

MR. PREMO: Correct. Yes.

MR. SIMMONS: Okay. What kind of

roof did it have?

MR. PREMO: I think at that time, I don't really recall.

MR. SIMMONS: Okay. Let me ask you, did you have a written construction contract with Ms. Wallace?

MR. PREMO: When?

MR. SIMMONS: For this project?

MR. PREMO: When?

MR. SIMMONS: All right. I'm asking you did you enter a written construction contract with her?

MR. PREMO: Yes.

MR. SIMMONS: When was that, please?

MR. PREMO: I don't know exactly when it was entered into.

MR. SIMMONS: Was it prior to work commencing or not?

MR. PREMO: Of course.

MR. SIMMONS: Was it after the purchase of the property itself, do you know?

MR. PREMO: I would imagine it would be.

MR. SIMMONS: Okay.

MR. PREMO: I don't remember what day it was.

MR. SIMMONS: All right. You stated -- did you state that you went to the property with her before the actual purchase occurred?

MR. PREMO: To help her look at it, yes.

MR. SIMMONS: All right. How many times did you go to that property before she purchased it?

MR. PREMO: At least once. I don't recall.

MR. SIMMONS: How long were you there that one time?

MR. PREMO: I don't recall.

MR. SIMMONS: And did you recommend to her or suggest to her that she purchase it or not purchase it or --

MR. BROWN: He answered that question.

MR. SIMMONS: Right. After she purchased the property from there -- what interaction did you have with Ms. Wallace from that point until the time the first building permit application was filed?

MR. PREMO: What do you mean?

MR. BROWN: Yes, he's beating a dead horse specifically on that, Madam Chair.

MR. SIMMONS: All right. Following the purchase of the property did you go onto the property yourself to look at the condition of the property?

MR. PREMO: The condition of it?

MR. SIMMONS: Yes. Let's back up then. After the purchase of the property when was the next time you went onto the property physically?

MR. PREMO: I wouldn't be able to recall.

MR. SIMMONS: Was it before or

after the first building permit application was filed?

MR. PREMO: I -- I'm sure it was-- I don't recall when I went there before the building permit was filed.

MR. SIMMONS: Did you go there before the architectural plans were drawn?

MR. PREMO: Well, I'm sure I went there with probably -- it's just conjecture, but I went there with Sizzler and with her.

MR. SIMMONS: All right.

MR. PREMO: Just to confer. But when it was, I wouldn't be able to tell you.

MR. SIMMONS: So you were on site with the architect at least once?

MR. PREMO: Yes.

MR. SIMMONS: Did the architect ask any questions about ground water?

MR. PREMO: Not to me.

MR. SIMMONS: Did the architect ask any questions about termites?

MR. PREMO: Not to me.

MR. SIMMONS: Did the architect ask any questions about structural integrity of the building?

MR. PREMO: Not to me.

MR. SIMMONS: Did the architect walk through the building?

MR. PREMO: I'm sure he did. He had to measure it up.

MR. SIMMONS: Did you observe the architect -- and maybe I'm not phrasing this very well, so please help me, do anything that looked to you like he was studying the structural integrity of the building?

MR. PREMO: I don't think that's-- I didn't see anything. I mean he -- if -- if I was there when he was there and we were doing anything, it was probably going over what possibilities were -- you know, measuring it or whatever.

MR. SIMMONS: Did you discuss with the architect the concept for what Ms. Wallace wanted to do with the property?

MR. PREMO: In terms of the design?

MR. SIMMONS: Yes.

MR. PREMO: Mostly I act as a consult in terms of, you know, what is possible. Not in terms of the design characteristics. That's between them and Ms. Wallace.

MR. SIMMONS: And what conversation did you have with the architect in this consultancy sort of capacity?

MR. PREMO: Well, he would just want to know what would be the best directions to put floor joist in or things like that.

MR. SIMMONS: Did he discuss with you the general concept of an addition?

MR. PREMO: Not really. I mean, other than -- I mean that was something that Ms. Wallace would have been doing with him.

MR. SIMMONS: All right. So you really didn't discuss with him the -- what -- strike that.

What was the first work physically done on the property?

MR. PREMO: Physically on the property? I would say probably cleaning the site and prepping it.

MR. SIMMONS: And when did that occur?

MR. PREMO: I do not recall.

MR. SIMMONS: And the next work -- physical work on the property?

MR. PREMO: I mean the next? Is this prior to permit or after permit or what?

MR. SIMMONS: I'm trying to go in sequential order.

MR. PREMO: Usually -- usually -- usually we clean the site. So as a homeowner, you know if we were going to be doing -- we'd probably remove vegetation to get ready. Stuff that would have been in the way.

MR. SIMMONS: What of this did you do prior to the first building permit application?

MR. PREMO: That's what I'm saying.

MR. SIMMONS: All right. And after the first building permit? When was the first building permit issued, do you recall?

MR. PREMO: I don't recall. I don't recall, but I think it's in the record.

CHAIRPERSON MILLER: In the future -- excuse me. I'm sorry. Just to speed things up, though. I don't think it's fair to keep asking each witness when each permit was issued. I think you ought to have them available and just ask them about them.

MR. SIMMONS: Okay. Turn to Exhibit 1 of your exhibit book please, the white covered one. And does that help you with the date of that building permit?

MR. PREMO: Well, it says up in the upper left hand corner.

MR. SIMMONS: Yes. I direct your attention up there. Yes. To your knowledge is that an accurate date?

MR. PREMO: It's what is on this copy.

MR. SIMMONS: All right. Do you have any reason to believe that date is inaccurate?

MR. PREMO: No.

MR. SIMMONS: All right. What was the first piece of work that occurred after this building permit, assuming the date is correct?

MR. PREMO: Generally speaking we go in and we interior demo the house and getting ready.

MR. SIMMONS: In this case did you do that or did somebody start to remove the roof first, do you remember?

MR. PREMO: The roof was never removed first. We don't take the roof off until -- the interior demo is just what it says.

MR. SIMMONS: So it's your testimony that the roof was never taken off?

MR. PREMO: Correct. When we do the demo -- the -- the house is always -- we leave the envelop alone except for where it calls or a demo.

MR. SIMMONS: Turn to the yellow exhibit book, number 19 please.

Do those appear to be pieces of roofing material on the ground?

MR. PREMO: I cannot tell.

MR. SIMMONS: Do you have any reason to believe that they're not.

MR. BROWN: He's answered the question.

MR. PREMO: I -- I can't tell.

MR. SIMMONS: All right.

MR. PREMO: They don't look like shingles.

COMMISSIONER JEFFRIES: Excuse me. What is this picture of, anyway?

MR. SIMMONS: Thank you. I'll set this up in my direct testimony. This is a picture of my land with roofing material on it

1 from the January 2005 roofing work that was
2 done.
3 COMMISSIONER JEFFRIES: Thank you.
4 MR. SIMMONS: In March 2005 the--
5 do you remember when the actual demolition was
6 begun on this project, sir?
7 I'll note the witness is referring
8 to a chronology.
9 MR. PREMO: It was done between
10 January 17th and 22nd of '05.
11 MR. SIMMONS: All right. And the
12 next thing that then occurred was the
13 activities of early March, 2005, is that
14 correct, where the demolition of the rear
15 portion of the house occurred? Do you
16 remember from personal recollection, sir?
17 MR. PREMO: Yes. No.
18 MR. SIMMONS: You don't recall?
19 Tell us what you found when you
20 began that demolition project?
21 MR. PREMO: Of what?
22 MR. SIMMONS: All right. You went

in and -- tell us what you started to do and what you intended to do in early March 2005?

MR. PREMO: I mean, the demolition on the interior of the house was done in February.

MR. SIMMONS: I understand. But what was happening in March?

MR. PREMO: Well, it's --

MR. SIMMONS: Let me try to do it this way. Do you recall some testimony earlier regarding a plumbing stack and collapse of the rear portion of the building?

MR. PREMO: Correct.

MR. SIMMONS: All right. Tell us when that occurred, please?

MR. PREMO: It occurred on March 2nd.

MR. SIMMONS: All right. So were you personally on site on March 2nd?

MR. PREMO: Yes.

MR. SIMMONS: Tell us what happened in brief terms. We don't want to

belabor this.

MR. PREMO: The stack was hit with a sledge hammer, which is a typical way of removing cast iron, it shatters. And that stack was hit at a bell, which is a connection between two pipes. And when that stack got hit it ended up the back portion of the house dropped about six inches.

MR. SIMMONS: All right. What did you do when the back portion of the house dropped six inches?

MR. PREMO: Ran.

MR. SIMMONS: All right. Who else was on site with you that day?

MR. PREMO: Other people that were there, part of the demo crew. I don't recall.

MR. SIMMONS: And did you -- I'm sorry?

MR. PREMO: I don't recall.

MR. SIMMONS: Were they your own crew or were they subcontractors?

MR. PREMO: A mix.

MR. SIMMONS: After you ran, when did you go back?

MR. PREMO: After I saw it wasn't falling.

MR. SIMMONS: So it was a matter of a few minutes?

MR. PREMO: More or less.

MR. SIMMONS: All right.

MR. PREMO: I don't know how you'd feel.

MR. SIMMONS: I just want the time period is all.

Did you then confer with Ms. Wallace as to what to do about the structure that now it had fallen six inches or so?

MR. PREMO: It's her house.

MR. SIMMONS: Did you confer with Ms. Wallace?

MR. PREMO: Absolutely.

MR. SIMMONS: All right. What did you and Ms. Wallace discuss?

MR. PREMO: That it was in

imminent danger of collapsing.

MR. SIMMONS: What did you recommend?

MR. PREMO: We discussed just removing it before it fell down. That we had no idea how long it would take.

MR. SIMMONS: How long which would take?

MR. PREMO: For it to just fall.

MR. SIMMONS: So you felt in your professional experience that the actual portion of the house was ready to fall down?

MR. PREMO: Well, I've taken down a lot of houses, so yes.

MR. SIMMONS: Did you notify DCRA that day that the house was in imminent danger of falling down?

MR. PREMO: Nope.

MR. SIMMONS: Did you notify them the next day that the house was in imminent danger of falling down?

MR. PREMO: No, they came and

notified us.

MR. SIMMONS: All right. And they in fact notified you after -- strike that.

After you'd conferred with Ms. Wallace you and your crew went forward and took down the back portion of the house, correct?

MR. PREMO: Yes.

MR. SIMMONS: And that was within a matter of a couple of days?

MR. PREMO: Yes.

MR. SIMMONS: And then shortly thereafter a stop work order was issued and posted on the property?

MR. PREMO: Correct.

MR. SIMMONS: And that stop work order is already in the record, so we won't belabor that.

You had nothing to do with the application for that first permit, did you?

MR. PREMO: Correct.

MR. SIMMONS: Did you have

anything to do with the application for the second permit?

MR. PREMO: No.

MR. SIMMONS: Did you have anything to do with the application for the third permit?

MR. PREMO: No.

MR. SIMMONS: The one that you were involved in was the application for the fourth permit, correct?

MR. PREMO: Correct.

MR. SIMMONS: And the application for the fifth permit?

MR. PREMO: Correct.

MR. SIMMONS: So at the time that that stop work order was issued in March of 2005, the front portion of the house remained, correct? Some part of the back portion had been demolished, correct?

MR. PREMO: Correct.

MR. SIMMONS: All right. What steps did you take to preserve the structural

integrity of the front portion of the house?

MR. PREMO: We put some bracing in it.

MR. SIMMONS: Let's look at number 10 of the yellow book, please. That diagonal wood that's there, is this the bracing you're referring to?

MR. PREMO: And the plywood.

MR. SIMMONS: And the plywood. So the plywood was for structural support?

MR. PREMO: Correct.

MR. SIMMONS: Okay. You would agree that the plywood was not sufficient to keep the elements totally out of the house; rain, weather, wind?

MR. PREMO: Not -- not at the time this picture was taken. There's other pictures that show it covered up.

MR. SIMMONS: Is there a picture that you know of that shows it ever completely covered up?

MR. PREMO: In your book.

MR. SIMMONS: Show me the picture then.

MR. PREMO: Exhibit 18.

MR. SIMMONS: All right. Let's look closely at Exhibit 18. See the house at the top left corner, correct? That's the one we're referring to.

MR. PREMO: Correct.

MR. SIMMONS: All right. You see what looks to be a door? Is that a door, that white portion?

MR. PREMO: That is a door.

MR. SIMMONS: All right. And exactly to the right of that you see some white, don't you?

MR. PREMO: Yes.

MR. SIMMONS: All right. That appears to be a window through the front of the house, doesn't it?

MR. PREMO: Yes.

MR. SIMMONS: You're telling me now that this picture shows that house

completely boarded up?

MR. PREMO: Not completely, but it has a roof over it.

MR. SIMMONS: Not completely, correct?

MR. PREMO: Right.

MR. SIMMONS: And you don't know from this picture whether any portion of the original roof remains or part of the roofing material had been taken off, do you?

MR. PREMO: That particular house, everything -- all the roofing is on that.

MR. SIMMONS: But you can't tell that from this picture, can you?

MR. PREMO: Which picture?

MR. SIMMONS: Either one on Exhibit 18. The pictures we were just looking at. The first two pictures -- the side-by-side pictures on Exhibit 18.

MR. BROWN: Tab 7. I'm referring my witness to Tab 7 in the exhibits is what he's looking for.

CHAIRPERSON MILLER: You're referring your witness to Tab 7 in --

MR. BROWN: Well, Appellant's, our book.

CHAIRPERSON MILLER: Tab 7 in Appellant's binder. Okay.

MR. PREMO: I think it's 6, not seven.

MR. BROWN: Six.

MR. PREMO: It's six. The aerial photos. Right there. If you look page 1 of 1 you'll see it has a shingled roof on it.

MR. SIMMONS: Your testimony is that that first picture shows a shingled roof?

MR. PREMO: It is a shingled roof.

MR. SIMMONS: And that picture is of sufficient clarity for you to determine that that is a shingled roof rather than, for example, a slate roof?

MR. PREMO: Well, it's -- it's not slate.

MR. SIMMONS: Can you tell that

from this picture?

MR. PREMO: Well, there's other pictures that show --

MR. SIMMONS: Can you tell that from this picture?

MR. PREMO: No.

MR. SIMMONS: Thank you. All right.

You put up some braces and you put up some plywood. Did you put a tarp over the roof?

MR. PREMO: Didn't need to.

MR. SIMMONS: Did you put a tarp over the roof?

MR. PREMO: No.

MR. BROWN: He'd answered.

MR. SIMMONS: What other steps, if any, did you take to preserve the structural integrity of that building?

MR. PREMO: Didn't need to do more than what we did.

MR. SIMMONS: Did you go into that

1 front of the building at that point -- strike
2 that. Let me put this back in context.
3 Back to March of 2005. The
4 demolition of the rear portion has taken
5 place. At some point thereafter, after that
6 demolition occurred, did you go inside --
7 physically inside what remained of the
8 structure?
9 MR. PREMO: Of the front portion?
10 MR. SIMMONS: Yes, sir. Yes, sir.
11 MR. PREMO: Yes. Yes.
12 MR. SIMMONS: And what did you
13 observe when you went in?
14 MR. PREMO: Be more specific. Ask
15 me a specific question.
16 MR. SIMMONS: What did you
17 observe? What did you --
18 MR. PREMO: I just saw the
19 structure as it was after demo.
20 MR. SIMMONS: Did you do anything
21 to determine whether there was termite damage?
22 MR. PREMO: Well, I mean visibly

you can see some damage. But it's not all termites. Some of it's just water damage.

MR. SIMMONS: So you did see water damage?

MR. PREMO: Just rot.

MR. SIMMONS: And you did see termite danger, is that correct?

MR. PREMO: Correct.

MR. SIMMONS: How extensive?

MR. PREMO: You can't tell by just visual.

CHAIRPERSON MILLER: When are we talking about?

MR. PREMO: The old -- the original house.

CHAIRPERSON MILLER: Right. When?

MR. PREMO: Before permit number four allowed us to take it down. He's asking about what it was like on the inside of that house. And so visually when you look at it some portions of it you could visibly see were falling apart. In fact, there's pictures of

the back of the house before that plywood went on that you can that some of the structural members are just totally rotting away. Whether that's termites or water, or whatever. But the rest of it you can't see. I mean, because termites operate inside wood, not outside so you can't tell until you start poking or drilling or something that they're-- that they're there.

MR. SIMMONS: Did you start poking or drilling or something?

MR. PREMO: Nope.

MR. SIMMONS: Did you do anything to determine the extent of the water damage?

MR. PREMO: No. It wasn't at that portion of the house that we'd be working on it.

MR. SIMMONS: But that portion of the house according to the original plans was to be retained, correct?

MR. PREMO: Correct.

MR. SIMMONS: And you wouldn't

deem it important to determine the structural soundness of that portion of the building if you wished to retain it?

MR. PREMO: Not until we're ready to work on it.

MR. SIMMONS: Would it have been of concern to you that that portion of the house may have been ready to collapse or to have some other kind of damage to it?

MR. PREMO: It seemed pretty stable.

MR. SIMMONS: It seemed pretty stable? What did you do to determine whether it was in fact stable?

MR. PREMO: I'll give you a funny little thing. What you do is you go up on the second floor when it's gutted and you run from one side of the building to the other and stop real quick.

MR. SIMMONS: Did you do that?

MR. PREMO: Yes.

MR. SIMMONS: And what happened?

MR. PREMO: Nothing.

MR. SIMMONS: Nothing happened?

MR. PREMO: Correct. It's a lot of inertia.

MR. SIMMONS: Did the floor give way when you were running?

MR. PREMO: No.

MR. SIMMONS: Did it wobble?

MR. PREMO: No.

MR. SIMMONS: When you were up on the second floor did you look to see if there was termite damage?

MR. PREMO: Couldn't see any.

MR. SIMMONS: Did you poke or prod or something I believe was a phrased you used a few minutes ago?

MR. PREMO: No.

MR. SIMMONS: Did you look to see whether there was water damage, rotting of any kind?

MR. PREMO: Didn't appear to be any.

MR. SIMMONS: Now this may seem like a dumb question, but indulge me for a minute, okay. I'm not a construction person and probably don't understand these things very well. But it would seem to me that after the third -- and I'm jumping ahead a little bit. After the third permit was issued, which was going to be raise, R-A-I-S-E, everything by about four feet that it might have made sense since you would have access to the old house on all four sides, to have tried to raise that up four feet before putting on the addition. Just what it seems to me. Is that a legitimate construction approach?

MR. PREMO: No.

MR. SIMMONS: Why not?

MR. PREMO: Well, because you need to establish the height of the foundation and then the new structure on top of it before you can add the new structure to it.

MR. SIMMONS: So you're telling me, how would you have put the foundation

under the old structure and raised it up four feet then?

MR. PREMO: Well --

MR. SIMMONS: And wouldn't that have been easier to do before the addition was put on?

MR. PREMO: No. Because the site plan calls for a specific elevation. You have to have that elevation first and then bring everything to it.

MR. SIMMONS: And couldn't that be done by surveying?

MR. PREMO: I don't think any --

MR. SIMMONS: To determine the elevation first?

MR. PREMO: Say it again.

MR. SIMMONS: Couldn't that have been done by surveying to determine the elevation first?

MR. PREMO: For?

MR. SIMMONS: For raising the -- physically elevating the original portion of

1 the house first? I just don't understand your
2 answer. I don't understand why it would not be
3 easier to elevate the old portion of the house
4 before you add the addition on the back.
5 MR. PREMO: Well, because you --
6 in this instance it's easier and better to add
7 the old house to the new. The new house is
8 stronger. And so it makes it easier for you
9 to add the old house to it.
10 MR. SIMMONS: All right. Did you
11 consider the possibility, either yourself
12 alone or with Ms. Wallace, of putting the new
13 house up, the addition up those four feet and
14 then maybe an interior staircase between
15 levels from the old house to the new house?
16 MR. PREMO: It was never our -- we
17 never discussed it. If she had it as an idea,
18 she never brought it up to me.
19 MR. SIMMONS: And how do you
20 physically propose to raise -- the elevate the
21 old portion of the house up to match the new
22 person if you couldn't get in under it to do

the foundation or something, or am I being naive here?

MR. PREMO: No. We were going to raise by -- since the bottom was rotted out, the proposal was to lift it from the second floor.

MR. SIMMONS: All right. I'm not going to belabor this. Thank you. I don't understand the answer, but it's not pertinent at this point.

So your understanding of the second permit issued in October of 2005 was to do what?

MR. PREMO: It was to allow the portion that got torn down to be rebuilt and torn down.

MR. SIMMONS: All right. So you don't read the phrase "remove and replace" as a repair job, but you view that as allowing you to do a complete reconstruction of that portion of the house, is that right?

MR. PREMO: Well, after you do the

demo, the only thing left of the house is just the structural. So them giving us a permit to just replace the structural was all that was left.

MR. SIMMONS: But how does that preserve the integrity of the front part of the building then?

MR. PREMO: Integrity of the front part of the building?

MR. SIMMONS: Yes, sir.

MR. PREMO: Do you mean the old structure?

MR. SIMMONS: Yes. Yes.

MR. PREMO: Well, it would just be in keeping with the plans.

MR. SIMMONS: Did Ms. Wallace ever tell you about the conservation that she had with me and a couple of other neighbors and the conversations occurring in approximately April of 2005?

MR. PREMO: Pertaining to what?

MR. SIMMONS: Well, it was a

conversation she testified to with me a few minutes ago. Among other things, it covered the issue of ground water.

MR. PREMO: We had had discussions about it because we wanted to put a swale across the back of the property and run it down your driveway. And that proposal was refused by you all.

MR. SIMMONS: That's not quite the question. Did she relate to you comments that were made to her regarding the ground water and a spring of which comments --

MR. PREMO: No. No.

MR. SIMMONS: -- were made to her in that meeting of April of 2005?

MR. PREMO: Not that I recall.

MR. SIMMONS: Okay. From the time of the demolition in 2005 until the next building permit, did you undertake any ground water studies?

MR. PREMO: No.

MR. SIMMONS: Did you undertake

any termite studies?

MR. PREMO: No.

MR. SIMMONS: Did you undertake any -- well, you've already discussed the structural integrity of the building so I won't refer to that.

Now, the next thing that happened in terms of construction work was the excavation, correct?

MR. PREMO: Correct.

MR. SIMMONS: All right. At the time that the excavation occurred, had you put up -- and I'm going to use the word "construction fence." And if that's the wrong word, please correct me. Had you had put up a construction fence around the property?

MR. PREMO: A sediment control fence.

MR. SIMMONS: And what is a sediment control fence?

MR. PREMO: It's usually a fence that is -- has chain link with a sediment

control fabric attached to it. And it's dug in about six or eight inches into the ground to control any sediment or whatever from leaving the site.

MR. SIMMONS: Is that the orange fence we saw in some of those pictures earlier?

MR. PREMO: No. It's a -- usually a black fabric. It's in your Exhibit 18.

MR. SIMMONS: All right. So the black fence in 18 is a sediment fence, correct?

MR. PREMO: Not that would what it would look that. That particular picture is after the -- after we had done the emergency backfill. And that was to try and prevent more water from getting in the site. So that was put on your easement.

MR. SIMMONS: All right. Can you tell whether that black fencing material, the top of that black fencing material is above or below the ground level?

MR. PREMO: I cannot.

MR. SIMMONS: It's the orange fence that's clearly above ground level, correct?

MR. PREMO: Correct.

MR. SIMMONS: Would you call that a construction fence?

Let me ask you this: Is there a commonly understood meaning of the term "construction fence?"

MR. PREMO: No.

MR. SIMMONS: What do you call, for example, a six foot high chain link fence around the property? Is there a term for that during a construction project?

MR. PREMO: Just other a six foot high chain link fence?

MR. SIMMONS: Right.

MR. PREMO: No.

MR. SIMMONS: Other than this orange fence and the black sediment control fabric that you've described here, was any

kind of construction fencing or other fencing put around this property at anytime prior to May, 2008?

MR. PREMO: Yes.

MR. SIMMONS: What and when?

MR. PREMO: Well, there was sediment control fencing put completely around the property prior to excavation, for one.

MR. SIMMONS: And that's the black fencing you're referring to?

MR. PREMO: Correct.

MR. SIMMONS: Any other fencing other than this orange fencing?

MR. PREMO: There was -- at one time there was -- prior to excavation there was a plywood fencing put from the property line over to our structure and from our structure over and adjoining Lemoine's fence.

MR. SIMMONS: And that would be what? Parallel to the street?

MR. PREMO: Parallel to the street and then parallel to Lemoine's property.

MR. SIMMONS: All right. Other than that plywood, did you put any shoring in place before you did the excavation?

MR. PREMO: No.

MR. SIMMONS: And when you did the excavation, in fact the sides of that excavation collapsed, didn't they?

MR. PREMO: The benches fell off, yes.

MR. SIMMONS: In common parlance, that's some kind of cave in, right?

MR. PREMO: Well, benches when you dig a certain depth you have to have what's called a bench. And so those benches fell off, but the site itself remained intact. It's just when the benches fell off we realized that we needed to stop and backfill. And that's when I brought in other people.

MR. SIMMONS: And when the benches fell in, those benches fell in and pat of that fall in occurred on my property and part of it occurred on Mr. Lemoine's property, correct?

MR. PREMO: Well, there was no damage to Lemoine's property at that time. Just on the driveway side, which you can see in that picture.

MR. SIMMONS: So the answer to the question yes, there was some cave in both sides, that's the bench falling on both sides, yes?

MR. PREMO: Bench falling but there was no damage to Lemoine's property.

MR. SIMMONS: But that bench falling encroached into my property, correct?

MR. PREMO: It encroached into the easement, yes.

MR. SIMMONS: My property, correct?

MR. PREMO: If the easement is yours, yes.

MR. SIMMONS: I will represent to you that it is. And the bench falling also occurred on Mr. Lemoine's property, did it not?

MR. PREMO: The bench did not exceed past the property line.

MR. SIMMONS: And when did you come out and backfill?

MR. PREMO: Immediately.

MR. SIMMONS: Did you go down to DCRA and to them that this bench falling had occurred?

MR. PREMO: No. They came out. And I talked to the inspector on site.

MR. SIMMONS: Were you present when those bench fallings occurred?

MR. PREMO: It was over a weekend. No.

MR. SIMMONS: How did you hear about that?

MR. PREMO: The excavation company called me.

MR. SIMMONS: And what did you instruct them to do?

MR. PREMO: That I would be down there immediately.

MR. SIMMONS: And what did you and the excavation company do when you got there?

MR. PREMO: We halted what we were doing and we immediately called in for 350 tons of stone.

MR. SIMMONS: Did that stone arrive?

MR. PREMO: Over a period of a few days, yes. A lot of trucks.

MR. SIMMONS: All right. And what did you do with that stone?

MR. PREMO: As it shows in that picture, we filled it.

MR. SIMMONS: And the site ultimately filled with water, correct?

MR. PREMO: No.

MR. SIMMONS: So Ms. Wallace was incorrect earlier when she said that -- I'm sorry. The excavation filled with water?

MR. PREMO: I don't know what she was referring to.

MR. SIMMONS: Did you ever see

water --

MR. PREMO: It was never a swimming pool. Yes, but it was never full.

MR. SIMMONS: But there was a lot of -- would you -- how full was it? More than half full? You don't know.

MR. PREMO: May I confer?

MR. SIMMONS: No.

MR. BROWN: I don't think he asked a question.

CHAIRPERSON MILLER: What do you want to confer about? It's a factual issue. I mean if you don't know the answer, you could say --

MR. PREMO: I mean we have pictures.

CHAIRPERSON MILLER: What?

MR. PREMO: We have pictures.

CHAIRPERSON MILLER: Okay.

MR. BROWN: There's a picture in our documents. Can you refer to the picture?

MR. PREMO: It's not going to be

in this one. It's going to be in the --

CHAIRPERSON MILLER: You want to refer to the pictures to refresh your memory, is that it?

MR. PREMO: Well, I mean, the site was never filled up with water. It may have had eight inches or ten inches of water just like with the footer. The picture that Mr. Simmons used, that was after we had that huge 13 inch rain. I mean, what was it going to do?

MR. SIMMONS: But the fact remains that part of this did fill up perhaps to eight inches, and that water stood there for a number of months, correct?

MR. PREMO: Not correct.

MR. SIMMONS: But it did stand there for days or weeks, didn't it?

MR. PREMO: Not so long as the pumps were working.

MR. SIMMONS: And when did you bring pumps on site?

MR. PREMO: I don't recall.

MR. SIMMONS: Now, are you familiar with the standing water violation issued regarding this excavation?

MR. PREMO: Yes.

MR. SIMMONS: Are you familiar with a violation issued for trash and vegetation, I believe in 2007?

MR. PREMO: I know that one happened.

MR. SIMMONS: Are you familiar with a violation issued in 2008 for barrier trash, I forget something else?

MR. PREMO: No.

MR. BROWN: What's the relevance of this?

MR. SIMMONS: You're not --

CHAIRPERSON MILLER: You "forget something else," that's really not specific enough for the witness.

MR. SIMMONS: All right. That's fine.

The fourth building permit resulted in the issuance of the stop -- strike that.

Following the work that was done under the fourth building permit a stop work order was issued, is that correct?

MR. PREMO: Correct.

MR. SIMMONS: And there was fine imposed under that stop work order?

MR. PREMO: Yes.

MR. SIMMONS: And that fine was paid, was it not?

MR. PREMO: What amount are you talking about?

MR. SIMMONS: Was a fine paid? And my next question was how much.

MR. PREMO: Written on the -- on the -- on the stop work order is 4,000, but we -- it was down to 500 or something.

MR. SIMMONS: And that was paid, correct?

MR. PREMO: Correct.

MR. SIMMONS: You did not appeal that fine, is that correct?

MR. PREMO: Correct.

MR. SIMMONS: And you agree with Ms. Wallace, don't you, that after the demolition work -- whatever we call it after the fourth building permit no part of the original building remained?

MR. PREMO: Correct.

MR. SIMMONS: Are you familiar with a posting on the structure on approximately June 30, 2006 declaring the structure to be unsafe?

MR. PREMO: Yes.

MR. SIMMONS: What did you do to make that structure safe in response to this?

MR. PREMO: That's where the rest of the plywood went on the building.

MR. SIMMONS: And that plywood was put on where?

MR. PREMO: On the back of the original structure.

MR. SIMMONS: No plywood was put on the front?

MR. PREMO: There's doors and windows on the front.

MR. SIMMONS: No plywood was put on the front?

MR. PREMO: Correct.

MR. SIMMONS: No plywood was put on the sides?

MR. PREMO: Correct.

MR. SIMMONS: No additional internal bracing was put up, was it?

MR. PREMO: No.

MR. SIMMONS: Thank you.

COMMISSIONER JEFFRIES: Excuse me. Madam Chair, excuse me for a second. We're assuming that we're going to get through Mr. Premo before we eat lunch?

CHAIRPERSON MILLER: I was. I don't know.

Do you have much more to go?

MR. SIMMONS: I'm not sure. I need

a few minutes to review my notes. But if the Panel's lunch has arrived, we'd be glad to recess for your convenience.

CHAIRPERSON MILLER: But I think it's better to finish if we can, you know --

COMMISSIONER JEFFRIES: And the point of this was trying to figure out how much longer --

CHAIRPERSON MILLER: Yes.

COMMISSIONER JEFFRIES: -- this is.

MR. SIMMONS: Honestly, I'm not quite sure. I'm trying to move as fast as I can, obviously.

COMMISSIONER JEFFRIES: Can it be like 30 minutes, one hour?

MR. SIMMONS: I'm hopeful. Very hopeful it's going to be less than 30.

CHAIRPERSON MILLER: We're going on almost an hour.

VICE CHAIRMAN LOUD: Do you have a sense of what additional areas of his

1 testimony that you want to cross him on?
2 MR. SIMMONS: I do, and I'm trying
3 to review my notes as we speak, sir, so that
4 I can move as rapidly as possible.
5 VICE CHAIRMAN LOUD: Can you just
6 share what those areas area?
7 CHAIRPERSON MILLER: You're going
8 to review your notes and then let us know?
9 MR. SIMMONS: Yes. There's not
10 much more. There's not much more here.
11 Hopefully, just a few minutes.
12 COMMISSIONER FRUMIN: And I don't
13 know what he's going to cover, but I had five
14 or so questions that I was going to want to
15 address if he has not.
16 VICE CHAIRMAN LOUD: Well, Mr.
17 Simmons, why don't you share, if you know, the
18 additional areas that you're going to cover.
19 You don't have to ask the questions, but just
20 from his direct testimony what areas you're
21 going to cover and they may overlap Mr.
22 Frumin's.

MR. SIMMONS: I do. I have questions about permit number four, of course. The process for permit number four, what was done in response to it.

I've got some additional questions as to efforts to protect and preserve the property at other time periods that have not been covered.

Communications with DCRA.

Responses to certain of the -- to several of the stop work orders, at least.

CHAIRPERSON MILLER: Well, is that more than 15 minutes?

MR. SIMMONS: I'm going to try to keep it to that if I can.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: I'm going to try.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: In all candor.

CHAIRPERSON MILLER: Okay. Keep going.

MR. SIMMONS: Thank you.

At any point during this construction process did you call in a termite control or termite expert company?

MR. PREMO: It wasn't necessary.

MR. SIMMONS: That wasn't my question. Did you or did you not?

MR. PREMO: No.

MR. SIMMONS: Did you call in a professional hydrologist?

MR. PREMO: No.

CHAIRPERSON MILLER: While he's looking, let me ask you the question I think that I asked Ms. Wallace and she said it was really for you. Why didn't you call in a termite inspector ever? Or maybe did you ever? It sounded like you never did and you say it wasn't necessary. And why wasn't it necessary? I think the point is if you were concerned about preserving about the original house?

MR. PREMO: There weren't any termites.

CHAIRPERSON MILLER: Are you saying there weren't any termites because the termites had already done their damage?

MR. PREMO: Correct. They were gone.

CHAIRPERSON MILLER: And how did you know that?

MR. PREMO: You just see it.

CHAIRPERSON MILLER: You can see it in the walls?

MR. PREMO: They usually leave little casings and stuff like that on the outside walls that they're trying to creep past the block or, you know, the foundation walls and stuff. And there wasn't any of that. This was all done years ago.

CHAIRPERSON MILLER: Well how about with the water damage issue then? Was there a reason to call in anybody about that? Was that already a done deal?

MR. PREMO: You mean water damage to the house?

CHAIRPERSON MILLER: Yes.

