

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 15, 2008

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

GREGORY N. JEFFRIES, Vice Chairman  
CURTIS L. ETHERLY, JR., Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON  
MATT JESICK  
MICHAEL GIULIONI  
PAUL GOLDSTEIN

The transcript constitutes the minutes from the Public Hearing held on July 15, 2008.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Preliminary matters:

Application No. 17793 of Ann-Lee and Ray S. Chen

Stephanie Baldwin, Greenstein, Delorme & Luchs 9

Application No. 17795 of Kevin Smith.....24

Allison Prince, Pillsbury Winthrop Shaw

Pittman for applicant

Matt Jesick, Office of Planning

Kevin Smith, Applicant

William Kirwan, Muse Architects

VOTE: To grant application, five-zero-zero103

Application No. 17797 of Seri J. Gbagbo...105

Dan Chung, Building Manager

Joel Lawson, Office of Planning

Michael Giulioni, Office of Planning

VOTE: To grant application, four-zero-one132

Application No. 17811 of D.C. Housing Authority.....142

Shirley Buber, Project Manager, DC Housing Authority

Toye Bello, zoning consultant

Earl Jenkins, private partner

William Reddick, private partner

Earl Jenkins, private partner

William Reddick, private partner

Paul Goldstein, Office of Planning

VOTE: To grant application, five-zero-zero172

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<u>Application No. 17747 of Stephanie Wallace</u> 174	
Gail T. Maddox Leving,	Assistant Attorney General with DCRA
Melinda Bolling,	Assistant Attorney General for DCRA
Matthew J. Green, Jr.,	Assistant Attorney General for DCRA
Zoning Administrator	Matthew LeGrant
John Lemoine,	intervening party
Commissioner Matthew Frumin,	ANC 3E
Commissioner Carolyn Sherman,	ANC 3E
Jack Simmons,	intervening party
Patrick Brown,	Greenstein Delorme & Luchs for appellant
Stephanie Wallace,	appellant
Alan Premo,	President Premo Building Remodeling
Vincent Ford,	Ford and Associates
Testimony:	
Stephanie Wallace	.....224
Alan Premo	.....237
Vincent Ford,	.....377

<u>Application No. 17761 of Harry L. Belin, on behalf of the Evermay Society</u> .....316	
Testimony of Public:	
John Horan	.....318
Dale Overmeyer	.....324
Betty Cooley, CAG	.....327
Ray Kukuzski	.....330
John Scanlon	.....334
Outerbridge Horsey	.....338
Blair Downing	.....341
Jerry Easley	.....345
Fred Elting, Frost Lighting	.....350
Ralph Alswang	.....351
Russell Katz	.....355
Heidi Scanlon	.....361
Barbara Downs	.....364

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

10:10 a.m.

CHAIRPERSON MILLER: Okay. I think we're good to go. Let me call this hearing to order.

My name is Ruthanne Miller, and I am the Chairperson of the Board of Zoning Adjustment. I am here with the Vice-Chairperson Marc Loud, and Board Members Curtis Etherly, Mary Oates Walker, Shane Dettman, and Clifford Moy.

We have Lori Monroe from the DC Office of the Attorney General, and on my far left is Ms. Beverley Bailey.

Be aware that these proceedings are being recorded by a court reporter as well as web broadcast live. Thus we ask you to refrain from any disruptive actions during the hearing.

Those in the audience are free to testify. Please turn on your microphone and speak into it. Those either in favor or in

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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 special exceptions and variances is as follows:

(1) Statement and witness of the applicant;

(2) Government reports including the Office of Planning, the Department of Public Works, DDOT, et cetera;

(3) Report of the Advisory Neighborhood Commission;

(4) Parties or persons in support;

(5) Parties or persons in opposition;

(6) Closing remarks by the applicant.

Pursuant to Sections 3117.4 and

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3117.5 the zoning regulations the following time constraints will be maintained: The applicant, appellant, persons and parties except an ANC in support, including witnesses, 60 minutes collectively.

Persons and parties except an ANC in opposition, including witness, 60 minutes collectively.

Individuals will have three minutes.

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

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

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

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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 exactly 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 on each case be held in the open before the public. The Board may, consistent with its 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

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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 withdrawals 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: Madam Chair, Members of the Board, to everyone, good morning.

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As Ms. Stephanie Baldwin would make her way to the table, I'm assuming I know what she's going to talk about, and that is the request to postpone application No. 1773 Ann-Lee and Ray S. Chen.

MS. BALDWIN: Good morning. I'm Stephanie Baldwin from Greenstein, Delorme & Luchs. I'm here with Ann-Lee Chen. And we're here to request a continuance of this matter.

CHAIRPERSON MILLER: Okay. Are other parties here, such as the ANC? We have party status applicant in this case, is that correct? I think they ought to come to the table then, or she.

And would you introduce yourself for the record, please.

MS. ZARTMAN: My name is Barbara Zartman. I live at 1642 35th Street. And I'm speaking on behalf of the Citizens Association of Georgetown.

CHAIRPERSON MILLER: Okay. So I think we should deal with both preliminary

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matters in this case. One is for party status and the other for the continuance.

And so what we normally do is deal with the party status question first unless there's some reason not to so that then the party status application, if granted party status, can then weigh in a party on the request for continuance.

Is there any objection to that procedure by the applicant?

MR. WALL: No objection to the procedure.

CHAIRPERSON MILLER: Okay. Then why don't we go forward. We have a party status application by Ms. Zartman. And that is on behalf of the Citizens Association of Georgetown?

MS. ZARTMAN: That's correct, and several individuals who have asked us to represent them.

CHAIRPERSON MILLER: And the individuals who have asked you to represent

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them, are they neighbors who would be distinctly impacted by the relief sought in this case?

MS. ZARTMAN: Yes. They're immediately adjacent neighbors to the properties in question.

CHAIRPERSON MILLER: Okay. So would you be representing them individuals or are you just going to be advocating on behalf the Citizens Association of Georgetown and that would encompass their concerns? Just so I understand the posture of your party status application.

MS. ZARTMAN: Well, these individuals are particularly effected because of the proximation. But the problem we identify with this application is one that would consistently effect properties throughout the Georgetown Historic District.

CHAIRPERSON MILLER: Okay. And I don't want to put words in your mouth but I just want to sure in our consideration that

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if we were to grant you party status, we would be granting you party status on behalf of the Citizens Association of Georgetown and that your concern, though, happen to encompass the concerns of the neighbors that you're references, is that correct?

MS. ZARTMAN: Quite correct.

CHAIRPERSON MILLER: Okay. Are there other questions by Board Members?

And let me just ask you one more question and then I'll ask the applicant if they have any objection. And how would you be distinctly impacted different from the general public if relief were granted in this case?

MS. ZARTMAN: The Georgetown Historic District is unique among communities in the District because it's the only national historic landmark that is a residential community. There is no other in the District.

The impact of significantly

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increasing the density and, in essence, the zoning district would be of harm not only to Georgetown and its residents, but to the historic properties and the history of the Historic District.

CHAIRPERSON MILLER: Does the applicant have any objection?

MS. BALDWIN: According to the application it only describes a general population of Georgetown. And I know she has said that there are individuals who live nearby, but I don't know what those addresses are. I'm concerned that if they're not exactly designated as the application stands as submitted, it doesn't describe persons uniquely effected who live within 200 feet.

COMMISSIONER ETHERLY: Madam Chair, if I could weigh in just briefly, I would tend to somewhat agree with Ms. Baldwin. First of all, of course, good morning to all of the potential parties. And, Ms. Zartman, welcome. As always, your

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expertise is very much appreciated in many of these matters.

Perhaps in response to Ms. Baldwin's observation, Ms. Zartman, are you in a position to specify or speak with more particularity with regards to some of the individuals who are adjacent or near the subject property that would be effected? I think that would probably be helpful in terms of kind of settling some of my nerves, if you will?

MS. ZARTMAN: I believe that communications have been entered into the record, including one from the gentleman to my wife who lives at 1675 35th. Another is from the resident at 1679 and another at 1683.

COMMISSIONER ETHERLY: So that would be 1675, 1683 and --

MS. ZARTMAN: 1679.

COMMISSIONER ETHERLY: 1679. And those you're characterizing those as a

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representative sampling, if you will. Are there others or those are the specifics at this point?

MS. ZARTMAN: Those are the individuals most geographically close to the site. You may be familiar with the location. Across the street there are no residences, there is the Ellington High School for the Performing Arts. A cloistered community, which is catty-corner across Reservoir Road has also submitted its letter of opposition to the application. And we have not particularly sought out individuals in the block to the south.

COMMISSIONER ETHERLY: Okay. Madam Chair, with that additional specificity, I mean often times there are not necessarily a tension between significant associations, of course, like Ms. Zartman's and the ANC kind of capturing some of the same arguments. But with the addition of some of the specific property owners who are

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adjacent to the subject property, I would tend to have a comfort level with accepting or being supportive of the party status application because, I believe, of the unique effects that would inure to those properties that have been identified in close proximity to the subject property.

But perhaps for the record just because Ms. Zartman alluded to it, I'm not sure if I'm locating in my submittals, and it could have been in the new submissions, the document that was referred to for the property owner at 1675, and would that be Mr. Blum? Correct. Okay.

CHAIRPERSON MILLER: I see in the record, and I may not be looking at all the letters, is there also 1693 35th Street from James Sanborn? Is that -- let me see -- I know that just came in.

MR. BLUM: Mr. Sanborn is at 1679 35th.

CHAIRPERSON MILLER: Okay.

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MR. BLUM: And then Ms. Budow, I believe is at 1683.

CHAIRPERSON MILLER: Oh, I see. Okay.

I guess this is where I'm at: You know, I wasn't necessarily convinced is this particular application uniqueing effected, Georgetown? I wasn't sure. But I think that the combination of that with what appears some of the neighbors that are directly impacted on this street desire that the Citizens Association of Georgetown represent them. That to me would give me a comfort in granting party status in this case. But I would ask Ms. Zartman if you could perhaps specifically get a letter from those that wanted you to represent them with their name and addresses and authorization if they want to be represented by the Citizens Association of Georgetown. And then provide that to Ms. Baldwin and the Board and then we know which addresses, you know, specifically are

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involved.

Yes?

MR. BLUM: It is my understanding that my letter was faxed to your office yesterday. And it was my understanding that the letters from Ms. Budow and Mr. Sanborn were as well.

CHAIRPERSON MILLER: So you're saying they're all in the record already??

MR. BLUM: It's my expectation that they should be, yes.

CHAIRPERSON MILLER: Okay. It's three letters, three addresses?

MR. BLUM: That's correct.

CHAIRPERSON MILLER: Okay. And if they're all in the record, then that won't be necessary.

MR. BLUM: Right. And I'm finally putting my hands on them.

COMMISSIONER ETHERLY: And I'm finally putting my hands on them. Mr. Blum's record, and just for purposes of

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identification, Mr. Blum, you reside at 1675 35th Street, Northwest, Washington, D.C.

MR. BLUM: That's correct.

COMMISSIONER ETHERLY: Excellent.

His letter is at Exhibit 30. Mr. Sanborn is at Exhibit 29. And I'm still trying to put my hand on that final letter.

CHAIRPERSON MILLER: What's the final letter that we would looking for?

MR. BLUM: Ms. Maya Budow, B-U-D-O-W.

MS. BAILEY: That one just came in this morning. I don't whether Mr. Etherly has it yet, I'm not sure. Because it was on the table. You may have picked it up.

CHAIRPERSON MILLER: Okay. That just came in this morning. So now we know what you're referring to. And it will be given an exhibit number later.

So, Ms. Baldwin, does that respond to your concern as well?

MS. BALDWIN: Yes, thank you.

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CHAIRPERSON MILLER: Okay. Now does the Board have any other questions with respect to party status in this case?

And is it the consensus of the Board that party status be granted then to Citizens Association of Georgetown? Okay. Then party status is granted.

And now we get to the second question about a continuance. And the applicant is requesting a continuance because the applicant has just retained new counsel, is that it?

MS. BALDWIN: Our firm was retained on Thursday. And the applicant would like some time to be able to work to respond to the concerns of the community.

CHAIRPERSON MILLER: Does the Citizens Association of Georgetown have any opposition to the continuance?

MS. ZARTMAN: We would be hard pressed to deny someone access to counsel in the matter of considerable import. But I

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would hope that the Board might advise the applicant to enter into no long term leases.

Because as we read the submission, they are already operating as flats. And I'd hate to see new leases entered into for another year.

MS. BALDWIN: They're operating as a rooming house and single family dwelling on the first floor. They're completely within the law to do so.

CHAIRPERSON MILLER: Okay. That's what I would think. Okay.

So you need us to look at the calendar for where we can fit you in next

MS. BALDWIN: Correct.

CHAIRPERSON MILLER: Okay. The first available date we have is September 9th in the afternoon.

MS. BALDWIN: Maybe the Citizens Association of Georgetown knows this. Does the ANC meet early in September or later?

MS. ZARTMAN: I believe it's the 2nd of September. I believe the 2nd of

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September is their meeting date.

CHAIRPERSON MILLER: Otherwise we go into October. October 28th is the other date.

MS. ZARTMAN: Oh, wow.

MS. BALDWIN: I wish the ANC was here to weigh in on that, but it should -- I would like to make sure there's enough time to go back to the community. Because they, of course, won't be meeting in August.

When does the Citizens Association meet? Do you have a meeting date?

MS. ZARTMAN: We will not meet again in August.

MS. BALDWIN: Right. In September do you meet?

MS. ZARTMAN: Usually the same night as the Zoning Commission meeting.

MS. BALDWIN: But early in September or the second week?

MS. ZARTMAN: Second week.

CHAIRPERSON MILLER: It sounds too

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tight --

MS. BALDWIN: It sounds too tight.

CHAIRPERSON MILLER: Yes.

MS. BALDWIN: I think we should have the opportunity to go to them. So, I guess October. What did you say, 28th?

CHAIRPERSON MILLER: Yes, I did. Yes. In the afternoon.

MS. BALDWIN: Okay.

CHAIRPERSON MILLER: Okay. Are there any other questions or issues? All right.

MS. BALDWIN: No. Thank you.

CHAIRPERSON MILLER: So any papers that would be filed with us will be filed on the Citizens Association of Georgetown, ANC?

MS. BALDWIN: Yes.

CHAIRPERSON MILLER: Okay. Great.

MS. BALDWIN: Thank you.

CHAIRPERSON MILLER: Thank you.

Have a good summer.

I think that's it for preliminary

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matter. Is that right, Ms. Bailey?

MS. BAILEY: Yes, Madam Chair.

CHAIRPERSON MILLER: Okay. Then everyone here who wishes to testify today on any case this morning, please rise and Ms. Bailey will administer the oath.

(Oath is Administered)

MS. BAILEY: Members of the Board the first case this morning is Application No. 17795. It's the application of Kevin Smith, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 402, a variance from the lot occupancy requirements under section 403, a variances from the rear yard requirements under section 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a garage addition serving a one-family row dwelling. The property is located in the Dupont Circle R-5-B District at premises 2021 N Street, Northwest, Square 97, Lot 46.

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There is a request for party status, and that is from Robert J. Fink.

CHAIRPERSON MILLER: Is Mr. Fink here?

MS. PRINCE: Madam Chair, Allison Prince of Pillsbury Winthrop here on behalf of the application. Mr. Fink withdraw his request for party status. That should be in the record in this case.

CHAIRPERSON MILLER: Okay. I don't think we've seen it. He did submit something in writing? You have a copy?

MS. PRINCE: He did, and we confirmed that it had been received, and we have a copy.

CHAIRPERSON MILLER: Okay. Do you have one that you can pass up to Ms. Bailey? Great.

MS. PRINCE: We do.

CHAIRPERSON MILLER: Thank you. Okay. Then why don't we go forward with introductions. Would you start it?

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MS. PRINCE: Good morning,  
Chairman Miller and Members of the Board.

I'm Allison Prince with Pillsbury  
Winthrop Shaw Pittman. I'm here this morning  
with Christine Reilly of my firm and with Mr.  
Kevin Smith, owner of the historic rowhouse  
located at 2021 N Street, Northwest.

We're here today seeking the  
variance relief required to allow Mr. Smith  
to complete his house. We're here with the  
support of ANC 2B, the Dupont Circle  
Conservancy and five immediately effected  
neighbors.

We are aware of no neighbor  
opposition to this case. And we have received  
supportive comments from the staff of the  
HPRB.

I have several items that I'm  
going to submitting up to the Board, but I'll  
wait until I'm done with my opening  
statement.

To allow for the proposed one

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level garage addition that extends off the house's basement, it appears that as many as four variances are required. There is a question as to whether the existing house complies with the lot occupancy limit of 60 percent. The architect believes it does, the Zoning Administrator determined it was four feet over that limit.

Out of an abundance of caution, we're advertised for that fourth area of relief and are happy to proceed with that fourth area of relief, whether or not it's needed.

In addition, variances are required from the rear yard and FAR and lot occupancy requirements.

Absent this relief from this Board Mr. Smith cannot add any kind of rear egress deck and stair to his house, since the house is at the lot occupancy limit. As he will explain, he will literally have a doorway that leads to nowhere, to an eight foot drop

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to the alley below. Accordingly, we must demonstrate that this application meets the three part variance test. And the first part of the test, as you know, is uniqueness.

While I understand the Office of Planning's general reticence in finding that any rowhouse can be unique, OP's concern is not well founded here. This is not just any rowhouse.

While this house may have been fairly similar to its neighbors when it was built over a century ago, and it is part of a very historically significant row located on N Street, each house evolved quite differently leaving Mr. Smith's property quite unique.

Also I must note that this Board has already found in five separate variance applications that houses that are part of the row that includes Mr. Smith's house are unique. They granted variance relief in five separate instances involving rowhouses in the

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very row that Mr. Smith's house in a part of. And I have copies of each of those applications.

In each of those five variance applications the neighbors were granted similar kind of relief to what Mr. Smith is seeking. They tried to enclose their rear yards and create some outdoor living space in one way or another. And in four of the five cases the variances were actually built out, the plans were built out pursuant to the variance. In the fifth it was not.

So essentially four of the rear yards in the houses in the row that he's a part of have already built out in a manner similar to what he is trying to achieve.

But how is his property unique? Well, first and perhaps most important, due to the manner in which the two adjacent properties have been modified over time, Ms. Smith now has a cave-like rear yard. It's very evident from the photos that we'll

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submit. It is bounded by high masonry walls, the wall of an actual garage structure and just a wall on the east and west sides. The resulting rear yard is dark and a haven for vermin.

In addition, the topography of the alley as it relates to the topography of Mr. Smith's lot is such that water literally pours into Mr. Smith's rear yard when it rains creating severe basement level flooding problems and filling the entire rear yard with water.

Third, as I mentioned, absent relief from this Board Mr. Smith will have a doorway to nowhere. The addition, we understand, was built pursuant to approved plans. The person from whom Mr. Smith bought the house built an addition that had a doorway at the rear. Those approved plans also included a deck off the back of the house that was never constructed. Strangely, for whatever reason, the permit authorities

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at the time determined that variance relief was not required to build a deck, but it did show on the approved set of plans. So Mr. Smith had no reason to know that such a deck would absolutely trigger a need for variance relief since the house was at the lot occupancy limit. But we're not fighting about whether variance relief is required. We understand that that was incorrect to allow a set of plans to go forward with a deck when the building was already at its lot occupancy. We're simply here to meet our burden and to ask for the relief that we need to get this project complete.

So one final factor, and initially I didn't think it was that significant. But the more time I've spent in the alley city in this square, the more significant I think it is.

The configuration of this alley is shown on plats that you'll see, is very irregular. And this irregularly configured

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alley system serves about 30 properties in the square ranging from rowhouses to a hotel to a condominium building. And virtually every single property in that square with the exception of the three that are located west of Mr. Smith have to go past his rear yard to get out of the alley system or to get into the alley system. He is close to the entrance to the alley system.

Well, what that means is in terms of trash and vermin and every other evil thing that effects the alley system, everything is getting carted past his property. So the configuration of this alley system is significant in this case. And the Board has found that in connection with the grant of variance relief effecting another property in the square.

It's one of those things you have to see it. But literally trash is carted past his rear yard several times a week from the variety of uses that exist in the square. And

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that just makes it really a highly unpleasant place to be.

So clearly this property is unique. Is any rowhouse unique? Absolutely not.

Is this case if you grant it setting a precedent that someone with a brand newly constructed rowhouse can get a big deck off the back of it? Absolutely not.

This is a historic property. It is a 108 years old. And the Board has found this and its neighboring properties to be unique.

The practical difficulties here are very real. Mr. Smith will go into them at length. And we have to beg to differ with the Office of Planning report on that as well.

There's no outdoor useable space. There's a doorway in the air. There's flooding. There's vermin. And there's security issues. All of which are solved by the proposed addition.

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And as for the third part of the variance test, I believe we easily meet the third part of the test given the fact that the neighboring properties have already been improved in a similar manner. And also I would note that although we are seeking four variances, it is not that we're trying to occupy 86 percent of the lot all the way up. We are simply trying to occupy 86 percent of the lot to extend out the basement level. So from a light and air standpoint, it is literally only the rats in the alley who are effected by the light and air that's blocked by this addition.

As I said, I'm going to bombard you with paper, and I'm sorry to do that but I felt it was necessary in light of the Office of Planning's concerns.

We have an email exchange with Steve Calcott from Historic Preservation Review Board basically acknowledging that he likes the addition and he thinks it will be

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handled on a consent agenda.

We have meeting minutes from the Dupont Circle Conservancy whereby the Conservancy noted its support of the addition.

And it is not often that this Board sees support from ANC 2B, the Conservancy and five neighbors in a square, I should add.

I have the five BZA orders that were in the square.

I have, just because I think it's interesting, an article from *The Current* about Mr. Smith renovation effort of the house and the fact that the house was on the Dupont Circle House Tour shortly after he moved in.

I have photos showing the conditions in the alley, the cave-like condition and the flooding.

And finally, I have drawings so each of you can have an individual set

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should you have difficulty reading the drawings that Mr. Kirwan will present to you.

So, if the Board has no questions, I'll submit all of these materials and we'll proceed with the testimony of Mr. Smith.

CHAIRPERSON MILLER: I do have a question.

MS. PRINCE: Yes.

CHAIRPERSON MILLER: With respect to the lot occupancy --

MS. PRINCE: Yes.

CHAIRPERSON MILLER: -- my reading of the regulations is when a portion of the building is below or flush with the main level--

MS. PRINCE: Yes.

CHAIRPERSON MILLER: -- that it's not counted towards lot occupancy.

MS. PRINCE: Right.

CHAIRPERSON MILLER: And so I was wondering if you agreed that this should be counted toward lot occupancy or if you're

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just going along with the Zoning Administrator or the Office of Planning's conclusion?

MS. PRINCE: That's a very good point. That is I think the most misunderstood section of the regulations. And Mr. Kirwan, the architect, did going to the Zoning Administrator and confirm the areas of relief that were required. And that was a very long and difficult process.

I personally believe that the section of the regulations that says that if an extension is off the main level of the house and not above the main level of the house, it simply doesn't count toward lot occupancy. But unfortunately that's been a very inconsistent interpretation from the Zoning Administrator.

So because Mr. Kirwan had gone to the trouble to get the memorandum, we decided we're just going to proceed with the most conservative course and we're not going to

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fight any new battles here. Because I think this case meets the variance burden. We're not afraid of it. So we're just going to go ahead with it.

But I do agree with you. I think that section of the regs is fairly clear. Unfortunately, BZA does not agree.

CHAIRPERSON MILLER: Okay. And also if the Board were to find that that was the case, is your FAR calculation effected?

MS. PRINCE: Yes. Then we still have an FAR issue.

CHAIRPERSON MILLER: You still have an FAR issue?

MS. PRINCE: Yes. We're very slightly over FAR. So we're here anyway.

CHAIRPERSON MILLER: Right.

MS. PRINCE: And that's why I saw no harm.

CHAIRPERSON MILLER: And I think it's somewhat of an issue, though, I mean for the Board at least to be -- we've dealt with

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this issue before. And I think that's the way we have dealt with it; that if it's below the main level or flush with the main level according to the regulations, it's not counted. But also then goes to the severity of the relief that's being sought.

MS. PRINCE: That's true.

CHAIRPERSON MILLER: You know, it takes on a different look when the percentages is staying the same in a lot of occupancies, you know.

MS. PRINCE: That's a very good point. It does certainly do that.

CHAIRPERSON MILLER: Okay.

MS. PRINCE: And we did have the benefit in this case of the previous cases that the Board had deliberated on the square.

And, again, I think in each of those cases an FAR variance would have been required regardless, but they did seek lot occupancy variance in all of them, I believe.

So, again, there's been this

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inconsistent interpretation. I'm encourage at the Board, though, has found in other cases that does not count toward lot occupancy.

CHAIRPERSON MILLER: All right. Does the Office of Planning want to weigh in now or wait until we get to you? I think maybe you ought to weigh in now.

MR. JESICK: Good morning, Madam Chair, Members of the Board. My name is Matt Jesick.

We realize that that's a confusing section of the regulations. And that's something that we're going to be looking at in our overall zoning review.

I think it has been our interpretation over the years that these sorts of additions do count towards lot occupancy. And in this case, the Zoning Administrator's determination echoed that. And so we just felt that it would be better to grant that relief, if necessary, or at

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least analyze it in our analysis so if it is necessary to have the lot occupancy relief, that the application has that.

CHAIRPERSON MILLER: Okay. Thank you. Okay.

I just want to state for the record that the Board is looking at the definition of percentage of lot occupancy, which talks about percent of lot occupancy, a figure that expresses that portion of a lot line within lot lines and building lines that is occupied or that may be occupied under the provisions of this title as building area.

And then when you go to building area, it states: "Except for outside balconies, this term shall not include any projections into open space authorized elsewhere in this title, nor shall it include: Portions of a building that do not extend above the level of the main floor of the main building if placed so as not to

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obstruct light and ventilation of the main building or buildings on adjoining property."

Okay. Any other comments on that at this point? Okay.

Okay. Then we're ready for you to proceed.

MR. SMITH: Hi, Ms. Miller. My name is Kevin Smith. I am the owner of the property at 2021 N Street. It is my primary residence.

It's located on the northwest corner of the intersection of 21st and N Street. It's thought to be built, as Allison said, in 1900 and is a contributing building to the Dupont Circle Historic District.

The rear of the property, as Allison mentioned, borders onto the alley. The alley services all of the properties on 21st Street between N and O. It services the rear of all the properties on O Street and the Firefly Restaurant, the Madeira Hotel and a condominium building that is on 20th

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Street.

The one alley is the only ingress/egress for the entire alley for all deliveries, trash, recycling all the property owners who have parking in the rear as well as the parking for the hotel and condominium building.

I purchased the property in 2006.

I had lived all my previous life in Maryland. Upon purchasing the property it was a state of disrepair in view of a renovation project that Allison had referenced had been started. And an addition had been built onto the back of the home. It was left incomplete.

I finished the interior renovation and in light of its historic -- the way I did it, reserving all of the historic aspects of the home, the Dupont Circle Historic House Tour asked me to put the tour in October of 2007.

There are a few changes I want to

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make to address the significant issues that remain at the house and finish the renovation. Correcting those issues is the impetus for constructing the garage and our presence here at the Board today.

The major problem I deal with right now is the grade of how my property drops off from the alley. The results of this is that my rear yard floods with every rainfall. The water rolls down the alley from the adjacent properties onto my property where it sits and collects.

My rear yard/driveway in the house it refers to is lined by masonry walls on either side. One is the dual garage of my neighbor immediately to my right and the concrete wall that you'll see in photographs to my left.

The other side of the alley running all the way up past my property is a three story apartment building. So it's got a solid concrete foundation. So the water and

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the rainfall that rushes down from up hill hits that as a barrier. It's like a canyon wall on that side and the water goes back and forth in the alley.

The other garages that are in the alley north of me bounce the water back and forth. And mine is the only opening so the water rushes in.

I might mention that the water is not just rainwater. The restaurant and the apartment building and the hotel, they regularly washout their trash cans every morning and rinse off the dumpsters and they hose out the kitchen area of the Firefly Restaurant every morning and every evening. So sitting in the alley it's like a treasure trove for the rats to go up the alley. Because their water really isn't strong enough to wash down, but it sits there.

Like this morning after yesterday's rain or the day before I had chicken bones and milk or coffee creamers and

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everything sitting in my driveway that had been washed down in by virtue of the rains we had the other day.

Another problem is when I brought the house there was this door from the kitchen, which was part of the addition that had been put on the house, that opens to an eight foot drop into the driveway. Right now the door goes nowhere, but ideally because it's ground level it would give us access to the roof of the garage which in essence will be a desk.

The plans that were provided to me when I purchased the property showed approved permits for a raised deck in the backyard. That part of the construction was never started either because of the water issue that they realized they had or the gentleman passed away who I bought the property from and, as I said, he never finished the interior of the renovation, just the outside of the structure. So perhaps they never got

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to it; I'm unsure.

But those approved plans led me to believe that there was no issue in rectifying the doorway to nowhere. In fact, when the Historic House Tour I had indicated to everybody who came through that that's phase two. Phase two is going to be a garage and deck. I've learned since then by trying to cooperate and do what needed, that there's a lot more that needed to be done than simply hire the builders.

The two masonry walls, as I mentioned before, creates a cave-like effect which is heightened by the addition which is in essence a little overhang.

Given these circumstances, I looked into the optimum resolution is constructing a garage. The garage would do a lot of things. It's going to alleviate the storm water drainage issue. It's going to provide access from my kitchen to the rear yard by providing access to the desk on the

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roof of the garage. It's going to elevate the only usable outside space of the rear yard to the roof of the garage. And it's going to provide me with the only way to have any light at that level.

By raising it up the usable space to the roof of the garage, it's going to avoid the restaurant trash issue that I have now that sits at ground level as well as the bug and the rat issue.

The garage, I think, equally as important as the water issue is going to provide me with increased security. It's going to let the homeless people stop living in my cave. It's going to get the people to stop hiding in my cave and smoking pot and doing whatever else that they do. It's going to allow me night security access to the rear of my home as opposed to parking in my garage and walk down the alley and go into the -- my front of my house, which is on N Street.

The convenience and the safety of

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off-street parking is going to eliminate the potential vandalism. It's going to eliminate strange cars parked in my driveway, the cable companies park in my driveway during the day. I come home, I don't know where they are, I can't find anybody. People turn into my driveway when they're confronted with all that other traffic I was mentioning that uses the alley. The people pull into my driveway to let other cars go by, to let the trash truck go by, et cetera. I can't get out even my own driveway sometimes because they're waiting for the traffic to come down the alley.

The garage is also going to allow me to keep my trash covered. And by having the outside garage, my trash cans aren't going to be exposed to all the other issues I just mentioned, but it also should eliminate the rat issue as it relates to my property, as it has for the other five garages that Allison mentioned. Because there's people

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who got the variances, they've all built garages except for one. And the other one just built a deck.

I've read the Office of Planning's report, and I agree the dimensions of my property are no different than most neighboring property. It's a 15 foot wide property.

I disagree the property is not unique for a lot of reasons. The unique aspects of my property have been addressed in prior Board decisions, and Allison has provided you with copies of them.

In addition to the uniqueness that's already been shown as it relates to other townhouses in my square, we also have the grade issue where the water comes down and it floods my basement, the cave-effect, the unfinished improvements and the improvements on neighbor properties have all created even more of a unique situation that I have that the other requests of my other

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neighbors years ago never had.

If I'm not granted a variance, I'll be plagued with these issues as well as likely others of which I am presently unaware for as long as I own the property. I'll be precluded from ever using my rear yard for anything other than parking, and quite frankly, it's not even useable for parking after it rains. I can't even park in it. I have three to six inches of water, as you'll see.

I enjoy being part of the D.C. vibrant life. I lived in Maryland for my entire life, and certainly my entire adult life. And I moved downtown from a nine acre horse farm that I had out in Maryland. I want to become part of this. I've worked with all my neighbors. I enjoy being the house tour.

I've made significant efforts, I believe, to comply with each and every requirement needed or required to fully enjoy

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my property.

As Allison mentioned, there are five other properties in the square that BZA has already granted relief for garage, including my immediate neighbor to my right and three properties to my left. I believe this speaks for the fact that granting a variance would be keeping with the Board's zoning regulations and zoning map at particularly this square and it's consistent with the finding of the uniqueness in prior applications.

I've made an effort to speak with and have shared my architect's drawings with all of my neighbors about this project. I've secured their support. I believe there's four letters that support from my immediate neighbors with respect to this project.

We've also presented the application to the Dupont Circle Conservancy, the Historical Preservation Board, the ANC 2B who after significant discussion as to the

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great weight of their decisions as it relates to supporting projects, voted nine to zero at their meeting of June 10th in support of our project.

I appreciate the Board's time today. I'm available for any questions. I look forward to moving forward.

CHAIRPERSON MILLER: Is your driveway the only driveway off the alley that's available for other cars to come into? Everybody else's is blocked?

MR. SMITH: Yes, ma'am. The neighbor immediate to my left, the one property who hasn't got variance, she built off a deck and left one area about the length of one car that she puts one car outside. But all the rest of them are enclosed garages. And there is no other way in other than pass by for anybody else to do anything. You have to go all the way up to the restaurant area and turn around and come back out.

CHAIRPERSON MILLER: Okay. Any

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other questions?

Okay. Thank you.

MS. PRINCE: We'll now proceed with the testimony of Mr. William Kirwan with Muse Architects. Bill has been found to be an expert by this Board in the past, but we've submitted his résumé, nonetheless. And I submit him as an expert today.

MR. KIRWAN: Good morning, Chairman Miller, Board Member.

CHAIRPERSON MILLER: Wait a minute.

MR. KIRWAN: I'm sorry.

CHAIRPERSON MILLER: I'm sorry. If she wants us to consider you as an expert, we have to say that we recognize you as an expert. But can I first ask you when did you submit the résumé, or where is it?

MS. PRINCE: With the prehearing statement. It's Exhibit F.

CHAIRPERSON MILLER: I don't think we have the prehearing statement. When did

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you file that?

MS. PRINCE: We filed it on the day that it was due two weeks ago.

MR. SMITH: July 15th.

MS. PRINCE: It was bound.

CHAIRPERSON MILLER: Do other Board Members have that?

MS. PRINCE: We have a stamped copy for the record.

MR. SMITH: July 1.

CHAIRPERSON MILLER: Okay. I'm not sure where Ms. Bailey went. Maybe to get it.

MR. SMITH: Here's the stamped copy.

CHAIRPERSON MILLER: All right. Thank you.

Okay. So Mr. Kirwan will be recognized as an expert in architecture.

MS. PRINCE: Thank you.

CHAIRPERSON MILLER: Okay.

MR. KIRWAN: Again, good morning,

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Chairman Miller, Board Members. My name is Bill Kirwan with Muse Architects, Bethesda, Maryland.

We began this project with Kevin in October of this past year, and in doing so we of course visited the site with Kevin. And as you see in some of these photographs the house is a three story, 100 year old rowhouse on N Street. Very similar to three other rowhouses that march their way to the corner of 21st.

This is the view of the rear of Kevin's property which illustrates the sort of canyon-like effect of the two neighboring properties to Kevin on the east and the west. It illustrates the kitchen door that drops off to the eight foot drop to Kevin's rear yard, which is shown at this elevation, and another series of doors at the master bedroom above the kitchen.

To the next set of photographs.

These two photographs illustrate

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the use up and down the alley. This is at the top of the alley looking down toward 21st Street. And you see the immediate neighborhood of Kevin which has a garage addition with a deck above. And then further down the alley the two garages with similar deck additions.

And this is, again, standing at the bottom of the alley looking up the alley. The two properties at the corner of 21st, Kevin's blank spot here and then the neighbors that march their way up the alley toward the hotel and restaurant.

Then these two photographs just illustrate when the flooding does occur on Kevin's property. The water rolls down the alley, makes this turn into Kevin's property and you get the standing water up against his cellar door underneath the kitchen that you can see in these two views.

So one of the first things we did after visiting Kevin's property is to

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immediately investigate the zoning regulations for the property. And at that point we went through the code book and make a couple of phone calls downtown. We acknowledged that we were at the maximum lot occupancy with the existing structure. We had a little bit of room in the FAR, a limit of 170 square feet. And we identified some of the rear yard setbacks. And with that information we began the design process.

Kevin, you know, wanted to still pursue the possibility of a variance given those issues and also given that the neighboring properties had succeeded in building out their rear yards.

So in the beginning of the design process with Kevin there were four major goals that we sought to solve with this project, as mentioned before. First was to provide access from the kitchen to an elevated rear deck so that Kevin could enjoy the rear property just as his neighbors do,

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elevated above the noise and the odors of the alley.

Number 2 was to reduce the flooding onto Kevin's property from the alley.

Three, to provide for a barrier from the rats and trash and accumulate in Kevin's rear yard currently.

And four was to provide Kevin with a safe and secure access into his house and protected off-street parking for his car.

So we then developed a design that we then began to take down to the Zoning Administrator's office to identify all the concerns before we proceeded any further with it. And these drawings illustrate that design at that time last November.

As you can see from the site plan drawing it identifies Kevin's original structure, which is colored in the red outline here. He's about 11 feet off the front property line, about 31 feet off the

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rear property line at the alley.

And this shows the current location of his kitchen addition on the back.

And then this shows the approximate 25½ feet of the rear deck and garage that we propose off the back of the house at that location, which is set back about 5½ feet from the alley line.

One of the reasons why we set Kevin's garage back from the alley line was we wanted to acknowledge the standard setback for a private garage under Chapter 23, which is 12 feet off the center line of the alley.

The other garages on the alley do not identify that setback, which we're not exactly sure why. But in doing so, we were at least following that as a regulatory guide and also providing easier ingress and egress for Kevin's car as he pulled out of the garage.

Going to the floor plans for the project. This top plan is the first floor,

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partial first floor plan. It shows the rear half of Kevin's existing house and his kitchen on the back of the property. And it shows the deck structure extending out about 25 feet beyond the rear elevation of the house.

It also shows -- there's four posts that you'll see in the plan. These are trellis structures that book end the deck view to provide a pleasant elevation off the house and off the end of the deck for Kevin. And also to allow plants to grow up the trellis.

This is the lower level plan or the garage plan on the alley elevation, which shows the extension of the addition of the garage and the area that's underneath the kitchen currently that we're also going to incorporate into the garage space.

And then Kevin's cellar, which is just a small 15 by 15 area underneath the kitchen.

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The next board shows a section cut through the back half of Kevin's property. It shows the three story portion of the house which is towards the front of the property, the two story addition that Kevin purchased and finished which has the master bedroom above the kitchen and then the deck structure extending off the kitchen and going toward the rear the alley.

And finally, the last drawing exhibit we have are the elevations of the rear of the house.

This first one to the left is the elevation at the alley. So you see on the lower half the red brick structure around a one set of garage carriage house doors and then the trellis structure above with the pressure treated privacy fence that goes around all three sides of the deck.

And then this elevation is sort of a section cut through the garage showing the rear facade of Kevin's existing house where

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we're making some minor modifications, adding a pair of French doors to the kitchen as opposed to the single French door that's there now, doing the same to the master bedroom up above and the trellis structure that's applied to the rear facade of the house.

So with these drawings we went down and met with Matt LeGrant last November to review the issues of the proposed design.

And, of course, after that meeting we decided at that time to set the garage back the 12 feet off the center line of the alley in deference to Chapter 23. And also to help facilitate Kevin's egress and ingress from the garage. So the resulting project is about 380 square feet of addition and it's exactly the same 380 square feet over the lot occupancy limit, bringing it up to 85 percent lot occupancy.

We're 209 square feet over the FAR limit, so it's about 14 percent over the FAR.

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And also we are extending the back of the house the additional ten feet past the rear yard setback.

So we then filed the drawings in November to DCRA to begin this process of getting before the Board.

And since that time in February we showed the property to Steve Calcott of the Historic Preservation Office. He told us that the project meets the requirements for consent.

We presented the project to the Dupont Circle Conservancy, and then following that to the ANC 2B who provided their support for the project.

And as Kevin's mentioned, he has shared the plans with all of his neighbors up and down 21st Street who are in support of the project as well.

So conclude my portion of the presentation I believe the project does meet the burden of proof required for a variance

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and is consistent with the zoning regulations and the zoning map.

In addition, I believe the approval of this project benefits the neighborhood because the project will help correct the current detrimental conditions that detract from the interior of the block, the neighboring properties and Kevin's property. The project is consistent with the neighboring properties, it's consistent with previously approved variances and creates a stronger more consistent context along the alley.

And finally, Kevin has the support of his neighbors because they, like Kevin, want all to be able to enjoy the rear yards given the exceptional alley conditions that confront all of them on 21st Street.

Thank you.

CHAIRPERSON MILLER: Thank you.

Let me just ask you if you take away the lot occupancy variance based on the

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reading of the regulations that I referred to earlier, can you characterize how great or how small the remaining relief is? I mean, are you asking for large variances, small variances, you know with respect to FAR relatively the area?

MR. KIRWAN: I think the FAR variance is small. I think it's considered to be small in respect to other projects.

You know, I think the other issue is, of course, the rear yard setback. And that's one that we looked at the zoning code, we read Chapter 23. We know that there is discrepancy about the -- I mean maybe to us, maybe not to you. About, you know, attached garages versus unattached garages. But, you know, along an alley where the properties are only 15 feet wide any garage if it's freestanding or attached, is going to have the same perception from all the neighbors if it's a freestanding structure or attached because you're not going to be able to seat

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that. You know, there is going to be no side yard. Basically we run it with the garage. And whatever happens behind that garage, whether it's filled in with dirt or built up to some deck level and connection is really indiscernible.

So what we tried to do is respect that setback 12 feet off the center line, which all the other garages should have but they didn't. But we did that both in deference to that requirement and also it helped facilitate Kevin's ability to get in and out of that garage given the fact that he's got this neighboring side of the property that's along the alley that is right up to the alley line as well.

So you have all these structures that have crowded the alley and we're just trying to give a little relief there, and also try to follow a reading of the zoning regulations.

CHAIRPERSON MILLER: Just so I

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understand. From the alley, is the proposed garage setback closer to the house than the other garages?

MR. KIRWAN: Yes.

CHAIRPERSON MILLER: So you've left some space there?

MR. KIRWAN: We've left some space there.

CHAIRPERSON MILLER: Okay. And what's going to be in that space? Is it pavement or --

MR. KIRWAN: Basically it's going to be pavement that will allow us to slop from the bottom of the garage door toward the alley so that the water doesn't come into the garage and flow onto his property.

CHAIRPERSON MILLER: Okay.

MR. KIRWAN: It gives us an ability to do that.

MR. SMITH: If I may, it's also a place where when I go to work and where I can put my trash cans in that space right there

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so that when I come home, I can put my trash cans in. So the trash will be covered except when the trash day they come to pick it up. So I won't have to put my trash cans in the alleyway where everybody else has to put their trash cans in. So everybody's trash -- because if you drove up the alley on trash day, they're broken, they're smashed because the trash truck actually hits them or knocks them over because there's no room for the trash truck to go over. So it'll allow me, you know, four feet to put two trash cans there and then when I come home, I'll just put my trash cans back in the garage.

CHAIRPERSON MILLER: Okay. So your garage is big enough for a car and your trash cans?

MR. SMITH: Yes, ma'am.

CHAIRPERSON MILLER: And then you can put them out for trash day?

MR. SMITH: Right. I'll put them out.

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CHAIRPERSON MILLER: Okay.

MR. SMITH: So then they're not in the alleyway.

CHAIRPERSON MILLER: Okay.

MR. SMITH: They'll be in front of the garage door.

VICE-CHAIRPERSON LOUD: Just -- I'm sorry, Madam Chair, were you --

CHAIRPERSON MILLER: No.

VICE-CHAIRPERSON LOUD: Okay. Very sorry.

Just a quick question with respect to something your client testified to regarding the uniqueness part of the variance test, specifically the significant grade drop off in the alley. And the Office of Planning's report, which is our Exhibit 25 at page 3, takes the exact opposite view that there's no unusual grade drop off. And I notice that you support, obviously, your client's position on that. But is there a percentage drop off that you can quantify?

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Can you specify what the grade drop off is from the alley?

MR. KIRWAN: Probably by dimension we can do it a little easier. There's probably about a foot, foot and a half. This graph sort of illustrates. You can see that there's a bit of a slope in the photograph that goes down to the cellar door underneath the kitchen.

And this cross section drawing shows both that condition at the cellar and shows the elevation at the alley. And there's approximately a foot to a foot and a half elevation change in Kevin's rear yard currently that will exist in his garage slab once we're completed because we have to get down to the elevation of the cellar and to provide adequate head room and all that. But the ability to set the garage elevation back, slope the paving down toward to the alley at the base of the garage doors will allow the water to flow back into the alley as it

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should remain. But the current condition is about a foot and a half elevation change.

VICE-CHAIRPERSON LOUD: And is that with respect to the other properties in the row of house, is that unique?

MR. KIRWAN: Yes. Because all the other row all have garages that permits blocking the water from going onto their property.

VICE-CHAIRPERSON LOUD: I guess let me sort of ask it a different way. So what makes this property unique, and this probably might have been a question for counsel, is not the foot and a half drop off but the fact that the foot and a half drop off is not covered by some sort of structure that blocks my term of cesspool from developing --

MR. KIRWAN: Yes.

VICE-CHAIRPERSON LOUD: -- as a result of the rain?

MR. KIRWAN: I would use that term.

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MS. PRINCE: I have --

VICE-CHAIRPERSON LOUD: You described a cesspool, you just didn't use the word.

MS. PRINCE: I have a comment.

We don't really know the topography of the other properties that are enveloped by that enclosed garage condition.

One of the garages has been there for over 30 years. But there's no question that our property does not have even topography.

VICE-CHAIRPERSON LOUD: Thank you.

CHAIRPERSON MILLER: Could you just point out where the garage meets the main level of the house?

MR. KIRWAN: The roof of the garage or the lower -- the garage level itself?

CHAIRPERSON MILLER: No. The top.

MR. KIRWAN: The top.

CHAIRPERSON MILLER: The roof.

