

CUP11-00090 & CFH11-00036 / THE MICHAELS ORGANIZATION

Location: 1004 W. Royal Boulevard

RECONSIDERATION OF A HEIGHT EXCEPTION TO CONSTRUCT A FIVE STORY MULTI-FAMILY RESIDENTIAL BUILDING ON 3.42 ACRES IN AN R-OD ZONE. A BOISE RIVER SYSTEM PERMIT IS INCLUDED IN THE REQUEST.

Josh Johnson – Tonight we are continuing a hearing for a height exception for a multi-family project located at 1004 W. Royal Boulevard. I'd like to focus my presentation on the letter of opposition received in electronic form on March 2, 2012 via e-mail and a hard copy delivered tonight. I would also like to note that around 3:30 PM today I received five additional pages, which were also in the physical packets I gave to you.

The letter begins by stating the application has been improperly converted from a Conditional Use Permit (CUP) to a variance. The City's Attorney's office has examined this issue and has determined that since the variance application is nearly the same form as the conditional use application, and the fee for a height exception and variance are identical, there is no conflict. In addition, the noticing requirements for a Conditional Use Permit are those properties within 300', whereas the variance would only require those properties adjacent to the project to be noticed.

The letter also contends the grant of the additional height would constitute a zone change for a grant of a special privilege. If this is true, it would create too great of a threshold for height exceptions as many other properties along the river have received. The variance also does not conflict with the Comprehensive Plan. The use of structure parking allows the project to better address the street and create a more pedestrian friendly streetscape. New urbanism design values are discussed throughout our Comprehensive Plan, specifically *Policy 7.2.2.2C*, that speaks to sighting parking with the architectural character of the structure so as not to dominate the streetscape. The (inaudible) into what we consider the main unusual circumstances associated with this variance for a height exception that the additional height is necessary to get the parking under the building to create a more pedestrian friendly street scape for Royal Boulevard, and along the Greenbelt.

The letter ends by stating there is also a shortage of parking and that this issue cannot be separated from the height exception. This building is a multi-family dwelling unit and meets our Parking Code. This issue is not before the Commission tonight. The application tonight only concerns the additional height requested by the applicant. Commissioner Story contacted staff and asked for information on the BSU (Boise State University) dormitories along Capitol, as far as their parking ratios, which is depicted on this slide. It shows the level of occupancy of each structure, the number of beds and the number of parking permits that have been issued. There is also a text detailing the number of students per suite and what kind of students are in there. These three examples include both freshman and sophomore classmen.

Commissioner Stevens also requested information on the height of the Cottonwood Grill. It was approved for a height exception of its parapet at around 61' and additional elements at 64' to 65', stairwells, elevators and things of that nature.

The additional height will not be injurious to other property owners, or a detriment to public safety. This variance finding also touches on issues similar to compatibility and adverse impacts found in your Conditional Use Permit that we already discussed in an earlier hearing. When we discuss issues of compatibility, the term does not mean sameness. In other words, where there are different types of housing, the Comprehensive Plan encourages this. We don't want to see a streetscape of identical buildings or identical product types. Different heights can provide some variety of the building environment and make for a more interesting streetscape. In addition, there are no privacy impacts to the surrounding the properties, as they are exclusively made up, on this side of Royal, of office and commercial uses, as well as Park's lands.

I would like to end by showing the differences along the river. This is the original view from the river and if you'll pay attention to these elements here, you can see where the changes happen. That additional height provides more modulation to the façade and also allows for additional screening of mechanical equipment. If you'd like to discuss design in more detail, Sarah Schafer, the Design Review Manager, is here to answer those questions, as well.

Becky McKay (Engineering Solutions, Applicant Team) – For those of you who are new on the Commission, I have been a planner in the Boise Valley for over 21 years. This is a unique opportunity that we've had to work on this particular project. It's one of the more complex projects I've seen over the past 20 years, but it is one that is exciting and I feel will definitely be a benefit to the City of Boise.

We have a Power Point this evening. I'd like to do a two prong approach if you don't mind. Roger Kiser from Kitchen and Associates came all the way from New Jersey to answer any specific questions you may have concerning the building and the architecture. The owner from The Michaels Organization is here, Nick Saparis. We have our legal representation Gary Allen from Givens Pursley here this evening, if you have any legal questions, so we feel we have someone here regardless of what your questions are, they can answer them for you.

To give you an overview of the project, I was out of town when this came before the Commission when they reopened the hearing and looked at it, so I apologize. I was here the night we were on the consent agenda. We went to Design Review the following Wednesday, so I would like to give you a good overview of the project. I read through the minutes from the last meeting. I understand there was some confusion and questions the Commission had and I believe we can answer those this evening. The aerial photo you see before you is the subject property. This particular property, the plat called the Boise City Parks Subdivision was done in 1910, so their particular area was platted really early in Boise's history. This particular parcel is made up of three different parcels, two of them are vacated right-of-way, and the other one was a block five, they called it, and it was originally split up in tiny lots, kind of like the North End where they have the little 35' lots, alleys and so forth. In the forties and fifties they vacated right-of-way and what you see before you now became an industrial use. On the property right now is Estes Express Freight Trucking. It is a truck transfer terminal. We believe it was probably built in the forties. It's all gravel with block type buildings. I have some examples for you. That's what the existing buildings look like. As you can see they're circa forties, fifties. They bring semi-truck trailers in, load them and drop trailers. There's no internal landscaping. Obviously, the development does not meet any current standards due to its age.

