

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

MAY 1, 2007

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chairperson
CURTIS ETHERLY, JR.	Vice- Chairperson
JOHN A. MANN, II	Board Member NCPC)
MARC D. LOUD	Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
TRACEY W. ROSE	Sr. Zoning Specialist
ESTHER BUSHMAN	General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Meeting held on May 1, 2007.

A G E N D A

REMAND OF APPEAL NO. 16839

Of Advisory Commission 4A

VOTE ON REMAND OF APPEAL NO. 16839

Granted - Five to zero to zero

APPEAL NO. 17589

Of Salvatore Galgone

VOTE ON APPEAL NO. 17589

Denied - Five to zero to zero

APPEAL NO. 17581

Of Edwards B. Rooths

VOTE ON APPEAL NO. 17581

Denied - Three to zero to two

APPLICATION NO. 17438Motion for Reconsideration of Final Decision
of Braden P. And Conner W. HermanVOTE ON APPLICATION 17438

Denied - Three to zero to two

APPLICATION NO. 17580

Of Macy Development, LLC

VOTE ON APPLICATION NO. 17580

Denied - Three to zero to two

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

2 10:20 a.m.

3 CHAIRPERSON MILLER: This meeting
4 will come to order. Good morning ladies and
5 gentlemen. This is the May 1, 2007 Public
6 Meeting of the Board of Zoning Adjustment of
7 the District of Columbia. My name is Ruthanne
8 Miller. I am the Chair of the BZA. To my
9 right is Mr. Curtis Etherly; he is the Vice
10 Chair. To my left is Mr. Marc Loud; he is the
11 Mayoral appointee, and next to him is John
12 Mann, representing NCPC. Next to him is Cliff
13 Moy from the Office of Zoning, Sherry Glazer
14 and Esther Bushman from the Office of Attorney
15 General, and Tracey Rose from the Office of
16 Zoning.

17 Copies of today's meeting agenda
18 are available to you and are located to my
19 left in the wall bin near the door. We do not
20 take any public testimony at our meetings
21 unless the Board asks someone to come forward.

22 Please be advised that this

1 proceeding is being recorded by a court
2 reporter and is also web cast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room. Please turn off all beepers and
6 cell phones. Does the staff have any
7 preliminary matters?

8 SECRETARY MOY: No, Madam Chair. I
9 think there are some, but we can take it up
10 case-by-case.

11 CHAIRPERSON MILLER: Okay, then
12 let's proceed with the agenda.

13 SECRETARY MOY: Morning, Madam
14 Chairperson and members of the Board. The
15 first case for decision is the Remand of
16 Appeal No. 16839 of Advisory Neighborhood
17 Commission 4A. This was pursuant to 11 DCMR
18 3100 and 3101 from the decision of the Zoning
19 Administrator, for the issuance of a
20 certificate of occupancy (No. 18366, dated
21 August 31, 2001) for an elderly development
22 center serving 30 persons, ages 22 to 85 years

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1 of age and 7 staff in a C-2-A District at
2 premises 5511 14th Street, Northwest That's
3 in Square 2800, Lot 9.

4 The staff is going to give just a
5 real, a very quick background, Madam Chair,
6 since this has been in process for a lengthy
7 period of time.

8 The Board denied Appeal No. 16839
9 of ANC 4A on July 2, 2002. The Appellant
10 appealed to the District Court of Appeals who
11 concluded that the Board erred in determining
12 that Metro Day was entitled to a certificate
13 of occupancy as a child elderly development
14 center.

15 The BZA order was vacated and
16 remanded to the Board for further processing
17 -- proceedings. In the remand -- in its
18 remand order, the Court instructed that,
19 although Metro Day does not qualify as a child
20 elderly development center, it may yet be
21 eligible for a C of O under a different use
22 classification.

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1 The Board then scheduled its
2 decision meeting on July 6, 2004, and at the
3 end of its deliberation, the Board instructed
4 the zoning staff to send letters to all
5 parties seeking comments on different use
6 classifications appropriate to Metro Day.

7 Through a number of meeting dates
8 and one hearing date, the Board on December 6,
9 2005 finally concluded to postpone its
10 decision until the Zoning Commission could
11 determine a new use definition or
12 classification. And on December 22, 2006 the
13 Zoning Commission issued Zoning Commission
14 Order No. 05-01 adopting a text amendment
15 creating a new use called Adult Day Treatment
16 Facility.

17 So, what's before the Board is to
18 act on the Court of Appeals remand of this
19 appeal, and that concludes the staff's
20 briefing, Madam Chair.

21 CHAIRPERSON MILLER: Thank you, Mr.
22 Moy, and I think you covered a lot of the

1 history, and I don't want to be too redundant,
2 but I want to at least start where I was
3 beginning my analysis from, and that is of
4 course the Court's ruling, and as you stated,
5 the Court did vacate the Board's decision and
6 remanded the case to us and instructed us
7 that, although Metro Day -- say it quotes,
8 "Although Metro Day does not qualify as a
9 child elderly development center, it may yet
10 be eligible for certificate of occupancy under
11 a different use classification."

12 And so therefore, when it was
13 remanded to the Board, the Board took a look
14 at that question and actually sought comments
15 from the parties whether the Board should
16 grant the appeal or determine whether there
17 was another use classification under which the
18 facility might be eligible, and the Board
19 heard from Mr. Chagnon on behalf of ANC4A and
20 from DCRA.

21 And in looking at the case, the
22 Board noted that there was a lack of clarity

1 in our regulations, which is not surprising,
2 and actually Mr. Parsons was the Zoning
3 Commissioner on this case, and the Board
4 determined that OAG should take a look at
5 this, and the Zoning Commission should
6 consider whether or not there should be a new
7 regulation that would specifically encompass
8 an adult facility, and in fact that's what
9 happened, and as Mr. Moy stated, on December
10 22, 2006 the Zoning Commission issued these
11 Zoning Commission No. 05-01, adopting a text
12 amendment and creating a new use called Adult
13 Day Treatment Facility, which is effective
14 December 29, 2006.

15 So at this point, it's up to this
16 Board now to take action, and I think we have
17 2 choices in -- to comply with the Court's
18 order. One is we could conduct hearings to
19 determine if Metro Day's facility falls within
20 the new regulation that was recently passed by
21 the Zoning Commission, or we could just grant
22 the appeal on the basis that Metro Day's use

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1 did not fall within that classification as
2 determined by the Court of Appeals.