MR. KIRWAN: Well, the roof of the

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garage is the deck, and that meets up with the elevation of the kitchen inside. We actually have a step up in the deck that allows us to get a garage door at the alley elevation. Again, because the alley is slopping -- we're slopping on Kevin's property from the cellar up to the alley. And to allow us enough head room to get a garage door on the alley elevation, the rear part of the deck is slightly higher than the portion of the deck right outside the kitchen door.

CHAIRPERSON MILLER: Okay. Then maybe what I was reading may not apply. Because it looks like it's above instead of below the main level, is that correct?

MR. KIRWAN: No. There are two levels to the deck, absolutely. Fourteen inches, 12 to 14 inches.

CHAIRPERSON MILLER: And I think this probably goes without saying, but the other permit did it lapse because it wasn't built within the required time? Yes. Okay.

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Anything else? Mr. Dettman?

BOARD MEMBER DETTMAN: I just followed up on one thing that Mr. Loud was asking about, and it goes to the extent, the depth of the garage that you built out from the rear of the house. Because it looks like you have a little bit of parking space underneath your house. And if we were just sort of looking at a secured parking space which has size requirements, a rooftop deck to sort of get yourself away from the noise of the alley, rats and trash it looks like you could have built shallower. But I was wondering if the extent to which you built your garage out five feet from the property line, was that influenced by the topography?

And that if you built shallower, you still have water running down not into your garage, but up against your garage door?

MR. SMITH: I'll mention and then let them talk.

Both issues. One, we'd still have

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the water pool and probably in the front and you'd probably have to put almost like a speed bump in front of it.

And two, as far as the useable space, you'd have this other area that's all ground level again which would not stop the restaurant trash and stuff. And it would also not give me air because of the concrete walls on either side of my neighbors. So if my line went out to here, he'd still have a concrete wall here and a concrete wall here and I'd have an elevated somewhat cave effect, but not necessarily the same. But that's how I'd answer it.

MR. KIRWAN: I think I can just provide a little bit additional to that.

If we were to move this wall back, two problems we would run into.

One is to keep water from again going onto Kevin's property, we would have to continue slopping up from this elevation which would compromise the garage door. And

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also create a much steeper interior garage slab for Kevin to try to park on, as another example.

Or we would move the threshold of the garage door down as we move it back creating, again, a slope back onto Kevin's property from the alley.

So it's a complicated thing to solve, unless you build out as far as you can and try to keep the water from coming onto the property and create an adequate slope for an interior garage.

CHAIRPERSON MILLER: Can I just confirm? Did you say that the height of the garage is where it is because of the garage door? The fact that it's coming a little bit above the main level?

MR. KIRWAN: Yes. It's to get a six foot eight, which is a standard garage door height to get vehicles in, that is generating this height up to the deck. You've then got the structure of the deck

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that's above the height of the garage. And that gets you at the deck elevation at the alley. Right, which is slightly higher than the floor elevation interior.

CHAIRPERSON MILLER: Okay. Any other questions? Okay.

Any other witnesses?

MS. PRINCE: No other witnesses. That completes our presentation this morning.

CHAIRPERSON MILLER: Thank you.

Why don't we go to the Office of Planning then.

MR. JESICK: Good morning, Madam Chair, Members of the Board. Again, my name is Matt Jesick.

We reviewed this request for variances, as with any variance as with any variance using the three part test. The first being is the property unique. We found that the property is not unique or does not exhibit any exceptional conditions. The property is regularly shaped, it is

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rectangular. It is the same size as other properties next to it, and the same size as other properties in the neighborhood and throughout the District.

We found, therefore, that it did not meet the first part of the test. Given that because the second part of the test builds on the first, the second part of the test could not be met either.

Regarding the third part of the test: Can the relief be granted without detriment to the public good, we found that yes there would be no harm to the public good. There would be no impacts to light or air, no impacts to privacy. In fact, the construction of the deck may even increase privacy for the homeowner and the neighbors. And certainly the addition would be in context with the development pattern around it.

We did find, however, that the variance to 2001.3 would be contrary to the

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intent of the zoning regulations. The zoning regulations give a maximum lot occupancy and then varying that lot occupancy -- or excuse me. If a building already exceeds that lot occupancy, varying that is strictly contrary to the provisions of that section 2001.3 which specifically call out lot occupancy as one parameter that should not be varied.

So we were not able to recommend approval of the project. But I would be happy to take any questions from the Board.

CHAIRPERSON MILLER: Thank you. I want to ask you when you say that 2001.3 talks about, I guess, lot occupancy and if not in compliance with that, it can't be varied. And that's what I understood you to say, what you were saying. But what can't be varied?

MR. JESICK: Sure. Certainly, you know, we see variances to lots of sections of the zoning regulations on a regular basis. With lot occupancy, however, there's this

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extra guideline, I guess, which specifically says, I'll just quote the section here.

"The structure shall conform. Enlargements or additions may be made to the structure provided the structure shall conform to a percentage of lot occupancy requirements."

So it's hard for us to say that it meets the third part of the test when this is specifically called out as kind of prohibiting that enlargement.

CHAIRPERSON MILLER: Okay. I think that this Board has been over this ground with Office of Planning before. I'm not sure with you. I guess it's been our position that the statute, the Zoning Act gives us authority to grant variances from any regulations and that there's no indication that this particular regulation isn't included.

MR. JESICK: I think what we're saying is, yes, certainly the Board has the

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power to grant a variance to this section. But it needs to, at least from the Office of Planning's point of view we feel that it should be a very clear dramatic need for a variance. Because the intent is so clear in here and because the third part of the test, the variance test states will it impair the intent of the regulations, it's just hard for us to reconcile those two things. But we certainly understand that the Board can find that it would be necessary in some cases.

CHAIRPERSON MILLER: Okay. And I guess it's my view that we would apply the three prong test in analyzing it. But I understand what you're saying. You think it should be really a bigger burden for that one. But I have yet to see really Office of Planning ever say that you could get a variance from that or ever support a variance from that. That's been my experience.

MR. JESICK: It is very rare that we would support a variance from 2001.3.

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CHAIRPERSON MILLER: Yes. My other question is when you did your analyses of the exceptional condition, uniqueness of this property did you limit that topography or did you consider what's been stated as a confluence of factors or improvements existing on the land or other things going on around this property?

MR. JESICK: We did look at the improvements on the property. I don't know that I would say we examined improvements on adjacent properties. And certainly there's been additional information presented this morning which we did not have, such as the cross section which may have informed our analysis. But, no, we did not look at adjacent properties. But we did look at structures and conditions on the subject property.

CHAIRPERSON MILLER: Okay. Thank you.

Other questions?

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VICE-CHAIRPERSON LOUD: Just a follow up, Madam Chair, on your line of questioning.

The testimony this morning by the applicant as well as his architect was that just taking a look. If you look at the property sort of in an isolation booth you may not see some elements of uniqueness. But I think part of their argument was that if you look at the property as it has evolved over the years, specifically this purported grade drop which made and/or makes the current area like a cesspool for vermin for rainwater, standing water, et cetera, et cetera that it provides an indicia of uniqueness along with the issue of the unfinished door that leads to nowhere. In light of hearing some of that this morning, is it still your position that there's nothing unique, at least for purposes of the variance test, about the property?

MR. JESICK: I think given that

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with the additional information that was presented this morning, we could find that the flooding condition would be unique to this property. We did not have the advantage of the cross section that has been presented.

But other factors such as the cave-like nature that has been mentioned or the door, I don't think we would consider those unique factors. But perhaps the flooding and the grade that leads down into the property.

VICE-CHAIRPERSON LOUD: Okay. And if you are so disposed to reconsider the whole flooding condition element, then moving on to the practical difficulty do you reevaluate whether or not there's a practical difficulty as a result of that flooding condition? I think the testimony was that three to six inches of standing water after rain conditions, et cetera.

MR. JESICK: Yes, I would certainly consider that a practical difficulty.

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VICE-CHAIRPERSON LOUD: Thank you.

MR. JESICK: Thank you.

CHAIRPERSON MILLER: How exceptional or unique is this door to nowhere? And have you seen a lot of properties in that kind of situation?

MR. JESICK: I've not seen that many properties in that condition. But certainly around the city you do see kind of French balconies loggias balconies. So I'd be hard pressed to say that that's a practical difficulty or a uniqueness. I think there are other solutions other than increasing the lot occupancy for that situation.

CHAIRPERSON MILLER: Other questions?

Does the applicant have questions for Office of Planning and do you have a copy of the report?

MS. PRINCE: We do. I have no questions.

CHAIRPERSON MILLER: Is anyone

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here from the ANC?

Is anyone here to wishes to testify in support of this application?

Is anyone here who wishes to testify in opposition to this application?

Okay. No hearing from anyone, I think that brings us --

MS. PRINCE: Chairman Miller --

CHAIRPERSON MILLER: Oh, wait. You want to -- yes.

MS. PRINCE: May I just confirm, because we have confirmed that you have a copy of the ANC letter. I just want to make sure--

CHAIRPERSON MILLER: Right. Just explain to say that it might an appropriate time to reflect the ANC report. And let's see if we do have. We do have a copy of the Dupont Circle Advisory Neighborhood Commission 2B report reflecting that on June 10, 2008 the Commission considered this application and had nine commissioners in

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attendance. That met their quorum. And it approved the motion by a vote of nine to zero.

VICE-CHAIRPERSON LOUD: I think I want to just place on the record that under our Exhibit 27 and Exhibits 21 and 24 there are letters of support from what I take are community members in the immediate vicinity. And that would be Ms. Webb and Mr. Wheeler.

MR. SMITH: You should also have letters from Ms. Bedard and Carol and Justus Theodore. There should be four support letters.

VICE-CHAIRPERSON LOUD: And let me stand corrected. That's at our Exhibit 20 for Ms. Bedard. And I don't see the exhibit for-- can you give me the last name again?

MR. SMITH: The last name is Theodore, Carol and Justus Theodore. They're at the corner -- their property is on 21st.

VICE-CHAIRPERSON LOUD: Okay.

MR. SMITH: We have a copy, an

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unsigned copy of it here we can give you. I know their email to me said that they mailed it on June 16th.

MS. BAILEY: Ms. Prince, would you please bring those documents over here?

CHAIRPERSON MILLER: Okay. Any closing remarks?

MS. PRINCE: Briefly in closing.

Mr. Smith has gone to great lengths to ensure that he constructs a compliant addition. He even went the step, with the help of his architect, of securing a memo from the Zoning Administrator so that we could be confident in the relief that we're requesting. And I think we've been very conservative and asked for the four possible variances that could be required.

We believe we've demonstrated that this property is unique for a whole variety of factors, perhaps the most compelling is the topography, but there are many others as well as we've outlined today.

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I'll emphasize again that the extent of the variance relief has to be considered in the context of the fact that this is a one story addition that is coming off the basement level of the house. This would be an entirely different application if, for example, the lot occupancy extended about that level and included the second and third levels of the house. But that's not the case here.

So we'd greatly appreciate your action on this application as soon as possible. We appreciate all your time and thought this morning. We've put a lot of work into it, and I think you have as well. And we appreciate your time.

CHAIRPERSON MILLER: Thank you.

We're going to deliberate this now.

VICE-CHAIRPERSON LOUD: Madam Chair, just to sort of articulate where I am with respect to Application No. 17795. I

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will be voting to support approval of the application and I'm going to share with you some of the reasons why. First by way of brief background.

This essentially is a project where the applicant proposes construction of a 25 feet deep garage in an existing approximately 31 feet deep rear yard with a roof deck on the garage. The addition is below the main level of the existing structure. The result would be about a five foot four inch rear yard where the regs require 15 foot minimum rear yard.

Also, the rectangular lot is similar to lots to the immediate east and west, but on the other hand there is an acknowledged flooding condition on the property as a result of the immediate lots to the east and west having, I believe, eight foot masonry walls and existing decks already.

With respect to the tests that one

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uses in a case like this, obviously, they're here before us on a variance. And a variance requires that they meet certain specific elements.

They need relief from section 402 floor area ratio 1.8 and approximately 2000 square feet are allowed. This project extends to about 1.94 and the proposed square footage is 2909.

They also need relief from section 403 lot occupancy. The regs allow 60 percent lot occupancy at about 900 square feet. They're going up to about 85.6 percent lot occupancy and a little over 1200 square feet.

They also need, as I indicated, relief from the rear yard requirements which is at section 404. And it's about four inches per foot of height, it roughly translates to about five feet four inches as I indicated for this particular project. As well as section 2001 which is an addition to a nonconforming structure.

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We heard with respect to the uniqueness element, and I think the Office of Planning modified its position to agree with this, that there's a flooding condition at the property which makes it a bit unique that the flooding condition collects about three to six inches of water. That this is a condition that has evolved over time that creates sort of a cave-like scenario that invites in, as I said, standing water, trash, vermin, you name it. And so it creates a very unique condition for this applicant in terms of its safety, just quality of life, sanitation, health conditions, et cetera.

There were also arguments that the property is unique because of this unfinished improvements and the configuration of the alley. I defer to others the discussion on that. I'm sort of convicted and convinced by the argument around the flooding condition of the property. And I think the Office of Planning is onboard with respect to that

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element of the uniqueness test.

With respect to there being a practical difficulty, the witness testified that there's no outdoor useable space and very clearly articulated some of the reasons why that's the case unless one wants to wade around in vermin and rats and all of that kind of thing.

And, incidentally, we've had a lot of rain this year and so I can imagine it's really an unpleasant place to be in this year.

The witness also testified that he can't even park when it rains. It's completely unusable space.

The Office of Planning, again, modified its report to say that yes if a flooding condition is on the property as is described by the witness, that is unique. and as a result of it being unique, then I can see the practical difficulty. That's the Office of Planning speaking.

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With respect to there being no substantial impairment to the public good, there was a lot of discussion back and forth.

But I'm taking a look at the ANC report, which is our Exhibit 28. They are members of our public. They met June 10. They voted nine to zip in favor of the application.

There are also a number of other neighbors. We have Ms. Webb at our Exhibits 21 and 24, Mr. Wheeler at our Exhibit 27, Ms. Bedard at our Exhibit 20 and then unnumbered exhibit for a witness that I believe just submitted their report this morning whose name escapes me for a second. But these are all members of the public who are effected by this who are stepping forward and providing us with testimony regarding whether or not there's any detriment to the public good. And, in fact, most of the rowhouses on this block already have a garage and deck similar to what the applicant is seeking. So I don't personally see any detriment to the public

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good.

There is this thorny question of whether or not the zoning intent has been impaired by increasing the lot occupancy. And for me I don't see where the zoning intent is impaired by that. I think that, and I'm going to need you guys to help me a little bit on this. But I think that we have a situation described, I think eloquently by counsel, where just due to the evolution of the rowhouses on that block the applicant finds himself in a situation where in some respects a major part of his house has become inhabitable. And I can't foresee that the intent of the zoning was for applicants who find themselves in situations like that to just continue to live under those conditions. And this is the R-5-B, so it's zoned residential. This is his home. This is not a vacation home. So I don't buy the argument that it impairs the intent of the zoning regs.

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And I'll be supporting the application.

CHAIRPERSON MILLER: I guess I'll jump in here. Because there are a lot of intents I think of the zoning regs and of the Comprehensive Plan. And I just want to jump in from there and then move back. But I think it's certainly by allowing a garage and roof deck in this area furthers the Comprehensive Plan because it makes more liveable the outdoors in the city. As of now this applicant can't make any recreation use of the driveway behind the house. So I think it adds to making it s more liveable vibrant city.

I think we have seen a transformation in certain blocks like this where the yard is almost raised.

I think you did an excellent job. And I just want to say one thing -- no. Correct one thing I think it's correction. And that is I was under the impression when I

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came into this hearing that also that the building was going to be below the main level. And it appears that that's not quite the case. According to these drawings it's a little bit above because of the height the garage door has to be. It may be a minimal amount, but it is above. Because we talked about whether or not that should even be included in the lot occupancy. But it looks like it probably needs to be.

But I do think that the applicant's attorney also did make a good point about where this lot occupancy is. It's not -- it almost looks like it's below, and it's not in a way that's having a negative impact on any of the surrounding properties.

With respect to the three prong test, though, I'd like to say I think that it does meet the exceptional condition and uniqueness test because of:

Number one, a confluence of factors, which is what the Gillmarten case

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tells we can look at, beginning with the improvement on the property which I would also refer to the Clarik's cases.

The improvements there and any addition that they would have to do at this point would violate the zoning regulations unless they demolish part of the house, which was not reasonable.

So I think that that's one factor to be looking at.

And then in conjunction with we have done this before, look at what's happening around them. Because the other properties were able to construct additions that then created walls abutting this particular property, this property is now subject different from the other properties to that whole kind of canyon effect that we have seen when this has happened in other situations. And that does mean it's damp, it's not inviting to use, it's dark. So that directly leads to practical difficulties.

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And then I think the third factor here in my view of the confluence of factors is its location near this very commercially used alley which, I guess plus the topography that brings in the rain which brings into this one open area now these practical difficulties of flooding, of rats, of trash, security problems. So that I think that we do have an exceptional situation that leads directly to practical difficulties for this applicant.

And I don't see any way that the applicant could comply with the regulations given its nonconforming status without relief from the Board.

And then even the Office of Planning has said that there's no adverse impact from granting the relief and that in fact -- oh, the other thing is that it would be consistent with the other homes on this block and surrounding homes. And so that I find it hard to understand why it would be

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contrary to the zone plan.

Others?

BOARD MEMBER DETTMAN: I'm also in support of the application for all the reasons that Mr. Loud so perfectly articulated.

I think it's clear in previous Board actions that especially with respect to lot occupancy and rear yard on this block, it's clear that the Board sees that in cases that are similar to this warrant some relief here.

Additionally with respect to rear yard I was asking about why the applicant chose to build so far toward the alley when in fact you could possibly meet the rear yard requirement by building a little bit further in. But I think it was the applicant that answered that it's still not going to relieve any of the flooding issues and some of the other woes that Mr. Smith has experienced along the alley with people potentially

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coming in to do a three point turn using your driveway and people hanging out or trash collecting. So I thought that was clearly articulated satisfactorily.

I'm always a little bit suspect when it comes to relief from FAR. I think FAR is a very good measure and it's a very good tool to protecting density. But in this case we're not seeing an increase in FAR in order to incorporate some additional dwelling units where you're going to see extra people, you're going to see extra cars coming into the alley or extra people and pumping in new density into this area. We're really just talking about -- and the relief from FAR is really just a result of the need to develop further into the lot to alleviate some flooding issues and increase the lot occupancy.

So in this case I think the relief from FAR is justified.

BOARD MEMBER WALKER: Madam Chair,

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I will also be voting in support of the application. I am not an architect. And while Mr. Dettman was looking at whether the rear yard could be larger, I was sitting here wondering from an aesthetic perspective why the garage door was not going to be flush with the neighboring garage door. But, again, I think the applicant's architect explained the challenges with grading the very back of the property so that the water would run into the alley. And so that satisfied me.

I agree with the Office of Planning that it is the flooding issue that creates the exceptional condition for this property that gives rise to a practical difficulty.

MR. DAVIS: Madam Chair, in the midst of all of this support, who is going to make the motion? I'll be more than happy to, Madam Chair

I would move approval of

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Application No. 17795 of Kevin Smith, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements, a variance from the lot occupancy requirements, a variances from the rear yard requirements, and a variance from the nonconforming structure provisions to allow a garage addition serving a one-family row dwelling in the DC R-5-B District at premises 2021 N Street, Northwest, and would invite a second.

VICE-CHAIRPERSON LOUD: Second.

MR. DAVIS: Thank you very much, Mr. Loud.

I think everything has been said that needs to be said now, Madam Chair.

CHAIRPERSON MILLER: I think so.

All those in favor say aye.

ALL: Aye.

CHAIRPERSON MILLER: All those opposed. All those abstaining.

And would you call the vote,

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please?

MS. BAILEY: Madam Chair, the vote is recorded as five-zero-zero to grant the application. Mr. Etherly made the motion, Mr. Loud seconded it, Mr. Dettman, Ms. Miller and Ms. Walker support the motion.

CHAIRPERSON MILLER: And this will be a summary order as there are no parties in opposition.

Thank you very much.

We're going to take just a five minute break and the other parties can come up when they're ready for the last case.

(Whereupon, at 11:49 a.m. a recess until 12:00 p.m.)

CHAIRPERSON MILLER: Ms. Bailey, we're ready for the next case when you are.

MS. BAILEY: Thank you, Madam Chair.

I hope I'm pronouncing this name correctly. Seri Gbagbo. Application No. 177797. It's pursuant to 11 DCMR § 3103.2,

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for a variance from the use provisions to allow a hair-braiding salon under subsection 350.4, at premises 3918 Central Avenue, N.E.

The property is zoned R-5-A and it's located in Square 5790, Lots 27 and 28.

CHAIRPERSON MILLER: Good morning.

MS. SERI: Good morning.

CHAIRPERSON MILLER: Would you introduce yourselves for the record? Just give us your name and home address, please.

MS. SERI: My name is Seri Gbagbo Josephine.

I'm sorry I don't speak good English. I'm from French -- you know it's not easy to speak if a lot of people watch you.

CHAIRPERSON MILLER: We understand.

MS. SERI: Okay.

CHAIRPERSON MILLER: That's fine.

MS. SERI: Okay.

VICE-CHAIRPERSON LOUD: I'm sorry.

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Can I just ask you to repeat your last name again?

MS. SERI: Seri, S-E-R-I.

VICE-CHAIRPERSON LOUD: Okay. Ms. Seri. All right.

MS. SERI: Yes.

VICE-CHAIRPERSON LOUD: Thank you.

MS. SERI: For me, I don't have a problem with my -- the owner. I don't have problem. My problem is I want my occupancy to open my business.

CHAIRPERSON MILLER: Okay. Let me say this especially because you don't speak English that well, as you stated --

MS. SERI: Yes.

CHAIRPERSON MILLER: --I want to tell you what you filed, your papers were very thorough. And if you want us to just consider what you wrote in your papers, that's fine. You covered everything you needed to cover as far as --

MS. SERI: That would be fine.

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CHAIRPERSON MILLER: --I can tell you unless there's something you want to add, you can.

MR. CHUNG: Madam Chair, good morning.

CHAIRPERSON MILLER: Good morning. And could you introduce yourself, too?

MR. CHUNG: Yes. My name is Dan Chung, C-H-U-N-G, 7101 Somerset Park Street, 205, Leesburg, 20157.

And I'm the building manager and I will be speaking in behalf of Ms. Gbagbo.

CHAIRPERSON MILLER: And to my right is the owner of the building. So if you have any questions, we'll be happy to comply.

CHAIRPERSON MILLER: Why don't we just start with Board questions if that's all right with you all.

We have one about the plat. We're not sure that the correct plat has been placed in the file, that it doesn't seem to

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match up with some of the other documents.  
Are you familiar with that?

MR. CHUNG: The --

CHAIRPERSON MILLER: There's a plat that references a Shannon Place here. We think it's the wrong plat.

MR. CHUNG: Yes. Did you send in anything like that? Yes. I don't think so.

CHAIRPERSON MILLER: Why don't we have the Office of Planning introduce themselves as well and maybe they can help us out with that question. And it's our Exhibit 2 that I'm referring to.

MR. LAWSON: Good afternoon, Madam Chair and Members of the Board. My name is Joel Lawson and I'm with the D.C. Office of Planning.

I'm here to introduce yet another new staff member today. Mike Giulioni has joined our staff about six months ago, not even, to mainly work on the zoning review process again. But he's also the manager for

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this case. So he'll be addressing most of your question.

Thank you.

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

CHAIRPERSON MILLER: Would you give us your name again?

MR. GIULIONI: It's Michael Giulioni.

CHAIRPERSON MILLER: Right. Okay. Thank you.

This is kind of a technical question, but kind of important. Exhibit 2 is a plat that doesn't seem to be the right plat for this case. I'm not sure if you have the same one, but it identifies a Shannon Place on it.

MR. LAWSON: We actually have the same map as you, and we agree with you that it's the incorrect map.

CHAIRPERSON MILLER: Okay. And do you understand what I'm talking about?

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MR. LAWSON: Actually, no, we don't.

CHAIRPERSON MILLER: Do you have Exhibit 2, this document here?

MR. LAWSON: You do have? You did receive it, though? You did get that document?

MS. SERI: Yes, I got it. This one. And I bring the copy with -- for this one and --

MR. CHUNG: She did. Yes, she did receive the copy. She just didn't bring it with her.

MS. SERI: Yes, I didn't bring with me.

CHAIRPERSON MILLER: Great. Do you have a different one that you want to put in that's right or what, or is that what you think is right?

MS. SERI: I remember this. I get it, and it is DC 441 something, yes.

CHAIRPERSON MILLER: Okay. That's

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what they gave you and that's what you filed.

Because that's what they gave you, correct?

MS. SERI: Yes.

MR. CHUNG: This is incorrect, is that --

CHAIRPERSON MILLER: Isn't it, Office of Planning? Maybe you can help out on this.

MR. GIULIONI: It does appear as though the plat represented is not consistent with the square and lot number identified. And through the analysis it didn't come in -- it wasn't relevant, so to speak, through our review. So it looks like it was a technical oversight.

CHAIRPERSON MILLER: Yes, exactly.

Okay. I think what-- the case that you made about using the property for hair-braiding is fine. You addressed everything you needed to address. And what Office of Planning is saying is they didn't notice this issue because it didn't really go to be

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specifically relevant to what we need to consider to grant the relief you're seeking. However, I think we need to get the right plat in the record. Okay. Just so that the record is correct, you know, that it reflects where the property is.

It's not a big deal right now. We're going to go forward with the hearing and leave the record open for the correct plat to come in.

Okay. Let me just ask is the ANC here as well on this case?

MR. CHUNG: I don't believe they're here, but I believe they submitted a letter in our favor.

CHAIRPERSON MILLER: Right. Okay.  
Hold on.

I just want to ask you about the ANC. This is really my only question, I think.

Did you go to a meeting of the ANC?

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MS. SERI: Yes, one time.

CHAIRPERSON MILLER: Okay. It says here that they're in favor of the application, but they want the operating hours to be limited to 8:00 in the morning to no later than 11:00 at night. What would your operating hours be?

MR. CHUNG: Store hours.

MS. SERI: I open 8:00 to 6:30.

CHAIRPERSON MILLER: Was that discussed at the hearing? I mean, at the meeting?

MS. SERI: The lady asked me -- I don't know the -- you know what is a 49 in the back street -- I don't remember the name.

And they have a meeting the day before the June 8 -- June 8, 7:00.

MR. CHUNG: Did they talk about your store hours?

MS. SERI: No, no, no. I'm not talking about store hours. The lady --

CHAIRPERSON MILLER: Let me ask

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you another question. They also asked that the salon be closed one day a week, that it only be open six days a week. Do you know what days you want to have the salon open?

MS. SERI: You know, sometime I don't open Monday if you have something to do, you know --

MR. CHUNG: And you're going to have a day closed that is set?

MS. SERI: No.

CHAIRPERSON MILLER: Okay. So you don't agree with that recommendation that you have to have it closed one day a week, is that right?

MS. SERI: Before my first shop in Maryland, I close Monday. and if you are closed Monday, customer call me. Now I say - - okay, if it's like that, I don't want to close the shop. I'm going to open everyday, you know. Because if I close -- if I say I'm off, they say they want me come do this for me quick, please, you know. And that's why I

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don't close the shop anymore. I open if a customer come. If they don't come, I'll go.

CHAIRPERSON MILLER: Okay. Any other questions?

VICE-CHAIRPERSON LOUD: Good morning again, Ms. Seri.

The ANC that supports your application for a variance, I think as the Chair alluded to, also would like to impose a condition that you're closed one day in a seven day period. And as an organization, as a body, we have to give their recommendation what's called great weight because they've meet the requirements as an ANC for us to give it great weight, which I believe essentially means that we have to be real clear and articulate a reason why we would not follow their recommendation.

Is there a reason why you cannot close one day?

CHAIRPERSON MILLER: I think she just tried to address that, is that right? I

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think she was saying that that happened in Maryland. And she has been running a shop and sometimes a customer will call and ask to come in on a day it's supposed to be open and she wants to be able to do that.

Do you want more?

VICE-CHAIRPERSON LOUD: Well, yes.

CHAIRPERSON MILLER: Okay.

VICE-CHAIRPERSON LOUD: Just a little more. Just in the context of if you didn't have the option of being open seven days a week -- I sort of understood your remarks about Maryland to be that there were no sort of external restraints on you being open seven days a week.

MS. SERI: Yes, I feel --

VICE-CHAIRPERSON LOUD: But if there's real pressure on you, is it an economic -- is it just convenience for the occasionally client that calls, or is there an economic -- is it driven by economics for your business?

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MS. SERI: It's not for economics. It's for help my customer, that's -- it's not for economic. You know, I need to take a break one day, too, you know.

VICE-CHAIRPERSON LOUD: It makes a lot of sense to me. Okay. Would you consider curtailing your hours one day in the seven day period, or will you want to be open 8:00 a.m. to 6:30 all seven days?

MR. CHUNG: If I may, could I explain it to her in a little bit more detail? I'm not sure if she actually understands the weight of the ANC. So if I may?

CHAIRPERSON MILLER: Let me just say a little caveat before you do that, too. Because we do need to give the ANC great weight, which means we need to articulate, you know, why we might not agree with them. But they haven't in this ANC report either articulated a reason why we should limit the hours. So I just want to let you know that,

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you know -- I don't know.

I mean giving them great weight doesn't mean we necessarily just go along with their recommendation. It means we usually address their reasons, and they didn't give me.

MR. CHUNG: Okay. We're ready. And her answer is she will close on Sundays.

MS. SERI: Sunday.

CHAIRPERSON MILLER: Okay. Is she the only one that's going to be working there or --

MR. CHUNG: Do you have other workers?

MS. SERI: Yes. Because, you know, D.C. they need a license.

MR. CHUNG: Are you the only person who is going to be working?

MS. SERI: Yes.

CHAIRPERSON MILLER: Just one person? Okay.

And am I correct that basically

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she doesn't plan on working Sundays because she wants a day off, but she'd like the option if a customer wanted her to do their hair on Sunday to be able to do that?

MS. SERI: No, I don't want to do that because if I say I'll close, I'm going to close. I don't want to open Sunday anymore, can I say?

MR. CHUNG: Yes.

CHAIRPERSON MILLER: Okay. I just want to be clear what she wants, you know. Because then we can decide between the ANC and the applicant.

MR. CHUNG: I believe what she wants is to be open seven days a week, but if it's a better chance for us to get the variance, she'll comply to any of these.

CHAIRPERSON MILLER: Thank you.

BOARD MEMBER WALKER: Mr. Chung, did you attend the ANC meeting?

MR. CHUNG: No, I did not.

BOARD MEMBER WALKER: Okay. Ms.

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Seri, do you remember whether the ANC talked about your being closed on a particular day of the week?

MS. SERI: No, they didn't. They didn't say -- the lady, she didn't see me, you see? I'll tell you, too. She didn't see me. And they are finished -- hey, you come here, say yes, you say you need to see me here. That's why I saw her. Okay. No problem. We didn't talk about that thing, no.

BOARD MEMBER WALKER: Did you hear any discussion about your being closed on a day, on a particular day?

MS. SERI: No, no, no, no. Talking about -- just how the people just left. They talking about, you know, problem now or close Sunday or Monday, you know. They didn't say that. No.

CHAIRPERSON MILLER: There are other stores in this building, correct?

MR. CHUNG: Yes, ma'am.

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CHAIRPERSON MILLER: Are they open on Sunday or open seven days a week, do you know?

MR. CHUNG: The grocery store, they operate seven days a week. And also the barber shop.

MS. SERI: Yes. Seven days.

MR. CHUNG: Seven days a week also. And, of course, the church is open on Sundays.

CHAIRPERSON MILLER: There's a barbara shop that opens -- that operates seven days a week?

MR. CHUNG: Yes.

CHAIRPERSON MILLER: Are there other questions? Okay.

Anyway, as I said before, I think that the record is very full for the relief that's being sought. Unless you want to say anything else at this point, we can go to the Office of Planning.

MR. CHUNG: We have no further.

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CHAIRPERSON MILLER: Okay. We're ready for your testimony.

MR. GIULIONI: So I guess the Board has reviewed our report. And so I just want to briefly go over how we felt it met the tests of the variance requirement.

Speaking to the uniqueness, a key fact we looked at was that the building did predate the zoning regulations. This is an existing space which served commercial users in the past.

The space is very small in nature. An estimated approximately 500 square feet including its circulation space to the basement and a washroom space.

And as the building exists, there are no residential amenities that would further the use as an immediate residential use.

With respect to practical difficulties faced by the owner and potential tenant, I reviewed the space against

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permitted uses other than a residence in the ordinance would find that they wouldn't be viable occupying such a space due to issues such as size. And we feel that the reconfiguration of this space would not be practical due to the fact that it's simply one small space within an entire sort of commercial floor. Having to retrofit one single space poses sort of unnecessary burden.

And with respect to the detriment to the public good, we feel that it would not -- the nature of the use would not pose a threat in terms of a nuisance to the neighborhood. And also we feel that having the space active would, if anything, provide a benefit to the area. And the nature of it is neighborhood serving retail also fits into compatibility with the area.

I'd be happy to answer any questions if you have any.

CHAIRPERSON MILLER: I just want

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to say it was an excellent report. Thank you.

Any questions from the Board? No. It was so good, it answered all our questions.

Okay. Does the applicant have any questions for the Office of Planning? And do you have a copy of their report?

MS. SERI: No.

MR. CHUNG: The report?

CHAIRPERSON MILLER: Of the Office of Planning, do you have that?

MS. SERI: I didn't receive the letter yet. They just call me.

MR. CHUNG: You didn't get that?

MS. SERI: No, they just call me.

MR. CHUNG: Okay. She was saying that she just received a phone call, not the full report.

MS. SERI: And I went to the office.

CHAIRPERSON MILLER: Okay. We can get a copy to you. It's extremely favorable

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to your position and totally supportive of your getting the relief you're seeking.

MS. SERI: Okay.

CHAIRPERSON MILLER: Okay. Now, I asked this before but I'm just going to double check. Is there anybody here from the ANC who wishes to testify in this case?

Is there anybody here who wishes to testify in support of this application?

Anybody who wishes to testify in opposition?

Do you need to look at that before we complete the hearing?

MR. CHUNG: That'll be okay. Yes, I think we're okay. Thank you.

CHAIRPERSON MILLER: Do you want to make any other closing remarks before the Board decides on this?

MR. CHUNG: I think we've covered everything. Thank you.

CHAIRPERSON MILLER: Okay. In which case, I think that the Board is ready

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to deliberate on your application.

As I stated, the record is very complete. The applicant and the Office of Planning both made very thorough reports. So I would like to move approval of this application, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to allow a hair-braiding salon under subsection 350.4, at premises 3918 Central Avenue, Northeast.

Do I have a second?

VICE-CHAIRPERSON LOUD: Second, Madam Chair.

CHAIRPERSON MILLER: This is an application for a use variance. It's similar to the variance analysis we did in the previous case, but in this case it's even a higher standard. But I think that this case meets it.

The first prong of the use variance test is that there be an exceptional situation. And I think Office of Planning

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addressed this quite thoroughly, that this is exceptional. It's a -- in this case, the space, it's a portion of the building that we're talking about. And that portion had in the past for commercial use that lapsed and now they need a variance because it's a residential use as a matter of right.

And, however, that the space was configured for a commercial use and it's very small and not suited for residential use. And it's in this building with these other commercial uses.

There's a great practical difficulty as Office of Planning set forth in their report in reconfiguring it for residential use. It's just too small and it would be very expensive to make it work for a residence. They'd have to change the bathrooms and add a kitchen, and it's just unreasonable and impractical and it's a great hardship. That's the standard that we use for a use variance; that it would be an undue

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hardship to do that.

And then finally that there be no substantial detriment to the public good if relief is granted. In this case to allow the use of this space is for hair-braiding and no substantial detriment has been identified. It's actually the space is in a building with other commercial uses, including a barbara shop. And it actually serves the residences around it.

And another issue that I thought was interesting was, you know, the way it's set up is it wouldn't be good for residents security-wise. A parking space goes up to it in this parking lot.

So in any event, I think that all the prongs are met.

If there's concurrence on that, we can then talk about condition or if anybody else wants to add something with respect to the test here.

Okay. Then we have a condition

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that was proposed by the ANC to limit the hours to be from 8:00 to 11:00, and that the salon be closed a minimum of one day a week.

And we give great weight to the ANC by addressing their concern or their recommendations -- and/or their recommendations.

They made recommendations without reasons here. So we can only just consider their recommendation, basically, in the context of what we here have heard today. And the applicant has represented that she intends to run the salon from 8:00 to 6:30 and would like the flexibility to be there seven days a week though she doesn't intend to work seven days a week. She's the only one working there.

I don't think it's necessary to have a condition at all, but I'd be open to hear what others say. We heard testimony that there's a barber shop there that's open seven days a week and a grocery store seven

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days a week. So I can't see how one person braiding hair is going to have an adverse impact on that situation.

And I think she's operating normal business hours. And even if she were to do somebody's hair one night at 8:00, I just don't see the adverse impact there. It's such a low impact occupation or use of the property.

So others have opinions on that?

VICE-CHAIRPERSON LOUD: I just wanted to add that I, too, am supporting the application without the condition. But I do want to explore on the record, first just to affirm the ANC and their submission of the report and their raising that particular concern, and just sort of go through it in dialogue with the applicant.

One of the things that I heard the applicant say that sort of ameliorated any concerns I might have with respect to what the ANC raised is that Ms. Seri was very

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willing to when she thought that it was necessary to close down one day per week. And I'm certain that in working with the ANC in the future that she'll work in good faith with them and if they have some concerns, that that could be worked out with us having to impose that as a condition.

Again, I will support it without any conditions.

CHAIRPERSON MILLER: Others? Yes.

I think she mainly wanted to just have flexibility to serve her clients, you know, rather than run an intense business seven days a week.

So, okay. Then what I would like to have us do is we vote on this, but then talk about leaving the record open for the plat. Okay.

Any further deliberation? And my motion was seconded, is that right? Okay. So we have a motion that was seconded.

All those in favor say aye.

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ALL: Aye.

CHAIRPERSON MILLER: All those  
opposed?

All those abstaining?

And would you call the vote,  
please?

MS. BAILEY: Madam Char, the vote  
is recorded as four-zero-one to grant the  
application. Ms. Miller made the motion, Mr.  
Loud seconded, Mr. Dettman and Ms. Walker  
supported the motion. And Mr. Etherly is not  
on the dias at this time.

CHAIRPERSON MILLER: Thank you.

And this will be a summary order  
as there is no party in opposition. However,  
before we can issue the order, before we will  
issue the order we need to get the right plat  
in the record. So I believe that's the  
responsibility of the applicant, but that you  
should confer with the Office of Planning if  
you have any problems getting the correct  
plat. Because it sounds like you were given

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the wrong plat. But we need to have the record correct in our file.

MR. CHUNG: Will do. Thank you.

CHAIRPERSON MILLER: Okay. So as soon as you get that in, you'll have your order or pretty soon thereafter. Okay.

MR. CHUNG: Thank you very much.

CHAIRPERSON MILLER: Okay.

MS. SERI: Thank you.

CHAIRPERSON MILLER: Thank you.

Ms. Bailey, is there anything else on the agenda for this morning?

MS. BAILEY: No, Madam Chair.

CHAIRPERSON MILLER: Okay. We're going to be adjourning, but those who are listening who have a hearing this afternoon, we expect to come back in an hour, so that would be about 1:30. And we will be hearing first 17811, D.C. Housing Authority as scheduled. But then we will be switching the order to hear 17747 Stephanie Wallace case and then third, 17761 of Harry Belin and the

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Evermay Society.

Okay. And this hearing is adjourned.

(Whereupon, at 12:30 p.m. the hearing was adjourned to the Afternoon Session at 2:30 p.m.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2:30 p.m.

CHAIRPERSON MILLER: This hearing will please come to order.

Good afternoon, ladies and gentlemen. I am sorry for the delay in starting these hearings, but here we go.

This is the July 15th, 2008 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller, and I am the Chair of the Board of Zoning Adjustment.

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To my right is Mr. Marc Loud, who is our Vice-Chair. To my left is Mary Oates Walker and Shane Dettman, both Board Members. and Beverley Bailey is sitting to the far left. Also Mr. Cliff Moy will be joining us 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 of the door.

Please be aware 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're finished speaking, please turn your microphone off so that your microphone is no longer picking up sound or background noises.

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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 special exceptions and variances is as follows:

(1) Statement and witness of the applicant;

(2) Government reports including the Office of Planning, the Department of Public Works, DDOT, et cetera;

(3) Report of the Advisory Neighborhood Commission;

(4) Parties or persons in support;

(5) Parties or persons in opposition;

(6) Closing remarks by the

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applicant.

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

(1) Statement and witnesses of the appellant;

(2) The Zoning Administrator or other government officials' case;

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

(4) The ANC 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, appellant, persons and parties except an ANC in support,

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including witnesses, 60 minutes collectively.

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

Individuals three minutes.

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

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

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specify at the end of the hearing exactly 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 on each case be held in the open before the public. The Board may, consistent with its 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

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cell phones at this time so as not to disrupt these proceedings.

The Board will make every effort to conclude the public hearing as near as possible to 6:00 p.m. This may be one day where that might not happen. So as we get closer to that time, we'll assess whether we can complete it or not.

At this time the Board will consider any preliminary matters. Preliminary matters are those that relate to whether a case will or should be heard today, such as requests for postponement, continuance or withdrawals 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: Madam Chair, Members

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of the Board and to everyone, good morning.

There is a preliminary matter. It has to do with a motion for a continuance of one of the cases this afternoon. But it is my understanding that that motion will be taken up when the case is heard by the Board.

CHAIRPERSON MILLER: That's correct. The Board is very aware of that motion and has determined that we will be considering it when we call the case. And we have rearranged the schedule, though, so that that case will be called second on the agenda. I announced this earlier in the morning session, but just to clarify for those who didn't hear it, the first case that we'll be hearing today will be 17811 as scheduled and then the second case will be 17747 of Stephanie Wallace. And then third will be 17761 Harry Belin and Evermay Society.

Okay. Any other preliminary matters?

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MS. BAILEY: That's it, Madam Chair.

CHAIRPERSON MILLER: Oh, hello. Okay. Do you have a preliminary matter in a case? All right. Well, come forward to the table and state your name for the record and address. And then we'll consider it.

MS. STEURY: My name is Ellen Steury. I'm here for the 17761 matter. Do you want to take up preliminary matters at that time when you call that case or if we have a preliminary matter now, should we raise it?

CHAIRPERSON MILLER: We'll take it in that case.

MS. STEURY: Okay. Thank you.

CHAIRPERSON MILLER: Thank you.

Okay. Then I think that is it for preliminary matters, is that correct? All right.

Would all individuals who wish to testify in any of the cases that are

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scheduled on the agenda for this afternoon, please rise to take the oath and Ms. Bailey will administer it.

(Oath is Administered)

CHAIRPERSON MILLER: I just wanted to announce that Mr. Curtis Etherly to my far right as joined us from the Zoning Commission.

MS. BAILEY: Madam Chair, the first case this afternoon is Application No. 17811. It is the application of the District of Columbia Housing Authority, pursuant to 11 DCMR § 3104.1 and 3103.2, for a special exception to allow the construction of a new residential development under sections 353 and 2516, that's new residential development and exceptions to building lot control, and a variance from the parking space location requirements under subsection 2116.2. The property is zoned R-4 and it's located at premises 2222 through 2250 Ainger Place, Southeast, Square 5740, Lots 28, 29, 30 and

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31.

CHAIRPERSON MILLER: Good  
afternoon.

ALL: Good afternoon.

CHAIRPERSON MILLER: And would you  
please introduce yourselves for the record,  
please?

MR. BUBER: Madam Chair, Board  
Members, my name is Shirley Buber, project  
manager with the District of Columbia Housing  
Authority, who is the named applicant in this  
application before you here today for  
consideration and hopefully approval.

As I heard Ms. Bailey introduce  
the project, she indicated that it was a R-4,  
which we have submitted as R-5A just for the  
record.

CHAIRPERSON MILLER: Okay. Thank  
you.

MR. BELLO: Good afternoon, Madam  
Chair. Toye Bello. I'm here as a zoning  
consultant to assist in this application.

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MR. JENKINS: Good afternoon, Madam Chair. My name is Earl Jenkins. I'm here as a private partner with the Housing Authority with this project.

MR. REDDICK: Good afternoon. My name is Bill Reddick. I'm also here as a partner of the development entity.

CHAIRPERSON MILLER: Okay. Great. And is anybody here from the ANC on this case? Okay.

And we don't have any party status applicants in this case.

So it's a very thorough filing. We think that you addressed all the elements.

We have some questions that we just want to follow up on, though I don't want to preclude you from adding anything you want to add today. We just want to let you know that you really did an excellent job of hitting all the points.

MR. BUBER: Thank you.

CHAIRPERSON MILLER: My one

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question, I think, goes to a landscaping plan. Is there a landscaping plan in the record?

MR. JENKINS: Yes, there is, Your Honor. I mean, Madam Chair. That's a freudian slip.

CHAIRPERSON MILLER: All right. What would you like us to look at? I know we have Exhibit 31.

MR. JENKINS: It's in the --

MR. REDDICK: Exhibit C2A has multiple functions one of which is a landscaping plan.

CHAIRPERSON MILLER: Exhibit C2A which is attached to what?

MR. REDDICK: I'm sorry. C1. I'm sorry C1. And I have a board for it.

CHAIRPERSON MILLER: You mean 31? What do you mean?

MR. REDDICK: It's part of the submission.

VICE-CHAIRPERSON LOUD: Mr.

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Reddick, our exhibits are numbered. That's what we're trying to find out which numbered exhibit that's attached to.

MR. REDDICK: Okay.

VICE-CHAIRPERSON LOUD: 31. Okay.

MR. REDDICK: This is what it looks like if that'll help. Is this 31?

MS. BAILEY: Did you want to -- I can show it to the Board Members.

CHAIRPERSON MILLER: Okay. So that's the exhibit that shows proposed grass cover with the dots, I see that.

MR. REDDICK: Right. And shrubbery.

CHAIRPERSON MILLER: And shrubbery.

MR. REDDICK: In front of the houses. Yes.