MR. PREMO: When you have a foundation that is so close to the ground, just the moisture from that ground being so close to it, it was less than a foot away. And code calls for a minimum of 18 inches. There's no vapor barrier. And it was trapped. So all the moisture emanating out of the ground just would go up and get into the wood. There was no stopping it.

CHAIRPERSON MILLER: Thank you.

MR. SIMMONS: And that damage began when? Start with termite. When do you think the termite damage began?

MR. PREMO: I would have -- I have no idea.

MR. SIMMONS: Before Ms. Wallace purchased the property?

MR. PREMO: Absolutely before Ms. Wallace purchased it. But I would have no idea.

MR. SIMMONS: Would it have been

more than ten years before she purchased the property?

MR. PREMO: I don't think anybody answer your question.

MR. SIMMONS: What about the water damage?

MR. PREMO: Same.

MR. SIMMONS: In fact, if I understood your testimony a moment ago regarding ground water and vapor barriers, this would be damage that would occur over time?

MR. PREMO: Usually it doesn't overnight.

MR. SIMMONS: And has the house existed at least since 1933 this damage would have been progressive since 1933?

MR. PREMO: Could have been stages. Who knows?

MR. SIMMONS: And certainly that damage exited at the time Ms. Wallace purchased the property, correct?

MR. PREMO: Correct.

MR. SIMMONS: Were any surveys made of the property after construction was underway. Strike that.

Before actual work began would I be correct to assume that the property was staked out by a surveyor to show where the individual points of construction would be, such as the points of where the addition would go?

MR. PREMO: Usually what I do irregardless of whether I'm working with Ms. Wallace or not, I always have all the boundary markers placed on properties. Any job I work.

MR. SIMMONS: And that's done by a surveyor?

MR. PREMO: That's always done by a surveyor.

MR. SIMMONS: Right. Other than that boundary markers, et cetera being put out at the beginning of this project did a surveyor ever come back on the property again?

MR. PREMO: Yes. Twice.

MR. SIMMONS: For what purposes?

MR. PREMO: One is to set brick points and the other one was do wall check.

MR. SIMMONS: All right. Do you have any explanation why the DCRA records do not reflect the wall check being performed?

MR. PREMO: I'm not part of DCRA, so I couldn't tell you.

MR. SIMMONS: All right. Building permit application number four, can we turn to that? That's 10, at least part of that is 10.

CHAIRPERSON MILLER: Ten of what for the record?

MR. SIMMONS: The Appellant's exhibit book. In fact, before we do that, after the collapse and demolition of the back portion of the house in March of 2005 did Ms. Wallace instruct you to conduct any studies of the structural soundness of the front of the building?

MR. PREMO: No.

MR. SIMMONS: All right. You've been present during the testimony earlier regarding the application for permit number four, is that correct?

MR. PREMO: Correct.

MR. SIMMONS: All right. And you know that a permit number four was in fact issued, correct?

MR. PREMO: Correct.

MR. SIMMONS: And you know that in fact ultimately a stop work order was issued asserting that the work done was beyond the scope of the permit?

MR. PREMO: I don't know. I think that's part of why we're here in a sense. But, yes.

MR. SIMMONS: All right. That's a fair answer. I should have just said whether a stop work order was in fact issued, and one was issued, was it not?

MR. PREMO: Correct.

MR. SIMMONS: All right. Now the

1 testimony earlier, and correct me if I'm
2 wrong, has been that the documents in number
3 4, I'm sorry. The documents for permit number
4 four that we've looked at before, is that your
5 handwriting that's on there?
6 MR. PREMO: Some's the engineer,
7 some's mine.
8 MR. SIMMONS: Would you tell me
9 which is yours and which is the engineers?
10 MR. PREMO: The engineers is near
11 his stamp. The rest of it is more or less
12 mine.
13 MR. SIMMONS: The phrase "area to
14 be demolished and rebuilt," I'm not sure. Is
15 that your handwriting or his?
16 MR. PREMO: That's mine.
17 MR. SIMMONS: That's your
18 handwriting? And the letters "R" along the
19 list of drawings, is that yours or his?
20 MR. PREMO: That's mine.
21 MR. SIMMONS: All right. Now
22 we've had some discussion earlier about what

these drawings mean. I'll refer to this as a site plan. It shows an area with lines that run southwest to northeast. You see that?

MR. PREMO: I'm assuming are you talking about the actual plat of the property?

MR. SIMMONS: Yes. There's a site plan on the first page of this. And to the left hand side it says "Proposed 2-3/4 story frame addition at rear of residence over fin. basement level."

MR. PREMO: Yes.

MR. SIMMONS: All right. And that cross hatched area is the addition, correct?

MR. PREMO: Correct.

MR. SIMMONS: All right. Now the area in the black box with your handwriting and the arrow pointing to it, that was the area that you proposed to take down and replace, if you will, as under the fourth building permit, correct?

MR. PREMO: Correct.

MR. SIMMONS: And these are the

same plans other than your handwriting and the engineer's handwriting as were submitted for the first building permit as you understand it, correct?

MR. PREMO: As I understand it.

MR. SIMMONS: All right. Now perhaps you can tell me the answer to a very simple question. We know that at the time of the first building permit application existing two story frame referred to the original house that was on the property, the 1933 house, correct?

MR. PREMO: Yes.

MR. SIMMONS: How did that word "existing" suddenly change meaning between then and the fourth building permit application?

MR. PREMO: It changed in the meeting with DCRA.

MR. SIMMONS: Is there anything on this building permit application that shows that the word "existing" no longer meant pre-

1933 house?

MR. PREMO: You'd have to talk to DCRA about that, I guess.

MR. SIMMONS: Is there anything on this piece of paper that shows that "existing two story frame house" no longer means the original pre-1933 house?

MR. PREMO: You just have to go into it further -- further into the drawings that were submitted and you'll see "existing" written across many of the drawings.

MR. SIMMONS: And my question remains the same; is there anything given to DCRA -- anything on any of these pages that says the word "existing" now refers to any new construction as opposed -- please stop telling the witness what to say.

MR. BROWN: He's answered the question. He just answered the question.

CHAIRPERSON MILLER: Okay. Right. I'm sorry. I happened to be looking at the site plan.

MR. BROWN: Yes. But --

CHAIRPERSON MILLER: But I think--

MR. SIMMONS: But the attorney is pointing to a piece of paper and directing the witness' attention to it. Let us not have any more coaching of the witness.

I ask that an adverse inference be drawn from this question and by the interference of counsel and the answer.

MR. BROWN: Mr. Premo had answered the question and referred to the drawing just before Mr. Simmons tried to ask the question again. So I think --

MR. SIMMONS: Quite incorrect. The first question I asked was about the first page. Then the witness started referring to other pages, and I started asking him about the other pages. And then counsel opens the book and points to something and draws Mr. Premo's attention to it.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: I ask that an

adverse inference be drawn against Appellant for this interference by counsel.

CHAIRPERSON MILLER: Okay. I hear what you're saying. Your objection is noted. But I'm not sure what the adverse inference would be. That he didn't know about that drawing until the attorney drew his attention to it?

MR. SIMMONS: Number one that. And number two, that the word "existing" means what it had throughout this entire process, which is pre-1933 house.

CHAIRPERSON MILLER: He didn't answer that question.

MR. SIMMONS: No, he didn't. Because counsel interfered.

CHAIRPERSON MILLER: And after the attorney --

MR. BROWN: Madam Chairman, he had answered the question and prior to Mr. Simmons outburst. He had answered the question and referred to the subsequent drawings. And end

of discussion.

MR. SIMMONS: No, it is not end of discussion.

MR. BROWN: And it was totally consist with his direct testimony when we went through those boards one-by-one.

MR. GREEN: Madam Chairman, if I might be heard.

We're going to continue to have this problem until and unless the Chair --

CHAIRPERSON MILLER: All right. Maybe we need to put more distance between you and your witness, Mr. Brown, so we don't have this argument anymore. So if you want to move over a little bit. Just try to refrain.

Because it just creates a question. I don't know that there was anything improper that was said.

COMMISSIONER JEFFRIES: It's an appearance issue.

CHAIRPERSON MILLER: Yes. It's the appearance and the speculation. And so

let's try not to have that occur.

I'm not about to draw some adverse inference about the conclusion of what the word "existing" based on their talking about something. I'm not. You know, I mean other people -- we're not required to draw an adverse inference.

MR. SIMMONS: I understand.

CHAIRPERSON MILLER: We're trying to hear all the evidence.

MR. SIMMONS: I understand, but--

CHAIRPERSON MILLER: I understand your concern and we're going to try to --

MR. SIMMONS: And I appreciate that. But this is an issue that's been raised by Mr. Green, and I supported it time again throughout this hearing.

The Board has cautioned all of us not to confer. Has cautioned counsel not to speak with witnesses. They have cautioned counsel not to help witnesses answer questions. Have said if you don't know, say

you don't know. If you don't remember, say you don't remember. And here again on a critical question when the witness himself has directed me to other pages of the exhibit and I'm starting to ask questions about them, Mr. Brown has opened to another page, is pointing and is directing the witness' attention to something.

CHAIRPERSON MILLER: Okay. I hear you. I think the inference I can draw from that is maybe Mr. Premo didn't know it on his own. And Mr. Brown found something to show him.

MR. SIMMONS: I think the inference is much more serious than that if you will, please, Madam Chairman.

CHAIRPERSON MILLER: Okay. Go ahead. If you want to say one more thing about how serious it is, what we should do with this question?

MR. SIMMONS: Well, as I said, I believe the only appropriate response is to

draw an adverse inference because, quite frankly, the witness --

CHAIRPERSON MILLER: Now are you saying that we should draw an adverse inference. And disregard the evidence in the case. We'll hear all this evidence. But go to some specific conclusion because Mr. Brown pointed him to a drawing. Is that what you're saying?

MR. SIMMONS: That's correct. On those other pages conclude that the word "existing" refers to the 1933 or pre-1933 house, not to any new construction constructed by either Mr. Premo or by Mr. Premo's crews in his contract with Ms. Wallace.

MR. BROWN: That's factually incorrect based on his testimony. I mean you have to decide as the trier of fact. He's testified on his direct and in answer to Mr. Simmons' questions that the drawings define "existing." And he was trying to, and did in fact refer to subsequent drawings in the

plans. So there's no basis --

CHAIRPERSON MILLER: Well, I'm not -- you know, I heard this concern. And I think, you know, maybe we should get even more distance so we don't have this problem anymore. But, you know, maybe I'm getting hungry. I hate to say this on the record. However, for some reason I think some of these documents might speak for themselves.

I mean if the documents show something, they show something. And if Mr. Brown happened to coach or he happened to show his witness, oh look at drawing number 7 or something, I don't believe that that means the Board has to disregard what the documents show. I mean that's my point.

MR. GREEN: But, Madam Chairman, if I might be heard?

CHAIRPERSON MILLER: Yes.

MR. GREEN: All throughout this proceeding I have talked about tainted testimony. I've talked about contamination.

1 And I even offered a solution to the problem.
2 And it's very simple. You've got three
3 microphones to your right. You've got a chair
4 that puts about 20 feet between the Appellant
5 and about at least ten feet from us. Put him
6 there.
7 CHAIRPERSON MILLER: Maybe -- all
8 right. Let's do it. And Office of Planning
9 isn't here. Let's do that. This is becoming
10 an issue. And I think it's a distraction.
11 And, Mr. Premo, why you take it.
12 Let's go over to one of those microphones.
13 MR. BROWN: We have to make sure
14 he has all the documents.
15 CHAIRPERSON MILLER: Okay.
16 MR. BROWN: Because he's the
17 Appellant's but he does not have own copy of
18 intervenor's yellow book.
19 CHAIRPERSON MILLER: Okay.
20 MR. SIMMONS: We've got very
21 little else, but I think --
22 CHAIRPERSON MILLER: Well, do you

want him to move? Because I don't want to keep returning to this issue.

MR. SIMMONS: I don't want to return --

MR. BROWN: Why don't I step away?

MR. BROWN: All right. Mr. Brown, okay.

MR. SIMMONS: That's the easiest solution. Thank you.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: Thank you, Mr. Brown.

CHAIRPERSON MILLER: End of issue. Thank you.

MR. SIMMONS: But we do, like the Government, I do want the record to reflect our ongoing objection and preservation of it for those issues.

Now, Mr. Premo, just a couple of final questions. And then I know that Mr. Frumin has a couple of things he would like to ask you.

On the subsequent pages of that Exhibit 10 is there anything on those pages where the word "existing" is shown -- strike that.

Look at page 2. It's drawing RA-1. Sheet number RA-1? You're looking at a different page from me. Okay.

CHAIRPERSON MILLER: Existing second floor plan, is that what we're looking at?

MR. SIMMONS: Existing second floor plan --

CHAIRPERSON MILLER: And existing first floor plan it says?

MR. SIMMONS: Yes.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: Identified as RA-1 in the lower right hand corner. This is the revised drawing A-1, yes?

MR. PREMO: Correct.

MR. SIMMONS: Okay. And you see on the first and second floor a dark line

around a portion of each of those floor plans?

MR. PREMO: Yes.

MR. SIMMONS: And you see within that area in what appears to be your handwriting, so that's my first question; is this your handwriting?

MR. PREMO: Yes.

MR. SIMMONS: It says the word "area to be demolished," correct?

MR. PREMO: Correct.

MR. SIMMONS: And it says that for both the first and second floor?

MR. PREMO: Correct.

MR. SIMMONS: Show me on this page where it says that anything on this area to be demolished is not all original house?

MR. PREMO: You want to ask that question again?

MR. SIMMONS: Sure. Show me where on this plan it says that what is to be demolished here is the only remaining portion of the original house?

MR. PREMO: Just by the fact that it's drawn where it is. That's the only remaining part of it. The other part of it is no longer existing.

MR. SIMMONS: Where on this page does it say that?

MR. BROWN: He's answered the question.

MR. SIMMONS: Objection. I mean we've got counsel interfering again. I'm asking --

CHAIRPERSON MILLER: Well counsel is not interfering. That's his job. It's like asked and answered. He's objecting to your question.

MR. SIMMONS: There is nothing -- let's focus on the top half of the page. Existing second floor plan, all right?

There's the area in the dark line and then the areas to the left of it that includes the word "bedroom #2," correct.

MR. PREMO: Correct.

MR. SIMMONS: Is there anything in that portion of the drawings or the words surrounding it that state that the area to be demolished is the only remaining portion of the original building?

MR. BROWN: He just answered that question.

BOARD MEMBER DETTMAN: Madam Chair, no, he's not answering the question. He's not. And the more Mr. Simmons asks the question and the more Mr. Premo does answer it. Because I think we all know that it's not indicated on here. So the more he doesn't answer the question, the more I personally am going to start to think that he's dodging the question.

Is there anything on these plans that says area identified as area to be demolished is the only remaining portion of the original 1933 house?

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: Where is

it?

MR. PREMO: It says "existing first floor plan" on the bottom part of the thing where it says just above scale. And then it says it again in "existing demolition first and second floor plans." So it mentions existing twice.

VICE CHAIRMAN LOUD: Could you be more specific as to where it is so that I might at least mark it on my exhibit?

MR. PREMO: Yes. It says "existing second floor plan" up on the middle of the page on the right hand side.

VICE CHAIRMAN LOUD: Yes, I see that.

MR. PREMO: It says "existing first floor plan," and then it says "existing second and first floor plan" on the -- you know, the part that has all the documented stuff on it.

VICE CHAIRMAN LOUD: Okay.

BOARD MEMBER DETTMAN: On the

title bar?

MR. PREMO: Yes.

VICE CHAIRMAN LOUD: Okay.

MR. SIMMONS: All right. Then let me ask the following follow up questions, please. The words "existing second floor plan" above the word "scale 1/4 inch equals 1 foot 0 inches," do you see that?

MR. PREMO: Correct.

MR. SIMMONS: That typing, those words were on the original building permit application and the original building permit plans from 2004, yes?

MR. PREMO: Yes.

MR. SIMMONS: How did those words magically change meaning in the fourth building permit and the fourth building permit plan application?

MR. PREMO: You had to be at the meeting.

MR. SIMMONS: You still haven't told me the answer. Show me where on this page

it shows that they have changed their meaning.

MR. PREMO: It's not on this page.

MR. SIMMONS: Thank you. I have no further questions.

CHAIRPERSON MILLER: You can't come back to the table yet.

Okay. ANC.

MR. BROWN: I lost my heard.

COMMISSIONER JEFFRIES: You've been banished. Out in the wilderness or something.

COMMISSIONER FRUMIN: I have only a few questions. But I want to concede at the outset that some of my questions got to assertions made in pleadings that are not in an affidavit, but that naturally must have come from Mr. Premo. So I want clarification on those claims made in pleadings.

CHAIRPERSON MILLER: Okay. You can go into legal argument or legal conclusions. Okay?

COMMISSIONER FRUMIN: No legal

arguments.

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: I've learned my lesson from previously.

MEMBER WALKER: And can you try to do it without making reference to the pleadings? Just try to fashion your question so that you're not making reference to a pleading.

COMMISSIONER FRUMIN: Well --

MEMBER WALKER: Try.

COMMISSIONER FRUMIN: I'll try.

An assertion is made that the cost of reconstruction and restoration of the original structure was $135,068. And that's not in your affidavit that that would be the cost of restoration and reconstruction of the original structure. But did you provide that number?

MR. PREMO: I don't remember.

COMMISSIONER FRUMIN: Other than you, where could that number have come from?

MR. PREMO: I guess you'd have to ask Ms. Wallace.

COMMISSIONER FRUMIN: Okay. I'm trying to do it without referring to a pleading.

A statement has been made that it is clearly established that the structural integrity of the original house, or what remained of it, has failed, been injured, lost or destroyed and would have collapsed if Ms. Wallace and Mr. Premo had not acted responsibly and as required by law to obtain permission to demolish the dangerous structure. Is that statement true?

MR. PREMO: And that pertains to what?

COMMISSIONER FRUMIN: That's a statement made in the argument about casualty and asserting that the damage was done and the structure would have collapsed. And the assertion is made, and it's not made in your affidavit, but it's made here. And it's the

kind of thing that I would think had to have come from you.

Is it true that it would have collapsed if Ms. Wallace and Mr. Premo had not acted responsibly and as required by law to obtain permission to demolish the dangerous structure?

MR. SIMMONS: I believe, if you will allow me, that he is referring to 2007.

CHAIRPERSON MILLER: Okay. Let me ask you, it's a very big question. Like let's say if you did nothing, if you just bought the house and didn't do any additions, would it have collapsed because of the termite damage and what?

COMMISSIONER FRUMIN: Well, no. This is a statement made -- well, actually --

CHAIRPERSON MILLER: Well, I don't think it's fair to bring a legal pleading and ask if the statement made in there is true. I think -- I don't think that's appropriate cross. But I think if you're trying to get at

the truth of a statement, you know, that's different in that -- you know --

COMMISSIONER FRUMIN: That's not the question.

CHAIRPERSON MILLER: But what are you saying? It would have collapsed when, like under what circumstances? Any circumstances?

COMMISSIONER FRUMIN: Well, no. This is a statement made that as of the time that they got the fourth permit that the damage was done. And it's a statement made in the papers. I don't know where it could have come from other than Mr. Premo. I was just asking --

CHAIRPERSON MILLER: Okay. But that's different. You didn't say that. You mean by the time of the fourth permit would it have --

COMMISSIONER FRUMIN: Exactly. And it's in the statement that's made it would have collapsed if Ms. Wallace and Mr. Premo had not acted responsibly and is required by

law to obtain permission to demolish the dangerous structure. So at the time when they sought that permit would it have collapsed?

MR. PREMO: I don't know. It was under the context that we couldn't lift it.

COMMISSIONER FRUMIN: The same document says "The structure failure had occurred and was beyond repair. There was nothing Ms. Wallace or anyone else including Mr. Lemoine could do under the circumstances." You don't know? It is a statement in pleadings presumably that should have come from somebody with expertise.

COMMISSIONER JEFFRIES: Well, we've already stated that we've not taken anything --

MR. BROWN: It's a -- yes, it's a legal argument.

COMMISSIONER JEFFRIES: So why are we here? I thought we gave these directions. And it's getting late.

COMMISSIONER FRUMIN: Okay. Last

1 question or two last questions. There was
2 discussion about when was the first time you
3 went into DCRA. Was the first time that you
4 went into DCRA to talk about taking down the
5 front of the house in November of 2006 or
6 January 2007?
7 MR. PREMO: The first time I went
8 in was in January.
9 COMMISSIONER FRUMIN: The first
10 time?
11 MR. SIMMONS: Let the record
12 reflect that the witness --
13 MEMBER WALKER: Can you get on the
14 mike, please.
15 MR. SIMMONS: I'm sorry. Let the
16 record reflect that the witness is referring
17 to notes in giving that answer.
18 COMMISSIONER FRUMIN: And then at
19 anytime prior to November 2006 did you have a
20 structural engineer look at the property to
21 determine whether or not the front half of the
22 house could survive this construction process?

MR. PREMO: I had people look at it, yes.

COMMISSIONER FRUMIN: Okay. And what did they tell you?

MR. PREMO: Most of them didn't want to have anything to do with it.

COMMISSIONER FRUMIN: I'm done.

MR. SIMMONS: Madam Chair, I know that it's getting late. The only remaining witness of the Appellant is Mr. Ford. I know that the Government has finished their examine of him. I don't know if intervenors or the ANC have any questions. I only have one or two questions of him. And if it's convenient to you, I'd just go ahead and ask them and we would be done.

CHAIRPERSON MILLER: Okay. I think that's a good idea.

MR. SIMMONS: Okay.

CHAIRPERSON MILLER: Does the ANC have any questions?

COMMISSIONER FRUMIN: No.

CHAIRPERSON MILLER: Okay. And Mr. Lemoine, you don't? Okay.

MR. SIMMONS: Thank you, Mr. Ford. Just a couple of real quick questions. And thank you for coming back.

You testified earlier. Your experience is in construction, not zoning, am I correct?

MR. FORD: Most of my experience, yes, is in the construction and permit processing.

MR. SIMMONS: All right. And that involves going out to sites and then determining whether construction is in accordance with building permits, is that correct?

MR. FORD: Building permits and building codes.

MR. SIMMONS: And building codes? But you don't investigate rezoning, right? You didn't investigate rezoning?

MR. FORD: I have in the past, but

in some cases I don't. Many cases I don't.

MR. SIMMONS: But your primary focus has been on construction and plans, correct, and processing.

MR. FORD: That's correct.

MR. SIMMONS: All right. Thank you.

I have no further questions.

COMMISSIONER JEFFRIES: Madam Chair, probably, Mr. Simmons, I wanted to go back to something in terms of your last line of questioning for Mr. Premo about these drawings, RA-1. My suspicion is that you're going to bring this back up, you know, during your -- you're going to bring this back up. Because I had a couple of questions.

In fact, strike that. I assume this will come up again. I had a couple of questions around this question of Mr. Premo in terms of these drawings. My rather than to do it now, my suspicion is that it will come back up. He'll bring this back up later on during

his --

CHAIRPERSON MILLER: Redirect. Redirect. Is that what you're talking about or are you talking --

MR. SIMMONS: I mean, I'm not quite sure what Mr. Jeffries is getting at. I had no part in the drafting of these plans or in the application for the fourth building permit. So other than question what they mean and make arguments post-hearing about what they mean, I'm not sure what --

COMMISSIONER JEFFRIES: Okay. Then let's deal with it now.

So I just want to be clear the line of questioning. Because I missed it terms of, you know, wanting to know whether these drawings, RA-1, whether these drawings had information on them that stated that this predated the 1933 house. I just wanted to make certain to understand what you were trying to get at.

MR. SIMMONS: What I'm trying to

get at here, and this is probably argument more than anything. I'm trying to get at these plans, other than the handwritten additional material on them, are identical. They are the same plans that were submitted for the first building permit application.

COMMISSIONER JEFFRIES: Right.

MR. SIMMONS: And I am getting at there is nothing on these plans to indicate that the demolition to take place or the razing to take place, or a neutral word, the taking down of building materials to take place; nothing to indicate that what was to be taken down was the only remaining portion of the original house. And to point out the word "existing" house, "existing" as it occurred and as it clearly meant during the initial building permit application for building permit number one referred unambiguously to the old 1933 house and magically in the fourth building permit application now it means the new construction, not the pre-1933 house. And

I am asking how that magic change in the meaning of the word "exist" changed to that.

COMMISSIONER JEFFRIES: Okay. So you're speaking to intent? That there was something that was intentional in terms of -- I mean the word "existing" obviously changed meaning from the first to the fourth. And your question is why was that not properly labeled?

MR. SIMMONS: That's correct. And why it not laid out for DCRA and what happened with DCRA and what did DCRA do in reliance to this?

COMMISSIONER JEFFRIES: Because clearly we need to get to DCRA. And we'll get to them.

MR. SIMMONS: Absolutely.

COMMISSIONER JEFFRIES: But I just wanted to be clear. Because the onus is on Ms. Wallace here, but obviously there's another side to the story. I just wanted to be clear about what you're getting at. And I just wanted to make it clear.

MR. SIMMONS: That's exactly what I'm getting at, sir.

COMMISSIONER JEFFRIES: Okay.

CHAIRPERSON MILLER: Let me -- I forgot. Mr. Brown, are you going to have some redirect?

MR. BROWN: I mean, I'd like to particularly on this issue. The question is when to do that. Do you want to take your break or do you want to do it now?

CHAIRPERSON MILLER: How long do you think it's going to be?

MR. BROWN: I think just a few minutes. I mean, it's going to be strictly to the issue that --

COMMISSIONER JEFFRIES: Right. Right. Yes, just do it now.

CHAIRPERSON MILLER: Can we hear it? Yes.

COMMISSIONER JEFFRIES: Just a couple of minutes.

COMMISSIONER FRUMIN: If I may?

Because this was a line of questioning that I passed on because Mr. Simmons wasn't -- and I just want to put my gloss on what I would have wanted to get at, which is that the documents when you look at them on their face created an impression that a portion of the old house was still there. If you look at R-1, if you look at the area to be demolished --

MR. BROWN: Excuse me. I object. He's testifying --

CHAIRPERSON MILLER: I just was wondering what he was doing. But then I thought maybe it was responding to your question, Mr. Jeffries, or no?

COMMISSIONER JEFFRIES: Yes. I think he was responding to my question. Although I was really --

CHAIRPERSON MILLER: Okay. Let's save that. No. That's for your case. You know, that's when you get to make all of your arguments about whatever means.

We're at redirect now.

MR. BROWN: Mr. Premo, we're going to use the larger versions. But they are Tab 10 to our Appellant's -- no. Hold on a second here.

MR. SIMMONS: Hold on. Let's get the witness a microphone, please.

MR. BROWN: Mr. Premo, these plans were the plans that were submitted and approved for the fourth building permit?

MR. PREMO: Correct.

MR. BROWN: Could you take us through -- first, before we actually get to the plans, how the plans were --

CHAIRPERSON MILLER: For the record, did you say that these were the plans that are attached as Exhibit 10?

MR. PREMO: Ten.

MR. BROWN: To Appellant's.

CHAIRPERSON MILLER: To Appellant's binder? Okay.

MR. BROWN: And these were the plans that were submitted for the fourth

building permit.

MR. PREMO: Correct.

MR. BROWN: And please describe how these plans were developed for purposes of submission for the fourth building permit, starting --

MR. PREMO: It was done in two meetings with DCRA.

MR. BROWN: And please describe those meetings?

MR. PREMO: The first meeting was a preliminary meeting where we brought, you know, information along with a letter from the engineer indicating that the front part of the old pre-'33 structure was not possible for us to lift. And so ended up meeting with somebody by the name of Dennis. And he gave me preliminary stuff to do in terms of getting it ready to have another meeting, which I ended up having with Mr. Chin. And Mr. Permit sent a representative, Steve Merchant.

And so out of the meeting with

Steve Merchant and Mr. Chin these were created. And it was all done page-by-page, as you can tell. They've all been marked up in the exhibits. And that's how it was -- when I walked out of that, that's how Mr. Chin wanted everything presented to DCRA for this permit.

So that's how it was all marked up.

VICE CHAIRMAN LOUD: Mr. Brown, can I ask a quick question? I'm a little unclear.

It sounded as if there were two meetings, one with Mr. Dennis and then a subsequent meeting with Mr. Chin.

MR. PREMO: Right.

VICE CHAIRMAN LOUD: I just wanted to clarify.

MR. PREMO: Correct.

VICE CHAIRMAN LOUD: The first meeting was with --

MR. PREMO: Two meetings, two separate meetings.

VICE CHAIRMAN LOUD: Okay. And who else was in on the meeting with Mr. Dennis?

MR. PREMO: Just -- just Dennis by himself. Mr. Chin was not there.

VICE CHAIRMAN LOUD: But you were there?

MR. PREMO: I was there.

VICE CHAIRMAN LOUD: You and Mr. Dennis.

MR. PREMO: Yes.

VICE CHAIRMAN LOUD: Okay. Thank you.

Sorry, Mr. Brown.

MEMBER WALKER: Is it Dennis as a first name or a last name?

MR. PREMO: It's just --

CHAIRPERSON MILLER: Mr. Ford says first name. Okay.

Now but who was he? Was he a --

MR. PREMO: I guess a structural-- somebody had to deal with structure because

that's where -- I was in there, Mr. Permit asked me or Jim Smith asked me to go in and meet with them first to see what requirements they would have for us to create this scenario.

COMMISSIONER JEFFRIES: And let me ask you this: Did they not in terms of supplying new drawings, they said that this was an acceptable way in which to illustrate exactly what -- there was no need to submit a new set of drawings, just sort of doctor up these drawings and make the marks that you made.

MR. PREMO: Exactly.

COMMISSIONER JEFFRIES: Continue.

MR. PREMO: Exactly. No, but actually what I had, was I had a set of drawings with us and we literally took those drawings and drew on them. And then I took those drawings and he just said neaten it up, you know.

So right there in that meeting we

1 were scribbling on these drawings creating
2 this. And he said --
3 COMMISSIONER JEFFRIES: And he
4 clearly understood that these were the same
5 drawings from the first -- from the original
6 permit?
7 MR. PREMO: Right.
8 COMMISSIONER JEFFRIES: Yes.
9 MR. PREMO: I mean basically I had
10 a blank of this. And what we did in that
11 meeting was just -- just with a pen, just went
12 around and he said just highlight it heavy,
13 you know write these things in. So I just
14 scribbled on those drawings. And then I went
15 back to my office, took out another clear set
16 of drawings and made it more detailed to this.
17 And this is what they had me give to Mr.
18 Permit to go take in for the permit.
19 CHAIRPERSON MILLER: What office
20 were you in?
21 MR. PREMO: I'm sorry?
22 CHAIRPERSON MILLER: I mean what

office were you in? Who is "they?" You know, I mean what office of DCRA? Permit?

MR. PREMO: Well, this was -- there was a little conference office off to the side.

CHAIRPERSON MILLER: No, I mean what -- no, I don't mean physically what room.

MR. PREMO: Oh.

CHAIRPERSON MILLER: I just mean like who were you meeting with? Like what office? It was part of the --

MR. PREMO: Well, the first -- the first one was with this guy named Dennis. I don't know his last name.

CHAIRPERSON MILLER: Is this like the Permits Office? I mean, what office --

MR. PREMO: Yes. Yes.

MR. BROWN: It's not the Zoning Office? It's not the Zoning Administrator's office?

MR. PREMO: No, no, no. This is walking up to the counter and putting down who

you wanted to meet, Structural.

CHAIRPERSON MILLER: Oh.

MR. PREMO: And they assigned somebody to me. And I just went in and -- I mean, I didn't know anything about this.

BOARD MEMBER DETTMAN: Mr. Premo, and so when you say that you were there at the table marking up these plans, you're marking up the plans that were associated with the first building permit?

MR. PREMO: I'm marking up the same original set.

BOARD MEMBER DETTMAN: The original set?

MR. PREMO: I had -- I had an original set with me.

BOARD MEMBER DETTMAN: So the set that you're marking up, it's the original set. They don't reflect any sort of change as a result of building permit number two or three?

MR. PREMO: Correct. Just one set, just like this.

BOARD MEMBER DETTMAN: And when you were sitting there and marking up the original plans, the people you're marking them up, are they familiar with the project enough to know that these aren't really the most accurate plans because they're the original ones and they don't reflect the rear collapse, the don't reflect the new foundation as a result of the ground water issues?

MR. PREMO: We have to bring in -- I mean I brought in the whole wad, everything. You know, the original set stamped, the permit number two set, the permit number three set. All of those are right there. And whether they looked at them and how they referred to them or what they did with them, I don't remember exactly how much we got into that.

But this is the stuff that we ended up having to doctor right there.

COMMISSIONER JEFFRIES: But Mr. Premo, he asked another question, though.

MR. PREMO: Yes.

COMMISSIONER JEFFRIES: Okay. Because these drawings are sort of a cumulative situation here.

MR. PREMO: Yes.

COMMISSIONER JEFFRIES: And if you started off with the original rather than which aren't the most accurate currently, there's a subsequent one and then there's a third one, why did you not start of with the third set in terms of making these various changes?

MR. PREMO: I -- I -- I was just doing what DCRA asked me to do. They were right there. They just -- you know, I had this stuff here and they just started marking up stuff with us. And that's all that was happening. I mean the whole set was there.

COMMISSIONER JEFFRIES: It just seems counterintuitive, that's what I'm saying. Even -- I mean, just for a layperson. It would seem that you would work on, you know, if you have subsequent drawings that

there are revisions and so forth, you'd just --

MR. PREMO: Well, they're there.

COMMISSIONER JEFFRIES: You show the most recent ones. Well, no, no. No, I got what you're saying.

MR. PREMO: Yes.

COMMISSIONER JEFFRIES: You bundled them up and they were all there. And so you left it to DCRA to sort of go through and figure this all out.

MR. PREMO: Correct.

COMMISSIONER JEFFRIES: But I'm just wondering, and I think that's what my colleague is saying, why did you just not start with the most recent drawings with the recent situation and mark those up?

MR. PREMO: I just -- I was just doing what DCRA was asking me or directing me to do. I mean, I am a layperson when it comes to do that.

COMMISSIONER JEFFRIES: Whoa.

Whoa. Did DCRA ask you to go to the original ones or did they -- what --

MR. PREMO: No. I mean, these were there. And so these were the ones that got marked up.

CHAIRPERSON MILLER: What do you mean "these were there?" What does that mean?

COMMISSIONER JEFFRIES: I'm confused.

MR. BROWN: Mr. Jeffries, can I interject? Mr. Ford testified to this.