3 If we do that, if we just grant
4 the appeal in this case, that means that DCRA
5 would be authorized to revoke the certificate
6 of occupancy that's in existence right now
7 under the old regulation, and that Metro could
8 re-apply under the new regulation. And in
9 that case, the Zoning Administrator would make
10 a determination in the first instance whether
11 Metro falls within the new regulation.

12 So I kind of open it up for
13 comments at this point on those two options.

14 MEMBER MANN: Madam Chair, in
15 considering these two options, do you have an
16 opinion on which would more efficiently draw
17 this process to a conclusion?

18 CHAIRPERSON MILLER: It would be my
19 opinion that we should just grant the appeal.
20 The normal process would be for the Zoning
21 Administrator to make that determination in
22 the first instance, and I think that's the

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1 better approach, though the Court has given us
2 the other option if we wanted to choose that.

3 Also, Metro Day hasn't been
4 engaged in this process. They didn't respond
5 to our request for comments or anything like
6 that, so that's why I would lean in the other
7 direction just to grant the appeal. It would
8 clearly be in accordance with the Court's
9 remand.

10 MEMBER MANN: Yes, I would support
11 you on that.

12 CHAIRPERSON MILLER: Okay. In
13 which case, I would move to grant the appeal
14 of 16839 of Advisory Neighborhood Commission
15 4A.

16 MEMBER MANN: Second.

17 CHAIRPERSON MILLER: Any other
18 comments on this? Okay, all those in favor,
19 say aye.

20 (A Chorus of Ayes.)

21

22 CHAIRPERSON MILLER: All those opposed? All

1 those abstaining? Would you call the vote,
2 please?

3 SECRETARY MOY: Yes ma'am. The
4 staff would record the vote as four to zero to
5 zero. This on a motion of Madam Chair, Ms.
6 Miller to grant the appeal, seconded by Mr.
7 Mann.

8 Also in support of the motion, Mr.
9 Etherly, Mr. Loud. The staff also notes that
10 we have a absentee ballot from John Parsons
11 who's participating on this remand appeal, and
12 his absentee ballot is to grant the appeal.

13 If I may read, his comment is,
14 "Given that the genesis of this appeal has
15 been resolved by the Zoning Commission's
16 revision to the regulations, which created an
17 adult day treatment facility, the BZA should
18 grant the appeal, allowing the facility to
19 apply for a C of O as a matter of right."

20 So that would give a resulting vote
21 of five to zero to zero.

22 CHAIRPERSON MILLER: Thank you very

1 much. Would you like to call the next case?

2 SECRETARY MOY: Yes, ma'am. The
3 next case is Appeal No. 17589 of Salvatore
4 Gorgone pursuant to 11 DCMR 3112 from the
5 administrative decision of the Zoning
6 Administrator, Department of Consumer and
7 Regulatory Affairs, to deny the issuance of a
8 certificate of occupancy permit for a Gourmet
9 Shop because the prior delicatessen use was
10 discontinued for more than three years,
11 pursuant to 11 DCMR 2005. The subject
12 property is located in the DC/R-5-E District
13 at premises 1417 17th Street, Northwest, and
14 that is Square 181, Lot 149.

15 On April 10, 2007 the Board
16 completed public testimony, closed a record
17 and scheduled its decision of May 1, 2007.
18 The Board requested post hearing documents
19 from the appellee, DCRA and allowed
20 additional filings from the ANC. The ANC did
21 file and that is in the case folders
22 identified as Exhibit 30.

1 We also received a filing from DCRA
2 yesterday, April 30, which is untimely. The
3 Board may wish to take that up as a
4 preliminary matter, so that should be
5 identified as Exhibit 31 as the most recent
6 filing.

7 CHAIRPERSON MILLER: I'm sorry, Mr.
8 Moy, what is that - Exhibit 31?

9 SECRETARY MOY: The filing from DCRA
10 would be identified as Exhibit 31. That was
11 filed yesterday from DCRA.

12 CHAIRPERSON MILLER: Thank you.

13 SECRETARY MOY: That completes the
14 staff's briefing, Madam Chair.

15 CHAIRPERSON MILLER: Well, the
16 Board is looking for that Exhibit 31. If I'm
17 not correct, I think those were the documents
18 that we had -- thank you, right -- that we had
19 specifically requested at the hearing.

20 One was the definition of a
21 delicatessen from Webster's Third New
22 International Dictionary, two copies of fast-

1 food restaurants and existing eating establish
2 issued temporary certificates of occupancy for
3 one year in order for the owner to apply to
4 the BZA for a special exception for a fast-
5 food restaurant in a C-2-A District, and
6 three, violation notices issued to Chef's
7 Express, October 20, 1999, March 7, 2003 and
8 August 21, 2003 for operating as a carry-out
9 without obtaining a certificate of occupancy.

10 I believe these documents also were
11 faxed to us last night, so we had a chance to
12 look at them, and I would move that we wave
13 our regulations to take them into the record
14 because they were documents that were
15 specifically requested by us, they don't
16 involve anything that the posing parties would
17 need to cross-examine on or would be surprised
18 about. So for those reasons, is there a
19 consensus to take that in?

20 CHAIRPERSON MILLER: Okay. So,
21 going to the merits of this case. Let me
22 start by just setting up the legal issue

1 that's before us. It's an appeal of a denial
2 of an application for certificate of occupancy
3 for a Gourmet Shop. Denied on the basis that
4 a prior non-conforming use was discontinued
5 for more than three years, and the ZA relied
6 on Section 2005 for that.

7 So, I think in approaching this
8 question, we need to first establish whether
9 or not there was a non-conforming use at this
10 premises, and if so, if it was discontinued,
11 and if so, when. Basically, that's our
12 framework for this analysis.

13 So, we do have a lot of
14 documentation in the record. I just want to
15 start with whether or not there was a non-
16 conforming use on these premises, and I'm
17 going to start by reading the definition of a
18 non-conforming use so that we're all on that
19 same page.

20 In our definition section 199.1
21 non-conforming use is defined as follows: Any
22 use of land or of a structure of a structure

1 and land in combination lawfully in existence
2 at the time this title or any amendment to
3 this title became effective that does not
4 conform to the use provisions for the district
5 in which the use is located.

6 A use lawfully in existence at the
7 time of adoption or amendment of this title
8 that would thereafter require special
9 exception approval from the Board of Zoning
10 Adjustment shall not be deemed a non-
11 conforming use. That non-conforming use shall
12 be considered a conforming use subject to the
13 further provisions of Sections 3104.2 and
14 3104.3.

