

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE  
GENERAL HEARING

THURSDAY, JULY 12, 2012  
7:15 p.m.  
in  
Senior Center

806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair  
Constantine Alexander, Vice Chair  
Timothy Hughes, Member  
Thomas Scott, Member  
Janet Green, Associate Member

Maria Pacheco, Zoning Secretary

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**PROCEEDINGS**

(7:15 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: Let me call to order the Board of Zoning Appeal for July 12, 2012. The first item on the agenda would be case No. 10247, 175 Huron Avenue. And concurrently we will also entertain 10114, 175 Huron Avenue, and 10051, 175 Huron Avenue.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. My name is James Rafferty and I'm appearing on behalf of the applicant in all of the cases noticed by the Chair.

This is a request for a continuance. And in making the request we're very mindful of the fact that there have been several continuances with this case. I would only offer by way of explanation that after the

last hearing, I reviewed the case further and scheduled an appointment with the Building Commissioner because I began to believe based on the exchange that took place, that the building might in fact qualify under 5.28, what we were proposing to do, because 5.28, which allows for the conversion, talks about what is proposed to convert an existing principal use structure designed and built for non-residential use. And then it led to a conversation, I began with Mr. O'Grady. We had one meeting; what is the principal use of this structure? The gross floor area of the building for funeral home purposes actually exceeds the gross floor area for residential purposes. So I suggested that it might in fact be a worthy candidate for 5.28. I would say that I was told that I should put that into writing, and I met with the Commissioner. He reviewed it with me, said that he would review it with the Law

Department. As often happens when I come up with great ideas, the Law Department apparently did not agree, but it took sometime before I was able to learn the outcome of the Commissioner's response.

So, at that point the client now needs to make a determination about a plan. In the interim there is a new parking plan. We did submit it in the file because it was a part of the question. A long way of explanation just as to what has happened in the interim. I know that the applicant did e-mail the abutters that have had longstanding interest about his request tonight for the continuance. I don't know if any of them are here, but to prevent them from having to come down again. And then I also learned recently that the signs I had -- there was some confusion. My client I thought would take care of that, and he was under the impression that I would be doing that. But -- so the

signs are deficient because they do not contain the date. I looked at them this morning, and I think it might burden Ms. Pacheco and ask if we get continued, we should get new signs because they've got six or eight dates, the language is faded, they have a lot of dirt and grime on them. And if we get charged a stipend for a few more signs, I think we'd gladly pay it.

If the Board would act favorably upon the continuance request, we would represent this would be the last such request. It may be that the case ultimately gets withdrawn. Two of the other cases really are candidates for withdrawal. It's just the remaining case.

The other issue remains is the 5.26 issue which Mr. Singanayagam is now reviewing because in filing the original application, I was -- after discussion we were seeking relief under 5.26, and 5.26 says

no new dwelling created by the conversion of an existing dwelling into a greater number of units unless you have compliant GFA, compliant open space, compliant parking, and compliant law to area per dwelling unit. And as one of your colleagues who is not here tonight pointed out, you don't need any of those four, Mr. Rafferty, so you're really pushing your luck asking for a 5.26 Variance.

Upon further examination it strikes me that that talks about creating units by converting existing dwellings into a greater number of dwelling units. We're not converting dwellings here. The single-family dwelling is going to remain as a dwelling. We're converting the portions of the structure of the funeral home; two of which have been built solely, and have only been used for that purpose. So I've asked Mr. Singanayagam to confer again with the Law Department to see if relief is indeed

required under 5.26. I've been at this a long time so I remain the eternal optimist that some day the Law Department would agree with me.

CONSTANTINE ALEXANDER: I take it, Mr. Rafferty, with regard to 5.28 you're not planning to take an appeal to that and have a fourth case?

ATTORNEY JAMES RAFFERTY: Well, I can't waive my clients's rights at the moment. I always get asked, you know, the likelihood of outcomes, and I said I think for good reason there is a great level of deference shown to the Commissioner when he makes determinations, and I had a case once with a windowless dormer that I was convinced would be overturned. And I told my client I was going to take the rare exception of coming to the Board and say there's no way you can interpret the provision in Article 8 that allows you to install a dormer and be told

that it's on a non-conforming wall so you can have a dormer, but you can't have a window. I thought the illogic to that was so compelling that with all due respect to the Commissioner, the Board would overturn him. And that proved not to be the case. So every decade I take one of those appeals. I think I've got nine years left before I bring another one, so I wouldn't think that's likely.

BRENDAN SULLIVAN: So the request is for a continuance, and how far out?

ATTORNEY JAMES RAFFERTY: I think it was suggested that September might be available.

MARIA PACHECO: September 13th.

ATTORNEY JAMES RAFFERTY: That's a final.

BRENDAN SULLIVAN: And that would be for all three cases?

CONSTANTINE ALEXANDER: Can all

members -- can everybody be here for that?

ATTORNEY JAMES RAFFERTY: The one member that's not here --

CONSTANTINE ALEXANDER: Tad. He's never missed a case before so I assume he will be here on the 13th.

ATTORNEY JAMES RAFFERTY: I would be surprised if he wasn't.

BRENDAN SULLIVAN: We'll have to check with the member. And that date may change and you'll have the option of going with four being the eternal optimist that you are. But you're not a gambler.

ATTORNEY JAMES RAFFERTY: But, you know, that's the safe bet. That fifth doesn't do a thing for me. So I -- I would not preclude proceeding with four at this moment.

BRENDAN SULLIVAN: On the motion -- is there anybody here interested in the matter at 175 Huron Avenue and the request

for a continuance?

(No Response.)

BRENDAN SULLIVAN: I see none.

There is a correspondence in the file. I'm not going to read it, but you should be aware of it, from Ms. Nolan, which came in at 4:35 this afternoon. There was a copy here that you can peruse at your leisure.

Let me make a motion then to continue all three cases; case No. 10247, 10114, 10051, 175 Huron Avenue to September 13, 2012, at seven p.m. on the condition that the Petitioner change the posting signs, three, to reflect the new date of September 13th, and the time of seven p.m. And that those signs be maintained as per the requirements of the Ordinance.

That should there be any changes to the -- any submissions different than what's in the file now, that those submissions be in the file by five p.m. on the Monday prior to

the September 13th hearing.

All those in favor of continuing this matter?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of continuing that.

ATTORNEY JAMES RAFFERTY: Thank you.

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

(7:25 p.m.)

(Sitting Members: Brendan Sullivan,  
Constantine Alexander, Timothy Hughes,  
Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will  
hear case No. 10235, 498 Franklin Street.

Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in  
receipt of correspondence on the letterhead  
of Smart Architecture. It's addressed to  
Mr. Sean O'Grady. (Reading) Please inform  
the Board of Zoning Appeal that my clients  
Joshua Meyers and Jeremy Faro, F-a-r-o would  
like to have their case continued by the Board  
of Zoning Appeal until the next possible  
hearing date of the Board which we have been  
informed is likely to be August 23rd.

Is it the 23rd or 26th?

MARIA PACHECO: 23rd.

CONSTANTINE ALEXANDER:

Mr. Chairman, I would only comment that this case has been continued several times. As we did with Mr. Rafferty, we should instruct the Petitioner no more continuances.

BRENDAN SULLIVAN: So noted and the Petitioner will be informed.

On the motion to continue case No. 10235, 498 Franklin Street until August 23, 2012, as a case not heard at seven p.m., on the condition that the Petitioner change the posting sign to reflect the new date, August 23rd, and the time of seven p.m.

That the sign be maintained as per the requirement of the Ordinance.

That the sign be affixed to the facade of the building and not in the present location on the upper level of the first floor window. And that any changes to the application shall be in the file by five p.m. on the Monday prior to the August 23rd hearing.

Also noted that because of the number of continuances, that the Board may not look favorably upon any more continuances of this matter.

All those in favor of continuing.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(7:25 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10221, 153 Brattle Street.

Is there anybody here on that matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. James Rafferty for the applicant. I believe there is a request to withdraw filed by Mr. Grassi, the applicant. The case is being heard on the other side of the wall tonight by the Historic Commission, but the proposed structure is a below grade parking garage which would not trigger any zoning issues or request for relief.

