

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, OCTOBER 11, 2012

7:00 p.m.

in

Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair
Constantine Alexander, Vice Chair
Timothy Hughes, Member
Janet Green, Member
Douglas Myers, Member
Mahmood Firouzbakht, Associate Member
Kevin Casey McAvey, Associate Member

Maria L. Pacheco, Zoning Secretary

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INDEX

CASE		<u>PAGE</u>
10299	--	3/34
10298	--	62
10310	--	11/27
10305	--	13
10327	--	57
10330	--	101
10331	--	120
10332	--	129
10333	--	140
10334	--	150
10335	--	157
10336	--	170
10337	--	178

P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Douglas Myers, Kevin Casey McAvey.)

BRENDAN SULLIVAN: Let me call the Board of Zoning Appeal for October 11, 2012, to order. First case we will hear is case No. 10299, 675 Mass. Avenue.

Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: There is correspondence in the file dated October 5th from Adams and Rafferty to Ms. Pacheco. (Reading) Please accept this correspondence request as a request to continue the above-captioned case currently scheduled for Thursday, October 12th, to the first hearing date in September. Thank you for your attention to this matter.

Now, unless we mark this up for

September of 2013.... It appears --

CONSTANTINE ALEXANDER: I think we should.

BRENDAN SULLIVAN: It appears that --

TIMOTHY HUGHES: Maybe he means the other September, December September.

BRENDAN SULLIVAN: It could be. Not impressed with the request. Rather sloppy.

The date?

MARIA PACHECO: December 6th.

BRENDAN SULLIVAN: December 6th. This is a case heard. Tom, Gus, myself, Tad, and Doug. December 6th?

DOUGLAS MYERS: If I may be heard?

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: I would like to express the thought that the Board make an effort to hear this case sooner than December. It seems to me that this case is

embroiled in considerable activity in the City Council, and that there will be speculation about the position of this Board if the case is continued for a lengthy period of time from tonight. It seems to me it's in the interest of the Board in resolving the interpretation of this not unimportant Ordinance to do so sooner rather than later, as I see it, removing the Board from an unnecessary and perhaps unfavorable or unfortunate role in the political arena. So I would like to express the thought that we make an effort to hear this case as soon as it can be scheduled by staff and the Board agrees.

BRENDAN SULLIVAN: As a part two to your comment, the reason why it was being continued, No. 1, is that there was some questions expressed by members of the Board regarding hardship which Mr. Rafferty asked for the opportunity to address. Also, there

was some visuals and some graphics which he was going to offer as to enhance his testimony, which I don't know if the Petitioner has even done any of that. It was absolutely nothing in the file to indicate that he has made any effort to comply with some of the requests that we made, and also some of the offerings that he proposed to supply us with. And I'm starting to get a little bit perturbed at the amount of continuations, and they seem to be proliferating, and it seems to be epidemic. And I don't think it serves the public interest at all to continue and continue and continue, and also it's taking up somebody else's place on the docket that really needs to go forward. So, I would support that.

Can we get any sooner?

MARIA PACHECO: We can do November 15th. I mean, October 25th we already have seven, three being Huron Ave. So I mean we

can certainly do November 15th.

BRENDAN SULLIVAN: Okay.

Gus, what are your thoughts?

CONSTANTINE ALEXANDER: Well, it's the tenor of your comments is that we set it November 15th and Mr. Rafferty requests a further continuance, you're not going to grant it? I mean, that's fine. That's what I'm sensing.

BRENDAN SULLIVAN: I think they need to go forward.

CONSTANTINE ALEXANDER: I think we make that clear on the record. I'm fine with November 15th, but we should also make it clear that there will be no other further continuances.

BRENDAN SULLIVAN: Right, they need to go forward.

CONSTANTINE ALEXANDER: They need to go forward or withdraw or we're not going to hear the case.

BRENDAN SULLIVAN: Tim, what is your comment?

TIMOTHY HUGHES: I didn't sit on this case so I have no opinion one way or the other.

KEVIN CASEY McAVEY: Nothing for me.

DOUGLAS MYERS: With the rights and wrongs of the situation I would be in favor of an earlier date, but obviously Mr. Rafferty's not here and at this point he's certainly entitled to a continuance, so the November the 15th is accepted.

CONSTANTINE ALEXANDER: We don't know frankly whether Tom and/or Tad can make it then either.

DOUGLAS MYERS: They're on the case heard?

CONSTANTINE ALEXANDER: Yes. Those are two members that are not here tonight.

BRENDAN SULLIVAN: Yes, nor do we

know about the December date either.

CONSTANTINE ALEXANDER: Right, exactly.

BRENDAN SULLIVAN: Let's set the date of November 15th. If it has to be changed, there is a procedure to notify the affected parties.

So let me make a motion, then, to continue this matter until November 15, 2012, at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date of November 15th, and the time of seven p.m. That that posting sign be maintained as per the requirements of the Ordinance, at least 14 days prior to the November 15th hearing. Any submissions be in the file by five p.m. on the Monday prior to the November 15th hearing, and that the Board reiterates that the Petitioner should be ready to go forward for a full and complete disposition of this matter.

CONSTANTINE ALEXANDER: Yes. I just rephrase it a little bit differently. That provided that all five members of our Board can be here on that date, it's our intention to hear the case that night and grant any further continuances.

BRENDAN SULLIVAN: So said.

All those in favor of continuing.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes, Myers, McAvey.)

DOUGLAS MYERS: Might I also suggest that we notify immediately or forthwith the two members that are not here tonight so we can clear the air in regard to their availability on that night.

BRENDAN SULLIVAN: I will mention that to the secretary.

140 Lexington Avenue will be heard at 7:30 if it's going to go forward.

(7:05 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Kevin Casey McAvey.)

BRENDAN SULLIVAN: The Board will hear case 10310, 1 Rogers Street, Pegasystems, Inc.

UNIDENTIFIED MALE: Mr. Chairman, we're waiting for Mr. Rafferty. He was at a wake in Wellesley. He's on his way here. If we could be pushed back a little later in the evening if that's possible?

BRENDAN SULLIVAN: That's fine.

CONSTANTINE ALEXANDER: Mr. Chairman?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: I also would note that Tom is on that case. Tom Scott, he's not here tonight.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: So do we want to go forward -- or maybe he wants to wait for Mr. Rafferty, but I'm not sure they're going to want to go forward with only four members of the Board.

BRENDAN SULLIVAN: Yes, I think Mr. Rafferty will have to talk to them about that.

(Case recessed.)

(7:05 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Janet Green, Kevin Casey McAvey.)

BRENDAN SULLIVAN: The next case is 61 Sparks Street, 10305, which is a case not heard.

Okay, Mr. Horst, if you would please introduce yourself for the record.

ARCH HORST: My name is Arch Horst, Cambridge, Massachusetts, I'm the architect for this project.

DAMON KRUKOWSKI: I'm Damon Krukowski. I'm the resident.

ARCH HORST: I think we can summarize what we're asking for with these two pictures. The one on the left is the current condition. The one on the right is the proposed change. And the reason we're

here is this little copper awning hood over the door, the new door, that the Zoning officer felt that that represented an increase in floor area ratio. And the building's quite large and already exceeds the floor area ratio. And that's there to protect, to some degree, the door. You can see that there was a door here at one time. This is actually returning the building to something closer to what it originally was.

Damon, do you know when the door was put in the bay?

DAMON KRUKOWSKI: Well, it was a rental apartment, and it was definitely done by the owner at that time. And they were squeezing a bathroom where they could to, I think, probably raise the rent. And in any case it was very cheaply done. As you can see, the brick doesn't match. And the third bay window here was pulled out and we actually found the original sill to that window buried

in the garden. So we have the original sill. And, we have also the threshold, we dug down to the door is still there. So we want to put the door where it was, get rid of this terrible brickwork, because the brick is one of the most beautiful things about the building I think, and restore the third bay window. And then to protect the door and so the rain and snow, if we ever have it again, doesn't pour in the house. We just wanted to put this little awning as a gesture toward the weather.

CONSTANTINE ALEXANDER: Why copper? Is it just aesthetics?

DAMON KRUKOWSKI: Oh, aesthetics. There's copper on the roof, and just trying to keep in character to the Historical building.

ARCH HORST: It's also lighter looking and not as heavy.

BRENDAN SULLIVAN: Does snow sort of

come off the roof sort of land in that particular spot or have you experienced that at all?

DAMON KRUKOWSKI: No, not in that direction. It's a really good question, though. It does happen off the other angle of the roof. That's because the roof line was changed many years ago. And so on that side we have a -- we don't have snow.

BRENDAN SULLIVAN: It's somewhat shielded.

ARCH HORST: It does blow up against the door.

DAMON KRUKOWSKI: Yeah, we get a lot of -- we're across from the Armenian church on Brattle and then there's this parking lot opposite us. We get more wind than anything else on the site.

BRENDAN SULLIVAN: Okay.

Any other questions?

DOUGLAS MYERS: Yes.

Why did you change the nature of the door? It seems to me that the existing door has a lot going for it aesthetically and historically. This is not the Historic Commission so I'm not sure legally my question is that relevant. But nonetheless I am interested in why you changed the style of the door.

ARCH HORST: Well, this door actually is like other doors on the street. And what about the front door of the building?

DAMON KRUKOWSKI: The front door of the building is very different. That's on Sparks Street and this is on Brewster. And Brewster actually was all built by Mr. Brewster who had the, what's now the parish house for the Armenian church. I guess you don't call it parish house. I'm not sure. The house on their property. And he developed the whole block. So the doors actually match more or less up and down the

block. Although the other buildings are wood, but what we do was we looked at all the doors, and they're all two pane like that.

DOUGLAS MYERS: So this door will more nearly match the doors?

ARCH HORST: The next house over for instance --

DAMON KRUKOWSKI: Along the whole street.

DOUGLAS MYERS: Match?

DAMON KRUKOWSKI: As best as we can manage, exactly.

On then in the front on Sparks Street it's a very different look, it's very heavy, much more formal. It's up a flight of stairs.

ARCH HORST: But the glass is, there's more glass in the front door as well. I mean, this -- it's not like this at all. This really is from a different era. It's old but it's --

DAMON KRUKOWSKI: Yeah. That also doesn't match anything on the interior. And all the original doors are on the interior because they're so tall nobody can ever replace them.

BRENDAN SULLIVAN: Does Sparks Street side have side lights?

DAMON KRUKOWSKI: Side lights?

BRENDAN SULLIVAN: Side lights on the doors on Sparks Street?

DAMON KRUKOWSKI: Oh, no.

BRENDAN SULLIVAN: So it's just in the door?

DAMON KRUKOWSKI: Oh, there's glass.

BRENDAN SULLIVAN: In the door.

DAMON KRUKOWSKI: There's a glass transit as well but nothing on the side.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Is there going to be a noise factor with copper and the

rain, hard rain on the copper?

ARCH HORST: Probably.

CONSTANTINE ALEXANDER: I mean, because I understand the roof is copper, but it's three stories up. I mean it's not exactly like it's right next-door to it so you want to match it. I don't think anybody would realize that the matching of this copper canopy with the roof and I wonder whether it might disturb other people in the neighborhood or at least your abutters as the rain comes clattering down on the copper.

ARCH HORST: Damon and his wife Naomi own both floors so they are the ones going to be most affected. It only projects 16 inches so it's not like all that much.

DAMON KRUKOWSKI: It's quite shielded as we said. It's more the -- what we're really concerned about is the water coming in from the ground.

CONSTANTINE ALEXANDER: I can

understand that, but it's copper. You don't need copper to solve that problem?

DAMON KRUKOWSKI: Yeah.

CONSTANTINE ALEXANDER: I hope no thieves come in and steal the copper like they do with the pipes.

DAMON KRUKOWSKI: And of course the copper will age which is the other thing we thought.

BRENDAN SULLIVAN: We all get softer as we age?

DAMON KRUKOWSKI: We hope.

BRENDAN SULLIVAN: Doug, any thoughts?

DOUGLAS MYERS: No questions.

BRENDAN SULLIVAN: Janet?

JANET GREEN: No questions.

TIMOTHY HUGHES: No questions.

BRENDAN SULLIVAN: Let me open it to public comments.

Is there anybody here who would like to

Speak on the matter at 61 Sparks Street?

(No Response.)

BRENDAN SULLIVAN: I see none.

There was correspondence in the file from Peter Tagiuri, T-a-g-i-u-r-i. (Reading) I live at 65 Sparks Street, one of three adjacent townhouses. I'm writing in support of Naomi and Damon's application. I always found the blocked up doorway curious. The return to the original layout door re-inserted into the original opening may return to prior fenestration would be great. An awning would be both useful and attractive adding to the elegance of the south facade of the building.

There is correspondence from Tony Lee, DeLantsheere, D-e-L-a-n-t-s-h-e-e-r-e.

(Reading) I live at 65 Sparks Street, and I'm writing in support of this application. It is great that the original entry will be reinstated, and installing an awning will

only add to the charm. The neighbor is happy with the -- this neighbor is happy with the change.

From Thomas C. Welch. (Reading) I'm a neighbor of Naomi and Damon. I support their petition to add a copper canopy on their side door.

And there is correspondence (reading) We, the residents and owners of condominium units at 61 Sparks have been shown the architect's drawing. The owners have commissioned for modification as to Unit G and we are in support of their proposal to restore the doorway back to its original location and to cover that doorway with a copper awning. Signed by David Evans, Carla Procaskey, P-r-o-c-a-s-k-e-y, and Tony Flanders, and Carol Holsiger, H-o-l-s-i-g-e-r.

And that's the sum and substance.

Okay, anything else to add?

Any other? Let me close presentation part, public comment part.

Any problem?

CONSTANTINE ALEXANDER: Ready for the vote.

BRENDAN SULLIVAN: Doug?

Tim?

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the relief requested to -- it's just basically the awning. An awning over a relocated door as per the plan submitted and the application contained therein.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner.

The Board finds that the addition of 12, plus or minus, square feet is quite de minimus.

The hardship is owing to the fact that the existing building is non-conforming and as such, any change, especially one of this small in nature, would require some relief from this Board.

