

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MAY 26, 2016

7:00 p.m.

in

Citywide Senior Center
806 Massachusetts Avenue, First Floor
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green, Member

Jim Monteverde, Associate Member

Alison Hammer, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And at the outset we'll start with our continued cases as we always do, though we have another item of business. But at the outset let me advise that after notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the Chair will inform other attendees at that meeting that a recording is being made. And I wish to inform those of you in the audience that a recording is being made. A citizen has made -- and it's sitting right there, is recording this meeting. And in

addition, our stenographer also makes a transcription to assist herself when she types up the final transcript to fill in the blanks of things she didn't pick up during the typing.

So, you're all forewarned and now we'll turn to the business of the meeting.

* * * * *

(7:05 p.m.)

(Sitting Members "General Business": Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The first item of business involves minutes of an Executive Committee -- Executive Session that we held on May 28, 2015. Previously there was a complaint filed with the Attorney General's office charging an Open Meeting Law violations in a number of respects with regard to our Board including the minutes of that -- the then minutes of that meeting. The Attorney

General agreed at least with regard to the minutes. And so with the benefit of the Legal Department, a new form of minutes has been prepared. They were distributed to members of the Board. If there's no discussion, I will make a motion to approve these minutes that you've all received.

(No Response.)

CONSTANTINE ALEXANDER: The Chair moves that the revised minutes of the May 28, 2015, Executive Session previously distributed to board members be approved.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. New minutes approved.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(7:05 p.m.)

(Sitting Members Case BZA-009647-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: Turning now to the actual cases. The Chair will call case No. 009647, 23 Griswold Street.

Is there anyone here wishing to be heard on this matter?

PAMELA SCHAEFER: Yes.

CONSTANTINE ALEXANDER: I have to say one thing at the outset. We continued this case because you didn't submit appropriate plans the last time, the first time. The plans you submitted are marginal at best. You don't, you're not meeting our standards. Now given the modest relief that's being sought, I think, at least in my opinion, other members of the Board may feel otherwise, I think we can proceed based on those plans. But, sir, if you come back before us again, don't give us plans like we've seen here tonight because we're not going to see hear the case.

ETHAN CORLISS: Okay. I'm sorry I hired someone that I thought would be appropriate. I'm sorry.

CONSTANTINE ALEXANDER: He gave us one page of elevations and that's all he did. And in the old plans were just drawings, they were not plans.

ETHAN CORLISS: The old plans I drew myself.

CONSTANTINE ALEXANDER: Anyway, I don't mean to be a scold, but I do think you do need to know that we expect more from petitions like that.

ETHAN CORLISS: Okay, yeah. I asked a builder who you recommended and necessarily I didn't know.

BRENDAN SULLIVAN: Part of the checklist was a certified plot plan showing the existing and the proposed and showing all the dimensions which have to go into that whole sheet in order to fill it out and were absent of that. The plan that was submitted in an engineer's site plan. But anyhow.

ETHAN CORLISS: I talked to, is it Ranjit? Is

that his name?

CONSTANTINE ALEXANDER: Ranjit.

ETHAN CORLISS: And I asked about the plot plan, and he indicated I could get the one that was originally used to do the house and I went with what he told me, and that's my error.

PAMELA SCHAEFER: I also believe when we were here the last time --

ETHAN CORLISS: That was our interpretation.

PAMELA SCHAEFER: Yeah, I believe we were told we could get the previous plot plan. So I apologize if we misunderstood but that was our understanding when we were here the last time that you did need the plot plan but the one from when the house was built --

CONSTANTINE ALEXANDER: In the future check with Mr. O'Grady who works with these day in and day out with the plans. At the end of the day, the purpose of these plans is if we approve something, we tie it to plans. And

then -- and assume we approve. When you go to pull your Building Permit, Mr. O'Grady will then compare those plans with what you've done to see whether you've complied with the terms of our -- the relief we granted. So if the plans were inadequate, he can't do that. And that's the reason why we have -- we need, you know, more specific plans than you've given us.

BRENDAN SULLIVAN: I mean, these are very legal documents. They get filed with the property so they are as much a part of the property as is the deed and the description of the property and I would have had hesitation with it, but my question directed to Mr. O'Grady is can you work with these? And the answer was yes.

CONSTANTINE ALEXANDER: Yes, I asked him the very same question and I got the very same answer.

BRENDAN SULLIVAN: And so the onus is unfortunately on the Building Department to make sense of it. But anyhow.

ETHAN CORLISS: I appreciate that. Thank you.

PAMELA SCHAEFER: Yes.

CONSTANTINE ALEXANDER: Anyway, now that we've scolded, you let's go to the case.

PAMELA SCHAEFER: Sorry. We really didn't understand that it was insufficient until you just told us. So we apologize.

CONSTANTINE ALEXANDER: Well, hopefully you'll never be back before us again, so you won't have to worry about it. This gentleman might have to. Why don't you go through the relief you're seeking.

THE STENOGRAPHER: Before we do that, can you just give me your name again?

ETHAN CORLISS: Ethan Corliss, C-O-R-L-I-S-S, looking to expend the I forget which direction, the living room all four feet, one-story high.

CONSTANTINE ALEXANDER: And why do you need relief?

ETHAN CORLISS: Because the other side is zero clearance, so the sum clearance --

CONSTANTINE ALEXANDER: You have a setback issue?

ETHAN CORLISS: Right, the setback issue on the other side.

CONSTANTINE ALEXANDER: And the four feet of living room is going to invade a setback?

ETHAN CORLISS: Yeah, it doesn't encroach on that side --

CONSTANTINE ALEXANDER: No.

ETHAN CORLISS: -- but the house is non-conforming to begin with, that's the problem. So anything would have to be approved.

CONSTANTINE ALEXANDER: Okay. While Jim's looking at it, does anybody have any questions at this point?

(No Response.)

CONSTANTINE ALEXANDER: I don't. I will open the matter up to public testimony.

Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt -- we have a petition from a number of your neighbors who support the relief.

PAMELA SCHAEFER: All of them that surround the house have signed that.

CONSTANTINE ALEXANDER: And the relief is modest in nature. I'm going to close public testimony by the way.

I mentioned that we do have and I put into the record, now that I have the file back I'll be a little more specific.

We have the petition. It says: The below signatures are in agreement and support that Pamela Schaefer of 23 Griswold should receive a Variance to build an addition on her home at 23 Griswold Street, Cambridge, Massachusetts. And it's signed by one, two, three, four,

five, six, seven individuals all of whom who apparently reside on Griswold Street; 19, 24, 22, 17, 25, and 22. And that's it.

Discussion or we ready for a vote? Go ahead?

BRENDAN SULLIVAN: Yeah.

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: All those in favor of granting the relief please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Oh, no, wait a minute, wait a minute. It's all wrong. I'm thinking of the minutes for the redacted -- for the Executive Session.

Okay, the Chair moves that we make the following findings with regard to the relief being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. The hardship being is that the petitioner needs additional living space and this will provide that

additional living space.

That the hardship is owing to the fact that this is already a non-conforming structure so that any modifications to the exterior of the structure requires zoning relief.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the Ordinance.

In this regard the Chair would note that the relief being sought is very modest in nature and it has unanimous -- apparently unanimous neighborhood support.

So, on the basis of these findings, the Chair moves we grant the Variance requested on the condition that the work proceed in accordance with plans submitted by the petitioner and which have been initialled by the Chair. And they're part of our file.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

PAMELA SCHAEFER: Thank you very much, we appreciate it.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

CONSTANTINE ALEXANDER: Good luck.

* * * * *

(7:15 p.m.)

(Sitting Members Case BZA-009695-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: Okay, the Chair will now call case No. 009695, 1 Brattle Square.

Is there anyone here wishing to be heard on this matter?

ATTORNEY DANIEL GLISSMAN: Yes. I'd like to quickly hand out some photo sims?

CONSTANTINE ALEXANDER: Are these the same in our files?

ATTORNEY DANIEL GLISSMAN: You may. If you like an extra copy, I have some.

CONSTANTINE ALEXANDER: I'll take an extra copy, sure.

ATTORNEY DANIEL GLISSMAN: Good evening, members of the Board. Daniel Glissman, attorney with Prince, Lobel, Tye, here on behalf of T-Mobile with respect to an application to swap out antennas at 1 Brattle Square.

We're seeking relief under Section 6409 of the Middle Class Tax Relief Act and we have, this is a continued matter. As you're all aware previously, we were missing Harvard Square Advisory Commission approval which we have since gotten. If you need copies of that, I brought that as well.

Otherwise we've also received approval from the Planning Board and the Cambridge Historical.

CONSTANTINE ALEXANDER: The Planning Board -- I'm just looking at it for the first time right now, they did

with conditions. Would your photo sims and your plans reflect these conditions?

ATTORNEY DANIEL GLISSMAN: Yes. It's my understanding that the conditions were met with the photo simulations.

CONSTANTINE ALEXANDER: And plans? So that if we approve the photo simulations, to be clear, we will be approving plans that the Planning Board wants us to approve?

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: Got it.

ATTORNEY DANIEL GLISSMAN: This is the same application, same photo simulations and plans that I presented for the Planning Board and they do conform to the comments.

CONSTANTINE ALEXANDER: Okay.

Why don't you, since it is a Spectrum Act case, why don't you go through the various things you have to tick off for your benefit.

ATTORNEY DANIEL GLISSMAN: Sure, no problem.

So the first prong of the Section 6409 Spectrum Act requires that they don't increase the height by ten feet or greater than ten percent. This is a replacement of an existing antenna. It will not be extending the height at all so we meet that prong.

The second prong is that we don't extend or protrude from the surface of the building by more than six feet. These antennas will not exceed the six-foot limitation. They're facade-mounted on the penthouse. As you can see in the photo sims here, which is actually stepped back a number of times from the facade of the building.

