

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, OCTOBER 2, 2014

7:20 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Timothy Hughes, Acting Chair

Brendan Sullivan, Member

Janet Green, Member

Douglas Myers, Associate Member

Slater Anderson, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:20 p.m.)

(Sitting Members Case BZA-004455-2014: Timothy Hughes, Brendan Sullivan, Janet Green Douglas Myers.)

TIMOTHY HUGHES: The Vice Chair will call this meeting of the BZA to order. The first order of business is BZA case 004455, 109 Grozier Road.

Is there anyone who wants to be heard on that?

(No Response.)

TIMOTHY HUGHES: Is there a letter in the file?

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: Letter in the file requests a continuance until October 9th.

The Chair makes a motion that we continue this case until October 9th on the condition that they change the posting and that they sign a waiver of time for decision.

SEAN O'GRADY: We have a waiver.

TIMOTHY HUGHES: The waiver's in here. Okay.

SEAN O'GRADY: And if they want to make any changes by the Monday.

TIMOTHY HUGHES: And if they want to make any changes to the plans, they have to be in by next Monday by five o'clock: Is that correct?

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: But I'm talking to nobody here. It's just the record.

JANET GREEN: Do you know who is on this case?

TIMOTHY HUGHES: Do you have who's on this case?

SEAN O'GRADY: No.

TIMOTHY HUGHES: I got it right here. It's Gus, me, Brendan, Tom, and Slater.

SEAN O'GRADY: Did we open this case? I don't remember it.

TIMOTHY HUGHES: I've got a transcript here.

SEAN O'GRADY: It looks like it's open.

TIMOTHY HUGHES: It's too thick not to be open. But I'm sure Maria already cleared it with everybody that they would be here for it.

All those in favor of continuing?

(Show of hands.)

TIMOTHY HUGHES: That's four.

(Hughes, Sullivan, Green, Myers.)

* * * * *

(7:20 p.m.)

(Sitting Members for Case BZA-004575-2014:

Timothy Hughes, Brendan Sullivan, Janet

Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will call case No. 004575, 1 Jackson Place. Comprehensive Permit.

Is there anyone wants to be heard on this case?

(No Response.)

TIMOTHY HUGHES: Again, this case is going to be continued to next Thursday, October 9th.

Make a motion that we continue this case on the condition that they change the posting to reflect the new time of seven o'clock and the new date of October 9th. There's already a waiver in the file.

All those in favor of continuing?

(Show of hands.)

TIMOTHY HUGHES: That's four.

(Hughes, Sullivan, Green, Myers.)

TIMOTHY HUGHES: That's done.

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-004957-2014:

Timothy Hughes, Brendan Sullivan, Janet

Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will call case No. 004957, 1664-1668 Massachusetts Avenue.

Is there anybody hear to be heard on this case?

JASON PARILLO: Good evening.
Jason Parillo with Back Bay Sign Company.

NICK MIGLIACCIO: And I'm Nick
Migliaccio from Starbucks.
M-i-g-l-i-a-c-c-i-o.

TIMOTHY HUGHES: Have you had a chance to look at this file? There's significant opposition to this case.

My suggestion is that you go back and meet with the community organization that registered their opposition to this case including the arts council and the neighborhood improvement committee for Mass.

Ave. before we even open this.

NICK MIGLIACCIO: What is the impression of the Board here of the actual art itself or you don't want to render an opinion on that?

TIMOTHY HUGHES: It's art and it's not even a sign. But that's not, that decision was made before, you know, you came before us.

NICK MIGLIACCIO: I mean this -- we just completed a significant renovation of the interior of the store and this was part, the design team in our New York office included this mural, they thought it was going to improve the look of the exterior because there's graffiti on the side of the building. So that's why we have the bee display and the mural. It wasn't the main feature of this renovation. It was an add

on.

TIMOTHY HUGHES: Right.

NICK MIGLIACCIO: And so, I kind of look at it that way and we certainly are looking to be good neighbors here. We don't want to upset anyone in the community. If there's that much opposition, we will withdraw the application.

TIMOTHY HUGHES: You don't have to withdraw the application if you think you can organize a meeting with the neighborhood groups that have registered their opposition. It's basically about protocol. They haven't registered an opposition to the graphic itself, you know, on an aesthetic grounds. They've registered opposition almost unanimously because they weren't consulted or talked to about the situation. And there are arts organizations and

community organizations that feel like this is part of their responsibility and --

NICK MIGLIACCIO: Sure, I understand that.

TIMOTHY HUGHES: If you withdraw, that's considered a negative finding. You wouldn't be able to bring this case back before us for two years. If we continue this case so that you can set up a meeting and talk to these people, maybe you can come to a meeting of the minds. That's up to you.

NICK MIGLIACCIO: Right. I guess it's my impression on this with all the negative feedback that we would not want to pursue it.

TIMOTHY HUGHES: Okay.

NICK MIGLIACCIO: I mean, the thing is everyone has an opinion and I think we could meet with the various neighborhood

organizations and present something that we feel we all could agree with and then the neighbors could still object and then we are not being a good neighbor. So I don't think I can win here is I guess what I'm saying.

JANET GREEN: You could win. I mean, we've seen people in that situation win, wouldn't you say?

TIMOTHY HUGHES: You couldn't win. You're a Starbucks but maybe you can win. It's not aesthetically, you know, unpleasing, you know. It's just that people feel like they were overlooked in the process.

BRENDAN SULLIVAN: My sense in reading through the communication is that they are not necessarily voicing an opinion on the mural, whatever it is, however you want to categorize it per se. They're objecting

to the process that they have not been included or there hasn't been communication from Starbucks as an outreach and so that's what they're objecting to for us to go forward with this.

NICK MIGLIACCIO: Right, right.

BRENDAN SULLIVAN: And they're asking us to not go forward. And, again, I don't -- there may be a letter or two voicing some opinion as to the artwork, mural, sign, but I think that it's generally that they would like Starbucks to have an outreach to the community. That's the way I see it.

TIMOTHY HUGHES: That's true. Right. You don't have to come back if you decide if there isn't anything fruitful developing. And you can just send a letter and we can withdraw it to the continued date. You don't lose anything by continuing this

case. In fact, you gain something by us not hearing the substance of the case because you don't have to impanel the same five members the next time it's continued.

NICK MIGLIACCIO: I got it.

RUTH RYALS: Can I interject for a moment?

TIMOTHY HUGHES: You can comment on the possibility of continuing. You can't talk about the specifics of the case.

RUTH RYALS: I just want to say, Nick --

TIMOTHY HUGHES: Can you identify yourself, please?

RUTH RYALS: I'm Ruth Ryals, R-y-a-l-s. And on the contrary, I think the neighborhood would love to have art there. Don't know if that's a piece of art, but art. And not necessarily -- not that piece of art,

but we do want that process to occur where we can talk to you and we can all come up with something that in fact the neighborhood would be happy with. There will be no second guessing if that happens if you go through that process.

NICK MIGLIACCIO: Yeah, I think we can be open to that. I think one of the things that I'm cautious about here is I know that our design group has certain standards. Starbucks has certain standards. So it's not like I can really pick and choose art that is locally relevant that may not pass our standards in New York if you know what I mean. They'll probably come up with maybe four or five different murals that they are comfortable with. You may not be comfortable with any of them. So....

JANET GREEN: And that would be it.

TIMOTHY HUGHES: But we don't know that. We don't know until we try it.

JANET GREEN: Give it a chance.

FROM THE AUDIENCE: We're also together with Stan Trecker and Dennis Carlone --

TIMOTHY HUGHES: Please identify yourself.

RON AXELROD: My name is Ron Axelrod. I'm one of the people with the Mass. Ave. improvement group.

TIMOTHY HUGHES: Yes.

RON AXELROD: I live at 26 Shepard Street just down the road. I've been there for 45 years. One of the things that Starbucks had said and you had said in your note about working in the community and being part of the community, and this is a wonderful opportunity for, I think, for Starbucks to

show how they could work with the community and how the community could support them. Especially because we have these three wonderful art institutions along the avenue. We have Lesley University. We have (inaudible), and we have Harvard University. All of those are good names for Starbucks to trumpet, especially Harvard. And if they were to look to work with these three institutions to do some mural that reflected the neighborhood plus what Starbucks does, is a real plus for them. And I can't see why you wouldn't want to do that quite honestly, instead of just having someone from New York do a mural, you know. Because one, it will save you some money. Two, and you will be working with three wonderful educational institutions. So, I hope you'll take advantage of that opportunity.

NICK MIGLIACCIO: I think it's worth pursuing that mainly because I don't want to look like we're not participating in the neighborhood.

TIMOTHY HUGHES: Okay, it's a question of time. How much time do you want to --

NICK MIGLIACCIO: What's your recommendation?

JASON PARILLO: How much time? At least a month, yeah.

NICK MIGLIACCIO: Minimum. But then again I can't -- we can't have it drag on either.

SEAN O'GRADY: You've got a chance at November 6th.

NICK MIGLIACCIO: Sure, why don't we do that.

TIMOTHY HUGHES: The chair would

move that this case be continued until November 6th at seven p.m. on the condition that the sign be changed to reflect the new time and date, and that you sign a letter of waiver of time of decision.

NICK MIGLIACCIO: Absolutely.

DOUGLAS MYERS: Not heard?

TIMOTHY HUGHES: Case not heard, correct.

DOUGLAS MYERS: And filing with the Monday afternoon.

TIMOTHY HUGHES: And any changes in the plans have to be in the office by five o'clock on the Monday prior to the hearing date.

JASON PARILLO: Absolutely.

TIMOTHY HUGHES: All those in favor of continuing the case?

(Show of hands.)

TIMOTHY HUGHES: That's five.

(Hughes, Sullivan, Green, Myers,
Anderson.)

JASON PARILLO: Thank you, we
appreciate it.

* * * * *

(7:45 p.m.)

(Sitting Members Case BZA-004458-2014:

Timothy Hughes, Brendan Sullivan, Janet

Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will next call case No. 04458, 62 Prentiss Street.

JIM LOUTZENHISER: Right here.

TIMOTHY HUGHES: Step forward. Identify yourself, please, for the record.

JIM LOUTZENHISER: Jim Loutzenhiser, L-o-u-t-z-e-n-h-i-s-e-r.

TIMOTHY HUGHES: And tell us what you want to do.

JIM LOUTZENHISER: I want to enclose the second floor back porch. We came before the same Board a couple years ago to do -- actually, the third floor owner did to do the third floor, and now we want to do the second floor. And I think the design is pretty straightforward. And the neighbors, the exact same house is right next to us and they enclosed all their porches.

TIMOTHY HUGHES: So you've spoken to your neighbors?

JIM LOUTZENHISER: The neighbors don't seem to have any problem with it, yeah.

TIMOTHY HUGHES: Okay. Any questions from the Board?

BRENDAN SULLIVAN: I wondered why you introduced the awning windows into the design?

JIM LOUTZENHISER: It was more a matter of privacy. We thought it was a little less -- I mean, we're happy to go with the double hung windows, but we thought maybe it's -- because it's a bedroom, we don't need them. We just want a little bit of light and a little bit of cross-ventilation, but it's --

BRENDAN SULLIVAN: Well, it's just -- I'm not a big fan of enclosing back

porches to begin with because I do think it does restrict light. It does restrict view.

JIM LOUTZENHISER: Well, right now there's no, no view at all. There's no windows back there as far as we're concerned.

BRENDAN SULLIVAN: I'm talking about surrounding properties. You can sort of look beyond --

JIM LOUTZENHISER: Right.

BRENDAN SULLIVAN: -- and now all of a sudden there's going to be a box there.

JIM LOUTZENHISER: Right.

BRENDAN SULLIVAN: And then, okay, if you accept the box, and then it should blend in I would think with the rest of the building, make it look more compatible and to see the awning windows and you're introducing some glass block in there. It just seems like it's, it's adding to my not liking the

whole thing to be honest with you.

JIM LOUTZENHISER: We could do casement -- I mean, double hung windows, it's fine.

BRENDAN SULLIVAN: I mean to soften it I guess. I'm not sure how you can put polish on this one.

JANET GREEN: I felt like that when I looked at the plan. I wondered why it caught your eye in a funny way when you're thinking about it.

JIM LOUTZENHISER: We're thinking of the layout in the bedroom and it makes that wall a little more useful and the windows are high from the inside. But if you guys would like to see double hung windows there, that's fine.

TIMOTHY HUGHES: Any questions?
I'm going to open it up to public

testimony.

Does anyone want to be heard on this matter?

(No Response.)

TIMOTHY HUGHES: No one. There's nothing in the file, no letters.

You've represented to us that you spoke to the neighbors and there was no opposition?

JIM LOUTZENHISER: Right.

TIMOTHY HUGHES: I close public testimony.

Further comments from the Board?

DOUGLAS MYERS: Have you spoken to the neighbors at the rear side who are going -- your abutters on the rear side of your building?

JIM LOUTZENHISER: I -- there are some new neighbors there but we haven't spoken to them and the sign is very prominent.

And we did this a few years ago, so we thought, you know, nobody had an objection to it then, I doubt they will now.

BRENDAN SULLIVAN: Is this a condo?

JIM LOUTZENHISER: Yeah.

BRENDAN SULLIVAN: So it's three separate owners?

JIM LOUTZENHISER: We own the first floor, another person owns the third floor, and we co-own the second floor. So we've owned the building --

BRENDAN SULLIVAN: Co-own with?

JIM LOUTZENHISER: The person who owns the third floor. My wife and I own the second floor. We have half interest in the second floor with him.

BRENDAN SULLIVAN: Oh, all right.

DOUGLAS MYERS: So this will be a rental unit?

JIM LOUTZENHISER: It's been a rental unit for quite sometime, yeah.

TIMOTHY HUGHES: Any other questions? Comments from the Board?

Do we want to see these turned into double hung windows?

JANET GREEN: I did think that was a big improvement to make it more consistent.

TIMOTHY HUGHES: Is this a deal breaker? Brendan.

BRENDAN SULLIVAN: Well, I mean I'm not a fan of it at all. So I mean, I would probably not support it.

TIMOTHY HUGHES: Okay.

BRENDAN SULLIVAN: But I think I would encourage -- if there are four people who don't have a problem, if they would soften it by possibly making it a little bit more compatible.

TIMOTHY HUGHES: How are we thinking on this?

