

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 27, 2005

+ + + + +

The Special Public Hearing convened in Room 1114 South, 441 4th Street, NW, Washington, D.C., 20001, pursuant to notice at 12:50 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

KEVIN HILDEBRAND
ANTHONY HOOD

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
MARY NAGELHAUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
STEVEN COCHRAN
STEVEN MORDFIN

This transcript constitutes the Minutes
from the Special Public Hearing held on September 27,
2005.

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12:51 P.M.

CHAIRMAN GRIFFIS: Good afternoon, ladies and gentlemen.

We will call to order the 27th of September 2005 Special Public Meeting of the Board of Zoning request for addition of funding money.

Jeff Griffis, Chairperson. Joining me today is Vice Chair Ms. Miller and Mr. Etherly. Representing the Zoning Commission is Mr. Hildebrand on our decision this morning.

And representing the National Capital Planning Commission is Mr. Mann.

I'm going to dispense with a lot of instruction because I'll go into that as we call our hearing to order.

So, let's move ahead and say a very good afternoon to Mr. Moy and Ms. Bailey with the Office of Zoning. Mr. Moy, I believe, you will call the first case for decision this afternoon.

SECRETARY MOY: The first case for decision is for certification of the revised campus plan adopted by the Board of the BZA to Application under 16566-F of the President and Directors of Georgetown College.

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1
2 For brevity I'm going to move on, Mr.
3 Chairman.

4 On September 13, 2005, the Board convened
5 at a Special Public Meeting to have a deliberation for
6 requesting that the Applicant provide a response to
7 the comments filed by the Citizens Association of
8 Georgetown or CAG.

9 The board also allowed CAG to respond to
10 the Applicant's--

11 CHAIRMAN GRIFFIS: Hold on a moment
12 please.

13 COURT REPORTER: I'm sorry, I can barely--
14 (Whereupon, off the record from 1:53 p.m.
15 to 1:55 p.m.)

16 SECRETARY MOY: Okay. To repeat.

17 On September 13th, 2005, the Board
18 convened its Special Public meeting. After
19 deliberation, the Board requested that the Applicant
20 provide its response to comments filed by the Citizens
21 Association of Georgetown or CAG on the revised campus
22 plan.

23 CAG was allowed to respond to the
24 Applicant's filing. In your case folder filings have
25 been submitted to the Board. The Applicant's filing

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1 is identified as Exhibit 299, submitted on August 3rd,
2 2005. And CAG submitted their filing dated September
3 15, 2005, identified as Exhibit 300.

4 The staff will conclude this briefing, Mr.
5 Chairman.

6 CHAIRMAN GRIFFIS: Very well, Mr. Moy.
7 Thank you very much.

8 I think that brings us up to date
9 essentially. It's fairly clear that we have the
10 revised master plan that was before us. We were to
11 review it for compliance with the order that we did
12 issue.

13 There was, as Mr. Moy has indicated, the
14 CAG filing that indicated that several of the elements
15 that were required from their reading of our order
16 were not incorporated into the master plan. It is
17 before the Board at this point. We have moved it to
18 today in order to take into the record the university
19 submission addressing those of CAG's concerns. We have
20 that altogether. I think we should move ahead and
21 move forward.

22 What is of issue is, of course, our
23 Condition Number 3 and our Condition Number 7.

24 Condition Number 3, I think very well
25 generally puts into perspective that we want all those

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1 adverse impacts or potentially adverse impacts to be
2 mitigated or removed. And it's a great general
3 statement and a condition.

4 On condition 7, we included more
5 specifics, saying based on the detailed filings of
6 programs, very substitutive piece. I think I can
7 speak for the Board and certainly for myself. We
8 found that the programs that were initiated and were
9 designed were of a very high quality and obviously
10 dealt directly with those issues of, let us call it,
11 community relations and how differing uses and people
12 function within the same area.