CONSTANTINE ALEXANDER: And to my very untuned eye, I looked at the photo sims and it seems to me what you're planning to -- the new stuff is going to be identical in appearance to the old stuff in terms of the impact on the landscape of Cambridge, am I right?

ATTORNEY DANIEL GLISSMAN: It's quite similar.

They -- the impact will be de minimus, they're similar size, and they would also be painted to match.

CONSTANTINE ALEXANDER: You say de minimus. Just how is it different from what's now? How will it be different?

ATTORNEY DANIEL GLISSMAN: Well, it's a new antenna.

CONSTANTINE ALEXANDER: Right.

ATTORNEY DANIEL GLISSMAN: So there will be new cabling and new wiring to install. But as far as the looks --

CONSTANTINE ALEXANDER: But the cabling and wiring will be in the exact same location as the old one? It looked like that from the photo simulations but maybe I'm wrong.

ATTORNEY DANIEL GLISSMAN: Well, there'll be necessary, they'll be placed as necessary. Like, I can't

comment on whether they'll be in the exact location, however, they'll be as tightly wound and as properly placed as possible.

CONSTANTINE ALEXANDER: Okay.

Keep going, I'm sorry.

ATTORNEY DANIEL GLISSMAN: That's all right.

The third prong is that we will not be adding or installing more than four additional equipment cabinets, which will not be installing any additional equipment cabinets at this installation.

The fifth -- excuse me, the fourth prong is that there's no excavation required for this site. This is a roof-mounted installation. There will be no excavation.

The fifth prong is that it will not defeat any existing concealed or stealth design. We submit that this application does not defeat the existing stealth requirements as we'll be painting it to match and properly concealing the wiring and antennas as possible.

And finally, that we'll comply with all the previous conditions of the approval. Again, we submit that this application has a de minimus impact and will comply based on the stealth requirements.

CONSTANTINE ALEXANDER: Okay.

Question came to my mind and went right out.

JIM MONTEVERDE: Can I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

JIM MONTEVERDE: The photo simulations are remarkable. The new equipment is -- I mean, I wear bifocals but those things absolutely are like dead nuts identical to the other photo.

CONSTANTINE ALEXANDER: That's exactly what I mentioned.

JIM MONTEVERDE: Is it really a different piece of equipment so help you God?

ATTORNEY DANIEL GLISSMAN: Yes.

JIM MONTEVERDE: The wiring, everything else, the

photos, the attachment, like, identical.

ATTORNEY DANIEL GLISSMAN: It's a new antenna. It's the L700 antenna. It's part of T-Mobile's upgrade. It's my understanding that the RF engineers and the architects have assemble the proper --

CONSTANTINE ALEXANDER: The visual impacts both, bottom line, we approved the old stuff and we could live with the visual impact then, and what the new stuff is going to be visually identical to what was there before.

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: That's basically your case.

ATTORNEY DANIEL GLISSMAN: Exactly.

CONSTANTINE ALEXANDER: By the way, just for the record, T-Mobile is a licensed FCC carrier in good standing?

ATTORNEY DANIEL GLISSMAN: Correct. There's a copy of the FCC license attached to our initial application.

CONSTANTINE ALEXANDER: Right. I want it as part

of the transcript, the oral, and you've confirmed that.

Thank you.

ATTORNEY DANIEL GLISSMAN: Of course.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Dan, if you could look at photo location 1 where it says "proposed," and I think I would have to agree that you would swap out proposed and existing and it would be absolutely no difference. But anyhow, photo location 1, proposed. Planning Board recommendations is that they should be mounted as close to the surface of the structure as possible and 12 inches below the parapet line so that they do not appear to break the roof line.

That proposed is not 12 inches below the parapet line, but also the one to the left of that, is that not T-Mobile?

ATTORNEY DANIEL GLISSMAN: Let me confirm on the plans. I believe it is T-Mobile.

BRENDAN SULLIVAN: This one here?

ATTORNEY DANIEL GLISSMAN: I believe so. Let me just confirm.

BRENDAN SULLIVAN: And you're not changing that?

ATTORNEY DANIEL GLISSMAN: No. There was previously six antennas and we're adding an additional -- well, excuse me, we're replacing three of those six antennas. If I may just confirm.

JIM MONTEVERDE: I would submit, your Honor, there's a very delicate thin line right there. I'll bet you dollars to doughnuts it's exactly that height. See that edge? There's an edge right there. That piece of cable coming over the roof?

BRENDAN SULLIVAN: Yeah.

JIM MONTEVERDE: See that line and that line are coplanar. Same as this one. That edge is exactly down from there.

ATTORNEY DANIEL GLISSMAN: I do believe that that's a T-Mobile antenna.

JIM MONTEVERDE: I wouldn't swear it's a foot, but it's definitely -- there's a dimensional difference.

BRENDAN SULLIVAN: It is funny how they -- well, okay.

JIM MONTEVERDE: Right.

BRENDAN SULLIVAN: I mean....

CONSTANTINE ALEXANDER: Any other comments? I mean....

JANET GREEN: I have a question. I have a question.

CONSTANTINE ALEXANDER: Go ahead.

JANET GREEN: I know this is what you say that this we'll do the wires to the extent possible. And it seems to me before we've gotten, you know, better pictures of how that wire's going to be, not that it's just up in the air and you'll do the best you can. I don't know if there's anything about that. I mean before what we've talked about is the way that the wires are going to be concealed, because

if you put the antenna and it doesn't stick out up over, but you've got wires that stick out up over, it kind of defeats the purpose.

ATTORNEY DANIEL GLISSMAN: Well, the equipment cabinets are located in the -- so the equipment room is actually in the base of the building, so the wiring does go into, up and over onto the roof of the penthouse and then down through.

JANET GREEN: Yeah.

It seems to me that one of the -- and let me just see if this is the one --

ATTORNEY DANIEL GLISSMAN: Additionally the antennas are at a 90-foot elevation height. So it would be a very minimal impact so should the wiring go over the top.

JANET GREEN: I guess I was looking at the existing -- the existing photo location No. 3. So that's the existing. And that's what you're saying will be the same? I guess your language is sort of "we'll do the best

we can." And before what we've had is more specific indications of what will be done.

ATTORNEY DANIEL GLISSMAN: Well, the wiring will still be going above the antenna and over, but I can ensure -- I can confirm with T-Mobile that they'll be tightening up the wiring to the best of their ability. But it will still go up and over. And especially with the gap that's created based on the Planning Board recommendation, there will probably be some visibility to the antenna.

BRENDAN SULLIVAN: Well, again, the looping effect, it looks like a backwards question mark. Maybe we can eliminate that and just bring it up and over. I don't care what you do on the other side of the parapet, but that wiring should not be so obvious. And I think we can be -- it can be not so obvious. And I would incorporate the Planning Board's obviously comments.

CONSTANTINE ALEXANDER: Any other questions?

JIM MONTEVERDE: No.

JANET GREEN: No.

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony.

Is there anyone here wishing to be heard in on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

As we have mentioned, there is a letter from the Planning Board which I will read into the record. And we also have a letter from the Harvard Square Advisory Committee, too, or a memo.

From the Planning Board: (Reading) The Planning Board staff reviewed the proposed installation and has the following suggestions if the Board of Zoning Appeal approves this Special Permit: The antennas should be mounted as close to the surface of the structure as possible and 12 inches below the parapet line so that they do not appear to break the roof line. This should minimize some of the

visual impact of the proposal. Staff also suggests that the associated cabling for the installation, which is quite unsightly, be put onto a surface-mounting raceway to remove the haphazard appearance.

And then the Harvard Square Advisory Committee, the memo we have states that due to a low turnout for their meeting, the advisory committee opted to submit comments to the staff for the Board of Zoning Appeal use. And their comments are: Members of the advisory committee expressed no objections to the proposed antenna replacement. The committee did suggest that the antenna be finished to match the facade and that all associated wiring be installed to be as close to the building as possible. All antennas should be of uniform height, width, and depth, equally spaced to prevent a scattered appearance of the installation. All antennas should be installed low enough to not interrupt the roof line of the facade.

So to a large extent it's similar comments that we

got from the Planning Board. So the City has spoken on this.

That's it. I'm going to close public testimony. Anybody want to discuss this or we should go to a vote?

JIM MONTEVERDE: Ready for a vote.

CONSTANTINE ALEXANDER: Ready for a vote.

Okay, the Chair moves that we make the following findings with regard to the relief being sought:

That the requirements of the Ordinance cannot be met without the Special Permit being sought.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted in the Zoning Ordinance will not be adversely affected by what is being proposed.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the

occupant of the proposed use or the citizens of the City.

And that what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate the intent and purpose of this Ordinance.

Further, the Board also finds that the modification of its existing telecommunication facility at the site proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meeting of Section 6409(a) of The Middle Class Tax Relief and Job Creation Act of 2012 also known as The Spectrum Act.

Based upon these findings, the Chair moves that this petitioner be granted the Special Permit it is seeking subject to the following conditions:

One, the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair.

Two, that upon completion of the work, the first appearance and visual impact of the proposed work will be

consistent with the photo simulations submitted by the petitioner and initialled by the Chair.

Three, that the petitioner shall at all times maintain the proposed work so that its physical appearance and visual impact will remain consistent with the photo simulations previously referred to.

Four, that should the petitioner cease to utilize the equipment approved tonight for a continuous period of six months or more, it shall promptly thereafter remove such equipment and reinstate the building on which it is located to its prior condition and appearance to the extent reasonably practicable.

Five, that the petitioner is in compliance with and will continue to comply with in all respects the conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And six, in proceeding with the work that the

petitioner comply with the comments and suggestions made by both the Planning Board and the Harvard Square Advisory Committee. So what is in here must be, and to the extent the plans are not consistent with it, this controls, what the Planning Board has said and with the Harvard Square Advisory Committee has said.

Finally, inasmuch as the health effects of the transmission of electromagnetic energy waves as a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report

with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

B, that in the event that at any time federal authorities notify the petitioner that its equipment on the site, including to, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner, within ten business days of receipt of such notification of such failure, shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure.