MEMBER WALKER: Really, Madam Chair, I don't think we want to hear from counsel on this very important point. I think we want to hear --

BOARD MEMBER DETTMAN: Here's a follow up question to my question. Does there exist a set of plans that those are the original, taking off your little scribbles, there's an original set of plans. We had the rear of the house collapse. You had to go to DCRA for a second building permit for

permission to rebuild the rear. Did you doctor up those plans, the original plans to show them that the area -- you have the hatched area and you have the area outlined in a box. That area in the middle. Did you doctor up-- did you make a revision to the original set of plans to say here's the area that we're looking to rebuilt?

MR. PREMO: Not with this, no.

BOARD MEMBER DETTMAN: No? Then you had the ground water issues and the collapse and you needed to revise your foundation plan, which I don't know what your foundation plan is. RA-6. You had to go back for a third building permit.

MR. PREMO: Right.

BOARD MEMBER DETTMAN: Did you revise the plans, either the original ones or the second set to show them --

MR. PREMO: There are three sets of plans.

BOARD MEMBER DETTMAN: There are

three sets of plans?

MR. PREMO: There are -- and that was in this meeting. They existed. They were there at the table. So they saw all of those. And all of those plans were there.

COMMISSIONER JEFFRIES: But was there a composite? This is what I'm trying to get to the bottom of.

MR. PREMO: No, they're separate.

MS. WALLACE: To your question --

CHAIRPERSON MILLER: Ms. Wallace, you have to wait.

Mr. Brown, wait. We're going to stick with the procedure. He has redirect. If you want to ask Ms. Wallace some questions afterwards, you have -- I don't think -- did you do redirect on her already?

MR. BROWN: No. But I would like to redirect to Mr. Ford. Because I think it will respond directly to --

CHAIRPERSON MILLER: Well, you'll get that opportunity.

MR. BROWN: Yes.

CHAIRPERSON MILLER: So the Board is asking questions of Mr. Premo. And then you're on redirect. So you can ask him when the Board's done with this line of questioning.

BOARD MEMBER DETTMAN: Well, it's my last question. That we hard from Ms. Wallace that said this whole process that it's an evolution of plans. You're always working off the same set of plans. When you go back to DCRA, you're working off the same set of plans. If that's the case, then why not why doctor up for the fourth building permit, why not doctor up the set of plans that reflects the second building permit and the third building permit?

MR. PREMO: I don't know. This is what DCRA had me draft.

BOARD MEMBER DETTMAN: Okay. Well, you describe yourself as a layperson just now, and you're not. You're a

professional contractor.

MR. PREMO: Yes, but I don't --

BOARD MEMBER DETTMAN: And you're very knowledgeable in the permit process.

MR. PREMO: I don't do permits.

BOARD MEMBER DETTMAN: And so I would assume that you know that we're sort of dealing with this evolution of plans so that no matter --

MR. PREMO: Correct.

BOARD MEMBER DETTMAN: -- who sees the set of plans, either involved for the long term or new person involved, they can get a sense of what's going on. So you don't why you didn't doctor up the most current set of plans? You just know that DCRA wanted to doctor up the original plans?

MR. PREMO: Correct. Exactly.

VICE CHAIRMAN LOUD: Let me ask the following question to Mr. Dettman's question. As you stand -- regardless of the plans and the evolution and what you showed or

didn't show, as you stand here today under oath and give testimony, is it your understanding that at this initial meeting with Dennis or Mr. Dennis, or whomever he was, that this Mr. Dennis understood that the only remaining part of the structure was the part that you were proposing to tear down?

MR. PREMO: As far as I know, yes.

VICE CHAIRMAN LOUD: And how is that your understanding? How do you understand that Mr. Dennis knew that?

MR. PREMO: Because we had that picture.

VICE CHAIRMAN LOUD: Did you have a specific discussion with him about it?

MR. PREMO: Yes. But I mean, we had the picture that shows the house -- you know, the existing -- the frame, all this was framed and all that's left is just the one that's right in front of it. He knew that right there.

VICE CHAIRMAN LOUD: Let me just

for my notes document it.

MR. BROWN: It's referring to our Exhibit 5?

VICE CHAIRMAN LOUD: To the Appellant's --

MR. BROWN: Hearing exhibits.

VICE CHAIRMAN LOUD: All right. And then again to follow up my question, I'm assuming -- I could be wrong, that it wasn't just that the picture was at the meeting with Mr. Dennis, but that there was some conversation about the picture or was the picture simply at the meeting and being it understood without ever being discussed that Mr. Dennis was aware of the picture, aware of the contents of the picture, et cetera?

MR. PREMO: Yes.

VICE CHAIRMAN LOUD: Which was it? That there was a discussion.

MR. PREMO: He was aware that that was the piece that we were going to tear down.

VICE CHAIRMAN LOUD: Was there a

specific discussion about it?

MR. PREMO: In terms of what?

VICE CHAIRMAN LOUD: About the only remaining part of the building being the part that was to be demolished?

MR. PREMO: I -- I don't -- all we had in that meeting was that this was the remainder of the old structure. So whatever that meant.

VICE CHAIRMAN LOUD: And he was shown the picture?

MR. PREMO: Yes.

VICE CHAIRMAN LOUD: And he shown the picture by you?

MR. PREMO: Yes. Yes. And Mr. Smith wanted us to go down and talk to them about that specifically to see whether it would effect anything.

VICE CHAIRMAN LOUD: Now Mr. Smith is the Mr. Permit.

MR. PREMO: Yes, Mr. Permit.

VICE CHAIRMAN LOUD: And that he

wanted you to do that, but he was not at this actual meeting?

MR. PREMO: No.

VICE CHAIRMAN LOUD: Okay.

MR. PREMO: His representative didn't come until the second meeting. This was just a preliminary.

VICE CHAIRMAN LOUD: Okay. And, Mr. Brown, give me the tab number for that again?

MR. BROWN: The picture?

VICE CHAIRMAN LOUD: Yes.

MR. BROWN: It's number 5.

VICE CHAIRMAN LOUD: Tab 5. All right. Thank you.

CHAIRPERSON MILLER: I have one other just follow up question on this point.

MR. PREMO: Yes.

CHAIRPERSON MILLER: I know that you said you brought everything to the meeting, like you brought the drawings as they evolved. And that this Dennis person wanted

you to use the original to doctor up for this purpose. Did he even look at the other drawings in your presence?

MR. PREMO: As far as I know he did. Most of them do.

CHAIRPERSON MILLER: In your presence, though?

MR. PREMO: I mean we were only at that table outside of the counter area. There is a little conference room right there. And all of the drawings were just laid out.

So I just don't remember exactly what happened. I mean it was basically we made the presentation, showed him the letter from the engineer saying that it wasn't -- it wasn't safe. And asked -- we asked him what can we do. And this is the process that eventually came out of the initial meeting. And we had to go back for the second meeting with Chin and all the people to, as I say, finalize this. Nobody asked us to redraw. Nobody asked us to do anything more than what

we got a permit from these drawings to do.

I mean if we had been asked, we would have done it.

CHAIRPERSON MILLER: Okay. I mean, I'm not familiar with this process. So that's why I'm asking in part. Also, and so did you tell them the history of the project? I mean, from you know through each permit in this process?

MR. PREMO: I don't know. I don't remember whether he asked me --

CHAIRPERSON MILLER: You just give him all the stuff?

MR. PREMO: -- asked us or whether it was just something that -- I don't remember. I just remember making the proposal to him about the fact that this was -- you know, giving him the letter, showing him the picture; that kind of stuff. I don't remember how much real dialogue took place.

CHAIRPERSON MILLER: Okay. So as I understand it, you brought with you

everything you thought you needed to go through this process and gave it to his person, and said "And this is what we'd like to do." And then they told you how to proceed?

MR. PREMO: Yes. Jim Smith told me to bring everything that I had, and he gave -- I don't know a list, but he just told me, you know, you'll need to bring this, you'll need to bring that. You know, so I brought whatever I could down and just showed him what we had and asked him, you know, what could we do.

COMMISSIONER JEFFRIES: And, Mr. Premo, this was not the first time you dealt with permitting in the District? Is this the first time you've dealt with permitting in the District?

MR. PREMO: As I said, I did work a long, long time ago in the District. But that was a long, long time ago.

COMMISSIONER JEFFRIES: Okay.

MR. PREMO: I mean, 20/30 years ago.

COMMISSIONER JEFFRIES: Okay.

MEMBER WALKER: So why did you become involved at this point if Mr. Permit had been working on your behalf up to now?

MR. PREMO: He was beginning to get out of the permit service. He was winding down. And so he just didn't have the time. And he told us what we could do. It was just to meet with somebody and see what, you know, we could do. As I said, you know, he did have somebody come out with us. You know, Steve Merchant on the second meeting. And then, of course, Steve Merchant is the one who ran it for permit number four. But that was the last time he was involved in it.

MEMBER WALKER: Okay. One other question, Madam Chair.

On the board to your right drawing RCS 1 there's a notation above the official stamp. The first page of the plan.

MR. PREMO: Oh.

MEMBER WALKER: There's a notation above the official stamp that says "throw away."

MR. PREMO: Right.

MEMBER WALKER: Whose handwriting is that?

MR. PREMO: Mine.

MEMBER WALKER: And why did you write that?

MR. PREMO: I'm not really sure. I don't know whether it was -- at what point that -- that -- I don't if that was prior to having the meetings or what. You know, it was just on the paper.

MR. BROWN: Briefly. Mr. Premo, if you could, take us through the various pages of these plans. And as you go through them, starting with the first page, your discussions led to how the work defined on each of the pages, is that correct? Your discussions with DCRA?

MR. SIMMONS: I'm going to object. This is well beyond the scope of cross. It appears to be leading. A whole bunch of other problems here as well.

CHAIRPERSON MILLER: It doesn't seem to be beyond the scope. Because you challenged these drawings and what they meant?

MR. SIMMONS: Right.

CHAIRPERSON MILLER: What existing meant, right?

MR. SIMMONS: Right. And in direct examination the question of these plans and what they meant was raised. So there's nothing new here for redirect.

CHAIRPERSON MILLER: Mr. Brown, do you want to respond?

MR. BROWN: Well, (1) Mr. Simmons asked questions that I think were incomplete and limited by client's ability or Mr. Premo's ability to respond in the fullness of his testimony. And I think it's critical for the Board. And the questions being asked

highlight that it's critical for him to complete his thoughts and his testimony. And ultimately the key is so you understand what happened. And I think Mr. Simmons, good lawyer that he is, cut off the discussion half way and he left you with an incomplete picture.

CHAIRPERSON MILLER: I would agree. The point of the BZA is -- yes, is to have as full an understanding of the evidence as possible that's relevant. And this is pretty relevant.

MR. BROWN: But the key I'm asking Mr. Premo is that what's shown on the plans was developed -- and this is a question. Was it developed in consultation and under the supervision of DCRA?

MR. PREMO: Absolutely.

MR. SIMMONS: Already answered.

MR. PREMO: Yes.

MR. BROWN: All right. And if you could then, starting with the first plan, the

purpose of these annotations was it to delineate what was being demolished and what was going to remain as existing?

MR. PREMO: Yes.

MR. BROWN: All right.

MR. SIMMONS: Objection. Lack of foundation. Whose intention --

MEMBER WALKER: Mike.

MR. SIMMONS: I'm sorry. Objection. Lack of foundation. Whose intention are we referring to?

MR. BROWN: Can you answer that question?

MR. PREMO: DCRA's.

MR. BROWN: Mr. Premo, if you could start. Very quickly. I know because you went through this in your direct.

MR. PREMO: Yes.

MR. BROWN: The first page.

MR. PREMO: Yes. It ended up that I -- I -- the reason why we have this set is because Chin said it was unnecessary to redraw

these. That he said that if we went through, and that's why we had the meeting and we scribbled on the original set. Not the original permitted set, but the original drawing set.

And so, as I said, you know these things were -- you know, he instructed me to me highlight this, and to -- you know, scribble these -- you know, make these remarks on it. And -- and we went over it page-by-page. He just flipped the pages and drew a thing around it and said, you know, just put on there area to be demolished. And I just went through and, you know, and just did exactly -- you know, how he had instructed me to do it.

BOARD MEMBER DETTMAN: Very quickly, Mr. Premo?

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: At this drawing --

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: -- did you inform them that the part that's not circled does not exist anymore?

MR. PREMO: Well, I -- it was part of the discussion I'm sure.

BOARD MEMBER DETTMAN: It was?

MR. PREMO: I mean, they knew that because that's why there's a hard line on there. So --

BOARD MEMBER DETTMAN: No. I mean the part that's not circled, the rear of the--

MR. PREMO: This stuff?

BOARD MEMBER DETTMAN: The rear of the original house?

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: Did you inform the person you were marking up --

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: -- that that was no longer there?

MR. PREMO: Yes. Well, it's in the picture it's no longer there.

BOARD MEMBER DETTMAN: Okay.

MR. PREMO: It's self evident. Plus we discussed it anyway. But again --

COMMISSIONER JEFFRIES: Wait. Can you go back to that drawing?

MR. PREMO: Yes. Yes.

COMMISSIONER JEFFRIES: Can you go back?

MR. PREMO: This one?

COMMISSIONER JEFFRIES: So did it -- anywhere on there did you note that the back part of the original house no longer existed?

MR. PREMO: Did -- no.

COMMISSIONER JEFFRIES: Was there a note anywhere on it?

MR. PREMO: No. He didn't-- he didn't -- he didn't indicate that it was necessary.

COMMISSIONER JEFFRIES: Okay. Continue.

MR. PREMO: You got to remember

I'm just following whatever it is that he's saying.

COMMISSIONER JEFFRIES: Well, I just wanted to know.

MR. PREMO: Yes. Yes.

CHAIRPERSON MILLER: The court reporter has a problem.

CHAIRPERSON MILLER: Okay.

MR. GREEN: You have power.

CHAIRPERSON MILLER: Excuse me. Wait. Can I ask a question? All right. I think if we're going to break, we're probably going to break for 20 minutes or so. Can you wait five minutes or anything like that, or no?

Are we like five minutes away, do you think, from this -- well, it's redirect. Mr. Brown?

MR. BROWN: Well, I'm almost finished here and then I think Mr. Ford.

CHAIRPERSON MILLER: Let's finish Mr. Premo, if we could. Okay.

MR. PREMO: As I said, you know, we just went through each drawings. He would make a line on it or whatever. And I just --

MR. BROWN: Mr. Premo, stop on that drawing.

MR. PREMO: Yes. What?

MR. BROWN: Stop on that drawing. You can put it back up. But if you could show--

MR. PREMO: It has the existing.

MR. BROWN: With your fingers point where the existing, where the demarkation is between existing and what's going to be demolished.

MR. PREMO: Okay. Existing is this side and to be demolished is this side. Existing is this side. And to be demolished is this side.

MR. BROWN: And that's consistent or accurate with what was physically there at the time?

MR. PREMO: It represents what was

in the picture.

MR. BROWN: Okay.

MR. PREMO: Again, the same thing with this level.

MR. BROWN: And again with your fingers.

MR. PREMO: This is the existing, this is to be demolished. This is existing, this is to be demolished.

COMMISSIONER JEFFRIES: That's RA-3, right?

MR. PREMO: No, that was RA-4 I just put down.

COMMISSIONER JEFFRIES: RA-4? Okay.

MR. PREMO: And this is RAP-5. Again, these are elevations to just illustrate.

COMMISSIONER JEFFRIES: So this line that you have here that looks like a section line almost with the arrows pointed to the left, that's the line of demarkation?

MR. PREMO: Yes, this is the line of demarkation right here.

COMMISSIONER JEFFRIES: Okay. Okay.

CHAIRPERSON MILLER: So the word "existing" here --

MR. BROWN: I think Mr. Jeffries, I believe, and Mr. Premo are on different pages.

MR. PREMO: It's RA-5.

COMMISSIONER JEFFRIES: Okay. R-5. Okay.

CHAIRPERSON MILLER: But the use of the word "existing" in RA-4 means that -- means what?

MR. PREMO: "Existing" is the framed structure that was in the pictures.

COMMISSIONER JEFFRIES: But it does indicate what was original that -- the part that was original then that was -- wait. Okay. Now I'm getting -- I thought I had this. Okay.

BOARD MEMBER DETTMAN: She has to go.

(Whereupon, at 4:20 p.m. off the record until 5:19 p.m.)

COMMISSIONER JEFFRIES: And then there was four.

CHAIRPERSON MILLER: Another one bites the dust, huh? Yes. Mr. Loud will read the record. He had to go.

So --

MR. SIMMONS: Madam Chair?

CHAIRPERSON MILLER: Yes.

MR. SIMMONS: I know that the Board is going to have address scheduling later on this afternoon. But before we do so and before we resume, I will have to leave here tonight at 7:00. I have a 9:00 flight out of National. So I would just the Board to keep that in mind as we move forward, please.

CHAIRPERSON MILLER: We have kept in that mind. Actually, you mentioned that to me off the record. And we thought maybe the

1 best way to proceed, and I was going to ask
2 the other parties, is after we do the redirect
3 to go out of order and let Mr. Simmons present
4 his case.
5 And how to do you feel about that,
6 Mr. Brown?
7 MR. BROWN: That's fine.
8 CHAIRPERSON MILLER: Okay.
9 MR. SIMMONS: I have no objection
10 to that so long as I am present for other
11 testimony and have the right to participate to
12 object. I'm hoping the Board is not
13 completing going past 7:00 tonight.
14 CHAIRPERSON MILLER: Yes, we are.
15 Now we scheduled today with the consent of all
16 the parties to try to finish this case. So I
17 don't think that this case cannot go on
18 because you have plans now.
19 MR. SIMMONS: Yes. But we did
20 schedule to begin at 9:30 in the morning. We
21 all have tried, I know, very hard to move as
22 rapidly and as expeditiously through this as

we can. But it would, I believe, it would be a due process violation quite frankly, Madam Chair, to proceed in my absence.

We did start early. We've all tried. I know the Board Members, I know my colleagues here in the front have tried very hard to move this forward as fast as possible.

CHAIRPERSON MILLER: I would say that, you know, we might have gotten through if the cross was less time consuming. You're not the only intervenor here, as well.

So, I mean, I want to hear from other parties. But I have heard from even our last hearing that there was a prejudice to be weighed to the applicant, and that's to be considered. And the Board is considering that.

The record would be left open later for proposed findings of facts and conclusions of law and the transcript will be available as well.

Can I hear from the other parties?

MR. GREEN: As far as the Government is concerned, Madam Chairman, we are flexible.

CHAIRPERSON MILLER: Okay. And the Appellant?

MR. BROWN: I'm not flexible. We're here and we're going forward. And, you know, we are where we are. I'm willing to accommodate Mr. Simmons and let him put on his presentation. And I don't suspect he's going to lose anything. I can't imagine him cross examining DCRA for which he is probably close aligned. So, I mean, I don't see any prejudice. But, you know, pushing this out for client, you know, you're well aware of the prejudice there. And this thing will never end.

I'm here. I quite frankly, changed my plans dramatically to be here for the duration. So have other people on my team, too, as well.

CHAIRPERSON MILLER: So have the

Board Members.

MR. BROWN: I'm sure. Yes.

CHAIRPERSON MILLER: We should be in recess at this point.

The Board Members, are you on board with proceeding as stated? And let's see, I mean, I'm not sure if we will finish will tonight. But I think we need to keep going.

There are others here who can -- who represent intervenors; the ANC, who can cross examine. And you've had a full opportunity, very full opportunity to certainly cross examine the Appellant.

So why don't we not use up too much more at this point and at least go with that schedule.

So, Mr. Brown, you have some more in direct? I mean, not in direct.

MR. BROWN: Redirect, yes. That's what I'm sitting in the back room. Redirect, yes. I'd like to finish up with Mr. Premo and

then go to Mr. Ford and move quickly.

And just kind of stepping back a half step for where we were, Mr. Premo. You indicated you had two meetings with DCRA?

MR. PREMO: Correct.

MR. BROWN: And the first meeting was with a gentleman by the name of?

MR. PREMO: Dennis Ataboma.

MR. BROWN: Why don't you spell it?

MR. PREMO: Who was --

MR. PREMO: A-T-A-B-O-M-A. And he was Robert Chin's boss.

MR. BROWN: And Robert Chin is who?

MR. PREMO: The -- the structural engineer that we met with on four -- on the second meeting.

MR. BROWN: And when you went first to meet with Mr. Dennis and you presented him with the entire history of this project?

MR. PREMO: Correct.

MR. BROWN: And that would include the first permit?

MR. PREMO: Yes, the first permit which, you know as I said, basically all the-- all the permits pertained to this set of drawings. And the only difference was is that there were attachments in the upper left hand corner. So like permit number one had attachments from engineers or whoever. And permit number two was the same set of drawings with another set of attachments in the upper left hand corner. And number three was the same set of drawings as this without the notes that we made on for number four with an attachment like this in the corner. And that would have been for number three. And then number four was that with the attachments of this letter and the sequence. And that's how -- so the package that I walked in there with were all of those drawings with their respectful attachments. And each set of

drawings had all their stamps on them that DCRA put on them.

MR. BROWN: And, Mr. Premo, notwithstanding your 40 plus years of experience as a contractor, a builder, when was the last time you a got a permit in the District of Columbia?

MR. PREMO: In the early '70s.

MR. BROWN: So you would be the first to admit that you were inexperienced in the process, correct?

MR. SIMMONS: Objection. Leading the witness.

CHAIRPERSON MILLER: You're leading the witness a little bit, Mr. Brown.

MR. PREMO: Well, as a -- as a -- as a contractor what I do is I get documents from architects. In other words, I'm in a bidder's list and architects would call up their contractors that bid on their jobs. So that architects take care of all this, the permit process. So the permit's already

issued when we go to bid on them. So the process of going through and getting permits is something I'm not -- not something I do.

MR. BROWN: Given your inexperience you relied heavily on the advice and consultation of DCRA --

MR. SIMMONS: Objection. Again leading.

CHAIRPERSON MILLER: Yes, Mr. Brown. This is not redirect. Don't lead the witness anymore.

MR. PREMO: But that's -- all of this stuff was done through DCRA through the meetings.

MR. BROWN: And again, referring first to the picture, that picture -- I believe I can -- it's Exhibit 5.

MR. PREMO: Five.

MR. BROWN: In the Appellant's book. That picture, was that picture presented to DCRA in the meetings?

MR. PREMO: Yes. Yes. That --

this picture was part of the original that was presented to Dennis. And to Mr. Chin.

MR. BROWN: and the purpose of presenting that picture was to demonstrate what?

MR. SIMMONS: Objection. This is not redirect.

MR. PREMO: Well, this -- well actually --

MR. SIMMONS: This is not redirect.

CHAIRPERSON MILLER: What is the redirect to, Mr. Brown?

MR. BROWN: Well, the cross examination that occurred and one of my concerns which got me moved to the back seat was that Mr. Premo was asked a question and was not able to give a full response. Given that his response was very limited, I'm trying to then allow Mr. Premo to give a full response on how these plans emerged and the consultative process and he relied on those

plans, which are very much issues that were raised by various members of the Board.

MR. SIMMONS: And quite frankly, the picture, the existence of it was mentioned by Mr. Premo in direct, and in his direct he said he showed it DCRA. Counsel had more than ample opportunity to follow up on the meaning of that picture at that time. This is not proper redirect.

CHAIRPERSON MILLER: All right. Well, this is relevant to the Board's understanding of what the process was.

But I think that that ground was covered a lot; that they brought the picture. I mean, we had this break. So I'm not sure. It sounds like we've already heard this part.

MR. BROWN: Again, I'm trying to kind of bridge the break.

CHAIRPERSON MILLER: Okay.

MR. BROWN: And my apologies.

Mr. Premo, the picture, what was the purpose of the picture?

MR. PREMO: Well, the picture -- or the purpose of the picture was to show them everything that was existing. You know, to show the -- the addition and the existing part of the old structure that was rebuilt, and to show the part that was still standing of the original '33 structure.

MR. BROWN: And was that picture part of the collaborative process for creating the plans?

MR. PREMO: Yes, it was. I mean--

MR. BROWN: And can you show me --

MR. PREMO: -- I'll do it on this one.

MR. BROWN: Do it one sheet. Show me the end result of that collaborative process.

MR. PREMO: Well, it ends up that from here over to this line is the wooden part of the structure that's unpainted. This is -- this was the existing from this point back was what was determined to be existing on this set

of drawings. And it's duplicated throughout the rest of them.

From this point forward was the white section of this picture. And so that's why the picture was presented at those meetings to help show what was existing and what was to be demolished.

CHAIRPERSON MILLER: Okay. And you were pointing to RA-4, is that right?

MR. PREMO: Yes, RA-4.

CHAIRPERSON MILLER: Okay.

MR. PREMO: Yes.

MR. BROWN: But that demarkation between existing and demolition of the old structure, that's consistent throughout the various --

MR. PREMO: It's -- it's on all the drawings. Yes.

MR. BROWN: And these drawings were submitted to DCRA along with what other documents?

MR. PREMO: Well, it was submitted

1 along with the letter from the engineers,
2 which was the original letter brought to
3 Dennis.
4 MR. SIMMONS: Again, Your Honor,
5 this is well beyond the scope of both direct
6 and cross. And I object.
7 CHAIRPERSON MILLER: This is
8 relevant. But have we heard this before or
9 not heard this before? Where are those
10 documents in the record?
11 MR. BROWN: They're all in here.
12 You've heard it before.
13 CHAIRPERSON MILLER: Okay.
14 MR. BROWN: But, again, based on
15 Mr. Simmons' cross examination --
16 CHAIRPERSON MILLER: Okay.
17 MR. BROWN: -- I think the Board
18 got a little confused and I'm trying to --
19 MR. BROWN: Well, no. I think --
20 I agree. I did. I mean I think that there was
21 a question as to what was looked at DCRA, you
22 know, that ended up with the plans being as

they are. And so I think to me it's relevant.

COMMISSIONER JEFFRIES: Yes. And I would say relevant. I think for me it's critical that that photo was shared with DCRA. Now I don't know if it's in the right form or whatever. I'll leave it to DCRA to discuss. But that gives me a little bit more comfort that, you know, what was being presented to DCRA, you know, was somewhat of a full record. Because I was on another track. So I have a little bit more clarity as to what exactly was then delivered.

MR. BROWN: And he got interrupted midstream. You --

CHAIRPERSON MILLER: Well, what are the documents that are there?

MR. PREMO: Well, the two documents that were attached to this upper left hand corner -- well, wherever. The upper left hand corner of the set that was permit number four was the letter from the engineer and the other -- the sequence of demo. Those

were the two attachments that were -- went in with number four.

MR. BROWN: And the sequence of demolition was -- it was -- was it a detailed process for the demolition?

MR. PREMO: Absolutely.

MR. GREEN: Madam Chairman --

MR. PREMO: Absolutely.

MR. GREEN: Madam Chairman, I believe that I have to interpose an objection. Counsel is answering the question with a statement. We have a speaking objection going on here. Please --

CHAIRPERSON MILLER: Okay.

MR. GREEN: -- do something about this. Please.

CHAIRPERSON MILLER: Mr. Green.

MR. BROWN: Mr. Premo, could you--

CHAIRPERSON MILLER: Okay. We heard about the sequence thing before, too. So I think just what was relevant here was that those documents were attached.

MR. BROWN: Okay.

CHAIRPERSON MILLER: And I don't think you need to start talking about those documents again.

MR. BROWN: Okay.

COMMISSIONER JEFFRIES: Can we just wrap it up? I mean, I think we're pretty much --

MR. BROWN: Okay. One last question for Mr. Premo.

COMMISSIONER JEFFRIES: Yes.

MR. BROWN: When this permit, permit number four was issued what did DCRA return to you with the permit?

MR. PREMO: Returned this set of drawings.

MR. BROWN: And were the structural letter and the demos sequence attached to that?

MR. PREMO: Yes. That's part of the -- that's part of the docs.

MR. BROWN: And that was part of

your -- you considered that part of your approved permit?

MR. SIMMONS: Objection.

MR. PREMO: Correct.

MR. BROWN: And one final question. Based on the fourth permit that was issued, did you complete the work that was authorized in that permit?

MR. PREMO: Yes.

MR. SIMMONS: Objection.

MR. PREMO: Yes.

MR. BROWN: I have no further questions for Mr. Premo.

CHAIRPERSON MILLER: Okay. Did he complete the work on the fourth --

MR. BROWN: The demolition.

CHAIRPERSON MILLER: Oh, the demolition part?

MR. BROWN: The demolition.

CHAIRPERSON MILLER: Okay. Okay.

MR. BROWN: And I'd like to recall Mr. Ford.

MR. SIMMONS: We've got some re-recross now on the basis of this --

CHAIRPERSON MILLER: There isn't recross here.

MR. SIMMONS: If Madam Chair pleases, there were some new matters raised here regarding these documents and regarding the photograph. In fact, Mr. Jeffries raised one of the concerns. I would like to follow up on those redirect questions and just very briefly, and get the answers onto the record. It's probably a half a dozen questions.

CHAIRPERSON MILLER: We don't do that. We could be here for days. We don't do it. So --

COMMISSIONER JEFFRIES: You can somehow wrap this into --

MR. SIMMONS: No, I can't. I was not present at this procedure at DCRA. I don't know, for example, if this photograph that was presented to DCRA was this size or was a 4 by six. I don't know if it was with

this clarity or not. I'm entitled to ask those questions since the question of this photograph and what it meant came out on redirect. I'm entitled to ask a couple of follow up questions, if you will --

CHAIRPERSON MILLER: I don't know why you --

MR. SIMMONS: -- about the demolition sequence.

CHAIRPERSON MILLER: Where are you entitled to do that? We have rules.

MR. SIMMONS: Because these were new points that were made on redirect.

MR. BROWN: I don't think there's anything new. We were trying to, quite frankly, clarify and respond to kind of the isolated partial cross examination by Mr. Simmons.

I mean if he had problems with this picture, it's been in evidence and he certainly had the opportunity to do it on his cross examination.

CHAIRPERSON MILLER: I think you can -- excuse me. And also, you know, if your point is was it big, was it small, you can make that argument in your case.

MR. SIMMONS: But I have no factual predicate, Your Honor.

CHAIRPERSON MILLER: You could say, you know, so he showed him a picture but we don't know what size it was. And that goes to the weight of the testimony.

COMMISSIONER JEFFRIES: Yes, and that's sort of what I was getting at. I understand that he needs to cross -- wants to cross here. But, I mean, there's a way to communicate to us for us to take things in consideration. That's the only point I was trying to make.

MR. GREEN: Madam Chairman, if I might interpose a suggestion?

I think what is instructive in this proceeding is the District of Columbia Administrative Procedures Act which enhances

any rules and regulations of any administrative body in the District of Columbia. And its purpose is to make any hearing, administrative hearing, whole and part in terms of the eliciting of information. And therefore, we would certainly encourage this body to accept all information before it makes any determination.

Consequently, it would appear that Mr. Simmons is entitled to pursue his inquiry limited --

CHAIRPERSON MILLER: You're saying--

MR. GREEN: It can be limited by the Chair and the Board, of course. But, we do believe that in the spirit of the DC APA that he should be allowed to ask those limited questions with your constraints.

CHAIRPERSON MILLER: Oh. Maybe we should accept everything. We might as well be here for the week, shouldn't we, and have no objections.

COMMISSIONER JEFFRIES: Is this Board, I thought we were quasi-governmental.

CHAIRPERSON MILLER: We are quasi-judicial. And we are bound by the APA. And this Board is most interested in getting all the evidence that it needs, and that's why we ask questions and overrule some objections because that is our point.

I'll say this, Mr. Simmons. I've never seen, you know, recross in my five years here. And I think this is one of the longest crosses I've ever seen where we're now at 5:30 and we're still on crossing witnesses.

If you want to make a proffer of what you would like to cross on, and that can be the record. But from the first thing that you said, I believe the due process would be served by, you know, you possibly arguing about the weight of their testimony.

But go ahead, and maybe the Board Members may ask a question later on, too, if you want to say what your concerns would be.

MR. SIMMONS: Thank you, Madam Chair.

It's difficult to make a proffer when I don't know what the answers to my factual questions would be, but they would be of the following sort:

The first would be regarding the picture. What size was it?

CHAIRPERSON MILLER: You have a next? Okay. First would be about the picture, the dimensions of the picture.

MR. SIMMONS: Right. Was it of this clarity? Was it such that it was very obvious or not obvious as to what part of the house, the old part of the house it was? Was there a discussion of it? How long was the discussion.

CHAIRPERSON MILLER: Okay. That's-- All right. I'm going to cut you off because this just too long. So I'm going to let you put that in your argument. Because from what I've heard, that is definitely

1 something that would go to the weight. And so
2 I think we ought to move on.
3 COMMISSIONER JEFFRIES: And I
4 don't think, and I think just for the record,
5 we're not cutting you off from providing
6 information to this Board. I think you are
7 providing information to this Board. So I
8 just wanted to respond to counsel Green. I
9 think that the Chair is allowing you a way.
10 Because I'm hearing what you're
11 saying, and some of your concerns. And so
12 that's going to be -- I'll take that into
13 consideration.
14 MR. SIMMONS: Thank you very much,
15 sir.
16 MR. BROWN: Quickly to redirect to
17 Mr. Ford. And this is, you're specifically to
18 respond just by way of brief introduction to--
19 COMMISSIONER JEFFRIES: But please
20 keep in mind Mr. Simmons' schedule. I mean, in
21 terms of timing.
22 MR. BROWN: Sure.

COMMISSIONER JEFFRIES: Because we really want to get through. Thank you.

MR. BROWN: And really to address the question of, you know, why were you using the original drawings and not the latest ones. And, Mr. Ford, that's my purpose.

Mr. Ford --

MR. FORD: And I can respond to that very briefly --

MR. GREEN: I have to object to this, Madam Chairman. I mean, you know, it would appear that Mr. Ford, we're going into areas that are new, that have not been dealt with. We're not trying to clarify anything. And I submit to you that what we have going on here is a obfuscatory behavior.

CHAIRPERSON MILLER: Okay. That was a Board question why were you using the first document instead of the fourth, was it not?

COMMISSIONER JEFFRIES: Yes, I asked a question why was --

CHAIRPERSON MILLER: Now it may not have been asked of Mr. Ford, is that the question?

MR. GREEN: But Mr. Ford was your expert witness.

CHAIRPERSON MILLER: He's the witness.

MR. GREEN: He wasn't a fact witness.

CHAIRPERSON MILLER: He wasn't the witness. So how do you --

COMMISSIONER JEFFRIES: That's correct.