BRENDAN SULLIVAN: There is correspondence dated July 10, 2012, to Ms. Maria Pacheco. (Reading) As we were denied our request for a Certificate of Appropriateness for the freestanding garage

by the Cambridge Historic Commission, I would like to request our application for a Variance for the garage and the pergola be withdrawn. Thank you for your assistance in this matter. Guy Grassi, Grassi Design Group.

On the motion to accept the request for a withdrawal.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: The matter is withdrawn.

ATTORNEY JAMES RAFFERTY: Thank you.

(A short recess was taken.)

(7:30 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: It being 7:30, the Board will hear case No. 10283, 1 Highland Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty appearing on behalf of the applicants, Robert Higgins who is seated at my far right. He and his wife Christine Higgins are the owners of this single-family home. And to my immediate right is the landscape architect Robert Calderaro, C-a-l-d-e-r-a-r-o of the Lombardi Design Group.

BRENDAN SULLIVAN: Okay, as you're aware there is an issue with the posting -- with compliance with the posting requirement. And Mr. Alexander did not see

the sign on Sparks Street over the weekend.

CONSTANTINE ALEXANDER: Highland Street. I didn't see a sign on Highland Street.

BRENDAN SULLIVAN: You did not see one on Highland Street. Correct.

I went by on the weekend, I saw one on Sparks Street, and then on -- I'm not sure if it was Tuesday or Wednesday, I went -- I was going down to the Building Department and saw the one on Sparks Street, went up around the corner, did not see the one on Highland Street.

UNIDENTIFIED FEMALE: On Tuesday night there was no sign on Sparks Street.

BRENDAN SULLIVAN: Excuse me, excuse me.

And then the next morning, which would have been yesterday morning, I went and I saw the one on Sparks Street -- I'm sorry, on Highland Street. And the one from Sparks

Street was removed.

So, my feeling is that I don't know what happened to the sign, but that it was not there on Highland Street.

ATTORNEY JAMES RAFFERTY: Well, might we be permitted to offer testimony?

BRENDAN SULLIVAN: Sure.

ATTORNEY JAMES RAFFERTY: From direct participants who installed the sign as well as the homeowner who observed the sign. And Mr. Hefferon, H-e-f-f-e-r-o-n from the Lombardi Group did in fact install the sign and informs me that he received a telephone call on a Friday from Mr. Higgins' assistant that the sign was down. He went out to the site that Friday, located the sign in the fence and reattached it with these ties. But I'll let Mr. Hefferon -- because I have no firsthand knowledge, but it does appear that the sign was down, but our understanding was that it was a day. What's become of the

Sparks Street sign, I don't know.

Why don't you just give your name.

DEVON HEFFERON: Sure.

Devon Hefferon, Lombardi Design. Like Jim said, I picked up the signs on the 25th and I hung them on the 26th. I was notified by Mr. Higgins' assistant that it was down on the afternoon of July 6th. I went out and I rehung -- this is the sign on Highland Street, excuse me. I rehung the sign on Highland Street on the 6th, and I went by on my way here today and I did see that the sign on Sparks was missing, and I was not able to locate that sign and that's as far as I know about the signage.

CONSTANTINE ALEXANDER:

Mr. Sullivan, if I can comment. I went by on Monday morning -- that Monday morning, there was absolutely no sign on Highland Street. I went around on Sparks Street, there was a sign. It was on the very far end of the lot

and placed at least noticeable as possible, No. 1.

No. 2, and on the period of time that the signs keep coming down supposedly. The weather has been fine, and this area is not noted for as an area for vandalism. I have a hard time believing that someone's been coming down and tearing down signs. I know what my eyes saw and there was no sign. If we go forward tonight, I'm just going to put everybody on notice, I'm going to abstain from voting on the merits because I don't believe you complied with the sign requirements. So I don't see how you can proceed on that basis.

ATTORNEY JAMES RAFFERTY: Right. Well, I would only say in light of that, I would only offer that there appears to have been an effort to comply.

CONSTANTINE ALEXANDER: I have no doubt about that.

ATTORNEY JAMES RAFFERTY: But it appears that it was not -- the compliance wasn't complete, and I'm well aware of the Board's practice, I explained to Mr. Higgins. It doesn't seem to be even a factual dispute that there was a period of time that the sign came down. I think there is some recognition that when a sign comes down, a homeowner should put it back up. But the mere fact that it's down for 12 hours or 24 hours, but there seems to be some uncertainty. But in light of all this, I certainly understand the Board's -- determination by the Board that there hasn't been compliance with the sign posting requirement and we accept the continuance and we'll be a little more vigilant in ensuring that both signs are up.

CONSTANTINE ALEXANDER: Good.

BRENDAN SULLIVAN: That would be my feeling.

Tom?

THOMAS SCOTT: No, I have to defer. I didn't go out and physically view the sign, so I can't -- I have to defer to the other members.

ATTORNEY JAMES RAFFERTY: So is it the preference that we request a continuance or is it the determination by the Board that there was not complete compliance with the sign?

BRENDAN SULLIVAN: Well, Tim, what's your thought?

TIMOTHY HUGHES: I don't have any. I don't care which way that goes, ultimately the results are the same.

BRENDAN SULLIVAN: Janet?

JANET GREEN: I agree with that.

BRENDAN SULLIVAN: Yes. I would make a motion that the matter be continued for failure to comply with the regulation 10.421 which is the notification requirement, and

that the Petitioner be required to maintain those signs as per the requirements of the Ordinance.

Additionally, there's a little bit of a shortcoming on the supporting statements where B has not been filled in also. So I would request that that be filled in in order for the Board to hear the case also.

That's --

DEVON HEFFERON: Excuse me, if I might -- we resubmitted that applicant -- that piece of the application along with this revised plan on Monday. That was accepted by Mr. O'Grady.

BRENDAN SULLIVAN: Okay. Then I did not see it. Oh, okay, so it was part of this submission here then?

DEVON HEFFERON: It should be, yes.

BRENDAN SULLIVAN: All right.

Also you're aware of the letter from Mr. Robert Taguri (phonetic), 67 Sparks

Street?

ATTORNEY JAMES RAFFERTY: Only recently.

BRENDAN SULLIVAN: Okay. So you should be aware of that anyhow and you might want to address -- that will come up so you may want to address that also.

Okay. On the motion then to continue this matter until....

MARIA PACHECO: July 26th.

BRENDAN SULLIVAN: July 26th at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date, July 26th, and the time of seven p.m. And that the sign be maintained as per the requirements of the Ordinance 10.421 of the posting notification.

CONSTANTINE ALEXANDER: Is it signs plural because of the amount of frontage, do they need two signs?

BRENDAN SULLIVAN: They don't need

it. The lots having street frontage of 200 feet or less, one panel shall be installed.

Now, Highland, I think, is 179 feet and....

DEVON HEFFERON: It's 100 on Sparks.

BRENDAN SULLIVAN: And 100 on Sparks or something. But there's no relief being requested on Sparks. Is that correct?

DEVON HEFFERON: That's correct.

BRENDAN SULLIVAN: Just Highland. So only one panel is required.

ATTORNEY JAMES RAFFERTY: Well, it's one lot. I --

CONSTANTINE ALEXANDER: I would put two signs up.

BRENDAN SULLIVAN: Well, if you have the two signs, I'd put them up.

ATTORNEY JAMES RAFFERTY: I'm a big believer in over processing. I'd say if we can't find that Sparks Street sign, we should

post it. Because I think, I think the requirement applies to the entire lot, not merely the location of the relief. So rather than have someone assert that there was an inadequate notice, I would -- I would --

BRENDAN SULLIVAN: Do we have both signs now?

DEVON HEFFERON: No. One's missing.

BRENDAN SULLIVAN: One's missing. So we will allow the Petitioner to pick up another one tomorrow and have that dutifully installed tomorrow.

CONSTANTINE ALEXANDER: And my request is a simple request, and only on my behalf, make sure that the signs are posted there prominently posted. Not tucked away in a corner somewhere underneath a bush. Okay?

BRENDAN SULLIVAN: Okay.

On the motion then to continue this

matter until July 26th.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

ATTORNEY JAMES RAFFERTY: Thank you  
very much.

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

(A short recess was taken.)

(7:45 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10284, 9 Montague Street and 5 Ballord Place.