The Board finds that the hardship is a practical nature, the location of the door, and the need to protect the door in the entryway from outside elements.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and that the relief may be granted without nullifying or substantially nullifying or derogating from the Ordinance.

The Board finds that the addition of this canopy will have a practical safety relief for the Petitioner, and also one of energy saving to have some protection over a front entryway.

All those in favor of granting the

relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

DAMON KRUKOWSKI: Thank you very
much.

BRENDAN SULLIVAN: You're not going
to change the drawings now?

ARCH HORST: No, certainly not the
awning.

(7:20 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Kevin Casey McAvey.)

BRENDAN SULLIVAN: The Board will hear case No. 10310, 1 Rogers Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. James Rafferty on behalf of the Applicant.

The Board may recall the case that was before you --

BRENDAN SULLIVAN: Now, before you -- thank you very much. Tom Scott, one of the members who sat on this, is not here tonight. His mother passed away.

ATTORNEY JAMES RAFFERTY: I'm sorry.

BRENDAN SULLIVAN: So that you have

the option of going forward with four members if you wish.

DOUGLAS MYERS: Who are the four?
I'm not one of the four.

(Whereupon, a discussion was
held off the record.)

ATTORNEY JAMES RAFFERTY: Thank you, but I think given the issues that were reviewed in the prior case, I think the Petitioner would like the opportunity to have a full complement of Board members present to be able to review the remaining issues. So we would request a continuance to a time that the Board would next be available.

BRENDAN SULLIVAN: Okay. We're at November 15th, are we?

Well, the other question that comes up is October 25th. We have a plethora of continued cases. And there are three of them at one address, and we want to know if they -- which leads us to another issue about

clogging up the airways here --

ATTORNEY JAMES RAFFERTY: Yes, right.

BRENDAN SULLIVAN: -- with continued cases. And there was a commentary made about the previous case on Mass. Avenue about continued and continued.

CONSTANTINE ALEXANDER: You weren't here.

ATTORNEY JAMES RAFFERTY: One of my cases?

BRENDAN SULLIVAN: Yes.

ATTORNEY JAMES RAFFERTY: On Mass. Avenue?

TIMOTHY HUGHES: The address is Mass. Avenue. The front door is on Prospect Street, isn't it?

CONSTANTINE ALEXANDER: The comment simply was that we're going to continue the case as you requested, but that there would be no further continuances. The sentiment

of the Board was that we don't want to keep continuing that case.

ATTORNEY JAMES RAFFERTY: Oh, I think of it as a Prospect Street case. I now remember the case. Oh, I see. In that case did you assign it a date?

BRENDAN SULLIVAN: We did. November 15th.

ATTORNEY JAMES RAFFERTY: Well, would it be possible to give it a later date? Because the reason for the continuance is there are two hearings scheduled --

CONSTANTINE ALEXANDER: We were going to continue to September of 2013.

ATTORNEY JAMES RAFFERTY: Yes, this is not the first time.

BRENDAN SULLIVAN: We were going to get out the 2013 calendar.

ATTORNEY JAMES RAFFERTY: Yes. So in that case -- in that case the -- there are hearings scheduled on November 20th at the

Planning Board on a Zoning Petition that's been filed that would make this case moot. So I understand and don't desire to tie up the docket, but if that could get a further continuance into January, I suspect it would be withdrawn and never have to be heard at the Board again. Because I suspect given the reaction in the first case, if the Amendment to the Zoning Ordinance isn't adopted, I don't -- but it would just preserve that option. So if it's possible.

BRENDAN SULLIVAN: Let me go back to 1 Rogers Street.

ATTORNEY JAMES RAFFERTY: Okay. And 1 Rogers, I would say that the November date is acceptable only because I am not going to be here on the 25th of October. So I appreciate the attempt to schedule it then, but I apologize, but November 15th.

CONSTANTINE ALEXANDER: We don't know whether Tom can be here. You should

understand that.

ATTORNEY JAMES RAFFERTY:

Understood.

BRENDAN SULLIVAN: We apologize, too, again for the delay. It was unforeseen, his mother passed away this afternoon and that takes priority.

ATTORNEY JAMES RAFFERTY:

Understood.

BRENDAN SULLIVAN: Well, again, on the motion, then, to continue this to November 15th at seven p.m. provided Mr. Scott is available, we will check within the next couple of days or so.

ATTORNEY JAMES RAFFERTY: And I presume the other members are available that day?

BRENDAN SULLIVAN: We will be available for November 15th.

So let me make a motion, then, to continue this matter to November 15, 2012, on

the condition that the Petitioner change the posting signs.

Are there one, two, or three?

ATTORNEY JAMES RAFFERTY: Three.

BRENDAN SULLIVAN: The three posting signs to reflect the new date of November 15th, and the time of seven p.m. And the signs be maintained as per the requirement of the Ordinance. Any new submissions different than what's in the file now be submitted by five p.m. on the Monday prior to the November 15th hearing.

All those in favor of continuing.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor of continuing it to November 15th.

(Sullivan, Alexander, Hughes, McAvey.)

(7:25 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Douglas Myers, Kevin Casey McAvey.)

BRENDAN SULLIVAN: Now let me reopen case No. 10299 which is 675 Mass. Avenue.

And, Doug, if you would come back. Thank you.

ATTORNEY JAMES RAFFERTY: I'll be right with you.

BRENDAN SULLIVAN: For Mr. Rafferty's edification, express your views on the continuation.

DOUGLAS MYERS: Well, I was not as well versed on the calendar of the City Council like Mr. Rafferty is. But I expressed the thought that this case is related to, and in a sense I used the word

embroiled with the ongoing efforts to change the Zoning Ordinance so that it would no longer read the way it does or as you said, moot this case. And the last time this case came up for hearing, it was clear that the questions about the activity, the possibility of relief by the Board of Zoning Appeals being an issue and arguments that were being made for and against changing the Ordinance. So I expressed the thought that if it was in the interest of this Board to decide the case as early as possible so as to resolve the position of this Board with respect to the case and then let the processes of the City Council and the Planning Board and the Ordinance Committee and so on continue in their ordinary course. It just seemed to me that we were embroiled, and there were really no obstacles aside from various things that you wanted to do to amplify the file, but there were really no reasons, there were

no -- nothing, you know, in a sense of evidence before this Board that would, that prevents us from deciding the case except for these other considerations which I hope I don't do a disservice to call them political.

ATTORNEY JAMES RAFFERTY: Right.

DOUGLAS MYERS: And it just seemed to me we should not postpone the case. For example --

ATTORNEY JAMES RAFFERTY: Well, I was --

DOUGLAS MYERS: One further thing. Supposing the hearing with the Planning Board is postponed. Then where are we? Then this case has been continued to December and who knows what further ramifications might occur in the political process.

ATTORNEY JAMES RAFFERTY: Right.

By the way, I don't consider political a pejorative. It's a legislative process, I agree.

DOUGLAS MYERS: It's not a bad thing. It's not a bad thing at all.

ATTORNEY JAMES RAFFERTY: There is another procedural element affecting this case and a few other cases that are somewhat unique, and that is this is a case heard and one of the five board members who sat on the case is no longer a member of this Board.

DOUGLAS MYERS: I understand that he's authorized and empowered to continue in those cases that are continued which are cases heard and which a case is heard and which he is a member of the panel.

CONSTANTINE ALEXANDER: I think that's the position that the Legal Department has taken. Sorry.

ATTORNEY JAMES RAFFERTY: I've reviewed that with the Legal Department. In cases where there has been an unexpired term, that is the case, but in this case there's a resignation at the City Clerk's office, and

I did ask -- I would be concerned as someone who writes the Zoning Opinions that that member's ability, having now resigned, not simply -- an active resignation is an affirmative act that I think puts his -- I've raised this with the Law Department. They said they would get back to me. I have another case and I wondered how we're going to effect it. I've looked at it on the case law side and I checked with someone quite frankly who writes Zoning Opinions quite regularly, and he expressed concern that the decision could be vulnerable if the -- one of the board members had resigned after the case. So I wasn't -- I'm not suggesting in this case that's, that's dispositive in this case. And I understand the process about not tying up the Board's docket. So the Board had already voted to continue the case --

CONSTANTINE ALEXANDER: Exactly.

ATTORNEY JAMES RAFFERTY: -- to a

date. So I'm just asking in light of the legislative hearings schedules that both the Ordinance Committee and the Planning Board, that that one continued being the last continuance simply be to a date later because frankly the date that -- the date that it's set for, nothing about the posture of the case will have changed because --

CONSTANTINE ALEXANDER: Brendan, if I might offer some observation. I agree with Mr. Rafferty. We're going to continue this case whether it continued to date X or Y., it's just one continuance. And why not do it in, continue it until January in which case the case may never be heard. I also think, because I think one, I don't see any reason to rush to hear this case particularly if the Petitioner doesn't want to have this case heard then.

Two, I think in view of the issue about we're only going to have four members on the

Board on the continued case, it may behoove you to re-advertise this case.

ATTORNEY JAMES RAFFERTY: Well, there is another case that I have and that's where it came up, where the question came, there may be -- and we're talking about the Huron Avenue case, there may be given the posture there's a meeting this week with the architect and the Building Commissioner on an issue related to townhouses in that case, which may, based on that the outcome of that, we may file -- and I apologize, which would amount to be the fourth application on the same case. And I know it's a record. And the only good news is he pays application fees and the Department's budget benefits from those filing fees.

All kidding aside, I think in that case, that's the case in which I raise the question with the Law Department. That this is -- there have been lots of board members

that come back on cases because the term. I said we have a board member, who is my understanding is, and in the Clerk's Office tells me they're in receipt of a resignation. And I'm not sure how that resignation plays in terms of the authority. The appointment is clearly no longer in effect.

BRENDAN SULLIVAN: In the past members have moved away and they have been allowed to come back and continue cases, not sit on any new ones.

ATTORNEY JAMES RAFFERTY: Well, clearly they couldn't sit on any new cases. I recognize that. But the vulnerability is on the Applicant's side. And I think if -- I think it's as a legal principle it's worth exploring. If the Law Department can assure me that the relief would not be subject to challenge based on the status of a resigned member participating, then I would be comfortable with that.

BRENDAN SULLIVAN: It puts the onus on both of us to be correct.

ATTORNEY JAMES RAFFERTY: Right, I agree.

CONSTANTINE ALEXANDER: I don't know why you wouldn't want to re-file. The Legal Department is not going to give you any iron-clad advice that you can go forward.

ATTORNEY JAMES RAFFERTY: They won't give me any, exactly.

CONSTANTINE ALEXANDER: Welcome to the --

ATTORNEY JAMES RAFFERTY: But at least you're their client. I mean I don't have an expectation they would advise me. But as someone who ultimately writes a Zoning Opinion and tells a lender that the necessary relief is contained here --

BRENDAN SULLIVAN: Well, if you can go to West Law and pull out some nugget somewhere, we would welcome that. Because

the member who used to do that for us is not here.

ATTORNEY JAMES RAFFERTY: Oh, yes, that's right, that's right.

BRENDAN SULLIVAN: Anyhow. Well, in light of Mr. Rafferty's commentary.

DOUGLAS MYERS: As far as the status of Mr. Heuer's concerned, I really voice no opinion. I would have to await and be guided by what the Legal Department does or does not say. I mean, I did say what I understood the status to be. But in view of other information, I really, I voice no opinion on that.

In view of the question the Chair just asked me.

BRENDAN SULLIVAN: Regarding this particular case?

DOUGLAS MYERS: Regarding this particular case. I have to say I'm not persuaded. I mean, I understand what Gus is

saying, but it seems to me we're here to decide cases. And the Applicant came in and presented a case, and it was a vigorous argument which ultimately became more coyest and it took the form of a motion to continue. I don't think any gross -- it's a waste of energy or effort to decide the case. I think it -- I think the case can be done with a modest hearing and dispatched and removed from the political arena where I think people do have a tendency -- will to take advantage of the pendency, argue one way or another, that the fact that the pendency and possible approval by the BZA may have an obviating need for an Ordinance for example. I don't know. I'm not enmeshed in those considerations as you are, Mr. Rafferty. But to answer the Chair's question, I'm not persuaded of the wisdom of further continuance of the case into December. So I would vote against it.

BRENDAN SULLIVAN: I would respect

Mr. Myers' view.

TIMOTHY HUGHES: I have to change my mind about what I said, I didn't have any opinion before. Now that I've heard all of this I do have an opinion. And my opinion would be to push this off as far as possible. I don't see any reason for us to decide a case which could be overturned or overridden by an action by another Board or by an action of the City Council. I see that as a duplication of effort. So I'm -- and I, you know, I'm a volunteer here and I don't want to waste my time here that could be undone. And I'm not sure that if we would take it out of the political arena -- it seems to me it would depend on how we voted on this whether or not it got unembroiled from the political part of it. So I would just as soon sit back and let the Planning Board do their thing, let the City Council do their thing, and if they still need us to do our thing, we'll do it.

BRENDAN SULLIVAN: Okay.

Kevin?

KEVIN CASEY McAVEY: I would suggest if we really want to take this out of anything that happens external to this room, we treat this like any other case, and we would assign this date if this case came before us like any other. I think the original suggestion was December, and then from there we go where we may. That's just my suggestion.

BRENDAN SULLIVAN: Okay. Right now we have scheduled it for November 15th. So your opinion is to stay with that November 15th?

KEVIN CASEY McAVEY: I would put it back at December or any other date as we go later than that. But at this point I would say later given that seems to be the sway of the Board.

DOUGLAS MYERS: If I am the cheese that stands alone, so be it.

BRENDAN SULLIVAN: Gus.

CONSTANTINE ALEXANDER: I'm for doing it in January as Mr. Rafferty requested.

BRENDAN SULLIVAN: That's three dates.