CHAIRPERSON MILLER: -- accept that.

MR. GREEN: He's an expert.

MR. SIMMONS: And in fact, if you will, my cross examination of Mr. Ford was two questions addressing only his expertise -- excuse me. His experience in zoning. This goes way beyond that.

CHAIRPERSON MILLER: Okay. But

this goes to Mr. Green's point about providing information that may be helpful to the Board in understanding the case, is that correct?

MR. BROWN: Mr. Jeffries asked a good question, and for which the witness who was before him, Mr. Premo, was not capable of answering. And I have a witness who testified on direct who can answer that question. And I think, quite frankly, we'd be done by now if--

CHAIRPERSON MILLER: Why can he answer it? He wasn't the one who brought the drawings in?

MR. BROWN: Because the question I'm not sure was so -- it went beyond the specifics of this case, but implicates how DCRA operates for changes to existing permits. Mr. Premo clearly, and I think everybody agrees, is inexperienced in these matters. Mr. Ford was introduced as a witness and can, I think, educate the Board very briefly about how the process works and also in the context of how it worked in this case specifically.

MR. GREEN: I would strenuously object, Madam Chairman. First of all, Mr. Ford has been away from the Department of Consumer and Regulatory Affairs for a number of years.

Mr. Ford was brought as an expert witness to talk about engineering and structural matter. We ceded that he is an expert in those areas.

We have with us the Zoning Administrator, the current Zoning Administrator involved in this case. Mr. Ford was not involved as a fact witness. To put Mr. Ford on to engage in such discussion is folly.

MR. SIMMONS: In addition, this is well beyond scope of cross examine. And redirect is designed to go to cross examine.

COMMISSIONER FRUMIN: Wasn't there a big debate about the --

CHAIRPERSON MILLER: We have the primo expert here in this little courtroom now. So we're going to wait for Mr. LeGrant to

address the process.

We wanted to get the information. And I'm not sure that this is the right way at this point.

MR. BROWN: We'll defer to our rebuttal.

CHAIRPERSON MILLER: Okay. That's right.

MR. BROWN: We'll be happy to do that.

CHAIRPERSON MILLER: Exactly. Okay.

MR. BROWN: So I think we're done with redirect.

CHAIRPERSON MILLER: Okay. I think we're ready to hear the intervenor's case.

MR. SIMMONS: I believe that the order of procedure that the Chair set out earlier indicated that after the Appellant, the Board goes first to the Government then to the ANC, and then to the intervenors. And I'm

more happy at this point to allow the Government to proceed with presentation of its witness or witnesses.

CHAIRPERSON MILLER: Well, that's fine. But we did that, we were trying to accommodate your schedule. So if you want to present your case, which you're the critical person to present your case. I mean, you know, if you're not, if you're going to chance. It doesn't look like we'll be done with DCRA by the time you have to leave for your plane.

MR. SIMMONS: It does not. But I would note my continuing due process objection. If the only way that I can get my testimony before this Board is to proceed now out of order, then so be it.

CHAIRPERSON MILLER: But the other option is --

MR. SIMMONS: If it's very clear--

CHAIRPERSON MILLER: -- in writing. It depends. I mean I don't know if

we're going to finish today or not. But if we can finish, the fact that you have to leave, then we would leave the record open for you to put something in in writing. But if you prefer to make your case on the record here, this would be it looks like your best opportunity as of 5:45.

COMMISSIONER JEFFRIES: And the rules say, I mean Madam Chair made herself very clear at the beginning of this. So I don't see why we keep, you know, going back. I thought we had agreement that we were trying to accommodate you for 7:00.

MR. SIMMONS: I appreciate the attempt at accommodation. I also understand that we've been here since 9:30 and I think we all had hoped we'd be finished well before 7:00.

CHAIRPERSON MILLER: We might have if we didn't have four hours of cross examination.

So what is your choice?

MR. SIMMONS: Give me just a moment.

CHAIRPERSON MILLER: Okay.

MR. BROWN: Madam Chair, you're feeling a little put upon. I get in trouble for consulting with my witnesses and yet the other parties who are supposed to be independent, seem to be consulting. I mean, we're not --

CHAIRPERSON MILLER: We weren't talking about attorneys consulting with each other about procedure.

MR. BROWN: I mean, Mr. Simmons is a witness. He's a fact witness. I mean, we need to get this thing moving. Either Mr. Simmons is ready to proceed without consulting with DCRA or he's not.

CHAIRPERSON MILLER: Okay. I don't think he's prohibited from consulting with DCRA.

MR. SIMMONS: Thank you. And just for the record we were consulting about --

CHAIRPERSON MILLER: Okay. Are we on the record. Sure.

MR. SIMMONS: I'm sorry. And just for the record what we were consulting about was how to proceed for efficiency, not any factual matter or anything of that sort.

I'm prepared to proceed either way.

MR. GREEN: I want the record also to reflect that I am not sitting near Mr. Simmons at all. He's giving his testimony.

MR. SIMMONS: All right. This is going to be somewhat disjointed because I'm going to attempt to move much more quickly than the outline that I have. And I will attempt to be as brief as possible. I will reserve the right, accordingly, to supplement if need be by affidavit later simply in the effort to be brief and understanding everybody's concerns.

That being said, my name is Jack Simmons. I live at 3952 Garrison Street,

Northwest. It's one of the properties that abuts the subject property in this case. We are on the north side of the property, one of several houses that abuts this property.

Along the property line between our house and the subject property is an easement. The easement is for the benefit of properties up the street from us, but as it crosses our property it's property that belongs to my wife and me. That easement also crosses the property on the corner, and the next property up.

That being said, we are familiar with the structure at 5013 Belt. We are familiar with the former persons who lived at 5013 belt, Robin Meyer. We'd been friends with her for a number of years.

We became aware in 2004 that the house for sale. And in fact, a picture of the house as it existed at that time is in one of these exhibits here. And I think we've referred to it already, so I won't mention it

again.

We knew nothing about who purchased it. We later learned that it was Ms. Wallace. She in somewhere in one of her papers said it was she and a business partner. We don't know who that is. But nevertheless, Ms. Wallace purchased the property.

The next thing we knew, of course, was the for sale sign came down. We didn't know anything about it at that point. And the first thing that happens as far as my wife and I are concerned is that the property remained unoccupied from approximately April of 2004 onward.

One Sunday in January of 2005 we heard some noises outside. My wife calls it pounding, I call it hammering. Looked out, there were two men on the roof of 5013 Belt. They were removing roofing material, prying it out. I'm not sure what tools they were using. Throwing it down on the ground. Some of it landed on the easement, some of it actually

landed closer to our house than the easement. A truck, that we later learned was one of the construction trucks, was parked on our easement. We asked that it be moved, and it ultimately was.

The construction, or this continued another Sunday, the following Sunday. We don't know who these two men were. We've never met them, never seen them. But in fact the construction material was taken down.

I spoke with Mr. Premo about the use of the property. He said he wouldn't use it again, and in fact sent us a letter to that. We posted no trespassing signs.

In early March of 2005 is when the process really began. I came home from work one day and saw that part of the rear of the house was gone. I tried to called DCRA for an inspection because what little we knew about what was going on was we understood that there was going to be something done to the house. We weren't exactly sure what. It struck me as

odd that part of this was coming down. I don't recall seeing a permit number. Perhaps there was one. But I didn't see one.

Several days later a building -- somebody came out, a stop work order was posted on the property. That's part of the record as well. So that's taking place.

Then, and I will confess I was at work some days on work days. So unlike my wife who possibly had a chance to see what was going on there, during work days I never had the opportunity to see if there was anyone actually physically inside that structure. I never saw anyone.

I don't know specifically what was being done inside that structure. What I do know is this:

That after that first part of the house came down, I never saw a tarp or anything else put over the roof to preserve the structure. I never saw any new roofing material put on the structure. And I can tell

you that the photograph we've looked at earlier is roofing material because it's what I saw being thrown off the roof in January, and I took that picture. So that is roofing material. I don't know what kind, I'm not roofer. But I never saw roofing material put on. I never saw any new shingles put on. I never saw any new shingles brought to the site. I never saw any tarp put on.

I did see some plywood that was installed on the back. I did not see it physically being put on. I didn't see any plywood or anything else being put over doors or windows in the front. What I do know is what's reflected in these pictures. It didn't fully cover the existing remaining portion of the structure. Rain could, and I assume, did get in.

In fact, there are a couple of pictures in here where you can actually see clear through the house to sky on the other side. I'll argue at the appropriate point

that is not appropriate care if you want o preserve the original house and use it in terms of reconstruction.

I never saw anyone on that property who appeared to me to be inspecting for structural soundness. I never saw anyone on that property who appeared to me to be inspecting for hydrological concerns. I never saw a truck parked in front that said Terminix or Orkin on its side. And I think that comports with what Mr. Premo has stated earlier.

I do know that in April of 2005 my wife and I were contacted by an individual, Greg Gaddy, he identified himself. He wanted us to meet Ms. Wallace, the developer. Thought that we should discuss what was going on, what the plans were for the property and to ask about use of our easement for access to the property in that it would make the construction simpler, and she was going to make some offers as to what she could do the

easement at the conclusion of that process.

We did meet with her. It was a Saturday or a Sunday afternoon. Mr. Gaddy was there and Ms. Wallace was there. Mr. Gaddy identified Ms. Wallace to us as an "experienced developer," and you can put those two words in quotation marks, please.

We discussed a little bit about what was going on. Ms. Wallace indicated she wanted to build an addition, something pretty, something she thought would enhance the neighborhood. We at some point walked outside, walked along the street. I think we walked along our easement a little bit. I'm not sure whether we walked along the other side of the property or not.

I specifically pointed to Ms. Wallace a drainage problem. I showed her where water flowed down. I showed her where the spring came down the hill. And I said words to the effect of we have a problem here with water, and especially when there's a lot of

water or a heavy rain. It comes down the hill. It pools. It comes down along the easement. Please take this into account when you do your construction, and I used words that were almost like that; please take this into account. So Ms. Wallace said she understood.

She did not have plans for us at the meeting. I don't believe she even had a picture or drawing of what the house ultimately would look like. We asked for one. She said she would -- I don't recall whether she said she would actually get us the plans or would try to get us the plans after the meeting. What I do know is that we didn't get them. Okay.

We attempted to contact Ms. Wallace sometime in October as to where the construction stood, what was happening. I believe this was the second permit was issued. We got no response.

Then sometime in October, a permit

is issued in November of 2005. The excavation of the rear, I assume for the addition, takes place. And we've looked at pictures of this and I can attest to them because I took them. Those are pictures that I personally took, as were the others, showing the condition of the house, the boarding up of the house. Either I took those or my wife took them. I picked them up from the developer Ritz Camera. So I can attest to those as well.

The orange fence is there that we've seen in the pictures.

The developer brings in some sort of equipment, I would hesitate to tell you what kind of equipment it is. I don't know. Equipment to dig up earth and take it away. They excavated for the basement.

And I don't know if they're called "benches" or what. All I know is the excavation was very close to our property line. All I know is that no physical shoring was put in place along our property line when

that excavation took place. And what I do know is that it caved in. And that cave in extended onto our property. I believe it extended on to Mr. Lemoines as well on the other side, but he'll have to speak to that himself.

The orange construction fence was then moved around onto our property as shown in those pictures to demarcate where the excavation had occurred. And I can tell you that that was within our property line.

Sometime later some stone was brought in. I can't tell you how much later.

Sometime later there was water there.

Sometime later and sometime in 2006, I believe it was, a standing water violation was posted on the property.

We've heard testimony that pumps were installed. I walked by that property almost every weekend, and I certainly didn't walk by it everyday. Let's be clear; I didn't

go by that property everyday. I did occasionally go on the easement, and I certainly walked by it at least once a week. I never saw a single pump or heard any noise that I would associate with a pump pulling water out of that excavation in the back. Nor did I see any water flow from any pipe or hose that looked to me like it could be associated with a pump. But I did see standing water there and I saw it standing there a long time. I don't know how deep it was. I do know that we were concerned about it being a mosquito breeding ground. And I do know that neighbors were concerned, and I think one neighbor even mentioned to me that she had called the Department of Health. I can't attest to whether she did or not, she simply told me that she did. I do know that it took a long time to get that water problem resolved. And I do know that even at points when the foundation had been poured that we've seen pictures, they were full of water.

The other thing I do know is that at no time during this construction process was a perimeter fence ever installed until May of 2008 in response to a notice of violation by DCRA. We as neighbors consistently had concerns and, in fact, we know that on one occasion police -- let me be careful with my words here. I'll say they ran somebody out of the property. I don't know exactly what happened because I didn't see all of it. I did see the police there. A police officer walking off the property with someone. And I later understood they were running somebody off. The exact circumstances I don't pretend to know. But there was a problem. The neighbors were concerned.

Now trying to move this forward as quickly as I can, at no point from March or April of 2005 until today -- strike that. Until March of 2007 did I see any activity that looked to me like it was attempting to structurally stabilize, repair or improve the

font of that existing house. I saw it boarded up, as we've talked about. I saw the notices that were posted on the front. I saw the plywood. I saw no work done on it. And as the pictures show in our exhibit book from what was a very pretty pristine house in 2004 when it was on the real estate market until the pictures in 2006 and 2007 the degradation, wear, deterioration of that house is clearly evident. I saw, I repeat, no effort to maintain it, to improve it. And in fact I did see at some time I believe in 2006, a sign posted on that house saying this was unsafe. That sign is in our exhibit book as well, and that no person was to enter other than for the purpose of rendering it safe.

Now reiterating that I was not there everyday, I will say that I never saw any person in that house or on that house doing anything that would appear to me to be rendering it safe.

What I do know is that the next

thing that I saw was in October or November of 2006 -- I'm sorry, sometime in 2006 the foundation was poured. It was poured during the workday. I do recall cement mixers being there. I don't recall that I personally ever saw any of the foundation being poured.

What I do know that I did see some of the construction of erecting what has been referred to as the addition. We may debate how flimsy it is or isn't, but it was erected. It was erected over the space of a few days. And I will tell my personal observation that it, too, has weathered tremendously between now and then. I'm not a structural person, I'm not an engineer. I can't tell you whether it can be salvaged or saved. I have my doubts as to whether it can. But that would have to be a question for someone else, somebody's who more familiar with that.

Then what I do know is that sometime in early March 2007. Sometime in early March 2007 the front of that house is

taken down. I don't recall seeing a permit for it. Maybe it was there, maybe it wasn't. But it was taken down. It was taken down all the way to the ground the last remaining portion of that house. It's not there anymore.

My understanding had always been, as I said, that this was going to be a reconstruction job, a refinishing job, if you will, a repair job and an addition. So I called the DCRA, the inspectors. My wife I know tried to call as well. And I do know that a stop work order was posted a few days later. Was I present when the inspector came out? No, I was not. I didn't talk to the inspector then, I haven't talked to the inspector since. But what I do know was that the structure was taken down.

What I do know is that each and every one of these building permits was issued. I do know that each and every one of ended with a stop work order.

I do know that I saw no activity

that I would consider to be attempting to preserve or protect the structure, the original structure. Protect it, use it, have it available as part of the ultimately resulting building.

I do know that we as neighbors and the entire neighborhood has had to live through this process for 3½ years. It's still ongoing. It's not done.

I do know that a fence, a six foot high chain link fence was finally put up in May of this year as a result, I believe, of a violation notice posted by DCRA I believe earlier in May of this year as well. The first time it had happened. The first time we as neighbors felt that there was a realistic way of keeping people from getting in there, using it and quite frankly, we were afraid of somebody setting fire to it. I'm glad it didn't -- I'm quite glad, as I know everybody here in this room is that it didn't happen.

I do know that we have a book of

exhibits for you. I do know that those are all exhibits from the record or documents that we have received. And I can walk through them just briefly for you and tell you what they are to authenticate them.

Number 1, of course, of our exhibit book is the application for the first building permit. That's part of the record.

Number 2 was a very gracious letter from Allen Premo, dated April 6th. I believe that was the correct date. He acknowledged that he'd been on the property. He apologize, said he wouldn't do it and clearly cognizant of the issues there.

Exhibit 3 are photographs that my wife and I took. These are only some of them we took. And these respond to the photographs taken -- of the aerial photographs taken and placed in the -- I don't know who they were taken by. They were placed in the record by Appellant. These photographs show the character of the neighborhood immediately

surrounding the subject property.

They're here to show that this is a neighborhood of mixed construction styles, mixed vintages. Some of the houses, like the first picture at the top of the first page on Exhibit 3 is the house next door to mine. And it's a red brick house, ours is too. All of our red brick houses were built in 1946 according to the records, of the land records in the District. The other houses that you see at the bottom of the page, for example, as much older. In the '20s or '30s, is my understanding.

MR. BROWN: Excuse me, Madam Chair.

MR. SIMMONS: If I may?

MR. BROWN: No, I'd like to, because we've had the discussion going back to the very original thing, renew my objections.

The character of the neighborhood, the macmansion, all that is not relevant.

MR. SIMMONS: Then does Mr. Brown

agree to the striking of his exhibits regarding the character of the neighborhood? I believe it's his Exhibit 1. Let me check here.

MR. BROWN: My photographs are aerial views showing the structure.

MR. SIMMONS: And the surrounding homes.

CHAIRPERSON MILLER: Wait. All right.

MR. SIMMONS: You agree to striking?

CHAIRPERSON MILLER: I think, let me say -- no, I don't think we're into striking. If they're in the record, fine. But I think that, you know I was hesitating not to interrupt your testimony, but I think Mr. Brown may have a point about the relevance of the testimony to go into too much about the character of the neighborhood.

MR. SIMMONS: I don't want to go into too much. But, Mr. Brown -- I'm sorry.

The Appellant put in pictures, aerial photographs that tend to show the house being constructed by Ms. Wallace is relative small compared to the neighboring houses. I'm simply showing that the house is relatively large compared to the neighboring house.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: All right? And these pictures, as I say, were taken by my wife and me. They're only some of them that we took, but we didn't want to burden the record. This is what our neighborhood looks like. This is where we live. This is where Mary and I have lived for 30 years.

Exhibit 4 is a stop work order that's been referred to before.

Exhibit 5 is an application for construction permit, again, dated 3/10/06 and it indicates on it face the stop work order was in place.

Exhibit 6 is the stop work order issued in 2007 and includes photographs taken

by Mr. LeTren of DCRA and provided to me under the Freedom of Information Act.

Exhibit 7 is pictures that I personally took showing the stop work order and the condition of the property in 2007 after the stop work order was issued.

Exhibit 8 is a resolution by the Advisory Neighborhood Commission issued this year regarding this construction project.

Exhibit 9 is the exhibit that was put together by a Mr. Grayher, and it was discussed by Mr. Lemoine discussing the quality of the construction in the structure in 5013 Belt at or before the time of purchase and how he met with -- obviously, the document speaks for itself. How he met with Mr. Lemoine in 2004 and what he told him.

Exhibit 10, the first two pages of that are pictures taken by Mr. Lemoine to show in approximately April of 2005 how the structure has been closed up or not closed up. The next page is a picture taken by me showing

the same thing.

Exhibit 11 is another picture, dated May 2006 taken by Mr. Lemoine. He can authenticate that.

Exhibit 12 is the June 30, 2006 danger unsafe posting by DCRA on the property. I took this picture as well. This is an accurate depiction of what it was. I took this picture within a day or two of when this sign was posted.

CHAIRPERSON MILLER: I'm sorry, What's the date on that?

MR. SIMMONS: The date that states on the picture 6/30/60, June 30, 2006. I took this photograph within a couple of days of when this was posted. So assuming that date is correct, my photograph was taken before July 4th. Okay.

Same thing on the next page. It's again a picture of the same sign, and the picture coincidentally shows the extent of deterioration of the existing house as of June

30, 2006.

Exhibit 13 is, again, a picture that I took sometime, I believe, in 2006. You can see the orange construction fence or the orange fence that was around. It's irrelevant to me that this individual is standing physically on my property, but again you will notice the incomplete boarding up of the house, that the house is left open to the elements to weather and the level of deterioration.

Exhibit 14 is the website of Ms. Wallace called STEPHCO. I personally downloaded this from the internet and printed it.

Number 15 is part of, not all of, the sales contract for the sale of this house provided to us. And as you will see, it reflects that the house was sold as is. It reflects as well that the termite inspection paragraph was stricken out of that contract.

Exhibit 16 is a notice published

in the newspaper. I would like to say it the *Washington Post* because that's what I think recall. But I'm not sure. It was published in a newspaper of general circulation in Washington, D.C. I cannot give you the exact date, although I do recall it was approximate the date stated in here, July 17, 2007. And it lists this property as one that needs to be cleaned up.

Exhibit 17 is, again, a document I received from DCRA, at least the first page. It indicates the abatement of a standing water problem. The second page is a picture that I took. Again, it shows the foundation in so it was after the foundation was poured. It was filled, you can see, with water. I don't recall the specific circumstances. I do not recall, my wife may have recalled it. I do not recall that I took a picture of the excavation pre-foundation filled with water. But I can tell you I did see it on a number of occasions.

Exhibit 20 -- excuse me, 18 are photographs that we've talked about before at the time of the excavation and what I call the cave in. And these were, again, pictures I took.

The second page is a picture taken by Mr. Lemoine, and he can describe that in his testimony as need be.

Exhibit 19 is what I referred to earlier. This may not be the world's greatest picture, and I'm not the world's greatest photographer, folks. I apologize. But this is roofing material that was thrown off on the roof in January of 2005. I saw it. I took this picture. That's what it is.

Exhibit 20 is the affidavit of Stephanie Wallace attached to her motion for summary judgment.

Exhibit 21 is the affidavit of Mr. Premo, likewise attached to the motion for summary judgment.

Exhibit 22 is a picture of the

house as it existed no later than 2004. And I actually have other pictures, including one from the real estate sales agent of about this time. This was the picture that reproduced the best. This picture, I believe, came from the Tenleytown Historic Association. And it accurately reflects the condition of this house no later than April of 2004. I can personally attest to that because I was in that house. I visited with Ms. Meyer when she lived there, Robin Meyer, who was the tenant, not Randall Meyer who as the owner. I remember the furniture out front. I remember the blue chair. This is what it was. This is what the house looked like. It was a pretty nice house, enjoyable. Nice people lived there. We enjoyed visiting, we liked the folks there. We thought the house was attractive. It was part of the mixed bag that our neighborhood was.

Exhibit 23, again, exhibits I received from DCRA. They're dated and they're by a Ms. Evon Rockett or Rocket, dated 6/9/06.

This reflects the house as I recall it looked in June of '06, the condition, the mound of dirt out front, the posting's on there, the weather deteriorated condition. I did not take these photographs, but I will tell you they are accurate reflection of what the house looked at this time.

CHAIRPERSON MILLER: Who is Ms. Rockett? She the one who took the picture?

MR. SIMMONS: I believe she did. I believe she works for DCRA. Okay. I received these pictures from DCRA as part of a FOIA request. Okay.

Exhibit 24 brings us to end. It's not the best picture in the world, but as I said, I'm not the world's greatest photographer either.

This is today, or I should say as of about a month, a month and a half ago. This is what it looks now. You see the front of the picture -- you see the front of the house, you don't see the sides. All the

existing -- the original existing structure is gone. You see the vegetation. Basically I took this picture initially to show the fence had finally gone up after 3½ years. And we as neighbors were very grateful that it finally went up because of the concerns I discussed with you before.

But this gives you a progression of what happened through the sequence of this house. This gives you a progression of what occurred, what I saw, what I did when I heard it.

And I will finally tell you that we had a meeting on the site called by the ANC to discuss various issues with this case. Ms. Wallace there. I hesitate to say I don't think she was there very happily, but she was there. And she stated to us then, and now we all know this is the case, the preexisting house had come and was no longer there, that she hadn't been back to the site since the construction project started. And in fact, I never saw her

on the site except the day I testified about in April 2005 when I was on the site with her. I never saw her there. But, again, as I've said before I wasn't there every minute every day. But I never did see her there. The days I was home from work I didn't see her there. Weekends I didn't see her there.

At that meeting she said she wasn't meeting at the site. She said she hadn't been there since the project began. And I'm sorry to have to use this language, but she said that one of the reasons she hadn't been there was that this project, and I will paraphrase, made her sick to her stomach because of what had happened, because of the length of it, because of the poor condition of what was going on.

And with that, I think it's probably about time for me to end my direct testimony.

I certainly appreciate the opportunity to appear here. I certainly

reserve my objections raised earlier. I certainly do need to leave at 7:00 to get my flight. But I'm certainly glad to try to answer any questions that anyone may appropriately have.

CHAIRPERSON MILLER: Okay. Thank you for your testimony. And I can see, you know, that you care deeply about your neighborhood.

So anyway, Mr. Brown, do you have some cross examination?

MR. BROWN: I have no cross examination, I'm happy to say. Mr. Jeffries looks in disbelief.

MEMBER WALKER: You got to turn on your mike, please.

MR. BROWN: No cross examination.

CHAIRPERSON MILLER: Mr. Green, do you have cross examination?

MR. GREEN: Absolutely not, Madam Chairman.

CHAIRPERSON MILLER: We're on a

roll.

Okay. Does the ANC have cross examination?

COMMISSIONER FRUMIN: No.

CHAIRPERSON MILLER: No? Okay. You guys are together. You're intervenors. That's why I'm not asking Mr. Lemoine.

Okay. Good. Done. Now we can move to DCRA. Am I wrong?

MEMBER WALKER: Can you restate what you said for the court reporter, please.

MR. BROWN: well, and I guess I'm a little confused since we're out of order. But when his time, Mr. Lemoine will have the balance of 32 minutes for his intervenor's presentation.

CHAIRPERSON MILLER: So you're two separate intervenors, is that correct?

MR. LEMOINE: Yes.

MR. BROWN: Yes.

CHAIRPERSON MILLER: Okay. But you do share the time. That's fine.

Now I'm going to give you the choice. You're two separate intervenors. But I mean normally -- we went out of order to accommodate Mr. Simmons. So I think it would make sense --

COMMISSIONER FRUMIN: I'll be glad to go back into the order.

CHAIRPERSON MILLER: Wait? I think that makes the most sense. And I think it would be helpful to hear DCRA's testimony. And it will be helpful to hear yours. I mean to hear this angle at this point. Okay.

MR. GREEN: Good afternoon, Madam Chairman, Members of the Board.

Some housekeeping thing. I just want to make sure that you have this -- sorry. It's captioned the District of Columbia Board of Zoning Adjustment Appeal of Stephanie Wallace, Department of Consumer and Regulatory Affairs Exhibits?

Mr. Brown, do you have this? All right. All right.

CHAIRPERSON MILLER: Attached to your witness list? Is this it?

MR. GREEN: Yes, it was, Madam Chairman.

CHAIRPERSON MILLER: Okay.

MR. GREEN: It was received July 11, 2008, 11:51 a.m.

CHAIRPERSON MILLER: Mine says 11:54, but I think it's right.

MR. GREEN: Oh, okay.

CHAIRPERSON MILLER: Okay. All right. Anyway, we have it.

MR. GREEN: All right. Thank you.

CHAIRPERSON MILLER: Do you have it?

All right. We're ready when you are.

MR. GREEN: All right. All right.

Sir, what's your full name, please.

ZONING ADMINISTRATOR LeGRANT: I am Matthew LeGrant. I'm the Zoning

Administrator here at the District of Columbia.

MR. GREEN: And you're employed by the Department of Consumer and Regulatory Affairs?

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. GREEN: All right. I'm going to move right into this. I'm going to direct your testimony to Exhibit 1 of the Appellant's appeal. Can you tell me what this is, please?

ZONING ADMINISTRATOR LeGRANT: This is a letter that is dated September 27, 2007 to Mr. Brown, John Patrick John.

MR. GREEN: And why did you send this letter to him on that date, sir?

CHAIRPERSON MILLER: Just a second. We're lost. We were looking at your exhibits. Now we're not we're not supposed to be?

MR. GREEN: Yes. I made reference to Exhibit 1 of the Appellant's appeal.

MR. BROWN: The notice of appeal?

MR. GREEN: Yes.

CHAIRPERSON MILLER: Okay. We're not looking in the Appellant's book anymore either?

MR. GREEN: No, ma'am.

CHAIRPERSON MILLER: It's Appellant's appeal. Okay.

BOARD MEMBER DETTMAN: Mr. Green, in the exhibit that you're referring to is that a letter addressed to Mr. Brown?

MR. GREEN: Yes, it is.

BOARD MEMBER DETTMAN: That would be BZA Exhibit 2, titled Statement of Appeal, is that correct?

MR. GREEN: That's correct, sir.

BOARD MEMBER DETTMAN: Okay.

MR. GREEN: Madam Chairman, did you find it.

CHAIRPERSON MILLER: I'm looking though.

MR. GREEN: I'll tell you what

we'll do, just give her ours. We'll give you what we have, Madam Chairman, and make it easier.

CHAIRPERSON MILLER: Thank you.

MR. GREEN: May I inquire of the witness? Thank you.

Mr. LeGrant, you indicated that on the 28th of September 2007 you sent a letter to a Mr. Brown, is that right?

ZONING ADMINISTRATOR LeGRANT: That's correct.

MR. GREEN: And this involved what, sir?

ZONING ADMINISTRATOR LeGRANT: This letter was my response to a letter that Mr. Brown had sent me on August 22nd and also a follow up to a meeting that I had with him, Ms. Wallace, Mr. Premo on August 8th, 2007.

MR. GREEN: And the purpose of this letter was to do what?

ZONING ADMINISTRATOR LeGRANT: The purpose of the letter was to respond to issues

raised by Mr. Brown in both the meeting of August 8th and his letter of August 22nd. having to do whether the termite damage that they had shown me at this meeting constituted a casualty or act of God under a particular section of the zoning regulation.

MR. GREEN: Now, based on this letter you made a determination of some sort, did you not, sir?

ZONING ADMINISTRATOR LeGRANT: I did.

MR. GREEN: And what was that determination based on this letter?

ZONING ADMINISTRATOR LeGRANT: Well, the letter speaks to what -- two issues. One having to do whether this termite damage constituted casualty or act of God, which I analyzed and look at. And then coming to the conclusion that a then building permit application and my disposition of that application.

MR. GREEN: Now, I take it there

was a building permit request, is that right?

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. GREEN: And what was sought as a result of this building permit request, sir?

ZONING ADMINISTRATOR LeGRANT: Well, this building permit request, which has been referred to in these proceeding as building permit application number five, sought to gain approval of construction of a new footers or foundation as a replacement for the structure that had been previously existing there, which has also been referred to in these proceedings, I believe, as the 1934/35 house.

MR. GREEN: And did you make a determination regarding this permit, sir?

ZONING ADMINISTRATOR LeGRANT: I did.

MR. GREEN: And what was your determination?

ZONING ADMINISTRATOR LeGRANT:

1 Well, first going to the issue of when the
2 termite damage constituted a act of God or
3 casualty. When that question was posed to me
4 in Mr. Brown's letter and in the meeting, I
5 looked back at the information that was
6 furnished to me. I also consulted with the
7 zoning regulations. And I'm going to read the
8 applicable section here whether the damage
9 fell under section 2001.6, which I'll read to
10 wit:
11 Section 2001.6 of the zoning
12 regulations, 11 DCMR is: "If a casualty or
13 act of God results in damage to an extent of
14 75 percent or less of a cost of reconstructing
15 the entire structure, the structure may be
16 restored or reconstructed to its previous
17 condition or to a more conforming condition
18 provided that the reconstruction or
19 restoration shall be started within 24 months
20 of the date of the destruction and continued
21 diligently to completion."
22 And what was posed to me was well

we had a nonconforming structure in regards to its side yard setbacks. And --

MR. GREEN: What do you mean by nonconforming in this case?

ZONING ADMINISTRATOR LeGRANT: Okay. In this case the zoning regulations prescribed in the subject zoning district, which is R-1-B, that the side yards be eight feet, eight feet on each side for a detached single-family house.

The structure, the preexisting structure that was here only have five foot side yard setbacks on each side. That condition is deemed a nonconforming condition. It doesn't meet the present zoning regulations, but if it has existed prior to 1958, August 19, 1958 if I got the exact date correct, then it is deemed a nonconforming condition. It's always known is it's grandfathered in.

What's relevant here in terms of section 2001.6 is well if we have a

nonconforming situation and a nonconforming structure and its damaged or destroyed 75 percent or less of the cost of reconstructing due to casualty or act of God, the question posed to me was was this termite damage and deterioration that was presented to me and asserted in the letter from Mr. Brown of August 22nd constitute a casualty or an act of God.

So, what I did, again I looked at the -- I went to the definitions of the zoning regulations to see if casualty or act of God was defined. They are not. So the zoning regulations direct us -- direct me to in those situations to go to *Merriam-Webster's Unabridged Dictionary*, which I consulted and looked up the definition of casualty.

In looking at the definition of casualty, which I'll refer to, they have a list of definitions including: (1) Chance fortune, losses that may befall them; (2a) which I think is most relevant here, an

unfortunate occurrence, a missed chance ; (2b) serious or fatal accident, a disaster, casualties at sea -- an example is casualties at sea during a storm, losses from fire, storm or other. Then there's other listings of casualty which I do not think are relevant that have to speak to more casualties as a person injured the course of a war or something.

So that seemed to be the closest relevant aspect of a definition of casualty.

So trying to apply to the situation at hand, I looked at this. I also consulted with fellow employees in the Offices of Zoning Administrator to see if it had ever been construed that termite damage was a casualty or act of God.

MR. GREEN: Now if termite damage was considered to be a casualty or an act of God, what benefit if any would flow to the Appellant?

ZONING ADMINISTRATOR LeGRANT: As

I read section 2001.6 if you have a damage that occurs to a nonconforming structure from a casualty of act of God, you gain rights to reconstruct that structure to continue the nonconforming condition. And this would have allowed the property owner to construct or reconstruct a structure without meeting eight foot side yard setback requirements. But to go back to the nonconforming five foot side yard condition.

MR. GREEN: How long have you been in the zoning business, so to speak, sir?

ZONING ADMINISTRATOR LeGRANT: Approximately 25 years.

MR. GREEN: And have you as a result of being in this business for 25 years come across the issue of casualty?

ZONING ADMINISTRATOR LeGRANT: Yes, I have.

MR. GREEN: And what if any reliance did you place upon your 25 years of experience in this area?

ZONING ADMINISTRATOR LeGRANT: Well, certainly I took into account my own experience to see if I had -- what examples of casualty that I had employed either as a zoning official or a staff member of a zoning office in interpreting a regulation to allow reconstruction of a nonconforming condition resulting from casualty.

