

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING

9:45 a.m. to 11:30 a.m.
Tuesday, October 04, 2016

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

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Board Members:

FREDERICK L. HILL, Chairperson

ANITA BUTANI-D'SOUZA, Vice-Chairperson

JEFFREY L. HINKLE, Board Member

ROBERT MILLER, Zoning Commission

CLIFFORD MOY, Board Secretary

Office of Planning:

MATT JESICK

ELISA VITALE

ANNE FOTHERGILL

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P R O C E E D I N G S

MS. BUTANI-D'SOUZA: The hearing will please come to order. Good morning, ladies and gentlemen. We are located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street Northwest. This is the October 4th, 2016 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Anita Butani, Vice Chairperson. Joining me today is Fred Hill and Jeffrey Hinkle, Board Members. And representing the Zoning Commission today is Robert Miller.

Copies of today's hearing agenda are available to you and are located in the wall bin near the door. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

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

All persons planning to testify either in

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favor or in opposition must have raised his or hand and been sworn in by the secretary. Also, each witness must fill out two witness cards. These cards are located on the table near the door, on the witness -- in the back.

Upon coming forward to speak to the Board, please give both cards to the reporter sitting on the table to my right.

Okay. All individuals wishing to testify today, I'm going to ask you to please stand up to take the oath. Mr. Secretary, would you please administer the oath?

MR. MOY: Thank you. Good morning.

[Oath administered to the participants.]

MR. MOY: Ladies and gentlemen, you may consider yourselves under oath.

MS. BUTANI-D'SOUZA: Thank you. Okay. Good morning.

MR. MOY: Good morning. Welcome.

MS. BUTANI-D'SOUZA: All right. So I think we have a couple of preliminary matters for today.

MR. MOY: Yes, we do, Madam Chair, and this is for the record as to the docket for today's proceedings. There are two cases that have been postponed and rescheduled. The two cases are 19338

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of Douglas and Stephanie Lett (phonetic). And Application No. 19339 of Chris Cadwell and Kelly Steel. And both of these two cases have been rescheduled to October 18th, 2016. Also, we have preliminary matters on cases that is before the Board today.

The first is 19153 of Independence Avenue Investments. There is a request to postpone and continue the application. Number one.

Number two, there is a request for party status with a waiver of the time requirements.

And finally, Appeal No. 19345 of Diane Conocchioli. There are two motions to dismiss on timeliness. So those are before the Board.

MS. BUTANI-D'SOUZA: Okay. I think we should -- before we get into all of that I think we should -- since former Chairperson Heath has retired we have a very important item of business today which is board elections.

So if the members of the board are okay with it, I'd like to move that we quickly knock out the elections.

So, I'd like to open it up for nominations for Chair, and I would actually like to nominate Board Member Hill to be the Chair of the Board of

Zoning Adjustments. As you may be aware, Board Member Hill previously asked me to take his place as Vice Chair while he addressed some family issues. And it's my understanding that those family issues are now resolved and that he is in the position to take on the role of BZA Chair.

Having worked with Board Member Hill for the last six months I know him to be exceptionally diligent, thoughtful, and knowledgeable about the issues that this Board covers, and I believe that he would be a terrific chair.

I also think that he is the most appropriate choice given that he is the senior mayoral appointee on the board right now. So therefore, I'd like to nominate Board Member Hill to be the Chair of the Board of Zoning Adjustment. Is there a second?

MR. HINKLE: I'll second.

MS. BUTANI-D'SOUZA: Okay.

[Vote taken.]

MS. BUTANI-D'SOUZA: Okay. The motion carries.

MR. MOY: On behalf of the staff, congratulations, Mr. Chairman.

CHAIRPERSON HILL: Thank you, Mr. Moy. Okay. So, well, first of all, thank you very much.

Thank you for the nomination, Vice Chair Butani, thank you very much to the Board for, you know, your faith in me and I do very much hope to do a good job for the Board and for the city, for my tenure.

I'd also like to, again, thank you, Ms. Butani, for stepping in while there were some issues at home, I suppose. And so I look forward to doing this and also would like to nominate you as being the Vice Chair for the Board here. May I get a second?

MR. HINKLE: I'll second that.

[Vote taken.]

CHAIRPERSON HILL: Okay. So, we done?

MR. MOY: I think that congratulations also to the Vice Chair.

CHAIRPERSON HILL: Okay. Great. All right. Well, good morning, everyone. Let's see. So, Mr. Moy, I know there was two preliminary matters you spoke of. Is it alright, I was just going to handle those preliminary matters during the actual case at the time, I guess.

MR. MOY: You may.

CHAIRPERSON HILL: Okay. So then that being the way we're going to move forward, can we go ahead and please call the first case?

MR. MOY: Okay. I believe that would be

Application No. 19330 of District Dogs. And as advertised and captioned for a special exception relief under the NC Use Group B requirements under Subtitle H, Section 1107.1, Sub A, to establish an animal boarding use in the NC-7 Zone, 3210 Georgia Avenue Northwest, Square 2892, Lot 910.

CHAIRPERSON HILL: Good morning. If -- yeah, just make sure your microphone is on there. If you could just please introduce yourself?

MS. GREER: My name is Carmel Greer, and I am the applicant's architect.

MR. HINSLEY: My name is Jacob Hinsley. I'm the owner of District Dogs.

CHAIRPERSON HILL: I'm sorry, what was your last name again?

MR. HINSLEY: Hinsley.

CHAIRPERSON HILL: Okay. Great. Well, I -- you know, we've read your application and it seems to be complete in terms of, you know, the outreach that you've had with the neighbors and also working with the Office of Planning and DDOT. I don't really think we need a full presentation from you today. If that's all right then I'm going to be interested in kind of like just moving over and hearing what the Office of Planning has to say.

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MS. GREER: That's fine, thank you.

CHAIRPERSON HILL: Okay. Thank you.

MR. JESICK: Thank you, Mr. Chairman and Members of the Board. My name is Matt Jesick. I'm filling in for Mr. Steven Mordfin this morning. But Office of Planning can rest on the record in support of the application, but I'd be happy to take any questions. Thank you.

CHAIRPERSON HILL: Thank you, Mr. Jesick. Does the Board have any questions for Office of Planning?

Okay. With that, then, I was going to see if anyone here from the ANC is in attendance and would like to speak. No? Is there anyone here would like to speak in support of the application? Is there anyone here who would like to speak in opposition if the application?

Okay. This is moving very smoothly for my first case. I thank you very much.

So with that I would turn back to you and ask if there's anything you would like to say in conclusion, but at this point I don't think there is. Is there anything you'd like to say in conclusion?