DOUGLAS MYERS: I would vote in favor of rear. To me this is more like a loggia. It does not protrude from the building. To me that militates in favor of voting for it as less obtrusive in terms of intruding into open space and limiting views. Otherwise I guess I would, not strongly, but I would mildly favor double hung windows if other Board Members feel that way. I would not insist.

TIMOTHY HUGHES: Slater?

SLATER ANDERSON: Yes, double hungs would be nicer I suppose. But it's the rear of the building, there is, you know, some added privacy to the neighbors by having less glass. I mean, it's -- there was no windows there before. Architecturally, you know, I

don't think it looks great, but no one -- it's not like you can see, you can't see that from the street, correct?

JIM LOUTZENHISER: Correct.

SLATER ANDERSON: And what's going in on the side? Isn't there a new window on the side as well?

JIM LOUTZENHISER: We're moving a window.

SLATER ANDERSON: But it will be similar in style?

JIM LOUTZENHISER: It will be the same size as what's currently there.

SLATER ANDERSON: Not an awning like in the back?

JIM LOUTZENHISER: Right. It would be a double hung window.

SLATER ANDERSON: A double hung.

JIM LOUTZENHISER: It would be just

replacing what's there.

SLATER ANDERSON: Yes, to me, it's, you know, that's visible from the street. It's going to look consistent. I mean, to continue and have to reassemble the same five of us to hear that, I don't know.

JANET GREEN: I don't think we have to do that, do we? I can make a note and say --

JIM LOUTZENHISER: We can use the exact same windows we used on the third floor on the second if you want, that's fine.

SLATER ANDERSON: Yes, just reconstitute the Board.

TIMOTHY HUGHES: No, I can make a note on this that the windows would mirror the --

SLATER ANDERSON: Match the third floor.

TIMOTHY HUGHES: Match the third floor.

JIM LOUTZENHISER: That's fine.

SLATER ANDERSON: Done.

TIMOTHY HUGHES: Okay, let me make a motion.

The Chair would move that a Special Permit be granted for the porch in-fill. The requirements of the Ordinance can and will be met for the following reasons.

I don't really understand this.

The requirement of the Ordinance will be met with the issuance of a permit.

Traffic generated and patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character for the following reasons:

This is a second floor porch fill in.

There's not going to be any increased traffic generated or any egress from this particular area of the building.

The continued operation and the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

There's no change in the use of the adjacent -- of this particular building in conjunction with the adjacent uses. No nuisance or hazard would be created by the detriment of the health, safety, and welfare of the occupant.

This is really not much change in the use of the house at all. In fact, except for the fact that it makes the interior a more liveable and usable space. It does in fact add a little more privacy to the situation.

The proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of this Ordinance.

And the abutting three-family at 66 Prentiss recently closed in all three porches and the third floor of this unit has already been built in and this is just in keeping with the character of the neighborhood.

The permit would be granted on the condition that the awning windows as shown on the plan would be changed to be double hung windows that mirror the third floor enclosure that was done -- how many years ago would you say?

JIM LOUZENHISER: Two I think.
Two or three.

TIMOTHY HUGHES: And as per the note on the plan and initialled by the Chair.

And these are the plans that you're going to be working from?

JIM LOUTZENHISER: Correct.

TIMOTHY HUGHES: And we move that the work be done in conformity with these plans, also initialled by the Chair with the note mirror third floor windows with double hung and dated today's date.

All those in favor of granting the Special Permit?

(Show of hands.)

TIMOTHY HUGHES: That's four in favor.

(Hughes, Green, Myers, Anderson.)

TIMOTHY HUGHES: Opposed?

(Sullivan.)

TIMOTHY HUGHES: One opposed.
Permit carries.

JIM LOUTZENHISER: Thank you.

* * * * *

(8:00 p.m.)

(Sitting Members Case BZA-004891-2014:

Timothy Hughes, Brendan Sullivan, Janet

Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: Okay, the Chair will call case No. 004891, 300 Mount Auburn Street.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, Members of the Board. For the record, Ricardo Sousa on behalf of the applicant Sprint.

I also have some plans if anyone is interested in a set of plans?

TIMOTHY HUGHES: A set would be --

ATTORNEY RICARDO SOUSA: They're the same set that's in the --

TIMOTHY HUGHES: The rooftop stuff?

ATTORNEY RICARDO SOUSA: Yes, it is.

DOUGLAS MYERS: Okay.

JANET GREEN: Thank you.

ATTORNEY RICARDO SOUSA: You're welcome.

TIMOTHY HUGHES: Go ahead.

ATTORNEY RICARDO SOUSA:

Mr. Chairman, once again this is an effort by Sprint Spectrum to upgrade its existing network here in the city of Cambridge by adding 2500 megahertz antennas to each of its sites. Currently on the hospital we have three facade-mounted antennas in three different locations, and we're proposing to add three more of those panel antennas also facade-mounted adjacent to the existing antennas.

And as you can see, the antennas themselves utilize this top section. It's penthouse on the hospital itself. So we have one antenna here and one antenna here. We're proposing to add one adjacent to the existing antennas.

And then this is another facade in front

of the hospital where we also have one antenna and we're proposing to add another one just adjacent to it. These antennas are another carrier, those are not ours. But they do show up in the photo. And --

TIMOTHY HUGHES: Are those antennas next to your installation, too?

ATTORNEY RICARDO SOUSA: So, these here?

TIMOTHY HUGHES: Yes.

ATTORNEY RICARDO SOUSA: These are pipe mounts. They're MT pipe mounts.

TIMOTHY HUGHES: Oh, they are.

ATTORNEY RICARDO SOUSA:
Historically Nextel operated installation here. Nextel was purchased by Sprint. They continue to operate the iDEN technology, and then over time, culminating in last year they have now decommissioned the iDEN technology

which allows Sprint Nextel to operate its company but with fewer antennas. So traditionally Nextel was operating 12 panel antennas at every location. It was a very inefficient technology to tell you the truth, and so now Sprint is able to operate with much fewer antennas. And so in meeting with the Planning Board, there was a recommendation and, of course, we agree with it, that we would remove any empty pipe mounts there. And so that I think that will cleanup the design quite a bit. That was one of the recommendations.

Second recommendation was to lower the antennas six to nine inches so that they are lower than the cornice line. Currently under the plans they do not extend beyond the cornice line, but if you're on the street, because they're set off the wall six to nine inches,

it may protrude above visually. And so we've agreed to move that down as well. And so we would be amenable to those conditions consistent with the Planning Board's recommendation.

BRENDAN SULLIVAN: And now, I'm sorry, who owns the empty pipe mounts?

ATTORNEY RICARDO SOUSA: We do.

BRENDAN SULLIVAN: And when were they abandoned or the antenna removed?

ATTORNEY RICARDO SOUSA: When were the antennas removed? You know, over time I can't tell you exactly, Mr. Sullivan, exactly when they were removed.

BRENDAN SULLIVAN: I think that one of the major, major, major conditions is that at any time should any of the facilities be unusable, abandoned, so on and so forth, that they be properly removed and the facade

restored to its original condition. I've been looking at this and I'm saying I wonder who owns those as I sit there at the red lights all the time and, boy, I'm waiting for them to come down some night.

ATTORNEY RICARDO SOUSA: Yeah, there's been a lot of changes. I don't know if you read it in the papers --

BRENDAN SULLIVAN: Too many players in the act?

ATTORNEY RICARDO SOUSA: There are a lot of players. For example, there have been a lot of transactions. Sprint acquiring Nextel. Sprint being an investor in Clearwire, and then eventually acquiring Clearwire.

BRENDAN SULLIVAN: And now you're on the hot seat and you're going to clean it up?

ATTORNEY RICARDO SOUSA: We are.

We absolutely are, Mr. Sullivan.

DOUGLAS MYERS: And you're going to clean it up because you're here asking for approval at the same location?

ATTORNEY RICARDO SOUSA: Now, unfortunately I am outside counsel to Sprint so I don't have an opportunity to clean it up unless I get it in front of the city. So this is an instance where --

BRENDAN SULLIVAN: Now we're required to.

ATTORNEY RICARDO SOUSA: Yes, exactly. Otherwise it doesn't come in front of my radar.

DOUGLAS MYERS: I should have said your client.

ATTORNEY RICARDO SOUSA: Yes.

SLATER ANDERSON: So with Nextel being an older carrier, is it possible, have

these conditions always been in place or is it --

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: Probably, yes.

ATTORNEY RICARDO SOUSA: Most likely.

TIMOTHY HUGHES: As long as I've been here.

SLATER ANDERSON: You should remind your client.

ATTORNEY RICARDO SOUSA: Yes, I will.

DOUGLAS MYERS: Yes, if you would. I wouldn't condition it, but it would seem in keeping with what this Board makes part of every approval, including many that you receive, you communicate with your client despite the corporate transmutations that have taken place that the Board noted that

old, abandoned, if you will, disused pipe mounts owned by your client are at this site and by rights probably should have been removed long ago.

ATTORNEY RICARDO SOUSA: I will communicate that very clearly to Sprint.

DOUGLAS MYERS: Okay, thank you.

ATTORNEY RICARDO SOUSA:
Absolutely.

BRENDAN SULLIVAN: Tell them we're watching.

ATTORNEY RICARDO SOUSA: You drive by there every day. You all do I'm sure.

BRENDAN SULLIVAN: Right.

JANET GREEN: Yes.

TIMOTHY HUGHES: Not me so much.

Any other comments before I open this up?

(No Response.)

TIMOTHY HUGHES: I'm going to open it up to public testimony.

Does anyone want to be heard on this case?

(No Response.)

TIMOTHY HUGHES: Seeing no one, and there is one communication in the file from the Planning Board.

(Reading) The Planning Board reviewed the above case and has the following comments: On the north and east elevation where there is one additional antenna proposed on both faces of the north stairwell penthouse the empty mounts should be removed, and the more harmonious paint finish is suggested in the photo simulations which will assist with blending with the background. If the antennas could sit further down the wall, they would no interrupt the cornus line

and views from the street. On the south elevation one additional antenna on the south stairwell penthouse is proposed and the empty mounts should also be removed from the photo simulations the proposed antennas located below the cornice line which support.

It's already been represented to us that they will conform with these conditions of the Planning Board. Or the suggestions of the Planning Board, but they will be made conditions of the Special Permit.

ATTORNEY RICARDO SOUSA: Right.

TIMOTHY HUGHES: They will be made in the motion.

I'll close public testimony.

Any other comments?

(No Response.)

TIMOTHY HUGHES: All right, the Chair would move that a Special Permit be

granted for adding three new panel antennas to the address cited in this case, 300 Mount Auburn Street. I know I got a pile of Special Permit stuff I'm supposed to read, but I don't know where it is.

Special Permit can be granted -- the requirements of the Ordinance can and will be met for the following reasons.

ATTORNEY RICARDO SOUSA: It's probably because we do a supporting statement.

TIMOTHY HUGHES: That's in this package. Just tell me what tab it is.

ATTORNEY RICARDO SOUSA: It's wordy.

SEAN O'GRADY: 10.45 if you want.

TIMOTHY HUGHES: That's the other part, right?

SEAN O'GRADY: That's the first

part.

TIMOTHY HUGHES: That's the first part?

SEAN O'GRADY: Right. I'll get you the other part.

ATTORNEY RICARDO SOUSA: It's just the front part.

BRENDAN SULLIVAN: Page 4-25, footnote 49.

TIMOTHY HUGHES: Footnote 49.

SLATER ANDERSON: You said 10 first?

SEAN O'GRADY: Either order but those are the two that you got to get, and 43.

TIMOTHY HUGHES: This is speaking to 10.43 so I'll work from that and then it's footnote 49 which was the page I was already on. There it is.

In reviewing the Special Permit application the mobile

communications facility before the BZA shall continue the following in reaching a determination:

The scope or the limitations imposed on a licensed secured from any state or federal agency having jurisdiction over such matters. The licensing is all in this package, isn't it?

ATTORNEY RICARDO SOUSA: Yes. For the record, Sprint Spectrum is licensed by the FCC to construct and operate a wireless network.

TIMOTHY HUGHES: All right. And we already talked about that the visual elements that would be minimized by the painting to match the facade and lowering the new antennas, and the existing antennas to below, to the height that would look from the street to be below the cornice line and not interrupt

the change in the texture of the material according to the recommendation of the Planning Board.

And that the old pipe mounts will be removed and that the facade be returned as closely as possible to its original condition.

No. 3, where it's proposed to direct such facility. This is not a residential zone is it?

ATTORNEY RICARDO SOUSA: It is, actually, yes.

TIMOTHY HUGHES: The extent to which it's demonstrated public need for the facility. Oh, I think we can probably suggest that the public need for the facility sitting on top of a hospital would be crucial in terms of communication in this area. And I think that's all on that one.

The requirements of the Ordinance can be met as provided above.

The applicant has met the requirement set forth in Section 4.3, footnote 49 of the Ordinance.

Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character for the following reasons:

The proposed installation will not obstruct existing rights of way or pedestrian access and will not change the daily conditions of access, egress, traffic, congestion, hazard or character of the neighborhood.

The installation will not require the addition of any new parking or loading spaces.

The uses will not change the current conditions.

The facility will not produce any odors, noise, waste. No need for water, sewer, or other municipal services.

The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

As described above and illustrated on enclosed photo simulations to modification the existing facility will produce a minimal change in the appearance of the building.

The modification of the existing facility will blend with the existing characteristics of the building and the surrounding neighborhood.

Nuisance and hazard will not be created

to the detriment of the health and safety or welfare of the occupant of the proposed use or the citizens of the city of Cambridge for the following reasons:

The operations of the proposed telecommunications facility will not adversely impact the health, safety, and welfare of the residents of the city of Cambridge. On the contrary, the proposed use will benefit the city and promote the safety and welfare of its residents, businesses, and drivers by providing reliable state-of-the-art digital wireless voice and data services.

The proposed installation will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance for the following reasons:

The proposed facility's designed to blend in with the existing characteristics of the property.

And the use of the building construction is consistent with the urban design objective set forth in Section 19.30 of the Ordinance.

The permit would be granted on the condition that the work proceed in accordance with the, with the plans as submitted. And to have a visual impact equivalent to the photo simulations with the specific notes that were made by the Planning Board and attached.

And that if in fact any of this equipment becomes unnecessary -- what do we have a time limit on the removal?

SEAN O'GRADY: Usually six months.

ATTORNEY RICARDO SOUSA: Six

months.

TIMOTHY HUGHES: That the pipe mounts and any equipment that's not being used be removed within six months and return the facade as nearly as possible to its original condition.