The Special Permit granted tonight shall ipso facto terminate if any of the petitioners federal licenses is or are suspended, revoked, or terminated.

C, that to the extent that the Special Permit is terminated pursuant to the foregoing paragraphs A and B, the

petitioner may apply to the Board for new Special Permit provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A or B above.

Any such new application shall not be deemed a repetitive petition, and therefore will not subject to the two-year period during which repetitive petitions may not be filed.

D, that within ten business days after receipt of a Building Permit for the installation of the equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with regard to a geographical area that includes Cambridge stating that:

A, he or she has such responsibilities;

And, B, that the equipment being installed

pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections, such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radio frequency radiation under federal law.

All those in favor of granting the Special Permit subject to these conditions, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

BRENDAN SULLIVAN: Dan, just as a little aside. I don't have a very warm comfy feeling that the comments, the conditions, and everything else sort of filter over to T-Mobile --

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: -- and the guy who is actually

going to install these things. So I would really try to reiterate that you advise your client that there are conditions that they have to comply with. Rather than just going back and saying, yes, we got approval and then that filters down to some guy coming in and pulling a permit and saying oh, yeah, we got approval on this. I really think the comments and especially those conditions really need to be highlighted to whatever and really be passed all the way down through engineering and so on and so forth to the crew that's going to go out. Okay?

ATTORNEY DANIEL GLISSMAN: Absolutely.

BRENDAN SULLIVAN: You're going to come back before us and the last thing we want to do is see that these things aren't being complied and taken seriously, that's all.

ATTORNEY DANIEL GLISSMAN: Absolutely. And we do work closely with the site acquisition firms. And in this case the site acquisition firm I believe is also going to be

installing this installation.

BRENDAN SULLIVAN: There will be a tendency to just go back and say, yeah, we got approval of it and then they run with it.

JANET GREEN: Yes.

BRENDAN SULLIVAN: So anyhow.

ATTORNEY DANIEL GLISSMAN: And we have actually already incorporated the comments by the Planning Board. We've sent them out to our clients, but I will be sure to reiterate that again.

BRENDAN SULLIVAN: Yeah, do, if you would.

Thanks.

ATTORNEY DANIEL GLISSMAN: Absolutely and thank you all.

CONSTANTINE ALEXANDER: Thank you.

* * * * *

(7:35 p.m.)

(Sitting Members Case BZA-009329-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: Turning to our regular agenda, we have case 009329, 24 Winter Street.

Is there anyone here wishing to be heard on this matter?

RICHARD VENDETTI: Yes, how is everybody?

CONSTANTINE ALEXANDER: Hello. Give your name and address, please, to the stenographer.

RICHARD VENDETTI: Richard Vendetti, 24 Winter Street, Cambridge, Mass.

KAJ VANDKJAER: Kaj Vandkjaer, 300 Main Street, Wenham.

CONSTANTINE ALEXANDER: I'm sorry to say we're not going to hear this case tonight for a number of reasons. Let me try to tick them off.

First of all, to get a Variance you need to satisfy state law. You need to satisfy three conditions:

That there be a substantial hardship that justifies the granting of the Variance. That hardship is not your personal hardship, it's one that runs with whoever owns the land.

Two, that the hardship must be owing to special circumstances related to soil conditions, shape or topography of the land.

And that, three, relief can be granted without substantial detriment of the public good.

We asked, because you have to establish this through us, we asked that you in your application deal with that. Give us your reasons why. You didn't do that. Every one of those three, somebody wrote in, "No substantial detriment to the public good or nullifying or substantially derogate from the intent and purpose of the Ordinance." That does not respond to the questions that are asked of you, and those are very important questions that have to be answered. So that's No. 1.

No. 2, the plans that you submitted to my eye are not, they're not right. You show your driveway for one of the parking spaces running through a corner of the building. You ain't gonna do that. That's two.

Three, your advertisement says that you're constructing a conforming three-story, two-family dwelling. I don't want to get into this now, and I didn't study it very hard but my quick look at the plans showed that you're not building a conforming addition. You have a setback issue still. And I'm troubled by a misleading advertisement. This is a significant element.

So if we were to proceed and it's not a conforming addition, at least speaking for myself, we would not grant you relief because it's misleading advertisement. So I think you need to go back and rethink whether you have an accurate advertisement, and if not, you may need to re-advertise and delete the word conforming.

Four, you make no mention of Section 5.26 of our

Ordinance. 5.26 deals with up conversions which is what you're doing. You're going from three units to five. And there are four requirements that have to be satisfied. You don't cite that section. You have to cite it in your advertisement. And beyond that, it's sort of an interesting issue, you don't meet one of the four requirements of 5.26 and that's the parking. You're seeking a Special Permit for that. I'm not sure, and I don't know the answer to this, but I had in my mind, and you might want to think about it, too, I don't know whether you can get there by a Special Permit. It seems to me you need a Variance under 5.26 for the parking. I think the Special Permit that allows us to reduce parking is for circumstances other than 5.26. That's for other situations, not this situation about conversion. So you've got a whole number of problems which is why I don't think we should hear the case tonight.

I'm also suggesting very strongly that I think you need to retain counsel who is knowledgeable with Cambridge

Zoning matters who can deal with all of the issues that I touched on right now and get you to do a complete or a more proper description of your reasons and also to consider some of these issues about whether your advertisement was sufficient or whether it's misleading. I just don't want to lead you down the primrose path. You've got issues.

RICHARD VENDETTI: I have talked to counsel and they said wait.

CONSTANTINE ALEXANDER: Wait?

RICHARD VENDETTI: Yeah.

CONSTANTINE ALEXANDER: Wait for what?

RICHARD VENDETTI: I don't know. I spoke to attorney Galluccio and attorney Rafferty and they said hold off with hiring us.

JANET GREEN: That time has come.

CONSTANTINE ALEXANDER: I think you need to -- and let me be very frank and speaking for myself. You've got a very tough case. Very tough case. Because of the

requirement for a Variance is, as I mentioned earlier, financial hardship that runs to whoever owns that property. The fact that you want to increase the value of your property and by building two more units is not a hardship for purposes of variances. And we've turned people down before who want to do something like this. I can think of a case on Walden Street where someone came in and wanted to -- bought a single-family house and wanted to put a second unit in and we said no. There's no hardship. It's, maybe there's a hardship to you maybe financially, but it's not a hardship that's -- requires or supports the granting of the Variance. That's -- I'm not going to judge that tonight. You may be able to convince us. That's another reason why you need I think competent counsel to help you with it. But I'm telling you you've got to -- we're not going to hear the case tonight and I think to be forewarned you've got a tough case ahead of you. So get somebody who knows what they're doing and we'll see what happens.

RICHARD VENDETTI: Can I ask a couple questions?

CONSTANTINE ALEXANDER: Go ahead. I don't want to get into the merits of the case, though, and then -- the reason for that is it becomes what we call a case heard, and then when we do hear the case again, the five of us have got to be there. And sometimes it's tough to get the same five. So if there's a general question, I'd be happy to answer.

RICHARD VENDETTI: Well, it has to do with that parking space that you said was at the corner of the building.

CONSTANTINE ALEXANDER: Say it again?

RICHARD VENDETTI: The parking space you said was at the corner of the building?

CONSTANTINE ALEXANDER: Look at the -- I don't have the plans. Look at the driveway, it runs to the corner of the building. If I can find it quickly.

Look over here. Here's your driveway and the corner of the building. Your driveway's going through the

corner of the building.

RICHARD VENDETTI: Okay. I was looking at like my curb cut's here. This is all driveway.

CONSTANTINE ALEXANDER: You know we -- you may have to move -- if we were to grant you relief, you may need to go to the City and get a new curb cut. I don't know. The fact that the curb cut is here is irrelevant. The plans you're going to show us have got to work and these plans obviously don't work.

RICHARD VENDETTI: Okay.

CONSTANTINE ALEXANDER: That's the problem.

I'm sorry to monopolize the conversation and to be so harsh, but anyway --

RICHARD VENDETTI: That's what you're here for to make sure it's done right. I understand that. Can I tell you why I got to this point?

CONSTANTINE ALEXANDER: I don't mind.

RICHARD VENDETTI: Well, I bought the property. I

live next-door at 28-30 for 30, 32 years and an elderly woman owned the property next-door to me and I kind of took care of her all them years and the son sold me the property. And I had no intentions to building, but then there's a section of what they call the L historically that was rotted out with the sills, and then I was saying well, I'm gonna have to rebuild that whole thing so why don't I look at the bigger picture. Not that I want to be a developer, but there were other reasons, too. I have a large family. I have brothers and sisters want to move back to Cambridge and can't afford to. I have up in Nashua my in-laws are elderly and they're going to need a place to live very shortly. So there's other reasons besides that --

CONSTANTINE ALEXANDER: I understand. And I'm not suggesting in any way that you're a bad person.

RICHARD VENDETTI: No, I'm just telling you why -- I'm not a developer --

CONSTANTINE ALEXANDER: We have to tell you,

though, that those reasons may not work -- and I want to underscore the word may --

RICHARD VENDETTI: Sure.

CONSTANTINE ALEXANDER: -- may not work for purposes of -- to entitle you to a Variance. That's the trouble.

RICHARD VENDETTI: One of the biggest things, I was part of the East Cambridge Planning Team back -- ten years back, '88 to '98. So I was firsthand on all the development coming in, and when I used to compare with the developers is it's like the west end of Boston. You threw them out like you're buying us out. So I understand what's behind it. I also looked at -- I originally was going to be two bedrooms, and I didn't want two bedrooms, because I said I want three bedrooms because nobody, there was no three bedrooms in East Cambridge that people -- families can stay. So that's where a lot of this came from.

CONSTANTINE ALEXANDER: Okay.

