

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY
DECEMBER 16, 2014

+ + + + +

The Public Meeting of the D.C. Board of Zoning Adjustment convened in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001 at 9:30 a.m., pursuant to notice, Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
S. KATHRYN ALLEN, Vice Chairperson
MARNIQUE Y. HEATH, Member
JEFFREY L. HINKLE, Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

PETER G. MAY
ROBERT MILLER

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

OFFICE OF THE D.C. ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN GYOR
MATT JESICK
MEGAN RAPPOLT
KAREN THOMAS

The transcript constitutes the minutes from
the Public Meeting held on December 16, 2014.

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

2 9:40 a.m.

3 CHAIR JORDAN: All right, if we could
4 please come to order.

5 Today is December 16, 2014. We're here
6 for the meeting of the Board of Zoning Adjustment.

7 We're located at 441 4th Street, N.W.
8 at the Jerrily R. Kress Memorial Hearing Room.

9 Today's proceeding is being recorded by
10 a Court Reporter and also being webcast live, so
11 therefore, I'm going to ask you to refrain from any
12 disruptive noises here in the hearing room.

13 Also, please silence any device that
14 might ring or vibrate loudly.

15 I'm Lloyd Jordan, Chairperson. To my
16 right is S. Kathryn Allen, Vice Chair. To her
17 right, Jeffrey Hinkle, Member of the Board. To my
18 immediate left is Marnique Heath, Member of the
19 Board. And to her left is Peter May, Member of the
20 Zoning Commission sitting in as a Member of the
21 Board of Zoning just for one case today.

22 If you are going to provide any

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1 testimony or make a statement to the Board on any
2 matter, I'm going to need you to do two things prior
3 to presenting, testifying or talking to the Board,
4 the first of which, I'm going to need you to
5 complete two witness cards per person. Complete
6 two of these cards per person and prior to you
7 testifying, please give those cards to the Court
8 Reporter who is to my right.

9 The second thing I'm going to need you
10 to do is to now stand and take the oath which will
11 be given by Mr. Moy, the Secretary to the Board.

12 SECRETARY MOY: If you're going to
13 provide any statement, read a letter or anything
14 to address to the Board in any matter, please now
15 rise and take the oath.

16 Do you solemnly swear or affirm that the
17 testimony you're about to present in this
18 proceeding is the truth, the whole truth and
19 nothing but the truth?

20 (WITNESSES SWORN)

21 SECRETARY MOY: Ladies and gentlemen,
22 you may consider yourself under oath.

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1 CHAIR JORDAN: Mr. Moy, are there any
2 preliminary matters that we need to discuss?

3 SECRETARY MOY: Nothing of major
4 consequence, Mr. Chairman. If there are any
5 others, the staff would suggest that we address
6 those on a case by case basis.

7 CHAIR JORDAN: All right. I'm going
8 to need a representative from the applicant of
9 18881 to come forward please and the representative
10 -- one person represents the two party status
11 requests in 18881.

12 MS. BROWN: Good morning, Mr.
13 Chairman, Carolyn Brown from Holland & Knight and
14 I have the applicant in Case 18881.

15 CHAIR JORDAN: Just make sure your
16 microphone is on. Is it on? You've got a bright
17 glowing green light?

18 MR. GOODMAN: Yes, I do.

19 CHAIR JORDAN: Come here, light
20 glowing. There you go.

21 MR. GOODMAN: Okay.

22 CHAIR JORDAN: Okay. Your name again?

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1 MR. GOODMAN: John Goodman on behalf of
2 the Woodley Park Community Association.

3 CHAIR JORDAN: Is there one -- is there
4 a is it Zaytoun? Zaytoun? Who's requested the
5 party's status in this case? Going once, going
6 twice. Oh, well, I'm going to -- we're going to
7 give a little time because we know we have a little
8 metro issue this morning.

9 Based upon the submission for party
10 status, I'm inclined to allow the party status of
11 Woodley Park to consolidate them as one group. Any
12 objection, Ms. Brown?

13 MS. BROWN: No objection.

14 CHAIR JORDAN: Any objection from the
15 Board?

16 (No audible response)

17 CHAIR JORDAN: As we have been doing,
18 as you're aware, Ms. Brown, and Mr. Goodman, you
19 may not be aware, we found it very helpful for
20 parties in opposition to have meetings and
21 discussions while they're here with the applicant
22 to see if they can resolve any issues that may be

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1 able to be resolved.

2 And the Board requires you to have some
3 serious, frank discussions prior a case being
4 called. So, I'm going to ask that the two of you
5 at least do that and have a discussion.

6 We have found it to be very helpful,
7 especially if parties are willing to have frank
8 discussions, we've been real successful with, I
9 guess, one case we had up to eight -- no, excuse
10 -- we had 12 different parties and they resolved
11 the matter.

