

**Minneapolis Zoning Board of Adjustment Meeting  
June 6, 2013, Room 317 City Hall**

**Date of Z&P Meeting: July 11, 2013**

## ITEM SUMMARY

**Description:** Item #1, BZZ #5910

**Appeal:** Application by Eric H. Galatz, on behalf of Megabus USA, LLC, for an appeal of the Zoning Administrator's determination that the bus passenger loading and unloading at 247 Chicago Avenue South is classified as a Bus Turnaround under the Minneapolis Code of Ordinances, thus requiring a conditional use permit (CUP).

**Action:** Notwithstanding staff recommendation, the Board of Adjustment **granted** the appeal of the Zoning Administrator's determination that the bus passenger loading and unloading at 247 Chicago Avenue South is classified as a Bus Turnaround under the Minneapolis Code of Ordinances, based on the following findings:

- Megabus, an intercity bus carrier, utilizes the commercial parking lot located at 247 Chicago Avenue as a bus stop for the regular loading and unloading of passengers.
- Megabus' use of the parking lot, in conjunction with the right-of-way, is not a Bus Turnaround.

**Aye:** Finlayson, Johannessen, Meier and Ogiba

**Nay:** Ditzler, Sandberg and Thompson

**Abstain:** Cahill

**Motion Passed**

## TRANSCRIPTION

**Staff Poor:** Just a little bit of background on Megabus, Megabus is an intercity bus carrier that operates in cities across the United States. Megabus patrons in Minneapolis purchase tickets online and passenger loading and unloading is conducted on the commercial surface parking lot located at 247 Chicago Ave. The parking lot, which is a legal nonconforming use in the Downtown Parking Overlay District, was designed not specifically to accommodate passengers who are waiting for bus arrivals and departures. There is a sign indicating the location of the bus stop, but there is no shelter provided for waiting passengers. Portable bathroom facilities are located at the parking lot at this time. This item came to staff's attention back in the spring of 2002. The City received numerous complaints about folks waiting for the bus who were lingering, using adjacent businesses, apparently going in to try to use the restrooms and there were complaints not so much about loitering but lingering waiting for the bus. Staff followed up on this and what we found that generally the people lingering were waiting for the Megabus, which was located in the lot. We then looked at whether this was an allowed use or not. Transit stops are allowed in the downtown district, but part of what was going on here is the bus comes in...in your packets you'll see the circulation of the bus and how it moves through the lot. One of the other aspects to this operation is that the bus comes in, circulates, picks up passengers, turns round, exits back out and goes on to the route. The Zoning Administrator looked at what the possible uses were here and one of the

things that was determined was that this constitutes what is called a bus turnaround. A bus turnaround is allowed with a conditional use in this district. The appellant did not agree with that determination and did not think that this constituted a bus turnaround and then filed an appeal. Subsequent to this, because you're aware of this, we had discussions with the appellant to try to find a different location. The appellant worked diligently with Public Works staff, particularly Parking Services staff, to see if there was a facility that was set up that may already have a bus turnaround to accommodate this type of arrangement. Those discussions went on in good faith for some time, but regrettably we were unable to come to some kind of agreement and that's why this item is before you today. It's a fairly straightforward determination. If there are questions you have, I can certainly answer them. If you looked at the packet and photographs, I think that will give you some insight into what the determination is based on. I don't have a lot more than that. The appellant is here to make his own representations about the determination.

**Chair Perry:** Thank you, Mr. Poor. Do board members have questions of staff?

**Commissioner Ditzler:** Does Megabus currently have anything with a city license to conduct their current operation with the city?

**Staff Poor:** No. At this time Megabus does not have any approved entitlements to operate at this location. I think they would assert that they are not required. The City obviously has a different position. If we were upheld today, they would be required to come in and file a conditional use permit to operate at this location. Currently they don't have any and they don't believe they need any.

**Commissioner Ditzler:** So the agreement is whatever they have with the private property owner of that location and they have no agreement at all with the City of any kind?

**Staff Poor:** That's correct. They have no land use approvals in conjunction with this operation. I'll leave it to the appellant's attorney to characterize what agreements they may or may not have with the property owner.

**Commissioner Sandberg:** Do any of the other bus operations, say transit buses that come from suburbs, maybe not part of MetroTransit, require special arrangements with the City in order to use bus stops on streets?