RICHARD VENDETTI: Now I just got to follow the rules.

CONSTANTINE ALEXANDER: And you can think about it some more with your counsel. I think you should get counsel.

RICHARD VENDETTI: Yeah, for sure.

CONSTANTINE ALEXANDER: And come before us with the best case you can. And we'll see whether we can grant you relief. I don't know. I just don't know.

RICHARD VENDETTI: Now, can I get this in writing? Because I won't remember what we talked about here.

CONSTANTINE ALEXANDER: Actually you can get a copy of the transcript. That will be the writing. At some point, it won't be immediately. I don't know how long.

RICHARD VENDETTI: Yeah, that's fine.

CONSTANTINE ALEXANDER: It's going to be a short transcript.

Cathy, put that at the top of the list for this

gentleman.

RICHARD VENDETTI: All right, I appreciate it.

CONSTANTINE ALEXANDER: Okay.

We've got to pick a date to when we're going to continue the case to. I'm going to suggest a time in July if not later.

RICHARD VENDETTI: I think later.

CONSTANTINE ALEXANDER: Well, you tell me.

RICHARD VENDETTI: Only because, well, I don't know, I'm going to be dealing with counsel.

CONSTANTINE ALEXANDER: We can continue it again if need me, but I think -- let's try to pick a date that you think you can meet.

RICHARD VENDETTI: I would say end of July? Does that seem reasonable?

SEAN O'GRADY: We have the 28th.

CONSTANTINE ALEXANDER: 28th of July? And what's the next one after that?

SEAN O'GRADY: We have them every two weeks. Then we've got August 11th and 25th.

RICHARD VENDETTI: Let's go for August 11th. It gives me -- makes me feel comfortable right now anyways.

CONSTANTINE ALEXANDER: Okay, don't go away.

The Chair moves that we continue this case as -- we call it a case not heard.

RICHARD VENDETTI: Right.

CONSTANTINE ALEXANDER: Which means any five members of the Board can sit, subject to the following conditions:

One, that you have to sign a waiver of a time for decision. And Mr. O'Grady's filling it out right now. That's just to deal with the technical requirement.

Two, that the sign that you have posted now --

RICHARD VENDETTI: Yes.

CONSTANTINE ALEXANDER: -- needs to be modified or get a new one, reflecting the new date and the new time. It

will be seven p.m. on August 11th. And that sign must be posted for the 14 days just as you've done for this hearing. So just make sure you do that and you don't -- sometimes people forget or they forget to change the time --

RICHARD VENDETTI: I got this poster.

CONSTANTINE ALEXANDER: You can do it by magic marker. You don't need to get a whole new sign. As long as it's legible, you can see what the date and time is.

And then lastly to the extent -- now, this is important. You need to get a new application in, because you didn't have the reasons for the Variance, and any modified plans. It would appear you need to modify your plans. They must be in our files no later than five p.m. on the Monday before August 11th. That's to allow us as the board members to come down and study them in advance of the hearing. It allows the citizens of the city to come down and to look at them as well. If you don't do it by five p.m. on the Monday before, we ain't gonna hear the case on

August 11th. Okay?

All those in favor of continuing the case on this basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

CONSTANTINE ALEXANDER: Good luck. We'll see you in August.

* * * * *

(7:50 p.m.)

(Sitting Members Case BZA-010003-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010003, 272 Walden Street.

Is there anyone here wishing to be heard on this matter? Good evening.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair, members of the Board. My name is James Rafferty. I'm at 675 Massachusetts Avenue in Cambridge and seated to my right is Ms. Rosalie Sard, S-A-R-D. Ms. Sard is a young entrepreneur about to venture into operating a retail store selling pet supplies and she's seeking to do so in a building at 272 Walden Street, which is -- the Board is familiar with is a rather simple wood frame mercantile structure always used for commercial purposes since it was built 100 years ago. And most recently it was used as a convenience store. So it's, it's grandfather pre-existing use is a convenience store. It's a slightly different category under retail uses. This is other retail versus convenience. I've never been quite sure as to when you traverse from convenience to general retail. I think it might have something to do with size. But at any rate, pet supplies apparently doesn't fit the bill. We get that. So Ms. Sard is not looking to do much by way of physical

alterations to the structure, interior improvements, but she likes the location, she thinks there's an active dog community in the area, there's a dog park across the street, access to Danehy Park. And it really is, it's a small retail use. It's not a chain. And the use and the hardship are directly related to the structure itself. It's never accommodated housing. It wasn't built for housing. It's located in a residential district. So as a result, she needs relief to do anything but residential or convenience store. So but historically, and I imagine some members of the Board have a longer history than others about the location, but it, even I recall it, and I'm not looking in any particular direction, I'm just saying that --

BRENDAN SULLIVAN: I think you're casting dispersions here.

ATTORNEY JAMES RAFFERTY: -- as young as I am, I've always known it to be a store of some kind. So, and probably Mr. Masse knows it longer, but it was part of that

little commercial block there on that stretch of Walden.

So Ms. Sard finds the building charming and appealing. She's worked out an accomm -- a least with the landlord. And the only thing between her and launching a successful enterprise as an affirmative vote from four members of the Board here. She is here this evening in the form of avid supporters in the form of her mother and father. I told her it wasn't necessary for them to testify, because the Board would take notice of their support. And we're here to answer any questions and hope it --

CONSTANTINE ALEXANDER: What it offers is one stop shopping, you have a drink at Paddy's and then you walk down the street and get some pet supplies.

ATTORNEY JAMES RAFFERTY: You know, I think there's a synergy there that she's probably factored into the marketing plan for Ms. Sard.

CONSTANTINE ALEXANDER: The only question I would have in convenience stores people walk to them because they

service the neighborhood. Your store is going to attract people hopefully from other parts of the city. Where are they going to park?

ATTORNEY JAMES RAFFERTY: Well, the Zoning Ordinance, as you know, bases its parking requirements on the square footage. So given the size of the building it's required to have two spaces, and there is parking in the back of the building.

CONSTANTINE ALEXANDER: Will you be able to park in the back of the building?

ATTORNEY JAMES RAFFERTY: You can park in the back of the building, but candidly how many people will park there? Is it something that's going to be encouraged? I think it's the type of retail that won't see a lot of parking behind there. But you are right, and it hopefully will attract people. There is some short-term metered parking. The patrons of the establishment you referred to earlier seem to be able to locate parking there.

CONSTANTINE ALEXANDER: That's true.

ATTORNEY JAMES RAFFERTY: Although some of them may -- what's the old phrase? Wander in, stumble out? Driving may not always be a friend there, but understood. But I think this isn't, given the size of the store and the like, and I don't want to speak for Ms. Sard, but --

ROSALIE SARD: We'll be looking at mostly neighborhood.

ATTORNEY JAMES RAFFERTY: She's looking at programs --

ROSALIE SARD: -- marketing, you know.

ATTORNEY JAMES RAFFERTY: -- which will be local dog owners, and it would distinguish her business from the larger chain pet supply stores. There's a kind of -- the pet community is strong in that area.

CONSTANTINE ALEXANDER: Well, they've come before our Board in support or opposition to some of the chains before, so I know a pet community in Cambridge is vigilant

and very expressive in their views.

ATTORNEY JAMES RAFFERTY: And they seem to have a preference for a more of a boutique style retail than a chain.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: It's kind of like the people that years ago when I represented Starbucks, the people of Central Square thought it was going to be ruination because it should only be mom and pop style coffee shops. Well, this is -- I don't know if you qualify as mom and pop. She's quite young. Maybe she's a sister and brother type operation. The appeal of the location is Ms. Sard's knowledge of the pet community and Danehy Park and Fresh Pond and the surrounding Cambridge neighborhood.

CONSTANTINE ALEXANDER: Questions from the members of the Board?

JIM MONTEVERDE: No.

JANET GREEN: Will you just sell things there or

what will you do?

ROSALIE SARD: That's the plan right now, yeah.
We're just looking for retail.

ATTORNEY JAMES RAFFERTY: But I asked about
groom -- it will be a different use category if grooming or
that type of thing.

ROSALIE SARD: If and when that's in the plans,
we'll do a whole separate application for it.

CONSTANTINE ALEXANDER: I'll open the matter up to
public testimony.

Is there anyone wishing to be heard on this
matter? Parents have a chance.

ERNEST TARQUINIO: I just wanted to be clear --

CONSTANTINE ALEXANDER: Oh, yes, give your name
and address.

ERNEST TARQUINIO: My name is Ernest, E-R-N-E-S-T
Tarquinio, T-A-R-Q-U-I-N-I-O, 268 Walden W-A-L-D-E-N Street,
Cambridge. My only question is regarding the, I just wanted

to be clear that it's not going to be used for dog daycare and that it won't be used for I guess we just talked about grooming? My fear is that, you know, it's -- sometimes you start a business and it starts morphing into something totally different. So that's my, that's my concern and I, I also have a pet. I have -- I love my dog, I have a dog. I think it would be very difficult for me anyway to be living next to either doggy daycare or a place that has a lot of, a lot of dog traffic.

CONSTANTINE ALEXANDER: Fair comment and you say you're not planning to board or --

ROSALIE SARD: Not at the moment, no. If and when, we would again have a whole separate application.

ATTORNEY JAMES RAFFERTY: Yes, I would just note that both of those uses, either a kennel or a grooming or veterinarian type of thing are separate use categories which would again require additional relief.

ROSALIE SARD: We would have to come back.

CONSTANTINE ALEXANDER: So we don't need to put a condition in?

ATTORNEY JAMES RAFFERTY: Right, we're asking for other retail, and other retail does not include, and I understand the concern, other retail doesn't encompass -- it would be saying like you could have other retail but you can't have, I don't know, trying to think of a -- you can't have a liquor store there. I mean, it's a separate use category.

CONSTANTINE ALEXANDER: Sir?

ERNEST TARQUINIO: So, again, informally people can't, you know, leave their dogs there to for daycare?