12 We also watch you come back in the room
13 or we find out you're still hanging down the hall,
14 sometimes we've had people walk out of the room like
15 they're going to leave and walk back in through the
16 other door, it doesn't work.

17 Good, thank you. So, we'll call your
18 case back up. Please have your discussion.

19 Okay, Mr. Moy, let's call the first
20 meeting, the meeting Case 18685.

21 SECRETARY MOY: Yes, sir. This is the
22 first of three cases for decision.

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1 The first is Application Number 18685
2 of Polinger, Shannon and Luchs. This is a request,
3 if you'll recall, for a special exception to
4 install roof mounted solar panels on an office
5 building at 1200 First Street, NE.

6 Participating on this discussion and
7 decision is the vice chairman, I believe, who has
8 read the record, Ms. Heath and Mr. Peter May.

9 MR. MAY: Mr. Chair, I did participate
10 in this case.

11 CHAIR JORDAN: You did?

12 MR. MAY: Yes.

13 CHAIR JORDAN: Oh, terrific.

14 MR. MAY: Thank you.

15 CHAIR JORDAN: The more the merrier.

16 All right, this matter has been -- I
17 guess we had our final hearing on this matter May
18 20, 2014, is that correct?

19 And the Board took a previous vote, is
20 that right? It was like 2-2, so we didn't have a
21 majority on that case. We're now eligible to do
22 that.

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1 Is the Board ready to deliberate in this
2 case? Any issues? Do you want to say something?

3 MR. MAY: Yes, I'd like to explain
4 again for the Board why I think that this variance
5 should not be granted.

6 First of all, let me say, I absolutely
7 believe in solar panels and believe that we should
8 be permitting them as widely as possible into the
9 District. I personally have solar panels on the
10 roof of my house and I live in an historic district
11 and I had to take some special precautions in order
12 to make it work.

13 But that really isn't the point. The
14 point here is that, you know, the fact that the
15 Department of the Environment happens to be in a
16 particular building that has maxed out on height
17 and maxed out on height of its penthouse does not
18 -- and they want to put solar panels on top of it,
19 does not constitute the necessary facts in order
20 to grant a variance from the roof height
21 limitation.

22 It simply just does not -- there is not

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1 an institutional necessity for DDOE to have them
2 on top. If they want to do demonstration projects,
3 that can be done at any location. It does not have
4 to be in their office.

5 You know, I don't know how long their
6 lease is for, but they could be moving to, you know,
7 a different location where they could have them on
8 top of their office. If they put them on top of
9 every other District office building that
10 qualifies.

11 I mean there are plenty of ways for them
12 to make the point about being a leader in solar
13 power and I don't believe that the zoning
14 regulations should be -- that we should grant a
15 variance of the zoning regulations in order to
16 allow it.

17 We heard testimony from DDOE themselves
18 that they hope that this will spur further cases
19 or further use of solar panels and I can just see
20 a parade of people wanting to come in and put solar
21 panels on top of penthouses.

22 This is why the Zoning Commission has

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1 taken up this issue directly. First, as part of
2 the penthouse regulations and now it's actually
3 going to probably be taken up as a separate
4 amendment to the zoning regulations so that we can
5 deal with all of the questions and so that we can
6 make sure that what we see on rooftops is fitting
7 and appropriate and consistent with the zoning
8 regulations as they have been written.

9 I believe that this is a matter that
10 should be decided by the Zoning Commission and the
11 BZA should not be voting in favor of a variance at
12 this point because we will be taking it up with the
13 Zoning Commission.

14 I will also say that already we see that
15 the Zoning Commission testimony regarding the
16 placement of solar panels and that included
17 substantial evidence of solar panels being
18 installed essentially flat on a roof.

19 And I don't know why we have not
20 received that alternative from the applicant. But
21 if the applicant was willing to put it up at --
22 essentially flat on top of the penthouse and take

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1 up no more than 18 inches which would put them
2 between, you know, move it up from 18.6 to more than
3 20, I would have no problem with the variance
4 because that's consistent with where the zoning
5 regulations are headed in terms of penthouse
6 heights.

7 I have no problem with 18 inches, I have
8 a big problem with four feet and I think we should
9 not vote for this variance today. And I do believe
10 that we will take it up at the zoning commission,
11 at the very least through the regulations.

12 CHAIR JORDAN: Anyone else?

13 Mr. Hinkle?

14 MR. HINKLE: Thank you, Mr. Chair. I
15 won't repeat everything that Mr. May stated, but
16 I do agree with his position.

17 And one of the factors that we have to
18 look at in terms of a variance is the uniqueness
19 of this property and, you know, this office
20 building is within NOMA and it's very similar to
21 just about every other building that's been
22 constructed there over the last few years.

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1 So, I have a problem with the first
2 prong of the variance test and that is not
3 necessarily any uniqueness to this building or
4 structure that allows us to actually approve a
5 variance at this location and in terms of the
6 application and the request that's being taken.

