

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, DECEMBER 15, 2016
7:00 p.m.

in

831 Massachusetts Avenue
Lombardi Basement Conference Room
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Brendan Sullivan, Vice Chair
Janet Green, Member
Patrick Tedesco, Member
Andrea A. Hickey, Member
Douglas Myers, Associate Member
George S. Best, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And then at the outset I have an announcement to make:

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 to 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 advise the meeting that a recording -- actually two recordings are being made. Our stenographer also makes a recording to help her when she's preparing the transcript of our hearing, and a citizen of

the city has also a recording and has left a recording device on the counter there.

So you are all forewarned.

With that, we'll start with our continued cases. As is our practice, we start with continued cases. These are cases that began at an earlier date but for one reason or another have been postponed to tonight.

* * * * *

(7:00 p.m.)

(Sitting Members Case BZA-011655-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: And the first case that I'm going to call is 12 Harding Street, No. 011655.

Is there anyone here wishing to be heard on this matter? Give your name and address to the stenographer, please.

BENJAMIN LEE: Hi, my name is Benjamin Lee and I'm

at 121 Briar Lane, Westwood.

DINA RUGAMAS: And my name is Dina Rugamas. The address is 12 Harding Street, Cambridge Mass, 02041.

CONSTANTINE ALEXANDER: Okay. The floor is yours.

BENJAMIN LEE: So tonight we're here to present 12 Harding Street. We are here to seek construction of two shed dormers on the left side and the right side of the structure, and we also seeking to add a window and an additional egress at the basement level. So for the location it is the third structure.

CONSTANTINE ALEXANDER: Let's start with the -- the dormer case is a Variance case.

BENJAMIN LEE: Yes.

CONSTANTINE ALEXANDER: The other case is a Special Permit. Let's deal with the Variance case first and then after we do that we'll get to the Special Permit.

BENJAMIN LEE: Okay.

Do we want to -- okay.

CONSTANTINE ALEXANDER: Whatever you want to do.

BENJAMIN LEE: So this is a location of the property. This is the structure from Cambridge Street. These are some of the contacts photos. There was a fire in 2015. So this, these three up here shows the existing condition of the property and this is the property at the rear of 12 Harding Street that is sharing the same lot.

The bottom --

CONSTANTINE ALEXANDER: You have a substandard lot of -- what is it? 2287 square feet.

BENJAMIN LEE: That's correct.

CONSTANTINE ALEXANDER: And there are two structures on this lot.

BENJAMIN LEE: That's correct.

CONSTANTINE ALEXANDER: How many dwelling units are on the lot?

BENJAMIN LEE: There's four in total.

CONSTANTINE ALEXANDER: Four in total. Two on

each lot?

BENJAMIN LEE: Yes. And this is the context photo.

This is the immediate neighbor, 14 Harding Street.

And then this is the side street looking back towards Cambridge.

This is 1 Harding with a shed dormer. And this is 7. This is 9. And this is 15 looking across from the property.

So, as I mentioned, we are trying -- we are seeking to construct two shed dormers on each side on the left and the right side, and then the following, the Cambridge dormer guidelines which are going to be offsetting one foot from the existing ridge line as for the top of the shed roof. And then the length of the dormer is going to be 15 feet. And the setback will be five-and-a-half feet from the front wall and the back wall of 12 Harding Street.

There will be windows on the right side which is -- we are

seven feet as a setback. We are proposing to have cement panels on the left side because it's right on the property line.

CONSTANTINE ALEXANDER: But the issue before us tonight on the Variance is not whether you can build a dormer. It's whether you can add the amount of FAR to the property. This is an extremely overbuilt structure. This right now, you're at -- your FAR is at 1.1 in a 0.75 district. You're 50 percent over. You want to add 800 more square feet to the structure. I'm not sure why. Which will bring your FAR to 1.48 or almost twice, virtually twice what Cambridge requires or limits you to. Why? Why should we grant a Variance for this completely overbuilt structure and make it even more overbuilt in a densely populated neighborhood? That's what you've got to address. And you have to demonstrate why you're entitled to a Variance which is what you're seeking.

BENJAMIN LEE: Right. There was tremendous

hardship when the fire that was caused to the property.

CONSTANTINE ALEXANDER: The fire doesn't mean you have to add 800 square feet.

BENJAMIN LEE: 550 of that is from the basement addition which I believe there is a provision --

CONSTANTINE ALEXANDER: What does this have to do with the fire?

BENJAMIN LEE: This doesn't have anything to do with the fire. But the nature of the lot is very narrow, and in order to make it viable as a two-unit -- right now there's already two-unit, but to make it more viable -- like, work as a two-unit, that's why we're seeking to --

CONSTANTINE ALEXANDER: Sir, I can understand the need to repair the damage caused by the fire and to the extent that you need zoning relief from us to do so, I think we would be ver amenable to that. You're looking to increase the value of your structure. You're trying to

increase the value of the property and you're doing it in a way that's dramatically out of sync with the City of Cambridge. We just had a major fire in a densely populated area.

BENJAMIN LEE: Right, I understand that.

CONSTANTINE ALEXANDER: And you're going to make this densely populated area even more densely populated simply because you can have more rental income from the property. That's what this is all about. Why should we grant you a Variance?

BENJAMIN LEE: It's basically that's what we're looking for is to make the two units more, more liveable.

BRENDAN SULLIVAN: What's in the basement now?

DINA RUGAMAS: There's nothing in the basement. It's just the way it was before, two-family, like it was a one bedroom in the first floor and living room and dining room and the kitchen.

BRENDAN SULLIVAN: So in the basement now there's

no living space at all?

DINA RUGAMAS: No.

BRENDAN SULLIVAN: So basically what you want to do is --

DINA RUGAMAS: Living room and dining room.

BRENDAN SULLIVAN: -- convert the basement into a liveable space --

DINA RUGAMAS: Yes.

BRENDAN SULLIVAN: -- and have that part of unit 1, which would be unit 1 --

DINA RUGAMAS: One.

BRENDAN SULLIVAN: -- the basement, and first floor.

DINA RUGAMAS: First floor, yeah. Like the two-bedroom. We will say like -- we want it like on the basement, we want it like a living room and a dining room, and then if possible a bathroom and then two bedrooms on the second floor.

BRENDAN SULLIVAN: And so where do you live now?

DINA RUGAMAS: I live on Brookline?

BRENDAN SULLIVAN: No, no, but I mean are you moving back to the house?

DINA RUGAMAS: Well, yeah, I would like to because, you know, like live -- before it was like two bedrooms and a second floor and the attic --

BRENDAN SULLIVAN: Before the fire did you live in the house then?

DINA RUGAMAS: No, I live before when I bought it. But then I had only two kids and now I have four. So the family grew.

BRENDAN SULLIVAN: So it's an investment piece of property?

DINA RUGAMAS: Yes.

BRENDAN SULLIVAN: Okay.

DINA RUGAMAS: But it will be like two bedrooms and two bedrooms. We only adding like extra living space,

like, living room and dining room.

PATRICK TEDESCO: Each unit -- before the fire each unit was a one-bedroom apartment.

DINA RUGAMAS: No. First floor was one bedroom, living room and dining room and bathroom. And then second and third floor was a bathroom, a living room, dining room, and the two bedrooms.

PATRICK TEDESCO: Oh, so the attic was habitable without the dormers?

DINA RUGAMAS: Yes.

PATRICK TEDESCO: Was it legally habitable without the dormers?

DINA RUGAMAS: Yes, it was legal. Yes, I bought it like that.

PATRICK TEDESCO: And you had egress?

DINA RUGAMAS: Egress, yes.

BENJAMIN LEE: The egress on the back side.

DINA RUGAMAS: On the back side.

PATRICK TEDESCO: No, but egress from the third floor from the attic?

BENJAMIN LEE: Not from the third floor.

DINA RUGAMAS: Not on the third floor, because when I bought the property, it was no egress on the back. So they -- I asked the City and they said they only supposedly was to put on the second floor, because it's like a -- it's one entrance from the third floor, second floor, all the way to the first floor. So they said that was an egress for in case of fire. So why -- basically what we just asking is just that because of the basement, was I think it's a new law that passed to be liveable. So it just like, it will stay two bedrooms and two bedrooms. Before it was one bedroom and a three bedroom. So now we're gonna do two bedrooms and two bedrooms. So it will be the same as before, we were renting before as a three bedroom and a one bedroom.

BRENDAN SULLIVAN: I think the house really works

as a single.

CONSTANTINE ALEXANDER: I'm sorry?

DINA RUGAMAS: It's 500 feet in the basement,
right.

BRENDAN SULLIVAN: I think the house really works
as a single.

CONSTANTINE ALEXANDER: Yeah. It's a
single-family house that's been converted to a two-family
house and now you want to expand it. What's your hardship?

The fire is not the hardship, because we're not
talking about repairing the fire. You're talking about
expanding the size of the structure. Why -- what is your
hardship?

BENJAMIN LEE: Part of the hardship I think
Ms. Rugamas is going to try to move back to the property and
her family has grown since then and that's part of
the -- part of the hardship.

BRENDAN SULLIVAN: That's a big try. Because how

many children do you have?

DINA RUGAMAS: Well, I have two little ones and two big ones, four. But my two big ones --

BRENDAN SULLIVAN: You're moving back?

DINA RUGAMAS: -- they in college, but they commute because one goes to Mass. Bay and so I'm trying to -- the two big ones live on the second floor and the little ones with me on the first and part of the basement. Trying to do that so they can pay their own bills.

CONSTANTINE ALEXANDER: Why don't you -- to follow up Mr. Sullivan's comment, why don't you repair the fire damage and make this a single-family home?

DINA RUGAMAS: Because I thought that because it was two-family, I supposed to leave it like that. Like when I spoke to the inspector, they said why are you going to go from two to one? So they gave me a suggestion like instead of, you know, like it was liveable, the basement, why not do an extra living space if I was gonna live on the property

and that's why we came out with that. But it's not like, you know, because I bought it as a two-family. It's two meters. So it's gonna be the same as a two-family just that it's gonna have like a -- and the dormer -- or on the second floor will have like the same two bedrooms, with a bathroom, that's it. Like before we didn't have bathroom, we have to come down to the second floor.

CONSTANTINE ALEXANDER: Other --

DINA RUGAMAS: And it was like --

CONSTANTINE ALEXANDER: I'm sorry, I may have interrupted your presentation. Keep going. Do you have anything more to say?

BENJAMIN LEE: No, I think that sums up the presentation.

CONSTANTINE ALEXANDER: So your hardship is the fact that -- one more time for me is? She wants to move back in.

BENJAMIN LEE: The client wants to move back,

potentially move back to the property.

CONSTANTINE ALEXANDER: Eventually, but not right away.

DINA RUGAMAS: No, right away when it's done. Because I been waiting for the right contract and it's almost going to be three years. But I would move right away.

CONSTANTINE ALEXANDER: Comments from other members of the Board at this point? We'll have a discussion later. Any more questions you want to ask?

ANDREA HICKEY: So would your intended use be for your family to use both units --

DINA RUGAMAS: Yes.

ANDREA HICKEY: -- or would one be a rental?

DINA RUGAMAS: No, no, it's because I have a teenagers. Like, they just graduated from college, so I want them to have their own space --

ANDREA HICKEY: Okay.

DINA RUGAMAS: And pay their own meter.

ANDREA HICKEY: All right.

DINA RUGAMAS: Basically for us.

CONSTANTINE ALEXANDER: And just out of curiosity, why do you have to expand the size of the structure, the living arrangements? Your teenagers could live in the one apartment that's with you before and you would use the other one.

DINA RUGAMAS: Because the way it was before is that the third floor it was the bedrooms, but we have to -- they have to come down the second floor to use the bathroom. And it would be a little bit bigger, like, they will have -- I mean, the bedroom will be smaller because now we adding a bathroom and a small closet. And before it was like the shape was like that so there was no closet. And we have to get like a little drawer. They're hard to close.

PATRICK TEDESCO: How many -- I'm sorry. Finish,

go ahead.

DINA RUGAMAS: And that's the reason, you know, for the liveable space basement because now the City allowed to have the extra space, that's why I asking two percent.

PATRICK TEDESCO: How many square feet do the dormers represent as an addition?

BENJAMIN LEE: As addition will be 300 square feet more.

PATRICK TEDESCO: And the 500 square feet will be from the basement?

BENJAMIN LEE: The 550 will be from the basement.

CONSTANTINE ALEXANDER: And then the basement doesn't count as FAR any longer, right?

SEAN O'GRADY: I don't think so. I don't know this project. I wouldn't want to make guesses.

BENJAMIN LEE: I put in 1.48 including the basement because, like, again --

CONSTANTINE ALEXANDER: But aware of the recent

amendment?

BENJAMIN LEE: I was aware of that, but I just put it in as a calculation. But it was taking out the 550, obviously the FAR will come down to a --

CONSTANTINE ALEXANDER: That makes a big difference.

JANET GREEN: Yeah.

CONSTANTINE ALEXANDER: How many square feet are you adding not counting the basement?

BENJAMIN LEE: 300 square feet.

CONSTANTINE ALEXANDER: 300 square feet.

PATRICK TEDESCO: I share the Chairman's concerns about density especially in this neighborhood, and I'm not sure where I'm going with this, but I will say that, you know, given the fact that we're not increasing the -- she's not increasing the number of bedrooms, if you think about the impact of density as tempered a little bit with the number of people living in the unit, and what you're gaining

is more living space. In other words, if this were to create, you know, three additional bedrooms or create a new unit, right, I would agree with you in terms of impact. So then the question is do the dormers themselves have the negative physical impact on the property given how dense it is and given the fact that there's two structures in the building. And I don't know if there are any abutters here to speak.

CONSTANTINE ALEXANDER: There were no abutters who commented. Well, I'll ask in a second. I could ask right now.

Is there anyone here wishing to be hard on this matter Harding Street?

(No Response.)

CONSTANTINE ALEXANDER: No, there is no one. And last I looked in the file there was no letters one way or the other.

BRENDAN SULLIVAN: When you come down off of

Cambridge on to Harding, this is really quite prominent, it's right there. The dormer that you're first going to see, it's going to make the house very top heavy, No. 1. I think your impact is absolutely correct, the more bedrooms, the more people, the more cars, the more yadda-yadda, on and on and on, it does impact the neighborhood. And I think that it has -- that's the genre of that neighborhood. And I think it works well without having to blow up the balloon a lot more if you will.

So, it's a big ask. And, again, the hardship that can be a sort of a misleading term "hardship," well I have a "hardship." Well, it cannot be of a personal nature. It has to be associated with the house and how is this Ordinance creating a hardship for you? And it really isn't one, the fact that you want more room or bedrooms or whatever, doesn't cross that threshold to a legal hardship.

CONSTANTINE ALEXANDER: Or to rephrase it, the hardship has got to be for anybody who operates the

property -- occupies the property, not just to your client.

BRENDAN SULLIVAN: And you need to, to your property and not to the others.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: And so, that's a huge ask.

Anyhow, I --

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony. I guess there's no one here who wishes to be heard on this matter. I think that's correct.

Any final comments you would like to make before we deliberate?

BENJAMIN LEE: Part of the hardship when I was designing the interior of the space, is I'm going to bring everything up to code. The stairways, it's going to be at least three foot clear. You know, that's taking up more spaces and everything. The nature of the lot is very narrow and makes it -- well, the nature of the house as it's existing is very narrow. So when I'm bringing it up to

code, it's actually pushing all the living space smaller.

So that's part of the hardship in nature of the structure.

CONSTANTINE ALEXANDER: You can still pick up 500 more square feet in the basement without any relief from this Board. It hasn't been used in the past, you can use it now. So you can create more living space in the structure. It's just creating -- modifying the structure to do it even more so. And as Mr. Sullivan is pointing out, making it -- the dormers make the house a bit top heavy.

ANDREA HICKEY: Excuse me for a second.

CONSTANTINE ALEXANDER: Go ahead.

ANDREA HICKEY: Is there no way to put a bathroom on the third floor except for the dormers?

BENJAMIN LEE: It will be very difficult. I mean the fact that like you, I need the dormer for the stairs to get up access. Right now the stair is actually very, almost like a ladder going up to the attic. So I put, like, the most efficient U-shape ladder going up. You need the

headroom. That's part of the dormer. And then for the headroom you need the seven foot by code, and then that's also, that's why the dormer comes into play to add the additional living space in the attic. So to answer your question, it will be very difficult to put a bathroom up in the attic.

ANDREA HICKEY: So how much of the 300 square foot area in the dormer would you assign to the making the stairs compliable and safe?

BENJAMIN LEE: How much -- can you repeat the question, please?

ANDREA HICKEY: Of the 300 extra square feet that would be added due to the dormers, what sort of portion of that would you assign to making the stairs safe and compliable?

BENJAMIN LEE: I would say 100 square feet of that.

ANDREA HICKEY: Really?

BENJAMIN LEE: One third of that.

ANDREA HICKEY: Okay.

CONSTANTINE ALEXANDER: And that would only be for one dormer. And you need that for one dormer not both dormers?

BENJAMIN LEE: That's right.

ANDREA HICKEY: Right.

BENJAMIN LEE: Because of the headroom coming up.

JANET GREEN: And am I correct that it was an existing two-family prior to the fire?

BENJAMIN LEE: That's correct.

DINA RUGAMAS: Yes.

JANET GREEN: And it had the same number of bedrooms then that you're asking for now?

DINA RUGAMAS: Yes.

JANET GREEN: And it's for your family where you have two older children and two younger children?

DINA RUGAMAS: Yes.

JANET GREEN: And there were no existing neighborhood objections?

DINA RUGAMAS: No.

Because it's already one on the property. Like One Harding Street that is facing part of Broadway and Harding Street.

PATRICK TEDESCO: Which probably doesn't meet the dormer guidelines I'm guessing. In terms of this property here?

DINA RUGAMAS: Yes. That's One Harding Street.

JANET GREEN: So it was before the dormer guidelines.

PATRICK TEDESCO: Certainly before. It's why dormer guidelines should be written.

CONSTANTINE ALEXANDER: You're right.

JANET GREEN: Exactly. Not as bad as another one I've seen. I can't remember the name of that street.

CONSTANTINE ALEXANDER: They're not dormers,

that's the roof line.

PATRICK TEDESCO: Plus this is a fourth floor, it's even worse.

Well, I mean to the dormer guidelines, there's a reason why they're written. This meets the dormer guidelines. So from an architectural perspective, it doesn't bother me. And I don't find adding a dormer to a three-story building to be overly burdensome.

Architecturally it's preferable when dormers are smaller and paired as opposed to sheds and it just looks better and -- but I realize it's more expensive. It doesn't add as much square footage. But, again, the dormer guidelines permit this kind of response. So architecturally I'm not bothered by it. I do share concerns about density and impact, but as I said, it's tempered in my mind by the fact that she's not proposing to increase the number of bedrooms but simply to make the space more habitable and comfortable for the family. That's sort of what I'm

weighing. And I agree with your concerns about the hardship whether it's been actually met yet.

CONSTANTINE ALEXANDER: Any other comments or discussion or we can go to a vote? It looks like we're going to a vote, right?

BRENDAN SULLIVAN: Yeah.

CONSTANTINE ALEXANDER: Okay. The Chair moves, and we're talking about the Variance. We'll take the Special Permit next.

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

That the literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that the petitioner needs additional living space within the structure for at least immediately, short term, for the use of her family.

That the hardship is dealing with the fact that this is a non-conforming structure, and that any

modification or increase in the size 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 this Ordinance.