**Staff Poor:** Bus stops on streets are regulated either through the Traffic Department in conjunction with the Met Council. I think there's a narrative here that precedes this appeal where Megabus at one time was parking on the street and picking up passengers and I believe they had some discussions with Public Works. I'm not sure if Public Works actually had the authority to discontinue their operation on the streets or not, but I believe the appellant's attorney can weigh in on that. I do believe that's what drove them to find an off-street parking lot to use as a facility. Other bus carriers currently have facilities that do accommodate these types of turnarounds whether it's the Jefferson Lines down on Hawthorne, we also have the Gateway Ramp that accommodates the buses passing through.

**Chair Perry:** The significance of this being a legal nonconforming use, the parking lot, what is the significance of the nonconforming use piece of it? There may be none.

**Staff Poor:** The nonconformity has to do with the primary use, which is a contractor off-street pay lot. I don't believe it affects those nonconforming rights at this time in that these other uses, whether it's a transit stop or the turnaround or allowed with a conditional use, if they went through a conditional use permit one of the things they'd have to do is submit a site plan showing the drive aisles with the existing

parking stalls and circulation. While there may be some determination if they went through that process whether they were eliminating stalls and thereby diminishing their nonconforming rights to off-street parking or not has not been determined, but in the sense that it would require an additional alteration or change in nonconforming use permit, I doubt that. The parking has its rights. The real risk is that they may actually reduce the number of lawfully established nonconforming off-street parking stalls they have because they may have to go through a site plan to accommodate a bus turnaround.

**Chair Perry:** Ok, thanks. On page three of the staff report, in the middle of the page, it starts out “the appellant’s application appeal is in response to the final warning letter issued.”...there are actually two pieces I had to this. There is a bunch of discussion in the staff report about how this came to be an appeal regarding complaints. I don’t see why that’s germane to this conversation. Can you explain to me why that’s part of the staff report and how it came to have to be appealed? If it’s not germane, I don’t want to hear that as part of our discussion here today.

**Staff Poor:** I did not include that in my presentation, I’m not sure it’s germane, however the appellant has the right to assert what reasons they think...I didn’t feel it’d be appropriate for us to sensor that out of a staff report. I think I’d rather leave it up to you all on the board to judge whether or not that’s germane to the determination. To me it’s not a determinate factor; it’s just a fact of how this came to our attention. I made reference to us getting complaints and kind of left it at that.

**Chair Perry:** I’m going to take that as, from your position, it’s not germane but it’s the right of the appellant to make those comments. Also in that paragraph it says that the appellant’s appeal is twofold, asserting the Zoning Administrator has incorrectly characterized the use of the bus as a turnaround and also that the Zoning Administrator does not have the authority to regulate the behavior of individuals who may be Megabus passengers. When I look at the beginning of the staff report, the appeal just speaks to the first item, not to the second. What is being appealed here? Is it both or just that the bus passenger loading and unloading at 247 Chicago Ave is classified as a bus turnaround?

**Staff Poor:** Our understanding of what the appeal is about, is the bus turnaround itself. I would leave it at that. I don’t think we’re appealing the second item. I will let the appellant speak to that.

**Chair Perry:** My last question is that we’re faced with a situation where the code does not define bus turnaround so the appellant has provided a definition they think is appropriate. I will just say that, not to make it a discussion item...let me put it this way, how is that you know it’s a bus turnaround if you don’t have a definition?

**Staff Poor:** This isn’t the first time this board has heard about appeals on definitions that may not be expressly defined in the zoning code. I think that it’s not unreasonable to conclude that in this situation, that given the layout and the circulation of the bus, that clearly the bus...it’s not like the Gateway Ramp where it’s coming in and passing straight through, it’s going in, it’s maneuvering around the lot and it’s exiting and I don’t think it’s unreasonable to conclude that part and parcel of this operation includes some type of bus turnaround. The City has some interest in regulating that for circulation purposes and others, which is why they made a decision that requires a conditional use permit.

**Chair Perry:** Maybe I can ask it this way; the appellant has gone to some effort to define for us what a bus turnaround is, I did not see in the staff report what the City staff sees as a bus turnaround. Maybe it’s because, from staff’s perspective, it’s self-evident, but if a bus could turn around on a street would that be a bus turnaround? What constitutes from the City staff’s perspective a bus turnaround?