MS. GREER: I think that District Dogs is a well-loved small business and they hope to operate on

Georgia Avenue in the place of a liquor store.

CHAIRPERSON HILL: Well said. Okay. Then that's it.

Is the Board ready to deliberate? Okay.

I, you know, again it was very good of the applicant to go ahead and work with their neighbors, the Office of Planning, DDOT, and you know, you went through the ANC and got the support of the ANC.

I thought that also the letters of support, you know, being here for not a particularly long time but at least over a year, you know, there were actually different letters of support rather than the standard printed, you know, churn and burn letters of support. So that was nice.

And so I would be -- unless the Board has any other deliberations or statements, I was going to go ahead and make a motion.

So I'd go ahead and make a motion to approve Application 19330 of District Dogs, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under NC Use Group B, requirements of Subtitle H, Chapter 1107.1A to establish animal boarding in the NC-7 Zone at the premises 3210 Georgia Avenue Northwest. Can I get a second?

MS. BUTANI-D'SOUZA: Second.

CHAIRPERSON HILL: Motion has been made and seconded.

[Vote taken.]

CHAIRPERSON HILL: Motion passes, Mr. Moy.

MR. MOY: Staff would record the vote as four to zero to one. This is on the motion of Chairman Hill to approve the application for the relief requested. Seconding the motion, Vice Chair Butani. Also in support, Mr. Miller and Mr. Hinkle. We have a board seat vacant. The motion carries, Mr. Chairman.

CHAIRPERSON HILL: Thank you. Can we have a summary order?

MR. MOY: Yes. Thank you.

CHAIRPERSON HILL: Thank you.

MS. GREER: Thank you very much.

CHAIRPERSON HILL: Thank you. Good luck.

MR. MOY: Next application is parties to the table to 19336 of Edward Gonzales as captioned and advertised for special exceptions under the nonconforming use requirements of Subtitle C, Section 204, and the parking requirements of Subtitle C, Section 705. This would convert office space to residential apartments on the first floor of an existing building, R-17 Zone, 2405 I Street, Number

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1-A Northwest, Square 28, Lots 157 and 2001.

CHAIRPERSON HILL: Good morning.

PARTICIPANT: Good morning.

CHAIRPERSON HILL: Just see if your microphone is on. Just push the button until the green light appears.

PARTICIPANT: [Speaking off mic.]

CHAIRPERSON HILL: Push it again.

MR. GONZALEZ: Here we go. Okay.

CHAIRPERSON HILL: There you go. There you go.

MR. GONZALEZ: Okay. Now we can get it. Okay. All right.

CHAIRPERSON HILL: Would you please introduce yourself?

MR. GONZALEZ: Good morning. My name is Edward Gonzalez. I'm the owner of the property in question. It's a first-floor condominium unit at 2107 I Street Northwest, and I'm the owner and also an attorney with the -- a member of the DC Bar.

CHAIRPERSON HILL: Okay. Great. So, Mr. Gonzalez, we've, you know, gone through the record and again it was -- it's similar in that you've worked with the ANC, your neighbors, and the Office of Planning and DDOT. I am not terribly interested

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in, you know -- I don't need to hear a full presentation from you. However, there was some recent opposition in terms of, I guess they had issues of density and also kind of like some questions about who might be -- they were concerned about like students in the development there or the, you know, the apartment. And just kind of interested in hearing a little bit about that if you could speak to kind of like density parking and kind of like students versus -- I know in your application you also mention like, you know, people from World Bank perhaps. I'm just kind of curious as to who you expect to be tenants.

MR. GONZALEZ: Yeah. Well, essentially the air -- the building and the condominium unit, it's located very close to the G.W. Hospital. It's also close to the IDB, and also close to the World Bank.

But in that area I know some of the other -- in the building there's other residential units and the people who have been renting there are -- amongst some of the people there are people who work in those international banks, the --

The units, I've tried to make them a little -- they're a little bit on the small side and the reason why, and I've been told that that's actually a

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benefit because if the units are a little bit smaller there's a tendency not to have people congregate and to have parties and that sort of thing. So that is actually, I think, something that's going to work better in terms of keeping down the noise level.

In terms of parking there is one parking space assigned to that unit. However, I had some long discussions with the Office of Planning on this. The proper is in really sort of a hub, a transportation hub. It's one half block from the Metro stop at Foggy Bottom. So with that access to that Metro stop the person can go on the blue and yellow line. It's about three stops to the silver line, so it's going out to the Tyson's Corner area. That should be easy enough to do. It's also close. It's about four or five stops to the Redline junction. So that's another direction in which the person can go.

In addition, there is the bus lines that run to the hospital over on 23rd Street. You're about three blocks from K Street, and about another three or four blocks from Pennsylvania Avenue. So there's access there.

Finally, it's very, very walkable. Georgetown, for example, is just a, it's about three

blocks away. You can walk down to the Watergate, take a left on -- take a right on Virginia Avenue, go through that parking lot. I don't know if you know that area. Actually, there is a little bridge that goes over near to the waterfront in Georgetown.

DuPont Circle is also walkable. It's about five or six blocks.

Finally, it's got -- the trends there, and I've seen it's -- I've owned this unit since 2005. So since that time we've seen a lot of -- we've got the bike shares that have come in. There's about, there's three to four stations that are close by. And in addition there is the Zip Car stations, which I think there's two of them, they're close by.

So, you know, I used to live in the District of Columbia too. I live now in Virginia. But when I lived here I know I had a tendency to -- and I think most people, residents of the District of Columbia, tend to want to sort of stay in the city, that's why they live there. So there is a lot of the entertainment there. There is Whole Foods is about a block and a half away.

CHAIRPERSON HILL: Okay. Okay. Thank you. Thank you. It sounds like a great place. I'm going to rent there.

MR. GONZALEZ: Thank you.

CHAIRPERSON HILL: Let's see. So, does anyone else on the Board have any questions for the applicant?

Okay. Then if it's all right with you, I'm going to turn to the Office of Planning.

MR. JESKICK: Thank you again, Mr. Chairman, and Members of the Board. The Office of Planning can rest on the record in support of the application. We appreciate the applicant taking a second look at the parking question. And again, we can support the application. Thanks.

CHAIRPERSON HILL: Okay. Great. Does anyone here on the Board have any questions for the Office of Planning?

Okay. With that, then I'm going to ask, is there anyone here from the ANC that would like to speak on the application? Anyone here from the ANC?

Is there anyone here who would like to speak in support of the application? Anyone here in support?

Is there anyone here who would like to speak in opposition of the application? Anyone here in opposition? Okay.

Then that being the case, Mr. Gonzalez, I

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would turn back to you and ask you for any conclusions that you might have. I don't know if there's anything necessarily you need to say, but if you'd like to, please go ahead.