SEAN O'GRADY: One more finding.

TIMOTHY HUGHES: What's that?

SEAN O'GRADY: Residential uses do not predominant in the neighborhood.

TIMOTHY HUGHES: Okay.

It has been determined prior to this case and it will be continued as a matter of this case, that residential uses do not predominate in this neighborhood.

All those in favor of granting the Special Permit?

(Show of hands.)

TIMOTHY HUGHES: That's five in

favor. Permit's granted.

ATTORNEY RICARDO SOUSA: Thank you,
Mr. Chairman and Members of the Board.

(Hughes, Sullivan, Green, Myers,
Anderson.)

* * * * *

(8:15 p.m.)

(Sitting Members Case BZA-004955-2014:

Timothy Hughes, Brendan Sullivan, Janet Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will call case No. 004955, 150 Second Street.

Is there anybody here that's going to speak? Please identify yourself for the stenographer and spell your names.

DANIEL BRENNAN, JR.: My name is Daniel Brennan and I'm here representing Foundation Medicine. And that's B-r-e-n-n-a-n and this is also Daniel Brennan, Sr. And so we're here for a Sign Variance for the height. We're here proposing a Variance for a height limit for the signage. Due to the facade conditions we feel that it's the proper place for placement. Speaking with the landlord he

didn't want it in the center of the building. It didn't seem to look right. We had scaled back our sign a bit in conversations with the Planning Board and neighborhood people to kind of meet the needs of that. We made it so that we're not applying for a size variance as far as square footage is concerned, and we revised it so that it's not going to be illuminated internally, externally, in any way. And the Planning Board asked us to get a letter from the landlord stating that he's not going to have a small tenant to have a Sign Variance so we have all these signs high up on the building or anything like that. And that if Foundation Medicine was to leave the building, that the sign would go away with it. It wouldn't be, you know, a sign just up there and not representing the company or anything like that.

TIMOTHY HUGHES: I have the letter in the file. I'll read it at the appropriate time.

DANIEL BRENNAN, JR.: So, yeah, that's basically it if you guys have any questions.

TIMOTHY HUGHES: Yes, you're making this pitch because it's -- there's a limited number of options in terms of where you can put a horizontal sign on this building.

DANIEL BRENNAN, JR.: Exactly.

TIMOTHY HUGHES: Did you explore the possibility -- you said the landlord didn't want it on the center.

DANIEL BRENNAN, JR.: He didn't want it on the center.

TIMOTHY HUGHES: It would still be about 20 feet, wouldn't it center even if you were to place it there?

DANIEL BRENNAN, JR.: It would be.

TIMOTHY HUGHES: I'm guessing it's halfway between the ground and 50.

And the other option of maybe of like three-dimensional letters mounted on the canopy. Was that discussed or looked at?

DANIEL BRENNAN, JR.: Yeah, the landlord didn't want to be blocking that view of the windows there, and he just felt like that didn't work for him. And the Planning Board really seemed to like this option best as well.

TIMOTHY HUGHES: Okay.

BRENDAN SULLIVAN: Let me ask a very simple question.

DANIEL BRENNAN, JR.: Sure.

BRENDAN SULLIVAN: What is the purpose of the sign?

DANIEL BRENNAN, JR.: It's to

attract clients, you know, Foundation Medicine doesn't have customers per se, but they do cater to the medical field so -- they do cancer research and they sell to other medical companies so it's more just of a recognition type of thing where they're located. They don't have a sign at all right now.

BRENDAN SULLIVAN: So if somebody were to come to Foundation Medicine with the address of Second Street, they would probably just punch it into their phone and find the location?

DANIEL BRENNAN, JR.: Yeah.

BRENDAN SULLIVAN: So what I get out of what you just said, it's really that you're putting your imprimatur on the building. You're putting your signature on the building. It's corporate branding.

DANIEL BRENNAN, JR.: Well, no, not only that. It's also for people to know where we're located. I mean, even when you, I don't know if you've been to the building, it's fairly new.

BRENDAN SULLIVAN: I'm familiar with it.

DANIEL BRENNAN, JR.: When you walk into the building, it's very large and we don't really have a way to show people where we're at.

BRENDAN SULLIVAN: But I mean I would think that you would be able to -- I mean, there's all kinds of buildings all around and they do it, you know, not higher than the 20-foot limit, you know.

DANIEL BRENNAN, JR.: True.

BRENDAN SULLIVAN: As opposed to walking around and that kind of thing.

DANIEL BRENNAN, JR.: Understood.

BRENDAN SULLIVAN: To me it's corporate branding.

DANIEL BRENNAN, JR.: It's also -- they're not a small portion of the building either. They do take up like 70 percent of the building, so it's -- they are a majority of the building, too.

DOUGLAS MYERS: There are other tenants?

DANIEL BRENNAN, JR.: There's a vacant space right now, relatively small, that, that's on the first floor. And I'm not really sure for the rest. I think there are, like, a couple other tenants. But Foundation Medicine certainly takes up most of the building. There are other tenants in there currently.

DOUGLAS MYERS: None of the other

tenants have exterior signage?

DANIEL BRENNAN, JR.: No.

DOUGLAS MYERS: And what options would you have that would be compliant with the Zoning Ordinance?

DANIEL BRENNAN, JR.: To bring it lower?

DOUGLAS MYERS: For signage.

DANIEL BRENNAN, SR.: As was originally said, it was the canopy that blocks the visual view. We also -- the new one also -- so I'm very limited and the established -- the height variance, too. So very limited of our options of where we put it on this building is mostly glass. So, you know, that's why we decided to put it there.

BRENDAN SULLIVAN: I don't want to be too wordy, but it almost seems like the landlord designs a building and he knows he's

going to have a pharmaceutical, medical, biotech, something in there, and at some point during the design stages they're going to say, okay, are we going to need a sign on this building to identify a major tenant? And at some point somebody in the Board will probably would have said, well, yeah, I guess. And so they said well, then should we not design -- what is the Cambridge Ordinance regarding the signage? Well, it cannot exceed a certain square footage and it can't be more than 20 feet. Well, then, okay, we should design a building that will accommodate that Ordinance and also accommodate a perspective tenant so that they are compatible as opposed to designing a building and there is no logical place to put a sign. And so it's going to have to let's throw it up high. Well, of course it doesn't

comply with the Ordinance. Well, go down and get relief from it. The option is obviously an awning and what have you, and all of a sudden the landlord says well, no, we don't want that. So there is a solution. There is an as-of-right solution but the owner doesn't want that and yet they never designed an appropriate location for a sign to comply with the Ordinance. That's how I read this whole thing.

DANIEL BRENNAN, JR.: I'm not sure they thought that far ahead, though.

BRENDAN SULLIVAN: Well, they should have.

DANIEL BRENNAN, SR.: That's why we have a Variance.

BRENDAN SULLIVAN: Skanska is a big outfit and they're doing a lot on here.

DOUGLAS MYERS: The number 150 is

conspicuous in that building.

SLATER ANDERSON: It's in that courtyard and that's my question, there seems to be a rather large courtyard. It's over there on the left.

DANIEL BRENNAN, JR.: It's not shown on there.

SLATER ANDERSON: The 150, it's right there.

TIMOTHY HUGHES: There is one over the center doorway. It seems that there's opportunity in that courtyard to have a signage you often see that at eye level as you pass other buildings.

DOUGLAS MYERS: Yes, something at ground level.

SLATER ANDERSON: Yes.

DOUGLAS MYERS: Like a pylon with some sort of signage on it.

SLATER ANDERSON: I mean, if this building were right up on the sidewalk and there wasn't -- I feel like there's an opportunity for another company compliant sign on the property. It's not that there is an area to put it in my view. In a way that would be visible, too.

Now, the landlord may, you know, have an issue with that, but have you asked about that?

DANIEL BRENNAN, JR.: In the courtyard?

DANIEL BRENNAN, SR.: How high would the limitations be on a pylon sign?

BRENDAN SULLIVAN: It's still 20 feet.

DANIEL BRENNAN, SR.: We'd be back there for that, too.

BRENDAN SULLIVAN: Freestanding?

20 feet.

SLATER ANDERSON: I think it's still
20 feet.

JANET GREEN: I actually think that
this might look better than a pylon. I mean,
because there's already that, that blue sign
that says 150 on there.

DANIEL BRENNAN, JR.: There's a tree
there, too.

SLATER ANDERSON: Yes, I'm not
thinking a pylon. I'm thinking it doesn't
have to be as low as the 150 right there.

DANIEL BRENNAN, SR.: That's why I
was asking about the height.

SLATER ANDERSON: You see these
things that are six feet high, you know, it
looks like a sculptural piece like that.

DANIEL BRENNAN, SR.: If we were
denied, we wouldn't be allowed to have a

20-foot pylon there?

TIMOTHY HUGHES: Yes, you could still build something that didn't require a Variance. You could still do signage.

DANIEL BRENNAN, SR.: For the building I guess. I was wondering if you guys would mind the 20-foot pylon.

SLATER ANDERSON: Or if it's compliant, you're not going to be before us.

TIMOTHY HUGHES: Right. If it's as a matter of right.

DANIEL BRENNAN, SR.: I think this sign would look a lot better, though.

JANET GREEN: I do, too.

TIMOTHY HUGHES: I --

DANIEL BRENNAN, JR.: The Planning Board seemed to like that option, too. We had a couple of different options that we actually showed them and they picked this

one.

SLATER ANDERSON: What were the options you showed them?

DANIEL BRENNAN, JR.: Well, the other one was to have it -- was having it here which the landlord really doesn't want.

SLATER ANDERSON: Yes.

DANIEL BRENNAN, JR.: And it looks odd because it's not, it's off center.

SLATER ANDERSON: You see them in the corner of buildings a lot, I'll give that.

DANIEL BRENNAN, SR.: And with the Variance is still over.

TIMOTHY HUGHES: They're still over the height.

SLATER ANDERSON: Yes.

TIMOTHY HUGHES: There is a letter in the file that I don't know if you had a chance to see it, where the landlord has --

SLATER ANDERSON: I saw that.

TIMOTHY HUGHES: -- has put some sort of limitations on other tenants, you know, coming before the Board on Variances on height limitations. On the height thing, you know, it doesn't preclude other tenants from using -- looking for a Variance for a sign if you know.

JANET GREEN: I thought --

TIMOTHY HUGHES: The way I read it, it says specifically for exceeding the height limit while Foundation Medicine has its sign up, if they needed a Variance for some other reason, if they were looking for a bigger sign, it would preclude them from coming before us for that. I don't think we would be very amenable to it, because I think the intent of this letter is to give you the flagship tenant in the building priority.

DANIEL BRENNAN, JR.: Yeah.

TIMOTHY HUGHES: And that -- I don't think the -- I don't think the landlord wants to see a bunch of signs blasted high up all over the building. I think he wants to identify this building as yours for the most part.

DANIEL BRENNAN, JR.: Yeah.

TIMOTHY HUGHES: At least for the duration of your tenancy there.

DANIEL BRENNAN, JR.: Yeah.

I don't think it's very offensive sign either. It's a positive message. They're doing positive things.

JANET GREEN: To me it's not a big picture of a horse galloping across or a lighted sign or, you know, something, I mean it seems pretty small and it seems informative to me more in this case more than

it seems like a branding that nobody's going to be --

DANIEL BRENNAN, JR.: It's not going to be shining at night or anything like that.

JANET GREEN: It's not going to be shining -- and it doesn't feel --

SLATER ANDERSON: And it's compliant.

DANIEL BRENNAN, JR.: Yes.

TIMOTHY HUGHES: Yes, it is.

JANET GREEN: And when I walked around that building, I did, I did imagine it would be hard to know what tenant is inside from just that part. And in this case, I often guess the signs in this case, the sign seems fine to me.

TIMOTHY HUGHES: Any more comments before I open it up to public testimony?

(No Response.)

TIMOTHY HUGHES: Is there anyone here that wants to be heard on this matter? Please step forward and identify yourself, please.

CAROL O'HARE: You know me. Carol O'Hare, 172 Magazine Street, Cambridge. Thank you for your attention. And it's heartening to hear you talk about this sign the way you have. Why do I bother you about these small potato signs when everyone knows there are much bigger fish to fry? Because I'm the canary. Though no one sign does much damage or creates much clutter, light distraction, branding, in our already taming visual environment, together all these Sign Variances which aren't a matter of right, these are not Special Permits, these are Variances, definitely do create a teaming visual environment. However, if I were

rewriting Article 7 of our Zoning Ordinance, I'd allow this sign. Why? Because it's modest, it's unlit, it's a tenant sign at the only logical location on the facade of the building that makes any sense which happens to be 30 feet higher than permitted and both the landlord and the tenant have agreed that it will be subject to three reasonable and explicit limiting conditions offered and agreed to in Alexandria's, the landlord's, August 25th letter in your file. I said the same in my comments to the Planning Board which I will give you for the file. If you do grant this Variance, I ask that you make it subject to the conditions that you've just discussed, that are explicitly listed in the landlord's letter. However, when the Chair just pointed out on a closer reading -- this is extemporaneous now, that that first

condition could be understood to mean that other Variances would be permitted for this building for signage. I would ask that you impose an additional condition consistent with Mr. Anderson's, Mr. Sullivan's, and Mr. Myers' comments which would require -- which would prohibit an additional Sign Variance for this building while this sign is up because there are plenty of places on that property, including the pedestal sign that is very common and very handsome for corporate signage where there are no retail clients, there are no people visiting offices. The only people who come to this building are the employees who know their way, and a few corporate visitors who have cellphones as Mr. Sullivan pointed out. The problem with these Sign Variances is that there's no justification for them. It's not

like a deck. It's not like a mother-in-law apartment. It's not like a balcony. It's not like a bay window. It's not like a setback. It is a totally unnecessary Variance. It is a Variance, not a Special Permit and, therefore, you have to find substantial hardship owing to this property, as you well know, that is different from every other property that complies with Zoning. Substantial hardship. Where is the hardship? Anyway, I have said for the first time to Mr. Brennan at the Planning Board when he -- when he first sought me out before even going to the Planning Board, and also sought out neighborhood people, that I would support this sign because it's so much more reasonable than the high flying signs that are popping up all over the city. And that I feel like I bore you with my, you know,

little speeches and I wish I didn't have to. I really do, but that's, that's what I hope you will do.

