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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND, WASHINGTON

**In the Matter of the Appeal of
Eugene Zakhareyev
Of the June 12, 2018 approval
Site Plan Entitlement LAND-2013-
00171 Decision for the Anjuman-E-
Burhani Mosque at 15252 NE 51st
Street, Redmond**

**Appeal No. LAND-2018-00701
Of LAND-2013-00171
ZAKHAREYEV'S CORRECTED
POST-HEARING BRIEF**

I. INTRODUCTION.

Over the course of several years, the City of Redmond has adopted numerous deviations, exceptions, allowances and unjustified code interpretations, all in an effort to approve the AEB proposal. In point of fact, the proposal as currently configured (Exhibit C-6) is fully inconsistent with the plain language of the City codes and regulations.

The code violations include, but are not limited to the following:

- a) granting an easement over public property in violation of the plain language of the deed to the City from the WSDOT (Exhibit Z-13 and Z-29);
- b) ignoring the long-established, and code-required, means to calculate a religious institution seating based on "seven square feet per person" in the prayer areas without fixed seats under RZC 21.08.280.B.3;
- c) avoiding the language of the code that requires churches to meet parking regulations "for assembly uses", RZC 21.08.280.C.2;

1 d) miscalculating special regulations for churches that required “increase in
2 building setbacks by five feet for every foot in building height” by only including a
small part of the building, RZC 21.08.280.D.2.c;

3 e) relying on an out-of-date “transportation management plan” when the code
4 requires a “traffic mitigation plan”, RZC 21.08.280.C.5;

5 f) allowing undefined “valet parking” shown on plans as tandem parking to be
6 counted to meet code standards when no authority exists for such parking
scheme, Exhibit C-6, Sheet A1.04;

7 g) basing parking calculations on the capacity of the “prayer area” rather than the
“gathering space” capacity to accommodate up to 336 persons;

8 h) ignoring code provisions for High Capacity Transit Corridor Preservation when
9 Sound Transit has identified plans which will use the AEB property and conflict
with parking plans, RZC chapter 21.28;

10 j) determining that “neighborhood compatibility” is met by a building five times
11 larger than adjacent properties with a 150 foot facade facing single family
homes.

12 k) granting a “deviation” from traffic safety code standards for sight distance at
13 the project driveway.

14 These exceptions, deviations and unpermitted interpretations arise from a simple
15 fact: the small size of the property is not sufficient to accommodate all that AEB wants
16 to do with its proposed facility. As will be demonstrated herein, these multiple and
17 serious code violations cannot be sustained and the proposal should be denied or
18 modified.¹

19 **2. STANDARDS OF REVIEW.**

20 The City has employed a variety of mechanisms to ask the Examiner to avoid the
21 plain, and long established, language of the zoning code. The City claims that these
22 baseless interpretations should be given substantial weight by the Examiner.

23 The Examiner, like the court, must observe well established rules of
24 interpretation in considering the application of the Redmond code, which include the
25 following:

26 Ordinances with plain meanings are not subject to construction. Only ambiguous

27 ¹This brief supplements, but does not replace, Mr. Zavhareyev’s Prehearing Brief.

1 ordinances may be construed. *City of Pasco v. Pub. Employment Relations*
2 *Comm'n*, 119 Wn.2d 504 , 507, 833 P.2d 381 (1992).

3 *Sleasman v. City of Lacey*, 159 Wn. 2d. 639, 647 (2007). In addition, "the City must
4 interpret and enforce the City Code as written, without adding new criteria on a case-by-
5 case basis." *Schroeder v. Bellevue*, 83 Wn. App188, 193, 920 P.2d 12 1216 (1996). As
6 noted at pages 10-11 of our prehearing brief, administrative authorities must be
7 concerned with compliance with the ordinance, not with its wisdom, citing *Eastlake*
8 *Community Council v. Roanoke Associates, Inc.*, 82 Wn.2d 475, 482 (1972).

9 Further, The law does not allow for strained interpretations:

10 Statutes should be construed to effect their purpose and unlikely, absurd or
11 strained consequences should be avoided.