MR. GONZALEZ: The only thing is I think that converting this from office over to residential is actually more in keeping with what the neighborhood is today.

CHAIRPERSON HILL: Okay. Great. Is the Board ready to deliberate?

MS. BUTANI-D'SOUZA: Yes.

CHAIRPERSON HILL: Okay. Great. Would you like to --

MS. BUTANI-D'SOUZA: Sure.

CHAIRPERSON HILL: Sure. Sure, great.

MS. BUTANI-D'SOUZA: I think, you know, we all considered the letter that was sent in opposition. But I think I'm heartened by the fact that we have a unanimous approval, or a unanimous recommendation of no objection from the ANC. We also have OP recommending approval. And you know, as we've all seen I think there is a clear need for more housing in this city. So, I would be in support of this and --

CHAIRPERSON HILL: Would you like to make a

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motion?

MS. BUTANI-D'SOUZA: I would make a motion to approve the request for special exceptions as captioned and advertised.

CHAIRPERSON HILL: Second. The motion has been made and seconded.

[Vote taken.]

CHAIRPERSON HILL: The motion carries, Mr. Moy.

MR. MOY: Staff would record the vote as four to zero to one. This is on the motion of Vice Chair Butani. Seconding the motion, Chairman Hill. Also in support, Mr. Miller, Mr. Hinkle. We have a board seat vacant. The motion does indeed carry, Mr. Chairman.

CHAIRPERSON HILL: Thank you. We can have a summary order, Mr. Moy.

MR. MOY: Thank you.

CHAIRPERSON HILL: Thank you. Thank you.

MR. GONZALEZ: Thank you very much.

MR. MOY: Then parties to the table to Application No. 19340 of Robert and Julie Corn, as captioned and advertised for a special exception relief under Subtitle E, Section 5201. This is from the lot occupancy requirements of Subtitle E, Section

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304.1. This would construct a two-story addition to the rear of an existing one-family dwelling, RF-1 Zone, 1736 Bay Street Southeast, Square 1098, Lot 141.

CHAIRPERSON HILL: Thank you. Good morning. Could you please introduce yourself?

MS. FOWLER: I am Jennifer Fowler. I'm the architect.

CHAIRPERSON HILL: Okay. Great. So, Ms. Fowler again, this is moving smoothly for me today thus far, and so I appreciate the fact that your application is, you know, complete and that you've been working with the Office of Planning and again have gone through the ANC process, and again, they were in favor eight to zero to one. And DDOT has no objection at this time. I see the letters of support that are also in there, but I don't have a lot of questions of the applicant on this after, you know, again thoroughly reading through the record.

Does the rest of the Board have any questions?

Okay. Then if that's the case, Ms. Fowler, you've been here before. If it's all right, I'll turn to the Office of Planning and see what they have to say concerning your application.

MS. FOWLER: That's fine with me. Thank you.

CHAIRPERSON HILL: Okay, great. Thank you.

MS. VITALE: Good morning, Mr. Chair, Members of the Board. Elisa Vitale with the Office of Planning and we will rest on the record in support of the application. I can answer any questions at this time. Thank you.

CHAIRPERSON HILL: Thank you. Does the Board have any questions for Ms. Vitale? Okay. Then in that case I'm going to ask if anyone is here from the ANC. Is anyone here from the ANC? No? All right.

Is anyone here who would like to speak in support of the application? Anyone in support?

Anyone here in opposition of the application? Anyone here in opposition? Okay. Great.

Well, then, Ms. Fowler, again I turn back to you for any concluding statements. Do you have any?

MS. FOWLER: Nothing else. Thank you for your time on this.

CHAIRPERSON HILL: Thank you. Is the Board ready to deliberate?

Okay. Then, you know, again as I already started, you know, I think OP is in approval. I read, you know, through all the record and I agree with OP's analysis. The ANC 6B is in support eight

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to zero to one. DDOT is no objection, and in fact you know, the letters of support were from the adjoining property owners concerning the application. So I'd be in support of this application. And unless the Board has any other comments for deliberation I'd go ahead and make a motion to approve Application No. 19340 as advertised. May I get a second?

MS. BUTANI-D'SOUZA: Second.

CHAIRPERSON HILL: Motion has been made and seconded.

[Vote taken.]

CHAIRPERSON HILL: The motion passes, Mr. Moy.

MR. MOY: Staff would record the vote as four to zero to one. This is on the motion of Chairman Hill. Seconding the motion, Vice Chairperson Butani. Also in support, Mr. Miller and Mr. Hinkle. Board seat vacant. Motion carries, Mr. Chairman.

CHAIRPERSON HILL: Thank you, sir. May I get a summary order?

MR. MOY: Thank you.

CHAIRPERSON HILL: Thank you. Oh, sorry? Oh, you're the next case. Okay. There you go.

MR. MOY: Yes, she is. This is Application No. 19341 --

CHAIRPERSON HILL: Don't you just want to just get up, walk around, and then sit back down?

MR. MOY: This is Phil and Kjersten Drager, special exception relief under Subtitle E, Section 5201 from the nonconforming structure requirements of Subtitle C, Section 202.2, the lot occupancy requirements of Subtitle E, Section 304.1. This would construct a second-story addition to the rear of an existing one-family dwelling, RF-1 Zone, 133 Kentucky Avenue Southeast, Square 1014, Lot 25.

CHAIRPERSON HILL: Thank you, Mr. Moy.

MR. MOY: Good morning. Could you please introduce yourself for the record? Thank you.

MS. FOWLER: Hi. I'm Jennifer Fowler. I'm the architect.

MS. DRAGER: Kjersten Drager, homeowner.

MR. DRAGER: Phil Drager, homeowner.

CHAIRPERSON HILL: Okay. Okay. Well, again, I'm having a very good morning and so I'm going to keep making a joke of it because I know that it's not always going to be like this.

This case, again, has been very much been put together. Everyone has done their homework and again, you have the Office of Planning in support, the ANC is also -- you've been through the ANC

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process. And, again, letters of support from both adjacent neighbors. And so I don't have a lot of questions concerning this particular case. Does anyone else on the Board have any questions?

Okay. So, with that if it's alright with you, I'm going to turn to the Office of Planning.

MS. FOWLER: Yes, please. Thank you.

CHAIRPERSON HILL: Okay. Thank you.

MS. FOTHERGILL: Good morning. For the record, I'm Anne Fothergill with the Office of Planning and we rest on the record in support of the application.

CHAIRPERSON HILL: Thank you, Ms. Fothergill. Does anyone have any questions for the Office of Planning? Okay.

So with that, then I would turn to see if there's anyone here from the ANC that would like to say something on this application. Anyone here from the ANC?