**Staff Poor:** I think a bus turnaround is compromised how you're looking a bus circulating through a lot. If you're on a public right of way, I think there are clear examples of what may look more like a cul-de-sac in some cases and those are in the public right of way and that really is a little different scenario. This is on private land and I think that some may consider it an expansive view, but it seems to me that if you're going in and maneuvering the bus around at some point you're turning it around and you look at the circulation, particularly in this case given that there are private vehicles parked in the immediate vicinity of it, that we've taken a view that this would meet that classification as including a bus turnaround. The appellant may go to very highly defined definitions of a bus turnaround, but I'm not sure that's the be all/end all of it. Maybe we have a more expansive view, but I don't believe it's unreasonable. It falls under the transportation portion of the zoning table so clearly it's seen in conjunction with these other types of uses. I'm just suggesting that I think some of the definitions are looking at more traditionally associated with maneuvering on public rights of way and streets instead of privately operating pay lots.

**Chair Perry:** That was my final question there. Is the trigger point for City staff that it is a turnaround that involves private property versus public?

**Staff Poor:** I can't recall us ever reviewing a Public Works on the public right of way turnaround so this is really intended to look at activity...forget about whether it's nonprofit or profit, but on private property...non-city right of way, maybe that's a better way to describe it. I think there's a different review process and standards for vehicular traffic and maneuvering on public right of way versus private property.

**Commissioner Sandberg:** So your findings are related to the actions of the bus within the lot and not the passengers of the bus waiting for it or being discharged from it. Your findings of this use as a bus turnaround are what the bus is doing and not what the passengers are doing. Is that correct?

**Staff Poor:** That is correct. Transit stops are a permitted use so if it's people being picked up, that's a permitted use. There may be safety standards in where they are being picked up. If the board finds this includes some type of bus turnaround, the conditional use permit actually would require that the site plan is viewed and then there would be a better review about where people are crossing and how they are interacting with traffic. In and of itself, it's a permitted use for picking up passengers.

**Chair Perry:** Let the record show that Mr. Cahill has joined us. Unfortunately, what I'm going to have to rule on is that we've had some discussion that was not covered in the staff report that I think has significant bearing on our determination and our ruling so I'm going to have to ask Mr. Cahill to not participate in this particular item. I'd like to cover one other procedural set of things. Appeals of the Zoning Administrator, they are a little bit different than the other things that we do like nonconforming use certificates and the regular variances so I want to go through some of the procedures here when we're dealing with appeals of the Zoning Administrator. Appeals of the Zoning Administrator are not variances and they are not a rebuttal of loss of nonconforming rights or a certificate for nonconforming rights and the board's job is narrowly defined to determine whether the Zoning Administrator correctly interpreted and administered the provisions of the zoning ordinance as adopted or as they are today that are the subject of the appeal which we just talked about. It is not this board's responsibility to determine whether or not the zoning ordinance is correct or should be changed. We are not a policy making body. In this particular case, we are to address a narrowly defined technical issue and that is, is the Zoning Administrator's determination that the bus passenger loading and unloading at 247 Chicago Ave is correctly classified as a bus turnaround. Our focus today is whether the Zoning Administrator's classification is correct or as the appellant contends is incorrect within the context of the Minneapolis

Zoning Code of Ordinances. Let me address a matter of due process. As a matter of due process, the appellant is afforded broad latitude in the testimony they provide to make their case. However, since written testimony has been provided for the record, I would ask that the appellant be respectful of the amount of time they use in providing their testimony today. The same broad latitude in testimony provided applies only to the appellant and is not afforded to others testifying who are not the appellant or not a member of the appellant's team. If I feel public testimony or board member questions or comments are straying from the aforementioned purpose, I will interrupt the speaker and ask them to address the decision before this body. This is not to be rude, but to be respectful of our time and the purpose of these proceedings. With that, is the appellant or their representative here?

**Eric Galatz (150 S 5<sup>th</sup> St):** I'm an attorney at Leonard, Street and Deinard and I represent Megabus USA, LLC, the appellant. We are asking a very narrow technical question about whether the Zoning Administrator properly determined that our use of the parking lot at 3<sup>rd</sup> and Chicago is a bus turnaround. I'll try to avoid getting too far beyond that question. You've sort of vetted this for yourself in your questions to Mr. Poor and his answers that underlying all of this is a series of complaints by property owners around this parking lot about the behavior of our passengers. There are things we've done to address those behavioral issues and I'd be happy to address those if this board has questions about that. On the question of the bus turnaround, I included some drawings of what a bus turnaround is.