The property is bounded on the west by Ann Morrison Park. The Parks Department Headquarters are adjacent to our west boundary and their maintenance yard is located to the north. They also have some accessory buildings. On our east boundary is the Keynetics Building located at this location and of course, we have the Boise River and then Royal Boulevard. Across the street are primarily industrial uses, then we have a multi-family project called Morrison Park Condominiums which is kiddy-corner to us. That gives you a feel for what's out in this vicinity.

The particular property is zoned R-OD, which is a residential office Design Review overlay. That particular zone has a height limitation of 35', with a height exception allowed under a Conditional Use Permit, due to obvious judicial decisions on January 25th to be exact. We submitted on the 29th of November. The Idaho Supreme Court indicated you need to make variance findings if you're going to deal with height exceptions, since it is part of the dimensional standards. This evening, I think staff indicated they would like you to do both variance findings and conditional use for the project.

This is obviously a permitted use. This particular zone allows up to 87.1 dwelling units per acre. We have 175, so based on the density we can have, based on the density up to 279 dwelling units. We meet all the parking requirements. They have 1.5 spaces, plus 1 per 10 units, with a total of 280 spaces. We meet that. We have two bicycle parking areas located in the building. We have two bicycle parking areas located in the northwest and the northeast corners. There are exit doors and auxiliary paths that lead directly to the Boise Greenbelt, and the Greenbelt comes along our boundary here. We meet the 70' setback from the high water mark in the Boise River. Our closest point to the River is 20' on the east boundary, on the west boundary we are at 31'. We meet all dimensional standards for the R-OD zone. The particular here is five stories. It's kind of an A shaped and the purpose for this is obviously the aesthetics. We wanted to emphasize a complimentary project along that Greenbelt. We didn't want to create a wall effect and therefore the design is shaped like an A.

The length of these two wings is 40'. Then we have a 140' area, and the building recesses back to this location. One of the nice and unique things about this particular project is almost all of the parking is internalized. We have 17 exterior spaces along the east boundary. That's what you're looking at there, the east elevation. All the other spaces are under the residential spaces, which is called podium parking. They are screened. We have wrought iron, masonry, heavy landscaping adjacent to the river and as you can see it's screened there on the east and west boundaries. We have an entrance only here, but yet it's two-way here for the guest parking spaces. This is the elevation that faces the Boise River. As you can see there's the Greenbelt which shows our interconnection to that pedestrian pathway.

We started working on this particular project last summer. Multiple meetings were held with the Parks Department. We worked hand-in-hand with the Parks Department because obviously, we adjoin Boise Parks and Ann Morrison Park. We adjoin the Greenbelt and it was important they be pleased with this project. We wanted to make sure the project fit, wasn't overbearing and the mass wasn't too great. We went before the Open Space Sub-Committee. They approved the project and recommended approval to the Boise Parks Committee.

Staff recommended approval. It was highly scrutinized by the Parks Department; the landscaping, the style of the building and location of all of our pathways. They were pleased. We will be targeting mostly Boise State students, but this is a multi-family project and we do have two-bedroom units, so you could end up having married couples where one may be a student, one may not. On Royal Boulevard we have two access points. We did a traffic study and submitted it to Ada County Highway District (ACHD). The Highway District Commissioners approved that. Basically, the traffic study indicated that none of the study areas are intersected within this area would require improvements based on the site generated traffic.

This particular project, we emphasize green. We want to limit the number of cars. We want to promote shuttle use, walking on the Greenbelt, going under the tunnel and over to the campus. Biking, we want to discourage vehicle use.

The Michaels Organization has built multiple projects very similar to this on other college campuses throughout the country. They understand what the demographics are of their clients, and understand what their needs are. One of the things they promote is the zip-car use. If you're not familiar with that, they intend on having five to six stalls within their parking garage and have a zip-car. Zip-cars may be rented by the hour or by the day. It's becoming quite popular in the urban areas. It fits very well within the university model. In fact, Boise State has a couple of zip-cars on campus now; that I was not aware of.

One of the other things they promote is bicycle use, U-bikes and rental bikes. They want these kids to have the lowest impact on our transportation system as absolutely possible. If you look at Boise State they're making the same in-roads. They have their bike barns. They have all kind of storage areas; enclosed and outdoor. They are trying to promote bicycle use onto the campus so we can reduce the number of parking garages and parking spaces that are required. Obviously, with the increase of the student population there is a large demand for parking, and they are doing everything they can and we're doing what we can to make sure we use alternative methods. The parking area will be gated. They'll have a card to enter, so it will be secure and safe for all of the residents.

There are adequate public services in this area. Royal Boulevard is designated as a local street. We will be going in and installing curb, gutter and sidewalk. We coordinated with the Parks Department and the planning staff and determined that an 8' walk will be required. They also want an 8' parkway or landscaped strip at the back of curb. They want to soften the look as you come into Ann Morrison Park and we have agreed to do so. One of the other things is there are huge distribution lines, power lines that run along the north side of Royal Boulevard. They're not attractive. There are three other utilities hanging on that have been there since the forties. We are going to place those utilities underground, so we have Idaho Power working on their design right now at a cost of my client of over \$150,000. We're going to put all of those utilities underground. That's going to improve the aesthetics for that gateway into Ann Morrison Park.

We've been working with the Parks Department as far as them dealing with the power poles located on their property. My client has agreed they will go ahead and pay for the design. There is one pole that extends across the frontage where the headquarters is located to their driveway. It's about 160' off-site.