I also want to point out on the notice question, the public notice, and I'm saying this for the record really, that this applicant gets a B plus-plus on public notice. His, as compared to the Bank of America application that was continued, because the Bank of America application that you heard last week simply said to install a non-compliant sign. That does not give any kind of notice to the public. By contrast, this sign notice published in the paper and sent to abutters says to install a non-illuminated sign that is 60 feet in area with a height of 50 feet. That gives some sense to the public and to abutters what the sign is going to be. Then if they're

interested, they can go to ISD and find out exactly what the sign looks like. They can call the petitioner if they're interested and follow up. Even Jim Rafferty who appeared before this Board last -- two weeks ago on the Bank of America sign, sign No. 2 for Bank of America, they already have a sign on Fresh Pond Parkway at that small location, he wrote to me the following day on the notice question: I took your point -- I'm quoting him. I took your point to be that it would be more helpful if the --

DOUGLAS MYERS: Is that really relevant to this case since the notice was compliant and official. Are you arguing the other case tonight?

CAROL O'HARE: No, I am not. Because I'm saying for the record that he, I'm giving credit to this petitioner.

DOUGLAS MYERS: And the notice is not an issue in this case tonight.

CAROL O'HARE: Yeah, well --

DOUGLAS MYERS: We're not here to hand out awards.

CAROL O'HARE: Why not?

DOUGLAS MYERS: Because we're here to decide the application that's before us.

CAROL O'HARE: Do you mind if I read what Mr. Rafferty said? It's only two sentences.

SLATER ANDERSON: There's Mr. Rafferty.

DOUGLAS MYERS: No, I'm --

TIMOTHY HUGHES: I wish you would stay on point here.

CAROL O'HARE: Okay.

The point is that --

TIMOTHY HUGHES: They did a good

job.

CAROL O'HARE: -- he did a good job on notice because he gave some sense on what the Sign Variance was about so that not every citizen who works or has a family has to go up to ISD and explore the file to find out exactly how this sign will require a Variance. So I give him huge credit. I also give credit to Mr. Rafferty who has acknowledged that the -- really do, that notice has to be more than just bare minimum.

TIMOTHY HUGHES: Thank you.

CAROL O'HARE: Thank you. I wish I didn't have to do this. I support the sign.

TIMOTHY HUGHES: Anyone else that wants to be heard on this? Please step forward and identify yourself.

JESSICA ERICKSON: Jessica Erickson from Signs On-Site. Just wanted to add to

the manufacturing side when you were speaking about the pilon signs, when we looked at different routes and different ways that we could put the logo, the Foundation Medicine on the building, we did look into a pilon sign, but we thought it would be more obtrusive. What we're looking at here with the letters, they're actually -- these are only three inches thick. If we're looking at fabricating a pilon sign, you're looking at doing probably six inches thick. And I really think with the landscaping and the beautiful walls, it would be too obtrusive, and it would actually, I want to say take away from the landscaping as opposed to -- I think it would be too much. It would be too solid, it would be too -- it would be almost too visual. Whereas we felt this is more, it's -- their font is very thin. The logo's

thin. They are -- there are colors that actually go with the building. Whereas opposed if you do a pylon sign, then what we're afraid of is that it would be a pylon sign, but it would almost turn into like more of like a directory type where it would be listing out the tenant names and then it could end up getting way too big. And so basically we were thinking that this was the smallest -- you know, so we're basically staying with a smaller scale, but looking for a, you know, a Variance height. So we're trying to keep it as small and not obtrusive and basically not building these huge pylon signs which I know, you know, there are a couple down the road, but we're trying to keep it that the landscaping and the trees and everything like that as the focus and the sculpture. You know, you don't want to take

away from those things that are already done.
We just want to add minimal.

TIMOTHY HUGHES: Thank you.

Anyone else that wants to be heard on
this?

(No Response.)

TIMOTHY HUGHES: I'm going to read
into the record the Planning Board's comments
on this.

(Reading) The Planning Board reviewed
the proposed Sign Variance with the
applicant's representative Daniel Brennan.
One of you two guys. The Planning Board
supports this Variance request as
appropriate and reasonable on this building
given several design elements and conditions
that have been agreed upon by the landlord.
The canopy design at the first floor would be
an otherwise sensible location for a sign

ban. The location of the sign at the edge of the building is a sensible location to be visible along Second Street. There will not be a sign visible from the Charles River Parkway. The Planning Board appreciates the community process that included the conditions agreed upon by the landlord to not approve any other Sign Variance requests for height relief. That's specific for height relief.

And I will read into the record the letter from Alexandria which is the Alexandria Real Estate Equities which is the landlord.

I can't pronounce this name.

(Reading) Dear Mr. M-a-c-i-e-j-c-z-a-k. As Executive Director Asset Services for Alexandria Real Estate Equities, Inc., managing agent for the property known as

ARE-MA region, No. 50, LLC located at 150 Second Street, Cambridge, Mass., I provide this written approval for Foundation Medicine to install an exterior building sign above the third floor windows on the Bench Street facing side of the building at the Second Street and Bench Street corner. We also agree to the following conditions for the sign:

No other tenant will be allowed by the Alexandria Real Estate Equities, Inc. to apply for a Sign Variance for exceeding the height limit while Foundation Medicine has its sign at 150 Second Street. The sign will not be allowed to be illuminated in any way externally or internally, and the sign would be removed if the tenant leaves the building. And no other tenant is allowed to take over the Variance approval and change the sign.

Please feel free to contact me. Signed
Jeffrey McComish, M-c-C-o-m-i-s-h,
Alexandria Real Estate Equities.

That's the sum total of the
correspondence. I'll close public
testimony.

Deliberation? Comments?

BRENDAN SULLIVAN: As final words.

TIMOTHY HUGHES: Yes, do you have
anything you want to add?

DANIEL BRENNAN, JR.: No.

DANIEL BRENNAN, SR.: So, I do want
to mention that you mentioned about the
height variance at least in the back. In the
building, I don't see any way to not have to
exceed that height unless you put a sign on
the canopy which the landlord doesn't want.

TIMOTHY HUGHES: I understand that.

DANIEL BRENNAN, SR: I just wanted

to mention that.

TIMOTHY HUGHES: Personally I'm speaking as of one vote not as -- that I'm fine with the sign. I think it has a logical place to put it on the building. I think this is what we do here when we have to, you know, vary from the Ordinance which has been given to us as a one size fits all architecture of every building as opposed to, you know, try and make these things fit and they just don't. So I think it's appropriate to give a Variance in this situation. I think you need to get at least two more votes over here, though.

JANET GREEN: I'm actually in favor of this sign as I mentioned before. In addition to finding the sign not objectionable, I also appreciate the community process that was gone through and the presentation at the Planning Board.

SLATER ANDERSON: I agree, it's the logical location for the sign. My earlier comments were if you considered other locations, it sounds like you have. I appreciate that. Again, as the Chair said, the Ordinance, we're here to, you know, enforce the Ordinance. The Ordinance, in my opinion in this case, the Sign Ordinance, is flawed and it is one size fits all. And in a setting like this, the commercial setting, with buildings like that, it's logical to have some exceptional allowance for that kind of signage. And I think it's a reasonable sign and design and scale.

DOUGLAS MYERS: I find this a very close and difficult case myself, because I -- I'm struck by the fact that the sign is more than twice as high as the Ordinance prescribes and there are other places on the

building where it could be put. On the other hand, I do feel the sign is modest, it's tasteful, and does not create the kind of clutter or visually undesirable effects that many, many signs do. I will vote for it. And I just want to articulate for myself on the record, we don't all sit on every case, so we have -- every Board member has to decide cases on the merits when they come up before that member and it can lead to a certain inconsistency occasionally in our decisions. But I view it as a close call. I feel the countervailing points that have been raised are significant, but I'm prepared to give this sign, as I would say, the benefit of the doubt and vote for it.

DANIEL BRENNAN, JR.: Thank you.

TIMOTHY HUGHES: Do you have any closing comments?

BRENDAN SULLIVAN: No, I stand by my original comments on that.

TIMOTHY HUGHES: All right. The Chair would move that a Variance --

SLATER ANDERSON: One question for Sean.

TIMOTHY HUGHES: Sure.

SLATER ANDERSON: When a developer comes to the city to build a building like this, is there a point in the process where there's somebody, like, you guys are going to need signs on this building?

SEAN O'GRADY: I would --

SLATER ANDERSON: It just seems that your point is good and that this is something that should be considered.

BRENDAN SULLIVAN: And I think we need to nudge, cajole, push developers, architects, these buildings going up -- as I

walk around Kendall Square and, and I picture all these very tasteful signs all over the place because there's no other place to put them and yet, you know, the steel is going up, the glass is going up, and then all of a sudden a tenant comes along and says, you know, we want to put our name on this thing. Well, good luck. You know, that type of thing. Well, can we put it here? Or we have to go get a Variance. No, I don't want it there. I'm as the landlord, the owner, protecting my turf, you know? So we're going to push you off to go get relief from the Ordinance when I think they need to know what the Ordinance is and I --you know, I have voted for some signs in the past which I thought were tasteful. Not, you know, neon signs glaring out at you, no running horses and so on and so forth, but yet I'm now of the tact that if

there's proliferation of all of these nice, tasteful signs, then I'm going to look back and see all of these things shouting at me and now I'm getting a little bit not to like them as much. And what is the purpose of them? Identification.

Well, again, the people who go to these -- these are not for retail trade. They're not for you or me. They're for scientists. They're for all these other people who are very savvy, know where these places are. Or all they have to do is, again, punch in the address and they're there. And if they want to have some identification, I think it can be done tastefully at the driveway or something, or some identification sign, something, something. But not -- and, again, you're going to have these things popping up. They're going to be

like mushrooms. And so, I think that in the design phase of these buildings, these developments, if they want to cater to a tenant, if they want to sell the space to a tenant and the tenant says fine, but we want some signage, some identification, and that has to be factored in. If we don't nudge them, if the message isn't given out there that you're going to have a tough time with this, then they're just going to, you know, go down and plead your case.

SLATER ANDERSON: Well, that's why I asked, Sean. And by the time they come to us, this is all done obviously.

BRENDAN SULLIVAN: Yes, I don't think the department is going to get involved in that.

SEAN O'GRADY: No.

BRENDAN SULLIVAN: Because there

are so many aspects of looking at a plan. You know, this is your plan, and then obviously you should have thought of this. You people are very sophisticated developers, real estate trusts. And you haven't got to where you are without having a bevy of professionals.

SLATER ANDERSON: These signs and I've seen them around Kendall Square, they're somewhat of a -- they're trophy signs or achievement signs. You know, we've planted our flag in Kendall Square. Here we are.

BRENDAN SULLIVAN: Corporate testosterone.

SLATER ANDERSON: Yes. But --

BRENDAN SULLIVAN: But anyhow.

SLATER ANDERSON: -- the Sign Ordinance is flawed in some ways.

TIMOTHY HUGHES: Okay?

BRENDAN SULLIVAN: Yes, done.

TIMOTHY HUGHES: Did you get an answer to your question?

BRENDAN SULLIVAN: Did you even ask a question? I don't know.

TIMOTHY HUGHES: You were asking Sean.

SLATER ANDERSON: Well, he said no. I got an answer, yes.

TIMOTHY HUGHES: All right.

The Chair will move that a Variance be granted to 150 Second Street to Foundation Medicine. I think I read somewhere that there was an S on medicine but it's not.

A literal enforcement of the provision of this Ordinance would involve a substantial hardship, financial or otherwise to the petitioner for the following reasons:

Due to the facade existing conditions

and the restriction by the landlord's design request, we feel that this is the best option. We did explore other options, but it did not seem visually correct from a design standpoint, and this was in keeping with the concerned members, the opinions of the concerned members of the community and the Planning Board agreed with this determination.

The hardship is owing to the following conditions: Related to the soil conditions. I'd say it's relating to the structure standards and the placement of the structure on the lot.

The facade conditions have limited for wall signs to be mounted. We did show the wall sign at a lower elevation provided the rendering of the Planning Board but they agreed that it was not the preferred design.

Desired relief may be granted without either substantial detriment for the following reasons:

Community members were consulted and the proposal was modified in a couple of considerate elements in terms of size and illumination in order to make it more fitting with what the community relief should exist here.

The relief may be granted without nullifying or substantially derogating from the intent of the Ordinance for the following reasons:

And the proposed sign exceeds the height limitation but it does not exceed the square footage of allowable, and it is done in a tasteful manner and in a way that it can identify the building without being overbearing.

The Variance would be granted on the condition that the sign be installed according to the designs that were in the file and the plans that are in the file. I don't know if there's actually a plan. According to the design that's in the file.

And on the conditions as stated by the landlord of the property that no other Variances will be sought for height limitations as long as the Foundation Medicine sign exists at 150 Second Street.

All those in favor of --

DOUGLAS MYERS: Also other conditions that mentioned by the landlord: The sign is not illuminated, and that it will be removed if the tenant leaves the building.

TIMOTHY HUGHES: Okay. Did you get those?

All those in favor of granting the

Variance on those conditions?

(Show of hands.)

TIMOTHY HUGHES: That's four in favor.

(Hughes, Green, Myers, Anderson.)

TIMOTHY HUGHES: One opposed?

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: One opposed.

Variance is granted.

* * * * *

(8:55 p.m.)

(Sitting Members Case #BZA-004908-2014:
Timothy Hughes, Brendan Sullivan, Janet
Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will call
case No. 004908, 1430 Massachusetts Avenue.

ATTORNEY RICARDO SOUSA: Good
evening, Mr. Chairman, Members of the Board.
Once again, Ricardo Sousa on behalf of the
applicant Sprint.

Much like the previous application,
Members of the Board, this is Sprint's
continuation effort to upgrade its site to
keep up with the demands for data services and
telephone service, wireless telephone
service, and we're proposing to install three
additional panel antennas on this existing
cupola located at the top of the building.
When we went to the Planning Board, we've also
been to the Historic Commission with respect

to the application as well. They have reviewed it administratively in connection with this current application, and approved it. And we also met with the Planning Board as well, and under their new protocol, they have a member of staff review our applications and submit a fairly detailed report as to recommendations they would make. And we, of course -- we agree with the recommendations and we would be amenable to cleaning up the site as it were. There is some cabling that we've already commissioned Sprint to go out to the site to find a solution whereby they could clean-up the cabling. It's really on the back side of the building. So that all cabling is vertical or horizontal rather than the weaving pattern. And in addition to that, to paint the remote radio heads consistent with the facade of that

cupola so that it blends in better as well. So as you can see on -- this is the front facade. The -- currently the three antennas here, we're adding one additional one. And that paint needs to be corrected. Some of the other antennas I think the paint is pretty well done.