7 CHAIR JORDAN: Anyone else?

8 This matter certainly, I believe we
9 need to go forward. I think we've been holding
10 this up for a while waiting for the Zoning
11 Commission to take action and I think we have a
12 responsibility to the -- for us to do what we're
13 required to do under the regulations and the code
14 as a Board of Zoning and Adjustment.

15 I think we certainly don't mind waiting
16 to some extent, but I think we just keep rolling,
17 rolling, rolling and I know the Zoning Commission's
18 been very, very busy. They work all the time, in
19 my estimation, but this is one that this matter may
20 take longer. I just don't know.

21 So, I just think we need it off our plate
22 and then the Zoning Commission can make their

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1 decision regarding this and they also have the
2 opportunity to take this case up on their own from
3 decisions made by the Board. That's why the
4 provisions are in the regulations.

5 So, I would hesitate on -- I don't have
6 a problem with waiting or something and reasonable
7 in time and the ability for the Zoning Commission
8 to rule and effect. But also, the applicants, they
9 operate upon what the regulations are in effect at
10 the time that they submit their application. If
11 something changes then so be it.

12 This is a building which I think that
13 they have met the requirements. There's been a
14 showing that this property, the lot and building
15 are long and narrow, that the mechanical penthouse
16 occupies more of the -- occupies a lot of the roof
17 area and it becomes the issue about where can they
18 place these panels.

19 The shape of the lot and size of the
20 penthouse was kind of limited from where it sits
21 for the exposure necessary to the side for them to
22 be able to utilize these solar panels.

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1 And there is also evidence in here, it's
2 not any evidence to the contrary that reducing the
3 height less than the four feet was going to cause
4 the impact on the energy outlet.

5 I hear the discussion about how high
6 they are, but there's been nothing to the contrary
7 that indicated technically or opposite of that
8 which the evidence that was presented to this Board
9 at the hearing that the panels can operate in a
10 different configuration.

11 So, I believe we're bound by that to
12 some extent and there was a showing that decreasing
13 the height of the panels decrease the output by I
14 think almost 7,000 kilowatts or something. It was
15 over 6,500 kilowatts. So, we have nothing to the
16 contrary.

17 I also believe this is -- you can look
18 at this case as a case of institutional necessity.
19 We have the Department of the Environment as the
20 tenant who has a need for this location and the
21 desire to install the solar panels and to
22 demonstrate the leadership and the engineering, I

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1 see it's an energy and environmental work.

2 It's a pilot program. It's kind of a
3 retrofit for this building, for this green roof
4 building and so, we could kind of look at this as
5 institutional necessity.

6 In addition to my thoughts on the
7 matter, the Office of Planning also agrees and we
8 certainly give deference to the Office of
9 Planning's recommendation as well as the ANC 6C who
10 is responsible for that area has voted in support
11 and whether or not the panels can be seen or how
12 they're going to affect the area, the ANC actually
13 said the solar panels are not visible from the
14 street and therefore, should have no negative
15 impact and they voted unanimously to support this
16 project.

17 So, that's my spin on this. So with
18 that, I would move that we grant the requested
19 relief in this matter.

20 VICE CHAIR ALLEN: Second.

21 CHAIR JORDAN: Motion made and
22 seconded.

1 MR. MAY: Mr. Chairman?

2 CHAIR JORDAN: Yes, please?

3 MR. MAY: So, I want to talk about a
4 couple of points that you just made.

5 One of the things I don't understand is
6 the urgency of this matter. I mean, yes, we've
7 already had it on the docket for approaching a year,
8 but solar panels are not new.

9 The District started subsidizing solar
10 panels, what, six or seven years ago, years ago,
11 not six or seven months ago.

12 I don't understand why now all of a
13 sudden the need to get out in front of this and do
14 this demonstration project. It boggles my mind
15 that they think all of a sudden this is an absolute
16 necessity and, therefore, the zoning regulations
17 which are not subservient to the institutional
18 directives of another agency should somehow take
19 this up. I just -- I completely fail to understand
20 that.

21 With regard to the height issue, it's
22 not a question of whether they can operate at all

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1 if they are lower or laying flat, it's a question
2 of how efficient they are. And I believe that
3 given the cost of panels and the way they are
4 dropping substantially every year, I mean they, you
5 know, from when I first started looking at them to
6 when they finally got installed on my house, the
7 price dropped 30 percent.

8 So, you know, more panels and panels in
9 places that don't necessarily get full solar
10 coverage all the time can make up for some of that
11 loss and it can be done at a lower height. So I
12 really don't understand why we need to permit this
13 particular application.

14 Again, I would be willing to go 18
15 inches, I'm not willing to go for four feet and I
16 don't think this Board should.