They have agreed they will go ahead and pay Idaho Power and other utilities to put their equipment underground and it will benefit the Parks Department. They said they had considerable problems with the existing mature trees getting into those power lines. They had one incident they said cost them \$10,000 when there was equipment damage, or damage to the utility companies. We obviously feel we're doing what we can to make sure this corridor looks as nice as possible.

One of the other things we worked on was the Fire Department. Boise Fire Department wanted to make sure they had adequate access because of the fact this building is five stories. We have aerial access on the east boundary with a 26' wide drive. We are working with the Parks Department and submitted a design for emergency access clear at the northwest corner, so even though this building is sprinkled, in the event there is a three alarm type fire, there would be access at multiple locations to the furthest point of this particular structure.

Regarding the height of the building, we have 59' back at the Greenbelt and Boise River area, then the building transitions due to topography and the building style to 63' up along this corridor. We did significant research in this area. The Cottonwood Grill was approved for a height exception. I think it ended up at 61', 6" and the stairway was a little bit taller. The Mallard Building received a height exception. The Keynetics Building, right next door to us, came through the City's conditional use height exception and received a height exception for 56'. I looked at their building permit which says they ended up constructing at 53'. Along this entire corridor we've consistently seen multiple height exceptions, as you can see. Here is the Cottonwood Grill, the Mallard Building, Blue Heron and this is the Arid Club. The Parks Department indicated to me that the Arid Club also received a height exception, but because of its age we could not find that information with the City of Boise. You can see the Keynetics Building located right here.

This is the last parcel that is along this river corridor leading up to Ann Morrison Park that is available for development. When we look at the findings required for a variance, we believe this meets those requirements. One finding is that we are in a floodplain and a floodway. We have high ground water due to the close proximity of the river. We will be filling this site between 1.7' and a little over 5', in order to get the elevation we need to get the storm drainage separation of 3' from the bottom of our swell to the high seasonal ground water. Also, we need to build our finish floor elevation 1' above base flood elevation. That base flood elevation is at 2687 so we'll be building a minimum of 2688, but with our grading plan I think we're at a 2688.7, which is our highest finish floor elevation.

Regarding Royal Boulevard and the additional detached walk obviously determined our footprint of our building. The other thing we have that is very unusual is that we have an existing 10' storm drained height that is in ACHD's jurisdiction on the west boundary. That pipe is located about 7' east of that western boundary. We can't touch that pipe because it's been there for along time and it goes down to the river. The Highway District has asked us not to disturb the pipe. We also received comments from them on our design plans. They are asking that we install a sand and grease trap to improve the water quality from the drainage coming from Dale Street and Royal Boulevard.

Before you is the Boise River Permit for Class C lands. We have no wetlands on this property. There's no mitigation required. No enhancement required. We have no Blue Heron rookeries and no Bald Eagle habitat that adjoins us. In talking with the Army Corp. of Engineers, I talked with Eric Derkey who I work with on a regular basis. Eric said, basically this site is developed with its industrial use, so there is no sensitive habitat along here.

We have an excellent project we believe will contribute to Boise State University and the community as a whole. It's a whole new idea on student housing, student luxury housing. They are bringing in new concepts from urban areas I think as a community we should welcome. This project is exciting and is going to be a cornerstone of this area.

Roger Kiser (Kitchen and Associates Architects) – Thank you for letting me come here and express my opinions. Ms. McKay said it all and the only thing I have to say about it is we introduced a building that is a contemporary design that harks to, and vows to the heritage of the Boise area, including materials you might see in buildings of historic nature and buildings of modern nature. It's a modern building in all aspects that it is an enhancement to the life style of the people who will be living in it, and also introduces a more urban scale to the City, which I believe is the goal for this particular area.

Commissioner Story – This question is for the applicant. As you are aware, you spoke about all of the other buildings receiving height exceptions, but in light of the recent judicial case that came down, we have an increased hurdle of a variance application, correct?

Becky McKay – Correct.

Commissioner Story – So we're going to have to hang our hat on a hardship. You mentioned several of them and are you aware of the letter we received from Spink Butler addressing the staff report?

Becky McKay – Yes.

Commissioner Story – I would really like to get your opinion, or legal's opinion on your side of where do we hang our hat on a hardship for this property, if you think there is one?

Becky McKay – I'll give you a little entry into it, but I'll probably turn the podium over to Gary Allen to address. In the variance we don't have to substantiate there is a hardship. We have to substantiate there are special circumstances, or conditions related to this particular property and that the grant in this variance is consistent with your Comprehensive Plan which does not change the zoning and does not create any hazard, nuisance or safety hazards associated with that particular height. I'll turn it over to Gary to go into more detail.

Gary Allen (Legal Representative of the applicant) – First, I want to clarify we think this is still a Conditional Use Permit application. You can properly consider that as well as the variance findings in that we filed our application prior to the Burns Holding decision. We're entitled to have law applied effectively at the time our application was filed. I can go into more if you'd like. We are asking you to make findings on both. Your question is about the variance.