13 Those programs were viewed by the Board as
14 very substitutive, not rising to the level of having
15 to be individually conditioned within the order, but
16 were part of the approval of the master plan as
17 incorporated.

18 We then went back and looked whether those
19 specific documents were incorporated into the master
20 plan and CAG brought to our attention several that
21 were not. I'll open it up to the Board for additional
22 comments on that as we move forward.

23 Ms. Miller.

24 VICE CHAIRPERSON MILLER: Yes. I wanted
25 to hear from Georgetown provided they weren't included

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1 because I was astonished that they had not included
2 those documents.

3 In our deliberations, I think we decided
4 that we did not need to impose conditions with respect
5 that there's an adverse impact, because of the
6 description of these programs were so comprehensive as
7 to alleviate our concern. And also we stated that if
8 they were included in the campus plan, then they would
9 be there for the community to see and to hopefully
10 alleviate their concerns and also give them
11 information as well with respect to contract matters
12 and things like that.

13 So, I was very surprised that they weren't
14 included and there was no motion for reconsideration
15 that they not be included.

16 So, at this point, having heard from
17 Georgetown, I was not convinced at all that they
18 should not be included. They are descriptive and I
19 think that including them does not tie Georgetown to
20 keeping them exactly the same until their campus plan
21 comes up for review again. They are descriptive and
22 they were the reason that we didn't include
23 conditions. So, my point of view at this point is
24 they need to put them in or else they need to consider
25 conditions again.

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1 Hopefully, I think they--that was the
2 reason for the --

3 CHAIRMAN GRIFFIS: Very well. And I think
4 that's succinctly put, Ms. Miller, indicating that
5 this was not to preclude any of the programs from
6 being adapted or changing over time. But rather was
7 to be stated and included as part of the normal
8 operation.

9 So, it's almost as if the order itself
10 indicates that these program and program headings will
11 be part of the master plan, but is not yet as you have
12 said, does not get so descriptive as to what exactly
13 happened in order to insure the flexibility and the
14 viability of all the programs.

15 VICE CHAIRPERSON MILLER: Yes. I will
16 note also that, you know, they did include other
17 programs assistance in their appendix and I believe
18 there are another two off campus benefits programs and
19 alliance living programs consider them--

20 CHAIRMAN GRIFFIS: Excellent. And those
21 are the two that you find lacking in the revised
22 submit. Is that correct?

23 VICE CHAIRPERSON MILLER: Yes.

24 CHAIRMAN GRIFFIS: Okay. Others?

25 UNIDENTIFIED PERSON: Mr. Chair?

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1 CHAIRMAN GRIFFIS: Yes.

2 UNIDENTIFIED PERSON: Just from the
3 standpoint, a very quick question.

4 Is it the sense of my colleagues that the
5 important issue is --

6 MR. ETHERLY: Testing 1, 2. Testing 1,
7 2. Thank you very much, Mr. Chair.

8 To start at the top, my question was for
9 the benefit of my colleagues, would it be the
10 intention of the Board that with the inclusion of
11 these additional programmatic details that any
12 modification in the future of those programs would
13 have to come back to the Board for subsequent action?

14 CHAIRMAN GRIFFIS: We're saying exactly,
15 you know, the opposite of that. That it is not
16 reconsideration upon modifications to the master plan,
17 a campus plan that if the programs change. Which is
18 why there are modifications to the body of conditions,
19 or rather conditions of the two, general conditions to
20 outline those which we found were going to continue.
21 Those programs that are going to implemented. So, we
22 did not require them to say how they could be
23 implemented specific of each of those programs. But
24 based on the headings of the discription as submitted,
25 we knew that they were focusing on the few issues that

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1 arose.

2 Ms. Miller?

3 VICE CHAIRPERSON MILLER: What may be the
4 quickest, you know, as of now and they may change.
5 They won't -- they shouldn't like change to a great
6 extent that they are no longer consistent with what
7 they submitted with the master plan, but they
8 certainly can evolve and include and, you know, adapt
9 to whole community situation.