15 That's the definition, not to get
16 too confused by it, but I think the first
17 premise of it is that basically there had to
18 be a use in existence prior to 1958 when the
19 zoning regulations were enacted, and that once
20 they were enacted, the use was no longer a
21 matter of right use.

22 I think what we do have in the

1 record is that Office of Planning report. I
2 believe it was attached to Exhibit 17, and it
3 was written in connection with, I believe, a
4 variance case that was brought before the BZA
5 and then withdrawn in 2004.

6 But in any event, the significance
7 of that is in the OP report. Office of
8 Planning stated that the history is documented
9 by a chronology of certificates of occupancy
10 that has operated as a delicatessen per a non-
11 conforming back to 1958. So, I think that's
12 pretty much established.

13 And really that was not the big
14 issue in the case. The big issue then, I
15 think, is whether it was discontinued, and you
16 know what is that -- how do you define
17 discontinued, or whatever, but -- and then
18 what was it -- okay, I think it had begin as
19 a certificate of occupancy for a deli, and so
20 then we, I think, need to look at the
21 definition in Webster's Dictionary because our
22 regs don't define a deli.

1 But our regulations say at 199.2
2 that if words aren't defined in this section,
3 they shall have the meaning given in Webster's
4 dictionary. So, in essence, the definition,
5 and I'm reading it actually from the
6 Appellant's, because I had trouble actually
7 reading DCRA's copy, but I'm -- I don't think
8 there's a disagreement to what Webster's says.

9 And it says, ready-to-eat foods as
10 cooked or processed meats, cheeses, prepared
11 salads, canned food, preserves, relishes in a
12 store where delicatessen are sold, either to
13 be taken out or to be eaten on the premises
14 (as in sandwiches).

15 So I think what we have in the
16 record is a series of certificates of
17 occupancy for this establishment for use as a
18 deli up until at least 1998, and then we have
19 evidence that there was a change in 1998 to
20 the type of establishment that it was.

21 We had evidence by the ANC that in
22 1998, when the last certificate of occupancy

1 for a deli was issued, there were great
2 physical changes to the establishment, and
3 there was a great change in the type of
4 operations that it conducted, and we can get
5 into that to a certain extent. But I do
6 recall that the ANC said that the change was
7 not incremental, that it was like going from
8 a kite to a helicopter.

9 And then we also have in the record
10 Notices of Violation from DCRA, I believe
11 dating back to 1998, that they were operating
12 outside their certificate of occupancy, and I
13 think it was in October of '99 they were told
14 that they needed to obtain a C of O for a
15 restaurant.

16 Mr. Crews testified that there were
17 complaints about a carry-out business at the
18 operation -- at the establishment in 1999. I
19 have in my notes a May 30, 2003 memo from
20 Denzel Noble about Chef's Express carry-out
21 that an R-5-3 zone does not allow carry-out as
22 a matter of right, and a Notice of Violation

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1 was sent and indicating to the tenant that
2 they need to seek special exception relief
3 because carry-out was denied in that zone.

4 I think there's some item, whether
5 special exception or variance, they were
6 notified that they could not operate their
7 business as a matter of right.

8 October 17, 2005 DCRA issued Notice
9 of Intent to deny a license renewal to Ming
10 Jin Zhang because they were operating outside
11 of the scope of the certificate of occupancy
12 issued on June, 1998.

13 So, I think there's evidence, there
14 may be more, but evidence in the record that
15 since 1998 certainly some people thought that
16 there was a big change in their operations and
17 that they were operating outside of the scope
18 of their certificate of occupancy.

19 Now, there's a question. I just
20 want to lay out one other aspect of the law,
21 and then I'm going to open it up for further
22 comments -- the law -- there's what's called

1 a discontinuance provision that Mr. Crews
2 relied on.

3 That's section 2005.1, and that
4 says that discontinuance for any reason of a
5 non-conforming use of a structure or of land,
6 except where governmental action impedes
7 access to the premises, for a period of more
8 than three years, shall be construed as prima
9 facie evidence of no intention to resume
10 active operation as a non-conforming use. Any
11 subsequent use shall conform to the
12 regulations of the district in which the use
13 is located.

14 So, it is an opinion, I believe, of
15 the zoning administrator that there was a
16 discontinuance of the non-conforming use as a
17 deli dating back at least to 1999, if not 1998
18 when changes were made to the operation, and
19 their business was more of a carry-out
20 operation and did not fall within the
21 definition of deli.

22 And I think that all we need to

1 determine is whether they no longer fell
2 within that definition of deli as of that date
3 for a continuous period of 3 years.

4 So, I think I'll open it up for
5 comments at this point.

6 VICE CHAIRPERSON ETHERLY: Madam
7 Chair, thank you very much for your summary.
8 I think your remarks bring us precisely to
9 where the record dictates that we go in this
10 particular instance.

11 I believe in particular, there are
12 two very critical points that you highlighted
13 with respect to the record and the facts that
14 have been established in the case, quite
15 convincingly, if you will.

16 First and foremost, the issue of
17 precisely what was happening on site at the
18 deli. As you indicated, testimony presented
19 to us illustrated unrebuted that at some
20 point there was in fact deli activity on site.

21 As you indicated, through siting of
22 the earlier Office of Planning report from BZA

1 Case No. 17075, that is not at issue here.
2 What is at issue is what began to happen in
3 1994 and subsequent years.

4 As testified to by the ANC and a
5 number of witnesses that were brought forward
6 by the ANC, there were a number of physical
7 changes to the establishment with respect to
8 the type of equipment that was being utilized,
9 changes which include the addition of larger
10 cooking equipment, exhaust, exhaust apparatus
11 to assist in a larger scale of operation, if
12 you will, from the standpoint of the type of
13 preparatory work that was underway concerning
14 the food stuffs that were being sold out of
15 this property.

16 As was indicated by the ANC, this
17 escalation was, to use ANC's word, like moving
18 from a kite to a helicopter. Again, I did not
19 see anything in our record or anything in our
20 subsequent submittals that rebuts these
21 assertions that clearly, what began to happen
22 moved away from the definition of delicatessen

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1 as referred to in Webster's.

2 And again, reading from that Office
3 of Planning's report consistent with your
4 definition, ready-to-eat food products (as
5 cooked meats and prepared salads).

6 Clearly the record demonstrates
7 that that is not what was happening in the
8 period after -- clearly after 1997, but again,
9 the ANC provided testimony that we began to
10 see experimentation on the property as early
11 as 1994 through 1997 with regard to some of
12 the changes that were underway inside the
13 establishment with regard to the type of menu
14 offerings that were available.

