

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JULY 21, 2015

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
MARNIQUE Y. HEATH, Vice-Chairperson
JEFFREY L. HINKLE, Board Member

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD W. MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN MORDFIN
JOHN NYARKU
ELISE VITALE
BRANDICE ELLIOTTE
ANNE FOTHERGILL

The transcript constitutes the minutes from the Public Hearing held on July 21, 2015.

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TABLE OF CONTENTS

Application No. 19046 of Kamyar Khodabandeh for special exception, not meeting side yard requirements and non-conforming structure requirements to retain a previously-constructed second story addition to existing detached one-family dwelling at 1511 28th Street, S.E.	3
Application No. 19051 of Richard Gbolahan for variance from lot area width requirements to allow construction of a new three-story, one-family dwelling at 1609 Levis Street, N.E.	6
Application No. 19052 of Joshua Green for special exception not meeting lot occupancy requirements to construct a deck with staircase to an existing one-family dwelling at 2905 28th Street, N.W.	9
Application No. 19035 of 1325 D Street, LLC from lot occupancy requirements to construct 30 one-family attached and semi-detached dwellings and flats at premises 1325 D Street, S.E.	13
Appeal of Caesar Junker, et al, Case No. 19049 from October 12, 2014 decisions by the Zoning Administrator and DCRA to issue building permit at 1351 Wisconsin Avenue, N.W.	30
Appeal of Michael Cushman, Case No. 19047 from March 10, 2014 decision by Zoning Administrator and DCRA to issue Certificate of Occupancy for premises at 20 14th Street, N.E.	52
Application 18967 of Buddhist Congregational Church of America for special exception to construct a second floor addition to an existing church at premises 5401 16th Street, N.W.	99

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

10:00 a.m.

CHAIRMAN JORDAN: Thank you. All right. Let's do 19046. Is that okay with you Board?

SECRETARY MOY: Okay. That would be Application No. 19046. This is the application of Kamyar Khodobandeh, I'm not sure if I'm pronouncing that name correctly, Mr. Chairman. This is a request for special exception relief under Section 223. Again, applicants to the table to Application No. 19046. This is property located at 1511 28th Street, S.E.

CHAIRMAN JORDAN: Okay. And that's Case 19046. Good morning, would you introduce yourself?

MR. BELLO: Good morning, Mr. Chair and Board Members. Toye Bello representing the owner of the property.

CHAIRMAN JORDAN: Mr. Bello, on this case the Office of Planning recommends the relief from 405.1 side yard. Do you want to amend to accept that or do you think it's--

MR. BELLO: I'm not going to argue. That's fine.

CHAIRMAN JORDAN: So you've been here before huh?

MR. BELLO: Yes sir.

CHAIRMAN JORDAN: Got it. Okay. So we'll put an amended release for relief under 223. I don't think there's any questions that I have regarding relief other than adding the additional relief requested from OP on this matter. I

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think the file sufficiently supports the relief. I don't know if the Board has anything they need to drill on or hear from this applicant. Okay.

Well, you know, customarily how we proceed here you have the right to present a case if you want to and jump out here and take that risk and say the wrong thing and lose the support you have, or we can proceed on with the hearing.

MR. BELLO: I'll shut up.

CHAIRMAN JORDAN: All right. Then let's move to the Office of Planning and see if there's anything in addition the Office of Planning would like to add to the report.

MS. BROWN-ROBERTS: Good morning, Mr. Chairman and Members of the Board. Maxine Brown-Roberts from the Office of Planning. I would stand on the record regarding this application and also I'm glad to hear that the applicant also agreed us with on the second side yard so we recommend approval. Thanks.

CHAIRMAN JORDAN: Very good. Board, any questions of Office of Planning? The applicant, any questions of Office of Planning?

MR. BELLO: No sir.

CHAIRMAN JORDAN: Anyone here from the Department of Transportation? We do have a letter of no objection received from the Department of Transportation. I don't have anything

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from ANC-7B, did you present to ANC-7B?

MR. KHODABANDEH: We didn't get the opportunity to because they couldn't fit us into their schedule.

CHAIRMAN JORDAN: But you made a request and you spoke to--

MR. KHODABANDEH: We certainly did.

CHAIRMAN JORDAN: Okay. Is there anyone here from ANC-7B on this case? Anyone here from ANC-7B for this case? Okay. Then we'll take the applicant's representation that there was outreach to the ANC and could not get scheduled.

We do have at least six letters of support from neighbors on this property. Is there anyone here wishing to speak in support of this application? Anyone in support? Anyone in opposition? Anyone in opposition?

Well we'd normally turn back to the applicant for any rebuttal but there's nothing to rebut so we will close this hearing based upon the record that we have and I would move that we grant the relief or 19046 on the amended relief.

MR. BELLO: Thank you.

VICE-CHAIRPERSON HEATH: Second.

CHAIRMAN JORDAN: We've got to wait for the vote. You might lose. All right. Motion made and second. Additional discussion? All those in favor, aye. Those opposed nay?

{VOTE TAKEN}

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The motion carries. Mr. Moy?

SECRETARY MOY: Thank you. Staff would record the vote as 4-0. This on a motion by Chairman Jordan to approve the amended relief, seconded by Vice-Chairperson Heath. Also in support Mr. Miller and Mr. Hinkle. Board Member not present. Motion carries, sir.

CHAIRMAN JORDAN: Summary please.

SECRETARY MOY: Thank you.

CHAIRMAN JORDAN: Now?

MR. BELLO: Thank you.

CHAIRMAN JORDAN: All right. Have a good day. Thank you. Mr. Moy, let's do 19051 please.

SECRETARY MOY: All right. Applicants to the table to Application No. 19051. This is the application of Richard Gbolahan. This is, Mr. Chairman, a request for variance relief on the lot area and lot width at 1609 Levis Street, N.E.

CHAIRMAN JORDAN: Okay. I'm concerned about this ANC though. Let's see where we are. Would you please introduce yourselves, make sure your microphone is on, make sure there's a bright glowing green light.

MR. CHIDOZIE: My name is Dominic Chidozie. I'm the occupant of the project.

CHAIRMAN JORDAN: Yes. Go ahead.

MR. GBOLAHAN: My name is Richard Gbolahan. I'm the

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owner of the lot.

CHAIRMAN JORDAN: And have the two of you given your witness cards to the court reporter? Okay. Let's give them to the court reporter please.

I don't know if you've had the chance to see Office of Planning's report but they recommend that you also include relief from lot width and so, if you wish, we can add that. You can make an oral motion for amending that and then subsequently file the follow-up documentation. Would that be what your wishes are?

MR. CHIDOZIE: Yes. I think we have included the lot width.

CHAIRMAN JORDAN: Okay. Well I don't think you do.

MR. CHIDOZIE: 1.33 feet.

CHAIRMAN JORDAN: All right. I think you do. Okay. So I think we're okay. Thank you. Let me ask you, did you do a presentation or meet with the ANC-5D?

MR. CHIDOZIE: We did and they have no objection but they needed some extra time to look at the entire project.

CHAIRMAN JORDAN: When did you meet with them and when did you have a discussion?

MR. CHIDOZIE: We met with them on the 14th of July. It was about a week ago.

CHAIRMAN JORDAN: About a week ago? All right. And

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then also you've late on your affidavit of posting. I'm going to do this. I'm going to continue this case. I would recommended we continue this case for a couple of reasons. One, you didn't post timely. We would have normally let that go and just giving the ANC a short time to react to this is just not a good thing. And well the 14th, that's a week ago, right? Oh no, no, no.

I would suggest to the Board that we roll this and we can do it with your permission or without your permission, either way. Otherwise, I don't think this Board is comfortable with moving on this although it's pretty simple, but it's very important that you give the ANC time enough to react in a great enough time so that the community can weigh in.

If the ANC had been involved in this process we might have let you go forward because you were just two days short on the posting but I just don't think we-- unless somebody else has a concern about that? Okay.

So let's make that the order then, Mr. Moy. When we can do this?

SECRETARY MOY: According to the calendar, Mr, Chairman, Mr. Miller is sitting with the Board on October 20th so I don't know if you want to go that far into the--

CHAIRMAN JORDAN: Yes, anybody can-- this case can be

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picked up by anyone.

SECRETARY MOY: Okay. All right. Well in that case, let's see--

CHAIRMAN JORDAN: I think it's a short case although I'm not trying to load up any particular docket.

SECRETARY MOY: All right. So we're looking at September, Mr. Chairman, and I would suggest September 22nd.

CHAIRMAN JORDAN: Okay. We'll place this on the docket for September 22nd. You need to reach back out to the ANC and ensure that you contact the neighbors, get a new sign, re-post it for that date and make sure you dot the i's and cross the t's that you're supposed to. Okay?

MR. CHIDOZIE: Thank you, very much.

CHAIRMAN JORDAN: That's the 22nd, Mr. Moy? September 22nd?

SECRETARY MOY: That's correct, sir.

CHAIRMAN JORDAN: September 22nd is the date. All right. Let's call 19052 please.

SECRETARY MOY: All right. To the table applicants to Application No. 19052. This is the application of Josh Green, special exception under 223, not meeting lot occupancy requirements at 2905 28th Street, N.W.

CHAIRMAN JORDAN: Good morning. Would you please identify yourselves for us? Make sure your microphone is

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bright green.

MR. RADIFERA: Good morning. My name is Bertin Radifera, I'm the architect for my client, Joshua Green.

MR. GREEN: I'm Joshua Green the property owner.

MR. WILLIAMS: Scott Williams and I'm an architect working with Bertin.

CHAIRMAN JORDAN: All right. When was this posted?

MR. GREEN: It was posted last Monday. Eight days. And as you'll see we filed a motion to waive the requirement of posting based on the fact that the ANC met twice in June, on June 1st and June 15th, to consider this matter and we also notified all the neighbors within a 200-foot radius and I have statements of support from my direct neighbors.

CHAIRMAN JORDAN: The ANC has submitted a letter in support, and did you receive any letters from the neighbors?

MR. GREEN: Yes. I have two emails from them which were considered by the ANC which are in support of the project.

CHAIRMAN JORDAN: We don't have it in our record, do we? I don't think we do. Do you have those with you?

MR. GREEN: I do have copies of those.

CHAIRMAN JORDAN: Let me see those please because you're right at the borderline of going forward or not, so let's see that. And a relief is so simple, that's the other aspect of it, that it shouldn't have any impact. Please give those

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to Mr. Moy. Thank you.

MR. GREEN: And those are the two houses on either side of my property.

CHAIRMAN JORDAN: Okay. Show it to Mr. Miller. Okay. All right. I think we can accept the waiver.

MR. GREEN: Thank you.

CHAIRMAN JORDAN: We'll grant you a waiver regarding that since you have presented to the ANC, you have a letter of support from the ANC both your neighbors and the relief is relatively light. I don't have any questions or anything we need to hear from you on this. I think the record supports the request for relief, unless the Board members have some questions and they need to hear from you.

All right. So as you heard in an earlier case, you have the opportunity to continue to present testimony if you want or you can allow us to proceed on.

MR. GREEN: Please proceed.

CHAIRMAN JORDAN: Okay. Then we'll turn to the Office of Planning to see if there's input from the Office of Planning.

MS. VITALE: Good morning, Mr. Chair and Members of the Board. The Office of Planning will rest on the record in support of the requested relief. We can answer any questions.

CHAIRMAN JORDAN: Thank you. Board, any questions of Office of Planning? The applicant, any question of Office

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of Planning? Anyone here from the Department of Transportation on this case? We do have a letter of no objection to the relief from the Department of Transportation.

Is there anyone here from ANC-3C on this case? ANC-3C? We have a letter of support from ANC-3C to which we will give great weight in supporting your requested relief.

Is there anyone here wishing to speak in support? Anyone in support? Let's do this. Mr. Moy, I want to accept those. You have copies of those emails, correct?

SECRETARY MOY: Yes.

CHAIRMAN JORDAN: All right. Let's add to those to the exhibits for the record.

SECRETARY MOY: That would be Exhibit 30.

CHAIRMAN JORDAN: Okay. All right. Anyone here wishing to speak in opposition? Anyone in opposition? Then we'll close the record in this case and I move that we grant the relief requested in 19052.

MEMBER HINKLE: Second.

CHAIRMAN JORDAN: Any discussion? All those in favor of the motion, aye? Those opposed, nay?

{VOTE TAKEN}

The motion carries. Mr. Moy?

SECRETARY MOY: Thank you. The staff would record the vote as 4-0. This on the motion of Chairman Jordan to approve

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the relief as requested. Seconding the motion, Mr. Hinkle, and also in support Mr. Miller and Vice-Chairperson Heath. Board member not present. Motion carries, sir.

CHAIRMAN JORDAN: Thank you. Summary order.

SECRETARY MOY: Thank you.

CHAIRMAN JORDAN: All right. Let's do 19035. Right? Is that where we are? Yes, 19035.

SECRETARY MOY: All right. Applicants to the table. Application Case No. 19035. This is the application at 1325 D Street. Mr. Chairman, this is a request for multi variance relief as well as special exception relief from lot width requirements and this has publicly advertised at property 1325 D Street, S.E.

I believe also, and perhaps applicant can provide some clarity, that it's been revised for the number of dwelling units to 34 I believe.

CHAIRMAN JORDAN: Okay. Please identify yourselves.

MS. SHIKER: Good morning, Chairman and Members of the Board. My name is Christine Shiker with the law firm of Holland & Knight representing the applicant.

MR. DETTMAN: Good morning, Mr. Chairman and Members of the Board. My name is Shane Dettman with the law firm Holland & Knight.