In looking at the letter you received this morning, we think it was a little misleading to the standard that is applied. It seemed to us in reading that they were saying you have to have unique circumstances related to the property. That is definitely not the standard. In looking at your ordinance, you either have to show a hardship, or exceptional circumstances that aren't everywhere in the district. We think there are both. You have a hardship in that you are in the floodplain and you have to deal with all of that, and you have to deal with the topography of the site. Those are the unusual parts of the site. That gets you part of the way. Becky went into some of the exceptional circumstances you have to address. You have the Greenbelt setback, you have special requirements such to the treatment on Royal, you have a different storm drains, or an unusual storm drain situation that limits your footprint. You have a relatively small site so you don't have a lot of options you might have in other places. You have a unique need in this situation for this higher density housing to support Boise State University. You also have this very nice feature of podium parking because that is going to minimize the surface parking. You have what will create a better streetscape and more pedestrian friendly environment. It's going to allow you to increase the density in this area and create vibrancy here that you want in this area. We believe all of those are exceptional circumstances. With that said, Burns Holding made absolutely no sense, so we think ultimately this is going to wind up being a Conditional Use Permit and we want you to make those findings. We think the Legislature is going to fix that, if nothing else, so please make both sets of findings. We know this isn't the perfect fit for a variance, but we do think this is enough to justify it and there is clearly justification for a Conditional Use Permit in this area.

Commissioner Bradbury – Do you think the City of Boise can write a definition of a variance that is different than the definition of the variance contained in Idaho Code?

Gary Allen – I think it has to be consistent with the Idaho Code. Idaho Code focuses on hardship, but it also contains language regarding the special conditions of the site. The City of Boise has had its variance definition for a long time and has never been overturned. I think it's consistent. I think it's within the City's power to uphold the Variance Ordinance that it has. Yes, I think you have some leeway as to compliance with the state statute.

Commissioner Bradbury – Will you please tell me about the notion that these folks are entitled to have their application reviewed under the pre Burns Holding decision?

Gary Allen – There is a fairly long line of case law in Idaho which gives the applicant the right to be heard under the law as it existed at the time the application was made. There is no indication in Burns Holding that it was going to have retroactive application and we've got a whole heap of trouble if it is retroactively applied, because as you heard, you have all kinds of Conditional Use Permits that have been granted for height exceptions.

Our clients, who are industrial clients, are beside themselves about this, that's why there is legislation there because so many industrial facilities have been approved in agricultural zones with height exceptions. If this is retroactively applied, then the people who are concerned about this, the Keynetics, have a problem just like we do.

Commissioner Morrison – I think I remember the just of what were discussing earlier tonight is since it was done as a Conditional Use Permit, if we take an action that is read into the meeting as a variance, will you stand behind that if it needs to be defended later on?

Gary Allen – As we've seen what's happened, obviously, we applied for a Conditional Use Permit. When we did nobody had any idea the Supreme Court was going to do what they did. That's where we came into the original proceedings here. We think it is appropriate the way City staff has handled this to say, this decision creates some uncertainty here. We think we have the right to say we are entitled to a Conditional Use Permit. There are other reasons for that apart from the just timing. There is an exception in the Burns Holding decision we think we fall under, and there was this legislation working its way through that and by the time this is all done may make the whole thing go away. We need to cover that base for sure. As far as the variance goes, your code does allow the City the flexibility to do exactly what it is doing. I'll read *Section 11-06-11.05* which says; *the commission or hearing examiner may grant a variance as part of a Conditional Use Permit. Without a separate application and hearing as long as the notice requirements of Section 11-06-11-03 are met, which they have been, and the findings in Section 11-06-11.4 are made,* which is what you're doing tonight. Basically, we have added a variance to this proceeding to the extent that it's necessary. If that is the necessary procedure to get this approval, yes, we will stand behind that.

Commissioner Morrison – I have one question for staff. Virtually, every other jurisdiction I've had recent experience in, on the applicant side, there has been a term called grandfathering. When you go back and look at when the date of the application was made, how long that process has taken, and whether or not any current laws have transpired since the application was made having merit that I'm aware of, grandfathering has stood up as precedence. Is that an issue we are discussing here?

Josh Johnson – Before deferring to my attorney, we do that often. For instances, this application came in under the 1997 Comprehensive Plan, so that's why you're seeing those policies, that's why we don't switch gears midway through and are applying a new Comprehensive Plan, so there is some legitimacy in what you're saying, but Mary may be able to speak to this more.

Commissioner Stevens – Mary is nodding her head that she has nothing to add.

Commissioner Bradbury – I think you may have already answered the question in a round-about way. As I sit here, I can think of another way to skin this cat. There is another way to accomplish what I think your client wants to get accomplished. It would take some time and would require a new application.

My question to you and your client is, would you rather run the risk of an appeal being taken of the decision of this Commission, and I don't know what the Commission will do, but assuming the Commission were to approve it, would you be inclined to skin this cat a different way? It seems to me the solution to this particular problem is to simply amend the Zoning Ordinance, which your client can make an application to do. Then we don't have to concern ourselves with appeals.

Commissioner Stevens – Mr. Allen, I understand you’ve been asked a very broad question that requires you to do some hypothetical thinking. If you could keep your answer to what’s in front of us tonight, we would all be greatly appreciative.

Gary Allen – Timing is really important in this application. For student housing, you’ve got to be open in the fall, so the delays are problematic here. Especially, amending the Zoning Ordinance and then having to come back and file an application, I don’t think that’s acceptable timing from our standpoint. We think this is adequately covered and if I had to bat, I think there is a good chance the Burns Holding problem will be handled by the Legislature this session.

Josh Johnson – I think the difficulty we’re dealing with here is when the applicant went to apply, the correct procedure was a height exception. They built into their timeframe possibilities for appeals, building permits and all that. As they said, they are on somewhat of a tight timeframe. We missed our hearing in January. We reconsidered and now we’re all the way into March, when we originally scheduled for a January hearing. They are kind of up against the wall. They went into this in good faith by thinking a height exception was correct.