12 *State v. Stannard*, 109 Wn.2d 29 (1987)

13 In addition, when AEB purchased the property in 2010 (a 1.2 acre property
14 purchased for \$300,000), a specific exception to the deed identified that the state had
15 condemned the right of access to the property. Exhibit Z-17, page 3. The
16 condemnation verdict indicated that the only access the owner of the property retained
17 was a Type A approach for a single family residence. Exhibit Z-12. In 2010,
18 substantially all of the code requirements for religious institutions in residential zones
19 had been in place since 1997. Exhibit Z-99. Generally our courts have ruled that:

20 To some extent the reasonable use of property depends on the expectations of
21 the landowner at the time of purchase of the property. If existing land regulations
22 limit the permissible uses of the property at the time of acquisition, a purchaser
23 usually cannot reasonably expect to use the land for prohibited purposes.
24 Although not necessarily determinative, courts may look to the zoning regulations
25 in effect at the time of purchase as a factor to determine what is reasonable use
26 of the land. Presumably regulations on use are reflected in the price a purchaser
27 pays for a piece of property. This landowner knew when he purchased this lot
28 that it did not satisfy either the minimum lot size or the setback requirements of
the MCSMP.

29 *Buechel v. State Dept. of Ecology*, 125 Wn.2d 196, 209-210, 884 P.2d 910, (1994)

30 (emphasis supplied). The special rules and conditions for religious institutions

31 (including mosques) had been a part of the Redmond code since at least 1997. Exhibit

1 Z-99. This applicant, well aware of the applicable codes in effect at the time of
2 purchase, cannot request, and is not entitled to, receive special treatment from the City.

3 Here the staff employed exception procedures and unsupported interpretations
4 to favor this applicant. As will be seen, these interpretations cannot be sustained.

5 **3. Issue 3: THE CALCULATION OF SEATING CAPACITY FOR THE MOSQUE IS**
6 **IN ERROR.**

7 As described at pages 4 -11 of Zakhareyev's prehearing brief ("ZPHB"), the RZC,
8 in section 21.08.080.B, has special provisions for calculation of seating capacity in
9 religious facilities. If there are no individual fixed seats or benches (pews), a "seat shall
10 be defined" as seven square feet in the area where "portable seating fixtures" are
11 employed. No ambiguities exist here; the faithful in the mosque will use prayer rugs as
12 "portable seating fixtures" (an example of the use of prayer rugs for seating in a
13 Dawoodi Bohra mosque is found at Exhibit Z-95; see also Z-94, Houston mosque.)

14 Nor is the code for calculation of seating out of date. The first section of the
15 code indicates it is intended to regulate "mosques". This precise provision of the code
16 has been in effect since at least 1997 (Exhibit Z-99). The code section was amended in
17 2010 (Exhibit Z-100), but no changes were made in the seating calculation or other
18 code provisions. Certainly the Muslim faithful have been using prayer rugs for hundreds
19 of years, so there are no changed new circumstances.

20 In addition, there is a substantial area just outside the traditional prayer area
21 called the "sehen." See Exhibit C-6, Sheet A2.02. While the AEB representative said
22 that prayer does not usually occur there, the Houston Dawoodi Bohri website (Exhibit
23 71) publicly includes the "sehen" in the capacity of their facility. In describing the
24 masjid, they say:

25 On the first floor, in the men's masjid, it will accommodate 700 masallahs inside
26 and another 200 in the sehen. The second and third floors will have room for
27 365 and 425 mesallahs in the masjid respectively, and another 225 masallahs in
28 the sehen on each floor.

Given this information, the actual prayer capacity of the proposed AEB facility is

1 understated. See Exhibits 95 and 96.

2 The calculation of the number of seats based on square footage is
3 straightforward, simple to perform and does not hint of ambiguity. The calculation of
4 the number of seats for this application is in error.

5 Not only is the City's interpretation of code strained, it adds new criteria to the
6 plain language of the code on a case-specific basis. As indicated in the Appellant pre-
7 hearing brief (pp. 7-9), the City and the Applicant were well aware of the code language
8 and came up with the interpretation to specifically address AEB application deficiencies.

9 The prayer area contains 2,868 square feet (Exhibit C-6, Sheet A2.02). Seating
10 capacity based on correct code interpretation of seven square feet per seat is 410
11 seats, with required parking for 82 stalls (410 divided by one space for each five seats).

12 **4. ISSUE #4: BUILDING SETBACKS WERE NOT PROPERLY CALCULATED.**

13 As described in ZPHB at pages 11-14, the City did not properly calculate
14 setbacks. As with other issues, the City failed to apply the code as written and instead
15 substituted an unwarranted interpretation for the plain and unambiguous code
16 language.

17 The code section for religious institutions in residential areas has a particular
18 provision for setbacks relative to building height. First, the Redmond code expressly
19 makes steeples, bell towers "or other symbolic religious icons" a part of building height.
20 Second, the RZC defines "building height" to be "the highest point of the structure."
21 There is no averaging of the "building height" as there is with calculating "average
22 finished grade."