MS. DAVIDSON: Good morning, Chairman and Members of

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the Board. My name is Sara Davidson, I'm the applicant, I'm with the Insight Property Group LLC.

MS. ANTOVA: Good morning, Mr. Chairman and Members of the Board. My name is Mila Antova and I'm the landscape architect on the project.

MR. WALTERS: Good morning. My name is Maurice Walters, I'm the architect for the project.

MS. SHIKER: We also have Ryan Brannan from Bowman Consulting, the civil engineer, in case there are questions relating to engineering issues.

CHAIRMAN JORDAN: Now, Mr. Moy, you indicated there's some change in relief. Ms. Shiker, is there some change in relief?

MS. SHIKER: There was a clarification filed. There is no additional relief. We reduced the scope of relief within the same four areas that have been advertised. Previously, we had had areas of relief on what were previously known as Lots 1 through 8 fronting D Street. Those lots have been combined and created into Lots 1, 3, 5 and 7. We no longer need any relief for those four lots, they are fully compliant, both lot area and lot occupancy.

CHAIRMAN JORDAN: So you don't need relief from 403 regarding that?

MS. SHIKER: No, we do not.

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CHAIRMAN JORDAN: Okay.

MS. SHIKER: We do still have lot area and lot occupancy relief for Lot 9 which is fronting on D Street, and we still have the special exception relief and we still have the relief for multiple structures on Lots of 10 through 20.

CHAIRMAN JORDAN: Okay. You did ask for the special exception relief for the IZ provision? Yes, I got you. All right.

MS. SHIKER: That's correct.

CHAIRMAN JORDAN: All right. I think we understand the project pretty well. I don't know if the Board has any questions that they need to hear. I think the record stands on its face regarding the test I think we were there from my standpoint but the Board certainly has questions and let's do it that way instead of having an overall understanding of the project. Board, questions please? Mr. Miller?

ZC MEMBER MILLER: Thank you, Mr. Chairman. Yes, I would agree but I have -- I mean I think this is generally a good project that will have 34 units of residential development and comply with inclusionary zoning.

I would like the applicant at some point that's appropriate to address both the Office of Planning's statement on page 10, the last paragraph, where they state, and I guess they can do it in rebuttal to the Office of Planning's report

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and that might be the most appropriate time, where OP states that while they're recommending approval, there are improvements that the applicants should consider as they refine their plans; since one of the applicant's goals is to establish compelling (inaudible) OP would support adjusting the layout and number of the D Street lots to allow for the mews to maintain a consistent width and create open sight lines straight through from E to D Street.

Then they go on further in that paragraph, the applicant should attempt to use pervious pavement wherever possible. And while the District can't require the applicants to retain the large canopy tree at the southern end of the site which shades both this site and the adjacent DPR sites, they say it's also worth reconsideration of the site layout to see if it is possible to retain and protect the tree.

So I just wanted the applicant at some point that's appropriate to address--

CHAIRMAN JORDAN: This is the time.

ZC MEMBER MILLER: --OP's suggested improvements.

MS. DAVIDSON: Yes, I'm happy to do that. Let's start with the center one first, the pervious paving. The project will comply in all respects with the pervious paving requirement of R-4. The site does have some unique soil conditions so to the extent that additional pervious paving

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cannot be provided, our team and civil engineer are working closely with DDOE to construct some unique storm water management systems to provide and capture as much of the storm water as possible. So we certainly are complying with this request to include the most pervious paving that we can and to have unique environmental considerations for the storm water management.

With respect to the first question, the Mews, what we're calling Buchanan Walk, is a really special place in this development. It's something that is characteristic of the Capitol Hill neighborhood. It will have an entry and then you go into a series of nodes as you go through the site. It is not intended to be a linear walkway. If a pedestrian wants a straight and narrow walkway they have 13th Street, they have 14th Street, there's in fact an alley that cuts through the square.

This is supposed to be a continuation of these mews that go through onto the north through Kentucky Court, and I'd ask Mr. Walters to go ahead and pull up that slide that shows how this is a continuation of these special mews areas. Do you know which one I'm talking about Maurice? There we go.

CHAIRMAN JORDAN: Just one second please. Mr. Moy, can we have the lights just a bit please? Okay.

MS. DAVIDSON: So you see how to the north there are

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these special areas that come down through the Kentucky Court and then it comes down and it goes through these nodes through the center of the project. It brings a special landscape architecture in a pedestrian scale to the Buchanan school building that is a very important architectural resource on the site.

It also allows in what we're calling in Gettler's Way which will come in from 13th Street when there will be a large green park. So we respectfully disagree with the Office of Planning's request to make this more straight and narrow because the design intent, and Mila can answer more questions about it, our landscape architect. The design intent was to make this something unique and special but not a straight linear passageway. So that responds to the first question, And again we can follow up with some more from Mila in a moment.

And then with respect to the -- well excuse me Board Member Miller, if you'd like to further talk about this while the lights are off I can--

ZC MEMBER MILLER: Well, yes. So that pedestrian walkway to the north does go from street to street though, right?

MS. DAVIDSON: That is correct.

ZC MEMBER MILLER: And I guess that's what they were suggesting, that it go from street to street.

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MS. DAVIDSON: And I think that we have provided examples in our plan packet that show a variety of precedent examples that go to the feeling that the landscape design was trying to evoke here and again not just a straight cut through. It was supposed to be something a bit more special.

ZC MEMBER MILLER: And if it was to go all the way to the what's that street to the north? If it were to go all the way to the street, how many units would you lose?

MS. DAVIDSON: It does go all the way through from D Street to E Street.

ZC MEMBER MILLER: Oh it does?

MS. DAVIDSON: It would be continuous. What the Office of Planning, my understanding of what they were requesting was that we widen it to make it straight and linear.

ZC MEMBER MILLER: I see.

MS. DAVIDSON: It does go, you can walk all the way now--

ZC MEMBER MILLER: I now see it.

MS. DAVIDSON: --further to the north.

ZC MEMBER MILLER: I didn't see that previously. Okay.

CHAIRMAN JORDAN: So this is just a design discretion and it doesn't impact the zoning relief does it?

MS. DAVIDSON: That is correct.

CHAIRMAN JORDAN: And it has no effect upon the

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community itself? It's self-contained in the property, is that correct?

MS. DAVIDSON: It is self-contained but it will be open to the community and we've reviewed it with the ANC who are very excited about it as well.

ZC MEMBER MILLER: Right. I didn't realize it went all the way to the street so I think that satisfies my concern about that one.

MS. DAVIDSON: Thank you. And then to the third question which is with respect to the tree on the site, there is a tree on the site that will have to be removed and that has been something that has been looked at. The tree does not relate to any of the relief that we're requesting from the Board of Zoning Adjustment and the applicant intends to and has already started the process of fully complying with the D.C. law provisions on tree removal.

This issue was one that was brought up through the ANC and our team has worked closely with the community, with stakeholders, with landscape architect and arborist as well as Casey Trees to come up with a very robust tree mitigation plan for the removal of this tree. It is very detailed but I can point out a couple of things for you. One, we're going to be putting a significant number of canopy trees on the site and we're going to be putting them in larger caliper-inch sizes

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to start with, 4.5 inches to 5 inches instead of usually the 2 to 3 inches, to help with the canopy.

The applicant intends to reuse the wood from the tree that will be taken down and create landscape furnishings to put throughout the site. The applicant will also be working with Casey Trees and the community to have community outreach and efforts for additional tree planting in the neighborhood.

This was presented to the ANC, it was discussed and the ANC felt comfortable that we were addressing the issues with the tree removal with kind of the robust tree mitigation plan and at that point they had voted unanimously to support it with the tree removal.

But we will fully comply with all the laws relating to the tree which do provide for the tree to come out.

ZC MEMBER MILLER: Thank you. And thank you, Mr. Chair.

CHAIRMAN JORDAN: Let's have the lights back on please. Okay. Board, any additional questions that you may have of the applicant on this? The Capitol Hill Restoration Association had some concerns. Can you just reply to their concerns in this?

MS. DAVIDSON: Absolutely. So our team has worked closely with the Capitol Hill Restoration Society having presented to the project three times to them and having worked

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with very positive discussions. And our most recent email correspondence, before we got the most recent letter, was that they are overall very supportive of the project. We do have an email to that effect.

But I believe that this objection with the lot area on Lot 9 is a bit more form over substance. I think that in their letter they state that the D Street portion of the site is easily divisible into six lots. As you know, we have four compliant lots and one lot for which we're seeking relief so we're certainly not easily divisible into six lots. Even to get five lots we need a slight bit of relief on the one lot.

There are solutions where we could devise a long tail along Lots 1, 3, 5 and 7 to get enough lot area for that 190 extra square feet we need, but it creates a very bad site plan. It doesn't result in a better site and it has the same configuration. It just results in a lot of cross easements and tax assessment issues. And we believe that the practical difficulty standard has been established, I mean going to the fact that this lot area would result in at least six lots and we can only get five lots in there. It is deep, it is constrained in terms of our street frontage. We have difficult access considerations.

And so to the point that we don't meet the practical difficulty standard I do believe that there is sufficient

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practical difficulties and again I will remind the Board that, you know, in that land area you could go to you know it's 6.4 lot, so six lots, and we certainly aren't trying to overcrowd the land area. We're trying to create lots that make sense, that provide the best site plan with the limited street frontage.

CHAIRMAN JORDAN: Board, any additional questions? You know it gets down to for me a design issue and I think there's substantial support that this certainly presents an exceptional situation and there's some difficulties with it. And I just wanted to hear your response. I'd already thought about it's a design issue and how you try and reconfigure this land and I don't think that's just impactful. Board, any other questions of this applicant? Okay. We'll turn now to the Office of Planning.

MS. FOTHERGILL: Good morning. For the record, I'm Anne Fothergill with the D.C. Office of Planning and the Office of Planning rests on the record in support of the request for relief.

CHAIRMAN JORDAN: Board, any questions of Office of Planning? Does the applicant have any questions of Office of Planning?

MS. SHIKER: We do not.

CHAIRMAN JORDAN: Is there anyone here from the

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Department of Transportation on this case? We do have a letter in support from the Department of Transportation. Is there anyone here from ANC-6B? ANC-6B? We do have a letter from ANC-6B in support of this application to which we will give great weight.

Is there anyone here wishing to testify in support of the application? Anyone in support? Anyone in opposition? Please, come forward. Give it to Mr. Moy, please. And make sure they have a copy. Okay. Make sure your microphone is turned on and would you introduced yourself first please.

MS. CASE: Yes, I'm Mary Case. C-a-s-e. I live at 1243 E Street, S.E., Washington, D.C. I'm glad the slide is on.

CHAIRMAN JORDAN: Yes, let me give you one second just to make sure we're-- you have three minutes to address the Board please.

MS. CASE: I'm sorry to be presenting this morning late to the party. I understand the competing goals of a need for speed and the ANC folks that have already been taken.

I submit that perhaps a small change to the plan, taking a wider view into consideration will lead to an extraordinary benefit to both the developer and the surrounding community.

There is a tree, a magnificent willow oak, at the center of this property. A tree featured by Lady Bird Johnson when

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she redesigned this property in the 1960s as part of her Capital Beautification Program.

As we've heard, this tree is slated to be pulled down. I know the Insight Property Group realizes the value of this tree and they've made efforts to compensate for its destruction. Also, abutting the IPG property is an underdeveloped DPR/DGS property occupied by one of Washington's best community resources, Peter Bug Shoe Repair Academy, run for many years by Mr. John Matthews, aka Peter Bug.

I'm proposing that IPG, DPR and GPS constitute a public/private partnership working with Mr. Matthews and other neighborhood leaders to save the tree and develop the DPR/DGS property. Saving the tree and creating a park integrated with the proposed 80 new homes obviously enhances the environmental benefit and the stability of the homes.

One way to save the tree is to move the six mews houses currently scheduled to go where the tree now stands to the southern end of 13th Street near E. This would constitute a property swap. This would allow the center of the property to be designed into a park space turning the under developed portions into something the entire community could be proud of, something up to the standard of the new IPG town houses and condos.

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I realize that inserting this new idea at this moment in the process isn't easy. I'm asking each of you to dig deep, to consider something hard and deeply beneficial to my neighborhood. At 17 percent Ward 6 has the lowest tree count in this city. I ask that my government and IPG, this very good development firm, join me and other neighbors and build not just a good place but participate in place-making for the generations. A place that will be a model for the city and for the nation. To see something in this neighborhood that Mrs. Johnson saw in the same willow oak more than 60 years ago.

I ask for approval for the zoning, excepting for the six town houses closest to where the tree is standing, until we can call the relevant parties together. Thank you for your time.

CHAIRMAN JORDAN: Where is the tree on the property in regard to the development?

MS. CASE: I'll show you here on the map.

CHAIRMAN JORDAN: You can use the wireless microphone. Mr. Moy, the wireless microphone please.

MS. CASE: The tree is right here.

CHAIRMAN JORDAN: All right. Okay.

MS. CASE: And the tree's canopy spreads all the way around here. It's an enormous beautiful unbelievably magnificent tree.

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CHAIRMAN JORDAN: All right. Thank you. You can take your seat please.

MS. CASE: Just let me say one more thing. What I'm proposing is to take these houses here and put them here on the corner of this property which is managed by the D.C. government.

CHAIRMAN JORDAN: Which is managed or owned by the D.C. government?

MS. CASE: Yes.

CHAIRMAN JORDAN: Anybody else in opposition? Anyone else in opposition? And let's turn back to the applicant for rebuttal and, if you would, just address the issue that was raised by Ms. Case please.