Is there anybody here interested on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence on the letterhead of Hope Legal Law Offices. (Reading) Dear Chairman Alexander -- he obviously has not caught up to us or else he's trapped in -- somewhere -- (Reading) Please accept this request to extend BZA case No. 10284 to the next meeting of the Zoning Board on

July 26th. The applicant has been made aware that the location of the on-site notification panel is not sufficiently visible from the street. We apologize for the delay and look forward to presenting our Zoning application at the next meeting of the Zoning Board on July 26th. Thank you for your time and attention to this matter. Very truly yours.

So, on the request to continue this matter until July 26, 2012, on the condition that the Petitioner change the posting sign to reflect the new date, July 26th, and the time of seven p.m. And that the sign be clearly visible and maintained as per the requirement of Ordinance 10.421. And that any changes to the application now in the file be submitted by five p.m. on the Monday prior to the July 26th hearing.

CONSTANTINE ALEXANDER:

Mr. Chairman, just a question, how many

continued cases do we have on the 26th of July?

MARIA PACHECO: Just with that one, three.

CONSTANTINE ALEXANDER: With that one three. Okay.

BRENDAN SULLIVAN: And we could inform Mr. Hope that Chairman Sullivan made the recommendation.

All those in favor of continuing the matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(A short recess was taken.)

(8:00 p.m.)

(Sitting Members: Brendan Sullivan,  
Constantine Alexander, Timothy Hughes,  
Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will  
hear case No. 10285, 3 Gold Star Road Court.

ATTORNEY JAMES RAFFERTY: Good  
evening, Mr. Chairman, members of the Board.  
For the record, James Rafferty appearing on  
behalf of the Applicant Nelson Oliveira.  
Mr. Oliveira is seated to my right.  
O-l-i-v-e-i-r-a.

This is an application to do some slight  
modifications to a two-family house on Gold  
Star Road Court which is a small street off  
of Gold Star Road in North Cambridge.  
Essentially what the Applicant is looking to

do is to modify the roof line. And in doing so he is not changing the GFA. And I'm trying to come up with a photo that best reflects the existing condition elevation. It probably reflects the fact that the roof line reads almost like an L. The last third of the roof you step down into the kitchen on the second floor. It has low ceilings. And what Mr. Oliveira wishes to do as depicted in the elevation, is to bring that roof line across, so it has a consistency of the entire apartment on the second floor has a consistent ceiling height. That actual work is really not the subject of the relief. There really isn't any GFA implication.

What's before the Board is a setback issue on an external staircase that's being introduced and also some windows on a non-conforming wall.

CONSTANTINE ALEXANDER: Isn't there a balcony going to be added, too? Does that

require relief?

ATTORNEY JAMES RAFFERTY: The balcony is in the setback area, too. It doesn't require GFA because --

CONSTANTINE ALEXANDER: Right, it's on the setback.

ATTORNEY JAMES RAFFERTY: -- it's on the second floor.

So the balcony is in the second floor. There is a balcony, however -- a deck at the lower level that is already into that setback area.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So there's been a modification to the plan that was filed which shows that the external circular staircase has actually been moved more to the middle of the house. And if you look at the site plan, you'll see that the lot line is not at a 90-degree angle. So the relocation of the stairway actually makes it

more conforming, because as you move in that direction along that plane of the house, you're getting greater setback.

BRENDAN SULLIVAN: Okay, so there are two sets of drawings here dated 5/15.

ATTORNEY JAMES RAFFERTY: Right.

The date unfortunately recently was rediscovered that the dates did not change. So the operative drawing, the one that was filed on the Monday is --

BRENDAN SULLIVAN: So this one.

THOMAS SCOTT: There's no date on this one. Well, it says 5/15, but it's not stamped in.

ATTORNEY JAMES RAFFERTY: Right.

So I've asked Mr. Oliveira to confirm which -- they both have the 5/15 date, and I apologize for that confusion.

BRENDAN SULLIVAN: This will make it easier. This one is not correct?

NELSON OLIVEIRA: Not correct. The

correct one is kitchen here.

BRENDAN SULLIVAN: Okay. Let me void.

ATTORNEY JAMES RAFFERTY: So what led to the change --

THOMAS SCOTT: But you know what, this packet doesn't have the existing condition elevations in it and that packet does.

ATTORNEY JAMES RAFFERTY: That's correct.

THOMAS SCOTT: We should add the existing condition elevations to this packet.

BRENDAN SULLIVAN: It's just a floor plan changes.

ATTORNEY JAMES RAFFERTY: Floor plan and the elevation. The proposed elevation. But to Mr. Scott's point the existing elevations --

THOMAS SCOTT: You need this sheet

added to this packet right here.

ATTORNEY JAMES RAFFERTY: Correct.

THOMAS SCOTT: Existing, because it doesn't exist. This is just proposed.

There's nothing to compare this to. So that sheet we don't need. This one we do.

ATTORNEY JAMES RAFFERTY: We do need existing.

THOMAS SCOTT: Now you can compare this comparison.

ATTORNEY JAMES RAFFERTY: Right. That's correct. So as you look at the roof line, you can see what's being accomplished in the house in what's happening.

NELSON OLIVEIRA: And the kitchen.

CONSTANTINE ALEXANDER: This is existing that's proposed.

THOMAS SCOTT: Proposed.

ATTORNEY JAMES RAFFERTY: So in the current configuration, you step down two steps from the living room into the kitchen

which is somewhat of an awkward layout. So that's happening. So the stairway -- external stairway and the balcony are being added. They are occurring within the setback, but it is an unusual lot because if you look at the Assessor's plan, the lot runs front to back. So there's Gold Star Road Court, but then the back -- what would traditionally be the backyard and what feels like the backyard, actually extends to -- and the name of the street is escaping me at the moment.

BRENDAN SULLIVAN: Washburn?

ATTORNEY JAMES RAFFERTY: Yes. If you look at the Assessor's --

CONSTANTINE ALEXANDER: What's the size of the lot? 2,000 or so feet.

BRENDAN SULLIVAN: 2412.

CONSTANTINE ALEXANDER: 2412, okay.

ATTORNEY JAMES RAFFERTY: 2412, yes. The -- but it's surrounded by 1600,

1600, 2100.

CONSTANTINE ALEXANDER: It's a very dense neighborhood. That's my point.

ATTORNEY JAMES RAFFERTY: Right.

So the, there are two setbacks. So the area we're talking about in the setback is the area on Washburn. And while it technically is a front setback, it is very much in its appearance and function the back of the house. And it's -- it operates as a rear yard.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The rear yard of the house has a Gold Star Road address. And in this area here, this, the rear stairway is being introduced. And off the bedroom a small balcony is being introduced to give some light and air.

Is there a kitchen or the bedroom the balcony?

THOMAS SCOTT: It's a bedroom.

CONSTANTINE ALEXANDER: Why does a balcony give light? A window gives the light.

ATTORNEY JAMES RAFFERTY: A bigger opening.

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY JAMES RAFFERTY: A bigger opening.

CONSTANTINE ALEXANDER: You can have an opening without a balcony.

NELSON OLIVEIRA: The balcony is necessary for the step out to get to the stairway.

CONSTANTINE ALEXANDER: But I guess my question is is that a small lot, dense neighborhood, why should we allow a balcony which would intrude upon the privacy of abutters to be built? What's the need for the balcony other than a nice amenity?

ATTORNEY JAMES RAFFERTY: Well, the balcony is a dual function; it provides the

access to the stairway. And then since he was constructing a --

CONSTANTINE ALEXANDER: Is there an internal stairway? I mean, from a code point of view, why do you need a stairway?

NELSON OLIVEIRA: Because the stairs there right now don't meet code. Only about 21 inches wide, and they don't have the height either.

CONSTANTINE ALEXANDER: You can't make it code compliant, the internal one right now, you have to go external?

NELSON OLIVEIRA: Have to go external.

BRENDAN SULLIVAN: Well --

THOMAS SCOTT: You can't put that stair inside the house?

CONSTANTINE ALEXANDER: Yeah.

NELSON OLIVEIRA: It's not easy without --

BRENDAN SULLIVAN: But you don't

have to bring the existing stairway up to code because it's grandfathered in.

NELSON OLIVEIRA: Well, it's most people to go up and down the stairs, and my height cannot go up and down stairs.