And in my own experience, you know I used examples such as fires, storm, wind damage. Most of my experience in California we do not have to deal with hurricanes, but there were earthquakes. So those types of things: Fires, storms, earthquakes, floods, hurricanes. Base of my experience were examples of a casualty -- or an act of God and then casualty might be a vehicle run you off the road into a structure, damaging it.

MR. GREEN: Isn't it a fact, sir, that all of these things that you've just mentioned have one thing in common?

ZONING ADMINISTRATOR LeGRANT:

They do.

MR. GREEN: And that's what, sir? Suddenness?

ZONING ADMINISTRATOR LeGRANT: Suddenness and unforeseen.

MR. GREEN: Thank you.

The current situation that we have at 5013 Belt Road based on your background and experience did it fall within this category, sir?

ZONING ADMINISTRATOR LeGRANT: No, it did not.

MR. GREEN: And why is that, sir?

ZONING ADMINISTRATOR LeGRANT: Well, as we laid out examples of acts of God or casualty as both in my experience and my fellow employees' experience at the Office of Zoning Administrator I concluded that the question posed to me whether this termite damage fell in this category, I could not -- I did not agree that it was.

And so I wrote that Mr. Brown. I

noted, and I'll quote my letter. "The damage from the termite activity is a result of a lack of maintenance of the structure not either a sudden occurrence resulting from a casualty or a national disaster such as an act of God."

MR. GREEN: And based on that, sir, one would conclude that what in terms of the reconstruction design at this location?

ZONING ADMINISTRATOR LeGRANT: Well, because the matter at hand before me was a pending building permit application to put in a foundation or footers for a structure that had effectively been razed that the nonconforming condition was gone. I no longer had authority to approve a structure that did not meet the required side yard setbacks, i.e., the eight feet on each side.

MR. GREEN: Now you mentioned something called approval. We've heard a lot of discussion, and you obviously have been here during the course of this hearing. Can

you tell us about the plan approval process, what one has to go through?

ZONING ADMINISTRATOR LeGRANT: Well, I'll try to speak to that relevant to the case at hand.

Applications for building permits are brought to the Permit Center at the Department of Consumer and Regulatory Affairs. There is a process, sort of a vetting process or maybe I'd think of it as a traffic directing process at the intake station in which disciplines -- is the term. Which disciplines must review that application.

Those disciplines include several building code related disciplines to administer the D.C. construction codes, what is known as the building code, the plumbing code, the mechanical code, so forth.

In addition, the Office of Zoning Administrator is a treated as a discipline to be directed those applications requiring review by employees of my office to gauge

compliance with zoning regulations.

So at this intake station some decisions are made based on the representations made to -- made in the application showing the plans as to which disciplines are to review the application. And I should say in addition to those, at DCRA we have what we call our sister agencies at DDOT and DDOE that look at, for example, storm water management and various other codes and departments throughout the city that may have effect of the construction.

Once that decision is made, those applications are routed to the particular disciplines which, in those cases that zoning is indicated to be a discipline to review a particular application, it's then put in both the electronic computer tracking system and it's noted on the paper which disciplines. And then it goes through a process to ensure that it comes to the appropriate staff and a timeline is designated for a review period in

a particular period of time, depending upon the complexity of the application.

MR. GREEN: This process that you have begun to describe, was it in place at the time that Mr. Ford was an employee?

ZONING ADMINISTRATOR LeGRANT: I do not. Mr. Ford, of course, was employed I believe several years ago. I cannot speak to that time. I've been with the Department of Consumer and Regulatory Affairs for approximately now 2½ years.

MR. GREEN: During the course of your tenure with the Department of Consumer and Regulatory Affairs and this process you've described undergone any changes since you came?

ZONING ADMINISTRATOR LeGRANT: Well, yes. There has been changes. I believe at the beginning of my tenure there was almost -- I would say almost all applications were routed to zoning for review. Working with the then Deputy Director for Permitting and my

office and the Director's office, there were certain applications that we developed a metrics and a process to discern would not in any case need zoning review.

I'll give an example of an interior demolition of an office in an office building where there's a present Certificate of Occupancy. In those situations then there wasn't a need for a zoning review. So we worked to ensure that only those applications needing zoning review in fact were routed to my office as an efficiency measure.

MR. GREEN: This almost like that commercial on television. We'll try to work around it.

(Whereupon, a background sound)

Mr. LeGrant -- I'm going to ask if we can, can you look at Exhibit 001. And I want the Board Members to -- I'm going to give you a small copy of this.

Mr. Brown, I think you've got this 001 in our exhibits.

Do you have a large blowup of this, Mr. LeGrant, that you can refer to?

ZONING ADMINISTRATOR LeGRANT: Yes. We do over in the corner on the easel.

MR. GREEN: Madam Chairman, the witness approach that display?

CHAIRPERSON MILLER: Sure. Absolutely.

MR. GREEN: Thank you.

CHAIRPERSON MILLER: Do you have the hand mike or do you need it. Probably you need it.

ZONING ADMINISTRATOR LeGRANT: Yes, I'll get it. Can you hear me?

MR. GREEN: Yes, we can hear you now.

ZONING ADMINISTRATOR LeGRANT: Very good. Very good.

MR. GREEN: Mr. LeGrant, can you tell us please what does this depict?

ZONING ADMINISTRATOR LeGRANT: This graphic shows some basic information

about the application, and I'll run through it quickly.

We have a vicinity map in the lower left hand corner that shows the area of the subject lot in context of the RAW District, or this portion of the District. And this square that is blown up in the largest portion of the graphic showing the subject property, which is the property is in red, and the yellow square near the front third of the property is the footprint of the previous structure. This shows the surrounding streets, it shows the zone, the R-1-B zone. And gives a bit of a context. And it shows the property in context of the surrounding properties.

In addition, there's a couple of photographs. There is a picture of the preexisting structure, and this is from 2004. The District has, as Members of the Board may know and other persons may know, photographs. We call it the Master Address Repository in

which photographs were take of almost every property in the District. It's part of our computerized system. And so that photo is taken from that Master Address Repository or MAR as we refer to it database.

There's also a photograph taken from recently, 2008, that shows the property in its condition I think about three months ago.

MR. GREEN: All right. I'm going to ask the Board to look at Exhibit 2. Number 2 is what, sir?

ZONING ADMINISTRATOR LeGRANT: This is a photograph of the existing house or the preexisting house that occurred there. Again, prior to its removal. This is not dated, but it certainly seems to comport with the photograph in our Exhibit 1 from 2004.

MR. GREEN: I direct attention to Exhibit 3. Can you tell us what that is, please?

ZONING ADMINISTRATOR LeGRANT:

Yes. And I have that blown up as well. This is the site plan of the subject property. Now this is taken from the cover page of the original building permit that we've been referring to as building permit number one. It's a portion of that cover page. It was a cover page with all sorts of information on each side. This is a blow up or a zeroing in of just the site plan portion.

And this, of course, shows a few key aspects of the site. It shows what was the preexisting structure for 5013 Belt Road. It shows the proposed or addition to that structure. And it illustrates the five foot side yard setbacks that existed for the previous structure and that the addition utilized that setback in extending the five foot setback to the rear of the property continuing the nonconforming side yard setbacks.

MR. GREEN: And when was this particular site plan presented to you, if you

can recall, sir?

ZONING ADMINISTRATOR LeGRANT: Well, this site plan was part of the original building permit. Now the original building permit was brought to my attention in this past year, basically. Other members of the Office of Zoning Administrator had reviewed and approved this first building permit, I believe.

MR. GREEN: All right.

ZONING ADMINISTRATOR LeGRANT: December 9. 2004. And then it was brought to my attention, I believe, in the past year. It was certainly at the meeting that I was present at with Mr. Brown, Ms. Wallace, Mr. Premo in August 2007.

MR. GREEN: All right. I'm going to direct your attention to Exhibit 4.

ZONING ADMINISTRATOR LeGRANT: Okay. I'll be seated now.

MR. GREEN: Yes. I'm going to ask the Board to look at Exhibit 4. Mr. LeGrant?

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. GREEN: Can you tell me what 4 depicts, please?

ZONING ADMINISTRATOR LeGRANT: This is a depiction of the -- I would say the north side of the original house. And there is -- looked like a plastic ribbon. I'm not sure if it comports with -- or delineates the property line, but it shows that side of the building.

MR. GREEN: Number 5?

CHAIRPERSON MILLER: What's the source of photo?

ZONING ADMINISTRATOR LeGRANT: I believe this photo was furnished to us by neighboring residents.

MR. BROWN: Madam Chair, I think we've seen these photos from intervenors. But given what Mr. LeGrant's opinion in how he made his decision, I'm not so sure the relevance of these photos.

CHAIRPERSON MILLER: Well, I wasn't sure of the point of the one with the pink ribbon, or whatever that is. I mean, why do we -- what's the point of it? To see where the boundary is, is that all you're showing us, the side yard or the property line or --

MR. GREEN: Well, all we're doing, Madam Chairman, and if you will allow us, we don't have to go through all of that. We can simply ask that the Board just take them into evidence that they represent the locale in question and in its various stages of incompleteness. And use them, that is the photos, to augment the exhibits that are already present.

And we can stipulate starting with Exhibit 4 and going on to Exhibit 21. That will save some time for the Board.

COMMISSIONER JEFFRIES: Well, I'm just looking through. I mean, a number of these we've already seen. I haven't seen number 12 perhaps.

CHAIRPERSON MILLER: It's just like some of them, okay, they might like be obvious on their face. Maybe this is what the house looked at some point, and if that's all we need to glean from them, okay. Is there anything else?

COMMISSIONER JEFFRIES: But how does that connect to your opening?

CHAIRPERSON MILLER: Yes. What is the point of these photos?

MR. GREEN: You know, they say that information is power. And our position here is the more information you have, particularly as it relates to the property in question, the boundaries, this location in relationship to the neighbors' property, the boundary lines we're talking about, the decision that Mr. LeGrant has gotten in as it related to the side yards and setbacks and so forth; we felt that the more pictorial information that you had, the better it would be to assist you.

Now, of course, it's the Board's discretion to throw out whatever photos it finds repetitive or duplicative. But to further enhance the process and to move this thing along, you know we're willing to stipulate to the photos from 4 to 21 and move on with the rest of our presentation.

CHAIRPERSON MILLER: I mean, we're not prone to throw out anything hardly, you know. It's fine. I mean we're interested in--

MR. GREEN: We were trying to give you a complete record as seen through the eyes of the Department of Consumer and Regulatory Affairs and its Zoning Administrator.

CHAIRPERSON MILLER: Okay. Well, seen through the eyes of the Zoning Administrator, I mean we have at issue a specific decision and whether or not he erred.

MR. GREEN: Sure.

CHAIRPERSON MILLER: And so if you want to make a connection somehow with these,

you know, later on. Fine. But I don't think we need a play-by-play of each picture is.

MR. GREEN: All right.

COMMISSIONER JEFFRIES: But we're not throwing them out.

MR. GREEN: Okay.

COMMISSIONER JEFFRIES: Okay. I just want to be on the record.

MR. GREEN: All right. Mr. LeGrant, I'm going to direct your attention to Exhibit 22. Can you tell me what this is, please?

ZONING ADMINISTRATOR LeGRANT: This is building permit number B-468280, which has been referred to as the first building permit issued on December 9, 2004.

MR. GREEN: All right. Exhibit 23?

ZONING ADMINISTRATOR LeGRANT: This is the second building permit referred to. It's permit number B-477334, dated October 4, 2005.

MR. GREEN: 24?

ZONING ADMINISTRATOR LeGRANT: Building permit 91338 issued April 21, 2006.

MR. GREEN: Now this particular one addressed what, sir?

CHAIRPERSON MILLER: You're looking at Exhibit 24?

MR. GREEN: Yes.

CHAIRPERSON MILLER: And this building permit number what?

COMMISSIONER JEFFRIES: Speak our language at this hearing.

ZONING ADMINISTRATOR LeGRANT: Okay. Building permit number three.

COMMISSIONER JEFFRIES: Okay. Good. Thank you.

ZONING ADMINISTRATOR LeGRANT: Okay. And this was a revision to the initial building permit, and I'll just describe what it states. It's description of work is: "Revised building permit number B-4528 to delete the foundation drawing of the cross

section elevation, substitute a revised basement structural drawing, a revised cross section elevation drawing. This permit revision will raise the house by approximately four feet."

MR. GREEN: All right. Permit number four, listed as 25.

ZONING ADMINISTRATOR LeGRANT: And its number if 103710, dated February 14, 2007. I can also read a description of that. It's: Demolish a portion of an existing SFD," stand for single-family dwelling, "due to the structural integrity and possible collapse of the house which is dangerous, unsound. Rebuild structure to current building code and specification per existing permits and plans."

MR. GREEN: Now you say "demolish." Does it say "raze" in there in anyway.

ZONING ADMINISTRATOR LeGRANT: No it does -- does not.

MR. GREEN: What's the distinction

between razing and demolition? We've heard a lot of talk around here. What's that mean, sir, as far as the Zoning Administrator is concerned?

ZONING ADMINISTRATOR LeGRANT: Well, from the perspective of my office as well as DCRA, a raze is the complete removal of a building or structure. A demolition is a removal of a portion of the structure. It may be an interior demolition, an interior portion or exterior portion but it is a demolition permit, which is a type of building permit is only for removal of a portion of a structure.

COMMISSIONER JEFFRIES: Okay. Wait. Excuse me. So it would be a misnomer to say the demolition of a house, okay, which is one whole unit? That would be a misnomer?

ZONING ADMINISTRATOR LeGRANT: It would be.

COMMISSIONER JEFFRIES: Okay. You really would have to -- in order to get rid of the house, you really need to say the word

"raze?" I mean, that's the verb.

ZONING ADMINISTRATOR LeGRANT: That's correct. If someone -- my experience at DCRA is someone comes to the counter says I want to remove this entire structure, I want to take it completely down, he or she must apply for a raze permit. R-A-Z-E.

COMMISSIONER JEFFRIES: Yes. Because I saw R-A-I-S-E earlier. And I tuned into that and said wait a minute. So, okay.

MR. GREEN: With regard to 5013 Belt Road, Northwest, was a razing or demolition involved as you understood it, sir?

ZONING ADMINISTRATOR LeGRANT: Well the net effect of the series of permits piecemealed over time ended with a de facto raze of this house.

CHAIRPERSON MILLER: And, you know, when that make judgment, because that's a little bit different from the normal just razing a house, you know, all in one time --

ZONING ADMINISTRATOR LeGRANT:

Right.

CHAIRPERSON MILLER: -- that this piecemeal razing, have you seen that before?

ZONING ADMINISTRATOR LeGRANT: No, I have not.

CHAIRPERSON MILLER: Okay.

BOARD MEMBER DETTMAN: And, Mr. LeGrant, when it's resulted over time as in a de facto razing of this house, what are you referring to as "this house?"

ZONING ADMINISTRATOR LeGRANT: Well, based on my review of all the issued building permits and then the application for the fifth building permit, there's no dispute that what was the original structure there no longer exists.

BOARD MEMBER DETTMAN: Okay. When you say "this house," a de facto razing of this house, you mean the 1930s original structure?

ZONING ADMINISTRATOR LeGRANT: That's what I mean. I'm sorry.

CHAIRPERSON MILLER: Where do you draw your definition of "razed" from?

ZONING ADMINISTRATOR LeGRANT: Well --

COMMISSIONER JEFFRIES: It's universally, it's a defined term within DCRA.

ZONING ADMINISTRATOR LeGRANT: Right.

COMMISSIONER JEFFRIES: Someone who is coming to the counter will clearly understand what the definition of raze is.

ZONING ADMINISTRATOR LeGRANT: Well, it's correct that it's not defined in the zoning regulations. The term "raze" does not appear in the definitions of zoning regulations. What I in my experience at DCRA in consultation with the permit operations, which again the permit operations, the Permit Center is the place where applications are brought in and permits are issued. That operation when I, not only actually in the context of this particular application but

when I first arrived at DCRA, I said okay, what happens if you demolish a house. Oh, that's called a raze. Well explain it to me. And it was explained to me. I think I spoke specifically with the Deputy Director for Permit Operations to see what that constitutes. And he told me it constituted the removal of an entire structure. It has its own application. It has to go through a separate process that is specifically referred to my office as a raze.

COMMISSIONER JEFFRIES: So if DCRA, now you mentioned de facto razing. If through permit number two you permitted the Applicant to demolish a certain portion, demolish a certain portion of the building and then through -- am I doing two/three or my letters. Yes, three and four. Yes.

And then four DCRA gave permission for the Applicant to demolish another portion of a building, at the end of all of this how do you arrive at that is a de facto razing if

DCRA effectively gave permission to demolish portions of one building that effectively razed the building?

ZONING ADMINISTRATOR LeGRANT: From my review of the record of what occurred here, and I believe in some of the other testimony and questions from the Board, it speaks to what happened at permit number four what was represented to DCRA, what was labeled on plans as existing or what was the meaning of that existing structure.

I will say that building permits number one, two and three were reviewed and approved by the Office of Zoning Administrator. Building permit number four was not referred to the Office of Zoning Administrator.

CHAIRPERSON MILLER: How did that happen?

COMMISSIONER JEFFRIES: And whose fault was that?

CHAIRPERSON MILLER: Yes.

ZONING ADMINISTRATOR LeGRANT: Well, it -- I'm going to say it's anybody's fault. What occurred --

COMMISSIONER JEFFRIES: Well, wait a minute. Okay. You just made a statement, okay?

ZONING ADMINISTRATOR LeGRANT: Yes. Okay.

COMMISSIONER JEFFRIES: So I'm -- continue with the testimony.

ZONING ADMINISTRATOR LeGRANT: Okay. Here's what I believe happened at the stage of building permit number four --

COMMISSIONER JEFFRIES: You're not certain? You believe.

ZONING ADMINISTRATOR LeGRANT: I'm not certain. I was not there. I've had to kind of reconstruct the record based on both the materials and the records from the electronic tracking system. And it appears to me that -- I'm speculating a bit here, is that the application number four came in. It was

1 represented as a demolition. Okay. So the
2 word "raze" was not flagged or noted.
3 COMMISSIONER JEFFRIES: Okay.
4 ZONING ADMINISTRATOR LeGRANT: It
5 talked about a -- "demolish a portion of
6 existing single-family home."
7 COMMISSIONER JEFFRIES: Okay.
8 ZONING ADMINISTRATOR LeGRANT: So
9 there's a connotation of existing.
10 I believe that at the intake
11 center, whatever individual was involved,
12 looked at that information, made a decision oh
13 this was a demolition of an existing building,
14 a portion thereof, that does not need to go to
15 the Office of Zoning Administrator.
16 CHAIRPERSON MILLER: Weren't the
17 previous ones demolition of a portion of a
18 building and it went to --
19 ZONING ADMINISTRATOR LeGRANT: The
20 error --
21 COMMISSIONER JEFFRIES: Number
22 two.

CHAIRPERSON MILLER: -- your office?

ZONING ADMINISTRATOR LeGRANT: Number two --

COMMISSIONER JEFFRIES: Number two. Because that's information that is held -- that's with your office. So even if the Applicant came forward and for whatever chance did not present a full picture, even if they didn't have a photograph and had to walk the intake person through this, wouldn't you have information about, you know, the second permit and what it allowed the Applicant to exercise?

ZONING ADMINISTRATOR LeGRANT: Well, the process that resulted in building permit number two being referred to my office, I was not present at the intake station when that occurred. That decision was made to refer it to Zoning. It was reviewed and approved by the Zoning Office at that portion -- that point of time. Because, I believe, there was still a portion of existing

structure that -- the preexisting structure that was still there.

COMMISSIONER JEFFRIES: Can you go to building permit number two?

ZONING ADMINISTRATOR LeGRANT: Yes.

COMMISSIONER JEFFRIES: That's Exhibit 23.

ZONING ADMINISTRATOR LeGRANT: Yes.

COMMISSIONER JEFFRIES: So under conditions and restrictions I don't see the word "demolish" anywhere in here. So is that the confusion?

ZONING ADMINISTRATOR LeGRANT: Well --

COMMISSIONER JEFFRIES: I'm just trying to understand how this could have been misconstrued by your office.

ZONING ADMINISTRATOR LeGRANT: Right. I think -- and what I always look at, I look at an application in conjunction with

its attached drawings. And so I've not personally reviewed the drawings for building permit number two. I can surmise that it showed a -- I believe in this case a portion, maybe the front portion structure being retained, the back portion being removed. And some other changes that were being proposed that resulted in a decision making having that application referred to my office for its review.

COMMISSIONER JEFFRIES: Where is Mr. Dennis? Or Dennis -- the last name --

ZONING ADMINISTRATOR LeGRANT: Well, I might be able to speak to that. I think the individual, I do not know for sure, but the individual who is being referred to is Mr. Dennis Ali Baba. Mr. Dennis Ali Baba is no longer employed at DCRA.

COMMISSIONER JEFFRIES: Ah.

ZONING ADMINISTRATOR LeGRANT: He was, at one point, a supervising structural engineer in that division.

COMMISSIONER JEFFRIES: He's a structural?

ZONING ADMINISTRATOR LeGRANT: Yes.

COMMISSIONER JEFFRIES: Oh. So he wasn't a Zoning person?

ZONING ADMINISTRATOR LeGRANT: No, he was not.

CHAIRPERSON MILLER: I'm having trouble following the distinction between number four and the previous permits that dealt with a demolition of a portion of the structure.

If you look at that picture, I don't know what exhibit it is. I don't know. It was maybe number 5. That shows the new addition and the old in the front that's going to be demolish. Why doesn't that represent what you're saying someone would need to see to know that we're talking about demolition, so it would be sent to your office?

ZONING ADMINISTRATOR LeGRANT:

Well, again I can surmise that the information presented in building permit number four showed a portion of a structure that was labeled existing, at that point of time no longer was existed, and that assumptions were made that it was a portion of a structure that was to be demolished, it was only in context of a portion of a structure that was being retained, the pre-existing structure being retained.

CHAIRPERSON MILLER: I mean what's the difference between whether it was an old or new existing structure? I mean, in that picture there was the new addition that was being retained and then the part that was being demolished?

ZONING ADMINISTRATOR LeGRANT: Well, because what was critical from the Zoning Office of Zoning Administrator because of the substandards nonconforming side yard is there a structure that pre-existed in 1958 that could be grandfathered?

CHAIRPERSON MILLER: Yes, I get that. But at the permitting point with the intake, would they -- they see an application come in. Do they look to -- are they trying to figure out whether its a pre-1958 structure or not?

ZONING ADMINISTRATOR LeGRANT: Well, if they are presented drawings that are labeled "existing" and that is construed as a pre-existing structure, I -- my take would be probably not. And that's what occurred here in permit number four.

CHAIRPERSON MILLER: Well, I --

ZONING ADMINISTRATOR LeGRANT: I could speak to why building permit five or the application for number five -- that's the point -- that's the decision that I was faced with, the application for building permit number five.

CHAIRPERSON MILLER: Okay. Before you do that, will you hold back? Because I know we need to go there, but what's the

significance of your characterizing the last demolition as a raze or --

COMMISSIONER JEFFRIES: De facto raze.

CHAIRPERSON MILLER: -- de facto raze?

ZONING ADMINISTRATOR LeGRANT: De facto raze. That prior to the issuance of the first building permit there was a nonconforming structure there. It was a structure that because it had five foot side yards and enjoyed certain property rights that other properties don't -- that an empty site would not enjoy. Then in the course of this piecemeal process it, in effect, at the last stage at number four was the removal of the final portion of that nonconforming structure. Then faced when a decision when it came to my attention that the footers for a new building not meeting setback requirements, the eight foot setback requirements was presented to me, I looked to see, well, do we have a

nonconforming structure that exists? No. Was there a question of whether that structure was damaged or destroyed by an act of God or casualty? No.

I could only conclude -- I felt at that point that my authority as Zoning Administrator to approve a structure with five foot side yard it had to --

CHAIRPERSON MILLER: But why does it matter whether it was a demolition or a raze? Either way the old part didn't exist anymore? Isn't that the rationale that you based your decision on with respect to not allowing them to take advantage of the nonconforming side yard?

ZONING ADMINISTRATOR LeGRANT: Only if a raze had been -- if a raze application had been made, that would -- the raze -- the raze application in my opinion -- often times a raze application is made to only remove a structure, period. If a raze application in conjunction with rebuilding was

made, then it's important to -- it would be important to see what the new construction would be in terms of compliance with the zoning regulations. And the raze application if it removed a nonconforming structure would erase the nonconforming condition.

I don't know what --

CHAIRPERSON MILLER: Why doesn't that demolition of the old erase the nonconforming condition if that --if I'm saying it right. We've talked about how there was no part of the house, the old house, left anymore, correct?

ZONING ADMINISTRATOR LeGRANT: Right. Right.

CHAIRPERSON MILLER: And we only had like, say -- or you said, you know, that's the position taken. So there's only the new addition that was there. Why does it matter if that old part in the front is characterized as a demolition versus a raze? Why do you have to go through this whole piecemeal raze

scenario? Why wouldn't you come to the same conclusion if it was just demolished?

ZONING ADMINISTRATOR LeGRANT: Well, I guess -- I could come to the same conclusion if it was demolished. I think in making a point of using the words "de facto raze" is that the result was the same of the 1958, pre-1958 structure was completely gone.

MEMBER WALKER: Mr. LeGrant, wouldn't you in fact only have a raze if the entire structure were taken down, old and new?

ZONING ADMINISTRATOR LeGRANT: Well, the -- the raze -- a raze of a complete structure on a site would be the removal of a complete structure of the site.

That we have an addition that was under construction but not yet completed, it was not a completed building.

COMMISSIONER JEFFRIES: What constitutes a completed building?

ZONING ADMINISTRATOR LeGRANT: Well, I can refer to a particular section of

the zoning code that speaks to what might be relevant in this regard. Let me pull out the section.

COMMISSIONER JEFFRIES: I mean, there's a roof, there's walls. I don't even know a code. If you look at the building code, correct?

ZONING ADMINISTRATOR LeGRANT: No. I'm looking at the zoning regulations.

COMMISSIONER JEFFRIES: Oh, zoning regs.

Part of the problem here was, you know, when there is vesting occurred. And in section 3202.4 it talks about -- and it's entitled section 3202 of the zoning regulations talks about building permits. Section 3202.4 talks about a point where vesting occurs. And I'll read it.

3202.4 "Any construction authorized by a permit may be carried to completion pursuant to the provisions of the title in effect at this state that the permit

is issued subject to the following conditions."

And the conditions (a) talked about permit begin construction in two years and (b) the amendment do the permit comply with the provisions in effect, the title and effect that the permit is amended.

But looking at this it talks about a construction authorized by a permit that may be carried to completion. So what is completion of construction? What I have relied upon is whether something has received a final building permit or a final inspection. Because in the course or construction there is a series of inspections, but the last step is a final inspection. And I would construe that to be coincident with completion.

That for me becomes a standard of vesting. And in the addition that was construed behind 5013 Belt Road has not proceeded to completion or has not had final inspection, has not been carried to

completion.

I don't know if that helpful or confusing to the Board.

CHAIRPERSON MILLER: Let me ask you, Mr. LeGrant, I think we went through this in another case. But just the fact that the addition is attached to the old house, in your view does it take on the grandfathering attributes just because it's attached? And once that new house is gone, does it in your opinion have that grandfathering right?

ZONING ADMINISTRATOR LeGRANT: Well, I would put it this way. An application has not been posed to me about, for example, when the original pre-1958 was removed and I took the --made a decision that the rights for the nonconforming aspect of that portion ended, whether the portion that was constructed lawfully at the time extending nonconforming could remain and then some other scenario occurred with replacement of the front portion, other than a portion that did

not meet the eight foot side yard setbacks, I could not approve because there's no longer in compliance with the eight foot -- the nonconforming -- the nonconforming condition is gone and I cannot meet a condition that does not meet the eight foot setbacks.

CHAIRPERSON MILLER: Okay. I thought that was the basis of your decision, and that's very clear. So why do we need to talk about vesting with respect to the addition?

ZONING ADMINISTRATOR LeGRANT: Well, the question was raised about the presence of the addition of the back and whether that constituted an existing structure for purposes then of saying, oh there wasn't a raze there. And I was trying to speak to that.

COMMISSIONER JEFFRIES: We're looking, Madam Chair, almost like that is a building effectively, you know, Was that -- could you define that photo as representing a

building? And apparently from Mr. LeGrant's commentary, no. Simply because the addition has not been final inspection.

CHAIRPERSON MILLER: So are you saying you could, that one might say demolish the front, you could call that a razing because the addition is not complete in the back?

ZONING ADMINISTRATOR LeGRANT: In terms of the nonconforming and pre-existing structure that -- that structure is gone. And that I used the word "de facto raze," perhaps the Board's more comfortable with demolition. But in any event, the portion -- that structure no longer exists that allows utilization of a nonconforming setback.

COMMISSIONER JEFFRIES: Listen, I'm still in the intake world. You know, I'm still trying to get -- I'm trying to still deal with the intake situation.

ZONING ADMINISTRATOR LeGRANT: Okay.

COMMISSIONER JEFFRIES: And where is DCRA's responsibility? I mean, because clearly, you know, someone is going to make the case that there was reliance on the fact that these permits were being issued by your office. Now, granted, you had someone at intake who, you know, saw the word "existing" and assumed that everything was existing when really everything wasn't existing. There was, you know, permit number two. And apparently-- I don't know if you're making the case that this Applicant should have been more definitive in drawings or there was some motive; you didn't go there.

ZONING ADMINISTRATOR LeGRANT: No.

COMMISSIONER JEFFRIES: But I'm just trying to understand, you know, typically I mean how would a particular applicant handle something like that?

ZONING ADMINISTRATOR LeGRANT: Well, again, I --

COMMISSIONER JEFFRIES: The

permits were issued. And I know -- and, see, another problem is that, you know, you're saying you believe because you weren't there to --

ZONING ADMINISTRATOR LeGRANT: Yes, right.

COMMISSIONER JEFFRIES: -- so you're trying to put the pieces together. But it's just -- you know, to me it's a little difficult.

ZONING ADMINISTRATOR LeGRANT: Yes. And I'll say for me the pieces came together in building permit number five. Building permit number five said we have to put in a new foundation. And in a way, it was like that is the last aspect of what the pre-'58 house was there. That, in my opinion was--

CHAIRPERSON MILLER: Was it there? Was there a foundation there?

ZONING ADMINISTRATOR LeGRANT: Or footers.

CHAIRPERSON MILLER: Footers were there? Okay.

ZONING ADMINISTRATOR LeGRANT: Footers were there.

CHAIRPERSON MILLER: That went with the old house. Okay.

ZONING ADMINISTRATOR LeGRANT: Of the old house.

CHAIRPERSON MILLER: All right.

MEMBER WALKER: Are you saying that was the point at which you understood that the 1034 house was gone?

ZONING ADMINISTRATOR LeGRANT: It came to my attention at that point that the old house was gone, that the final piece of that would ge replacement of footers. That was correctly directed to my office. I said, okay, wait a second. Where is -- why do we have five foot setbacks for something that was, in my opinion, the nonconforming condition was gone? That's the point that my office denied the permit.

COMMISSIONER JEFFRIES: Mr. LeGrant, so let me understand this. So the fifth -- when was the last time there was zoning review of this particular project? Was it permit number two? Because you didn't have it in four, right?

ZONING ADMINISTRATOR LeGRANT: Number three.

COMMISSIONER JEFFRIES: You had it in three. Two -- one, two, three and you skipped four?

ZONING ADMINISTRATOR LeGRANT: Two, three. Not four.

COMMISSIONER JEFFRIES: Okay. So you skipped four, but you had zoning review on the other permits?

ZONING ADMINISTRATOR LeGRANT: Correct.

CHAIRPERSON MILLER: You or your office? I thought you didn't --

COMMISSIONER JEFFRIES: His office.

CHAIRPERSON MILLER: Your office.

ZONING ADMINISTRATOR LeGRANT: No.

COMMISSIONER JEFFRIES: His office. That's what I mean. Just someone --

CHAIRPERSON MILLER: Your office? You didn't do one through three, just for the record.

ZONING ADMINISTRATOR LeGRANT: Yes. Right. Right. I personally did not see, but my office saw and it reviewed and approved one through three.

COMMISSIONER JEFFRIES: Okay. And so you pulled this altogether, one could say, at the eleventh hour and, you know, permit number five looking at the footings.

ZONING ADMINISTRATOR LeGRANT: Right. Application number five came first to the attention of my predecessor, Mr. Bill Cruz and then to me. And then we had the meeting with the Applicants about their structure or their project.

COMMISSIONER JEFFRIES: I'm

listening to you and I'm looking at this photograph here. And you said at intake it's just someone who was just there and looked at it and made some assumptions based on what was presented seeing the word "existing" and not--

ZONING ADMINISTRATOR LeGRANT: That's correct. We have permit review coordinators who look at the information and make decisions about based on the information presented to them who gets to see them. It's routed to zoning, plumbing, electrical, building and so forth.

COMMISSIONER JEFFRIES: Would you say you have the correct checks and balances at intake? I mean, obviously, you would like for someone to submit what is effectively, I mean you know illustrate, you know, and reflect correct drawings and whatever and they're absolutely clear. But, you know, is there another system in place that you can -- because, again, I mean this is coming for your office.

ZONING ADMINISTRATOR LeGRANT: Right.

COMMISSIONER JEFFRIES: I mean from DCRA.

ZONING ADMINISTRATOR LeGRANT: Yes. Well --

COMMISSIONER JEFFRIES: I mean, it's predictability.

ZONING ADMINISTRATOR LeGRANT: Right

COMMISSIONER JEFFRIES: I mean, you know, an applicant coming there has to sort of understand that, you know, that if you approve previous permits, then you must have, you know, a background as to what you've done for this particular project. And so I'm just -- there seems to be a missing piece here at intake.

ZONING ADMINISTRATOR LeGRANT: Well, in retrospect we could look back and say the intake process for this project along in stages was something -- could have something

been handled better. And at no point did I -- do I have any feeling of the intention of the Applicant on what occurred. But the information that was presented at each stage ultimately had the result of a permit application coming to my attention, building permit application number five, which I believe, and I don't have an authority to approve because --

COMMISSIONER JEFFRIES: About what you did, I am absolutely clear about what you did and what's the actually -- your jurisdiction. You did what you were supposed to do.

ZONING ADMINISTRATOR LeGRANT: Okay.