Commissioner Bradbury – I understand perfectly, I just wanted to toss out an idea for Mr. Allen and his client to think about and with all due respect, I’m not entirely convinced I agree with his analysis of the potential retroactive effect of this Burns Holding decision. But that’s the matter for Mr. Allen and his client to deal with.

Josh Johnson – Also, we would be hard pressed to make the findings for increasing the height limit for the R-O zone just citing one project. It would be more of a global rewrite, is how we want to approach it.

Commissioner Stevens – I’m going to add I think there needs to be discussion in a work session at a different time to talk about this, because I think it’s very clear the R-O zone needs to be revisited. I don’t know we can do it in the context of a simple application tonight. If we could just make the point to put it on our agenda for the next month or so, we can address it then.

PUBLIC TESTIMONY

Eileen Barber – I’m an owner and co-founder of Keynetics, which I own with the other founders of our company, which is located directly adjacent to the proposed development. As you remember, I was here in February to testify before you. As I said then, we welcome new development. We would like to see new neighbors, especially, if it enhances our community. I had the opportunity to meet with the developer today, Tom Galuski and his broker. Although, our concerns were not addressed and he recapped their vision for their project.

We continue to have two major concerns with the design of the current proposed development. First, the proposed height of the building isn’t similar to the other buildings along this stretch of the Greenbelt. Again, this stretch of the Greenbelt has mostly three story office buildings. The Cornerstone Cottonwood is four stories. The (inaudible) is three stories and the Arid Club is only two stories. BRS Architect designed all the buildings on this stretch of the Greenbelt from Mallard, the Arid Club, down to the Cornerstone.

We purposely chose BRS Architects to also design our buildings so we can be consistent with the buildings on this stretch of the Greenbelt. We wanted very natural looking materials used that blend in with the Parks, and the landscape along the river. The height of the proposed building is far above the City Code for housing in this zone, which is classified R-OD, and the details of the height issue has been submitted to you in my comments, as well as others.

I wanted to talk a little bit about Becky's comments. She said the City of Boise allows 187 dwelling units per acre. They will have 175-units total on 3 acres, so they could do more units if they wanted to, but they have 4-bedroom units. Part of the issue is since they are doing 4-bedroom units, which are virtually unheard of in multi-family housing; true multi-family housing consists primarily of 1 and 2-bedroom units. If they actually have all of those as 2-bedroom, not even a mixture of one and two, they would have 311-units and there would be about 500 parking spaces. The fact they have quads and are calling this multi-family housing means the project is terribly under parked. This project should not be classified as multi-family. College students living together are not families. There is nothing in the Boise City Code that fits this type of use. I suggest the City consider creating a new residential category for private off-campus student housing. This is new to Boise. The issue with the proposed five floors and the issue of inadequate parking are the result of a density that deserves a more in-depth examination. Boise only has four people per acre. That comes right from the census data. Portland is close to 7 and Seattle is a little over 11.

Kate Lenz – We have 101 employees in our building. As the Human Resource Director I'm responsible for hiring these great employees, preparing their benefits and retention. Part of that retention includes some of the things we offer, like adopting the one mile section of the Greenbelt in front of our building and we clean that up. In the summer months employees volunteer to do that, as well as a project I created called the Go Green Program. You've heard previous testimony that the proposed building will be green. As the creator of the Keynetics Go Green Program I feel I am uniquely qualified to speak to this. Our Go Green Program incentivizes employees who use alternative forms of transportation to get to work. We have 18 employees, out of the 101, who participate during what I would describe as warm weather months, May through September. Then we have 9 employees who participate October through April. We also have a combination of indoor and outdoor bike parking, roughly right under 25 spaces, so a good amount of spaces. For employees to receive a small stipend, they have to go green 60 percent of the month. If you can compare what Keynetics successes with our Go Green Program, you'll see the proposed project provides 48 bike spaces for 622 occupants. Again, as a reminder we have 25 spaces for 101 employees. The Michaels Organization is only providing bike spaces for less than 8 percent of their occupants, and they will need at least 112 bike spaces if 18 percent of their residents' bike and that is what they are proposing. They are proposing this is a Go Green community and I just don't see it. What's important to note is that every one of the employees I manage who participates in the Go Green Program at Keynetics, every one of them own cars. I just don't see how there is ample allocations for cars and bikes for these future students, with the proposal that is in front of you.

Makho Ngazimbi – I've live at Morrison Park Apartments since about July of 2008. In addition, I've been employed at Keynetics for about the past four years while I have been living at Morrison Park. I was a student at Boise State. I got my Masters in 2009.

In addition, I participate in the Go Green Program, so I ride my bike to work every single day along that portion of the Greenbelt that was shown. I think I am an appropriate representative for the people who live, work and commute to work on that portion of the Greenbelt. I do agree this development would be a great benefit to the City. I like all the things they talked about as far as being green and I am also advocate to see the truck lot go away. It's very dirty, it's dusty. In the summer it stinks, it smells like oil, so I think this will be a very good thing.

My main concern is the pressure that this development will have on the already limited parking in that part of town. From what I understand the maximum capacity would be about 600 people and they will be providing parking for about 45 percent. Everybody I know who lives in that area, including myself. Chances are the overflow will end up being on Lusk Street, Dale, Island and Royal, which are all streets in that area. It is probably a workable solution. I think they tried to emphasize that what they do is encourage people not to own vehicles. I don't know how you can do that in Boise. Pretty much everybody needs a car to get around. I think we are all very proud of our public transportation, but it's not great. I tried it one time and never did it again. That was 10 years ago. I would urge you to consider the impact of this development on surrounding neighborhoods.