10 CHAIRMAN GRIFFIS: And I think it's an
11 important aspect to look at how we got to this
12 position because clearly we were looking at not only
13 the subject and the facts in the case presented to us
14 with the Campus Plan, but also important is the court
15 decision that sent it back to us saying in my words,
16 we cannot go in and micro-manage a university's
17 programs and how its dealt with. But we can assess
18 certain elements that might become problematic for the
19 overall existence of the community and the university
20 and how we mitigate that. I think we've taken the
21 steps that are within our jurisdiction in order to
22 address those, so that we draw those into the plan to
23 mitigate it.

24 And I don't see any real difficulty. I
25 don't think we're really very far off. Now, it's

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1 almost Tuesday. In my mind, it's almost a collating
2 exercise of what could be added into the campus
3 document.

4 MR. ETHERLY: Thank you, Mr. Chair. I
5 appreciate the clarification and I agree entirely with
6 it. By virtue of the Court of Appeals decision, I
7 think we find ourselves on interesting ground in
8 balancing some of the cautions that were offered by
9 the court on its remand of this decision to the Board
10 for further action.

11 I didn't necessarily quite agree with the
12 characterization on the part CAG regarding the
13 details, efficiency of the submittals on behalf of the
14 university. But I think given the history of this
15 particular case, it is perhaps most prudent to air on
16 the side of insuring that there's a full disclosure to
17 the best possible extent to insure that these programs
18 are indeed being implemented satisfactorily.

19 But I appreciate the clarification as it
20 relates to what our posture would be regarding the
21 ability of the university to have flexibility to
22 further tailor and adapt these programs as they move
23 forward in their implementation.

24 Thank you, Mr. Chair.

25 VICE CHAIRPERSON MILLER: I just want to

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1 add something in reference to Georgetown. We are not
2 trying --

3 CHAIRMAN GRIFFIS: It doesn't pick up.

4 VICE CHAIRPERSON: MILLER: Where was I?
5 Would alleviate some impact. And so all we're saying
6 is, put that in your plan so we all can see it. And
7 that's it and then you have flexibility to evolve.

8 CHAIRMAN GRIFFIS: Very well. If there's
9 no further discussion we'll--it seems to me that we
10 have a next step and that is to request that the
11 university submit the attachments to the Campus Plan
12 as articulated today. The two documents. We would
13 then provide--I'd like to do this as expeditiously as
14 possible, but not run into major problems.

15 I would suggest that we allow a week for
16 the university to submit those into the record, that
17 we would allow a week for response from CAG as to any
18 comments they would have in regard to that. The Board
19 could then pick this up at another Special Public
20 Meeting.

21 That would put us, Mr. Moy, at what date?

22 SECRETARY MOY: Provisionally upon the
23 applicant, the interest was articulated as October the
24 4th, that's a Tuesday. The following week for
25 responses from CAG would be October 11th.

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1 CHAIRMAN GRIFFIS: Okay. And just for
2 assurance so that we have it in time to review, which
3 shouldn't take us that long, but why don't we put it
4 to the following week then which would be--

5 SECRETARY MOY: The 18th.

6 CHAIRMAN GRIFFIS: -- the 18th for a
7 Special Public Meeting?

8 SECRETARY MOY: Yes, sir.

9 CHAIRMAN GRIFFIS: Okay. I think that
10 would suffice if that's amenable to the rest of the
11 Board?

12 Any comments on that? Questions?
13 Clarifications? We're all clear? Very well.

14 Mr. Moy, thank you.

15 Let's move ahead then to the next case.

16 SECRETARY MOY: The next case then, Mr.
17 Chairman is the motion to dismiss the appeal of Number
18 17411 of Paul Basken and Josh Meyer, which is pursuant
19 to 11 DCMR 3100 and 3101, from the administrative
20 decision of the Zoning Administrator, Department of
21 consumer and Regulatory Affairs to issue a building
22 permit and a certificate of occupancy permit
23 authorizing construction and occupancy of an apartment
24 building.