COMMISSIONER JEFFRIES: I'm just more -- when I'm looking at the totality of the whole process coming from DCRA and looking at all these permits, I'm just saying you know it's one thing to rely on the applicant to submit drawings that are absolutely

definitive. But it's yet another thing for the agency to submit that's -- given all these permits to sort of know what it's doing and being able to coordinate appropriate so that you catch these things.

And I just -- again, I mean you're at the eleventh hour looking at footings. And there's a building up. Or that's not approved, it's not a real building. But it's just tough for me.

ZONING ADMINISTRATOR LeGRANT: Okay.

COMMISSIONER JEFFRIES: You know, in terms of just understanding, you know, sort of what the balance is here.

ZONING ADMINISTRATOR LeGRANT: Well I guess all I can say is we can -- we can always improve our processes, and I strive to improve our processes.

BOARD MEMBER DETTMAN: Well, I'm certainly in the same place that Mr. Jeffries is in terms of the process. A couple of quick

questions.

ZONING ADMINISTRATOR LeGRANT: Yes.

BOARD MEMBER DETTMAN: Mr. LeGrant, do you have any idea why your office in terms of the Zoning Division and the zoning discipline, why that wasn't done for building permit number four?

ZONING ADMINISTRATOR LeGRANT: Again surmising myself in the place of the permit review coordinator looking at this, he was presented with the information that showed a partial demolition of an existing, that referred to existing single-family dwelling. There are drawings that he may have looked at that were labeled existing. He made, I don't believe, a -- a -- given those circumstances, maybe a call that was out -- that is not understandable with how thick this is, something that does not to be referred to the Office of Zoning Administrator.

BOARD MEMBER DETTMAN: It didn't

trigger zoning review based on what was presented is what you're saying you thought?

ZONING ADMINISTRATOR LeGRANT: Correct.

BOARD MEMBER DETTMAN: Okay. And this has come up a couple of times when you read the permit it says demolish a portion of an single-family dwelling. And I think it's been mentioned by the Appellant that by single-family dwelling that means old and new, that picture. But when you say existing and surmising at the intake process when they looked down at the plans and sawing "existing," they may have interpreted the plans as the rear portion of the 1930 some house still existing?

ZONING ADMINISTRATOR LeGRANT: That may have been the case.

BOARD MEMBER DETTMAN: Okay. The fifth building permit, do you normally get -- does the Zoning Division normally review building permits for just foundations?

ZONING ADMINISTRATOR LeGRANT: Yes.

BOARD MEMBER DETTMAN: They do? Okay.

Slightly just in a different direction. I'm trying to get my heard around where we leave 405.8 in the past. And is it your interpretation of your 405.8 that in order to do the addition that we're seeing right there, the existence of that addition with nonconforming side yards is contingent upon the existence of a pre-1958 structure forever?

ZONING ADMINISTRATOR LeGRANT: Forever?

BOARD MEMBER DETTMAN: Yes. Well--

ZONING ADMINISTRATOR LeGRANT: Well, and let me speak. It needs to be in existence and continued existence for that addition to be built upon -- to be built upon it or an extension. It typically is an extension of the nonconforming side yards

1 along the side.

2 BOARD MEMBER DETTMAN: So when you

3 say "continued existence," does that mean that

4 at some point in time, ten years down the road

5 a 100 years down the road, if the pre-1958

6 structure goes away, the addition has to go

7 away with it for whatever reason?

8 ZONING ADMINISTRATOR LeGRANT: No.

9 No. As I tried to point out in quoting 3202,

10 if at some point there gets to be a completion

11 and completion under construction, then that

12 structure -- now, I have not been faced with

13 a particular situation of somebody coming in,

14 you know, after they've utilized nonconforming

15 setback, built an addition, got it to

16 completion, got their final building permit

17 and then turning around and wanting to come

18 back with -- with a partial demolition. I've

19 not been faced with that in career.

20 I can see understandably if that

21 occurred, we would look at that structure as

22 perhaps gaining the nonconforming rights that

1 were extended through use of 405.8.
2 BOARD MEMBER DETTMAN: So in order
3 for us if we were going to say we need to find
4 a point in time where we can leave 405.8 in
5 the past --
6 ZONING ADMINISTRATOR LeGRANT:
7 Right.
8 BOARD MEMBER DETTMAN: -- it never
9 comes up again, we need to reach some level of
10 completion? And I know you covered it when
11 you were looking at this picture, but is that
12 not that level of completion in your mind, in
13 your DCRA's mind?
14 MR. GREEN: No.
15 ZONING ADMINISTRATOR LeGRANT: The
16 present construction?
17 COMMISSIONER JEFFRIES: No.
18 BOARD MEMBER DETTMAN: That
19 picture right there?
20 ZONING ADMINISTRATOR LeGRANT: No.
21 COMMISSIONER JEFFRIES: Yes, he
22 sort of took us to that story, the final

inspection.

BOARD MEMBER DETTMAN: But I did miss it. I did miss it.

COMMISSIONER JEFFRIES: Yes, yes, yes. He said it needs to have a final inspection for there to be a finished and approved building.

BOARD MEMBER DETTMAN: Okay. I'm sorry for missing it.

But one last question.

ZONING ADMINISTRATOR LeGRANT: Yes.

BOARD MEMBER DETTMAN: Mr. LeGrant, there's a provision that talks about a provisional Certificate of Occupancy.

ZONING ADMINISTRATOR LeGRANT: Yes.

BOARD MEMBER DETTMAN: And I know that's been brought up in previous case, the *Morris* case. What is the significance of a provisional Certificate of Occupancy?

ZONING ADMINISTRATOR LeGRANT:

Well I should get that language in front of me. Excuse me.

BOARD MEMBER DETTMAN: It's 3203.11

ZONING ADMINISTRATOR LeGRANT: Yes. At 3203.11.

BOARD MEMBER DETTMAN: That's right.

ZONING ADMINISTRATOR LeGRANT: Yes. In those cases where a Certificate of Occupancy is required, and of course in this case single-family home Certificate of Occupancy is not required.

BOARD MEMBER DETTMAN: Right.

ZONING ADMINISTRATOR LeGRANT: But we utilize a process called a preliminary occupancy data sheet that at the time a final inspection -- the construction's completed. They get their final inspections. They come in with evidence in terms of those inspection records for us to schedule a final zoning inspection as to inform the Certificate of

Occupancy.

So, for example, the structure's been built, it's got its final inspections. They come in, they fill out this preliminary occupancy data sheet form. We schedule a zoning inspection, the purpose of which to ensure that the construction is compliant with zoning regulations and then allows us to move forward with the issuance of a Certificate of Occupancy. That's the significance of this section.

MR. SIMMONS: Madam Chair, with all respect, I've waited frankly as long as I can. I've waited as long as I can. I'm going to, obviously, have to take a cab to the airport rather than the subway as I planned.

I'd like the record to reflect that I'm leaving now.

I'd like the record to reflect -- maybe there's demolition going on here.

COMMISSIONER JEFFRIES: Hotel.com.

MR. SIMMONS: Thank you, Mr.

Jeffries.

I'd like the record to reflect that I have to leave now. I'd like the record to reflect my objection.

My schedule and my wife's schedule for any continuing proceeding, we will be available the month of September. We will not be available the month of October. We will be available starting, I think, the 1st or 2nd of November again.

I thank you. My objection stands. I appreciate your attention this afternoon.

CHAIRPERSON MILLER: Thank you.

My understanding is the court reporter has to stop at 9:00. So we'll be going to somewhere around 9:00. 9:00 p.m. So we'll see how we can do.

The Board wants to make every effort to complete this proceeding if we could. We'll have to see how it goes. And then, you know, leave the record open for proposed findings and things like that.

Okay. I have a question. The fourth permit approved demolition of the rest of the original house. Well, the whole original -- right, the portion that was remaining. And did it not also allow construction per plans?

ZONING ADMINISTRATOR LeGRANT: Well, it refers to rebuild structure to current building code specifications to existing permits and plans.

CHAIRPERSON MILLER: Okay. I'm interested in the relationship between four and five. When you denied five -- you denied five, is that right

ZONING ADMINISTRATOR LeGRANT: Yes.

CHAIRPERSON MILLER: Okay. Based on the letter, this Exhibit A. Okay.

ZONING ADMINISTRATOR LeGRANT: Yes.

CHAIRPERSON MILLER: Okay. Was that somewhat of a revocation of what was

allowed in building permit number four or not?

ZONING ADMINISTRATOR LeGRANT: Well, I can only surmise that in four there was -- perhaps there was an assumption on the part of the Applicant that they could utilize the footer. That would have finished the situation. Instead, they needed to come back to DCRA when some decision was made that the footer was inadequate, that they did not reveal in number four or did not know in number four. So the building permit application five came in. That's the point that it was brought to my office's attention and we then looked back, as I've said, about the existence of a pre-existing nonconforming condition.

CHAIRPERSON MILLER: Okay. So permit number five was denied because it didn't comply with the side yard regulations, is that correct?

ZONING ADMINISTRATOR LeGRANT: Correct.

COMMISSIONER JEFFRIES: Footings did not.

CHAIRPERSON MILLER: The footings didn't.

ZONING ADMINISTRATOR LeGRANT: Well, the footings were depicted on -- at five foot setbacks instead of eight.

CHAIRPERSON MILLER: So if they were to construct or if they were intending to construct in compliance with the side yard regulations, what would that mean? They'd have to submit a different plan with respect to footers or --

ZONING ADMINISTRATOR LeGRANT: They would have to submit a different application.

CHAIRPERSON MILLER: Okay. Okay.

COMMISSIONER JEFFRIES: What impact would that have on the extension?

ZONING ADMINISTRATOR LeGRANT: Well, the extension then the question would be

-- because there's two components of the extension, okay?

COMMISSIONER JEFFRIES: Yes.

ZONING ADMINISTRATOR LeGRANT: There's a portion that was part of the pre-existing house that was existing and did not meet the side yard setbacks and then the extension itself. Truthfully, that scenario has not been presented to me.

CHAIRPERSON MILLER: What's before is what your decision here, the denial of permit number five.

ZONING ADMINISTRATOR LeGRANT: The letter --

BOARD MEMBER DETTMAN: So -- okay.

COMMISSIONER JEFFRIES: So I know this is going to sound like Stockdale so many years ago, but it seems that the Appellant is in limbo.

You've only denied permit number five?

ZONING ADMINISTRATOR LeGRANT:

Yes.

COMMISSIONER JEFFRIES: Okay. And so they can't -- and so based on our -- what happens here, whatever our decision is, that still doesn't really address the extension, or will it?

ZONING ADMINISTRATOR LeGRANT: Well, I -- as I suggested in my letter of September 28. 2007, I closed the letter saying that if they could appeal my determination, which of course they've done.

COMMISSIONER JEFFRIES: Right.

ZONING ADMINISTRATOR LeGRANT: Or they can file a variance application. So if the result of either of those processes, obviously the Board can speak to the appeal issue or if an application came in for a variance I would evaluate that application.

CHAIRPERSON MILLER: I have just one other question.

ZONING ADMINISTRATOR LeGRANT: Okay.

CHAIRPERSON MILLER: I'm not all that well versed in construction, though I'm learning.

The foundation of the footers, was there any -- is that a part of the old house? I mean is that considered -- was there anything remaining there that was a part of the old house or not?

ZONING ADMINISTRATOR LeGRANT: In my -- I've been to the site. I've looked at the site. I don't recall seeing the foundation of the -- what was known as the old house or that front portion of the old house.

CHAIRPERSON MILLER: Okay. So we don't have like that question, whether or not that was considered part of the old house that was remaining? I think we did hear testimony that no part of the house was remaining.

COMMISSIONER JEFFRIES: But I'm looking at building permit number four and it says rebuild structure to current building code specifications per existing permits and

plans. But that doesn't take into consideration footings. If I were an applicant and you're telling me to rebuild the structure to current building code specifications, I shouldn't assume -- I mean the footings is a complete different ball of wax? Do you understand what I'm saying?

ZONING ADMINISTRATOR LeGRANT: Yes, I see what you're saying.

COMMISSIONER JEFFRIES: Because it seems like it's implicit. I mean, obviously, how can you rebuild a structure unless the footings -- you know --

ZONING ADMINISTRATOR LeGRANT: Well, unless there's an assumption that those footings that were there were going to be reused. Again, the plans that were presented to DCRA, in my opinion, were not completely clear in terms of what was labeled as existing or what was considered existing. And by fact of a permit application, building permit application number five, that's the point that

the footing question was put to my office and posed to me.

CHAIRPERSON MILLER: I mean, I get that that was before you and you saw that it shouldn't be approved because it wasn't in compliance with the side yard requirements, correct?

ZONING ADMINISTRATOR LeGRANT: Correct.

CHAIRPERSON MILLER: Okay. And number four never made it to your office.

ZONING ADMINISTRATOR LeGRANT: That's correct.

CHAIRPERSON MILLER: If number four, though, authorized construction in accordance with the nonconforming side yard and maybe in your view would have been a mistake, it didn't come to your decision. But do you have the authority to -- or do you believe you have the authority just to revoke building permit number four? Because in essence they're not allowed to execute all of

building permit number four

ZONING ADMINISTRATOR LeGRANT: That question has not been posed to me to date. But, yes, I would say presenting building number four to me before it was being built that my office could take action to revoke the building permit.

CHAIRPERSON MILLER: One other second. Just as I understand the process, that's just a basic question. Is revocation of permits, where is that authority set forth?

ZONING ADMINISTRATOR LeGRANT: Well, there -- the authority to revoke a building permit resides with the -- with the-- it resides under the building code with the building official. And in my past experience the Zoning Administrator has gone to the building official and say please revoke a building permit for noncompliance with zoning code that, you know, it's a cooperative effort that could proceed.

CHAIRPERSON MILLER: Thank you.

Finished with this line of Board questions?

MEMBER WALKER: Well, Mr. Green is sitting back like he's finished for the night. I don't know. Are you finished?

MR. GREEN: One moment, please.

MEMBER WALKER: And, Mr. Green, I don't know if you heard me when I was just chatting with my colleagues.

MR. GREEN: All right.

MEMBER WALKER: But I'm really interested in exploring more fully the testimony that we've heard about the meetings between DCRA and the Applicant around building permit number four and the plans. I mean to the extent that you have information about what took place during those meetings and, you know, whether the Applicant appropriately relied on DCRA's representations, that would be useful.

MR. GREEN: Well, you know, you raise an interesting point, ma'am. And,

unfortunately, in light of the fact that Mr. Dennis is no longer with us, I don't think we can really be fully responsive to your inquiry.

COMMISSIONER JEFFRIES: Are there any written documents that he had or anything, just anything that --

MR. GREEN: Well, regretfully, the Department doesn't maintain records to that extent.

I do have the Zoning Administrator here. And --

COMMISSIONER JEFFRIES: Who wasn't even here at the time.

MR. GREEN: I understand. And the prior Zoning Administrator, I don't think we have any authority to bring him back into the fold.

COMMISSIONER JEFFRIES: Yes, I just saw him last night in parking. He testified.

MR. GREEN: Well, I don't have any

subpoena power over the good gentleman. And--

CHAIRPERSON MILLER: I think we have to stay focused also that's what's on appeal is Mr. LeGrant's decision.

COMMISSIONER JEFFRIES: Okay.

CHAIRPERSON MILLER: Okay.

MR. GREEN: Yes. Mr. LeGrant signed off on it. Mr. LeGrant is here to defend his position. And that's about all we can do.

I just have one really quick question for Mr. LeGrant. And that's this: In the process of approval how are plans and permits noted as approved in the Department as you know it?

ZONING ADMINISTRATOR LeGRANT: Well, for an approval of a building permit three things basically occur.

On the plan sheets themselves, there are stamps of the appropriate disciplines. I can speak for the Zoning Office. We typically stamp the site plan, the

1 plat, elevations and floor plans.
2 For the other disciplines, my
3 understanding is that the structural
4 discipline for those plan sheets in which they
5 look at they stamp, I believe, every page.
6 For other disciplines, the
7 mechanical the electrical they have
8 particularly pages they stamp those.
9 There's also on the paper
10 application in the back there is column of
11 where people initial and date and check off.
12 For those disciplines that are checked,a nd
13 they're checked ahead of time as to which
14 disciplines are apply, as I described earlier,
15 then the particular disciplines initial and
16 date when they're approved.
17 There's also been in our
18 electronic tracking system a computer entry
19 denoting those approvals.
20 MR. GREEN: So in regard to
21 Zoning, what do you stand? Where does your
22 organization stand, your division; what do you

do?

ZONING ADMINISTRATOR LeGRANT: Well, we have a stamp that we stamp the plan sheets then noted. And we -- my -- those individual in my office, the zoning technicians or either my Deputy or myself will sign the application. And we'd enter those into the computer system.

MR. GREEN: If a page is not stamped, what does that denote?

ZONING ADMINISTRATOR LeGRANT: Well, if a page is not stamped let's say for the structural discipline, I would say they have reviewed and approved that sheet.

MR. GREEN: And if a sheet -- if a plan which purports to having Zoning approval does not possess your seal on all pages, how is it addressed? How is it viewed?

ZONING ADMINISTRATOR LeGRANT: Well, again, it's the sheets that we look at are the elevations, site plan, plat and floor plans. And those would have the stamp on

1 those pages.

2 MR. GREEN: On every page, is that

3 not right?

4 ZONING ADMINISTRATOR LeGRANT:

5 Those pages I've mentioned.

6 MR. GREEN: Thank you.

7 CHAIRPERSON MILLER: Pardon me,

8 I'm sorry --

9 COMMISSIONER JEFFRIES: Mr. Green,

10 so you're referring to the fact that the

11 drawings associated with permit number four

12 did have stamps, it therefore -- I mean, what

13 were you driving at with that line of

14 questioning?

15 MR. GREEN: Simply this, Mr.

16 Jeffries: That as a part of the process the

17 Zoning Administrator's office stamps every

18 page.

19 COMMISSIONER JEFFRIES: Right.

20 MR. GREEN: All the disciplines do

21 the same, and they off on it.

22 COMMISSIONER JEFFRIES: Right.

MR. GREEN: Any pages that do not have these seals from these particular areas is not authentic.

COMMISSIONER JEFFRIES: So did mean that because Zoning did not, you know, approve or stamp the drawings associated with permit number four, what are you saying?

MR. GREEN: I think the Zoning Administrator has said that if a plan requiring his office's approval does not have the appropriate stamps on it, then there is a problem.

COMMISSIONER JEFFRIES: So what does that mean for permit number four?

MR. GREEN: Well, I can't address it. I will let the Zoning Administrator address it.

COMMISSIONER JEFFRIES: Zoning Administrator?

MR. GREEN: He's the Zoning Administrator.

CHAIRPERSON MILLER: Yes, let's

let the Zoning Administrator.

COMMISSIONER JEFFRIES: You tell us.

ZONING ADMINISTRATOR LeGRANT: Okay. As I've stated before, permit number four did not get referred to my office and they didn't -- so my office did not review those plans.

COMMISSIONER JEFFRIES: So does that mean that because you didn't, it's a bogus permit? I mean what -- so what, I guess? I'm trying to get to --

ZONING ADMINISTRATOR LeGRANT: As I've tried to state earlier, in conjunction with the subsequent revision number five, the totality -- because this is a series of revisions over time.

COMMISSIONER JEFFRIES: Oh, so you're merging? Okay.

ZONING ADMINISTRATOR LeGRANT: Then if looking at the information on number four and number five, I conclude with number

five that there's portions of this -- the old house that were removed culminating in a decision before my office that I could not sign off and approve.

COMMISSIONER JEFFRIES: So -- okay. So in essence, you know, permit number four was somewhat incomplete because it did not have Zoning approval until you sought to sort of correct this through some amendment through permit number five?

ZONING ADMINISTRATOR LeGRANT: Well, it was the Applicant who --

COMMISSIONER JEFFRIES: That's right, the weak footings. The weak footings.

ZONING ADMINISTRATOR LeGRANT: Right.

COMMISSIONER JEFFRIES: But you took that opportunity because of the weak footings to, you know, obviously get your approval in?

ZONING ADMINISTRATOR LeGRANT: Well, it was not our approval. It was --

COMMISSIONER JEFFRIES: Well, I mean, I'm sorry. Your --

ZONING ADMINISTRATOR LeGRANT: Right. It was that, as I've stated before, that's the point. That I did not feel -- my office no longer had authority to approve that revision.

COMMISSIONER JEFFRIES: Right. Correct. Right.

CHAIRPERSON MILLER: I'm sorry. Your office didn't have authority to what?

ZONING ADMINISTRATOR LeGRANT: Yes. That when presented with building permit application number five that what was presented to me was an application that was beyond the scope of the Office of Zoning Administrator's ability to approve.

COMMISSIONER JEFFRIES: See, he's not looking at the full five permits. He just looked right at what was in front of him for review for permit number five. And he could not--

CHAIRPERSON MILLER: It wasn't beyond your authority to approve it. It was a decision you made that you shouldn't approve it because it wasn't -- right?

ZONING ADMINISTRATOR LeGRANT: Well, it did not meet the side yard setback requirements.

CHAIRPERSON MILLER: Right. Okay. I got it.

I have one other clarifying question.

ZONING ADMINISTRATOR LeGRANT: Yes.

CHAIRPERSON MILLER: Because I thought you said something and then Mr. Green said it differently. I thought you said that only certain pages had to be stamped, not every page of whatever.

ZONING ADMINISTRATOR LeGRANT: Well perhaps what Mr. Green is referring to, but I can clarify.

Plan sets come to us, in large

1 part, just hundreds of pages and it showed
2 details of pipes and things. My office does
3 not--
4 COMMISSIONER JEFFRIES: What a
5 wonderful job you have.
6 ZONING ADMINISTRATOR LeGRANT: --
7 stamp everyone of those. The ones that are
8 relevant to Zoning such as floor plans that
9 show uses, such as elevations that show
10 building height, such as site plans and plats
11 that show dimensions for setbacks and lot
12 occupancy those are relevant, those are the
13 sheets that if once we review them, we stamp
14 off and approve. So that's correct Mr.
15 Green's assertion.
16 CHAIRPERSON MILLER: How about
17 demolition sequence?
18 ZONING ADMINISTRATOR LeGRANT: I'm
19 sorry?
20 CHAIRPERSON MILLER: Demolition
21 sequence, is that something you would stamp?
22 ZONING ADMINISTRATOR LeGRANT:

Demolition sequence.

CHAIRPERSON MILLER: I think that came up in the hearing, if I'm not mistakes.

COMMISSIONER JEFFRIES: Demolition sequence.

CHAIRPERSON MILLER: There was some -- what? Is it on the board. Oh, that has a stamp.

MR. BROWN: No. That's the engineer's stamp. It's not a D.C. Zoning.

ZONING ADMINISTRATOR LeGRANT: Yes. It's not --

CHAIRPERSON MILLER: Okay. Thank you.

Does that complete Mr. LeGrant's testimony?

MR. GREEN: I would move admission of Exhibits 1 through 25, Madam Chairman.

And, yes, it does conclude Mr. LeGrant's testimony.

CHAIRPERSON MILLER: Great.

Mr. Brown, do you have cross?

MR. BROWN: Yes. And I could first, you gave a definition of casualty. Could you repeat that?

ZONING ADMINISTRATOR LeGRANT: Yes. Let me dig it out here.

MR. BROWN: Or can you provide me a copy?

ZONING ADMINISTRATOR LeGRANT: Certainly.

I'll speak to what I think is the relevant portion of the six or so listings of casualty in *Webster's*. (2b) a serious or fatal accident, a disaster. It gives an example, casualties at sea during a storm, losses from fire, storm or other.

MR. BROWN: I may come to that.

You indicated on the --

CHAIRPERSON MILLER: Excuse me, Mr. Brown. I just want to make one comment, okay?

MR. BROWN: Yes.

CHAIRPERSON MILLER: And that is I

1 know that it's in your client's interest that
2 if we could wrap this today, that would be
3 good. So I just want to say that I think
4 there was an incredibly full briefing on the
5 casualty issue in the pleadings.
6 MR. BROWN: Yes.
7 CHAIRPERSON MILLER: And so I just
8 want to remind you about that. And that
9 anything in DCRA's pleadings I think
10 represented the Zoning Administrator's
11 position?
12 MR. BROWN: Okay. And I've moved
13 on.
14 As to the fourth permit you
15 indicated that it should have been referred to
16 the Zoning Administrator's office?
17 ZONING ADMINISTRATOR LeGRANT:
18 Well, I can see the value of it should having
19 been referred to the Zoning Administrator's
20 office in the context of the series of
21 revisions. I believe I testified that I could
22 understand the call made by the permit review

coordinator based on the information given to him and the plans and the application why that decision was made not to refer to my office.

MR. BROWN: So it was not -- and the intake decision is made by a DCRA employee?

ZONING ADMINISTRATOR LeGRANT: Correct.

MR. BROWN: Right. And the Applicant, my client, is required to follow the intake instructions as far as where the permit goes for review?

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. BROWN: At the end of the day the agenda, the review is set by DCRA and at the day when this permit number four was issued didn't my client have the right to rely on that permit?

ZONING ADMINISTRATOR LeGRANT: Well, the -- for the -- for the -- for that -- that description of the work embodied in the

permit, I would say yes.

MR. BROWN: So the partial demolition and the rebuilding of the structure she had the right to rely on?

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. BROWN: And then going back to the fourth permit. And the sequence which I'll refer you to, I think it's our Exhibit 9.

ZONING ADMINISTRATOR LeGRANT: Okay.

MR. BROWN: And this was part of the approved permit four. Draw your attention to the bottom of the page, the lowest section of the page says: "Footer foundation existing." To yourself or loud read the bullet there "Once the existing wood structure has been removed, examined or replace if necessary."

ZONING ADMINISTRATOR LeGRANT: Okay. I've read it. You've read it loud.

MR. BROWN: Yes. So in the context

of the fourth permit what was submitted for approval and what was approved by D.C. clearly contemplates if necessary a new footer, is that correct?

ZONING ADMINISTRATOR LeGRANT: That's -- it states "footer foundation existing." And then it states what you've stated.

MR. BROWN: That they can examine and replace if necessary?

ZONING ADMINISTRATOR LeGRANT: That's what it says.

MR. BROWN: So at that point permit four the determination has been made that the replacement of that footer is authorized if necessary, is that correct?

ZONING ADMINISTRATOR LeGRANT: That's correct. Again, the header of that says "footer foundation existing."

MR. BROWN: So permit five, which was submitted strictly as a footer permit, based on what you've said in the last few

questions that was previously approved in four, was it not?

ZONING ADMINISTRATOR LeGRANT: Well, it states to -- it says "To reflect a new footer."

MR. BROWN: Well, wasn't the concept of the new footer replacement footer already approved in the fourth building permit?

ZONING ADMINISTRATOR LeGRANT: Well, I guess I really do not know.

MR. BROWN: In drawing your attention to, and let me get you the right exhibit number. Excuse me here.

COMMISSIONER JEFFRIES: Excuse me, Mr. LeGrant, while he's looking.

ZONING ADMINISTRATOR LeGRANT: Yes.

COMMISSIONER JEFFRIES: For Exhibit 9, what he just had you refer to, this was the demolition sequence was tied to the fourth building permit? This was just on top

of what I looked at in Exhibit 025?

ZONING ADMINISTRATOR LeGRANT: That's what been represented here. I do not have knowledge that this was presented. But certainly it's been presented that was attached to building permit number four.

COMMISSIONER JEFFRIES: This is not the first time you've seen it?

ZONING ADMINISTRATOR LeGRANT: Correct. No, it's not the first time I've seen it.

COMMISSIONER JEFFRIES: Okay. Okay. But this is a typical thing that would be submitted alongside the building permit?

ZONING ADMINISTRATOR LeGRANT: I have seen instances of demolition sequences in other building permits.

COMMISSIONER JEFFRIES: Are there times when you don't see them? I mean, obviously, when there's no demolition it's not--

ZONING ADMINISTRATOR LeGRANT:

Right, when there's no demolition.

COMMISSIONER JEFFRIES: -- yes, yes, yes. But normally if there is a demolition that's involved, you would see this sequencing, this demolition sequencing form?

ZONING ADMINISTRATOR LeGRANT: I guess my experience has been I've seen other instances of sequencing with permits that have demolition applications. But not all demolition permit applications that I have seen or reviewed have included the sequencing document.

COMMISSIONER JEFFRIES: Okay. Thank you.

I'm sorry.

MR. BROWN: Turning to my Exhibit 11, Appellant's Exhibit 11 which is a copy of the fifth building permit application. Before I specifically reference that, you indicated that under the system that's in place now not all building permit applications are referred to Zoning?

ZONING ADMINISTRATOR LeGRANT: That's correct.

MR. BROWN: And in this fifth building permit application I refer you to the second page. The column plans and application approval, subsection C on the right hand side.

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. BROWN: And we went through this on Mr. Ford's direct testimony. But the DCRA, the intake person up at the top on line one, their intake job is to identify the approvals required, is that correct?

ZONING ADMINISTRATOR LeGRANT: It's to denote which disciplines are to review the plans, that's correct.

MR. BROWN: And looking at this you'll see check marks at one information, which is intake, correct?

ZONING ADMINISTRATOR LeGRANT: Correct.

MR. BROWN: Item six environmental

regulation.

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. BROWN: Down 15 construction inspections branch, correct?

ZONING ADMINISTRATOR LeGRANT: Correct.

MR. BROWN: And 18 structural engineering.

ZONING ADMINISTRATOR LeGRANT: Yes. But in addition, it looks like -- looks like -- number --number three Zoning is checked and number 20 is QC, quality control is checked.

MR. BROWN: Yes. QC is at the end.

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. BROWN: But --

COMMISSIONER JEFFRIES: It's checked?

MR. BROWN: I think it's the -- I think it's the tail of the message hold for

Zoning going through it. But going up to box three there is a hold written next to it with an explanation point.

ZONING ADMINISTRATOR LeGRANT: Correct.

MR. BROWN: But that box is not checked.

ZONING ADMINISTRATOR LeGRANT: Well, I beg to differ. It appears to me that box three is checked and then hold, which the Office of Zoning Administrator then placed on this was instead of an approval, we wrote the word "Hold."

MR. BROWN: If I could, I show you -- and this is actually -- this was returned to us, but it is the original of the document. The intake was done in green. And you'll see that --

CHAIRPERSON MILLER: Is he picking up? All right. Go ahead. I guess she's not complaining. But it didn't sound like you were on mike. But, go ahead.

MR. BROWN: I'm not. I'm sorry.

COMMISSIONER JEFFRIES: Well we don't have what you have. What you're about to show.

MR. BROWN: Yes. And I think it would probably be worth circulating. Would the Board members like to see it first?

CHAIRPERSON MILLER: No.

MR. GREEN: No, I'd like to see it, Madam Chair.

CHAIRPERSON MILLER: Go ahead. No, show them first.

MR. BROWN: Okay.

MR. GREEN: But I'd like to see it.

MR. BROWN: Madam Chair, maybe would it help if -- I think you have a color Xerox machine in this office?

CHAIRPERSON MILLER: I think we do. But I don't see our staff right this minute. But do you want -- what is it to show? Maybe you can tell us.

MR. BROWN: Well, it's important because it shows the original colors and what was checked and what wasn't checked in the fifth building permit given the different colors used and, quite frankly, at a later time Mr. Cruz intervened, but he was not originally part of the approval process.

CHAIRPERSON MILLER: Okay.

MR. GREEN: But, Madam Chairman?

CHAIRPERSON MILLER: Yes.

MR. GREEN: I mean, in looking at this it looks like the tailend of a check going through the L. But be that as it may, I see the words "Hold" here in red and in blue.

CHAIRPERSON MILLER:

COMMISSIONER JEFFRIES: What's the difference between the color copy and what we're looking at?

MR. GREEN: I mean, hold is hold, is it not?

MR. BROWN: But --

CHAIRPERSON MILLER: I'd like to have it in the record with the colors.

MR. BROWN: Yes.

CHAIRPERSON MILLER: Yes.

MR. BROWN: But, quite frankly, I'm not going to give up my original copy of it.

CHAIRPERSON MILLER: All right. I'm sure our staff would be happy. Here's Ms.--

MR. GREEN: But, Madam Chairman, we want to know then what's the efficacy of the word "hold?" Hold means hold. Checked, hold it now.

CHAIRPERSON MILLER: Wait. Are you testifying, Mr. Green?

MR. GREEN: I'm asking a question.

CHAIRPERSON MILLER: Well, it's Mr. Brown's turn to ask the questions.

MR. GREEN: But he's making a deal as though because it wasn't --

CHAIRPERSON MILLER: Well, let's

hear. Let's hear what it's all about.

Go ahead. Time's running.

MR. BROWN: Okay. Well, Madam Chair and Mr. LeGrant, looking at the intake column, column C.

ZONING ADMINISTRATOR LeGRANT: Yes.

MR. BROWN: And when it was done in green ink, correct?

ZONING ADMINISTRATOR LeGRANT: Well, boxes one, six, fifteen and eighteen are done in green ink. It appears to me box three is done in Zoning's blue ink, perhaps quality control might have done it in black ink, but it may have been the tailend of the abbreviation for the hold for Zoning. Those are the colors I see.

MR. BROWN: But in -- and the intake is progressive, from top to bottom?

ZONING ADMINISTRATOR LeGRANT: I don't know what you mean by progressive?

MR. BROWN: Well, you go through

the process starting at line one and going through to the bottom, which is QA/QC at eighteen or nineteen and the permit's issue. You go in order?

ZONING ADMINISTRATOR LeGRANT: Not necessarily. No. The check marks are to --let me say two things.

The check marks denote those divisions that are to be disciplines that are to review the plans. The sequence other than, of course, the initial intake and for QC at the very end can happen in various orders.

I will say also my experience at DCRA is sometimes during applications during the course of their review it's identified that other disciplines may, in fact, need to look at a set of plans. And so disciplines are added after initial intake. Initial intake does not freeze you to hold you throughout the permit process. It's like, well, no this needs -- you know, mechanical needs to see this or WASA needs to see this and so forth.

MR. GREEN: Madam Chairman, I mean, I hate to belaboring a point, but the word "hold" is here. I mean, we're straining at a gnat to get a camel. It's hold. Hold means hold, Mr. Brown.

CHAIRPERSON MILLER: Mr. Green, you're not the witness.

MR. GREEN: I know that, but I'm asking a question. What's the big deal?

COMMISSIONER JEFFRIES: Mr. Brown, what's the importance of the colors? You know, why do we need to understand the colors?