23 The code says in plain language that: "building setbacks shall be increased by
24 five feet for every one foot in building height over 30 feet." There is no ambiguity here:
25 building height and setbacks are defined terms in the RCZ and are intended to closely
26 limit increases in building height over 30 feet. However, in the rush to approve the AEB
27 facility, the City rewrites the code section to be: "building setbacks shall be increased by
28

1 five feet for every one foot of that portion of building height over 30 feet.” Thus the City
2 would introduce terms and conditions that do not exist. Since this code provision is
3 special to religious institutions in residential areas, the code needs to apply as written,
4 not as city staff think it should be applied.

5 It is essential to note that the code pertaining to places of worship applies to *all*
6 residential zones, from R-1 to R-30. Thus the maximum height and setback
7 requirements are independent of maximum residence height and average lot size per
8 zone. The code reflects the Council determination to provide abundant transition space
9 and distance between residences and places of worship.

10 Correct interpretation of the code calls for 95 feet of building setback for a 45
11 foot high building for the place of worship. The requirement is not excessive and is
12 consistent with the intent of RZC 21.08.280 “to ensure that the unique impacts
13 associated with church, temple, synagogue, and mosque uses are addressed”. The
14 code does not require the building height to be over 30 feet; the developer may elect to
15 adjust the height of the proposed building to adapt the proposal to the available lot
16 dimensions.

17 **5. Issue #5: PARKING NOT PROVIDED TO MEET ASSEMBLY USES.**

18 On the issue of parking, staff continues its rewriting of the code to benefit the
19 AEB. Again, clearly, plainly and unambiguously the code says that for religious
20 institutions in residential areas “the use (religious institution) shall comply with the
21 parking regulations for assembly uses. . .” See ZPHB, p.14-18.

22 The city interprets this section as “the use (religious institution) shall comply with
23 the parking regulations for assembly area. . . .” But an assembly “use” is different from
24 an assembly “area”.

25 Assembly uses are defined in the International Building Code as follows:

26 IBC SECTION 303
27 ASSEMBLY GROUP A
28 303.1 Assembly Group A. Assembly Group A occupancy includes, among

1 others, the use of a building or structure, or a portion thereof, for the gathering of
2 persons for purposes such as civic, social or religious functions; recreation, food
or drink consumption or awaiting transportation.

3 (Emphasis supplied). As noted in the ZPHB, assembly uses in the RZC plainly call for
4 parking “adequate to accommodate peak use.” The City must apply parking criteria for
5 “assembly uses” which require parking be “adequate to meet peak use.”

6 As a practical matter, the City has eliminated any meaning of this provision with
7 the staff decision. Essentially the City argues that RZC 21.08.280.B trumps RZC
8 21.08.280.C.2 and that charts in RZC 21.08.080.B control. However, if that was the
9 intent, there would be no reason to have RZC 21.08.280.C.2 at all. Indeed, that section
10 clearly anticipates that calculation of parking for assembly uses might exceed
11 calculations based on seats because a hard stop is placed at one stall per three seats.
12 However, such long standing provisions (since 1997, See Exhibit Z-99) cannot be read
13 out of the code. The City must apply parking criteria for “assembly uses” which require it
14 to be “adequate to meet peak use.”

15 Incredibly, the city argues in its brief (page 9) that the tables for religious facilities
16 in residential zones (e.g. RZC 21.08.080 Table C) should be read as follows:

17 Under the square-foot method, the mosque needs only 2.9 parking spaces for its
18 2,858 square feet of worship area, which AEB again easily exceeds.

19 This patently absurd proposition points to fundamental errors in the City’s code and why
20 the separate provision for “parking adequate for assembly uses” controls.

21 In addition, in the present case, the applicant has carefully and discreetly
22 established a “Gathering Space” on the first floor of the mosque. Exhibit C-6, Sheet
23 A2.02. The drawings carefully show that this space will accommodate 42 “thaals,”
24 which will provide eating space for 7 or 8 persons at each thaal, for a total of between
25 294 and 336. Note that this activity is directly tied to religious traditions of eating from a
26 common plate (a “thaal”), rather than a generic calculation of capacity.

27 Indeed, the traffic study done for the AEB properly includes the Gathering Space
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1 in determining the minimum number of required spaces. See Exhibit C-11, pages 11-
2 12. At the time, AEB's traffic engineer included only 210 persons in the Gathering
3 Space. *Id.* However, updated figures from hearing testimony indicate the capacity of
4 that space is 336, requiring re-calculation of assembly use parking requirements.