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 the plans. There are two pages, A4.0 and A1.0, prepared by -- I want to get your name right -- by Ben Lee Architects.

All those in favor of granting the Variance on this basis, please say "Aye."

(Aye.)

(Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: Opposed?

(Show of hands, Alexander, Sullivan.)

CONSTANTINE ALEXANDER: You need four to be approved. It is denied.

Let's go on to the Special Permit. Excuse me, I'm sorry. We have to take another vote before you get to the Special Permit.

The persons voting on this would be the people who voted against granting relief.

And the Chair moves that the relief was denied or the vote against the relief on the grounds that the hardship that is afforded by the petitioner is not a hardship within the meaning of a legal requirement for a substantial hardship, and that relief could not be granted without substantial detriment to the public good inasmuch as this structure is already significantly out of compliance with our -- in terms of density and would become more so if we would grant relief.

All those in favor -- anything else you want to add?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: All those in favor of that

say "Aye."

(Show of hands, Alexander, Sullivan.)

CONSTANTINE ALEXANDER: Mr. Sullivan and I.

Now you could go to your Special Permit.

BENJAMIN LEE: For the Special Permit we are seeking to have the window for the basement level and also the egress for the basement level. That is basically making the basement into a habitable space.

CONSTANTINE ALEXANDER: This is in connection with converting the basement into habitable space. You need this to make it really work?

BENJAMIN LEE: Right. So this would be a window well and then the egress for the basement level.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board on the Special Permit?

(No Response.)

CONSTANTINE ALEXANDER: None.

I'll open the matter up to public testimony just for the record.

Is there anybody interested in this Special Permit case?

(No Response.)

CONSTANTINE ALEXANDER: No one's interested. I'll close public testimony.

Discussion or we ready for a vote on the Special Permit?

ANDREA HICKEY: I'm ready.

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the Special Permit that's being sought:

That the requirements of the Ordinance cannot be met unless a Special Permit is granted.

That traffic generated or patterns of access or

egress resulting from the relief sought by the Special Permit 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 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 districts or otherwise derogate from the intent and purpose of this Ordinance.

In regard to all of this this is based on the fact that the petitioner seeks to create living space in the basement and needs the Special Permit to make the living space habitable.

So on the basis of these findings, the Chair moves

that we grant the Special Permit requested on the condition that the work proceed in accordance with the plans that I previously identified with regard to the Variance and which have been initialled by the Chair.

Before we take the vote, sir, these are the final plans?

BENJAMIN LEE: Yes.

CONSTANTINE ALEXANDER: Because if you modify them, you're going to have to come back before us. I want to make sure you understand.

BENJAMIN LEE: I understand.

CONSTANTINE ALEXANDER: All those in favor of granting the Special Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Special Permit granted.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: Thank you.

SEAN O'GRADY: You're all set, folks.

BENJAMIN LEE: Thank you.

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-011658-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,

George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 011658, 2500 Massachusetts Avenue.

Is there anyone here wishing to be heard on this

matter?

Okay, this is -- the case was continued because there were some issues about screening with the Planning Board and the like, and you were going to meet with the landlord and see what you could do and you were going to come up with new proposals.

ATTORNEY DANIEL GLISSMAN: Good evening, Members of the Board. My name is Daniel Glissman, an attorney with Prince, Lobel, Tye, One International Place, Boston, Massachusetts.

So, as the Chair just stated we were continued for some screening issues. The Planning Board had requested that we look into the possibility of putting a fourth wall on to completely screen the proposed extended screen wall. We have since designed and implemented that new program. So you can see in the plans that are submitted, I'm happy to pass them out. And in the photo simulations we've taken a fourth screen wall, it's a six-foot screen wall, which will

connect the two corners and actually go just over the existing HVAC unit that we thought was an issue previously. I went to the site along with the site acquisition team and the engineers and we looked at the equipment on the roof. And the HVAC unit while real actively taller, is just under the existing six-foot screen wall which is a concrete screen wall. So we're able to fit this new screen wall across and completely conceal it and really fill in that fourth wall.

CONSTANTINE ALEXANDER: And the Planning Board did not submit a memo to us this time. Have you met with the Planning Board since we had our hearing and have you shown them what you're showing us tonight?

ATTORNEY DANIEL GLISSMAN: The plans and updated sims were -- we received them on Friday of last week and they were submitted into the file, but they haven't gone specifically to the Planning Board. However, I did attend the Planning Board hearing and their one -- their chief concern really was just coming up with a way to have this

fourth screen wall.

CONSTANTINE ALEXANDER: They also expressed a concern about the screening and it will not match what's there now and particularly over time and weathering and the like and that would make it unattractive let's say.

ATTORNEY DANIEL GLISSMAN: Correct. They had asked that we have the materials signed off on by CDD staff prior to a Building Permit being issued. So we're, we're fully prepared to comply with that as a condition of any approval that this Board may have this evening. We haven't yet ordered the pieces or the actual stealthing equipment. There is still work that has to be done to go up and match the exact equipment. It hasn't been ordered just yet, but we'll certainly have that approved by CDD staff prior to a Building Permit.

CONSTANTINE ALEXANDER: And better if you could have had it done before tonight but understood.

Comments at this point from members of the Board?

JANET GREEN: No.

CONSTANTINE ALEXANDER: Why don't you go through -- we never got through it last time, go through the usual steps we've got to go through to get the Special Permit in terms of you're a licensed FCC carrier in good standing?

ATTORNEY DANIEL GLISSMAN: Correct. We're a licensed FCC carrier in good standing. T-Mobile is the license carrier.

Its signed on for this application.

We're seeking relief under both Section 6409 of The Middle Class Relief Act as well as the Special Permit criteria. I'm happy to walk through the 6409.

CONSTANTINE ALEXANDER: In a second. This is not a residential -- for the record, not a residentially-zoned district?

ATTORNEY DANIEL GLISSMAN: Correct, it's not a residentially-zoned district.

CONSTANTINE ALEXANDER: All right now go through the 6409 special map drill.

ATTORNEY DANIEL GLISSMAN: The first part of the Section 6409 test is that the modification to the facility does not exceed the height of the existing facility by more than ten percent or more than ten feet. We won't -- we are extending the height of the existing antennas, however, they do not exceed that ten-foot threshold.

The antennas themselves will not protrude beyond six feet, which is the second part of this test for Section 6409. The roof installed, and four of them will continue to be installed on the penthouse where the two relocated antennas will be set back from the roof line.

The third part of the test is that we are not proposing any excavation. This is a rooftop installation design, it does not include any excavation.

We also will not be installing any additional equipment cabinets.

And we believe that this facility does not exceed the existing condition, the existing stealth conditions. In fact, where we believe we are increasing the stealth for this site by screening the new --

CONSTANTINE ALEXANDER: Provided that the materials you're using for the screening is not -- is different than what is there now so it sticks out, which is what the CDC is going to pass on.

ATTORNEY DANIEL GLISSMAN: Correct, correct.

BRENDAN SULLIVAN: So you're going to put a fiberglass screen wall on top of an existing concrete screen wall?

ATTORNEY DANIEL GLISSMAN: Correct.

BRENDAN SULLIVAN: And that's going to look the same?

ATTORNEY DANIEL GLISSMAN: That's -- I believe so. I am told that it, that the screening technology is up to standards and they should be able to make it match.

CONSTANTINE ALEXANDER: I suppose if it's laminated or do something -- I don't know if they'll do it, but that's what you can.

ATTORNEY DANIEL GLISSMAN: And the concrete, it's not a raw concrete --

BRENDAN SULLIVAN: 3-D.

ATTORNEY DANIEL GLISSMAN: -- concrete. It's painted as well. A darker color so I believe we will be able to match it.

BRENDAN SULLIVAN: It's a rough aggregate is what it is. But all right.

And you're going up six-foot, six with the new -- there's two panels above the roof line now and you're going to go four.

Are those additional two of six-foot, six?

ATTORNEY DANIEL GLISSMAN: I believe it's six feet, but let me just confirm it. If you have the plan in front of you.

No, sorry, you're correct, six-foot, six.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: I don't think so.

We don't have any letters in the file. So, any final comments you want to make?

ATTORNEY DANIEL GLISSMAN: I don't believe so, no, thank you.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we make the following findings with regard to the relief being sought, this being a Special Permit case:

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

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. We're talking, again, the addition of antennas on the rooftop.

The continued operation or development of adjacent uses as permitted by the Ordinance will not be adversely affected by the nature of the proposed use.

In this regard we received no comments from abutters or the like regarding adverse effect, and as we get farther into the conditions, we will try to put conditions that will minimize the possibility that there would be an adverse effect.

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

Ordinance.

In addition, the Board finds 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 bay 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 the petitioner be granted the Special Permit they're seeking subject to the following conditions:

One, that the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair. That's these right here.

Two, 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.

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, and this is consistent with the comments about the -- how the screening is going to age and compare to what's there before. Finding is it's got to stay consistent with what's there now.

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.

Five, that the petitioner is in compliance with and will continue to comply within 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, that the materials to be used for the screening for the new equipment to be put up by the petitioner, be approved by the Community Development, CDD, on the basis that it will weather and have an appearance consistent with the appearance of the screening that's there now. So that it will not be different to any material extent than what it there now.

And then 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 authority regarding electromagnetic energy waves, emissions, emitting from all of 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 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 regulation, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner shall, within ten days of receipt of such notification file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred on the basis for such claimed failure, the Special Permit granted tonight shall ipso facto terminate with any of the petitioner's federal licenses is or are suspended, revoked, or terminated.

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

petitioner may apply to this Board for a 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 application shall not be deemed a repetitive petition and therefore will not be subject to the two-year period during which the 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 the geographical area that includes Cambridge stating that;

A, he or she has such responsibility;

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 with excessive radiofrequency 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. Special Permit granted.

(Alexander, Sullivan, Green, Hickey, Best.)

ATTORNEY DANIEL GLISSMAN: Thank you.

* * * * *

(7:45 p.m.)

(Sitting Members Case BZA-011769-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011769, 85 Hamilton Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman and members of the Board. For the record, my name is James Rafferty. I'm an attorney with offices at 675 Massachusetts Avenue in Cambridge. I'm appearing this evening on behalf of the applicant Miltenyi Biotec, M-I-L-T-E-N-Y-I B-I-O-T-E-C. Miltenyi Biotec, Inc. Their President Harold Fritzenkotter is here. The project architect --

HAROLD FRITZENKOTTER: I'm not the President. I'm the head of infrastructure.

ATTORNEY JAMES RAFFERTY: I think this has legal effect. Why don't we leave it at that. You can inform your colleagues back in Germany. Battlefield promotion.

This is Christopher Chan. He used to sit on this

Board when you had much more lavish settings. This is his associate Michael DiMaggio. Spelled just like the baseball player but no relation.

CONSTANTINE ALEXANDER: Not that he knows anyway.

ATTORNEY JAMES RAFFERTY: Right.

So by my count, one, two, at least two members, I might take that -- no, no, two members of the Board might recall this property on Hamilton Street and Mr. Fritz Fritzenkotter and myself and the architects appeared before the Board in the succession of hearings back in 2012. The primary focus of which involved efforts to place an addition on the roof of the building.

At the end of those extended proceedings we withdrew the cases related with that, but we did seek for approval to construct a basement in the building. Now the building is significant in that it does not have a basement. It's a slab on grade. One of the things that came about as part of the renovation of the building that's being

extensively remodeled by Miltenyi, the -- in dealing with the neighbors and in looking at heating systems and other forms of mechanical equipment, Mr. Chan devised equipment that could be accommodated into the basement which would have the benefit of having little, if any, rooftop mechanical equipment, which was well received by our abutters and had certain efficiencies and attraction to the property owners. So the Board back in 2012 granted a Variance to allow for the basement to be used for that purpose, to allow us to construct a basement. And the GFA permitted at that time was an additional 1,020 square feet in the basement. The areas devoted for mechanical equipment as you know would not be included in the GFA because they're exempted but there are -- there were in that floor plan additional proposed uses for the basement. That Variance was granted in 2012 but not acted upon. So it is a lapsed Variance. For a variety of reasons the construction of the building was delayed, the renovation plan.

Mr. Fritzenkotter tells me it had nothing to do with awaiting the outcome of the election. I thought perhaps that the German mark and the currency changes anticipated, but that didn't affect things.

So they are now back. We are looking essentially to get the same Variance to allow for a GFA in the basement, but there's a slight change, and it does represent an additional 380 square feet beyond what was originally proposed. That came about because of a lot of examination of a type of work that's done in the building and that the company does. And there's actually an area where testing goes on. And I wanted to share with you a photograph. We can go into the details. The testing around metal things, right?

HARALD FRITZENKOTTER: Genetic cell separations.

ATTORNEY JAMES RAFFERTY: Yeah. It occurs in the location that is sealed, secured, no windows, no vibrations, and all that. And as they looked at this activity, they

came to the conclusion, you know, it would be nice to be able to do that in the basement.

It's a complicated excavation. They're going to have to bring equipment in and excavate the basement. So as they're doing all of that, as you know, if they could do -- if they did it at six-eleven, it wouldn't be GFA. If it's more than seven feet, it is GFA. It's a couple hundred square feet. It is notable that part of this phase, part of this work involves the removal of what was called an annex. And that's roughly 323 square feet. So that's coming out. So the net change in GFA isn't as large as the difference between the 1,020. The 380 was mitigated by some other changes. So the additional square footage here between what was originally approved and what was approved 1,020 is now 1144. So it's 120 square feet of additional GFA. I say additional, not contained in the basement.

There's two covered awnings for the entry on the street and the side yard. So the door now, you open the

door there's no covering. And as we know under the Ordinance, even something as modest and simple as a covered awning would require GFA relief even when the building exceeds the GFA.

So in the design the last time the Board looked at it, we hadn't proposed that. And I think upon further examination, Mr. Chan thought that that would be an advantage.

So we are back before the Board seeking a Variance based on the same hardships contained within the decision you granted in 2012. We believe it is very modest, not impactful in any way, and does in fact allow for the most part for a productive use of this basement. It does not in any way intensify the use of the building. I don't know if the members had a chance to review. There is a letter in the file from the Historical Commission where Mr. Sullivan has commented upon the exemplary restoration work occurring at the building.

CONSTANTINE ALEXANDER: I'll read it into the record at the appropriate time.

ATTORNEY JAMES RAFFERTY: Okay.

It is a classic example of art moderne buildings of which there are very few. I'm sure the Board will recognize that.

So when Mr. Sullivan has been helpful at the advising on the re-pointing of the masonry, work on the windows, so I think we're pointing out to the Board that there is a sensitivity being employed here with regard to the restoration of this building. We -- the footprint is unchanged. The landscape will improve. It's a quiet use. It doesn't have that many employees. There's little or no evening or weekend activity. There's a gentlemen's agreement with some of the abutters during snow and weekends and things. The parking lot gets used on a handshake, and they attempt to get along well with their neighbors and I think that they've succeeded.

You may recall there's a small studio apartment, that remains. And Mr. Fritzenkotter is staying there now while he's here. But it's --

CONSTANTINE ALEXANDER: I was going to ask you about that only because in 2012 you didn't show that unit. There was a no dwelling units in the property in the dimensional form and this time there was one. I was just curious. You've answered it. You created it in the last four years.

ATTORNEY JAMES RAFFERTY: No, no, it was created. It was an as-of-right conversion.

CONSTANTINE ALEXANDER: No, no, I understand that.

ATTORNEY JAMES RAFFERTY: Right. I know, but the Building Permit was issued before those hearings because at some point, at some point there was -- I recall there were questions about how the Building Permit came about. And how does it happen. You'll recall this is the Special District 10 which allows for residential uses and certain residential

uses and how -- there was a lot of discussion about -- you may recall some people were concerned that it was a hotel because the apartment wasn't going to be consistently occupied as someone's permanent residence. And we said, no, Mr. Fritzenkotter and his colleague are here regularly and they would prefer to stay in the building. So that has been the case for many years.

CONSTANTINE ALEXANDER: Probably just your dimensional form was incorrect in 2012 because it does say zero.

ATTORNEY JAMES RAFFERTY: Next to dwelling units?

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY JAMES RAFFERTY: Well, that unfortunately might be the case, yes.

CONSTANTINE ALEXANDER: It's incorrect. It's correct that's always been the case at least back to 2012.

ATTORNEY JAMES RAFFERTY: I was going to mention that the floor plans in the 2012 case do notice, do locate

the -- do have the dwelling unit there, but it is there.

So that is, that is the change. It's a, a request to allow for a basement GFA. What was largely contained in a lapse variance from 2012 representing a few additional hundred square feet for the ability to do additional work in the basement, and is setting a volume space that's greater than six feet, eleven.

And I know the Board is well familiar with all the changes of ceiling heights and the relationship of basement volumes to GFA, but this would allow, as I said, the excavation to be slightly bigger than we had shown you three years ago.

CONSTANTINE ALEXANDER: Why don't you address the Special Permit side of the case?

ATTORNEY JAMES RAFFERTY: Oh, sure.

The Special Permit, when we take -- when the annex is removed, what is currently an interior wall becomes an exterior wall. So there are doors into the annex now from

the main building. Those doors will now be facing onto the exterior of the building. So notwithstanding Mr. Chan's many hours on this Board, he did come up with a change when Mr. Fritzenkotter was here this week about the possibility of relocating a door and a window. And I -- very mindful of the Monday rule, but I did suggest that he might, it might be modest enough that if he initialled a plan and showed the difference what it would mean, that's on an alley, that's going to be space that's now open space. That's a wall that's currently an interior wall, but upon further examination, the present thinking is that the floor plan and the operation would benefit from switching the location of the door. But that's the non-conforming wall that we're referring to. It -- it's up against the alley that abuts the good news garage. So --

CONSTANTINE ALEXANDER: You're asking us for a waiver of the Monday rule on the basis that the waiver is modest, very modest in nature, is that it?

ATTORNEY JAMES RAFFERTY: That would be one of the reasons.

CONSTANTINE ALEXANDER: What other reason?

ATTORNEY JAMES RAFFERTY: Former board members get a vote.

JANET GREEN: Wait a minute, what was that?

PATRICK TEDESCO: Former board members get a vote.

BRENDAN SULLIVAN: Then we should extend this one-time courtesy, is that it?

CONSTANTINE ALEXANDER: Use it up.

CHRISTOPHER CHAN: I would have picked a better one than that. I could come back for that one.

ATTORNEY JAMES RAFFERTY: Tis the season.

CONSTANTINE ALEXANDER: Questions or comments from members of the board at this stage?

ANDREA HICKEY: No.

JANET GREEN: No.

CONSTANTINE ALEXANDER: I'll open the matter up to

public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently no one wishes to be heard.

We are in receipt of a letter as Mr. Rafferty has indicated, from Charles Sullivan the Executive Director of the Cambridge Historical Commission. (Reading) I am writing in support of the Zoning Variance requested for the above-referenced project. The former Meyerson Tooth building at 85 Hamilton Street was constructed in 1938, designed by architect Sumner Schein, S-C-H-E-I-N, it is a rare example of art moderne factory design. The owner is currently conducting an exemplary restoration. The variances requested -- it's actually a single Variance -- will allow this historic building to continue to meet the needs of its owner, and I hope the Board will see

fit to grant the requested relief.

And that's it, nothing else. There's no neighborhood correspondence. No one's here obviously.

Anything to report about the neighbors? Any reviews on this?

ATTORNEY JAMES RAFFERTY: No. Just the relationship we I described earlier.