Brad Wiskirchson – Tonight I am here in my capacity as the Chief Executive Officer of Keynetics. By way of background, Keynetics is Idaho's largest privately owned technology company. You probably never heard of it. We have two operating subsidiaries Click Bank, which is one of the worlds 15 largest online retailers, and (inaudible) which is the premier (inaudible) solution first of the biggest banks in the world and online retailers. We were founded in 1998 and as Kate indicated we employ over 100 individuals in our Boise Facility. We have a class A three story building at 917 Lusk, adjacent to the property in question. We built that and made a significant investment of the design of that building by hiring BRS Architects, who we recognized did all of the buildings on the north side of the river so we had a consistent look and feel of the buildings there. As you heard from Eileen, we have some concerns about this project, the least of which is the height and lack of parking for this site and for the project. We are here tonight to ask for you to consider this decision that perhaps gives everyone, including the City, more sustainable (inaudible).

First I would encourage you to consider approving this development proposal only with the removal of one floor of the housing. While this project will never be in line with the surrounding buildings, by removing at least one floor of the units will create a more realistic or more practical ratio of parking to residents.

Secondly, I urge the Commission to consider reevaluating the definition in the code for multi-family housing, including the parking regulations. Boise State has moved from a commuter orientate school to a residential orientation school, which will only create the additional need in the area for well designed off-campus student housing and given the recent interest by builders to develop off campus student housing, it's probably a good time to consider the standards by which the City will allow student housing.

The proposal you have before you is clearly not a multi-family housing development. It's aimed at students by their own admissions. In fact, it more appropriate fits in with the City's definition of fraternity or sorority type of living situation, although 622 residents would make an awfully large fraternity. This is an opportune time to hold out approving these types of developments until you have a plan for the management, both in the development phase and the on-going maintenance phase. We're not opposed to the development of this particular parcel. In fact, we are excited to welcome new neighbors and excited to say goodbye to the truck lot, but nevertheless, we're asking the development of the property be done right and given consideration of the impacts and influx of people in the surrounding area, including the property's neighbors, and more importantly, the City's own assets, the Boise River and Ann Morrison Park.

Richard Andrus – I was the one who started the fire storm earlier of my letter of March 2, 2012. I stand by the two issues I pointed out in that letter, first, the problem with this conversion to a variance from the CUP. It was stated earlier that this provision in the code that does allow a variance to be heard as long as there is a pending CUP. Given, not the decision in Burns Holding, but the Idaho Code provisions that Burns Holding interpreted that the CUP is not valid, so you can't adopt this variance into the CUP proceeding. It has to be a new application. That has not been done. There may have been an application made, but it wasn't for a variance.

The second issue, which is really the issue here, is the application does not meet the standards for a variance. I've heard a lot tonight about the benefits of redeveloping this property and redevelopment will improve this area. What I do hear tonight is how it meets the conditions of the Idaho Code to obtain a variance. The City does have the provisions and the definitions of a variance. That's one element of meeting the variance conditions, but you also have to meet the Idaho Code provisions. I think Commissioner Bradbury hints to that. In fact, regarding the suggestion Commissioner Bradbury had, I think amending the Zoning Ordinance should have been done at the beginning of the process. What we have here is a zone that allows 35'. If you're seeking a 63' building, I don't know if an exception or a variance is the right term to use. I think this is a situation where there should have been a rezone or an amendment to the zoning ordinance.

Commissioner Bradbury – I guess the question I wanted to ask you is this notion about the fact that we can't convert, or include a variance with the application for a Conditional Use Permit. The code section mentioned earlier tonight seemed to suggest to me that if there is an application for a Conditional Use Permit, we're entitled to also issue a variance. Help me to understand why the application for a Conditional Use Permit is invalid. It seems to me that if we grant the Conditional Use Permit under the Burns Holding we have a problem. But I don't quite understand how it is the application is invalid before we take actions.

Richard Andrus – I sent an e-mail to the City Attorney on this very issue. In there I discussed that it's not Burns Holding that causes the Conditional Use Permit application given out, it's the definition of the Conditional Use Permit under the Idaho Code, that's why there's a problem with the retroactive argument Mr. Allen was making. You don't look at Burns Holding and say well that changes the law.

No, the Idaho Code was in effect at the time the application was made and it defined what a Conditional Use Permit is, and it doesn't include height and it doesn't include bulk. I know this decision is a problem for a lot of people, but it's what the law is, as far as this issue taking a variance including it into a Conditional Use Permit, because there was an invalid Conditional Use Permit application under State Code. There is no valid pending CUP application, so you can't reference in the City Code where it talks about converting an existing CUP application, because if it's not valid, that means there can't be a variance as part of that application.

Dave Kangas – I did not plan on testifying for this but listening to the testimony, I am President of the Vista Neighborhood Association and one of the biggest problems we have with multi-family housing is parking. Planning and Zoning will admit that their ordinance does not adequately address parking. When you look at a proposal, most multi-family housing comes in at two bedrooms and they are allowed so many spots considering that formula. If you're going to one bedroom apartment, you have to realize there's probably a couple living there and there's going to be two cars. If you have quads and you're gearing towards Boise State students, you're going to have four vehicles and four bikes. That's what they're going to have. That's how they get around. From everything I've heard if there's a proposed 600 residents and they are allowed 45 bike spaces, give me a break. You're imposing big problems on every other business in that area for parking. I love the building. I think it's a unique location and a nice replacement for the industrial park, but if you have 600 people coming in and out of that apartment in the summertime when Ann Morrison Park is full of rafters, that whole shoreline from that building from the bridge, all the way through the park is going to be trashed by people coming in and out of the river. You're potential of 600 more people floating the river coming in and out to access the park apartment. They're not going to go down to the concrete ramp to get out. They're going to get out right along that river. The parking addressed by the people who have already testified is a major issue with multi-family housing throughout the City and all the neighborhood associations will testify to that, I would think because that is one of the biggest problems in the neighborhoods.