5 The code makes clear that parking must be calculated for "assembly uses" which
6 must accommodate peak usage.

7 **6. ISSUE #6: THE CITY ERRED IN REVIEWING TRAFFIC IMPACTS OF THE**
8 **AEB PROPOSAL.**

9 At pages 18 to 30 of our PHB, detailed analysis was provided that demonstrated
10 the transportation analysis for the project was in error in multiple instances as indicated
11 during the hearing.

12 There are several threshold issues that apply here.

13 First, RZC 21.08.280.C.5 requires that: "A traffic mitigation plan shall be
14 submitted for approval by the City." This is a change from the version of the code
15 adopted in 2010, which required a "transportation management plan." A "traffic
16 mitigation plan" is defined in RZC 21.78T as:

17 Traffic Mitigation Plan. A plan that addresses traffic control, parking
18 management, and traffic movement to and from the arterial street system and
19 that, when required, helps mitigate traffic impacts in residential zones.

20 Second, the code requires the City approve any "traffic mitigation plan." No such
21 plan has been approved because the City says the plan presented is a transportation
22 management plan, not a traffic mitigation plan. Further the plan will be considered and
23 approved after these proceedings are complete, apparently during approval of the
24 building permit for the proposal. However, given the importance of traffic issues, a
25 decision on whether the traffic improvement plan is sufficient must be made during the
26 SPE process, not delayed. RZC 21.08.280(C) states:

27 The following development criteria shall apply to places of worship and related
28 activities without regard to the zone in which it is located or the permit under
which the use is processed:

1 (Emphasis supplied.) The parking section of the RZC at 21.40.010.C. provides that:

2 3. Site Plan Entitlement Required. All proposed parking facilities are subject to
3 the Site Plan Entitlement Process of RZC 21.76.070.Y, Site Plan Entitlement.

4 Thus the traffic mitigation plan must be considered during the processing of the current
5 permit for the SPE.

6 SPE 21.76.070.Y provides that SPE review will achieve certain purposes,
7 including:

8 d. The adequacy of streets and utilities in the area of the subject property
9 to serve the anticipated demand from the proposal.

e. Determination that the proposed access to the subject property is the
optimal location and configuration for access.

10 Note review of a building permit for the AEB project will not be dealt with as a land use
11 permit and such approval is not subject to public notice, public review or appeal once
12 an SPE is approved. Delaying approval of the traffic mitigation plan effectively shuts
13 out the public, a result inconsistent with the code.

14 Third, continuing the City's waiver of its standards and ordinances, the SPE
15 approval granted a "deviation" from site distance standards. See Exhibit C-3, page 8.
16 Tellingly, the City's PHB (page 4) says that proposal "does not comply with the City's
17 entering site distance requirement . . . ," yet justifies violation of code standards
18 because the deviations meet AASHTO standards and a "deviation" is appropriate.
19 Again, the city authorizes violation of important code standards.

20 Additional justification for the deviation provided by JTE was "the access is low
21 volume thus the City should allow for a deviation" (Z-33). The city granted the deviation
22 in January 2017 (Z-44); since then TSI has re-evaluated the trip generation for the
23 project to produce 62 PM peak trips (Z-85) but there is no evidence that the city re-
24 evaluated the original deviation request approval.

25 Significantly, there is no basis to invent new standards such as supposedly found
26 in the AASHTO, when the RZC already established standards in RZC 21.52.040 and in
27 RZC Appendix 2. Moreover, the City gave AEB an easement over its own property
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1 (public right of way) to access the AEB property, knowing that safety standards were
2 not met. See Exhibit Z-29 (June, 2018).

3 The testimony at the hearing is telling on these issues. Witnesses Gunderson
4 and Zakhareyev both testified about the serious sight distance problems at the
5 intersection of 51st and 154th, as did Mr. Popp, the appellant's expert witness regarding
6 traffic issues. The issue here is public safety, not some abstract mathematical
7 calculation. Special deviations for AEB are not justified.

8 Again the proposal does not meet long established engineering criteria and must
9 be denied.

10 Fourth, the Traffic Mitigation Plan (labeled as a transportation management plan,
11 Exhibit Z-79) is inadequate and incomplete to meet its purpose, for the following
12 reasons.

13 a) The parking plan (Exhibit C-6, Sheet A1.04) says it provides 36 parking stalls,
14 but there are only 27 marked and lined stalls.²

15 From the drawing it appears that the remaining nine stalls are provided by using
16 multiple "Tandem Parking" along the west side of the plan. See Exhibit C-6, Sheet
17 A2.01. See also Exhibit Z-79, page 3. But this configuration blocks access to the four
18 parking stalls on the lower floor and there is no space to turn around at the end of this
19 line of vehicles. See Exhibit C-6, Sheet A2.01.