Is there anyone here who would like to speak in support of the application? Anyone here in support?

Is there anyone here who would like to speak in opposition to the application? No? All right.

Well, with that, Ms. Flowers (sic), then I

would turn back to you to see if there's anything you'd like to say in conclusion.

MS. FOWLER: Nothing else to add. Thank you.

CHAIRPERSON HILL: Okay. Thank you. Is the Board ready to deliberate? I will go ahead and deliberate, which is to say that again, I thought that the Office of Planning did an excellent job in their record and the analysis and the letters of support from the adjacent neighbors. And I'm convinced that they meet the standard, and so I would be moved to make a motion to approve Application No. 19341 as advertised. May I get a second?

MR. HINKLE: Second.

CHAIRPERSON HILL: Motion has been made and seconded.

[Vote taken.]

CHAIRPERSON HILL: Mr. Moy, the motion passes.

MR. MOY: Oh, I'm sorry.

CHAIRPERSON HILL: That's all right.

MR. MOY: I thought there was something you were going to ask.

CHAIRPERSON HILL: I don't think so.

MR. MOY: But anyway, staff would record the vote as four to zero to one. This is on the motion

of Chairman Hill to approve the application for the relief requested. Seconded the motion, Mr. Hinkle. Also in support, Vice Chair Butani, Mr. Miller, and with board seat vacant motion carries, sir.

CHAIRPERSON HILL: Thank you. Get a summary order.

MR. MOY: Yes.

CHAIRPERSON HILL: Thank you.

[Pause.]

Mr. Moy, yeah, would you call the next case?

MR. MOY: Yes, next case is Appeal No. 191 -- or rather, 19345 of Dianne Conocchioli as captioned for appeal from a February 3rd, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs to issue Building Permit No. B, B as in Bravo, 1501052. That granted to permit a health clinic in the C-M-1 District, 1225 4th Street Northeast, Square 804, Lot 56. There are two motions to dismiss the appeal on timeliness, as well as the appellant's response under Exhibit 44.

CHAIRPERSON HILL: Good morning, Mr. Moy. Thanks so much.

Members of the Board, I'm going to recuse myself from this case and leave it in the capable hands of Vice Chair Butani.

MS. BUTANI-D'SOUZA: Thank you, Chairman Hill.

Okay, before we get into the preliminary matters why don't we start with introductions? So I'm going to start on this side.

MR. SULLIVAN: Thank you, Members of the Board. My name is Marty Sullivan on behalf of the property owner.

MS. CONOCCHIOLI: Good morning, and thank you. My name is Diane Conocchioli. I am the appellant.

MR. LeGRANT: Good morning. I'm Matthew LeGrant, the Zoning Administrator from DCRA.

MR. TONDRO: Maximilian Tondro representing DCRA.

MS. BUTANI-D'SOUZA: Okay. Thank you so much.

So, there is a preliminary question here about the timeliness of the appeal filing. So, and I understand that there are motions to dismiss based on untimeliness.

So what we're going to do to start is we're going to hear from the applicant on why this case is late, and then we're going to hear from DCRA and the property owner to get their view of that.

Just to sort of kind of preface the discussion, the BZA has some standards and rules under which it operates and ways that it can consider cases. So there's very specific criteria that we can consider when you have an untimely appeal.

So, if you could explain to us why the appeal was filed late, and give us the reasons for that so that we can understand and consider that?

MS. CONOCCHIOLI: Okay. Fair enough, and thank you very much, and I do thank you for your time and consideration.

Respectfully, I don't believe that it was filed late at all. I first appeared at the ANC meeting on September 10th, 2015, and within 30 days I was involved in several e-mail exchanges with the DCRA. The first of which occurred on October the 5th. And it had three key points.

One, and it was directed to the plan examiner as to why there was no zoning variance and why there was no public hearing.

MS. BUTANI-D'SOUZA: Can you make sure that your mic is on?

MS. CONOCCHIOLI: The second had to do with the number of five parking spaces. The third had to do with a compliance with the ADA, vis-à-vis, parking

spaces. That initial foray occurred on October the 5th.

When I didn't receive a response from the plan examiner I appended my original e-mail and sent it along to the same gentleman on October the 8th. And I basically said, well, is there some way that we can have a meeting to, again, discuss the first three issues. A., the lack of a public hearing, the number of parking spaces which were approved at 5 for a 27,000 square foot building in a mixed use zone. And thirdly, how in the world five parking spaces could ever comply with ADA requirements under any circumstance.

I finally received a response on October the 15th. And notably October the 15th was even outside the 60 days of allowable response time. When you take into consideration that the DCRA plan examiner actually approved the zoning on -- pardon me on August the 14th. So again, I believe that I acted very quickly.

My e-mail exchanges continued through approximately mid-November, when again the Director of Legislative Affairs was very kind enough to walk me through all the different steps involved in the process. And you know, he made me, you know,

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understand the exact statutes by which the zoning had been approved. So that was November 9th or 10th.

And again, please bear in mind that I didn't receive their response formally until October 15th. Again, in early January I redirected -- pardon me, an e-mail to the ANC commissioner in, you know, in which I said well, you know, I'm still not comfortable with this. Can you please tell me if there are any conditions under which the other property owner has to make known some type of zoning variance? Or will they ever post the zoning variance, and will there ever be a public hearing.

And again, please bear in mind that from my initial foray back on September the 10th, my concern was consistently, the lack of a public hearing. And this was borne out in all of my correspondence.

The ANC commissioner responded by saying that the permits had already been approved; that is in December by the ANC, a month after the permits had been issued.

Still, as part of that response, you know, in early January, the ANC commissioner said, well you know, you know, you know, if there's going to be a public hearing -- pardon me, if the property owner is in fact going to file for a variance or whatever, you

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know just, you know, keep your eye out to see if there have been signs posted outside the premises, or you know, see if there's a listing on the BZA website.

You know, I kept checking, checking, checking and there was absolutely no indication that there would ever be a public hearing. And, you know, we arrived in June and it, like it just struck me that I was still not at all content that there was not a public hearing and that this matter did not merit a public hearing from the start.

So I literally picked up the phone. I called BZA and, you know, I asked okay, what are my options? And I was informed that, you know, at that time, I believe it was on or about June 20th, that I was informed that I did have an option and that was for an appeal.

I immediately wrote to the chair of the ANC 6. I said, well, you know, I'm still not thrilled about this and I'm not convinced that this does not merit a public hearing whereupon the ANC Commissioner responded on the same day that the ANC would not revisit quote/unquote, "The matter." Whereupon, I did what I needed to do and the entire application was submitted on July the 14th. And it was accepted.

And I would really ask the members of the Board to please bear in mind that it was accepted. It was accepted without objections, and you know, given an application number and a docket date.