25 The Appellant alleges that DCRA erred by

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1 allowing the permits for a said construction to be
2 issued in violation of 11 DCMR 101.5, 330.4, 401.3,
3 403.2 and 405.6.

4 The subject property is located in the R-
5 3 district at premises 1638 and 1640 Irving Street, NW
6 (Square 2591, Lot 203).

7 On September 20th, 2005, the Board
8 conducted a limited Special Public Hearing. The Board
9 heard testimony, limited testimony, from the
10 intervener represented by Holland and Knight and the
11 Appellant, which is Basken and Meyer.

12 The Board then scheduled its decision at
13 a Special Public Meeting on September 27th, 2005.

14 Finally, the staff would just like to
15 move to the Board for the record that the office did
16 receive the filing from the Appellant yesterday,
17 September 26th, after the public hearing on September
18 20th and after the record has been closed.

19 And that concludes the staff's briefing,
20 Mr. Chairman. The Board should act under the merits
21 of the motion to dismiss.

22 CHAIRMAN GRIFFIS: Excellent. Thank you
23 very much, Mr. Moy.

24 Just for clarification, you indicated
25 that there was something that was submitted into the

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1 office that was not put into the record?

2 SECRETARY MOY: That's correct, sir.

3 CHAIRMAN GRIFFIS: Very well. So, just
4 to be absolutely clear. I have not seen that and I
5 don't believe any of the other Board members have seen
6 that document. So, we have a record that is before us
7 that at the ending of our past session it was closed
8 and no other information was accepted into the record.

9 Let's move right ahead then into the
10 substance of the merit of the motion. The motion as
11 Mr. Moy has laid it out of timeliness.

12 This is as I think was last said, it's
13 hard often to find an adjective for this one. But
14 it's perhaps a little bit complicated. It certainly
15 isn't clear at all elements. And, well, it's down
16 right confusing in my mind.

17 However, the motion as before us, I
18 think, limits us in terms of what we're looking at.
19 And to be clear in my own deliberation, picking up
20 timeliness, there is not a walk down the substance of
21 the issue or getting into the basis of the appeal
22 itself for the elements, except those that relate
23 directly to the timeliness issue. And that is the
24 threshold of when should the Appellant have known or
25 when did they know. When could they have known and

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1 when they should have known. And, of course, we do
2 have the timing of 60 days, that runs with that.

3 Let me open it up for comments and then
4 we can get, I think, quite a way into the discussion
5 on this today.

6 Ms. Miller, did you want to say
7 something?

8 VICE CHAIRPERSON MILLER: Sure.

9 First, I just want to context in the law
10 that the District of Columbia Court of Appeals tells
11 that the timeliness of an appeal that the Board is
12 mandatory in jurisdiction. And that means that we
13 don't have a lot of discretion necessarily to take a
14 case which we think, is the merits in the case. We
15 really cannot look at the merits and look at the
16 timeliness.

17 So, and the time starts to run from the
18 date of the decision. The appeals permit, one of the
19 first questions you are looking at on that page is
20 which decision are we looking at? Are we looking at
21 the issuance of the building permit or are we looking
22 at the issue --

23 So, in deciding that, we looked at what
24 is the issue that is being appealed? And that issue
25 primarily is converting three units into seven units.

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1 And that issue is the first and regards the permit
2 which is dated December 2004.

3 The time also runs in the case where the
4 decision involves a construction or alteration of the
5 structure so that they can say no appeal shall be
6 filed later than 10 days after the date on which the
7 structure comes under relief.

8 In this case that was January 15th, 2005.

9 The regulations also say, however, that
10 notwithstanding that the Appellant should have a
11 minimum of 60 days from the date of the administrative
12 decision complained of.