MS. DAVIDSON: Absolutely. Thank you. As I stated earlier, we were aware of this issue. Ms. Case had brought her concerns to the ANC, we had been working with the community. Ms. Case, we only directly heard from her yesterday for the first time but we were aware of these concerns and had worked very closely with the stakeholders on this issue as I stated earlier. We did receive word of this idea yesterday.

The site that Ms. Case is referring to is actually held in title by the United States government. It was a transfer jurisdiction in 1967 to the D.C. for recreation purposes. The community has a lot of interest in that site and what

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happens to it and certainly this disposition hadn't been discussed. But again we believe that the removal of the tree is fully compliant with D.C. law and it is not related to the areas of relief that we're requesting and so that's how we would respond. Thank you.

CHAIRMAN JORDAN: And that land is parkland? The one that's controlled by D.C. government?

MS. DAVIDSON: It's federally owned and it was given a transfer jurisdiction for recreation purposes to District in 1967.

CHAIRMAN JORDAN: All right. Board, anything else you want to say in rebuttal? Board, anything else in rebuttal? Okay. All right. Then let's close the hearing based upon the record that we have. Is the Board ready to deliberate on this case?

I believe the record is sufficient and the evidence produced here at the hearing is sufficient to grant the amended relief requested in this case. So I'd be ready to support it. Anyone else? There's not been anything presented to the Board showing this development would have a substantial impact. I think there is a question or concern raised about this one tree. However, the applicant has offered alternative measures where they're going to do some not one-for-one replacement but some other landscaping that would support

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having a tree-lined and well landscaped area.

So with that I would move that we grant the relief requested in this case.

ZC MEMBER MILLER: Second.

CHAIRMAN JORDAN: Motion made and second. Additional discussion? All those in favor aye? Those opposed nay?

{VOTE TAKEN}

The motion carries. Mr. Moy?

SECRETARY MOY: Staff would record the vote as 4-0. This is on the motion of Chairman Jordan to approve the amended relief requested. Seconding the motion Mr. Robert Miller. Also in support Vice-Chairperson Heath, Mr. Hinkle, and we have a Board member not present. Motion carries 4-0, Mr. Chairman.

CHAIRMAN JORDAN: All right. So we can do a summary order please.

SECRETARY MOY: Yes.

CHAIRMAN JORDAN: And we're going to take a 5-minute break and then we will come back with um I think we're going to come back with 19049. Five minutes, that's all. Five minutes. We're keeping it tight.

(A BRIEF RECESS WAS TAKEN)

CHAIRMAN JORDAN: Appeal No. 19049.

SECRETARY MOY: Appeal No. 19049. This is the appeal of Caesar Junker, et al. This is a property located at 1351

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Wisconsin Avenue, N.W. There are preliminary matters, Mr. Chairman. There is a motion by the appellant to waive the 60-day time deadline for filing as well as two motions to dismiss the appeal as untimely from the property owner and the appellee.

CHAIRMAN JORDAN: Certainly. All right. Thank you. Please identify yourself starting with right to left. You know how to use that. It's just reluctant, huh? No, I turned you off. Now you can go. My fault. I'm wrong. Okay.

MR. TONDRO: Good morning, Mr. Chair, and members of the Board. My name is Maximilian Tondro representing DCRA and the Zoning Administrator.

MR. LEGRANT: Good morning, members of the Board. Matt LeGrant, the Zoning Administrator/DCRA.

MR. BELL: My name is Robert Bell.

MR. SULLIVAN: Good morning. Marty Sullivan here on behalf of the property owner.

MR. GALAGHER: Bill Gallagher, neighbor.

MR. MOLDER: Christian Molder, neighbor.

MR. JUNKER: Caesar Junker, neighbor and appellant.

CHAIRMAN JORDAN: Okay. Who's the appellant? We're only going to have one person speaking so you need to determine who's going to speak for the appellant.

MR. JUNKER: I am. Caesar Junker.

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CHAIRMAN JORDAN: Okay. So everyone else needs to communicate their issues or concerns to Mr. Junker is it? All right. Very good.

We have before the Board in this case an appeal. There's two motions before the Board. One is for a motion to dismiss, well there's actually a combined motion to dismiss on this property by the property owner and DCRA alleging that the appeal was not filed timely. Then we have a request to waive the time-lines 3112, well we have a request to find that there is an exceptional situation/condition why the appeal was filed late.

I would rather go ahead and start with the motion to dismiss from whoever's going to argue first, I guess the property owner can do so. As I said, I think the property owners are always the real party and interest in these and I guess at some point we will get in to where we will recognize as a District that we shouldn't be spending District money and defending private property interests in regards to that as a real party of interest. In most other jurisdictions the property owner has the responsibility of coming forward in these type of cases.

So I think we understand to some extent, Mr. Sullivan, the motion to dismiss but there's a couple of things. So let me ask right off the bat before I let you get to your argument.

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When you say that this property is under-roof, what was under-roof and what do you mean by that?

MR. SULLIVAN: Well again of course we're not relying on that principally because it was way past the 60-day deadline but--

CHAIRMAN JORDAN: Mr. Sullivan, stay with me on that. I understand.

MR. SULLIVAN: Okay.

CHAIRMAN JORDAN: So you and I are on the same page. But I want to get to some things I think are really, really relevant that we can point our fingers at.

MR. SULLIVAN: Okay. I think I'll have the property owner explain what was under-roof.

CHAIRMAN JORDAN: Yes. And I think say it was under-roof -- and let me give you a date here. You had things under-roof on--

MR. SULLIVAN: April 16th.

CHAIRMAN JORDAN: April 16, 2015. Yes. Where were we on April 16, 2015 regarding this property?

MR. JUNKER: We had installed the waterproofing roof and we had the windows installed.

CHAIRMAN JORDAN: The roof was completely installed by August 16th?

MR. JUNKER: Not completely because there's still

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little parts to be done.

CHAIRMAN JORDAN: What do you call parts to be done?

MR. JUNKER: The garage which is still under construction. It's just a small portion of the property.

CHAIRMAN JORDAN: I guess you don't have a diagram you can show me what was what? Show us what was--

MR. JUNKER: No, we don't.

CHAIRMAN JORDAN: Was the main roof in place?

MR. JUNKER: Yes, the main roof was in place.

CHAIRMAN JORDAN: And the part that was not in place? If you just submit it, Mr. Tondro, I'll come back to you and you can add in. So the garage was not completely under-roof but the main structure was under roof.

MR. JUNKER: Yes. Yes, that's 90 percent of the project probably.

CHAIRMAN JORDAN: All right. Got that. And Mr, Sullivan, then you want to -- I know you're looking for a diagram but I can take that. And let's talk about the 60-day issue. I think we're good on your deadline dates, what you had in there. You're claiming that the building permit of December 2014 is the date you're trying to run the clock from? Is that correct or not?

MR. SULLIVAN: I would argue October but just to be safe let's say--

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CHAIRMAN JORDAN: Let's give five minutes on this.

MR. SULLIVAN: Sure. Sure. Thank you. Just to be safe and then we don't have any ambiguity about it I'll say December 10th is our date. That's the building permit date, we know that for a fact. We also know that the appeal was filed on May 12th, five months later. It's been established that the appellants had knowledge, had intimate knowledge of the application and the permit plans as far back as May 2014, a year before they filed the appeal. And that they had hired zoning counsel at that point as well.

Construction began immediately after the permit was issued in December of 2014 and therefore the clock began to run and the appeal was filed five months later.

Regarding an exceptional situation, the language is that there has to be an exceptional situation that prevented the appellant from filing the appeal.

They're claiming that an April 10th memo, which was four months after the building permit date and two months after the 60-day deadline had already run, has prevented them from-- actually, they're not even making that argument. That's the argument they would have to make is that there was something that prevented them from filing the appeal within the 60-day deadline, and they haven't even presented that argument in my opinion.

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Finally, I would just reiterate that the 60 days is a balancing between the interests of the appellant and the interests of the permit holder. It's not just the time period to give the appellant the time to get their act together; it's also an outside date to give the permit holder some assurance that they can continue to spend significant money in the construction.

CHAIRMAN JORDAN: Let me ask you. What was on the building permit? What did the building permit allow?

MR. JUNKER: It allowed the addition of a second story, basically a--

CHAIRMAN JORDAN: Do we have that because I don't think I saw it in the evidence? So do we have it somewhere?

MR. SULLIVAN: I didn't submit the building permit.

CHAIRMAN JORDAN: Got it. I don't think anybody did.

MR. JUNKER: It allowed to extend the front of the building--

CHAIRMAN JORDAN: Do you have a copy of it?

MR. JUNKER: Of the building permit?

CHAIRMAN JORDAN: Yes. Mr. Tondro, would you give it to Mr. Moy please. Thank you. You know, in these cases where building permits come in question, and we have another case following up and again the building permit was not submitted in that case either. Thank you. Just give me a second please.

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SECRETARY MOY: We do have it. Exhibit 11.

CHAIRMAN JORDAN: Exhibit 11?

SECRETARY MOY: Yes.

CHAIRMAN JORDAN: Okay. Got it. Thank you. All right. Anything else you need to raise, Mr. Sullivan before I go to Mr. Tondro?

MR. SULLIVAN: No, thank you.

CHAIRMAN JORDAN: Okay. Mr. Tondro, do you want to add anything to this?

MR. TONDRO: Yes, just briefly to reiterate the fact that the April 10th memo or letter to the Board by the Zoning Administrator was not a new determination. It was not something that changed anything. It was a clarification on how it was that the Zoning Administrator calculated FAR but it did not change anything. It was not a new decision.

Therefore the appellants, they had already raised issues or concerns about the project and specifically FAR, as we've already heard from Mr. Sullivan, all the way back from the previous year in May and as a result there's no reason that this should give them an opportunity to reopen an appeal of a process that had already -- that they had already sat on their rights for. Thank you.

CHAIRMAN JORDAN: When did construction start on this property?

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MR. SULLIVAN: Actual construction started August 1st. There's a series of interior permit which were issued to allow the restoration of the front of the building, etc. This specific permit--

CHAIRMAN JORDAN: August 14, 2014?

MR. SULLIVAN: Yes.

CHAIRMAN JORDAN: Okay.

MR. SULLIVAN: Those were other permits and the permit that was issued in December was the one that allowed the addition to the second floor and the garage.

CHAIRMAN JORDAN: So when did that construction begin from the December 10th?

MR. SULLIVAN: December 10th, I mean as the ground work was already established.

CHAIRMAN JORDAN: And you worked consistently through?

MR. SULLIVAN: Absolutely.

CHAIRMAN JORDAN: Okay. Then let's turn to the appellant and ask to respond to the motion to dismiss first and also, at the same time, make the argument regarding why there was a hindrance to your ability to file an appeal timely.

MR. JUNKER: Thank you, Mr. Chairman. The appellants are four local resident homeowners with five properties adjacent to the permitted construction at 1351

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Wisconsin Avenue. They are not represented by an attorney, as Mr. Bell suggests, nor are any of them practicing attorneys. The appellants followed the process--

CHAIRMAN JORDAN: But they had retained an attorney. Didn't you have Andrea Ferster as counsel at some point during this?

MR. JUNKER: Initially, we asked her to try to mediate a process of I'll say reconciliation. This was almost a year ago. Once we realized how much it was going to cost, we terminated that relationship.

CHAIRMAN JORDAN: And when was she terminated?

MR. JUNKER: Um, we probably stopped consulting her towards the end of the year. I don't have the exact date but I would say some time, you know, towards the end of 2014.

CHAIRMAN JORDAN: Okay. All right. Thank you.

MR. JUNKER: Okay. The appellants followed the process and directions provided by DCRA to stop construction but DCRA failed to follow its own regulations. This exceptional circumstance and the new facts uncovered during the April 2014 zoning hearing of Case 18884 are what impaired the appellants' ability to file.

The appellants will prove that they acted with the utmost diligence and without delay given the extraordinary circumstances. These circumstances are a direct result of the

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misleading practice of the developer, Mr. Bell.

Furthermore, we contend that it was not just a simple error by DCRA but instead several prejudices that were displayed towards the development of this property.

So we'll start with trying to create a time-line of why we feel that we should have this exceptional circumstance. So during the months of May, June and July of 2014, the appellants sent four letters and emails to DCRA advising the Zoning Administrator that the permit under consideration was not a matter of right and requested that the meetings with the Zoning Administrator Kathleen Beaton and Matt LeGrant. And I have Exhibits A and B dated May 5th and June 23rd of 2014.

I don't know if you want me to pass it up there right now.

So all of these emails and letters went unanswered and that's why there was one after another after another after another.

CHAIRMAN JORDAN: But during this period, May and June, you did have counsel, correct?

MR. JUNKER: Correct.

CHAIRMAN JORDAN: And I think we had this case before us before because, based upon your representations, we denied some relief, so this is not a project that just kind of snuck in on you, right?

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MR. JUNKER: I'm sorry?

CHAIRMAN JORDAN: You've been here before in opposition to the appellant's relief and I think this Board denied some relief requested by the appellant previously. Is that correct?

MR. JUNKER: Case 18884 is the one that we--

CHAIRMAN JORDAN: Okay,

MR. JUNKER: And that was this year so we hadn't had the knowledge at that point but, yes, you're correct.

CHAIRMAN JORDAN: Let me ask you. You heard the property owner and DCRA state that this property, except for the garage, was under-roof. You got an opinion about that?

MR. JUNKER: I have witnesses. I was going to ask, I have two witnesses and photographs of the property and what was under-roof and what wasn't. So I can address that now of I can keep going.

CHAIRMAN JORDAN: Address it now.

MR. JUNKER: Okay. I'd like to call a witness, Christian Mulder, who has photographs and the actual architectural drawings, copies of the architectural drawings. So Mr. Mulder, would you--

MR. MULDER: I mean we-- there is indeed a roof on the main building but the roof is 2-feet too high. So we contend that the roof is illegal.