CONSTANTINE ALEXANDER: The last time in 2012 there was neighborhood support for what you were doing.

ATTORNEY JAMES RAFFERTY: Right. But admittedly the last time we had extensive engagement with the neighbors over the rooftop addition.

CONSTANTINE ALEXANDER: That was separate, yeah.

ATTORNEY JAMES RAFFERTY: Yeah. So that's -- there was never much focus on the basement. And in fact, the conclusion was that the neighborhood, for a variety of reasons, we decided to withdraw that sensing that the attic --

CONSTANTINE ALEXANDER: That's the rooftop?

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: But for the basement, there was, according to the earlier decision in 2012, there was neighborhood support.

ATTORNEY JAMES RAFFERTY: Right. I don't think anyone -- no, there was no neighborhood -- no one in the neighborhood was concerned about the basement, right. And in fact, you're right, the neighbors spoke favorably about the basement because of the ability to locate the mechanical equipment into the basement, and we said creating the basement will allow us to really keep the roof rather pristine and not put the mechanical equipment up there. So you're right, I think that's what led them not to simply be benign about it but actually to advocate for it. And that continues to be.

And we did send out, I should note, Mr. Chan did send out a communication to the neighbors. We took the list

of abutters that get notified explaining to them the relationship of this application to the 2012 Variance and offering to answer any questions if he heard from anyone.

I think you told me you did get one question about construction and ensuring that there wouldn't be any rodent problems, and he assured that the nature of this construction, digging interior of the building, we wouldn't anticipate -- and everything else is really exterior windows and re-pointing and all that. Is there any other feedback you got?

CHRISTOPHER CHAN: We have talked to the people at Sidney Street, I think it's 179. Mr. Grossman who is a neighbor, Don. And I thought he was actually going to be here or send a letter. He thought he might be able to be here. I thought he might send a letter. He's generally been positive about it. But he did not send a letter. But I think the person who mentioned the rodent issue said it was cold, she wasn't coming because it was cold. So I don't

know if that may have decreased the people who wanted to go out tonight.

CONSTANTINE ALEXANDER: Well, usually people who are opposed they make an effort to get here.

CHRISTOPHER CHAN: Yeah, more of an effort.

ATTORNEY JAMES RAFFERTY: Not withstanding the temperature.

CONSTANTINE ALEXANDER: I'll close public testimony unless you have any final comments?

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: Ready? Discussion? Or do you want to take a vote? Two votes. We have a Variance and a Special Permit?

BRENDAN SULLIVAN: Yeah.

CONSTANTINE ALEXANDER: Ready?

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that the basement, the fact that there is no basement in this structure means that the structure cannot be -- as well utilized as it can with a basement, particularly given the nature of the activities to be conducted in the basement.

That the hardship is owing to the fact that this is a non-conforming structure in the first place, and therefore, any relief requires -- any modification requires zoning relief.

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.

On the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Chan Mock Architects dated October 6th, first page of which

has been initialled by the Chair, except to the extent modified by a single page, A4.2 also initialled by the Chair.

All those in favor of granting the Variance please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: Turning to the Special Permit. This is with regard to doors and openings on non-conforming walls.

That the Chair moves that we make the following findings with regard to the Special Permit request:

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

That traffic generated or patterns of access or egress will to the 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 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 from the intent and purpose of this Ordinance.

With regard to all of these foregoing findings, the Chair would note that the Board approves that the changes being requested are very modest in nature and that there's no deleterious impact on the neighborhood.

So on the basis of all of these findings, the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with the

plans referred to with regard to the Variance we just granted.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(8:05 p.m.)

(Sitting Members Case BZA-011890-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011890, 11 Inman Street.

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

RYAN LEE: Thank you very much. My name is Ryan Lee. I'm operations director of Food For Free.

ELAINE DeROSA: I'm Elaine DeRosa, the Director CEOC of 11 Inman Street.

RYAN LEE: And so what we're doing, we're a food rescue organization. We pick up food all over the city, distribute it to people who need it. An area of growth for us lately has been prepared food. Food coming out of places like Harvard University's dining halls, Tufts, that sort of thing. We collect that food frozen, store it for a period of time, and then process into individual meals that can be served to people who don't have facilities to do much cooking themselves. The great news is we're seeing more and more food. The bad news is our freezer's getting full. So what we're looking to do is to add to our, with an existing bank of walk-in coolers and freezers in the yard. We're

plaining to build -- we'd like to build a walk-in freezer to the side of it. And so it's going to be 9-by-13, those are the proposed dimensions. It's going to match the look of the other one. Condensers will be next to each other and screened in the with the lattice work.

CONSTANTINE ALEXANDER: First of all, on behalf of the City, thank you for the work you do for the citizens of the city. And what you want to do is increase your ability to do that good work and all to the better. I just have a question, nothing to get alarmed, but your dimensional form shows no setback issues. I looked where you're going to put the cooler, there is going to be a setback issue.

RYAN LEE: I'm not quite sure.

ELAINE DeROSA: You mean because the back -- because it backs up on the driveway on City Hall?

CONSTANTINE ALEXANDER: Maybe Sean can help us. I was curious. It looks like it's going to be....

SEAN O'GRADY: Well, they're only going to have a

five-foot setback, but that looks like it's going to be two or three.

CONSTANTINE ALEXANDER: Yeah. Okay.

SEAN O'GRADY: Is this the new piece?

CONSTANTINE ALEXANDER: Existing.

SEAN O'GRADY: That's fine. That's fine. Well, I would say you're probably a foot or two closer than they should be.

CONSTANTINE ALEXANDER: It's not a problem. Because they did cite 5.31 so we're all okay. I think there is -- technically you're too close to the lot line.

ELAINE DeROSA: To the back fence or the one behind --

CONSTANTINE ALEXANDER: The side fence.

ELAINE DeROSA: The one behind where the Dotty Way is, is that what you mean?

CONSTANTINE ALEXANDER: No, I think the one by the -- abutting City Hall. City Hall property.

ELAINE DeROSA: The City Hall side of things.

CONSTANTINE ALEXANDER: No one at City Hall is complaining you're getting too close.

ELAINE DeROSA: No. Build it, they said. Build it.

CONSTANTINE ALEXANDER: Okay.

Comments from members of the board?

JANET GREEN: I just echo your comment, Gus. You know, I've brought some things for Food For Free and how wonderful they are about helping move food along when it's possible to do that.

RYAN LEE: Thank you.

ELAINE DeROSA: You know, and it really -- they break it down to do the microwave, but then the pantries can, you know, we run the pantry there in the basement with our own coolers, but then for large families it doesn't have to be broken down and people can take it home and cook it. Then it's even a bit -- you know, it's like all different

ways to distribute it.

PATRICK TEDESCO: You distribute or people come like a pantry?

ELAINE DeROSA: Both. Both. For the deliveries, they just -- because it has to be remain frozen. We can keep it frozen until distribution in the pantries when people come to pick it up. So on their way out they take it because they're heading home. Maybe it almost defrosts by the time they get home. So the frozen foods are a great addition to the produce, the fresh produce that we have.

CONSTANTINE ALEXANDER: How many people do you estimate on a monthly basis come?

ELAINE DeROSA: 900 households.

CONSTANTINE ALEXANDER: 900 households?

ELAINE DeROSA: In a very little tiny old garage space.

CONSTANTINE ALEXANDER: Yeah, I know.

JANET GREEN: That's great work.

CONSTANTINE ALEXANDER: Good for you.

Any comments from members of the Board besides Janet?

(No Response.)

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

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

(No Response.)

CONSTANTINE ALEXANDER: There is no one. I don't see any letters in the file for anyone pro or con so I'm going to close public testimony.

Ready for a vote?

JANET GREEN: I'm ready.

BRENDAN SULLIVAN: Whatever they want.

CONSTANTINE ALEXANDER: That's my feeling.

ELAINE DeROSA: We wanted an annex step, you know, walkway behind City Hall but I don't know. If you could

help us.

BRENDAN SULLIVAN: Monday night. Monday night.

Public comment.

CONSTANTINE ALEXANDER: Okay, the Chair moves that this Board 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. Such hardship being that this is an institutional property that provides a very valuable service to the community and it needs additional space to provide and increase the services it provides to the community, potentially increase.

That the hardship is owing to the fact that this is already a non-conforming lot and therefore any modification or additional structures requires zoning relief.

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. In fact, it is really -- relief may be granted without -- it will grant a substantial benefit to the public good just even more so than no substantial detriment.

So on the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the three pages of plans submitted by the petitioner and initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(8:15 p.m.)

(Sitting Members Case BZA-011932-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011932, 1815 Massachusetts Avenue.

Is there anyone here wishing to be heard on this matter? Floor is yours.

ATTORNEY BRIAN GROSSMAN: Thank you, good evening, Mr. Chairman, members of the Board. Brian Grossman, Anderson and Kreiger, 50 Milk Street, 21st floor, Boston, Mass., 02109. And with me is Tim Greene who is the consultant on behalf of AT&T.

I know we are here not that long ago for this site.

CONSTANTINE ALEXANDER: People have been here for this site for a long time.

ATTORNEY BRIAN GROSSMAN: Yeah. But there's actually a second round of modifications that were determined that needed to be done. The proposed modifications will still be compliant with the Section 6409. In general what the proposal involves is a replacement of one antenna per sector. There is a sector where there's two existing antennas that are there now. They are actually going to swap positions. And that sector's actually the one that's parallel to the north, parallel to 2A toward the intersection of Somerville Avenue. So those two literally will switch and be located on the existing mounts that are there.

There are three RRUs, the remote radio units that will be removed, and then -- so one per sector. And then

there will be two new ones added, so two per sector. So a net add of three associated with the facility. And that's it.

It complies with the Section 6409. The antennas are facade mounted. They utilize the existing mounts that are there. Those antennas do not currently stick up above the roof line, and they still won't so they don't increase the height of the building by either the ten feet or ten percent.

They won't protrude -- the current antennas don't protrude by six feet from the facade and neither do the proposed antennas.

JANET GREEN: I'm sorry, what did you just say?

ATTORNEY BRIAN GROSSMAN: The existing antennas don't protrude more than six feet off the facade and neither will the proposed.

JANET GREEN: You mean up?

ATTORNEY BRIAN GROSSMAN: No.

JANET GREEN: No. You mean this way?

ATTORNEY BRIAN GROSSMAN: Horizontally. So the second criteria. The first criteria is ten feet or ten percent by height. Second is horizontally off whatever the structure is and that's six feet.

There's no cabinets being installed so there's no -- in compliance with that provision that says no more than four for the technology.

They will be painted to match the facade just as the existing antennas are now. So they will comply with the conditions concerning concealment.

And then the facility will continue to comply with the other conditions that were previously imposed in the other decision.

CONSTANTINE ALEXANDER: We have not received any communication from the Planning Board. Did you meet with the Planning Board about this?

ATTORNEY BRIAN GROSSMAN: We did not. We

communicated with --

TIM GREENE: Yeah, no, I spoke with the Planning Board. The Planning Board did have all of it. Planning Board did not have any --

CONSTANTINE ALEXANDER: You didn't speak with them in a public hearing?

TIM GREENE: I spoke to Liza.

CONSTANTINE ALEXANDER: You spoke to Liza.

TIM GREENE: Submitted it all to the Planning Board, received no comments, and took it as, you know, we just seen this nine months ago and don't really have any comments on it.

CONSTANTINE ALEXANDER: Okay. I just want to get that on the public record.

TIM GREENE: Yeah.

BRENDAN SULLIVAN: My thought of this whole thing is that the background rather than having a terrible faux brick look.

JANET GREEN: Yes, I was going to, you know, I was going to say that, too.

BRENDAN SULLIVAN: And that it should be a solid color. Whether it be terra-cotta or whatever the color, but it looks like somebody got up there with a little white --

ATTORNEY BRIAN GROSSMAN: I'm not sure those are the AT&T antennas. Because I seem to remember having this conversation and having --

BRENDAN SULLIVAN: There's probably four carriers up there.

ATTORNEY BRIAN GROSSMAN: Right. We can only modify ours. And I think if the existing AT&T antennas are a flat color. They don't have that faux brick.

TIM GREENE: They are the flat color. They're the top ones.

CONSTANTINE ALEXANDER: The good guys.

TIM GREENE: Well, I don't know if we're the good guys or the bad guys. We're guys. But we had just been

here, we modified the site, brought everything down, painted them all a solid color.

BRENDAN SULLIVAN: So we'll beat up on next --

TIM GREENE: So, we were here nine months ago and we'll continue with all that.

ATTORNEY BRIAN GROSSMAN: So the proposed three will be the flat, they won't have the fake mortar lines.

JANET GREEN: And do they -- it was a little hard for me to tell from the picture. If I'm standing on the street, do they stick up over the edge of the building now? Doesn't one of them stick up over the edge of the building?

ATTORNEY BRIAN GROSSMAN: No. So the original installation I think -- when I say original, so I -- we were here like nine months ago.

JANET GREEN: Right.

ATTORNEY BRIAN GROSSMAN: The installation before that, I think did, because we had that conversation about pushing those --

JANET GREEN: Exactly.

ATTORNEY BRIAN GROSSMAN: -- antennas down. So now that first work from nine months ago construction's been completed. As part of that the site was modified to bring those antennas lower --

JANET GREEN: Right.

ATTORNEY BRIAN GROSSMAN: -- so they don't appear to protrude above the facade of the roof line. And the proposed antennas will be consistent with that look. They won't appear to protrude.

JANET GREEN: Okay, thank you.

CONSTANTINE ALEXANDER: And the other elements of the drill, you're a licensed carrier in good standing?

ATTORNEY BRIAN GROSSMAN: Yes.

CONSTANTINE ALEXANDER: That's your representation to this Board?

ATTORNEY BRIAN GROSSMAN: Yes.

CONSTANTINE ALEXANDER: And we're not in a

residentially zoned district.

ATTORNEY BRIAN GROSSMAN: No, we're not.

CONSTANTINE ALEXANDER: So we don't have to deal with those issues.

ATTORNEY BRIAN GROSSMAN: We do not.

CONSTANTINE ALEXANDER: Anything else?

ATTORNEY BRIAN GROSSMAN: No, other than to say I know we've done this before, Mr. Chairman, I was here -- well, first of all, I know what the standard conditions are. And we were just here to watch you to approve T-Mobile as well. If it would help you out, I would be happy to waive the reading of the standard conditions.

CONSTANTINE ALEXANDER: It would help me out immensely and probably my board members even more. But, so they will be in the decision.

ATTORNEY BRIAN GROSSMAN: Understood.

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

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

(No Response.)

CONSTANTINE ALEXANDER: No one.

You may be pleased to know, maybe you're aware of it, there is a letter in our files of support -- well, sort of support which I will read into the record.

The letter is from Kiefer K-I-E-F-E-R Hicks H-I-C-K-S who resides at 2440 Massachusetts Avenue, No. 13.

(Reading) I am writing to express my non-opposition to AT&T's position to replace antennas on 1815 Massachusetts Avenue.

So sort of a letter of support.

TIM GREENE: That's what we usually get, right?

CONSTANTINE ALEXANDER: And that's all she wrote.

Are we ready for a vote?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: All right.

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

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

That traffic generated or patterns of access or egress will to the cause congestion, hazard, or substantial change in established neighborhood character. In this regard the new antennas, like the old ones, are far above the streetscape and don't have an impact on traffic or the like.

That the continued operation or development of adjacent uses as permitted by the Ordinance will not be adversely affected by what is proposed. All you're doing is swapping old antennas for new antennas.

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 from the intent and purpose of this Ordinance.

Also the finding that the -- we also find 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 facilities within the meaning of Section 6409(a), The Middle Class Tax Relief and Job Creation Act of 2012 also known as The Spectrum Act.

So I move that we grant the Special Permit subject to the following conditions -- and the conditions are as we've had in the past. Just to quickly summarize, that you will proceed in accordance with the plans that I've initialled.

Photo sims as initialled.

That you'll remove the antennas in the event you cease using them.

That you'll at all time maintain the proposed antennas so that the physical appearance and visual impact will remain consistent with the photo simulations.

And then all the other good stuff about electromagnetic waves:

(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 authority regarding electromagnetic energy waves, emissions, emitting from all of 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 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 regulation, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner shall, within ten days of receipt of such notification file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred on the basis for such claimed failure, the Special Permit granted tonight shall ipso facto terminate with any of the petitioner's federal licenses is or are suspended, revoked, or terminated.

C, that to the extent that the Special Permit has terminated pursuant to the foregoing paragraphs A and B, petitioner may apply to this Board for a 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 application shall not be deemed a repetitive petition and therefore will not be subject to the two-year period during which the 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 the geographical area that includes Cambridge stating that;

A, he or she has such responsibility;

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 with excessive radiofrequency radiation under federal law.)

And you want to note for the record that -- don't you -- reserve your rights?

ATTORNEY BRIAN GROSSMAN: We do reserve our rights on under that condition and note our objections. We know it gets included anyway.

CONSTANTINE ALEXANDER: Those in favor of the Special Permit, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Special Permit granted.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

(8:25 p.m.)

(Sitting Members Case BZA-011933-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: There was a question that the sign wasn't posted.

ATTORNEY BRIAN GROSSMAN: The signs were posted.

CONSTANTINE ALEXANDER: I checked, Mr. O'Grady checked, and maybe your landlord took them down, but there are no signs up.

ATTORNEY BRIAN GROSSMAN: I mean, we've posted. We posted them. Someone took them down. We don't know who took them down.

CONSTANTINE ALEXANDER: You have a responsibility for checking them from time to time to make sure they're still up.

ATTORNEY BRIAN GROSSMAN: Understood. I would note that this is -- one of the reasons why as we've talked about before, Mr. Chairman, you know, given the very strict deadlines under 6409, one of the reasons why we have talked with the City and we've had discussions here about why clearly compliant 6409 applications, perhaps, don't really

need to come to the BZA. And I would note even under Section 4.32 footnote 49, the very end of it even says: The Board can impose conditions and about a process for the changing or upgrading of equipment and set a process or a standard of what does and does not need to come back to you.

I know we -- I think one of the last times I was here, not happy really seeing us back for what kind of rote applications, and I mean I think at some point with respect for the Board to consider utilizing that, where things are clearly within 6409 and meet the clear standards like this application actually and the one before it where antennas are just being swapped out or something like that. That, you know, that is something that I think ISD certainly can look at just like they would with any other part of the Ordinance with regard to setbacks and other criteria. And yes, this clearly meets the criteria.

CONSTANTINE ALEXANDER: The only issue, we've had this discussion before, the Legal Department has advised

this Board that you have to not only, the Spectrum Act does not preclude us from -- or preclude the City from going through the usual Special Permit requirements. And one of those requirements is that the sign be posted and it wasn't posted. And maybe you did -- I take you at your word.

ATTORNEY BRIAN GROSSMAN: I do want to put on the record that we do have pictures of it --

CONSTANTINE ALEXANDER: But it's got to be maintained.

TIM GREENE: No, I understand that, but just so we're clear, it's like we didn't go --

CONSTANTINE ALEXANDER: I'm not suggesting that.

TIM GREENE: Okay.

CONSTANTINE ALEXANDER: Frankly, I commented to Mr. O'Grady, I said I went to 1815 Mass. Ave., that sign was right there. And then I went to Portland Street and there's no sign. I said what's going on here.

TIM GREENE: Picked them up and put them up on the

same day.

CONSTANTINE ALEXANDER: I suspected the landlord took them down.