And then this is the back side of that same cupola where we're adding antennas.

BRENDAN SULLIVAN: What's inside of that structure?

ATTORNEY RICARDO SOUSA: You know, Mr. Sullivan, I'm not sure to tell you the truth. I have not been up there. I've been to many of these sites, but I haven't been to this particular rooftop personally. And I don't know if there are existing mechanical systems in there or --

BRENDAN SULLIVAN: Something tells

me that because of the presence of the cable on the outside that it's impossible to put it on the inside.

ATTORNEY RICARDO SOUSA: Right, exactly. That's my sense, because we try to do that as best as we can.

TIMOTHY HUGHES: There does appear to be some kind of louver on that one side.

BRENDAN SULLIVAN: It may be a venting or a shaft or something.

JANET GREEN: Because on the previous case they were going to mount something on the inside of the penthouse.

ATTORNEY RICARDO SOUSA: They did, that's right. That's exactly right. We try to go on the inside, for example, if there's a parapet wall, we try to put antennas -- excuse me, remote radio heads on the inside of the parapet wall and that keeps

the cabling away as well.

TIMOTHY HUGHES: A question on the, that top view on the top right.

ATTORNEY RICARDO SOUSA: This one right here? Yeah.

TIMOTHY HUGHES: Will they sit up that high on above the top of the cupola? It appears that they're sitting in above it in your --

ATTORNEY RICARDO SOUSA: Yeah, the way that they designed it is so that it doesn't broach that top cornus line, but I think we can make a similar condition so that we bring it down nine inches so that it's nine inches below the top.

TIMOTHY HUGHES: So visually it doesn't look like it's breaking --

ATTORNEY RICARDO SOUSA: Exactly right. And we can absolutely do that.

And there are two mounts in the back that also need to be removed as well.

TIMOTHY HUGHES: Okay.

ATTORNEY RICARDO SOUSA: And the one thing that the Historic Commission has always said with respect to this facade, antennas can only be on either side of that round element so that we don't protrude.

DOUGLAS MYERS: Would you repeat that? I'm sorry.

ATTORNEY RICARDO SOUSA: Sure. With respect to our meetings with the Historic Commission, the one thing they've always been consistent about is this round element, that we not put any antennas in front of that round element. Just from a symmetrical perspective. So there would be two antennas on either side. And if they're brought down, that actually helps the cabling

and just helps it visually.

DOUGLAS MYERS: On the view from Church Street --

ATTORNEY RICARDO SOUSA: Here, yes.

DOUGLAS MYERS: Yes. -- are you increasing the amount of external cabling?

ATTORNEY RICARDO SOUSA: There will be additional cabling because of the additional remote radio heads. And so each of these new antennas requires one remote radio head, which are these boxed elements.

DOUGLAS MYERS: Yes, they look like buckets. There would be two, two additional of those?

ATTORNEY RICARDO SOUSA: Two additional on that back side. One on either facade. And what the, what the Planning Board has recommended is to make sure -- see this one here? Excuse me, this one be moved

to the back side so that it minimizes the view. And that we paint those a darker grey so that they blend in better.

DOUGLAS MYERS: Plus two mounted antennas? New?

ATTORNEY RICARDO SOUSA: That's correct.

DOUGLAS MYERS: Or in any event, thicker and more conspicuous as I -- just looking at the after picture from Church Street.

It seems to me that's a lot. Is there anything you can do to reduce that new quantitative increment of telecommunications equipment?

ATTORNEY RICARDO SOUSA: We've tried to put it as far back. I think by removing this, this is an empty mount here on that edge, Mr. Myers, that will be removed.

DOUGLAS MYERS: You're pointing to the far left?

ATTORNEY RICARDO SOUSA: Far left, correct. That is an empty mount. On the plans it's shown as a dead antenna.

DOUGLAS MYERS: And that will be removed, the left most?

ATTORNEY RICARDO SOUSA: The left most, correct.

DOUGLAS MYERS: Not the one on the corner. There's a small antenna at the very corner, am I correct?

ATTORNEY RICARDO SOUSA: It's just a pipe mount, Mr. Myers.

DOUGLAS MYERS: And that's what you're talking about that's being removed?

ATTORNEY RICARDO SOUSA: Yes, that's exactly right. And we're amenable to doing that. And there's an empty pipe mount

that will be removed here as well. On the linear facade of that cupola.

DOUGLAS MYERS: Okay.

ATTORNEY RICARDO SOUSA: And the new antennas are not --

BRENDAN SULLIVAN: And the snake-like cabling.

ATTORNEY RICARDO SOUSA: That has to be corrected as well so that the cabling will be horizontal and vertical only.

TIMOTHY HUGHES: It will drop vertically to the top of the brick where it transitions and then will run horizontal to the radio heads?

ATTORNEY RICARDO SOUSA: We could do that. See, these are bottom fed antennas and so the cabling -- you're not suggesting that it go up to the top?

TIMOTHY HUGHES: No. I'm

suggesting it would go parallel to the kind of paneling of the cupola and drop down to the transition of where the brick is and then head, you know, towards the radio heads from there.

ATTORNEY RICARDO SOUSA: That's exactly right. That's the best way to fix it. This is vertical seamed siding and so trying to take advantage of that element and have the cabling come vertical down and then across to the remote radio head.

BRENDAN SULLIVAN: Yes, that would be better.

TIMOTHY HUGHES: That's as good as it's going to get on this.

SLATER ANDERSON: I have a question.

ATTORNEY RICARDO SOUSA: Of course.

SLATER ANDERSON: Sheet Z-2 of the plans, there's an existing antenna plan and

then a proposed antenna plan.

ATTORNEY RICARDO SOUSA: Yep.

SLATER ANDERSON: And one of these antennas is labelled A1-dead.

ATTORNEY RICARDO SOUSA: Correct.

SLATER ANDERSON: Okay? But it's, it's showing -- and there's also actually a B4-dead around the corner there.

ATTORNEY RICARDO SOUSA: Yep.

SLATER ANDERSON: Are you representing that A1-dead is going to be removed, correct?

ATTORNEY RICARDO SOUSA: That will be removed, correct.

SLATER ANDERSON: Okay. Because it's a little misleading on the plan that the proposed antenna plan is still showing it there.

ATTORNEY RICARDO SOUSA: I'm

confident that that will be removed.

SLATER ANDERSON: And what about B4-dead?

ATTORNEY RICARDO SOUSA: As a condition.

And so that one is there primarily to keep symmetry.

SLATER ANDERSON: Okay.

ATTORNEY RICARDO SOUSA: Two antennas on either side of that round element.

SLATER ANDERSON: Fine.

ATTORNEY RICARDO SOUSA: We could be adding a condition of A1-dead as being removed. We would be amenable to that.

SLATER ANDERSON: Okay.

TIMOTHY HUGHES: Anything further?

SLATER ANDERSON: No.

TIMOTHY HUGHES: Any other

questions from the Board?

(No Response.)

TIMOTHY HUGHES: I'm going to open it up to public testimony.

Is there anyone here who wants to be heard on this matter?

(No Response.)

TIMOTHY HUGHES: Do you have a copy of the letter from the Planning Board? I don't see it in the file.

ATTORNEY RICARDO SOUSA: I do, I do have one.

So the way they gave it to me -- here it is.

TIMOTHY HUGHES: I'm going to read that into the record.

ATTORNEY RICARDO SOUSA: Sure. I believe it didn't arrive until late today by e-mail.

TIMOTHY HUGHES: Pony Express probably.

ATTORNEY RICARDO SOUSA: Right.

TIMOTHY HUGHES: (Reading) The Planning Board reviewed the proposed installation. There's quite a lot of wireless equipment installed on this small penthouse. Color choice for the proposed antenna appears improved and will reduce the prominence. The proponent should be encouraged to better organize cabling so that it has a tidy appearance and ensure the proposed and existing equipment is arranged in a symmetrical and unique matter. Any redundancy should be removed.

It has been represented by Counselor Sousa that is in fact their intent.

I will close public testimony. Any further comments from the Board?

(No Response.)

TIMOTHY HUGHES: The Chair would move that a Special Permit be granted at the address of 1430 Massachusetts Avenue to install three additional antennas.

The applicant complies with the wireless communication provisions set forth in Section 4.3, footnote 49 pursuant to Section 4.32(g) of the Ordinance.

The applicant's proposed use for a wireless communications facility in the BB Zoning District is permitted by Special Permit.

The applicant's proposed facility further complies with the provisions set forth, that would include all of the licensing requirements which are in this packet.

The Board of Zoning Appeal has to

consider the scope and limitations of the license:

Enclosed herein is the applicant's FCC license.

The applicant meets all the requirements proposed by governmental authorities having jurisdiction other the proposed facility.

The Board of Zoning Appeals shall consider the extent to which the visual impact of the elements of the proposed facility is minimized. It has already been represented that in a variety of ways, including color match and organization of radio heads and organization of cabling and symmetry will be adhered to and planting this new equipment on the cupola at the top of 1430 Mass. Ave.

We can skip three. There is no

residential requirement.

ATTORNEY RICARDO SOUSA: Right.

TIMOTHY HUGHES: The requirements in the Ordinance can be met.

As provided above, the applicant has met the requirements set forth in Section 4.32, footnote 49 of the Ordinance.

Traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in the established neighborhood character for the following reasons:

The proposed installation will not obstruct existing rights of way or pedestrian access.

Will not change the daily conditions of access, egress, traffic, congestion, hazard, or character of the neighborhood.

As mentioned above, once modified the

facility will be unmanned and will only require infrequent visits about a technician.

Continued operation and development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

As described above and illustrated on attached photo simulations, the modification of the existing facility will produce a minimal change in the appearance of the building. I think we can cite the fact that there's already been equipment up there and with no adverse effect to the, you know, to the adjacent, adverse effect to the nature of the proposed use of the adjacent properties up until this point, and there's no reason to suspect that it would happen in the future.

Nuisance or hazard would not be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use of the citizens of the city for the following reasons:

And I'll cite the same thing that there's already been a wireless facility there with no adverse effect and no change to the conditions of the citizens or the occupants of the building. No hazards to the citizens or the occupants of the building.

Proposed installation will not impair the integrity of the district. Again, this is an upgrading of an existing, you know, facility that's already there. And the use of the building construction's consistent with urban design objective set forth and maybe it is or maybe it isn't. I'll skip that one.

The permit would be granted on the condition that the work proceed in accordance with the plans marked John Lee Associates, LLC, Sprint Vision. It's got T1, SP1, SP2, SP3, C1, Z1, Z2, with the notation on Z2 that in fact that A1-dead antenna will be removed and Z3 and Z4. Plans and first page initialled by the Chair and dated with today's date.

Did I get everything?

DOUGLAS MYERS: Have we stated that if it's not reflected in the plans, that have we stated that the new antennas will be below the cornus line?

TIMOTHY HUGHES: It was stated as a matter of testimony. I didn't put it in the motion. You're right.

In terms of mitigating the visual impact, the antennas will be set below the

cornus line in such a way so that when visible from the street, they appear to not go above the cupola.

ATTORNEY RICARDO SOUSA: Right.

DOUGLAS MYERS: And have we stated that the cables on the building will be modified so that they, so that excess curves are removed and they're more nearly in a vertical position?

TIMOTHY HUGHES: Again, that was stated in testimony but it's not specifically in the motion.

But what Mr. Myers says should be added to the motion. Okay?

This is initialled. And there was one other thing. Oh, yes, and on the condition that the any unused equipment be removed within six months and that the facade be returned to as much as possible to its

original condition.

All those in favor of granting the
Special Permit?

(Show of hands.)

TIMOTHY HUGHES: That's five in
favor. Permit's granted.

ATTORNEY RICARDO SOUSA: Thank you,
Mr. Chair. Thank you, Members of the Board.

(Hughes, Sullivan, Green, Myers,
Anderson.)

* * * * *

(9:10 p.m.)

(Sitting Members Case #BZA-004900-2014:
Timothy Hughes, Brendan Sullivan, Janet
Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will call
case No. 004900, 9 Follen Street.

ATTORNEY JAMES RAFFERTY: Good
evening, Mr. Chairman, Members of the Board.
For the record, my name is James Rafferty.
I'm appearing behalf on the petitioner,
Matthew Kavet, K-a-v-e-t. Mr. Kavet is
seated next to me. He and his wife Sabrina
occupy this home with their two young
children. And to Mr. Kavet's right is the
architect Diane Lim, L-i-m. This is a home
located on 9 Follen Street, a very handsome
home on a very handsome street. Mr. Kavet's
family has been living there for

approximately four years, and this is a proposal to add a mudroom of approximately 42 square feet to the house. It's a conforming addition to a non-conforming structure. The structure is non-conforming because a front setback and rear setback slight deviations, actually conforming when constructed, but in the 80s there was a change in the Zoning District. It went from A2 to A1. There was a prior addition to the house in the 80s which slightly exceeded the ten percent which can be done as of right, so we find ourselves here seeking a Special Permit for an amount in excess of ten percent under 8.22.2(c), such additions are permitted upon a finding that the addition does not exacerbate any of the non-conformities existing. And in this case that is true, neither the front nor the non-conforming front nor non-conforming side

yard or rear yard are affected and the house is still below the allowed FAR. So the size of the house is below what's permitted. This 42 square foot addition is really just an accommodation to allow a young family with a three and a five-year-old to take their boots off before they get into the nice carpet. And Ms. Lim has worked closely with the house. This is part of a little bit of a restoration for the whole home. It's been very tastefully designed in keeping with the high quality and standards of the home, and we have two letters of support that I'm aware of; a neighbor in the rear and the neighbor across the street have both expressed support. That's all.

TIMOTHY HUGHES: Questions?

DOUGLAS MYERS: Was the -- did you receive the -- was the approval of the

Historical Commission required?

ATTORNEY JAMES RAFFERTY: Yes, because it's in a, is it the.

DIANE LIM: History.

ATTORNEY JAMES RAFFERTY: It's either, it's either the old Cambridge district of -- it's not the Half Crown. I think it's -- which one of them? They have jurisdiction over exterior alterations and there was a Certificate of Appropriateness. That was some months ago.

DIANE LIM: Uh-huh.

ATTORNEY JAMES RAFFERTY: Ms. Lim and Mr. Kavet attended that hearing.