13 So, looking at least the January 15th,
14 date again--well, 60 days from December 17 is February
15 15th. And so the time could have run February 15th,
16 2005.

17 Then we get to the question of, well, did
18 the Appellant know of decision being complained of at
19 that time. He should have known. And in this case he
20 has the confusing language on the permit which says
21 converting three units to seven units subject to
22 building a number of units in the zone. And with the
23 exception that that would be an extenuating
24 circumstances that might have prevented the Appellant
25 from appealing right away, because the regulations

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1 allow for that and provided it wouldn't prejudice the
2 parties to the appeal.

3 Just looking at some of the other facts
4 that we have that are spread in the appeal, however,
5 it does say that the parties had notice.

6 Page 6 of the appeal says, we and other
7 neighbors have repeatedly telephoned DCRA officials
8 during the construction process expressing concerns
9 about all of these apparent zoning violations of 1636
10 Irving.

11 So, we have some indications that the
12 Appellants had notice of what they were complaining
13 about during construction and also it was on the
14 permit. But the question is whether that language was
15 confusing enough as to have prevented them from filing
16 a timely appeal?

17 Without reaching that question, I want to
18 go onto another significant couple of dates. One is
19 the May 26th date, 2005, in which DCRA wrote a letter
20 of ANC-1D in response to their may 23rd, 2005,
21 resolution regarding the issue that's the subject of
22 this appeal.

23 And in that letter, DCRA stated clearly
24 that the Zoning Administrator will not deny the
25 property owners a certificate of occupancy for the

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1 property on the basis of the zoning review error and
2 told them specifically that ANC-1D of course has the
3 right to appeal this decision to the BZA.

4 And then the next significant date, I
5 think is May 27th, 2005, which shows that the
6 appellants in this case were aware of that May 26th
7 letter.

8 There's a May 27th, 2005, e-mail from
9 Appellant Paul Basken to Appellant Josh Meyer showing
10 actual knowledge of the letter in which DCRA admitted
11 error and invited an appeal to the BZA. And, in
12 fact, in that letter, the Appellant asked ANC, I think
13 and the Mt. Pleasant Historic Society to, since they
14 had standing to file a fee-free appeal to the BZA,
15 whether they might appeal.

16 So, I think by may 27th it's clear that
17 they knew that there was a final decision and they had
18 a right to appeal. I don't think that the letter
19 itself is appealable, the May 27th letter under the
20 regulations but I think that if that date, there isn't
21 any reason to believe that they wouldn't know that
22 they could appeal the decision complained of.

23 And if you add 60 days from that you get
24 to July 26th, 2005, and they didn't file their appeal
25 until August 3rd.

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1 I'll just say a little bit more and then
2 everybody else can jump in.

3 But the other thing is, I think they
4 also, you know, raised a couple of other issues that
5 they, I believe, argued might be extenuating
6 circumstances. One is that they were misled by
7 opposing counsel during negotiations, that they could
8 appeal the certificate of occupancy and I don't
9 believe that that rises to a level of increasing our
10 jurisdiction or extenuating circumstances.

11 And then there were some unsubstantiated
12 claims that staff told them they could wait but there
13 isn't any documentation of that. So, it looks to me
14 as if they have missed the deadline, that the deadline
15 would have been July 26th.

16 SECRETARY MOY: That is at the latest.

17 VICE CHAIRPERSON MILLER: At it's latest.

18 Yes.

19 CHAIRMAN GRIFFIS: As I understand it and
20 you laid it out very well in detail. The July 26th
21 absolutely is the most, I might say, liberal
22 construction of the time line that pushed this as far
23 out as possible.

24 I mean, clearly, we're starting at a
25 beginning date where their actual knowledge of

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1 knowledge should have known as a December 17th, 2004.

2 And now we're talking about dates into '05 and close
3 into August.

4 So, what you're saying is as this all
5 lines up, having to find somewhere where the clock
6 could keep going or had stopped, you render it the
7 26th as the absolute end that it could have been.