TIM GREENE: I don't know --

CONSTANTINE ALEXANDER: The landlords have a habit of doing that. You're just going to have to police your landlord to make sure it doesn't happen again.

ATTORNEY BRIAN GROSSMAN: Yeah, and I know, again, we talked to the Law Department. I know the Law Department's position is that it can go through this process. But again, the Ordinance says you the Board itself can set a procedure. And so as part of that if the Board were to put in upcoming decisions, if ISD looks at it and it clearly meets those conditions, then it doesn't need to come back to the Board. And so it's still covered by the Ordinance. It's still part of the Special Permit overall process. The only -- it's certainly something that I think like the one -- like the T-Mobile petition before us, where

there's a new screen wall being put in and, you know, there's a more of a question of is it consistent with the concealment elements of the prior decision? Yeah, okay, maybe ISD says this really needs to go to the BZA for that determination, and I might agree with that. But where we're just literally taking antennas off and putting new ones on, and ISD certainly, if the Board were to put that kind of condition in the decision so that now we're still consistent with the Zoning Ordinance, you know, we can streamline this for everybody.

CONSTANTINE ALEXANDER: I understand that. Nobody would like to streamline this more than the five of us sitting here.

ATTORNEY BRIAN GROSSMAN: I'm sure.

CONSTANTINE ALEXANDER: However, the Law Department has said we don't -- we shouldn't -- well, I'm not sure if shouldn't or can't do that. We have to go through the same procedures as we do for all Special

Permit -- all telecommunications cases. We can't sort of defer or delegate to the ISD as to whether they think something should come back to this Board or whether they can sign off on their own.

ATTORNEY BRIAN GROSSMAN: With all due respect to the Law Department, your Ordinance says you can.

CONSTANTINE ALEXANDER: Talk to the Law Department. If you can persuade them, as I said --

ATTORNEY BRIAN GROSSMAN: I mean in fairness, the discussion we had with the Law Department really wasn't around whether or not the Board could include that kind of condition or whether that would be consistent. It was in the absence of that condition what the 6409 dictates. And, you know, we respectfully disagree with the Law Department on their position.

CONSTANTINE ALEXANDER: I understand.

ATTORNEY BRIAN GROSSMAN: So I mean in terms of a continuance, if we can continue this to -- what's your

January meeting?

CONSTANTINE ALEXANDER: We may have a full schedule. January 12th I think it is?

SEAN O'GRADY: 26th.

JANET GREEN: Is it heard or not heard?

CONSTANTINE ALEXANDER: It's not heard.

JANET GREEN: Okay. I mean, I would just like to point out, too, there are several things about it. What we're talking about is the posting, and the posting is not about whether we decide. I mean, it's really about whether the public has a right to know.

CONSTANTINE ALEXANDER: That's -- thank you, Janet. That's right. That's what the posting's all about.

ATTORNEY BRIAN GROSSMAN: No, I'm not -- I understand the issue here. I'm not arguing the issue. I'm saying in general this is kind of indicative of one of the reasons why we maybe look to figure out a way to take --

CONSTANTINE ALEXANDER: Like I said, we would be

very happy to figure out a way because --

ATTORNEY BRIAN GROSSMAN: That condition is certainly one of them.

Anyway, if are we able to get --

SEAN O'GRADY: January 26th.

CONSTANTINE ALEXANDER: 26th.

ATTORNEY BRIAN GROSSMAN: So we request this be continued to the 26th. We would need to agree to extend the deadline under 6409(a) to -- the Board usually takes 14 days after to write a decision on this?

CONSTANTINE ALEXANDER: Yes, I forget.

Okay, so we are going to extend the time under The Spectrum Act.

So the Chair moves that we continue this case as a case not heard until seven p.m. on January 26th subject to the following conditions:

That the petitioner sign a waiver of time for decision. You've done that before.

Two, that the posting sign, and it's not there now or at least it's not there now, be posted for the 14 days. You just every couple of days go by and make sure it's still there. And reflecting new date, January 26th, and the new time, seven p.m.

And lastly to the extent that the plans, the photo simulations that you submitted so far are going to be modified, that those modified plans or items must be in our files no later than five p.m. on the Monday before January 26th. That's a requirement for all of our cases. That's to allow us to go into the ISD and read them in advance of the hearing. And it also allows the citizens of the city to do the same. I don't think you're going to modify.

TIM GREENE: No.

ATTORNEY BRIAN GROSSMAN: No.

CONSTANTINE ALEXANDER: But if you do, five p.m. by the Monday before.

TIM GREENE: Okay.

CONSTANTINE ALEXANDER: That's the waiver for time of decision.

ATTORNEY BRIAN GROSSMAN: Right, well, and I know we've had this discussion before, too. It's not a waiver. We're extending the time --

CONSTANTINE ALEXANDER: Fair enough.

ATTORNEY BRIAN GROSSMAN: -- and then setting the date, you know, outside date. It's not a complete waiver in general.

CONSTANTINE ALEXANDER: You're absolutely right. And the record should reflect that. It's not a waiver, it's an extension of time.

ATTORNEY BRIAN GROSSMAN: It would be 14 days after the 26th which I'll do the math.

CONSTANTINE ALEXANDER: All those in favor of continuing this case on this basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case

continued.

See you on the 26th.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-011898-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011898, 56 JFK Street.

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

STEVE STEFANOPOULOS: Mr. Chairman and Board, sorry about the confusion.

CONSTANTINE ALEXANDER: Confusion is something we're very used to on this Board. Tell us what about what you want to do.

STEVE STEFANOPOULOS: I just want to put in a pizza place in --

BRENDAN SULLIVAN: Just introduce yourself for the record.

STEVE STEFANOPOULOS: I'm sorry. My name is Steve Stefanopoulos. I am the owner of Sweet Pizza. I have a location in Wilmington, Mass., and I have a location in Beverly. We were looking to renting out 56 J.F.K. It used to be way, way back I think a yogurt shop and it was a liquor store, and then recently it was just a pop-up soccer store. So we're just looking to put in a small pizza place, pizza, salads, calzones, takeout, to go, maybe a couple seats if I can fit them in there.

CONSTANTINE ALEXANDER: All right. I'm fumbling about because I wasn't prepared for this. But since you have not been before us before, in Cambridge the Zoning Ordinance defines something called fast order food establishment.

STEVE STEFANOPOULOS: Okay.

CONSTANTINE ALEXANDER: And basically takeout as opposed to a sit down restaurant, and of course your establishment would be that, that's why you're here tonight.

STEVE STEFANOPOULOS: Correct.

CONSTANTINE ALEXANDER: And you've got to meet certain criteria or we've got to make certain findings with regard to what you want to do. And I'm looking to find where those are. I usually have it marked because I didn't think we would hear the case tonight.

BRENDAN SULLIVAN: 11.30.

CONSTANTINE ALEXANDER: Give us a second. Yes, here it is. Do I have it marked? Okay.

And I'm going to read to you what the statute says.

STEVE STEFANOPOULOS: Yep.

CONSTANTINE ALEXANDER: In considering applications as Special Permit for a fast order food establishments the Board of Zoning Appeal shall find, in addition to the other findings we make for Special Permit generally, the following requirements are met. So I'm going to have to go through them with you.

STEVE STEFANOPOULOS: Okay.

CONSTANTINE ALEXANDER: The operation of the establishment -- A, the operation of the establishment shall not create traffic problems, reduce available parking, threaten the public safety in the streets, or encourage or produce double parking on the adjacent public streets.

Do you envision that your customer base is going to be people driving there?

STEVE STEFANOPOULOS: No, it's going to be walking just like, you know, everybody else in that area. It's all, it's all foot. It's going to all be foot traffic. Looking into using some of the delivery services that are around, like Door Dash and stuff like that for deliveries.

CONSTANTINE ALEXANDER: Okay.

That the physical design -- do we have plans?

STEVE STEFANOPOULOS: Yeah, I have plans with me, yep.

CONSTANTINE ALEXANDER: Physical design, including

color and use of materials of the establishment will be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces, and uses in the particular location?

What's it going to look like on the outside?

STEVE STEFANOPOULOS: It's going to look -- we're not changing the outside. Just whatever we can put in for a sign with the planning department, that's what we'll put in for a sign.

CONSTANTINE ALEXANDER: You're going to put in a zoning compliant sign in there. Otherwise it's going to stay the way it is.

STEVE STEFANOPOULOS: Right, that's it. We're not changing anything on the outside. It's just the inside that we're going to renovate.

CONSTANTINE ALEXANDER: We have to find that the establishment fulfills a need for such a service in the neighborhood or in the City.

And tell me why there's a need for another pizza joint in Harvard Square.

STEVE STEFANOPOULOS: There's always a need for a pizza joint.

CONSTANTINE ALEXANDER: A true entrepreneur.

JANET GREEN: Pizzeria Uno's closed.

STEVE STEFANOPOULOS: Yeah, Uno's closed, exactly.

I mean, it's just like everything else, it's different -- I mean, I'm different than everybody else. I try to be different. I could open my -- your normal mom and pop pizza, round pizza.

CONSTANTINE ALEXANDER: Just curious how are you different?

STEVE STEFANOPOULOS: Square. So all the pizzas are square. We don't do round pizzas.

CONSTANTINE ALEXANDER: Do they taste better because they're square?

STEVE STEFANOPOULOS: It's a sweet sauce, so hence

the name Sweet Pizza. So it's a sweeter sauce than normal. It's a square pizza. The way I cook it is different than everybody else. So it's -- there's a lot of difference. There's differences.

JANET GREEN: Do you have a pizza oven?

STEVE STEFANOPOULOS: It's not Sicilian style. It's a hybrid between a Greek and an Italian. So the crust is right in the middle. It's an a crispy, crispy crust. I cook it with just a sauce, no cheese. Put the cheese on after. So it's different.

CONSTANTINE ALEXANDER: Okay. The next one we have to find is your establishment will attract patrons primarily from walk-in trade as opposed to drive-in and automobile-related trade.

And you've an already addressed that.

STEVE STEFANOPOULOS: Right.

CONSTANTINE ALEXANDER: The establishment shall to the greatest extent feasible utilize biodegradable materials

in packaging the food and utensils and other items provided for consumption.

Do you use biodegradable material?

STEVE STEFANOPOULOS: I'm pretty sure I do, yeah.

Yeah, everything --

CONSTANTINE ALEXANDER: In terms of your wrappings and boxes and stuff like that?

STEVE STEFANOPOULOS: Yeah. We recycle all the boxes that we use right now, yeah.

CONSTANTINE ALEXANDER: That the establishment shall provide convenient, suitable, and well-marked waste receptacles to encourage patrons properly to dispose of all packaging materials, utensils, and other items provided with the sale of food.

STEVE STEFANOPOULOS: Yep. So we have our original container and we have --

CONSTANTINE ALEXANDER: Do you have it outside or will you have it inside by the door?

STEVE STEFANOPOULOS: Inside by the door.

CONSTANTINE ALEXANDER: Inside by the door.

STEVE STEFANOPOULOS: You can't put it outside.

CONSTANTINE ALEXANDER: No, I don't think you can.

I wanted to ask. I wanted to make sure you knew what you're doing.

STEVE STEFANOPOULOS: It's inside.

CONSTANTINE ALEXANDER: The establishment complies with all state and local requirements applicable to ingress, egress, and use of all facilities on the premises for handicapped and disabled persons.

Is this handicapped accessible?

STEVE STEFANOPOULOS: It is not right now handicapped accessible.

CONSTANTINE ALEXANDER: So you can't meet that requirement.

STEVE STEFANOPOULOS: We'll have to. So there's one stair, there's one stair going, going down.

CONSTANTINE ALEXANDER: How will you meet them?

STEVE STEFANOPOULOS: I have an architect. I'll bring the architect in and engineer and we'll figure out what we have to --

CONSTANTINE ALEXANDER: Is that required -- for my edification, if we were to grant you the relief and you have this problem with the handicap, does that mean you could not open the restaurant?

STEVE STEFANOPOULOS: I probably wouldn't be able to open it, no.

CONSTANTINE ALEXANDER: So you have to do it anyway?

STEVE STEFANOPOULOS: Yeah.

CONSTANTINE ALEXANDER: What about sandwich -- we talked about signs. You're going to put a sign in the window.

STEVE STEFANOPOULOS: Yep.

CONSTANTINE ALEXANDER: If we granted relief for

fast order food establishment up the street, Sweet Pea or something like that.

STEVE STEFANOPOULOS: Sweet Greens.

CONSTANTINE ALEXANDER: Sweet Greens, that's it.

And I think if my memory is correct, I would have checked, but I didn't think we were hearing the case tonight. We prohibited the use of sandwich board signs on the sidewalk because of the congestion. It's a very busy area. Are you going to have any?

STEVE STEFANOPOULOS: Sandwich board signs? No.

CONSTANTINE ALEXANDER: So I think I'm going to propose if we grant relief, that we make a condition that there will be none.

STEVE STEFANOPOULOS: No.

CONSTANTINE ALEXANDER: Just so you understand.

STEVE STEFANOPOULOS: That's fine, yep.

CONSTANTINE ALEXANDER: What are your hours of operation?

STEVE STEFANOPOULOS: Right now what we're talking about looking at the area and what everybody else is doing, Monday -- Sunday, through -- Sunday through Thursday eleven to twelve and then Friday/Saturday depending on if school is in session either one o'clock two o'clock in the morning.

CONSTANTINE ALEXANDER: Are the other pizza joints Pinocchio's --

STEVE STEFANOPOULOS: Pinocchio's is open till one o'clock. Ott's is open till midnight. So we'll be consistent to what everybody else is doing in the area.

CONSTANTINE ALEXANDER: Questions from members of the board?

PATRICK TEDESCO: I just have one question. It is below street level?

STEVE STEFANOPOULOS: It is.

PATRICK TEDESCO: What you labelled courtyard on the drawing is a sunk in, sort of sunk in --

STEVE STEFANOPOULOS: Sunk in -- yeah, it's one

step down and that little --

PATRICK TEDESCO: And there's not any plans for outdoor seating?

STEVE STEFANOPOULOS: No, it's not big enough.

PATRICK TEDESCO: Okay.

STEVE STEFANOPOULOS: Yeah, it's probably four-by-four if it's -- you know, if it's that. Shea's next-door has a lot --

PATRICK TEDESCO: They have the patio.

STEVE STEFANOPOULOS: Has that patio area.

PATRICK TEDESCO: That's set back.

STEVE STEFANOPOULOS: Yeah, it's set back where ours is small, much, much smaller.

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. Are there any letters in the file?

Apparently there's no correspondence in the file. Do we have to hear from the Harvard Square Advisory on this?

SEAN O'GRADY: Well, yeah. I mean, you know how I feel about that.

CONSTANTINE ALEXANDER: Yeah, I know.

SEAN O'GRADY: They have been notified.

CONSTANTINE ALEXANDER: They have been notified?

SEAN O'GRADY: CDD is always notified. They always have the opportunity to do it. And if they don't, I take that to be they --

CONSTANTINE ALEXANDER: It's like the Planning Board.

SEAN O'GRADY: Yeah.

CONSTANTINE ALEXANDER: On some cases, not all cases.

SEAN O'GRADY: Right, exactly.

BRENDAN SULLIVAN: And or it's really Sean Digiovanni (phonetic) is really just really one person. There is a committee, but it's really a committee of one.

CONSTANTINE ALEXANDER: Any other questions comments?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We have to make all kinds of findings to grant this relief, ready to go or you want discussion?

JANET GREEN: I'm ready.

ANDREA HICKEY: I'm ready.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this Board make the following findings with regard to the Special Permit being sought to operate a fast food establishment at 59 J.F.K. Street. We make the following findings:

That the requirements of the Ordinance cannot be met unless we grant the Special Permit.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. This is not a suggestion that you're not going to be very good with your pizza. It just means that you're not going to worsen the situation.

STEVE STEFANOPOULOS: I know.

CONSTANTINE ALEXANDER: That continued operation or development of adjacent uses will not be adversely affected by the nature of what is being proposed.

Have you talked to the other shop owners in the area?

STEVE STEFANOPOULOS: I've talked to the owner of Shea's that's all.

CONSTANTINE ALEXANDER: Of what?

STEVE STEFANOPOULOS: Shea's.

ANDREA HICKEY: It's a bar.

STEVE STEFANOPOULOS: A bar and little restaurant

right next to us.

CONSTANTINE ALEXANDER: They wouldn't care about pizza smells. But nobody above you or other sides?

STEVE STEFANOPOULOS: No.

CONSTANTINE ALEXANDER: What are you going to do about pizza smells? Well, smells. Odors.

STEVE STEFANOPOULOS: Bread, sauce, you know, mostly it's a, you know, it's a bread odor, so....

CONSTANTINE ALEXANDER: So people don't object to it?

STEVE STEFANOPOULOS: No one's objected to it. Every time everyone walks into my Wilmington restaurant, they comment about how good it smells.

PATRICK TEDESCO: What's above?

STEVE STEFANOPOULOS: There's Optical.

PATRICK TEDESCO: Yeah. It's up a stoop from the street?

STEVE STEFANOPOULOS: Yeah, it's up the stairs,

yeah.

BRENDAN SULLIVAN: It will mix in with Pinocchio's. Won't know the difference.

CONSTANTINE ALEXANDER: That's right.

PATRICK TEDESCO: Yeah, right behind them.

CONSTANTINE ALEXANDER: Continuing.

Continued operation -- when I said development of adjacent uses will not be adversely affected and we dealt with that.

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

And further, that the -- what is being proposed will not create traffic problems, reduce available parking, threaten the public safety in the streets, or encourage or produce double parking in the adjacent public streets.

We make this finding on the basis that this business is intended to attract walk-in, as opposed to

people driving to the area, and so there should be no traffic created by what you want to do in this area.

You're going to maintain the exterior of the structure just as it is now or essentially as it is now. So, there's no issue regarding physical design, including color and use of materials.

That the establishment fulfills a need for such a service in the neighborhood or the city.

That the establishment will affect patrons primarily from walk-in trade as opposed to drive-in or automobile-related trade, and we've talked about that.

And you're going to use -- you've represented that you will use biodegradable materials in packaging your food and in the utensils and other items provided for consumption.

And that you represented to us and you're going to provide waste receptacles within the structure -- within the premises so as to -- and to encourage patrons to properly

dispose of all packaging materials, utensils, and other items provided with the sale of food.

And that you will not open this business until you have complied with making this property handicap accessible. That's the -- yes, sir.

SEAN O'GRADY: I would just say that I'm not sure what that condition means. That is that they are required to comply with the law, but that doesn't necessarily mean they're required to make it handicap accessible.

CONSTANTINE ALEXANDER: Okay.

SEAN O'GRADY: In the same way that things are grandfathered under the Building Code.

BRENDAN SULLIVAN: It's a grandfathering clause there that it's just physically impossible or prohibitive to do it.

PATRICK TEDESCO: They can also see the Variance.

CONSTANTINE ALEXANDER: Okay. So rephrase that. Your process will comply with the required environmental, or

not a condition of opening the business --

STEVE STEFANOPOULOS: Right. So I can seek a Variance to not be not handicapped coming into the restaurant, in other words, correct? No?

PATRICK TEDESCO: Well, you may not have to depending on what's grandfathered. But that's also an option. If you're required to do it, you can seek the Variance with hardships just like any other.

STEVE STEFANOPOULOS: Okay.

PATRICK TEDESCO: And that would be up to you to figure out.

STEVE STEFANOPOULOS: And that would be through the Planning Board?