CHAIRPERSON MILLER: Okay. Those black dots are the shrubbery in front of the houses?

MR. REDDICK: Yes. On the right

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hand side there should be a key that shows.

CHAIRPERSON MILLER: There is, yes.

MR. REDDICK: Yes.

CHAIRPERSON MILLER: Okay. I also wanted to ask you your response to the recommendation of the Department of Transportation that you have bike racks on your site. Are you familiar with that?

MR. REDDICK: We're not familiar with that.

CHAIRPERSON MILLER: No. Okay. Let's see if you have gotten this. It's very recent. It's dated July 9, 2008. It's a memorandum from Korinna Ricks, Associate Director for Transportation Planning to Director Jerrily Kress, Office of Zoning. We'll show it to you then, I think.

MR. REDDICK: Okay. We have no problem. That's great.

CHAIRPERSON MILLER: Okay. I'll just read you the pertinent part, though, if

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you haven't gotten this at this point.

"Twenty-eight off-street parking spaces are provided in lieu of 11 required. DDOT does not encourage the provision of excessive off-street parking spaces. Access to the property is from Ainger Place, Alabama Avenue is a major Metro bus route. It is in close proximity to the project site. DDOT recommends that five secured bicycle racks be provided within the property."

MR. REDDICK: Okay. Good. And we'll--

CHAIRPERSON MILLER: You're fine with that?

MR. REDDICK: We'll do that. Yes.

CHAIRPERSON MILLER: You're good with that.

MR. REDDICK: Yes.

CHAIRPERSON MILLER: Okay. Did you go to an ANC meeting?

MR. JENKINS: Yes, I did. I presented the project at an ANC meeting at

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the police station on Alabama Avenue. I believe that's Seventh District, if I'm correct.

CHAIRPERSON MILLER: And did they vote on your project?

MR. JENKINS: Yes. They voted and approved our project. They had a quorum and we got a letter from the ANC Commissioner supporting it.

CHAIRPERSON MILLER: Do you have that letter, because I don't believe that we have it?

MR. JENKINS: It's not a part of the record?

CHAIRPERSON MILLER: We don't have it. I think Office of Planning might have made reference to it, but --

MR. GOLDSTEIN: I believe I saw it, but then I didn't have it as part of my record. I think it got forwarded to me separately.

CHAIRPERSON MILLER: If you have a

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copy, you could give it to Ms. Bailey. And then maybe Ms. Bailey could give you a copy of the memo from DDOT.

Ms. Bailey, that was our Exhibit 33.

MS. BAILEY: Okay. I have a copy with me. I'll forward one to you. Okay.

MR. REDDICK: Okay.

CHAIRPERSON MILLER: Any other questions from Board Members?

We also just got a copy, dated July 15th, of a memorandum from a Fire & Emergency Medical Service. Did you get a copy of that?

MR. JENKINS: No, ma'am.

CHAIRPERSON MILLER: Okay. We'll get you a copy of that.

MR. JENKINS: Okay.

CHAIRPERSON MILLER: Okay. We really just got this, and I'll bring it to your attention and you can take a look at it and respond if you like right now, and Office

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of Planning can respond.

This is from D.C. Fire and EMS Department, July 15, 2008. And it says "Based on the site plan submitted that D.C. Fire and EMS Department has an objection to this application. Reference Section 503 of the IFC code. Specifically Section 503.1.1 Building and Facilities states that approved fire apparatus, access roads shall be provided for every facility, building, or portion of a building hereafter constructed and moved into or within the jurisdiction.

The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the first story of the building as measured by an approved route around the exterior of the building or facility."

I don't know if you can react based on my just reading this. I think you need to take a look at it. And I'd like to

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know if Office of Planning has seen this memorandum. Because everything else has been totally supportive of the application. This is the first memorandum that's come in with a problem.

Do you want to introduce yourself for the record? We're just going to jump over there to you.

MR. GOLDSTEIN: Fine.

CHAIRPERSON MILLER: Okay.

MR. GOLDSTEIN: That'll be fine. My name is Paul Goldstein. I'm a development review specialist with the Office of Planning. That actually is the first time I've heard about it. As part of our review we do forward information to the various agencies. I think it's under 2516, actually has that requirement.

I did forward information to the Fire Department, but until you mentioned it I hadn't heard anything.

CHAIRPERSON MILLER: Mr. Bello, do

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you have a comment?

MR. BELLO: Yes. Yes, Madam Chair.

CHAIRPERSON MILLER: Okay.

MR. BELLO: If I can just address this question very simply.

First of all, the Fire Marshal has no role in the building permit process.

Secondly, the private egress/ingress provided for this property does not meet the intent and purpose of its requirement, I would argue.

CHAIRPERSON MILLER: I mean, I know that the applicant went through all the provisions in the zoning regulations that apply and it's met all the zoning regulations, I think, that I'm aware of. But where does this concern get picked up? I mean, where does it get addressed?

MR. BELLO: It actually has no role in the building permit process whatsoever. But to the extent that one even considers it, the private ingress/egress road

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into this property is within 150 feet of the two story structure that is proposed. So I think that our application is in compliance with the intent and purpose of this regulation were it to even be an issue in the building permit process.

CHAIRPERSON MILLER: Okay. I mean, so their main point was that it has to be within 150 feet and you're saying it is?

MR. BELLO: It is.

CHAIRPERSON MILLER: So it's a non-issue?

MR. BELLO: Yes.

CHAIRPERSON MILLER: In your view? Okay.

Other Board questions?

VICE-CHAIRPERSON LOUD: Just a quick follow up question on that last point. And you obviously you may not know the answer right now.

This, I'm looking at the time stamp on it. It just came in at 2:30. But

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what it says is that the site plan submitted, based on the site plan submitted, it didn't reflect that. So I'm wondering if the site plan reflect what you just said, Mr. Bello?

And then it says that the apparatus access road shall extend to within 150 feet of all portions, which I take to mean, I guess, the -- and I don't know. I guess I'm asking. Does that mean all of the 14 first floor units that are going to be built or are they talking about a specific part of the project?

MR. BELLO: Well, the site plan submitted does reflect a private access road into the theoretically subdivided site. And the access is not restricted. So fire equipment would be able to access the site and be within 100 feet any portion of the development.

CHAIRPERSON MILLER: I mean, it's only a zoning issue to the extent that the regulation requires the Board to send out the

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application for comment to all these agencies. So that's how this comes in.

MR. BELLO: That is correct.

MR. REDDICK: Madam Chair? Madam Chair?

CHAIRPERSON MILLER: Yes.

MR. REDDICK: Yes. If we refer to that same document that has the landscaping on it, if you will look at the site plan on the left where there's a circle that shows the 35/36 foot radius. That serves as a fire apparatus access road. And if you will look - - if you were to draw a circle of 150 feet from that circle, all the structures would be within that circle.

CHAIRPERSON MILLER: Okay. Thank you.

MR. REDDICK: Yes.

CHAIRPERSON MILLER: Okay. Any other questions for the applicant? Does the applicant to add anything else? Okay. Then why don't we go to the Office of Planning?

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MR. GOLDSTEIN: Good afternoon,  
Madam Chair, Members of the Board.

As I identified myself earlier,  
I'm Paul Goldstein and I'm a development  
review specialist with the Office of  
Planning.

The Office of Planning supports  
the applicant's request for special exception  
and variance relief to subdivide the property  
into 11 building sites to accommodate a  
combination of eight single-family row  
dwellings and three flats intended for  
affordable housing and handicap accessible  
housing.

Those subject property consists of  
record Lots 28 to 31 in Square 5740, which  
are zoned R-5-A and are currently vacant.

As you've mentioned, there is a  
pretty heavy paper trail of addressing a  
number of the issues. As a result, I'll just  
perhaps hit a few highlights, with your  
permission.

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First, the applicant seeks special exception relief under Section 353, which is required for new residential developments of this type in the R-5-A zone. And OP believes that the applicant has met the burden for relief.

Under this section OP is asked to make recommendations on how the development will relate to the existing and future neighborhood based on factors such as the site plan, the provisions of light, air, parking, recreation, landscaping and grading.

As you have heard, the proposal for eight single-family row dwellings and three flats is arranged in two parallel rows parallel to Ainger Place. A driveway would lead to the parking spaces.

OP believes that the light and air of the surrounding properties would not be harmed and that the quantity of units, their scale and the arrangement of the buildings would not be inconsistent with the

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surrounding neighborhood.

Second, the applicant seeks special exception relief under 2516 which governs exceptions to the building lot control and residence districts. The applicant proposes to subdivide the four lots into 11 building sites, meaning that there would be construction of two or more principal buildings on a single subdivided lot. The dimensions of the back row of dwellings which do not front a public street fulfil the requirements of 2516.5a through d.

For instance, the dwellings would face the side upon which the principal entrance is located, have sufficient open space in front of their entrances and accommodate rear yards of the required size.

Looking at section 2516.6d the provision permits a modification to the width and diameter of the area of ingress and egress.

As part of the proposal the

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applicant will create a 30 foot wide driveway extending from Ainger Place and a 35 foot diameter of turning radius. OP understands that the applicant discussed these dimensions with DDOT and that DDOT is not opposed to the design. And OP believes that the applicant has met the various provisions of 2516, of which there are quite a few.

Third, the applicant seeks variance relief under section 2116 for the location of parking spaces. The applicant proposes to locate the parking spaces for the rear dwellings in the front yard of the lots as opposed to the places specified under 2116.2.

OP believes that the applicant has met the three part variance test for relief.

The property is unique due to the exceptional topography of the site, which the applicant has in the document submitted has shown that it is quite extreme and that the site plan was developed in reaction to that

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topography.

Due to the uniqueness, the application would have an exceptional practical difficulty in locating the spaces in a manner that conforms to the parking location requirements while still fulfilling the mission of providing affordable housing.

And lastly, the requested relief could be granted without undue detriment to the public good or the zoning regulations. OP notes generally that the Comp Plan, Comprehensive Plan strongly supports in-fill development, affordable housing and the creation of handicap accessible housing.

It is supported by DHCD, DDOT, ANC 8B. The Chairman, I saw a letter of support from the Chairman of it. And as with you, I just learned of the one submission of opposition.

To conclude, the Office of Planning supports requested relief for special exception and variance relief. And

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that concludes my presentation. And I'm available for questions.

Thank you.

CHAIRPERSON MILLER: Thank you.

You did an excellent report.

And I just want to follow up and ask you I don't recall seeing a letter of opposition. Is that in the record or --

MR. GOLDSTEIN: Oh, I'm sorry. By opposition I was referring to the Fire Department's letter.

CHAIRPERSON MILLER: Oh, the Fire Department. Okay.

MR. GOLDSTEIN: I apologize.

CHAIRPERSON MILLER: Okay. Thank you.

Are there other questions?

And I did locate the letter from the ANC -- it says it's from the Chair of ANC 8B in support of the application.

Just to the applicant. It doesn't say that they necessarily had any meeting.

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But did they have a meeting?

MR. JENKINS: Yes. I attended the meeting and gave a presentation.

CHAIRPERSON MILLER: Did they vote on the application?

MR. JENKINS: I -- after my presentation I left the meeting.

CHAIRPERSON MILLER: Okay.

MR. JENKINS: So I didn't see an actual vote.

CHAIRPERSON MILLER: Okay. But this letter is very supportive. It's very short, I'll just read a little bit. It says "Thank you for sharing your plan for building affordable housing on Ainger Place, Southeast.

As you know, making housing affordable in Randall Heights is a high priority in the community. As an ANC Commissioner I support your efforts and look forward to offering any assistance I can add to your project. Please keep me and the

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community informed of your progress." And that is signed by David Brewer, Chairman ANC 8B.

Okay. Are there any other questions from the Office of Planning?

Does the applicant have any questions for Office of Planning? Do you have a copy of the report? Good. Okay.

Okay. And I asked earlier, but I'll ask again, is anybody here from the ANC who wishes to testify on this case?

Is there anybody here who wishes to testify in support of this application?

Anybody here who wishes to testify in opposition to this application?

Not hearing any, any final questions?

Okay. Then I'll turn it back to the applicant for any final remarks or closing statements.

MR. BUBER: Just to bring to your attention the importance of this project for

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the Housing Authority, we are currently under a U.S. court order to produce 565 handicap accessible units. We produced a total of 487 thus far. And have a remaining 78 to produce. And these units are very crucial to our inventory and, therefore, ask that you really take this into consideration.

CHAIRPERSON MILLER: Okay. Anything else?

MR. JENKINS: That's pretty much it.

CHAIRPERSON MILLER: Okay. I think the record is full on this case. And recognize the urgency. And I think even if there wasn't an urgency in this case, the record is so full that the Board is ready to deliberate on the application now.

Is there anyone who wishes to start?

VICE-CHAIRPERSON LOUD: Madam Chair, I'll start us off briefly and just sort of summarize what the project is about.

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As you indicated, I don't believe we need to go through all the legal tests verbatim, they've been so well articulated by the Office of Planning report, which is our Exhibit 32, and which I adopt by reference as part of these remarks.

Essentially, the applicant proposes 11 --let me back up. The applicant proposes to subdivide four lots into 12 lots, 11 of which will be used to create a total of 14 units of affordable housing and some handicap accessible units as well.

The way that they're going to do this is that they're going to have eight row single-family dwellings and it looks like six flats. They've designed the project so that -- let me see -- eight of the dwelling units will be in the rear and they will not front the street. And then it looks like six of the units will be on Ainger Street.

There will be a 30 foot driveway provided, which will be the 12th lot that's

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going to be subdivided from the four original lots.

The projects requires because a new construction in the R-5-A, the project requires special exception relief under 353 as well as 2516 because they're subdividing the lots and putting two principal buildings on more than a single lot.

As indicated, they've articulated very carefully themselves as well as Mr. Goldstein in his report the required elements for both section 353 relief as well as 2516.1, in addition to which because of the topography of the land and how they've had to identify the project on the site, they're not able to locate the parking spaces in the rear of the property as required, but they're going to have to do it in the front of the property. And that requires a variance from our rules. Mr. Goldstein indicated that the land is quite unique and there's a tremendous slope toward the rear of the property. I

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think 30 degrees is what's mentioned in the pleadings. Practical difficulties that they couldn't locate the parking spaces in the required locations and still keep the units affordable.

Clearly, there's no substantial detriment to the public good. In addition to receiving the support of a number of our agencies that are vested in this kind of issue, DHCD, DDOT, et cetera. There's also the indication of the court order, which is urging with some sense of urgency the agency to create 565 units of handicap accessible. And so that is indica I think of the public good. So clearly there's no indication of that.

As you indicated, Madam Chair, the ANC has weighed in. It doesn't look like there was a quorum or that they had a meeting, so I'm not certain if we give that great weight. But it's very clear that the ANC was briefed, that the project developer

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and/or a team went to the meeting. They received support.

There is the whole issue that surfaced I guess at 2:30 this afternoon of the Fire Department report. But it appears from the remarks of Mr. Bello as well as Mr. Dettman's review of the plans and I think Mr. Reddick's commentary as well that the requirement for the accessory road for the fire vehicles to be within 150 feet of the first floor of buildings is met in this case.

I think Mr. Reddick appointed our attention to Exhibit 31 and showed us a radius on Exhibit 31 from which one could count out 150 feet in any direction. And that requirement would be met.

The DDOT recommended that five bike racks be included. That's our Exhibit 33. The project development team fully supports that recommendation and will be including that in the plans.

So I'm fully supportive of this

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application. I'm fully sensitive to the sense of urgency and agree with Madam Chair that we should vote on this today.

CHAIRPERSON MILLER: Thank you. That was a great summary.

I think perhaps my reading of the application that we're talking about seven back lots and not eight. Just for the record.

VICE-CHAIRPERSON LOUD: Say that again.

CHAIRPERSON MILLER: I think you said there were eight lots in the back that couldn't comply with the parking because of the topography. I think when I'm looking at the paper it says seven, just for the record.

VICE-CHAIRPERSON LOUD: Okay. I stand corrected.

CHAIRPERSON MILLER: Otherwise, I think I agree with everything else you said.

And I would also like to compliment the D.C. Housing Authority on their filing in addition to Office of

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Planning's for being, as I said earlier at the start of this hearing, extremely thorough and addressing all the different provisions.

There are a lot of provisions under 2516. And I think we're not going to go through each one because of the time. But what we're saying is we agree with your analysis, which is in line with Office of Planning's analysis. And you met all the other zoning requirements.

And you meet the variance test, it's clear that the topography in this case would make it extremely difficult and expensive for you to comply with the parking requirement.

And no substantial detriment. In fact, it's the opposite. You know, obviously providing affordable housing is a high priority for the city.

Are there any other comments?

Okay.

Then I would move approval of

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Application No. 17811 of District of Columbia Housing Authority for a special exception to allow the construction of a new residential development under sections 353 and 2516, and a variance from the parking space location requirements under subsection 2116.2 at premises 2222 through 2250 Ainger Place, Southeast, with the one condition that five secured bicycle racks be provided on the site.

Do I have a second?

VICE-CHAIRPERSON LOUD: Second,  
Madam Chair.

Further deliberation?

I would just say for the record that the bike racks is a result of DDOT's recommendation, that the applicant has said it has no problem with.

Okay. Anything else? All right.

All those in favor say aye.

ALL: Aye.

CHAIRPERSON MILLER: All those

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opposed?

All those abstaining?

And would you call the vote,  
please?

MS. BAILEY: Madam Chair, the vote is recorded as five-zero-zero to grant the application. Ms. Miller made the motion, Mr. Loud seconded the motion, Mr. Etherly, Mr. Dettman and Ms. Walker support the motion. And it's granted as conditioned.

And, Madam Chair, I would just like to add a quick footnote that the record does indicate at various places that the site is zoned R-4 and other places indicated that the site is zoned R-5-A. But as the Board learned this afternoon, in fact the correct zoning of this site is R-5-A.

CHAIRPERSON MILLER: That's correct. And this will be a summary order as there's no party in opposition.

Okay. Thank you.

MR. REDDICK: Thank you.

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CHAIRPERSON MILLER: We're ready for the next case when you are, Ms. Bailey.

MS. BAILEY: Madam Chair, the next case is the continuation of an appeal and the number is 17747 of Stephanie Wallace, pursuant to 11 DCMR §§ 3100 and 3101 from a September 28, 2007 decision 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 in the R-1-B District at premises 5013 Belt Road, Northwest, Square 1756, Lot 64.

CHAIRPERSON MILLER: Commissioner Jeffries is on this case and he is on his way. He's like five minutes. Unless there's an objection by the parties, we feel we can start with a motion for a continuance and introductions. But if any of the parties want us to break and wait for Mr. Jeffries to come, we could do that. Okay. Not hearing any objections, why don't we start with

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introductions? Why don't we start on my right and go down.

MS. MADDOX-LEVING: Good afternoon. My name is T. Gail Maddox-Leving, Assistant Attorney General with DCRA.

MS. BOLLING: Good afternoon, Madam Chair, Board Members. My name is Melinda Bolling, Assistant Attorney General for the District of Columbia Department of Consumer and Regulatory Affairs.

MR. GREEN: Good afternoon, Madam Chairman, Members of the Board. My name is Matthew J. Green, Jr., and I represent the Department of Consumer and Regulatory Affairs. I'm an Assistant Attorney General.

ZONING ADMINISTRATOR LeGRANT: Good afternoon. I'm Matthew LeGrant. I'm the Zoning Administrator for the District of Columbia.

MR. LEMOINE: Hello, I'm John Lemoine, intervening party.

COMMISSIONER FRUMIN: Matthew

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Frumin, a Commission on ANC 3E.

COMMISSIONER SHERMAN: Carolyn  
Sherman, Commission on ANC 3E.

MR. SIMMONS: Good afternoon. Jack  
Simmons. I'm one of the intervenors.

MR. BROWN: I'm sorry. Patrick  
Brown, Greenstein Delorme & Lucks for the  
appellant, Stephanie Wallace.

MS. WALLACE: Stephanie Wallace,  
the appellant.

MR. PREMO: Alan Premo, President  
of Premo Building Remodeling.

CHAIRPERSON MILLER: Say your name  
again.

MR. PREMO: Alan Premo, President  
Premo Building and Remodeling.

CHAIRPERSON MILLER: Are you a  
witness in the case? Okay.

MR. BROWN: Yes, he is. And we  
also have on additional witness, Mr. --

CHAIRPERSON MILLER: I don't need  
to hear. Okay. That's okay. All right.

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The first thing that I think that we need to discuss is the motion for a continuance.

So intervenor Simmons has submitted a motion for continuance. I don't have anything in writing in response from any of the other parties. Are we missing anything, or you're just going to address it now? I just want to make sure we don't have something we should see.

MR. BROWN: We have not filed anything in writing. It just arrived late yesterday.

CHAIRPERSON MILLER: Right. Okay. So why don't we start with the motion.

MR. SIMMONS: Thank you. Good afternoon. I appreciate this. I'm sorry for the late filing of this.

We note also that there is an opposition to the motion to amend by the ANC, which also includes a motion for continuance as well if that motion were to be denied or

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granted.

But the reason for this motion, quite frankly, is that intervenor Mary Grumbine has suffered an injury to her back and knee. Had hoped to be able to be here today, had had medical treatment last week. And as late as yesterday, was hoping to be able to be here and participate. She's uniquely knowledgeable about this situation and participated in many if not most of the events surrounding this. But because of the physical situation, frankly, including the swelling of her left which I personally observed yesterday, felt that she had no physical alternative but to even at the late moment file the request for continuance. And so we have done so.

The other reason for requesting the continuance as noted in our papers is the notice for appeal -- to amend the notice of appeal was filed notwithstanding our letter of May 28th asking for supplemental

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information on some incomplete settlement proposals. We haven't gotten a response to that. But on the next day, May 29th, the appellant submitted her letter to the Zoning Administrator asking we think raising wholly new issues and proposals that had not been communicated to us or the ANC. And then immediately the next day filed the notice to appeal.

CHAIRPERSON MILLER: Let me ask you, can we separate? That's another issue, is it not, the motion to amend the appeal? And then if we were to grant that, then that would be another reason for a continuance, right?

MR. SIMMONS: And that's exactly the point.

CHAIRPERSON MILLER: Okay. But can we just deal with the first one?

MR. SIMMONS: We can deal with the two issues separately, as you choose, Madam Chair.

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CHAIRPERSON MILLER: Okay. Let's do that.

MR. SIMMONS: Thank you very much.

CHAIRPERSON MILLER: Okay. Now, I didn't mean to cut you off. But I think it's easier for us to focus on them individually.

MR. SIMMONS: That's fine.

CHAIRPERSON MILLER: Is there anything more you wanted to say --

MR. SIMMONS: No. I thank you for your attention to the matter.

CHAIRPERSON MILLER: Okay. Okay. And I'm sorry about your wife.

MR. SIMMONS: Thank you.

Now, who would like to respond to that? Does DCRA have a response?

MR. GREEN: As far as the government is concerned, Madam Chairman, we have no objection if a continuance is granted. The government, though, is prepared to go forward today. We have the appropriate witness, and I believe that the panel has the

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appropriate pleadings. So we are prepared. But it's the decision of the Board as far as we're concerned. But we do not oppose it.

CHAIRPERSON MILLER: Okay. Thank you.

Mr. Brown?

MR. BROWN: Madam Chair, Members of the Board, I've expressed to Mr. Simmons, and I will to the Board, that sympathy over Ms. Grumbine's personal situation. It's regrettable. But I don't think it forms the basis for another continuance in this case.

By way of background, we were originally scheduled for April 29th hearing in this matter. We're now 2½ months later and we're faced with another continuance.

And looking at the substance of the continuance. First, Mr. Simmons and Ms. Grumbine, and we kind of finesse this issue to this point, they're not separate intervenors. They're husband and wife living in the same property, espousing the same

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position.

Mr. Simmons, as we've all found out, a very capable lawyer himself. More than adequate to represent the family. And also Ms. Grumbine, having some unique perspectives on "the appellant's activities or the builder's activities." I'm not so sure in the context of what this case is about that's really relevant. And one of the challenges that we face throughout this process is trying to remain focused. And the activities that are critical in this case are the ones that interacted between my client and the Department of Consumer and Regulatory Affairs. And a lot of what we may hear today and which I'm going to object to is goes beyond that in this extraneous and quite inflammatory and prejudicial to my client.

So I think Ms. Grumbine, while clearly she's been a participant, the Board's not going to lose anything in the process of moving forward.

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I will tell you that another continuance, and we oppose the original continuance, another continuance will be highly prejudicial to my client because we're looking at least into September and probably into October. The case this morning was put over until late October.

And also, and putting it in real terms, my client's been put on notice by her lender that she's in default in her loan and foreclosure proceedings are moving forward. So that a delay is prejudicial to the hearing of this case, which I think in the end of the day is purely narrow, and too another delay and my client likely doesn't survive financially during that period. And weighing that against some very minor loss by Ms. Grumbine's not being able to participate, and I think it's clear the Board has the need to go forward today.

CHAIRPERSON MILLER: Okay. Does the ANC have a position?

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COMMISSIONER FRUMIN: Well, the ANC supports Ms. Grumbine's request for a continuance. We think that the neighbors should have as full right as possible to hear their case before the Board. So we are generally in support.

CHAIRPERSON MILLER: And does the other intervenor have opposition, Mr. Lemoine?

MR. LEMOINE: I support the motion for a continuance.

CHAIRPERSON MILLER: Mr. Simmons, what is your wife uniquely knowledgeable about?

MR. SIMMONS: Well, since she works from home she's been able to observe the building process almost on a daily basis, whereas I've been employed outside the house and I can't speak from personal knowledge as to the building process on a daily basis. She can speak as to what she's seen, what has happened, what has occurred, her

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conversations and the reactions with people on the site. Things that I simply cannot speak to.

Now, I appreciate the kind words as a lawyer, but that doesn't change the fact that she has unique factual knowledge with, not withstanding Mr. Brown's contentions, we believe is directly pertinent to the issues that are before the Board. And, of course, we'll make the relevancy arguments at the appropriate times. But the fact of the matter is that Ms. Grumbine has unique personal -- has the personal knowledge that no one else at this table can bring.

CHAIRPERSON MILLER: Okay.

VICE-CHAIRPERSON LOUD: Just a quick follow up question in terms of elaborating on what you just said, Mr. Simmons. On which specific issues that are in play does your wife -- and let me also offer condolences for her as well and hope for a speedy recovery -- but which specific

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issues does she offer some personal observation of?

MR. SIMMONS: She can speak to a number of the factual contentions that have been raised, such as what happened on specific dates, who was on the property doing what, what stop work orders may or may not have been posted; all of the various facets of the construction project as they've been addressed in the various pleadings by the appellant and by the opposing parties. So they do go to all of the issues we believe that are at play here. We see the issues, obviously, more broadly than the appellant does.

And I thank you for the kind words. I'll pass those along to her as well.

CHAIRPERSON MILLER: Okay. I just want to make a few observations. You know, we had some time to reflect on this case. And I'd like to put forth what I think are the issues in this case. And it's my initial

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reaction to this motion that she is not integral to all the issues. And I want to just lay this out for you all and you can see.

But I guess my initial reaction would be that we go forward on the issues that do not involve these kind of factual questions that she may have specific knowledge about. I think some of these are clearly legally issues.

And I think it also will help to review and put in context what we're doing here.

As I recall, there were two errors alleged by the Zoning Administrator. And the first one goes to the issue that was recently briefed dealing with a casualty, an act of God. And the question was did the ZA error in determining that the damage resulting from termites was not a casualty or act of God, and therefore appellant could not reconstruct the single-family dwelling under the

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provision. And I know there was also an allegation of water damage that has since been added to this. But you all briefed this I think very thoroughly, including even if there were a water damage. So I'm not sure.

I would not think, and you can clarify it, but I would not think that there would be more factual information coming on that issue.

I'm just putting that out there as one of the issues in the case.

So then the next legal issue I thought dealt with 405.8 and the side yard. Did the Zoning Administrator error in not approving the permit to reconstruct the nonconforming single-family house on grounds of noncompliance with the side yard requirements. That 405 did not apply because nonconforming house no longer existed.

405.8 provides as follows: "In the case of a building existing on or before May 12th, 1958 with a side yard less than

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eight feet wide an extension or addition may be made to the building provided that the width of the existing side yard shall not be decreased. And provided further that the width of the existing side yard shall be a minimum of five feet."

Now I think that there's an issue about the fact the addition was not existing on or before May 12th, 1958. I think that was the position of the ZA.

To me this is a legal question not a factual question that could be addressed.

And after I go through these, you know, please let me know if you disagree.

The intervenor in the motion to dismiss and for related relief raised the issue about whether the Board could order raising of the addition on grounds that it's illegal or was part of a fruits of an illegal construction or whatever, and that's a legal issue.

And applicant's asking if they can

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reconstruct the single-family dwelling based on equitable theories of latches and estoppel. Those to me make -- they may the factual questions that we may need her for or that she may be a key witness. That's the one area that I see a possibility.

The others do seem to me to be like legal questions that Mr. Simmons could argue and represent the both of them in this case.

I know we also have the question about amending the appeal, which we'll get to. That's another legal question I think we can deal with that also without her.

So I would now invite anyone to -- let me know if you disagree with -- there may be more issues than this, but with anything I've said or taking the approach that we deal with that these are legal questions that she doesn't have specific distinct knowledge about.

MR. BROWN: Madam Chair --

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CHAIRPERSON MILLER: Let me make one more comment, and that is it is a lot easier if we have to continue to continue a small issue or one issue. That could be fit into the schedule easier than the whole case or the whole rest of the case.

Mr. Brown, do you have a response?

MR. BROWN: Yes. And to your list, I think you've covered the bases with one I think very significant exception, and putting it to the very top of the list and I've tried to point out and you'll see as we make our presentation. The first and most fundamental issue is did in fact through the fourth -- and in fact with the fourth building permit which says partial demolition and reconstruction, whether in fact what now DCRA says we need a permit for has already in fact been authorized such that there's no basis for them to now require a further permit other than the footer permit which is not a zoning permit.

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So putting that to the top of the list I think the Chair and I suspect the Board collectively focused in on where we need to be.

CHAIRPERSON MILLER: Now that also is a legal issue, is it not, or is going to involve facts that she will need to testify to?

MR. BROWN: The facts I don't think are disputed, at least the existence of the fourth building permit, the existence of the plans and the reports that's required to support the fourth permit. And then I guess the only factual question in dispute is whether in fact Ms. Wallace complied with the terms of the fourth building permit.

But we're prepared to take that -- and in all due respect to Ms. Grumbine, I don't think she's in a position to testify as to compliance with the fourth building permit, that would be left to others in a position to make that judgment and qualified

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to make that judgment.

CHAIRPERSON MILLER: Okay. Are there other reactions, especially Mr. Simmons, to proceeding on the issues that she may not have unique knowledge about?

MR. SIMMONS: I think your position makes a great deal of sense. I would certainly disagree with Mr. Brown respectfully on the question of the fourth building permit. And while Ms. Grumbine may not have any direct knowledge of that, certainly there are questions of fact and factual matters that need to be explored regarding what was applied for, what it means, what the permit itself ultimately may mean. How all this fits into an estoppel and/or potentially latches argument I don't think Ms. Grumbine would have any personal knowledge as she was not at DCRA when these were applied for. But other than that clarification.

ZONING ADMINISTRATOR LeGRANT: And

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I'm wondering from your list of issues which ones you're thinking about holding over. I know you said, but there seem to be two: The question of whether or not the addition itself, the existing addition would need to be raised, which sounds like it has factual issues in there as well as whether or not the reconstruction of the new house could be authorities. Are those the two issues that you would continue on so that Ms. Grumbine could be present or is it different, which issues are they that you would continue?

CHAIRPERSON MILLER: I think there was a question raised by Mr. Simmons in the motion to dismiss and for other relief or something about, you know, that this Board should order that the addition be raised and that Mr. Brown said we didn't have the authority to do that. So I raise -- I raise it in a legal context whether that you may or may not want to brief that, but I saw that as a legal issue that was put out there. Not a

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factual issue dependent on the condition of the building or anything like that.

I mean, I guess I would suggest we start the legal issues and then see where we go with the fact or, you know. I mean, we don't want to not allow her the opportunity to give evidence if she has pertinent evidence. But what we're trying to do is cover as much territory as possible without violating anybody's due process, and just leaving a little bit as possible so maybe we could fit it into September to finish off if need be.

Is there any other comments?

Okay. So I think what we will do then is would be to deny the continuance on a motion for continuance. But we'll deal with the legal issues first and then we will just either -- we'll probably have a short hearing, perhaps in September, if there's one issue or two that her testimony is integral to unless there's another solution.

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I think sometimes we do have affidavits. But then there's a problem with, you know, you can't cross examine. And so that's usually a worse problem.

I believe we had a September 9th date and the other case was too big for it or it wasn't enough time. They didn't have enough time. So I think isn't that right, Mr. Moy? We could give this case that date.

Because we take recess in August.

Do you have a problem with that?

MR. BROWN: My client informed you that she's out of town, out of the country on that date. I mean, I think it's fundamental that she should have the right to attend.

CHAIRPERSON MILLER: Yes. Okay. So we'll have to look at another date then. Then it'll be later. We were just trying to find the earliest date possible.

Let's see when we go through this, you know, how much time we need. If it's not very much time left, if it's a very

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segregable issue, you know we could fit you in hopefully not too late in the fall.

Why don't we go to the motion to amend?

Mr. Brown, that's your motion, right?

MR. BROWN: And briefly, Madam Chair, Members of the Board, the motion to amend arises directly out of how this case has developed both in here at the Board and in discussions with DCRA.

One, as you've already hit upon, the question about the intervenors requesting that the rear addition be raised. While I don't think the Board has the authority to order that. That issue has been put on the table and it is also quite frankly an issue that DCRA does have the authority to do.

And in the context of discussions with DCRA how to find a resolution of this, we've made numerous proposals to them for how to proceed. Quite frankly, each one reducing

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the scale of the --

MR. GREEN: Madam Chairman, I'm going to object. He's getting into a discussion area that in the normal proceeding would not be acceptable if this were a jury. And I submit that this body acts not only as a trier of facts, but a trier of the law.

And I also submit what is going on by his comments are highly prejudicial and unacceptable to get into a discussion of this sort. Consequentially, if this were a trial in federal court or D.C. Superior Court what he is saying would put us in a situation of a mistrial. And I would ask that the Board rule on my objection on that basis.

Thank you.

MR. BROWN: Madam Chair, can I continue?

CHAIRPERSON MILLER: Let me just say this. I mean, your point is you're having trouble getting this resolved. And so you wrote up this decision letter, correct?

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MR. BROWN: That's right.

CHAIRPERSON MILLER: Okay. And you're trying to get it resolved. But in 24 hours you didn't respond, and so there's the decision --

MR. BROWN: Well, Madam Chair, I mean these discussions didn't happen overnight. They happened over a period of time--

CHAIRPERSON MILLER: Okay. I don't think you have to tell us too much about the discussions, which is what the objection goes to.

MR. BROWN: No. And also I never, quite frankly, expected the Zoning Administrator to approve my letter. Because it was confirming the position that --

MR. GREEN: Madam Chair, please.

MR. BROWN: I did not have the --

MR. GREEN: I object.

CHAIRPERSON MILLER: He's got an

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objection and I --

MR. GREEN: Yes, I know. But every time he gets into a discussion that goes into another area of this, it again puts the Department of Consumer and Regulatory Affairs in a bad light before this Board. And that's not what we're here for.

Any discussion about settlement is unacceptable.

CHAIRPERSON MILLER: Okay.

MR. GREEN: And I ask that the Chair rule.

CHAIRPERSON MILLER: Okay. I'm not finding if that's prejudicial, but I'm finding that if you keep going in that direction, that he may have a point. So I would rule that no longer talk about the settlement discussions.

I think, you know, the Board has read the motion. And, you know, some of our concerns are:

(1) This doesn't look like a

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final decision that's appealable in the normal sense. Do you want to address that? The ZA has evaluated the situation and come up with a decision and then we're then looking at his rationale. There's no way we can do that in the kind of letter that you drafted and took away in 24 hours. So --

MR. BROWN: But, Madam Chair, and stepping back one second. Certainly it involves the same facts and circumstances. The property is the same, the improvements are the same, the controversy is the same. And what I was attempting to do is -- and the Zoning Administrator's position is that we haven't complied with the law. And I've put in front of them a situation, two situations cousins of each other under 401.1 where we've offered to comply with the law --

MR. GREEN: Madam Chair, I object. I have a continuing objection. I ask that the Chair rule --

CHAIRPERSON MILLER: It's noted.

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It's noted. But it doesn't sound like settlement discussions per se.

But is the point that you want to know what you're allowed to do and so you want the ZA to tell you what you're allowed to do?

MR. BROWN: Well, Madam Chair, the ZA has told me what I can't do. And that letter: (1) was written in the fashion it was to confirm what I've been told I can't do and put it in terms of the zoning regulations. Also put in a time frame that's meaningful.

You recall and one of the contentions of this case is that a permit was filed on April 17th of 2007. I did not get a response from the Zoning Administrator until September 28, 2007. That is for me to wait six months, five months for the Zoning Administrator to write me a letter is unreasonable under the circumstances. And what I did is I did a self-executing

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situation where I confirmed what the Zoning Administrator and his lawyers have been telling me, and I put it out there --

MR. GREEN: Madam Chair, really, I ask --

CHAIRPERSON MILLER: But he's just getting to the point right now.

MR. GREEN: Oh, okay.

CHAIRPERSON MILLER: Right?

MR. BROWN: Yes.

CHAIRPERSON MILLER: So you put it out there. Okay.

MR. BROWN: All right. And --

MR. GREEN: Note my objection, please.

CHAIRPERSON MILLER: Note your objection.

MR. GREEN: Thank you.

Continuing.

MR. BROWN: And so I structured the matter in a direct method, a time sensitive matter so I didn't have to wait

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five months for the Zoning Administrator to put in writing what he'd already told me in other circumstances -- over a period of time.

And the beauty of it is my client's obligation is to comply with the law. She's attempting to comply with the law through various avenues, this being one of them. And the likelihood exists that six months from now we're back before this Board or a year from now we're back before this Board under section 401.1 claim on the two facets I've raised and I think we've done ourselves -- everybody involved, including the intervenors who have made it very clear that they don't like the current state of the affairs of the property, we've done ourselves, my client, the intervenors, DCRA and the Board a great disservice by coming -- having to come back and start all over in a situation where 99.9 percent of the facts are before us now. And all I'm asking you to do is take those facts and apply it in a section 401.1 scenario.

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CHAIRPERSON MILLER: Okay. So what you're asking the Board to do is make the decision instead the ZA, is that correct?

MR. BROWN: No, I'm asking --

CHAIRPERSON MILLER: Skip that part of the process?

MR. BROWN: No. I'm asking you to accept that the ZA has made a decision. I mean, I don't think -- and the ZA is here and he can tell us if he has a different conclusion to the letter. And, again, he's had 45/50 days to respond to it. He hasn't. DCRA has not responded to the notice to amend.

CHAIRPERSON MILLER: Okay. I want to go to DCRA in a minute, but just for the record I think your letter was submitted on May 29th and you said "If you're not able to respond by the close of business May 30, 2008, my client's proposal will be deemed denied," is that correct?

MR. BROWN: That's absolutely

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correct. But at any time --

CHAIRPERSON MILLER: Okay. I've never --

MR. BROWN: -- at any time after that he could have responded. I mean, I didn't say you cannot respond. And, quite frankly, he could have responded to the notice of appeal that DCRA specifically did not respond to it. And I'm --

CHAIRPERSON MILLER: Okay. I think why don't we go to DCRA? I think we get your point.

I mean, let me just -- I think, you know, I wouldn't buy this that this was a decision of the ZA if somebody hands it to him and says you got 24 hours to respond, otherwise I'm going to deem it denied. I personally wouldn't consider that an appealable decision. But do you want to get to the bigger picture of, you know, what would the normal decision be? Would be they're having applying for a permit and then

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DCRA deciding on the permit, right?

MR. GREEN: That's correct. I think Madam Chairman understand the process.

MR. JENKINS: Or you could ask for an opinion from the ZA, is that correct?

MR. GREEN: Well, the ZA doesn't give advisory opinions. But the ZA does respond to submitted applications and makes determinations based on submitted applications. And if you don't like his determination, you come where? The Board of Zoning Adjustment. That's how the process worked.

I have on my right hand side the Zoning Administrator who is prepared to give testimony to explain anything the Board and the Chairman want to know.

CHAIRPERSON MILLER: So in this case are you waiting for an application for a permit to decide --

MR. GREEN: It's my understanding that we're waiting for a revised plan

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submission so that the ZA can look it over and make a determination. That has not happened.

MR. BROWN: Madam Chair, and I don't want to delve too deeply into this because it's a sensitive area. But we've provided four separate proposals to the ZA. And we've gotten no written response. And we've gotten only in our meetings that none of your proposals which were intended to be matter of right would be acceptable without going to the BZA.

So, I mean, I keep putting section 401.1 type issues in front of the ZA and they keep: (1) don't respond, and; (2) when they do respond orally they're denying my argument and my claim. And I think we've created a situation that we're faced with coming back and revisiting this case once again in the future. And that doesn't seem to make any sense.

CHAIRPERSON MILLER: Okay. But

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let me just ask you this: Our regulations give us authority over appeals of decisions of the Zoning Administrator or others involving the enforcement, administration of the zoning regulations. So what authority would we be considering your amendment under?

MR. BROWN: Well, it's decisions, denials, and if you give me one second I'll get the exact language out in front of me.

CHAIRPERSON MILLER: If we don't recognize that letter that you gave him 24 hours to respond to?

MR. BROWN: Madam Chair, if you don't recognize the letter, then there's no Zoning Administrator's action.

My apologies here. And this is from 3100.2. "The Board is authorized to hear and decide appeals where it is alleged by the appellant that there's an error in any order, requirement, decision, determination or refusal made by the administrative officer including the mayor in the enforcement of the

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zoning regulations."

So whether you call this a decision or a refusal, I think it falls within the scope of the regulations. And certainly intended particularly in the context of this case to resolve the situation and all the issues related to it. And I think it's in everybody's interest. Because regardless of who you ask in this room, wherever they stand, they want a resolution of this case. And all I'm saying is let's put it altogether in one box and decide the case. And then everybody will know where they stand.

CHAIRPERSON MILLER: Okay. Other comments?

COMMISSIONER FRUMIN: Matthew Frumin from the ANC.

You clearly see what this is about, though. One piece of this story is on May 28th, which is a Wednesday. Mary Grumbine sent an email saying if you have any concrete

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proposals, let us know. May 29th the appellant files this letter saying we need an answer in 24 hours, that's a Friday. Monday June 2nd the notice to amend the appeal was brought out.

Now part of what's prejudicial is things that are said in the papers about this process, and that's why the attorney for the city is so upset.

One of the things, the requesting the letter is so general. How could the zoning agency act on it? It offers various alternatives, it doesn't have the kind of specific proposal like the kinds of things you were looking at before. None of it was presented to us at the ANC. We on the ANC haven't seen drawings of what the construction would look like. We had no opportunity to react to that. The Zoning Administrator had no opportunity to react that.

One of the things that's said in

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the papers is an option would be to tear down the existing addition and replace it and replace the entire structure with something with eight foot side yards. If there were a proposal like that on the table, there could be discussions. There isn't --

CHAIRPERSON MILLER: Okay. You know, I heard the DCRA's attorney Mr. Green, you know. I don't think we need to hear much about settlement discussions.

And I don't mean to cut you off, but I really think that the issue here is whether this kind of a letter, trying to force the hand of the Zoning Administrator, should be recognized by this Board as a decision under 3100.2. And I don't think it should be.

Do Board Members have other views on that?

VICE-CHAIRPERSON LOUD: I don't want to elaborate and open up a wide -- but I support Madam Chair's interpretation on it

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having looked at the pleadings and our rule.

BOARD MEMBER DETTMAN: Madam  
Chair, can I interject?

And being very forward about it,  
Mr. LeGrant is here. He was the recipient of  
the letter. Perhaps the Board would like to  
ask his input?

CHAIRPERSON MILLER: Well, unless  
he wants to give it, I don't think I need it.

I know, you know, a lot of the history about  
what this Board considers are decisions. And  
I can't imagine that Mr. LeGrant is going to  
say that he thinks that this type of if you  
don't answer within 24 hours this is deemed  
your decision should be deemed your decision.

Mr. LeGrant, do you disagree with  
that? Is that a problem?

MR. GREEN: Madam Chairman, before  
Mr. LeGrant gives any response at all, as the  
Board knows Mr. LeGrant came in after the  
witnesses were sworn. I would simply ask  
that Mr. LeGrant be sworn before he gives any

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testimony.

CHAIRPERSON MILLER: Let's go.  
Ms. Bailey, will you swear in Mr. LeGrant,  
please?

(Mr. LeGrant sworn).

ZONING ADMINISTRATOR LeGRANT:  
Well, when presented with that letter I can  
react to an application to like a building  
permit or an application for another type of  
permit; that is in my purview to respond to.  
So that's my basic on this.

CHAIRPERSON MILLER: Okay. I  
don't hear you disagreeing with my point  
about this reflecting your decision?

ZONING ADMINISTRATOR LeGRANT: I  
do not disagree.

CHAIRPERSON MILLER: Okay. Let me  
say this and then I'll see what the consensus  
of the Board is.

I understand or I hear the  
applicant's frustration in the whole process.  
But I don't believe that this is the proper

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way for it to be resolved, that we have authority or would want to recognize something like that as a ZA's decision.

In other cases where we've amended appeals to include other decisions, there have been permits. They've been permits that have been signed off on, and that's very different from the case here.

Do Board Members have other opinions on this? Okay. Is the consensus then as I understand it is that we deny the motion to amend the appeal? Okay.

I think that dispenses then with our preliminary matters and we can move into the merits of the case now.

And I understand that you all probably have your own idea as to how you want to present your case, which is fine, except that I think that we need to if we can be cognizant of issues that might involve Ms. Grumbine. Mr. Brown, was that going to throw you off a lot if we try to get through the

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other issues first? How would you like to proceed?