So, as far as I'm concerned, I acted in a timely manner. I complied with all necessary protocol, and the bottom line is that this application was in fact accepted and approved and docketed, and given an application number.

MS. BUTANI-D'SOUZA: Okay. So before we get into any questions of the Board we are going to hear from DCRA and the owner first. But just to clarify from an administrative point of view, the Office of Zoning doesn't make a determination on whether or not the application is timely. That's the responsibility of the Board. They simply put it on for hearing and then we, as the Board, decide whether it is considered timely if you have this situation.

So just to clarify that, just because you're here today doesn't mean that this was accepted by anyone. Okay? All right.

So, let's go -- so, I'm going to -- I think before we get into questions from the Board I think it would be worthwhile to first hear from the property owner, and then we'll turn to DCRA. So, Mr.

Sullivan.

MR. SULLIVAN: Thank you, Madam Chair and Members of the Board.

Again, my name is Marty Sullivan on behalf of the property owner, Planned Parenthood of Metropolitan Washington. I think the Board is very conversant in the standard for timeliness. The permit was issued August 17th. One of the permits was issued. The appellant had knowledge of that decision, admittedly on August 5th, 2015. And then the appeal was filed 11 months after the appellant had knowledge.

The appellant argues that it -- simply that it wasn't late. I'm not sure that they've even argued exceptional circumstances, but if they had I'll go over the requirements for exceptional circumstances. That they be outside the appellant's control. There was nothing outside the appellant's control here.

It could not have been reasonably anticipated. And that it's for some reason, its ability to file the appeal was impaired. None of that is present in this case. In fact, she even notes that she got a response from DCRA on October 15th, 2015. It's at that point we're still about

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nine months before the filing of the appeal.

The Baskin case, *Baskin v. BZA*, of course the BZA laid out very clearly, or the Court of Appeals laid out clearly that just choosing another strategy other than filing an appeal doesn't toll the deadline. And filing general complaints to DCRA or with your ANC does not toll the deadline and is not an exceptional circumstance that can toll the deadline.

So there's also a very important requirement to that provision of 3112.2D. The other half of that exceptional circumstance exception is that entertaining the appeal will not prejudice the parties to the appeal. In this case the property owner moved forward with their plans, they've occupied the building, and they've spent considerable sums doing that in reliance on the permit being issued. So that requirement is easily not met because it will certainly prejudice the property owner.

That's all we have on that timeliness issue.
Thank you.

MS. BUTANI-D'SOUZA: Thank you, Mr. Sullivan.
Okay. We're going to turn now to Mr. Tondro.

MR. TONDRO: Good morning, Madam Vice Chair,

Members of the Board. I'll try to keep this very quick. I think we've gone over the details.

I would just call your attention to a relatively similar case that was recently decided, BZA Appeal 19049 of Cesar Junker, where there's specifically sort of a similar fact pattern of assertions by the appellant in that case, that they had complained to DCRA for almost a year. In other words, indicating that they had concerns about the building permit, which was -- which they had raised with DCRA, and arguing that that was sufficient to hold that requirement to appeal.

And the Board, in that case, I think I rightly, said no, the filing of an appeal is what matters and that is determined by the time that you have notice. Under 3112.2D it's at the time when the appellant has notice, should -- has notice of or knowledge of the actual decision, which is normally the building permit.

This particular case, as I pointed out in my brief, appellant has indicated they had knowledge of were aware of this even prior to the issuance of the building permit. As Mr. Sullivan just indicated the appellant also had further contact with DCRA and could have filed, even as maybe slightly outside of

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the 60-day window, but they certainly had questions. They could have filed then. They didn't file then. They waited for another nine months afterwards.

So I think this should be fairly clear this is not sufficient to meet the 60-day requirement. Thank you.

MS. BUTANI-D'SOUZA: Thank you, Mr. Tondro. Okay. We're going to turn now to the members of the Board to find out if they have any questions for any of the parties up here today. Are there any questions?

Okay. I do have one question. Can you help me understand why you didn't file an appeal in November or in October when you were in conversations with DCRA? Why didn't you file at that time?

MS. CONOCCHIOLI: Well, that's a very good question. However, to the extent that the actual permits were not issued until November, I didn't ask about -- you know, I did not follow up with the ANC commissioner until January, and it's at that point that I realized that the permits had been issued and that the ANC approved the public space after the permits had been issued.

But it was during that point in that e-mail exchange when I said, well, you know, if the property

owner is going to file a variance, how does that process take place? How will I know it? Where will I find the signage? Where will I find any public indication that the property owner will be filing a variance? Because again, my concern was the lack of a public hearing.

And again, in the ANC's response they said, well, you know, if the property owner files an application for a variance, and if there's a public hearing, you will find the signs. So, you know, you know, I would drive by on a Wednesday morning on my way to work. No sign.

So I'm thinking, well, you know, I guess, I guess, you know, this may or may not be happening. So it's not as though it were outside my stream of consciousness. I mean, I was, I was very you know, diligent about following up as to whether or not a zoning variance would ever be filed by the property owner.

MS. BUTANI-D'SOUZA: Thank you. Are there questions?

MR. HINKLE: Yeah, if I could ask, then, just for a point of clarification. I'm a little bit confused and I recognize that the zoning rules and regulations are a little bit confusing themselves.

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But I'm trying to understand. So, you -- what I'm hearing is you understood they got a building permit, but then you were questioning whether or not they were going to file for a variance. And I'm just trying to understand for myself why you would think they would need to file for a variance if they already have a building permit that's established.

MS. CONOCCHIOLI: I just thought that on the outside chance that, you know that, some review might have taken place that would necessitate the owner filing -- pardon me, for a variance prior to their formal opening. So I was basically trying to cover bases. You know, any possibility out there.

And that was the purpose of my, you know, of my question, you know, you know, you know, in the event that the owner files for a zoning variance, how will I know it.

MR. HINKLE: Okay. If I could ask the, excuse me, the property owner's representative. When did this open?

MR. SULLIVAN: I'm not aware of the actual date that it opened. I think they --

MR. HINKLE: But it is open now.

MR. SULLIVAN: Yeah. Well, they've received a certificate of occupancy. Yes.

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MR. HINKLE: Okay.

MS. BUTANI-D'SOUZA: We're sticking with questions from the Board at this time.

MS. CONOCCHIOLI: Okay. Forgive me. Forgive me.

MS. BUTANI-D'SOUZA: No questions? I'll let you make one last statement and then we will move to deliberations if there are no further questions.

So, you can go ahead.