PATRICK TEDESCO: No, that would be through the access board through the state.

SEAN O'GRADY: The building inspector.

PATRICK TEDESCO: Your architect will know that.

STEVE STEFANOPOULOS: Okay.

CONSTANTINE ALEXANDER: Based on all of these findings, the Chair moves that we grant the Special Permit requested subject to the following conditions:

That the petitioner in connection with the operation of the business will not maintain on the sidewalks of the city sandwich board signs. That the signage will only be within -- in the window of your establishment and will comply with all the requirements of our Ordinance unless you wish to seek Variance for that as well. But that's premature today.

STEVE STEFANOPOULOS: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. One opposed.

(Sullivan, Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: Nothing to do with you. I

don't vote for any fast order food establishments in Harvard Square. We've got too many as it is. I don't think you fulfill a need. But I've never swayed any of my colleagues.

ANDREA HICKEY: We need good pizza.

JANET GREEN: Square pizza. We need square pizza.

STEVE STEFANOPOULOS: I invite you to come to Wilmington.

CONSTANTINE ALEXANDER: (Indiscernible). I'm a voice crying in the wilderness.

BRENDAN SULLIVAN: Anyway, I think the marketplace dictates whether there's a need for -- that's my --

CONSTANTINE ALEXANDER: We can argue this some other time.

STEVE STEFANOPOULOS: Just like buying or selling the house, whatever the market dictates.

BRENDAN SULLIVAN: If you have a good product, you'll survive. If you don't....

CONSTANTINE ALEXANDER: Anyway, thank you for

coming down.

STEVE STEFANOPOULOS: Thank you very much. I appreciate it and I'm sorry again for the confusion.

* * * * *

(8:50 p.m.)

(Sitting Members Case BZA-011949-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011949, 16 Kennedy Road.

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

(No Response.)

CONSTANTINE ALEXANDER: There's no one here.

We have an e-mail from Jacob Farmer addressed to Maria Pacheco. (Reading) I just spoke to Paul, whoever Paul is, we are in agreement to postpone the case. We will move quickly to get the drawings revised with the hopes of getting on the docket in January if that is possible.

Let me mention to members of the Board that one of the issues here was -- two issues as it turned out. One issue is that there's a question whether the plans comply with the dormer guidelines. Whether the design of the new structure. And remember this is a new structure. So there's no reason in my mind why you can't comply with the dormer guidelines 100 percent. But to also it turns out that the petitioner now decided he wants to get a Special Permit for an accessory apartment, and it's been at least my practice, is that we don't hear cases piecemeal. If you want relief for a piece of property, I want to hear all the relief at one time and not hear it a little now and a little

later. And that with regard to the Special Permit, it's not been advertised. So they're going to have to make a separate filing, advertise, and then we'll hear the two cases, the continued Variance case plus a Special Permit case on the same night.

Now, Sean, what was the night that, or --

SEAN O'GRADY: January 26th.

CONSTANTINE ALEXANDER: And they can comply with the advertisement and the like for the Special Permit by that date?

SEAN O'GRADY: Yes, they can.

CONSTANTINE ALEXANDER: They can.

SEAN O'GRADY: But also I mean, they're going to be filing a new case.

CONSTANTINE ALEXANDER: Yes, new case and they're going to advertise. But they'll be ready to go then go on the 26th.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: All right, the Chair moves that we continue this case as a case not heard subject to the following conditions:

That the petitioner sign an extension of time for a time of decision.

Have they signed it yet, Sean?

SEAN O'GRADY: No.

CONSTANTINE ALEXANDER: Okay. Make sure that they do.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: That the petitioner maintain -- well, modify the posting sign that's there now to reflect the new date, January 26th, the new time, seven p.m., and to maintain this sign for the 14 days before the January 26th.

And lastly, this will apply -- that the -- to the extent that the petitioner will submit modified plans or any new plans or dimensional form, that they must be in our

files no later than five p.m. on the Monday before January 26th.

And, Sean, they're aware of this, the Monday before?

SEAN O'GRADY: They'll be notified. Maria will give them a call and tell them those three conditions.

CONSTANTINE ALEXANDER: 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, Hickey, Tedesco.)

* * * * *

(9:00 p.m.)

(Sitting Members Case BZA-011971-2016: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, Douglas Myers.)

BRENDAN SULLIVAN: Okay. The Board will hear case No. 011971-2016, 38-50 Albany Street.

If you're going to speak if you would introduce yourself for the record with your name and address, thank you.

KELLEY BROWN: My name is Kelley Brown. I'm senior campus planner from MIT, 77 Mass. Ave.

BRENDAN SULLIVAN: Okay.

KELLEY BROWN: Thanks to the Board for having us this evening and being able to present this project. I'm joined by several colleagues from our team, Frances Boyle, is the project manager -- senior project manager. David Brown who is program manager for us. Eric Mitchell's our architect for questions that come up. Sarah Gallop who is

Co-Director of the Office of Government and Community Relations, and Ken Packard who is the Director of Utilities.

So we're here this evening about -- we sort of simply called it just Cogen here, but we have this central utility plant second century plant expansion is the official name. We'll explain a little more about what we mean calling it a Cogen facility. What you see is an entire site. To locate it for you, here's Main Street, Mass. Ave., Albany Street, and Vassar Street. And so the central utility plant started I think even a little before the school in 1916 right here, and over time has kind of grown and is now on both sides of the track, right? This is the railroad track that runs down here, and now we have this opportunity for a new, a new facility that we'll talk about.

It is -- it's not shown quite here, but you'll see it is connected back to, to the central plant that fronts on Vassar Street. And that, that is the reason we're actually here tonight.

The -- it's an addition to this plant, and the addition itself is fully conforming to zoning. As needs no Special Permit of any kind and no other relief than what we're here for. And the reason is because in 2001 the City changed the zoning. And I suppose that's the case for all non-conforming, prior non-conforming buildings like this. They changed the zoning from an Industrial B Zone which is historic, reflected the industrial area of the character, they already built up to the lot line. They said no, we're gonna make it a residence zone, and so you need to have a ten-foot setback as part of your permit. Okay. So now everything that's now connected to this building became non-conforming. And we kept adding actually after that time but not very much. Like, little bits and pieces, very little gross floor area because it's all excluded, right, as mechanical space under the codes definition.

But in this case we finally got a not very much more floor area, but as you'll see kind of a big volume and

that's what put us over the edge the 25, 25 percent limit.

So it's not even a Special Permit. We come in for a Variance.

BRENDAN SULLIVAN: So it's a conforming addition to a non-conforming building?

KELLEY BROWN: That is correct. That is correct. And if it wasn't so large in volume, it would be fine. But because cumulatively over time, we've added more than -- with this, it would be over 25 percent.

BRENDAN SULLIVAN: Yes.

KELLEY BROWN: So, you know, what it is, it's a kind of a follow on. We put in a cogeneration plant which is essentially a -- it's a gas-fired turbine and it recovers some of the heat from a -- in a, it's called a heat recovery steam generator, it's a HRSG we call it. And that steam then used to create heating and then cooling, cooling through chillers that are driven by steam, steam turbines as well.

So, it supplies electricity, steamed heat, chilled water to the campus. We put it in in 1995. It's 21 megawatts. It's at the end of its life, right, and needs to be replaced. So now we're going to put in in this new addition two, 22 megawatt combustion turbines. And there's also going to be a smaller, two megawatt cold start engine that can provide emergency startup. So if, the electricity goes down around us and our -- and we go down with it, we can come back up and operate in kind of an island mode. We wouldn't be able to provide all of the electricity for every building, but for most. And right now we serve more than 100 buildings with the existing system, and we'll probably be expanding that over time. Although this wasn't specifically designed for that purpose.

It mainly, I think, is designed to provide reliability and resilience for all the campus energy needs, and it will have a lot of environmental effects that we think are very beneficial. One of the things that we had

used for a long time is a No. 6 fuel, which has more emissions and particles related to it. We'll be able to stop using that permanently and drastically reduce the other fuel oil that we would use almost exclusively gas-fired for everything that we will do. So, the modelling that we've done, which was pursuant to the environmental review process that we're still going -- we went through part of it, we're still getting our air permit. I'll tell you about the part we have been through. Even though energy demands will be going up by 2020, that what we find is that upgraded plants emissions will go down by ten percent relative to the base, our baseline of 2014. So we think that's, that's, that's a step in the right direction.

We have, as I say, we have been through the state environmental review process. We got an MEFA certificate. We got a determination of public benefit both from the Secretary of Energy Environmental Affairs. And as I say, we're in the -- let's what's a really, really long process

to get an air quality permit.

So let me just, I want to just quickly walk through these, these slides just to give you an idea of what we're talking about physically and get a better understanding.

So what you're looking at is this parking lot here over on the left, and that large building on the cover there is our chiller plant which is kind of, it's going through its own expansion and renovation right now that will be completed soon. So on the second page you get a view from, this is essentially from across Albany Street and you can see the chiller plant, the chiller hall rather, and the cooling towers. The old building, right? You're looking at the back of it across the tracks there, the old central utility plant, all of which is not so old. In fact, you see that glass part that's in the back there, Owens-White did that, I don't know 20 years ago I guess.

And the Albany Street garage. So if you look on

the three, what you see is the floor plan, and what we've done is put the more kind of public activity and public facing things on the street. So there's a presentation room that you can look into. The entry is there. There's more office space there. And we put kind of the mechanical part, the reserved fuel storage and other mechanical stuff is towards the back.

On four, and this is kind of the critical part for our purpose here tonight, you see the control room bridge, that orange bit there. And the key is that you can view into both the new plant and the old plant because we're still gonna be running equipment in the old plant. And for functional and safety and economic purposes it really makes sense to have a central facility there so that you can look in -- and the regulations would require, you have to have somebody who is looking in on the equipment, right, to run it. So you're not, you'd have to have two separate crews. This way, you can consolidate it, run it all from the same

place safely and efficiently. And as a result, that's why we're connected back to the old, the old building, right? So that's -- otherwise we would be fine. We wouldn't need, we wouldn't need this Variance.

We have -- you'll see on five, because there's been some discussion with the -- particularly with the staff about the interest in a multi-use path along the side of the railway and we're not -- we're being very careful not to encroach in any way on what, what has been contemplated as the path. We've -- in fact, I should have said we've had a couple of meetings, even though we don't need a Special Permit, we met with the Community Development, Public Works, and Traffic a couple of different times, answered all their questions, and obviously we went through -- I don't think the Planning Board had any comments for you. Do you know?

BRENDAN SULLIVAN: No.

KELLEY BROWN: I don't think they told us they weren't expecting to have us on their agenda so....

We hope to do something really nice around the edge. We think that the Albany streetscape would be nice. This is on six and seven.

We're also going to make a nice pathway adjacent to the garage and on the side of the building that can -- it actually connects all the way across. It does now. There's kind of a just a pathway. It's not particularly attractive. We think this will be a tremendous improvement both on Albany and in the side of the building.

So on eight, just to give you a quick look at the kind of architectural feel of it, this, this is a view looking down Albany Street from the west to the east. You've got a new building, 610 Main Street South over there on the left and then our chiller hall, that's what that grey part over on the right.

And I think it's, I think it's a really nice feel to it to have the glass there at street level and then you can look up into the turbine hall. The red is -- and those

are actually louver, essentially louvers, ventilation spaces on the bottom there and then as part of the panels that are red in the front. And I think also you get the sense of they're really trying to break up, break up that mass. You get a better look at the front on -- in nine and how it really will feel on the street. We're making the sidewalk large -- larger. We're using some MIT property to do so. We're gonna give an easement to the City for public transit on our property. Not really public transit, pedestrian traffic for the public.

We're also going to put some -- these bikes here are in the landscaped area. It's the City's land up there, right, on the other side of that sidewalk. And that tree line that we're putting in, that's all the City's property. We're gonna put in those trees. We're gonna do the -- those bicycle racks as well. They may not end up exactly right there. There are some issues about how the drainage will work and things like that, but we're working on the details

with the City.

So on ten, you do get a sense that, you know, this is a pretty substantial building but I think that, again, these -- the way the panels were and the colors and the glass help to break up that mass pretty well.

There really isn't -- when you get up above, there's kind of nothing to see. There's some huge electrical equipment there that wouldn't really be great to look in on, so that's one of the reasons there's no glass there.

On 12, this is another big piece of glass. This is where you're kind of turning, turning the corner to this pathway that I mentioned that goes across the tracks and I really -- I think this kind of use of the -- both on 12 and 13, you get this great sense of kind of the geometry of the building. And the thing that I like about it is that it's a fully functional piece. It isn't just like, you know, as much as we love our architects, it isn't just the

architect's great idea of what would look pretty, it's something that's really necessary for the building that they've used in a way to make it a great architectural element.

So, and then the last slide just is a view from our grand cog science center down the tracks. And you can -- this kind of gives you a little better sense of the scale. I mean, this thing's competing with, you know, a very large building across the street, the chiller hall which is, and really the cooling towers there, and the garage which will eventually be replaced with a building probably on that same scale. So I think it actually fits in pretty well there.

So, our -- in our application we do, we go through the reasons why we believe that this meets the Variance standards that are set out, and I think first that the idea of, you know, literal enforcement causes hardship. Well, it -- because this connection is really needed for the

functional regulatory and economic and safety purposes, to not be able to make that connection would really be very -- would be an entire reengineering of everything that we did. And so, we felt that it made more sense to come to you to do the right thing for the entire facility rather than try and work around that because it would require a Variance because we felt it was a genuine hardship. And really if we dis -- if this Cogen plant was disallowed, it would really undermine kind of our core purposes. This is such a base of support for everything that happens at MIT. It would cause a substantial hardship for the educational activities at MIT to be unable to do this. So that's, that's our hardship case.

We looked also at, you know, how is it a hardship compared with other sites, other locations within this district? And, you know, as I mentioned, it's really been a historical evolution of a unique site for MIT's energy at least for a hundred years. And the direct adjacency between

both, you know, both parts of the plant on Vassar Street and on Albany Street as well -- is critical to the functionality of it. And I don't think any, you know, typical office building or lab building, they don't have that or multi-family residential. They're not looking for that kind of adjacency. It's just not relevant to their purpose. And I think also that we feel that having this area and volume is part of the kind of resiliency program and greenhouse gas goals that we have here. For example, the turbine hall itself is 30 feet above sea level, above Cambridge datum, that allows it to survive a 500-year storm. I actually made a little like -- I got confused, I thought it was only 100-year storm and I put in a modification, I later found out, no, that's for the drainage for the 100-year storm, so that is correct. For this it is really the 500-year storm. They're trying to take very seriously the idea of resiliency here. But that's one reason why we ended up with the volume that gets us over the limit because we needed to lift up

these very large turbines to that elevation.

So we don't think it will be a detriment to the public good because, you know, we find that we'll get maximum efficiency, this kind of environmental benefit out of this kind of adjacency. We're using what they call best available control technology which is the highest standard for environmental purposes.

There's going to be a gas supply, a regulator station that will allow us to make this fuel switch. So where Eversource is going to have a little piece of this building, it's going to sort of help them serve other customers in the area and then in return they contracted with us to say we will give you an uninterrupted supply of gas to -- for your purposes, which made us say, okay, we don't have to rely on these other fuels, we can use gas with the lower emissions and greater efficiency. So that's something that I think worked out and is very much for the public good.

And it also makes use of just existing buildings and equipment. Despite the fact it's a building in a building, if it weren't we probably would have to do a lot of things to build additional space to be able to make the building work on its own. So we're able to make efficient use of building on the campus already.

We don't think it nullifies or derogates the intent or purposes of the Zoning Ordinance because it, you know, the actual building does exactly what the new zoning requires. It has that kind of a setback. We did a setback like that on a -- also at the brain and cognitive sciences facility that fronts back on Albany Street as well, and we're gonna keep doing that on Albany and have that more generous sidewalk making it less than a kind of industrial -- which I think is the purpose of the zoning change. Make it feel less like an industrial alley and more like, you know, an urban street for pedestrians, for residents, for everyone in the area.

We think it's also responsive -- I'm kind of using the Article 19 provisions as, you know, my sense to express the intent and purpose of the Ordinance. That's how we use it -- most of our big buildings go through that Article 19 process and they have all the urban design requirements. And I think it does, it is responsive to the existing buildings as they call for in that article, you know, on Vassar -- on Vassar Street we retain that historical building which is certainly a historical purpose. But yet we were able to respond to the buildings around us, both architecturally and in the massing of the building for all the Albany which is being totally transformed from what it was. It keeps these institutional uses concentrated, which is another purpose of Article 19. It accommodates the bike and pedestrian traffic in the surrounding area. And as I mentioned, it does preserve the historic structures. So we think that's -- does not nullify or derogate the intent or purpose of this Zoning Ordinance.

BRENDAN SULLIVAN: There are a couple of correspondence, one from the Pedestrian Committee, the other one is from the Bicycle Committee and basically focuses in on the grand junction. And how does this project respect what they're trying to achieve as far as not impeding upon that? Can you just sort of summarize that a bit?

KELLEY BROWN: Sure, sure. If you go to -- I think the best slide that you have is this one, No. 5 which really shows the no build zone.

You know, we've been talking for a long time with the City about the idea of this path, and in fact we conducted a feasibility study of all of our property and the idea of how could it work on our property? We have service requirements, we have access to the backs of many of these buildings, but perhaps the real way to do a path. And, you know, we did that jointly with the city and with the advocates, some of whom are on the Biking and Pedestrian Committees. And, you know, what we found is, and we've been

consistent with this also in with the state, we go through a state process when we build over the railroad corridor to establish that we're not doing anything that would upset future transportation plans. Even though we own the land, we actually own this land and the corridor, we gave an easement to the railroad to run their rail line. So we can build, but we can't, you know, we don't want to interfere with major transportation plans, including the path. And so what we've established with them and been consistent with is that we would not encroach on this 20 -- it's about a 24-foot area. This happens to be 24-foot, six from the fence line --

BRENDAN SULLIVAN: Yes.

KELLEY BROWN: -- of the railroad. And in fact, we made sure that doors that would open out would not, you know, they're setting -- the building is actually 27-and-a-half feet back, but with the door swing, we don't want it to go into that area. And, you know, so we feel

that we've accommodated that concern and the state's been consistent in approving our applications as long as we stayed back.

The building adjacent, if you look at the-is N-16 chiller hall, we did the exact same thing and you'll see it's virtually parallel with the building here. When we built that, we had -- across the railroad track, we did the same thing and went through the same process.

PATRICK TEDESCO: You're saying it would allow for the same width, sort of the path?

KELLEY BROWN: Exactly.

PATRICK TEDESCO: Can I ask you a question related to that the other side of the garage?

KELLEY BROWN: Yep.

PATRICK TEDESCO: The landscape you're proposing between the garage and the Cogen plant which leads to the rail crossing --

KELLEY BROWN: Yeah.

PATRICK TEDESCO: -- which I think is great. I think it's a huge public benefit. But the landscape behind the garage that's existing, there is a picnic tables and things out there. What is that?

KELLEY BROWN: Oh, you're looking at the view?

PATRICK TEDESCO: Page 3. Yeah.

KELLEY BROWN: Which one?

PATRICK TEDESCO: Page 3. These plans. There's just things that --

KELLEY BROWN: I don't know, sometimes people take license with these renderings. So I'll have to --

PATRICK TEDESCO: Well, I guess my question is --

KELLEY BROWN: Actually, no, what you're looking at there -- you'll looking at this red bit behind the garage?

PATRICK TEDESCO: Yeah.