15 I think if I recall, in fact, Madam
16 Chair and my colleagues, there was some
17 discussion about the type of menu options that
18 were available in a very limited manner early
19 on in the property's operation in that early
20 1990s period, if you will, compared to what
21 was then offered from the standpoint of the
22 menu quite expansive options for patrons to

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1 choose from.

2 I think this is in large part
3 again, the result of the fact that there were
4 extensive renovations made inside of the
5 property that enabled the operator to provide
6 a much more extensive array of food items for
7 purchase.

8 Secondly, as was indicated in your
9 summary, Madam Chair, I think it is very
10 important to note that there were quite a
11 number of instances where this applicant --
12 this appellant was put on notice by the office
13 of -- by the zoning administrator's office
14 that there were considerable concerns with the
15 type of activity that was underway.

16 As you indicated, our record
17 demonstrates that we have, at least by my
18 count, one, two, three, four, might be as many
19 as six, but I believe I'll just -- I'll leave
20 the count at five separate notices with
21 respect to the zoning administrator's shock
22 regarding concerns about this applicant --

1 this operation.

2 The violation notice dated
3 10/28/99, I do not have an exhibit number for
4 that, but it is part of our record as my
5 colleagues are aware, which notes that there
6 is a concern regarding the operations on site,
7 violation notice at March 7 of 2003, a clear
8 memorandum dated May 30, 2003 from the lead
9 zoning inspector to Mr. Denzel Noble, who was
10 the administrator at that time, and then
11 August 21 of `03 Notice of Infraction, again,
12 on this same property, operating a carry-out
13 without a certificate of occupancy.

14 So I think clearly, the record
15 illustrates that one, the scope of operations
16 as early as 1994 began to move away from the
17 delicatessen understanding definition as
18 referred to in Webster's ready-to-eat food
19 products and began to move into the ambit of
20 walking into the establishment, taking a look
21 at a very extensive menu and having made-to-
22 order food stuffs available for service across

1 a wide array of culinary options, if you will.

2 That is not to make light of the
3 case here, but it is simply to emphasize, and
4 I think the record is very strong on this
5 point, that the operation here far exceeded
6 the understanding of delicatessen.

7 And I believe, therefore, that the
8 zoning administrator was indeed proper to deny
9 the issuance of a certificate of occupancy in
10 this case, Madam Chair. Thank you.

11 CHAIRPERSON MILLER: Thank you. I
12 just want to comment on -- pick up on a couple
13 things you said. One is, you know, that there
14 -- we did hear evidence that starting in 1994
15 they may have been moving away from the deli
16 operation but I wouldn't want to rely on that
17 for our determination that they actually did,
18 because it's not as strong as starting in 1999
19 when we have actually the beginning of the
20 documentation of notices from DCRA, clearly
21 that they were operating outside the scope.

22 And also, we have at that time --

1 it just seems like the -- you know, a certain
2 year we have at that time is when the ANC was
3 talking about noticing changes. And actually
4 the member of the ANC actually lived next
5 door, so his testimony was quite credible.

6 And a three year period starting
7 from 1999 leads to 2000 -- 2001, 2002 --
8 whatever, there -- they've definitely
9 continued that operation for three years.
10 There wasn't any rebuttal of that fact.

11 And I also want to say that the
12 evidence, certainly the testimony the ANC,
13 brought out the fact of how important -- why
14 this is important that they come for relief
15 from the BZA before they make such a drastic
16 change, because before then there weren't
17 adverse impacts on the neighborhood, at least
18 there's no evidence of that.

19 But after the change, we have in
20 the record Mr. Crews saying he began -- that
21 DCRA got complaints, and we heard testimony
22 about rats and noise and smells from trash and

1 things like that.

2 VICE CHAIRPERSON ETHERLY: I would
3 absolutely agree, Madam Chair, I think as you
4 look at the record for the purposes of
5 establishing the three year period of
6 discontinuation, if you will, I would
7 definitely agree with you that we -- the
8 record would support a fairly strong reliance
9 on the period beginning, at the earliest 1998
10 and clearly the notice of infractions, the
11 multiple notices of infractions help to
12 buttress that case, but I think it's
13 consistent with the testimony that we received
14 that -- as early as 1994 we began to see a
15 move away here.

16 But clearly a discontinuation would
17 -- I would agree would start somewhere in 1998
18 or 1999, and the record is unrebutted in that
19 regard. So, that gives me a fairly strong
20 comfort level here, that all the i's were
21 dotted and the t's were crossed in this
22 particular case, Madam Chair.

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1 And I'd be more than comfortable,
2 not of course precluding any of my other
3 colleagues from engaging in the deliberation,
4 but just to help expedite our process here,
5 I'd be more than comfortable moving at this
6 time, Madam Chair, denial of Appeal No. 17589
7 of Salvatore Gorgone, pursuant to 11 DCMR
8 Sections 3112 from the administrative decision
9 of the zoning administrator to deny the
10 issuance of a certificate of occupancy permit
11 for Gourmet Shop because a prior delicatessen
12 use was discontinued for more than three
13 years, pursuant to 11 DCMR Section 2005 and
14 would invite a second.

15 CHAIRPERSON MILLER: Second.

16 VICE CHAIRPERSON ETHERLY: Thank
17 you, Madam Chair.

18 CHAIRPERSON MILLER: No further
19 comments?

20 MEMBER MANN: The only thing that I
21 would add from some of the evidence that you
22 were talking about a few moments ago, was that

1 commensurate with the change in the menu of
2 course, was the change in the actual type and
3 quantity of food products that were delivered.

4 We also heard some testimony that
5 there was a change in the amount of trash
6 generated in the way that those operations
7 were conducted prior to those changes in the
8 menu and the food quantity.

9 CHAIRPERSON MILLER: Thank you, good
10 points. And I also think that we have more
11 than three years in the record continually of
12 a discontinuance, so I'm not sure that we need
13 to exactly pinpoint when that began.

14 You know, but it's clear in the
15 record they were -- there were indications
16 they were moving away from it in '94, and then
17 by '99 they were getting notices, and there
18 was a huge change in physically in the
19 establishment and then as well as in their
20 offering of types of food and cooking and
21 things like that.

22 Okay, I think I'd also like to

1 comment that, the ZA's position became clear
2 after, you know I went through all the
3 documents, including what was faxed last
4 night, and that in the future, I think it
5 would be helpful if the Board had those
6 documents at the beginning of the hearing
7 instead of at the end of the hearing. It
8 might have made for a faster hearing.