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CHAIRMAN JORDAN: So there was a roof but you're saying it was too high?

MR. MULDER: There is a new roof. They built a new roof but it's 2-feet too high according to the--

CHAIRMAN JORDAN: Okay. I don't need to hear the argument about the roof being too high.

MR. JUNKER: That was the second question I'd like to ask Mr. Mulder. Is the roof on the entire structure? There's actually the commercial structure and the residential structure. There's what they call a home office that is in the rear. Does that have a roof on it? Right now does it have a roof and do you have a photograph of that?

MR. MULDER: That doesn't have a roof on it.

MR. JUNKER: Can you please show that to the Chairman.

CHAIRMAN JORDAN: Thank you. What are you appealing? What's the basis of-- give those to Mr. Moy please.

MR. JUNKER: So they were stating that it was not under-roof.

CHAIRMAN JORDAN: No, what's the basis of your appeal? If we go past this point, what's the basis of the appeal?

MR. JUNKER: Oh, the basis of the appeal is that FAR calculations, the project was over-built by over 1,000 square feet and that is our biggest contention with the project. So we believe that the permit was issued in error which is where

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we started and it was not until, as Mr. LeGrant and counsel stated earlier that that was made evident.

CHAIRMAN JORDAN: Okay. All right. Anything else you want to talk about on the motion to dismiss? Anybody? Go ahead please.

MR. JUNKER: And I can speed it up but essentially I do want to say that the permit, well let me just state these dates. On October 16, 2014, the appellants met with Zone Mack zoning technician who confirmed that the Zoning Administrator had received information and would contact appellants prior to the permit being issued.

She also stated that she thought the appellants' concerns were valid but it was up to the Zoning Administrator.

On November 3rd, so this is after this October 22nd date that they said was in the permit tracking system, the appellants met with Ademola Shutu, zoning technician at DCRA, who stated that the FAR calculations seemed incorrectly calculated and that it was under review by the Zoning Administrator. The permit tracking states that on October 3rd--

CHAIRMAN JORDAN: What did the zoning technician tell you?

MR. JUNKER: He said that it was under review.

CHAIRMAN JORDAN: That he thought it was an error in

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what?

MR. JUNKER: He said he thought that our calculations were correct but he could not comment on it.

CHAIRMAN JORDAN: Your calculations as to what? What were you--

MR. JUNKER: There's a relief I guess that's--

CHAIRMAN JORDAN: Are you talking about the FAR calculation, lot occupancy calculation or what?

MR. JUNKER: FAR calculation.

CHAIRMAN JORDAN: Okay.

MR. JUNKER: So 672 square feet x 2.5, it shouldn't been multiplied by 2.5.

CHAIRMAN JORDAN: We went through this dance I think in the previous case. We have 50 different calculations from different-- and I'm exaggerating but we had at least three different sets of calculations. Proceed.

MR. JUNKER: Okay. So the permit that was issued on December 10th I'm going to read you. You have it up there, I'll just read you the last few lines which says, "Remove durastone cover covering masonry facade and restore stucco. Restore theater sign and kiosk. Extend existing roof to rear of building. Remodel rear garage. New masonry wall in north rear of property."

So the appellants presumed that the permit language was

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correct. The existing roof is or was 2-stories and that was to be extended to the rear, as the permit states, not a 3-story structure. In either case the current structure does not conform to this language since the existing roof was also raised in the rear. So the issue there is that the permit stating the structure roof is supposed to be extended to the rear--

CHAIRMAN JORDAN: Excuse me one second. I'm trying to your read your exhibit. Just let me catch up on that exhibit. I'm sorry. One second. Ah, there it is. How could I miss that? The only thing it said was building permit. Give me a second. I'm waiting for it to open. It's saying it's coming. Okay. Finally opened here. Well if that didn't take long enough. All right. Please continue.

MR. JUNKER: Yes. On February 20th 2015, Mr. Bell starts work on the exterior of the C2a building. Appellants under the impression that he has no permit, call for stop work order. And you can see the photos of the new work and building February 23rd and this was one of many phone calls placed to DCRA. This is just an email that was sent. Just for purposes of what you're looking at, it's a photograph of the rear of the building that doesn't have a second story on it and this is when there's a board -- call it a beam -- that's extruding from the actual building.

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CHAIRMAN JORDAN: And what is that again?

MR. JUNKER: This is a photograph--

CHAIRMAN JORDAN: This one? Is this what you're talking about? This one?

MR. JUNKER: No, this is a different photograph. This is a photograph earlier in the month of February that just--

CHAIRMAN JORDAN: February 2014?

MR. JUNKER: 2015.

CHAIRMAN JORDAN: 2015. Okay.

MR. JUNKER: And it's trying to show that the appellants, this was the first time that we were like okay he's actually proceeding on work on the actual exterior of the building. Up until that point he hadn't shown us that he was doing anything on the exterior of the building.

So on March 3rd there was a request for a stop order and it was referred to Rohan Reid, program analysis and enforcement officer. DCRA states that they would investigate but the appellant must file an appeal. So this was the first time that we said that--

CHAIRMAN JORDAN: You said March 3rd?

MR. JUNKER: Excuse me?

CHAIRMAN JORDAN: March 3rd?

MR. JUNKER: March 3rd. It was the first time that we had notice that we should file an appeal. He states that

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the deadline has passed. He does not inform us that the appellants can take advantage of a special exception. I have the email here and I can read it to you.

CHAIRMAN JORDAN: What do you mean who can take what special exception?

MR. JUNKER: So Rohan Reid wrote to us when we said that hey they're working on this building and we believe that this is not permitted work that they're doing. He said that well he'd investigate it further but there was a permit that was issued on December 10th. And of course we're waiting for this meeting from the Zoning Administrator because we sent these emails and we were supposed to get a meeting and supposed to get some sort of discussion. But nothing ever happened. So we're sitting here waiting.

Instead, what happens is we start seeing the building, you know, a part of the exterior building being built. We call for a stop work order. It's referred to Rohan Reid and he states to us that the permit was issued on, and you can see our email states that it was issued on December 10th and you have to appeal it. And he gives us the language that the deadline was missed. But he doesn't give us, he doesn't state in this email Section 3112.2d permits the Board to extend the appeal deadline if there are exceptional circumstances outside of the appellant's control that could not have been reasonably

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anticipated that substantially impaired the appellant's ability to file an appeal to the Board and extension does not punish the parties.

CHAIRMAN JORDAN: Okay. I got you and I don't think I need to -- unless the Board has any other questions or anything else you want to add to that? Because I think the record's pretty clear here. Any rebuttal on this? We went beyond the time and so you're claiming that your exceptional situation condition is that you weren't properly advised to some extent by some of the zoning staff as to what the next avenue of pursuit was?

MR. JUNKER: No. Our contention that we went to them both before the permit was issued and after the permit was issued and we said this is a permit that does not follow the regulations. Can someone please-- And what they tell us that the Zoning Administrator has already made a ruling.

So we're sitting here going well we don't have anything to-- we don't have any grounds for an appeal because the rules are clear, you know, these calculations are very hard to make. So it's not until during the hearing here on April 10th with Matt LeGrant, and I have the letter here, that he issues as he stated as clarification of his position which states that the FAR calculations were incorrect. And I'll just read you the one line. It just says--

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CHAIRMAN JORDAN: I read that and I think we have that in the record, the email, the memorandum.

MR. JUNKER: We thought it was a permit for a 2-story.

CHAIRMAN JORDAN: I got you.

MR. JUNKER: And instead it ends up being a 3-story and it's not until April that he stops working on the -- and just one more photograph just so you see. This is a photograph of the actual building right now and if you see, this is the 3rd story that's under-roof, everything else is under construction. It's just a big hollow structure. So he raced to go and get the roof on the C2a portion of the thing. Didn't do anything with the garage, he just did the top portion.

CHAIRMAN JORDAN: Okay. All right. So this is what I'm going to suggest on this for the Board so we can deal with this motion to dismiss and exceptional situation circumstances.

One, I think there has not been a rebuttal to the fact that the property owner has testified that this property was substantially under-roof on April, what's the date? Is it April 16th? Was substantially under-roof on April 16, 2015. There's a couple of issues. One, there's just two motions actually based upon one to dismiss this. One is that it was under-roof with a 10-day clause and the other is the general appeal process of 60 days. And I think the appellant fails

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on both and that the motions be granted on both.

But particularly the strongest provision would be that under-roof under 10 days, even by the appellant's own testimony they saw this building going up. But I don't think we even have discretion for an under-roof motion to dismiss under 3112; 3112.2d provides for exceptional situation and conditions for the 60-day time-line. This section Regulation 3112 does not provide such an exception for the 10-day under-roof and it's very clear in the regulation that it's provided for the 60-day relief and not the 10-day. It didn't say any provision under this can be circumvented by showing of exceptional circumstances. If you look at 3112.2d it applies to the 60-day.

The same type of relief is not for a 10-day and I think I understand because now we have a question about some part of latitude and equitable situation if someone is actually under-roof and that by the time you're putting a roof on a place, somebody should have seen something.

So I think the motion to be granted can be granted solely upon that but also take into consideration the 60 days. I don't think there's been exceptional circumstances or a situation under the 60-day provision because this is one property that I know that the appellants have followed almost from day one. You've been in front of this Board several times on this

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property and, as you know, this Board denied relief that the owner was looking for because we're not jumping up and down about this property, but the rules are the rules.

I think you knew as well as December 3, 2014, even before that permit was issued, that there was an issue which you're now alleging with the calculations. This Board has gone back and forth reviewing calculations several times.

You've gone through several different aspects with people at DCRA on this property and you knew as recently as March 3, 2015, by your own admission, that there was a problem, that the permit had been issued and that you could do something and that the DCRA even told you that I think you're late. But you waited until May 7th even to file that appeal.

You had lawyers representing you early on even until the latter part of 2014 when this other permit was issued. I think the permit is pretty clear the type of work that was going on there. It would be my recommendation to the Board that we have two bases to sustain the motion to dismiss that are both independent of each other. One, I don't think we even have an exceptional ability to go around, that's the first one that was under-roof for ten days.

Your pictures even showed-- I think your March 3rd picture shows that something was happening and it looks like the structure was going on, which we didn't have until you

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presented that to us.

And then the second aspect, I think the 60-day exceptional circumstances is not sufficient to withstand a motion to dismiss. So that would be my motion that we grant the motion to dismiss both (1) on the 10-day requirement, the 10 day bar that the property is under-roof and alternatively that the exceptional circumstances for the 60-day provision wasn't met. So that's two bases, that would be my motion. Anyone going to second?

MR. JUNKER: Can I ask a question?

CHAIRMAN JORDAN: You can't at this point.

VICE-CHAIRPERSON HEATH: I'll second the motion.

CHAIRMAN JORDAN: Motion made and second. Let's now discuss the motion. Anyone? Any discussion? Yes?

MEMBER HINKLE: Yes, I was just going to say I think you were pretty thorough in your analysis and I tend to agree with that. I think there's two bases here to dismiss the appeal for timeliness.

CHAIRMAN JORDAN: Any other discussion? All those in favor of the motion signify by aye. Those opposed, nay.

[VOTE TAKEN]

The motion carries. Mr. Moy?

SECRETARY MOY: Staff would record a result of 4-0 on the motion of Chairman Jordan to grant the motion to dismiss

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on timeliness. Seconding the motion, Vice-Chairperson Heath. Also in support Mr. Hinkle and Mr. Miller. We have a Board member not present. Motion carries 4-0, sir.

CHAIRMAN JORDAN: And that would be the order. Thank you. All right. Let's deal with 19047 and we're going to excuse Vice Chair Heath who has to leave by 11:15 and I don't think we can start another case before that. But thank you for coming in really to help us. You came in even though you needed to do some things. We're taxing enough on people's times and not take away their employment and when your boss says you've got to do, you need to do. Unless you just want to be really seriously committed and waive your job. No? We thank you and appreciate it.

SECRETARY MOY: Which one are we doing now? The appeal? Okay. Then let's do 19047. Parties to Appeal No. 19047 of Michael Cushman.

CHAIRMAN JORDAN: All right. Would you please introduce yourselves starting with you, Mr. Tondro.

MR. TONDRO: Good morning, Mr. Chairman and member of the Board. My name is Maximilian Tondro representing DCRA and the Zoning Administrator.

MR. LEGRANT: Good morning. Matthew LeGrant, Zoning Administrator DCRA.

MR. TAHERI: Good morning, Mr. Chair and members of

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the Board. My name is Ramin Taheri. I'm the owner of the property.

CHAIRMAN JORDAN: Last name again?

MR. TAHERI: Last name Taheri T-a-h-e-r-i owner of the property in question.

MR. CUSHMAN: Michael Cushman. I'm the appellant. I live at 1364 East Capitol street, 40 feet from the property.

MS. SEGAL: Good morning, Mr. Chairman and members of the Board. I am Sheryl Segal. I live at 1366 East Capitol Street catty-corner from the property in question.

CHAIRMAN JORDAN: Okay. And I think we have before the Board again a motion to dismiss. First, did I miss somewhere in the filing the building permit in this case? Is it there? What's the exhibit number?

MR. TAHERI: It's in there. It's Exhibit No. 13. My initial filing didn't have all the exhibit numbers listed and I've given a revised one with the exhibit numbers as footnotes.

CHAIRMAN JORDAN: Just give me a second please. Exhibit 13 is a building permit or Exhibit 11? What case is this? This is 19047, I'm on the wrong case. Okay. One second please. So let's take five minutes from the property owner why the motion to dismiss should be granted.