20 Tandem parking is defined in RZC 21.78.T as follows:

21 *Tandem Parking. Tandem parking is two parking stalls that are arranged*
22 *lengthwise, end-to-nose, where both parking stalls use the same drive-aisle to*
access the two spaces, not including parallel parking.

23 (Emphasis supplied.) As seen in 21.78.T, Tandem Parking is limited to two parking

24 _____
25 ² Thirteen of the marked stalls are within the twenty foot front yard setback (there is only a five foot space
adjacent to the north property line). However the code is clear that parking is not allowed in the front yard
setback in residential zones, such as R-5: 21.40.010(F), "General Parking Regulations:"

26 *3. Parking in Building Setback Areas. In all residential zones, parking other than bicycle parking and*
27 *parking in driveways is not permitted in front setback areas. In all other zones, parking is permitted*
28 *in all setback areas subject to the requirements of the district and the following subsection F.4 of this*
section, Parking Restricted in Shoreline Areas.

1 stalls, and it is only available for residential uses in the parking chapter of the RCZ:

2 21.40.010 Vehicle Parking.

3 a. E.15. *Tandem parking may be used to meet the parking requirements for*
4 *residential uses. Each pair of tandem parking stalls shall only be for one dwelling*
5 *unit. A tandem pair of parking stalls shall have no more than one compact*
6 *parking stall.*

7 In addition, this tandem parking plan is located on an area with a 28% slope.
8 Exhibit C-6, Sheet A2.02.³ The plan presented with tandem parking fails to meet code
9 requirements, and common sense; the parking plan must be denied or redesigned.

10 b) The parking plans also include provisions for so-called “valet parking.” See
11 Exhibit Z-79, pages 3-4, Exhibit C-6, Sheet A1.04. This plan includes mass parking for
12 21 cars between the two rows of parking (total of 21 vehicles) on the south portion of
13 the site. *Id.* There are five additional cars depicted on the southwest corner of the site,
14 but adding this group totals only 26 “valet parked” cars, not the 29 claimed on the
15 drawing.

16 However, nothing in the parking code of the city permits such mass parking.
17 RZC 21.40.010.E.1 states:

18 E. Design Requirements for Parking Facilities.

19 1. Parking space and aisle dimensions for parking facilities shall meet the
20 standards set forth in the Table 21.40.010 entitled “Minimum Parking Spaces
21 and Aisle Dimensions.” The Technical Committee may approve alternate designs
22 not meeting these standards when a qualified Transportation Engineer
23 demonstrates that the alternate design proposal meets more current and
24 accepted standards such as ITE and/or ULI parking dimensional standards.

25 Jamming cars into aisle space is not permitted by the code. The applicant’s current
26 traffic engineer (Mr. Salemann) specifically stated during testimony that he did not
27 design the so-called valet parking arrangements, so the valet parking cannot be an
28 “alternate design.” As described above, the only modifications from code requirement
for minimum aisle and backup space are found for tandem parking, which is limited to

³Maximum street grade are found in Appendix 2 to the RZC provides in Section A 5, “Street Grades” as follows:

b. All streets, alleys and service drives shall generally not exceed 15 percent in average grade. Refer to Table 2 where grades greater than 15 percent are permitted.)

1 residential use and only two cars.

2 The “valet parking plan” actually includes the blockage of 13 cars along the west
3 side of the proposal, as shown on Exhibit C-6, Sheet A1.04. The plan shows four valet
4 parked cars are blocked as well as the nine other stalls required to meet minimum
5 requirements. No code provisions support this jury-rigged parking arrangement.

6 c) Nor can the Examiner ignore the impact of the pending taking of a portion of
7 the AEB property by Sound Transit in connection with the traffic issue. The Sound
8 Transit plan blocks access to the rear portion of the building for fire access. Moreover,
9 access to at least thirteen parking stalls on the west side of the site is blocked when the
10 Sound Transit plan is implemented. As seen in Ex. Z-72, Sheet L90-RPP107, Sound
11 Transit plans a “Proposed Noise Wall Drainage and Vegetative Clear Zone Easement” -
12 precisely where access to parking stalls is planned. Exhibit C-6, Sheet A1.04. It
13 appears that this acquisition will require modification of various features (on a site that
14 already is short of parking, as described above).