Monika Anderson – I live next to BSU and parking is a problem. I have two roommates and I have proper parking for them. They usually bike to wherever they go, but they don't drive the Geo, they are driving SUVs. I came to this country and for the first time in my life I felt handicapped without a car, especially in Idaho. You want to go out to the mountains. You want to go to the river. Everybody I know has a car. I have two.

The height is a problem for the river. It makes the river more confined. When I go through University Drive, one side is the parking garage and the other side is those apartments. It feels like it is really confined driving through there, compared to the open space that was there before.

Every time I drive there, especially in the summertime, because you used to see the sun all the time and this might even take away the sun from the river. I don't know, but it might.

REBUTTAL

Becky McKay – I think Gary has a couple of comments he wants to make so I'll try to be brief. As Josh indicated, we submitted on November 29, 2011, so we come under the old Comprehensive Plan which has this designated as the Central Bench Area. Under Blueprint Boise this is now part of the Downtown Planning Area. When you look at your new Blueprint Boise you see that the vision calls for higher urban densities and new urbanism concepts. That's what we're bringing with this project. The reason we have asked for the height exception for the variance is the fact that we have three different varying parapet heights. The Design Review staff asked us to increase some of the height to give it a more varied roof line with 6' intervals in order to create more modulation; more interest and the aesthetics of the building would also be enhanced.

You ask about parking. There is a shuttle that comes by here on Royal Boulevard every 20 minutes. I was there this morning for a meeting with Idaho Power and it went by four times. As far as our bike parking area, I was the one who put the 48 spaces in there, but that doesn't take into consideration the vertical racks. The reason I was extremely conservative was because the building was still evolving. It was going through different stages with the architects and I wanted to be conservative. As far as accommodating more bikes, we have the room.

We have followed all Boise City's procedures. We submitted that Conditional Use on the 29th of November. The same procedures for the Conditional Use as far as hearing, notice, going to this decision body are identical to the variance. Your code also allows for a Conditional Use application to include a variance. It says without a separate application. This project has gone through a lot and we've worked hard. The Keynetics Building is over 180' from the east face of our building to their west face. We've got significant separation. We have other height exceptions approved along this corridor. If you look at this R-O zone purpose statement, it promotes that this is identified as a Downtown area intended to provide higher density residential and office uses, with an emphasis of high quality urban design pedestrian oriented. That is exactly what we are providing here. It talks about flexible design standards. Thirty five feet is what is in your R-1C, R-2B zones and every other municipality in this valley is a single-family height restriction. I know exactly what they were thinking. They thought, we'll put 35' then we will have a little more review over a particular project if it's over 35'. They were looking for a little more input into these projects and that's why that 35' is totally irrational for the purpose statement I've given you.

Your code asks to calculate by dwelling units. Eighty seven point one dwelling units doesn't say bedrooms. We look at the definition of multi-family, it says they can be family or they can be up to five individuals that are totally unrelated. The applicable Zoning Ordinance is what is in effect at the time they apply, even if Ms. Barber would like code amendments. This is not the time to do it. You can't tailor a code for a particular project. We meet the requirements of the R-OD. We are not asking for anything that has not already been approved for other projects in this area, R-OD, L-OD and R-2D, regardless of zone. We think this is reasonable and it makes sense. I ask the Commission to take a look at this and notice all the hoops we've been through. Don't be hung up on the stories. Consistent and compatible does not mean identical. Her building is 53', but its three stories. We're looking at height not stories. This is a good project and I ask for your support.

Gary Allen – I want to quickly address two points that Mr. Andrus brought up. The first one is he says we have to meet the code provisions in addition to the ordinance. That is not the case. You're ordinance has to be consistent with the state code. You don't apply the state code separately.

Secondly, he comes up with some creative arguments about how the CUP application is not valid. Here's what we think is important. You guys are the finders of fact. We need you to make findings of fact on both the CUP and the variance because we've got all of these legal issues flying around. Don't try and be a court and decide what the right answer is on all of those things. We've given you our view and they've given you their view, that's going to sort itself out. We are pretty sure we're not done with this at this hearing. Please make those factual findings we need on both sides so we don't have to come back to you for those later on.

PUBLIC HEARING CLOSED

Commissioner Stevens – I want to remind the Commissioners that the parking issue tonight is not actually before us. This Commission is not in position to make findings that require our applicant to be held to standards above that which is in our code. That would be arbitrary and would make the City be in some serious hot water, so I want to make sure that when we have our discussion tonight, that we keep the parking out of it. It is not before us. They have met code and to require that is above and beyond what we are allowed to do.

Commissioner Story – Like you said parking is off the table. This complies. I can't say our code is correct on parking and the way it should be handled, but I think the rubber meets the road where we're talking about height and that's really the only thing we have before us. When I look at the Comprehensive Plan I think it fits well. I think it's a project we want, higher densities, closer to the core, structured parking. I think there is question on the variance. Is one even needed here? I agree, we're not attorneys and I think we need to take a look at the height and see if we think it fits the necessary requirements.