17 CHAIR JORDAN: Regarding the time,
18 this is -- I guess the Board not showed any urgency.
19 This matter has been pending with this Board for
20 a long time. And I think it's incumbent upon the
21 Board to act B

22 MR. MAY: So, why can't we wait six

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1 months? Sorry.

2 CHAIR JORDAN: I think it's incumbent
3 upon the Board to act responsibly in regards to
4 applications and processing them. There are a lot
5 of -- this Board has a responsibility, not just to
6 the applicant, not just to the District, not just
7 to the Zoning Commission, the Board has a
8 responsibility to the citizens at large, to the
9 neighborhoods, to the ANCs. These are decisions
10 that are very, very important.

11 And also to some extent, the building
12 owners, the developers, it's a big group that we
13 have a responsibility of that we do not take
14 lightly. And every day that we wait, it affects
15 somebody's interest or life or et cetera.

16 So, I think waiting the period of time
17 that we've waited which is now, I think you said,
18 a year. I don't know if it's been that long, we
19 have waited. I think at some point you have to --
20 the Board has to take its statutory responsibility
21 and move forward.

22 And there are mechanisms for the Zoning

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1 Commission to invoke themselves in this matter once
2 we do what we need to do. And the rules and
3 regulations are as whatever they may be.

4 I know the zoning regulations have been
5 around for a long time and life and the world has
6 changed and we're going through a zoning rewrite
7 and hopefully we're going to catch a lot of this
8 also.

9 But if we sit and hold every case
10 because it missed within the gap of something in
11 the zoning regulations -- well, let me go back, let
12 me say it the other way.

13 This Board regularly meets and tries to
14 determine the gaps in between what's been set forth
15 in the zoning regulations is what this Board's kind
16 of required to do by statute. So, I don't think
17 we're acting urgently, I think we're acting
18 responsibly to go ahead.

19 I think we've juggled this as much as
20 we could, we've waited such a long time to get some
21 other relief in this regard.

22 MR. MAY: Mr. Chairman, so, all the

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1 reasons that you cited are all reasons why I think
2 the responsible thing to do is to not approve it
3 at this time.

4 I don't have any problem with taking
5 action on the case, I think that we should be acting
6 to dismiss the case at this point, not to approve
7 it. And that would be just as responsible in the
8 sense that you talked about in terms of making a
9 decision in a timely fashion.

10 But for all the reasons that you cited,
11 our duty to the citizens, our responsibility to the
12 Zoning Commission, our responsibility to zoning
13 regulations, all reasons why we should not be
14 approving it at this point.

15 You're right, the Zoning Commission has
16 the ability to take up this matter and I expect that
17 they probably will.

18 CHAIR JORDAN: All right, any other
19 discussion?

20 All those in favor of the motion signify
21 by saying aye.

22 (CHORUS OF AYES)

1 CHAIR JORDAN: Those opposed, nay?

2 (CHORUS OF NAYS)

3 CHAIR JORDAN: The motion carries.

4 Mr. Moy, would you poll the Board?

5 SECRETARY MOY: The staff will record
6 the vote as 3-2, I believe. The motion to approve
7 by Chairman Jordan, second of the motion by Vice
8 Chair Allen, also in support Ms. Heath. Opposed
9 to the motion, Mr. Peter May and Mr. Jeffrey Hinkle.

10 CHAIR JORDAN: Then let's have a for
11 order.

12 SECRETARY MOY: For order. Thank you,
13 sir.

14 CHAIR JORDAN: Thank you. Thank you.
15 Thank you, Mr. May.

16 Something we're waiting to see, we have
17 another Member of the Zoning Commission who will
18 sit for the rest of the day.

19 Some of these cases, based upon the
20 schedule, we first heard the cases, like Mr. May
21 heard this originally, so he's stayed on this case.
22 So, we're waiting for Commissioner Robert Miller.

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1 We are now joined by Robert Miller, a
2 Member of the Zoning Commission.

3 Our next case is going to be 18827,
4 although Mr. Miller is not on this case, we do have
5 an absentee ballot by Mr. Hood on this one.

6 Do you want to call it, Mr. Moy?

7 SECRETARY MOY: Yes, I'm sorry, sir.

8 That would be Appeal Number 18827 of Dr.
9 Joan Evelyn Kinlan. And this Board will recall
10 this is an appeal of the decision of the Zoning
11 Administrator to allow a child development center
12 at 3855 Massachusetts Avenue, NW.

13 The Board last considered this decision
14 on this appeal on November 18, 2014.

15 And I believe there are preliminary
16 matters to this appeal, Mr. Chairman. The first
17 being the Board to ask for a motion to dismiss filed
18 by DCRA.

19 CHAIR JORDAN: Sitting here is a motion
20 to dismiss, correct? Is that what you B

21 SECRETARY MOY: Yes, sir.

22 CHAIR JORDAN: Yes, for untimeliness.

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1 Is the Board ready to deliberate on this
2 case?