ATTORNEY JAMES RAFFERTY: It's a very compromised --

BRENDAN SULLIVAN: No, what I'm saying is you're not required to build the rear spiral staircase to comply with the code.

ATTORNEY JAMES RAFFERTY: I think that's technically correct.

BRENDAN SULLIVAN: It's because you're taking -- you're capturing some of the space that is now occupied by the internal stairway as living space, and hence that then does away with the internal stairway and so then you're pushing the stair, the exit to the outside. You're capturing some of the interior space for living space.

NELSON OLIVEIRA: And by doing that move the stair outside and also what I do to compensate --

BRENDAN SULLIVAN: But I mean is that true?

ATTORNEY JAMES RAFFERTY: Well, yes, that is factually accurate --

NELSON OLIVEIRA: This is true, but --

ATTORNEY JAMES RAFFERTY: -- and it does so -- it's fair to say that it accomplishes multiple purposes. It allows for reorganization of the floor plan, but it also provides for a more compliant staircase.

NELSON OLIVEIRA: By doing that we make the deck smaller. Right now the deck is big. We make the deck -- we shrink the size of the deck as well.

ATTORNEY JAMES RAFFERTY: In the area where this proposed circular stairway is going there is a second floor deck currently

that's being -- a portion of it is being removed. It doesn't go down to the ground, but this is not a new introduction into the setback area. The setback is already --

CONSTANTINE ALEXANDER: Is it a second floor deck? I thought it was just an overhang on the first floor.

NELSON OLIVEIRA: It's not second floor. It's just up a little bit, you know.

ATTORNEY JAMES RAFFERTY: Oh, you mean it's on the first floor? I apologize.

THOMAS SCOTT: Yes, there's a deck here. There's nothing up here.

ATTORNEY JAMES RAFFERTY: Right. But on the existing condition, the ground floor deck is being reduced. That's also in the setback.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So it's a new incursion at the second floor level, but at the ground floor the footprint of the deck,

the stairway is within the footprint of the current first floor deck.

Thank you.

BRENDAN SULLIVAN: Because you have to remove part of the staircase -- I'm sorry, you have to remove part of the deck in order to have the spiral staircase to come down on land someplace.

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: Okay, so you're substituting one footprint for another.

CONSTANTINE ALEXANDER: Except the new -- it's on the second floor. The impact on abutters is greater when you're intruding with the setback, to me, on the second floor as opposed to the first floor.

BRENDAN SULLIVAN: Yes.

What's the purpose of renovating the house?

NELSON OLIVEIRA: Better function. Function better.

BRENDAN SULLIVAN: But I mean, are you going to live there? Are you going to develop it and flip it?

NELSON OLIVEIRA: I'm not going to flip it.

CONSTANTINE ALEXANDER: Do you live there now?

NELSON OLIVEIRA: No.

CONSTANTINE ALEXANDER: You don't live there now.

NELSON OLIVEIRA: I don't live there right now.

It just going to be a rental place.

CONSTANTINE ALEXANDER: The reason I think -- if I may, Mr. Sullivan, the reason where the questioning is going is that, you got to establish a hardship. Your hardship, it sounds more and more to me like the property's not as valuable as it could be from a dollar and cents point of view if we allowed to you do what you want to do. And that is,

as Mr. Rafferty can tell you, is not a hardship that satisfies the requirements for a Variance.

ATTORNEY JAMES RAFFERTY: Well, Mr. Chairman, I would say that what's occurring here is not unlike many situations where an older home which has not had renovation in many years is being acquired by a new owner and being rehabilitated, renovated, and in the context of the renovation the ceiling heights are being adjusted and the egress is changing. So like most Variances, it will provide greater efficiency, and I suspect one can conclude it's providing greater value. But I think if it was just a focus on value, I think the raising of the roof and the clearing of the room would probably create the same amount of value. But, the egress issue, and it's only a setback. And I would say if this was, if this was a GFA question, I would respectfully

suggest that that's the case -- and I often advise clients don't buy a house with a certain type of GFA and presume you can come here in front of the Board and get additional GFA.

The rear yard here is really a front yard. So the setback requirement is at 15 feet. And it has two front setbacks, although Washburn Ave. feels very much like the back of the house, so it's burdened with two setbacks. So we're in an area where there's already a ground floor deck that's in the back of the house. We're not aware of any privacy concerns expressed by neighbors. Mr. Oliveira has been in communication with neighbors. And the second floor stairway does have an element of the deck, but it's modest. I think it's probably -- could accommodate a chair and perhaps not even a table. And it was deliberately constrained, mindful of the Board's concern, that

something like this should not be excessive or create problems.

So the hardship is related to the fact that the property does have these two setback requirements, and the rear yard requirement here is really treated as a front yard requirement.

CONSTANTINE ALEXANDER: But not to badger you and maybe take up too much of the Board's time, but the fact of the matter is the house is habitable now. It's a two-family house. It's been used as a two-family house. It's not like if we don't grant you relief, you can't use the house.

ATTORNEY JAMES RAFFERTY: Right. But with all due respect, I don't mean to interrupt. That's never been a standard if something is habitable, it therefore wouldn't qualify for Variance. We're not claiming the house isn't habitable.

CONSTANTINE ALEXANDER: What's the

hardship then? I have to go back to the hardship.

ATTORNEY JAMES RAFFERTY: The hardship is in order to create a more code compliant egress and a more organized floor plan. And that's all --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: I understand your point, but I don't think the suggestion that it's -- we're not here saying the hardship is the house is unusable without the stairway. There's an efficiency to the floor plan and there's a greater way to egress the property, and there's health and safety benefits associated with it. The tradeoff is that we're now in an area where there is existing intrusion to the setback. It's somewhat modest. It's probably within four feet of what's permitted, and we're asking for the relief for the setback for that specific reason, and then the Special Permit

relief relying -- involves the relocation of the windows. But there's no GFA being asked.

BRENDAN SULLIVAN: I'm just not a big fan of exterior spiral staircases.

THOMAS SCOTT: And neither am I. And I think this could be solved with an interior stair if there was some more thought given to the plan. I think the spiral is just -- it's kind of a quick and easy fix to a solution to gain more square foot area within the house, when in fact it's always functioned with two interior stairs. And now you're taking one of those away and saying well, okay, we'll just stick it on the outside of the house and I think that's just very insensitive.

NELSON OLIVEIRA: Because this stair is not function. At the moment it doesn't function.

THOMAS SCOTT: I agree, it doesn't function but it can be rebuilt. It can be,

the opening can be reframed and --

NELSON OLIVEIRA: We can move the side deck... (inaudible).

ATTORNEY JAMES RAFFERTY: It sounds like that the concern is the --

BRENDAN SULLIVAN: Well, it's pushing, it's pushing what is interior element outside and it's a very tight neighborhood. As Mr. Alexander alluded to, I went there and I walked around the site -- and, you know, I'm looking at these other houses here, and I'm saying boy, I tell you if that roof line gets pushed out, this thing gets pushed out, it's massing, it's just way, way too much massing. And, you know, it is what it is. I mean, you bought what you bought. And, yes, the proposal would enrich the liveability and the environments of the house and what have you, but at the expense I think of pushing interior elements out. But I don't know. We'll see

how it goes.

Any questions?

CONSTANTINE ALEXANDER: No more questions.

JANET GREEN: Can I just ask about the size of the deck that's going to be on the second floor and what it actually looks at?

ATTORNEY JAMES RAFFERTY: It's right here. Maybe you can just describe.

NELSON OLIVEIRA: We can cut the deck back and just put the stairs only.

(Discussion between Mr. Oliveira and Mr. Rafferty.)

ATTORNEY JAMES RAFFERTY: Okay.

The applicant is suggesting that he could improve the setback -- the existing setback with the deck by reducing the size of the existing deck further than he was proposing. So it would have less intrusion. And that he could also not have the balcony component of the stairway such that the

relief would be solely related to the stairs themselves with regard to that setback. And that he could create a counter balancing amenity by scaling back the ground floor deck. And the ground floor deck currently is within the setback area. And this as you can see, the yard, this area here which really does function as the rear yard, it -- that, this is the portion that's balcony and that's the portion that's stairs.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: That was seen as a -- it's a -- it's less relief, but I understand the issues as stated by the Chair.