ATTORNEY JAMES RAFFERTY: Here's the relevance. Obviously the date that's been selected is a date where the posture of the case will not be changed. There is a scheduled hearing. I learned today that the Planning Board has scheduled its hearing for November 20th. My understanding is that the Ordinance Committee will schedule its hearing for a date in early November. I understand the Board's concern about not complicating its docket. But I would suggest that you would uncomplicate your docket if you took a case off that's tying up space on November 15th, for which there is an addition to the pending legislative

hearings, there is this remaining question about the status of one of the members that now will have to be resolved prior to November 15th.

The effect of extending it to January, and I don't mean to be flippant, merely means that a rather thin folder continues to sit in a drawer for two more months. I would respectfully say that the administration of the Board is not hampered by the continuance into January. In fact, it may be benefitted because the November date becomes available, and the likelihood that the case never has to be heard is far greater. So it becomes less taxing upon the resources of the Board and its members.

BRENDAN SULLIVAN: You okay with January?

KEVIN CASEY McAVEY: Yes.

BRENDAN SULLIVAN: What's the date in January?

MARIA PACHECO: I don't have one on my list, but probably most likely be January 10th.

BRENDAN SULLIVAN: Let me make a motion, then, to continue this matter changing the original rescheduled date from November 15, 2012, to January 10, 2013, at seven p.m. on the condition, again, the Petitioner change the posting sign to reflect the new date and time.

Any submissions different than the ones that are in the file be resubmitted by five p.m. on the Monday prior to the January 10, 2013, hearing.

All those in favor.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, pardon my interruption, but if the Board is inclined to vote for January for the reasons stated earlier, would the Board accept a second hearing in January to --

BRENDAN SULLIVAN: I will not be

here.

DOUGLAS MYERS: A second hearing.
I don't understand.

ATTORNEY JAMES RAFFERTY: Well,
there's two hearings a month; right? So I'm
saying the January 10th with the holiday and
everything else, if this thing came within a
week of January 10th and we're -- so then --

BRENDAN SULLIVAN: I'm not here
then.

ATTORNEY JAMES RAFFERTY: First
hearing in February.

CONSTANTINE ALEXANDER: My
suggestion is the merits. If we're
absolutely sure January 10th is going to be
the date? If not, we can say the first
meeting in January so we don't find ourselves
in the conundrum.

MARIA PACHECO: I think that's it.

CONSTANTINE ALEXANDER: However you
want to do it.

MARIA PACHECO: It will be the 10th and the 21st.

BRENDAN SULLIVAN: January 10th or the first meeting in January, whichever is first.

All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes, McAvey.)

BRENDAN SULLIVAN: And one opposed.

(Myers.)

DOUGLAS MYERS: One opposed.

BRENDAN SULLIVAN: And your dissenting vote is noticed.

Now which gets us back to the 25th. If you're not going to be here when we have three cases on 175 Huron Avenue.

ATTORNEY JAMES RAFFERTY: Right. So I -- frankly, I need a continuance

independent of everything else complicating our case. So I had shared that with Mr. O'Grady I think earlier in the week. But I came to the realization I'm going to be out of the country that day.

But that case, I think you'll recall, there are three cases there. One in -- there's one involving some commercial use. I don't think that case -- that case will never get heard frankly. But it would complicate the procedure.

BRENDAN SULLIVAN: That's what I'm exploring that scenario, also.

ATTORNEY JAMES RAFFERTY: And the second case, the second case was a case that contained a use variance for the three-family. The third case that changed there is as it proceeded under a townhouse exception. It was raised at the last hearing. The structure may not qualify. We've had one meeting and are scheduled to

have another one next week to ascertain -- and if that, if that is the determination, then frankly I think we probably do need to file a --

BRENDAN SULLIVAN: I think all three cases should go away.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: But that's another discussion for another day.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: I don't want to complicate the calendar. I would urge for the benefit of this Board and for the benefit of the Petitioner, that every case in which Tad has sat on has been continued as a case heard, that you re-file. Unless there's a recent Supreme Judicial Court decision exactly on point, there's going to be a cloud on our decision. There's going to be a cloud on your client's ability to get

financing. These cases should be re-advertised, and a whole new procedure we don't have to worry about -- we'll have five members. You don't have to get the same four.

ATTORNEY JAMES RAFFERTY: Right. And I think that's likely for a variety of reasons, but that would be chief among them. But here's the challenge, Mr. Chairman, as you know, if we dispose of those cases, then any case that seeks to -- any subsequent case that seeks to convert that funeral home into residential units would have to then go through the repetitive petition process where a determination would have to be made first here that there was some material change in it. Then it would require going to the Planning Board, having them make the same thing.

BRENDAN SULLIVAN: Right. But 22 months has expired since this was scheduled

to be heard. This was scheduled for January of 2011.

ATTORNEY JAMES RAFFERTY: I'm very mindful, yes. I know, yes.

BRENDAN SULLIVAN: And there isn't enough window space to --

ATTORNEY JAMES RAFFERTY: I agree.

BRENDAN SULLIVAN: Right.

ATTORNEY JAMES RAFFERTY: So if those cases were all disposed of --

BRENDAN SULLIVAN: I'm exploring that.

ATTORNEY JAMES RAFFERTY: Then the fourth case, I mean --

BRENDAN SULLIVAN: Start all over again. Anyhow.

ATTORNEY JAMES RAFFERTY: Well, maybe -- all right. I guess so I'll send a surrogate on the 25th to make the case. Because you don't want to deal with the 25th tonight I gather?

TIMOTHY HUGHES: It's not on our docket.

ATTORNEY JAMES RAFFERTY: It's not scheduled. All right, thank you very much.

(7:40 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Janet Green, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10327, 678 Mass. Avenue.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, members of the Board. For the record, Ricardo Sousa from Prince, Lobel, Tye on behalf of the Applicant T-Mobile.

And, Mr. Chairman, it was communicated to us because there was not a definitive recommendation from the Planning Board that we should continue this so that we could go back to the Planning Board. We were there on the 2nd of October. We had originally been scheduled to be heard on September 18th. They canceled their meeting, so that's why we

were not able to have you hear this case. And so their recommendation was actually fairly amorphous relative to two of the sectors, so we have some additional designs. We will go back to them as of next Tuesday, and we respectfully request a continuance either until October 25th, if you have some openings then, or November 15th. We have hearings on other matters, other telecom matters on either of those dates. So if those dates are amenable to this Board, we'll take either one.

BRENDAN SULLIVAN: Okay. What is the pleasure of the Board? Either October 25th.

CONSTANTINE ALEXANDER: It's a case not heard so it doesn't make any difference.

BRENDAN SULLIVAN: And some of the docket has been freed up.

TIMOTHY HUGHES: Are we sure about that? Are we sure that discussion isn't

going to take an hour.

MARIA PACHECO: I have it scheduled for November 15th.

ATTORNEY RICARDO SOUSA: That works as well, Maria. Either one is fine. We have one other matter on November 15th.

BRENDAN SULLIVAN: Is there anybody here who would like to speak on the matter of 678 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: There is nobody here in attendance. There is no letter of correspondence in the file.

Let me make a motion, then, to continue this matter to November 15, 2012, at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date of November 15, 2012, and the time of seven p.m.

That the posting sign be maintained as per the requirements of the Ordinance.

That any submissions different than what's in the file be resubmitted and in the file by five p.m. on the Monday prior to the November 15th hearing.

Anything else to add to that?

CONSTANTINE ALEXANDER: No. Just a comment to Mr. Sousa.

ATTORNEY RICARDO SOUSA: Yes, Mr. Alexander.

CONSTANTINE ALEXANDER: I glanced at the file, and I don't think your photo sims in this file are appropriate, before and afters. Maybe I misread them. I misread them, but just take a look at the file and --

ATTORNEY RICARDO SOUSA: We will. Of course, Mr. Alexander, yes. We believe they are consistent with the plans. However, there are three different proposals that we wanted to bring to the Board's attention so that you would have enough to choose from. We'll work harder on that.

BRENDAN SULLIVAN: On the motion to
continue.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,
Green, Firouzbakht.)

(7:45 p.m.)

(Sitting Members: Constantine Alexander, Douglas Myers, Mahmood Firouzbakht, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The acting Chair will call case No. 10298, 140 Lexington Avenue.

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

For the record, please give your name and address to the stenographer.

JOHN LODGE: My name is John Lodge. I'm the architect. And my address is 56 Aberdeen Avenue.

POLYXANE COBB: My name is Polyxane Cobb. P-o-l-y-x-a-n-e Cobb, C-o-b-b. I'm the owner.

MATTHEW MAZZOTTA: Matthew Mazzotta, Mazzotta. I'm one of the

residents, and I'm her son-in-law.

RACHEL COBB: Rachel Cobb, C-o-b-b, 140 Lexington Avenue.

CONSTANTINE ALEXANDER: Before we start we have an important procedural matter we have to get out of the way. When you were here before us before there were five members here. Those five have to be here. One of them, Tom Scott, cannot be here tonight. As you can see, there are only four of us. So there's a decision you have to make. To get relief, if we're going to grant you relief, you need four votes. If you have five people here, you can have one dissenter and still get your relief. If you go forward tonight with just four of us, you'd have to get a unanimous vote. So the call is yours, do you want to go forward tonight or do you want -- statistically you have a better chance if you wait for another day. It's your call. And I apologize on behalf of the

city that we don't have all five here.

POLYXANE COBB: We understand that. What do you guys think?

JOHN LODGE: Well, I'm inclined to say we should go forward. We understand your concerns and I think -- well.

MATTHEW MAZZOTTA: We've attempted to address them.

JOHN LODGE: I hope we've addressed them to your satisfaction.

CONSTANTINE ALEXANDER: The floor is yours.

JOHN LODGE: So having said that, at the last meeting -- so what we're trying to do is add square footage to the top floor. And at the time the Board expressed a concern about the size of the dormer. So we --

MATTHEW MAZZOTTA: And the shed.

JOHN LODGE: Yeah, and the fact that it's a shed dormer. So we have reconfigured the plan, broken the dormer up into two

dormers, and turned them from shed dormers or a shed dormer into two gable dormers. And the square footage is basically the same.

CONSTANTINE ALEXANDER: So the dormer, you broke them into two and you redesigned the nature of the dormer, but you haven't reduced the amount of -- the total amount of footage of the dormers.

JOHN LODGE: No. In a de minimus way. And I think it's six inches less dormer.

CONSTANTINE ALEXANDER: Effectively not. And of course you've now got roughly 26 feet of dormer under your current proposal?

JOHN LODGE: We have the two -- the two -- each dormer is 12 foot 6, so 25 feet.

CONSTANTINE ALEXANDER: 25.2.

JOHN LODGE: Yeah.

CONSTANTINE ALEXANDER: And, of course, the dormer guidelines say?

JOHN LODGE: Say 15.

CONSTANTINE ALEXANDER: And explain to us why you still need the 25 feet, two inches.

JOHN LODGE: Well, the issue is that in order to create enough living space in the upper, in the upper apartment, while we, you know, while we could in theory build an addition off the back, that doesn't really add to the upper apartment. It adds to the lower apartment which really isn't where we need the space. So in order to create a, you know, an apartment that's big enough for their family of four, that pushes, you know. That pushes us to try and add the space either on the second floor or the third floor. And we looked at, you know, ways to do it on the second floor. The problem is, you know, really that means you're going to add to the first floor which just sort of adds to the overall bulk of the building which, you know,

didn't really seem to work out.

So we redesigned the third floor to try to break up the bulk. Create dormers that are in more keeping with the house that it's in. And as I said, we didn't -- I mean we -- the square footage is roughly speaking the same. But we also pushed the second dormer further back to the rear of the building to try and minimize the amount of bulk that you see from the front, from the road.

So those are -- basically those are the moves that we've made.

CONSTANTINE ALEXANDER: And these gable dormers are consistent with the single gable dormer on the other side in terms of nature of dormer, not number?

JOHN LODGE: Yes. I mean the fact -- the other side -- there's a dormer over a -- so it's slightly different, but roughly speaking the proportion and the

geometry is the same.

CONSTANTINE ALEXANDER: And in all other respects besides the amount of the square footage the proposed dormers are in conformance with our dormer guidelines?

JOHN LODGE: I believe they are. The dormers are set back from the edge of the roof. They are set down from the ridge of the roof. So they, you know, they're within the roof plane, so I believe they do meet all the other considerations.

CONSTANTINE ALEXANDER: Okay. Questions from members of the Board at this point? No questions?

DOUGLAS MYERS: Well, tell me about the number of living units at 140 Lexington Avenue.

JOHN LODGE: There's two.

DOUGLAS MYERS: Two?

JOHN LODGE: Yeah.

DOUGLAS MYERS: And how are they

occupied at the present time?

JOHN LODGE: At the present time -- maybe I'll let the occupant.

POLYXANE COBB: What we're doing is flipping it. I presently live on the upper, most of but not all of the second floor, and the third floor with my son.

RACHEL COBB: Who is severely disabled and sitting back here.

POLYXANE COBB: And he's behaving himself which I'm grateful.

My daughter and her husband and their two presently young sons who are small and who will get larger, seem to occupy more space than daughters did. They live on the first floor. And even though the number of rooms is the same, the space both the way it's configured and I think in square footage, is less. And I'm getting older, and I have arthritis. And getting my groceries up the stairs is a bit of a challenge. So what we

want to do is flip it around so that I don't have to be living on the second and third floor and have to cope with all those stairs. And they, who are younger and more fit as you clearly can see, are going to be on the upper floors.

JOHN LODGE: And this also allows for their son to stay in the house.

CONSTANTINE ALEXANDER: I want to get on the record again, you testified to that, but I want to reiterate that. There is a hardship involved with respect to your --

POLYXANE COBB: Yes. He has many challenges, and the Department of Developmental Services doesn't feel that he fits into most community residences. And --

MATTHEW MAZZOTTA: So the goal is basically to have him be in the same apartment, but to have a slightly separated, you know, space that he can kind of have where a care worker can be with him but still in the

same apartment.

DOUGLAS MYERS: And where would he and you live, then, if the application is approved?

POLYXANE COBB: We -- I would be on the first floor and that would be connected with the staircase to the basement apartment where he would be.

DOUGLAS MYERS: And your son would live in the basement?

POLYXANE COBB: Where he would be, yes.