KELLEY BROWN: That -- what they're trying to show you there, is a community garden. There's a raised bed

garden that's there.

PATRICK TEDESCO: That's existing?

KELLEY BROWN: Yeah, that is existing.

PATRICK TEDESCO: So I guess my question is, if the grand junction path happens at some point, you're also willing to grant the space behind the garage?

KELLEY BROWN: Yeah. I mean, well the path goes for a mile on our property.

PATRICK TEDESCO: Right. In other words, there are things there now but it's the same intent as --

KELLEY BROWN: Right. I mean, what we've been careful not to do and probably the most challenging one was with the brain and cognitive science project where we had to put a large column line down next to the track, and we ended up making an agreement with the city to cut out a portion of building after we designed it in order to allow the path.

PATRICK TEDESCO: The path, yeah.

KELLEY BROWN: You know, there are trucks that

park there now. There are motorcycles that park there now, because there is no path in that area. But in the event that the path does happen and it does go as we expect on this north side of the tracks here, yeah, there's a number of challenges that are going to have to be overcome, but we don't want to create more by building something.

PATRICK TEDESCO: Understood.

BRENDAN SULLIVAN: Okay.

Just, what is the presentation room?

KELLEY BROWN: Well, let me ask these guys, they would know. What do you anticipate to happen?

DAVID BROWN: David Brown, Program Manager at MIT. The intent is -- the intent is to really show off what's going on in the process part of the building. So we envision public tours, students, faculty, you name it, go in and provide an opportunity where we can demonstrate the Cogen process, some of the technologies we're using, show how we're impacting a reduction on greenhouse gas which is a

significant goal that MIT has set for itself. So it's just an opportunity to portray the process going on is all.

BRENDAN SULLIVAN: Okay. Yeah, I saw that and I was just what is that, an MIT term or something?

KELLEY BROWN: No, no, nothing. No term of art there. Just what you expect.

BRENDAN SULLIVAN: Okay. Anything else at this moment?

KELLEY BROWN: No, thank you very much.

BRENDAN SULLIVAN: Questions from members of the Board?

DOUGLAS MYERS: With regard to the no build zone, the pedestrian and bicycle organizations expressed a degree of disappointment that it wouldn't be 32 feet wide. I've listened to what you've said and I've looked at the plans on page 5, is there anything further you can do to accommodate the opinions that they've expressed?

KELLEY BROWN: Yeah. Well, you know, this is the,

I guess, third time we've been through this on this project with this concern, right? So we did look really hard at, okay, you know, because their suggestion was basically well, why don't you move your building back and in fact why don't you encroach on the setback area was one suggestion. And we didn't, we thought that having that sidewalk was what was intended there and we thought was appropriate there and we couldn't do that. And the engineers looked hard at well, is there a way to rearrange some of the equipment to be able to pull this back? I mean, they had already done a lot to kind of shrink the expanse of it, but still contain the equipment, and they have a -- they're about to the kind of safety and regulatory tolerances of having some of the proximity. I was sort of saying well, we want the equipment. Direct adjacency is great, but too close of an adjacency is actually a safety problem. And some of the ways in which the equipment is configured, it makes it impossible to go kind of end to end and squish the building

and have it go longer. It just it doesn't function that way. It has to be adjacent it in a different way. So we did look pretty hard at that and were basically unable to accommodate that request. And, you know, I think our view also was well, gee, the building right next-door and the building just down the way at brain and cog are also -- have at the same proximity to the proposed path. You know, having 200 feet of a slightly wider path is perhaps a laudable objective. You know, they would like to have the path that wide. There's certainly many -- you know, I've studied, because I conducted that study about the feasibility. I've studied these multiuse paths and they often respond to conditions that they're placed in, they have to be wide enough to accommodate. Obviously pedestrians and bicycles going in two different directions, but they -- frankly, they don't have to be 32 feet like that. And in this area and many other areas on the path -- on the areas where MIT's already got property,

they're not gonna be that wide. So we felt that given the engineering issues associated with making this change or, you know, moving the building much closer to the street was just not the right response to that request.

DOUGLAS MYERS: You mention the possibility of encroaching and moving the building to the front and encroaching on the sidewalk. The ten-foot setback that you said is required under the zone is in fact that wide sidewalk-like area that you've --

KELLEY BROWN: That's right.

DOUGLAS MYERS: -- on page 8.

KELLEY BROWN: Exactly.

DOUGLAS MYERS: That is the ten-foot setback that makes zoning compliant?

KELLEY BROWN: Yes it is. Actually it is. It's on this page 5 you can see the red line is almost right on top of the building face there. So we are as close as we kind of are allowed to get, you know, so to speak, but

we're, you know, we're not using it for like a strip of grass or picket fence. We're making it part of the urban street.

DOUGLAS MYERS: And obviously the entire addition that you're going to build is going to replace the existing parking lot?

KELLEY BROWN: That's correct.

DOUGLAS MYERS: So where are those cars going to be displaced to?

KELLEY BROWN: They're generally going to be absorbed into our overall inventory. We have about 4300 parking spaces on campus, and they kind of -- they sometimes get shifted around and sometimes we end up leasing some spaces because we need them either directly or through office leases. So we're kind of working out a long-term plan. They're not, they're not kind of -- it's not like we create a parking lot somewhere else. We actually, you know, just deal with that change along with many others that are

taking place. For example, the work that we're doing in Kendall Square is eliminating 321 parking spaces. Now we do have a plan eventually to open a garage in that area which will accommodate some of this academic parking as well by 500 spaces altogether. So eventually it will land, it will land there.

ANDREA HICKEY: How many spaces are being lost now?

KELLEY BROWN: 90.

ANDREA HICKEY: 90.

BRENDAN SULLIVAN: We constantly hear about the Harvard pool and now MIT has a pool.

JANET GREEN: This is the first time I've heard about the MIT pool.

KELLEY BROWN: Well, we've had a pool a long time. At least as long as Harvard.

BRENDAN SULLIVAN: Before the Harvard pool.

KELLEY BROWN: Definitely before then.

DOUGLAS MYERS: One final question. On page 10
you show -- a bridge is shown.

KELLEY BROWN: Right.

DOUGLAS MYERS: Between the proposed addition and
the chiller hall.

KELLEY BROWN: That's right.

DOUGLAS MYERS: But is that bridge new
construction?

KELLEY BROWN: It is.

DOUGLAS MYERS: And that is not the bridge that is
shown on page 4?

KELLEY BROWN: That's right.

DOUGLAS MYERS: So there are two bridges?

KELLEY BROWN: Right. I mean, the bridge --

DOUGLAS MYERS: Is the new bridge that's shown on
page 10 shown on page 4?

KELLEY BROWN: Let's see. Actually, it is not
shown there, no. It could be maybe because of the elevation

that we're looking at here. I'm not sure.

DOUGLAS MYERS: But it would be --

KELLEY BROWN: It could be --

DOUGLAS MYERS: -- would it represent the project completely, it should be shown there.

DAVID BROWN: They're at different elevations.

KELLEY BROWN: Is that what it is?

DOUGLAS MYERS: Then I understand.

KELLEY BROWN: Oh, okay.

It's at 30 there and this one is different. Is this going to be fully enclosed?

ERIC MITCHELL: Yes.

KELLEY BROWN: And it's primarily, though, for the types --

ERIC MITCHELL: Utilities. Heights.

KELLEY BROWN: And will there be a person across it as well?

ERIC MITCHELL: Yeah.

KELLEY BROWN: I learn something new everyday.

BRENDAN SULLIVAN: Andrea, any questions?

ANDREA HICKEY: So there will be piping kind of visible through that?

KELLEY BROWN: Yeah, that's part of the idea here is to have -- you can see it actually in the rendering, that the colors represent different types of -- conveying different chilled water and steam and so forth. So you'll be able to see that and it will be glass and that part to demonstrate that.

ANDREA HICKEY: And what's in the area underneath that where there's sort of this --

KELLEY BROWN: Gate?

ANDREA HICKEY: Gate. What is there?

KELLEY BROWN: It's essentially a delivery and service area. There still may be from time to time some fuel deliveries and other kinds of supplies that will come in there and serve -- certainly the new building. Yeah.

That's the only access. We -- part -- I should -- I perhaps should have said in that -- one of the other issues that came up in this discussion about the path was that we would, we did design it so we would not have vehicles going back and serving from the rear including the gas company coming back and using that area. So it will be easier sometime in the future to -- if we were to make a path, to not have to kind of rearrange our service and loading back there. And having it on that side will, will be the only service access to the building.

ANDREA HICKEY: Are there any mechanical components in that outdoor area? Anything else sort of there or is it just open space for trucks and the like to pull in and out of?

KELLEY BROWN: I don't. I'd have to ask my colleagues.

DAVID BROWN: It's open. There is some containment so if there were -- a vehicle had a spill, it

would be captured. It's general open. There's some underground utilities. And as you noticed the bridge overhead, the products made in the building, the electricity will be exported to the rest of the building.

ANDREA HICKEY: But nothing mechanical out in that open area?

DAVID BROWN: Nope.

BRENDAN SULLIVAN: Janet?

ANDREA HICKEY: Could someone talk about lighting along the front and rear?

KELLEY BROWN: Path?

ERIC MITCHELL: Eric Mitchell with Owens-White, the architect. So we're going to provide --

JANET GREEN: Can you hear him, Cathy?

ERIC MITCHELL: Sorry. We're going to provide building lighting that will illuminate the sidewalk along Albany Street, and we're gonna try to achieve the cutoff so that it only illuminates the sidewalk.

The utility yard that you just referenced will have its own lighting as well.

And then on the south side we're gonna do building lighting as well to illuminate that.

So we're not proposing to do any pole lighting or anything like that along Albany Street.

And then on the east, the pedestrian way we will have campus standard pole lighting that will provide the emergency foot candles that are required by law, and we'll have an emergency phone out front of the building as well.

Would that answer your question?

ANDREA HICKEY: Yes, thank you.

BRENDAN SULLIVAN: Patrick.

DOUGLAS MYERS: You triggered one brief very small question. The passageway, is that open 24 hours a day?

ERIC MITCHELL: The pedestrian way?

DOUGLAS MYERS: Yes.

ERIC MITCHELL: Yes, it is.

KELLEY BROWN: Like other open parts of the campus.

PATRICK TEDESCO: I would ask your landscape architect how tufted snow grass survives snowbanks?

KELLEY BROWN: There's been vigorous discussion about snowbanks and our plant choices.

BRENDAN SULLIVAN: Anything else?

ANDREA HICKEY: No.

BRENDAN SULLIVAN: Let me open it public comment.

Is there anybody here who would like to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence from the Cambridge Pedestrian Committee. Comments will be acknowledged and incorporated as part of the record. And also from the Cambridge Bicycle Committee expressing their views on the passageway behind the building and adjacent to the grand

junction right of way.

And the Planning Board has not reviewed the case for tonight.

Okay, let me close the public comment part.

Anything else to add?

KELLEY BROWN: No.

BRENDAN SULLIVAN: Dispute? Contend? Nothing?

KELLEY BROWN: I've done all the contention I care to do.

BRENDAN SULLIVAN: Okay. All right, let me close the presentation part and let the Board discuss it among themselves.

Any comments?

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Questions, Andrea?

ANDREA HICKEY: Not really.

BRENDAN SULLIVAN: Janet? Patrick? Motion?

Let me make a motion, then, to grant the relief

requested for the expansion of a non-conforming structure in the area as per the plans submitted.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner because it would preclude the petitioner from constructing a cogeneration plant building to provide power/utilities to the campus facilities.

The Board notes that the proposed building at 38-50 Albany Street is planned to connect back to the building at 42 Vassar Street which in turn is connected to a series of building on this block.

These connections are for functional regulatory and safety purposes and greatly assist in energy conservation.

The hardship is owing to the fact that a rezoning of the area encompassing this proposed Building 42, from industrial to Residence C-3B resulted in a non-conforming status to Building 42. This encumbered the structure and

any expansion thereafter. The existing multi-building structure has been refashioned internally to provide steam, chilled water, and electricity to the campus achieving resiliency and greenhouse gas emission goals require an expansion of floor area and volume beyond what is allowed under the current Ordinance.

The Board takes special note that the twin combustion turbines, the heat recovery steam generators, and the electrical equipment are all arranged at the closest possible proximities in line with safety standards and maximum efficiencies.

In addition, the volume is expanded because resiliency needs require placing the turbine hall at 30 feet above Cambridge datum for sea level which is 12 foot above grade to survive a 500-year storm.

The Board finds that desirable relief may be granted without substantial detriment to the public good for the following reasons:

To achieve maximum energy efficiency. MIT is pairing cogeneration and high efficiency equipment using state of the art design, MIT investment in best available control technology, insures that the proposed plant upgrades will meet all state and federal requirements through the use of clean fuel, efficient equipment, and advanced emission controls including two different catalysts that will reduce the plant's NOX, nitrogen oxide emission by 90 percent. The new cooling tower with high efficiency drift eliminators will reduce particulate emissions and conserve water.

By 2019 the institute will eliminate the use of No. 6 oil on campus.

The Board finds that the proposed project responds to the City's policies, best practices, and governance related to sustainability and climate change as manifested in recent city initiatives including the get to NetZero task force and the community compact for sustainability future -- sustainable future.

The Board finds that the proposed project will have far reaching benefits not only to the larger MIT community but to the general public as well.

The Board finds that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Board finds that both the Massachusetts Zoning Act and the Cambridge Zoning Ordinance allow non-conforming buildings to remain in place and even be expanded so long as the change, extension, and alteration is not substantially more detrimental to the neighborhood.

The Board finds that the granting of the requested Variance would support the intent and purpose of the Ordinance.

The intent and purpose of the Zoning Ordinance with respect to the new front yard is to establish a new and more generous building line to reflect and support the altered overall context of the area which has shifted from

industrial uses and structures to a modern urban mix of institutional, commercial, and high density residential uses that now predominate in the neighborhood.

I further move that the Board specifically find that based upon all of the information presented, there are circumstances involving a substantial hardship relating to this property within the meeting of Mass. General Law Section 40-A and Chapter 10.

And that the Board grant the Variance for the requested relief on the condition that the work be performed in substantial compliance with the plan and dimensional form submitted, initialled by the Chair, and for the enlarging of a non-conforming structure. And further finding that the literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner.

Anything else to add to that?

(No Response.)

BRENDAN SULLIVAN: All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

DOUGLAS MYERS: Initial the plans?

BRENDAN SULLIVAN: I will initial it, thank you.

(Sullivan, Green, Hickey, Tedesco, Myers.)

DOUGLAS MYERS: Good luck with the most difficult aspect of this project allocating the parking spaces.

* * * * *

(9:45 p.m.)

(Sitting Members Case BZA-011903-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011903, 200 Sidney Street.

Is there anyone here wishing to be heard on this matter? The floor is yours.

MELISSA NUGENT: Melissa Nugent Signs on Site. We are proposing to install a sign for Seres Therapeutic that is 29 feet from ground to the top of the sign.

The sign conforms to the size restrictions within the Zoning By-Laws. It's non-illuminated. The main reason that we are proposing this location is because there's a building identification sign right at the North Main entrance that would allow us to be within the height guidelines.

On the east side there's a freestanding -- and I have photos of this here. A freestanding awning or a structure that prohibits the sign from being viewed from that angle.

CONSTANTINE ALEXANDER: And also it involves the nature of the architecture of the building at issue?

MELISSA NUGENT: Exactly. Exactly.

CONSTANTINE ALEXANDER: I mean in terms of where you can put the sign on the face of the building?

MELISSA NUGENT: Exactly.

CONSTANTINE ALEXANDER: Because of the way of the windows and --

MELISSA NUGENT: Exactly.

GARY NOLAN: Gary Nolan, N-O-L-A-N. I'm the Director of Facility at Seres. And, you know, what we've tried to do here is build an identification to be non-illuminated to be not intrusive.

JANET GREEN: You know, we're in this other room that we're not usually in so she's kind of sitting....

GARY NOLAN: So what we're trying to do here is get the building identification so we're trying to get to the size to conform, non-illuminating. We don't want to bleed the area. But we want to enter the only other location that's allowed to the building because they have the identification over there.

ANDREA HICKEY: Does your company occupy the whole building?

GARY NOLAN: So we are the anchor tenant in the building. There are three other companies within there. Under our lease we're allowed to have one or two building identifications, and we've chose one of the least intrusive area above the entrance.

CONSTANTINE ALEXANDER: I'm sorry, I didn't follow all of that. Do you lease the whole building and sublet it out to --

GARY NOLAN: No, no. We are the anchor tenant. So we have the majority share within the building.

CONSTANTINE ALEXANDER: Right.

GARY NOLAN: There are four -- including ourselves, there are four companies within the building.

CONSTANTINE ALEXANDER: Got that. But there's nothing in the lease -- the other three companies, are they able to put up a sign?

GARY NOLAN: No.

CONSTANTINE ALEXANDER: No?

GARY NOLAN: We as the anchor tenant with the majority share on the company through the PMR.

CONSTANTINE ALEXANDER: It doesn't make sense to me. How do you -- if it's not a sublet to the other tenants, how can you prohibit in your master lease, them from putting up a sign?

ANDREA HICKEY: In their subleases, they --

CONSTANTINE ALEXANDER: He said they're not subleases.

GARY NOLAN: So BioMed Realty owns the building --

CONSTANTINE ALEXANDER: Yes.

GARY NOLAN: -- and we're one of four tenants in the building.

CONSTANTINE ALEXANDER: One of four tenants.

And how do you know tomorrow BioMed says to one of the other three tenants, come to BioMed and say can we put up a sign? Can we amend the lease? BioMed says sure. How

do you stop that? You have no ability to stop that.

ANDREA HICKEY: Is there a provision in your
lease --

CONSTANTINE ALEXANDER: Okay.

ANDREA HICKEY: -- where the landlord agrees that
no other tenant --

GARY NOLAN: Correct, yes.

ANDREA HICKEY: -- shall be allowed to erect a
sign?

GARY NOLAN: Correct.

CONSTANTINE ALEXANDER: Okay.

ANDREA HICKEY: How long -- are you at liberty to
say how long your lease is for?

GARY NOLAN: So our lease is a seven-year lease.

ANDREA HICKEY: Okay, beginning?

CONSTANTINE ALEXANDER: When does it start?

GARY NOLAN: We started in March of this year.

CONSTANTINE ALEXANDER: Okay. Seven years, six

years.

PATRICK TEDESCO: Were the other tenants already in the building though?

GARY NOLAN: So this is a previous building that was owned by Vertex and that the BioMed Realty renovated the whole building and then subdivided and we then became one of the --

PATRICK TEDESCO: But the other tenants, the other three tenants were there before you were or since you moved in?

GARY NOLAN: They were there just prior to us.

PATRICK TEDESCO: Again, it's a legal question but if their lease -- I mean --

CONSTANTINE ALEXANDER: If they were there before --

PATRICK TEDESCO: That's what I'm asking.

CONSTANTINE ALEXANDER: -- they would have a lease of their own. I don't know how --

ANDREA HICKEY: Right, but their lease may say tenant A, B, and C cannot erect a sign. Do not have a right to erect a sign.

CONSTANTINE ALEXANDER: I shouldn't -- it still doesn't compute for me because you can't, you can bind the landlord to require that the other tenants in the building can't put a sign up, but if the these other tenants had a lease before your lease, that lease may have given them a right to put up a sign or it may not -- you know, there is nothing prohibits someone from putting up a sign in the lease then they have a right to put up the sign that otherwise complies with the law, etcetera.