MR. BROWN: Well, because a process was occurring. The color show that it went through and Mr. LeGrant explained the intake process and that he should have -- "he" being Zoning should have been identified. I'm showing that when this went into the intake process, Zoning was not identified.

COMMISSIONER JEFFRIES: Initially.

MR. BROWN: Initially.

COMMISSIONER JEFFRIES: Right.

MR. BROWN: And that only --

COMMISSIONER JEFFRIES: And that was because those there were identified initially were greens?

CHAIRPERSON MILLER: All right. How do we know they weren't identified initially? Because of the colors?

MR. BROWN: Yes.

COMMISSIONER JEFFRIES: And how do we know the greens --

MR. BROWN: Because -- because the person who was the intake, the first person line number one used a green pen. And you saw that --

CHAIRPERSON MILLER: How do we know that?

MR. BROWN: Well, because it hasn't reached you. But it's green on the -- this is the original document.

COMMISSIONER JEFFRIES: Yes, but do we know that green is the color that, you know, signals the first -- and why do I care?

MEMBER WALKER: Right. Are you suggesting that Mr. LeGrant could make a Zoning review because an intake specialist didn't check the box.

COMMISSIONER JEFFRIES: First?

MR. BROWN: Well, but I'm indicating that a process occurred that did not identify Zoning. It reached all the way to the bottom and still had not identified Zoning. And only subsequently did Mr. Cruz put the hold on it.

In a permit, that if you look on the other side of that permit application, was marked as part of the process in parenthetical structural only.

COMMISSIONER JEFFRIES: So what are you trying to say as it relates to the process here?

MR. BROWN: Well, the process -- their process did not identify this as a Zoning matter and it went through. And then as testimony that I provided already and will --

COMMISSIONER JEFFRIES: It initially didn't --

MR. BROWN: Yes.

COMMISSIONER JEFFRIES: -- identify it? But by the time it was all done, they did. So I guess so what?

MR. BROWN: Well, in conjunction with the testimony I've already provided by Mr. Ford and rebuttal will provide, that they were right the first time. That Zoning review wasn't required and that events other than an appropriate process intervened to put the hold on it.

COMMISSIONER JEFFRIES: So your point is that this is a -- this should have been strictly around footings and somehow it stepped out of footings and the tentacles reached to Zoning. And your question is why would it even go to Zoning?

MR. BROWN: Yes, that's correct. And also it goes hand-in-hand with the point I believe you made, Mr. Jeffries, or someone

else, that isn't this really a back door way of revoking the fourth permit by virtue of this mechanism.

CHAIRPERSON MILLER: Okay. That was my question. And that is still is my basic question. So maybe we can address that head on instead of dancing around the issue.

MR. BROWN: Well --

CHAIRPERSON MILLER: No, let me just ask this question and see if I can get an answer.

If permit number four approved building per plans, which would have allowed the building to build with nonconforming side yards. And then building permit number five comes your way and you see that that's not in accordance with the regulations in your opinion, it seems as if it is your opinion that you can deny building permit number five?

ZONING ADMINISTRATOR LeGRANT: I'm sorry. Can or cannot?

CHAIRPERSON MILLER: Can. That's

what you did.

ZONING ADMINISTRATOR LeGRANT: Oh, yes.

CHAIRPERSON MILLER: And I'm just wondering if you can explain in anyway I guess the significance of in away undermining a previous authority -- authorization that was given in a building permit. I mean, and so I was asking about it sounds somewhat like a revocation.

ZONING ADMINISTRATOR LeGRANT: Okay.

CHAIRPERSON MILLER: I mean, for instance we have our rules. If we want to reconsider something, we have rules that say you can do it within a certain amount of time or you do it on these standards. So I'm wondering what -- you know, how do you justify, you know, those two decisions which do appear to be somewhat contradictory.

COMMISSIONER JEFFRIES: I thought he said -- I thought you responded to that.

But I --

ZONING ADMINISTRATOR LeGRANT: Well, I could try again.

CHAIRPERSON MILLER: No, but can he answer? Because I didn't get it.

ZONING ADMINISTRATOR LeGRANT: Yes. Well, that -- yes, the question of revoking building permit number four, you know, had not been posed to me.

CHAIRPERSON MILLER: I got that. Okay.

ZONING ADMINISTRATOR LeGRANT: I guess in my light it's the same result. If building permit number five, application number five can came before me, and we've heard, I've testified, did not believe that I could approve that, then let's say in the absence of that and in the absence if that if it came to my attention that building permit number four was issued incorrectly and construction had not yet occurred, would I have a basis to revoke that building permit?

I believe I said yes. To date my office, of course, had not taken any of those steps simply because I had another revision to the original building permit before me that spoke to the issue.

CHAIRPERSON MILLER: Okay. Is there like a time frame when you have authority to do that? It's not completion, I mean, is it?

ZONING ADMINISTRATOR LeGRANT: That I -- personally I do not know at this point if I have a time -- if after four was issued that is there a clock that limits me. I think it would be related to if construction authorizing that permit had occurred. To my knowledge it has not. Therefore, is there a basis to seek that? I truly do not know if I'm constrained from that point -- at this point on that possible revocation.

COMMISSIONER JEFFRIES: But, you know, it sounds to me, Mr. Brown, that Mr. LeGrant sort of responded to you as related to

the fact that even though on the surface it didn't seem as if, you know, permit number five should have gone to Zoning. I mean, the review was such that it was able to pick up simply because the footings were according to the eight foot side yard requirements.

And that's what -- I guess my point is is that I understand the point you're making. But it seems as if by virtue of the fact that the footings weren't set the way they were supposed to did it make it a Zoning issue.

So I thought you were trying to make the case that it's a little nefarious that it would be at Zoning, you know, in terms of the fifth permit.

MR. BROWN: Nefarious isn't the right word.

COMMISSIONER JEFFRIES: Well, maybe not nefarious. But --

MR. BROWN: Well, because again, and you have to remember that permit number

four was issued in February of '07.

COMMISSIONER JEFFRIES: Right.

MR. BROWN: We're in -- well, we're now August 1 of '08. So we're, what? Sixteen months later. And there's been no revocation taken place.

COMMISSIONER JEFFRIES: Yes.

MR. BROWN: You know, permit four for our purposes, certainly for Zoning purposes is set in stone. And what is occurring is permit five is being used. And, again, permit five was a requirement imposed by the city, not the -- you know. But permit five is being used to thwart the execution of permit four. But that's fact of life.

And my client in four went through the process. And DCRA apparently doesn't like the way the process occurred, but it was their process. It happened. The demolition occurred in reliance on that permit. Not only demolition, but the demolition and the conjunction with the ability to rebuild. And

dramatically changed position. And now DCRA apparently says well we shouldn't have really given you four and we're changing our mind now.

Four was issued. She acted upon it. And she really from a Zoning standpoint doesn't need -- all she needs is a footer permit. A footer is below grade.

COMMISSIONER JEFFRIES: Yes. But the footers do -- they do set the footprint, okay. I mean, they do determine sort of where the walls are going to be that determines the side yard --

MR. BROWN: Well --

COMMISSIONER JEFFRIES: So it's not accidental --

MR. BROWN: -- but where the walls--

COMMISSIONER JEFFRIES: -- I guess, that's what I don't understand.

MR. BROWN: Yes. But in this case you're correct about that, to a certain

extent. But in this case permit four set where the walls are going to be. And so then my client's left, she's got to go and put a footer underneath where the walls were set. I mean -- and so that she has no control over where the footers are because four told her to do the demolition and to rebuild.

COMMISSIONER JEFFRIES: I see what you're saying. So you're saying the walls were set in permit number four. Really permit number five was just really dealing with weak footings, not so much placement of footings. And so why would, you know, DCRA have to reach and really end up sort of, you know, turning around permit number four.

MR. BROWN: Okay.

CHAIRPERSON MILLER: Okay. Where are we? You finish your cross?

MR. BROWN: Well, one last question for Mr. LeGrant. And it goes to actually permit four. And DCRA made a mistake by not sending it to Zoning, is that correct,

as part of the process, in your view?

ZONING ADMINISTRATOR LeGRANT: In conjunction with application for number five this series of steps of revisions to the original building permit, looking at four and only then, yes, I would say it should have come to Zoning.

MR. BROWN: So that was a mistake made by DCRA?

ZONING ADMINISTRATOR LeGRANT: It was -- you could characterize it as a mistake.

COMMISSIONER JEFFRIES: He's already, I think, answered that.

MR. BROWN: Yes. And part of the process is going through, the final step in permit four or any permit is the QA/QC process, correct?

ZONING ADMINISTRATOR LeGRANT: Correct.

MR. BROWN: And that's the final step before issuing the permit, correct?

ZONING ADMINISTRATOR LeGRANT:

Yes.

MR. BROWN: And that's the opportunity to for DCRA to, in this case, catch any mistakes, is that correct?

MR. GREEN: Objection. The question has been asked and answered and he's mischaracterizing the whole process.

MR. BROWN: I don't think it's been asked.

CHAIRPERSON MILLER: It sounded like you were asking the same question different ways almost.

MR. BROWN: Well, no. One was what happened and two was the process. One, he's admitted a mistake was made and I'm asking him is the process -- the process includes a fail/safe, the quality assurance/quality control step as the last step where basically DCRA double checks what they've done to make sure they haven't made a mistake. And I've asked him that question, you know, is that true.

MR. GREEN: And I submit, Madam Chairman, the question was asked and answered.

CHAIRPERSON MILLER: Well, I don't have any answer. Let's just -- yes, let's just--

COMMISSIONER JEFFRIES: Answer it again, because I don't --

CHAIRPERSON MILLER: It'll take last time.

COMMISSIONER JEFFRIES: Because I had that question, too. And I think that you answered it, but just answer it again.

ZONING ADMINISTRATOR LeGRANT: Okay. I would -- I would characterize quality control as ensuring that all the identified steps that were shown on the back of the building permit application had in fact occurred.

MR. BROWN: But in this case Mr. Chin on permit four signed off, correct, as the QA/QC?

ZONING ADMINISTRATOR LeGRANT: I

do not know who did quality control for number four.

MR. BROWN: All right.

MR. GREEN: Madam Chairman, point of personal privilege. Can we get a little break, please?

COMMISSIONER JEFFRIES: If you get a little break, you might get three up here.

MR. GREEN: My witness needs a break and I know counsel needs a break.

CHAIRPERSON MILLER: Okay. We just have until 9:00. So -- as I understand from the court reporter. We can't have a case without a court -- okay. All right. Let's take a break then. How long? Ten minutes or what?

MR. GREEN: Two minutes, Madam Chairman.

CHAIRPERSON MILLER: Two minutes? Oh, well we can take at least -- it takes us at least five minutes. Okay.

MR. GREEN: All right. All right.

(Whereupon, at 8:30 p.m. a recess until 8:43 p.m.)

CHAIRPERSON MILLER: So now we are three.

So where are we now? Mr. Brown, did you finish your cross?

MR. BROWN: Yes, we did.

CHAIRPERSON MILLER: Okay. Does the ANC have cross? And intervenor?

COMMISSIONER FRUMIN: Yes.

CHAIRPERSON MILLER: Okay. Good.

Ms. Walker has a question.

ZONING ADMINISTRATOR LeGRANT: All right. I have one question for the applicant.

CHAIRPERSON MILLER: Who?

MR. BROWN: The Appellant?

MEMBER WALKER: The Appellant.

CHAIRPERSON MILLER: Okay. We're going to go forward and hear from the ANC now.

COMMISSIONER FRUMIN: Thank you.

MR. GREEN: Excuse me, Madam Chairman. I just want to -- you know,

housekeeping.

All matters not moved into admission, I hereby move.

CHAIRPERSON MILLER: Oh, good. And I don't know if I said this. We do have all night, we're not going for records. But the court reporter has said that we can go beyond 9:00. I'm not sure if that was said before. So we are aiming to finish if we can.

COMMISSIONER FRUMIN: Thank you.

When the Appellant purchased the house, the old house, she had three options. She could preserve the old house and build to 20 feet in width taking advantage of the five foot side yards. An alternative is she could have torn the house and built a house, a new house that would be 14 feet wide. If you look at the picture -- if you go eight feet in on each side, she's got 14 feet left there. And she can go back a long way, but it's a house that would be 14 feet wide.

And the inside in would be more

like 13 feet wide because the walls themselves take up space.

A third option would be to tear down the old house and build something that was wider than 14 feet, but apply for a variance.

If she had chosen the third option, she would have had to come before authorities and seek a variance and the ANC would have had an opportunity to comment, and the neighbors would have had an opportunity to comment. And many of the issues that have been raised about effect on the neighborhood would have been taken into account. She didn't choose option three. Instead she chose option one, which was to preserve the old house and build to 20 feet wide. But in the end she really did do option 3 because by the end the whole original house had been torn down. But the only thing she didn't do pursuant to option 3 is she never sought a variance, never had to get the approval of Zoning authorities

for the deviations from the 8 foot side yard requirement, never had to face the input from the neighbors on that subject.

MR. BROWN: Madam Chair, particularly in light of time, but is this at all relevant to the matter we have before the Board as well as I mean I think also the ANC, and I don't have my rules in front of me, but the ANC's role is really limited to the extent of their resolution or official action rather than a kind of winding --

CHAIRPERSON MILLER: That's true. Where is your report? The ANC's testimony is supposed to be tied to the report.

COMMISSIONER FRUMIN: And the ANC's -- this testimony relates to the claim in the ANC resolution that what has happened here was, in effect, a piecemealing and that her --

CHAIRPERSON MILLER: Perhaps, I mean, are you going to be highlighting or making your arguments from the report,

basically?

COMMISSIONER FRUMIN: Well, I'm going to be making arguments related to the arguments that are made in the report, also taking into account the things that have been talked about at this hearing today.

CHAIRPERSON MILLER: Because it's an unusual situation. But, I mean, my understanding is you as the ANC representative is authorized only t represent what the Commission voted on as what the ANC, you know, position is.

Now if you want to tie something you heard to how it fits in this position or something as argument, I think that would be allowable. But you can't really go too far off course the report because you are representing a group that voted on something in particular.

COMMISSIONER FRUMIN: In the resolution the ANC has opined that none of the defenses offered by the Appellant apply. And so now what I would like to do is go through

one, two, three of those defenses and update that based on what was said at the hearing today.

CHAIRPERSON MILLER: Okay. So you're going to argue how those points are reenforced by what has happened today at the hearing?

COMMISSIONER FRUMIN: That's right.

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: So there are three -- the first defense that's offered is latches. And the argument is that DCRA sat on its hands because they sat on their hands since December 2004. But all the way up until the fourth permit, which is into November or January of 2007, the claim was they were pursuing option one, which is preserving the old house and they would build to a 20 foot width.

And so until building permit number four when the result was the

disappearance of the entirety of the old house, there was nothing for DCRA to act against.

From the time of February 2007 from when the fourth permit was issued to March when the stop work order was issued is about a month. And a month does not make latches.

On casualty you have warned and you have said that there has been a lot of briefing on casualty. And I don't want to rehash all that briefing, but I do want to point to two arguments on casualty.

The regulation that's been cited, and if you would like to have it handy, I think it was Mr. LeGrant's letter that you --

CHAIRPERSON MILLER: We know it.

COMMISSIONER FRUMIN: Okay. And it says: "If casualty or act of God results in damage to an extent of 75 percent or less of the cost of reconstructing the entire structure, the structure may be restored or

1 reconstructed to its previous condition, or to
2 a more conforming condition provided that the
3 reconstruction or restoration shall be started
4 within 24 months of the date of destruction
5 and continue diligently to completion."
6 There are two things. The 75
7 percent rule. The Appellants have data in the
8 record where they say it would cost a
9 $135,000 to reconstruct the original house.
10 And then they use that in the numerator and
11 they divide it by an assessed value of
12 $180,000. If you look in the statement of
13 appeal you'll find that. And I asked Mr.
14 Premo about that $135,000.
15 Now that $135,000 was to construct
16 the entirety of the original house, was to
17 construct the entirety of the original house.
18 It's not a portion of the original house. It
19 was to construct the whole original house. So
20 why use an assessed value as the denominator?
21 Doesn't the regulations say the amount that it
22 would cost to address the issue divided by the

cost of reconstruction for the entire house? It's a $135,000 in the numerator and it's a $135,000 in the dominator. It's a 100 percent.

So based on the 75 percent rule this provision doesn't apply,

Appellant's point to a 2008 assessed value for the house of $180,000. And they divide their 135 by that 180. Even assuming you should use an assessed value, the same document and if you would like to look at it, it's the statement --

MR. BROWN: The regulations call for --

CHAIRPERSON MILLER: Would you get on a mike please.

MR. BROWN: -- use the assessed value. It specifically call in dispute to use the assessed value.

And quite frankly, again, the problem I highlighted. Nowhere in the resolution do I believe that they touch upon this issue, looking at their -- I mean, they

talk in terms of not thinking it's a casualty, but there's no discussion about this issue, which --

CHAIRPERSON MILLER: Yes, I think that's true unless it was something that has come up in the hearing that you're responding to.

COMMISSIONER FRUMIN: Well, this came up in the hearing in the sense that I asked Mr. Premo about this figure of $135,000. And I'll be done on this point in a moment and you can look at this and see whether or not there's anything to it.

Their application that this was a casualty occurred in 2007. As of 2007 the assessed value of the house was, I believe, $163.190. So at the time that this issue was in front of Mr. LeGrant, the assessed value was 163. If the numerator's a 135 and the denominator is 163,000, that's 82 percent. That's over 75 percent.

On the issue of the 24 months.

1 There has been abundant testimony that the
2 damage, the destruction pre dated the
3 Appellant's purchase of the house. It
4 predated April 24th. Both the termite damage
5 was complete before April 2004 and the water
6 damage Mr. Premo testified predated April
7 2004. If that's the case -- now Appellant has
8 said well it's based on discovery. But this
9 regulation says destruction. The regulation
10 says 24 months of the destruction.
11 So using the 24 month rule by
12 April 2006 the 24 months had expired and they
13 had not commenced reconstruction of the
14 existing house by April 2006.
15 In addition, they've said that
16 that damage was done long before April 2004.
17 So the 24 month rule was complete.
18 They want to say that the line is
19 discovery. But the regulation itself says
20 destruction.
21 Reliance. We have gone at length
22 about, and I tried to do it on cross and you

1 didn't think it was an appropriate time to do
2 it. March 2005 it was abundantly clear that
3 there was a problem with this project. No
4 money had been -- very little of the
5 construction financing had been spent. Did
6 they check to see whether or not this plan,
7 the option 1 plan to preserve the old house
8 and build to 20 feet, did they check to see
9 whether or not that continued to be feasible?
10 They did not.
11 April 2006 you get to a time when
12 they know the house has to be lifted. It's
13 still before they've poured footings and spent
14 much of the money. Did they look at it to see
15 whether or not this could be done?
16 Until now they've said no. Mr.
17 Premo today said they talked to structural
18 engineers and no one would touch it. No one
19 wanted to be involved in it.
20 At that point they knew or had to
21 know that their option 1 plan was very
22 dubious. That's the contention of the ANC.

We get to the application for the fourth permit about which there has been, obviously, enormous discussion. And that application for the fourth permit comes after they did all the work and put the addition under the roof. And then they go into DCRA and it's changed. It used to be that they went into DCRA on November 2nd. Now it's later. But they go in after they have done all of that work and they make a presentation to some people at DCRA about what it is that they want to do.

Today they have said emphatically that they were clear to the people at DCRA. No portion of the old house remained. And so it had to be clear to them, and that's -- and nevertheless they got approval. And then DCRA would have made a mistake in giving them approval and not concluding that there was a zoning issue because they were clear that the whole original house was gone.

Now, when you look at the

drawings, and people have gone through the various drawings, the drawings on their face the drawings do not show in anyway that the back portion of the original house was gone. In fact, when you look at the drawings and you see area demolished and you see that description of existing two story house, just looking at those drawings you --

CHAIRPERSON MILLER: I'm wondering if you're straying from -- are there three points in the ANC resolution?

COMMISSIONER FRUMIN: And part of those points are unclean hands, and part of that goes to what they were communicating and how they were behaving at each step along the way.

I don't have much more.

The documents, you'll look at them after the hearing. You'll look at them. I think that the only fair reading, and I don't think anybody on the other side has even said that on their face they're clear that the back

1 portion of the old house remained.
2 Now there are also statements in
3 the record, and these are things that I had
4 asked about before. And that is in Ms.
5 Wallace's statement, her statement in April
6 2008 at paragraph 23 she asserted a portion of
7 the original and existing single-family
8 dwelling was not demolished and remains in
9 place.
10 Now in April 2008 in her statement
11 Ms. Wallace wasn't clear on whether or not a
12 portion of the old house was still in place.
13 She was conveying to you in her affidavit that
14 in fact there was a portion in place.
15 If she was conveying that
16 impression here, why can't we think -- we
17 shouldn't we think that they were conveying
18 the same impression back in 2007 when they
19 were pursuing the permit?
20 Similarly in her --
21 MR. BROWN: Madam Chair, I mean
22 we've -- and I've let the Commissioner go on

because it's, quite frankly what he's saying is almost entirely irrelevant. I've given him some latitude. But now he's just speculating--

CHAIRPERSON MILLER: You know, it's a very -- it's a weird position that you're in. But, you know, on the one hand the ANC report is given great weight, so it's given a lot more weight than a lot of other people's testimony. We have to address the issues raised in the report. And on the other hand, though, you're representing the ANC. You have to really stick pretty much to the report or the issues identified in the report.

And I'm looking at the report and I think that you are straying pretty far.

MR. BROWN: I mean, I think the best way to proceed is the report's there, he's made -- I mean, he's been given enormous latitude. And we need to move on.

I mean, I'm not going to bother cross examining it. So, you know, I think he's done more than he's entitled to do and we

ought to move on. Because I mean in fairness to the Lemoines, they haven't put their case on yet.

COMMISSIONER FRUMIN: I think this question of what was represented at the fourth permit has become very, very important. What was represented, what would have been understood.

CHAIRPERSON MILLER: That's true. But, you know, we do have intervenors here who can address that as well. And I just don't know that you're authorized to speak on behalf of the ANC about that issue.

COMMISSIONER FRUMIN: Well, in point 3 of the resolved, it's the claims under latches -- the claim that the District should ge estopped from denying the permit under the Doctrine of Latches must fail because the developer acted in a manner so imprudent that she cannot claim.

CHAIRPERSON MILLER: Okay. So what I would say to you here if you can focus

and wrap this up and say, yes. And we heard today that she said this and that or she didn't do that under -- that shows why the ANC was correct in saying that, you know, she was imprudent. It doesn't go to like drawings. I don't know where you're going with that. But if there was something you want to argue tonight, and we are going to leave the record open I believe for findings of fact and conclusions of law and an argument there. You know, fine. But tonight if there's something that you're authorized to speak on behalf of the ANC, if there's something you want to bring to our attention that shows that she wasn't prudent or something, you can make that argument. But it is late. And, you know, you will get another chance to argue in writing based on all the evidence that's come out.

COMMISSIONER FRUMIN: Yes. I think it could take me five minutes to complete this. And I don't want to impose the Lemoines' time. But I think the question of

the developer's behavior and how that impacts the question of rights in this case has been raised by the ANC resolution. It has been -- the issues have moved forward in the course of this hearing. And I'm straying in anyway from where the ANC was coming from. But I'm incorporating things that have come out in this process and come out since the ANC --

CHAIRPERSON MILLER: Okay. So you're going now to the clean hands points, right?

COMMISSIONER FRUMIN: Yes.

MR. BROWN: Excuse me, Madam Chair.

CHAIRPERSON MILLER: You want to highlight that, what came out in the testimony that supports the ANC's argument that they didn't proceed with clean hands.

COMMISSIONER FRUMIN: Yes.

MR. BROWN: But, Madam Chair, I mean we don't -- their resolution said basically she shouldn't have clean hands

because she was so imprudent. I mean, that doesn't open the door to basically the claims of representation and obtaining the fourth permit less than candid. I mean, imprudent means she was a bad business woman, made bad decisions. But he's gone way far afield of that and beyond the scope of his --

CHAIRPERSON MILLER: I think that's true. Why don't we leave that for Mr. Lemoine? I mean, really, when I look at this, the ANC in paragraph two is also talking bad judgment. Number three is talking imprudent. That that's what the ANC has found.

MR. LEMOINE: If I may, I shouldn't take long and I'd be happy to cede some of my time, too. I think that's my clock there of 32 minutes.

CHAIRPERSON MILLER: It's the point -- it's not time.

MR. LEMOINE: I understand. Okay.

CHAIRPERSON MILLER: Because the ANC, it's not a question of time. It's a

question of authorization that an ANC is not a free agent to just come in. I think that's the point. And just argue whatever on behalf of the ANC.

COMMISSIONER FRUMIN: I mean the ANC has said that there could be no question that her own missteps, whether intentional or merely reckless, make it impossible for her to demonstrate that she had clean hands. That's part of the ANC resolution. That's part of the observation of the ANC. And I am attempting to support that in the context now of the application for --

CHAIRPERSON MILLER: Okay. What missteps do you want to highlight now?

COMMISSIONER FRUMIN: Well, the misstep that I want to highlight is that on the paper it is the implication in the documents was that a portion of the old house remained in place, which would be a completely different animal than a clear acknowledgement that with the demolition of the front of the

house, the whole old house was gone.

In the application for the fourth permit on its face it does not suggest that the whole -- that the back of the house was gone.

Now, they say that there were conversations and there couldn't have been confusion. And I'm pointing now to a year later in 2008 in an affidavit they claim again that a portion of the old house was there. That's an important statement. It's not just a little mistake. That's an important statement that a portion of the old house. The whole pursuit of the option 1 turned on that the old house would survive. And that statement later implies that it's at least possible that they created that same impression when they were talking to DCRA.

Similarly, in their motion for summary judgment there is a sentence, and counsel has disavowed it, but on page 2 they say "significantly a portion of the existing

1 original single-family dwelling was not
2 demolished" again in 2008.
3 There is confusion on their side.
4 There is confusion in their team on whether or
5 not a portion of the old house remained. And
6 given the documents, given that statement I
7 think it creates a strong implication that
8 they could have conveyed that to DCRA.
9 Lastly on this point there's been
10 discussion about the picture. And the picture
11 as an example was attached to Appellant's
12 supplementary pre-hearing statement, and it's
13 Exhibit D. And there is a reference there for
14 October 23 to November 1 on page 2 of
15 Appellant's supplemental pre-hearing
16 statement. I think it was filed July 2nd for
17 this hearing.
18 And it says "Photograph showing
19 rear addition framed, closed and under roof
20 and original 1933 structure." And if you look
21 at the picture there's the rear addition
22 that's framed and under roof and then there's

the back portion of the house which is not under roof. That portion is framed and it's the first story, but it' not under roof. And then there's the front portion.

So I would argue that even here in the way that they're describing it, they're describing the back portion of what had been the old house as the original 1033 structure.

CHAIRPERSON MILLER: Could you repeat what -- oh, it's the chronology?

COMMISSIONER FRUMIN: It's the chronology.

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: And it's October -- it's the entry on October 23rd to November 1, 2006. Yes, this is the chronology, Appellant's supplemental pre-hearing statement. And when you --

MR. BROWN: Madam Chair, I'm --

CHAIRPERSON MILLER: It's be quicker if you just finished this -- what?

MR. BROWN: But it doesn't finish.

It just keeps going on and on and on. And, you know, 20 minutes -- ten minutes ago we identified that he exceeded the scope of his authority as in the --

CHAIRPERSON MILLER: Well, confusion goes to improvements. So I don't think it was that far off track.Madam Chair

MR. BROWN: I don't think confusion goes to imprudence. I mean, that's -- it's her being Ms. Wallace imprudence. I don't think that can be read to talk about what he's doing.

I mean, he's going on a fishing exhibition and trying to fine error in every word in a record that's six inches thick, whereas all that has been -- these issues today we've covered those and put them to rest. So he's talking about news that's old. He's talking in contrast to testimony that's been provided.

CHAIRPERSON MILLER: Wrapping up his argument, right? I mean, okay, those were

example of misstatements or whatever. But they have been corrected on the record, but you were using them to show that they might represent something. Okay.

COMMISSIONER FRUMIN: This has been a central issue. It was did any portion of the old house remain. It was a central issue at the time of the fourth building permit on multiple occasions in this record in 2008. And they have implied that a portion of the old house remained. And they claimed they were crystal clear in 2007 when they applied for the fourth building permit, but documents on their face are not clear. And they've been pretty unclear at other steps along the way.

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: For I think the implication is that they were unclear.

My final point on reliance.

CHAIRPERSON MILLER: Your final point what?

COMMISSIONER FRUMIN: My final

point on reliance.

CHAIRPERSON MILLER: Reliance?

COMMISSIONER FRUMIN: Reliance. Yes. Estoppel.

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: Estoppel reliance is that in their -- just a moment.

In their argument on casualty they have made the claim that the damage was complete and, in effect, the building was already collapsed. They say it hasn't collapsed, but they shouldn't be encouraged to do nothing and allow collapse to occur which could not be challenged as a casualty. But they make a series of statement in their argument on casualty. And those statements include --

CHAIRPERSON MILLER: Can I -- we had oral argument on casualty. We really, really heard that issue.

COMMISSIONER FRUMIN: Actually, I don't want to use this as an argument on

casualty.

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: I want to use this to show that they're saying two different -- two very different things in different settings when they think that they're needed in order to win their argument.

And so on casualty here they're saying it's an effective collapse. And they say on page 6 of their filing Stephanie Wallace's Reply Statement on Casualty and Notice of Directly Related Appeal "It is clearly established that the structural integrity of the original house has failed, been injured, lost or destroyed and would have collapsed if Ms. Wallace and Mr. Premo had not acted responsibly and required by law to obtain permission to demolish the danger structure." It would have collapsed if they hadn't brought it down themselves.

They then say on the next page "The structural failure had incurred and was

beyond repair. There was nothing Ms. Wallace or anyone else, including Mr. Lemoine, could do under the circumstances." Their argument because they believe that it was a necessary argument for casualty was it was done. It was effectively collapsed. There was no choice but to take it down. That's the argument they're making on casualty.

On reliance Mr. Premo says: "If I had not gotten the approval from DCRA to tear down that house, the front portion of the house, we wouldn't have done it." They cannot both be true.

If their argument on casualty is true, that there was nothing that could be done it had to be torn down, then it cannot be that they relied on DCRA because they only did what they say they had to do. So they can't then turn around and say but for DCRA giving me approval, I wouldn't have done it. They had to do it. So they can't have reliance in that circumstance.

I am now done.

CHAIRPERSON MILLER: Is there any cross? Mr. Green?

MR. GREEN: No, ma'am.

CHAIRPERSON MILLER: Okay. Then Mr. Lemoine.

MR. LEMOINE: Well --

CHAIRPERSON MILLER: You look thrilled.

MR. LEMOINE: In clean up here.

All right. I live and work at 5011 Belt Road, which is directly adjacent to 5013. They're on the north side of me.

My wife Martha is here with me.

We've lived --

CHAIRPERSON MILLER: But you're the next door neighbor on the other side, right?

MR. LEMOINE: Yes. We're the next door neighbor to the south.

Martha and I are here. We've lived there since 1992.

In February or March of 2004 when my neighbor Robin at 5013 told me she was planning to sell a house, I had a construction supervisor from a local residential construction company come in and inspect the property. He went around the house and the low perimeter, and poked around it with a screwdriver and examining the wood sills and the thresholds. And he told me that the house was sitting on the ground in a wet location and it was in a really poor state of condition.

He told me that rehabilitating the original house would be very problematic, probably not worthwhile and very expensive.

I can point to some exhibits you've already seen of the house. Our number 9. This is his letter, Mr. John Crayer's letter that I've submitted to the Board.

In February '05 a small crew working for the contractor arrived on the site and immediately proceeded to demolish the rear

half of the existing house. The complete interior of the front portion was gutted at this time, exposing termite damage and rot to the structural members. The exposed foundation walls were also shown to be severely deteriorated.

In early March '05 a stop work order was posted on the property. It stated work being done beyond the scope of permit. Our number 10 --

CHAIRPERSON MILLER: What you were just reading from, did you say it's in the record?

MR. LEMOINE: Could you identify it again so we can go back and review it later, too?

MR. LEMOINE: The stop work order?

CHAIRPERSON MILLER: Oh, is that what it was?

MR. LEMOINE: Is the first stop work order of March '05.

CHAIRPERSON MILLER: Oh, the first

stop work order. Okay. Thank you.

MR. LEMOINE: And on that in April '05 I took a photograph showing after they removed the back part of the house. And that's 10 in our exhibit book.

At that time in March '05 after they took the rear part of the house off I met with the contractor Allen Premo on the site. I noticed he had set out stakes showing a very large footprint of the proposed addition. When I became aware of the great size of the structure they were planning to build sitting only five feet from the joint property line and far past the back of my house, I was very concerned about the size and proximity of construction.

I approached Mr. Premo and Ms. Wallace on several occasions when they were on the property and asked if they would show me building plans. But they never would.

Around this time I spoke with Mr. Premo and urged him to be extremely careful

about excavating for a basement on this lot. I stressed to him the history of severe ground water problems throughout the entire block. I expressed concern about digging such a large foundation so close to my property. I told him that every house on the block had had issues with extreme ground water. I told him that two houses a few doors down had been built a few years early and the contractors have had enormous difficulties with ground water.

In April of '05 I went to DCRA office to try to find out if the developer -- what they were proposing was by rights and if the narrow side yards they had staked out were okay. I met with a Ms. Epps and Ms. Joseph at DCRA.

Ms. Joseph explained to me that the side yard for new construction in R-1-B is eight feet but because of the small jet out on the original house, the developer was being able to extend the narrow five foot side yard of the proposed addition.

I pointed out that the back of the structure had been demolished and there was no way, I thought, that anyone could build on the crumbling original foundation and that the existing structure was in severely decrepit state, what was left of the house.

I suggested that they may be planning to completely demolish the original house. She responded by telling me that DCRA can't go by my assuming what they're going to do. That they have to rely on plans and permits submitted to them and cannot assume the developer will do otherwise. She said until the developer actually took away the original house, there is nothing that DCRA could do to stop them.

I then requested a meeting with Mr. Toreabello, the Zoning Administrator. Ms. Epps told me it would be difficult to schedule a meeting with him, that I should instead write to him to express my concerns. On April 12th '05 I sent a letter via certified mail to

Toreabello, the Zoning Administrator, stating my concerns. I thought the developer was intending to remove the entire existing structure, original structure, despite what their plans said. And that they possibly should not be allowed the narrow side yard.