MS. CONOCCHIOLI: Sure. So the question of the certificate of occupancy, yes it was issued, but on a temporary basis. And then apparently there are some checklist items that need to be complied with before the final certificate of occupancy is granted on or about October the 30th. And I have the C of O right here as well.

To the extent that this entire matter is under jurisdiction of the 1958 Zoning Regs. You know, I would really ask for some consideration of the manner in which the zoning review took place and was given approval.

Those zoning regulations were in effect until September 6th, less than a month ago.

The zoning review was really done under the auspices of the statutes contained in the 2016 regs.

Not in the 1958 regs. So I think there are some inherent flaws.

So I -- so yes, maybe I should have been more cognizant during that period between January and June, but my understanding was that, was that in the event that a zoning variance or a public hearing was going to be docketed on behalf of the owner, that I would see some public indication of it.

And to the extent that in June I did contact the BZA office, I contacted the ANC Commissioner on the -- Chair on the same day. She made it absolutely clear that the ANC would not take any further action or revisit the issue. I acted almost immediately to file the appeal.

MS. BUTANI-D'SOUZA: Okay. Thank you very much. Are there any other questions from the Board?

Okay. So I would suggest that we move to deliberation on this preliminary matter. So, I'm curious about whether my fellow board members have any thoughts to share, if they'd like to kick off the deliberations on this.

Okay. So this is a tricky one. I can tell that obviously there's quite a few people here who wish to be heard on this matter. To me it seems quite clear that there is a misunderstanding on the

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part of the appellant of what the zoning process is. You know, and I think that as the property owner's representative indicated, we do have very specific criteria that we may consider when waiving the 60-day filing deadline, and those criteria are that the appellant must demonstrate that there is an exceptional circumstance that is outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board and the extension cannot prejudice the parties to an appeal.

So, in my view I don't think that that standard has been met. But I am sensitive to the complexity of the appeal process. The fact that a lot of resources have been extended in order to bring people here to be heard. So my feeling is that it may be sensible to hold this decision on the preliminary matter. I believe the term is, hold it in abeyance, and hear the case. And then come back to a decision about whether the appeal was timely filed.

That's where I am. I'm curious to hear where my colleagues are.

MR. MILLER: Thank you, Madam Vice Chair.

It's very clear that the appeal was not filed in a timely manner, whether it's under old regulations or new regulations, those standards haven't changed. So, I know I've participated in Board BZA -- other BZA appeals where we held the timeliness question in abeyance until we allowed the parties to argue the merits or the person -- parties argue the merits.

It's just so clear, though, I think it's kind of -- I personally think it's a waste of time. But I understand your sensitivity to those who are here who wanted to speak on the issue. I will defer to the wisdom of the chair and my other colleagues.

But I think we're going to get to the same place and it may just be an hour later. Or two hours. Or whatever it is, I think in another case it may not have been even in that day. I can't even remember.

But you know, an e-mail exchange discussion at an ANC meeting, that's not a filing of an appeal to this Board. It's just so clear, and it's 11 months. If it was in November or December. Maybe we might make allowances, but there are reasons why there is that rule for reliance by people who are proceeding based on what the Government has done. And there is harm that happens if we set a percent

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allowing an appeal 11 months after a deadline.

But I'm willing to -- I have the time. And people here have the time. That's what we're here for. It's up to you. I defer to you and Mr. Hinkle on this matter.

MR. HINKLE: I'll weigh in, in a little bit. I do think it's a timeliness issue. I mean, I tend to think that perhaps if we do go through a hearing then an hour and two hours later we might come to the same conclusion as well. You know, there could be some deference to the Board if this was filed not in a timely manner but, you know, in a manner shortly after all these building permits were let back almost a year ago.

But I'm struggling the 11 months and not submitting the appeal, at least, to this Board to at least get your foot in the door. And I think it would set a bad precedent for this Board if we were to not address this timeliness issue first before we go into a hearing. That's my thought.

MS. BUTANI-D'SOUZA: Okay. I find my colleagues thoughts to be very compelling. You know, I will say that I think that as I referenced, there was some lack of clarity on the regulations and I just want to make it clear what I view the lack of

clarity to have been.

This was a permit that was issued for a matter of right use, and when a permit is issued for a matter of right use there is no requirement that the property owner go before the Board of Zoning Adjustment for any reason unless there is relief required. So this Board hears applications for special exceptions and variances.

There is very clear language in the Zoning Regulations that describe what a variance is and what a special exception is. There was certainly in the view of the Zoning Administrator, and I would say, you know, based on my reading of the record, no need for a variance here. And I don't want to get into the substance of the case, but I do just want to clarify that. There is -- there would not have been a hearing or any need for a hearing. Obviously there is the ability to appeal a building permit. But again, the Zoning Regulations very clearly lay out the timelines for those appeals as 60 days.

The reason that those exist, that those timelines exist, as my colleague referenced was, you know, to protect the integrity of the zoning process.

So, I think it would be worthwhile to go to a vote on whether we should hear this appeal. So I'm

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going to ask if there's a -- so, let me see. I'm going to see if there's anyone who would like to make motion to hear this appeal at this time. Or, I'm sorry, let me make sure that I'm asking for the right -- or making the right motion.

MR. MILLER: If you want me to make a motion to dismiss and see if there's a second and vote on that, I think that would dispose of the matter as well.

MS. BUTANI-D'SOUZA: Okay.

MR. MILLER: Or you could, I guess, make a motion.

MS. BUTANI-D'SOUZA: I think that's the right --

MR. MILLER: Counsel can correct me, to accept it either way and see if you get a second.

MS. BUTANI-D'SOUZA: Okay.

MR. MILLER: Either way, I guess it could work.

[Discussion off the record.]

MS. BUTANI-D'SOUZA: Okay. All right. Mr. Miller, why don't you go ahead with your motion?

MR. MILLER: Okay. Thank you. So I would make a motion that the Board dismiss the appeal on the question of timeliness.

MS. BUTANI-D'SOUZA: Okay. Is there a second?

MR. HINKLE: I'll second that.

MS. BUTANI-D'SOUZA: Okay. The motion has been made and seconded.

[Vote taken.]

MS. BUTANI-D'SOUZA: Okay. Mr. Moy, I believe the motion carries.

MR. MOY: Yes. Staff would record the vote as three to zero to two. This is on the motion of Mr. Miller to dismiss the appeal on timeliness. Seconding the motion, Mr. Hinkle. Also in support of that motion is Mr. Rob Miller. Seat vacant, no other member participating. Your motion carries.

MS. BUTANI-D'SOUZA: Thank you, Mr. Moy. Thank you very much.

[Pause.]

CHAIRPERSON HILL: All right. Okay, Mr. Moy, if you wouldn't mind calling our next case?