MR. BROWN: I don't think so. Again, I perhaps have a different view of the significance of Ms. Grumbine's testimony and certainly I couldn't control what she's going to say. So I'm ready to move forward as we had always planned, and do so very quickly and in a focused sort of way. Because I think that's --

CHAIRPERSON MILLER: Okay. Why don't we do this, and I'm sure that Mr. Simmons will speak up if he thinks that we're hitting an area that there's going to be a problem because Ms. Grumbine is not here. But I just want to ask, you know, this is on the Internet. And perhaps she's watching, I don't know.

MR. SIMMONS: I don't know. I know she was going to try.

CHAIRPERSON MILLER: Okay. You know, if that's possible, you know you could

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take a break if there were some questions that she thought you could ask. You know, we'll see. I don't want to take away her opportunity, but I want to try to get through as much of the case as we can.

MR. SIMMONS: As long as she gets the opportunity to be able to testify. The problem I think may be at this point with the list of the four or five or six issues that we've now gone through the one, two, three, five and even perhaps the issue raised by Mr. Brown are all legal issues, that takes us squarely into the latches and estoppel factual sorts of issues. And those are the issues that the facts of this case really will turn on. And that may be exactly where we are.

Perhaps we ought to see if we could resolve the issues one, two, three, four and six and then move on to the testimony. Because that is where Ms. Grumbine is going to be participating and that is

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integral to, frankly, I believe all appellant's case and certainly to all of ours. I would submit without speaking for them, probably for the government as well.

CHAIRPERSON MILLER: Yes. I understand that. I just think this is Mr. Brown's appeal and I'm not sure if he can do it that way. But I would, you know --

MR. BROWN: Well, I don't see any reason to.

CHAIRPERSON MILLER: Okay.

MR. BROWN: I mean, what Ms. Grumbine will testify to is what she's going to testify. I have no prepared my case concerned about her testimony. I've prepared my case to present the testimony I think for my client and others.

CHAIRPERSON MILLER: Okay. And if we're mainly concerned with just her testifying, then we can -- that's easier to solve. We could just set a date as soon as possible for her testimony. And you can just

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proceed with your case.

MR. BROWN: Actually, I'd like to do that.

CHAIRPERSON MILLER: Okay. Let's just see if we want to discuss time for a second. Do you have any idea how long your case will take?

MR. BROWN: Our case, putting aside the normal interventions, will be less than an hour. I mean --

CHAIRPERSON MILLER: Okay. Because I mean I guess our rules provide for 60 minutes anyway max. So I think we're going to put on the clock today just because we do have another case waiting and we think that should be adequate amount of time. And we'll see what happens. Okay.

MR. BROWN: If I could, and my understanding is that the intervenors collectively will have the same one hour period of time?

CHAIRPERSON MILLER: Yes.

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MR. BROWN: Okay. Then I'm ready to begin. Is the Board --

CHAIRPERSON MILLER: Ready.

For those of you waiting for the next case -- well, I mean, you're going to at least have an hour if you want to leave and come back. Probably more.

MR. BROWN: Madam Chair, before we begin a couple of housekeeping matters.

One, and I've sent up to the Board Members and will provide to the other parties a bound package of material. It's for your convenience. It reflects what's on the boards so that you can do either way. With the exception of some current photographs, "current" being last Friday, I believe everything is already previously in the record in other places, but we've put it altogether in one spot for your convenience.

So I'm going to provide, here's one for the Simmons/Grumbine. I need one more. Does DCRA have one? And we need one

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for Ms. Simmons. Here we go.

CHAIRPERSON MILLER: Did you get that on the record? You want to put that on the record, Mr. Brown?

MR. BROWN: I've also provided the Board. And my apologies I gave too many copies to you, Mr. Vincent Ford's résumé or CV. I plan to introduce him as an expert witness in construction matters in the District of Columbia. We can wait until he testifies to qualify him, but we'll get the paperwork out of the way.

MR. SIMMONS: For the record we would simply object at this point to calling Mr. Ford as an expert. He was identified as a witness, but certainly not as an expert in the prior papers. Obviously, if we need to, we'll deal with the qualifications at that time.

MR. BROWN: I believe I identified as an expert in construction matters in one of the numerous briefs I have. But we'll take

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that up later.

If I could just have my team introduce themselves again, and then we'll move forward.

CHAIRPERSON MILLER: Go right ahead.

MS. WALLACE: Stephanie Wallace, the owner.

MR. PREMO: Alan Premo, President Premo Building and Remodeling.

MR. FORD: Vincent Ford, Ford & Associates.

MR. BROWN: Madam Chair, just briefly to introduce you, and we've already I think been through this, but we start really the fundamental fact of this case and what I believe is the controlling fact in this case is the fourth building permit which you'll see on the board, you'll also see as a tabbed exhibit in the package. And it talks in terms of authorizing the partial demolition and reconstruction of the demolished area due

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to structural integrity and likelihood of collapse.

What this case really comes down to in the first and most important instance is that through the first, the second and the third and then finally the fourth building permit my client did exactly what she was told to do by DCRA. The fourth permit goes into great detail about the structural defect, the likelihood of collapse, the sequence of demolition. And you'll see in the plans which are both in your packet and on the board and then testimony by Mr. Ford that my client did exactly what she was authorized to do. People may not like that, but she was told what to do, she did it. And only when she went back in for a minor footer permit, which the Board I'm sure is aware, is a nonzoning related matter. A footer is a structural permit below grade of no import to zoning purposes. Only when went in to get in the footer permit, which everybody

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anticipated if the footers had to be demolished, which is again in the permit application and the permit forms, only then did this become a zoning issue. This isn't a zoning issue. It's a question of what DCRA authorized her to do and then stopped her from doing.

The fourth building permit, in fact the first, the second and the third and the fourth building permit are valid, still operating. There's no stop work order in place on the property. And my client, other than this footer permit which is not a zoning issue, has the right to rebuilt the front of this house as set forth in the fourth permit.

The other three items, and I still include the section 401.1, but the other items in my appeal; the casualty, the 405.8 and latches and estoppel and then ultimately perhaps in the future 401.1 are only the remedies to respond to what DCRA has in effect told my client to do. She followed

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their instructions. And now they've changed their mind.

So really we start and begin with the fourth building permit. You'd heard enough from me, I'd like to introduce Ms. Wallace. She and Mr. Premo, because they were intimately involved throughout the process, are going to take you through from the beginning to the end in a fairly expedited and focused manner. Again if you'll look at the boards, they correspond to your exhibits in your packet, whichever is more convenient. They're both there for you.

With that.

MS. WALLACE: Hi. So I just want to take a minute and just go through sort of how this all came to be.

I brought a house in Bethesda. I put an addition on it. I met Alan. He did the work for me. We got along great and we thought why don't we do this again.

We found this nice little farm

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house on Belt Road and purchased it, and planned on putting an addition.

We hired an architect. We draw up an addition to put a kitchen, family room and the master suite. Got a building permit to do so. As we went -- and that's the building permit number in your Exhibit 1. And there's an application in there, too. It's all for an addition.

I did not hire at that particular time a permit services company because I thought I could just do it myself. I mean, how hard is it to get a building permit? I went down -- I learned it was harder than I thought, but I ultimately did get it. I had no understanding at that time that there was any sort of side yard zoning issue. They approved the permit. Nobody told me, oh this is a problem. I got a permit. And I was the down at the Building Department meeting with, you know, picking up stuff and comments to have the plumber redraw things and

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structural. But nobody ever came to me and said, you know, this is a funky grandfather issue during that first phase.

When we went to do as per our permit the demolition of the interior of the existing building and the back of the building of the existing original 1933 structure it was pretty wobbly, but it was still standing. And when Alan went to take down the plumbing stack, which was the last remaining piece of the back of the 1933 structure, the house buckled. The back half of the 1933 structure buckled.

At that point we didn't really know what to do because the house was about to fall down. So we take that back portion of the house off and we were going to replace the wood exactly, you know the rotted wood exactly with new wood.

Somebody from the Building Department was called and the inspector came out and said, you know, I have to give you a

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stop work order. You needed to apply for an emergency something -- emergency relief for this before you had taken the structure down.

They do have it in 24 hours. But, honestly we didn't understand and we didn't know. So we made a mistake.

So we understood. We redrew the plans, got structural engineering drawings. Reapplied for permit number two which allowed us to do the work we had already done, basically. And that permit was issued on 10/4/05, and that's number three in your package there.

So we're back on track again. And as we went to dig the hole for the foundation, the water table is quite high there and we dug the hole and overnight it filled up and the site became sort of unstable. I'm going to use my words, not technical words. And so we had to do quite a bit of emergency shoring and fill in the hole with stone and whatnot. We had permission.

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This time we understood how had to work with emergency situations and inspectors were there and Alan and the inspectors worked stuff out so we could get the shoring and safeguard the site.

And when all that was sort of safe, we went with new structural engineers and redrew new foundations dealing with the helical piers which we had to put into the bedrock to hold up the basement because it's so wet there that you can't just pour a normal foundation. You actually have to go down into the bedrock. And we have 22 helical piers, which is probably more than what you have in this office building for this little house -- you know, little house.

Building permit number three dealt with that. That was our helical piers and new foundation dealing with the wet site.

We went ahead and framed the house on top of this new foundation, which was extraordinarily expense if you can imagine.

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It was almost \$100,000 for a foundation that's normally a \$20,000 operation.

So in the photograph right here and in your Exhibit 5 you can see that that's where we were. We put the foundation, we built the house on top of the foundation. We had the last bit of the original structure, the front half of the original 1933 structure left. Our plan always was from the very beginning to do an addition. Never to do a new construction. I don't do new construction. I never have done new construction. I like to do additions.

Anyway, when it came time to lift this house out of the ground because it needed to match the new house which had to be raised out of the ground because of the wet site, Alan had four different structural engineers come to the site. And they all said this house can't be lifted. It's going to fall apart.

MR. SIMMONS: Objection. We're

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willing to some hearsay here, and we've only got evidence of one structural engineer coming out.

MR. BROWN: Mr. Premo had the conversations. But I think she's providing factual information.

MS. WALLACE: But we have one structural engineer's letter, how's that?

CHAIRPERSON MILLER: Okay.

MS. WALLACE: So however many structural engineers came.

CHAIRPERSON MILLER: Let me say this just for everyone's information. I mean, we're not bound by the Rules of Evidence. We kind of follow them. The Rules of Civil Procedure, we pretty much follow, but it's not like, you know, it's grounds necessarily for appeal. And basically when we hear hearsay, which is what you're talking about, we give it a lot less weight than when we hear direct testimony.

But I note your objection.

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MS. WALLACE: Okay. At that time Alan had the structural engineer's letter, which I'm not sure where it is in this package. What number is that? Here. Okay.

Exhibit 8. And he went down to meet with various people. And again for me saying I guess it's hearsay. Alan can give you more detail. And met with various people down at DCRA with the Structural Department. And the decision was by the structural people at DCRA that the front of the house --

MR. SIMMONS: And we'll object here for the same reasons that Mr. Green objected earlier.

The government speaks through the issuance of permits only, not through this kind of informal discussion. Whatever may have gone on, what matters is the permit application, the ultimate decision on the permit and if appropriate, the permits themselves and compliance or noncompliance with it.

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MS. WALLACE: We have them.

MR. SIMMONS: Not these prior discussions.

MR. BROWN: Madam Chair, I mean one, whether it's Ms. Wallace or Mr. Premo were both involved, and Mr. Premo will join us shortly. There's a process that went on here. And the process, and the Board can obviously judge this, but judge it in light of the fact that what we're telling you is what in fact produced the permits which are a matter of factual part of the record and undisputed, at least as to their existence.

So she's laying a framework for what was to come.

CHAIRPERSON MILLER: And again, we recognize that this is her version, you know. I mean, I'm assuming that it's necessarily the whole truth and nothing but the truth. I'm sure it's your truth, but sure DCRA may have another version.

MR. GREEN: DCRA always tells the

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truth, Madam Chairman.

CHAIRPERSON MILLER: Okay. I'm sure you all do. All I'm saying is it doesn't seem to rise to the level that we would strike it from the record, in my view at this point.

Okay. Why don't you go on?

MS. WALLACE: Okay. Okay. I don't quite understand the objection.

The structural engineer wrote a letter. They also put together, which is Exhibit 9, they put together a demo sequence as requested by DCRA to attach to the plans for building permit under four.

Building permit number four was issued, so you have your fact of all -- my hearsay, which what exhibit is four? Exhibit 7. Okay. Well, I was going to show a picture.

Okay. What was attached? Building permit number four says demolish a portion of the existing square foot due to

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the structural integrity and possible collapse of the house which is dangerously unsound. Rebuild the structure to current building code and specifications per existing permits and plans.

CHAIRPERSON MILLER: Where are you in the exhibits that we have?

MS. WALLACE: That's building permit four Exhibit 7.

If you look at Exhibit 10 or the plans over here that Alan can point out, those are the actual plans from the Building Department. You have a copy of them. But they are the actual plans that went with building permit number four. Attached to them was the engineer's letter and the sequence of demolition that they required us to attach. So it's pretty clear if you go through the demo sequence what was supposed to be demolished.

If you look on the plans, and again we're in Exhibit 10, you can see. The

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front page it's very clear "area to be demolished," and they circled the 1933 front half of the building.

If you go to the second page -- Alan, if you please. You can see again on page 2 of the plan "area to be demolished." It's pretty clear.

Again, the next page. Same thing.

It's just all different versions of showing the front of the house "area to be demolished."

In fact, in this plan you'll see it's highlighted. These are the actual plans. We didn't doctor them up or anything. It's highlighted in the front what was to be demolished and the word "existing" is written on the plans. You can look again on your -- it's R-A-3 is what page it is in Exhibit 10.

And the word "existing" came from this page where it shows the existing house, which is again if you look at the photograph, the existing house is the addition. And the

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front portion of the house to be demolished.

It's over and over every page. It's very clear what we were told to demolish and rebuild in accordance with the existing plans as per permit number four.

And the word "existing" that is referred to in permit four is written right here on the plans that were attached to building permit number four.

So we demolished the front of the house to rebuild it as we were instructed to do in building permit number four. There were discussions with Alan and DCRA, and this was the decision that was made. Clearly they gave us a permit. The plans could not be clearer, circling on the plans "to demolish" page after page.

When we demolished the plans -- let me go to your next exhibit. Where's the stop work order stuff? Oh, it's on here. Okay.

When we demolished it, the front

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of the house, as per building permit number four, the city -- somebody called an inspector to come out and say we went beyond the scope of work of the permit.

Alan -- my testimony on this particular issue will be hearsay as Alan met with this particular person. But he basically said I don't --

CHAIRPERSON MILLER: But he's here.

MS. WALLACE: Yes. Do you want to just --

CHAIRPERSON MILLER: Wouldn't that be better?

I just want to take this moment also to say that Mr. Jeffries has joined us from the Zoning Commission. Welcome

COMMISSIONER JEFFRIES: And I will certainly read the record up until the point that I was not here. Thank you, Madam Chair.

CHAIRPERSON MILLER: Mr. Jeffries, for your information, a lot of what you

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missed was procedural and motions and we're really just getting into the heart of the case. Okay.

MR. PREMO: Yes. What I was told was that the drawings that we had and the permit that we had were fake.

CHAIRPERSON MILLER: You were told by whom?

MR. PREMO: The field inspector who came out. I was at the job site that day.

And he stated that because this red stamp here was the only thing that was on the drawings and other than on the back page. That was the only thing that said official on it. And he said that that's not official, that there should be --

CHAIRPERSON MILLER: Do you have a name?

MR. PREMO: There should be numerous stamps on it and that this was all fake, and that our permit was fake.

CHAIRPERSON MILLER: You said your

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permit was fake?

MR. BROWN: Madam Chair, if I could, I believe his name was Neil LeTren. He is the DCRA inspector who issued the March 21st, '07 stop work order --

MR. PREMO: Right.

MR. BROWN: -- which is in the record. And DCRA has proposed him as a witness.

MR. GREEN: Madam Chairman, I'm having a difficult time following the sequences of events. We started out with the testimony of Stephanie Wallace and now we have another individual is giving testimony. And then Mr. Brown is giving testimony.

I mean, who is giving testimony here?

CHAIRPERSON MILLER: Mr. Green, Ms. Wallace started talking about a conversation with Mr. Premo and someone, and that's when the Board said maybe Mr. Premo should talk about it instead of you, because

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he has personal knowledge of it. That's what happened there. And I believe that Mr. Brown was trying to clarify or answer a question the Board asked also. So, I'm sorry it's kind of confusing.

MR. GREEN: Yes, ma'am. I understand, Madam Chairman. But for the sake of moving this thing along in a cogent way, in a way that's smooth, wouldn't it be helpful for all parties concerned if we'd go with the testimony of one person at a time?

CHAIRPERSON MILLER: Let me just say this, I hear your comments. I think --

MR. GREEN: It would certainly help us all.

CHAIRPERSON MILLER: -- what slows down this process a lot, though, is when each of the attorneys start complaining about what the other attorneys are doing, et cetera. So let's just try to stay on course.

MR. GREEN: I'm not complaining, Madam Chairman. I'm only asking --

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CHAIRPERSON MILLER: Okay.

MR. GREEN: -- that a process be put in place that would facilitate all of us understanding exactly what's going on and who is giving testimony, whether it is Ms. Wallace or Mr. Brown --

CHAIRPERSON MILLER: Okay. I hear you. I hear you.

COMMISSIONER JEFFRIES: I think we got you. Can we move on, Madam Chair?

CHAIRPERSON MILLER: Yes, let's go.

I do think it's not inappropriate when another person has more expertise to deal with an issue.

Yes?

MR. BROWN: And, Madam Chair, (1) Mr. Green is using my time --

CHAIRPERSON MILLER: We didn't stop the clock on that?

MR. BROWN: No.

CHAIRPERSON MILLER: I'm sorry.

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MR. BROWN: But also we'll be finished long before our 60 minutes, I promise you. We've tried to present this in a chronological manner, and that may require going back and forth between Ms. Wallace and Mr. Premo. It's in my interest that you not get confused, and we're trying not to do that.

So can we go back to Mr. --

MS. WALLACE: Do you want me to talk or --

CHAIRPERSON MILLER: You know, it's your case and I don't necessarily agree with Mr. Green. It's your case. You have a chronological manner of presenting it, go ahead.

MS. WALLACE: I think that it would be best if Alan talked about the conversation that he had on the job site when the stop work order was issued instead of me saying it and then him saying it again.

CHAIRPERSON MILLER: That's fine.

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MS. WALLACE: If that's okay?

MR. PREMO: Right. He came out and said that our permit was fake and that our drawings were not official. I mean, they didn't have the official stamps that would normally come out of DCRA. And I explained to him that these were the drawings that were given to us by the permit service Mr. Permit and the permit was posted on site. And he just refused it. And so it ended up I had to go to DCRA later at a meeting to get the work stop order lifted. And at that time it was explained to him that these were actually the official drawings. And he was part of that meeting.

MS. WALLACE: So then the next sequence events was that at that particular meeting that Alan is referring to it was brought to DCRA's attention that the footers were not structural sound to rebuild the front of the house that building permit number four allows us to do. And so the DCRA

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structural people advised us to submit for another amendment to the permit to allow us to put new footers underneath when we rebuild the front of the house. And that is when the hold was put on the job.

At no time has the floor plan of this ever changed. Not one wall has ever changed from 2004 until today. I gained nothing by this. Nothing, except four years of paying a mortgage. Nothing has ever changed. I just wanted to make that clear.

I think that's pretty much it with my sort of where we are today in this.

Please ask questions. And if I've left a gap, you could --

CHAIRPERSON MILLER: I have a really basic question. But what is the house supposed to look like?

MS. WALLACE: The --

CHAIRPERSON MILLER: This, the picture that's right on the right hand corner or is something missing?

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MS. WALLACE: This is what the house supposed to look like.

You'll see on the far left corner shows the existing -- yes, but that's -- but it looks -- yes, it looks pretty similar to that except for different -- a little bit of different elevation and different siding.

MR. BROWN: And turn it so they can see it.

MS. WALLACE: And that is in your plan there.

So, I mean, the photograph does give you a pretty good representation of what the house is supposed to look like. The original 1933 structure had -- originally had a living room and a dining room and then there was this little bump out kitchen that must have been on in the '40s or something. And then upstairs were two bedrooms and a little bath. We were keeping the living room and the dining room and the two bedrooms. We were never -- the only thing we took out was

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the bath on the second floor. We moved it into the addition so that we could get the staircase to go upstairs. And, you know, we took off the little 1940's kitchen that was popped on the back. But there --

CHAIRPERSON MILLER: So basically, though, if nothing went wrong, or whatever, if nothing -- there wasn't a termite damage or whatever, that's the way it would look?

MS. WALLACE: Yes.

CHAIRPERSON MILLER: Okay.

MR. PREMO: Yes.

MS. WALLACE: Exactly. And, again, a nice old farmhouse with, you know, new modern conveniences.

VICE-CHAIRPERSON LOUD: Good afternoon, Ms. Wallace. Just a quick follow up question, kind of basic, too.

In terms of your testimony and then the exhibit, both of which your counsel handed out. Thank you. It was very helpful tool. At Exhibit 5, and I'm just trying to

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get my handle on the facts a little bit better. There's a picture of the addition along with the existing, and I think it's the same picture that's in the corner.

MS. WALLACE: Yes.

VICE-CHAIRPERSON LOUD: And then Exhibit 10 we have the specifications for I think building permit number four, correct.

MS. WALLACE: We have the plan, correct.

VICE-CHAIRPERSON LOUD: All right. So the plans look as if only the front portion of the existing building were to be demolished?

MS. WALLACE: The front portion, but the entire front portion.

Where' the floor plan? That one. Right. Well, the picture. The white --in the picture the white house was what building permit number four allowed us to demolish. That plan right there shows that. Every one of the drawings in Exhibit 10 it circled what

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was allowed to be demolished in permit number four.

VICE-CHAIRPERSON LOUD: Okay.

MS. WALLACE: The entire white building.

VICE-CHAIRPERSON LOUD: Let's slow down a little bit. This is right like that, but let me slow down a little bit. All right.

So at Exhibit 10 I'm looking at the very first page --

MS. WALLACE: Yes.

VICE-CHAIRPERSON LOUD: -- there's a box drawn around --

MS. WALLACE: Yes

VICE-CHAIRPERSON LOUD: -- what is described as the existing two story frame?

MS. WALLACE: Yes.

VICE-CHAIRPERSON LOUD: And there's an arrow pointing to that box which says "area to be demolished and rebuilt."

MS. WALLACE: Correct.

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VICE-CHAIRPERSON LOUD: And that box captures about half of the existing two story frame?

MS. WALLACE: Right.

VICE-CHAIRPERSON LOUD: Is that right?

MS. WALLACE: Because the back half of the existing two story structure was already replaced in building permit number two.

VICE-CHAIRPERSON LOUD: Okay. All right. That was one of my questions. All right.

So that when you look then at this Exhibit 5 you're actually covering part of what had been part of the existing --

MS. WALLACE: Right. You can see--

VICE-CHAIRPERSON LOUD: -- because the plans have two sets of windows on the ground floor that are existing. And the picture only has one set of ground floor --

MR. PREMO: Yes, you can see part

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of number two right here.

VICE-CHAIRPERSON LOUD: Okay.

MR. PREMO: It just doesn't extend out because a beam is in play there that we would have to put across. And so we can't go up as high.

VICE-CHAIRPERSON LOUD: All right. So my notes on this case reflect, and they probably are in error, but my notes reflect that your second permit allowed removal of the damaged part of the additional. But you're saying that it allowed --

MS. WALLACE: No. The --

VICE-CHAIRPERSON LOUD: -- part of the existing? Okay.

MS. WALLACE: Of the original structure.

VICE-CHAIRPERSON LOUD: Okay.

MS. WALLACE: Permit number two allowed the rear half of the 1933 structure to be replaced.

VICE-CHAIRPERSON LOUD: Yes.

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MS. WALLACE: And permit number four allowed the front half of the 1933 structure to be replaced. But by that time we already had the existing addition and rebuild of the back half of the '33 structure already up.

VICE-CHAIRPERSON LOUD: Okay.

MS. WALLACE: And existing -- hence the word "existing" on all of the plans. Because that was already existing at that point.

VICE-CHAIRPERSON LOUD: Okay. All right. That makes it a lot clearer.

And the basis upon which this was done, again, was that you were not able to lift the structure four feet as originally contemplated?

MR. PREMO: Right.

MS. WALLACE: Yes.

MR. PREMO: Correct.

VICE-CHAIRPERSON LOUD: Okay.

That's all for right now.

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MS. WALLACE: All right.

BOARD MEMBER WALKER: I have a couple of questions.

Ms. Wallace, who is it that made the handwritten marks on the plans that appear behind Tab 10?

MR. PREMO: Which -- these remarks? These marks?

BOARD MEMBER WALKER: On drawing-- the first drawing R-CS-1 area to be demolished and rebuilt and the box around the front part of the farmhouse, the old house?

MR. PREMO: You mean this drawing?

BOARD MEMBER WALKER: Yes.

MR. PREMO: I did those.

BOARD MEMBER WALKER: You did? And when did you make those markings?

MR. PREMO: Well, I made these prior -- so that the permit service would have drawings. They were after the meeting that I had with DCRA they instructed me how to set this up; that I could just use the

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existing drawings and just mark over top of them.

BOARD MEMBER WALKER: Okay.

MS. WALLACE: That's what the "R" is for.

BOARD MEMBER WALKER: Take me back to the beginning.

MS. WALLACE: Yes.

BOARD MEMBER WALKER: Okay. I'll start with permit number four which you say is so important. So take me back. You used, Ms. Wallace, in your testimony a lot of references to "we," and "us," and "our." And, you know, I'm trying to get a sense of what your involvement in this project was, what Mr. Premo's involvement in the project was. Who had most of the interaction with DCRA, what the communications were. Okay. So let's hear from you about your interaction with DCRA, whether it's Inspector LeTren, or whomever with respect to this permit. Let's go back to the beginning.

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MR. PREMO: This permit --

MR. BROWN: Please go back to the beginning when you first noticed that there was a structural problem.

MR. PREMO: Well, and that's -- yes. What we found was that after we had done the --

BOARD MEMBER WALKER: And who is "we?"

MR. PREMO: My company, the staff that I have. When we did the internal demo of the original structure based on permit number one, what we found was that the structure had a lot of just damage to it. And as Ms. Wallace had pointed out, it ended up being dangerous at one point that we ended up having to take down the back part of it just to save it from just rolling over, which I explained to Mr. Chen at one point.

It ended up with this one what ended up happening was that we tried to save as much -- we do a lot of green construction.

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And so what we try to do is we try to take buildings and save them as much as possible. And what we found with this one was that we needed to left it up, to get it up four feet, so we could put a foundation underneath it. And it ended up that it was so damaged that we ended up going -- I ended up going to DCRA, their engineers said that we needed to just demo it.

And so I went down to DCRA. I met with a Dennis, who I guess who is a subordinate of Mr. Chen -- or -- and he ended up indicating to me that if I took these drawings and outlined exactly what it was that I was going to do, that I would just give it back to the permit service and let them run with it and see if it would be approved for a demo. And so that's what I did.

I went back, I drew these up. He gave me instructions on using the letter that I already had. He asked me to come up with a

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demo sequence, which the engineer did. And they were all attached to the face of this drawing up in the corner. And then it was submitted by the permit service, and it was - - we got a permit. And that's how it happened.

BOARD MEMBER WALKER: And you're referring to permit number four?

MR. PREMO: Right. Exactly permit number four.

MR. BROWN: Alan, could you go through just the sequence of demolition and particularly that it was always anticipated that the demolition would go through to completely including the footers, if necessary?

MR. PREMO: Well, yes. The demo sequence that was -- this -- this sequence was attached to the drawings as requested by Dennis. And it says "have Pepco disconnect power from building. X brace all interior walls by 2 by 4s. Tie second floor deck to

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outside wall where stair opening is with 2 by 4s. Nail 2 by 4s onto deck and extend over to outside wall." This is all part of a stability process that the engineer wanted us to come up with first since it was a very weak structure. We had to sort of try to stabilize it as much as possible before we demo it.

"Remove existing windows and doors. Remove roofing. Remove roof sheathing starting at top down each side to top plate. Remove gable starting at top down. Remove each stick built truss one at a time. Brace as necessary. Remove siding on second floor down to deck. Remove second floor deck floors. Remove second floor joist.

COMMISSIONER JEFFRIES: Excuse me.

Excuse me.

MR. PREMO: Yes.

COMMISSIONER JEFFRIES: Right here. We have that in our file, correct?

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MR. BROWN: Yes.

COMMISSIONER JEFFRIES: So you don't have to read through that. Okay. So just give us a sense of what it is and then--

MR. PREMO: Well, it ended up we took it all the way down to "once the existing wood structure has been removed, examine and replace if necessary." And this is for the footer.

COMMISSIONER JEFFRIES: Okay.

MR. PREMO: And that's where permit number five was applied for. Because the engineers came out after we removed the structure and said it's just bricks laying on top of bricks, hardly any mortar and the bricks are just sat on top of dirt. That doesn't meet code. So we went back for number five.

BOARD MEMBER WALKER: Okay. Well, tell me about the stop work order then.

MR. PREMO: The stop work order applied to when -- when I was -- the plumber

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who I hired ended up couldn't get somebody to come out there to dig to extend the drain line out to where this -- where the front part of the addition was. He needed to get it out here for us to put the footer in. Because you couldn't dig on the other side of it. And so while I was digging that ditch, it ended up the inspector came out there and stopped us and said all the stuff that I said previously about he looked at the drawings, he looked at the permits that were posted and said that, you know, we had fake drawings, we had fake permit. You know, gave us the stop work order, set a fine on us. And that we would have to go and meet with, you know, the staff that I did meet with eventually to get the stop work order lifted. They found out that this was real.

Does that help?

BOARD MEMBER WALKER: Okay. And then carry me forward to the fifth permit from that point.

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MR. PREMO: What happened after we got the stop work order lifted was we ended up -- I had the engineering company, you know they ended up in process after we -- this was already in process that they were doing the design for the footers. It ended up that we went -- after we had gotten -- because we can't apply for a permit until we get the stop work order lifted. So after we -- I had made the meeting with DCRA and they understood what this was, they saw the drawings, everything got--

BOARD MEMBER WALKER: Okay. I'm sorry. But with whom did you meet at DCRA?

MR. PREMO: Let's see, I guess it was Douglas, Mr. Chen, Mr. Chen's boss and the field inspector who gave us the work stop order. And they said -- you know they said -- they said that they would -- they were okay with what we had come up for number five. And so from that point I had to go upstairs to see Mr. Magett to get the work stop order

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lifted. I had to fill out an application or something. And it ended up the next day we went out, back there, was able to get it lifted. And then we were able to make the application for number five. Everything got signed off on except there was an administrative hold.

BOARD MEMBER WALKER: From Mr. Cruz?

MR. PREMO: From Mr. Cruz. Nobody knew why, but there was.

MR. BROWN: Alan, just to be clear, the fifth permit the origin of that was the necessity for footers?

MR. PREMO: Yes. Yes.

MR. BROWN: And your understanding was that footers did not require zoning approval?

MR. PREMO: That's what my understanding was.

CHAIRPERSON MILLER: Sounds like you've gotten some -- Mr. Brown.

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MR. BROWN: I'm asking him direct questions.

MR. PREMO: Well, that's what -- when I went in for number five, zoning appeared on the screens of people when I'd go up to them and they'd go "I don't understand why zoning is here. Are you doing anything outside of the existing permits that you've already been permitted? Are you going higher? Are you going wider?" I said "No."

And they said "well, we don't understand why zoning's on your screen. Why it's on the screen."

BOARD MEMBER DETTMAN: I have a few questions, and I'll try to ask them in the most logical manner as I can.

Ms. Wallace, in the beginning of your testimony you had said that when you started this process you sort of went in a little bit blind, meaning you didn't know that you had this nonconforming side yard and that the nonconforming side yard was actually

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the thing that was going to allow you to build the addition that you had drawn up. It was sort of dependent upon this.

I'm curious to know when -- at one point along this process did you find out that the ability to build your addition as designed was sort of dependent upon compliance with 405.8?

MS. WALLACE: Well, I don't know what 405.8 is.

BOARD MEMBER DETTMAN: That's the side yard provision that allows you to do it.

MS. WALLACE: Okay. I knew -- I found out in the process of building permit number two that we had a side yard issue. It was at that point. Nowhere did the architect who designed the plans, I never -- I just saw the house and let's put an addition on the back. The architect never told me there was a side yard issue. And, you know, like I said nobody at the Building Department told me that until permit number two.

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Then somebody wanted -- somebody at Zoning, I cannot remember her name, said she wanted to see the survey. And I went over to the survey office and got the survey. And she said, okay, and signed off. And I asked her why. And she said well there's a five foot side yard and I just wanted to make sure the survey -- I wanted to see what the survey said. And when she saw that the survey said it was a five foot side yard, she said okay and signed off.

I'm sorry, but I cannot remember her name.

BOARD MEMBER DETTMAN: Okay.

MS. WALLACE: And that was --

BOARD MEMBER DETTMAN: Building permit two was the process that immediately the rear collapse, is that correct?

MS. WALLACE: Correct.

BOARD MEMBER DETTMAN: As part of that process did you have to submit amended plans?

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MS. WALLACE: Yes.

BOARD MEMBER DETTMAN: Okay. So they're not the same plans that show up in Exhibit 10?

MS. WALLACE: Well, they're -- all the plans are the same. The amendments are all either an addition of a structural engineer's drawings that are stamped to it or a handwritten on the plan. So sort of the first building permit plans are sort of the basis for everything. And so if you opened up building permit two or three, they're all the same plans just with different numbers on the bottom of the page with drawings or attachments from engineers.

BOARD MEMBER DETTMAN: Okay.

MS. WALLACE: If that was what was needed for the amendment.

BOARD MEMBER DETTMAN: Okay.

MS. WALLACE: Like building permit number three has amendments with engineer drawings on it, but they're all attached to

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the same plan.

BOARD MEMBER DETTMAN: Okay. So we're essentially seeing an evolution of the same set of plans throughout this whole process.

MS. WALLACE: Correct.

BOARD MEMBER DETTMAN: Is there a reason why on Exhibit 10 then that we don't see an indication of what's being done at building permit number two stage? I think a quick glance, if I look at Exhibit 10 --

MS. WALLACE: Yes, I see what you're saying. That's a good question. I don't -- I have the plans -- I have plans right there we could pull out.

BOARD MEMBER DETTMAN: Okay.

MS. WALLACE: Why didn't you -- I don't know. Maybe he just drew them on one.

I don't know why you took that set to draw on.

BOARD MEMBER DETTMAN: Well, I'll come back to a similar question in a moment.

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At the time that the rear collapses, it's my understanding that work like that in order to take off the rear of the building requires some sort of emergency demo permit or something. Did you acquire some sort of emergency demo permit following the rear collapse?

MR. PREMO: You're addressing it to me since you're looking at me?

BOARD MEMBER DETTMAN: Yes. Yes.

MR. PREMO: We didn't really know about an emergency demo permit. We went and did this on a spur of the moment because we felt like because it was beginning to lean and it ended up that we were going to go through the process, which we did, we went through the process. The guy came out almost the next -- I think we did it -- I don't even know if it was over a week, like a Friday/Saturday kind of a thing we ended up doing it. Monday he was there.

So we just explained to him what

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had happened. We went through the thing with-  
- I went through the whole thing with the  
inspector. And he just explained to me. He  
said, you know, just next time you get in  
this sort of situation we have this provision  
in D.C. that if you get in this sort of  
situation, because they don't want collapses  
and they understand that if there are  
situation where they can occur, that you know  
they will come out in an emergency basis,  
look at the site and make an evaluation so  
that you can get this done without allowing  
the building to actual come down.

We didn't know that. I -- I had  
never, even though I've done this for all  
these years, I've never been in that  
situation before. So I didn't know about it.

BOARD MEMBER DETTMAN: Okay.

MR. PREMO: That's why for number  
four we were very careful about, you know,  
making sure that we went through and tried to  
do the best that we could to make sure that,

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you know, if we could do something with it to utilize the whole building, we wanted to do that. But at that point, you know the engineers all the people I talked to anyway -

BOARD MEMBER DETTMAN: Okay.

MR. PREMO: -- said there just wasn't enough wood left to be able to do it.

BOARD MEMBER DETTMAN: Okay. So at this point we have half of the existing house left?

MR. PREMO: Correct.

BOARD MEMBER DETTMAN: We've removed the rear because of the collapse. And we have knowledge of the necessity to maintain this nonconforming side yard as per the second building permit process through DCRA. Is there a reason why we didn't pull in a structural engineer at this point to assess the extent of the damage to the entire house, meaning the remaining front portion.

MR. PREMO: There were four

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engineers that came out and looked at it.

BOARD MEMBER DETTMAN: The first we find out about the extent of the damage to the front of the property is when we go to, I think it's building permit number three when we go to lift the front.

MS. WALLACE: No. That's four.

BOARD MEMBER DETTMAN: Building number four. Right. That's the first we hear about it.

MR. PREMO: And that's -- that's--

BOARD MEMBER DETTMAN: But very early in the process when the rear of the property collapses and it's removed, and the plans are amended and we get the second building permit and we start to build the addition, I'll call it the addition plus --

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: -- we have no idea of the extent of the damage to the front of the property. And I'm wondering why.

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MR. PREMO: Well, part of it is you can't see it. I mean --

BOARD MEMBER DETTMAN: But we hear very early in Ms. Wallace's testimony that the structure during the interior demolition process it was wobbly.

MR. PREMO: That was the rear.

MS. WALLACE: The house -- one thing to clear up is when -- the house was built in two different time periods. So they -- their joist went opposite --

MR. PREMO: Two different directions.

MS. WALLACE: Two different directions. So they weren't actually structurally married to each other. So you could technically have the back part of the house being wobbly and the front part of the house still being secure.

BOARD MEMBER DETTMAN: Okay. So in March of 2005 in one of your filings it mentions that during interior demolition

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structural damage was discovered, no live termites, no termite infestation, but structural damage was discovered. I think in your preclosing walkthrough no termite, no foundation damage you could see because you couldn't penetrate the walls. But during interior demolition it's new found knowledge that we have structural damage. Why the decision not to sort of explore the extent of structural damage to the entire existing house?

MR. PREMO: Well, I mean -- like I said, you know after the -- after we ended up taking down the back part of it an engineer was brought in who augmented and created the permit number two to cover that. Okay. That person looked at the front of part, you know. They didn't want to deal with trying to

MR. SIMMONS: I'm going to have to object here. Please. If we may. I understand the leniency the Board has to give with hearsay. But this is the very first time

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that any of the rest of us have heard about any structural engineer on the property in March of 2005.

As we've mentioned before, the only structural engineering report or anything regarding a structural engineer comes in early 2006 with the report and demolition sequence that have been provided.

None of this has ever been disclosed before.

This is all new. None of this is in the record.

MR. BROWN: I think Mr. Premo is responding directly to a Board question. I mean, I don't think we could have anticipated that question in our prior filings. I mean, he has to have the latitude to answer Board questions, otherwise your hands are tied.

MR. SIMMONS: We've made an issue in our pleadings in the past about the lack of structural engineering investigation in March 2005 and earlier.

CHAIRPERSON MILLER: I agree with

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Mr. Brown that he is responding to a Board question.

I appreciate Mr. Simmons putting on the record that none of this is in the record, and this is all new. And did we have a name of this structural engineer? I can't recall.

MR. PREMO: There were several in -- in the very beginning the underpinning for the existing house was done by JGK Engineering. That's part of the documents that are part of the drawings. It was an attachment for the permit.

Then the engineer that Stephanie hired that I was not involved with for permit number two, I don't remember his name.

MS. WALLACE: No, but it's on the--

MR. PREMO: It's on the stuff.

We brought another one out --

CHAIRPERSON MILLER: It's "on the stuff."

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MR. PREMO: I mean on the permits.

MS. WALLACE: The plans.

MR. PREMO: The plans.

MR. BROWN: It's on the permit plans.

CHAIRPERSON MILLER: Okay.

MR. PREMO: There was another engineering outfit that we brought up, and I can't remember their name, but I -- anyway, I can't remember their name. They came out and looked at the job again. They refused to -- they said the house was too damaged to be able to be lifted.

CHAIRPERSON MILLER: Okay. I mean, again, I say to Mr. Simmons it does go to weight also. You know, we hear Mr. Premo say they said this. You know, it's not the same as when you have a written document of somebody approving something or saying something in writing.

MR. SIMMONS: I appreciate that. But it's raised yet another concern as we've

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gone forward. We've never gotten any plans or submittals of plans prior to the fourth building permit. And now we're told that we can find names of engineers on those. We're back in the same boat. We're in no position to question this. We're in no position to call the engineer. We're in no position to cross examine or do anything with this.

CHAIRPERSON MILLER: Okay. I think that this goes to the issues of -- equitable issues of latches and estoppel, which we did say they were probably going to have a continuation on. So I would suggest, you know, you keep track of these issues that might relate to that and then later we can get to the question of if there are any documents that you feel they should be producing. And Mr. Brown and you can respond whether you think you should have to produce them or not.

Okay.

BOARD MEMBER DETTMAN: Thank you,

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Madam Chair. Just two very quick questions.

And I apologize for having so many questions, but there are some gaps that I needed filled in.

I think the last question I sort of left off on is that at the time of the rear collapse there was a structural engineer on site to deal with the underpinning and the foundation issues that were going to be associated with this new addition. But that I think you started to say, correct me if I'm wrong, that that structural engineer or the structural engineers that were out to the property to address the rear collapse didn't want to deal or didn't want to address the front at that time?

MR. PREMO: No, you got it --

MS. WALLACE: We weren't ready to do it.

BOARD MEMBER DETTMAN: Okay.

MR. PREMO: Yes. Yes. What it is is in the original -- what ends up happening

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because there's an existing house already there and we're attaching a basement to it, what happens is you have to go underneath the existing house. To go underneath the existing house we need to have an underpinning process.

BOARD MEMBER DETTMAN: Yes.

MR. PREMO: So he's not really privy to what's going on in the house yet, the old house.

MS. WALLACE: The front house.

MR. PREMO: The front house.

BOARD MEMBER DETTMAN: Okay.

MR. PREMO: The '33 house. This is just a person who is drafting up a sequence of underpinning so that sections, four foot sections can be poured along that underneath the existing foundation of the old house. So he's not really involved in what's going on with the old house. He's just hired to come out there --

BOARD MEMBER DETTMAN: Yes.

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MR. PREMO: -- to draft up an underpinning process that gets used with the people who are going to do the foundation for the new addition. So he's not really part of that.

BOARD MEMBER DETTMAN: Okay. I understand. And thank you for that.

MR. PREMO: So he's not -- he hasn't seen -- he hasn't seen anything more than I have --

BOARD MEMBER DETTMAN: Okay.

MR. PREMO: -- with what's going on with the existing house.

BOARD MEMBER DETTMAN: Okay. And lastly --

MR. BROWN: The old house.

BOARD MEMBER DETTMAN: -- looking at Exhibit 10 the first page that has the box drawn around the front portion of the existing two story house that says "area to be demolished," while working with DCRA and showing them these plans in order for you to

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get your -- I believe it was the fourth building permit?

MR. PREMO: Right. Fourth.

BOARD MEMBER DETTMAN: Whoever you are working over with DCRA, were they aware that the portion that's not covered by that black box that was drawn by you, that that was originally drawn to indicate the existing 1933 structure and that the portion that is now not covered by that box is no longer a portion of the original structure?

MR. PREMO: This picture was brought.

BOARD MEMBER DETTMAN: And it was clear to them --

MR. PREMO: Yes. Yes. Absolutely.

BOARD MEMBER DETTMAN: -- that the part that's sort of outlined in black there, that is the last remaining portion of the 1933 structure?

MR. PREMO: Yes. Yes. This was brought. This was brought to that meeting.

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BOARD MEMBER DETTMAN: And they were aware or you made them aware of this nonconforming side yard issue?

MR. PREMO: I don't know whether I made them aware. I figure just since they're with DCRA they know what the -- you know, what zoning -- whatever, the rules are. I mean, I would have made an assumption. I was just there to, you know, get building permit number four.

BOARD MEMBER DETTMAN: Okay.

MS. WALLACE: And no one said at anytime to me or to Alan, to sort of interrupt, that if you demolish the front half of the building, you're going to be at BZA, you know, a year and a half later.

BOARD MEMBER DETTMAN: Certainly.

MS. WALLACE: No one said that. Had they sat down with us and said we understand that the building is structurally unsound but if you demolish it, you're going to have a problem with zoning issues, we

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would have tried to find -- I don't know what we would have done. But we would have tried to find another solution. Nobody ever said to us, you know, this is risky thing to do. This -- I mean, everybody felt that this building needed to come down. They granted us a permit to do it.

BOARD MEMBER DETTMAN: Okay.

MS. WALLACE: And we did it. I mean, trust me, I didn't want to be here. I wanted this to be sold and be long gone.

BOARD MEMBER DETTMAN: Thank you.

VICE-CHAIRPERSON LOUD: Just a quick follow up to Mr. Dettman's question. And I believe for the architect and/or the applicant if you were present. As I understand it when you reached the point of stage -- not stage four, but permit four when you reached that stage you know that you're getting ready to demolish the last remnant of what had been the existing house. But you don't attach any particular significance to

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it because you're not necessarily aware of the significance of that in the context of the D.C. municipal regs?

MS. WALLACE: Correct. We were going to just replace bad wood with new wood. That was all. We weren't changing anything. So it would never have occurred to me that there would have been --

VICE-CHAIRPERSON LOUD: But visually, though, you know you're getting ready to demolish the last part of the existing house, correct?

MS. WALLACE: Well, of the original 1933 --

VICE-CHAIRPERSON LOUD: Of the original house?

MS. WALLACE: Yes. Because by that point there is an existing house there.

VICE-CHAIRPERSON LOUD: Okay.

MS. WALLACE: But I -- right. We had no idea that --

VICE-CHAIRPERSON LOUD: You're

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aware of that?

MS. WALLACE: -- that this was going to turn into this.

VICE-CHAIRPERSON LOUD: With whom did you meet at DCRA? Do you recall?

MR. PREMO: Well, with DCRA, like I met with, I guess, a Mr. Chen.