BRENDAN SULLIVAN: I'm not sure if your question was answered.

JANET GREEN: Yes. Well, it wasn't answered in feet, but I'm looking at the picture here I could tell. But without that you can see it's quite different, there

wouldn't be any view on the neighbors.

ATTORNEY JAMES RAFFERTY: But what the Petitioner is suggesting in light of the comments of the Board is that he's prepared to modify, to remove the balcony portion and have the relief apply only to the deck so that the -- it would only be a door out to the stairs. So this area here that you had inquired about could be removed entirely so that the privacy question would not be an issue.

BRENDAN SULLIVAN: Okay. Any other questions?

JANET GREEN: No, that's fine.

BRENDAN SULLIVAN: And you're good for right now?

TIMOTHY HUGHES: I'm good for now.

BRENDAN SULLIVAN: Okay, let me open it to public comment.

Is there anybody here who would like to speak on the matter at 3 Gold Star Road Court?

If you would please come forward, give use your name, please spell your last name for the record it's being recorded.

JOSEPH DOTY: Joseph Doty, D-o-t-y.

BRENDAN SULLIVAN: Mr. Doty, yes.

JOSEPH DOTY: It's all basically above the second floor that you're talking about. All right? There's no way anybody is going to live up there. I've lived up there for 44 years and the ceilings are so low you had to slice the cabinets to get the cabinets to attach it to the walls. All right? And if you're going to put brand new cabinets up there, you're going to have to do the same thing.

The bathroom is a fire trap. Okay?

And the back stairs, it's about, I'd say about this narrow going down. And you'll kill yourself going down there if there ever was a fire. I'm not sticking up for him or anything like that. I got -- my wife and I

got problems. We can't do any work to the house at all. I can't even do any yard work to the house on it. So I'm just, you know, sticking up for him, I'm telling you people the truth about the second floor, kitchen and bathroom, and the back stairs.

There's a step going into the kitchen from the living room going down to the kitchen, that has to be levelled off and brought the ceiling up to level, bring it up higher.

BRENDAN SULLIVAN: Floor to ceiling in the kitchen now is roughly how much?

JOSEPH DOTY: What's that?

ATTORNEY JAMES RAFFERTY: What's the ceiling height in the kitchen now?

BRENDAN SULLIVAN: Floor to ceiling in the kitchen now is roughly what dimension?

ATTORNEY JAMES RAFFERTY: How high would you estimate.

MAUREEN DOTY: You could stand there

and touch it with your hand.

JOSEPH DOTY: You can touch it with your hands.

BRENDAN SULLIVAN: So it's seven feet maybe?

JOSEPH DOTY: No, it's not even seven feet. It might be five-ten, five-eleven.

MAUREEN DOTY: A little bit more than that, Joey.

JOSEPH DOTY: I'd say six, six feet at the most motion.

BRENDAN SULLIVAN: All right. But that's not part of the relief. I mean, he could do that as part as of right.

ATTORNEY JAMES RAFFERTY: That's correct. But it does illustrate the constraints in the area. So then when you think about relocating the stairs, then it's a constrained --

JOSEPH DOTY: What I'm saying is

you're never gonna put modern cabinets in that kitchen.

BRENDAN SULLIVAN: Right.

JOSEPH DOTY: You're going to have to get junk cabinets or get morning cabinets and slice them on the back and put them up there.

BRENDAN SULLIVAN: Okay.

JOSEPH DOTY: And the stairway's the same way and the bathroom. The bathroom is probably put two tables together and that's about it what you got for a bathroom right now.

THOMAS SCOTT: His proposal is to raise the roof in that area.

JOSEPH DOTY: I realize that. That would be the best thing to do and then you could put morning cabinets in there, and the thing would look 100 percent better. It would take care of the bathroom, it would take care of the back stairs, and everything else

down there.

MAUREEN DOTY: In the house next-door has a third floor on it. So, you know, it's not that we're going out and, you know, adding more. He's just going level with what's already there.

THOMAS SCOTT: I don't have any problem with him adding --

MAUREEN DOTY: And the balcony on the back, I mean, the little one there, I mean, next-door she has a balcony. She has a deck on her second floor and her stairs come out down the back right next-door to me. So....

BRENDAN SULLIVAN: Okay, good. Thank you.

CONSTANTINE ALEXANDER: Thank you very much.

BRENDAN SULLIVAN: Is there anybody else who would like to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance and there is no correspondence in the file. I will close public comment.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Well, Mr. Chairman, as noted, for the record we would like to amend the Petition to not seek relief for the second floor balcony in the setback. It is not critical to the stairway. There was some added benefit associated with it, but in light of the comments, we would ask that the Board consider the application to apply in terms of the setback relief, merely for the introduction of the proposed spiral staircase.

BRENDAN SULLIVAN: All right.

ATTORNEY JAMES RAFFERTY: And the hardship is related to the existing structure, the substandard condition of the existing egress as testified to by one of the residents of the property.

BRENDAN SULLIVAN: All right, I'm not convinced that you can't correct that internally. I just do not like exterior spiral staircases and the appearance that they give. And the imposition I think on the surrounding properties. That's my view anyhow.

THOMAS SCOTT: I'm -- I mean, I'm in favor of, you know, what you're doing with raising the roof, but I'm much not in favor of this spiral stair being external to the house. I think there's got to be a solution where you can frame a stairway in that house. There was a stairway in there once, and I know it wasn't code compliant. But I'm sure that it could be worked into the plan. You know, some space may get sacrificed slightly, but --

BRENDAN SULLIVAN: Existing here and here.

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: Gus, what are your thoughts?

CONSTANTINE ALEXANDER: Well, my principal problem with the petition was the balcony and the intrusion into setbacks. And you've withdrawn that from the plans which make me feel good about it. I'm not a fan of external staircases, spiral staircases, I must say. On the other hand, I am a fan of getting rid of non-compliant stairs. So I want to come up with an answer that will comply with building code with regard to stairs. If the only way to do it would be a spiral staircase, I would vote in favor of it. I'm not convinced that there's not an internal solution which would be a matter of right to do it. Yes, it would take away some living space, but, but --

JOSEPH DOTY: If you don't believe us, you should come up and look at it yourself on this.

CONSTANTINE ALEXANDER: I believe it. I want him to redo the staircase to make it code compliant. There's no question. I'm not sure that the spiral staircase is really the great solution to the problem.

JOSEPH DOTY: Well, I don't know what he's got planned for it, but I'm just telling you what's there right now.

CONSTANTINE ALEXANDER: I guess bottom line is unless I hear more testimony that convinces me that the only way to have code compliance is to have an external staircase, I'm not going to vote in favor of the petition.

BRENDAN SULLIVAN: Okay. Tom, what's your thought?

THOMAS SCOTT: Well, I'm definitely against the spiral stairway being external. I'd rather even see a more traditional staircase that even like a switchback style staircase that could be external to the

house. It will look better and be more in conformance with the architecture of the house. I just think that the spiral staircase, you know, is not a good aesthetic solution, and where it's in a setback I'm having a -- I'm having trouble.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I feel similarly about the spiral staircase, but for different reasons. That's not aesthetics as far as I'm concerned. It may very well be code compliant, but I don't think it's an easy way to maneuver yourself outside of a building in an emergency even. If it is code compliant, it just seems to me that it's not the best way to do it. If you're going to encroach on a setback, why not go with a more traditional staircase. I would almost rather see them bump the building another foot or so just to get the staircase inside. If there's an encroachment on the setback already, you

know, there are other ways to do this then just take tacking a spiral staircase on the back of the house.

BRENDAN SULLIVAN: Janet, what's your thought?

JANET GREEN: You know what, I'm going to agree with what Tim said. It's not a neighborhood of -- it's a neighborhood with a lot of different kinds of architecture. I don't think the look of this is particularly a problem, but I do think that a spiral staircase isn't very efficient other than it's just kind of an easy fix if you can attach it to the outside rather than having to go inside and do that work. But an inside staircase is definitely more preferable to that.

BRENDAN SULLIVAN: So....

ATTORNEY JAMES RAFFERTY: We're not expecting a happy outcome on the Variance at the moment, but I reviewed it with

Mr. Oliveira, and I think a more -- a larger external, more conventional staircase isn't particularly appealing I think, so I think in light of that I don't know if you wish to withdraw that portion of the application or suffer the indignity of a negative vote on your Variance.