3 All right. This is a case where the
4 applicant challenges the Zoning Administrator's
5 decision to allow a child development center to
6 operate at the property and to allow the property
7 for religious purposes for clerical person
8 housing, persons on the property allegedly without
9 a C of O, or it's alleged that one is required.

10 In this particular matter, the owner
11 and operator of the property is a church and then
12 we've been presented in this matter two particular
13 issues.

14 One is first which is a motion to
15 dismiss which has been filed by the Department of
16 Consumer Regulatory Affairs, I believe, alleging
17 that the applicants failed to properly timely
18 challenge the C of O for the child development
19 center that was issued in 2011.

20 If the motion is granted, we would be
21 required to deal with the one issue, that issue
22 being the youth ministry or the use of the property

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1 to house people who are part of their ministry at
2 the church that are kind of transient.

3 So, that's the issues before us and if
4 we're ready, any thoughts on this?

5 On the motion to dismiss, I would offer
6 to the Board that we grant the motion challenging
7 the motion to dismiss on the challenge to the C of
8 O because it's clearly untimely and it's years
9 beyond the 60-days from the issuance of the C of
10 O and when the applicant knew or should have known
11 that the C of O existed.

12 The C of O was issued in 2011 for the
13 child development center. In August of 2011,
14 there was a building permit issued for this
15 property and it had been posted. And in September
16 of 2011, the C of O was issued.

17 The applicant themselves admitted that
18 they knew of the use of the property by the child
19 development center, however, they waited because
20 they wanted to see -- they thought the use was going
21 to be similar to the use of the previous tenant or
22 organization that was at the church where it was,

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1 I think, a charter school.

2 And so, they waited until for at least
3 a couple of years and then in 2013 they got a lawyer
4 and they also communicated to the Department of
5 Consumer Regulatory Affairs their concern.
6 That's already two years beyond the time they knew
7 that it existed.

8 And so, they sent a letter to the
9 Department of Consumer Regulatory Affairs and in
10 May of 2014, they received a response back from them
11 where the Zoning Administrator just reaffirmed the
12 decision they had already in 2011 that it was a
13 proper C of O that was issued.

14 Now, the issue before us, and what I
15 believe that we grant the motion on the motion to
16 dismiss is not going to the merits of the C of O
17 which I think they probably had a decent challenge
18 had it been timely.

19 But if we allow parties to violate the
20 regulations or people to violate the regulations,
21 this can go on forever and ever and ever. You know,
22 you can wait four years or five years and six years.

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1 And that's not what the regulations are for.

2 And sometimes these things for us, it's
3 hard to swallow, but we have to what we have to do
4 in accordance to the law as the law is written
5 today.

6 So, I would move that we grant the
7 motion to dismiss the issue on the challenge to the
8 C of O.

9 MR. HINKLE: Mr. Chairman, I'll second
10 the motion on that, but it's tough for me because
11 I think the applicant probably had a good case in
12 terms of the C of O itself.

13 CHAIR JORDAN: They really did.

14 MR. HINKLE: You know, I agree with you
15 the way this Board has recently looked at Zoning
16 Administrator determinations and when those are
17 made and how those can be appealed, I think we're
18 being consistent with kind of our previous
19 decisions on that point.

20 But I have to say I do wish the applicant
21 made more of an argument in terms of how this Board
22 may perhaps look at and actually overturn the C of

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1 O. We didn't get much of an argument there.

2 And there was one Court case cited which
3 was Gorgone, I think, Gorgone v. The Board of Zoning
4 Adjustment which I found interesting but I didn't
5 think it quite got us there.

6 But, I just wanted to make the statement
7 that I do wish they took that argument a little bit
8 further in terms of allowing the Board to look at
9 how to potentially overturn a C of O that may have
10 been issued improperly.

11 CHAIR JORDAN: Yes, I agree with that.
12 As I said, I thought if we got to the merits, it
13 would have been a different situation, but it's
14 just one that they were clearly aware of and just
15 sat on it and sat on it and sat on it.

16 VICE CHAIR ALLEN: I hate to be
17 repetitive, but this is one that really sticks in
18 my craw. I mean it is very difficult for me to
19 support this because of the underlying merits.
20 And until I vote, I'm not sure how I'm going to vote.

21 CHAIR JORDAN: Now, we still have the
22 remaining issue. There's still another issue that

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1 this Board has to decide and that's the use of the
2 facility, the other part of the challenge, it's a
3 two part challenge.