MR. TAHERI: Thank you, Mr. Chairman. I filed a

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motion to dismiss essentially on two grounds. First is lack of timeliness and then the second I made some allusion to the merits of the case and I'm happy to discuss my position there in more detail.

But let me first address the basis for the motion to dismiss. The appellant in this case has been aware of this property apparently for a couple of years. He was aware that the building permits were issued. He has lodged complaints with DCRA and the Office of Planning several times. I have been in constant contact with DCRA and the Office of Planning.

At no time did appellant seek to initiate an appeal, not until after all of the construction was done, not until after I obtained a Certificate of Occupancy and not until after I obtained lease agreements. So it's my position that to look at this now and to consider appellant's arguments would just be fundamentally unfair given that he was well aware of the construction. We took our time, it took a long time. He was well aware. He made his opinions known. He took no action to initiate an appeal.

And I just want to reiterate the fact that from day one I have proceeded in good faith. I didn't make a single alteration to the property without first going to DCRA, meeting with the Historic staff, meeting with the Zoning staff, putting my plans on there, getting the appropriate building permits.

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And then since that time, based on Mr. Cushman's complaints to the Office of Planning and DCRA, I've worked closely with the Office of Planning. They've asked me to make some changes. I made those changes. In every way possible I have endeavored to do the right thing here. And that is up to and including the Certificate of Occupancy.

And I think the last case is instructive in that the basis for appellant's appeal here is his disagreement with any change being made to the property. And that is the building permit. That was the time to make that complaint and he missed that time.

And if you look at the last case, allowing those appellants to then come in after the building owner completes construction and gets a Certificate of Occupancy, to then get another bite at the apple based just on a Certificate of Occupancy, again is just fundamentally unfair to the building owner. I mean there are questions of timeliness here that go to the underlying purposes of filing deadlines and statutes of limitations.

And that fairness is designed to protect someone in my position who has expended a considerable amount of time and energy all again in good faith to revitalize this property and put it into use, all the while cooperating to the fullest extent possible and not expecting there to be now an action taken

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against me. And I would just--

CHAIRMAN JORDAN: When was the appeal filed?

MR. TAHERI: I believe it was somewhere around May 10th, 15th, something like that. May 6th I think is the date on the--

CHAIRMAN JORDAN: May 6th?

MR. TAHERI: Yes. Mr. Tondro just gave me a copy of the appellant's appeal form, May 6th.

CHAIRMAN JORDAN: May 6th. And when was the building permit issued?

MR. TAHERI: Well, the appeal was filed May 6, 2015, the building permit was issued on May 16, 2014, so it was a year late.

CHAIRMAN JORDAN: Okay. When did you start construction?

MR. TAHERI: The end of May. May 30th. I think in my motion and my fax I have the specific date. May 30th was the first day that we began and on that day--

CHAIRMAN JORDAN: 2014?

MR. TAHERI: May 30, 2014 is when we began construction. And then on that day, to my knowledge the appellant complained to the Office of Planning and we got a stop work order which was immediately lifted that day and since that day on--

CHAIRMAN JORDAN: So there was a stop work order issued

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when?

MR. TAHERI: On May 30, 2014.

CHAIRMAN JORDAN: Let me go back. So the appellant made a request for a stop work order, made a complaint to DCRA when?

MR. TAHERI: May 30, 2014.

CHAIRMAN JORDAN: And a stop work order was issued that same day?

MR. TAHERI: Yes.

CHAIRMAN JORDAN: And when was the stop work order issued?

MR. TAHERI: It was issued May 30, 2014. I spoke with--

CHAIRMAN JORDAN: And when was it lifted?

MR. TAHERI: That same day.

CHAIRMAN JORDAN: Okay.

MR. TAHERI: And so to reiterate, the essence of the motion to dismiss on the grounds of timeliness is that to consider this appeal now, a year after construction started, a year after the building permits were issued and after everything's been completed, Certificate of Occupancy has been issued, leases have been undertaken, would be just fundamentally unfair to my interests and would cause me--

CHAIRMAN JORDAN: That's a whole different argument

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that we're going to use. You can bring that up when we get to the case-in-chief. Mr. Tondro, on the motion to dismiss, your aspect on it please?

MR. TONDRO: I would fully support what the property owner has indicated. Again, I think this is an issue where if the C of O was substantially different than the building permit, then there would be something that they might be able to appeal, but in this particular case the underlying use is already stated in the building permit and the C of O just merely reiterates that.

CHAIRMAN JORDAN: Yes. Please?

ZC MEMBER MILLER: So to either the property owner or to DCRA, the building permit in terms of the rear of the area, to the rear of the garage, it says lay permeable pavers in area behind garage, whereas the Certificate of Occupancy talks about the open parking spaces. Where is there evidence in the record that the appellant knew that you were going to lease out four parking spaces on the surface behind the garages and is that area in fact permeable currently?

MR. TAHERI: Yes, it is the permeable pavers. I would offer two things. Firstly, when we went in and wanted to pave that rear portion for parking, it was always obvious that it was for parking. I don't know why it doesn't say it in the building permit. That might have been an oversight, it was

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not intentional on my part and I doubt it was intentional on the part of DCRA. But there's no other use that I can conceive of for this paved area that we had always intended to serve as parking.

And then one thing is I did include as an appendix to my motion to dismiss, one of my many interactions over email with the Office of Planning, where I called it a paved parking pad. And this individual at the Office of Planning was in frequent and constant contact with the appellant so there's just no reasonable way to assume that the appellant didn't think that this was for parking.

CHAIRMAN JORDAN: Well that's subjective.

MR. TAHERI: That is my--

CHAIRMAN JORDAN: In your conversations with the Office of Planning he's not necessarily versed in that, like Mr. Miller has pointed out. And here's the issue that I'm having. I understand your appeal was based on grounds. You're saying that the garages are improper and shouldn't be issued and you're also claiming separately that the parking spaces are improper. Is that correct?

MR. CUSHMAN: There are actually three things and I didn't know the third reason to appeal until last Thursday I finally got notice from the Zoning Administrator's office.

CHAIRMAN JORDAN: That one's out the window. That's

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out the window. If it's not in your appeal we're already fighting trying to keep the ones you've got. We're not allowing you to add anything.

MR. CUSHMAN: That's fine. But in my appeal, the argument is that this is not an accessory use. Additionally, the building permit was issued in error and the Certificate of Occupancy requires that the building permit be valid and properly issued before the Certificate of Occupancy can be issued.

This is the first Certificate of Occupancy ever issued for this property.

CHAIRMAN JORDAN: I want you to talk about the motion to dismiss.

MR. CUSHMAN: The motion to dismiss. Every indication I had gotten previously, and again Rohan Reid, well two years ago, HPRB had a concept presented before them by a limited liability corporation to raise and put a parking pad on it.

I researched that and found that this in fact was the original building. They denied the raised parking permit and it became a contributing structure. Contributing structures, under--

CHAIRMAN JORDAN: I'm asking you to talk about the motion to dismiss regarding the timeliness, not your argument

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in chief if you'd like.

MR. CUSHMAN: The timeliness is the first indication that I had that this was going to be used for parking was the present of Zip Car parking signs behind the building. Prior to that I'd been in contact for over a year with Rohan Reid and Kathleen Beaton of the Zoning Administrator's Office and had reported to them that this appeared that there were problems with the building permit. And they told me that--

CHAIRMAN JORDAN: What did you say you talked to them, you said to them it appeared what?

MR. CUSHMAN: They wrote back to me. I contacted Richard Nero. Okay. In June 2014, a building permit was issued to renovate the garage and put permeable pavers and a gate on the open area behind the garage. No parking was referenced on the building plans and no--

CHAIRMAN JORDAN: What did you think the pavers were supposed to be for?

MR. CUSHMAN: I thought they might be used for parking so I immediately contacted Richard Nero to begin an appeal process, but was counseled that discussing issues with the Zoning Administrator's Office might resolve the issue more easily.

CHAIRMAN JORDAN: So when did you make that contact with Nero?

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MR. CUSHMAN: That would be in June 2014. And then I was in contact with Kathleen Beaton and that would be Exhibit 3. Sorry, Exhibit 2 is my letter to Kathleen Beaton and she refers it to Rohan Reid. And Rohan Reid says the documents do not show a reference parking on the open space and was not approved for parking lot use on the open space. A parking lot use in an R-4 district would require relief from the BZA. Okay?

And then I write back saying, as you've pointed out, any attempt to use the open space for parking would be treated as a new use parking lot and an alley lot and it is not a grandfathered use. If the open space is used for parking, I will notify your office for enforcement proceedings.

CHAIRMAN JORDAN: And when was that?

MR. CUSHMAN: That would have been in June 2014.

CHAIRMAN JORDAN: And whose letter is that?

MR. CUSHMAN: That is a letter from the Zoning Administration office staff Rohan Reid to me, copy to Kathleen Beaton. And that would be Exhibit 4.

CHAIRMAN JORDAN: Okay. Because you had raised the issue that you thought that it was--

MR. CUSHMAN: That it looked like it was going to be used for parking and that wasn't approved use.

CHAIRMAN JORDAN: That the pavers was actually looking

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like they were going to have a parking space there?

MR. CUSHMAN: Yes. I don't mind permeable pavers but I do mind parking. I don't want to look at four cars parked behind my house.

So I thought I was protected by Zoning Administration staff having ruled--

CHAIRMAN JORDAN: Have we got that letter? What Exhibit is it?

MR. CUSHMAN: Exhibit 3 is his response to me. Exhibit 2 would be the first notification to Kathleen Beaton I believe and that was June 12, 2014. I had been trying to do things properly to preserve my rights to appeal. I had seen too many of these things go south on a 60-day time limit. But the first notice I had that there was going to be parking was when the signs showed up.

CHAIRMAN JORDAN: Okay. Where does it say that he said he was going to let you know if it was going to be used for a parking space?

MR. CUSHMAN: He didn't say he was going to let me know. He said if it gets used for parking, give me a call to begin an enforcement proceeding, that it isn't approved for parking lot use. You can't park back there is my interpretation because it would require a special exception for parking lot on an alley lot.

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CHAIRMAN JORDAN: He said all that?

MR. CUSHMAN: Yes.

CHAIRMAN JORDAN: In this memo? I don't know if I'm looking at the right memo.

MR. CUSHMAN: Exhibit 3.

CHAIRMAN JORDAN: Yes, I'm looking at it. It says the parking lot use in R4 required relief from the Boarding of Zoning Adjustment. Okay.

MR. CUSHMAN: Right. Which would require that the property was posted and I'd have notification and I'd be able to file my appeal then and be timely.

CHAIRMAN JORDAN: Okay. So then what happened?

MR. CUSHMAN: So I'm saying okay well I'll be notified if they're going to start parking back there, if they're going to try and turn it into a parking lot again. So I just sort of put it aside and said okay we're good. The garages are okay but nobody's going to be parking four cars on open space.

So the construction is completed and my stop work orders were due to HBO should have listed that. It was named a contributing structure and exceptional review should have been taken.

CHAIRMAN JORDAN: When was the appeal filed again? The appeal file was May 6th?

MR. CUSHMAN: May 5th or 6th. I mean it was within the

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60 days. I believe it was 60 days of the C of O being issued.

CHAIRMAN JORDAN: So when you sent the letter April 3rd, what did you get back from DCRA?

MR. CUSHMAN: April 3, 2015? I had a succession of letters to April 3rd with--

CHAIRMAN JORDAN: You actually got a letter April 10th that said okay thank you, we'll get back with you.

MR. CUSHMAN: Yes and then a week later, well the third thanks for reporting this, we'll get back to you. Then a week later I get something, two weeks later I was told Matt LeGrant's out of town and they'll respond. And then I get the determination that the Zoning Administrator is familiar with the C of O and it determined that a private garage at a private--

CHAIRMAN JORDAN: I think I'm okay and I think there's two issues here. One, I think that the motion to dismiss should be granted regarding the seven parking garages. I think that's very clear from the building permit and etc. But the building permit did not say anything about these parking spaces.

I thought though that you took that away from yourself as you kept talking back in June of 2014 when you contacted DCRA and said to them that this area is paved, this area looks like it's going to be parking spaces and DCRA told you to process. And then you went back and forth with them up to April

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10th and you really did not have notice that this was parking spaces until the C of O was issued.

So I think you would be foreclosed in any further discussion appealing the seven parking garages but I think to the contrary you are still in the ball park regarding the parking spaces. Any other thought or you think that--

ZC MEMBER MILLER: I would agree, Mr. Chairman. I think that just based on what I've read so far and heard so far I think the appellant was trying to find out what the process was to appeal those parking spaces and he was informed by DCRA that first of all it wasn't even in the building permit. There is a difference between the building permit and the C of O and it wasn't -- I've forgotten my train of thought.

CHAIRMAN JORDAN: But let me say this for the record. I want to be sure we're real clear. It's not your correspondence or your discussion with DCRA that lacks basis because a person takes at their own risk of having those discussions while the time frame is running. That's not the basis. You'd only get an extension of the time frame by the fact that you're having conversations with DCRA because a law is a law and someone is supposed to do it.

However, I don't see where you had a record of a definitive decision by the Zoning Administrator that this is being used as a parking space until the C of O was issued. So

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that's the basis on which I'm talking about. Okay. So do we need to vote on -- where are you Mr. Hinkle on it?

MEMBER HINKLE: No, I see that. I mean I'm looking at the C of O now and some of the other correspondence and I tend to agree with both of you on those issue.

CHAIRMAN JORDAN: So by consensus we would agree, Mr. Moy, that the motion to dismiss is granted the seven garages. However, the motion to dismiss is denied regarding the parking spaces. There's four parking spaces, is it? The parking spaces.