NELSON OLIVEIRA: Well, just remove the section of the stairs. (Inaudible).

ATTORNEY JAMES RAFFERTY: So I think we would ask to at this point not pursue the portion of the application that seeks setback relief for the stair or the balcony, and ask the Board to act upon the Special Permit request associated with the windows.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: I don't see any Special Permit on the public advertisement. It just says Variance.

BRENDAN SULLIVAN: There's nothing about windows at all.

ATTORNEY JAMES RAFFERTY: Are those windows conforming walls?

NELSON OLIVEIRA: The windows are not conforming walls.

TIMOTHY HUGHES: That doesn't look like it was advertised.

ATTORNEY JAMES RAFFERTY: We may need to continue for another reason. The windows, the changed windows weren't in the plan. We didn't advertise for the changed windows that showed up in the plan.

NELSON OLIVEIRA: Raise the roof line?

ATTORNEY JAMES RAFFERTY: Raise the roof is as of right. You don't need the Zoning. So I think what happened is the window change occurred in the Monday submittal.

CONSTANTINE ALEXANDER: If I may, Mr. Chairman, if you're going to come back, you're going to have to advertise for a

Special Permit it sounds like; right?

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: I would prefer that we not vote on the Variance then tonight.

ATTORNEY JAMES RAFFERTY: That would be my preference as well to avoid repetitive --

CONSTANTINE ALEXANDER: Not that it's repetitive. But I also want to do it all at one time, all in one package. If we did give a Variance tonight and have to worry about a Special Permit later.

ATTORNEY JAMES RAFFERTY: So we'll probably file a successor case tomorrow for the windows and then withdraw the Variance case after the window case was acted upon.

BRENDAN SULLIVAN: So what I hear is a request for a continuance of this matter?

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: Okay. On a

motion then to continue this matter, case No. 10285, 3 Gold Star Road Court to allow the Petitioner some additional time to reconsider comments by the Board, possible alternative plan, and/or some additional relief which may be required and not requested at this time. On the condition that we continue to be...probably quickly I would think. Oh, yes, New cases are when?

MARIA PACHECO: We are advertising for August 23rd, but this is case heard and Gus can't be there.

CONSTANTINE ALEXANDER: Maybe it won't make a difference to you, but the 23rd I don't think I'll be here so on this continued case.

ATTORNEY JAMES RAFFERTY: Right, but I would anticipate that the continued case is not going to fair well. So we could, we could do the new case. So I appreciate it, but I think we would proceed notwithstanding

your availability of one of the members if that's okay.

BRENDAN SULLIVAN: So we'll mark August 23rd for this particular case.

So, again, regarding the motion is to continue this matter until August 23, 2012, at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date and time. Also maintain the posting sign as per the requirements of the Ordinance, and that any additional changes to the application now in the file be in the file -- be submitted in the file by five p.m. on the Monday prior to the August hearing.

Anything else? All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of continuing.

ATTORNEY JAMES RAFFERTY: Thank you very much.

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

BRENDAN SULLIVAN: So this matter is  
continued and it's a case heard.

(8:35 p.m.)

(Sitting Members: Brendan Sullivan,  
Constantine Alexander, Timothy Hughes,  
Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: Mr. Sousa.

ATTORNEY RICARDO SOUSA: Good  
evening, Mr. Chairman.

BRENDAN SULLIVAN: Are you aware of  
the Planning Board report?

ATTORNEY RICARDO SOUSA: Yes, I am,  
Mr. Chairman. I just received it today.

BRENDAN SULLIVAN: Okay. The Board  
will hear case No. 10286, 10 Fawcett Street.

Mr. Sousa.

ATTORNEY RICARDO SOUZA: Good  
evening, Mr. Chairman, members of the Board.  
Once again for the record, Ricardo Sousa on

behalf of the applicant Sprint Spectrum, L.P. This is a continued effort by Sprint to modernize its network. It is in the process of a project called Network Vision where it's streamlining its network, taking out some old antiquated antennas and replacing them with new antennas that are multimode.

Essentially they operate voice network and a data network at the same time. Nice, efficient service. In addition to that their new cabinets will allow for the need for more capacity, simply adding more radios to that cabinet rather than adding more antennas. Nice, efficient upgrade.

The nature of the three applications that are before you tonight is that they are existing installations on buildings and we are simply replacing those antennas, the old antennas, with new ones. With respect to 10 Fawcett Street, I have some photo simulations if you'd like. However, I can also point

them out here.

CONSTANTINE ALEXANDER: Mr. Sousa, your application says on your advertisement, I guess, your application, it says you're gonna replace three -- I'm talking about Fawcett Street.

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: Three existing antennas with three updated antennas together with adding six remote radio heads. So that's new, sounds like, and replacing -- another replacement, but adding six remote radio heads.

ATTORNEY RICARDO SOUSA: Correct.

CONSTANTINE ALEXANDER: When I looked at the photo sims to my untuned eye before and after they look identical. Where are these radio heads? Are these so small you can't see them?

ATTORNEY RICARDO SOUSA: They are. They are one by one so they are base of the

penthouse so that you can't see them.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: Our goal is to try install them in a way so that they're not visible to the public. We can attach them up to 10 to 12 feet away from the antennas with jumpers and so that's what we try to do.

CONSTANTINE ALEXANDER: You're representing though throughout Fawcett and the other two cases that you will not be able to see them from the public way?

ATTORNEY RICARDO SOUSA: That's correct.

CONSTANTINE ALEXANDER: And are you also going to replace an existing equipment cabinet? Is the new one identical in size to the old one or what, is it smaller or bigger or what?

ATTORNEY RICARDO SOUSA: It's almost identical. And with respect to 10

Fawcett Street, it's an equipment platform that you cannot even see from the --

CONSTANTINE ALEXANDER: I couldn't see it from the photo sims.

ATTORNEY RICARDO SOUSA: That's correct. I can show you with respect to the building itself, this is a visual of the building. And if you'd like individual plans or photo sims, this shows the layout, the roof layout. And this is the penthouse here, which you can see is yellow. And at the base of the penthouse, just as you're coming out of the door, out of the penthouse, there's a steel platform there. And we're not expanding the steel platform in any way, we're taking out a new cabinet and putting in the new one and so it will not be visible to the public.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: And so these are some photo simulations that we've

prepared that show different viewpoints. For example, from this viewpoint you can't see the antennas at all in the penthouse. And according to the Planning Board, this was really the most sensitive side of the building from an architectural standpoint and we're not affecting that side in any way.

Here's another view. This is sort of the middle or the main entrance to the building.

CONSTANTINE ALEXANDER: These are the same photo sims that are in our files?

ATTORNEY RICARDO SOUSA: They are. They are the same ones. We made sure there were no replacements. And these are the same ones presented to the Planning Board on Tuesday night as well.

And so as you can see here, these are two panel antennas here as well. One is utilized by Clearwire and one is utilized by Sprint. We're taking out the Sprint one,

which is the CDMA antenna and we're replacing it with a new modern antenna. Those are going to be facade-mounted and painted to match.

One of the comments by the Planning Board was that we make an effort to make sure that the antennas themselves do not protrude above the roof line of the penthouse. We will make that change. According to the plans, it doesn't appear as though they do. It doesn't appear as though the antennas actually do extend beyond the roof line, but I think from the ground, the visual is in fact the case, that it appears to extend beyond the roof line. So we're going to lower those by six inches.

CONSTANTINE ALEXANDER: You're going to lower those from what you're proposing?

ATTORNEY RICARDO SOUSA: That's correct. We made that presentation to the

Planning Board on Tuesday night.

And this is another viewpoint from here. This is the viewpoint when you're actually walking out from the roof. And once again two more antennas. We're replacing one and replacing it with a new one.

And so it's a total of three antennas that we're replacing with three new antennas. They are multimode. They are one foot longer than the current antennas, however, they are panel antennas and they are essentially, essentially the same. And this will allow Sprint to really modernize its network and make it much more efficient for consumers.

BRENDAN SULLIVAN: The anchoring -- are flush mounted?

ATTORNEY RICARDO SOUSA: They are flush mounted. We try to get as close to the facade as possible, Mr. Chairman.