GARY NOLAN: So per our lease and per the landlord we are the only one of the four tenants within the building of the leases that they've given out are able to erect a sign.

CONSTANTINE ALEXANDER: And it still doesn't make sense but be that as it may, keep going.

MELISSA NUGENT: We're just proposing that I think given it's only nine feet above what is allowed and the architectural structure of the building it seems that there isn't really a grave detriment in the location that we're proposing.

CONSTANTINE ALEXANDER: Okay.

ANDREA HICKEY: Why do you need a sign?

GARY NOLAN: So for us it's a, you know, identifier for our company and for the, you know, the recess that we're doing we would propose that given the nature of the street where we are and doing the work that we're doing as anchor tenants, that a building identifier for us would be key for our research.

CONSTANTINE ALEXANDER: You want a sign just why anybody else wants a sign on the building.

ANDREA HICKEY: Advertisement.

CONSTANTINE ALEXANDER: To tell people, here, we're in this building. And the question becomes our Zoning

Ordinance has rules as to what signage you can put up, and you complied with all of those rules except that you want to be -- you have to be, because of the nature of the building, and the other signage, you have to be 29 feet up and the Zoning Ordinance says no more than 20. So it's just nine more feet is what this is all about.

GARY NOLAN: Correct.

CONSTANTINE ALEXANDER: No illumination issues. No massive signs. You're going to comply with the volume requirements. Just, we need to go up nine feet higher because of the way the building is to get the sign on the building.

GARY NOLAN: Correct.

CONSTANTINE ALEXANDER: I mean, look at Shire -- you weren't here. We had a case involving -- in Kendall Square, Shire Pharmaceuticals, they put up -- they wanted to put up a sign six stories high. They wanted to put it up bigger in terms of volume as permitted by our

Ordinance and we granted a Variance to them because they had -- and with neighborhood support. Because they had a hardship given the location unless they were able to put up their sign.

The relief you're seeking here, in my mind, is far more modest than the relief that was requested by Shire where we granted relief.

BRENDAN SULLIVAN: My feeling is there's three reasons why you put up a sign:

One is directional, the other one would be advertising, and the other one would be branding.

Now, I can accept the directional. I can accept the advertising in a sense, you know, the old traditional advertising for a store, a mom and pop store -- whatever it may be, that type of thing. What I really wrestle with is the branding part of it. And I know that everybody likes to put their little imprimatur on the building and say, you know, we're here, you've arrived. But -- and, you know,

initially parts of Kendall Square just outside of Kendall Square it was a little bit amenable to it in a sense, you know, Marriott Hotel, whatever it may be, and some of those other place as sort of a way finding type of direction. You know, a way finding, what have you. But over the time I've come to not look so favorably on the branding part of it because from where I sit, it's easy to say, yeah. But when do you say no, you know? And then to me these things start to grow like mushrooms all over the place, and all of a sudden you stand back a few years from now and you see these signs all over the place and you say really what was the purpose of it? It was really that somebody put their imprimatur on the building. And it really wasn't for directional, it really wasn't for advertising because whoever goes to your place of business is probably really, you know, gonna pull out their phone, punch in the address, and it takes them right there. And so it defeats the advertising part and it defeats the, you know, the

advertising part of it. And, again, that's what I wrestle with is, you know, when do you say no to is? You know?

And --

CONSTANTINE ALEXANDER: Brendan, can I respond to that a little bit? Finish.

BRENDAN SULLIVAN: And then so you say well, okay, you know, where do you place it on the building? And, you know, for someone who's done work in Concord and someone who's done work in Lexington, you know what the rules are going in. And until we sort of stress the rules and say these are the rules, guys, the architects are not going to design buildings that will accommodate tenant signs. Tenants who may want it for "we've arrived" type of thing. So that's sort of what I'm wrestling with.

CONSTANTINE ALEXANDER: All right, let me give a different point of view.

First of all, why is a sign that's nine feet higher than our Ordinance prescribes branding? If it was

bigger than -- if it were bigger than our Ordinance provides, yeah, I could see the branding argument much more. If it were much higher on the building, if it were illuminated, nine feet higher than -- it doesn't go to branding, it goes to basically aesthetics.

BRENDAN SULLIVAN: Well, only because that's the yardstick that we've been given. In other words --

CONSTANTINE ALEXANDER: Yeah, but then we've also been given the right to the variances for hardship and the like.

BRENDAN SULLIVAN: That's right. And so, you know, what if it's 10 feet, what if it's 11 feet? Then I mean how far do we --

CONSTANTINE ALEXANDER: Each one you look at, you look at the environment, you look at the nature of the sign. You look at a lot of things. But I don't think here, in my view, just going up nine feet makes it a branding sign. Where for were it nine feet lower, it's not a branding sign,

or say it a different way, it's a branding sign that the Ordinance allows.

And I think, also, I think it's really unfair to say the architect when they design a building should take into account the signage requirements of our Zoning Ordinance. Architects design buildings for -- whether you have much -- Patrick can tell us, much more issues than the sign issues, particularly because when a building gets built, it's there forever. Our Ordinance can change any day. Every time the City Council decides they want to change it, they can change it. So you can't if you're an architect, it seems to me, to design a building to match an Ordinance that may change the day after you design the building.

ANDREA HICKEY: But certainly a tenant looking at a place to locate their business can know what our rules are and know what kind of sign they perhaps would like to do and know whether the building they're interested in leasing will

accommodate that within our rules. So, from my perspective it's not so much on the architect creating the constraint. We create the constraint and then you decide whether this is a place you want to lease or not for your business knowing that there are rules in place for a reason.

PATRICK TEDESCO: If an architect is designing a multi-tenant building or a shell core building that's on spec, it's generally not going to consider occupant signs, it's going to consider, you know, 200 Sidney Street or One Beacon or whatever it is. So unless it's a headquarters building for a company where signage would be does become important...

Gus, I want to -- you mentioned Shire. I seem to recall from that case that there was language about corporate branding or identity that resulted in Shire actually removing their -- they didn't put their logo, they actually put the word Shire, they took the color away, they had some little design they took away. That language comes

from the zoning guidelines, right? Or was that from --

CONSTANTINE ALEXANDER: No, no, that was part of the negotiation or the process of getting support from --

PATRICK TEDESCO: The community.

CONSTANTINE ALEXANDER: From the community, yeah.

PATRICK TEDESCO: Okay.

CONSTANTINE ALEXANDER: It was not from the Ordinance.

PATRICK TEDESCO: So there's nothing in the guidelines that prohibits branding or corporate identity --

ANDREA HICKEY: Or a logo.

PATRICK TEDESCO: -- or logos, right? As long as it's within the height and size and illumination?

CONSTANTINE ALEXANDER: I think I made this comment before, I'll make it again. A community cannot prohibit branding signs per se.

PATRICK TEDESCO: Right.

CONSTANTINE ALEXANDER: Corporations like the

individuals have a right of free speech, and branding is part of their speech. However, what communities can do with regard to individuals and buildings is to put reasonable restrictions on the exercise of free speech. To take the famous example from home, you can't yell fire in a crowded theatre. That said, your First Amendment right doesn't give you the right to do that. That's the balance we have to -- you can't simply say it's a branding sign, therefore, you can't do it.

PATRICK TEDESCO: So Shire was a particular negotiation --

CONSTANTINE ALEXANDER: Yes.

PATRICK TEDESCO: -- and acquiescing to the community.

CONSTANTINE ALEXANDER: Right.

ANDREA HICKEY: Yeah, the concern that I have is that there are three other tenants in the building, and I believe what you say that you've interpreted your lease to

read that you'll be the only sign. My fear would be that if we approve this, then another one of your tenants -- not your tenants, another one of your neighbors in the building comes and says well, you approved it on this area for Seres, we want it, too. And then there's another sign next to that.

And then the third neighbor of yours comes in and we've got this whole front of this building with signs and logos. That doesn't really speak to the nine foot kind of issue, it just sort of means to me speaks to, if we make this exception for you, we may be asked to make it three more times.

GARY NOLAN: Yeah.

ANDREA HICKEY: And there's no way that we could fashion a decision in my opinion that would prevent that.

CONSTANTINE ALEXANDER: That's right.

PATRICK TEDESCO: So could that -- I was just going to say as a legal question, if those tenants are

prohibited by lease, there's nothing --

ANDREA HICKEY: Well, we have no way -- we're not -- we don't have standing with respect to that lease to --

CONSTANTINE ALEXANDER: Leases can change by the parties. So it's nothing. They're not written in concrete.

ANDREA HICKEY: Right. And that would be a claim for the gentleman here from Seres to make with his landlord. It's not something that we can sort of impose on the building owner with respect to those three other leases. So that, that's what I'm struggling with, three other signs next to yours perhaps.

GARY NOLAN: I don't have the proof here with me. You know, but I do know that --

ANDREA HICKEY: Right.

GARY NOLAN: -- but, the leases as they're currently written --

ANDREA HICKEY: Right. No, it's not that I don't

believe what you're saying. Please don't get me wrong. But you -- your company could decide that you'll break your lease and you're gone in a year and then sort of --

CONSTANTINE ALEXANDER: And then at least the sign would come down then.

ANDREA HICKEY: Your sign would come down but maybe we have three or four more requests again. So anyway, I've said what concerns me. But, you know, respecting your comment that it's nine feet, it complies every other way. I get that. I get that.

MELISSA NUGENT: I think we would --

JANET GREEN: I went over to look at your building before I actually seen the file. So I dove around before I saw the files. So I'm not quite -- I mean, I remember where the big arch thing is, but what I don't remember is where it says 200 Sidney Street, how much further there is to the side of 200 Sidney Street and why your sign wouldn't fit down there which you would then not have the problem of the

nine feet.

MELISSA NUGENT: That was by request first of all by the landlord because the feeling was that it took away from the building identification and then aesthetically I think it just appears a little more unbalanced that way. And so, you know, I think aesthetically it looks better stacked, that was our opinion there. But it was also the landlord's request to not be on the same plain to distract from the building.

JANET GREEN: That was a request, not a requirement.

GARY NOLAN: It's a requirement. They will not allow it next to their sign. They want separation from --

JANET GREEN: So they kind of put you in this situation.

MELISSA NUGENT: And I think we went into this knowing that our main request was -- that was the location. We were trying to be very respectful in regards to all

other, you know, aspects of the by-laws so that we were in compliance. And really I think that that location is what was going to work as opposed to anything else.

GARY NOLAN: So the landlord has given us other locations to put the sign, and their identifier was to put it at the top of the building and at the corner of Sidney and Erie, which we didn't want to, A, because we want to get it as close to the entrance as possible. As low down as feasibly possible that we can get. We don't want to illuminate our sign all over Cambridge. We just want it at the entrance of the building.

PATRICK TEDESCO: The sign is proposed on Sidney Street?

MELISSA NUGENT: Erie.

GARY NOLAN: Erie Street.

PATRICK TEDESCO: Oh, it's on the side street. This is Sidney this way.

GARY NOLAN: It's actually directly facing the

parking garage.

PATRICK TEDESCO: Right. I mean from your perspective if the arch weren't there, you would be content with it on the Sidney Street sign?

GARY NOLAN: It's the lowest plain, because it's a standstill at the entrance way to the building.

JANET GREEN: You could put it on the front of the arch.

CONSTANTINE ALEXANDER: Should I open the matter up to public testimony?

ANDREA HICKEY: I think so, yeah.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this matter?

Ms. O'Hare.

CAROL O'HARE: May I?

CONSTANTINE ALEXANDER: Yeah.

CAROL O'HARE: I'm going to take a little bit longer than usual because I'm here on behalf of 36

neighbors. I'm sorry, I have a cold. I want to pass this out because I had no problem in Cambridgeport where I live getting these signatures.

On Sunday I walked over to their neighborhood, that section of Cambridgeport, and in a half an hour all of the people at the top of this list that have green stars who are abutters or directly across the street signed this in agreement with my position and many other positions.

The yellow names are people who live within a three minute walk.

The other people who are checked live in Cambridgeport. And as you know, I've been at this for a while. And, yes, I did support the Shire sign. And, yes, I did support the Hanover Apartments sign or -- over in West Cambridge because they had hardships. They had moderate hardships. But in the case of Shire that sign could not be seen from the public way. I walked that street. I walked Third Street and you could, if the sign had been placed

above the door of that building, it would not have been seen from Third Street which is the major thoroughfare. And so they did compress the sign. They took out their logo, and they did have a hardship. If you look at this, my photograph of the building taken on Sunday -- I couldn't really get my printer to work very well. There are places that the sign could be that would be legal. One place is right underneath the 200 or the 200 Sidney Street sign could be higher.

CONSTANTINE ALEXANDER: I'm sorry, I'm trying to understand your comment. You mean put their sign underneath?

CAROL O'HARE: Yeah, that whole series sign, just like there are other corporate entities that don't have to have huge --

CONSTANTINE ALEXANDER: And that would be the landlord's consent to it?

CAROL O'HARE: So what. The landlord was the

one -- wait a sec. The landlord was the one that created this situation by building a double unnecessary fluff.

CONSTANTINE ALEXANDER: That's not fair.

CAROL O'HARE: Why isn't that --

CONSTANTINE ALEXANDER: The landlords and architects they design the building. You can't --

CAROL O'HARE: They should design the building -- this is --

CONSTANTINE ALEXANDER: No, no. Listen to me. If you design the building to meet an ordinance that may change the next day and when you're designing the building, you don't really worry about the signage, you worry about the occupancy, the layout, the aesthetics.

CAROL O'HARE: Well, if they knew that the Board -- if they knew that the Board didn't grant variances for signs, they would pay attention to the Sign Ordinance. The Zoning Ordinance -- this is not a hardship. This,

this -- they can make a sign that goes on the window that goes underneath nine feet higher. So is ten -- as somebody said, is ten feet higher the problem? Is 20 feet higher the problem? How -- you know, you know it when you see it, is that what it is that gives them the hardship? I know your position that you know it's flexible, but it is not flexible. If we want to change the Zoning Law, change the Zoning Law. Don't, don't give hardship variances for no real reason especially because people do not want branding in their neighborhoods.

This is Cambridgeport. It took me no time to get all of these signatures. People are tired of branding literally.

CONSTANTINE ALEXANDER: But why is this sign branding and another sign that complies with --

CAROL O'HARE: I'm not, I'm not saying branding. Why don't they comply -- in fact, I'm not saying branding. But they don't sell -- as Mr. Sullivan said, they're not

selling anything. They don't need a huge sign to attract people.

PATRICK TEDESCO: Can I just ask, I'm sorry --

CAROL O'HARE: Sorry. I'm sorry. I'll cool off.

It's just that I've been doing this for years and they, they know it. And the landlord in this case BioMed should have made their 200 Sidney Street sign smaller, and then like there's a building at the end of CambridgePark Drive where they've got the tenant names all in a row, you've seen it.

CONSTANTINE ALEXANDER: Right, we approved it.

CAROL O'HARE: And they've got their tiny little brands and you can see those when you come up to the building. So all that they have to do is it make their sign smaller, put Seres -- is it Seres?

MELISSA NUGENT: Seres.

GARY NOLAN: Seres.

CONSTANTINE ALEXANDER: Anyway, you know.

CAROL O'HARE: They need to put their sign or they

can put it over to the right above the door. They don't need to put it nine feet too high. If they took their logo away, it would fit even better. I'm not suggesting that they do. There are plenty of places on this building where they could put a sign that would be visible, and I do think it is the landlord -- BioMed is a grownup tenant, landlord that knows perfectly well how -- they have a brand new building complex. They took down a whole mess of trees to plant little teeny, weeny trees to -- anyway. BioMed is not a very -- you know, they decided to have this new campus, they could have decided to design their building to comply with zoning in all respects.

CONSTANTINE ALEXANDER: I thought, maybe I misunderstood. Didn't you say this building was not built by BioMed? It was Vertex.

GARY NOLAN: Vertex built it in 1999.

CONSTANTINE ALEXANDER: Don't blame BioMed.

CAROL O'HARE: Did BioMed put that archway there?

GARY NOLAN: No.

PATRICK TEDESCO: You mentioned the Shire sign and, I agree with you, the hardship there was the sign was not visible which is why I supported that.

CAROL O'HARE: Right, that's right.

PATRICK TEDESCO: I would agree that the arch makes this sign not visible at least from Sidney Street.

CAROL O'HARE: But what I'm saying is there are other -- the 200 Sidney Street sign doesn't have -- there is a building that Mr. Alexander knows over in West Cambridge, off CambridgePark Drive. Sorry. That has the tenant names right there prominently, and there are four tenants, and each of them has -- and I probably have a picture of it, each of them has the name and the brand.

PATRICK TEDESCO: (Inaudible).

CAROL O'HARE: Okay? And so this 200 Sidney Street sign could be shortened, it could be raised a little bit, it could be put on the glass.

GARY NOLAN: We have no mechanism by which to enforce our landlord to put their sign. So what we're asking for is to -- we can't, we can't ask them to do that as a tenant. So they -- we're then asking for the next closest possible way at the minimal disruption that we can --

BRENDAN SULLIVAN: Something tells me that until something gets their attention, this may be the something gets the attention of landlords, building owners, that they are not going to be sensitive to the Ordinance. That's my feeling.

CAROL O'HARE: I mean, that's the problem. That every single sign variance you grant generates ten more, and everybody thinks they're entitled to it. And the neighbors, the people who rely on you to comply with the law or abide by the law accepting hardship not -- I'm running out of voice.

CONSTANTINE ALEXANDER: Take your time.

CAROL O'HARE: You get it. And you've seen my eleven reasons, I think you've read them all I hope.

CONSTANTINE ALEXANDER: Yeah.

CAROL O'HARE: We're tired of fighting this. And I'm not the only one. I'd rather be doing something positive than -- and Heather and I are working on something positive about lighting, taming the lighting, but it's just every one of these that isn't, isn't a hardship. This hardship can be cured. BioMed will surely accommodate you once you get -- if you are denied this Variance.

CONSTANTINE ALEXANDER: My only suggestion is that if you're tired of fighting, one thing I don't see from your group is a sense of balance. Every -- you come and if a sign doesn't comply with the Variance, there's something wrong with it and we should oppose it. Very few -- no, I'm sorry, very few cases that we have a sign variance.

CAROL O'HARE: Right.

CONSTANTINE ALEXANDER: Where you're in support of

the Variance.

CAROL O'HARE: Very few because there isn't substantial hardship. And if this is substantial hardship because it's only 50 percent larger, higher, you know, suppose the, suppose it were 80 percent higher, 90 percent higher.

CONSTANTINE ALEXANDER: But the hardship here, as Patrick has pointed out, is partly blocked by the arch. That's part of the building. That's not --

CAROL O'HARE: No. They can make a smaller sign. They don't need a sign that's how many feet high.

CONSTANTINE ALEXANDER: It's a sign in volume as it complies with our Ordinance.

CAROL O'HARE: There's plenty of room where it's legal. There is plenty of room. It is not a substantial hardship. I, I just -- if this is the -- then everything is. Sorry.

JANET GREEN: So this sign is like four feet,

eight inches by twelve feet, four inches?

MELISSA NUGENT: It's about 57 and a half square feet. So we're just under the 60 square feet.

CAROL O'HARE: It's not too big. It's just too high.

BRENDAN SULLIVAN: Personally what I would do is I would take 200 Sidney Street and I would maybe just hang it from here, this little bit of overhang, and then push this sign down to here.

CONSTANTINE ALEXANDER: Yeah, if the landlord wants to do that.