4 With that, all those in favor of the
5 motion to dismiss the challenge on the C of O
6 signify by saying aye.

7 (CHORUS OF AYES)

8 CHAIR JORDAN: Those opposed, nay?

9 CHAIR JORDAN: All right, I guess we
10 have -- I heard little whimpers here. Come on,
11 we've got to step, this is B

12 MR. HINKLE: Yes, I just wanted to
13 clarify, this is the C of O for the CDC?

14 CHAIR JORDAN: Yes, yes, the child
15 development center.

16 MR. HINKLE: I just wanted to make
17 sure.

18 CHAIR JORDAN: Okay. The motion
19 carries, Mr. Moy, do you want to poll the Board?

20 SECRETARY MOY: Yes, sir. I believe
21 from what I heard -- well, before I get to that,
22 I just want to inform the Chair that I do have the

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1 absentee vote from a participant.

2 CHAIR JORDAN: On the motion to
3 dismiss?

4 SECRETARY MOY: I was going to get that
5 to that. She did not vote on the motion to dismiss,
6 so I can't -- so there's no vote there, so the
7 resulting vote is 4-0 without that vote.

8 And just on motion of the Chairman to
9 grant the motion to dismiss, second by Mr. Hinkle,
10 all support, Vice Chair Allen and M. Heath.

11 CHAIR JORDAN: Okay. So no we move to
12 the other part of the case which is regarding
13 allowing the property to be used for religious or
14 housing of people on the property without a C of
15 O which is another -- this is another matter which
16 we have to be real cautious as we move forward in
17 deliberating on this case.

18 This is a case where it kind of stinks
19 all around, but we have to, you know, be guarded
20 and careful about where we are particularly in this
21 particular matter. We've asked over and over
22 again and we've had some other discussions about

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1 this case and how it might be affected by the
2 Religious Land Use and Institutionalization
3 Persons Act, where that Act says no government
4 shall impose or implement a law or land use
5 regulation in a manner that imposes a substantial
6 burden on religious exercise of a person including
7 religious assembly, institutions, dah, dah, dah,
8 unless the government can show that it has a
9 compelling interest in the matter.

10 There is at least one BZA case that we
11 got not necessarily on point with this case, but
12 where the Board has kind of ruled in regards to a
13 church operation. But there are other Court cases
14 which have indicated additional reasons why we
15 ought to be very guarded.

16 So, what has been brought before us is
17 that this property and as the applicant has used
18 the word where the church is used for its youth
19 ministry to allow members of its youth ministry,
20 people who come in from out of town to use the
21 property and stay on the property as it goes further
22 with the church's youth ministry program.

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1 And that's the testimony that was given
2 by the church and I believe that to be the case
3 because we have not received anything to the
4 contrary that was the type of people that were
5 there, that they were part of the ministry, the
6 church's youth ministry.

7 People come in from out of town, they
8 go out into the community. They did something, and
9 I think that particular weekend, they were down at
10 the White House doing something at the Ellipse on
11 a religious basis.

12 The other part of the property is also
13 the people who manage and supervise that who I
14 understand, I think, are ministers or manage that
15 particular youth ministry stay on the property also
16 so that at times, it can be as many as 30 students
17 -- 30 youth, I guess I'm calling them students --
18 people at the property who are part of this youth
19 ministry along wit the staff.

20 There has been some -- there is
21 testimony that this can get disruptive to the
22 neighbors which is of concern certainly for me and

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1 for this Board. I would offer that which ever way
2 we come, this thing would need to be managed in a
3 better process, at least I would offer that it needs
4 to be managed in a better process. But this is
5 something that's on us by appeal.

6 Based upon what the law says and where
7 we are, we don't really have a lot of room to
8 challenge what's a church program and there's been
9 nothing contrary that this is not a church program
10 and it's a cases say, the government has no role
11 to involve themselves in the religious nature of
12 a church program. And I have seen nothing to the
13 contrary, I wish there was more there that we could.

14 In fact, many churches have kind of
15 similar programs. Churches have been
16 historically places where they're ministering or
17 are outreach ministries and people come and stay
18 at the church from out of town to further that
19 church ministry.

20 In fact, local churches house people,
21 particularly homeless at times and they don't have
22 any special C of O for that.

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1 Some put on -- regularly put on soup
2 kitchens and et cetera and those things are part
3 of the ministry of the church.

4 So, you know, the way I'm looking at it
5 is that this is something that is part of the
6 church's program as part of its ministry and I am
7 very cautious and guarded to invoke the Board's
8 zoning regulations any more than what's already
9 there on this matter.

10 That's where my thought is. Any other
11 thoughts?

12 VICE CHAIR ALLEN: I would just be
13 interested in my colleagues thoughts regarding --
14 I don't think there's any debate about the programs
15 that you've outlined, Mr. Chairman. What concerns
16 me are the other activities that we saw pictures
17 of in terms of the drinking and the fire pits and
18 the, you know, all of that activity that clearly
19 don't fall within anything that you just outlined.

20 And I'm just trying to, you know, how
21 do we B

22 CHAIR JORDAN: How do we get to that?

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1 VICE CHAIR ALLEN: Yes, how do we get
2 to that?