VICE-CHAIRPERSON LOUD: And Mr. Chen is a person you met with in the specific context of permit number four?

MR. PREMO: Yes.

VICE-CHAIRPERSON LOUD: And demoing the last remnant of the existing --

MR. PREMO: Right. He was -- he and I had previously met with a Dennis. I'm assuming that he was part of it. Because I went down there to meet with Mr. Chen and this guy Dennis also a part of the structural aspects of DCRA is who met me first.

VICE-CHAIRPERSON LOUD: And was that the only meeting you had with the DCRA representative before --

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MR. PREMO: Before giving it to the permit service, correct.

VICE-CHAIRPERSON LOUD: Permit? Okay.

BOARD MEMBER WALKER: Can I just clarify? Because earlier you said you met with someone named Douglas, a Mr. Chen, Mr. Chen's boss.

MR. PREMO: That was for the removal of the work stop order. That was the meeting that had to deal with that.

MS. WALLACE: That was that.

MR. PREMO: That was after the permit.

VICE-CHAIRPERSON LOUD: Again, sort of to flush out this part of the permitting process, and I'll wait to your counsel is -- I have a follow up question.

When you met with Mr. Chen you gave him a full briefing, I guess, on the context of the inability to raise the structure four feet, et cetera. And Mr. Chen

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authorized this remedy or this solution that is embedded in permit number four?

MS. WALLACE: Yes.

VICE-CHAIRPERSON LOUD: Okay.

BOARD MEMBER DETTMAN: Ms. Wallace, if you could just remind me again, at the second building permit phase when I believe you said a young woman told you that-- sort of informed you of this side yard issue--

MS. WALLACE: I think her name was Ms. Fay.

BOARD MEMBER DETTMAN: You cut your microphone off.

MS. WALLACE: Okay. There was a Ms. Fay in Zoning at that time. I believe she's the woman who met with me. Because I did the permitting still myself. I hadn't gotten the permit services company until after that.

You go down and they tell you different departments want to see you or have

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comments. And so the Zoning, Ms. Fay from Zoning was the one. I think her name is Ms. Fay. She wanted to see me to pull the plat, I guess, from the survey department. And I gave that to her. And she said that was fine, and she checked the box and off I went to the next person.

BOARD MEMBER DETTMAN: Do you remember exactly how she sort of framed this side yard issue?

MS. WALLACE: No. She just -- she didn't -- she just said something -- she just said she wanted to see the survey to understand the -- I -- I can't remember. I'm going to make -- I don't remember --

BOARD MEMBER DETTMAN: But she did tell you you had a nonconforming side yard?

MS. WALLACE: She didn't use the word nonconforming side yard, no. She did not. Because that would have been a big ding, ding, ding. But she did not use those words. But I can't remember exactly.

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BOARD MEMBER DETTMAN: Okay.

MS. WALLACE: I mean, it was years and years ago.

BOARD MEMBER DETTMAN: So moving forward from building permit number two you're still sort of unaware of the importance, I should say, of this nonconforming side yard and that it --

MS. WALLACE: Yes.

BOARD MEMBER DETTMAN: -- needs to exist?

MS. WALLACE: Yes. The ultimate importance of it that has led me here, I was not aware of. Because I -- I thought if you had it, in my just logical mind thought if you have a piece of wood that's damaged and it's not even touching the foundation and you replace it in the exact same place with a new piece of wood that is structurally sound, that you're not changing anything. I thought you were allowed to replace in like kind, and that sort of thing.

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So I -- I never felt I was changing anything except repairing something that wasn't a structural sound thing. And that -- I've learned a lot in the last four years. More than I thought I was ever going to learn.

But, yes, I mean, I really didn't -- I didn't really know the severity really until all of this started, the BZA stuff started that we were in -- done anything that wrong to do this. I thought we were replacing something to make it a safer structure.

BOARD MEMBER DETTMAN: Okay.  
Thank you.

MS. WALLACE: I would never have bought this house or done any of this had I know this is where I was going to be.

Right. I was permitted. Right.  
Everything -- everything that we did was permitted. I mean -- I'm sorry. I have one more thing I failed to mention.

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Because I relied on all these permits to allow me to do this, I got construction financing and have a mortgage. And I have at this point not including him and all of this, a \$1,03600 into this site. I will never get that back because I still have -- no matter -- if we win, I still have to build the structure and sell it, and the market is not the same as it was. And, you know, I can't even refinance my own house. I can't, you know, buy a car because this is sitting on my credit, this huge debt sitting on my personal credit. So this is -- and I have done everything I was told to do by DCRA.

CHAIRPERSON MILLER: Any other questions? Okay.

Are you finished?

MR. BROWN: Well, we have -- okay.

Then Mr. Ford.

CHAIRPERSON MILLER: Okay.

MR. BROWN: You want to do cross

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examination?

CHAIRPERSON MILLER: I want to pause for a minute I think and recognize the reality of the situation, of the time, that it's 5:00 and we have another case on the agenda.

MR. BROWN: Okay.

CHAIRPERSON MILLER: I understand that the other case needs to be heard today or it's pressing for them to be heard today and it's harder for them to be continued. I'm not saying that we should stop the case right now, but I just want to just see if we can resolve the time issue and then keep going on this case to a natural break.

You know, there was a motion for a continuance and I heard from most of you that you didn't oppose it, which meant -- but I have to see.

What I would like to suggest is that if this case can do it, otherwise we'll have to see which case can't be heard, but

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stop at a good breaking point. Maybe that's the end of the applicant's case after there's cross or whenever we finish this segment if you all can come back next week. Okay. And we may have to call the other case parties, you know attorneys up here to look at the calendar. Or we can stay very late. I don't know. But the Board is willing to stay late, I believe, some of us. We'll see. We'll have to see if we can get a quorum. But we know we're in this crunch and the August recess is coming, and that is a problem for parties in general.

So let me just hear from the parties in this case whether or not -- I saw somebody shake their head. But whether or not we could finish up the case next week in the afternoon.

MR. BROWN: Madam Chair, I mean we're prepared to -- I mean, we've waited and a continuance doesn't serve us, so we're ready to push forward. And we're trying to

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remain focused and move quickly. And my apologies to the folks from the Evermay case.

CHAIRPERSON MILLER: All right. I mean, am I hearing that you all don't want a continuance and you want to keep going. What time is realistic, you know, that we think we can wrap it up so that the others can assess, you know, whether they can go and come back?

You know, we're only on the applicant's case right now.

Shall we break and you all talk about it?

I do know -- and then the other party can think about it, too. But we do have some space next week in the afternoon.

Okay. Why don't we take a ten minute break.

(Whereupon, at 5:04 p.m. a recess until 5:33 p.m.)

CHAIRPERSON MILLER: Back on the record.

We're wondering if you all have

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worked everything out while we were away.

Let's hear first from the Wallace group. I mean this case. The question I guess on the table was are we going to try to finish this tonight with another case to go afterwards? If so, how much time really is it going to take? Or, are we going to continue? We could continue as early as next week in the afternoon.

MR. SIMMONS: Well let me, if I may, take a crack at this. I think the realities are given the amount of cross exam that can be anticipated and the number of issues that we need to go into, I know that I have a far amount of cross exam, I would estimate an hour for each Mr. Premo and Ms. Wallace, perhaps a little bit less for Mr. Premo. I don't know about the government.

CHAIRPERSON MILLER: Two hours of cross examination?

MR. SIMMONS: Yes. Yes.

CHAIRPERSON MILLER: I'm not sure

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our rules actually provide that. It has like an hour for each to present a case, so --

MR. SIMMONS: Well, this is not presenting the case. This is --

CHAIRPERSON MILLER: I know.

MR. SIMMONS: -- cross exam.

MR. SIMMONS: And there are many, many issues here and many things --

CHAIRPERSON MILLER: We don't want to cut into due process, but on the other hand there are --

MR. SIMMONS: What I was going to suggest is I think the realities are given the needs for cross and then given the needs for direct testimony from the other side, and what you've said, Madam Chair, about the other case that's pending, which I'm sorry to say I know nothing about, it may be that this is a good point to break or continue with Mr. Ford until he's finished. And then break at that point, give you as much time as we can for the other matter pending.

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We've consulted amongst ourselves and the only time we seem to be able to all come up with a time that works for us is starting about the 17th of September. We'd love to be able to take next Tuesday, but I just can't be sure that Mary is going to be available on Tuesday with her knee. And so knowing that the recess is coming up in August, Ms. Wallace is going to be out of town in September until September 17th, perhaps we could find a day from there quickly after the 17th of September to conclude.

CHAIRPERSON MILLER: So everyone can do next Tuesday afternoon, but we're not sure about Ms. Grumbine, is that it?

MR. SIMMONS: No. I'm pretty sure she won't be able to just with the experience that we've had with her back in the past.

MR. BROWN: Madam Chair, if I could interject. And as we stated earlier on, I mean our interests are very strong

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interests to move this case to conclusion. We're prepared to stay tonight as long as possible. We're not prepared to belabor the matter. Mr. Ford's up, some brief closing remarks, that'll be our case. It's well under an hour clock time.

The concept of two hours of cross examination seems, in my experience, to be well beyond the pale.

So we're prepared to move forward tonight now. Next week, the 29th -- I don't know what exactly the Board schedule. I'm here on the 29th for other reasons. I'm more than happy to make myself available then.

The only date that isn't available is September 9th when my client will be out of the country.

CHAIRPERSON MILLER: Okay. So what I'm hearing is you all could come back and next week and then we can, you know, deal with Ms. Grumbine question. But that's separate, in any event.

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And Mr. Ford's testimony should take how long?

MR. BROWN: Ten minutes. I mean, it's subject --

CHAIRPERSON MILLER: And he's available next week, too?

MR. BROWN: Yes.

CHAIRPERSON MILLER: Okay. I know this table is full, but I think in all fairness I should hear from the other case, the parties in the other case if they can just tell us their constraints.

If you all could clear the -- I'm sorry. If you could just clear --

MR. LEMOINE: Yes. No, I'm not available. I wasn't really a part of these talks about next week. I'm not here on Tuesday. The 28th would work for me, as Mr. Brown suggested.

CHAIRPERSON MILLER: All right. Let me just hear the constraints of the other case and then we'll figure out what to do.

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Okay. This is a fairly unusual situation, you know, as we're getting towards the end of summer and everyone is in a crunch. But the Board is willing to stay, but I need to hear from you all even whether it's feasible that we could fit both cases tonight. So I don't want to keep everybody waiting if it's not feasible, and I want to understand though if there are constraints on this case that it couldn't be continued. And I see that there are so many people that have turned out. I understand it would be an inconvenience, But I just want to see if we can do the most realistic process here.

So let me hear from you all. If you could introduce yourself for the record and then we can hear about the constraints on this case.

MS. STEURY: I'm Ellen Steury at 2800 R Street, party in opposition.

I would hate to start at 6:00 or 7:00 p.m. tonight after having sat here all

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afternoon. I'm about to wear out. This would be quite a burden.

I don't know what it is you perceive as the urgency, but if it has to do with the AG's request for an expedited decision, I'm quite willing to address that.

There is another matter of a procedural irregularity that I would like to draw to your attention that may or may not resolve this issue for this evening. Do you want me to proceed with that?

CHAIRPERSON MILLER: Well briefly. We might as well know what's on the table.

MS. STEURY: Okay. I am a stranger to these proceedings so I read the rules. And it's on the basis of what I read that I draw this to your attention.

Apparently section 3113.14, 3113.15, .19 and .20 require that before a public hearing that a notice be posted both on the street frontage and in front of the property for 15 days and the applicant is

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required to check every five days to make sure that it is posted. And then file an affidavit with photographs showing that these notices have been posted. Yes, each building. Right.

Your frowning -- did you --

CHAIRPERSON MILLER: I thought you said each building? Is that what -- what are you alleging? That they didn't post?

MS. STEURY: They have not filed an affidavit that showed that they posted on each building as is required by the rules. They did not post this time for this public hearing.

And I notice from the hearing record on the Tudor Place issues that that was an issue and they did post every time there was a public hearing.

CHAIRPERSON MILLER: Okay. Let's have Mr. Collins respond.

MR. COLLINS: Thank you. I'm Christopher Collins with Holland & Knight

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representing the applicant in 17761.

The application was posted properly and maintained properly. The posting was done back in April prior to the May 15th original date of the hearing. And on the date of the hearing on May 15th we came down and requested a postponement. And the postponement was to a date certain, which is today. And in those occasions when it's postponed to a date certain there's no need for reposting.

The fact that Ms. Steury is here indicates that she knows the date and it's almost unbelievable that anyone in Georgetown would not know that the hearing is today. Certainly we have a roomful of people who know the hearing is today.

There are, yes, a few buildings on the site other than the main building. The purpose of the posting is to let the public know.

CHAIRPERSON MILLER: Okay.

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MR. COLLINS: To post the notice on the greenhouse down the path is not going to serve any purpose for anybody.

MS. STEURY: I understood what he said. What they did did not confirm with the rules --

CHAIRPERSON MILLER: Okay. Let me just say this because we don't have all night to deal with a zillion issues, but posting is one way of providing notice to the public. The public is the ANC and then there's mailings to people within 200 feet, whatever.

If you're saying that because they didn't post each and every building we can't go forward with the hearing, I think the Board would not find that that would be the case. That we would just need to determine that there was adequate notice and that we could waive -- that's the first notice I've seen a notice that actually every building would have to be posted.

MS. STEURY: It's in the rules.

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CHAIRPERSON MILLER: So I think that we ought to move on. If we had a lot of time, I would probably go into more detail on this and give you a kinder explanation or whatever. But I understand that, you know, you're reading the rules that way, and I don't fault you for that at all. I just think that the Board would not go forward on the hearing because of that.

Right? Is that the consensus of the Board? Okay.

So let's get to now could we postpone this case to next week or a different date?

MR. COLLINS: May I address the Board on that? Christopher Collins again.

It's our view that we absolutely need to go forward today. What we intended to do at the conclusion of the hearing today is ask you for a decision on the 28th of July.

We've been postponed already. We

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postponed in order to have meetings with the communities. That was at the ANC request. The same people that we had tried to meet with all spring who didn't meet with us, which Mr. Eason will talk about a little bit more. We did postpone, we had some meetings.

One couple showed up three times. And I appreciate the fact they showed up.

We have discussed things out. The issues are fairly clear. As the Attorney General's letter says to you, they asked for expedited treatment of the application, and I can get into that with more detail when the case begins. But we absolutely need to go forward today and we would like a decision on the 29th of July so that we can know by the end of July whether we are going to be able to go forward or not be able to go forward.

CHAIRPERSON MILLER: Well, let me ask you this: Why --

MR. COLLINS: The second point is--

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CHAIRPERSON MILLER: Yes, yes. Go ahead.

MR. COLLINS: -- we have a room full of people here who, of course, the other case does as well. But these people came down and took time out. And many of them are willing to stay here and it would be very difficult to get people back. I know some people are not going to be in town next week.

So, for all these reasons, we respectfully request moving forward today.

CHAIRPERSON MILLER: Okay. But what I want to say is, I mean it's possible - - you know, both cases have, you know, saying they want to do it. That's fine. I mean, and we also have in the first case, though, a party that cannot be here next week.

So that means if we proceed with that case, which is not quickie, that you know we could be talking about 8:00 or something beginning your case.

I mean, I've read the whole file

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in this case and I don't see -- and you could tell me where I'm wrong, but why if we begin this case next week and have the hearing when everyone is fresher, that it would in anyway interfere with a decision that you're seeking on the 29th? Why it would change it.

MR. COLLINS: Well, if we can --

CHAIRPERSON MILLER: I mean, I'm not saying we're guaranteeing you a decision on the 29th in any event. But given that that's a concern of yours, what difference would it make if we had the hearing next week?

MR. COLLINS: Well, we have many supporters here who would like to --

CHAIRPERSON MILLER: I see there are many supporters here.

MR. COLLINS: And they would like to speak --

CHAIRPERSON MILLER: Okay.

MR. COLLINS: -- in support. And if there's not an opportunity today, then

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they may not have an opportunity next week because they can't -- it's a lot for us to ask --

CHAIRPERSON MILLER: Come down twice.

MR. COLLINS: -- these people to come down.

CHAIRPERSON MILLER: Okay. I mean, and the Board is -- you know, we'll stay. I just wanted to make sure that, you know, that your whole group would prefer for the most part, I don't think you would, prefer to stay until 10:00 or whatever and then come back next week in the afternoon.

MS. STEURY: Madam Chairman?

CHAIRPERSON MILLER: Yes.

MS. STEURY: Could I make a suggestion? Why don't we hear from the interested people? Because that might be a very brief period of time. And then we could save the substantive matters for another time when we are fresher, when we can get through

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them.

I cannot imagine that this case would be resolved in less than four hours.

COMMISSIONER EASON: Madam Chair, may I be heard. My name is Charles F. Eason, Jr. I'm Commissioner with Advisory Neighborhood Commission 2E in Georgetown. And I'm here representing the Commission.

I frankly, while I'm appreciative of the turnout of all these citizens, I'm not quite sure the extent to which the testimony that they may offer is going to be totally relevant to the issues before the Board. And I do have concerns about starting very late in the evening. And to that extent I would support the notion of putting it off to a time certain when we could do it all at once.

CHAIRPERSON MILLER: You know what? Maybe I should see some hands in the back. Because I know there's a lot of people in the audience. And I care, you know we care what you all think. We want to factor

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that as well. and I can't have everybody come up and say what they would prefer.

And I note this file is a really thick file and we've read all the letters that have come into that file.

But I would like just to see how many of you would prefer to stay here tonight for how long it takes or to come back next week in the afternoon. So, for those who would prefer to come back next week, could we just get a feel by you raising your hand? This is just an indication of whether you'd like -- oh, which day? Next Tuesday afternoon.

No one would like to come back.

Well, let me just see a show of hands for those of you who would like to stay.

Okay.

MS. STEURY: This was postponed once before and when we postponed it -- when the applicant postponed it, I noted that this

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would be hard on the opposing neighbors because they had vacations and would be out of town. It is true that every one of them, except us two here today, are either on business out of town or on prescheduled family vacations out of town. That would in large part resolve as well if this were postponed.

COMMISSIONER EASON: May I just offer another suggestion, maybe not to complicate things. But if people are here to testify, that they could testify tonight and then we could proceed with the case in chief next Tuesday. That would be an acceptable alternative.

MS. STEURY: I would be quite amenable to letting the members of the public testify. If he's talking about putting on his case and his witnesses -

COMMISSIONER EASON: No, I'm not.

MS. STEURY: Okay. That's fine with me.

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MR. STEVEN STEURY: I will be out of town next Tuesday.

CHAIRPERSON MILLER: Did you identify yourself for the record.

MR. STEVEN STEURY: My name is Steven Steury. I live at 2800 R Street.

CHAIRPERSON MILLER: Are you two married?

MR. STEVEN STEURY: We are.

MS. STEURY: Yes.

CHAIRPERSON MILLER: Okay. So you will be represented then still? But you would want to testify today, is that it?

MR. STEVEN STEURY: No. I think that this has been a -- it's worked out that there are no -- the other neighbors on vacation. We know this a problem. They're out of town also. And I think to have one person here is -- I'm not sure that it's representative.

CHAIRPERSON MILLER: I don't know, but I can't reschedule because some neighbors

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aren't here.

MS. STEURY: They were party.  
They applied for party status.

CHAIRPERSON MILLER: But they're  
not here today.

MS. STEURY: No, because it was  
postponed.

CHAIRPERSON MILLER: Because it  
was postponed.

MS. STEURY: Yes.

CHAIRPERSON MILLER: And there  
wasn't a complaint then. So if you're saying-  
-

MS. STEURY: I did register a  
complaint.

MR. KIRWAN: Okay. All right. All  
right. We have to --

MS. STEURY: I did. And you  
overruled me.

CHAIRPERSON MILLER: Okay. I'm  
sorry. I mean, as you can see, it's very  
difficult to get everybody here.

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MS. STEURY: Yes, I understand.

CHAIRPERSON MILLER: So we have a lot of people here. So I think Mr. Collins' suggestion is a good one, so I think that's what we should do. Because we have all these people here, a great number who may want to testify. And they've come all the way down here. And they're willing to stay. So we should hear them night. And then so that it doesn't go too late, I understand that the parties will all be represented and can do the rest of the case next week.

So that's settled.

Let me see how many people want to testify today in the second case. Okay. So here we go.

WE are going to hear the members of the public who came out for the second case, the Evermay case now. The individuals get 3 minutes to testify. So, therefore, we believe that we can handle this case in relatively short period of time and do that

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first. And then we'll call back the Wallace case.

MR. BROWN: We're going on recess while this --

CHAIRPERSON MILLER: Why don't you take a quick dinner break.

MR. BROWN: All right.

CHAIRPERSON MILLER: But let's see how many again so we can figure out how long it's going to take.

MR. BROWN: Well, with the commitment that we're going to finish tonight?

CHAIRPERSON MILLER: With the commitment we're going to finish tonight and we'll just address whether Ms. Grumbine should have an opportunity to come back and testify on some issues. Other than that, we'll finish tonight. Okay.

Mr. Brown, do you -- all the parties in the Wallace case, would you like an hour so you can go have dinner and then

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come back? Where are you? Okay. Does that sound good? That's the best we can do. Otherwise, we can have you come back earlier.

But I think it makes sense just to say an hour.

MR. BROWN: So five minutes to 7:00?

MR. STEVEN STEURY: Madam Chair, I have some personal responsibilities this evening. Do you expect that this will conclude at 7:00? It's 5:55 now.

CHAIRPERSON MILLER: I would think so. I would think before. Because I only saw really a half dozen people or so who want to testify. If they're given about three minutes, the Board can ask questions.

And, again, I would like to say to you I appreciate that you can't be here next week. And so if there's anything that you want to put on the record, we would give you that opportunity as well.

MR. STEVEN STEURY: Thank you.

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COMMISSIONER JEFFRIES: Also, Madam Chair, you know every individual will be kept to three minutes and groups five minutes. Are there any groups that are here representing -- okay. So it seems -- oh, no, there is.

CHAIRPERSON MILLER: I don't think we have that group rule.

COMMISSIONER JEFFRIES: Oh, we don't have that group rule? You might want it.

CHAIRPERSON MILLER: Maybe in the Zoning Commission.

COMMISSIONER JEFFRIES: You might want it in this situation.

CHAIRPERSON MILLER: All right.

COMMISSIONER JEFFRIES: Unless you want to give an organization three minutes.

CHAIRPERSON MILLER: Okay. Are we clear?

So we're recessing the Wallace case. And Ms. Bailey, when you're ready

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would you call the Evermay case formally?

MS. BAILEY: Madam Chair, Application 17761 of Harry L. Belin, on behalf of Evermay Society, pursuant to 11 DCMR § 3104.1 for a special exception to allow a nonprofit organization under section 217 at premises 1623 28th Street, Northwest.

The property is zoned R-1-B, it's located in Square 1285 on Lot 815.

CHAIRPERSON MILLER: Okay. We're going to give an opportunity to those in the public who have come down here to testify on this case to come forward and give their testimony.

I want to also clarify that this case is being continued until next week. And if someone prefer to testify next week, they're not precluded from doing that. Because a normal procedure you would come later after you heard the applicant's case. But we often allow the public to testify earlier if there are time constraints.

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So why don't you come forward.  
I'm not sure how many chairs there are at the  
table. But anyone -- ah wait a minute.  
You've all been sworn in?

MS. STEURY: None.

CHAIRPERSON MILLER: Okay. None.  
You weren't here. Okay. All those wishing  
to testify in this case either in support or  
opposition, please rise. Ms. Bailey will  
administer the oath.

(Oath is administered).

CHAIRPERSON MILLER: Well, why  
don't about five of you come forward at a  
time. How's that? Don't be shy. Okay.

I want to thank you all for your  
patience. Again, this is an unusual  
situation where we end up going this late.  
But we're very interested in what you have to  
say. So why don't we just start from the  
right.

You can give your name and address  
for the record and then your testimony.

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MR. HORAN: Thank you. My name is John Horan and I live at 2531 Q Street, Northwest in the District of Columbia.

I want to thank the Board for taking the time and effort to look into this and let us comment.

We're asking for a special exception for a very special place. We all enjoy the characteristics and qualities of this beautiful place we know as Washington, D.C.. It's very unique. And one of the gems is an estate known as Evermay. It's green, it's quiet, not much goes on there. The sun shines, the squirrels play. And every now and then they'd like to have some people over for a celebration.

It was originally built as a home many years ago. It was zoned as such.

The application before the Board is to allow them to operate a nonprofit for the expressed purpose of gatherings, celebrations, weddings, corporate get-

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together, occasionally just people enjoying life.

They've taken extraordinary steps to ensure that they have a minimal impact upon their neighbors. They have only approved vendors. They have paved over their tennis court to make an internal parking lot.

They've taken every step to ensure that at Evermay, like Los Vegas, what happens in Evermay stays in Evermay.

Occasionally there's an impact on the world around us. We have jets flying out of National Airport, the Vice President's helicopter goes right above all the time. So, sure, these actions aren't without consequence. But it's a good purpose to keep this estate intact, to be able to allow it to be self-supporting. And we ask for your kind and due consideration of their application for a special exception.

Thank you.

MS. STEURY: May I cross examine?

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CHAIRPERSON MILLER: I don't think so.

MS. STEURY: I have a very short question.

CHAIRPERSON MILLER: Okay. Let's see. Because basically what I heard was opinion, and he's not represented by counsel. So I'd tread very carefully. You want to throw out your question.

MS. STEURY: All right. Rule me out of order if you don't like my question.

CHAIRPERSON MILLER: Okay.

MS. STEURY: My question would be have you ever seen the articles of incorporation? Because you made a statement that this is operated for the not for profit and that it includes weddings and corporate events and things like that that you described as a not for profit mission? And I'm wondering on what you base that opinion?

MR. HORAN: Well, I actually haven't seen those articles of incorporation.

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And I think that that's generally something that --

MR. COLLINS: Madam Chair, may I object at this point.

CHAIRPERSON MILLER: Oh, would you like to step in as counsel here? No, you're objecting on behalf of the applicant? You're objecting on behalf of your client, the applicant?

MR. COLLINS: Yes. Right. Right.

CHAIRPERSON MILLER: Okay.

MR. COLLINS: These supporters are here clearly to support the application. They are not here to testify about the articles of incorporation.

CHAIRPERSON MILLER: I would tend to agree.

MR. COLLINS: I don't believe that Mr. Horan testified about the articles of incorporation. So I don't think it's a fair game for cross examination, in any event.

MR. HORAN: And I was just going

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to state that these are more the affairs of attorneys and the Internal Revenue Service.

MS. STEURY: And I understand, and I won't ask that question. But it would be question, and I just want to state this for the record, for everyone who states that they believe that this is being operated as a nonprofit, which is what Mr. Horan said.

CHAIRPERSON MILLER: So it's your running question: Have you seen the laws or -

MS. STEURY: Or what do they base their opinion that this a not for profit operation on. But I'll --

MR. COLLINS: Madam Chair, cross examination is based upon what they testified to in chief. And if they didn't testify about the articles of incorporation, I don't believe that anyone else in the room here is going to testify about the articles of incorporation.

CHAIRPERSON MILLER: Okay. Let's

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stop.

MS. STEURY: Well let me -- I just want to make this point that he did testify that it was a not for profit. And that is dependent on what the articles of incorporation say. So he did testify about that.

CHAIRPERSON MILLER: Okay. Okay. I don't want to go through this with every witness.

MS. STEURY: I don't either.

CHAIRPERSON MILLER: I think that they're testifying it's their belief that it's a nonprofit. Okay. I don't think that they're testifying from a legal point of view about whether it is or it isn't.

MR. HORAN: If I may, I actually got that phraseology from the application before the Board itself

CHAIRPERSON MILLER: Okay. Thank you. All right.

Let's move on.

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MR. OVERMEYER: Good evening. I'm Dale Overmeyer. I live at 2106 P Street, and I practice architecture at 3213 P Street. So my practice is very much Georgetown base and I've lived here my entire adult life.

And I've attended a small number of events at Evermay, and I found those to be, you know, delightful things that were inspiring to me, and a couple of them were fundraising benefits that helped children in Anacostia and children in Uganda.

And I've found that this is a place that has a very positive and reenforcing value in our neighborhood. For me, I'm not one of the immediate neighbors, but I'm one of the neighbors in the community that can walk there and enjoy -- participate in any number of things that have happened in the past. Georgetown Garden Tour, I've been there several times. A prayer breakfast.

And so for me it's an edifying place in that it's not just somebody's home,

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but it's a home where they wish to extend invitation to others that makes a positive difference both in our local community and even internationally.

As an architect, I would say that I've had the pleasure of working on a number of large projects in Georgetown, large residential projects. In fact, the one right next door, immediately to the west at Makell Square. And I think about 12 years ago this Board ran a zoning variance to construct a large -- well, not too large, but a guest house on that property.

I think what's extraordinary here is that we're not asking for any construction, we're not asking for any addition. In fact, the irony here is that this is a building that has a tremendous amount of infrastructure already in place. They've very carefully hidden a 100 car parking in a site that's not visible from really the public space and in a way that is

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very discreet. And so they're managed to have quite a bit of infrastructure for the purpose of hosting a large number of people in a very wonderful setting for that. And I appreciate that they're taking the step to formalize what would otherwise just be very informal way of doing it.

We attend fundraisers at a number of these large houses. I think there's quite a put if impetus to when you have a place like that, to put it to a positive use. And here we see somebody that's really trying to formalize that. And so I appreciate that.

CHAIRPERSON MILLER: Thank you.

MS. COOLEY: Hi. I'm Betsy Cooley. I'm the Director of the Citizens Association of Georgetown, and I'm here to tell you about what the Board of Directors of the Citizens Association has done regarding this issue.

First of all, CAG, which is our lovely acronym, Citizens Association of Georgetown, has more than 1200 dues paying

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members, all of whom are residents of Georgetown. And for a 130 years we're the oldest civic organization in the city it has represented the citizen's concerns for historic Georgetown, which is a national historic landmark. And our official mission is to preserve the historic character, to develop the aesthetic values of Georgetown and to help protect the interests of the residents and the homeowners, and to assist in making it a pleasant place in which to live.

CAG's Board of Directors is extremely active, along with many committee people, who spearhead community education and advocacy regarding historic preservation, zoning, ABC issues, issues concerning streetscapes, traffic, parking, utilities, public safety, trash and rodent control.

CAG also promotes community connections via monthly program meetings, several annual social events and clean up

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days.

At both our April and June Board meeting the Board of Directors discussed at length the Evermay application. And we have several lawyers who are members of our Board.

And after lengthy discussion we passed the following resolution:

"The Citizens Association of Georgetown supports the Evermay Society and Harry Belin application for a special exception filed December 4, 2007 with the D.C. Board of Zoning Adjustment provided that the District of Columbia condition its grant of a special exception by including in the order:

(1) A requirement that Evermay comply with the summary of rules and regulations in substantially the same form provided to CAG, and;

(2) The special exception be for an initial period of not more than five years."

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COMMISSIONER EASON: Madam Chairman, I do have one question on cross if I could. Just so the record is clear, the Citizens Association of Georgetown, I think its described in the application but it's one of those entities which is given free use of the property by Mr. Belin and Evermay at least once a year for a fundraiser?

MS. COOLEY: Not every year, but we have had our -- one of our annual events there several times in the past. But anybody who knows the Citizens Association of Georgetown, our Board and our members would know that we have gone up against head-to-head other businesses and organizations in Georgetown that have also extended many complimentary privileges and benefits to us. And it does not color our review of what is happening before any D.C. legal boards.

CHAIRPERSON MILLER: Okay. Thank you.

MR. KUKUZKI: My name is Ray

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Kukuzki. I live at 1021 30th Street, Northwest. I've been there for 41 years.

I've served as the Chairman of the Georgetown Advisory Neighborhood Commission and as the President of the Citizens Association of Georgetown.

One of the issues I've learned in my civic life is that people who get involved in disagreements with other neighbors need to consider the alternatives to what they're proposing.

Evermay provides an entire block of free parking for the neighbors. It is a large tract of land that produces almost traffic, noise, trash during the vast majority of time.

It is often graciously open to the community for their events.

And Harry and Sue Belin on behalf of the Evermay Society are extremely willing to work with neighbors to resolve their concerns and issues.

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As a matter of right the alternative to the continued use of Evermay Society include a publicly chartered school, a religious institution or an embassy residence. A school would have significant adverse impact on the neighbors with traffic issues of parents dropping off and picking up students, buses delivering and picking up students and noise, after hours events and loss of this entire block of parking.

A religious institution would have similar parking, traffic, noise and evening and weekend issues.

Embassy residence would also cause such problems.

In every case it is hard to imagine that a new owner would or could be, in any cases, accommodating, as sympathetic to the neighbors' concern as are the Belins.

In fact, zoning regulations require the proposed use of the property by the Evermay Society will "not adversely effect the use of

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neighboring property."

It is difficult to imagine a school, church or embassy residence taking the mitigation steps that the Evermay Society has in meeting this requirement.

The Society has implemented safeguards in the form of rules and regulations both for the guests and the vendors for the activities that take place on their property. They provide free on site valet parking for the larger events, a 100 cars. They strictly control noise and have the on site duty officer for all events that ensure any potential problems can be quickly addressed.

Since ever alternative to the continued use of this important piece of Georgetown history and charm would bring consequences significantly more adverse for the neighbors, one can only wonder as to the motivation of the opposition given the overwhelming support of the community for

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Evermay that was demonstrated at the July 1st ANC meeting and tonight.

Thank you.

CHAIRPERSON MILLER: I just want to clarify. I'm not saying you can't ask any cross exam. So, you know, if there's something about somebody -- that's specific to the testimony.

MS. STEURY: I have one question.

CHAIRPERSON MILLER: Okay.

MS. STEURY: I guess based on what Mr. Kukuzski said. Did he state his residence, his address for the record?

MR. KUKUZSKI: I did.

MS. STEURY: Okay. Thank you.

And the question I have is your list of alternatives does not include a single-family dwelling. And can you explain that to me?

MR. KUKUZKI: I can't imagine how many people would show up that would buy the Evermay. And it would still fall in the same

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situation. Would they be as willing to work with the neighbors as are the Belins because they too will have events.

And one of the issues that was raised, the issue with the problems caused when the President comes by. Anybody who has the kind of money to buy Evermay would certainly have high end party and you'd have very high end guests, which are going to cause problems.

So again, I'm not -- I can't see any alternative to the existing one that would not cause more harm to the neighborhood than what is there today.

CHAIRPERSON MILLER: Thank you.

MR. SCANLON: Good evening. My name is John Scanlon. I live at 1627 35th Street, Northwest.

And I want to talk about two ways in which I've personally seen the Evermay Society give back to the community in a way that I think clearly expresses their

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commitment to public service and in a way that offered no return to them.

In the fall of 2005 I went to Uganda to shot a documentary on the situation in the refugee camps in the northern part of that country. I came back with a film that showed the work that was being done in that part of world by a couple who have a very unique ministry. And it was difficult to find, frankly, a channel to show that film until Harry Belin graciously offered Evermay and the Evermay Society as the place to screen the world premier of the film, which we did in March of 2006.

We had a capacity crowd for that show. And as a result, there were contributions made to the support of the ministry that resulted in the construction of an orphan and that has resulted in support that continues to this day for that group and for the work that they're doing in Uganda.

Not only did the Evermay Society

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not charge any kind of fee for our use for the facility, but the nominal reimbursement that they did accept didn't cover their costs, and they refused to accept anything more because they wanted the funds that were being contributed by people who were looking to write checks as a result of the film to go to the work of the Uganda mission.

So everyone involved in that ministry, everyone who has benefitted by indirectly owes a great deal to the Evermay Society.

On an ongoing basis I've been teaching for about five years a nondemoninational Bible study in Georgetown that touches about 45 men's lives every week.

And about 2½ years ago we were getting close to outgrowing the space that we were meeting in.

Again, the Evermay Society stepped forward and offered us the opportunity to meet once a week in their facility. And we've

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been doing that for the last two years.

We've never been charged any fee. In fact, quite to the contrary. In order to support our ministry of worship and study of the Bible and encouraging one another to live by its precepts, they've actually been providing breakfast and coffee for us every morning that we meet. They set up for us. And I know that they have folks who get there well before working hours to make sure that the facility is there and open for us.

They've been careful to instruct us about how to park and where to park so that we don't have an impact on the community. But I want to say that the impact that I've perceived has all been good. And, again, I'm grateful that we've been given that opportunity. Nothing has ever been asked of us in return. And I think it just expresses the heart and the character of the Belins personally and in fact the Evermay Society as a whole.

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CHAIRPERSON MILLER: Okay. Thank you very much.

Okay. Shall we start on the right.

Good evening.

MR. HORSEY: Good evening. My name is Outerbridge Horsey. I'm a resident of Georgetown. My wife and I live at 1632 32nd Street. I also -- I'm an architect and I have my place of business in Georgetown as well at 1228½ 31st Street.

In the spirit of full disclosure, I have done professional work for Harry Belin and Evermay over the years. Small projects from time-to-time to assist with renovations in the house.

My family has also known his family for a couple of generations. And I have very fond memories of Mary Belin, who I knew quite well and who died a number of years ago.

I'll give copies of my testimony.

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I won't read it all because I know we're under a duress of time here.

But I just want to say that Evermay occupies the unique position in our community in being the largest residential parcel of land still in private hands in Georgetown, and one that lies in a geographically critical part of Georgetown adjacent to the Oakhill Cemetery, Rock Creek Park and Dumbarton House.

To date it has been a great value to the community in the history of its house and its garden, particularly, and also in the generosity that the Belin family has shown to the community in making its property available for specific events.

Harry and Susan Belin's personal commitment to the Georgetown community is exemplary, as was that of Harry's parents, Captain Peter Belin and Mary Belin who gave so much of their time and energy and money to our community at a time when it was most

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needed.

As an example of the Belin's generosity to the community is their donation around 1980 of a parcel of land on Q1 of land on Q and 27th Street, I don't about maybe a quarter of an acre, for the formation of a public park. That parcel is adjacent to the Mount Zion Cemetery and to Dumbarton House to which the land was given. The park was planned and planted by the Georgetown Garden Club and it's open everyday to the public and continues to be enjoyed daily by the neighborhood, especially by the residents of nearby apartments.

And finally, I believe it's altogether appropriate for Evermay to be allowed to operate as a nonprofit foundation in the manner outlined in the application. Harry and Susan Belin have shown that this can be done in a manner sensitive to the privacy and well being of their neighbors. And I believe that they've always had the

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interest of both their neighbors and the community at large very much in the forefront of any decision they've made in the use of their property.

Thank you.

MR. DOWNING: Good evening. My name is Blair Downing and I'm not currently a resident of the District, but live in Alexandria, Virginia and at a slightly different view in that I work for Susan Gage Caterers and we were one of the caterers who does events from time-to-time at Evermay. But I thought I might add our thoughts.

We obviously enjoy the opportunity to work at Evermay. I've seen a lot of great celebrations there and have seen people come to know the District and know parts of the District and parts of Georgetown that wouldn't otherwise see it.

We also are acutely aware of Evermay Society and of Mr. Belin's concern about not impacting the neighborhood anymore.

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It's probably one of our most, in some ways, stressful occasions when we go on the property to make sure we are on the property with a minimum of noise and problems. And we are very careful to behave as a good neighbor. And that's one of the messages that keeps coming to us from the Belins and Evermay Society is that we are trying to be good neighbors and to make sure that we behave ourselves as such.

One other thing that has occurred to us that may be of interest to this as you consider this. I know that one of the things with Evermay Society is allowing events. And it not only has, I'm sure, an impact on the neighborhood but it also has an impact on the city in the terms of tax revenue, quite frankly, that comes from events that are held there.

We are -- and we've seen a lot of events that since they haven't been at Evermay have moved to Maryland and to

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Virginia. And it's just another aspect of how -- what goes on that Evermay effects.

That's it. Thank you.

MS. STEURY: Mr. Downing, what is the name of the catering company that is your employer?

MR. DOWNING: Susan Gage Caterers.

MS. STEURY: And your position?

MR. DOWNING: Account executive.

MS. STEURY: Thank you.

CHAIRPERSON MILLER: Wait a second. Oh, you have a cross?

I just want to say to Mr. Steury, is that how you pronounce your name? Because of the time constraints we have really gone out of order. Okay. And I understand that you're a party status applicant, that you haven't been granted party status yet. So, I would again -- I would just suggest, you know, you be prudent with your questions. Because only a party really can ask questions. And most likely you're going to

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be granted party status because I understand that you're impacted neighbor from the file. But, again, it is a little bit different with members of the public who come and testify. They get a lot more latitude.

And so I would just, you know, reserve your questions really for key issues if you can. I'm not saying you haven't. I'm just -- I think it's based on that first question when you were drilling the first one on the bylaws or the articles of incorporation.

All right.

COMMISSIONER EASON: Yes, a question. You indicated in your testimony that there was a tax revenue benefit to the city. I wondered what you based that on?

MR. DOWNING: We pay a District sales tax for every event that occurs at Evermay. And it's ten percent -- I'm sorry. We pay a sales tax to the District of Columbia on every event that occurs that we

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do anywhere in the city. And it's ten percent on a certain group and 5.75 percent on another group. But it's not an insubstantial amount for a large-

COMMISSIONER EASON: Do you collect that from the people --

MR. DOWNING: For the -- yes. From the client. But we collect it, I mean because it's in the District. If we do an event, obviously, in another place it's paid to another locality.

COMMISSIONER EASON: Thank you.

Oh, yes, I'm sorry. Again, I'm Charles Eason, E-A-S-O-N.

CHAIRPERSON MILLER: Just for the record, the ANC is automatically a party in ever special exception or variance case.

Okay. Did you have a question. Okay. Okay. Good.

All right. Next?

MR. EISLEY: My name is Jerry Eisley. I am -- I lived in Georgetown for 12

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years. I own a business in the city and I'm founder and Director of the Washington Arts Group, which was founded in Georgetown in 1978 in my home.

I've known the Belins for over ten years, and I've been on both ends; receiving end as well as giving end in their nonprofit outreach to the city.

One of the projects -- one of the interests of the Washington Arts Group is to find ways to bring about reconciliation through the arts, both here in our city as well as abroad. And Evermay has been an integral part of that.

In 1997 I began to work on a project called Anacostia, A Place of Spirit, which was a large cultural project that took three years. The meetings that began it, began at Evermay. And then when Union Station asked us to do a Black History Month exhibit, it was the most successful thing that they've ever done there. And over a million and a

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half people saw the exhibit and Evermay again opened up their doors to have -- we couldn't afford to have a reception at Union Station, so we had dinners around the city and they hosted the dinner to bring people together in all parts of the city.

The exhibit was about the place of community outreach, faith, family and the community in the shadow of the Nation's Capitol. The U.S. Consulate chose that to represent the United States for the 2003 celebration of the 300th anniversary of St. Petersburg, Russia, the city. And we do an orphan outreach. Again, Evermay came alongside and helped us do an orphan outreach which we had a benefit for Orphan Choir and linked it with issues of international adoption. And that the Library of Congress chose the cultural project to be representing -- our two projects were chosen to represent the Nation's Capitol in this huge program called Local Legacies, which the Library of

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Congress undertook at the turn of the millennium.

Then also Evermay very generously at no cost to us and actually helped us in other ways. We put on international arts convocations from time-to-time. Again they stepped in and helped us with a documentary. And we brought together artists from all over the world together here for a week. And, again, Evermay was part of that.

So I am a recipient of some of the other things that have been mentioned here that I've gone to as well as a contributor. And unfailingly, the Belin family have continued their generosity in reaching out to the community, and especially bringing together the different parts of this city. There's something about the historic home of Evermay and the history of the Belin family that helps bring together people from different parts of the city and embeds it within the history of the city.

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So I, for one, have not only benefitted, but have found it to be a great resource in nonprofit -- I've never seen anything that was done for selfish purposes from my experience.

So thank you.

COMMISSIONER EASON: Madam Chair, just to clarify, do you have another relationship with the Evermay Society?

MR. EISLEY: Oh, yes.

CHAIRPERSON MILLER: Your light's not on.

MR. EISLEY: Yes. I'm on the Advisory Board for the Evermay Society, the nonprofit part.

Just, by way of record, my work with the Washington Arts group, I'm not paid for nor I receive nothing from the Evermay Society. I have my own business. I own a gallery in the city, which has nothing to do with any of this.

Thanks.

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CHAIRPERSON MILLER: Yes.

MS. STEURY: I have a follow up question. Mr. Eisley --

CHAIRPERSON MILLER: Is your mike on?

MS. STEURY: Yes. You described yourself as on the Advisory Board. Are you not a member of the Board of Directors of the Evermay Society?

MR. EISLEY: Yes.

CHAIRPERSON MILLER: Your mike's not on. The light has to be one. Okay.

MR. EISLEY: Yes, that's what I meant. Sorry.

MS. STEURY: Thank you.

CHAIRPERSON MILLER: Thank you.

MR. ELTING: Hi. My name is Fred Elting. I own Frost Lighting. And I'm another vendor who does quite a bit of work at Evermay.

I'm here to talk about some of the rules and regulations that Mr. Belin has

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worked out to prevent an impact on the neighborhood, probably most importantly our trucks. We bring trucks of lighting equipment onto the property. We spent many discussions, many ways to work and improve how we do it of bringing them in in the middle of the day, mostly between about 10:00 and 2:00.

Harry set up ways for us to park our truck on the property so there's no parking on the street. There is absolutely no trucks showing up in the evening. We've all had to change our schedules to make sure that nothing is taken out or loaded out in the evening after the events, which is standard that we do for all of our events of taking things out right afterwards.

So over the years there have been many conversations and probably there are constant conversations to improve how we do things at Evermay to create less of an impact. Because you've all been very

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concerned about that.

CHAIRPERSON MILLER: So your experience at Evermay is pretty different from your experience with other events?

MR. ELTING: With other venues, absolutely. I mean Evermay has always sort of had a warm spot in my heart. I've worked very hard to stay there and take care of it because it is more of a home than a venue.

And, yes, we are allowed to pick up equipment at other places, other places in Georgetown, other venues and places that are like home in Georgetown we're able to bring our trucks in after midnight and pick up our equipment. We aren't -- it's not that we aren't allowed to bring our truck in, we aren't even allowed to take it down. The party ends and we go home. We have to leave all of our equipment in place and come back, not even on Sunday. But come back on Monday.