TIMOTHY HUGHES: There is an attached certificate here.

Old Cambridge Historic District is what I'm reading here.

ATTORNEY JAMES RAFFERTY: That's

it.

TIMOTHY HUGHES: Further questions from the Board?

(No Response.)

TIMOTHY HUGHES: I'll open this up to public testimony.

Does anyone want to be heard on this matter?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I will read the letter. (Reading) Dear BZA Members: I've reviewed Matthew Kavet's plans to renovate his home by constructing a mudroom. I'm satisfied that the work is modest in scope and will improve his lovely home. I urge the Board to grant the Special Permit that he's applied for and allow for this work to be performed. This is signed by C. Todd Stewart, 11 Follen Street. And he's

No. 11.

The same wording in another letter signed by Susan M. -- I'm going to go with Reagan.

MATTHEW KAVET: Reagan.

TIMOTHY HUGHES: And that's the sum total of the correspondence.

I'll close public testimony.

Any further comments from the Board?

(No Response.)

TIMOTHY HUGHES: We're ready for a vote.

JANET GREEN: I'm ready.

TIMOTHY HUGHES: All right. The Chair would move that a Special Permit be granted at 9 Follen Street to construct a mudroom.

Requirements of the Ordinance can be met for the following reasons: Article

8.22.2(c) permits a conforming addition to a non-conforming structure when as in this case there are no further violations of the dimensional requirements of Article 5.

Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in established neighborhood character for the following reasons:

There will not be any change in traffic patterns as a result of adding a mudroom wherein there is already an egress and nothing would change in terms of the number of people that use it, which would just be easier for people who own the house.

A continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected.

Adjacent uses will remain unchanged.

And if they're not adversely affected now, they're not going to be adversely affected by the mudroom.

Nuisance or hazard will not be created to the detriment of the health and safety or the welfare of the occupant of the proposed use or the citizens of the city for the following reasons:

Adding a mudroom will not create any detriment to the health, safety, and welfare. On the contrary, it make things easier and probably safer.

And for other reasons the proposed use will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

The proposed mudroom will not change

the use of the property and is consistent with the residential uses in the district.

The Special Permit be granted on the condition that the work proceed in accordance with the plans submitted by Lim Design Studio, Inc. And consisting of pages A1, E1, A3, L1, L2. And that looks like it.

All those in favor of the Special Permit.

(Show of hands.)

TIMOTHY HUGHES: That's five in favor. Permitted granted.

(Hughes, Sullivan, Green, Myers, Anderson.)

* * * * *

(9:20 p.m.)

(Sitting Members Case #BZA-004904-2014:
Timothy Hughes, Brendan Sullivan, Janet
Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will call
BZA 004904, 245 Mount Auburn Street.

AARON KEMP: Hi. My name is Aaron
Kemp. I'm a resident of 245 Mount Auburn
Street and I'm proposing to add six skylights
to my house to add more natural light in the
back north facing side of the house. And the
six skylights are conforming to Section
8.22.1(d) because they are within the
specified yard setbacks. I'm not sure if the
term is within or without. And --

TIMOTHY HUGHES: They're not in the
setback.

AARON KEMP: They are not in the setback.

TIMOTHY HUGHES: Well, if they're in the setback, then they're not conforming if they're.

AARON KEMP: And the reason I'm here is because the portion of the roof in which the skylights are being added to was previously granted a Variance from around this time last year which was -- I don't have the number.

TIMOTHY HUGHES: I have the case number.

AARON KEMP: 002449-2013.

And the skylights are not visible from the street or from the ground in any position at any angle. They are only visible from two abutters' houses and I met with both abutters and they have no problem with the skylights.

And I have a little poster showing where the skylights are as viewed from a third story of the rear neighbor's house and the second story of the side neighbor's house. They're balanced over the windows and fairly symmetrical in layout. And these are just -- this is showing how it's not in the setbacks and it just shows where the layout of the skylights is over the footprint line.

TIMOTHY HUGHES: Any questions from the Board?

(No Response.)

TIMOTHY HUGHES: I'm going to open it up to public testimony. Anybody want to be heard on this matter?

(No Response.)

TIMOTHY HUGHES: I don't see anyone. There aren't any letters of support, however, you represented that you've spoken to the

neighbors?

AARON KEMP: Yes.

TIMOTHY HUGHES: Obviously they let you in to get pictures. I'm going to go with everything's okay.

I have a little trouble with the wording here about, you know, this is a modification to a Variance. And the way that he's written his application is that the hardship standard is inapplicable on this and that we got to find a way to make a motion that includes a hardship standard, don't I?

SEAN O'GRADY: Well, I think what you can do is simply reference the earlier case.

TIMOTHY HUGHES: The hardship from the earlier case?

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: Do we have that

file here?

SEAN O'GRADY: I didn't bring it.

AARON KEMP: If you need a hardship, I can give you one.

TIMOTHY HUGHES: No, we'll apply the hardship standard from the earlier case if that's amenable to everybody.

All right, we're ready for a vote then?

The Chair would move that we grant a Variance to 245 Mount Auburn Street to modify the plans approved by BZA case 002449-2013 to include six conforming skylights.

A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise.

That standard and the hardship standard in the B part of this statement we're taking into consideration in the original case of which I cited, 002449, and that standard

still applies with regards to the modification in this case.

Desirable relief may be granted without either substantial detriment to the public good for the following reasons:

Since the skylights are on top of a roof. I don't see how they're going to --

AARON KEMP: They're not visible from the public way.

TIMOTHY HUGHES: Indeed. They're not visible from the public way.

Relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance for the following reason:

There are no changes to the dimensional standards. Again, not visible from the public way. Would only enhance the property itself, which can only be a help to the

community at large.

The Variance will be granted on the condition that the work proceed in accordance with the plans submitted -- identified only as 245 Mount Auburn Street with the address and consisting of one, two, three, four pages of floor plans and elevations and associated photographs or photo sims and initialled by the Chair and dated with today's date.

All those in favor of granting the Variance?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor. The Variance is granted.

(Hughes, Sullivan, Green, Myers, Anderson.)

AARON KEMP: Thank you very much.

* * * * *

(9:25 p.m.)

(Sitting Members Case #BZA-005001-2014:
Timothy Hughes, Brendan Sullivan, Janet
Green, Douglas Myers, Slater Anderson.)

TIMOTHY HUGHES: The Chair will call
case No. 005001, 265-273 First Street.

Gentlemen.

ATTORNEY JAMES RAFFERTY: Good
evening again, Mr. Chairman, Members of the
Board. For the record, James Rafferty
appearing this evening on behalf this evening
on behalf of the applicant Veolia Energy of
North America.

Seated to my right is Tom Herlihy,
H-e-r-l-i-h-y. And Mr. Herlihy is business
development manager with Veolia. And to
Mr. Herlihy's right is A.J. Jablonowski,

J-a-b-l-o-n-o-w-s-k-i.

Board Members may remember this location. It's the Kendall Power Station which has operated on this location on First Street for several generations. The power station was acquired in the past year by Veolia. It had been owned by GenOn and GenOn was acquired by NRG. Veolia may be known to some, but Veolia is largely engaged in the steam energy business. They recently constructed a new steam line over to Boston. They're one of the principal providers for steam in the medical area of Longwood and over at Mass. General Hospital and the like. So that has relevance because about a year ago the Board approved a Variance to allow for the installation of an air cooled condenser on the roof of this plan. It was something that was heralded as an environmental attribute

that would allow the plant to no longer rely upon river water and particularly discharging hot water back into the river. And this ACC is an air cooled equipment. So rather than putting the hot water back in, it was going to be cooled through this air handler on the roof.

Now that Veolia owns the plant, they've explored an alternative technology and Mr. Herlihy and our A.J. can give you all the details on that. But the difference is the wet cooling tower uses water rather than air to cool the hot water.

So we began meeting with the city of Cambridge in this matter back in the summertime. We've had a series of meetings with the energy department, with Community Development, with the Water Department, with DPW, and we essentially followed the same

path we did with the ACC which was to alert them to what we're proposing to change. The plant issue, as you may be aware, is subject to a significant amount of federal regulations, both from the EPA and an agency called the EFSB, the Energy --

TOM HERLIHY: Facilities.

ATTORNEY JAMES

RAFFERTY: -- Facilities Siting Board. And the EFSB has the ultimate say over changes like this. And so in this case what we're proposing the city is a participant or will be a participant in hearings at the EFSB over this, but in order for us to go back to the EFSB and propose this alternative, we wanted to get approval on the Zoning side.

And both in elevation and in profile this is very similar to the ACC. It will be located on the roof of the plant. We have

engaged with an environmental consultant that the city has selected to work with our environmental consultant, and there have been a series of tests performed and that is an ongoing process. And A.J. could give you some of the details of that, but suffice it to say that we, we are following the same protocol and we're here tonight to request that the prior Variance that, just as in the prior Variance, where the Board found that the environmental benefits were sufficient to support the Variance that the same findings to be made in this case, the plant, the use of the property for power generation is not a permitted use.

There was a Variance granted some years ago for a second facility to the CT building, so there are actually two buildings out there. This water cool tower will go in

nearly the identical location as the other equipment. And as I said, we're following the same regulatory steps and review steps with the city and we're just here tonight asking that the Variance be, it's not a modified Variance, it's a new Variance for a different piece of equipment which will achieve the same effect which will mean no reliance on river water or impact upon the river, but rather than a large heat emission from an air cool condenser, hot air coming out, there will be a condensed --

TOM HERLIHY: Yeah, condensed water vapor.

ATTORNEY JAMES RAFFERTY: Condensed water vapor. I should probably stop here on any technical things because I can see our consultant getting nervous, Mr. Herlihy.

We provided elevations and a photo

array that photoshops in this.

I did hear from the Commissioner about a week ago that there was an inquiry made about whether the city -- whether the Water Department felt they had capacity both in terms of the water infrastructure and enough capacity to provide the water this would demand. And Mr. Corda, Sam Corda of the Water Department and Mr. Herlihy had an exchange of e-mails and we've provided a copy of that e-mail, but suffice it to say that we're working in close collaboration with the Water Department and as well as the DPW. We had meetings with Mr. O'Riordan and his staff around the capacity of the sewer system to handle this as well. So the reason we're here at this moment is there is a narrowing window of opportunity to do this because there is an EPA order that requires the plant

to be out of the river by a certain date. Mr. Herlihy can tell us what that is. In order to do this they are currently -- the ACC work is underway and the production of the ACC equipment is actually underway. If the Variance were to be granted, Veolia would stop that process and shift to this wet cooling tower. But they're not able to stop it because if for some reason the Variance were not to be approved and they have a superseding federal requirement, and they would simply proceed with the air cool tower that was approved by the Board last year. I think, I think Veolia's view is that this is an improved method environmentally both in terms of carbon footprint, heat emission, and noise will all be improved and that we're in the process of modelling and providing test results from that modelling to the city and

their environmental consultant.

I mentioned in my conversations with the City Solicitor that we would offer for the Board's consideration a condition that any relief contained in the Variance to allow for this were the Board to make that finding would be conditioned on approval by the EFSB. The difference being the last time we were here, the EFSB approval was already in place. We simply didn't have the time to get the EFSB approval.

As a practical matter, if there is not EFSB approval for this, it will not go forward. So the condition is almost a belt and suspenders. The Variance would be needed to locate the equipment on the roof, but to allow for this change and method, the EFSB will have to approve that. The city is a participant in that process, as I said,

there's been for several months now an exchange of information between the Veolia's consultants and the city's environmental consultants.

Veolia has agreed to pay for the city's environmental consultant to perform this peer review. And we hope the Board would find, as it did in the prior case, that the environmental benefits presented by this support the finding for a Variance.

TIMOTHY HUGHES: Questions from Board members?

JANET GREEN: In the previous case one of the things that you presented, I believe, was that the advantage to moving from the previous system to the ACC system was that you would no longer be increasing the temperature of the Charles River by two degrees I think it was, two degrees or I don't

remember exactly, in the basin area there. And that that was a very important part of why this, that change was so important. I don't understand exactly what this -- how this is different? It's not going back into the Charles?

TOM HERLIHY: No. The water is not going back into the Charles. The difference is with the air cooled condenser we're replacing equipment. So the steam goes into a turbine and the exhaust from that turbine it's not solid. So we use steam to distribute steam.

ATTORNEY JAMES RAFFERTY: Can I make a suggestion for the benefit of the Board? Maybe can you describe for the Board how the cooling occurs now, how it was going to occur with the ACC, and how it would occur with the -- differently with the wet cool tower.

TOM HERLIHY: Okay. All right.

Right now we use what's called once-through system. We actually have pumps that take water from the Broad Canal, they pump the water through the condenser. What the condenser does is the cooling water goes through tubes, the steam from the turbine goes around the tubes, the hot -- the water that's pumped through that increases in temperature and it's discharged back into the Charles.

With the air cooled condenser we were going to change the equipment so that we had one turbine and it was going to have -- take steam in and discharges steam, you know, the exhaust steam. Some of it used to be distributed to the district heating system. And the rest goes to the air cool condenser which is like a radiator in a car. It has the

steam inside of it and it has large fans that blow air through it. And it turns it back into water and that water is recycled into the system. With the --

JANET GREEN: Into the system of --

TOM HERLIHY: Back into the boiler system.

ATTORNEY JAMES RAFFERTY: But to your point, Ms. Green, the ACC removed the river connection.

JANET GREEN: Exact -- it didn't go back into the river?

TOM HERLIHY: Right.

ATTORNEY JAMES RAFFERTY: Right. This will follow the same pattern. It will have the same river benefits and then some additional benefits.

Maybe you can go through that.

TOM HERLIHY: The wet coolant tower

system, it uses once-through cooling also, but instead of the circuit being from the river to the river, it's from the cooling tower to a cooling tower. So it uses the same condensers. We're going to have to rebuild the condensers because of pressure differences and things like that. But it's going to use the same machinery, the same condensers, but it's going to remove the circuit that takes water from the river and discharges it back into the river and replace it with cooling tower circuit. So it's going to send the water to the cooling tower and it takes the heat out and then it brings it back into the --

SEAN O'GRADY: May I ask a question?

DOUGLAS MYERS: Earlier

Mr. Rafferty said it would produce condensed water vapor.

TOM HERLIHY: Right.

DOUGLAS MYERS: Is that right?

TOM HERLIHY: Yes.