**Chair Perry:** You have some additional information that you...

**Eric Galatz:** I will leave it with the clerk when we're done. It's just additional drawings.

**Chair Perry:** We do have drawings in our packets and the public has those as well.

**Eric Galatz:** It's really just more of the same just illustrating a bus turnaround is what it sounds like. It's a cul-de-sac designed for buses to turn around. The narrow issue before you is whether we are, in fact, a bus turnaround. The reason that's an important question and the fact that there is no definition or illustration or any standards in the zoning ordinance is an important issue is that if this board determines that we are, in fact, a bus turnaround and therefore need a conditional use permit, the next question that I think the Planning Commission will address and not you is what are the standards that apply. There are no standards to apply, there's no definition. The underlying problem here is that this isn't a land use issue. There are complaints about the way human beings are behaving and we do not dispute that the City has the ability to regulate this kind of behavior but this isn't the forum for it. The fact that it's not a forum for it is illustrated by the fact that the zoning ordinance doesn't address it. The only Minnesota reference to a turnaround other than just the single use of the word in the zoning ordinance that I was able to locate was in the Metropolitan Transit Authority Manual and it defines bus turnarounds as "special facilities designed for exclusive use by buses with the purpose to provide a location which buses may lay over and reverse route direction. They may be provided as part of a roadway facility or may be provided as an exclusive transit facility." It's a place for buses to turn around. Ours is a bus stop. It's a use of a parking lot. Your question about the arrangement between Megabus and the parking lot owner, we are renting parking spaces in a parking lot. What we do is we park a bus and people get off the bus and people get on the bus and we drive away. That addresses the entire technical question. I'd like a minute to just talk about whether there is an agreement with the City. The public buses stop at publicly designated bus stops. The private buses, Southwest Metro and commuter buses, stop at North Terminal, the large bus shelter at 3<sup>rd</sup> and Hennepin across from the library. We had been in negotiations with Public Works for an agreement under which we'd be able to use that stop. Those negotiations aren't over, but with respect to putting off this hearing until that agreement was reached, I think staff made a determination that it was time to come in and have this discussion. We were not done with Public Works,

we've got a couple other locations we'd like to discuss with them. We're also shopping for alternative private parking lots or other private property to use. It's a problem with respect to how and whether the City regulates this kind of use. The buses that are bringing folks up from the suburbs to go see a play on Hennepin Ave, they drop their passengers off in front of the theaters and park in the Hawthorne Ramp. The City financed that ramp and leased it to Greyhound Bus Company. Greyhound accommodates the commuter buses by providing them layover facilities for the buses that are bringing the people in from out of town to see plays. That same facility serves Jefferson Lines under subleases with Greyhound. There is no room in that particular location for us is what we're told. I think it might have something more to do with competition than space, but we have not been able to secure a location within that bus depot. The City has got two unused bus depots in their 3<sup>rd</sup> Ave distributor ramps, the large parking ramps on the west side of town down by the 35/394 entry. There are two places where a bus can pull in and pick up/drop off passengers. You're using one of those with MetroTransit and one of them is not in use. We've offered to open that up and provide security guards and pay rent to use that as an alternative location and we haven't got an absolute "no" to that yet, but I've been working on this for about a year and we haven't come to any agreement about that yet. This isn't really a land use question. I think the City does have the ability to regulate what happens in parking lots and streets, but right now, with respect to this particular use, the City does not regulate it. In terms of what the actual underlying complaints that are generating the notice of violation we received has nothing to do with how the bus is behaving. With respect to what we're doing about the complaints, the primary objection is what our passengers are doing while they're waiting for the bus. They've been going inside the businesses around the bus stop and loitering. We have the bus come 45 minutes early now and these are large commuter buses that have restroom facilities on them and they are heated. Rather than providing a bus shelter we just provide the bus itself so there is now a place for them to wait and there are restrooms for the passengers to use. We are shopping for another location. The stadium is going to solve the City's problem with respect to 3<sup>rd</sup> and Chicago. The property owner is not going to renew our lease because they've got much better opportunities now that the new stadium is going up around them. We are shopping for private locations and public. So far we haven't resolved that. The City has been incredibly patient with us and Mr. Poor in particular has been pretty broad minded and helpful in terms of guiding us in terms of where we might be shopping for alternative spaces. The City to my knowledge hasn't been doing anything with respect to actually generating regulations that could address what we're doing. I'm not saying you can't, I'm saying you don't. The fact that you don't makes both improper and impractical of you to find that we should apply for a conditional use permit because when I go sit down with a planner and talk about which regulations apply and which design standards that apply here and what I'm going to put in my application for a permit. If I'm putting up an apartment building, they have a code section I can look at that has very specific requirements for what an apartment is going to look like. If we're going to do an office building, the same is true. To do a bus turnaround, all I've got is standards from other states and from civil engineering manuals that show me that a bus turnaround is a cul-de-sac. For those reasons, I ask you to find that ...to basically reverse the Zoning Administrator's determination that our use of this parking lot is a bus turnaround that requires a conditional use permit.