CONSTANTINE ALEXANDER: That's correct. If they did that or they would allow that to happen, they would be violating the Zoning for the property.

ERNEST TARQUINIO: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I will close public testimony.

Is there anything in the file. Let me just check in terms of letters or the like. No, nothing else.

So, discussion or are we ready for a vote?

JANET GREEN: Ready.

JIM MONTEVERDE: Ready.

BRENDAN SULLIVAN: I think it be important to have some retail there. Having a vacant store is not good for the neighborhood. Living around the corner, I go by there all the time. When they rezoned the lot across the street to allow for housing, the rezoning and the neighborhood came out and said we really want some retail there to add a vibrancy to the neighborhood. Albeit maybe small, but still some. So I think this is an element that is satisfying that overall general request for some retail, and it's a very difficult.

CONSTANTINE ALEXANDER: I'm -- frankly I'm surprised. I go by that building all the time, and I just assumed that someone would buy it and tear down the present building and put up housing since it's residentially zoned. I didn't check whether the lot was a conforming lot.

BRENDAN SULLIVAN: Are you renting or buying?

ROSALIE SARD: Renting.

CONSTANTINE ALEXANDER: But I think it's good that we have retail there as well. I agree.

BRENDAN SULLIVAN: Well, it's good to have a presence, yes.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: An active something.

CONSTANTINE ALEXANDER: Okay. Ready for a vote?
I think we are.

The Chair moves that we make the following findings with regard to the Variance being sought:

That a literal enforcement of the provisions of

the Ordinance would involve a substantial hardship. The hardship being is that this building which is really only, unless it's torn down, can be used for retail purposes or business purposes, not for residential purposes which is where the -- which is where the lot is located in the residentially zoned district.

That the that the hardship is owing to the fact of the -- that the structure, again, is -- the nature of the structure is such that it's only really conducive to a retail use.

And that the relief may be granted without substantial detriment to the public good or nullifying or substantially derogating the intent and purpose of the Ordinance.

In this regard the Chair would note that for probably 100 years this building has been used for retail purposes.

That the current retail purpose which is -- will

be a condition that it be used for pet supplies and not for grooming or boarding of pets, is, is not substantially different than the prior convenience store use of the building in terms of its impact on the neighborhood.

So on the basis of all of these conditions, the Chair moves that we grant the use variance to allow the structure at 272 Walden to be used for pet supply store.

All those in favor say "Aye."

ATTORNEY JAMES RAFFERTY: Could I -- just because -- I think the relief would allow for retail use under 3.52. I'm saying if some day Ms. Sard was pet supplies and it became women's clothing, I think the Variance would -- the use category, the Variance would suggest, you know --

CONSTANTINE ALEXANDER: Oh, you mean they couldn't go back to a convenience store?

ATTORNEY JAMES RAFFERTY: No, but you wouldn't be limited to pet supply retail because the category is broader

than that. It's other retail.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: And I would say that the relief should reflect the use category it's in.

CONSTANTINE ALEXANDER: Fair enough. Sir, I'm sorry.

ERNEST TARQUINIO: Just point of clarification. I don't understand what the conversation you guys are having.

CONSTANTINE ALEXANDER: Well, the question Mr. Rafferty is making a point is that we don't want to make -- maybe my motion was making the relief too restrictive and there could be other uses that would not affect you like a clothing store. That may not be permitted without further zoning relief because of the way I narrowly framed the motion. So it would be for other retail uses, not just pet supply store. But it is clear that the boarding of pets or the grooming of pets will not be a permitted use.

ERNEST TARQUINIO: Thank you for the
clarification.

CONSTANTINE ALEXANDER: All those in favor please
say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

ROSALIE SARD: Appreciate it.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(8:00 p.m.)

(Sitting Members Case BZA-009982-2016: Constantine
Alexander, Brendan Sullivan, Janet Green, Jim Monteverde,
Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 009982, 7 and 15 Robert C. Kelley Street.

Is there anyone here wishing to be heard on this
matter?

ATTORNEY SEAN HOPE: Good evening, Mr. Chair,

members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. And we're here tonight on behalf of the petitioner and owner Mr. Kyu Sung Woo.

This is an application requesting Variance relief to subdivide two parcels that have always been two parcels. I think it's pretty clear in the application this was an inadvertent merger from the Common Law Doctrine of Merger between two properties. Pretty basically these -- Mr. Kyu Sung Woo lived at 15 R.C. Kelley Road and he owned 17 R.C. Kelley Road as investment property. Refinanced and took them out of the trust. At that time they had unity of title which means they were actually owned under the same ownership at the same time. That triggers a Common Law Doctrine of Merger. It's not quite clear at what point of when ISD became aware of this, but it was inadvertent. So now, for zoning purposes only these two lots were merged. There were separate mortgages, separate deeds. We did try to discuss the need to even come before the Board, but just

to clear title and to make sure if he ever wanted to refinance, we're here today.

So, nothing on the property is changing. We just want the property to revert back to what it was prior to the refinancing.

CONSTANTINE ALEXANDER: So the lot lines are not going to change?

ATTORNEY SEAN HOPE: Nothing is changing.

CONSTANTINE ALEXANDER: The investment property, how many units are there?

KYU SUNG WOO: It's a single unit.

CONSTANTINE ALEXANDER: I'm sorry.

KYU SUNG WOO: I had the house built.

CONSTANTINE ALEXANDER: Yes.

KYU SUNG WOO: R.C. Kelley, it's two-family house. And then the new property was single one, and we just bought it for the investment.

CONSTANTINE ALEXANDER: As I drove by, it looked

like a good number of units in that building.

KYU SUNG WOO: It's just one house.

CONSTANTINE ALEXANDER: Just one?

JANET GREEN: You mean for 7 or No. 15?

CONSTANTINE ALEXANDER: No. 15. I'm talking about
15.

KYU SUNG WOO: No. 15, yeah, is two-family.

CONSTANTINE ALEXANDER: There's only two families?

KYU SUNG WOO: Yes. I used to live in the back
and my mother used to live in the front but she's gone, so
just --

CONSTANTINE ALEXANDER: That's what your filings
show. But when I went by I said oh, my God, that's got to
be more than a two-family house.

KYU SUNG WOO: You know, at that time actually the
City encouraged to build more. Even gave -- at 1989 they
gave incentive zoning to be townhouses. So it seems to be
big, but it's not.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

JANET GREEN: No.

CONSTANTINE ALEXANDER: I just make the observation that, for the record, is that this merger document actually does have some salutary purposes to it in terms that it does, it gets -- in particular it gets rid of non-conforming lots. When they put some part of a conforming lot which is good for the city, but it tends to be a trap for the unwary as you found out. Even sophisticated lawyers, knowledgeable real estate lawyers miss the issue of merger. And certainly you're not a lawyer and I can understand how you missed it or were not aware of it.

ATTORNEY SEAN HOPE: And just to add to the record, actually 15 R.C. Kelley Road was actually conforming at the time it was built.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: It became non-conforming when the zoning changed. And so it would have been protected but for this. So actually at one point you didn't even know there was a non-conformity when the zoning changed in 1989, I believe, and then subsequently that's when he took it out of title. So it was even more complicated than Kuy Sung Woo would have known at the time. We would love to move passed this and be able to separate the two parcels.

CONSTANTINE ALEXANDER: Thank you for your comments.

Questions or comments from members of the Board?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: I'll open the matter up for public testimony.

Sir, give your name and address to the stenographer.

CHARLES TEAGUE: Hi, I'm Charles Teague. I live at 23 Edmunds Street. I'm speaking for the owners of 9

Donnell Street which is one house away from the property, and I want to fully support Mr. Woo. He's done -- he's an architect and he's worked on No. 8 Donnell and I admire that. He did the Harvard housing just across R.C. Kelley that goes out to Concord Ave. And then I really admire what he's done in his own residence with the, which you saw with all the light coated copper. Whatever he does is great for that area. So I fully support it.

CONSTANTINE ALEXANDER: Thank you for the comments. Thank you for taking the time to come down.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not and there's nothing in the files so I will close public testimony.

Comments or ready for a vote?

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: Okay, people are ready.

Okay, the Chair moves that we make the following

findings with regard to the Variance being sought. The Variance is to subdivide the single lot back to its same dimensions, the two lots that were there prior to the merger document, merger doctrine taking place.

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship would be that the petitioner would lose the benefit of all of the economic benefits of two separate lots that he had and intends to keep.

That the hardship is owing to the fact that a merger occurred without his knowledge and that it's something that is a more technical, legal requirement. That it has a goal, as I said before, to improve the land use of the City but in this case it doesn't apply.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Chair would note that there's neighborhood

support for what is being proposed and that it does -- it makes really no change to the impact on the City or the neighborhood other than it allows this gentleman, the petitioner from having his economic interest adversely affected by an Archean legal doctrine of which he was not aware.

On the basis of all of this, the Chair moves that we grant the requested Variance to re-divide these lots back to where they were before, these lots being 7 and 15 Robert C. Kelley Street.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

KYU SUNG WOO: First of all, just one clarification?

CONSTANTINE ALEXANDER: Go ahead.

KYU SUNG WOO: Is that I don't quite recall the

boundary, because I think we originally 6,000, 6,000 and because this is big building is over dimension, we moved the boundary from seven and five. And that I'm not sure whether they took place, I mean the legal terms before the merger or after the merger.

ATTORNEY SEAN HOPE: But I think the plans we submitted show that the -- that easement you're talking about the parcel, you have one that's five and one that's 6,850, yes, that's in there.

KYU SUNG WOO: Just want to be clear. Thank you.

* * * * *

(8:15 p.m.)

(Sitting Members Case BZA-010036-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010036, 60 Vassar Street.

Is there anyone here wishing to be heard on this

matter?