3 CHAIR JORDAN: That's a good thought.
4 How do you get to that?

5 MR. HINKLE: Yes, I'll weigh in real
6 quick.

7 I think while there's certainly some
8 leeway built into the code on what constitutes a
9 church activity or program. The code also within
10 the R-1 zoning category in Sections 215 and 216 is
11 actually very clear on what constitutes a church
12 program that requires special exception review by
13 the Board.

14 So, for me, the youth -- what the
15 mission program appears to be exactly the type of
16 program that fits into these special exception
17 requirements. And the special exception
18 requirements actually stress that these programs
19 should not be objectionable within either the
20 zoning district or to neighboring properties.

21 And so, for me, I tend to believe that
22 this program and, in particular, that we've heard

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1 testimony on and heard, you know, about the impacts
2 that you just mentioned, actually does require a
3 special exception from this Board and should be
4 submitted as such.

5 So, that's my opinion.

6 CHAIR JORDAN: Any other thoughts? I
7 mean I'm opening the way for it. This is an
8 interesting case.

9 I just don't know how we get to it. You
10 know, the issue before us is the appeal, so it's
11 not like we can give any further guidance and
12 direction regarding the sustaining the action of
13 the Zoning Administrator or as it sits in front of
14 us now.

15 MR. HINKLE: No, I agree. I'm not
16 quite sure. Maybe counsel could weigh in. I'm
17 not quite sure. I mean my belief, as I just stated,
18 is that that program requires a special exception
19 simply because it's a church program in the R-1
20 District.

21 But in terms of this appeal, I'm not
22 quite sure what the action is that we actually need

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1 to take.

2 CHAIR JORDAN: Well, what's before us
3 is the appeal of the Zoning Administrator's
4 decision to let it go. So, that's the only thing
5 that's in front of us now.

6 Whether or not the property is being
7 used for church allowable within the purview of the
8 church program and purposes within the Act.

9 So, and let me ask, no, no, stay at your
10 mic, if you would just -- could you provide us what
11 the issue is directly that this Board needs to rule
12 on?

13 MS. GLAZER: As I see it, the issue is
14 whether these activities that are happening at the
15 church property are an inherent aspect of the
16 matter of right church use or whether they are
17 something that is not an inherent part of the church
18 use but rather a church program. And in that case,
19 they would require a special exception approval.

20 The issue is church versus church
21 program.

22 CHAIR JORDAN: And let me -- well, I

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1 just laid out what I believe is the legal issues
2 and the situation here.

3 However, this is one in which we have
4 zoning regulations on it as Mr. Hinkle talked
5 about, Section 215 of the zoning regulations I
6 think are clear and whether or not there's going
7 to be a possible challenge on any decision we do,
8 that's not for us to deal with here.

9 And I think if we're going to deal with
10 it, then I kind of laid out the argument for -- where
11 a challenge can be. But it's also if we rule
12 against the -- if we ruled in favor of the
13 applicant, then it does not stop the church from
14 having the ability to apply to this Board for a
15 special exception to receive the proper -- to
16 receive special exception to move forward.

17 And so with that, I would -- and hearing
18 the arguments you made, certainly very convincing,
19 Mr. Hinkle, and in light of the zoning regulations,
20 I believe that we should overrule the decision of
21 the Zoning Administrator and find that the church
22 needs to receive a special exception for the mere

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1 fact that -- solely in the mere fact that our zoning
2 regs has a requirement in there over 15 people, and
3 the testimony that was given by the church said that
4 they had 30 people.

5 So, it's not a question of everybody
6 being necessarily a church program, but the housing
7 of residents of groups of people are clearly
8 specified in our zoning regulations 15 and over --
9 over 15 requires a special exception. Is that your
10 reading also, Mr. Hinkle?

11 MR. HINKLE: Well, in addition or as an
12 alternate, there's also Section 216 which deals
13 with specifically church programs within the R-1
14 District.

15 CHAIR JORDAN: Yes.

16 MR. HINKLE: So, I mean it's certainly
17 up to -- it would be up to the church to decide what
18 appropriate special exception is.

19 CHAIR JORDAN: Yes, and I think the
20 testimony you got was given and I don't know what
21 was before the Zoning Administrator, but the Zoning
22 Administrator may not have had before him the fact

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1 of the testimony that there was 30 people residing
2 at the property.

3 And it's clear from 215, I'm not as
4 guided by 216 because I think we're really getting
5 to a whole bally wax in dealing with church programs
6 and ministers. I really just think that's
7 something that kind of strikes me a little
8 differently.

9 But under 215, because the testimony we
10 got here was that it's, you know, at least 30 people
11 and, like I said, I don't think the Zoning
12 Administrator had that before him.