15 d) In testimony, it was disclosed that the applicant proposes a large “Gathering
16 Space” on the first floor which will accommodate “42 THAALS.” Exhibit C-6, Sheet
17 A2.02. Thaals are traditional communal plates used during communal meals and,
18 according to the applicant, customarily are used by seven or eight persons. Sheet
19 A2.02 carefully provides 42 circles where diners will gather around the thaals.

20 This indicates that the Gathering Space is planned by AEB to accommodate as
21 many as 336 persons (42 thaals times 8 persons). The AEB spokesman at the hearing
22 stated that the congregation is relatively stable at 150 members, a number used by the
23 transportation witness TSI. See Exhibit Z-86, page 1. The proposal that includes
24 dining space for more than twice the congregation size indicates the reasonable
25 expectation that the space will be used for that intended purpose, accommodating up to
26 336 people, clearly indicating that both traffic and parking calculations are in error.

27 e) Further, the proffered Transportation Management Plan is dated January 2,
28

1 2014, labeled as “draft”, and is now four and a half years old. See Exhibit Z-79.
2 Though AEB claims an off-site parking arrangement with a nearby VFW, all that the
3 supposed Plan contains is an agreement allowing parking at the VFW for two days in
4 2013 and 2014. There is no indication that the VFW has a current agreement with AEB
5 nor any indication of the city approval of such agreement, as mandated by RZC
6 21.08.280.C.5.

7 f) As described in testimony the City already has experience with parking
8 shortages with the MAPS proposal, despite a professionally prepared trip generation
9 and parking analysis that was submitted and reviewed by the city during the project
10 approval process. See Exhibit Z-41. Care must be taken to avoid a repeat of this
11 experience that took at least three years to resolve.

12 g) The City also cited code enforcement as a mechanism for controlling the
13 seating capacity (and therefore parking) in the future. AEB is a membership based
14 organization which would not even cater to other denominations of Muslim faith,
15 according to their representative who testified at the hearing. The complaint based
16 nature of the code enforcement program requires a person to intrude on the
17 congregation’s religious ceremonies repeatedly to gather evidence for a code
18 enforcement action. And then even if such complaint was provided, the City would be
19 hard pressed to substantiate it without infringing on the constitutional rights of AEB.
20 Parking and traffic impacts must be resolved at the SPE stage, not adjusted later.

21 h) Despite years of traffic analysis from five sources (JTE, TENW, TSI, WSDOT
22 and William Popp), there is still no succinct written analysis of traffic and parking by the
23 city. The sole analysis is hearing testimony by the city, and despite being presented
24 with clear standards in Exhibit C-19, compliance with these standards is not
25 demonstrated anywhere.

26 i) No adjustments for the fact that the new AEB facility would be ten times the
27 size of the current (unpermitted, Exhibit Z-93) facility in Kirkland, with unknown seating
28

1 capacity.

2 j) Despite WPA (Exhibit Z-80) and WSDOT comments (Exhibit Z-83), there is
3 no trip distribution analysis provided. Trip routings given artificially exclude possibility of
4 U-turns at 51st Street/154th Ave NE and cut-through traffic through the neighborhood;
5 the 51st/154th area is known to have limited sight distances, making U-turns there
6 particularly unsafe.

7 k) Traffic studies by the applicant use “members” and “persons” interchangeably,
8 whereas the city uses only worshippers for parking and traffic calculations. No attempt
9 is made to develop trip rates per attendee (regardless of whether the attendee may be
10 a worshipper or not), and even traffic counts gathered are discarded in favor of using
11 the figure of 150 worshippers. No attempt is made to draw any connection between the
12 number of prayer rugs at the existing location (a number that is still unknown after four
13 years of review!) and the planned number of rugs at the new facility; instead arbitrary
14 coefficients are introduced.

15 Traffic and parking analysis for the AEB proposal is deficient on its face,
16 requiring permit denial and remand to the City for correction.

17 **7. ISSUE #7: AN ACCESSORY DWELLING UNIT IS NOT PERMITTED IN THIS**
18 **PROPOSAL.**

19 In the ZPHB at page 30, it was shown that the proposal includes not only a
20 “parsonage” with three bedrooms, two baths and a living room, but a separate living
21 room and bedroom on the first floor. See Exhibit C-6, Sheet A2.02. The City contends
22 that this space should not be counted as creating the need for separate parking,
23 contending it is just like a separate bedroom in an ordinary house. This argument might
24 have credibility if it were just another bedroom on the first floor. But by moving it to a
25 different floor and including a living room, the proposal takes on a separate and distinct
26 character. Such quarters are not permitted in the R-5 zone.