So now let's get into the discussion on the parking spaces. I think you can go ahead and take 10 minutes to discuss that please.

MR. CUSHMAN: There are a couple of things that relate to this and I have submissions I'd like to have put into the work. The ownership references my long history of taking exception to having parking back there.

On April 8, 2011 the property was sold for the first time to an entity known as Leo MCMLXIX Holdings whose mailing address is 154 Venetian Bay Circle, Sanford, Florida. The purchase price was \$98,000 dollars. On March 21, 2014, that entity of 154 Venetian Bay Circle of Sanford, Florida sold the alley lot to R&R Holdings, the current owner of the lot whose mailing address is also 154 Venetian Bay Circle, Sanford,

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Florida. So it's hard to know whether this was an arm's length transaction.

CHAIRMAN JORDAN: I think you need to get to your point about why you believe the Zoning Administrator erred in regards to Certificates of Occupancy for these parking spaces.

MR. CUSHMAN: Okay. The assertion last Thursday in the response to the appeal was that these were accessory parking spaces. The Zoning definitions clearly define the uses for garages and parking spaces, namely parking for motor vehicles and that's in-- A parking space is an off-street area accessible and of appropriate dimensions to be used exclusively for the temporary parking of a motor vehicle. A car-sharing space is a parking space that's designated for the parking of a car-sharing vehicle. Garage parking is used for the parking of motor vehicles. Garage private used for the parking of one or more motor vehicles.

It seems that an accessory use is supposed to be a subordinate use, or an accessory use, to the principal use of the property. The principal use of this property is parking, either in garages or in a parking lot, because a parking lot is defined as a tract of land that is used exclusively for parking where the use is not accessory or something else.

So I'm making an argument that parking can't be an accessory use to parking. That the only distinguishing

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characteristic there is whether it's in a garage or on open space. There are special exceptions listed in the Zoning Regs that list parking on an alley lot, either a parking garage on an alley lot or a parking lot on an alley lot.

In my correspondence with the Zoning Administrator's office I'd been asked to detail my questions that I wanted answered. I am searching for an answer. I've been searching for an answer for this for quite a while and it's not clear in the Zoning Regulations of what exactly holds here. But the use of this was granted as accessory parking spaces. The C of O also requires that your building permit, and I would like the Zoning folks to actually look at this because there are other lots in Ward 6 where you have parking garages, you have a lot of open alley lots and what are the rules that should govern those?

When you look at car-sharing, car-sharing is a use that is named specifically in the Zoning Regulations because the car-sharing space would not be an accessory space for a business. It would be a parking space of a particular purpose. If you look at what the Zoning Regulations give on location of parking spaces, they say that they are for the use while owners or guests are at their business during the principal use.

A car-sharing space absolutely people come to car

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sharing space to pick up a car. They don't come to car sharing space to visit the car that's parked in a parking garage. So there's some inconsistency on how car sharing should be, whether it can be an accessory use on an alley lot to a parking garage.

The regulations also require that a C of O be issued in conformance to properly issued building permits. The building permit that was originally issued for this referenced the house lot not the alley lot. It mentions alley lot but it gives the lot number as 99 not 810. It doesn't mention any parking spaces.

The building plans that are associated with that do not show parking spaces as they're supposed to by 3202, chapter and verse is probably 11 something or 8 something so it's not a properly issued building permit, the building plans are deficient. So the C of O should be able to be denied under that basis as well.

But the only rationale that I've heard presented for matter of right use is an accessory parking space. And it doesn't match a clear reading. When you look at the Zip Car or the car-sharing regulations, it is a use agenda R-1 as a matter of right on an unimproved lot. In an R-2 I believe you can have two cars but anything over two must be under cover or in a structure. So having four cars would certainly be

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inappropriate use of that space for car sharing.

In the Zoning definitions and the Zoning Regulations, there are repeated places where the intensity of use changes your definition. If you've got two tenements in a house, it's okay; if you get three, all of a sudden you're a tenement house. Three units, small type unit dwelling. So the C of O was issued as private parking garages, seven. And it's not seven, it's one structure. It's got shared electricity. Up until the time the doors were removed it had barn doors that all slid on the same shared track. There's one electrical service that provides electricity to the entire unit. It's a multi-bay garage and I think that some guidance on how to read the garage square footage I think that should be interpreted as an intensity of use. It says the--

CHAIRMAN JORDAN: We're not arguing anything about the garage. We're talking about the parking spaces.

MR. CUSHMAN: Okay. The parking spaces are not accessory because the principal use is the same and car sharing there's specific rules on how car-sharing spaces can be allocated. I can live with two car-sharing cars back there but if he wants to park four cars back there he would need to seek a special exception to get permission for a parking lot because when you look at what the use of the entire lot is, it's parking. And the definition of parking lot is tract of

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land whose use is for temporary parking of vehicles, not accessory use.

CHAIRMAN JORDAN: All right. So you said you can live with two but the four not because you think two allowable but four is not?

MR. CUSHMAN: Right.

CHAIRMAN JORDAN: And we're going to take a 5-minute break and I'm going to suggest that you two have conversations. And we'll take a 5-minute break and we'll come back.

(A BRIEF RECESS WAS TAKEN)

CHAIRMAN JORDAN: Okay. Let's resume here. I don't know if you had a chance to resolve any issues while we took the break. Did we or did we not?

MR. CUSHMAN: I don't think we did.

CHAIRMAN JORDAN: Okay. Well then let's proceed on. Response from the property owner or DCRA, whoever wants to be first.

MR. TAHERI: I'm happy to just respond.

CHAIRMAN JORDAN: Let me right now tell you where we are. I need to get over the threshold how these parking spaces are allowed. Do we need to talk about these parking spaces? I didn't see anything in your brief, Mr. Tondro, addressing these parking spaces except that you said they were accessory use. I don't see where the foundation that they were

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accessory use is. They are accessory parking spaces to parking garages.

So one of you all can carry that argument, whoever wants to go first.

MR. TAHERI: I was going to take an opportunity to rebut some of the statements made.

VICE-CHAIRPERSON HEATH: You can use your five minutes however you wish.

MR. TAHERI: Okay. The first issue raised was that the previous owner and the current owner, my partnership R&R, are somehow the same entity.

CHAIRMAN JORDAN: Do you really want to waste your time talking about that?

MR. TAHERI: No, I just want to state for the record that that's incorrect.

CHAIRMAN JORDAN: Okay.

MR. TAHERI: Secondly, as the appellant cites in his statement, a parking lot is defined as a tract of land used for temporary parking of motor vehicles. That's the lot that I alluded to in my motion to dismiss that you might see for a sporting event or something like that. Someone come in, they pay a fee, they're there for five hours and they leave.

CHAIRMAN JORDAN: We're clear this is not a parking lot.

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MR. TAHERI: This is not a parking lot. This is not temporary parking. These cars are there indefinitely for as long as the lease term is in existence. This is not a temporary parking lot so it doesn't even fit the definition of parking lot.

CHAIRMAN JORDAN: And we're on the parking space side of it.

MR. TAHERI: These parking spaces are the same as any other lot on the alley where cars are being parked. They are being privately leased by me, the owner, to a tenant.

CHAIRMAN JORDAN: Under what use?

MR. TAHERI: The same use that any other lot would be.

CHAIRMAN JORDAN: --matter of right, stand-alone parking spaces, matter of right use as a parking space. Is that what you're saying?

MR. TAHERI: For a couple of reasons I would say yes. First--

CHAIRMAN JORDAN: Where's the authority for that?

MR. TAHERI: My authority is that it seems to me that this is what the lot was designed for. Historically, it has been there--

CHAIRMAN JORDAN: I'm talking about what is the regulation that allows for that?

MR. TAHERI: I'm not sure what the regulation honestly

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is that applies specifically to this. I can tell you that it has, and appellant cites the fact that it formerly held four parking garages. Those are gone. We paved it with the intention of using it as parking. That was always made clear, that was clear to the appellant.

And then there is this question of an absurd result because I'm not sure exactly what this area is supposed to be used for if it's not used for the parking of vehicles. And I haven't been able to come up with an answer.

So to me it seems that, you know, I'm well within the bounds of the law and I've made every effort to comply with the law--

CHAIRMAN JORDAN: You keep saying that. What is the law? What law are you complying with? The law that applies to the parking spaces?

MR. TAHERI: Honestly, your Honor, I would leave that to the experts in zoning. I'm not a zoning attorney or an expert and that's why I relied on DCRA to make those determinations.

CHAIRMAN JORDAN: And when did you inform DCRA that you were going to have parking spaces there?

MR. TAHERI: Based on my recollection, this was part of the permitting process. We went in there--

CHAIRMAN JORDAN: You received a permit, that permit

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makes no reference to parking spaces. Is that correct?

MR. TAHERI: I understand that. I understand that but we pulled this map and I attached it to my motion. We pulled this map because they asked for proof that there had been four garages there so we pulled the map showing that there were four garages. That was as part of a conversation based on the fact that we intended to pave the place for parking and use it as a parking pad. In my other attachment to the Office of Planning I made clear that this is a paved parking pad. I never tried to hide the fact that this was for parking.

CHAIRMAN JORDAN: When did you first tell Planning that?

MR. TAHERI: When I was in contact with Planning was after the appellant had filed a complaint. I have it attached in my motion, he emailed me--

CHAIRMAN JORDAN: That's an email in?

MR. TAHERI: June 2014.

CHAIRMAN JORDAN: June 2014?

MR. TAHERI: June 2014. But of course I also said several times that it was parking as part of the permitting process. I concede that it's not listed on the building permit but that was an oversight. And so this had always been the intended use and the Certificate of Occupancy merely confirmed--

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CHAIRMAN JORDAN: So in your application to DCRA you indicated seven garages and four parking spaces?

MR. TAHERI: I don't have the application in front of me but that's the application that that was the intended use of the property and that's what we put--

CHAIRMAN JORDAN: You put that on the application?

MR. TAHERI: I don't have it with me now.

CHAIRMAN JORDAN: I'm asking a very direct question. Did you put that on the application?

MR. TAHERI: I honestly-- for the building permit or for the Certificate of Occupancy?

CHAIRMAN JORDAN: For the building permit and for the Certificate-- well the building permit, I know you had a Certificate of Occupancy.

MR. TAHERI: Yes, I definitely had it on C of O. I can't remember if I-- I can't remember what I had on the building permit application but I can tell you that we discussed parking at length because it took a while to go through this process of review. This was not just a one-day process.

CHAIRMAN JORDAN: Okay. Anything else?

MR. TAHERI: No. Thank you for the opportunity.

CHAIRMAN JORDAN: Mr. Tondro?

MR. TONDRO: Yes. Good morning, Mr. Chairman and Members of the Board again. Just to walk through what maybe

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I didn't lay out in significant enough detail in the brief, I think that under Chapter 331.1b, accessory uses in buildings in the R-4 zone, it specifically calls out that accessory parking spaces are subject to the special provisions of Chapter 21 and 23 of this title are permitted. The subject obviously has part of or associated accessory to a principal use that is permitted through Sections 330 to 349.

CHAIRMAN JORDAN: What's the principal use?

MR. TONDRO: The principal use would be as a private parking garage.

CHAIRMAN JORDAN: So each one of these parking garages has a separate parking space? Is that what you're saying?

MR. TONDRO: Right. So they have one building with seven bays, each a separate bay because it has only one entrance and exit. It's exclusive to itself, they're not connected internally as opposed to a parking garage which would be one where you would have multiple spaces that would be sharing one entrance. So these are--

CHAIRMAN JORDAN: Each has their own separate entrance. I got that.

MR. TONDRO: Each has their own separate entrance--

CHAIRMAN JORDAN: And the parking spaces are where in conjunction with each parking garage?

MR. TONDRO: They're situated on the same lots,

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therefore accessory uses to that. They're in the back of that, backing up to parking garages.

CHAIRMAN JORDAN: And so a parking space is a necessary incidental to a parking garage? Is that what you're telling us?

MR. TONDRO: I don't see that there's anything in the Regs that say that it cannot be.

CHAIRMAN JORDAN: Continue. Just keep stabbing.

MR. TONDRO: I would again just point out that we have a principal use as a parking garage. We have an accessory use for parking spaces. This is now a lot, one of myriad alley lots like this which has been historically used for parking.

If we were to go down this road of saying that all the spaces which are not alley lots similar to this situation were no longer going to allow parking on, except if they get a special exception, I believe the Board would be inundated.

CHAIRMAN JORDAN: Do we have a pattern of practice that you want to present to the Board that the Zoning Administrator has made this interpretation? Is that what I'm hearing you trying to say?

MR. TONDRO: That is precisely what you're hearing me say. Thank you, Mr. Chair, I would refer to the Zoning Administrator.

CHAIRMAN JORDAN: The Zoning Administrator could

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give that to us probably us a little bit more directly about the practice and get you out of that hot seat.

MR. TONDRO: Thank you, sir.

MR. LEGRANT: Thank you, Mr. Chairman. As the appellant cites himself, the regulations are not crystal clear on the treatment of parking and alley lots.

My office has approached the situation as follows. The regulations do require that a parking lot in an R-4 district on an alley lot requires a special exception.

Several years ago I was posed with the issue of a situation similar to this but that particular situation was all private parking garages. And at that point in time I had to distinguish private from public parking. So as the intervener noted, a public parking arrangement is something that is for the temporary storage of a vehicle where someone comes in a financial transaction, they park temporarily and they leave.

Whereas, a private parking garage is a situation in which a lease or a contract is set up for a specified individual. In the alley lot arrangement, typically -- and I've found this in several instances -- people will start with their private parking garage. They will lease a private parking garage space from a property owner for use because they live in a nearby like a row-house or something that fronts a

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public street.