13 So, anybody want to make a motion?

14 MR. HINKLE: It's a motion to?

15 CHAIR JORDAN: A motion to overrule the
16 decision of the Zoning Administrator, is that what
17 you B

18 MR. HINKLE: Correct. There you go.

19 CHAIR JORDAN: If someone wants to
20 second?

21 MS. HEATH: Second.

22 CHAIR JORDAN: Motion made and

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1 seconded to overrule the Zoning Administrator
2 regarding the ability of the church to house -- to
3 have a residency program there of more than 15
4 people without a special exception.

5 Any additional discussion?

6 All those in favor of the motion, aye?

7 (CHORUS OF AYES)

8 CHAIR JORDAN: Opposed, nay?

9 Mr. Moy, the motion carries.

10 SECRETARY MOY: Yes, and before I could
11 file the vote by Ms. Marci Cohen, it will be
12 consistent, so that would give a final vote of 5-0.
13 This is on the motion of Mr. Hinkle, second by Ms.
14 Heath. Also in support, Chairman Jordan and Vice
15 Chairperson and of course, Ms. Cohen. So, that
16 will be 5-0, sir.

17 CHAIR JORDAN: All right. Thank you.

18 UNKNOWN PARTICIPANT: Mr. Chairman?

19 CHAIR JORDAN: I can't have discussion
20 with you at all.

21 UNKNOWN PARTICIPANT: I just want to
22 know if I can ask you a question.

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1 CHAIR JORDAN: Not at all.

2 UNKNOWN PARTICIPANT: That's fine.

3 CHAIR JORDAN: Sorry, but thanking you
4 for coming, but no, you can't.

5 And certainly there's avenues for the
6 church to receive the ability to go forward by
7 filing for a special exception and things like
8 that. So, there's ways around it.

9 Okay, Mr. Moy, let's go to -- where are
10 we, 57?

11 SECRETARY MOY: Yes, the last decision
12 case before the Board, Mr. Chairman, this is, as
13 you'll recall, DCRA's motion to hold the Board's
14 decision in abeyance.

15 This is to appeal Number 18857 of the
16 Advisory Neighborhood Commission's 3D. And, of
17 course, you will recall, this is to the appealing
18 the decision by DCRA to issue a Building Permit
19 Number FD, as in Foxtrot Delta, 1400058 allowing
20 the construction of a two story parking garage for
21 the American University at 4400 Massachusetts
22 Avenue, NW.

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1 CHAIR JORDAN: All right. We have
2 before us -- did you announce that? Because that
3 wasn't -- I was being a little B

4 SECRETARY MOY: I just now did.

5 CHAIR JORDAN: -- about the motion to
6 stay?

7 SECRETARY MOY: Yes, I did.

8 CHAIR JORDAN: So, the Board we have
9 before us a motion to stay this proceeding. The
10 motion to stay has been filed by DCRA and supported
11 by the American University on this because they B

12 Also pending at the same time is an
13 application for modification to the Zoning
14 Commission which this all arises out of Zoning
15 Commission activity that they are given the
16 opportunity to have the Zoning Commission rule on
17 this.

18 The Zoning Commission actually, I
19 think, may have already had the first phase
20 hearing.

21 VICE CHAIR ALLEN: It was on the
22 Consent Calendar and then removed for a hearing in

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1 February.

2 CHAIR JORDAN: So, we -- it's on the
3 exact same issue that's before this Board and this
4 is a recent case. I think there is time enough that
5 we need to defer on this particular item to the
6 Zoning Commission. It's the same issue that's set
7 for February so there is a time and date certain.

8 It's not -- so I would be supportive of
9 granting a stay.

10 Anyone else?

11 VICE CHAIR ALLEN: Second.

12 CHAIR JORDAN: I didn't move it, but
13 I'll move it. I move -- no, we're going to do it
14 this way, Vice Chair Allen just moved it by
15 seconding it, but she moved it and I'll second it.

16 Any other discussion? All those in
17 favor of the motion, aye?

18 (CHORUS OF AYES)

19 CHAIR JORDAN: Those opposed, nay?
20 The motion carries. Mr. Moy?

21 SECRETARY MOY: Yes, sir. Before I
22 read the final vote, there is a absentee ballot from

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1 another participant who is Mr. Anthony Hood and his
2 decision is in concurrence with the motion, so the
3 resulting vote would be 4-0, one Member not
4 participating and this on the motion of Vice
5 Chairperson Allen, seconded by Chairman Jordan.
6 Also in support Ms. Heath and Mr. Hinkle and, of
7 course, the absentee vote of Mr. Hood. That's 4-0.

8 CHAIR JORDAN: Okay. Okay, so that's
9 that.

10 Where are we? Are we still doing
11 meeting cases this morning? Oh, we lost one today,
12 right. One got withdrawn.

13 (Whereupon, the meeting went off the
14 record at 10:30 a.m.)
15
16
17
18