27 **8. ISSUE #8: THE PROPOSAL VIOLATES CITY CODES INTENDED TO**
28 **PROTECT AND PRESERVE NEIGHBORHOOD CHARACTER.**

1 The ZPHB carefully set forth Redmond code and Comprehensive Plan
2 provisions that require that new development “retain desired neighborhood character.”
3 See pages 30-40. Comprehensive Plan Policy LU-30 does allow religious institutions in
4 residential zones but only if they are “appropriately scaled” and “respect the character
5 and scale of the neighborhood.” Specific provisions applicable to the Overlake
6 neighborhood (OV-11 and OV-12) further emphasize the protection of existing
7 residential neighborhood. The plans presented, and the testimony from neighbors such
8 as Tom Flick, demonstrate that these polices are blatantly violated, due in large
9 measure to plans to overbuild on this small lot.

10 Among other factors, the following features show the proposal’s inconsistency
11 with neighborhood character.

12 ● Exhibit Z-90 lists lot sizes and square footage of the homes in the
13 neighborhood. The square footage of the AEB proposal is ten times the size of most
14 homes in the neighborhood, while keeping the minimum required setback of twenty feet
15 for religious institutions.

16 ● Exhibit C-6, Sheet A2.02 shows the rear facade of the building, facing the
17 homes in the neighborhood, to be about 157 feet in width, dwarfing the existing homes
18 (see Exhibits Z-9 and Z-90).

19 ● Exhibit C-6, Sheet A3.03 depicts the view to the neighborhood, consisting of
20 stucco and a multitude of windows, presenting a commercial appearance, reminding
21 witnesses of a Microsoft building at the campus across 51st Street. The design does
22 not further "visual compatibility" with the rest of the neighborhood as mandated by
23 Redmond Design Standards.

24 ● The “Gathering Space” intended to hold up to 336 members during meals
25 (Exhibit C-6, Sheet A2.02) is only twenty feet from the property line with neighborhood
26 homes, with large windows which are likely to create noise and light impacts to the
27 neighborhood.

1 ● The staff failed to demonstrate how the project will "promote a gradual
2 transition between different uses" (RZC 21.60.020.D); the staff assertion that the
3 property is designated transitional between OBAT area (Microsoft campus) and
4 residential neighborhood is not supported by evidence.

5 ● Because the proposal is topographically higher than the rest of the
6 neighborhood, it will be seen throughout the single family neighborhood to the north
7 (thus subjecting the entire neighborhood to its light impacts).

8 ●The proposal includes a large rooftop view deck (Exhibit C-6, Sheet A2.04) that
9 will increase effective building height (no railings or other features are shown) and allow
10 AEB members to look down into neighboring homes and yards.

11 ● Building plans show that thirteen parking stalls will be located just five feet
12 from the south property line (and within the front setback). Exhibit C-6, Sheet A1.04.
13 During overflow parking events up to 42 vehicles would be parking *en masse* and
14 bumper to bumper in this area. *Id.* The visual impact of this plan is wholly inconsistent
15 with neighborhood character.

16 These factors, among others, demonstrate a patent disregard for existing
17 neighborhood character and the adjacent community.

18 **9. ISSUE #9. FOR TRAFFIC AND PARKING PURPOSES, THE PROPOSAL**
19 **MUST BE CONSIDERED ON OVERALL BUILDING CAPACITY.**

20 This issue was analyzed on pages 40-41 of the ZPHB, citing to provisions of the
21 SPE portion of the code that require that the adequacy of support for a proposal must
22 serve the anticipated demand from the facility. As described above, special provisions
23 of the RZC 21.08.280.C.2 already require parking to meet requirements for assembly
24 uses, which in turn must be determined sufficient for peak uses.

25 At the hearing, it was disclosed that the applicant has specifically sized and
26 configured its Gathering Space to accommodate 336 members during a meal. Exhibit
27 C-6, Sheet a2.02. Given the specificity of this project feature, the applicant cannot
28

1 escape the obligation to assess and plan for the impacts of such gatherings on parking
2 and traffic.

3 **10. ISSUE #10: THE CITY CANNOT AVOID CONSIDERATION OF FUTURE**
4 **GROWTH OF THIS FACILITY.**

5 The ZPHB at pages 42-45 addressed code requirements that the growth of this
6 facility must be accounted for in permit review. Hearing testimony further confirmed this
7 requirement.