8 VICE CHAIRPERSON MILLER: I do, because
9 the certificate of occupancy didn't raise any new
10 zoning issues that they are appealing. This goes right
11 back to December 17th, 2004.

12 CHAIRMAN GRIFFIS: Okay. And so you say
13 that the certificate of occupancy wouldn't start a new
14 clock in terms of an appealable decision because it
15 was based on that which the permit was issued and it
16 was the same issue in terms of the number of units,
17 outside of consistencies or error which would have
18 been also commented on. There's no new information
19 that would then have been known or would be appealable
20 outside of a permit that the certificate of occupancy
21 would cover?

22 VICE CHAIRPERSON MILLER: Yes.

23 CHAIRMAN GRIFFIS: I see. Okay.

24 Others?

25 VICE CHAIRPERSON MILLER: I just want to

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1 ask note. I think, you know, the ultimate of the
2 argument, you know, that the BZA in the past

3 SECRETARY MOY: I do, because the had
4 forced people to tear down illegal structures even
5 when they've already been built. And that's really
6 not the issue here. I think that that has happened,
7 but in those cases, the appeals were made on a timely
8 basis. So, the issue here is timeliness.

9 CHAIRMAN GRIFFIS: It is exactly
10 timeliness.

11 Other comments?

12 Going directly to that, I think you well
13 addressed the extenuating circumstances or special
14 circumstances that might extend the time line and I
15 think one that gave me some concern and I now the rest
16 of the Board was the terminology, the working on the
17 permit itself. And that was as you've said, it was
18 subject to zoning approval for the number of units
19 written right on the permit. And I think I've spent a
20 lot of time deliberating on that and the fact that we
21 could certainly add more time in order to begin to get
22 an understanding of that. But, the amount of people
23 involved in this and the amount that you've indicated,
24 you know, going to the ANC. There's an official
25 district office involved, an agency involved and other

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1 community. And over a long period of time, since
2 December or January '04, certainly there was adequate
3 and sufficient time to realize that that was either an
4 error that may well be appealable, but that there was,
5 in fact, a process that was going to move forward.

6 What really put it in my mind in terms of
7 timeliness is, if you were waiting for some other
8 zoning approval as with a permit, how could you be
9 standing there watching it constructed? When was it
10 actually going to go through that approval of just
11 logically thinking, even if you didn't know what the
12 process was, when was that supposed to have happened.

13 Because clearly an approval would go to whether
14 something would be able to be built or not. And yet
15 you're watching it be constructed.

16 So, I think that would again move anybody
17 to take action.

18 Now, I think the Board is well aware of
19 it that our process and numerous processes and
20 certainly the appeal process is not so clear. It can
21 be cumbersome and it can be confusing. But that's why
22 we have one in our own regulations the definitive
23 aspects. And timing is one of them. But we also have
24 a relief in order to extenuate that for different
25 circumstances. I think all of those were exhausted in

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1 this case as you played out quite distinctly. But let
2 me let it open for others and comment.

3 VICE CHAIRPERSON MILLER: I'll state one
4 other comment then.

5 CHAIRMAN GRIFFIS: Very well.

6 VICE CHAIRPERSON MILLER: I also think,
7 you know, you look at it and we're seeing it ran
8 around July 26th and they filed August 3rd. And, you
9 know, it's only like a week or so. But so the way I
10 understand the law is we don't have that flexibility.

11 I mean, it's mandatory, jurisdictional and I think
12 you're correct that there was -- even in this
13 interpretation, we built in a lot of flexibility from
14 December 14th.

15 At this point then, I would move to grant
16 the motion to dismiss appeal number 17411 of Paul
17 Basken and Jose Meyer as untimely.

18 MR. ETHERLY: Second. I agree that the
19 target of the discussion that had taken place around
20 this motion that perhaps it is important to note that
21 this issue of appeal will be more naturally continued,
22 I think work its way through with the community's
23 understanding as well as the understanding of the
24 applicant, community developers, what have you.