Because most of the events take place on Saturdays. We don't show up on Sunday and

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take down. It comes out of Monday. So that Sunday is also another quiet day.

CHAIRPERSON MILLER: Thank you.

Yes?

MS. STEURY: Just a question. You were making a comparison with other sites in Georgetown. Are those other sites in residential areas or are they in commercial areas?

MR. ELTING: I don't know what -- I don't know what the areas are, whether they are residential or commercial.

CHAIRPERSON MILLER: Okay.

MR. ALSWANG: My name is Ralph Alswang, and I am a vendor that works at Evermay. I'm also a resident of the District.

I just wanted to say the same things. I think it's a very unique venue.

CHAIRPERSON MILLER: Excuse me. Did you say you're a vendor also.

MR. ALSWANG: Yes, I'm a vendor.

CHAIRPERSON MILLER: What kind?

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MR. ALSWANG: I'm a photographer.

CHAIRPERSON MILLER: Okay. Thank you.

MR. ALSWANG: Yes. Sorry. Very sorry.

I just want to say it's a very unique venue in that what they demand of their vendors in load in and load out.

Also that Mr. Belin and his staff are always on site, which is not true for other venues. So when we have load ins, it's always when I pull up he'll be there, tell you where -- how to operate.

Also. on the end of evenings it's a very abrupt stop. So it is always very clear about when things stop and the impact.

I just also want to comment as a resident of the District it's an amazing resource and it brings people to the District. And it really adds to our community. And I would like to see anything possibly done to work out something with the

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Board because it's so unique and wonderful.

CHAIRPERSON MILLER: Thank you.

Okay. Thank you all very much.

Is there anybody else who is going to want to testify that's still in the audience that hasn't come forward. Okay.

MR. KATZ: Hi. My name is Russell Katz. I live at 2723 Q Street. Our backyard abuts the Evermay property. We've been there for 2½ years. We is my wife and my three kids. So we're close owners, you know close neighbors to the Evermay estate. And we're strongly in support of the application.

There are a lot of events that go on there. Many, many different kinds. And in our experience the staff is always informative and considerate of us as neighbors. So we have an open line of communication. And, you know, we see weddings and events of all sorts throughout the year.

And, you know, more than anything I suppose from our point of view it's entertaining and

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interesting, and it's an unusual neighbor to have.

We've gotten to know Harry a little bit better recently and we know more of the philanthropic things that he does there as well that don't meet the eye immediately, and are just impressed some of the things that they're working on there are wonderful. Like the film event that they're trying to get started every summer, which is one of the kind of incubator things would be fantastic. And there are a few more that I know about.

And in general I think it's a great resource.

So my wife can't be here. She's with the kids. But we both support it, that's why I'm here. And it's not easy to get here at times like this. I'm sure everybody would agree. But we're here because it matters to us and we want to support and see it continue.

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Thank you.

CHAIRPERSON MILLER: Thank you.

And thank you for waiting so long.

I'd like to ask a question about your property and their property. Like what divides it? Do you have trees in between you, or what?

MR. KATZ: No. There's a low wall, maybe 4½, five feet. And there's a big gate that you actually see through that's locked.

But, you know, from our -- the hill rises behind our house. So from all the back of our house, including being in the yard we're exposed to the -- you know, to the grounds and we see the house. We sort of look at each other.

So if there's an event going on there, we know it. You know, we're close neighbors. And so visually there's a lot of connection. And, you know, acoustically and everything. It's essentially would be like a continuous yard with just a wall across it.

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CHAIRPERSON MILLER: So if there's noise, you hear it, am I right?

MR. KATZ: Yes. Right.

CHAIRPERSON MILLER: As much as anybody else do you think?

MR. KATZ: Yes.

CHAIRPERSON MILLER: Yes. Okay.

MR. KATZ: I mean, the place where they park and they unload and load, et cetera, it's just off to the side on the back. So it's on our side.

The entrance is around 28th Street on the top of the hill. So we don't have much exposure to the entrance. But the parking for all of the -- I guess most of the cars and trucks that come in service the parties happens within eye shoot and ear shoot of our backyard and porch and back of the house. And all the events that are outdoor in the tent are fairly exposed to us.

CHAIRPERSON MILLER: Thank you.

MR. COLLINS: I have a question.

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CHAIRPERSON MILLER: Okay.

MR. COLLINS: On cross examination.

Mr. Katz, you said that in response to a question by the Chair you said that you hear if there was a noise, or you'd hear just about the same as everybody else in the neighborhood. Would it in fact be you would hear it more than anybody else in the neighborhood because of your close proximity to the outdoor events and the parking and the things of that nature?

MR. KATZ: It's a large property, so there are different exposures. And we're on Q Street so we are exposed to the parking, loading and garden festivities.

MR. COLLINS: Where the outdoor events happening?

MR. KATZ: Whatever those are. Like I said, we're not exposed to the driveway access, egress, we don't get that.

MR. COLLINS: Okay. But on the

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south where the outdoor events are?

MR. KATZ: Yes.

MR. COLLINS: Okay. But on that side you're exposed more than most other people?

MR. KATZ: Well we're -- yes, and more than anybody else. Well, there's -- next to us is the Dumbarton House which also has events very similar to Evermay which we're equally exposed to. And we also have good relations with them. But I will say that the performance of the Evermay staff and Harry in regard to keeping us up to date and looking out for our comfort exceeds that of the Dumbarton House. Not to a great extent, we're good with both. But it stands out in our mind.

MR. COLLINS: Thank you.

MR. KATZ: And the other houses are not occupied next to us. They're under construction.

MR. COLLINS: Thank you.

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CHAIRPERSON MILLER: They have events at the Dumbarton House, too?

MR. KATZ: Oh, yes. They have a lot of them.

CHAIRPERSON MILLER: Okay. Thank you.

MS. SCANLON: My name is Heidi Scanlon and I live at 1627 35th Street. And as a mother of two stay at home children, I appreciate you hearing us tonight. It's great.

Actually, I did want to mention that I am the neighbor to a very large venue Georgetown Visitation Preparatory School which is 200 years old. And I'm directly across the street from there. And I'm two blocks from Holy Trinity and about three blocks from Georgetown University and two blocks from Georgetown University Hospital. So I know traffic and noise.

So never in my entire experience of living in Georgetown in ten years have I

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had anybody like Evermay except for one time try to minimize the impact on my family from those organizations. We've had maybe a few letters saying, you know, we'll be kind of noisy this weekend, but not anybody going to the extent that Mr. Belin seems to go to.

So I just wanted to speak regarding the nonprofit issue. I've had personal experience and have attended numerous nonprofit events at Evermay. One I attended a film sort of finishing party for a documentary that was being made to recuse human trafficking victims who were child slaves in Togo, Pakistan and the UAE. It was totally a nonprofit event completely paid for by Mr. Belin. A beautiful lavish evening, you know, lots of money raised for that particular film. And we were never asked for a dime. I mean we couldn't -- other than to support that effort.

I have attended numerous Alpha neighborhoods sort of outreaches where

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neighbors come together and talk about issues of eternal consequence. And the impact to minimize the party on the neighborhood was amazing.

I live in zone 2. I have a zone 2 parking sticker. I pulled up, tried to park on the street and, you know, was immediately met by one of the valets from Evermay saying, you know, please don't park on the street. And I said, you know, but I live here. This is my neighborhood. I want to park on the street. No, no, we really want you to use our valet. And I don't want to use your valet. So, you know, arm twisting by Evermay please use our valet, don't park on the street.

And I can't really understand what the problem on that particular street is because there's no houses on the other side and it's just a big hill. So anyway, I've experienced the aggressive generosity of valet parking at Evermay.

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The other thing that I would mention from a nonprofit status is that Georgetown Women's Bible Study is an organization that's about 15 years old in Georgetown started by my best friend. And we have about 110 women in our list, most are neighbors from the neighborhood. About 70 people attend regularly. And every now and again we have a fall kick off or a Christmas party. And a couple of times we've just outgrown our homes. I mean, Evermay is a large home. Our homes are small homes. And Evermay just steps forward all the time and says come, have your Christmas party at our house.

And, you know, it's just been amazing. And I've had that experience at least three or four times with that organization.

So I've been to at least six or seven nonprofit events at Evermay where I was only ever asked to give money to the

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organization. And certainly with Georgetown Womens Bible Study no money exchanged hands for anything.

Attended also to hear a talk from an Iranian woman who was under religious persecution.

So these are far and wide examples of nonprofit expense that Evermay has gone to.

I did want to just say from the perspective of an organization using Evermay, I represent the Georgetown Womens Bible Study and we've had, as I've said, two or three events there at least. The excessive extent to which Evermay went to minimize the impact on the neighbors was amazing. I mean, we are neighbors. So it's kind of odd, you know. It's like please don't freak out the neighbors, but we are neighbors ourselves. I mean, I'd just like to say a few that I experienced.

We had to use their approved

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caterers. We had to park in their lot only. We could not have any trucks. If we had a person over 75, we had to keep the staff informed at all times.

And when there was some discussion that we might have a few more than 75, the entire staff -- I mean I want to say it in the nicest possible way, freaked out because they don't want the neighbors to be impacted.

And so lots of instruction about where to park and so forth.

And the one that I felt that was really funny was please take your trash with you. And, you know, it's funny but it was true. They wanted to minimize even the potential of trash impact on the neighbors.

So, you know, all these lovely Georgetown women came and had a Christmas coffee and invited their girlfriends, and we took our trash with us.

So, I mean I feel like I can testify from personal experience the enormous

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extent to which they've gone to minimize impact on the neighborhood. And I just would like to say that I would support anything that Evermay did, a for profit, a nonprofit, any kind of even that they did. Because they have been so generous to the community. It's just been beyond belief. And I have a lot of friends who have large estates in the city and have never seen anybody go to the extent they do to help.

So, thank you.

BOARD MEMBER WALKER: Ms. Scanlon?

MS. SCANLON: Yes.

BOARD MEMBER WALKER: Are you related to John Scanlon?

MS. SCANLON: I am. John is my husband.

BOARD MEMBER WALKER: Okay.

MS. SCANLON: And the film I spoke of is a totally different one.

BOARD MEMBER WALKER: And the Bible study is a different one?

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MS. SCANLON: Womens, mens, totally different.

BOARD MEMBER WALKER: Okay. And this was probably a more appropriate question for him, but is Bible study meets with what frequency?

MS. SCANLON: If I can speak for the Georgetown Mens Bible Study, they meet on Thursday mornings at 7:00 a.m. And I will say that the Georgetown women, we don't meet there but we've had a few events there. But the interesting is even the events that we did have in the freezing cold, Mr. Belin was standing at the end of the driveway to help us get setup and, you know, loading and schlepping chairs from the basement by himself. So the stories could go on, but anyway that's been our experience.

MS. DOWNS: My name is Barbara Downs. And I live in Georgetown at 3321 P Street.

And I wanted to reiterate what

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many of the speakers have said about how generous the Evermay and the Belin family has been to the community.

I'm a Board member and former President of the Citizens Association of the Georgetown. And we hold our annual gala there, and have been doing that since about 2004. And working with Harry and working with the staff, they just bend over backwards to make sure there's as little impact as possible both in terms of noise, parking and everything else.

I've also walked outside on the street with Harry during the gala where an orchestra is playing in the ballroom. And there's absolutely no noise. Everything -- every consideration has been taken in building that structure so that it's completely sound proof.

And also I want to say, want to reiterate too what's been said many times before is the incredible generosity of

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Evermay to the community. We have our gala there which allows us to fundrise for different community programs, public safety programs, education and historic preservation and just lots of other things.

But anyway, I'll keep this brief. And we certainly strongly support the application -- Evermay's application for this exception.

Thank you.

CHAIRPERSON MILLER: Okay. Thank you.

Yes?

MS. STEURY: Sorry. About how many people attend your gala fundraisers?

MS. DOWNS: About 175, something like that. But it's, you know, revolving. People are coming and going. It's like a big-

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CHAIRPERSON MILLER: Okay. Thank you.

Last call, anybody else want to

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testify tonight?

Okay. If anybody changes their mind or plans on testifying next week, you'll have that opportunity.

So thank you all for hanging in so late.

COMMISSIONER EASON: Just to clarify, Madam Chair. We're continued until next Tuesday afternoon, is that my understanding? 1:00?

CHAIRPERSON MILLER: I don't think you'll be at 1:00, though. Mr. Moy's not here. But --

COMMISSIONER EASON: But it'll be the afternoon session?

CHAIRPERSON MILLER: In the afternoon.

You all might want to check in with -- I'm sorry he's not here, Mr. Moy. We are adding you to the schedule. So more likely than not, you're going to be at the end, though we do sometimes rearrange. I

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would doubt, though, that we would put you at 1:00. Okay. So you can check with Mr. Moy.

Yes?

(Off microphone)

CHAIRPERSON MILLER: We have a published schedule right now that has three cases in the afternoon, though they're not -- certainly. I mean today's case ahead of you is an exceptionally long case. I don't think that these cases, though I don't know for sure about all of them, would be of that complexity, I doubt.

MS. STEURY: But ours is the fourth case?

CHAIRPERSON MILLER: Well, what I'm saying is I can't commit to that at this point. We're adding you to the afternoon. But what I'm saying is in all likelihood you won't be the first case and most likely you'd be the last case.

MS. STEURY: And there are four total?

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CHAIRPERSON MILLER: What?

MS. STEURY: And there are four total as of --

CHAIRPERSON MILLER: Four total including you. But I would say, you know, unless you want to be here at 1:00, which is to be totally safe you be here at 1:00, but you might want to double check with Mr. Moy because I think it's unlikely that you would be the first. It's more likely you'd be the last. You know, it's possible he might take you earlier than 3:00 or whatever.

Okay. Thank you all very much. I appreciate your cooperation and hanging in.

So I think that the Board is going to take another recess at this point before we go back to the Wallace case.

(Whereupon, at 6:49 p.m. a recess until 7:37 p.m.)

CHAIRPERSON MILLER: Mr. Brown just finished with one witness, correct? Two witnesses?

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MR. BROWN: That's correct. Ms. Wallace and Mr. Premo.

CHAIRPERSON MILLER: And I don't know if you had a chance to talk about this, but we can either have you finish with your last witness, perhaps, unless the other parties have a strong desire to cross at this point? I think it might make sense at this point just to have the applicant finish his case. Is there any objection to that process?

Okay.

MR. BROWN: We're fine with that.

CHAIRPERSON MILLER: Okay.

We're ready. Mr. Ford is here. I'd submitted to the Board his résumé to have him recognized as an expert witness in D.C. construction codes and permitting.

He's appeared before the Board previously, most recently in Morris case and before that. I mean, I'll leave it at that. I mean, I think he's certainly among us out

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there in this world he's well recognized both in and out of the government. I'll leave it up to the Board to ask him any questions you might.

CHAIRPERSON MILLER: I don't have any. I remember Mr. Ford very well from the Morris case.

Do others have questions?

BOARD MEMBER DETTMAN: Madam Chair?

CHAIRPERSON MILLER: Yes?

BOARD MEMBER DETTMAN: If it'll help move things along a little bit --

CHAIRPERSON MILLER: I really want to do that, Mr. Dettman.

BOARD MEMBER DETTMAN: I'll stipulate to Mr. Ford's expertise.

CHAIRPERSON MILLER: Okay. Any objections from the intervenors?

MR. SIMMONS: I'm sorry to say that I must. We see a long history of matters, some training, some which appears to

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be relevant and some which does not. But what we do not see in here is the sine qua non of expertise under District of Columbia law which is an ability to speak from the standpoint of the national standard of care.

You need to be able to speak to the national standards, and not basically just personal opinion or local conditions as an expert. And unless and until that is identified, we would object to this gentleman as an expert. Cite to the cases of Toye and others of the D.C. Court of Appeals for the proposition.

CHAIRPERSON MILLER: Okay. I don't think the Board is familiar with the case that you're referring to. You're saying he has to have experience in evaluating national standards in order to be qualified as an expert witness in construction matters in D.C.

MR. SIMMONS: To be an expert in the District of Columbia it's not sufficient to have experience, it's not sufficient just

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to be well read; it's to be able to issue opinions based on knowledge of and ability to demonstrate the national standard for the particular matter at which the individual is an expert.

To take a crazy example for example to be able to qualify as an expert in orthopedic surgery you have to show what the national standard for the particular orthopedic surgery procedure or treatment is. Not just your opinion. Not just your own experience. And not just local practice. But a national standard. And unless and until that's demonstrated here, we must object to Mr. Ford as an expert.

COMMISSIONER EASON: Madam Chair, I could let Mr. Ford respond.

CHAIRPERSON MILLER: Okay.

MR. BROWN: I'll let Mr. Ford respond. I'm going to let Mr. Ford respond. Sorry.

MR. FORD: Well, I've been in the

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building code business for about 30 years. I headed up the Building Inspection Department for the District of Columbia for 18 of those years. And prior to that I was head of Planning and Zoning and Inspections for the City of Laurel, Maryland for seven years.

I've testified as an expert witness in the building codes and building standards in a number of cases for the city in that period of time for D.C. as well as for Maryland.

I work every day with the building codes. I interpret the building codes in my position now in Ford & Associates as I would do here based on the code itself and not on opinions. And I will cite sections of the building code that will be relevant to this particular case, as I've done in the past on other cases where I've been -- and I've never been denied expert -- being an expert witness in D.C. or in Maryland, or in Virginia.

CHAIRPERSON MILLER: Do Board

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members have any questions? Okay.

I mean, it's my view I don't really see the connection why he has to be versed in national standards in order to be an expert in District of Columbia building code. And we have qualified him as an expert, or recognized him as an expert in other cases. So I would be in favor in recognizing Mr. Ford as an expert in construction matters in the District of Columbia.

Is there consensus on this Board?

Okay. All right. Then we will recognize Mr. Ford.

MR. BROWN: And then I'm just going to let Mr. Ford go forward.

MR. FORD: I'm Vincent Ford, President of Ford and Associates, LLC. And what I do now and since I've retired from the D.C. Government I'm in government everyday dealing with code concerns; building codes, obtaining building permits as code consultant. Time-to-time I do architectural

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work also. And cost --

MR. GREEN: Excuse me, Madam Chairman. I hate to be the buller of the will here. But I have one, is Mr. Ford testifying in the narrative or he is being responsive to inquiry put to him by counsel and the Board? I'm a little confused here.

MR. GREEN: It appears he's testifying in the narrative.

MR. GREEN: But in the narrative to what?

CHAIRPERSON MILLER: Well, he just started. Maybe we would find out in a minute.

MR. GREEN: Well, rather than to take the Board's time, why not have counsel proffer the area that Mr. Ford intends to testify about so that we can move on and so that the questions asked of him by the Board can be what? Relevant.

CHAIRPERSON MILLER: Okay. It's not necessarily a bad idea what Mr. Green is

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suggesting so that we can focus also as well and know what he's going to be testifying to.

MR. BROWN: Mr. Ford was asked to review the permit history of the property, permits one, two, three, four and the pending fifth permit.

He's been to the site. He's inspected the property. And reviewed the plans, particularly in relationship to the fourth and fifth building permit applications. So he's prepared to give his professional judgment on the stream of permits, their appropriateness, the authorizations in the fourth building permit, compliance with the fourth building permit which is an allegation that the fourth building permit was not complied with. And the nature of the proper request in the fifth permit, which are all relevant issues here.

CHAIRPERSON MILLER: Okay. You know, I think, you know where Mr. Green is coming from is, you know, is not so bad in

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that let's try and zero in on what's the issue and what should he really get to as opposed to a whole going through each permit individually. I mean, what is at issue is that if it's compliance with the fourth permit, do we need to hear the whole stream of what happened first permit, second permit, fourth permit? Or if we do, why?

MR. BROWN: Well, and I don't want to replace Mr. Ford's testimony, but in the context of permits one, two, three and four here, and again they occurred in a series and there's revisions and amendments to prior permits, that's a practice which then as part of that, that's a standard practice or an accepted practice. But also that prevents one permit being looked at separately from the other. They're being looked at cumulatively so that when you submit the fourth building permit application, which is a revision and builds upon earlier permits, that the people looking at those permits have access to the

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prior stream of permits. So that it's relevant to -- because one of the allegations that's been is that somehow there's a disconnect between the permits as opposed to a continuum of activity and review and oversight that builds one on the other. And that when you're getting the fourth building permit it's not being done in isolation, but in the context of the other ones and to ensure compliance.

CHAIRPERSON MILLER: I need to back track just a little bit. Maybe we can save time even if I do that.

At the very beginning of the hearing I listed what I thought were the issues in the cases. And then you said oh there's another very important one, which I think I realized. Is it your position that the fourth permit authorized you basically to go forward with respect to all zoning issues and that the fifth permit shouldn't have prevented you from -- or not getting the

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fifth permit shouldn't have permitted you from going forward and you're trying to prove compliance with all the permits? Is it your good faith? I think really we need to know like where are you going with this testimony. What's the point of it?

MR. BROWN: It goes to what the fourth permit authorized, whether my client complied with the fourth permit. And having been issued the fourth permit, what that authorized my client to do. And in the fifth permit, what is the nature of that permit and does that, in fact, rise to a level of a zoning question.

Again, the fifth permit was initially only for the purposes of the footers.

So Mr. Ford's able to testify to that. But if you look at the question of the allegation that my client exceeded the scope of the fourth permit, he's able to provide testimony about compliance with the fourth

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permit and the fact that the fourth permit authorized not only the demolition that did occur, but that it also authorized the reconstruction which DCRA has prevented from going forward.

Also I think in the context of the series of permits and that my client's obtaining a series of permits all of which tied together go to the latches and the estoppel issues because there's a good faith reliance concept to that.

So I think all those things can be put together in very brief testimony. Quite frankly, Mr. Ford would be done by none.

CHAIRPERSON MILLER: But just so some of us can focus.

MR. BROWN: All right.

CHAIRPERSON MILLER: Basically if your point is making that they relied on the permits, they complied with the permit, okay, and you have all this testimony to support that, then DCRA should be stopped from what?

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MR. BROWN: The should be stopped from letting the reconstruction under the fourth building permit go forward and they should not be preventing the issuance of the fifth footer permit based on alleged zoning violations.

He also will indicate that the first, second, third and fourth permits are still valid and in place, which obviously is an important factor to the Board.

CHAIRPERSON MILLER: One last question for you, and I know we will be sidetracked by this, but does this line of testimony have anything to do with any errors in the Zoning Administrator's letter that's been appealed?

MR. BROWN: Yes.

CHAIRPERSON MILLER: Which one?

MR. BROWN: Well, Mr. LeGrant has -- and Mr. Cruz initiated it, has put a hold on the fifth permit on the basis, and you'll see on the plan it says hold for zoning.

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It's a footer permit. And Mr. Ford will in no uncertain terms testify that a footer permit is not a zoning related permit. Not requiring zoning approval. And so at the very narrowest tip of the point that Mr. LeGrant had no authority for zoning purposes to put a hold and refuse to issue the fifth permit.

And again, the fourth permit which authorizes the demolition that Mr. Ford will indicate was authorized and complied with, also authorized the reconstruction of the building that was partially demolished so that from a building code standpoint other than the footers, he'll be able to testify that my client was given full authority to do what she's now being prevent from doing.

COMMISSIONER JEFFRIES: Madam Chair, I know that our point here is to try to get the testimony as narrow as possible. And, you know, I certainly appreciate Mr. Green's commentary. You know, if we could

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just probably just start this, get the show on the road here, and I think hopefully the Board if we think that people are moving far afield that we will pull them back in just out of respect of time here. But again, I just think if you can obviously keep their testimony very, very narrow so that we can get through the evening.

VICE-CHAIRPERSON LOUD: And let me just chime in from my vantage point, I don't know about other Board members.

I read your statement of appeal, Mr. Brown. It was very well written. I feel like I have a foundation for permits one through three. And I'm much more interested in four and five.

CHAIRPERSON MILLER: Okay. Go ahead. I would just say, you know, as you present your testimony try to make it as clear as possible as to what issue you're addressing.

MR. FORD: In looking at the

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matter, permit number four gave the owners of the property the ability to do two things. One is to demolish that area of the building that was in unstable condition, and the other was to reconstruct.

The demolition portion of it, the directions were quite clear on how that portion was to come down, and that's what we consider as hand taking down or piecemeal taking down because when the engineer that wrote the guidelines for it stated what he stated and the way it was supposed to come down indicates to me that the structure was in such bad condition that he didn't want to fall down which may damage adjacent property or damage -- or injury someone on the property.

COMMISSIONER JEFFRIES: You're speaking about the front part of the original home?

MR. FORD: That's correct. That's correct.

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COMMISSIONER JEFFRIES: Okay.

MR. FORD: Secondly on that for the reconstruct, the reconstruct indicates that the owners of the property had the ability to put back in the same location the new structure, in this case would be new wood meaning wood studs, steel plates, any other portions of the framing, anything else right in the same footprint.

Now you must remember that the engineer that wrote the guidelines also put a little caveat at the bottom about the footing. Now this house was built in somewhere around 1933. And around that time and other times when a lot of money was not put into the construction of structures you did not have the footings that you see now, the concrete type footings. What they would do is go in and hone out the earth and lay brick. Now, this may have been very hot fired brick or may not have been so hot fired. The mortar joints in between the

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brick may have consisted of a lot of shell, a lot of sand. So over a period of time that breaks down, especially if it's in contact with water.

What I found out on the site is that this site does have a water table. And so thus if water's able to get to the footings, that will increase the time it takes for those elements within the footing to break down.

So, the engineer put that little caveat in there.

That takes care of permit under four.

When you get to permit number five, the application for number five, number five is basically saying we have investigated the footing and it's in terrible condition. And we need to put a footing that would be proper according to today's code under the existing what now would be considered at the footprint or the framework above what was the

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footprint.

So the house itself, that portion of the house would not be extended, added additional square footage. What you're looking at is something going down that will allow that new portion that you will see above the finished grade to stand for a long period of time. That's what that number five is.

So number five building permit application is really an amendment or an addendum to permit number four.

Now in going through all of these amendments from permit number one, when plans come in for amendments the original permit and plan must accompany the amended plan and amended building permit application. So when one down in the review department reviews the plan and application, they have the full story from beginning to end as to what was there, what has happened over a period of time and then what will be the ultimate

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outcome. And that would be the issuance of the last permit.

That's what we have.

CHAIRPERSON MILLER: So is it your testimony that once the fourth permit was issued the Zoning Administrator couldn't deny the fifth permit which wouldn't allow you to execute what was permitted under that fourth permit?

MR. FORD: That's correct. Because with your new loads and the section in the code that deals with new loads, and that would be footing loads and that's in the District of Columbia Building Code Supplement 2000 section 102.6 Existing Structures, Exception, item number 2, subset 102.6.4.3 Existing Systems Set and that's 102.6.4.3.1

You could not put the additional or the new loads on inferior foundation.

COMMISSIONER JEFFRIES: That's the amendment that's in permit five?

MR. FORD: That's in permit five.

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COMMISSIONER JEFFRIES: And it takes you back to four?

MR. FORD: It takes you to permit five, yes. Yes.

CHAIRPERSON MILLER: So do you have any experience with this kind of situation? Have you seen it where a building permit's issued but then it's not allowed to be implemented either because it's rescinded or another necessary permit is not approved?

MR. FORD: Over the years I've had cases where the permit has been issued and work was not allowed to go forth because some extenuating circumstances. I have not over the course of that time seen it stop because of what was perceived to be a zoning issue. I've only had them stopped because either the person had not prepared the site so it's safe or that it was discovered when an inspector went out to take a look at the work that was supposed to proceed that more work was needed to be done. Thus, an amendment to the permit

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that was issued would have been required. Now in some cases if it was imminently dangerous condition per the code, an inspector can allow that work to occur. But within a 24 hours period or the next work day then the person can then come in and make application for a building permit if they deem it was dangerous or unsafe. And that usually goes to emergency takedowns or buildings that are going to fail, failed condition.

VICE-CHAIRPERSON LOUD: So in a nutshell your testimony is kind of saying that the ZA's decision to deny a permit application number five was erroneous because he lacked authority?

MR. FORD: That's correct.

VICE-CHAIRPERSON LOUD: Who would have had the authority to issue that permit?

MR. FORD: On the structural because the original permit, the number four permit was issued. And I have not -- first

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thing let me say, I have not seen the permit application for number four. But I can only assume, and this is based on what I've heard here, is that the structural engineer at the time who evidently reviewed this project gave the authority or the ability for the permit to be issued based on the conditions that were brought to him --

MR. GREEN: Excuse me, Madam Chairman. I would interpose an objection. I would ask that if Mr. Ford is going to render an opinion on permit number four and its accompanying application and he has, by his statement, not seen it maybe we should afford him an opportunity to at least review the application if he's going to render an opinion. Because his opinion based on an application that he hasn't seen is of no assistance to the Board in rendering any rational or reasonable decision.

VICE-CHAIRPERSON LOUD: I don't think that really was my question. I think he

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could answer my question as a qualified expert. And if he can't, to me it goes to his credibility or his stature as an expert.

CHAIRPERSON MILLER: Well, what was your question to him?

VICE-CHAIRPERSON LOUD: My question was if the Zoning Administrator is not the person in the regulatory scheme of things to review the application for a footer, I guess it's called, then who is. And he doesn't have to review this specific application.

CHAIRPERSON MILLER: No, I agree with you.

VICE-CHAIRPERSON LOUD: If he's the expert, he ought to be able to say.

MR. FORD: It's normally the structural engineer.

VICE-CHAIRPERSON LOUD:  
Structural--

MR. FORD: The structural engineer/plan reviewer.

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VICE-CHAIRPERSON LOUD: Okay. And in your experience as an expert has the Zoning Administrator ever reviewed these permit applications for footers?

MR. FORD: I've never known them to review them for footers, exclusively for footers. No.

VICE-CHAIRPERSON LOUD: Okay.

MR. BROWN: Again, could I --

CHAIRPERSON MILLER: Make sure you're on the record, Mr. Brown.

MR. BROWN: This is the fifth permit application. This is the application for the fifth permit here. It's also in your book tabbed as Exhibit 11. And you'll note, Mr. Ford, the sign off down here all the places required including the structural engineer?

MR. FORD: Yes.

MR. BROWN: Exhibit 11 to your spiral bound book.

CHAIRPERSON MILLER: Okay. I have

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Exhibit 11. Where do you want us to look on that?

MR. BROWN: The second page there

CHAIRPERSON MILLER: Got it.

Second page. Okay. Hold.

MR. BROWN: And then down here you have the progression of sign-offs starting up here. And it was signed off all the way at the bottom by the structural engineer ready for issuance. And that's when Mr. Cruz put a hold on the permit.

MR. SIMMONS: If I may object. I'm not sure if this argument or testimony. The document certainly speaks for itself.

CHAIRPERSON MILLER: I think it's an explanation of what's on the document, which is helpful to the Board.

MR. SIMMONS: All right. Then I think the witness is the one who would probably have to give that explanation, not the counsel.

MR. BROWN: I'm more than happy

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to--

CHAIRPERSON MILLER: It's kind of like he's reading and showing where it's marked on the paper. He's not really issuing an opinion on it. Okay.

Let me ask, though, I don't see where -- does it say ready for issuance on here or was that your -- were you making an opinion there or a deduction there, Mr. Brown?

MR. BROWN: Well, I --

CHAIRPERSON MILLER: Just to follow up, I thought you said ready for issuance.

MR. BROWN: Yes. And I'll let Mr. Ford answer that one.

CHAIRPERSON MILLER: Because that would be more of Mr. Ford's testimony. If it's not written on here -- if you're deducing something from it, I would want Mr. Ford to testify to that.

COMMISSIONER JEFFRIES: This is

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Exhibit 11, correct?

MR. BROWN: Yes, it is. The second page of Exhibit 11.

MR. FORD: The sign off sheet of the building permit application for number four -- for number five, excuse me, shows that the -- (1) the structural engineer signed off on it. And then there are other various sign offs. But up in the --

COMMISSIONER JEFFRIES: Excuse me. Can you just be very pedantic clear here.

MR. FORD: Okay. Yes.

COMMISSIONER JEFFRIES: Okay. So under plans and application approval column?

MR. FORD: Yes. Yes.

COMMISSIONER JEFFRIES: Okay? What number?

MR. FORD: Number 18.

COMMISSIONER JEFFRIES: Okay.

MR. FORD: Structural engineer.

COMMISSIONER JEFFRIES: Okay.

MR. FORD: Okay. The structural

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engineer signed off for these particular plans.

MR. GREEN: Madam Chairman, I'm going to again interpose an objection. It appears that counsel is advising the witness in the middle of his testimony. Now who's testifying here?

CHAIRPERSON MILLER: Your objection is noted, but I don't think that that's unheard of for our clients to consult with counsel.

COMMISSIONER JEFFRIES: And we don't know if he's advising anyway.

CHAIRPERSON MILLER: Right.

COMMISSIONER JEFFRIES: So --

MR. GREEN: Well, he's whispering in his ear. I don't know what he's doing.

COMMISSIONER JEFFRIES: He could be talking about any number of things. We don't know --

MR. GREEN: Baseball maybe?

COMMISSIONER JEFFRIES: Well,

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possibly. But, you know, I just -- you know, it's not really helpful all these -- I mean, it really is not helpful, you know, that we continue to get outbursts here like this. I mean, I understand -- I understand --

MR. GREEN: I have a right to an objection.

COMMISSIONER JEFFRIES: Absolutely you do. But, you know, I wish you would sort of allow the people to finish some of their testimony and then we'll hear.

MR. GREEN: You know, all due respect, sir, and you're right, you know. I don't like making objections. I really don't.

However, I have a right to protect my client particularly when I see something that's going on that's not fair, that's unheard of, and that is not unacceptable --

CHAIRPERSON MILLER: Okay. Your objection is noted.

MR. GREEN: And you cannot tell a witness while the witness is testifying what

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to say.

COMMISSIONER JEFFRIES: But we don't know that that is what Mr. Brown is doing. Did you hear that? Did you hear him actually doing that?

MR. GREEN: I saw Mr. Brown whispering in Mr. Ford's ear --

COMMISSIONER JEFFRIES: Okay. Okay.

MR. GREEN: -- during his testimony.

COMMISSIONER JEFFRIES: Okay. This is just not helpful.

VICE-CHAIRPERSON LOUD: I think we should move.

COMMISSIONER JEFFRIES: Just move on.

VICE-CHAIRPERSON LOUD: You made the objection. The objection is noted.

CHAIRPERSON MILLER: Okay. It's noted. It's on the record. It's on the record.

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VICE-CHAIRPERSON LOUD: The Chairman has noted it, and what else can you do at that point?

MR. GREEN: Yes. Go on.

MR. FORD: Also on the sign off is -- and this is item 15, and that's the inspector. Normally when the inspector signs off on a building permit application it's because the inspector has been on site and is aware of the conditions of the site. In most cases if a stop work order has been issues for -- on a site and a person comes in to obtain a building permit, before the building permit is approved all other disciplines that are needed for that particular issuance of that permit sign off. But also the inspector who is on site will sign off based on his also review of the plan to make sure what is being sought after is exactly what is being done in the field.

So in this case the inspector signed off on the building permit

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application.

Up in item number six Environmental Regulations Administration and down Erosion Control, that was signed off. And that was signed off by -- that's Department of Health.

And the person who took in the permit in item one, and that's Mr. Garnett, also signed off at the counter on this permit coming in -- permit application coming in for processing.

CHAIRPERSON MILLER: Where's that noted?

MR. FORD: That's item one under permit and application approval.

CHAIRPERSON MILLER: Oh. Those initials are Mr. Garnett's is what you're saying?

MR. FORD: Yes. Yes.

CHAIRPERSON MILLER: Okay.

MR. FORD: And as you'll also notice that where the sign offs occur there's

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a check mark at the box to the left. That is done when the permit application comes in for processing and the plans come in for processing. At the intake they check off the box of the disciplines that have to review for the issuance of the building permit.

In this case I do not see a check off for zoning.

COMMISSIONER JEFFRIES: Which means --

CHAIRPERSON MILLER: So -- oh, I'm sorry. Go ahead.

COMMISSIONER JEFFRIES: I'm sorry.

Which means that you don't see a check off for zoning which means?

MR. FORD: It would not have gone through the zoning review process.

CHAIRPERSON MILLER: So not all construction permits have to go through the zoning process, get zoning approval, correct?

MR. FORD: That's correct.

CHAIRPERSON MILLER: Okay. And

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then the remarks as per app and plans, I can't read the next word, but okay to go through permit process. Does that mean that it was signed off in general? I mean, they've got all the sign offs they needed so it should have gone forward, but instead it was held because of this hold for zoning?

MR. FORD: Yes, it should have gone forward to complete the permit processing.

COMMISSIONER JEFFRIES: Madam Chair, I might ask -- I mean, I was conferring here with my colleague here. And I just wanted to be clear.

So your argument here is that this permit, the fifth permit the Zoning Administrator put a stop on this -- through this fifth permit, but there was no review from zoning as to this particular permit?

MR. FORD: At this point from what I've learned and seen there was no review, nor was it designated to go to zoning for

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review.

COMMISSIONER JEFFRIES: So why would the Zoning Administrator then have any - your argument is why would the Zoning Administrator really have anything to say as relates to this particular permit?

MR. FORD: That would be my concern. Because the basic reconstruction of that portion of the building was given in the fourth permit. And the fifth permit is only there to place a footing under -- a proper footing under there so that that which was allowed on the fourth permit would be able to stand.

COMMISSIONER JEFFRIES: So the Zoning Administrator's involvement at this point was -- I mean, that's the whole premise of your argument; that it's just an erroneous -- I mean, that the Zoning Administrator really was not in his right to place a stop order?

MR. FORD: That's correct.

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COMMISSIONER JEFFRIES: And you have not seen in your professional opinion -- I mean -- well, okay. I strike that.

MR. BROWN: Mr. Jeffries, I think he answered that question previously. He said that in his experience he's not seen -- not seen the Zoning Administrator --

COMMISSIONER JEFFRIES: That's why I remembered.

VICE-CHAIRPERSON LOUD: I just want to ask a follow up question in terms of the authority of the Zoning Administrator to conduct the review it being understood that I guess with the routing identified on these forms he was not identified in the routing. But that's not the same as saying that there's a restraint on his authority.

MR. FORD: No, it's not.

VICE-CHAIRPERSON LOUD: I think your expert opinion is that there is a restraint on his authority, correct?

MR. FORD: No. There's not a

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restraint on anyone's authority when it's going through the review process.

VICE-CHAIRPERSON LOUD: Okay.

MR. FORD: It's what is normal or the normal process in which you're going through.

If you look at the fact that --

VICE-CHAIRPERSON LOUD: But does the ZA lack authority to conduct that kind of review over a footer application?

MR. FORD: I would not say he lacks the authority or she lacks the authority. What I would say is that from the beginning, from the issuance of the first permit upon which the Zoning Administrator did or did zoning staff person did review and then approve the issuance of the permit for the first permit and continuing on through with the amendments or the changes and the presence of the original plan and a copy of the original permit along with the plans that showed a change and the application for that

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change through that process zoning was not involved again. Because it all was dealt on permit number one that gave them authority to do work in the first place. And then permit number two. Then permit number three that's saying -- which is number four which is the important that says oh because of these conditions you can demolish what is there, but you must build back what would have been there in the same location with new material.

And this has all been reviewed through one having -- still having the original plan, an original application -- original building permit walking with it all the way through to even item to permit number five.

So the approval was given up until a point where -- you get to a point where you say well this thing can't hang by a skyhook. We got to put it on a firm foundation. And that's when permit number five comes in --

VICE-CHAIRPERSON LOUD: Yes.

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MR. FORD: -- and says per what the engineer had stated in his sequence of taking down the -- that portion of the building. And then the little caveat at the bottom about looking at or reviewing, or inspecting the footing. That is -- that is the main item that the rest of that structure is going to sit on.

So if the footing is bad and you decide you're going to put steel plates on there and studs and rafters and everything else, it won't stand for long. So that's why you have to come back and put in a proper footing.

VICE-CHAIRPERSON LOUD: Let me ask one final question, at least for me, on permit number four. When the DCRA -- not the DCRA, but when the -- I guess Zoning Administrator issued permit number four were they authorized to issue a permit that allowed the reconstruction of the existing single-family structure in your expert

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opinion?

MR. FORD: I have not seen the application for --

COMMISSIONER JEFFRIES: Did the Zoning Administrator -- go on.

VICE-CHAIRPERSON LOUD: I stand corrected if it was not the --

COMMISSIONER JEFFRIES: Okay.

MR. FORD: I've not seen the application for permit number four. But had the Zoning Administrator or the zoning staff person approved that construction or that permit for the demolition and construction, then it basically gave approval for number five, which is the footing.

MR. SIMMONS: I'm going to object to the answer of the question. The question is fine, but the answer starts out with speculation as to what the Zoning Administrator may or may not have done, or may or may not have thought and goes from there. So I think that the answer needs to

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be stricken.

COMMISSIONER JEFFRIES: No, he's just -- the point is that Mr. Ford has not reviewed permit number four so he really -- he's speculating as to --

BOARD MEMBER WALKER: And I'm actually confused, Madam Chair, about the area that Mr. Ford has been qualified as an expert.

Mr. Brown, you offered him as an expert in what discipline exactly? Is it construction? Is it zoning? Is it -- what is it?

MR. BROWN: Construction -- D.C. construction code and the -- oh, I'm sorry.

BOARD MEMBER WALKER: If you could speak into the mike, please.

MR. BROWN: D.C. construction code and the permitting process through DCRA.

BOARD MEMBER WALKER: Okay.

CHAIRPERSON MILLER: We didn't qualify him as a witness on the permitting

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process through DCRA. Just for the record. We did -- we said D.C. construction matters.

MR. BROWN: I requested that when I asked and introduced it. But you can't -- I mean, quite frankly and Mr. Ford in the description of his background, you can't -- the two are intertwined.

CHAIRPERSON MILLER: I'm getting a request that we clarify what we've qualified Mr. Ford in. Okay. Correct?

COMMISSIONER JEFFRIES: Yes. I mean, I just think if we need to -- if the Board needs to official just -- you know, have him put on the table exactly what he is being proffered for in terms of expertise, then we can give our consensus, you know, so we can get this -- move us along.

CHAIRPERSON MILLER: I think that, okay, Mr. Brown, you were just saying that you intended that he be qualified as a witness or recognized as a witness in the permit building -- in the permitting process,

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is that right?

MR. BROWN: Well, in the D.C. construction code.

CHAIRPERSON MILLER: D.C. construction code. Go ahead.

MR. BROWN: Construction code. And the permitting process through DCRA. And the two are -- you know, the permitting process is based on the building code and vice versa. So the two are -- and I think in his CV and his introductory remarks and response on the questioning of his expertise, you'll see that that's his background and his expertise.

COMMISSIONER JEFFRIES: Anything else while we're here? Just anything else that you're putting forward in terms of expertise besides those two things?

MR. BROWN: No.

CHAIRPERSON MILLER: So as the chef building inspector the District of Columbia for 18 years, that would give --

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that gave you great experience and expertise in the building permit process, is that correct?

MR. FORD: That is correct.

COMMISSIONER JEFFRIES: Mr. Green, are you still fine with, you know, Mr. Ford being an expert in these particular areas. Mr. Ford --

BOARD MEMBER WALKER: And let me just add -- let me add. I mean, are you fine with Mr. Ford offering testimony about the Zoning Administrator's authority?

MR. GREEN: Well, since you put that last question, I'll answer your last question first. No, ma'am, I am not. Mr. Ford has for the 30 years, and I know Mr. Ford, I've used Mr. Ford as a witness. I understand his expertise. That's why I stipulated to Mr. Ford giving testimony about construction. I know that Mr. Ford knows construction.

Now, these other areas I'll have

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to let the appropriate voir diring take place with regard to them. But with respect to construction, I stand behind Mr. Ford.

MR. SIMMONS: My notes, Madam Chairman, show that Mr. Ford was qualified in construction matters, the construction code in the District of Columbia. Not in permitting.

I would certainly object since he's shown no expertise in zoning or zoning matters, zoning review, or zoning approval that he not be qualified in that area.

MR. BROWN: And, Madam Chair, I've not offered him as a zoning witness.

CHAIRPERSON MILLER: In my notes I put construction matters.

COMMISSIONER JEFFRIES: But you did offer him as permitting process and so forth. I mean, that's different than really providing expertise in one of the areas that actually signs off on the actual permit.

I mean, I think that, you know,

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Mr. Ford can certainly speak about just his background and understanding about the process. I think that's what's being offered here. Is that what I understand? You're offering up just his understanding about the permitting process and his years of experience and background.

MR. BROWN: I mean it--

COMMISSIONER JEFFRIES: I know it's interchangeable --

MR. BROWN: It goes beyond his understanding and his knowledge. I mean, this is the man, he was the chief building inspector who, quite frankly, is the most important -- one of the most important links in the building code and the permitting process. And I think -- I mean, I'll let Mr. Ford respond. But the questions that you've posed to him and the questions that are raised by this case from a building code and permitting standpoint are the kind of things that he dealt with as the chief building

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inspector on a daily basis.

CHAIRPERSON MILLER: Okay. Why don't we hear him testify to that then. Because -- and it's not like we're revisiting. I don't feel like we're revisiting his being granted expert witness again. And I guess there was a misunderstanding. I think it's clear that he was granted expert witness with respect to construction matters, as Mr. Green said. Now there's a question about the building permit process. So we're looking at that.

Okay. So individuals here are not necessarily accepting on the face just because it says you were a chief building inspector for the District of Columbia that they all understand why that means you should be qualified in building permit review and processing. So perhaps you can address that.

And in considering -- I guess it just means it gives me a little pause since Mr. Green says he knows you so well and for

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some reason he feels totally comfortable about the construction, but not about the building permit process.

COMMISSIONER JEFFRIES: Although I'd like to add that I agree with Mr. Brown. I think it's very difficult to have a position that he had and doing the inspector and not really have a through sense of, you know, the permitting process and so forth. I just don't see how you can separate those things out. But I'd like to hear him offer that.