Then we're faced with the situation of some arrangement upon an open parking area. It's not in a garage, it's just an open parking space. The Code is silent as to whether a private parking space on an alley lot is permitted as a matter of fact. The Code is silent on this. My office has ruled that that situation is a matter of right by virtue of the fact that the closest definition is a private parking garage. And as my counsel noted, this is a very common arrangement. I've not been faced to date, perhaps except of this appeal, of that being challenged for that arrangement.

So I have construed that a private open parking arrangement, not a public private parking lot where someone comes in and says hey I want to park here for the day and I can give you ten bucks. Now typically it's a monthly or a longer lease arrangement, those are permissible use on an alley lot.

CHAIRMAN JORDAN: And a private garage is a permissible use. A private garage is a permissible use as a matter of right, is that correct?

MR. LEGRANT: That's correct. Section 201.10 specifically explicitly allows private garage in an alley lot.

CHAIRMAN JORDAN: So is your thought that similarly one has a roof and siding, the other parking space it would

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not have any impact on a community. It wouldn't be a greater impact to have a parking space as would be a private garage?

MR. LEGRANT: That's correct.

CHAIRMAN JORDAN: Okay. All right. I don't know if there's really more to be said on this. I think this is an issue where the Board's going to have to do some, well I don't know if we consider we do rule-making but we have to fill in a gap for where the regulations are silent. And that's what we typically and regularly do. So I don't know if there's any other-- Before we get to deliberation if you want to ask some more questions.

ZC MEMBER MILLER: I want to ask--

CHAIRMAN JORDAN: Yes, please ask a question.

ZC MEMBER MILLER: --a question just before we get into other questions. I'm having difficulty understanding how the private parking open spaces are accessory to the private parking garage. And I can see how they each separately could be a principal use but you can't have to principal uses on one lot. Is that correct?

CHAIRMAN JORDAN: Well you can. We can talk about it in deliberations but that's a question.

ZC MEMBER MILLER: If you can give me more information as to how those open parking spaces are accessory or incidental to the parking garage. If those were the garage leases, for

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example, I could see how they might be if those garage leases allowed, well if you have an extra person coming over and you can use one of the open spaces. I can see how that might be incidental. But how does a separate arrangement with a commercial venture, which I support these commercial car-sharing ventures, but how does a separate arrangement have any relationship at all with this private parking garage?

CHAIRMAN JORDAN: Yep.

MR. LEGRANT: So there's somewhat a distinguishing factor and I would look to the intervener to correct me if I'm wrong, is that the garages have separate lease arrangements where the open area is a car-sharing situation. So they're somewhat distinguished. If they were purely the same treatment where it was all do you want to lease a garage or an open space on a contractual basis, then I would see that would be a tougher sell to call the open spaces accessory.

CHAIRMAN JORDAN: And I was going to say do you think your strongest argument here is that these are really accessory uses or you're saying that they are similar permitted uses as you would a private garage?

MR. LEGRANT: These-- we purport I believe our strongest argument they're accessory spaces. If the Board rejects that, then I believe that the description that I gave a few minutes ago about distinguishing private parking would

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be a second means of supporting the decision.

CHAIRMAN JORDAN: But Mr. Miller was asking where-- how are you saying this an accessory? You're saying where is it? And Mr. Tondro, what section did you say was accessory use to define it as accessory use?

MR. TONDRO: 331. Accessory uses in buildings in the R-4, accessory to a principal use. And those principal uses are laid out and what they refer to is in section 330 through 349 and then you have to do that normal (inaudible) from the R-4 to the uses that are allowed in the R-3 and all the way down. And you get down to then 201.1.

CHAIRMAN JORDAN: Right. That says with a single family dwelling you're permitted one parking space or two car-share situations. Isn't that basically what it says?

MR. TONDRO: I'm actually looking at 201.10. A private garage on an alley lot or, alternatively, 201.1n a private garage as a principal use.

CHAIRMAN JORDAN: Not private garage, we're talking about the parking space.

MR. TONDRO: Right. But they're relying on the principal use. The principal use should be 201.1 which is the private garage is again being the principal use.

If I might also just offer an analogy in response to Commissioner Miller's question which I think is a valid one

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to think about. I think that it might be helpful, at least it is to me, if the concern is that the car-sharing is somehow disconnected from the principal use as a private garage, I'm not sure that I see the difference if you have on a standard residential lot where you have accessory parking that's allowed that can be used by the owner but that owner is in their right to go and rent that out if they want to, then at that point once that lease has taken place to rent out the parking spaces that are associated as accessory uses to the principal structure, the principal use which is the residential, there's no problem with that.

In other words, the lease arrangement is not an issue that determines whether it's accessory or not to the principal use. And I would argue that that's somewhat similar here as well.

ZC MEMBER MILLER: And I think it's distinguishable that it's not accessory to a residential structure on the lot.

CHAIRMAN JORDAN: And Mr. Tondro, so as you do the walk-down, as you walk it back down and you get to Section 202.7, right, that defines accessory use for parking spaces, that's where we first see it right? As an accessory use, right?

MR. TONDRO: Yes.

CHAIRMAN JORDAN: And that says 202.74, single family

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detached dwelling in addition to any accessory parking space required, under 2101 it has to either be one parking space for exclusive use of the occupant or up to two car-sharing spaces, right? So where in there do we get the accessory use you're talking about?

MR. TONDRO: I believe respectfully that that's for the R-1 whereas the R-4 is government by 330 in terms of the accessory uses.

CHAIRMAN JORDAN: And you walk your way back down doesn't it?

MR. TONDRO: Not for that. You walk it back down it's just a reference to the principal uses. The accessory uses are defined within 330. What they're referring to when you walk back down is just what principal uses those could be accessory to. Does that make sense?

CHAIRMAN JORDAN: Not really.

MR. TONDRO: So if you look at 330, I'm happy to read it for you.

ZC MEMBER MILLER: It's easier--

CHAIRMAN JORDAN: I don't know, the Board might have questions. We might have beat this dead horse, I don't know.

MR. TONDRO: If I might in response, you're referring to-- I think there is a distinction, a very important distinction here between what's allowed in the R-1 and what's

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allowed in the R-4. R-4 there's obviously a lot more leeway because it is a higher density zone. And I think therefore in that standpoint what they allow as accessory uses are unique to the R-4 and differentiated from what's allowed for the R-1. But in the R-4 what they do is they do peg it back down to what are the principal uses allowed in the R-3 and/or the R-2 and/or the R-1. And we get private garages as a principal use first articulated in the R-1 district.

They're also allowed in the R-2, they're also allowed in the R3 and they're also allowed in the R-4. So the only issue that we have to step down is for that principal use and I think we've accepted that principal use is allowed in the R-4.

Then once you figure out that that's a principal use as acceptable, then you determine what the accessory use is and that's under Section 330 which applies only to accessory use in buildings in the R-4 zone.

CHAIRMAN JORDAN: But the other thing that you didn't answer is Mr. Miller asked you how can you have two principal uses on the same lot? You did ask that didn't you?

ZC MEMBER MILLER: Yes.

CHAIRMAN JORDAN: Because I made my notes on what the response was.

MR. LEGRANT: Well, I guess if you decide that there's both principal uses then that can be an issue. The Code does

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not allow principal buildings but in many districts we have mixed uses, I'm trying to think of an R4 example but I know under commercial example we have multiple uses, multiple principal uses on a lot.

CHAIRMAN JORDAN: And I can understand that especially if we go back to one of the BZA cases I think is 17906. It was a grocery store kind of issue and food preparation that allowed for additional principal use in that case. And that's something we've gone back and forth. So I think your distinction is that you can't have two buildings. I got you. All right. That makes sense.

So that makes more sense why Case 17906 now makes sense to me. Okay. All right. Board, are we-- Wait, did we get a rebuttal? Did we have rebuttal on this? I don't think in appeals you get rebuttal. They don't get rebuttals do they? Give me one second. Let me check the old trusty here because I think we're a little different. Yes, you get a rebuttal. So why don't you rebut. You have five minutes to rebut.

MR. CUSHMAN: I find the arguments to make an accessory use or a double principal use or whatever it needs to be to let parking be there, to be a little bit all over the map.

At the time this structure was built and then transition to zoning, there were 13 then 11 then 7 parking spaces allowed.

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And the Zoning Regulations say that if you've gone to a more restrictive use you need to get evaluated under current zoning for anything less restrictive. And since there was never a C of 0, we don't have actually have a C of 0 on this saying, yes, seven parking spaces is the maximum load allowed.

Putting more parking spaces on there should require a review, a special exception of the BZA. The offer on the table when you left was yeah I can live with 7 parking garage parking. I think it's one unit, I don't think it's seven private garages, I think it's-- but I can live with that and two car-sharing spaces.

And the counter offer was I'll take four. If you have four car-sharing spaces, two of them need to be in a structure or underground or under cover. That's car-sharing under R-2.

So there's a limitation of intensity under a car-sharing space usage. The limitation on matter of right use should be the prior use as discontinued because that use was abandoned for 30 years. It was fenced and gated, nobody could park there. It was a garden spot.

CHAIRMAN JORDAN: Excuse me. Mr. Moy, what time are we on the clock because it didn't start. Take a couple of minutes and wind up.

MR. CUSHMAN: So there are spaces throughout Ward 6 where we have alley lots. And I do have a letter from the ANC.

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They did not take up the appeal but they did write to the Zoning Administrator requesting a response. I don't believe such a response has been forthcoming yet. That letter was written May 28th and I'd be happy to put it into the record. But they also note that car-sharing is a service and they're interested in knowing how it's going to be regulated.

I don't think there are that many spaces in Ward 6 where you have a principal use of a garage and also an intention to have a principal use as an accessory parking area. The distinction between public, commercial doesn't appear in the Regs. I understand that there might be an interpretation there. I think getting that interpretation written down with some precedent might be useful. I'd like to have the precedent turn out right for me in this case.

The Capitol Hill Restoration Society had an interest in this case because they also recognize that there are lots of alley lots. Again, there aren't that many with alley lots with garages and a proposal to put pad parking there. It is an unclear area.

I would note that this is really a NIMBY argument because parking lots affect the people nearby. If it was not in my view shed, I'd be a whole lot less inclined to be very actively participating against this. But it is. And I think the Zoning Regulations do have many places where they note the

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intensity of use and that this ought to be evaluated by the Board.

CHAIRMAN JORDAN: All right. That would do it. Thank you very much. Let's close the record on it.

SECRETARY MOY: Rebuttal?

CHAIRMAN JORDAN: Only an appellant gets rebuttal on this matter. All right. So we'll close the record based upon what we have here. Is the Board ready to deliberate or do we need something more.

Well I'll go first. This is the issue, I think this is a fine kettle of worms. Can we put that in the order? Fine kettle of worms. But the underlying principle here is that the appeal means that the Zoning Administrator violated the Zoning Regulations and did something that the Zoning Regulations said it could or could not do. Right? That's the basis of it.

So I have a concern whether or not we have a showing because there's no Zoning Regulation that really hits square with this. So therefore that means that the Board then is required to interpret the Zoning Regulations at best it can, as we normally do fill in the blanks from the Zoning Regulations within our purview, our authority.

I think what we have here is an argument by DCRA, piggy-backed by the owner, that private garages are allowed as a matter of right in this area and that similarly, because

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there's no discussion in the Zoning Regulations, that there's no additional impact on a neighborhood, etc., and that a parking space is almost the same thing. It's for the operation of the use of parking a car, and therefore that the car space is the same as a parking garage without the four squares, probably maybe less impactful.

And that you can have, and as I said before, we have cases which clearly show that we have other uses. I cannot think of a use that allows two building uses but we certainly have other similar principal uses within a lot. And I gave you an example Case No. 17906 which was where this Board did a heck of a job discussing accessory uses, double principal uses on a lot and etc which allowed in that grocery store case where it was a grocery store and then they tried to do some prepared food that the Board dismissed it and said the relief was not necessary because of the mere fact that you would have the two principal uses because they're not accessory. The packaged food is not accessory to a grocery store, which I had some issues with that but the case did say that.

So I think what's before the Board, if we want to draw a line saying that it is an allowable principal use to have a parking space is as similar as you would have a parking garage in the alley. That's what it comes down to me.

And I would argue that there's something wrong with it

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so it would be allowable under the C of O but as a separate principal use. I don't think this is an accessory use. I just don't see the accessory use. I don't think it meets anything about an accessory use. I don't care how we care to stretch it, go around the corner, sneak up on it. We just couldn't get that as an accessory use. It was a good try but in my opinion it just didn't get there. But I certainly can buy the argument that it's a principal use allowable like a private garage and that had not been instructive in the regulations about it. That was just my thought on it.

Anyone else? Mr. Hinkle?

MEMBER HINKLE: Which regulation is that? That the surface parking would be a principal use?

CHAIRMAN JORDAN: No, I'm saying that we're being called upon to make that equivalent as a private garage. So there is not a parking one that says that it could not be. That's the issue.

MEMBER HINKLE: I see.

CHAIRMAN JORDAN: It's zero area.

MEMBER HINKLE: Hmm-mmm.

CHAIRMAN JORDAN: And we're asked in our authority, and I'm just kind of extrapolating saying it's like a private garage. It's probably less impactful than a private garage but that's just what my thoughts are about it. I clearly don't

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think it's an accessory use. To a private garage I don't find the space accessory use. That's just how I'm looking at it because we've got to make some decision about it.

MEMBER HINKLE: Right.

CHAIRMAN JORDAN: And it's just not in front of us in black and white I don't think unless you see it.