9 Okay, any other comments? So we
10 have a motion before us, and it's been
11 seconded.

12 All those in favor, say aye.

13 (A Chorus of AYES)

14 CHAIRPERSON MILLER: All those
15 opposed? All those abstaining? Mr. Moy,
16 would you like to call the vote?

17 SECRETARY MOY: Yes, ma'am. The
18 staff would record vote as four to zero to
19 zero. This is on the motion that Vice Chair,
20 Mr. Etherly, to deny the appeal. This was
21 seconded by Ms. Miller.

22 Also in support of the motion, Mr.

1 Mann and Mr. Loud. We also have an absentee
2 ballot from Mr. Hood who's also participating,
3 and his absentee ballot is to deny the appeal.

4 His comments reads as follows: "The
5 ballot use was discontinued. The ZA, in my
6 opinion, made the correct determination. The
7 use was changed and was intensified."

8 So that would give a resulting vote
9 of five to zero to zero.

10 CHAIRPERSON MILLER: Thank you.

11 SECRETARY MOY: The next case for a
12 decision is Appeal No. 17581 of Edwards B.
13 Rooths, pursuant to 11 DCMR 3112 from the
14 administrative decision of the Zoning
15 Administrator, Department of Consumer and
16 Regulatory Affairs to revoke certificate of
17 occupancy Permit No. 109733, dated September
18 12, 2006, for a Dry Cleaning Pick-Up-Only
19 establishment. The subject property is
20 located in the R-5-C District at premises 1312
21 13th Street, Northwest. And that's in Square
22 243, Lot 12.

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1 On September 20, 2007 the Board
2 completed public testimony, closed a record
3 and scheduled its decision on May 1, 2007.
4 The Board requested parties to submit a draft
5 of Findings of Fact and Conclusions of Law.

6 The filings have been submitted and
7 are in your case folders. The first is a
8 filing from the Appellee, DCRA, and is
9 identified as Exhibit 25.

10 We also have the second filing from
11 the Appellant, which was filed this morning,
12 May 1, and that should be identified as
13 Exhibit 26. That would be the preliminary
14 matters is that that filing from the Appellant
15 is untimely.

16 So the Board is -- should act on
17 the merits of the appeal. And that concludes
18 the staff's briefing, Madam Chair.

19 CHAIRPERSON MILLER: Thank you, Mr.
20 Moy. I'm going to turn this over to Mr.
21 Etherly, as I didn't sit on this case.

22 VICE CHAIRPERSON ETHERLY: Thank you

1 very much, Madam Chair. As my colleague Mr.
2 Mann will recall, we took quite extensive
3 testimony on this case during our hearing on
4 March 20 and set it forth for action on this
5 date.

6 Mr. Mann, I'll perhaps just
7 indicate really at a starting point as to
8 where I believe we are, and in all honesty,
9 it's somewhat funny that this case follows the
10 previous case, because I think we have very
11 similar questions in terms of what was, in
12 fact, happening at a particular location and
13 whether or not the record and the testimony
14 supports the Appellee's -- the Appellant's
15 version of the facts, if you will.

16 And I think we are in fairly
17 similar waters with respect to this particular
18 matter. The key issue here, one of the key
19 questions, if not the key million dollar
20 question is what was, in fact, operating at
21 this establishment.

22 Was there, in fact, a dry cleaning

1 pick-up-only establishment in operation at
2 this site? And I believe the record, as was
3 the case in the prior case that this board
4 just decided, again one has nothing to do with
5 the other, but I think very similarly this
6 record does not support a finding that there
7 was, in fact, the operation of a laundry
8 business on the premises.

9 My colleague, Mr. Mann, you will of
10 course have noted at Exhibit 25, which is the
11 Proposed Findings of Fact and Conclusions of
12 Law of DCRA, in relevant portion at page six,
13 I think the DCRA briefing sets out clearly
14 where this case is at, at its point.

15 And it reads, in relevant portion,
16 on the top of page six, that first, the Board
17 notes that each certificate of occupancy
18 issued to the Appellant for the base unit and
19 first floor of the property were to operate a
20 laundry on the premises. However, the Board
21 concludes that no laundry was operated on the
22 premises during the critical three year

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1 period.

2 The Appellant never secured a
3 business license to operate a laundry
4 business. Furthermore, the Appellant
5 testified that he never operated a laundry
6 business on the premises.

7 Again, that's coming from the
8 Proposed Findings of Fact and Conclusions of
9 Law, DCRA, but I believe that statement is
10 very spot-on with respect to what is at issue
11 on this premises.

12 Further, Mr. Mann, you will recall
13 testimony that we received from participants
14 in the case that there was, in fact, no
15 observation of any business activity of
16 relevant concern going on at this property.

17 Neighbors to the property, and
18 again I'm reading from page six in the third
19 paragraph, "Neighbors to the property have
20 testified that the door was kept locked and
21 that there was no evidence of normal business
22 activity."

1 And this is in direct contravention
2 -- direct opposition to the testimony from the
3 Appellant that the front basement door was, in
4 fact, kept open for walk-in customers. I
5 think finally, again in relevant portion DCRA
6 notes that there was no documentary evidence
7 provided to confirm the operation of
8 commercial copying service even on the
9 premises, which was what the Appellant had
10 noted was part of the operations on this site.

11 So I think the record is very, very
12 clear, and again, fairly convincingly so that
13 the nature of the operations on this site are
14 not, in fact, consistent with what, in fact,
15 was the case. Mr. Mann, I'll open it up to
16 you for further discussion.

17 MEMBER MANN: Mr. Etherly, I
18 believe you hit on the salient points and
19 certainly touched on a lot of the points that
20 I would have discussed myself.

21 It is interesting that there were
22 the parallels in this case and the previous

1 case, and I did want to note again what you've
2 already mentioned that we did hear testimony
3 that there was evidence of no business
4 activity occurring for a period of time, which
5 I really think buttressed the case that, in
6 fact, there was no laundry business of any
7 sort occurring on their premises for a period
8 of at least three years.

9 I've actually asked Mr. Moy to
10 obtain one bit of information for me if we
11 could just pause for one moment.

12 VICE CHAIRPERSON ETHERLY:
13 Certainly.

14 (Whereupom the above-
15 entitled matter went off
16 the record at 11:01 a.m.
17 and resumed at 11:02
18 a.m.)