ATTORNEY BRIAN GROSSMAN: Good evening, Mr. Chair and members of the Board. Just quickly for the record, Brian Grossman, Anderson and Kreiger on behalf of New Cingular Wireless, PCS, LLC, the applicant, also AT&T. With me is Tim Greene.

CONSTANTINE ALEXANDER: Okay, you want to do something horrible to 60 Vassar Street, right?

ATTORNEY BRIAN GROSSMAN: We don't think it's horrible. Actually it's pretty straightforward. I do have photos -- I do have plans and photo simulations for you.

So the existing installation has nine antennas, AT&T proposes to replace six. Two of the sectors are staying exactly where they are. There's a third sector on the side of the building that arguably faces Mass. Ave., but there are a couple of intervening buildings between buildings --

CONSTANTINE ALEXANDER: Mass. Ave.?

ATTORNEY BRIAN GROSSMAN: -- on Mass. Ave. On that side, yes.

CONSTANTINE ALEXANDER: This is 60 Vassar.

ATTORNEY BRIAN GROSSMAN: Right, it faces that way.

TIM GREENE: It's MIT and it's a massive --

ATTORNEY BRIAN GROSSMAN: So, yeah, the sector that I'm talking about --

CONSTANTINE ALEXANDER: Yeah, yeah, yeah.

ATTORNEY BRIAN GROSSMAN: -- is on this side of the building, you know, the long stretch over to Mass. Ave., but it does face in that direction off to the west.

CONSTANTINE ALEXANDER: Got it.

ATTORNEY BRIAN GROSSMAN: MIT, as I'm sure you know, is doing some work in that area. And as part of that, they are going to be adding some what we've called smokestacks that would end up blocking that sector. So for that reason in addition to replacing the two, two of the

three existing antennas, that entire sector will move from the corner of the building at say it's -- and they're both far removed from Vassar and Mass. Ave. and more towards the Mass. Ave./Memorial Drive side, but again there's intervening buildings, it's very long distance. We can't actually see that sector based on the view sheds and even after the move from Memorial Drive or anywhere else is in the public ways.

And that's very similar to the other 6409 applications that you've seen. Some RHs are being added. Surge arresters are being added as well. Those will be roof mounted. They'll be located right near the other RHs -- or RRUs that are existing about three and a half feet off the roof.

So it meets the 6409 criteria. It doesn't exceed building by ten feet. The antennas will remain facade mounted. The two sectors that don't move, the existing antenna mounts will be utilized. The facade mounted

antennas will not exceed six feet off the building, far less than six feet off the building.

CONSTANTINE ALEXANDER: Right.

ATTORNEY BRIAN GROSSMAN: There's nothing less that will protrude. No equipment cabinets are be added, so there's no less than four. All the development and all the changes will be taking place on the building and on the roof so there's no disturbance on the ground. And as far as concealment elements, and those will remain consistent the those that were produced and imposed.

All antennas will be painted to match. The existing RRUs are also painted to match the building color. Also so the proposed RRUs will be as well. You can see that in the blow up on the zoomed-in view on the photographic simulations.

CONSTANTINE ALEXANDER: Have you seen the Planning Board's comment, commentary?

ATTORNEY BRIAN GROSSMAN: No. I did --

TIM GREENE: No. They told me what they were -- I haven't actually seen it yet, but they told me what they were going to --

CONSTANTINE ALEXANDER: I'll read it into the public record. I mean, they have some suggestions. I want to be sure see what you're reaction to that is.

ATTORNEY BRIAN GROSSMAN: In terms of the mounted below the parapet line, so they don't appear to break the cornice line, that's consistent actually with the existing set up and we've agreed to that in the past, we would do that here as well.

This new comment about there being -- the antennas being the same length and size, I think really came up out of more relation I think to the next application and perhaps just carried over here.

CONSTANTINE ALEXANDER: Right.

ATTORNEY BRIAN GROSSMAN: Technologically we can't do it. So the proposed antennas that work for that

particular frequency, are a particular size. They are very close in size as we've talked about in previous hearings, to help minimize the, you know, the change in look. We do put those so that the antenna top line is all the same and again, won't break that cornice line. And at these distances again, you know, at that height, you know, any, any minor differences in the antennas is really going to be --

BRENDAN SULLIVAN: Could they not put a faux piece, an attachment to the shorter of the two to bring that up?

TIM GREENE: We're talking about. Well, it's within six inches. The size of the antennas. It's not like one's three feet and the other one is eleven feet. And I know you're talking between --

CONSTANTINE ALEXANDER: And the antennas are hard to see in the first instance anyway. The building is high and set back. I don't think -- speaking for myself, I don't

get too worked up for that comment. I think breaking the cornice line is more important and you said you're not going to do that.

Is there anything else? I'm going to read into the record, but if you have anything else you want to --

ATTORNEY BRIAN GROSSMAN: Associated cable.

TIM GREENE: Well, it's in a cable tray. There are drawings. I'm forgetting, though, about the site. Let me just make sure this isn't something.

I think we comply with it anyway. I'm just trying to make sure -- I don't remember anything about it. No? I don't understand the -- that one, the associated cabling for the installation which is quite unsightly to be put in a surface mounted raceway to remove the haphazard appearance. It's on -- it currently is on the roof.

CONSTANTINE ALEXANDER: Often they, they give you the same comment for all the ones and maybe that applied to a different one. I don't know. I'm guessing.

TIM GREENE: We already have as they call it a surface mounted raceway. We will call it a cable tray. Their term is raceway so I just used that.

CONSTANTINE ALEXANDER: Okay. I will read the letter into the record in any event, but I wanted you to have a chance to look at it first.

ATTORNEY BRIAN GROSSMAN: Appreciate it, thank you.

CONSTANTINE ALEXANDER: Anything further you want to add at this point?

ATTORNEY BRIAN GROSSMAN: Not unless the Board has questions.

CONSTANTINE ALEXANDER: Questions from members of the Board?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: Other than the fact why are we going to be burdened with these cases?

JIM MONTEVERDE: That's a good one.

ATTORNEY BRIAN GROSSMAN: We have argued that in fact that you shouldn't be but we were, we were rebuffed in that argument.

CONSTANTINE ALEXANDER: So were we.

All right. I'll open the matter up to public testimony. Anybody here wishing to be -- sir?

JOHN HAWKINSON: Yes, thank you Mr. Chairman.

John Hawkinson, 84 Massachusetts Avenue. A couple of brief comments. The first is there is no street address 60 Vassar Street, and the notice for this is a little troubling because it doesn't tell you where it is without reading hundreds of pages in. It is MIT building 16. 60 Vassar Street is a number that gets used for -- it's basically a driveway on Vassar Street that you use to get to any of probably 20 buildings and it's insufficient. And there's clearly confusion even among the City. If you look at the Historic Commission, they note paren building 39 which they also associate with 60 Vassar Street, with many other

buildings, and, you know, this doesn't touch building 39 which isn't really close to building 16 at all. So I would respectfully suggest that the petitioner and maybe staff ought to take some care and make sure that to specify the building with enough information that a member of the public can figure it out. And that certainly wasn't the case in the notice. It is the case if you read the file in full. And I don't think that really matters for your -- for this case.

CONSTANTINE ALEXANDER: Well, I understand. I appreciate the comment. My only response would be when I went down the street, I -- there's a sign right on Vassar Street.

JOHN HAWKINSON: Yes, you can find the sign.

CONSTANTINE ALEXANDER: So whoever is there, maybe they can't associate that sign with exactly the building, but they are put on notice.

JOHN HAWKINSON: Right. But if you read the

notice in the newspaper, for instance, you have no idea what building it's talking about.

CONSTANTINE ALEXANDER: No, that's true.

JOHN HAWKINSON: And I think that's a problem.

Not a fatal one, but something that should be worked on.

And secondly, you know, in your comments earlier, you referenced a view from the public way. I don't know from the extent that's the legal standard here, but I think in practice MIT is an open campus, anyone can walk by. The view that matters I think in the public's interest is not the view from Memorial Drive, it's the view as you walk through there in the open MIT campus which is much closer than I think what's shown in the simulations. So, I, you know, and, again, it's not a speech against the application in any way, but I do think it's something that should be looked at a little bit differently.

I was at that Planning Board meeting and I regret I don't remember exactly what they were saying with respect

to the raceway and cable issues, but I thought they had suggested -- they said something about the cables coming over the edge of the roof, though, that seems consistent with the picture from the prior application. So it may be that they were confused. They certainly did not just repeat the same comment, but they might have misassociated photo simulations, but I really don't know. Maybe I shouldn't say anything at all now. But those are my three points though.

CONSTANTINE ALEXANDER: Thank you. Thank you.

Anybody else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one else.

We do have as I have mentioned, a letter from the Planning Board or a memo from the Planning Board which I'll read into the public record, and I want to sort of annotate as we go through.

(Reading) The Planning Board reviewed the proposed installation and has the following suggestions if the Board

of Zoning Appeal approves the Special Permit:

The antennas should be mounted as close to the surface of the structure as possible and below the parapet line so that they do not appear to break the cornice line.

We'll stop there. You said you will comply with that.

ATTORNEY BRIAN GROSSMAN: Yes.

CONSTANTINE ALEXANDER: You can accept that condition?

ATTORNEY BRIAN GROSSMAN: Yes.

CONSTANTINE ALEXANDER: And it goes on to say this will minimize some of the visual impacts of the proposal.

(Reading) The antennas should be of the same length, and if not, shielding should be added to make the antenna appear to be the same size and to cover any additional cabling or pipe.

And I think the comment you made is that you really can't technologically make them the same size and

that although you could do as Brendan has suggested, use some sort of faux addition, that what we're talking about is a very small amount of difference in length, and given where it's going to be located on the building, it would, I think your view is that it would not, it's not necessary in terms of the visual impact.

ATTORNEY BRIAN GROSSMAN: Correct.

CONSTANTINE ALEXANDER: And the Board also suggests that the associated cabling for the installation which is quite unsightly be put into a surface mounting raceway to remove the haphazard appearance. The installation should be finished in the color and texture to match the adjacent building surface.