DOUGLAS MYERS: And the existing second floor and the existing third floor would be available?

POLYXANE COBB: Yeah.

CONSTANTINE ALEXANDER: You said to his apartment in the basement. You don't really mean that I hope?

POLYXANE COBB: No, I don't really mean that.

CONSTANTINE ALEXANDER: There's not a separate dwelling unit? There's no kitchen facilities?

MATTHEW MAZZOTTA: It's nothing like that. It's purely a living space.

RACHEL COBB: Living area.

JOHN LODGE: I mean, I think the concede is to give him a space that he feels is his own.

MATTHEW MAZZOTTA: And to have a space.

CONSTANTINE ALEXANDER: I want to make sure the record is clear, you're not looking to make a three-family house.

POLYXANE COBB: No, not at all.

MAHMOOD FIROUZBAKHT: What is the ceiling height on the basement?

JOHN LODGE: The ceiling height in the basement is -- I think it's seven, seven I believe.

MAHMOOD FIROUZBAKHT: Okay. So

clearly it's captured on the gross floor area?

JOHN LODGE: It's already in there. It's already there.

DOUGLAS MYERS: How much of the front wall of the surface area below the pediment to the windows of the proposed dormer constitute?

JOHN LODGE: Explain. I'm sorry.

DOUGLAS MYERS: The front wall of the surface on the area below the pediment of the front door in each gable do the windows constitute?

JOHN LODGE: The windows themselves?

DOUGLAS MYERS: Yes.

JOHN LODGE: I'm not exactly sure. I would say on the order of maybe 15 percent, something like that. 20. If you look at A-4 -- here, I can show it to you.

DOUGLAS MYERS: I was looking at the

dormer guidelines actually about the windows accounting not less than 50 percent of the dormer's front wall below the pediment. And it seemed to me that the windows were less than that is my rough examination of your --

JOHN LODGE: Yes, they would be less than that.

DOUGLAS MYERS: -- your drawing.

JOHN LODGE: Yes, sir.

DOUGLAS MYERS: And the setback from the --

JOHN LODGE: Sorry, this is a side issue. But is that actually in the Ordinance? The part --

CONSTANTINE ALEXANDER: Dormer guidelines, it wouldn't be the Ordinance. Here are the dormer guidelines. You have them right there. Why don't you read them.

DOUGLAS MYERS: Well, this is in the section gable dormers, the last two pages. Actually page nine of the dormer guidelines.

JOHN LODGE: Okay.

DOUGLAS MYERS: Under gable dormers, windows: Window area, including trim, should account for not less than 50 percent of the dormer's front wall area below the pediment.

JOHN LODGE: Below. I'm sorry. I mean, it's still not 50, but it's more than I said. I forgot to take out the pediment. I'm going to say it's -- well, you can take a look, too -- it's probably, I don't know, 30 percent maybe.

DOUGLAS MYERS: And the front wall setback is indeed one foot and a half, one foot, six inches?

JOHN LODGE: The front with -- the wall is within the plane of the wall, but the roof, you know, the eave goes out probably about 18 inches passed the plane of the wall.

DOUGLAS MYERS: And what is the distance between the dormers?

JOHN LODGE: The distance between the dormers is I believe, five foot, ten.

DOUGLAS MYERS: So that's slightly, what -- and what do the dormer guidelines --

CONSTANTINE ALEXANDER: There is a thing in the dormer guidelines, 50 percent if I recall when you have two --

DOUGLAS MYERS: The distance between each dormer should be not less than half the width of each structure.

JOHN LODGE: All right, so --

DOUGLAS MYERS: So it's slightly less than half.

JOHN LODGE: Slightly.

DOUGLAS MYERS: And the total length is 26 feet, whereas --

JOHN LODGE: 25.

DOUGLAS MYERS: 25 feet.

CONSTANTINE ALEXANDER: 25 feet, yes.

DOUGLAS MYERS: Whereas, the

dormers guidelines say that when combined it's still 25 feet of two dormer.

JOHN LODGE: No, but I knew that one I think.

DOUGLAS MYERS: Approximately 75 percent more than what the dormer guidelines would recommend.

RACHEL COBB: In trying to keep my brother in his home, we are also -- and, therefore, giving him the basement area space, we are losing all of that as area to put as storage. So that is part of the argument for this that we're gaining that.

CONSTANTINE ALEXANDER: At the last hearing, Tom Scott, who is an architect had suggested some ways of getting more living space without having such big dormers. Did you explore those with regard to the closets?

JOHN LODGE: We did. We did. I mean, you know, we went back to sort of square one on the third floor. And I -- actually I

think he also mentioned maybe trying to split it into two.

CONSTANTINE ALEXANDER: He did.

JOHN LODGE: So I mean, you know, we looked at a lot of different options. I mean, you know, I think one of the dormers is -- has a bathroom and a stair in it. So that one is pretty, you know, that one is a fairly essential piece of the design. The other dormer, you know, as Rachel said, is mostly to try and compensate for the storage that we're going to lose in the basement. So, that one is, you know, I guess more flexible in terms of the design, but at the same time, you know, trying to give ourselves what we thought we needed to create a unit that they could live in sort of in perpetuity. Because what happens as soon as Polly sort of passes along, they want to be able to stay in the house and take care of their brother as well. So, you know, we were sort of working

to try and deal with the spirit of the law or the spirit of the comments from the last time and this is sort of where we're at.

CONSTANTINE ALEXANDER: Okay.

Further questions?

DOUGLAS MYERS: No more questions.

CONSTANTINE ALEXANDER: Any questions?

MAHMOOD FIROUZBAKHT: How long have you owned the property for?

POLYXANE COBB: Since 1970. We bought -- originally bought the property -- two families bought it, tenancy-in-common. They left after a year. Six years after that my husband left the family, and so I became the sole owner. And I've been in it ever since. It's a long time.

MAHMOOD FIROUZBAKHT: A fair amount of time.

POLYXANE COBB: Yes, it is. And I'd be happy to stay there for -- my family lives

to extraordinary long, deep into the tooth age. My grandfather was 103. My mother was 99, and we just go on and on and on. And so my intent is to go on and on and on at this house. I hate moving.

CONSTANTINE ALEXANDER: I notice there are no letters in the file from neighbors.

RACHEL COBB: We have one. There's one.

CONSTANTINE ALEXANDER: You have some?

RACHEL COBB: Yes.

CONSTANTINE ALEXANDER: I can't take your iPad and put it in the file.

MATTHEW MAZZOTTA: We printed them out and left them home.

RACHEL COBB: We thought the other had....

CONSTANTINE ALEXANDER: When the time comes for public comments, I'll read it

into the record. I'll ask you to hold it for a second.

Any other questions?

MATTHEW MAZZOTTA: And we did again run it by our neighbors.

RACHEL COBB: We visited with all of them in the back.

CONSTANTINE ALEXANDER: Your oral testimony is that there's no neighborhood opposition. And you have one written which I'll get to in a second.

MATTHEW MAZZOTTA: Right.

CONSTANTINE ALEXANDER: I'm going to open this matter to public comments.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

The Chair is in receipt of a letter addressed from -- it's a letter from the

Paolitto P-a-o-l-i-t-t-o. I guess they're at 147 Lexington Avenue. And the letter is addressed to our Board, and it says:

(Reading) We are writing this e-mail to support the Cobb/Mazzotta application for a Variance to add a dormer. Not quite right. All of the alterations are in keeping with the neighborhood. We live across the street from their dwelling (No. 140) and see every reason that this small addition should be approved.

At this point I'm going to close public testimony. Do you have any further comments you want to make at this point?

JOHN LODGE: Only if you guys feel like you need more elucidation.

CONSTANTINE ALEXANDER: Okay. I think it's time for us to deliberate.

Mahmood, do you have any views?

MAHMOOD FIROUZBAKHT: Well, yes, I think given this updated proposal it's

certainly responsive to some of the comments, you know, that we made last time around. Visually I think this is an improvement over what you originally had proposed. I think from the street the impact and the symmetry between the dormers on the respective sides, you know, it makes more sense. Certainly I think this is a little bit more massing than, you know, you typically would want to see, you know, but I can appreciate the personal and situational hardship here. And so, it's a small lot and it's a difficult physical structure to make work for what I think are the reasonable needs of a growing family. And it's certainly within the city's goal and the desire of the city to see residents in Cambridge stay and for families to stay within their longstanding homes. And so I think in light of that, you know, I would be supportive of this application.

CONSTANTINE ALEXANDER: Thank you.

Kevin.

KEVIN CASEY McAVEY: I think hardship has been demonstrated twice here. I think it does go against some of the former guidelines, but they are guidelines, and I think there has been a good faith attempt to try to address some of the concerns of the Board last time. So I'm inclined to vote for it should it come to a vote.

CONSTANTINE ALEXANDER: Thank you.

Doug?

DOUGLAS MYERS: I'm, I'm troubled I have to say. I certainly respect the element of hardship and if a vote against this were to require your son to be displaced or to be manifestly inconvenienced, I don't think I could bring myself to do it. But I mean he's living at the property now and living comfortably, so I'm just troubled where there are some minor, several minor noncompliance. There are several minor instances of

noncompliance with the dormer guidelines, and the -- and there's an instance of major noncompliance. And I'm concerned about the precedent that this will set in a house that really has adequate living space on three levels; basement, first, and second floor, and where there may be other ways of solving a very legitimate concern on your part. I did go out to take a look at Lexington Avenue especially in view of the comments made at the first hearing about -- that the dormers would be compatible with the neighborhood, and there certainly are lots of dormers on Lexington Avenue, but it was my impression as I walked around and looked at the both the gable dormers and the shed dormers, that they were very few exceptions all compliant with the dormer guidelines. And it's hard for me to visualize what a 25-foot, two dormers totalling 25 feet, would look on one side of the house. But as I tried to estimate and

eyeball the other shed and gable dormers in the immediate vicinity, and I made notes about the neighboring houses and their number, there's nothing close. So frankly I regret that the procedural posture of this case now makes my misgivings decisive, but I am troubled by the precedent we are setting where the noncompliance is 80 percent excess. And I just, you know, and I don't want to pause it, I don't think we can and should as people trying to apply this Ordinance on a fair principle basis throughout the city, pause this case simply on physical status of your son. I just don't think that's what we say to the next person who comes in and asks for 26, 25 feet dormers. So I'm troubled. I'm certainly not happy with my decision, but that's what I see at the present time.

Now I'll listen to more argument from the fellow board members, but that's the present state of my thoughts. And I'd listen

to other approaches if -- I mean, I understand you as the Chair said there was some discussion about other approaches, and I don't mean to put you over a barrel or say that you have to accommodate me, I'll let other board members respond.

CONSTANTINE ALEXANDER: Thank you.

Well, speaking I guess I'm the only one who hasn't spoken on the merits. I, too, am troubled by the size of the dormers and the departure from the dormer guidelines. But in my view I think the hardship overcomes my discomfort. This is an unusual case in terms of the hardship, and the family dynamics of a family staying in the structure that they've been there for a very long time, that's salutary for the city. We also have to acknowledge, though, if we grant relief tonight, after you folks are gone, and at some point in time you're all going to be gone, those dormers are still going to be there.

The impact, the aesthetic impact of them will remain. That all being said, however, I think I can get over my misgivings about the former guidelines, failure to comply with the former guidelines and hang my hat and make my decision based upon, as I said, the very compelling personal circumstances and the hardship involved.

So, if there's no other further comment, I guess it's time to put it to a vote.

MAHMOOD FIROUZBAKHT: Do you mind if I look at this?

POLYXANE COBB: If I might, my son's issue is not a physical issue. My issue is a physical issue because I have fairly severe arthritis and that's not something that gets better as time goes by. He, he's physically normal. That's not his disability. He has other quite profound challenges, behavioral as well as intellectual, and tolerates only limited amount of change. So the process of

transferring him even from one bedroom to another is going to be a challenge. But the best possible way for us to live is for me not to have to cope with staircases. And if we leave the house as it is now, the -- even if we go to the first floor, we'd have to walk upstairs to the bedrooms. And the whole reason for doing this is that he can be downstairs sleeping and I don't have to -- that would not be the level where my bedroom would be. And I can live on a single floor. And so that's the, that's where my hardship lies in being able to continue to live in the community without -- without having to abandon him to circumstance that would be so trying that he would find it very difficult to tolerate it.

MAHMOOD FIROUZBAKHT: And I completely appreciate that and thank you for offering that.

In terms of the design, how small of a

study would you be willing to live with on the second floor?

JOHN LODGE: Well, I mean, that's up to these guys. I mean, they have -- well, you do a lot of work at home.

Well, I mean if the --

MAHMOOD FIROUZBAKHT: The reason I'm asking that is because it seems like on the second dormer you're trying to provide for the bathroom and also the stairs. And so to the extent that you're able to push that dormer over about a foot or so into the -- and basically move the stairs over a foot --

JOHN LODGE: Oh, you mean to separate the dormers out?

MAHMOOD FIROUZBAKHT: Yes, to separate the dormers out so you can create a foot of space.

JOHN LODGE: I mean, if I sort of address the concerns one by one, I think, you know, certainly I could, I could reconfigure

it such so that we could have the spacing, you know, the spacing could work. You know, the back dormer, I think there's some flexibility exactly how we locate that. So, you know, there are definitely -- there are definitely things that I think we can do to sort of start to sway some of the issues.

CONSTANTINE ALEXANDER: What about the size issue?

JOHN LODGE: Well, you know, again, the size issue I think is --

CONSTANTINE ALEXANDER: That's the real issue.

JOHN LODGE: That's the real issue. But at some -- you know, so one of the reasons I did it this way was because then they match; right? So we wouldn't have two different size dormers. I did actually look at it sort of from various configurations, and, you know, I mean if you think that the massing is more of an issue than having two dormers that

basically look the same, that's something that I'm perfectly happy to take on Board.

MAHMOOD FIROUZBAKHT: Well, certainly the massing I think is your number one issue. What you're hearing from the Board you have three members that are willing to get over that, and then you're missing a fifth member, you know, who I don't know, you're looking to file and you can sort of see, you know.