19 VICE CHAIRPERSON ETHERLY: Madam
20 Chair, I'd like to suggest Mr. Mann raises an
21 excellent issue for us, and I won't direct
22 this to the Chair, as she's not participating

1 in the case, but Mr. Mann, what I'd like to
2 suggest is that we take a brief recess on this
3 issue.

4
5 The question at issue here is the
6 receipt of the Appellants Proposed Findings of
7 Fact and Conclusions of Law, which were
8 received by the Board this morning.
9 Technically, therefore, that submittal would
10 have to be waived in, as we currently only
11 have two members who are participating in the
12 case.

13 I understand that we are going to
14 reach out to Mr. Turnbull to secure his
15 agreement to receive that submittal into the
16 record so that we can, in fact, deliberate on
17 it. So I suggest that we take a brief recess
18 to clarify where we are on that.

19 MEMBER MANN: I agree.

20 VICE CHAIRPERSON ETHERLY:
21 Excellent. Thank you Madam.

22 (Whereupom the above-

1 entitled matter went off
2 the record at 11:03 a.m.
3 and resumed at 11:11
4 a.m.)

5
6 VICE CHAIRPERSON ETHERLY: Alrighty,
7 I think we are good to resume again, this
8 portion of our public meeting as it relates to
9 Appeal No. 17581 of Edwards B. Rooths.

10 Just to pick up where we are, Mr.
11 Mann, again we received the Proposed Findings
12 of Fact and Conclusions of Law from the
13 Appellant this morning, and therefore would
14 need to waive our rules.

15 I would take it as a consensus of
16 the Board. The Board has received the
17 communication from Mr. Turnbull, who is the
18 other participating member on this case that
19 he has no objection to waiving our rules and
20 receiving in those Proposed Findings of Fact
21 and Conclusions of Law.

22 MEMBER MANN: I agree.

1 VICE CHAIRPERSON ETHERLY: So I
2 would take it as a consensus of the
3 participating members on this case, myself,
4 Mr. Mann and Mr. Turnbull that the Board can
5 waive its rules and accept in that filing. A
6 procedural issue, but nevertheless one that is
7 very important, because it just ensures that
8 we take into our record all of the appropriate
9 submittals and filings.

10 At the end of the day, however, it
11 is a tempest in a teacup, because I simply
12 don't find any of the arguments of the
13 Appellant in this case to be compelling and to
14 rebut the record as it has been set forth in
15 this case to date.

16 So I believe where we are, Mr.
17 Mann, if there are not any further discussions
18 or any further issues that you want to raise,
19 I think it would be appropriate to move
20 forward under a motion at this time.

21 MEMBER MANN: Yes.

22 VICE CHAIRPERSON ETHERLY:

1 Excellent. With that I would move denial of
2 Appeal No. 17581 of Edwards B. Rooths pursuant
3 to 11 DCMR Sections 3112 from the
4 administrative decision of the zoning
5 administrator Department of Consumer and
6 Regulatory Affairs, to revoke certificate of
7 occupancy permit No. 109733 for a dry cleaning
8 pick-up-only establishment at subject property
9 1312 13th Street Northwest and would invite a
10 second.

11 MEMBER MANN: Second.

12 VICE CHAIRPERSON ETHERLY: Thank you
13 very much, Mr. Mann. Again, I think the
14 record is very full and clear on the fact that
15 there were not any pertinent business
16 operations at this address as argued by the
17 appellant.

18 Clearly there was not a laundry
19 operation present based on both the testimony
20 of DCRA, based on the testimony of witnesses
21 and, in fact, neighbors who live in very close
22 proximity to the subject property that they

1 did not observe any normal business activity.

2 Quite frankly, other than the
3 assertions of the Appellant on the record
4 here, there is nothing to support the finding
5 of a laundry service -- a pick-up laundry
6 service at this site. Nor, in fact, not that
7 it's necessarily relevant to this particular
8 question, but with respect to this issue of a
9 consulting business, I think the record is
10 full and complete on those questions.

11 Mr. Mann, anything further?

12 MEMBER MANN: I have nothing
13 further. I concur with your conclusions.

14 VICE CHAIRPERSON ETHERLY:
15 Excellent. Not hearing any further
16 discussion, we have a motion in front of us
17 that's been properly seconded. I'd like to
18 ask all those in favor please signify by
19 saying, aye.

20 (A Chorus of Ayes.)

21 VICE CHAIRPERSON ETHERLY: Opposed,
22 abstentions? Hearing none, the motion

1 parries. Mr. Moy, could you call that vote
2 please?

3 SECRETARY MOY: Yes, sir. Staff
4 would record the vote as two to zero to two.
5 That's on the motion of Mr. Etherly, the Vice
6 Chair to deny the appeal, seconded by Mr.
7 Mann. We have two Board Members not
8 participating.

9 We also have, sir, as you know the
10 absentee ballot from Mr. Turnbull, who's
11 participating on this case and his absentee
12 ballot is to deny the appeal.

13 To read his comment, "The testimony
14 given at the hearing and the nature of the
15 records clearly show that the zoning
16 administrator was correct in revoking the
17 certificate of occupancy permit."

18 So that would give a resulting vote
19 of three to zero to two.

20 VICE CHAIRPERSON ETHERLY:
21 Excellent. Thank you very much, Mr. Moy.
22 With that, I'll turn it back over to you,

1 Madam Chair.

2 CHAIRPERSON MILLER: Mr. Moy, what's
3 the next case on the agenda?

4 SECRETARY MOY: The next case is a
5 motion for re-consideration of the filed
6 decision to Application No. 17438 of Braden P.
7 And Conner W. Herman.

8 This application was pursuant to 11
9 DCMR 3126, or rather the motion for re-
10 consideration is pursuant to 11 DCMR 3126.
11 The original application was pursuant to 11
12 DCMR 3104.1 for a special exception to allow
13 a two-story addition to a row dwelling under
14 Section 223, not meeting the percentage of lot
15 occupancy or court width provisions of 403 and
16 406. The subject property is located in the
17 R-4 District at premises 629 East Capitol
18 Street, Northeast. That's in Square 868, Lot
19 805.

20 On April 12, 2007 the party status
21 in opposition, Madison and Solveigh
22 McCullough, filed a motion for re-

1 consideration, which is identified in your
2 case folders as Exhibit 49 of the Board's
3 final decision.

4 In opposition, the Applicant
5 represented by Arnold and Porter filed a
6 response to that motion on April 19, 2007, and
7 that is identified in your case folder as
8 Exhibit 50. The Board is to act on the merits
9 of the re-consideration request.