MEMBER HINKLE: Well, I mean I'm struggling with it and I'm not comfortable with the argument from DCRA and the Zoning Administrator but I see where they're pulling it from and I see the regulations and I think you can make the case. And I think they did make the case that these four parking spaces are accessory to the garage parking.

CHAIRMAN JORDAN: Mr. Miller?

ZC MEMBER MILLER: Well, we're going to have to get a resolution here.

CHAIRMAN JORDAN: Well we can sustain it, with a back up side it may be different, but I don't know how you do it for the--

ZC MEMBER MILLER: I'm sympathetic to both the property owner and to the DCRA and the appellant because I think they have relied on, in some cases, misinformation and in some cases not clear enough information. But I'm ultimately persuaded by the appellant's arguments and I think the last point he made about the-- I kind of already, well not on the

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principal use issue but it relates to something when you're calling it accessory to is.

But I kind of agreed with his arguments to begin with that these were grand-fathered in, not really matter of right to begin with because of they way the garage is structured. And because of the number of spaces that were there and because of the discontinuance of the use for decades.

So I would support the appeal of the issuance of the C of O for these spaces.

CHAIRMAN JORDAN: All right. So let me throw out something else. What about the detrimental aspect of reliance upon the property owner upon the directions given by DCRA and the Office of Planning that money has been expended, the work has been done and this processes, he's gone back and forth with them. What about that? What do you think about that?

ZC MEMBER MILLER: I think it's a kettle of worms to quote somebody.

CHAIRMAN JORDAN: The whole thing is a kettle lf worms. I mean and I'm going to the second phase of the owner's argument. All right. Well let's just put it up because I think we're going to be at a point of decision.

But I would move that we sustain the decision of the Zoning Administrator based upon several alternative theories, one of which is that this is an accessory use to the parking

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garage. Two, alternatively that it is a second principal use allowable, similar to a private garage on an alley, and third alternatively that equitable relief should be granted to the property owner because he has detrimentally relied on advice and worked very diligently with DCRA regarding the opportunity for these things to be a parking space, as well as the Office of Planning. So that's my motion.

MEMBER HINKLE: I will second that.

CHAIRMAN JORDAN: Motion made and second. Do we need to have any further discussion?

ZC MEMBER MILLER: Yes, just briefly. I would oppose the motion because certainly in this case the appellant also detrimentally relied on DCRA and the real point of that is that there was supposed to be a special exception process or some kind of review process we haven't gotten to in this proceeding as we shouldn't because it's not before us. But to the merits of the impact of these additional open spaces of parking beyond the garage.

And so I oppose the motion because I think the appellant is entitled to a review of these open spaces before a body such as ours that would review adverse impacts upon the neighborhood.

CHAIRMAN JORDAN: But we gave appellant credit for their conversation with DCRA in the motion to dismiss. That's

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what kept this in front of us. All right. So all those in favor of the motion, aye? Those opposed, nay?

[VOTE TAKEN]

The motion fails. Mr. Moy?

SECRETARY MOY: Yes sir. The motion fails on the vote of 2-1. This is on the motion of Chairman Jordan that sustains or affirms the ZA's decision. Seconding your motion Mr. Chairman is Mr. Hinkle. Opposed to the motion, Mr. Miller. And we have two members not present on this appeal. The motion fails, sir.

CHAIRMAN JORDAN: All right. Seeing that the Board is unable to resolve this situation we're going to have to put this on for another docket and another argument when we have additional members of the Board. Okay? That's where we're at. So thank you. Appreciate it. Thanks for the time. Whenever we can get it back on the docket. Do you want to give a docket date?

SECRETARY MOY: Well, let's see. So we're looking at September, Mr. Chairman. And well this is odd. Mr. Miller is not due back with the Board on his rotation until October 20th. I don't know if the Board wants to go that long or not. If not, then the Board could set a decision date on this and at the earliest would be September 15th.

CHAIRMAN JORDAN: We can do that. Mr. Miller can

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either come in or-- Very good. So we'll put it on for September 15th and we'll go at it again. And let's make sure we have everything in black and white. Thank you. That's where we're at. Any submissions that you think you need? Anybody? No, I don't think so because I think we've beat that horse. Right?

ZC MEMBER MILLER: Well, I hesitate to ask but I guess if there's any similar examples from DCRA of accessory open spaces that are privately contracted out to a commercial venture that have been determined as accessory to a private garage that is leased out to other people. If you have an example of that it might be helpful.

CHAIRMAN JORDAN: Okay. Thank you very much everyone. Appreciate it. Thank you. So let's move to our last case.

SECRETARY MOY: The last application before the Board is Application No. 18967. This is the application of Buddhist Congregational Church of America. This is a continued hearing, Mr. Chairman, June 9th.

CHAIRMAN JORDAN: Yes, how come my notes are so limited. Where's the rest of my notes? I don't like that. I've got all kinds of notes in here. Oh I know because I'm looking at the OAG report instead of my notes. Okay. All right. Please introduce yourselves.

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MR. GLASGOW: Members of the Board, for the record my name is Norman M. Glasgow, Jr., of the law firm of Holland & Knight.

MR. DO: My name is Quy Do, I'm the applicant for the Buddhist Church.

MR. VU: My name is Long Vu, one of the Board members of the Buddhist Congregational Church of America.

MS. DINH: My name is Phuc Dinh, I'm just a member in the temple.

CHAIRMAN JORDAN: Okay. This is a continued hearing from one which I think we started on June 9th I believe. At that time we took testimony from basically the community. Some voiced their concerns against having this property. We also learned that there had not been interaction or any interaction with the ANC and other neighbors and we try to give the applicant the opportunity to meet with the citizens association, neighbors and ANC.

And I understand that there had been some discussions and some communications but still no real agreement, everybody still went to kind of their own corner although the applicant has proffered to the Board some potential conditions that they'd be willing to live with if this went into effect. Is that about it?

MR. GLASGOW: Yes sir. Mr. Chairman, I was contacted

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shortly after the June 9th hearing and I said that you should reach out vigorously to the ANC, get a meeting together, see if you all could come to an agreement. There were terms that were discussed that went back and forth some and the ANC then took an action and I advised the applicant that they should put down what they had put in writing, what they had submitted to the ANC and that we should submit that to the record for the Board to consider as conditions that would go with the-- if the Board deemed fit to approve the application because there were a number of in our view positive things that occurred as a result of the interaction. And that it reflected in the agreement that was proffered.

One, it establishes points of contact with the church; two, it limits how the facility could be used and the capacity, and we have copies of the placarding and the Certificate of Occupancy for the property at the 200 level which we are committing to maintain because the facility right now they have a worship facility but they do not have a facility where they can prepare food. And like most religious facilities, you don't eat in the sanctuary.

So they have a situation now where when they have some of these events people are spilling out into the courtyard area, they're in the house next door, and now this will allow an enclosure so that there will not be as much noise whatever

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because the people when they're coming in, the same people that are there for the food part of the service are the same people that are going to be in the main sanctuary.

So we have our placarding and Certificate of Occupancy and I will give copies of those so the Board Members can see, and that will not change. And also Mr. Long Vu went in this past Sunday and did a survey of available parking spaces and I can understand why there is some-- if you don't know how to get into the back of the facility, because I was there last year for a funeral service, and the alley as you come off of Kennedy Street is in a bow. And you can't see from that that you can get all the way down to Colorado Avenue which is where there a number of parking spaces that are available.

So what I ended up doing, because I didn't know whether I could get in or out, I went around to the back where the 20-space parking lot is. I didn't know whether I could get out or not. I started turning my car around, got back out to Kennedy Street, went around the block, there was plenty of parking spaces on Colorado Avenue and then I walked up a half block to the facility.

So if you're not familiar with it, I understand why there could be some confusion within the alley. So it is important to have people out in the alley because if I was told continue down the alley, you'll be out on Colorado Avenue and

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you just go down there and you find a parking space. And the survey that Mr. Long Vu did bears that out.

So I think there are a number of ways that what was raised before can be dealt with by the Board through conditions in the order.

CHAIRMAN JORDAN: Okay.

MR. GLASGOW: And of course we have the support of the Office of Planning. This is not a substantial area of relief under the Regulations and we meet the special exception criteria under Section 1553.

CHAIRMAN JORDAN: And although not applicable you have some type of institutional necessity for the relief.

MR. GLASGOW: Yes.

CHAIRMAN JORDAN: Board, do any of you need to hear anything else from the applicant? Okay. So we'll next call the Office of Planning to see if there's anything in addition that the Office of Planning would like to weigh in.

MR. MORDFIN: Good afternoon Chair and Members of the Board. I'm Stephen Mordfin with the Office of Planning and the Office of Planning has nothing additional to add and continues to support the application and is available for questions. Thank you.

CHAIRMAN JORDAN: Board, questions or Planning? Applicant, questions of Planning?

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MR. GLASGOW: No sir.

CHAIRMAN JORDAN: Department of Transportation. Do we have a letter from Transportation? Yes, we have a letter from the Department of Transportation with no objection.

Anyone here from ANC-4C? I think we had them here before and they spoke and we do have a letter in opposition and I think the testimony shows the ANC remained in opposition to the requested relief.

Anyone here wishing to speak in support? Anyone in support? I think we do have some letters from some adjacent neighbors.

MR. GLASGOW: Right.

CHAIRMAN JORDAN: Is it seven neighbors that we have?

MR. GLASGOW: There are several letters in the record in support of the application.

CHAIRMAN JORDAN: Anyone here in opposition? We did have a host of people in opposition at our last hearing that are on the record here who voiced concern about the noise and the illegal parking and poor behavior of the congregants on worship days. So we do already have that in the record. So then I don't think there's anything that you need to say in rebuttal because you already used that in your opening here. Does the Board need to hear anything else in this case from the applicant or anyone? Okay.

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So we'll close the record here on this case. I think this is one where, you know, it's a not-in-my-backyard situation but we do have an argument, this is a special exception so does this case dot the i's and cross the t's and the question it raises is does it make an impact on the community?

There was testimony that the request-- well I don't know particularly that the requested relief provides impact on the community. I don't think we had any evidence that the request for relief that the overall operation of the church has impact on the community, and I think there's a difference here because we're limited to what we examine by the requested relief. And the requested relief was just an expansion of the existing non-residential use to allow for a kitchen in the facility.

The ANC certainly moved against this citing that the noise level, the illegal parking and pure behavior. However, the applicant has met with the neighborhood and the ANC and has proffered for us a set of conditions, one that would mitigate the concerns of the ANC and the neighbors; one that the parking and traffic issues when ceremonies or events are held at the church, the church shall have a monitor to help direct the members' cars so they don't pose a danger to the neighborhood and ensure that they don't block alley traffic and surrounding streets and that no cars will be parked in the alley.

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That the church will abide by the noise regulations of the D.C. government and shall control the noise level generated. They've also provided a community liaison who will be monitoring the noise level and for the community to contact in regards to these problems that have been cited by the community. And that they should communicate with the ANC on a biannual basis and attend all meetings with neighborhood community.

The construction phase is something that I would see where it meets the Zoning issues. However, we will make part of this that the applicant shall provide that the debris in the alley and around the property shall be picked up on a regular basis and should not allow debris or trash to arise out of the property.

That the worship facility, and particularly the dining hall, should be used only by members and they cannot be used for any outside organization etcetera or any third party for use of the worship hall. So with that said and with those conditions I could support it. I don't know where everybody else is on this one. Mr. Miller?

ZC MEMBER MILLER: Yes. Mr. Chairman, I think those conditions if they're part of the order mitigate the concerns of some of the neighbors and the ANC. So I would be supportive of incorporating all but the construction in the order but note

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that they have-- well you rephrased it so that it could be in--

CHAIRMAN JORDAN: The order.

ZC MEMBER MILLER: In the order. So yes, I think with those conditions the concerns are mitigated. Noting also that the very de minimis--

CHAIRMAN JORDAN: Relief.

ZC MEMBER MILLER: They're at 11 percent expansion, if they were at 10 percent it would have been a matter of right and this whole proceeding would not have happened.

CHAIRMAN JORDAN: Okay. Anything else?

MEMBER HINKLE: No, I tend to agree. I just want to make sure and clarify that what was submitted by the applicant in terms of the contact information is not included in the conditions. In terms of the names and the phone numbers.

CHAIRMAN JORDAN: Oh you don't want them included. Okay. Right.

MEMBER HINKLE: But the applicant would be responsible to have a community liaison.

CHAIRMAN JORDAN: Okay. So we'll incorporate in the order the conditions proffered by the applicant with the additions that we talked about please. So I would move that we grant the relief requested with the conditions as discussed here in proffer.

ZC MEMBER MILLER: Second.

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CHAIRMAN JORDAN: Motion made and second. All those in favor, aye? Those opposed, nay?

[VOTE TAKEN]

The motion carries. Mr. Moy?

SECRETARY MOY: Staff would record the vote as 3-0. This on the motion of Chairman Jordan to approve the application with the conditions as cited by the Board. Second the motion, Mr. Robert Miller. Also in support Mr. Jeffrey Hinkle. Two Board members not present. The motion carries, sir.

CHAIRMAN JORDAN: Thank you. It has to be a full--

SECRETARY MOY: Yes.

CHAIRMAN JORDAN: Right. Very good. Thank you very much.

MR. DO: Thank you very much. You all have a good day.

CHAIRMAN JORDAN: Any other business coming before us today, Mr. Moy?

SECRETARY MOY: Not from staff today, sir.

CHAIRMAN JORDAN: Board have any other issues that we need to resolve?

(Whereupon, the proceedings of the Public Meeting of the Board of Zoning Appeals having been concluded, went off the record at 12:41 p.m.)

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