JOHN LODGE: Tom, actually probably had the least reservations about the dormer.

MAHMOOD FIROUZBAKHT: So I guess, you know, if you've got the massing is your biggest issue. But then on top of that you've got all of these sort of noncompliance aspects. So in my mind if you can check off some of those easier non-compliances --

JOHN LODGE: You know, I think giving ourselves separation, that's -- we can do that. And frankly, we could do that

by -- we can take a foot or two out of the back dormer.

CONSTANTINE ALEXANDER: If we're going to go that route, then I would suggest you recess the case and redesign the plans in another room and solve some of these.

MAHMOOD FIROUZBAKHT: You know, I'm sorry to interject.

CONSTANTINE ALEXANDER: No, no, go ahead.

MAHMOOD FIROUZBAKHT: I just, I don't, I just don't know if that's a wise move, you know, given that I wouldn't want to do something quick on the fly. I mean, this is a family home. And I think there should be a little bit more thought to the extent -- you said the Applicant would want to do this. I'm happy to do that, but my preference would be that there's a little bit more thought, you know, given to the design so that you come up with something that really

makes sense and takes into account, you know, some of these other comments that you're getting -- so that you do something that's really thoughtful that's going --

JOHN LODGE: I mean, we have been through many of these iterations so it's not -- I don't think it's something that we -- we haven't seen or talked about before.

DOUGLAS MYERS: I'm frankly sympathetic to Mahmood's suggestion for several reasons. I'm just calling it as I see it as a Board member.

CONSTANTINE ALEXANDER: I think what we're hearing is we should continue the case.

DOUGLAS MYERS: Exactly. And I do think that if you want to put effort into making the dormers of less length and therefore less mass, you are more likely, you're very likely to satisfy me. I mean, it's not -- I'm practical in that respect.

But I also, you know, when this, when this case is continued, Tom Scott may be here the next hearing and I don't mean to be cynical or political, but that's just a fact. And then my vote, which I said troubled me, and I'm a decisive vote, but due to happenstance I'm not aware of that, but I, I just believe what I believe. And finally, and this is not -- I know other Board members, and I too don't want to second guess the architect and talk about redesigning things, I stand by what I said. But I just noted there was a study, there was a work room, there's a family room, and a living room on one floor. There's a lot of space in this house, and I'm not second guessing, but I am saying it might be amenable to redesign. That's all, in the context of everything else we're talking about here tonight.

JOHN LODGE: Right. Why don't I, I mean it's not really my decision. So....

CONSTANTINE ALEXANDER: Well, let me just suggest I think what you're hearing, just to cut through it all, if you want to have a vote tonight, your chances of getting a favorable vote are not very good. If you continue the case, you've got two shots of getting a favorable vote in my sense. You might satisfy Doug and maybe other members of the Board on your new design, plus you hopefully would get the benefit of that fifth vote which would make, as Doug has all but told you, make his vote not as important as it is tonight.

So I mean it would be foolish, frankly, for you not to continue the case.

POLYXANE COBB: I'm in favor of continuing.

MAHMOOD FIROUZBAKHT: From a construction scheduling point of view as well, let's say by miracle of some higher power you get approval tonight, you know, you

wouldn't have your building permit in hand for at least another, I don't know, two months. So I wouldn't expect that you're going to start this kind of a project in the, you know, depths of winter.

POLYXANE COBB: I don't think so. It seems a bad idea.

MAHMOOD FIROUZBAKHT: I don't think a continuance will impact your construction schedule. I think it would be a smart thing to do.

CONSTANTINE ALEXANDER: So I think you want to make a motion to continue?

JOHN LODGE: Oh, I get to make the motion?

MATTHEW MAZZOTTA: Can we motion to continue?

CONSTANTINE ALEXANDER: You request a motion.

RACHEL COBB: Request a motion.

CONSTANTINE ALEXANDER: Maria,

what's the date?

MARIA PACHECO: Do you want to do October 25th?

JOHN LODGE: I mean, I'm here anyway.

POLYXANE COBB: My one difficulty is that that's -- I'm an election commissioner.

CONSTANTINE ALEXANDER: I'm sorry.

POLYXANE COBB: I'm one of the city's election commissioners. That's within our two-week period before the elections when we're doing a great deal.

CONSTANTINE ALEXANDER: We'll do whatever works for you.

POLYXANE COBB: If we could bump it passed the election, that would be --

MARIA PACHECO: November 15th?

POLYXANE COBB: November 15th, that works fine.

DOUGLAS MYERS: I'm available.

CONSTANTINE ALEXANDER: Everybody

here?

Mahmood.

MAHMOOD FIROUZBAKHT: That works for me.

CONSTANTINE ALEXANDER: Okay. The Chair will move that this case be continued as a case heard until seven p.m. on November 15th on the condition that the Petitioner change once again the sign, the posting sign, to reflect the new date and time. This time around, by the way, you didn't change the time. That's why we had to wait until 7:30 and not 7:00. So change it to November 15th, seven p.m., and that the sign be maintained according to the requirements of our Zoning Ordinance, ten days or so before the hearing.

A waiver of time for decision already having been signed. We don't need that. And that if you -- and I guess there will be further revised plans, that they be in our files no later than five p.m. on the Monday

before November 15th.

That's not a holiday, is it, by any chance?

RACHEL COBB: Yes, it is.

CONSTANTINE ALEXANDER: It's not Veteran's Day, is it?

RACHEL COBB: Yes, it is.

JOHN LODGE: So Friday.

CONSTANTINE ALEXANDER: Is the office closed on that day? It is.

JOHN LODGE: Friday.

CONSTANTINE ALEXANDER: So then by Friday. Five p.m. on the Friday before.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Four in favor. Case continued.

(Alexander, Myers, Firouzbakht, McAvey.)

(8:20 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Janet Green, Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The acting Chair will now call case -- we'll go to our regular agenda and call case No. 10330, 52 Griswold Street.

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

For the record, give your name and address to the stenographer.

FRANCIS MULLEN: Francis Mullen, 52 Griswold Street, Cambridge.

BARBARA MULLEN: Barbara Mullen, 52 Griswold Street, Cambridge.

CONSTANTINE ALEXANDER: The floor

is yours.

FRANCIS MULLEN: My wife and I are looking to put an addition on the back of the house. We have three children at home and we're really crammed into the house. We're both long members -- lifelong residents of the City of Cambridge and we really want to stay in Cambridge. I work for the Cambridge Fire Department. I been there for 27 years, and I have strong ties to the community like my wife.

My kids have grown up in Cambridge. They've all played sports in it, and my son's still active in Babe Ruth. So they all want to stay here, and we want to stay here, too. It's a great neighborhood to stay in. So we just don't have the room that we need to function as a family. And there's like one room in the house that we can all sit down in and that's the dining room. We just don't have any room to sit down and function as a

family.

CONSTANTINE ALEXANDER: This is not the first time you've been before this Board either for the record.

FRANCIS MULLEN: We were going to do this before we got married, but for financial reasons we couldn't do it.

CONSTANTINE ALEXANDER: Let the record show that in 1988 this very same project was given a Variance -- the Board granted a Variance to build this addition, and for whatever reason the project did not go forward and the Variance expired.

FRANCIS MULLEN: Right.

CONSTANTINE ALEXANDER: So it's not the first time we've heard, as a Board, this case.

FRANCIS MULLEN: Our neighbors have changed since then on either side of us. We have -- we went around with a letter, and either side of us and across the street. And

either side of the people that are on the side of us on the sides of us, they've all signed it. We have a couple of letters from some of our neighbors there that are two doors up from us and they're all in favor -- you know, everybody seems to be in favor of it. There was no opposition for us to do what we wanted to do.

CONSTANTINE ALEXANDER: And the reason you're here before us tonight is not because of an FAR issue or other, it's just a slight technical setback issue I think on one side of the house.

FRANCIS MULLEN: One side of the house, yes. And like I say, either neighbors on either side of the house, they have no objection to what we were going to do.

CONSTANTINE ALEXANDER: The addition is going to have a basement underneath it. A full basement.

FRANCIS MULLEN: Yes.

CONSTANTINE ALEXANDER: How high will that basement be?

FRANCIS MULLEN: Probably like six feet, 11 inches.

CONSTANTINE ALEXANDER: So it will not be inhabitable for purposes of the Building Code?

FRANCIS MULLEN: No.

CONSTANTINE ALEXANDER: And you do not plan to inhabit?

FRANCIS MULLEN: No.

CONSTANTINE ALEXANDER: You can't use it as living space.

BARBARA MULLEN: Storage.

CONSTANTINE ALEXANDER: Storage? That's fine.

And what about the existing basement under the current house?

FRANCIS MULLEN: It's storage right now. I mean we --

CONSTANTINE ALEXANDER: How high is

it?

FRANCIS MULLEN: Like, seven feet half-inch.

CONSTANTINE ALEXANDER: That counts as FAR because it's more than seven feet and you could use it for living space if you so choose under the state Building Code.

FRANCIS MULLEN: Right.

CONSTANTINE ALEXANDER: But you've not chosen to use it. You're not going to be able to use -- you have a lot more storage area. You're going to use storage now under the new addition should we grant you relief and the old storage area.

BARBARA MULLEN: We have laundry down there. We have like laundry that's there.

CONSTANTINE ALEXANDER: Is there any reason why you're not making the basement underneath -- well, I guess you have FAR issues. But --

FRANCIS MULLEN: That was basically it. The -- we were just worried that we wouldn't be able to get it because it was over the FAR.

CONSTANTINE ALEXANDER: Right.

FRANCIS MULLEN: I mean, if you want to grant us that, we would gladly -- I would -- you know, I would gladly do it. I mean --

CONSTANTINE ALEXANDER: I'm not asking you what you want to do. For the record and for the benefit of the members of the Board, the FAR, if we allow the project to go forward on the basis of the plans submitted, would go from 0.39 to 0.49, and the district has a maximum of 0.5. So obviously adding a few inches to the basement underneath the new addition, should we allow it, would put you -- would require you to get further Zoning relief on the FAR but that's not before us tonight.

FRANCIS MULLEN: Right. No, no. We're just going to go with what we have there, and we just, you know, we're more concerned about getting the up -- the first floor of it done.

CONSTANTINE ALEXANDER: And the plans that you've submitted, these are the final plans?

FRANCIS MULLEN: Yes, they are.

CONSTANTINE ALEXANDER: If we grant relief, we'll tie them to the plans. And then if you modify them, you'll have to come back before the Board.

FRANCIS MULLEN: Right. No, we're just gonna --

CONSTANTINE ALEXANDER: You understand?

FRANCIS MULLEN: Yep.

CONSTANTINE ALEXANDER: Questions for members of the Board?

TIMOTHY HUGHES: Just for the

record, what do you mean by a technical setback issue?

CONSTANTINE ALEXANDER: Let me see if I have my notes. The setbacks are -- it's a sum of 20, and they're slightly like a foot underneath it. It's on the left and right side setbacks. It's a formula computation that's required. That's what I mean by technical.

TIMOTHY HUGHES: Okay.

CONSTANTINE ALEXANDER: Again, no questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll open this to public testimony.

Anybody here wishing to be heard?

Please come forward and give your name and address, or you can stay there if you like.

MARY ELIZABETH HOOKER: Yes. My

name is Mary Elizabeth Hooker and I'm a resident across the street. The Mullen family has been such a cordial set of neighbors; all the children as well as the adults. And I'm one of the signees of the letter in your possession and I'm here to support the Variance in their favor. Anything to help their quality of life. Anything to enhance it, to keep them together in the family as a welcome to the neighborhood.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one else wishes to be heard.

We are in receipt of letters. There is a letter in the file from Mary McDonough, 44 Griswold Street. (Reading) I am writing this letter -- it's addressed to this Board -- I am writing this letter as a close

neighbor of Frank and Barbara Mullen. The Mullens have requested a Variance in order to add an addition at the rear of their home at 52 Griswold Street. I am in complete support of this proposed project and for the necessary Variance to be granted. I have known the Mullen family for many years, and it is my hope that they will continue to reside at 52 Griswold Street far into the future. By enlarging their home, the Mullen family will create the living space they need to continue to reside on Griswold Street. That will be a very good thing for our neighborhood. The Mullens are thoughtful and considerate neighbors, and having them to continue to reside at 52 Griswold is a very positive force in our community. I encourage you to grant the Variance petition in case 10330 at the October 11th Board of Zoning Appeal hearing.

And we also have a letter from Jan

Griffin also at 44 Griswold Street.

FRANCIS MULLEN: They just thought that --

BARBARA MULLEN: It's a couple there. I don't know why they both wrote.

FRANCIS MULLEN: They thought two letters would be better than one.

CONSTANTINE ALEXANDER: Okay.

Anyway, it's a letter from Jan Griffin, J-a-n and Griffin, G-r-i-f-f-i-n addressed to this Board. (Reading) This letter is written to convey my full support for the Variance requested by Frank and Barbara Mullen of 52 Griswold Street. The Mullens are long-term neighbors on Griswold Street, and as a family, a true asset to our neighborhood. The proposed project of adding an addition to the rear of their home will have no negative impact on the surrounding properties. It is my hope that by enlarging their home, that the Mullen family will create the living space

they need to continue to reside on Griswold Street for many years to come. Although the street address numbers of our homes imply otherwise, my home is actually one house away from the Mullens' home. I value the Mullen family as my neighbors and lend my enthusiastic support to their proposed addition. I encourage you to grant the Variance.

And I believe that's the sum total of the letters in the file.

Do you have any letters with you?

BARBARA MULLEN: No. I think they signed something.

FRANCIS MULLEN: No. There was a letter with -- it was like signatures that we had from the neighbors on either side of us.

BARBARA MULLEN: They all signed.

FRANCIS MULLEN: It was, like, I believe it was seven signatures. Those are the two people that wrote that letter. Those

letters, they weren't around at the time, but Mary Hooker signed it. People --

BARBARA MULLEN: There's no one behind us.

CONSTANTINE ALEXANDER: Okay. I'm just looking for that petition you said that people signed. It's not in our files.