10 That completes the staff's
11 briefing. Thank you Madam Chair.

12 CHAIRPERSON MILLER: Thank you, Mr.
13 Moy. Okay, so we have a motion for re-
14 consideration and then we have an opposition
15 to it that was filed by the Applicant. So,
16 and I think the Applicant's opposition is
17 quite to the point, but let's start with the
18 first one.

19 The first point was that the motion
20 for re-consideration is untimely. I don't
21 think they're correct on that point. 3126.2
22 of our regulations provide ten days from the

1 date of issuance of a written order of the
2 Board for a motion for re-consideration to be
3 filed.

4 The order was issued on March 29,
5 2007. That regulation is to be read in
6 concert with 3110.3 and 3110.2, which together
7 they basically give three days for mailing and
8 then if the due date falls on a Saturday or
9 Sunday or a holiday, it gets moved to the next
10 weekday.

11 So, by my calculations, this
12 motion was due April 11, and it was faxed to
13 the Office of Zoning on April 10. So I
14 believe its timely, unless my Board Members
15 have calculated otherwise.

16 Okay, so I think we can then go to
17 the merits of the motion for re-consideration
18 to see whether they, in fact -- whether it's
19 alleged that we made an error of law, or there
20 was new evidence that couldn't have been
21 offered at the hearing or any other error.
22 And basically, we can go through the errors.

1 I don't believe any of them have met that
2 standard.

3 The first error that is alleged is
4 that we erred in qualifying a mechanical
5 engineer as an expert. If you recall in this
6 case, there were experts on each side. Going
7 to the shadow and light impacts of the
8 proposed addition.

9 And we, it's the normal process you
10 know, looked at the experts, allowed the other
11 parties to cross-examine them or whatever, and
12 in our judgement determined that this
13 mechanical engineer qualified as an expert,
14 and I don't see any grounds, except an opinion
15 here, that there's an error.

16 There's no standard that we didn't
17 meet or anything to that affect. Does anybody
18 else see any merit on that one?

19 The next one was that we didn't
20 allow cross examination of him regarding the
21 computer program process, and as the
22 opposition stated, if you look at the

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1 transcript, there was -- we allowed cross --
2 extensive cross examination, so I don't think
3 that that is supported in the record.

4 Anything else?

5 Third, that the BZA should have
6 specified building material. And then the
7 Applicant said in response to that, that they
8 actually assumed in the impact study the use
9 of white painted brick on the west-facing
10 building wall, consistent with the Applicant's
11 property, used white so as to maximize the
12 reflective light into the McCullough's house,
13 and that McCullough never sought for the Board
14 to specify a color.

15 So I think it was certainly
16 reasonable, I mean, within our proper role in
17 evaluating this case not to specify a color.

18 There was an error suggested that
19 BZA should have said that the two new windows
20 would be frosted. As the Applicant shows,
21 frosted glass is specified in the plans and
22 will be installed, so that's not an issue.

1 There was an error alleged with
2 respect to the measurement of the rear yard,
3 and the Applicant explained that measurement
4 of the rear yard includes where the carriage
5 house is, which is correct, so there was no
6 error there as far I can see.

7 And finally, there was an error
8 alleged regarding, or maybe not an error, but
9 I believe they asked again that the Board
10 consider ordering a double courtyard, and the
11 Board considered this at the hearing and
12 rejected it, and there's no new law or
13 evidence suggesting that the Board should re-
14 consider.

15 So I think that covers the
16 allegations of error as far as I can see. Any
17 other comments here?

18 Okay, in which case then, finding
19 no errors of fact or law, or new evidence that
20 could have been offered at the hearing before
21 the record was closed, I would move to deny
22 the motion for re-consideration of final

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1 decision in Application No. 17438 of Braden P.
2 And Conner W. Herman and ask for a second.

3 MEMBER MANN: Second.

4 CHAIRPERSON MILLER: Any other
5 comments that Board Members would like to make
6 on this motion? Okay, in which case then, All
7 those in favor say, aye.

8 (A Chorus of AYES.)

9 CHAIRPERSON MILLER: All those
10 opposed? All those abstaining? Mr. Moy,
11 would you like to call the vote?

12 SECRETARY MOY: Yes, ma'am. The
13 staff would record the vote as three to zero
14 to one. This is on the motion of the Chair to
15 deny the motion for re-consideration, seconded
16 by Mr. Mann. Also in support of the motion,
17 Mr. Etherly. We also -- actually the final
18 vote would be three to zero to two, because we
19 have a board member not participating, and we
20 have a zoning commissioner not present and not
21 voting.

22 So again, the final vote is three

1 to zero to two on the vote to deny the motion
2 for re-consideration.

3 CHAIRPERSON MILLER: Thank you.

4 SECRETARY MOY: The next and last
5 case for decision by the Board is Application
6 No. 17580 of Macy Development, LLC, pursuant
7 to 11 DCMR 3103.2, for a variance from the
8 residential recreation space requirements
9 under section 773 to build an eight unit
10 residential condominium building in the C-2-A
11 District. This is at premises 284 15th Street,
12 Northeast, Square 1073, Lot 803.

13 On March 20, 2007 the Board
14 completed public testimony, closed the record
15 and scheduled its decision on May 1. The
16 Board, however, did allow the Applicant to
17 submit revised plans after meeting with
18 parties after the hearing.

19 To date there have been no filings
20 into the record. The Board is to act on the
21 merits of the variance request for the
22 residential recreation space, pursuant to

1 Section 773. That completes the staff's
2 briefing.

3 CHAIRPERSON MILLER: Thank you, Mr.
4 Moy. I didn't sit on this case, either, so
5 I'm going to defer to Mr. Etherly.

6 VICE CHAIRPERSON ETHERLY: Thank you
7 very much, Madam Chair. This case is ready to
8 move forward, but I think it's perhaps
9 appropriate just to talk very briefly about
10 the procedural posture that we're in, because
11 I will recognize that we have members of the
12 audience who were participants in that case as
13 parties in opposition.

14 It is not necessarily a step that
15 the Board is required to take, but I'm just
16 going to walk very slowly through the
17 procedural posture here. Speak a little bit
18 to some of the concerns that were raised, but
19 at the end of the day, as those members of the
20 audience will hear, we are very constrained
21 in what we can do.

22 And I might as well just simply

1 start with where we are in this case and then
2 kind of work my way backwards.