**Chair Perry:** Thank you very much for your testimony.

**Commissioner Ogiba:** How long has Megabus been using the property at 247 Chicago?

**Eric Galatz:** I meant to correct Mr. Poor. He said 2002, but I'm sure he meant 2012. I personally got involved when the notice of violation was served in 2012, but I think they may have been there slightly longer than that, but not significantly longer. Before they were there, they were in a Met Transit facility near the Target Field and they were displaced by the construction of the baseball stadium.

**Commissioner Ogiba:** Ok, thank you.

**Chair Perry:** Is there anyone here to speak in favor of this appeal? Is there anyone here to speak against? I see no one on both questions so let's close the public hearing.

**Commissioner Ogiba:** The first thing I'd like to say is, I'd like to express disappointment and displeasure at the fact that we've spent the better half of 2013 waiting to hear this particular item. I believe the agenda says February 14 was the first time this came to the board. I'm disappointed to see that while we were reassured in our multiple agreements on continuing this item, that essentially nothing that's been presented to us today is substantially different than any of the information that we were provided in February. The second thing I'd like to say is that I tend to agree with the appellant in this case that there really is no definition that's out there for them to operate their business in a different fashion or different manner than they have. While I question the security and the facility and the use thereof, I don't believe it's for this board to make that determination, giving no parameters to look at beyond what's been presented by the appellant. That being said, I side with their statement here that it's not appropriate for the Zoning Board of Adjustment to make a determination on this and would stand opposed to the City's recommendation that this be considered a bus turnaround.

**Chair Perry:** Thank you, Mr. Ogiba. Mr. Ditzler.

**Commissioner Ditzler:** Thank you, Mr. Perry. I'm going to respectfully disagree with Mr. Ogiba on both points. I'm not going to comment on the process or how long it takes to get here, I don't have enough information to do that. The way I look at, and I'd like to get a couple other board member's opinions, is that whether or not the bus turnaround is defined in the building code, I know for the applicant and the attorney that it's relevant, but I don't know that it's particularly relevant to this item. We've heard several items about Mr. Poor's decision regarding definitions, some of them it's a little surprising they aren't in the zoning code, such as hospital – if you remember that one. For me, the argument is that just because it's not defined there doesn't mean he doesn't have the right to regulate it...well, we have routinely said that is not the case. He does have the right to regulate uses if we know they aren't defined in the zoning code because the zoning code doesn't define everything as technology and life changes. I'm not really into the definition of is a turnaround meaning that the bus has to do a three or four point turn, does it have to go out the same way it came in, can it go around, can it go backwards, can it stand on its head. I don't really care. I think the flexibility that Mr. Poor has to his benefit in this case is that it's not defined so he gets a little more latitude that way like he has with other items that we've seen. I'm guessing that he has the right to regulate the use because it's on private lot, it's a parking lot, we've got downtown big vehicles going in and out, pedestrians back and forth and he feels it's in the City's best interest that they get a chance to regulate this. The testimony that I heard from the appellant is the same type of testimony that we've heard on other items that are not defined in the code. If the decision is if Mr. Poor made the right call in this case, I have not heard anything to overturn the decision from the applicant's testimony because what I heard is that it's not defined in the code and that has not been the litmus test in the past.

**Chair Perry:** Thank you, Mr. Ditzler, for those comments. Mr. Finlayson.

**Commissioner Finlayson:** I feel that it's not defined so the attempt to apply a definition to something that's not defined when the definition flies in the face of the behavior. The appellant has indicated that the Megabus enters the parking lot off Chicago Ave and exits on Norm McGrew Place continuing in the same direction. Not being that familiar with it, I will take it as literally true so it's not turning around. There is

sparse information and that is what I'm going to go with at this point in time. I'm willing to be talked out of it by my fellow board members. I'd like to hear some other arguments.