The photo sims show you will do a color and texture to match the surface.

ATTORNEY BRIAN GROSSMAN: Correct.

CONSTANTINE ALEXANDER: And refresh my memory, what about the cabling be put into a surface mounting

raceway?

ATTORNEY BRIAN GROSSMAN: I don't know what they're talking about and frankly the -- they took their --

CONSTANTINE ALEXANDER: One second.

ATTORNEY BRIAN GROSSMAN: They took the BZA recommendations out of order or prior to the time that we were told to be there. So I wasn't actually there or actually my associate was not actually there to hear any of the comments. So all I have to go off of is that.

CONSTANTINE ALEXANDER: And you can't figure out what they mean, you or your client?

TIM GREENE: Well, I know that we have a surface mounted raceway. There are no cables. You can look at the photo simulations. I don't see any unsightly cables or anything like that. You certainly would always have a cable that goes into the antenna, that's only natural, but they run behind the antenna and go up and through, so they generally don't roll all over.

CONSTANTINE ALEXANDER: Mr. Hawkinson, yeah.

JOHN HAWKINSON: I think they're referring to 5 of 9 which is -- in the detail which is kind of hard to see, but, you know, here's the zoomed version where you can clearly see there's kind of a.

JIM MONTEVERDE: That's the point, it's hard to see.

JOHN HAWKINSON: I would say it's easier to see if you're in the effective public way which may not be the technical public way.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY BRIAN GROSSMAN: If what they're talking about is the cabling comes behind the antenna to loop up into the bottom to connect it, that can't be pushed flush against the surface.

CONSTANTINE ALEXANDER: I don't give a hoot -- damn. I mean this is so impossible to be seen. I mean, we are -- how many angles can dance on the head of a

pin?

Anyway. Anything else? Any other comments?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: Done, Mr. Hawkinson?

JOHN HAWKINSON: I am, thank you, Mr. Chair.

CONSTANTINE ALEXANDER: All right.

ATTORNEY BRIAN GROSSMAN: Mr. Chairman, if the Board is so inclined to approve, I know you have your standard conditions.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY BRIAN GROSSMAN: If you'd like to incorporate them and not have to read them all.

CONSTANTINE ALEXANDER: That would be wonderful.

ATTORNEY BRIAN GROSSMAN: You can do that. We'll incorporate our objection to what's become known as standard condition No. 6 for the record, but otherwise we know what your standard conditions are.

CONSTANTINE ALEXANDER: Okay. What's standard

condition No. 6?

ATTORNEY BRIAN GROSSMAN: It's the RF reporting.

CONSTANTINE ALEXANDER: Oh, got it. The long
litany.

TIM GREENE: Correct.

CONSTANTINE ALEXANDER: All right. Ready for a
vote?

The Chair moves that we make the following
findings with regard to the relief being sought:

That the requirements of the Ordinance cannot be
met without the Special Permit that's been applied for.

That traffic generated or patterns of access or
egress will not cause congestion, hazard, or substantial
change in established neighborhood character.

That the continued operation or development of
adjacent uses will not be adversely affected by what is
proposed.

That no nuisance or hazard will be created to the

detriment of health, safety, and/or welfare of the occupant of the proposed use or the citizens of the City.

And that what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate the intent and purpose of the Ordinance.

Further, that the Chair moves that we find that the petitioner -- here it is. That the modification of the existing telecommunication facility at the site proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of 6409(a) of The Middle Class Tax Relief and Job Creation Act of 2012 known as The Spectrum Act.

Based on these findings, the Chair moves that we make the following -- we grant the Special Permit subject to the following conditions:

That the work proceed in accordance with the plans submitted by the petitioner, initialled by the Chair.

That upon completion of the work the physical appearance and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair, which I've done.

That the petitioner shall at all times maintain the proposed work so that its physical appearance and visual impact will remain consistent with the photo simulations previously referred to.

Four, that should the petitioner cease to utilize the equipment approved tonight for a continuous period of six months or more, it shall promptly thereafter remove such equipment and restore the building on which it is located to its prior condition and appearance to the extent reasonably practicable.

And five, that the petitioner is now in compliance with and will continue to comply with all other requests -- in all respects, the conditions previously imposed by this Board with regard to previously granted

Special Permits with regard to the site in question.

And lastly, that the petitioner -- further conditions that the antennas shall be mounted as close to the structure as possible and below the parapet lines so that they do not appear to break the cornice line.

And that the installation will be finished in a color and texture to match the adjacent building surface.

And as to the further conditions, we've agreed that we know what they are.

(Further Conditions Agreed to by the Parties:

Finally, inasmuch as the health effects of the transmission of electromagnetic energy waves as a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all the petitioner's

equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

B, that in the event that at any time federal authorities notify the petitioner that its equipment on the site, including to, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner, within ten business days of receipt of such notification of such failure, shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure.

The Special Permit granted tonight shall ipso

facto terminate if any of the petitioners federal licenses is or are suspended, revoked, or terminated.

C, that to the extent that the Special Permit is terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to the Board for new Special Permit provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A or B above.

Any such new application shall not be deemed a repetitive petition, and therefore will not subject to the two-year period during which repetitive petitions may not be filed.

D, that within ten business days after receipt of a Building Permit for the installation of the equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the

petitioner with regard to a geographical area that includes Cambridge stating that:

A, he or she has such responsibilities;

And, B, that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections, such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radio frequency radiation under federal law.)

CONSTANTINE ALEXANDER: They will be part of the minutes of the meeting.

All those in favor please say "Aye.)

(Aye.)

CONSTANTINE ALEXANDER: Relief granted.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(8:35 p.m.)

(Sitting Members Case BZA-010017-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010017, 11 Gray Gardens East.

Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one here wishing to be heard.

Are you the petitioner?

UNIDENTIFIED MEMBER OF THE AUDIENCE: No, I'm not. I'm an abutter.

CONSTANTINE ALEXANDER: You'll have a chance. I'm asking if the petitioner is here. Sorry.

The Chair is in receipt of a letter from Hope -- from Sean Hope counsel for the petitioner.

(Reading) Please accept this request on behalf of the petitioner to continue case BZA No. 010017 to allow additional time for continued discussions with interested neighbors and abutters. We apologize for the delay and look forward to presenting the Special Permit application once the parties have had a full opportunity to discuss the details and merits of the requested relief.

I think that's a good idea to continue this case given there is neighborhood or at least one neighbor in opposition. Mr. Hope doesn't suggest a time when he wants to continue the case to. Did he orally express a desire?

SEAN O'GRADY: He said out.

CONSTANTINE ALEXANDER: Say it again, I'm sorry?

SEAN O'GRADY: He said out. He said continue the case out.

CONSTANTINE ALEXANDER: Out?

SEAN O'GRADY: Right. So I'm thinking maybe July 14th?

CONSTANTINE ALEXANDER: Okay.

SEAN O'GRADY: If that seems --

CONSTANTINE ALEXANDER: If we -- you're here, we're going to continue the case. We generally do this when there's opposition and the petitioner wants more time to see if he can work something out with the neighbors. So I mean, we've routinely grant continuance requests at least the first time. I wanted to pick a date that's good for you since you've taken the time to come down. Does July 14th seven p.m. work for you? And if not, we'll pick another day that works for you. We have summer vacations so be careful.

UNIDENTIFIED MEMBER OF THE AUDIENCE: Thursday. I think that would be okay for me.

CONSTANTINE ALEXANDER: Okay for you?

UNIDENTIFIED MEMBER OF THE AUDIENCE: Yeah.

CONSTANTINE ALEXANDER: Okay.

The chair moves that we continue this case as a case not heard subject to the following conditions:

That the petitioner sign a waiver of time for decision.

Sean done that yet?

SEAN O'GRADY: No, I let him walk out without doing it. I wasn't thinking.

CONSTANTINE ALEXANDER: Two, that the posting sign that's there now be modified to reflect the new date, July 14th, the new time, seven p.m.

And that this modified sign or new sign if he doesn't want to modify, be maintained for the 14 days required by our ordinance.

And lastly, and most important I think from your perspective, to the extent that the petitioner chooses to modify the plans that are in our files, the dimensional form, they must be in our file no later than five p.m. on the Monday before that July date. That allows you and any of the citizens of the city and members of the Board to look at them in advance of the hearing on July 14th. If that

does not happen, we're not going to hear the case. It's nothing for you to worry about, but the petitioner should worry about it, we're going to continue the case again. That's important for us and you to know exactly what's going on so we can have an informed discussion when we do meet in July.

SO on the basis of -- subject to all these conditions, the chair moves that this case be continued as indicated.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five. Five in favor.

We'll see you on July 14TH.

UNIDENTIFIED MEMBER OF AUDIENCE: Thank you, sir.

CONSTANTINE ALEXANDER: If you choose to come.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(8:45 p.m.)

(Sitting Members Case BZA-010037-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010037, 1336-1362 Mass. Ave.

Is there anyone here wish being to be heard on this matter?

ATTORNEY BRIAN GROSSMAN: Thank you, Mr. Chair. Brian Grossman with Anderson Kreiger on behalf of the applicant, and with me is Tim Greene.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY BRIAN GROSSMAN: Again, it's another 6409 effort -- Section 6409 application from AT&T. This one is fairly straightforward. There's nine existing antennas, three per sector, AT&T proposes to replace one per sector.

Two RRUs per sector will be added for a total of six and three existing surge arresters will be replaced.

All visible elements of the facility will be

painted to match.

The equipment will not exceed ten feet above the building. The antennas are facade mounted. Again, the RRUs added on the side will be about three-foot, six off the roof line. Nothing will protrude more than six feet from the building. They will not involve the installation of new cabinets at all, so we meet the not more than four cabinet criteria.

There's no excavation or development off the building so no ground disturbance.