8 The AEB representative spent considerable time testifying about the insular
9 nature of this Dawoodi Bohra congregation and how the community has had a stable
10 membership. He testified that some of the community events such as weddings and
11 religious ceremonies often occur in other (off-site) locations

12 However, he also testified that the Gathering Space, specially designed and
13 configured for ceremonial meals, will hold up to 336 members. Indeed, this space will
14 be about twice the size of the prayer area. Exhibit C-6, Sheet A2.02. The applicant
15 cannot have its cake and eat it too. Setting aside a large portion of a building to
16 accommodate more than twice the current membership cannot be ignored on the basis
17 it might not be used.⁴ The traffic studies done by both JTE and TSI did not account for
18 the potential for 336 persons in the "Gathering Space." TSI assumed special events
19 would have maximum attendance of 150 during a few days and 150 to 200 on one day
20 a year. Exhibit C-12, page 7. Traffic studies that ignore spaces set aside in the
21 building that are specifically slated to hold a far larger number of people than studied
22 cannot be sustained.

23 As mentioned above under Issue #6 at page 13, the City also cited code
24 enforcement as a mechanism for controlling the seating capacity and parking in the
25 future. However, as stated, the complaint based nature of code enforcement requires
26 time and dedicated observers to gather sufficient evidence on which to base any code

27 ⁴ Contrast the ICOR mosque where the multi-purpose space is only about 1/3 of the Prayer Area. Exhibit
28 Z-42, Appendix A, ICOR Floor Plan.

1 complaint. Given this practical difficulty it is incumbent on the City to assure this use is
2 properly considered and configured at the outset rather than rely on uncertain future
3 circumstances.

4 **11. ISSUE #11. SOUND TRANSIT PLANS CANNOT BE IGNORED.**

5 At pages 45-49, the appellant addressed the unique provisions of the Redmond
6 code that require "High Capacity Transit Corridor Preservation" under RZC chapter
7 21.28.

8 Evidence at the hearing indicates that as of May 24, 2018 (prior to the SPE
9 decision on June 4, 2018), the Sound Transit Board authorized the acquisition of a
10 portion of the AEB property for the Downtown Redmond Link Extension. See Exhibit Z-
11 97. The proposed acquisition, shown at Exhibit Z-72, will cut through an intensively
12 used area of the proposal, where tandem and "valet" parking is planned. Compare
13 Exhibit Z-72 with Exhibit C-6, Sheet A1.04. Though the Sound Transit proposal may
14 still have some refinements, the response of the City to bury its head in the sand is not
15 acceptable.

16 The Technical Committee has explicit authority to review the impacts of current
17 development to Sound Transit plans under RZC 21.28.030.D ("The Technical
18 Committee may expand, reduce, or waive the required setback in order to meet the
19 purpose of this chapter"). Moreover, the Code sets Site Plan Entitlement review
20 purposes that require the Technical Committee to consider "(c)oordination, as is
21 reasonable and appropriate, with other known or anticipated development on private
22 properties in the area and with known or anticipated right-of-way and other public
23 projects within the area", 21.76.070.Y.1.b (emphasis added).

24 The SPE approval should be remanded to revise the proposal in light of the
25 upcoming acquisition by Sound Transit.

26 //

27 /

1 **12. CONCLUSION.**

2 The AEB plan calls for too much development on too small a site on a highly
3 restricted and encumbered residential location. As a result, the approval violates
4 provisions for building setbacks, requirements for providing parking for assembly uses,
5 allowances for inclusion of a guest apartment, established provisions to protect
6 neighborhood character, and it fails to consider planned large congregations of persons
7 at the facility and plans by Sound Transit to acquire a portion of the site. These
8 violations are too numerous and too serious to permit approval of the proposal.

9 Respectfully submitted on this 17th day of September, 2018.

10 ARAMBURU & EUSTIS, LLP

11 

12
13 J. Richard Aramburu, WSBA #466
14 Attorney for Appellant

CERTIFICATE OF SERVICE

I am an employee in the law offices of ARAMBURU & EUSTIS, LLP, well over eighteen years of age and competent to be a witness herein. On the date below, I distributed copies of the foregoing document to counsel of record by email PRIOR TO 3:00 P.M.:

Office of the Hearing Examiner, c/o cdxanthos@redmond.gov
James Haney, Redmond City Attorney, jhaney@omwlaw.com
Sarah Mack, Attorney for Applicants, mack@tmw-law.com, cc
cohee@tmw-law.com
Applicants eliyasy@microsoft.com, ahaveliwala@gmail.com
Planner dlee@redmond.gov
Appellant eugenez@outlook.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED: September 17, 2018.



Carol Cohoe