Commissioner Bradbury – I agree with Commissioner Story, I think he is correct in his analysis of the application and what our job is tonight. Clearly, the use is allowed in this zone, although it may be debatable whether our ordinance requires adequate parking for this particular use. The application applies to the ordinance. My view after having heard the presentations and having seen the drawings and thought about the proposed use, I think it's clearly an improvement for the vicinity. It appears to me to be a good project. Our catch, if there is one, is with respect to the height of the building, and clearly the applicant kind of got caught in a bit of whiplash with the Supreme Court throwing a curve ball that the applicant has to try to hit and we have to duck as it goes by, I guess. The bottom line in my mind is whether or not we can make findings. I think we can clearly make findings for the Conditional Use Permit and the height exception, if there is such a thing under Idaho law anymore. The other question is, can we make findings for a variance, and that in my mind is a little more tricky.

Commissioner Morrison – I think it's a great project. I think it's very well thought out. This particular site has been under study for years. I know because I've studied it in the past and I think the Conditional Use Permit was the application in which we heard this project.

This is what we initially acted on, on this project. It was brought back before us because of lack of clarity on the height exception, which I believe we took action on in the past and again, I have to support this project. I think it's what the plan and the City desires for this location.

Commissioner Stevens – I want to start by stating I'm very comfortable with the noticing. I think staff did a good job explaining to us that the noticing which took place for the CUP exceeded what would actually take place under a variance, and because of the wording, it is very clear that we're dealing with a height issue here. I feel very comfortable the City has met with the City's needs to meet and make sure people are noticed. We have a lot of people here who are interested so they know about the application and clearly have been noticed appropriately.

I also want to say I feel comfortable with the findings staff provided to us for a variance in a memo that stated March 5, 2012, and that's in our packet. I'm not sure how it got dated March 5, 2012 because that's today's date and we got it last week. In any case, the memo and the findings in the memo for the variance I am very comfortable with. Specifically, with regard to the hardship verse the exceptional circumstance. Mr. Allen did read that appropriately. It does say that, *either a hardship with the property itself, or an exceptional circumstance*. I think the applicant has made a very good presentation to explain both. I feel comfortable there is a hardship with regard to the floodplain and I think frankly the developer has done a good job of being creative with this site to meet the Comprehensive Plan goals related to structured parking and not require us to see an asphalt parking lot. By doing so has kind of dealt with the hardship of the floodplain and I think that is a creative solution. I'm glad to see it that way. I think it's what the City is looking for in terms of our vision for that area.

I also think there are a lot of exceptional circumstances associated with the property, most of which were outlined by Mr. Allen which are very well put in our findings staff put together. I feel very comfortable with that regardless of the legal stuff going on, which happens all the time. The Supreme Court throws stuff like this all the time at you, Gary and the rest of us, for that matter. I do feel comfortable that even with what's happened with the Supreme Court that what's in front of us meets the standards we need to have it meet for our City Ordinance, so I'm very comfortable with where we stand right now.

COMMISSIONER BRADBURY MOVED TO APPROVE CUP11-00090 & CFH11-00036 INCLUDING A VARIANCE TO THE EXTENT REQUIRED BY LAW, IN ACCORDANCE WITH AND PURSUENT TO THE PROPOSED FINDINGS AND CONCLUSIONS SET FORTH IN OUR STAFF REPORT.

COMMISSIONER STORY SECONDED THE MOTION.

Commissioner Stevens – For the record, I want to make clear that with regard to the findings you're including both the findings that were in the original staff report related to the CUP, as well as the findings that were in the memo dated March 5, 2012 related to the variance.

Commissioner Bradbury – That was my intention.

Commissioner Stevens – Does the seconder agree?

Commissioner Story – Yes.

Commissioner Bradbury – Sometimes I struggle with being over technical or being practical, and in this case I think practical is the one tonight. I think with all things considered the project is appropriate to the location. It complies with our ordinances. I have no problem what-so-ever with the height and the design of the building. I think we need to try and find a way to approve the application and I think the applicant has demonstrated their requisite hardship, although on a personal note, I think it's a little thin, but it's enough.

Commissioner Story – I would agree with Commissioner Bradbury that all night I guess the only thing I was looking for was the exceptional circumstance related to the intended use of the property, and I think in our Zoning Code it talks about high density projects is what we want in this kind of zone and with increased river setbacks and floodplain, those circumstances just aren't found in all of the R-OD zones. I think this is a little bit of an exceptional circumstance for this property.

Commissioner Stevens – I do want to say one last thing and that is regarding the height exception specifically. Looking up and down the river it feels to me that the reason I'm going to support the height exception particularly is because it would feel arbitrary to me to look at what we've approved adjacent to this property, not to mention the other properties across the river on the north side. To somehow not approve this feels very uncomfortable to me. That's the reason I'll be supporting the motion.

Commissioner Morrison – As an observation, because it is probably inappropriate for me to say this, but a section through the proposed height of the building in relationship to the other examples around the property and the trees along the river, would have been very helpful in establishing a case.

ROLL CALL VOTE

COMMISSIONER BRADBURY	AYE
COMMISSIONER STORY	AYE
COMMISSIONER MEYER	AYE
COMMISSIONER MORRISON	AYE
COMMISSIONER STEVENS	AYE

ALL IN FAVOR, NONE OPPOSED. MOTION CARRIES.