FRANCIS MULLEN: I know it was.

BARBARA MULLEN: Yeah.

CONSTANTINE ALEXANDER: It's your testimony that you've talked to the neighbors?

BARBARA MULLEN: Yeah, all of them.

FRANCIS MULLEN: Talked to the neighbors? Yes.

CONSTANTINE ALEXANDER: Okay. With that, I'm going to close public testimony.

Anything further you want to add on your behalf?

FRANCIS MULLEN: Just if you could

grant us this, it would be great.

BARBARA MULLEN: We could breathe.

CONSTANTINE ALEXANDER: Thank you.

All right. I'm going to close public testimony.

Comments from members of the Board?

Doug?

DOUGLAS MYERS: No, I'll listen. I have no comment at the present time.

JANET GREEN: No comments.

CONSTANTINE ALEXANDER: No comments?

TIMOTHY HUGHES: No. I'm good with it.

CONSTANTINE ALEXANDER: Kevin?

KEVIN CASEY McAVEY: I have no comments either.

CONSTANTINE ALEXANDER: I have no comments to add either.

I'm going make a motion to grant the Variance requested.

The Chair moves that a Variance be granted to the Petitioner to allow the construction of a single-story addition to the rear of their existing home on the basis of the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner needs additional living space. It's a home that they've occupied for many years and have a growing family. And is a home of very modest size at this point, again, requiring additional living space.

That the hardship is owing to circumstances involving the shape of the current structure. The structure is such that it is non-conforming, albeit in a modest way, but nevertheless because it is non-conforming, any addition such as proposed requires Zoning relief in the form

of a Variance.

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.

In this regard the Chair notes that, as I have already indicated, the relief being sought is modest, and that there is unanimous and strong neighborhood support for the project, and it is a project that would allow a family to continue to reside in Cambridge as the family has increased in size.

On the basis of these findings, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They are numbered A1 -- they're dated 28, March 1988.

These are the same plans?

BARBARA MULLEN: The inside will be different, but the outside --

CONSTANTINE ALEXANDER: Okay, the outside?

BARBARA MULLEN: Yes.

CONSTANTINE ALEXANDER: The inside doesn't involve the Zoning.

FRANCIS MULLEN: So it will be the same.

CONSTANTINE ALEXANDER: It's not a typo. It's 28, March 1988.

BARBARA MULLEN: Yeah.

CONSTANTINE ALEXANDER: Numbered A1, A2, A3, A4, and then there's one more unnumbered page. The first page of which has been initialed by the Chair.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Are you an aye, too?

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: I'm sorry I didn't see you. Unanimous. Variance granted.

(Alexander, Hughes, Green, Myers, McAvey.)

FRANCIS MULLEN: Thank you, Mr. Chair. Thank you, Board members. Thank you very much.

(8:30 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Janet Green, Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10331, 123 Garden Street.

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

CHRISTOPHER CHAN: Hello, Mr. Chairman and members of the Board. Christopher Chan, Chan Mock Architects. To my left is Eric Block and Marcia Walsh who are the owners the house on 123 Garden Street.

The proposal is to enclose a rear facing

porch in a non-conforming house. The house conforms with FAR, GFA, but two of the setbacks, the left and the right, are the existing building are in those two setbacks. The right one just barely at the corner, and the left one down the whole length of it. The existing rear porch is very small, about seven feet deep. At some point someone thought it was a good idea to put a window in the third floor, actually make it a stair that goes out one floor, and then I guess as an extra egress from the two, third floor bedrooms. So we'll be kind of removing all that and actually making it usable space.

The second means of egress is actually not required from that third floor.

It becomes a mudroom for use of the back. The lower part is shared between the two, so we're only enclosing about two-thirds of the lower section which you can see right here sort of the members of the first floor

unit can get in. Since it's an existing structure, we are asking for a Special Permit. So I think we can meet that. It's fairly simple, a couple of windows. We'll remove the kind of unusual stair and above. And it's actually kind of unusual. You actually walk on the roof of the third floor to get out. There's actually no deck on it. And Marcia and Eric have actually gone around to the neighbors and asked them if they would -- showed them the project. They agreed to, I guess the word to use is not object, to support the project. And if there's anything I can explain, it's fairly simple.

MARCIA WALSH: So the neighbors we talked to, none of them objected and they signed off on.

CHRISTOPHER CHAN: We'll give you that during public testimony.

CONSTANTINE ALEXANDER: Questions

from members of the Board at this point? No questions? I'll open the matter to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

You said you have a petition for us? There are otherwise no written materials in the file one way or another on this matter.

The Chair will note that there's been submitted to the Board a petition entitled, "Proposed changes to residents at 121-123 Garden Street." (Reading) I have reviewed the proposed architectural changes to 121-123 Garden Street and have no objection to the proposed construction. And then they -- this petition has been signed by one, two, three, four, five, six, seven, eight -- eight people all of whom live on

Garden Street or Winslow Street or Sherman Street or Obury Street (sic). I didn't know there was an Obury Street in that area.

JANET GREEN: Oh, Crescent Street?

MARCIA WALSH: I forget the name of it.

CONSTANTINE ALEXANDER: Okay, it and Fenno Street.

MARCIA WALSH: Orrin Street.

CONSTANTINE ALEXANDER: Orrin Street? Okay.

In any event, someone from a street yet to be identified has signed a petition.

CHRISTOPHER CHAN: I should also note that it's a rear facing porch so it's actually not really visible from the public way at all.

CONSTANTINE ALEXANDER: And that's it?

CHRISTOPHER CHAN: Yeah, it's fairly simple and I know it's been a long

evening. So I mean certainly you can answer any questions if people have questions about the actual design.

CONSTANTINE ALEXANDER: I'll close public testimony at this point.

Any comments from members of the Board?
Are you ready for a vote?

TIMOTHY HUGHES: Ready for a vote.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the Petitioner to enclose the rear porches as proposed on the basis of the following findings:

That what is proposed is this alteration of your structure will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

And on the basis of the further findings that because of the non-conforming nature of the structure, the alteration will not be

able to meet the requirements of the Zoning Ordinance.

That what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

What is being proposed as indicated is simply to enclose within the existing footprint two rear porches.

That the continued operation or development of adjacent uses will not be adversely affected by what is proposed. If anything, it would seem to me is that you're going to help the neighbors by -- from a noise point of view, by people being on those porches could obviously disrupt neighbors, and now that would be behind closed doors and closed walls. So there is that element of benefit to the neighborhood. Although it's offset to some extent by increased massing. Right now you have open space and now it's

going to be closed.

That no nuisance or hazard will be created to the detriment of the health, safety, welfare of the occupant or the citizens of the city. And that the proposed use will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

And then finally that what is being proposed is not inconsistent with the urban design objectives set forth in Section 19.30 of our Ordinance.

On the basis of these findings, the Chair moves that a Special Permit be granted to the Petitioner to proceed with the work as requested on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They are dated September 18, 2012, prepared by Chan Mock Architects, and they're numbered X1.0, X1.1,

X1.2, X1.3, X3.0, X3.1, A1.0, A1.1, A1.2, and A1.3, and A3.0. The first page of which has been initialed by the Chair.

All those in favor of the granting the Special Permit on the basis of the motion, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

(Alexander, Hughes, Green, Myers, McAvey.)

CONSTANTINE ALEXANDER: Good luck.

(8:40 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Janet Green, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10332, 101-C Brookline Street.

If you would introduce yourself for the record. Please spell your last name, give us your address.

ISAAC FRANCO: I'm Isaac Franco, F-r-a-n-c-o. And I reside at 101-C Brookline Street and I've been there for almost ten years and I'm also an architect and

doing the renovation of my house.

LINDA GERSTLE: And I'm Linda Gerstle, G-e-r-s-t-l-e. I'm at 175 Huron Avenue, No. 1, Cambridge. I've been there for close to 20 years.

CONSTANTINE ALEXANDER: Sir, did you say you're an architect?

ISAAC FRANCO: Yes.

BRENDAN SULLIVAN: If you would tell us what is it you would like to do.

ISAAC FRANCO: Well, we are combining our households and we will be moving Linda's into my unit and we've been doing renovation to improve the conditions of the bathroom, kitchens and the two bathrooms and adding a lot of storage space in the building -- in the unit to be able to hold all our two households. So we are losing a lot of wall space. We wanted to add a small addition within the building, within -- I have a two-story living room and I wanted to

add a small mezzanine of about 90 square feet overlooking the living room to be able to put the chair, the few books, and a lounge chair, to be able to have a place to lounge and read. Linda has also a grand piano that takes up a lot of room. So basically by combining the two, the two households, the need for a little bit of expansion is required. I'm doing no additional, no changes to the exterior. It's all interior work within the volume of the space.

BRENDAN SULLIVAN: I read the petition and I was fine until I got to Roger's drawings and then became totally confused. It seemed like there was an awful lot in there. But to break it all down, basically what you have now is an area of the first floor. And where does the second floor now stop?

ISAAC FRANCO: It stops at this line, that's right.

BRENDAN SULLIVAN: It stops here?

ISAAC FRANCO: Yeah.

BRENDAN SULLIVAN: Basically you want to add this area which is four foot eight, five-eighths, by 19 foot, three and a half. So that you're basically encapturing this little area.

ISAAC FRANCO: A little bit of space, yeah.

BRENDAN SULLIVAN: This little area right here?

ISAAC FRANCO: Yeah.

BRENDAN SULLIVAN: Okay.

And that will allow you to --

ISAAC FRANCO: It's within the scope of the -- the roof, it will allow me to put a lounge chair and a couple of few books and maybe a table for a computer.

BRENDAN SULLIVAN: This wall is going all the way up?

ISAAC FRANCO: No, no, just a

handrail overlooking that.

BRENDAN SULLIVAN: Okay. So it's just basically a platform from the first floor you'll still see?

ISAAC FRANCO: Yes, right.

BRENDAN SULLIVAN: Is that somewhat explanatory.

DOUGLAS MYERS: Somewhat.

BRENDAN SULLIVAN: To all of that.

ISAAC FRANCO: I have some photographs of the interior space if that would be helpful.

BRENDAN SULLIVAN: Yes, sure. That would be helpful.

I was fine before I got to this and I said there's Roger and his free hand.

ISAAC FRANCO: This is the space and all I'm doing is covering that amount of it. Which is -- it's, you know, difficult to -- but basically covering that amount of it which is -- there are already beams there

to give -- actually, what that does also is it helps that big room to have a little bit more natural stability, because right now it's -- all there is for lateral stability are those four beams that come across the room.

JANET GREEN: Again, how wide is the mezzanine?

ISAAC FRANCO: It's about five feet. Four foot, nine. Yeah. Okay, just enough.

CONSTANTINE ALEXANDER: Was this structure some sort of a business or a commercial building?

ISAAC FRANCO: No, no. It was always a -- it's a three-unit condo. And it's an L-shaped building. I have the back wing completely on two floors overlooking my own garden. And the other two owners have the other wing. And the reason I'm here is because when we went for the permit with -- we were told it came, it was built under a Variance. And to have this thing built even

because even though it was only internal, we needed another Variance. But the construction is already going on so that's part of it there. This is the, these are the windows that are overlook that space from the small bedroom which we are opening up into a double door.

BRENDAN SULLIVAN: Okay. Any questions by members of the Board at all? Any further questions?

(No Response.)

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter case No. 10332, 101-C Brookline.

(No Response.)

BRENDAN SULLIVAN: There is nobody in attendance. There are no letters from what I --

ISAAC FRANCO: The only letter I

have is the letter from the association basically that approved the construction of the renovation of the building.

BRENDAN SULLIVAN: All right. Are they expressing an opinion on this?

ISAAC FRANCO: No. They're basically saying that they have no objection to my work.

BRENDAN SULLIVAN: Well, that's key.

CONSTANTINE ALEXANDER: Do you need the approval of the condominium association?

ISAAC FRANCO: Yes, which is that.

CONSTANTINE ALEXANDER: And that letter is the approval, formal approval?

ISAAC FRANCO: Yes, which I submitted when I submitted for the permit.

BRENDAN SULLIVAN: (Reading) To Whom It May Concern: Isaac Franco, owner of Unit C at 101 Brookline, will be doing some internal renovations to his unit. The unit

on two floors is entirely located in one wing of our three-unit L-shape condominium with no unit below or above. We have no objection to the renovation, and to his request for Building Permit. Best regards, Stuart Hunter, H-u-n-t-e-r, 101-103 Brookline Street. Okay.

Do you have a copy of this, do you?

ISAAC FRANCO: Yes.

BRENDAN SULLIVAN: Okay, so I'll leave this in the file.

All right. That's it, pretty simple? And it's a Variance because you're adding square footage. Okay.

Let me close public comment, the presentation part.

Gus, any comments?

CONSTANTINE ALEXANDER: No comments.

DOUGLAS MYERS: No comments.

TIMOTHY HUGHES: Seems pretty

minimal to me. I'm in favor.

JANET GREEN: I'm fine.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the relief requested which is the addition of -- what did you say 80?

ISAAC FRANCO: It's 90.

BRENDAN SULLIVAN: Approximately 90 plus or minus square feet.

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 capturing some much needed space.

The occupant of the dwelling will increase and with it certain goods, material. And that the capturing of this space would alleviate a space problem.

The Board finds that the hardship is owing to the non-conforming nature of the

existing building, and that any addition recapturing of some additional floor area would require some relief from this Board.

The Board notes that this project is entirely within the unit, does not affect any other adjoining units, and cannot be seen from the public way. And as such, the amount of work is quite de minimus.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Board notes a letter of support from the association adjoining members.

All those in favor of granting the relief requested?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,

Green, Myers.)

ISAAC FRANCO: Thank you so much.

(8:50 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Janet Green, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10333, 10 Fawcett Street.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, members of the Board.

BRENDAN SULLIVAN: Mr. Sousa.

ATTORNEY RICARDO SOUSA: For the record, Ricardo Sousa on behalf of the

applicant T-Mobile.

BRENDAN SULLIVAN: You're aware of the posting problem?