BRENDAN SULLIVAN: Again, and I think until --

GARY NOLAN: So I've spoken to the landlord, and he told me he will not.

BRENDAN SULLIVAN: To get the attention of the landlord.

ANDREA HICKEY: Or until tenants negotiate in their lease a specific proposed space for their sign if

having signage is crucial.

CAROL O'HARE: Right.

This is a huge campus. There are many other tenants in this whole block campus. And the direct abutters across the street, people who are entitled to notice, object to this. I am not the only one. These are people who live in this neighborhood and don't want it to be -- I mean, what can I say?

GARY NOLAN: Well, the sign is only visible from the -- we directly face a car park and an open car park --

CAROL O'HARE: They don't want their neighborhood to be branded.

GARY NOLAN: We're not actually facing --

CONSTANTINE ALEXANDER: I've read the letters. Most of the people who are writing the letters are either upset because Chroma and other buildings have signs that they feel are too big and are not being prohibited by --

CAROL O'HARE: That's one letter. Two letters

that's a husband --

CONSTANTINE ALEXANDER: No, no, I read more than one, I'm sorry.

CAROL O'HARE: It's a husband and a wife and they live right across the street.

CONSTANTINE ALEXANDER: The fact of the matter is that's not relevant to this case.

CAROL O'HARE: That's right. But his whole first paragraph is about this case. It's not about Chroma.

CONSTANTINE ALEXANDER: I know. The sense I get from these cases -- these letters, I'm sorry, is that they're opposed to signs, period.

CAROL O'HARE: They aren't. These are people who never signed anything before.

CONSTANTINE ALEXANDER: Okay.

CAROL O'HARE: Mr. Alexander, these are people in my neighborhood because I know them or I can communicate with them, who have never, except for maybe four or five,

never signed anything about this.

PATRICK TEDESCO: But you're soliciting opinion, you're going around knocking on doors. They're not seeing the posting of the Variance and going to --

CAROL O'HARE: No, I wrote, I wrote them --

PATRICK TEDESCO: No, I understand. And so I'm not saying that means that their opposition is not relevant. I'm just asking, you know, are they seeing this? Are they understanding --

CAROL O'HARE: Yes.

PATRICK TEDESCO: -- what's being proposed?

CAROL O'HARE: Yes. I sent them. I e-mailed most of them, and I showed them that, yes. They don't want their neighborhood branded. There's a whole mess of buildings on that side of Cambridgeport intermixed with residences. In this case they have that whole block except for --

PATRICK TEDESCO: I live in Cambridgeport, too, so I know it very well.

ANDREA HICKEY: But how does moving the sign down make it not branding?

CAROL O'HARE: I don't care if it's branding. I don't really care.

ANDREA HICKEY: All right.

JANET GREEN: It's the height.

CAROL O'HARE: It's the Variance.

PATRICK TEDESCO: You're troubled by the visual impact of it being higher?

CAROL O'HARE: Yeah, I am troubled by with the non-compliance with zoning. Five and a half years ago when you, you, you were not on the Board, there was a Zoning Amendment proposed. It was called the Microsoft Amendment because Microsoft wanted a sign at the top of the building that it now has signs on. You've heard about it.

PATRICK TEDESCO: Oh, yeah.

CAROL O'HARE: So, it was originally proposed to allow the Planning Board to have signs to grant approval,

Special Permit approval for signs way up above the normal height larger than normal lighted, more lighted than normal. And I'll cut to the chase. It was, you know, 15,000 residents in the span of 20 days opposed it. There were lots -- that's cutting to the chase. They signed petitions. And 15,000 is the low estimate because they don't want the city to have signs all over the place. So if you're gonna, if you think that signs should be higher, amend zoning. Don't grant variances case by case because then you're in the problem that Mr. Sullivan described, is that the property owners assume that there's gonna be a Variance, the tenants assume they're gonna get a Variance, the Board has no choice but to grant Variances in cases like this. But it should be a very special case. I think I've, I've supported six Variances where the sign was hidden by a bridge, where that sign was hidden by some trees, you know. So that's, that's my -- that's it.

CONSTANTINE ALEXANDER: Thank you for taking the

time to come down.

ANDREA HICKEY: Thank you.

CONSTANTINE ALEXANDER: Ms. Hoffman, you want to speak?

HEATHER HOFFMAN: Yeah. My name is Heather Hoffman. I live at 213 Hurley Street with a great few of other people's branding signs in Kendall Square.

And I was, I was not even going to come down and talk about this, and then I read the application and I -- I don't know if you noticed that your application says it's nine inches that you're asking for. Repeatedly it says nine inches. It says this is for tenant branding. That's what it says. It doesn't say it's to help people find the place. I think it says it's for tenant branding.

And I don't -- I mean, I am actually quite familiar with this building because I was -- I liked the sculpture that used to be there. And I would arrange my trips to go by this building to look at that sculpture. And

were it still there, you probably could stick your sign right between Pikachu's ears. But I just -- as Carol said, I don't see a hardship. There's nothing hiding this building from anyone coming by on all of the streets that are around it. It's big.

GARY NOLAN: It's a multi-story carpark that blocks any view of --

HEATHER HOFFMAN: If you think that people are not allowed to object because they go by it rather than live across from it? I mean, it's still part of my environment that I pass by all the time. For that matter, you know, I go by there often enough to know how incredibly overbright the parking lot lights are. So, you know, I just -- I did not see any hardship in this application and so I didn't see any good reason for it to be granted.

Now, I was also one of the people who supported Shire because it's really true, you can't see the building, it's hidden. This building is there and BioMed happens to

be a major landlord in my neighborhood. And it's true, they are terrible about signs. They, they think that tenants should just have to deal with getting Variances and too bad for all of us and for the tenants. And so I understand that part of your problem, but BioMed is not gonna change until they start hearing from their tenants that the answer's no.

So, I hope that -- that the, that this Board will continue in the path that it's been on for a while now of saying, yes, when there's a real hardship, and, no, when there isn't.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

ANDREA HICKEY: Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time. Sir, did you want to speak?

STEPHEN PIKE: Yeah, Stephen Pike. It sounds like to me it's an architectural design is the reason why they're asking for the nine feet, right? Because it's glass. It's

within the requirements of the Cambridge, right? If you look around Cambridge, there's signs everywhere because it's a great place to be. It's where businesses want to be because it's the City of Cambridge. So they're asking for nine feet because there's glass at the requirement that they would put it at. If they put it in the front, it's blocked. Nobody's gonna see it. If I go to a business, how do you guys find someplace when you're going to try to find a place? You look for a sign. I do.

ANDREA HICKEY: I put the address in my GPS.

STEPHEN PIKE: And where do you look for the front entrance, though? If it was on that side of the building, wouldn't you go over to that side of the building to come in? I would. You want the sign to be close to your entrance. You don't want somebody to go on the west side of the building when you enter on the east side of the building. To me it makes sense -- and the only reason they're asking to put the sign up higher is because it's

glass. Architecturally they can't put it where they would. And the landlord is never gonna take down their sign of the number of their business and say oh, yeah, put your sign there and we'll move this. That's never gonna happen.

ANDREA HICKEY: Do you live in Cambridge?

STEPHEN PIKE: No, I don't. I live in Duxbury.

But it's just the fact -- I mean, there are signs everywhere around here, but you want the sign near the front entrance of a building.

CAROL O'HARE: Are you the sign contractor?

STEPHEN PIKE: I'm not a sign contractor, no.

CONSTANTINE ALEXANDER: Thank you. Thanks for taking the time to come down from Duxbury.

STEPHEN PIKE: Thank you.

GARY NOLAN: So I think one of the policies the building that they redesigned -- they redesigned where the entrance is. So the entrance used to primarily be on Sidney and Erie, at the corner. And so that now is not an entrance

anymore. And so it's now on actually on Erie Street. So your GPS would actually take you to Sidney and not Erie Street. And so what we don't want to do is we don't want to put you on the corner of Sidney because that's a main thoroughfare going forward. We want to put it actually at Erie Street, opposite way of where the actual entrance is that's being changed by the landlord.

MELISSA NUGENT: And I think the most specific thing for this case here is the archway, because we probably wouldn't be there -- here right now had that archway not be -- I mean, that is an ideal location on the other side of the building, a completely not visible.

ANDREA HICKEY: And the configuration of the glass.

MELISSA NUGENT: Exactly.

GARY NOLAN: Yes, the architecture.

CONSTANTINE ALEXANDER: I'm going to close public testimony at this point. We do have as Ms. O'Hare pointed

out, we have lots of letters in the petition which she's handed to us. And I think it's fair to say, you can disagree with me, that your two comments basically cover everything that's in these letters. You don't want me -- if you want me to read into the record verbatim?

CAROL O'HARE: Well you could -- the one neighbor --

CONSTANTINE ALEXANDER: You can come forward. I don't want to make you strain your voice.

CAROL O'HARE: The letter from the across the street guy who did talk about Chroma, he says something in his first paragraph that's different probably from mine and then Bob Simha (phonetic) his comment --

PATRICK TEDESCO: It's on the petition -- this list at the bottom.

CONSTANTINE ALEXANDER: Yeah, I thought everything was on the petition, which is also in our files, too. You had given this to us before or you filed it before.

CAROL O'HARE: What?

CONSTANTINE ALEXANDER: The petition.

CAROL O'HARE: No, this is the longer version with the colors.

CONSTANTINE ALEXANDER: Okay. I was mistaken.

CAROL O'HARE: I hadn't gone to the neighborhood.

CONSTANTINE ALEXANDER: I thought I saw it, but okay.

CAROL O'HARE: Which one are you --

CONSTANTINE ALEXANDER: Keep going. I thought when I read the files the day before yesterday, that I saw this petition in here with the different colors. But it must be -- I must be hallucinating.

BRENDAN SULLIVAN: There was one in there.

CONSTANTINE ALEXANDER: There was one in there? Okay, we have it in our files.

CAROL O'HARE: Okay. Bob Simha --

CONSTANTINE ALEXANDER: You want me to try to find

his letter and read it?

CAROL O'HARE: It's at the bottom of the petition.

CONSTANTINE ALEXANDER: Oh, yeah, I see what you're saying. I'll read into the record.

Mr. Simha, S-I-M-H-A wrote: Please record me in opposition. What a foolish way to get noticed. Lousy sign design. Lousy location. Waste of everyone's money and time not to mention illegal. And then there's a comment here Simha served as director of planning for the Massachusetts -- for MIT from 1960 to 2000. In that capacity he was responsible for the planning and development of the MIT campus. During the period of his service at MIT, the campus grew from 4.5 million square feet to 9 million square feet and its related commercial research and facilities built adjacent to campus at Technology Square and University Park. He was deeply involved in the creation and financing of the Kendall Square urban renewal area. That's been part of the record.

So I think now, I mean are you ready? Anything further you want to add? I'm going to close public testimony.

CAROL O'HARE: There was the -- as I said, the first four paragraphs of the letter from Vivek Sikri.

CONSTANTINE ALEXANDER: Do you have it right there?

CAROL O'HARE: I do.

CONSTANTINE ALEXANDER: So I don't have to paw through this. You want me to read the first four paragraphs?

CAROL O'HARE: Yeah.

CONSTANTINE ALEXANDER: Okay, this is a letter from -- or an e-mail from Vivek V-I-V-E-K Sikri S-I-K-R-I. First paragraph: Hope all is well. She's not down here tonight.

(Reading) This e-mail is to convey my strong opposition to the proposed non-conforming Sere sign that is

seeking a Variance at 200 Sidney Street. The reasoning behind requesting the Variance is:

The archway's in the way.

They have another sign in the way.

It seems ridiculous to allow a Zoning Variance based on these reasons as both reasons are entirely within the control of the building owner themselves. That the owner of the building, BioMed Realty would like to allow their tenant to promote their brand, they're welcome to do so went the Zoning Ordinance. Why should the rest of us suffer another eyesore of a sign because BioMed didn't have a foresight to build their building, which was recently renovated, in a way that allowed for tenant signage within the Zoning Ordinance. Were they not aware that we have a Zoning Ordinance? Or have they just become used to skirting the laws of our city because they own so much real estate within it?

I just want to comment. I think this is a little

bit scurrilous, No. 1.

And, No. 2, I've address the point already, that you don't design buildings and architecture of buildings with having in mind an Ordinance, a Sign Ordinance that can be changed at any point in time, while the building can't be changed at any point of time. I think this is a perfectly scurrilous argument that the landlord could have done something better about it.

CAROL O'HARE: That's my package.

That's one person's view.

CONSTANTINE ALEXANDER: I know and I'm giving you my view in response to that person's view.

Anything else?

CAROL O'HARE: No.

CONSTANTINE ALEXANDER: Close public testimony.

We've had a lot of discussion already but we could have further discussion if people would like or we could have a vote.

JANET GREEN: I would just --

BRENDAN SULLIVAN: Well, ladies before....

JANET GREEN: Thanks.

I find this a really difficult, difficult issue because I feel like the people who are before us aren't -- are the people who are sort of bearing the brunt of decisions that other people made. And I do sort of disagree with you about whether buildings should be built with regard to signage and the Ordinance of the city. We ask them to be built for other things that might change, too. Setbacks that change, this has changed, those have changed, those things change. But I don't feel good about having the one suffer for that. I do feel that there is a difficulty in putting this sign in this building any place other than this. I don't feel that that's the right question to have come to us, you know? Because it's not a case of here's a building that was built a hundred years ago. We deal with that all the time. Those buildings have

had numerous zoning changes along the way that have changed, and that's what we try to do with the Variance. This isn't that situation. This is a building that was put together fairly recently by somebody's that's built a lot of buildings in the city and could know very well that. But I don't think by the sign is the right size. You know, it fits in the size of the Ordinance. The only thing is that you said is the nine feet. And whether they should be held -- this company should be held accountable for that nine feet, I guess I don't feel that that's the case. So, I will probably vote in favor of this, but I don't feel very good about it. And I don't know how else to express that because I don't feel like it's necessarily their fault, but I do feel it's the fault of the person who built the building and our city for not holding them to a standard.

CONSTANTINE ALEXANDER: Patrick.

PATRICK TEDESCO: I share Janet's, you know, challenges. It is difficult. And I -- I think there's a

lot of animosity towards this landlord which frankly should not impact the Board's decision on the tenant's rights. But I go back to Shire. There was an obstruction to where the allowable signage height was proposed, and I agree with that. I find this arch to be an obstruction. Do I blame BioMed for that? They didn't design the building. Maybe they decided to put this arch in front of the building, I'm not sure why. Nonetheless there it is, and you know, I'm probably inclined to support it as well with some difficulty because I, you know, I go back to the Shire and I go back to the visibility and it's not illuminated.

I appreciate, Gus, your reminder that it's free speech and, you know, I would feel differently if every tenant in this building could do the same thing and -- but you typically don't see that. And, you know, I'm not, I don't object to the design of it or the visual impact of it. Actually, I think that this rendering makes it look illuminated. It could be a little flatter than that against

the glaze style, but nonetheless, I do share the concerns and the challenges with this one.

CONSTANTINE ALEXANDER: Can I just ask you a question as a practicing architect, because maybe I may be dead wrong? When you design a building, do you look into the what the zoning requirements are as to signage in making your architectural design?

PATRICK TEDESCO: Yes, we do but I would say generally the notion of signage on a building, if it's -- if the client is a commercial developer and wants to -- if the developer wants as much flexibility as possible. If he needs ten tenants or if he can get one tenant, great. Unless it's a headquarters for one company, typically speaking the building is designed to accommodate the address. Because in most commercial buildings, you know, it's whoever lives in that building or whoever occupies that building, and you walk into the lobby and then you have signage and then directories, you know, some tenants you get

preference, but usually if it's a commercial building -- now Vertex, this was designed for Vertex. I don't believe Vertex had a sign on the building. But Vertex, that was their decision. They didn't have a lot of branding in their campus. They do now in Boston that's for sure.

CONSTANTINE ALEXANDER: In Boston they have a very big sign up.

PATRICK TEDESCO: Right. We're not in Boston. So, it depends. Usually you consider signage when it's a headquarters building for a company and that's important to them. Otherwise it's about address. It's not to say that an unilluminated aluminum sign against an architectural spandrel is perfectly reasonable. I mean it's -- a lot of buildings have signs.

CONSTANTINE ALEXANDER: Thank you. Anyone else want to speak or ready for a vote?

BRENDAN SULLIVAN: Well, I really feel as that we need to -- I need to send a message back to the property

owners that they have to be respectful, cognizant of our sign ordinance, and that they have to probably make more conceptions and accommodations to their tenants if they want to get an anchor tenant and that anchor tenant is going to be there for a while and the anchor tenant says we need a sign, identifying sign, and the Ordinance says so on and so forth. Other than that, the BioMed, I don't care who it is, it doesn't matter, is not going to be respectful and cognizant of our sign ordinance. They're just going to send the tenant down, go down to City Hall, get what you need to get, and oh, you didn't get it? Well, that's too bad. Well, no, I think that message has to be brought down. So that's my thought.

CONSTANTINE ALEXANDER: Any other comments or not?

ANDREA HICKEY: Yeah, I'm still struggling with hardship and the sort of architectural issues with respect --

BRENDAN SULLIVAN: I mean, I think that -- excuse

me. I think that the building owners can make an accommodation to their tenants.

ANDREA HICKEY: So as I was saying, I'm struggling a little bit with hardship and kind of degree of hardship. I do think the arch could arguably be a hardship, and I think the positioning of the lettering identifying the building that already exists, kind of taking up that ideal space, could -- you could argue is a hardship. It's, I'm really on the fence. I really am.

CONSTANTINE ALEXANDER: You want to take a few minute recess to give you more time to think about it?

ANDREA HICKEY: Yeah. I mean my fear, again, is that we could wind up with three more identical petitions like this and we probably would have to approve them if we approve this one. If other tenants in the building complied in terms of the size of their sign, what they're made of, and wanted to put them next to yours. I mean, we're creating a precedent at least with respect to this building

and that troubles me a little bit.

Maybe a couple more minutes for me.

CONSTANTINE ALEXANDER: Why don't we take a five minute recess. It's ten of. We'll reconvene in five minutes, five of eleven.

ANDREA HICKEY: Or three minutes.

(A short recess was taken.)

CONSTANTINE ALEXANDER: The Chair will reconvene the meeting. Do you want to go to a vote or do you want to say anything else?

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: Okay. The Chair will make the following motion -- Or the Chair proposes that this Board 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. Such hardship being is that given the

architectural design of the building, the architectural features of the building such as the archway, and the location of the entrance of the building is such that without the signage that's being proposed, the ability of persons wanting to find the find Seres headquarters is prohibited or severely limited I should say.

That the hardship is owing to circumstances relating to the nature of the building and its architectural features. 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. In this regard the Chair would note that the relief being sought, that only relates to height, that the sign will comply as to volume and as to illumination. And that the height is such, at least nine feet and a few more inches, above what is permitted by our Ordinance. So the relief is -- the departure from the Ordinance is modest in nature.

So on the basis of these findings the Chair move that we grant the Variance requested subject to the conditions that the work proceed in accordance with these two pages that you've handed to us and are part of our file relating to how the signs will appear on the structure and the wording of the sign.

All those in favor of granting the relief, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: Opposed?

(Sullivan.)

CONSTANTINE ALEXANDER: The Variance is granted.

(Whereupon, at 10:55 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.

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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.

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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.

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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 9th day of January, 2017.

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

My Commission Expires:
April 29, 2022

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