I have submitted to you in my brief a letter to Toreabello.

And in November --

CHAIRPERSON MILLER: Just a minute. Your brief is what?

MR. LEMOINE: It's the yellow --

CHAIRPERSON MILLER: Okay. The yellow folder in our --

MR. LEMOINE: Yes. Okay. . This is what I submitted, my statement. So it's Exhibit L8 in this filing.

So in November or December, I guess November of '05, excavation began for new construction. A deep sheer vertical cut with no benches was made on the adjoining property lines on both sides of the property.

I've learned later that building codes specifically requires notification to the adjacent properties and protection of adjacent properties when such excavation is made. No notification or protection was allowed for by the contractor.

The excavation caved in and caused severe damage to both sides at that time. The retaining wall on my side sagged and ground from under my driveway washed away and caused the driveway to begin to crack.

I sent a registered letter to the developer requesting acknowledgement of the cave in on mu property, but the letter went unanswered. No communication ever resulted from the developer.

Some shoring was installed, but it was later undercut by another excavation and the damaged worsened severely subsequently.

All that remained of the rear portion of the original house at that time, including the crumbing foundation of the back

1 part was completely removed. The building
2 permit posted at this time, the second permit
3 which is in a -- I think that's number three
4 of the Appellant's, calls for underpinning,
5 which I believe is a building up under an
6 existing foundation to strengthen it. But no
7 underpinning was done. Instead the entire
8 foundation was completely removed. So the
9 second permit called for underpinning the
10 foundation, it was not.
11 In Exhibit 11 in our yellow --
12 what we submitted today, the yellow folder,
13 shows a picture after -- a photo that I took
14 showing the entire foundation of the back part
15 removed.
16 In May '06 I went back to DCRA and
17 I met with Ms. Epps and Tamika Jones there.
18 Ms. Epps instructed me to file a complaint
19 against the property because I felt sure at
20 this time that the developer, this is in May
21 '06, planned to take down what was left of the
22 original house, especially since they were

taking no steps to maintain the front part that was left.

Ms. Epps recommended that I write Mr. Cruz, the Zoning Administrator at that time and state my concerns to him. And that I did. I sent a letter to Bill Cruz, dated June 8th. And it's in my folder with my statement and it's number L10, the letter to Mr. Cruz.

After May '06 a new work permit was posted. That would be the third permit, which is Exhibit 4 in the Appellant's file calling for the proposed addition and what was left of the original house to be raised by four feet.

The plans calls for four foot extension walls to be built upon the original existing foundation. The original foundation was very shallow, not even two feet below grade. This can be seen in my photo of May '06, and I actually have a blow up of that. Can I show it? It's the same photograph.

CHAIRPERSON MILLER: Sure.

MR. LEMOINE: This is what was left of the old footings.

CHAIRPERSON MILLER: You need to talk into the mike, though.

MR. LEMOINE: This is what was left of the front of the original structure showing the footings after the back foundation had been removed.

CHAIRPERSON MILLER: Okay. So you're showing a blow up of Exhibit L9?

MR. LEMOINE: Yes.

CHAIRPERSON MILLER: Taken in May of 2006?

MR. LEMOINE: And it's number 11.

CHAIRPERSON MILLER: Okay.

MR. LEMOINE: In our --

CHAIRPERSON MILLER: I'm sorry. What did you say just that it shows?

MR. LEMOINE: It shows that the existing footings that the developer was planning to put four foot extension walls on

top of. This is the depth that they were. I don't know what the required depth of footings are, but it seems -- would you like to -- it seems unlikely that they would be able to use those.

As it turned out, no work was ever done to raise the foundation in the period while it was accessible on all sides. Instead, the new foundation of the rear addition was built right up to what was left of the original house and the new addition was framed.

The original house was not raised, as the third permit stated. No framing was done on what was left of the original house. No measures were taken to preserve it. No tarp or tarp materials or other materials were ever applied to preserve it. And the original house was never attached in any way to the new addition. It remained separate.

In March '07 another permit was posted on the property, the fourth permit,

calling for a portion of the existing --

CHAIRPERSON MILLER: Do you have a picture of that?

MR. LEMOINE: The fourth permit?

CHAIRPERSON MILLER: No. You said the original house was never attached to the addition? I mean, is that the picture that you're talking about? I mean, is that you're saying that it's not really attached?

MR. LEMOINE: I don't have a detailed photograph showing, but I --

CHAIRPERSON MILLER: Well, there's that one picture that's been up in the hearing room.

MR. LEMOINE: Yes.

CHAIRPERSON MILLER: Right? That's the old house --

MR. LEMOINE: Yes.

CHAIRPERSON MILLER: -- and the addition?

MR. LEMOINE: It was not attached.

CHAIRPERSON MILLER: It looks like

it could be attached. But you're saying it really isn't?

MR. LEMOINE: My statement is --

CHAIRPERSON MILLER: It wasn't?

MR. LEMOINE: -- and I was there looking at it, and I saw -- I was looking at it quite carefully. I work there. And I'm looking over progress everyday. And I know that it was never attached.

They built that right up to it, up to the old, the front of the original house and it was never attached.

In March -- on March 21, '07 another stop work order was posted on the site. This is the last stop work order. One it was written "Exceeding scope of permit, took down entire house," et cetera. Nothing remains of original structure.

On May 8th of '07 I had a telephone conversation with Mr. LeGrant and also corresponded via email. He informed me that the developer having removed the entirety

of the original structure had been directed to submit plans to DCRA that would reflect the required eight foot side yards for new construction in R-1-B or to apply for zoning variance. He asked me to write a letter describing the process of construction from my perspective. I've also submitted that in my statement. It's Exhibit 13 that in my brief.

And I'd just like to make a concluding statement. Probably take another ten minutes, five or ten minutes.

I'd like to stress the neighborhood's and the general community's overall opposition to every aspect of the way the development has proceeded at this property. To my knowledge not a single person in the community has taken a stand in support of Mr. Wallace or her contractor, Mr. Premo.

MR. BROWN: Is that relevant, Madam Chair?

CHAIRPERSON MILLER: You know, this is case. I think --

MR. BROWN: Well, but he's making the argument that because his -- his arguments are supported by the fact that nobody supports my client. And we're in an appeal case. I mean, if we were -- again, it goes back to--

CHAIRPERSON MILLER: It goes to the equitable part, I believe, of clean hands, whether you know -- is that -- I think so.

MR. LEMOINE: I'm hoping, yes.

MR. BROWN: But if the neighbors don't like the project, don't like my client, that doesn't go to clean hands or the validity of her appeal. I mean --

CHAIRPERSON MILLER: It goes to whether they perceive whether she acted in good faith or whatever. I think --

MR. LEMOINE: I'll be over fairly shortly. I'll be finished.

MR. BROWN: Yes. Go ahead.

MR. LEMOINE: Yes. It's been a while waiting to make this statement. I mean--

CHAIRPERSON MILLER: Go ahead.

MR. LEMOINE: -- there's been a lot of talking.

As I said, to my knowledge not a single person in the community has take a stand in support of Ms. Wallace or Mr. Premo. Every neighbor within view of this property has written a statement in support of the ZA's decision. I've submitted to the Board ten statements from property owners who surround this site as part of my brief. That's in my statement, Exhibit 3.

Title 11 DCMR of zoning regulations states that the Board shall give great weight to the written report of the ANC. In its monthly meetings the ANC has thoroughly addressed the issue of this appeal. These meetings were attended by the aforementioned property owners along with the Appellant and her attorney. In the meeting of April 10, '08, ANC 3E passed a resolution in strong opposition to this appeal.

I believe, and I've presented

evidence to support, that the previously existing original structure was intentionally destroyed.

At the time of purchase the developer was put on notice of the decrepit state of the property. The developer and the her contractor have continually acted in a way that indicated they had no intention of saving the original house. It was obvious in March '05 that saving the original house was hopeless. It was clear to me that the developer intended to take down the total existing structure in a piecemeal fashion while simultaneous building a completely new structure that would be much larger than is normally allowed.

In permit applications and in this appeal the developer deliberately confused the existing original house with the addition and has made claims that part of the original house still exists when in fact nothing remains of it.

Developer intended to gain a zoning advantage of the original house's nonconforming narrow side yards in order to build a completely new house of 3500 square feet in place of the existing house, which was approximately a 1000 square feet.

The entire neighborhood would be pleased to see a new house built on this site. This developer could have at the outset approached the neighbors and the ANC and worked towards a design compromise that may have allowed a reasonably sized house to be built, one that's not so completely out of the proportion to the small lot and that would not effect the adjacent properties so negatively. Had she acted reasonably and responsibility as she claims in this appeal, a new house could have been completed and sold years ago. There was a reasonable path to take towards improving this property.

Since beginning work on the property the Appellant and her contractor have

continually treated neighbors with contempt. Through their own diligence and shoddy construction practices, they've made countless errors in planning and execution which have led to interminable delays. They've been cited and fined by the city for creating continually dangerous conditions at the site, including standing water and open construction over long period.

In the process of the work they have caused major damage to the adjacent properties. They've ignored conditions of poor soil and chronic ground water problems which are familiar to all property owners on the block.

By excavating without soil tests or planning for shoring they caused the collapse of neighboring properties into the excavation. The Appellant and her contractor then ignored and stonewalled neighbors' attempts to have them take responsibility for or provide conditions for the repair of these

damages.

If the Board reverses the Zoning Administrator's decision and this nonconforming structure is built as planned, its close proximity, height and depth will significantly diminish the privacy, light and air of the adjacent property at 5011 Belt Road, my property. To quote from the ANC resolution: "The structure presently standing at 5013 Belt Road is grossly out of scale and proportion to its small lot. The erroneously grandfathered five foot side yards places this enormous house stunningly and perilously close to its neighbor to the south --

MR. BROWN: Madam Chair --

MR. LEMOINE: -- impinging on the owner's right to enjoy their property?

MR. BROWN: Finished?

MR. LEMOINE: Yes.

CHAIRPERSON MILLER: Okay. Thank you.

Do you have cross?

MR. LEMOINE: I'm actually -- I'm actually not.

CHAIRPERSON MILLER: Oh, you're not finished.

MR. LEMOINE: I just four more paragraphs.

CHAIRPERSON MILLER: Okay.

MR. BROWN: But I keep having to renew my objections to, you know, the scale and massing and all these other issues. Again, we're in an appeal case and all that is entirely irrelevant. It's pretty clear that the neighbors don't like this house, but it's irrelevant the scale, the character. All that does is confuse the issues. And I don't think it's -- it's not fair to my client.

CHAIRPERSON MILLER: Okay. I don't totally agree with you. In normal cases I would, but in this case what's at issue was whether she built something she wasn't really allow to build that's out of scale. And that is what he's addressing how it is out of

scale.

MR. BROWN: But -- but --

CHAIRPERSON MILLER: So I think he's got a few more paragraphs. And, you know--

MR. LEMOINE: Yes, I'm almost done.

CHAIRPERSON MILLER: -- I think we can let him finish his testimony.

MR. LEMOINE: All right. I'll start where he interrupted me.

The erroneously grandfathered five foot side yard places this enormous house stunningly and perilously close to its neighbor to the south impinging on the owner's right to enjoy their property.

The city's zoning laws exist in part to guide developers in the planning and construction of structures that will not infringe upon the surrounding properties. These laws much also help prevent the sort of damage to adjacent lots that has been caused

at this site. Until the Zoning Administrator's decision to deny a permit, the developers sought to bypass the zoning regulations in order to maximize the size of the new house, much to the detriment of the adjacent properties.

Maximizing profit should not trump responsibility to the local community. If the Board does uphold the decision of the Zoning Administrator this property will still remain a valuable asset. I can only hope this developer will in the future proceed in a way which adheres to the requirements of zoning and does not further harm the neighborhood.

Thank you.

CHAIRPERSON MILLER: Thank you.

Cross?

MR. BROWN: Not necessary.

CHAIRPERSON MILLER: Mr. Green?

MR. GREEN: No, ma'am.

CHAIRPERSON MILLER: Board questions?

CHAIRPERSON MILLER: Well I have a question for Ms. Wallace. You know, there is a big issue here about estoppel. That's what a lot of this evidence today has gone to, testimony.

I guess my question is with respect to permits four and five. If permit four permitted demolition and then this rebuilding per plans and code, whatever, and then permit five disallowed you to put in certain footings that were not in compliance with the side yard regulations. And my question to you is what harm did you suffer as a result of permit five not allowing you -- if any, build in accordance with your plans which showed, I believe, a building with noncompliant side yards? Do you understand my question?

MS. WALLACE: No. I'm sorry.

CHAIRPERSON MILLER: Did you suffer any harm as a result of building permit number five.

MS. WALLACE: The administrative hold on building permit number five did I suffer? Was that your question? I don't --

MR. BROWN: Did you ask, Madam Chair, whether she relied on four and then the nonissuance of five caused her harm?

CHAIRPERSON MILLER: The denial of permit number five did you suffer any harm by that denial of permit number five?

MS. WALLACE: Yes. Yes.

CHAIRPERSON MILLER: Could you put that on the record? What was that?

MS. WALLACE: It stopped the job for -- I mean, it basically stopped me from continuing with the construction and the job has been sitting hang debt on it since March or April, whenever he put the administrative hold on it, a year -- year and a half.

CHAIRPERSON MILLER: Because is it the hold that's the delay or is part of the appeal process?

MS. WALLACE: Well, I think it's

the hold. It's the appeal process. Am I answering your question? Am I understanding your question.

CHAIRPERSON MILLER: Well, no, I really was asking about permit number five. But, Mr. LeGrant, I mean she keeps talking about the hold. Was this on hold for a long time or --

ZONING ADMINISTRATOR LeGRANT: Well, my predecessor Mr. Cruz, I do not know when he placed the hold, but I believe in conjunction with application number five when that came to our attention we -- we denied that permit. He first did not act on that permit and then when I succeeded him, I ultimately denied the application for the permit.

The hold, the word "hold" is a bit of a misnomer. It's a flag that we place on applications, including this one, in which it typically state that they are to be referred to the Zoning Administrator for scrutiny.

CHAIRPERSON MILLER: Okay. And Ms. Wallace, you're saying the harm is that you weren't able to build what you thought you were going to be able to build per permit number four?

MS. WALLACE: Right.

CHAIRPERSON MILLER: Any other questions?

MS. WALLACE: I have -- I could read something that was written regarding --

MR. GREEN: Madam Chairman, I just again, since we don't have complete video access here, the record ought to reflect that Mr. Brown handed something to the witness.

MS. WALLACE: It's explaining the administrative hold and that we were -- if you want, I can just read this.

CHAIRPERSON MILLER: No.

MS. WALLACE: The memo. No?

CHAIRPERSON MILLER: No, don't. That wasn't really my question. So I think you answered my question.

MS. WALLACE: Okay.

CHAIRPERSON MILLER: Any other questions? Okay.

Yes, Ms. Walker does.

MEMBER WALKER: Okay. I have a question. I guess for Mr. Premo.

Why didn't you include a request to replace the footers in your application of permit number four?

MR. PREMO: The permit calls for the replacement of it, but the specification for that replacement is not in four. Permit four allows us to replace it, but it doesn't have a specification for it. The specification or the drawings that show how wide the footer is, how deep it is, you know how tall it's going to be. Four only allows the capability of doing it. But the actual dimension for it wasn't -- weren't in those drawings. Wasn't in that permit.

MEMBER WALKER: Okay. In the demolition plan that's behind you on the board

there's a reference to existing footings, isn't that correct? Right. Right there.

MR. PREMO: Yes.

MEMBER WALKER: So why isn't it the case that when you applied for permit four that you didn't also seek to replace the footings?

MR. PREMO: Well, it says in here "once the existing wood structure has been removed, examine and replace if necessary." This is the footer.

MEMBER WALKER: Okay. You submitted application number five for new footings, correct?

MR. PREMO: Just the specification for it.

MEMBER WALKER: Okay. And you did not include the specifications for number four for the footers, correct?

MR. PREMO: Number four doesn't have specifications for footers?

MEMBER WALKER: Why not?

MR. PREMO: We didn't know what they would be.

MEMBER WALKER: So you did not anticipate that there may be some problem with the footers, problem that the footers might be compromised in some way?

MR. PREMO: Not to the extent that we were going to have drawings for them.

MEMBER WALKER: So then --

MR. PREMO: At that point.

MEMBER WALKER: -- why is that referenced in your demolition plan to examine the footers and replace them if necessary? Doesn't that contemplate that there could be a problem?

MR. PREMO: It does contemplate it, but not to the extent that specific drawings were done.

CHAIRPERSON MILLER: I guess as a follow up, would you not know that it would be a problem until you had done the preceding demo sequence?

MR. PREMO: At the beginning of demo an engineer did come out and look at them. And it was determined at that time after we had already received permit that they needed to be replaced. Does that help?

CHAIRPERSON MILLER: Well, we're just kind of wondering like why wouldn't you get everything in order and then go get the permits so that you didn't have to come back another time?

MR. PREMO: Didn't know that they would have to be replaced until we started to demo. They're covered up.

CHAIRPERSON MILLER: Yes, I guess that's your choice anyway.

Anything? Okay.

Mr. Brown, I guess it's rebuttal and closing.

MR. BROWN: Yes.

CHAIRPERSON MILLER: Okay.

MR. BROWN: Ms. Wallace, I'll start with you very quickly.

Your intention was to do --

CHAIRPERSON MILLER: You're telling her. Don't put words in her mouth.

MR. BROWN: Please describe your intentions when you undertook this project?

MS. WALLACE: To keep the original house and put an addition on, including a new master suite, kitchen, family room and attic/office bedroom.

MR. BROWN: Okay. And your intention was never to --

CHAIRPERSON MILLER: Mr. Brown, don't put words in her mouth, please?

MR. BROWN: Did your intentions change?

MS. WALLACE: My intentions never really changed. The circumstances changed on the site. The circumstances changed. My intentions to the bitter end was to save the original structure. I would have never bought the property if it was going to have to be tear down. I don't like to do that.

MR. BROWN: And even at this stage your intention is --

CHAIRPERSON MILLER: Oh, don't tell her what her intention is.

MR. BROWN: Do you desire to complete the fourth building permit?

MS. WALLACE: Yes.

MR. BROWN: And what would be the result of that?

MS. WALLACE: It would be rebuilding the front part of the 1933 structure exactly as it was, except with good wood.

MR. BROWN: And what would be the result of completing the fourth permit in comparison to what you originally intended to do?

MS. WALLACE: It's the same. Same except it would be new wood instead of old wood. The house would be the same size, same layout, same configuration; everything.

MR. BROWN: No bigger?

MS. WALLACE: No bigger?

MR. BROWN: No taller?

MS. WALLACE: No taller.

MR. BROWN: No wider?

CHAIRPERSON MILLER: Same footprint?

MS. WALLACE: No wider.

Same footprint. Exactly that one. Same, even the interior. Same room layout as the 1933 structure.

MR. BROWN: Did you rely on the fourth building permit?

MS. WALLACE: Absolutely, yes.

MR. BROWN: Did you rely on it to undertake the demolition?

MS. WALLACE: Yes.

MR. BROWN: Did you rely on it to be able to rebuild the structure?

MS. WALLACE: Yes. Yes.

MR. BROWN: Did you have any notice that you would not be able to rebuild the structure?

MS. WALLACE: No notice.

MR. BROWN: Would you have demolished the front portion as authorized by the fourth permit if you knew you couldn't rebuild?

MS. WALLACE: I would not.

MR. BROWN: Would you have sought alternatives to demolition?

MS. WALLACE: Yes. I don't know what they are, but we would certainly gone exploring somehow. It would have been better than being here.

MR. BROWN: So the demolition and the authorization to rebuild were linked?

MS. WALLACE: Yes. Absolutely.

MR. BROWN: You wouldn't have done without the other?

MS. WALLACE: Correct.

MR. BROWN: And following up, you changed your position by virtue of the approval on the fourth permit and completed demolition?

CHAIRPERSON MILLER: I'm sorry. Are you asking her if she changed her position as a result of what --

MR. BROWN: On the fourth permit.

CHAIRPERSON MILLER: What position?

MR. BROWN: Did she relying -- I mean, it's a reliance question. Did you alter your position as a result of the --

CHAIRPERSON MILLER: I just don't understand what you're referring to when you say "position." What position are you asking her about?

MR. BROWN: Well position as it relates to in this case demolishing the front of the house. I mean, based on that authorization did she take a step that she couldn't reverse?

MS. WALLACE: Of course. I can't put -- I can't put it back. Trust me.

MR. BROWN: And they won't let you put it back now, is that correct?

MS. WALLACE: That's correct.

MR. BROWN: And you're prepared to--

CHAIRPERSON MILLER: Don't tell her what she's prepared to do.

MR. BROWN: Well, I'm asking. Are you prepared --

CHAIRPERSON MILLER: Okay.

MR. BROWN: Are you prepared to complete the fourth permit?

MS. WALLACE: Yes.

CHAIRPERSON MILLER: I have a question. I think it was raised by the ANC. I think they said that you said somewhere that you had to demolish the old house.

MS. WALLACE: Building permit --

CHAIRPERSON MILLER: Is that not correct?

MS. WALLACE: Building permit four.

CHAIRPERSON MILLER: No, not because of a building permit. That because of

the condition of the house that you had to demolish it.

MS. WALLACE: According to the engineers the condition of the house, that's the whole premise of building four was that it was not structurally sound and we had to demolish it. And that's how this all process started. Does that answer your question?

CHAIRPERSON MILLER: Well, it does but that was their point, that you didn't do it because of building permit number four --

MS. WALLACE: Yes, we did it by --

CHAIRPERSON MILLER: But you wouldn't have done it if you weren't authorized -- you said you had to do it. It wasn't like you did it because -- you were authorized to do it by building permit number four, but you said you had to do it.

MS. WALLACE: Our belief --

CHAIRPERSON MILLER: You couldn't just leave it?

MS. WALLACE: Our belief was that

we could not keep it. Mr. Brown's question of would I have kept it had I know what was going on, yes I don't know what would have happened to the structure but I wouldn't have at this second in hindsight would not have taken it down. Maybe it would fallen down. Maybe we -- we would have made it shed. I don't know, I'm just -- but --

CHAIRPERSON MILLER: I just wanted a clarification.

MS. WALLACE: Yes. Yes.

CHAIRPERSON MILLER: Just because that was a point that they were hammering. And I just wanted to get your further input on that. Okay.

MEMBER WALKER: I have one question for Mr. LeGrant. If the footers of the original house had been sound, could the Appellant have rebuilt the original house as per plans?

ZONING ADMINISTRATOR LeGRANT: If I understand your question, you're saying if

the original footers were sound and would not have triggered the need for building permit application number five?

Well, as Zoning Administrator if it had come to my attention that the structure was gone and removed, all the above ground portion of the structure was removed, then I would not be able to approve that structure.

MEMBER WALKER: So the existence of the footers, in and of themselves, are not enough to -- don't constitute a portion of the house, a portion of the structure under 405?

ZONING ADMINISTRATOR LeGRANT: The -- in and of themselves they do not constitute a structure.

MEMBER WALKER: Thank you.

CHAIRPERSON MILLER: I have a question for Mr. LeGrant, too, thinking about it. Mr. Lemoine raised a point that he says that the addition was never attached to the old original house in that picture, that they're not attached. Would that have effected

your analysis in any way? Or what did you assume? Is that even relevant to your decision that's on appeal?

ZONING ADMINISTRATOR LeGRANT: That picture to me shows the front half of the original old house and a reconstructed portion of the back half of the original house and then the new addition to the rear. So in short, the relevance of tying that -- the addition's foundation to the footer or foundation of the original house, the old house that existed, it's not relevant.

CHAIRPERSON MILLER: Thank you.

Okay. Mr. Brown?

MR. BROWN: Do you have anything else you'd like to add?

MEMBER WALKER: I mean, I don't want to -- I don't want to beat a dead horse. I'm sorry. But, I mean, really the building-- I don't understand the intake and that somebody didn't check the right thing off, but they gave me a building permit to demolish the

building and to rebuild it exactly the way it was. And that's what I relied on. And that's my whole issue is I got permission to do it. And we did it. And we can't turn back time to change it. So it's there and we have a legal permit to do it.

And I think that's really all I want to say.

CHAIRPERSON MILLER: Okay. It's been a long day.

MS. WALLACE: Yes.

CHAIRPERSON MILLER: Mr. Brown, are you making any closing or is that it?

MR. BROWN: I will ask you, do you have anything more for Mr. Premo?

CHAIRPERSON MILLER: I don't.

MR. BROWN: Mr. Ford, who has been--

CHAIRPERSON MILLER: No, I don't.

MR. BROWN: Okay. He's not going to stay for closing arguments.

Madam Chair, and I think Ms.

1 Wallace really summed it up personally, but
2 correctly. You know, there's a lot of
3 discussion about casualty and all these other
4 things which the Board can obviously take into
5 consideration. But it really comes down to not
6 just the fourth permit, but the first, the
7 second, the third, the fourth permit and how
8 they come together. You recall that in Mr.
9 Ford's testimony was that the practice, the
10 standard practice in permitting and which
11 occurred in this case is that when you revise
12 an existing permit, you go back to the
13 original permit. So if you look, and you draw
14 your attention to actually the permits that
15 were issued, the second permit is a revision
16 of the original permit. The third permit is a
17 revision of the original permit. The fourth
18 permit utilizes the original permit and made
19 very specific notations about existing and
20 what's to be demolished.
21 And again, it's not just the
22 fourth permit, it's the fourth permit that Mr.

1 Premo's testified in the context of the third
2 permit, the second permit, the first permit.
3 It was all laid out in front of DCRA and as a
4 result of that process they were involved not
5 just in reviewing the permit, but in the
6 development of the permit application that was
7 submitted, and then submitted into the system.
8 Quite frankly, Mr. Premo's not an expert but
9 certainly I can't imagine anybody operating in
10 more good faith than he processed with this
11 permit. And submitted it int he package that
12 was developed with DCRA. Submitted it. And
13 now Mr. LeGrant says well we really made a
14 mistake in processing that permit and it
15 should have gone to Zoning and I wouldn't have
16 approved it. And that may all very well be
17 true, but the fact of the matter is it didn't
18 happen. And Mr. Premo obtained the permit, Ms.
19 Wallace relied on that permit.
20 And putting aside, you know you
21 can go through the estoppel and latches tests,
22 and we've done that in some. But just look at

it from a fairness and what makes sense standpoint to be your initial guide.

If you go through this process, you get the permit and you start the work. And to be told after you've done, you know you cut your arm off, you can't sew it back it on.

She demolished the front of this structure and can't put it back now. And virtue of demolishing this structure, the ZA's opinion is that once that original structure was gone, you know, too bad. So she relied on the fourth permit not just to take it down, but as they're now saying later on to lose all her rights with respect to that structure that were, I think, guaranteed by the fourth permit.

So if you step back and think about it of what's fair and what's right, putting aside all the hysteria about who shot who and everything like that, it really comes down to the fourth permit told her what she could do. She attempted to do it, started

doing it and now in the context of a fifth permit, which really doesn't involve anything other than the technical specifications of this footer. Not whether the footer's going to exist because the existence and replacement of the footer was established in the fourth permit. It's just a question about whether it's going to be a big footer or a little footer. It doesn't have anything to do with where that footer is going to be located vis-à-vis the property line. That was established in the fourth permit. This is whether it's going to be a brown footer or a blue footer, or it's going to be wide or narrow and the structural capacity of it.

With that, I'd like to leave it.

CHAIRPERSON MILLER: Thank you. Board questions?

Okay. It's my impression, but I could be wrong, are the parties interested in submitting proposed findings and conclusions of law? Okay. That's what my assumption is.

And I'm sure Mr. Simmons interested in doing that as well and in reading the record.

So I note that because I want to set a schedule that will allow us for the transcript to be available to the parties and then sufficient time to submit proposed findings and conclusions of law.

So, Mr. Moy, can you help me on that?

MR. MOY: Yes, Madam Chair. Well if we go on the scheduled decision meetings, we have one on September the 9th. The other one is October the 7th.

If the Board is looking at decision on September the 9th, there's ample time for the transcript to be available. It takes between seven and ten days, which would put the transcripts being available, let's say August the 15th at the latest.

CHAIRPERSON MILLER: What I hear from the parties on preferences? Mr. Moy just said that the transcript would be available by

1 August 15th, the latest. You know, I don't
2 know everybody's summer plans. So if it worked
3 for everyone, we could put this on the agenda
4 for September 9th. If there are problems with
5 that, speak up now. So why don't I hear from
6 the parties on the schedule.
7 MR. BROWN: September 9th works.
8 You wouldn't want the draft orders before
9 September 1st, would you? We're not going
10 to--
11 CHAIRPERSON MILLER: Well, when
12 would we want the submissions?
13 MR. MOY: If it's just filings for
14 -- I say "just." Findings of fact conclusions
15 of law, it was time submission from all
16 parties with the transcript being available,
17 say, the 15th giving Appellant and parties to
18 file, say two weeks. I would say provide
19 that, say, August 29th. If that's not too
20 early, I don't know.
21 CHAIRPERSON MILLER: What day of
22 the week is that?

MR. MOY: That's a Friday, Madam Chair.

MR. BROWN: I would just note that that's the Friday of Memorial Day weekend or Labor Day weekend, I'm sorry.

MR. MOY: Well the other option then would be if it's afterwards, then we're looking at the Friday of September the 5th. I would make it the 4th, because that September the 4th would be the staff's delivery of packages to the Board Members for its decision on the 9th. I'd like to -- although it's up to the Board Members, but I'd like to get these filings sooner to the Board.

MR. GREEN: Madam Chairman --

CHAIRPERSON MILLER: Wait. Could you hold one second. We're just looking at what's on our calendar already for the 9th, unless you're telling me that's just out of the question for you.

MR. GREEN: Well, there are a couple of problems.

CHAIRPERSON MILLER: And you're the Appellee, so that's kind of important. Yes.

MR. GREEN: Yes, I know.

CHAIRPERSON MILLER: It's kind of important.

MR. GREEN: Yes. I know that around the end of August and the first couple of weeks of September there are some vacations schedules for those of us at this table. And then there's the issue of Mary and Jack. I thought -- the Simmons. I thought there was some consideration to --

CHAIRPERSON MILLER: Yes, we said we were finishing the hearing today. He didn't make a request to submit anything with respect to Mary before he left.

MR. GREEN: Okay.

CHAIRPERSON MILLER: So, but we said we were going to leave the record open. When he left us, that we were going to leave the record open for proposed findings and

conclusions of law.

MR. GREEN: Yes. But I don't know, maybe they wanted to make another submission. I just don't know. She didn't get an opportunity to be heard because of her physical condition. It seems to me that you might want to make provision for that.

CHAIRPERSON MILLER: Let's just talk about your position, okay. As far as a date.

MR. GREEN: Okay.

CHAIRPERSON MILLER: Okay. A moment to look at our schedule.

MR. GREEN: Madam Chairman, we would accept some date in October because, as I said we pointed out September is going to be a difficult time for us. There's several of us who are involved in this case that will be on vacation.

MR. BROWN: Madam Chair, I mean October, again going back to the time and economic pressures on my client, that's

unthinkable from our position.

CHAIRPERSON MILLER: Okay. Let me just see if we can possibly do a special meeting or not in the middle of September. We need a moment to really look.

I hear what you're saying about September 9th. I thought that it might be difficult with summer schedules and everything.

MR. GREEN: And remember, this has been a four day trial. I mean, when you count going in the morning and the evening today; this is two days, as far as I'm concerned. And then last time we stayed until 11:00. And about to do it tonight.

CHAIRPERSON MILLER: Okay.

MR. GREEN: So that's a lot of time. And that means that the transcripts are going to be voluminous.

CHAIRPERSON MILLER: I would say that you all have fully, fully, fully already addressed one of the legal questions in this

case, which goes to casualty. And I wouldn't expect you to be doing much on that, unless there's some evidence came out in the hearing that you want add. But that is fully addressed.

So anyway, I think -- let us just look at the calendar for a minute.

MR. BROWN: Madam Chair, it almost sounded like you were expecting more briefing as opposed to just draft findings of fact and conclusions of law.

CHAIRPERSON MILLER: No. The conclusions of law I'm talking about. I don't have the decision in front of me, Mr. LeGrant's decision, but I really recalled I think there were two conclusions of law and one dealt with casualty and another dealt with 405, or something, and then there's the estoppel which you all have already briefed legally. So I think the hearing transcript is going to just provide more supporting evidence to cite.

So I'm just saying, I don't see this case as being quite as labor intensive with respect to, you know, putting together conclusions of law. Because a lot of it has been done already.

So let us just look at our calendar and see what we can do. We'll be right back.

(Whereupon, at 10:13 p.m. a recess until 10:26 p.m.)

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

We had a chance to look at our calendar and take into consideration some of the things that you all have said. And this is what I think we're going to do and if there's a real problem with it, I know I'll hear from you.

We're going to allow -- we're going to keep the record open to allow Mary Grumbind to file an affidavit in lieu of her having been able to come and testify. And I

believe that, Mr. Moy, we said that that would be due by August 14th?

MR. MOY: That's correct.

CHAIRPERSON MILLER: Okay. And then we are going to allow responses to that affidavit in lieu of parties being able to cross Ms. Grumbind.

We would like to set this for a meeting on September 16th. It would be a special public meeting which would mean that we would like proposed findings and conclusions of law to be filed by September 9th.

Comments?

MR. BROWN: That's fine. But Ms. Grumbind can have her affidavit by August 14th and then you said we'd have a response in lieu of, but you didn't give a date for that.

CHAIRPERSON MILLER: I'm sorry. August 21.

MR. BROWN: Okay. Well, I didn't hear you.

CHAIRPERSON MILLER: Okay. I'm sorry. I don't know. Does anybody have any problems with that schedule? Not hearing any.

Okay. Any other questions or -- yes?

MR. GREEN: The main date is the 9th of September, is that right? All right. Findings of fact due September the 9th. That's the main date, right?

CHAIRPERSON MILLER: That's right. Is that a problem, Mr. Green?

MR. GREEN: I don't think so. I mean, you know, we just have to suck it up and do it.

CHAIRPERSON MILLER: Okay. Anything else?

MR. MOY: Madam Chair, just administratively. I think in terms of items that were submitted into the record, I think this was the photograph. If you had something smaller that we can place into -- oh, it is already. I just want to be sure that

everything and what was in the board is already in the record. That's all.

CHAIRPERSON MILLER: And the record is then closed for everything other than what I just mentioned.

Okay. Have a good summer.

(Whereupon, at 10:29 p.m. the hearing was adjourned.)