DOUGLAS MYERS: And what becomes of that condensed water vapor?

TOM HERLIHY: Vapor comes from a -- there's a -- water vapor that comes from the tower. Instead of using just air, blowing air through these tubes and putting heat out, it uses water and the water -- the water condenses and, you know, you see -- if you went over to MIT right now, you would see cooling towers and they have a plume from them.

DOUGLAS MYERS: The vapor's not being discharged into the atmosphere?

TOM HERLIHY: Yes, it is.

DOUGLAS MYERS: It is?

ATTORNEY JAMES RAFFERTY: Yes.

This would not be unique technology in Cambridge or elsewhere. It's just that because this use is not a conforming use, the determination was made -- under the once-through system involving the river the cooling was taking place within the building. It went through and it was discharged back into the river. When we spent a fair bit of time with Mr. Singanayagam in exploring the ACC because we made the case that we did not think we were enlarging or altering a non-conforming use, that we were simply using a different type of technology but the energy it put out would essentially remain the same. His conclusion was because we were taking a process that was occurring within the walls of the building and placing this ACC on the roof, that we were in fact expanding the non-conforming use of the power plant. So

with that direction we came to the Board, received the Variance for the ACC.

We now -- but that's, that decision which you may have -- you know, specifically tied to a set of plans and imagery and elevations around that equipment. This equipment is different. So that variance I think rightly, has been concluded, would not be applicable because the change of the equipment, even though it's roughly the same size and nearly the same location, but because it's a cooling tower, we once again sought the Variance. The issues around the plume or the vapor and all that, that is all being reviewed and provided to the city and their consultants by Mr. Jablonowski. And I don't know if you want to characterize but I think -- I'm sorry.

DOUGLAS MYERS: That's all right.

By all means, I don't want to derail your presentation because the presentation is important. But just in terms of basic issues you alluded to the decision of Mr. Singanayagam about the -- whether or not the ACC having been placed on the roof was an enlargement of the non-conforming use. And in terms of just a straightforward Zoning analysis it occurred to me from an entirely non-technical point of view in terms of any environmental evaluation, but just in terms of Zoning and the amount of equipment that was going to be on the roof, that this was going to represent -- the water cooling towers was going to represent -- again, just from using the visual supply in the file is going to represent a considerable increase in the amount of equipment on the roof, at least the space it occupies, the space and not in a

negative sense, I'm trying to use it neutrally, and the bulk of the area that's occupied on the roof, the number that would be a new row of look like cylindrical tanks of some kind on the roof, and I just wanted to follow along in terms of a Zoning analysis that this would all be an increase in the non-conforming use or not. What is your comment on that?

ATTORNEY JAMES RAFFERTY: Well, it is an increase and that's why we're here. I mean, so as the plant currently operates, the cooling occurring within the building. This is completely analogous to the ACC, whereby installing the equipment on the roof, the cooling would occur on the roof. So I don't think this is any different question from the Zoning perspective which the ACC did, which the function occurring on the building now

occurs on the roof. I don't think the profile is all that different. I'll let Mr. Herlihy speak to it. I don't know if you've seen the roof plans in the prior case. And this equipment, the cylindrical items are there, but the -- we were going to have -- I don't know how many condensers on the roof with the ACC. That's where the noise benefits are coming, because there was far more cooling fans associated with the ACC than are associated with this. But I don't want to misspeak on that. But that's the issue is that the -- once again a function occurring within the building would be occurring on the roof.

TIMOTHY HUGHES: I think Mr. Myers is referring to a photo sim here that --

TOM HERLIHY: Yes.

TIMOTHY HUGHES: -- is this a photo

simulation of what this building would look like with the ACC equipment installed?

TOM HERLIHY: Yes.

ATTORNEY JAMES RAFFERTY: Yes.

TIMOTHY HUGHES: And then --

DOUGLAS MYERS: It's a sheet that has a visual comparison and ACC to the left and WTC to the right.

ATTORNEY JAMES RAFFERTY: No, no, that's correct. That's the purpose of that.

TIMOTHY HUGHES: What's the building look like without the ACC, is there none of this?

DOUGLAS MYERS: This is another sheet existing main view.

TIMOTHY HUGHES: I see. I got it.

ATTORNEY JAMES RAFFERTY: This is the building today.

SLATER ANDERSON: The problem --

ATTORNEY JAMES RAFFERTY: This is a better picture of what's there today without either pieces of equipment on the roof. Right.

SLATER ANDERSON: The confusion with this is that it's not the same photo. They're taken from different angles. And you see the building behind it and so you're getting -- it's a little bit of a tricky comparison. I mean --

ATTORNEY JAMES RAFFERTY: And you can see, probably the existing conditions probably tell a better story. You can see the lower building in the front and the taller building in the back, this is going on the roof of the lower portion of the building.

JANET GREEN: Does this like drinking water? Is that the kind of water when you're getting it from Cambridge as to

taking it out of the drinking water system?

TOM HERLIHY: Yes, city water.

SLATER ANDERSON: But it was using river water.

TOM HERLIHY: There's a difference. There's a difference. Because one was non-consumptive use. And a circuit that took water from the river, sent the exact same amount of water back to the river. So there wasn't consumptive use.

JANET GREEN: It was just heat up but it was the same amount?

TOM HERLIHY: Right, exactly.

JANET GREEN: And then I had one other question and that was I wondered what the EFSB is actually looking at? They're not looking at this facility at all. They're looking at the technology to see if it fits?

TOM HERLIHY: Yeah. They look at

the technology. They look at, you know, what impact it has. You know, the noise. They do look at the heat rejection. They do look at the plume. That's why the plume studies. That's why we're working with the consultant that the city has chosen and, you know, we're compensating them for that. And I'll let A.J. speak to it, but he's, he's been in consultation with the other consultant, the other consultant to make sure that everything is, everything, you know, is as it should be. So we have to go through the EFSB, and obviously the city, if there were an issue, that they'd want to bring up but they'd bring it up there and have it addressed.

SLATER ANDERSON: So the wet cooling solution saves more carbon dioxide than the ACC; is that correct?

TOM HERLIHY: Yes. In fact, that's

one of the major environmental benefits.

ATTORNEY JAMES RAFFERTY: Probably the single most.

TOM HERLIHY: That's probably the reason that the Community Development and environmental people in Cambridge --

SLATER ANDERSON: Is it because it's a more efficient system, is it using more energy?

TOM HERLIHY: It's a cogeneration system. So when we talk about carbon benefits, we talk about the difference between making electricity and making heat separately.

ATTORNEY JAMES RAFFERTY: Now I keep interrupting. But it might be helpful to explain how Veolia being in the steam business and now owning the plant has a different view -- the steam on the electrical

side was basically a byproduct, correct?

But now you can -- because you're in the steam business, you can capture the steam and put it into your pipe.

TOM HERLIHY: Yeah, well when, when NRG -- I mean, I wasn't party to the conversations because I didn't work for the company. When NRG was looking for a solution, I'm sure they were looking of it of how it contributes to their primary business being electric generation. We have -- our primary business is really steam production. We provide thermal energy and we have customers in Boston and Cambridge and that, that is what we do. We also sell power now because of, you know, we own the station. But our primary reason for being there is to make steam. So when you look at carbon benefits and you look at co-generation,

co-generation basically takes the byproducts of electricity and uses that heat.

Unfortunately we don't have enough customers to use all the heat from that, from the system. We have to reject some of it. We're looking forward to the day when we don't have to reject any of it and we can sell it all.

JANET GREEN: I just had to buy steam. Too bad I don't live closer.

ATTORNEY JAMES RAFFERTY: But you have a network of steam tension and you just built a new steam pipe over to Boston, correct?

TOM HERLIHY: Yeah. And, you know, that is -- our EPA permit was set off by the, in other words, the start date of when we had to build the air cool condenser. Actually, when NRG had the building had to build the air cool condenser. That steam line, steam line

over the Longfellow Bridge, that was the original planned route for it. And frankly, we weren't able to wait. We weren't able to wait that long. We needed to have that steam line built. There was a lot of environmental benefits to that steam line. And we built it and it's taken a different route so that it could be built early. So that triggered the date that the administrative order would kick in. So, we're -- we are, we are at a bit of a disadvantage now. That puts us at a bit of a disadvantage that AO has to be, we have to be out of the river by the end of December. And if we use this air cooled condenser, we can make that. We can make that date and we will be out of the river by that date. But the change is going to -- before we can make that change, we have to continue on with the ACC. I don't know if that makes sense to you.

But we have to continue on with the project that's gonna meet the --

DOUGLAS MYERS: Deadline.

TOM HERLIHY: -- A0. The terms of the A0 conditions.

DOUGLAS MYERS: And then if you receive your approvals before December 31st --

TOM HERLIHY: No, we have to, we have to stop the project -- what's -- the problem that we're running into now is an economic one frankly. If we don't stop the air cool condenser, every day that work continues, it's making the wet cooling tower less likely.

ATTORNEY JAMES RAFFERTY: So that became a -- as we met with the city over this, the procedural steps from here would be to if we succeed in acquiring the Variance, we

would then move on to the EFSB process which the city is a participant in, get approval at the EFSB, and then the administrative order referred to by Mr. Herlihy is a process to seek an amendment and extend the period of time given the change in technology here. So that there are three steps here.

So the Variance would allow us to be able to go into the next phase of the process saying we now have this option. But as Mr. Herlihy noted, if we're not able to obtain the Variance, then Veolia isn't able to stop production on the ACC. And we came here to be able to say we have the Variance, Veolia can stop the production on the ACC, shift towards the cooling tower, and seek approval for that.

TIMOTHY HUGHES: More questions?

BRENDAN SULLIVAN: No.

DOUGLAS MYERS: Well, I mean, that satisfies me about why the BZ -- why our approval has to be given now rather than later. Rather than say, for example, at the end of the permitting process rather than at the present point.

ATTORNEY JAMES RAFFERTY: It's a legitimate question, and in fact to be candid, when we were here last time, we followed that approach. We had the EFSB approval and then we came here. This was the last stop along the way. We don't -- we've reversed that with -- the city understands that with the, as I said I represented to the Law Department today, that if the Board were willing to consider granting the Variance, we would suggest that the Variance be conditioned on approval by the energy facility siting board, this is what they

provided for the ACC.

DOUGLAS MYERS: Because our limitations in terms of appreciating the environmental benefits, which I really don't doubt what you're saying at all, nonetheless our limitations are so evident and I would hope that our approval here would carry no weight in terms of the environmental approvals which you're going through. That it's only a matter of your standing under Zoning Law in Cambridge that we're acting on today.

ATTORNEY JAMES RAFFERTY: Right.

DOUGLAS MYERS: I wouldn't want to see this decision bootstrapped as if someone is saying well, the Board of Zoning Appeals has approved this and therefore --

ATTORNEY JAMES RAFFERTY: That's a very good point. And at the risk of

diminishing your authority, it's quite accurate. The Zoning question is can an activity occurring within a building of a non-conforming use be transferred to the roof. It's the same legal question that was presented a year ago that was presented with the ACC. And you're right, though. So whether the Zoning -- so the Zoning Board determination at this point is okay, you have this use. We felt helpful that we have spent some months in discussions, and I would only say that if there were objections to this, I think the city has many ways of sending those objections to the Board. They are very mindful that we are here tonight. They have replied to an inquiry concerning water. We have an ongoing process with their consultant and our consultant, but I'm, I'm not authorized nor would I attempt to speak for

the city beyond saying that I represented to the Law Department today that we would request a condition related to EFSB approval.

DOUGLAS MYERS: Because, again, I'm sorry if I'm monopolizing the conversation at this point, but I mean in slight contradistinction to what Slater has said, you know, I mean I do -- I think there's going to be, I think there's going to be a lot more bulk and a lot more objects on the roof and prescinding from the environmental factors which is an enormous thing to do, I'm well aware of that, but in terms of the Zoning issues and considerations with which we customarily deal, there would be, I think, at least from my point of view, a robust debate about what's entailed by putting this much extra equipment, modifying what was approved before, the amount, the aesthetics, and how

it's going to appeal and all of that. But I, I mean I think that those considerations, even though they're valid Zoning considerations, I think they significantly diminish. They pale in comparison to the environmental impact. The possible environmental advantages and no doubt the exhaustive environmental approvals and process to which you're going to have to submit yourselves. So having said that, I won't ask any more questions.

ATTORNEY JAMES RAFFERTY: I would only offer some assurance that if you look at the prior EFSB order, screening requirements and the like around visual impacts are contained in that as well. So I would say that that to the extent that that concern needs to be mitigated, there will be ample opportunity to do so in this process.

DOUGLAS MYERS: Well, just to make me feel better about that, what sort of screening typically just in a general sense as the EFSB considered in this case with regard to the air cooled?

ATTORNEY JAMES RAFFERTY: Well, the screening was -- the screening for the ACC was designed as most rooftop mechanical equipment is to provide visual and acoustical benefits. It's ironic that when we appeared a month or two ago at the East Cambridge Planning Team, one of the more seasoned architects who is a regular there, suggested that the screening isn't necessary. That this should show its true industrial fashion. But we were quick to point out that the acoustical, aside from the subjective nature of one's aesthetic as to whether the screening --

DOUGLAS MYERS: Hopperesque beauty I understand.

ATTORNEY JAMES RAFFERTY: Yes. But the details of the screening addressed and I know Mr. Jablonowski could talk, too, about the acoustical requirements associated. The material for the screening, I don't know if that's been settled on yet?

A.J. JABLONOWSKI: No.

TOM HERLIHY: And it's also designed as a louver so the air can pass into the area because the wet cool towers do use air also.

ATTORNEY JAMES RAFFERTY: It is worth noting that this equipment exists on rooftops around the city, but when it's related to heating and cooling of a building, it's not subject to a Variance. But here it's not necessarily for the operation of the building, which is the standard by which

rooftop equipment is here. This has to do with the production activity within the building. So thus we found ourselves here. But this would not be all that uncommon from rooftop equipment. I know there are several of these water cooling devices, and I -- you noted MIT and other places, Mr. Jablonowski.

DOUGLAS MYERS: This is a very large building.

ATTORNEY JAMES RAFFERTY: True, true.

SLATER ANDERSON: Are there any other operating facilities like this in Cambridge?

TOM HERLIHY: Not in Cambridge, no.

SLATER ANDERSON: In Boston?

TOM HERLIHY: Yeah, in Boston the medical area Longwood Medical area.