**Chair Perry:** Before other people comment, I want to ask Mr. Poor again to define for us what a bus turnaround is from City staff's position. I'll make a little bit of an editorial comment to address Mr. Ditzler's comment regarding definitions. While it is true when there are not definitions we do hear those items occasionally because there is no definition, that's one of the purposes of this board to provide some clarity when the code doesn't define it, but in the past staff has provided us with a definition and I don't see that in the staff report. It's a little frustrating and I think it's causing some confusion here for us because we're not looking at what it is other than your statement, which I'm going to have to ask you repeat of what a bus turnaround is in the eyes of City staff and the Zoning Administrator. I think if you asked all of us what we thought you said, it's going to be a little different. So I think if you provide us with some clarity on that, it'd be helpful because then we can see if, in fact, as we are asked to do, that your determination that this is a bus turnaround is or is not what you have defined it as.

**Staff Poor:** I think that's a valid request. What I would suggest on why we didn't provide a definition on it, is that to us it is self-evident. In the diagrams you have it shows that the bus does pass through. I'm not here to say that isn't...I've seen the bus maneuver around in the lot on a different path on a different day. It was early on before any determinations were made. You ask me what the turnaround is, on these types of arrangements where clearly this is in conjunction with a bus stop. I don't think anybody doubts the turnaround in and of itself is not the primary use. I think the primary use for Megabus' standpoint is that it's a bus stop and within that context, the buses enter, they pick up passengers, they maneuver to some degree and they exit. Whether or not they are going straight through or not taking any turns is a valid question, though I do think in this case they do pick up passengers and they exit and turn around and leave. It is valid to say that in part of this development is a turnaround. I don't think it'd be appropriate that we provide a definition when there's absent one here when really we're pretty much describing that it comes in, picks up passengers, maneuvers through the lot and exits. Obviously, reasonable people can disagree with that.

**Chair Perry:** I'm sorry for interrupting you, but it seems like there are at least two components I heard. There's a bus stop component and there is a private property and the bus is going from right of way to private property to right of way. Are there other elements that define bus turnaround?

**Staff Poor:** I think that's valid, but in this context, I think Mr. Galatz's point when he talked about the transit authority, there may be situations even on private land where buses literally are coming in without any passenger pick up at all and doing a full 360 and leaving. I think there is room for other types of maneuvering and in this case it involves passengers. To get to this point though, a turnaround is included in these other activities. You come in, you're picking people up... it's not on the right of way, they aren't just stopping on a corner and picking people up and going down traffic. They are coming into a private lot, picking people up, maneuvering and exiting. I haven't had to answer this question; there may be others out there. I'm not sure when they may have been lawfully established or not so we don't have a lot of guideposts to work from to begin with.

**Chair Perry:** Thank you. I will just remind my board colleagues that even when there is a definition and there is some lack of clarity because of how the land use is being used, which doesn't quite line up with the code, we have been asked to determine whether the use is substantially similar is the phrase. I'm a bit frustrated that we don't have the definition written down and what elements define that even though they aren't in the code, but we've heard from Mr. Poor so I'd ask you to think about if this use is substantially similar to that definition that Mr. Poor just gave.



**Commissioner Sandberg:** I think I would be willing to consider the definition of this as a bus turnaround in that it is an intercity bus and this is one of the cities in which it stops and it returns to another city even though it may not be going from the same street...from one street back to the same street within the private property. I think in that regard it's functioning as a bus turnaround for the city if not for the street on which it resides so I would respectfully disagree with Mr. Finlayson's interpretation of literally turning the bus around on the property.

**Chair Perry:** Thanks for that insight. Mr. Ditzler.

**Commissioner Ditzler:** I just wanted to maybe offer a little clarity. I'm looking at it as what the impact is of the activity on the site. To me, the range of activities that are happening on that site are really more germane to the question about whether or not which actual direction the bus goes in and out. The bus is still going in whether or not it has people or not, whether it is full or not or whether it goes all the way through or turns around. It might impact the lot and use a little bit whether it's turning or going straight. I think the activities on that site are going to be substantially similar whether or not it's actually pulling and turning around and coming back or going off to the left or right or straight. I look at more of what the impact is to the site more than specifically and technically which direction the bus is actually going in or out since it's not defined.