MR. FORD: In my position as chief building inspector for D.C., as well as when I was in Laurel, one of my concerns was did the permit match the work that was occurring in the field. So on many occasions, daily I reviewed building permits, building permit applications before they were issued, permits were issued, based on my inspections in the field and my inspector's inspection in the field. And these applications were not only

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for building permits, but for boiler, elevator, electrical and all the mechanical. I reviewed when I was in government for mechanical. I reviewed for elevator. And I reviewed for architectural and structural.

My degree is in architecture. I was trained in the field by engineers, structural engineers. So I had a varied background.

I still today visit the Department of Consumer and Regulatory Affairs to process building permits for various types of projects in the city.

CHAIRPERSON MILLER: Thank you. Okay. Any other questions?

Does the Board have any concerns about recognizing Mr. Ford as an expert in that area?

BOARD MEMBER WALKER: Madam Chair, I have no problem with recognizing him as an expert in matters of construction and the permitting process. I have problems when we

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tread into areas of zoning, specifically the Zoning Administrator's authority. Because I don't see that as being a part of his experience in his CV.

CHAIRPERSON MILLER: I think Mr. Brown has stated that he's not offering Mr. Ford as an expert in zoning. So it would be in the building permit process.

COMMISSIONER JEFFRIES: So we can move on.

CHAIRPERSON MILLER: If that's the consensus of the Board, which I believe it is.

COMMISSIONER JEFFRIES: Yes, that's the consensus of the Board, so we can move on.

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: Excuse me. May I ask if he's not an expert on the question of zoning, is his testimony on whether or not zoning sign off was required and what role the Zoning Administrator might

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have had in the fifth permit admissible?  
Because if he's not testifying on zoning --

CHAIRPERSON MILLER: Okay.

COMMISSIONER FRUMIN: -- is that  
admissible?

CHAIRPERSON MILLER: It's not a  
question of admissability. It'll be a  
question of weight. If he's an expert in a  
certain area and he's talking about that  
area, this Board's going to give him more  
weight.

If it's an area where we recognize  
he doesn't have expertise in that he's  
talking about, he's not going to get as much  
weight. That's what it means.

COMMISSIONER FRUMIN: And I'm  
understanding that on questions of zoning  
which would go to those questions, he ought  
not get that much weight.

COMMISSIONER JEFFRIES: Well,  
clearly. I mean, I think we just -- that's  
what -- yes. I thought that's what we --

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CHAIRPERSON MILLER: Okay.

COMMISSIONER JEFFRIES: -- been saying. So --

CHAIRPERSON MILLER: I think that's understood.

Now I don't know where we were on the merits, though, at this point.

COMMISSIONER JEFFRIES: I mean, again, he offered speculation, he hadn't read the permit. I mean, you know, and then he brought up speaking about the Zoning Administrator. And I think that's when we got into this whole business of questioning whether he was the appropriate person.

I mean, he can certainly make the statement. But I think in terms of the weight that we give him, that's a different story. So--

MR. BROWN: I think Mr. Ford wants to continue -- Mr. Ford would like to continue briefly.

CHAIRPERSON MILLER: Are you

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answering somebody's question or what? Are you continuing briefly -- and I forget where we are? Where are we?

MR. BROWN: Well, I think he was trying to conclude his testimony. But you'd asked questions along the way. But he just wants to wrap up and so we can --

COMMISSIONER JEFFRIES: Okay.

CHAIRPERSON MILLER: Move on.  
Okay. Okay.

MR. FORD: Let me make one statement as far as zoning is concerned. Whenever you deal with a building permit, you have to deal with zoning --

COMMISSIONER JEFFRIES: Remember, you're not speaking --

MR. GREEN: Madam Chairman, I object. I object.

MR. FORD: All right. That's all I have to say on that matter. Okay.

The last thing I have to say is on permit number five, at least on the

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application because we have no permit here, on application number five. Application number five only supports if that were to be issued the work that would be done under that permit would support the structure that was allowed under permit number four, bottom line.

CHAIRPERSON MILLER: Got it. Okay. Thank you.

Any questions? Okay. Any cross examination first from DCRA?

COMMISSIONER JEFFRIES: You're on.

MR. GREEN: I'm going to --

MR. BROWN: Are we going to start with Mr. Ford?

MR. GREEN: No.

COMMISSIONER FRUMIN: Can I ask, I'm sorry, I'm curious about what the contemplation of schedule is. And I know you've talked about this. And at the beginning you said there were a series of issues that needed to be addressed and some

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of them you initially had tried -- had hoped to hold over to a time when Mary would be available. And then we've had all kinds of things. It's now 8:30, we're turning to the first phase of cross examination.

And there was a comment before the public on the Georgetown case spoke and before dinner that we'd finish tonight.

Have you changed from where you were at the beginning where you were thinking that we might hold over some issues that Mary might have an opportunity to comment on and the plan is to go from here starting at 8:30 for us at a first opportunity for cross examination, and then put on our case all the way until it's all over or is the contemplation that there will be something that will be carried over?

There had been a mention of July 29th as a possibility for various people. And it strikes me --

CHAIRPERSON MILLER: I don't want

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to get sidetracked into schedule now or we'll never get through this case.

I highlighted issues that I thought were defining of the case to see if that was the sentiment also of all the parties. And Mr. Brown brought another very important issue to our attention. So that we would be able to focus on all your testimony to fit it in our analysis.

And my understanding of Ms. Grumbine is that she is going to -- she may want to testify as to the estoppel and latches question. But it didn't change the testimony or cross of anything else that's going on here. That Mr. Brown was going to present his full case, that DCRA -- that we're going to full cross over here. DCRA is going to do their case. You're going to do your case. And if at the end of the case it's determined that, you know, Ms. Grumbine still has a very important piece to put in on the equitable issues of estoppel and latches,

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then we will schedule that. But I don't want to get into scheduling. We've spent too much time at this point. I want us to continue on the substance of the case. At the end we'll see what's left and how big it is, and where we can fit it.

MR. BROWN: Madam Chair, before -- and we're ready to move forward. Before we do cross, and we can do cross anyway anybody wants to do, but Ms. Wallace wanted to make the briefest of remarks. And then that would be -- conclude our -- we've still got plenty of time. Briefest of remarks. We'll open it up for all cross examination. We've made our case, you know, in chief and well under our hour of allotted time.

MS. WALLACE: No. All I was doing was thinking you for trying to make this happen tonight. That was it, really. Just the cost for me to keep going and going is killing me.

CHAIRPERSON MILLER: Thank you.

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Okay. Okay. Thank you very much.

So well, Mr. Green, how do you want to do the cross, your cross?

MR. GREEN: Yes, ma'am.

CHAIRPERSON MILLER: You wanted to start with whom?

MR. GREEN: Well, I'd like to start with Ms. Wallace, if you don't mind, Madam Chairman. Is that okay?

CHAIRPERSON MILLER: Sure. It doesn't make a difference to me.

MR. GREEN: Yes, ma'am.

CHAIRPERSON MILLER: It's okay.

MR. GREEN: All right. May I move a little bit? I can't see Ms. Wallace, and I-

CHAIRPERSON MILLER: As long as you stay on the record, on the microphone.

MR. GREEN: Yes, I know, but it's -- I just feel it's impolite --

CHAIRPERSON MILLER: But don't come to close to her.

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MR. GREEN: Oh, I'm not going to come -- no, I'm not going to do that. I just feel it's impolite to -- not to look at people, you know, when you talk to them if you can.

Thank you.

How you doing, Ms. Wallace?

MS. WALLACE: Lovely. Time of my life.

MR. GREEN: Ms. Wallace, when did you acquire this property at 5013 Belt Road?

MS. WALLACE: April 2004.

MR. GREEN: And when you acquired it I think you indicated in one of your pleadings that you'd been in the business of buying and selling houses for some 20 years, is that right?

MS. WALLACE: No.

MR. GREEN: No?

MS. WALLACE: No. I'd done one house prior to this. Well, that's not true. Two houses. My house that I live in I

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renovated. I had a lot of fun doing it and I was pretty good at it, and people said why don't you make this your living. So I bought a house in Bethesda, renovated it. That's when I met Alan. The second house I bought was Belt Road.

MR. GREEN: So you'd be kind of surprised if I said that you'd been in the real estate, construction and development business for over 20 years?

MS. WALLACE: No. I was in -- I worked for a corporation, that I did not own any of those houses that -- in New York. I worked for a company and I helped run the marketing and design side of -- and project managed stuff for a company. I never owned any of the properties that I worked on when I was in New York.

MR. GREEN: But in the areas that you were located, I believe New York City you indicated and --

MS. WALLACE: That's where the

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company was based, and I was based.

MR. GREEN: Oh, I see.

MS. WALLACE: But they had properties -- they had brought lots of properties all over the country and I -- they would send me out to decide to decide what to do with the property.

MR. GREEN: Well, isn't it a fact you were also involved in the renovation of these various properties?

MS. WALLACE: If that was necessary.

MR. GREEN: And this included a conversion of a 220 unit apartment in College Park, Maryland?

MS. WALLACE: Yes. We -- we put carpet and paint; that was -- that was the renovation. Carpet and paint. And I --

MR. GREEN: Just --

MS. WALLACE: Yes. And I set up a sales offices. And I had a sales manager and staff. And I came up once a month, and that's

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-- but the renovation -- well, we black topped the parking lot.

MR. GREEN: And you did the same thing in New York and Miami, is that right?

MS. WALLACE: Yes. The property in Miami was -- I designed, I helped design sort of the space. And I went down, you know, once a month and worked with the staff and helped set up a construction -- I mean a sales office.

Same with New York. That one I was a little more involved with the design, again, but there was always, you know, construction people. I didn't --

MR. GREEN: So you have some familiarity with construction people?

MS. WALLACE: With construction people, yes.

MR. GREEN: Now with respect to 5013 Belt Road you chose to acquire this property and renovate it, is that right?

MS. WALLACE: That's correct.

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MR. GREEN: And was it your intent to live there?

MS. WALLACE: Not by -- no -- yes and no. If I can't sell the house that I'm renovating and I have to sell mine, then I have to move into that house. So my hope was to sell that house and stay in my house. But I always try to renovate them so that, you know, I have to live in. My house is very saleable because I bought it a long time ago so I have a lot of equity in it. But -- so then each house -- well, I haven't really done much since this started, but the goal was that I would renovate a house and either sell it or move into it.

MR. GREEN: You acquired this frame house at a cost of excess of \$100,000, is that not right?

MS. WALLACE: It was \$517,000.

MR. GREEN: Oh, \$517,000? And then you built an addition behind it, is that right?

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MS. WALLACE: That's correct.

MR. GREEN: So you acquire a house for \$500,000 and you added an addition for a considerable amount of money. Did you know the condition of the house that you purchased at the time of the purchase?

MS. WALLACE: No.

MR. GREEN: Did you conduct any kind of test to determine its structural rigidity and so forth?

MS. WALLACE: No. I was in a bidding war. I walked through the house once. I thought it was a great location. I made an offer. There were multiple offers. I was in a bidding war.

MR. GREEN: You were in a bidding war?

MS. WALLACE: Yes.

MR. GREEN: And you won the --

MS. WALLACE: And I won. Well, I believe I lost. But at that particular time I got the contract. I truly went through

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that house one time.

MR. GREEN: And at what point did you acquire the services of a professional contractor?

MS. WALLACE: At that time. He and I had already done work.

MR. GREEN: The "he" that you --

MS. WALLACE: Alan, I'm sorry.

MR. GREEN: -- is Mr. Premo?

MS. WALLACE: Alan Premo, yes.

MR. GREEN: And what year was this?

MS. WALLACE: I had -- I mean, I'm not sure when we signed the contract, but we had already been working together. He saw the house prior to our --

MR. GREEN: And did you ask him to do an inspection on this house?

MS. WALLACE: No. I asked to take a look see and see if he saw anything glaring. We had already -- we had looked at numerous properties before this one and some

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of them kind of -- there were multiple bidding wars and all sorts of other issues in some of these other ones. And we walked through and we didn't see anything screaming.

MR. GREEN: What did he tell you in the end? Did he say buy it or don't buy it, or what did he tell he?

MS. WALLACE: I guess buy it since I bought it. Again, it was a one time walkthrough. I mean we were -- I think we walked through one time. One time.

MR. GREEN: And you understood that he'd been in the business a great period of time, right?

MS. WALLACE: Yes.

MR. GREEN: Some 42 years he had experience as a contractor, is that right, to your understanding?

MS. WALLACE: I don't know how many years, but --

MR. GREEN: A lot of years?

MS. WALLACE: Yes. And I had

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worked with him on a previous project and felt confident. I had -- he had great recommendations from people.

MR. GREEN: So you were comfortable with him and you accepted his advice?

MS. WALLACE: Yes.

MR. GREEN: With regard to this property when did you first notice some kind of a problem? What year was this?

MS. WALLACE: I guess 2000 -- the beginning of 2005. I don't really have a calendar in front of me. But we did -- we went for the permit application for the first permit, which took a long time because, again, I did it myself and it took a while to get stuff back. And then I had to drive all the stuff to the structural engineer. And then he took forever. You know, so we had -- it took longer than I was hoping. So it did not -- demolition didn't start. We had got the permit in December, so the demolition of

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the interior in the back of the house came about in early 2005.

MR. GREEN: In 2005? And what was the problem that you noticed in 2005?

MS. WALLACE: Well, when Alan did the demolition, as I stated earlier in my testimony, when he took the stack out the last bit of the back of the house, which was allowed to be taken out for the addition for the underpinning and all that stuff, the house --

MR. GREEN: The -- the --

MS. WALLACE: -- was wobbly.

MR. BROWN: Could be she be allowed to finish?

MR. GREEN: Yes. I didn't stop her. I just kind of grunted. I mean, I didn't stop her.

MS. WALLACE: Well --

MR. BROWN: My apologies --

CHAIRPERSON MILLER: Okay.

MS. WALLACE: -- I'm finished. I

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mean, that's when -- that's when it appeared that there was some problems with the back of the house.

MR. GREEN: This problem that appeared at the back of the house, what was it that you observed?

MS. WALLACE: The house was wobbly.

MR. GREEN: Wobbly?

MS. WALLACE: Yes.

MR. GREEN: And was same house wobbly in 2004 when you acquired it?

MS. WALLACE: No. Because the back of the house was up and the stack was holding the house up.

MR. GREEN: When you say "stack," what do you mean?

MS. WALLACE: That's the plumbing pipe that goes from down into the dirt up through the ceiling. And it's a big -- I don't know. What are they made out of?

MR. PREMO: Cast iron.

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MS. WALLACE: Cast iron pipe that went up the back wall of the house.

MR. GREEN: Was there any discussion of shoring up the house since you said it was wobbly?

MS. WALLACE: It was wobbly after we took the pipe out.

MR. GREEN: Again, was there any effort made to your knowledge to shore up the house to keep it from wobbling? Did you have any discussion? Let me see if I can help you out a little bit. Did you have any discussions with Mr. Premo as to how you could keep the house wobbling?

MS. WALLACE: I don't believe so because the house was sort of tilted. He -- he -- Alan would know more than me since he was there.

MR. GREEN: Well, I just want you to tell me what you know.

MS. WALLACE: What I know is that the house was going to collapse and we were

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worried it was going to pull down, do damage or pull down the front part of the house.

MR. SIMMONS: I'm going to object to some of the answers, with all due respect. Ms. Wallace --

CHAIRPERSON MILLER: Shouldn't her attorney object? I mean, she has an attorney. So are you objecting for prejudice to you?

MR. SIMMONS: I am as nonresponsive. She's stating that the plumbing stack was holding up. There's a lack of foundation for her knowledge for knowing this.

She's stating that the back of the house was wobbly and was going to collapse. Again, there's a lack of foundation for stating this.

She can say what she saw, what she observed, what she heard. But certainly drawing these kinds of conclusions and opinions she has not demonstrated foundation

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sufficient to be able to offer those opinions, nor has she been offered as an expert for them.

CHAIRPERSON MILLER: She's not offered as an expert witness. And she is just answering the questions based on her knowledge.

Your objection is noted, but I don't think it's improper.

MR. GREEN: Let me ask you this: This regard to this, you mentioned the word demolition, what does "demolition" -- we've been throwing this term around a lot. What does demolition mean to you?

MS. WALLACE: It depends on the circumstances.

MR. GREEN: As it related to your property what does demolition?

MS. WALLACE: It depends on which part of the project you're talking about. The initial building permit let us demolish all the interior walls. You know, we were

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going to replace the windows, the siding, the roof. All that had to be demolished as well as the back of the house to be able to attach to the new house. All that was phase one of demolition.

Phase two of demolition was when we took down the back part of the 1933 structure.

MR. GREEN: When you took down the back part how were you going to attach it to the other structure? Do you know?

MS. WALLACE: No. Right. You'd have to ask Alan.

MR. GREEN: Wa there plans to attach it to the other structure?

MS. WALLACE: Which other structure are we talking about?

MR. GREEN: The one behind it.

MS. WALLACE: The back of the house or the --

MR. GREEN: The back of the house.

MS. WALLACE: The addition?

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MR. GREEN: The addition?

MS. WALLACE: Yes. Right. It's one house, it all has to be attached.

MR. GREEN: The picture I believe that you've identified as Exhibit number -- what is it, B?

MS. WALLACE: Five.

MR. GREEN: Five? Yes. What does this picture show?

MS. WALLACE: It shows the 1933 original front of the house. It shows the rebuild at the back of the 1933 as permit number two. And it shows the addition as permit number one.

MR. GREEN: Now in the looking at this picture what year was the picture taken, if you know?

MS. WALLACE: I'm not positive. It was 2006. Wouldn't it be when was five issued"?

MR. BROWN: You mean four?

MS. WALLACE: I mean four issued?

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Yes. So this picture was probably taken at the end of '06 or the beginning of '07.

MR. GREEN: And when this picture was taken and the additional structure was put up, was your house wobbly at that time?

MS. WALLACE: this front piece? No. That house was not wobbly. It was this middle piece that we replaced, as per permit number two.

MR. GREEN: When you say "middle piece," can you show us on the picture what you're talking about?

MS. WALLACE: Yes.

COMMISSIONER JEFFRIES: Mr. Premo--

MR. GREEN: In other words you touched the side of your house, is that right?

MS. WALLACE: I touched the picture of the house.

MR. GREEN: You say -- no, no.

MS. WALLACE: I'm not sure I

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understand. Do you want me to come over there and point it to you.

MR. GREEN: No. I want you to point -- no, no. I want you to point on the chart on the board what part of the house you were talking about. Just point to it.

MS. WALLACE: It's right there. Right there. Alan's pointing to it right now.

MR. PREMO: Where the window opening is.

MS. WALLACE: Where the window he's pointing to.

MR. GREEN: And the window opening is in -- I saw him moving his hand up and down. Is it in the addition that he's talking about or is it the house?

MR. PREMO: It's number -- permit number two.

MS. WALLACE: Permit number two.

MR. GREEN: All right. Now you pointed to what? The house?

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MR. PREMO: Right here.

MR. GREEN: The addition?

MR. PREMO: Well, this is number two. The addition is back here. This is part -- this is a replacement for part of the '33 structure.

MR. GREEN: Okay. All right.

MR. PREMO: Does that help?

MR. GREEN: Yes.

By making that replacement to the '33 structure which Mr. Premo has just shown us --

MS. WALLACE: The back half.

MR. GREEN: The back half, did that take out the wobbly condition?

MS. WALLACE: Of that particular structure, of that part of the structure, yes.

MR. GREEN: And then you did what after you took out the wobbly condition? You continued to do what?

MS. WALLACE: Then we went to dig

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our foundation behind the addition. That's -  
- we dug the whole, got everything ready to  
pour and the foundation flooded. That's when  
we had to have emergency crews come in and  
shore up the site and fill it with rocks and  
blah-blah-blah, I don't know all the details.  
Again, that's an Alan thing. And once we did  
that on this emergency basis we redrew the  
foundation for the addition, struck new  
drawings and got building permit number three  
or the amendment for that foundation. Once  
that was approved, we built the structure  
that you see there.

MR. GREEN: Now did there come a  
time after this construction took place --

MS. WALLACE: Yes.

MR. GREEN: -- that your property  
was determined to be other than wobbly, or I  
should say wobbly again?

MS. WALLACE: I'm not sure I  
understand the question.

MR. GREEN: All right. I'll

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restate the question.

MS. WALLACE: Thank you.

MR. GREEN: All right. After this construction did there come a time when you experienced further problems with your home?

MS. WALLACE: Well, nobody's living in the home so I don't know what sort of problems. But at this particular -- at this time of the picture all seemed well.

MR. GREEN: And what was your next step?

MS. WALLACE: The next step was to lift the old part of the last -- this 1933 structure out of the ground --

MR. GREEN: Yes.

MS. WALLACE: -- and that's when it was determined by an engineer that the house was not structurally sound to do that.

MR. GREEN: Structurally sound to lift, is that right?

MS. WALLACE: That is correct.

MR. GREEN: If you left it there,

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that is in its condition prior to lifting, the house would not fall down, would you agree?

MS. WALLACE: I would have no idea.

MR. GREEN: Well, isn't that what the engineer said?

MS. WALLACE: I -- I don't believe that's what the engineer said, but I don't know exactly what he said.

MR. GREEN: Isn't it a fact that the engineer said that if you read his letter carefully that the house was in an unstable condition if lifted?

CHAIRPERSON MILLER: What are you referring to, Mr. Green?

MR. GREEN: I'm sorry.

MS. WALLACE: It's Exhibit A-8.

MR. GREEN: A-A.

MS. WALLACE: Eight.

MR. GREEN: Eight. I'll tell you what, the letter was dated January 9, 2007.

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MR. BROWN: Madam Chair, the document speaks for itself if you read through it. I mean --

MR. GREEN: It might speak for itself, counsel, but I wanted her to tell us what her understanding is of this letter.

What is your understanding of the letter?

MS. WALLACE: That the house -- that the house is not structurally sound and it would be better to demolish it. I mean, that's what it says, isn't it? "It would be safer to demolish the existing structure and rebuild it to match the existing plan and specifications." That's what the -- that's what DCRA agreed with and that's why they granted us the permit to do that.

MR. GREEN: But, ma'am, I direct your attention to the second paragraph and it says -- I mean, you can read along with me.

MS. WALLACE: I just did.

MR. GREEN: No, you didn't. I

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want you to look at the second paragraph.

MS. WALLACE: I --

MR. BROWN: She just read from the second paragraph.

MS. WALLACE: I just read from the second paragraph.

MR. GREEN: No, no, no. Let's read it together then. "After inspecting the structure --"

MR. BROWN: Madam Chairman --

MR. GREEN: "-- it was determined that the structural elements of the house are not in any shape to be lifted without causing some major damage and possible collapse of the house." Now, that's what he said. Is that not right?

MS. WALLACE: Right. Yes. But he does not state whether the condition of the house --

CHAIRPERSON MILLER: Can I say something? I mean, you brought attention to this letter, which is fine, so we can

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understand its significance. But when I read the first sentence it says that the -- it seems to me to say that the owner's required to lift the house. Is that --

MS. WALLACE: Permit number three-- permit number three required us to lift the house.

CHAIRPERSON MILLER: I'm not sure about this line of questioning about if you do or you don't live the house.

MS. WALLACE: Right. So we asked an engineer if we could lift the house. I mean, I don't -- again, we got a permit to do that, number three. We had to lift the house.

We got an engineer. We wanted to lift the house.

CHAIRPERSON MILLER: Why were you required to lift the house? Do you understand that?

MS. WALLACE: Why? Why?

MR. PREMO: Why were we required to lift the house? The permit.

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MS. WALLACE: I mean, you're going to ask a technical question --

MR. GREEN: Well, we'll let him explain. We just want her --

CHAIRPERSON MILLER: Mr. Green, I would like him to -- wait. I just would like the Board to have an understanding of this issue since we're delving into this letter.

Do you understand why it says that the owner was required to lift the house?

MR. PREMO: Yes. Because --

CHAIRPERSON MILLER: Is it on?

MR. PREMO: Because of the water table, the whole structure was -- in permit number three we -- the engineering people went up above the water table. So they lifted it four feet up which then meant that that original structure that was still remaining for it to be in line with the new structure would have to be lifted to match it. That way it would attach as Mr. Green was alluding to other. It needed to be

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brought up to the same height and attached.

MR. BROWN: Madam Chair, if I could draw your attention to permit --

MR. GREEN: Ma'am -- excuse me.

MR. BROWN: -- permit three --

CHAIRPERSON MILLER: Number three.

Well you opened this door, Mr. Green.

MR. GREEN: Well, I know, but I think I'd like to ask him a follow up question. He indicated something. I'd like just to ask him, since he injected himself, I'm talking about Mr. Premo, into this conversation between Ms. Wallace and myself.

I'd like to ask Mr. Premo a follow up question to what he just said. I don't want to hear from Mr. Brown. I want to hear from Mr. Premo, which Chair --

CHAIRPERSON MILLER: Okay. That's all right. No, that's all right. I think Mr. Brown was just going to bring us to permit number three, if I'm not mistaken.

MR. BROWN: Which is Tab 4.

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CHAIRPERSON MILLER: Yes. Okay.  
Which also talks about lifting.

Go ahead, Mr. Green.

MR. GREEN: Yes. I just want to know from Mr. Premo based on your 42 years experience in the construction field weren't there other methods that one could utilize in terms of channeling the water away from the foundation and the house short of lifting?

MR. PREMO: Not if the water table is that high.

MR. GREEN: Isn't it possible, sir, that you could have also utilized certain stairs to achieve a connection to the house rather than lifting it?

MR. PREMO: You mean the '33 house?

CHAIRPERSON MILLER: Mr. Green --

MR. GREEN: Yes.

CHAIRPERSON MILLER: -- what's the point of this? The Board is not following.

COMMISSIONER JEFFRIES: You're

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losing us. We don't understand the -- well, can you just give us a little preview as to--

MR. GREEN: Yes, sir. Yes. They indicated that the problems that were encountered were brought about because the house was lifted. And if the house is lifted, it puts it in an unstable position based on what the architect said. The only question that I had was isn't it a fact that there were other methods that could have been utilized to leave the house in its current condition in terms of location four feet down channeling the water away and making the connection to the addition by means of steps other than lifting the house, thereby leaving the house in a stable condition, not wobbly, which apparently they had solved the wobbly problem. That's all I wanted to know. Isn't it possible to do something different from an engineering and construction perspective? That's what I wanted Mr. Premo to address based on his experience. That's the

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question.

COMMISSIONER JEFFRIES: But it seems superfluous to me. I mean -- I'm sorry. Go ahead.

MS. WALLACE: It's against the permit.

MR. BROWN: Well, I mean relevancy. Because, I mean would have, could have, should have to what they did -- what they did when the permits were issued is how they proceeded. I'm not so sure we can revisit options as it relates to the third permit.

COMMISSIONER JEFFRIES: Yes. Mr. Green, that's what I don't understand with your line of questioning. It's like, you know we already have information in front of us in terms of what was requested in these permits. So to do down this road of, you know if they could taken -- we've long since that barn. You know, I'm just -- I'm still not following the line of questioning.

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MR. GREEN: What I was getting at, Mr. Jeffries, was simply this: There's been discussion that the permits acquired for the purpose of lifting a house, which was determined to be unstable if it got above four -- or got to four feet --

COMMISSIONER JEFFRIES: Right. Right.

MR. GREEN: My only question was in order to maintain that property to continue with the project that they had, was it possible that the house could have remained at its level, that another means could have been found to channel the water and connect the house to the addition? That was the only question I was asking.

COMMISSIONER JEFFRIES: But did DCRA ask any of those questions?

MS. WALLACE: No.

MR. GREEN: You know, I cannot answer that.

COMMISSIONER JEFFRIES: I mean,

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because I'm just going on what's in front of us.

MR. GREEN: I know. I can't answer that. I understand. I can't answer that. I wasn't there at the time that they made these requests of DCRA for the permits.

COMMISSIONER JEFFRIES: Right.

MR. GREEN: I wasn't there. I'm just simply asking him was this option explored, that's all.

MS. WALLACE: Well, but -- and I--

MR. GREEN: I mean he can either say no we didn't do it, no it engineeringly can't be done.

COMMISSIONER JEFFRIES: Okay.

MR. GREEN: That's all he had to say.

COMMISSIONER JEFFRIES: I was just really trying to get -- I mean, again, it's 9:00 and we're, you know, looking at hypotheticals. And I just don't see where it's helpful.

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MR. GREEN: All right.

COMMISSIONER JEFFRIES: But go on.

MR. GREEN: I will not continue that line of questioning, sir. Okay? All right.

One moment.

Ms. Wallace --

MS. WALLACE: Yes.

MR. GREEN: In 2005 there's been a lot of discussion, at least in the papers, about termites. Did you at any point conduct a termite inspection?

MS. WALLACE: No.

MR. GREEN: Now you indicated that you acquired the property for a considerable amount of money, over a half million dollars, and you put in another lot of money into it. So did there come a time at anytime that you acquired the services or Orkin or Western, or any of the other termite people?

MS. WALLACE: No.

MR. GREEN: Did you at any point

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attempt to make any repairs to termite damage?

MS. WALLACE: No. Well, we replaced the termite damaged wood.

MR. GREEN: You replaced the termite damaged wood? And was your house still wobbly?

MS. WALLACE: As stated in building permit number two we demolished the back part of the house and replaced the termite damaged wood with new wood.

MR. GREEN: And the house was stabilized at that time, right?

MS. WALLACE: That portion of the house was stabilized, yes.

MR. GREEN: All right. And after that, after the termite wood was replaced did there come a time when you made a determination to take the entire house down?

MS. WALLACE: I mean --

MR. BROWN: I'm not so sure --

MS. WALLACE: -- at the

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application for building permit number four after Alan, the engineers and Alan spent time and the structural engineers of DCRA, this -- our structural engineer and Alan determined that the house was not structurally sound. That's when the determination at a table at DCRA was determined. Nobody gave me other options. They said you take it down and replace it and gave me a permit.

MR. GREEN: All right. Who at DCRA told you to take it out? Do you know?

MS. WALLACE: Do you --

MR. BROWN: That's an Alan Premo question.

MS. WALLACE: I was not -- I was not at the meeting, but we do have a building permit, whatever exhibit -- building permit number four.

MR. GREEN: Now --

MS. WALLACE: So whoever signs off on building permits gave us the permission to do it.

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MR. GREEN: Now it's your understanding -- I ask you to look at permit number four.

MS. WALLACE: Okay. Can you pull that out for me?

MR. GREEN: Was that Exhibit 7?

MS. WALLACE: Okay. I'm looking.

MR. GREEN: Now show us where the permission was granted to tear down your house. Show us in that particular document.

MS. WALLACE: It didn't give us permission to tear down the house.

MR. GREEN: Yes, ma'am.

MS. WALLACE: It gave us permission to demolish a portion of an existing square foot due to --

MR. BROWN: Single-family --

MS. WALLACE: I'm sorry. Single-family dwelling due to the structural integrity and possible collapse of the house which was dangerously unsound, rebuild structure to current building code

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specifications for existing permits and plans.

As I stated in my testimony, there are the permit plans that went with that permit showing exactly what we were permitted to demolish and replace.

MR. GREEN: And that was to be that rear wall, is that right?

MS. WALLACE: That was to be the front -- see on that plan right there circled.

CHAIRPERSON MILLER: Could you identify what you're -- oh, okay. What you're pointing to in our records so later when we refer to the record --

MR. PREMO: It's Exhibit 10.

MS. WALLACE: Yes.

CHAIRPERSON MILLER: Thank you.

MR. GREEN: Exhibit 10. All right.

MS. WALLACE: Do you go --

MR. PREMO: It's an amendment to

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Exhibit 10.

MS. WALLACE: Well, all the pages of Exhibit 10 show this.

MR. GREEN: Are we starting with the first page of Exhibit 10?

MR. PREMO: All of them.

MS. WALLACE: Sure.

MR. PREMO: And the first page is up there now starting with -- referenced RCS-1 was there and then it goes through.

MR. BROWN: Ms. Wallace -- maybe she could --

(Whereupon, off the record comments).

MR. GREEN: All right. Ms. Wallace --

MS. WALLACE: Yes.

MR. GREEN: -- I'm looking at an arrow.

MS. WALLACE: Yes.

MR. GREEN: The area that you are describing is this wall right here up front,

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is that it?

MS. WALLACE: No. It's the box around that -- well, I'll just show it to you. It's the --

MR. GREEN: In other words, you're saying it's the entire box, is that right?

MS. WALLACE: That is correct. If you continue looking at all the pages of the plans, it's very, very clear.

CHAIRPERSON MILLER: It seems very clear to me. Are you referring to the black lined boxes that say "area to be demolished and rebuilt?"

MS. WALLACE: That is correct.

CHAIRPERSON MILLER: Okay. Mr. Green, where are you going with this?

MS. WALLACE: I did this in my testimony page-by-page already.

MR. GREEN: All right.

MS. WALLACE: Sorry.

MR. GREEN: You've already identified the box area, is that right?

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MS. WALLACE: Yes. On each page of the plans that were part of permit number four shows the area to be demolished. It shows it in elevation, it shows it on the 00- whatever you call that, the -- what do you call it.

MR. PREMO: The site plan.

MS. WALLACE: The site plan. It shows it in numerous different ways on floor plans --

CHAIRPERSON MILLER: Okay. We've seen Exhibit 10.

MR. GREEN: Well, ma'am --

MS. WALLACE: -- site plans.

MR. GREEN: Well, ma'am?

MS. WALLACE: Yes.

MR. GREEN: Isn't it a fact, though, that at the time these plans were submitted that the box area that you have just described, isn't it a fact that the house, your house at 5013 Belt Road was already down?

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MS. WALLACE: Absolutely not.

MR. BROWN: We've got the picture.

MR. GREEN: Are you saying that --

MS. WALLACE: There's the picture of it all intact right there.

CHAIRPERSON MILLER: And when was that picture taken? What's the date of that picture?

MS. WALLACE: I don't know. Sometime prior to building permit number four.

MR. GREEN: Sometime prior? It could be in '05 or '04, is that not right?

MS. WALLACE: No. Because the addition was not built in '05.

MR. GREEN: Was it '06?

MS. WALLACE: We built the addition in '06.

MR. GREEN: What month?

MS. WALLACE: What month? February -- I don't have --

MR. GREEN: You don't know?

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MS. WALLACE: I can't -- it's --  
it's -- I knew many hours ago when I went  
through it all in my testimony.

MR. BROWN: There's a timeline in  
our--

MS. WALLACE: Yes.

MR. BROWN: We already established  
that--

COMMISSIONER JEFFRIES: We've got  
the timeline. Can you point Mr. Green to the  
timeline?

MR. BROWN: Yes, I can.

COMMISSIONER JEFFRIES: If you  
could.

MR. BROWN: I'd also point out on  
that photograph --

MR. GREEN: I don't want Mr. Brown  
to tell me the timeline. I want Ms. Wallace.  
It's her house.

CHAIRPERSON MILLER: But it's her  
house, but there's no reason she can't refer  
to this timeline at this hour of the hearing

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to remember exactly which month of the year it was.

MS. WALLACE: We did not take down that house without permission, period. There's--

MR. GREEN: Objection. Nonresponsive.

MS. WALLACE: Sorry.

MR. BROWN: She responded. He asked if she took it down before she got the permit and she answered no. Absolutely no.

CHAIRPERSON MILLER: Okay. Do you want to know the month that you asked about? Do you want them to check the --

MR. GREEN: Well, you know, it would be nice if it came out of Ms. Wallace's mouth. I want Ms. Wallace to tell me.

MS. WALLACE: Okay. I will --

MR. GREEN: I don't want Mr. Brown to tell me.

CHAIRPERSON MILLER: I think Ms. Wallace can check the file, though.

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MS. WALLACE: The rear addition was framed October 23rd to November 1st. Rear addition frame, first floor of original single-family house framed.

MR. SIMMONS: And we will object because this is not Ms. Wallace testifying from memory but from a document prepared by counsel which has not been identified --

CHAIRPERSON MILLER: Okay. We'll recognize that Ms. Wallace is having trouble tonight exactly remembering exactly which month it was.

MR. SIMMONS: Or which year.

MR. BROWN: Madam Chair, that information --

CHAIRPERSON MILLER: She can refresh her recollection.

MR. BROWN: That information is also contained in her affidavit that was submitted into the record many moons ago.

Can I also point out just to clarify --

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MR. SIMMONS: Objection. Again, counsel is testifying.

CHAIRPERSON MILLER: Mr. Simmons, I think that -- I hate to say it, but she's not your witness. And really Mr. Brown should be the one objecting to question to Ms. Wallace.

I understand if you -- I mean, I think if you -- you can have testimony that addresses her testimony even if you think that, you know, you want to say later she didn't remember this right away, whatever it is. But it's not improper for her to look at her affidavit to answer her question.

MR. SIMMONS: No. And I won't object to her looking at her affidavit for purposes of refreshing her recollection.

What my objection a moment ago was going to was Mr. Brown testifying. And he is not the witness here. Ms. Wallace is. And Ms. Wallace should be the one testifying. If she needs a document to refresh her recollection,

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so be it and let her testimony proceed. But not Mr. Brown testifying.

CHAIRPERSON MILLER: All right. I just want to say that, you know, sometimes we can have a problem too much with an attorney testifying. However, at this hour if she -- it's in her affidavit it is her testimony and he's just bringing her attention to the fact that that's where it is. I don't see a problem.

I do see a problem if we're going to be, you know, have too much objecting all night, we're not going to get through some of this. Not that, you know -- I'll note all your objections.

Now where are we? What's the point, Mr. Green? You want her to validate when something was built, is that right?

MR. GREEN: Yes, I just wanted her to answer that and I'm going to ask her maybe one or two more questions and we can move on. I mean, she can answer the question. I mean,

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after all, she's got a million dollars in this thing, not Mr. Brown.

CHAIRPERSON MILLER: Okay. Let's not go there and let's not pontificate.

I think -- you know, I mean I may be getting short here, but really it's the same thing. You can proffer, too, like where are we going with this. What information do you really want to elicit at this point?

MR. GREEN: All right. I'd like to know this then: Ms. Wallace indicated that this was an investment project.

Is that correct, Ms. Wallace?

MS. WALLACE: Yes.

MR. GREEN: And as an investment project why did you approach it in such a disjointed fashion?

MR. BROWN: I object to the characterization.

MS. WALLACE: I'm not sure I understand the question. I don't believe I approached it in a discounted fashion. I

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purchased the property. I planned on putting an addition onto the property. I got a permit to put an addition onto the property. And then stuff happened beyond my control.

MR. GREEN: But isn't it a fact that you had four different structural engineers involved in this project?

MR. PREMO: No, that's --

MS. WALLACE: I don't --

CHAIRPERSON MILLER: Yes, what is the point of that? Is that --

MR. GREEN: Well, it goes to our whole point of this was an investment property and most investors try to protect her investment, and yet she approached it in a rather disjointed way.

CHAIRPERSON MILLER: Your point? Does your question go to whether she tried to protect her investment?

MR. GREEN: Yes. I want to know what did you do to protect your investment?

MS. WALLACE: I -- I mean, I got

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permits to build the house. That's my investment is to sell the house and get permits to do so.

If there were different engineers throughout the case, it was probably due to numerous things. The architect that I hired left D.C. So whatever engineering company he worked with -- I can't say. I don't know how many engineers there were. But I'm just saying he left town. Maybe his engineer didn't want to work with us directly.

The engineers were so crazy busy at that period of time and it took forever to get work done. And so sometimes it would take so many months to get an engineer to do something that we would look for somebody else to do it again --

MR. GREEN: Did --

MS. WALLACE: You know, we just tried to go -- move on with it and get permits and build the house and sell the house.

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MR. GREEN: But isn't it a fact that one of the engineers indicated to you that the project that you were engaged in, your house, was too unsound for you to continue? Weren't you told by an engineer that --

MS. WALLACE: No. What engineer told me that?

MR. GREEN: I'm asking you that. No one said that to you?

MS. WALLACE: No. No. I mean --

CHAIRPERSON MILLER: Mr. Green, I think you ought to note your source here.

MR. GREEN: She -- she testified--

MS. WALLACE: No. I don't really understand when, where, how --

MR. GREEN: -- to that on direct examination, Your Honor -- Ms. -- Madam Chairman, excuse me.

CHAIRPERSON MILLER: I don't --

MS. WALLACE: I mean, but you're phrasing the question in such a way. We had

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an engineer tell us in the letter regarding building permit number four that the house was structurally unsound, to raise it. And he believed the house would be demolished.

MR. GREEN: And you sought to have it demolished, right?

MS. WALLACE: Yes.

MR. PREMO: Right.

MR. GREEN: Thank you.

MS. WALLACE: As per --

MR. GREEN: Thank you.

MS. WALLACE: -- the engineer.

I don't understand. Okay.

COMMISSIONER JEFFRIES: Madam Chair, I have a kid I'm going to have to get home soon. I'm going to leave in about ten minutes. I'll have to read the rest of the record.

(Whereupon, at 9:16 p.m. a recess until 9:36 p.m.)

CHAIRPERSON MILLER: Back on the record.

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The night is still young, but I don't think we really want to be here until 1:00 in the morning. And from the Board's perspective, short focused cross is a lot more effective than a whole build up. Our procedures are different from a court in that you don't have to lay a whole big foundation. So I would really like to encourage you all, you know, to ask the questions you need to ask but not a whole series of, you know, building up. And we really want to know where you're going. We all know what the issues are, I think. That's what we've been trying to focus on.

We don't want to deprive anyone of due process. I do want to say, though, our regs do allow us to place reasonable restrictions on cross examination including time limits and limitations on the scope of cross examination. And that's set forth in 3117.4.

So I would hope we could pick up

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the pace a little bit just by, you know, really focusing on the issues and not painting a big picture here. We don't need to do that. It's more effective, really, with this Board to get us to zero in on what we need to focus on.

So, that being said, DCRA has cross. Have you finished your cross, Mr. Green, on Ms. Wallace?

MR. GREEN: I just really have one more question to ask her.

CHAIRPERSON MILLER: Okay.

MR. GREEN: And then I'd like to move on to the next witness.

CHAIRPERSON MILLER: Okay.

MR. GREEN: Ms. Wallace, when was the last time you visited the site at 5013 Belt Road?

MR. BROWN: Is that relevant?

CHAIRPERSON MILLER: Mr. Green, again, I think you need to tell us what the relevance is?

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MS. WALLACE: I think Friday.

CHAIRPERSON MILLER: Okay.  
Friday. Okay.

MR. GREEN: All right. I don't have any other questions of this witness at this time, Madam Chairman.

I would like to call one more witness. But before we do that, I'd like to make a recommendation. And my recommendation would be this: That we end the proceedings today at 10:30. I would ask the Board to take administrative notice of the fact that the Metro shuts down and has been operating in a rather haphazard fashion after rush hour. And I do have some colleagues that have to take the Metro tonight home. And I would ask that the Board take that into consideration.

CHAIRPERSON MILLER: I will, but I wasn't aware of that at all. Some of us take the Metro as well.

MR. GREEN: Oh.

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CHAIRPERSON MILLER: I thought that it went until midnight.

Anyway, we're trying to accommodate the parties that you said you wanted to try to finish tonight.

MR. GREEN: Yes.

CHAIRPERSON MILLER: And we're trying to accommodate you.

MR. GREEN: Yes. I mean, I only have one other person I'm going to ask for cross purposes and --

CHAIRPERSON MILLER: Well, wait a second. Let me just say this before -- you know--

MR. GREEN: Sure.

CHAIRPERSON MILLER: If that's what the parties want to do, we have one party here who said he can't be here next week. And so, you know we might have to shift gears pretty quickly if that's the case. Anyway, next week we just gave away your slot for next week. We gave that to Evermay

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because you all were going to be here tonight.

COMMISSIONER FRUMIN: Madam Chairman, I know when I talked about scheduling before and I didn't win favor from you, but while next week was given away, there was talk about July 29th and not all of the parties had wanted to finish tonight. In fact, one of the parties had sought a continuance of any of the hearing today, and we supported that request for a continuance.

I think DCRA was natural on that request for a continuance.

It strikes me that a sensible approach is to look at that July 29th date to see whether or not you can accommodate all the parties by continuing the hearing at that point as opposed to pressing on late into the night where lots of people are saying it's getting late, hurry up, I'm getting confused. That doesn't serve the process at all if that happens. It seems to me that the wiser

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course is to look at the July 29th period.  
And if there's something --

CHAIRPERSON MILLER: I just want to say July 29th is not a great day. I mean, it's our last day and it's fairly packed. So I just want to let you know.

MR. BROWN: Madam Chair, I think we ought to make the most of what we have now. I'm available June 29th -- July 29th. But we ought to make the most of every second we have here tonight.

CHAIRPERSON MILLER: I agree. I agree.

So let's focus on our questions and really get to the core of the issues here.

So let's move on and see how far we go at this point.

Mr. Green?

MR. GREEN: Yes. I call as my next cross witness Mr. Vincent Ford. May I inquire of the witness? Thank you.

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How do you do, Mr. Ford?

MR. FORD: Fine. Fine.

MR. GREEN: Mr. Ford, you've been present during the proceedings in which we've discussed 5013, is that right?

MR. FORD: That's correct.

MR. GREEN: Now there's been a lot of discussion about demolition. Sir, what is demolition?

MR. FORD: Demolition is the taking down of a structure or portions of a structure but leaving something. It's not a raise.

MR. GREEN: All right. What is the distinction between a demolition and a raise?

MR. FORD: A raise is when you remove everything. All of the structure.

MR. GREEN: With respect to the 5013 Belt Road property building permit number three required what, sir, as you understand it?

MR. FORD: That was demolition.

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MR. GREEN: In other words, in did not require that the entire --

MR. BROWN: One second. Four.

MR. GREEN: Four.

MR. BROWN: Excuse me, Mr. Green.

MR. GREEN: Certainly.

MR. FORD: Could you clarify? Are you interested in permit three or four?

MR. GREEN: Well, why don't you tell me what three required, sir, and then we'll talk about four. Let's start with three.

MR. BROWN: It's Exhibit 4.

MR. FORD: Okay. Four, permit under three it says revise building permit number B4 --looks like 6820 to delete the foundation drawing and the row section, the cross section elevation and substitute a revised basement structural drawing and revised cross section elevation drawings. This permit revise -- revision will be -- will raise the house up by approximately four

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feet. So this is the permit that allowed them to raise the house.