BRENDAN SULLIVAN: I'm looking at

A3. Is that --

ATTORNEY RICARDO SOUSA: That's a standard representation of a pipe mount. The representation is that we've made in the past is that we will not utilize pipe mounts in Cambridge. We will utilize what's called low clearance brackets. But that's a standard spec that's put into plans.

BRENDAN SULLIVAN: Yes, okay.

ATTORNEY RICARDO SOUSA: And in fact, Mr. Chairman, that page that you have on your finger right now shows the actual mount.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: So for purposes of our case we can propose a condition of the nature of the mounts?

ATTORNEY RICARDO SOUSA: You can, Mr. Alexander. In fact S-1 shows the actual mount that we will be utilizing which are two mounts rather than a pipe. That's an actual

detail.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: And that Detail 2 actually shows where the mount is below the existing roof --

ATTORNEY RICARDO SOUSA: Correct.

BRENDAN SULLIVAN: -- line?

ATTORNEY RICARDO SOUSA: Correct.

BRENDAN SULLIVAN: Okay. Actually even Detail 1, it shows the pipe and it's more detailed.

ATTORNEY RICARDO SOUSA: Right.

BRENDAN SULLIVAN: It shows the mount is above the existing roof, so via pipe.

ATTORNEY RICARDO SOUSA: We can make a representation that it will not be a pipe mount.

BRENDAN SULLIVAN: Yes, Detail 1, you see that?

ATTORNEY RICARDO SOUSA: Yes.

BRENDAN SULLIVAN: That just needs

to slide down.

ATTORNEY RICARDO SOUSA: Correct.

BRENDAN SULLIVAN: Which is easy to do. And so Detail 2 will sort of rule the day.

ATTORNEY RICARDO SOUSA: Yes.

BRENDAN SULLIVAN: Detail 2 actually conflicts with Detail 1, does it not?

ATTORNEY RICARDO SOUSA: Yes.

BRENDAN SULLIVAN: So Detail 2 on Sheet S-1 would be the governing installation?

ATTORNEY RICARDO SOUSA: Correct.

BRENDAN SULLIVAN: Okay.

ATTORNEY RICARDO SOUSA: We would be happy to have that as a condition as well, and more specifically stated in any decision.

BRENDAN SULLIVAN: Yes, so stated.

Okay. Let me just go through some pro form an stuff here.

ATTORNEY RICARDO SOUSA: Of course.

BRENDAN SULLIVAN: Under Section 4.32G footnote 49; the applicant complies with the wireless application provision as set forth in the aforementioned section.

The Board finds that pursuant to Section 4.32G of the Ordinance the Applicant's proposed use for wireless communication facility in the 01 Zoning District is permitted by Special Permit.

The Applicant's proposed facility further complies with the provisions set forth in 4.32G footnote 49 of the Ordinance.

The Board of Zoning Appeal shall consider the scope of or limitations imposed by any license secured from any state or federal agency having jurisdiction over such matters.

Enclosed in the application is the Applicant's FCC license, and the Applicant meets all requirements imposed by

governmental authorities having jurisdiction over the proposed facility, including by the FCC to provide wireless communication in this market area.

The Board shall consider the extent to which the visual impact of the various elements of the proposed facility is minimized to the use of existing mechanical elements on the building's roof or other features of the building as support and background through the use in materials that in texture and color blend with the materials to which the facilities are attached or other effective means to reduce the visual impact of the facility on the site.

And as mentioned, sheet S-1 Detail 2 shall rule the installation.

The Board finds that the Planning Board and their recommendation shall be part of this finding.

That the Planning Board reviewed the

proposal to replace the existing antenna with ones that are slightly longer as well as the associated equipment.

The Planning Board has no objection, but does recommend that if the Board of Zoning Appeal grant the Special Permit, the plans be amended to lower the antenna so they do not project above the roof line and break the plane of the parapet. And that the color be matched to the facade and maintained over time to address the issue of fading and weathering. That issue has been aforementioned dealt with.

The Applicant's design minimizes the visual impact of the proposed facility, and where it's proposed to erect such a facility in any residential Zoning District, the Board finds that this is in an Office 1 Zone and as such that requirement does not apply.

Okay, so we got that pro forma out of the way.

All right. Any questions by the Board at this particular time?

Let me open it to public comments. Is there anybody here who would like to speak on the matter of 10 Fawcett Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance. I'll close the public comment part.

Anything else to add?

ATTORNEY RICARDO SOUSA: Nothing else to add, Mr. Chairman. I would just respectfully request that the Board grant the Special Permit being requested.

BRENDAN SULLIVAN: Okay. Let me make a motion, then, to grant the Special Permit to replace three existing panel antennas with three panel updated panel antennas on the same mounts together with adding six remote radio heads and replacing one equipment cabinet to the Applicant's

existing and previously approved wireless communication facility currently operating on the rooftop of the building at 10 Fawcett Street.

The Board finds that the Applicant complies with the Special Permit criteria set forth in Section 10.43.

The requirements of the Ordinance can be met.

The Applicant has met the requirements as set forth in Section 4.32G footnote 49.

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

The Board notes the existence of existing telecommunication equipment up there, and as such no detrimental affect to traffic or pattern of access or egress have occurred.

The Board finds that continued

operation 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 Board would offer that the continued operation on development of adjacent uses would be enhanced by the addition of upgraded facilities at this location.

The Board finds that there would not be any nuisance or hazard created to the detriment of the health, safety, and/or welfare of the occupants of the proposed use or to the citizens of the city. In fact, the Board finds that the operation of an updated communication facility at this location would enhance the public welfare.

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

Anything else you want to add?

TIMOTHY HUGHES: You want to reference that Detail on S-1?

BRENDAN SULLIVAN: That sheet S-1, Detail 2 would be the preferable and the required installation. And the comment by the Planning Board shall be incorporated as conditions of --

CONSTANTINE ALEXANDER: We want to say the usual, they'll maintain the mounts and further, that if they abandon the use of them, that they'll remove them, the usual vote on that.

BRENDAN SULLIVAN: So said.

CONSTANTINE ALEXANDER: You want more specific text or do you have it? You have what you need?

ATTORNEY RICARDO SOUSA: I understood what you said, Mr. Alexander.

CONSTANTINE ALEXANDER: She's got to get it in the record, though.

BRENDAN SULLIVAN: Anything else to

add?

All those in favor of granting the  
Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

ATTORNEY RICARDO SOUSA: Thank you  
very much.

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

(8:45 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green.)

ATTORNEY RICARDO SOUSA:

Mr. Chairman, the next application is 1420-1440 Massachusetts Avenue. I'm not sure if you wanted to call it, Mr. Chairman, or should I just jump in.

BRENDAN SULLIVAN: Just jump in any time.

The Board will hear case No. 10287, 1430 Mass. Avenue.

Mr. Sousa.

ATTORNEY RICARDO SOUSA: Once

again, for the record Ricardo Sousa on behalf of the applicant Sprint Spectrum.

As part of a modernization program, we are upgrading this installation. This modernization project at this site actually involves removal of some antennas. And this application has been heard not only by the Planning Board last Tuesday, but also by the Historical Commission on June 7th. And both of those Boards recommended approval for this application primarily because we are removing some old antennas and modernizing the site.

CONSTANTINE ALEXANDER: And what you're going to add is like the other case, it won't be visible?

ATTORNEY RICARDO SOUSA: That's correct. That's correct. With respect to the remote radio heads, those will not be visible. The antennas themselves will be visible.

CONSTANTINE ALEXANDER: Obviously.

ATTORNEY RICARDO SOUSA: But they are installed in such a way that's acceptable to both the Planning Board and the Historic Commission. I can show you on some photo sims, but I think it does make sense for me to hand these out to you since you'll have them right in front of you. But if I can point them out on the board, I think that would be helpful as well.

And so the nature of this building is that it is in Harvard Square. There is a preservation easement on the facade itself, and that's why we have jurisdiction with the Historical Commission. If I could first, I'd like to just point out that with respect to the plans, all of the antennas are on a penthouse that's located at the top most of -- that's correct. The top most of the building itself. It's this grey penthouse that has vertical seam siding on it. And

there are currently a number of antennas there now. There are 12 antennas there now. And we actually are removing six antennas, which is a great benefit.