25 One thing that perhaps worth saying here,

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1 however, is the continued difficulty that some of the
2 people are having with working with DCRA in securing
3 appropriate information with an organization which
4 they deem to be potentially helpful in prosecuting an
5 appeal and determining whether the matter of appeal is
6 appropriate.

7 And I wanted to just speak to them again
8 somewhat briefly and highlight it once again as my
9 colleagues proposed putting it in the context of
10 another issue of untimeliness last week and made the
11 same comment. I obviously can't highlight it to the
12 benefit of anyone listening who is interviewing today,
13 in the revised surroundings because that is
14 encouraging concern, and continue to redouble his
15 efforts to work comfortably with all segments of our
16 community, be it NCs, be it individuals, around --

17 As was stated in the discussion leading
18 up to the motion, and as was outlined by Ms. Miller, I
19 agree wholeheartedly that the circumstances that were
20 identified in the appeal surrounding difficulties back
21 and forth with DCRA not in my mind whether its under
22 the circumstances. And, again, I would emphasize that
23 I believe this rule, the issue of 60 days was worked
24 out with a clear purpose in mind, and that was to
25 insure that there is some finality to actions. And

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1 it's a finality in terms to determine when a project
2 can move forward.

3 That being said, once again, if this
4 means that members of the community are NC'd other
5 interested parties need to air on the side of caution
6 in bringing appeals at the earliest possible date
7 whenever there is a question or reason for doubt. And
8 I would encourage that type of action and this body
9 can sort out the details at the appropriate time in
10 this forum as opposed to what we continue to hear and
11 that is the back and forth around the gathering of
12 information. We exchange e-mails, letters and those
13 types of things. That's where it becomes a very
14 difficult factual situation for this Board to draft.
15 It is not one that it is unable to deal with, but I
16 just think that it becomes a concern.

17 CHAIRMAN GRIFFIS: Thank you very much.
18 It's looks like through those comment that is that
19 this is one of the most frustrating of processes that
20 we go through, appeals generally speaking, but
21 specifically when we have this frustration of a
22 process that cannot bring it to us that we might
23 actually hear the substance of it and decide.

24 We would have to move so far beyond our
25 own jurisdiction to get into any of the details here.

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1 And yet it's frustrating to be at that edge knowing
2 that there is detail there to be dealt with. We're
3 just unable to do it.

4 So, I absolutely agree with you except
5 that I think hopefully each of these that we go
6 through and this is not the first that has been to
7 this level. There is an increasing, broader awareness
8 both in the agency side and the community side which I
9 hope will work in better concert in the future.

10 However, we do have then a motion before
11 us. It has been seconded. I don't know if there are
12 any further comments? Deliberation?

13 If there's no other comments or
14 deliberation, I'd ask all those in favor to say aye.

15 (AYES)

16 CHAIRMAN GRIFFIS: And opposed?
17 Abstaining?

18 Very well. Mr. Moy.

19 SECRETARY MOY: Yes, sir. The staff
20 would record the vote as five to zero to zero. Motion
21 of Ms. Miller, the Vice Chair, to grant the motion to
22 dismiss. Seconded by Mr. Etherly. Also supporting
23 the motion, the Chair, Mr. Griffis, Mr. Mann and Mr.
24 Hildebrand.

25 CHAIRMAN GRIFFIS: Excellent. Thank you,

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1 Mr. Moy.

2 Is there anything else for the Board's
3 attention in this Special Public Meeting?

4 SPEAKER: No

5 CHAIRMAN GRIFFIS: Very well. Then let's
6 adjourn the Special Public Meeting and call to order
7 our morning session of the 27th of September, 2005, of
8 the Board of Zoning Adjustment.

9 (Whereupon, the above matter was
10 concluded at 1:29 p.m.)

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