MR. MOY: Yes, sir. That would be application No. 19153 of Independence Avenue Investments, LLC. Presently at the last hearing where it was amended for variances from the off-street parking requirements under 2101.1, parking space with requirements under 2115.3, and the parking

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space striping requirements under 2117.3, to commit parking spaces to a car sharing service in the R-4 District, at the premises, the rear of 1524 Independence Avenue Southeast, Square 1072, Lots 2025 through 2032.

Mr. Chair, as I mentioned earlier there is a request from the application to continue to a future hearing date in November. And there is also a request for a party status with a waiver to -- waiver of time requirements under Exhibit 60.

CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Is the party here who is requesting party status? Would you mind coming forward as well, please?

You can -- yeah, it doesn't matter.

Okay, if you could all please introduce yourself?

MR. CROWLEY: David Crowley, Capital Properties Group. It's a primary business, and Independence Avenue Investments, LLC. is the original development entity that acquired the properties in 2004.

CHAIRPERSON HILL: Okay. Thank you. Introduce yourselves.

MS. HARSLEY-DEAN: Veronica Harsley-Dean with the law firm of Whiteford, Taylor, and Preston,

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representing Capital Square Condominium, the owners of Lots 80 and 81.

CHAIRPERSON HILL: Could you introduce yourself, please?

MS. McMURRAY-ABDULLAH: Good morning, Rashida McMurray-Abdullah, Board Member of Capital Square Association and owner of P3.

CHAIRPERSON HILL: Okay, great. So there's a couple of preliminary issues before the Board. I guess one again, is to continue the hearing until November. And the other again, is the party status issue.

Where I am, and you know, we'll let the members of the Board weigh in as well, where I am at is again to kind of I guess grant the continuance and knowing that -- and not settling, or hearing, I guess, the party status issue. Like, I'd like to wait until November.

Mr. Crowley, I mean, you've been here quite a few times now before, and you seem to obviously not be pleased about it but you know, you're here again and this is actually very muddy. The case is very muddy. The Office of Planning has a lot of questions for you. What has now been raised is that whether or not you own the property at all, and so whether this

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should just be dismissed.

The, let's see, what else is going on. Like I mean, you know, you had some things in here about, in the record, concerning spots. And I'm just kind of sharing this with you because we're going to continue, so I'm letting you know that we're just continuing this, right?

You have the whole issues about the couple of spots. And I'm just looking through my record here.

Yeah, P3 and P4, and that, you know, you are able to speak on their behalf but there's nothing in the record that shows that. There is, you know, what I just refer you to again is the Office of Planning's report from September 29th, page 2 and 3, where they're again talking about, you know, the relief requested and clarification on the relief that you're requesting. And then page 3 it talks about all the different things that they would like to hear from you about.

And so, you know, what I'd like when you come back here again, to really be clear as to what the relief is that you're requesting, I suppose and I know that -- I mean again, this was January that we first heard this, I think. Of February. I can't remember what it was. And I do remember the

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opposition that you had. And now the opposition and the -- I'm sorry, and the condo association as counsel, and they put forth a very long record, 63 pages I think it was, about the condo docs and how everything, you know -- and so, for your side of it I supposed when you come back, you know, if there's a way to, you know, present in a concise manner -- and you did in your letter as well, but how the condo docs reflect the ownership and whether or not this applicant can even come forward with this and whether this should be dismissed.

So, let's see if I'm missing anything. So again, Mr. Crowley, I'd recommend you to go ahead and keep going back to the Office of Planning. You know, the Zoning Administrator has stated in the record very clearly that he thinks, you know, eight spots should be there, eight spots were there. We're not talking about the case. I'm just telling you, you know what, you know, we're going to be looking for the next time.

And we'd like to send you both back, you know. I mean, we've seen it in the past where parties in opposition, particularly even you know, associations get together with whoever the applicant is and come up with some kind of a resolution. And

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so, you know, there might be some need for you to have a resolution in terms of the variances that you might need yourself as the association. You know, that's kind of -- so, you know, if you guys can get together I'd request that you do that, try to do your best to do that.

But definitely, Mr. Crowley, like the next time you come here, like making sure that you're on the same page with the Office of Planning.

And actually, I'm going to turn to Office of Planning if I could to just clarify if there is anything that you think I might have left out that would be helpful for the applicant. Again, just referring to page two and three of your report there.

MS. VITALE: Good morning, Mr. Chair and Members of the Board. Again, Elisa Vitale with the Office of Planning.

I do think page 3 of the September 29th Office of Planning report spells out clearly the information that the applicant must provide in order for this application to be evaluated. And that includes a site plan that identifies the final conditions of the property that would identify clearly the proposed final use of each space. And that cannot provide for flexibility if a space is

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going to be used for car share that space would need to be identified as a car share space and shown as a car share space on the site plan.

I think there needs to be the final location identified for all trash and recycling bins, and then also I believe in the latest site plan there were some revisions to drive aisles, the widths of drive aisles. So we would want to ensure that turning radius diagrams are provided that demonstrate that all spaces are accessible given the proposed drive aisle widths.

The applicant does need to confirm with the Zoning Administrator. The Zoning Administrator is the interpreter of the zoning regs. They would make the call as to the actual extent and type of relief needed. I think that has been an ongoing question, what sections specifically does the applicant need relief from, from the Zoning Regulations.

And then finally, confirmation that the applicant can in fact pursue the relief for request, given that there are some questions about property ownership. And then obviously coordination with the owners of property that may or may not be the subject of the application.

CHAIRPERSON HILL: Okay. Great. And then if

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you got all that then you think that the Office of Planning would be able to give a recommendation?

MS. VITALE: That is correct.

CHAIRPERSON HILL: Okay. Because I'm kind of stuck. I've got no recommendation to work off of here, you know, from the Office of Planning. So you have a lot of work ahead of you, Mr. Crowley, and so, you know if you want to go ahead and work with the Office of Planning and see what you can do to clarify all those things that were just mentioned, you can go back and look at the tape if you'd like. You know, but it's all down here.

And so, so we'll go ahead and put this off until November unless anyone else has anything to add from the Board.

Sure. Go ahead, please, Mr. Miller.

MR. MILLER: No, I just wanted to -- thank you, Mr. Chairman. I just wanted to agree with everything you said and with all of what Office of Planning said, and also state that I haven't -- I have reviewed the entire record on this case even though this is the first time I'm participating in it. Even though the first hearing was held back in February, of this year, I believe.

So, I would encourage the applicant to take

head of the Office of Planning's recommendations and because they have been unable to make a recommendation thus far. And even though I've only participated since I've reviewed this case over the weekend, my patience, having reviewed the record, won't be there to continue this any further if you haven't -- you know, if the applicant hasn't provided some of the basic information that the Office of Planning is seeking.