**Chair Perry:** Thank you for those comments. Ms. Thompson.

**Commissioner Thompson:** What I'm thinking right now is, is it relevant that this is in a parking lot. I think of a bus stop, it pulls over and all the traffic is going in one direction and it's not really an option or the bus to do a turnaround. In this parking lot, the arrows show us it's going through and coming out, but a parking lot has a different feeling and attitude to it. I'm sure there is probably one point in the history of Megabus using this site where they've had to turn around. Maybe it was snowing, maybe there was a car there. To me it seems relevant that it can turn around in this site if it needs to and it probably has. It seems like a function of parking lot is for maneuvering and to me that lends to the idea of a turnaround as opposed to a one-way street where you pull over. It seems like a maneuvering area as opposed to a one way pullover. At this moment in time, I'm kind of agreeing with staff, but I'm very interested in further discussion.

**Chair Perry:** Thank you for those comments and yet another perspective. Ms. Thompson made a call for additional comments.

**Commissioner Meier:** Thank you everyone for your presentation and answering questions. Although it's disappointing that the patrons of the bus are choosing to be probably disrespectful of activities of the parking lot or adjacent businesses –there's quite a list of property impact, that was not the case why this has been brought to the Board of Adjustment. I agree with Mr. Finlayson and Mr. Ogiba as far as the definition of a turnaround seems unclear at this point and I find it hard for the...I'm in agreement with the appellant that it's kind of hard to uphold something where there is really no clear definition. It's not clear and therefore I'd have a hard time in the case of an appellant to try to figure out what a turnaround actually meant and what kind of guideline I was supposed to follow with regards to that. I am in agreement with the appellant on this. Thank you.

**Chair Perry:** Thanks for those comments. Mr. Sandberg.

**Commissioner Sandberg:** I agree that there is a deficiency in the definition that resides here and that's the reason that we're hearing it. One of the things that happens when we hear issues like this is that it

comes to the attention of the policy makers on City Council committees and City Council. I think that's one of the purposes that Mr. Poor makes this decision to make something happen that...the ordinances tend to guide uses like this towards conditional use so that other arrangements can be made. To their credit, the appellant has been adding conditions to their operation to make it better, but I think it needs to be codified in the city ordinances so that when the next decision like this comes along we don't have to struggle with it so much. I think it's appropriate for the Zoning Administrator to have made the decision he made. I think it should go to the next decision making body to clarify things and to keep this company in business and to make sure it's acceptable in the future.

**Chair Perry:** Thank you, Mr. Sandberg. Just to point out, and Mr. Galatz brought this up, if the appeal is upheld and other appeals are exhausted and they do end up having to get a conditional use permit, that set of questions of what it is that they are trying to abide by will be taken up by a different body in a different process, not us. That's not why we're here today. Let's keep that in mind as we're making decisions individually. Mr. Ditzler.

**Commissioner Ditzler:** I'm going to make a motion if that's ok. I'm going to move staff recommendation (Commissioner Sandberg seconded).

**Chair Perry:** Is there any further discussion? Clerk, please call the roll. Sorry, just to make sure...if you're voting yes, you're voting to deny the appeal and uphold the Zoning Administrator's determination.

**Aye:** Ditzler, Sandberg, Thompson

**Nay:** Finlayson, Johannessen, Meier, Ogiba

**Abstain:** Cahill

**Chair Perry:** That motion fails. I will entertain a different motion. I would ask for some staff guidance here. Staff has findings; do we need to do that for this item?

**Staff Sether:** With the approval of the appeal, staff – with the appellant's statements – have sufficient findings to make in support granting the appeal.

**Commissioner Ogiba:** I'd like to make a motion to uphold the appeal of Megabus USA LLC in determining that the bus passenger loading and unloading at 247 Chicago Ave is not a bus turnaround under the Minneapolis Code of Ordinances and does not require a conditional use permit (Commissioner Finlayson seconded).

**Chair Perry:** Any further discussion? Clerk, please call the roll.

**Aye:** Finlayson, Johannessen, Meier, Ogiba

**Nay:** Ditzler, Sandberg, Thompson

**Abstain:** Cahill

**Chair Perry:** The motion passes. The appeal is granted.