And the facility is consistent with the existing concealment elements. The antennas will be painted to match. The existing facade and as well as the other antennas, new RRUs, they're not visible from any public areas as well.

CONSTANTINE ALEXANDER: I'm sorry, did you say that it will be below the parapet line the new antennas? I want to hear that. I want to make sure I --

ATTORNEY BRIAN GROSSMAN: They will be. I don't think I said that. You can see it in the photographic simulations.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY BRIAN GROSSMAN: I do want to be clear, though, on the photographic simulations, you know, they always do that cover page. The set here that's in the middle is not AT&T. Those aren't the AT&T antennas. The AT&T antennas are if you look at the --

CONSTANTINE ALEXANDER: The far end.

ATTORNEY BRIAN GROSSMAN: -- sheet on the far end on the left there.

That's not the only sector that's being changed. We're talking about doing all three, but that's the only one that's visible from the public way given the --

CONSTANTINE ALEXANDER: You only have one location. You can't see it anywhere else?

TIM GREENE: You really can't.

CONSTANTINE ALEXANDER: I would have thought you could see it up Mass. Ave.

TIM GREENE: Well, you know what you can see, I'm actually looking at it. If you look at the Cambridge Saving Bank --

CONSTANTINE ALEXANDER: Yeah.

TIM GREENE: -- sign and you go behind it, there is another one there. But when you're on a public way walking around, you can't look up and see it. They're actually, the engineer, he didn't pick it up, but in the spirit of true disclosure there it is.

And then the one in the back just the way the buildings are, those are very tight streets, you can't, they're set back. They're not on them.

CONSTANTINE ALEXANDER: Okay.

Make sure you do better photo simulations next time, though. These aren't quite as complete as they should be.

Anything else?

ATTORNEY BRIAN GROSSMAN: No. As we talked about, the condition in terms of being not to below the roof line, is fine. We'll utilize the existing antenna mounts. And as we talked about before in terms of the size of the antennas, you know, they're fairly close but they are not exact and it's not a condition that we can comply with.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Open the matter up to public testimony.

Is there anyone wishing to be heard on this matter? Here's your chance. Doesn't want to be heard. Okay.

JIM MONTEVERDE: Can I ask one question?

ATTORNEY BRIAN GROSSMAN: Sure.

JIM MONTEVERDE: In the simulation as well as in

the location, there's one of the few that we've seen that don't seem to match the coloration of the building itself.

I know the condition says it will, correct?

ATTORNEY BRIAN GROSSMAN: It will.

JIM MONTEVERDE: Just in my eye it doesn't seem to do it as well as some others do. Just a closer color match will be appreciated.

ATTORNEY BRIAN GROSSMAN: Okay.

CONSTANTINE ALEXANDER: The Chair would report that we are in receipt of a memo from the Planning Board. The letter actually is identical to the one we heard with regard to a different case, 60 Vassar Street and the petitioner has -- we also, petitioner has dealt with it and in the photo simulations and the like. Some of the comments are going to be complied with such as you're going to be locating below the parapet line. Others in terms of the same length, the antennas being of the same length, we've already discussed the fact that technologically it's not

possible, and that the given the distance of the antenna to require a faux structure to accomplish that does not seem to be necessary, at least in the opinion of this Board.

And that you have, as you've already said, too, the installation will be finished in a color and texture to match the adjacent building surface, and that was Jim's comment or question.

We also have a letter from the Harvard Square Advisory Committee, but I think it's in the wrong file. This really relates to the one at 1 Brattle Square.

No?

ATTORNEY BRIAN GROSSMAN: They did --

CONSTANTINE ALEXANDER: No, no, no, it doesn't.

AT&T. It's the same comments, though.

ATTORNEY BRIAN GROSSMAN: Yes, they did provide comments on this one and the Planning Board I think incorporated their comments.

CONSTANTINE ALEXANDER: Basically very similar to

the Planning Board's comments.

ATTORNEY BRIAN GROSSMAN: Yes.

CONSTANTINE ALEXANDER: Nothing new or different here.

ATTORNEY BRIAN GROSSMAN: The Planning Board got their letter. They issued our letter I think last week and then Planning Board was Tuesday night.

CONSTANTINE ALEXANDER: All right. I'm going to close public testimony. Ready for a vote? I think we are.

Here we go again. The Chair moves that we make the following findings with regard to the Special Permit being sought:

That the requirements of the Ordinance as such that you cannot meet the requirements without a Special Permit.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted by the Ordinance will not be adversely affected by what is proposed.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare or the occupant of the proposed use or of the citizens of the city.

And that what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate the intent and purpose of this Ordinance.

And in addition, the Chair moves that we find that the modification of existing -- of its existing telecommunication facility at the site proposed by the petitioner does not substantially change the existing wireless tower or base station at such facility within the meaning of Section 6409(a) of The Middle Class Tax Relief and Job Creation Act of 2012, also known as The Spectrum Act.

Based on these findings the Chair moves that we

grant the Special Permit being requested subject to the following conditions:

That the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair.

That upon completion of the work the physical appearance and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair.

That the petitioner shall at all times maintain the proposed work so that its physical appearance and visual impact will remain consistent with the photo simulations previously referred to.

That should the petitioner cease to utilize the equipment approved tonight, for a continuous period of six months or more, it shall promptly thereafter remove such equipment and restore the building on which it is located to its prior condition and appearance to the extent reasonably practicable.

And lastly, that the petitioner is in compliance with and will continue to comply with in all respects the conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And then lastly there are our usual general conditions which is being incorporated by reference and your objection to that is also incorporated by reference.

(Further Conditions Incorporated by Reference:

Finally, inasmuch as the health effects of the transmission of electromagnetic energy waves as a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all the petitioner's equipment on the site. Each such report shall be filed with

the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

B, that in the event that at any time federal authorities notify the petitioner that its equipment on the site, including to, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner, within ten business days of receipt of such notification of such failure, shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure.

The Special Permit granted tonight shall ipso facto terminate if any of the petitioners federal licenses

is or are suspended, revoked, or terminated.

C, that to the extent that the Special Permit is terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to the Board for new Special Permit provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A or B above.

Any such new application shall not be deemed a repetitive petition, and therefore will not subject to the two-year period during which repetitive petitions may not be filed.

D, that within ten business days after receipt of a Building Permit for the installation of the equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with regard to a geographical area that includes

Cambridge stating that:

A, he or she has such responsibilities;

And, B, that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections, such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radio frequency radiation under federal law.)

ATTORNEY BRIAN GROSSMAN: Thank you.

CONSTANTINE ALEXANDER: Based on these findings the Chair moves we grant the Special Permit requested.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Relief granted.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(9:00 p.m.)

(Sitting Members Case BZA-010076-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010076, 15 Buckingham Street.

Is there anyone here wishing to be heard on this matter?

All right, give your name and address.

DAVID PEELER: Yes, sorry. I'm Randy Peeler or David Peeler, I should say, I apologize, 15 Buckingham Street.

RICHARD BERNSTEIN: And I'm Richard Bernstein from Gloucester, Randy's architect.

DAVID PEELER: And I thought it was useful to have Richard here to show, I hope attractive this looks and you can't see it from the street so we wouldn't bother anybody anyway.

RICHARD BERNSTEIN: We believe it will actually be a quite a nice fit to the house. This is the existing house, and the area we're talking about is on the other side of this bay.

So here's Buckingham Street. That's that bay window I just pointed out. And here is this small roof canopy which is over a set of existing stairs and the side entry. And the reason for the project is to protect the stair and landing from rain, ice, and snow.

CONSTANTINE ALEXANDER: We've had these kind of cases before.

RICHARD BERNSTEIN: And the design is actually there's no vertical support. It's a bracket which picks up on an existing shape from the house. And what we are going to do is actually pick up the lines of this pent edge at the second floor and crown and cornice molding to make the roof just tie in and be seamless. And there will be a copper standing seam roof. That's the proposal.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

JANET GREEN: It looks nice.

CONSTANTINE ALEXANDER: It is very nice.

DAVID PEELER: It's painful to walk out in the rain and the snow.

CONSTANTINE ALEXANDER: And people can't see it from the street unfortunately.

I'll open the matter up to public testimony.

Is there anyone wishing to be heard in this the matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. There are no letters or any correspondence in the file.

I'll close public testimony. Ready for a vote?

The Chair moves that with regard to the Variance being requested, we make the following findings:

That a literal enforcement of the provisions of

the Ordinance would involve a substantial hardship. Such hardship being is that the entrance to the structure that's most frequently used has no roof cover and it creates a real problem with regard to the ability to use that entrance and to the area around the entrance.

That the hardship is owing to the fact that this is a non-conforming structure so any modification requires zoning relief.

And relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

And in this regard the Chair would note that the relief being sought is rather modest in nature.

That is a relief of a kind that we have granted before in situations like this.

So on the basis of these findings, the chair moves that we grant the Variance requested on the condition that the work proceed -- and let me just stop right here since

you haven't appeared before us, Mr. Bernstein. These are the final plans?

RICHARD BERNSTEIN: Yes.

CONSTANTINE ALEXANDER: Okay. Because if you modify them, you're going to have to come back.

RICHARD BERNSTEIN: Those are the final and permanent set.

CONSTANTINE ALEXANDER: Okay.

So on the condition that the work proceed in accordance with plans prepared by R.F. Bernstein Architect. They're numbered A6, A7, A7.1, each of which has been initialed by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: God luck. Relief granted.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

(Whereupon, at 9:05 p.m., the

Board of Zoning Appeals Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

INSTRUCTIONS

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

PAGE	LINE	
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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
 BRISTOL, SS.**

I, Catherine Lawson Zelinski, a Certified Shorthand Reporter, the undersigned Notary Public, certify:

That the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of June, 2016.

 Catherine L. Zelinski
 Notary Public
 Certified Shorthand Reporter
 License No. 147703

My Commission Expires:
 April 29, 2022

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