MR. CROWLEY: If you do read -- may I speak? Not now?

CHAIRPERSON HILL: No, that's all right. We're going to go ahead and continue. So, this is just information for you, Mr. Crowley.

So again, I appreciate that Mr. Miller, Mr. Miller, welcome to the case. And the Office of Planning again, being unable to make a recommendation is also something that, you know, we you know, don't absolutely have to have, but is something that we use to evaluate.

And so, I again mention that to the applicant. And also, yeah, then what Mr. Miller kind of -- or Commissioner Miller referred to in that if you're not ready this next time in November, I would make sure the next time you're here, you're ready

because otherwise you can already see how this is going to go.

So, with that, Mr. Moy, can I schedule another time?

MR. MOY: Yes. Very quickly for the staff's own edification, Mr. Chair, are you holding the request for a party status at a later date?

CHAIRPERSON HILL: Yeah, I was. Yeah.

MR. MOY: Okay. Okay.

CHAIRPERSON HILL: Exactly. Unless the Board has some other thoughts on that.

MR. MOY: Okay. So as to future dates, Mr. Chair, Mr. Miller is not due back with the Board until, until, until December the 7th. Apart from that then I think because of the size of the dockets staff would suggest either November 2nd or November 30th.

CHAIRPERSON HILL: Does the applicant have --

MR. CROWLEY: Well, I met with Mr. LeGrant already this morning, quickly, and we set a time that Office of Planning would be able to attend for a couple weeks from now.

CHAIRPERSON HILL: Uh-huh.

MR. CROWLEY: I just feel like the 2nd might be a little tight.

CHAIRPERSON HILL: Yeah, that's what I would think also.

MR. CROWLEY: Because I've got to get something from Mr. LeGrant in writing that's clear.

CHAIRPERSON HILL: So you want the 30th or you want December 7th?

MR. CROWLEY: My third meeting with him, upcoming. So let's go November 30th.

CHAIRPERSON HILL: All right.

MR. CROWLEY: Not because I want to, but because I feel I have to.

CHAIRPERSON HILL: You prefer the 30th. Is that what you said?

MR. CROWLEY: Correct.

CHAIRPERSON HILL: Yeah. Okay. Okay. I mean, would you like the 7th? It's a little bit more time.

MR. CROWLEY: I heard the 2nd.

CHAIRPERSON HILL: The 7th of December.

MR. CROWLEY: Oh, no, I have a conference in New York.

CHAIRPERSON HILL: Okay. All right. Are you good with the 30th of November?

MS. HARSLEY-DEAN: We'll make it work.

CHAIRPERSON HILL: Okay. Great. And again,

even though we're not hearing this from you now concerning party status, I would like to see you here the next time as well. Okay? So, okay.

MR. MOY: Mr. Chair.

CHAIRPERSON HILL: Yes.

MR. MOY: One other thing. Would you like to set a deadline on the applicant filing?

MR. CROWLEY: That would be fine.

MR. MOY: And possibly the, I'm going to say opponents, ability to reply or not? Or, this is a continued hearing so they can do it at the time of the hearing unless you want something sooner, but --

CHAIRPERSON HILL: Whatever works best for the staff.

MR. MOY: Well, well, then if you're -- if the intent is to have the opponent's response at the time of the hearing, which would be the 30th, then --

CHAIRPERSON HILL: Yes, that would be. Thank you.

MR. MOY: Then I think maybe if the applicant can file by -- just to remind you all, November 30th is a Wednesday, because in November we're moving to Wednesday hearings. Okay? So Wednesday. They're all Wednesdays now.

So your filing, then, to allow for --

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CHAIRPERSON HILL: Mr. Moy, I'm sorry. Is the Board comfortable talking about the party status now? Oh, that's right, you're not participating. Okay. Never mind. We'll hold it off. Okay.

MR. CROWLEY: Later is better. Yeah.

CHAIRPERSON HILL: I'm not going to, but still, nonetheless, Mr. Moy, please go ahead.

MR. MOY: Okay. Anyway, so if this is a good time for the applicant can you file by Monday, November the 21st?

MR. CROWLEY: Certainly.

MR. MOY: Is that good? Oh, thank you.

CHAIRPERSON HILL: And then I'd like to hear the response by the possible party status holders. Right?

MR. MOY: Yeah, by no date or --

CHAIRPERSON HILL: When is a good date before the -- when is the -- you know, with enough time for us to -- with them to -- with enough time for them to respond, and then enough time for us to review.

MR. CROWLEY: You can back up my November 1st 10 days if you need to. Or a week.

MS. McMURRAY-ABDULLAH: Chairman Hill, if we could possibly move that December 7th date further into December. My concern is, is the Board of

Directors, they are volunteer Board of Directors, and that's right in the Thanksgiving holiday window and I would need to confer with the Board to get some of the more detailed facts.

CHAIRPERSON HILL: Okay. Mr. Moy, if we did this December 7th, December 7th is, you know, when the next time Mr. Miller is here. So, that is as far back as I want to push it.

MR. CROWLEY: I can't be here on the 7th.

CHAIRPERSON HILL: Oh, gosh. Okay.

MR. MOY: Yeah, that's what he had said earlier.

MS. McMURRAY-ABDULLAH: I guess, Chairman Hood, the only thing I would say is that only today did I know that the owners of P3 and P4 were going to be affected by this hearing. And so we would -- and owner of P4 is in Florida. So.

CHAIRPERSON HILL: Okay. Just give me a second. Everybody just hang on. Okay. We'll leave it the 30th of November, and we'll go with what we get. Right.

So what dates? I don't have a calendar in front of me so that's why I'm just trying to figure out when you would like.

MR. MOY: Okay. Let's rehash this a little

bit. So if the continued hearing is Wednesday the 30th, Thanksgiving is the previous Thursday, the 24th, to give opposition time to review the filings. Maybe if the applicant were able to file -- make his filings, let's say another seven days earlier, maybe by the 14th of November --

MR. CROWLEY: That's fine.

MR. MOY: Would that work? Okay. Okay. So the applicant would file Monday, November 14th and we'll continue the hearing on Wednesday the 30th.

And everything is ISIS or everything is on line 24/7, right?

CHAIRPERSON HILL: Yes, sir. All right, thank you, guys.

MR. CROWLEY: Thank you, Chairman Hill, Members of the Board.

CHAIRPERSON HILL: Mr. Moy, do we have anything else coming before the Board today?

MR. MOY: I believe -- I don't think you missed anything, sir. So I think that's it.

CHAIRPERSON HILL: Okay. Then we stand adjourned. Thank you.

[Whereupon, at 11:04 a.m., the Board Hearing was adjourned.]