ATTORNEY RICARDO SOUSA: Yes, I am, Mr. Chairman. We have gone back and corrected the posting and we apologize for what happened. Clearly it fell again.

BRENDAN SULLIVAN: Somebody just gave posting board to the manager and said post this?

ATTORNEY RICARDO SOUSA: Actually Ms. Slaga who is here tonight, she actually dropped it off with the management company. She did check on it and it was up at one point and then it came down.

BRENDAN SULLIVAN: Okay. But where was it up?

ATTORNEY RICARDO SOUSA: If I could have Ms. Slaga talk specifically to that point?

BRENDAN SULLIVAN: Yes. If you'd

introduce yourself for the record.

JACKIE SLAGA: Sure. My name is Jackie Slaga, Zoning Manager for T-Mobile.

We initially posted -- I had been in contact with the owner of the property who was aware of obviously of our upgrade. We had the owner authorization in the application before you, posted the signs initially on Fawcett Street. There's columns from Fawcett Street, you know, the entrance is not visible from the road. But there's columns that kind of lead into the entrance. So I posted one on that first column facing Fawcett Street. And then on -- I forget what's the other road there.

BRENDAN SULLIVAN: Concord is the main one.

JACKIE SLAGA: And then on the facade of the building facing that road as well. The day I posted it, that weekend, if you recall, we had some severe weather winds

and rains. I went back and check on it that Monday. They had actually come down. I reposted them, but apparently the landlord never communicated with the property manager regarding the postings and they took them down and put them in the lobby. Which I was not aware of. So I apologize that that happened.

DOUGLAS MYERS: They took them down from the posted position?

JACKIE SLAGA: Yes. And then put them in the lobby and I was not made aware of that until we got a call from the Zoning office. So I called the landlord. He apologized, there had been a miscommunication or a lack of communication with his property manager. I was out there this morning with the property manager and they've been reposted.

BRENDAN SULLIVAN: And where are they now?

JACKIE SLAGA: In the locations that I've indicated. That I -- where we had previously --

BRENDAN SULLIVAN: Section 10.421 requires panels shall be securely mounted on the subject lot at the street line, but within the property, but in any case not more than 20 feet from the street line.

JACKIE SLAGA: Right.

BRENDAN SULLIVAN: And that the panels shall be visible, easily identifiable, and legible to persons passing by on the public street without the necessity of trespass on to private property.

So, it may be a difficult site. It may mean and, again, I'll go by there in the morning. I went by there today, but I didn't bother to look in. It may be just putting it on the lawn or something like that. I know Social Security is on the first floor and everything. But it's just that, we don't

have much wiggle room in this.

JACKIE SLAGA: Yeah. I think the one on the column that faces Fawcett Street meets the parameters. The one facing the road to the -- on the other facade I believe the building's probably setback a little bit more than that.

BRENDAN SULLIVAN: As long as you're aware of this and, again, not more than 20 feet.

JACKIE SLAGA: Okay.

BRENDAN SULLIVAN: So, at any rate we can't go forward tonight. We'll have to continue it to --

ATTORNEY RICARDO SOUSA:
Mr. Chairman.

BRENDAN SULLIVAN: When are you back here again?

ATTORNEY RICARDO SOUSA: November 15th.

BRENDAN SULLIVAN: November 15th.

It will be mobile night at the opera.

TIMOTHY HUGHES: You mean this one isn't?

ATTORNEY RICARDO SOUSA: That's true. We have four other matters tonight.

BRENDAN SULLIVAN: All right. Let me make a motion, then, to continue this matter to November 15, 2012.

What time of the other cases?

ATTORNEY RICARDO SOUSA: Seven p.m.

BRENDAN SULLIVAN: They're all at seven?

ATTORNEY RICARDO SOUSA: I believe there is one at seven and two other matters during the regular agenda. So one continued matter so far.

BRENDAN SULLIVAN: All right. Well, we can schedule it for seven -- well, anyhow, let's schedule it for seven I guess.

I make a motion, then, to continue this matter to November 15, 2012, at seven p.m. on

the condition that the Petitioner change the posting signs, plural, to reflect the new date of November 15, 2012, at seven p.m. And that the sign be maintained as per the requirements of Ordinance 10.421. Any changes to the material now in the file, be in the file by five p.m. on the Monday prior to the November 15th hearing.

DOUGLAS MYERS: Which was a holiday.

CONSTANTINE ALEXANDER: That's the the Monday. Remember Monday's a holiday so we have to do it the Friday or Tuesday.

BRENDAN SULLIVAN: Do we do it Friday or allow it for the Tuesday?

CONSTANTINE ALEXANDER: It's your call.

TIMOTHY HUGHES: I would say the Friday because we're losing the Monday and we -- it's not until five o'clock on Tuesday. We lose the Tuesday, too. So that just gives us two days for everybody to get in and look

at the file.

BRENDAN SULLIVAN: They close at noontime on that Friday. So it has to be in by noon on Friday prior to the November 15th hearing.

ATTORNEY RICARDO SOUSA: We have no objection to that.

DOUGLAS MYERS: You might even consider 11:30 a.m. before the holiday weekend.

BRENDAN SULLIVAN: If you come at twelve, you may have a locked door.

MARIA PACHECO: They're open until one.

BRENDAN SULLIVAN: Someone is there.

MARIA PACHECO: They'll just throw it on my desk.

BRENDAN SULLIVAN: We have a waiver in the file?

MARIA PACHECO: I'll get one ready.

BRENDAN SULLIVAN: And that also that the Petitioner sign a waiver to the requirement for statutory hearing and a decision to be rendered thereof.

All those in favor of continuing this matter to November 15th?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

DOUGLAS MYERS: Case not heard?

BRENDAN SULLIVAN: Case not heard.

(8:55 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Janet Green, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10334, 2500 Mass. Avenue.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman.

BRENDAN SULLIVAN: Are you familiar with the Planning Board's comments?

ATTORNEY RICARDO SOUSA: I am familiar with those comments. For the record, Ricardo Sousa on behalf of the Applicant T-Mobile.

Mr. Chairman, this is a continued effort by T-Mobile to upgrade all of its wireless antenna installations here in the City of Cambridge. They are essentially swapping out old antennas for new antennas. These antennas have within them the remote radio units that allow the antenna to propagate a much better signal. In addition to that, it will allow us to provide 4G, fourth generation services, not only for voice but for also data transmission.

So in this case here at 2500 Mass. Ave., we are -- we currently operate six panel antennas. They're all facade-mounted on the top red penthouse. And we are just proposing to simply take out those old six antennas and install six new antennas. However,

we -- given that the antennas themselves are slightly thicker, they're five inches thicker, we are replacing the existing pole mounts with low profile brackets, as has been requested by the Board on previous applications. And so that will actually bring the antennas closer to the facade of the penthouse. And as you can see from the photo sims themselves, there is a change. There is an improvement by bringing the antennas closer to the facade. And in addition to that, and that's reflected in the plans. In addition to that, we are making sure that the antennas are dropped down slightly so that they are at least one foot from the top of that penthouse. That will also -- that's also consistent with other conditions that the Board has placed on these applications. And so there's really a de minimus change, if any, and actually I would suggest that there's actually a beneficial change in the sense

that the technology is beneficial to the residents and businesses in Cambridge. But also above and beyond that, design parameters are also satisfied, and I think it's actually improved design relative to these antennas.

So we respectfully request that the application for the amended Special Permit be approved by the Board.

BRENDAN SULLIVAN: Okay.

Is there anybody here who wishes to speak on the matter in case No. 10334, 2500 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: There's nobody in attendance.

We have correspondence from the Planning Board dated October 3rd regarding 2500 Mass. Avenue. And the Planning Board has expressed no comment.

That's the sum substance of any correspondence in the file.

And any questions, any concerns?

DOUGLAS MYERS: I have none.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the Special Permit for an in-kind replacement of six existing antenna, new antenna. The replacement of one existing cabinet and small cabinet and same equipment area on the roof. All antennas will be mounted in the same location and painted to match the facade on the building.

In granting of the Special Permit the Board shall make the following findings:

The scope or limitations imposed by any licensed secure by any state or federal agency having jurisdiction over such matters.

The Board is in receipt of the license from the Petitioner and there are no such limitations, and they are duly licensed to conduct their work.

The extent to which the visual impact to the various elements of the proposed facility is minimized.

They are reducing the mount of space that the antenna coming off the building with low mount brackets, and also they are going to color the new equipment to match the back facade of the building.

The Board finds that this is not in a residential zone, hence that finding may not be made in granting a Special Permit.

The Board shall set forth in its decision any limits which the permittee may be allowed to replace or upgrade its equipment without seeking a new Special Permit -- and there are no allowance for the replacement or upgraded equipment without the necessity of a new Special Permit.

So, having complied with those findings, the Board finds that the requirements of the Ordinance can be met.

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

The Board finds that continued operations of or development of adjacent uses as permitted to the Zoning Ordinance would not be adversely affected by the nature of the proposed use. In fact, it would be enhanced by the upgrading and the enhancement of the services to be provided.

The Board finds that there would not be any nuisance or hazard created to the detriment of the health, safety, or welfare of the occupants of the proposed use or to the citizens of the city. And the proposed use would not impair the integrity of the district or districts otherwise derogating from the intent and purpose of the Ordinance.

All those in favor of granting the --

CONSTANTINE ALEXANDER: Do you have

the condition about the removal? If they don't use it for six months or more and also that they continue to maintain the antenna so that the visual camouflaging continues in effect.

ATTORNEY RICARDO SOUSA: Of course.

BRENDAN SULLIVAN: So said.

All those in favor of granting the Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(9:05 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Janet Green, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10335, 955 Mass. Avenue.

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

Applicant T-Mobile. And for the record, the wireless phone that went off with the AC/DC ringer was not mine earlier tonight.

DOUGLAS MYERS: Was it one of your companies?

ATTORNEY RICARDO SOUSA: Oh, that I can't say. Most likely it was.

Members of the Board, once again this is another effort by T-Mobile to upgrade its existing wireless antenna installation. Currently T-Mobile operates five panel antennas on this particular building. They are all facade-mounted either on the top penthouse or there's one indent in particular, one antenna in particular that's mounted if you look at this photo here, which is the third photo at the corner of the building. And actually if you look fairly -- it's very hard to discern, to tell you the truth. It's located right on the corner. We're going to take it away from

that fairly exposed location and move it up to the top of the penthouse. So that all the antennas, all six panel antennas, will be facade-mounted on the white penthouse that's at the top of the building.

CONSTANTINE ALEXANDER: And they'll not exceed, go beyond the top of the penthouse?

ATTORNEY RICARDO SOUSA: That's correct.

CONSTANTINE ALEXANDER: They will all be on the side or the face I should say?

ATTORNEY RICARDO SOUSA: That's correct, Mr. Alexander. We've provided some plans, and if you look at pages A-3 of the plans, you will see that we've added a note so that we maintain at least a one-foot separation between the top of the panel antennas and the cornice line of the penthouse. And once again we are replacing the pole-mounted brackets with low profile

brackets as well, and we think this is a good improvement to this particular installation. And it will allow T-Mobile to provide higher quality both voice and data transmission at 4G speeds.

BRENDAN SULLIVAN: The existing antenna, what basically do they do? Is it voice and data?

ATTORNEY RICARDO SOUSA: So the existing antennas or the proposed antennas?

BRENDAN SULLIVAN: The existing.

ATTORNEY RICARDO SOUSA: The existing antennas provide both voice and data but not at 4G compatible speeds.

BRENDAN SULLIVAN: Which is speed and capacity?

ATTORNEY RICARDO SOUSA: It's both bandwidth and speed. It's the amount of data that's through putted through the antenna and through the network, but it's also the amp of bandwidth that can go through as well.

BRENDAN SULLIVAN: So they're limited obviously.

ATTORNEY RICARDO SOUSA: They are limited.

BRENDAN SULLIVAN: Technology has advanced.

ATTORNEY RICARDO SOUSA: That's correct.

BRENDAN SULLIVAN: You need to get more bandwidth and faster speed?

ATTORNEY RICARDO SOUSA: That's correct.

BRENDAN SULLIVAN: Hence the need to replace.

ATTORNEY RICARDO SOUSA: That's correct.

In fact, Mr. Chairman, by utilizing these newer antennas that have within them the radio heads, the remote radio heads, so in the older generation networks the radio heads were actually in the cabinets that were

sometimes in the basement. So you would literally lose propagation. These antennas allow a better propagation. So we'll actually reach more customers further away from the site than we would with our old antennas. So that's the other additional benefit you would get.

BRENDAN SULLIVAN: And the power source remains the same.

ATTORNEY RICARDO SOUSA: The power source remains the same because the radio heads are within the same antennas. They're much, much better propagation.

BRENDAN SULLIVAN: Yes.

Okay, any questions?

DOUGLAS MYERS: Yes, just for the sake of being complete.

ATTORNEY RICARDO SOUSA: Of course.

DOUGLAS MYERS: Could you indicate with a pen or otherwise a pointer where on your 4BN0029B, the existing.

ATTORNEY RICARDO SOUSA: I'll come around. Really I can't see the location.

CONSTANTINE ALEXANDER: It's hard to see, but you can see it.

DOUGLAS MYERS: If you can point it out to me.

ATTORNEY RICARDO SOUSA: Mr. Myers, it's actually fairly well -- it is right here at the corner.

DOUGLAS MYERS: Next to that little 4A object?

ATTORNEY RICARDO SOUSA: That's correct, to the left of it, yes.

DOUGLAS MYERS: And it extends up to the roof?

ATTORNEY RICARDO SOUSA: Actually, we'll be -- it will be removed from that location --

DOUGLAS MYERS: Right.

ATTORNEY RICARDO SOUSA: -- and placed here on this top penthouse.

DOUGLAS MYERS: Actually more visible than it appears in the new location.

ATTORNEY RICARDO SOUSA: One could argue it's more visible. However, from that particular vantage point, however it's, it's once again brought to the point where I think most antennas are located now which are the mechanical penthouses. I think if you look at the installations in the City of Cambridge, most of the antennas are installed among the top penthouse which is set further in than a prominent facade like that one and will be painted to match as well.