ATTORNEY JAMES RAFFERTY: That's a

good point. There is a facility with the same -- with a wet cooling tower.

TOM HERLIHY: Yes.

ATTORNEY JAMES RAFFERTY: Is it on Longwood Avenue?

TOM HERLIHY: Yes.

ATTORNEY JAMES RAFFERTY: And it provides steam and it does the same function in a -- we've cited that example in our discussions with the city. That there are institutional, there are employees, there are residents not that far away. It has many of the characteristics of this location.

TIMOTHY HUGHES: Further questions?

SLATER ANDERSON: I just commend, I do think that to Doug's point, I think the photo sims are difficult to discern the actual visual change when you have different angles on these, this ACC versus the wet

tower. That your line of sight is significantly different between the two of them. And conveniently in favor of diminishing the size of this and that you're looking from a lower elevation in the wet tower one, whereas it's a higher elevation in the ACC model.

You see what I'm saying? The view, you can see the building in the background how much higher it is over here?

DOUGLAS MYERS: I would say that's obscure because the equipment is higher.

SLATER ANDERSON: Well, to a degree, yes. It's definitely a different view.

ATTORNEY JAMES RAFFERTY: There was no attempt to guild the lily.

DOUGLAS MYERS: I accept completely the bona fide --

SLATER ANDERSON: It's hard to

judge.

DOUGLAS MYERS: I accept completely the submission.

SLATER ANDERSON: It's harder to judge what the visual impact is.

TIMOTHY HUGHES: Questions?

JANET GREEN: I'm good.

TIMOTHY HUGHES: I'm going to open it up to public testimony.

BARBARA BROUSSARD: Unfortunately I'm the public. I'm sorry, Jim. Barbara Broussard, East Cambridge Planning Team. When Veolia came, they had absolutely no information. Everything was if Mr. Herlihy -- well, it should, it could. But there was nothing definite. What is going to be the impact with all of this extra equipment on the roof for the site of the people living across the street? Is it going

to be encased? How long is it going to take before you're dumping all the hot water into the river which hasn't frozen in almost 20 years because of the use of that river. I really -- is it really gonna work? Some of the questions, they're all here and I can recite them because there are very few. And we didn't get any follow-up information that we were promised, and that is the reason I had to come out at night.

How much noise? You didn't know.

There would be a plume. You didn't know how great it would be.

Um, yes, it would be more expensive to build. Who would get the profit?

That you're using city water. Do we actually have enough?

Are you going to help clean-up the Broad Canal because it is filthy?

The other one is people were actually concerned about the noise, and you said it was only going to be operational during the day. Well, we want to know what is the effect of that noise? You didn't come back with any of the answers that you promised and that was why I have to come out and tell you that the neighborhood will not support you unless they have the data and they will have someone who is technically capable to review it. I'm sorry.

Well, I think we basically just talked about that. I mean, the EFSB is going to come up with the data and we don't have that available to us even now.

TOM HERLIHY: Some of the data is not available. And one of the things that we're doing and we're doing in conjunction with the city is that we are running tests. We're

doing the testing that, you know, Barbara alluded to. And, you know, we're working with the -- our consultants and working with their consultants to determine exactly what the plume's going to look like. The noise effects. The heat effects.

ATTORNEY JAMES RAFFERTY: Maybe A.J. can speak to what has been done. Because part of the effort has been agreeing to a model and then establishing what acceptable standards will be, and all of this is going to be submitted as part of the EFSB.

A.J. JABLONOWSKI: Yes. The energy board, which I have testified in front of before, has broad jurisdiction to address environmental impacts both that are regulated and general impacts such as (inaudible) impacts. So, for example, as part of a package that would go to them, I

fully expect we will need to have a before and after visual analysis from the same camera angle, with the same location so that that is part of their record which they are, they typically review for energy facilities, transmission lines, power plants, across the Commonwealth.

ATTORNEY JAMES RAFFERTY: Can you just talk briefly about the work you're doing with the consultant and those particular models?

A.J. JABLONOWSKI: The consultants so far we have been working on the fogging in that same model, the plume visibility model, the air quality dispersion model, and the calculations of air estimates, calculations of water use, wastewater generation, and discussions of the circulating water chemistry associated with keeping that water

clean as it circulates through the cooling tower. That will continue and continue to address noise associated with the project. And other things as may come up through the EFSB process. Because the EFSB does get to issue information requests and record requests through their review process.

SLATER ANDERSON: And does the EFSB hold public hearings?

A.J. JABLONOWSKI: Yes. It is an adjudatory process that Cambridge will participate in and that does include a hearing process.

SLATER ANDERSON: And what is the nature of the notice? Is it a public -- when I say hearing, it's a public hearing process. Citizens and things like that.

A.J. JABLONOWSKI: This is a notice of product change which I have not been

directly involved with that type of process at the EFSB. For a new generation facility there are open, there are open hearings associated with it. I can't speak right now to whether or not that same process is followed for a notice of project change.

ATTORNEY JAMES RAFFERTY: We can certainly represent that we'd be happy -- the city will be at every part of those proceedings. We'd be happy to share with Ms. Broussard and the neighborhood association when those hearings would come, we'd be happy to return and update them as we proceed through that process. I think frankly, the city would have the expectation that we continue to keep them engaged at that level.

SLATER ANDERSON: That would make me more comfortable. And I think, I think a lot

of concerns, there are environmental benefits on the CO2 reduction, but I think a lot of these real near term potential effects on people's lives are important and I don't want to gloss over that with our approval. As Doug pointed out earlier, that oh, well, the Zoning Board was in favor of this. We're looking at this in the context of a new Variance, but a --

BRENDAN SULLIVAN: I think we're just another step along the way and that there is a much larger step beyond us and that they will delve into all of the particulars and all of the nuances that we're thinking about that we don't have the answers to, but they will, they will get the answers to. I think what we're being asked here is to approve a facility to allow for this new technology to occur. All of the ramifications of that, we

don't have the answers to now and we're not going to get them now because they're evolving and yet the final stop along the way will get that. And I think they will be the final arbiter and probably have far more expertise than we to deem this project suitable or not.

JANET GREEN: How would something like the noise vary and where would that come into play?

ATTORNEY JAMES RAFFERTY: We would suggest that we will follow the -- we had, we had protocols around noise, heat emission for the ACC. And the model that we're following is we're going to incorporate as many of those that are applicable in this. So that's what makes this -- much of this work got covered in the ACC process at the --

SLATER ANDERSON: With the EFSB.

ATTORNEY JAMES RAFFERTY: With the EFSB. And so we have an impact report on noise. A monitoring requirement on noise all associated with the ACC. And we have indicated obviously that we would expect the same, the same methodology, the same reporting and monitoring requirements that are already contained in the EFSB order for the ACC.

SLATER ANDERSON: And that's a public document?

ATTORNEY JAMES RAFFERTY: That's a public document, yes. And it's, it contains a -- and we could, we could submit it, but there are --

DOUGLAS MYERS: But I take it, Mr. Rafferty, in many cases you see the advantage with communication with community organizations and the neighbors and

community neighborhood organizations, and I assume if there were, if community organizations felt there was an exigent need to obtain information and contacted you, you would respond to their inquiries?

ATTORNEY JAMES RAFFERTY: Without hesitation, Mr. Myers. And Veolia as --

DOUGLAS MYERS: You and Veolia?

ATTORNEY JAMES RAFFERTY: Yes. And I would say Veolia and Mr. Herlihy has known the leadership at ECPT and he's had a long association with the plant and he's going to share everything.

DOUGLAS MYERS: You would not just saying to them well, go to the public hearing? You would try to satisfy --

TOM HERLIHY: No.

DOUGLAS MYERS: -- their reasonable requests from a valid, well-established

community organization --

ATTORNEY JAMES RAFFERTY: No, no. I don't think, I don't think -- I look for opportunities to engage with Ms. Broussard and the members of the East Cambridge Planning Team. So we would be happy -- and we will -- and it's a good point. It's not simply oh, by the way, there's a hearing if you want to know that. We could represent that before there was any hearing, we could return and make a presentation and we could answer questions. And so, I'm -- I would only say that we -- we have been as transparent as possible and will continue to be so in sharing all of this information obviously as required with the city and with the neighborhood association as well.

TIMOTHY HUGHES: Anything further?

DOUGLAS MYERS: Well, just since the

hour is late and I've been the noisiest one here, I would want to say that I do think that there are valid Zoning considerations for this Board to consider, including some that might be in the nature of objections, but I feel that it would be -- they're not of such moment and this is not at the ordinary Zoning case, and they're not of such weight that I speak for myself that I would be inclined to impose this. That they're not of such weight that I would be inclined to oppose the application. It seems to me it would be prejudicial on my part to vote against this application for a Variance because it would have an in effect that could substantially derail the process that could be of extreme value to the public. So I'm in favor, I would prepare to vote in favor of the Variance.

TIMOTHY HUGHES: I'd like to read

into the record this correspondence that Jim alluded to from the Water Department.

Actually just mentioned it outright. It wasn't an allusion. To Mr. Herlihy.

(Reading) It says that, Tom, there is sufficient capacity within the water -- Cambridge water system to provide the quantity of water you have requested which is up to -- I'm reading this at 1.74 million gallons a day as defined in the BOE letter from Nancy Glowa, City Solicitor, dated December 23, 2014. As a note of importance, if for some reason the local distribution system is limiting the flow, it would be on Veolia to correct the problem. Correct is in quotes for some reason. As it specifically relates to the increased flow needed.

My question is what's the backup plan

if the city can't provide you with enough water?

TOM HERLIHY: We have a -- we have a permit to take 860,000 gallons out of the river. We don't plan on doing that. But, you know, that would be -- that would be an option. But the city does tell us that they can, you know, we did talk to them obviously before we decided to do this and whether they could --

ATTORNEY JAMES RAFFERTY: I think the reference to the "correct" is if the -- if there is not adequate water service, if there needs to be an upgrade to the water line, that the Water Department would expect or require Veolia, which they do in nearly every project, if the capacity or the infrastructure is inadequate --

TIMOTHY HUGHES: It goes on to say:

Also, the water service and facility are the owner's responsibility. So I think there's two different things being said here.

ATTORNEY JAMES RAFFERTY: Okay.

TIMOTHY HUGHES: I didn't finish reading it.

Anyway, so are we ready for a vote?

The Chair would move that a Variance be granted to Veolia Energy North America to install a wet cooling tower on the roof of the existing structure rather than an air cooler condenser approved in BZA case 10315.

A literal enforcement of the provisions of the Ordinance would involve -- would prevent the petitioner from installing a wet cooling tower at this existing power generation facility.

The petitioner has already obtained relief to install an air cooler condenser at

the site to comply with the terms with the national pollutant discharge illumination system permit and associated administrative orders issued by the United States Environmental Protection Agency. And that's through the Department of Environmental Protection.

The petitioner would like to install the wet cooling tower instead for the already -- instead of the already approved ACC as it will allow for additional power generation by limiting CO2 emissions beyond those proposed by the ACC.

The hardship's owing to the following circumstances:

The hardship is unique to this use and directly related to the location of the power plant along the Charles River. Moreover, the wet coolant tower is not able to be

installed inside the existing structure.

Relief may be granted without substantial detriment to the public good for the following reasons:

On the contrary the public would benefit from the installation of a wet cooling tower since it would result in a significant reduction in the amount of CO₂ discharged when compared to the proposed ACC.

And relief may be granted without nullifying or substantially derogating from the intent of this Ordinance for the following reasons:

The granting of this Variance will not derogate from the purpose of the Ordinance with the expansion of the this non-conforming use simply represent the change in the manner by which the steam generated by the power plant is cooled and will not result in an

increase of power generation activity.

The Variance would be granted on the condition that Veolia receives the necessary energy facility siting board approvals and -- is that enough?

ATTORNEY JAMES RAFFERTY: That's the right term, yes.

TIMOTHY HUGHES: And I don't think there's anything else. I don't have plans that I can tie this to.

ATTORNEY JAMES RAFFERTY: There are plans.

TIMOTHY HUGHES: They're so tangential and kind of sketchy that it's hardly even worth mentioning it.

ATTORNEY JAMES RAFFERTY: Okay.

TIMOTHY HUGHES: The facility is approved.

DOUGLAS MYERS: They may be modified

I expect?

TIMOTHY HUGHES: I mean, you know, you can't --

BRENDAN SULLIVAN: The photo simulations or the artist renderings of the proposed facility.

TIMOTHY HUGHES: All right. And in addition that the facility be constructed in accordance with the plans submitted by Vandenvale Power Group (phonetic).

ATTORNEY JAMES RAFFERTY: Might this be a case to warrant the term approximate conformance which --

TIMOTHY HUGHES: I would say substantial conformity but the Legal Department doesn't like that.

ATTORNEY JAMES RAFFERTY: Only because it's a piece of equipment and something could happen in the EFSB --

TIMOTHY HUGHES: These plans are very sketchy at best. There's no dimensions on it. It's just a drawing. I can hardly call them plans. That's why I was going to avoid tieing them to anything in this packet at all to tell you the truth.

ATTORNEY JAMES RAFFERTY: Well, I think that's probably wise if you're comfortable with that.

TIMOTHY HUGHES: I'm comfortable with it, but are you going to get four votes?

ATTORNEY JAMES RAFFERTY: You okay with that?

SEAN O'GRADY: Oh, yes.

ATTORNEY JAMES RAFFERTY: This is something that would typically, what do you call it when you say they would bring in an engineer, right? It's not so much a building inspector that reviews these.

BRENDAN SULLIVAN: Design/build?

ATTORNEY JAMES RAFFERTY: What's the term?

SEAN O'GRADY: Oh, yes. Controlled construction.

ATTORNEY JAMES RAFFERTY: Controlled construction. That was the thing. When we were doing the ACC --

DOUGLAS MYERS: You're not in a position to go out and build based on the plans that are before us tonight?

TIMOTHY HUGHES: I don't have anything here that they can use to build this facility.

ATTORNEY JAMES RAFFERTY: Right. This is going to be built by a mechanical contractor and simply installed on the roof.

SEAN O'GRADY: You can make it by the plan by the other Board.

TIMOTHY HUGHES: Yes, okay. What he said.

All those in favor of granting the Variance.

(Show of hands.)

TIMOTHY HUGHES: It's five in favor.

(Hughes, Sullivan, Green, Myers, Anderson.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

(Whereupon, at 10:20 p.m., the Board of Zoning Appeal Adjourned.)

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