3 My colleagues will recall that, as
4 indicated in the summary provided by Mr. Moy,
5 this was a residential rec. space requirement
6 case. That is a provision that is no longer
7 on the books.

8 Our participants in the audience
9 will recall that there was a discussion during
10 the hearing of this eventuality. The relief
11 that's sought here is very, very specific
12 relief. The project meets all other zoning
13 requirements save, at the time of its filing,
14 the residential recreation space requirement.

15 As of April 6, 2007, the repeal of
16 that requirement by the zoning commission
17 became final with its publication in the
18 District of Columbia register. As a result,
19 it makes the relief that the applicant is
20 seeking in this case moot - no longer
21 necessary because the regulation is no longer
22 on the books.

1 As a result, it will be my
2 suggestion with the concurrence of my
3 colleagues, of course, that the case,
4 therefore, be dismissed. Because the relief
5 is not longer required under law.

6 That being said, however, as Mr.
7 Moy indicated, the Board did encourage the
8 applicant to continue dialoguing with members
9 of the community, in particular some of the
10 adjacent neighbors, to see whether or not
11 there could be accommodations that could be
12 reached.

13 The Applicant is not required to do
14 that, not by this board, not by law, but
15 clearly there were a number of concerns that
16 were expressed with the participants that
17 provided testimony and participated in the
18 case, Mr. Young, Mrs. Solomon, and Mr.
19 Washington.

20 Clearly there were a number of
21 concerns that addressed issues that I think
22 the Board was fairly clear fell outside of the

1 purview of what we could do in this particular
2 case as it related to trash, as it related to
3 particularly the impact on, if I recall
4 correctly, Mrs. Solomon's property being
5 adjacent.

6 And a lot of discussion was had
7 about the property line and where the
8 particular structure would be faced. Again,
9 I don't want to speak for my colleagues, but
10 we definitely understand those concerns, we
11 hear you.

12 It's little solace and comfort to
13 you to hear us say there's nothing we can do
14 about it, but it would be entirely outside of
15 the scope of this board's power and authority
16 in this case and, generally speaking, to
17 constrain the Applicant in any way with regard
18 to the relief that they were requesting. And
19 again, ultimately the resolution of the case
20 is that relief is no longer necessary.

21 So with that, Mr. Mann, as the
22 sitting and participating -- as the other

1 sitting and participating member on the case,
2 it would be my suggestion that by virtue of
3 the publication of zoning commission order No.
4 05-02 on April the 6th, 2007 in the District of
5 Columbia register revoking the residential
6 recreation space, I would suggest and I would
7 move, therefore, that this board dismiss
8 Application No. 17580 of Macy Development, LLC
9 on the grounds that the requested relief is no
10 longer required, and therefore, the
11 application is moot and would invite a second.

12 MEMBER MANN: Before I second that,
13 if I could just ask you a question perhaps
14 just to make sure that I understand and that
15 all the parties understand what all of the
16 options are.

17 You mentioned that the Applicant
18 could have withdrawn, you've made a motion
19 that we dismiss on mootness and I guess there
20 is no other alternative. I mean, we could if
21 we moved to approve the application we'd be
22 moving to approve something that isn't a

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1 requirement. And that's why the dismissal is
2 the proper way to go.

3 VICE CHAIRPERSON ETHERLY: Thank you
4 very much, Mr. Mann, for that question. Yes,
5 as you indicated, the Applicant could
6 conceivably have withdrawn their case. The
7 Applicant probably had very little way of
8 predicting, if you will, when the publication
9 of the residential rec. space requirements
10 death, if you will, was going to happen.

11 So, clearly because the case is
12 still before us, I'm suggesting that the --
13 probably the cleanest and most direct way is
14 simply to dismiss it on the grounds of
15 mootness. That way the Applicant has some
16 clarity and some closure on this particular
17 case.

18 They will continue to move forward
19 in their process in other venues as they move
20 through their permits and everything else, but
21 this was the only relief that was sought
22 before the Board. So the cleanest way is

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1 simply to dismiss it, I believe, on the
2 grounds of mootness.

3 MEMBER MANN: Alright, then, I will
4 second your motion.

5 VICE CHAIRPERSON ETHERLY: Thank you
6 very much, Mr. Mann, you made me work hard on
7 that particular one. Again, it's the record
8 and the procedural posture of the case compels
9 us to make this decision, but out of courtesy
10 to those who took time to come out and who
11 took time to participate in the hearing on the
12 20th, I just wanted to walk you through where
13 we are.

14 Thank you for taking the time. Of
15 course, the Applicant's representative is
16 here. Hopefully there will continue to be
17 discussions and dialogue around how neighbors
18 can live together and work together, as I
19 indicated on the record, and this has nothing
20 to do with the decision or the grounds for our
21 decision, but I don't live too far from this
22 area.

1 So I'm familiar with a lot of the
2 issues that we're all facing. And we had a
3 wide range in discussion on the 20th about some
4 of those concerns, be it gentrification, be it
5 the practical impacts of parking, in trash and
6 what have you.

7 So hopefully, there will continue
8 to be dialogue across the parties. But I
9 think that would, with our action today,
10 conclude all the business that this board is
11 empowered to handle on this matter.

12 With that, we have a motion in
13 front of us that's been properly seconded.
14 Not seeing any further discussion, I'd ask all
15 those in favor to signify by saying, aye.

16 (A Chorus of AYES.)

17 VICE CHAIRPERSON ETHERLY: Those
18 opposed? Any abstentions? Hearing none, Mr.
19 Moy could you record the vote please?

20 SECRETARY MOY: Yes, sir. Staff
21 would record the vote as two to zero to two.
22 This on the motion of Mr. Etherly to dismiss

1 the application on the ground of mootness,
2 seconded by Mr. Mann.

3 We also have two Board Members not
4 participating. In addition, we have an
5 absentee vote from Mr. Turnbull, and his
6 absentee vote is to dismiss the application as
7 well, which would give a resulting vote of
8 three to zero to two.

9 VICE CHAIRPERSON ETHERLY: Thank you
10 very much, Mr. Mann. I'll turn it back over
11 to the Chair. Thank you.

12 CHAIRPERSON MILLER: Thank you. Mr.
13 Moy, do we have any other items on the agenda?

14 SECRETARY MOY: That completes the
15 public meeting agenda.

16 CHAIRPERSON MILLER: Okay, thank
17 you. Then we'll be reconvening at 1:00 for a
18 public hearing, and this meeting is adjourned.

19 (Whereupon, the above- entitled
20 matter was concluded at 11:33 a.m.)

21
22