BRENDAN SULLIVAN: Okay. Any other questions?

(No Response.)

BRENDAN SULLIVAN: Let me open to public comments.

Is there anybody here who wishes to speak on the matter, 955 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: There's nobody in attendance.

There is correspondence from the Planning Board regarding case No. 10335, 955 Massachusetts Avenue. And the Planning Board has no comment. Leave the matter up to the BZA.

Let me make a motion, then, to grant the Special Permit for in-kind replacement of five existing antenna with new antenna relocation of existing antenna from the southeast corner facade of the building to the southeast penthouse facade with the addition of one antenna adjacent to the relocated antenna on the penthouse, and the replacement of one existing cabinet with a smaller cabinet. As per the plan submitted and the photo simulations as part of that submission.

As part of the granting the Special Permit, the Board must consider the

following:

The scope or limitations imposed by any license secured from any state or federal agency having such jurisdiction over such matters, and the submission in the file and the presentation is that there are no limitations imposed by any state or federal agency.

The extent to which the visual impact of the various elements of the proposed facility is minimized.

The Board finds that the reduction from the spacing off the building will reduce the impact of these facilities. The painting of the new antenna to match the background color will also minimize the impact on the placement of these facilities.

The Board finds that this is located in a Residence C-2B Zone, and the Board finds that where it is proposed to erect such a facility in any residential zoning district,

the extent to which there's demonstrated public need for the facility at the proposed location. The existence of alternative functioning suitable sites in non-residential locations, the character of the prevailing uses in the area, and the prevalence of existing mechanical systems and equipment carried on or before the roof of nearby structures.

The Board finds that there is an existing telecommunication facility on this particular building which has served the community since 2003, is it?

ATTORNEY RICARDO SOUSA: Most likely 2003.

BRENDAN SULLIVAN: Since 2003. And there have not been any adverse reaction to such facility. In fact, it has enhanced the communication of the citizens, both private, business, and also emergency services.

And as such that the location of this

facility particular locus is suitable and much needed.

The Board finds no reason to allow the replacement or upgrade of existing equipment without the necessity of seeking a new Special Permit. Hence an upgrade Special Permit.

As such, the Board finds that the requirements of the Ordinance can be met.

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

The Board finds the continued operations of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

In fact, the upgraded equipment would enhance the telecommunication ability on the citizens and nearby businesses.

The Board finds that there would not be any nuisance or hazard created to the detriment of the health, safety, or welfare of the occupants of the proposed use or the city. And that the proposed use would not impair the integrity of the district or adjoining districts, otherwise derogate from the intent and purpose of the Ordinance.

The Board finds that should the existing equipment become not useful, obsolete, that it be removed within six months, and that the facade to which it has been mounted shall be repaired to its original condition.

And also that the appearance of this equipment be maintained in a pristine condition and not be allowed to deteriorate.

All those in favor of granting this particular Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY RICARDO SOUSA: Thank you,
members of the Board.

(9:15 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Janet
Green, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10336, 51 Brattle Street.

ATTORNEY RICARDO SOUSA:
Mr. Chairman, members of the Board, once
again for the record, I'm Ricardo Sousa on

behalf of the Applicant T-Mobile. So, once again this is a continued effort by T-Mobile to upgrade its wireless antenna installations here in the City of Cambridge, and in particular on this property at 51 Brattle. T-Mobile currently operates six panel antennas that are all located on top of the penthouse rooftops. We are simply replacing those six with six new upgraded antennas, and those will be facade-mounted with low profile brackets by removing the pipe mounts. And we have also maintained a note that we will maintain a gap of one foot from the top of the antenna to the top of the penthouse line, and in order to benefit the aesthetic aspect of this particular location.

CONSTANTINE ALEXANDER: Are the low profile mounts indicated on the plans that you submitted?

ATTORNEY RICARDO SOUSA: They are,

Mr. Alexander. I can point that to --

CONSTANTINE ALEXANDER: Okay, I'll take your word for it.

ATTORNEY RICARDO SOUSA: If you -- just for the record, page E-401 shows the old mounts and the new mounts. Those details.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY RICARDO SOUSA: And also shows the offset distances of those two mounts. So we feel that this upgrade benefits both the residences and businesses in the City of Cambridge, and in this case Harvard Square, and is a benefit to the city. And the aesthetic aspects of the installation also are beneficial in a sense that they satisfy certain conditions that this Board requests of wireless carriers coming before you.

CONSTANTINE ALEXANDER: It just occurred to me, Mr. Chairman, this is the

Harvard Square Overlay District. Is there any requirement of trying to get to the Harvard Square Advisory Committee or has it been officially disbanded so it's impossible to obtain?

BRENDAN SULLIVAN: They have pretty much disbanded.

CONSTANTINE ALEXANDER: I think we should state for the record that there's no ability to satisfy the requirement of the Ordinance because of that fact.

BRENDAN SULLIVAN: They have been a non-functioning board.

CONSTANTINE ALEXANDER: So that there's no question about the Petitioner meeting all the requirements of the Ordinance.

BRENDAN SULLIVAN: Are there any other questions?

ATTORNEY RICARDO SOUSA: Thank you, no.

BRENDAN SULLIVAN: Let me open to public comments.

Is there anybody here who wishes to speak on the matter, case No. 10336, 51 Brattle Street.

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence from the Planning Board dated October 3rd regarding 51 Brattle Street. The Planning Board has no comment except to note that the use of flush mounts reduces the shadow created by the antenna.

End of correspondence. Close public comments. Close the presentation part.

And in finding the awarding of the Special Permit, the Board shall consider the following:

The scope of the limitations imposed by any license secured from any state or federal agency having jurisdiction, the Board finds that the application contains no such

limitations imposed by any license from any state or federal agency.

The Board finds that, and to the extent to which visual impact of the various elements of the proposed facility is minimized, again, the Board notes the reduction of the space from the facade of the building to the antenna has been reduced by the use of flush mount brackets.

The Board also notes the comments by the Planning Board which also comments that it reduces the shadows created by the antenna. Hence an enhancement of the aesthetic value.

The extent to which through the use of mechanical equipment on the building's roof or other features of the building are supported in back as support and background, the Board notes the change on the mounting and in the drawings and the reduction of the visual impact with this equipment as opposed to the previous equipment. And that the

equipment will be painted to simulate the background color.

As such, then, the Board -- let me make a motion, then, to grant the Special Permit.

The Board finds that the requirements of the Ordinance can be met.

That traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighbored character.

The Board notes the existence of existing facilities at this location and there has not been any adverse affect from those.

The Board finds a continued operation of or development of adjacent uses as permitted to the Zoning Ordinance would not be adversely affected by the nature of the proposed use. In fact, it would be enhanced by the upgraded equipment.

The Board finds that there would not be

any nuisance or hazard created to the detriment of the health, safety, or welfare of the occupants of the proposed use or the citizens of the city.

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

On the condition that should the proposed equipment become not useful or obsolete, that they be removed within six months. And that the facade of the building be restored to its original condition. That the antenna be maintained in pristine condition and not be allowed to deteriorate to become unsightly.

Anything else?

On the motion, then, to grant the Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY RICARDO SOUSA: Thank you.

(9:20 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Janet
Green, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10337, 141 Portland Street
a/k/a 198 Broadway.

ATTORNEY RICARDO SOUSA:
Mr. Chairman, members of the Board, once

again for the record, Ricardo Sousa on behalf of the Applicant T-Mobile. This is the last one of the evening so we'll try to get you ahead of schedule.

This is a continuing effort to upgrade T-Mobile's existing wireless antenna installation on this building. We have currently six operating antennas that are facade-mounted on this -- on the facade of this building, and we are looking to upgrade those six with new air antennas that will be facade mounted using low profile brackets. We'll be removing the pipe mounts. And in addition to that, we will be slightly lowering the antennas so that they maintain one foot from the top of the penthouse. As you can see from the photos, there are a number of antenna installations on this building. We are not the ones that are sticking up at the top. I'm proud to say. We are the ones that are facade-mounted along

the top edge of the building. And once again as you can see from the improvement photos, we are dropping those slightly. And so that we maintain that distance, and the low profile brackets, I think will help with the aesthetics of the installation itself with that.

Mr. Chairman, I would respectfully request that this is a beneficial use and will serve as a benefit to the City of Cambridge.

BRENDAN SULLIVAN: Do the new photo sims take into consideration the comments by the Planning Board? It says the antenna should be finished to match the facade including the trim at the top? Because it appears that it does.

ATTORNEY RICARDO SOUSA: Yes, it does. That's correct, Mr. Chairman. I had to refresh my memory on their specific comment.

BRENDAN SULLIVAN: Because it's

going to match the coping?

ATTORNEY RICARDO SOUSA: That's correct.

BRENDAN SULLIVAN: It sometimes works and it sometimes doesn't work.

ATTORNEY RICARDO SOUS: That's right.

BRENDAN SULLIVAN: Sometimes I feel it's kind of odd, you know.

JANET GREEN: Like the one on the Sears building where they tried to paint the bricks.

BRENDAN SULLIVAN: Well, they did it with a four-inch brush.

ATTORNEY RICARDO SOUSA: For example, photo 2 does reflect that. The tips of the antennas are painted that white color.

BRENDAN SULLIVAN: Sort of like when you do conductor pipes, one house you go from one body of the color to the trim color. It looks like a barber pole at some point.

DOUGLAS MYERS: So the two flush mounts that are going to be on the face of the building where the ITA logo is as proposed --

ATTORNEY RICARDO SOUSA: Yes.

DOUGLAS MYERS: -- you stated that the upper part of those mounts will be lower in position than now is the case for the upper parts in the existing conditions. Did I hear you right?

ATTORNEY RICARDO SOUSA: What we are going to do is actually maintain a one foot separation from the top.

DOUGLAS MYERS: Maintain a one foot separation.

ATTORNEY RICARDO SOUSA: Right.

DOUGLAS MYERS: There is no change.

ATTORNEY RICARDO SOUSA: There will be a slight portion of the top antenna which will still have to be white. So that's reflected in the photos.

TIMOTHY HUGHES: You said from an

engineering standpoint does that, why not just lower it to the brick color? Does that take too much away from this?

ATTORNEY RICARDO SOUSA: That drop in rad center, for example, bumping that might cause too much --

TIMOTHY HUGHES: I could see where there would be one problem, there could be some shadowing from a lower roof. But on others it looks like a clear shot. Maybe not. I don't know. It just seems like it would be easier on the eyes.

ATTORNEY RICARDO SOUSA: Right. I would suggest that this one here is the one that you're referring to. That might have some roof shadowing that could cause some interference because of that lower roof. However, the others, I don't see any impediment to be able to do it. That being said, I'd have to get permission from the RF engineers and there may be an effect. I

can't imagine one foot can make a difference.

BRENDAN SULLIVAN: Well, I'm willing to accept as presented with the caveat that if it can be lowered below the coping, try to do so. That's all, I think to --

ATTORNEY RICARDO SOUSA: I would be amenable to that type of condition, Mr. Chairman.

BRENDAN SULLIVAN: Or to assimilate the background and to blend in better.

ATTORNEY RICARDO SOUSA: Sure.

BRENDAN SULLIVAN: Does that sound about okay?

TIMOTHY HUGHES: Sounds good.

BRENDAN SULLIVAN: I just raise that if you can --

ATTORNEY RICARDO SOUSA: Of course. We've had that type of condition before and we'll talk to Mr. O'Grady prior to -- relative to that particular point.

BRENDAN SULLIVAN: Let me open it public comments.

Is there anybody here who wishes to speak on the matter 141 Portland Street?

(No Response.)

BRENDAN SULLIVAN: There's nobody in attendance.

There is correspondence from the Planning Board dated October 3rd, leaving the matter up to the BZA with their no comment. They further state the antenna should be finished to match the facade, including the trim at the top to match the masonry which is pertinent to the aforementioned discussion we just had.

In considering the granting of the Special Permit the Board shall consider the scope of limitations imposed by any license secured by any state or federal agency having such jurisdictions over such matters.

The Board is in receipt of no such

active or various elements to their license to the extent that the visual impact of the various elements is minimized.

The Board finds that the presentation shows that the proposed facility will be moved closer to the building by use of flush mount brackets.

That the antenna will be painted to match the background color where possible.

The antenna shall be lowered below the top coping so that it be fully in front of the brick masonry and be painted to match where possible.

The Board finds that this is an Industry B Zone, hence the residential requirement need not apply in this particular case.

The Board finds that should the proposed antenna be replaced or upgraded, that the Board is requiring the Petitioner to return for additional review and a new Special Permit.

The Board finds, then -- let me make a motion, then, to grant the Special Permit for in-kind replacement of eight existing antenna with new antennas replacing two existing cabinets with one cabinets of similar size and appearance and one substantially smaller cabinet in the same location as per the application, the drawings, and the photo simulation in the application.

The Board finds that the requirements of the Ordinance can be met.

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

Continued operations of or the adjacent uses as permitted to the Zoning Ordinance, would not be adversely affected by the nature of the proposed use. In fact, it would be enhanced by the upgrade of equipment.

It would not be any nuisance, hazard created to the detriment of the health, safety, or welfare of the occupants of the proposed use, and that the proposed use would not impair the integrity of the district or adjoining districts otherwise derogate from the intent of the Ordinance.

All those in favor of granting the -- on the condition that should the equipment become not useful or obsolete, that it be removed within six months of such condition.

That the antenna and equipment be maintained in pristine condition and not be allowed to deteriorate. And that should the equipment become obsolete, that the facade of the building be restored to its original condition.

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY RICARDO SOUSA: Thank you
very much.

(Whereupon, at 9:30 p.m., the
Board of Zoning Appeals
Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Inspectional Services Department.

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DATE: 10/11/12

REP: CAZ

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C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
 BRISTOL, SS.**

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

I am not related to any of the parties in this matter by blood or marriage and that

I am in no way interested in the outcome of this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of October 2012.

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

My Commission Expires:
April 23, 2015

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