MR. GREEN: All right. What about number four, sir? Permit number four?

MR. FORD: Permit number four demolish a portion of an existing single-family dwelling, that's what the SFD stands for due to the structural integrity and possible collapse of the house which is dangerously unsound. Rebuild structure to current building code specifications per -- per existing permit and plans.

MR. GREEN: Sir, isn't it a fact that permit number four was a demolition permit?

MR. FORD: That's what it's called for, yes.

MR. GREEN: And isn't it a fact, sir, that it did not require the removal of the entire house or authorize it?

MR. FORD: I'll answer -- I'll answer this way: Based on the face of the

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permit it's for demolition of a portion of the house. Based on the directions that were given that allowed this permit to be issued it states how the house was supposed to be demolished. Thus, it actually takes down the full structure under a demolition permit.

MR. GREEN: Mmm. So in other words you're saying that a raising took place?

MR. FORD: Basically, yes.

MR. GREEN: Even though the permit was for a demolition?

MR. FORD: Even though the permit is stated for a demolition.

MR. GREEN: So if one raised the house based on a demolition permit, one exceeded the requirements and authorization given by the demolition permit, is that right, sir?

MR. FORD: Incorrect.

MR. GREEN: Why is that incorrect?

MR. FORD: Because the guidance

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that was given in writing on how to take down the building was the basis for the issuance of this portion of the permit.

MR. GREEN: The guidance in writing is -- or rather was given by whom, sir?

MR. FORD: Well, in my book and as well as on the chart here --

MR. GREEN: No, excuse me. What exhibit? Can you direct us to it, please, sir? You pointed out something on a chart. What exhibit is that?

MR. FORD: Exhibit 9.

MR. GREEN: One moment, please. All right.

MR. FORD: And the title up there is "Demo Sequence.

MR. GREEN: Okay.

MR. FORD: And it gives the site location and it gives the existing structural description. And then tells the demo sequence.

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MR. GREEN: I see. Where in here, sir, does it say raise the building?

MR. FORD: If you do what is stated in this list of items, you will raise the building.

MR. GREEN: So in other words you're saying that if you do what's in here, nothing -- nothing will exist, is that what you're telling me?

Let the record reflect that Mr. Ford is being given an answer by counsel for the appellant.

CHAIRPERSON MILLER: Okay. Let me ask you this, who prepared this demo sequence document? Can you tell from it? I mean --

MR. FORD: Seemingly it was stamped by an engineer, a structural engineer.

CHAIRPERSON MILLER: So does that mean the structural engineer prepared it and then submitted it to DCRA?

MR. FORD: That's correct.

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MR. GREEN: Mr. Ford, this structural engineer that you've just referred to, isn't it a fact, sir, that the structural engineer is an structural engineer of the appellant?

MR. FORD: Yes.

MR. GREEN: So the structural engineer of the appellant said to the appellant this -- by this procedure, by this sequence you can demo this property at 5013 Belt Road and ultimately raise it, is that what you're telling me?

MR. FORD: I'm not saying that at all.

MR. GREEN: Well you just said if you follow this sequence of demolition, you will raise the property. Now which is it?

MR. FORD: What I'm saying is I'm not saying that's what the engineer said. I'm just saying what is stated on the paper here. I don't know what the engineer said verbally. The only thing I can tell you is what was

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written or what is written here that was evidently accepted by government which allowed the permit to be issued.

CHAIRPERSON MILLER: Can I ask you how do we know it was accepted by the government? How do we know it's related to the permit?

MR. GREEN: Again, Your Honor -- I mean, Madam Chairman, let the record reflect that Mr. Ford's response is being given to him by counsel for the appellant.

CHAIRPERSON MILLER: Okay. Now can you answer the question?

MR. FORD: Yes. I'll be with you in just a second.

I don't have the building permit application nor do I have the plan in front of me right now. Do you have the plan?

MR. BROWN: Madam Chairman, Mr. Premo may be in a better position to answer the question, at least part of the question because he was the one who obtained the

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issued permit.

CHAIRPERSON MILLER: Okay. Since I'm the one that asked the question, I'd be happy to have Mr. Premo answer it. I just want somebody to make that connection for the record.

MR. PREMO: The permit, all the drawings and inclusive of that letter and the sequence of demo was all created out of meetings with DCRA.

CHAIRPERSON MILLER: Okay.

MR. GREEN: Madam Chairman, may I inquire of the witness, please?

CHAIRPERSON MILLER: Just a second.

So does that mean we understand as based on your testimony, is that it?

MR. PREMO: Well, all of that stuff -- all --

CHAIRPERSON MILLER: I mean that's okay. I just want to know.

MR. PREMO: -- all of that stuff

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went down with the permit service as part of the -- for the permit for number four.

CHAIRPERSON MILLER: Okay. Thank you.

MR. GREEN: May I inquire of Mr. Premo on this point, Madam Chairman, please?

CHAIRPERSON MILLER: Okay.

MR. GREEN: Mr. Premo, don't look at the lawyer, look at me. I have a question for you. I want to know this demo sequence that Mr. Ford talked about that ultimately resulted as he interprets in a raising of the property, and he says it's in here somewhere, you indicated that DCRA said that this demo sequence was okay and that it was perfectly fine to raise the property based on Mr. Ford's testimony, is that what you're telling us?

MR. FORD: What I'm telling you is that that document was attached to the plans when they went through permits. And that was all part of the permit. That document was

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part of the -- that sequence was part of the documents that went through permit. So that was attached to those drawings when it was issued. That was the sequence that was come up with -- that was -- that that was drafted out of the meetings at DCRA.

MR. GREEN: Who signed off on this, sir?

MR. PREMO: I wasn't there when it was signed off.

MR. GREEN: And I'm looking at a document --

MR. PREMO: It went through a permit service.

MR. GREEN: I know. I'm looking at a document, you know, that says demo sequence. Can you tell me how the members of the Board looking at this document can determine that the Department of Consumer and Regulatory Affairs signed off on it? Where does it show that the Department of Consumer and Regulatory Affairs put a stamp on it or

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someone from that agency signed this document, sir? Show me now?

MR. PREMO: I'll show you. See the first one right there it says "official."

That's what DCRA put on the documents that were submitted to number four. The work stop order was placed on this job because the field inspector thought that this stuff was fake. The meeting with DCRA to get the work stop order lifted, it was determined that all these documents including the one that you're arguing about were all part of the permit. And they're all real.

CHAIRPERSON MILLER: Could you clarify for us what was put on the documents to prove that they were official?

MR. GREEN: There's nothing on it.

MR. PREMO: It ends up that somehow four -- the only thing that we got from the permit service was this red stamp says "official." And when the field inspector came out he said this was fake.

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And when -- when I went to get the stop work order lifted, in the meetings with DCRA it was determined that this was actually a real document. That it somehow had not gotten stamped by everybody, but that it was real.

CHAIRPERSON MILLER: Okay. Was that particular document stamped, though, that you're referring to, the demo sequence?

MR. PREMO: This was stapled, both these documents were stapled up in this corner. And so the only thing stamped from DCRA is this green ink or whatever and "official."

CHAIRPERSON MILLER: Okay. Thank you.

MR. GREEN: Madam Chairman, I know that this --

MR. PREMO: And the permit.

MR. GREEN: I know that this is an administrative proceeding. I understand that. I understand you want to have a complete record. I understand that in an

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administrative proceedings all documents are given the appropriate weight, and I pretty much accept it.

I do want the Chair and the Board to recognize the fact that this document identified as the Exhibit 9 of a demo sequence has no DCRA stamp, no signature or anything authenticating the fact that it was received and is a part of the Department of Consumer and Regulatory Affairs approval process. That's what I want the Board to look at and give the appropriate weight. All right?

CHAIRPERSON MILLER: Got it.

MR. GREEN: Thank you.

Mr. Ford?

MR. FORD: Yes.

MR. GREEN: You indicated in your prior testimony and also on your curriculum vitae that you served in a function for 18 years or so as the chief building inspector for the city of Washington, D.C. operating

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under the Department of Consumer and Regulatory Affairs, is that right?

MR. FORD: That's correct.

MR. GREEN: During your long tenure at this institution --

MR. FORD: Yes.

MR. GREEN: -- at anytime, sir, did you function as a Zoning Administrator?

MR. FORD: No.

MR. GREEN: During the course of your tenure, sir, were you trained as an expert in the area of zoning?

MR. FORD: I was trained in some areas of zoning, but not as an expert, no.

MR. GREEN: You said you were trained in some areas?

MR. FORD: Yes.

MR. GREEN: By whom?

MR. FORD: At that time we had Fayee that was there, and that goes back to the early '80s. And I can't think of the fella's name that took over after Fayee.

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MR. BROWN: Mr. Boatner.

MR. FORD: Mr. Boatner, Joe Boatner.

MR. GREEN: Again, let the record reflect the answer was given by counsel for the appellant. Thank you.

Mr. Ford?

MR. FORD: Yes.

MR. GREEN: Were you ever certified as a Zoning Administrator?

MR. FORD: No.

MR. GREEN: Were you ever certified as a zoning technician?

MR. FORD: No.

MR. GREEN: Were you ever certified as a zoning expert?

MR. FORD: No.

MR. GREEN: Therefore, sir, you gave opinions about the Zoning Administrator's decision tonight, is that not right?

MR. FORD: No.

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MR. GREEN: Oh?

MR. FORD: Oh.

MR. GREEN: And you challenged the Zoning Administrator, you talked about the Zoning Administrator making a bad decision during the course of your direct examination, is that not right?

MR. FORD: No.

MR. GREEN: Well, we don't have time to go through the transcript right now, but we'll --

CHAIRPERSON MILLER: No, we don't.

MR. GREEN: -- address that later.

Mr. Ford, you indicated that you took issue with the determination that the Zoning Administrator made in his decision regarding 5013 Belt Road, is that not right, sir?

MR. FORD: In which item?

MR. GREEN: With regard to the interpretation of whether the Zoning Administrator should have signed off on

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zoning permit application, I believe it was identified as number five, permit number five?

MR. FORD: What I -- what I stated was there are two things. One -- well, one more important thing is that the areas of the box that indicates the technical areas that had to be reviewed, zoning was not struck as one of those that had to review it.

MR. GREEN: You were asked whether or not the Zoning Administrator should review that particular area, is that not right, sir, by counsel for the appellant?

MR. FORD: I can't remember. I may have.

CHAIRPERSON MILLER: Mr. Green, what's your point that you're trying to get at?

MR. GREEN: Well, my point is very simple, Madam Chairman. Number one, Mr. Ford though he's a credentialed and acknowledged expert his expert does not flow to zoning.

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CHAIRPERSON MILLER: We already addressed that.

MR. GREEN: I understand that. I just want to reemphasize that in case anybody missed it.

Thank you.

One moment, Your Honor -- Madam Chairman.

BOARD MEMBER DETTMAN: I have one quick question. I think it's best directed to Mr. Premo.

Looking at the fourth building permit it begins by saying "demolish a portion of an existing single-family dwelling." You were in charge of, you know, sort of heading up this effort to get the fourth permit, correct?

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: When that read that I'm sort of a little bit unclear on whether or not this permit applies to what exists of the 1933 structure or whether it

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applies to the front end of the 1933 structure and the new construction in the back.

MR. PREMO: That's why we brought all these. All of these drawings here indicate existing as part of the drawings; that's where existing came from that was mentioned in the permit itself.

BOARD MEMBER DETTMAN: Okay.

MR. PREMO: If I may for a minute--

BOARD MEMBER DETTMAN: So what's indicated in your drawings as existing two story structure, whatever it says --

MR. PREMO: Yes. If you look here on all these drawings it'll say "existing." And that's where the word existing came from that got put on the permit. It doesn't have anything to do with the pre-'33 structure. It has everything to do with what was drafted on these drawings.

BOARD MEMBER DETTMAN: So demolish

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the portion of an existing single-family dwelling applies to what still remains of the 1933 structure as well as what's been constructed so far?

MR. PREMO: Well, the portion that we're taking down is the only remaining part of the '33 --

BOARD MEMBER DETTMAN: I understand that. What's defined as single-family dwelling? Tell me what makes up single-family dwelling.

MR. PREMO: The whole structure that was still there.

BOARD MEMBER DETTMAN: Okay. So in fact it seems to me that in fact a raising has not occurred?

MR. PREMO: Right. Exactly.

BOARD MEMBER DETTMAN: A raising would mean that everything on the site is removed, old and new. And what seems to me is you've demolished a portion of an existing single-family dwelling as defined by old and

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new.

MR. PREMO: Exactly.

BOARD MEMBER DETTMAN: And that portion of demolition eventually entailed taking down what exists above ground and then once you got down to the ground, what existed below ground? But nonetheless, it wasn't technically a raising.

MR. PREMO: Exactly. If we'd taken the whole structure down and there was nothing on the site --

BOARD MEMBER DETTMAN: I just need a clarification on that.

MR. PREMO: Yes.

BOARD MEMBER DETTMAN: Thank you.

CHAIRPERSON MILLER: I just want to follow up, Mr. Premo. With respect to the photograph there, this building permit demolish a portion, you know, of the existing single-family dwelling, what portion of all of that was demolished?

MR. PREMO: The photograph, all

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the white part.

CHAIRPERSON MILLER: The white part? Okay.

MR. PREMO: Yes. That represents that little square that's down here.

CHAIRPERSON MILLER: And behind the white part some new construction, correct, in the back?

MR. PREMO: All the new construction that had been from building permit one, two and three.

CHAIRPERSON MILLER: Okay.

MR. GREEN: Madam Chairman?

CHAIRPERSON MILLER: Yes.

MR. GREEN: May I ask one other question of Mr. Ford, please?

CHAIRPERSON MILLER: The last question?

MR. GREEN: Yes.

Mr. Ford, guarantee this will be the last question unless you give me a strange answer.

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When the work in the field does not match the permit, would you agree that the work should not be allowed to continue?

MR. FORD: Normally what occurs is when the work does not match what the permit calls for or the approve plans call for, then normally a stop work order is issued.

MR. GREEN: All right.

MR. FORD: Yes.

MR. GREEN: That was a good answer, sir.

MR. FORD: Okay.

MR. GREEN: I don't have any other questions.

MR. FORD: Okay.

CHAIRPERSON MILLER: Okay. I think we're now at intervenors cross. Am I correct?

MR. BROWN: Madam Chair, can I redirect for Mr. Ford on that?

CHAIRPERSON MILLER: Oh, you want to redirect on this cross?

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MR. BROWN: Just really quick.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: How would you like to proceed? I mean, we've taken several witnesses. I was going to suggest that perhaps we all cross examine Mr. Ford to the extent we need to and then Mr. Brown can do any redirect.

MR. BROWN: That's fine.

MR. SIMMONS: That seems to be the most efficient.

CHAIRPERSON MILLER: Okay. That is normally the process. Okay. Why don't we do that?

COMMISSIONER FRUMIN: And then what is the schedule for further cross examinations of Ms. Wallace and Mr. Premo?

CHAIRPERSON MILLER: The schedule is the intervenors have cross right now of Ms. Wallace and Mr. Ford.

MR. SIMMONS: And Mr. Premo?

CHAIRPERSON MILLER: And who? Oh,

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Mr. Premo. Yes.

MR. GREEN: Madam Chairman?

CHAIRPERSON MILLER: Yes.

MR. GREEN: At what point will I get an opportunity to cross Mr. Premo? I've only took Mr. Ford because I thought that the cross with him would be quick, we could get it out of the way and move on. I have not given the right to cross examine Mr. Premo.

CHAIRPERSON MILLER: Oh. I thought that DCRA was doing its cross and then we were going to go to intervenors for their cross. Is there a problem with that?

MR. GREEN: I mean, I don't mind the intervenors doing cross of anyone that -- you know, I just don't want to -- the Board to misunderstand that I have not given up the right of DCRA to cross examine Mr. Premo, that's all.

CHAIRPERSON MILLER: Okay.

MR. GREEN: So if you want to change the sequence, we don't have any

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objection to that.

CHAIRPERSON MILLER: I'm not changing any sequence. Unless I heard from others, I thought it was most efficient if you just finish your cross of all the witnesses and then intervenors can --

MR. GREEN: Well, I mean --

CHAIRPERSON MILLER: I don't think we're going to go back and forth all night between DCRA and intervenors' cross.

MR. GREEN: Well, we've been going back and forth all night over a lot of things.

CHAIRPERSON MILLER: Yes.

MR. GREEN: Again, I mean I can go to Mr. Premo now. But I thought that you were giving the intervenors an opportunity to cross examine Mr. Ford and Ms. Wallace. And I said I don't have any problems with that. I can wait.

CHAIRPERSON MILLER: No Okay. No. Let's go.

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MR. GREEN: I can wait.

CHAIRPERSON MILLER: Let's go.  
Let's not wait. Let's finish DCRA and then  
go to intervenors. I think that would be most  
efficient unless --

MR. SIMMONS: No, I don't.

CHAIRPERSON MILLER: Oh.

MR. SIMMONS: And you'll excuse me  
for coming back to the subject of schedule,  
but bear with me 20 seconds, please.

We're at eight minutes after ten.

Some of the folks have to leave at 10:30. I  
expect the cross of Mr. Premo and Ms. Wallace  
by both Mr. Green and myself and perhaps some  
of the others could be fairly lengthy. May I  
humbly suggest that what we do now is simply  
finish with Mr. Ford and see where we are at  
that point.

My sense is that that will take  
another ten to fifteen minutes amongst  
everyone.

And I suggest it simply --

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CHAIRPERSON MILLER: I don't really care. If all the parties are fine with that, let's go with that. Let's use the time as efficiently as we can.

Is there an objection?

MR. GREEN: Yes --

MR. BROWN: I'd like to see DCRA finish their cross examination.

CHAIRPERSON MILLER: Okay. You know what? Really what I say is, first of all, we knew this was going to happen that this was going to get really late. And this is because you all said this is what you wanted to do, and that's why we're here.

So I think we need to try to do it as efficiently as possible and see where we get. And I think it is more efficient to have DCRA finish.

I think we seem to be wasting a lot of time on this procedural stuff. If you've got a few quick questions for Mr. Premo, I would ask you to ask them, Mr.

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Green. Because you've already asked him some questions anyway at some of the most pointed areas. So whatever you have left, I think you ought to do it right now.

MR. GREEN: I will try to be as efficient to the extent that I can, Madam Chairman.

Mr. Premo, how you doing?

MR. PREMO: Fine and dandy.

MR. GREEN: Good, good.

Let's start with one or two of these building permits. Building permit number B477334. That's exhibit -- one moment. MR. BROWN: It's number 3.

MR. GREEN: Exhibit 3. Yes. And that was for the replacement of damaged wood and underpinnings, is that right, sir?

MR. BROWN: Exhibit 3.

MR. GREEN: Yes.

MR. PREMO: Ask your question again. Exhibit 3?

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MR. GREEN: Exhibit 3 was for the replacement of damaged wood and underpinnings, is that correct?

MR. PREMO: That's what it seems to read.

MR. GREEN: All right. Now in your testimony you indicated that you assisted Ms. Wallace in conducting inspections of this property, is that right, sir?

MR. PREMO: As a walkthrough, yes.

MR. GREEN: You did a walkthrough? And based on your walkthrough you advised Ms. Wallace about this property in terms of whether she should purchase or not?

MR. PREMO: That's correct.

MR. GREEN: And based again I think on your testimony, you indicated there was 42 years of experience you did this walkthrough. And at the time did you see any evidence of termite infestation or damage?

MR. PREMO: No, sir.

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MR. GREEN: And you indicated that you conducted no penetration of the closed in walls, is that right?

MR. PREMO: That's correct.

MR. GREEN: Is that the standard method that you utilize in checking out property for termite damage?

MR. PREMO: Yes, usually homeowners don't like it if you punch holes in their wall to look.

MR. GREEN: I see. Well, can you tell me this? Did you notice any pin holes of any kind in the wood?

MR. PREMO: No, sir.

MR. GREEN: How about in the wall?

MR. PREMO: No, sir.

MR. GREEN: What if any piles of dust or trails of dirt were noted by you during this inspection?

MR. PREMO: There were none.

MR. GREEN: What soft wood, if any, did you notice during this inspection?

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MR. PREMO: None.

MR. GREEN: Sir, did you go into any crawl spaces or in the attic and make this kind of inspection during your inspection?

MR. PREMO: There was no crawl space.

MR. GREEN: What about attics?

MR. PREMO: The attic was accessible to us at the time we walked through. It required a ladder.

MR. GREEN: Did you get one and flash a light up there or anything?

MR. PREMO: No, sir. Not at the time.

MR. GREEN: Can you tell me from whom did you order a termite inspection or report?

MR. PREMO: I'm not -- I didn't do anything with that. I'm not responsible to do that.

MR. GREEN: Did you advise that

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Ms. Stephanie Wallace do this, sir?

MR. PREMO: No.

MR. GREEN: Again based on your 42 years in the construction trade when did you notice a high water table and related problems therefrom, sir?

MR. PREMO: After the excavation was done.

MR. GREEN: Huh-uh. From whom did you order a soil suitability report?

MR. PREMO: It was done post the digging.

MR. GREEN: Post the digging? Did you do this at the time Ms. Wallace was considering purchasing the property based again on your 42 years of experience?

MR. PREMO: No, sir.

MR. GREEN: Well, sir, you indicated at some point that there was damage to this property, is that right?

MR. PREMO: What do you mean?

MR. GREEN: The property was

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damaged at some point? Ms. Wallace based on her testimony said that she suffered some damage based on termites, you talked about some walls coming down. Can you talk a little bit about that, please?

MR. PREMO: I think you'll have to ask the question a different way.

MR. GREEN: All righty, I will.

Was there any damage to Ms. Wallace's property at anytime during the course of your being contracted to do work on the property?

MR. PREMO: Damage to the building?

MR. GREEN: Yes.

MR. PREMO: Damage to what?

MR. GREEN: To the building.

CHAIRPERSON MILLER: Mr. Green, what's your point?

MR. GREEN: Well, I want him to tell me what damages and when he noticed that her property was damaged.

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MR. PREMO: What do you mean "damaged?"

MR. GREEN: Well she talked about wobbly. You've been here. She talked about the walls being wobbly.

MR. PREMO: Well, wobbly was something that existed once the demo work had been done. IF you went up on the second floor and you walked from one side of the house to the other, it wobbled.

MR. GREEN: I see. And what caused this wobbling, sir, since you're the construction man? What caused the problem?

MR. PREMO: Structural problems.

MR. GREEN: Brought about by what?

MR. PREMO: Without going into the wood and stuff, it was hard to tell whether it was rot, whether it was termites, whether it was whatever.

MR. GREEN: At what point did you notice termites?

MR. PREMO: There were no termites

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found on site. Only damage by termites.

MR. GREEN: Oh, I see. At what point did you notice that, sir?

MR. PREMO: After the demo was done.

MR. GREEN: And what year was that?

MR. PREMO: I guess it was '05.

CHAIRPERSON MILLER: That's in the record, is it not, in the chronology.

MR. BROWN: Yes. Yes.

CHAIRPERSON MILLER: Okay.

MR. PREMO: And his affidavit.

MR. GREEN: All right.

CHAIRPERSON MILLER: Let's try not to go over facts like that that we have in the record already if possible.

MR. GREEN: Well, all right. All right, Madam Chairman.

How long did this property remain exposed to the elements, sir?

MR. PREMO: What do you mean?

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MR. GREEN: After the rear end of the building was taken down, how long was it exposed to the elements?

MR. PREMO: Not too long. It ended up we closed it up.

MR. BROWN: I need some -- I don't know where we're going here.

MR. GREEN: All right. All right. Let me tell you where we're going. This property was told by Ms. Wallace and I guess substantiated through his testimony that it was wobbly. The back end of the building was taken down and it was found that there was rotten wood. The property was acquired in 2004, is that right, sir, as you understand it?

MR. BROWN: Is he trying to ask whether this condition occurred --

MR. GREEN: No. Are you posing an objection or not to the question?

MR. BROWN: I'm objecting because I'm not -- I mean, my witness doesn't

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understand the question and neither do I.

MR. GREEN: Well, why don't we let the witness say he doesn't understand the question.

MR. BROWN: He's already said that.

MR. GREEN: All I want him to say is was the property acquired in 2004, and I think he said yes. And my other question is when did he first notice that the property had rot in it and damage to the wood. And he was about to give us that answer when you interrupted him.

CHAIRPERSON MILLER: I thought he answered that already that it was upon the demolition that they discovered. Is that correct?

MR. GREEN: Well he was going to say yes. I want an yes.

CHAIRPERSON MILLER: He said it. He said it, Mr. Green. I heard it.

MR. GREEN: Okay.

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CHAIRPERSON MILLER: It's in the record a few times.

MR. BROWN: He referenced the year 2005 and he referenced the -- the Chair referenced the chronology in the record.

MR. GREEN: Why can't the witness speak? I mean, the witness is tongue tied. Let him talk.

MR. BROWN: He's spoken and answered the question.

CHAIRPERSON MILLER: What's your next question.

MR. GREEN: This exposure to the elements based on the wall being taken down in the rear, how long was the wall down, sir, from the time it was taken down until I guess you put another wall up?

MR. PREMO: It couldn't have been too long. Maybe weeks before we put plywood over it.

MR. GREEN: And isn't it a fact, sir, that the plywood was not sufficient to

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keep out the weather?

MR. PREMO: I don't know, would it make any difference. It was -- plywood was mostly keep up to keep people from going into the structure.

MR. GREEN: So water could still get in it, sir, is that not right?

MR. PREMO: It's possible it could come down the edges of walls, but not inside the structure. It had a roof, windows, doors.

MR. GREEN: Isn't it a fact, sir, that the plywood did not completely encapsulate the rear wall?

MR. PREMO: Didn't need to.

MR. GREEN: Mr. Premo, I want you to tell me who at DCRA advised you that removal and replacement of walls or any kind of removal and replacement at DCRA, who told you that this was an acceptable process?

MR. PREMO: I don't understand the question.

MR. GREEN: You have some --

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MR. PREMO: I just submitted what they asked us to submit.

MR. GREEN: All right.

CHAIRPERSON MILLER: What are you referring to? Are you referring to the demo?

MR. GREEN: Yes. The demo. Who told you that it was okay to demo the property?

MR. PREMO: They just made it as an option that it would be okayed if we got a permit.

MR. GREEN: All right. Who are "they?" What's the name of the person or persons?

MR. PREMO: I met with somebody by the name of Dennis.

MR. GREEN: Dennis? Do you know Dennis' last name?

MR. PREMO: No.

MR. GREEN: You don't know?

MR. PREMO: No.

MR. GREEN: Okay. Now you

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indicated -- let the record reflect that counsel and Mr. Ford are engaged in providing responses to the witness.

MR. SIMMONS: I join that objection. This has gone on far too often. It's the witness who is supposed to answer, not the attorney.

CHAIRPERSON MILLER: Okay. We got it and it's in the record.

MR. GREEN: Thank you, Madam Chairman.

Can you tell us, sir, this whole process of the construction that you were involved in, what connection did this construction and building code issues that you've discussed have to do with zoning as you understand it, sir.

MR. BROWN: I object to the question.

CHAIRPERSON MILLER: I do, too. I mean, I think didn't we go through this in this voir dire of his expert qualifications,

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his experience with zoning?

MR. GREEN: All right. I'll accept it, Madam Chairman.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: Just for clarification, Madam Chairman, Mr. Premo was never offered as an expert.

CHAIRPERSON MILLER: I'm sorry.

MR. GREEN: I think you're confusing him with Mr. Ford.

CHAIRPERSON MILLER: I was. I was. I'm sorry. Go ahead.

MR. GREEN: All right. Mr. Premo, again, what connection did this construction building code issue had to do with zoning, as you understand it.

MR. BROWN: Objection.

CHAIRPERSON MILLER: Is it because you don't understand the question or what's your objection based on?

MR. BROWN: Well, I mean I don't understand the question. And I don't think

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Mr. Premo does. And also it's asking him to make a connection between construction and zoning issues. And I'm not so sure why the question's being directed to Mr. Premo.

CHAIRPERSON MILLER: What's the foundation for your question? I really, I don't understand it.

MR. GREEN: Well, we've been all day, at least half the day talking about a construction. And this is a zoning, Board of Zoning Adjustment hearing process.

I wanted Mr. Premo to tell us if he understand that is there a connection between the construction of which he was responsible for and zoning which he may or may not have any advice in. I want him to tell me if he doesn't know or if he says there's no connection, I want him to tell me that.

MR. BROWN: That's question that:

(1) Not relevant, and; (2) I don't think it's an appropriate question to be placed to

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Mr. Premo.

MR. GREEN: Well let me ask this other foundation question, and if the Board will allow me. Mr. Premo, did you confer with anyone for a zoning review for 5013 Belt Road?

MR. BROWN: I still don't understand what he's --

CHAIRPERSON MILLER: Answer yes or no did he do something or not. I think he can answer that.

MR. BROWN: But looking at the expression on his face, I'm not so sure he understands the question.

CHAIRPERSON MILLER: Let him say that then.

MR. PREMO: The only time that I got involved in this is when there was the hold placed on it. And I went down and met with Matt LeGrant.

MR. GREEN: All right. So that was the only time that you conferred with anyone

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in zoning, is that right, sir?

MR. PREMO: Right. Correct.

MR. GREEN: Okay. May I approach the witness?

CHAIRPERSON MILLER: No. What do you mean? You want to show him a document or something?

MR. GREEN: Yes, ma'am. Yes, ma'am. Please.

CHAIRPERSON MILLER: Is that all right with Mr. Brown?

MR. BROWN: At Mr. Green's risk.

CHAIRPERSON MILLER: Okay.

MR. GREEN: I'm going to show you, sir, what I believe the appellant has marked as Exhibit 9. Oh, this is our exhibit. Good. I know it was somebody's exhibit.

MR. BROWN: Two things, Madam Chairman. I'm having a hard time, it's not a great picture, too.

MR. GREEN: We can get a better picture. We can always get you a better

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picture.

CHAIRPERSON MILLER: Well, I think the Board should be aware of what is being looked at as well.

MR. BROWN: Yes. And also the origin of the picture as far as filing. The DCRA, and this is kind of a repeat story, filed the witness list and series of documents Friday, last Friday. So that if it's part of that group of documents, I have an ongoing and this stretches back probably four appeal cases objection to the last minute filing of documents which I'd like to renew in the context here.

CHAIRPERSON MILLER: That's noted.

I'm not sure. Do we have that in our record? You filed it --

MS. BAILEY: Yes, ma'am. We have that.

CHAIRPERSON MILLER: Okay.  
What's the exhibit number?

MS. BAILEY: I don't think it has

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an exhibit number, but it was handed to the Board this afternoon.

MR. BROWN: This afternoon? I doubly renew my objection. Because if it came in this afternoon I don't have it.

CHAIRPERSON MILLER: Well, did you see it? Is it a document that you were given, do you know?

MR. GREEN: Madam Chairman, this document in question was filed July 11th at 11:51 a.m. And I have received D.C. Office of Zoning stamped on it.

CHAIRPERSON MILLER: Okay. I see that. That's great.

MR. GREEN: So it wasn't filed this afternoon.

CHAIRPERSON MILLER: Okay. Noted.

Okay. And, Mr. Brown, and we note your objection.

Is there a picture thought that --

MS. BAILEY: Exhibit 9.

CHAIRPERSON MILLER: Exhibit 9.

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Okay.

MR. GREEN: I'm just looking for a better copy.

MR. BROWN: Madam Chair, the other thing is we need to be cautious, particularly at this late hour. Cross examination is for the purposes of the testimony that the witness gave. So I don't want to have this all of a sudden become DCRA going beyond the scope of that.

MR. GREEN: DCRA has not gone beyond the scope, Madam Chairman. And I think that Mr. Brown, you know, we've given him a lot of leeway this evening and I don't think that we've -- when I say "we," I'm sorry. The Board has given him a lot of leeway and I don't think that DCRA is doing anything to stretch beyond the scope of the examination.

The only question I wanted to ask this witness was this: And, you know, I wanted him to answer the question as to whether or not when he talked about boarding

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up and covering up with plywood the rear of 5013 Belt Road, I wanted him to say whether or not this picture depicts what he did. Now, I don't think that's unreasonable.

MR. JENKINS: Okay. Who took this picture and when? Can I just --

MR. BROWN: Well, he's now referring to an even different picture that's part of the Grumbine & Simmons filing. It's Exhibit T to your opposition to our motion to dismiss.

So, I mean --

CHAIRPERSON MILLER: Wait a minute. I thought our attention was being drawn to Exhibit 9 attached to D.C. --

MR. GREEN: What I was attempting to do was get a better picture of what the appellant did in terms of closing up the rear of the property. And I was trying to get a picture that gave or rather would give the Board as well as the witness a clearer picture of what was utilized for covering up

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that area. I just wanted him to identify it and tell me a couple of things about it; that's all. There's no mystery here.

CHAIRPERSON MILLER: But to me there's a mystery. I mean, like you know maybe this Exhibit 9, maybe they hadn't completed covering it up? Maybe they -- you know, you want to ask them at what point this was?

MR. BROWN: Well, but more fundamentally, Madam Chairman, we start talking about one photo and he's showing the witness a different photo. Neither photos, I believe, are dated. Certainly Exhibit 9 is --

CHAIRPERSON MILLER: Right. We have to be at least looking at the same photo.

MR. GREEN: All right. I have a color rendition of the photo that depicts the same configuration as in the black and white which is not clear. I have a color rendition of it. And Mr. Brown is looking at this.

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And, you know, I will share this beautiful color photo with the Board and then I will ask the witness a couple of questions about that photo.

CHAIRPERSON MILLER: Because, Mr. Green, I mean you know in court it's kind of like a basic who took the picture and when.

MR. GREEN: I know.

CHAIRPERSON MILLER: Okay. Do you have an answer to that, and then I don't --

MR. BROWN: The photo's undated. And I still don't understand what he wants from the witness.

CHAIRPERSON MILLER: Okay. But do you have an answer to that question? Who took the picture and when? Just as the foundation.

MR. GREEN: Yes. I -- okay. The photo was taken by one of the intervenors. One of the intervenors is present and can identify the picture. And I'm prepared to put that intervenor on the witness stand to

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identify the picture. All right? Would that-

-

MR. SIMMONS: Just to make it simple, I personally took this picture and I-

-

CHAIRPERSON MILLER: Are you on the mike? You got to be on the mike.

MR. SIMMONS: Yes. I Jack Simmons -- opps, sorry. I, Jack Simmons, personally took this photograph. I took it in approximately November/December 2005. This is an accurate depiction of the photograph I took developed from the roll of film that was in my camera.

CHAIRPERSON MILLER: Thank you.

And your question is.

MR. GREEN: Yes Mr. Premo, did you -- you described during that time frame boarding up the rear of the house. Is this what you or your men did?

MR. PREMO: Correct.

MR. GREEN: Is it a fact, sir,

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that the entire rear end of the house was not completely covered but that if you look in the right hand quadrant of the house on the photo you see openings?

MR. PREMO: Correct.

MR. GREEN: Isn't it a fact, sir, that these openings remained from the time you did that, that is boarded up this area, until even today?

MR. PREMO: Well, this structure got torn down in permit number four, but yes.

MR. GREEN: Isn't it a fact, sir, that the weathering that we talked about water damage, wind damage could possibly have been caused by these openings in this property?

MR. PREMO: The damage was already done by either dry rot or just wet when it was close to the foundation. The plywood was applied because DCRA wanted us to cover it up so people couldn't get in. It wasn't put there to prevent water from getting in.

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MR. GREEN: All right. Thank you.  
That's all, Madam Chairman. Thank  
you very much.

CHAIRPERSON MILLER: Thank you.

MS. BAILEY: Mr. Green, is it  
possible to have some copies of that made?

MR. GREEN: This was submitted on  
the 11th of --

MS. BAILEY: No.

MR. GREEN: You're talking about  
the good picture, right?

I hate to tell you this, ma'am,  
but not only is our black and white Xerox  
machine broken, but we don't have a color --

MS. BAILEY: No. I could make a  
copy.

MR. GREEN: Oh, you got a color?  
Excellent. Fine. Thank you, Ms. Bailey.

CHAIRPERSON MILLER: Mr. Green,  
you finished?

MR. GREEN: I got one more  
question, Your Honor.

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CHAIRPERSON MILLER: Okay.

MR. GREEN: Mr. Premo, you indicated that a stop work order was issued and that there was some discussion about it being a fake, is that right?

MR. PREMO: The work stop order was a fake?

MR. GREEN: Yes. Was there some discussion about whether it was or was not a fake, your testimony?

MR. PREMO: You don't mean the work stop order was a fake. What do you mean was a fake?

MR. GREEN: The building permits.

MR. PREMO: Oh, yes. The field inspector who came out accused us of having fake plans.

MR. GREEN: Fake plans and fake building permits, is that right?

MR. PREMO: That's correct.

MR. GREEN: And he issued a stop work order pursuant to that or did he issue

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it because of something else?

MR. PREMO: From my understanding he issued it for that. He assumed that that was a fake and then we would have been operating the scope of building permit one, two and three.

MR. GREEN: I see. Well, again, in the submission of the appellee received the Zoning Office on June the 27th at 2:22 a.m. I direct the Board's attention to Exhibit 3, I believe.

MR. BROWN: What is the title of the document it's attached to?

MR. GREEN: The title of the document is District of Columbia's Response In Opposition to Appellant's Supplemental Statement on Casualty. And it would be Exhibit 3.

I could show it to you. I can bring it over there.

MR. BROWN: That would be appreciated.

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MR. GREEN: Thank you.

Madam Chairman. Okay.

Mr. Premo -- Mr. Premo, I want you to look at this document. And what is it?

MR. PREMO: It says a stop work order.

MR. GREEN: And what was the reason it was stated that this stop work order was issued?

MR. PREMO: If I read it correctly, it says working beyond scope.

MR. GREEN: Where on this stop work order, sir, does it indicate that any documents were fakes?

MR. PREMO: I don't see it on here, but that doesn't mean he didn't say it.

This is not the right one.

MR. GREEN: All right. What stop work order was issued that indicated to you that permits and plans were fakes and based on those permits and plans being fakes you were being compelled to stop work on the

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project? Can you tell me that, please?

MR. PREMO: I don't know if it was written on the work stop order. It's just what he said.

MR. BROWN: If Mr. Green wants to ask a question about a document, he ought to provide it to Mr. Premo.

Also, I'm not so sure -- I mean we're getting pretty far afield here.

CHAIRPERSON MILLER: I don't know. What's the point of your question, Mr. Green?

MR. GREEN: Well, he indicated in his testimony that a stop work order was issued pursuant to documents being fraudulent and fake submitting to the District of Columbia. I have in my hand a work order which talks about -- a stop work order which says working beyond the scope, you know, of a building.

Now I just wanted him to indicate on this one where it said fake. And since he

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said it doesn't say that, I'm asking him to show me any stop work order issued by the District of Columbia where it said "fake," "fraud," that's all.

CHAIRPERSON MILLER: Okay.

MR. BROWN: But he showed --

CHAIRPERSON MILLER: Did you show him Exhibit 3 to District of Columbia's Response in Opposition to Appellant's Supplemental Statement on Casualty?

MR. GREEN: Yes, I did.

CHAIRPERSON MILLER: Fine. And it doesn't say that on there?

MR. GREEN: It doesn't say it on here. He says it doesn't say it on here, and I said fine. Show me where it does say it. That's all I want to know.

MR. PREMO: That's not the work stop order --

CHAIRPERSON MILLER: Speak into the microphone.

MR. PREMO: That's not the work

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stop order for number four.

MR. BROWN: Could I see the document he's referring to? This document is dated in 2005, which is two years before the fourth building permit for the demolition was issued. So we're not on the correct document here.

MR. GREEN: All right. Let me see if I can help out a little bit.

I have in my hand a stop work order that was issued 3/21/07. And --

BOARD MEMBER WALKER: That's Exhibit 7.

MR. GREEN: Get the numbers right here.

BOARD MEMBER WALKER: That's Exhibit 7.

MR. GREEN: All right.

BOARD MEMBER WALKER: The same filing.

MR. GREEN: You talking about exceeding -- all right. Yes. Okay. All

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right. Exhibit 7.

MR. BROWN: Well, Madam Chairman, but I'm seeing two different versions of the same document, though.

BOARD MEMBER WALKER: You need to turn on your mike.

MR. BROWN: But I've got one version here that differs from that -- yes.

CHAIRPERSON MILLER: We're looking at Exhibit 7 and you have two different versions attached as Exhibit 7?

MR. BROWN: Well, I'm looking at -- yes. Between this which I don't know what this document is. This is Ms. Grumbine's and Mr. Simmons' document. And I'm also looking at a DCRA document. And they're not the same document. They've got different writing on it. I don't know --

MR. PREMO: See, it's on here and it's not on here. It's not on there.

MR. BROWN: And there's writing up here that isn't on the other one.

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CHAIRPERSON MILLER: Mr. Green, what document should we be looking at? Is there only one stop work order for March 21st, 2007?

MR. GREEN: All right.

CHAIRPERSON MILLER: That's our Exhibit 7.

MR. GREEN: I'm asking you to look at the Exhibit 7, the one that we have submitted. I'm asking you to look at that. I'm not going to get into any discussion about what other exhibits may or may not say. But look at the one that the Department of Consumer and Regulatory Affairs submitted. Can you kindly look at that one? Let's see if we can read it together and avoid confusion.

MR. BROWN: I mean, Mr. Premo, I believe has already answered the question that Mr. Green asked. But I also renew my objections to having multiple different versions of the same document.

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CHAIRPERSON MILLER: Well, the Board's only looking at one. I don't know. Is there a reason we should be considering anything else other than Exhibit 7?

MR. GREEN: No.

CHAIRPERSON MILLER: Okay. So we're looking at Exhibit 7 which is a stop work order. And I heard Mr. Green inquiring, I believe, where on the stop work order does it say fake. Is that basically your question?

MR. GREEN: That's right. You're right, Madam Chairman.

CHAIRPERSON MILLER: Okay. All right.

MR. BROWN: And Mr. Premo answered--

BOARD MEMBER WALKER: I didn't hear for 3/17/05 stop work order.

CHAIRPERSON MILLER: Right.

BOARD MEMBER WALKER: But he renewed his question with respect to the

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3/21/07 stop work order.

MR. BROWN: Well, he answered it with respect to -

BOARD MEMBER WALKER: And if we could hear that from -- let the witness, that would be fantastic.

MR. PREMO: What I said was that there was -- it was a verbal thing that he said. He did not write it on the work stop order.

CHAIRPERSON MILLER: And "he," is that Mr. Neil --

MR. PREMO: That was the field inspector who issued it.

CHAIRPERSON MILLER: The official who has signed it is who you are referring to?

MR. PREMO: Correct.

CHAIRPERSON MILLER: Okay.

MR. GREEN: All right.

MR. JENKINS: That was your last question?

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MR. GREEN: Yes.

CHAIRPERSON MILLER: Good. Thank you.

We're going off the record for a second.

(Whereupon, at 10:46 p.m. off the record until 11:02 p.m.)

CHAIRPERSON MILLER: Okay. We're back on the record and we've decided that we should stop at this point. It's 11:00 and a lot of people are tired and concerned about transportation home, et cetera.

So we were in there looking at our calendar to see how we could accommodate this case without having it, if possible, drag over the summer recess.

So, it's hard to calculate or estimate how much time we need for the rest of this case. But it looks like we might need a good amount of time.

So the Board is willing to come in one day after its recess for this case if it

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works for the parties. And that day would be Thursday July 29th if the parties are free.

The Board was -- official recess was going to start the 27th. Oh, I'm sorry. The 31st, Thursday the 31st was the day that we're proposing.

Our last scheduled day before the August recess is July 29th. But if the parties are available on the 31st, we'll come in.

MR. GREEN: Madam Chairman, what time did you have in mind?

CHAIRPERSON MILLER: Well, we thought we'd better start it around 9:00 or 9:30. I think -- you know, if we thought that it could be done in a few hours, we could start in the afternoon. But we were hesitant to do that.

MR. GREEN: 9:00 or 9:30 is fine with me.

CHAIRPERSON MILLER: Okay.

MR. GREEN: I mean, I'm at my desk

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in the morning anyway.

CHAIRPERSON MILLER: I think maybe we'll stick to the 9:30 schedule. Okay.

So DCRA can do that. Is anybody else ready, have you checked your schedules?

MR. BROWN: Madam Chair, we're on board for 9:30. Yes.

CHAIRPERSON MILLER: Okay. So the applicant can be there.

MR. LEMOINE: That's fine for me.

BOARD MEMBER WALKER: Great. Okay.

COMMISSIONER FRUMIN: Fine for me as well.

CHAIRPERSON MILLER: Great.

MR. SIMMONS: Assuming Mary's knee and back is better, we will be here.

CHAIRPERSON MILLER: But you'll be here in any event, is that right, Mr. Simmons?

MR. SIMMONS: Yes, I will be here in any event.

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CHAIRPERSON MILLER: Okay. We hope she'll be here.

MR. SIMMONS: If she is physically capable, and we've said before her testimony we believe is crucial. I can't speak to things that she can and I'm unaware of any other witness who can.

CHAIRPERSON MILLER: Okay.

MR. SIMMONS: So preserving that objection.

CHAIRPERSON MILLER: Okay. That's a couple of weeks from now so, hopefully she'll be able to come if for maybe a small part. But she could testify. But I will say if she will, I understand.

MR. SIMMONS: I think medical reason - or just as quickly as we possibly can.

CHAIRPERSON MILLER: Okay. Good. Good. All right.

MR. BROWN: Just want to kind of leave a bookmark where we are. DCRA has

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finished cross examining of the appellant's witnesses. So then what we have intervenors and ANC's cross examination.

CHAIRPERSON MILLER: That's correct. That's where we'll pick up. Okay.

COMMISSIONER FRUMIN: The same question I was about to ask.

CHAIRPERSON MILLER: Okay. Good.  
Anything else?

MR. BROWN: Thank you very much for your accommodation, tonight and the 31st.

CHAIRPERSON MILLER: Okay. Okay.  
Thank you all.

Good night.

This hearing is adjourned.

(Whereupon, at 11:06 p.m. the hearing was adjourned.)

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