CONSTANTINE ALEXANDER: Can't remove the penthouse though?

ATTORNEY RICARDO SOUSA: We can't remove the penthouse. In fact, there's a preservation easement on it. We couldn't even if we wanted to, not that we want to. And I think one of the most important features was that the front of the penthouse has this round architectural element. If you look at these first, these middle two photos, and that round architectural element, we needed to make sure that we place the antennas on either side of that round element rather than in the middle, and that's what we've done. And as you can see from the first photo to the second photo, it is cleaner by removing some of the old CDMA antennas which are the

antennas that Sprint used to utilize. Now they're going to be utilizing a dual mode antenna that operates on both 1800 and 1900 megahertz. And so all of the work is being done around that penthouse itself.

The cabinet itself, the cabinets themselves are located on a much lower roof located here. Excuse me, here. And they are within a steel platform. We're not extending the steel platform in any way. We're simply taking out an old cabinet and putting in a new cabinet. And you can't see that from -- I apologize, with respect to the street. However, it's the street that goes to the Border Cafe and the theatre. That's the view that you would be able to see it from here, and you can't see it in there. And so once again this is a -- once again, a streamlining of an installation. I'd like more of these types of applications where we're removing some old antennas. Can't do

it in every case, but in this case we are able to remove some old antennas. And we think this is a benefit not only to Sprint but also to -- it conforms to footnote 49 of the Cambridge Zoning Code.

BRENDAN SULLIVAN: And the mounting is on A-4 in this application?

ATTORNEY RICARDO SOUSA: I'll turn to A-4.

That is once again a standard mount. And we are willing to stipulate to low clearance brackets once again, Mr. Chairman, and that the antennas do not extend beyond the roof line of the penthouse. We would be willing to stipulate to that once again.

BRENDAN SULLIVAN: Okay. So that will be a condition that on sheet A-4, detail 2 is not to correct mounting application, but instead that the antenna pipe mount obviously will be lowered not to extend above the penthouse roof, and that the bracket used is

a --

ATTORNEY RICARDO SOUSA: A low profile bracket.

BRENDAN SULLIVAN: -- a low profile bracket to be as flush as possible. Okay.

Anything else by the Board at this particular time?

Is there anybody here who would like to speak on the matter at 1430 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

I'll close the public comments part.

Just so pro forma again, the requirements to considering this application.

The Board finds that the Applicant complies with the wireless communication provision set forth in Section 4.32G, footnote 49.

The Board finds that it's our authority

that the Applicant's proposed use for a wireless communication facility in the BP Zoning District is permitted by Special Permit.

The Applicant's proposed facility further complies with the provisions set forth in Section 4.32G, footnote 4.

The Board shall consider the scope of or limitations imposed by any license secured from any state or federal agency having jurisdiction over such matters.

Enclosed is the Applicant's FCC license.

The Applicant meets all requirements imposed by governmental authorities having jurisdiction over the proposed facilities, including the FCC to provide a wireless communication in this market area.

The Board shall consider the extent to which the visual impact of the various elements of the proposed facility is

minimized through the use of existing mechanical elements on the building's roof or other features of the building as support and background. Through the use or in materials that in texture and color blend with the materials to which the facilities are attached or other effective means to reduce the visual impact on the facility of the site.

The Board notes the Planning Board letter. (Reading) The Planning Board reviewed the proposed Special Permit application to replace the existing antenna and has no objection to the proposal. The Planning Board feels that the antennas blend in with the details of the penthouse and use a symmetry of the facade very well. The Planning Board also supports the review of the Historical Commission in this location.

The Cambridge Historical Commission writes on June 19th (Reading) The property is located in the Harvard Conservation District

where exterior alterations visible from a public way are subject to review and approval. The application to alter the roof top antenna was approved on June 7th. See the attached Certificate of Appropriateness.

In the Certificate of Appropriateness the Cambridge Historical Commission finds that work described is not incongruous to the historic aspects or architectural character of the building or the district to alter existing wireless antenna installation by removing six existing CDMA panel antennas and installing three dual technology panel antennas, install six remote radio heads at the base of the penthouse. Work is to be carried out as indicated on the plan and elevations drawn by EBI Consulting, titled, "1420-1440 Mass. Ave., BS03XC031" and dated October 11, 2011.

Approval was granted on the condition that the color of the new antenna match the

color of the penthouse walls to which they are attached.

And then the letter -- and those conditions shall be part of this decision.

The Board is proposed to erect such a facility in any residential Zoning District. The Board finds that that requirement is not applicable.

Any other questions by Board?

CONSTANTINE ALEXANDER: Same as before, the removal -- maintain them and remove them if you stop using them.

ATTORNEY RICARDO SOUSA: If they're abandoned.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY RICARDO SOUSA: Sure.

BRENDAN SULLIVAN: I make a motion then to grant the Special Permit for the installation as per the application and the drawings contained therein to remove the existing nine panel antenna with six updated

panel antennas on the same mounts.

The Board notes that the mounts shall be low profile mounts together with adding six remote radio heads on the mounts and replacing two equipment cabinets to the Applicant's existing and previously approved wireless communication facility currently operating on the facade of the building.

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 neighborhood character.

The Board notes a letter of appropriateness from the Cambridge Historical Commission.

The Board finds that 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, the Board would find that the continued operations would be enhanced by the upgrading of 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 to the citizens of the city. And, again, the Board finds that there would be enhancement to the citizens of the city.

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

The Special Permit is hereby granted.  
All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

ATTORNEY RICARDO SOUSA: Thank you.

(Sullivan, Alexander, Hughes,

Scott, Green.)

(9:00 p.m.)

(Sitting Members: Brendan Sullivan,  
Constantine Alexander, Timothy Hughes,  
Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will  
hear case No. 10288, 284 Norfolk Street.

ATTORNEY RICARDO SOUSA:

Mr. Chairman, once again Ricardo Sousa on  
behalf of the Applicant Sprint Spectrum in  
connection with an application to upgrade the  
existing installation that Sprint currently  
operates on this building. I've submitted  
some photo simulations that depict the nature  
of the changes. However, what you'll see is  
that there are more antennas on this building

than just this application applies to.

Sprint currently operates three antennas on this building only. However, Nextel, which is the other affiliate of Sprint, operates another 12. It's, I would say public record that Nextel, that affiliate, has made a public statement that it is going to decommission the old iDEN Nextel network by the middle of next year. And so we've -- that part of the -- that part of the story is not a part of this application.

Those antennas are facade-mounted along the edge of the building itself, and so we're not proposing to touch those antennas in any way. What we are proposing to do is to modernize, take out the three existing CDMA antennas and replace them with the modern antennas that are dual band. Two of those antennas are located within stealth cannisters that are up on the roof. You can see them here. And after much work we have found a way to keep

the size of those cannisters the same. And so we're not going to expand the size of those cannisters in any way. We're just going to take out the old antennas and put the new ones in there. So there are two antennas located on two different stealth cannisters as you can see them from here and on this view as well. In addition to that there, is one panel antenna that's located on a stairway penthouse in the back of the building. That is located here. We're going to take out the old one and put the new one in. And in fact, the new one's going to be pushed further away towards the corner of the building. And so that's the extent of the changes themselves, and it's fairly straight forward. As I said, in the future I think you'll probably see the old iDEN antennas coming down, but that's not part of this application right now.

CONSTANTINE ALEXANDER: Mr. Sousa, unlike the other two cases, this is in a

residential district.

ATTORNEY RICARDO SOUSA: That's correct.

CONSTANTINE ALEXANDER: We've got to make additional findings. I think you should address them orally. And it says -- I'm reading from the Zoning Ordinance.

ATTORNEY RICARDO SOUSA: Sure.

CONSTANTINE ALEXANDER: We should grant a Special Permit to erect a facility in a Residential Zoning District only upon a finding that non-residential uses predominate in the vicinity of the proposed facility's location, and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

ATTORNEY RICARDO SOUSA: Yes, Mr. Alexander, I would state that footnote 49 of the Cambridge Zoning Code --

CONSTANTINE ALEXANDER: Right, that's what I'm reading from.

ATTORNEY RICARDO SOUSA: Exactly. Which sets forth the standards by which antennas can be installed in residential zones essentially requires us to state that the neighborhood in which the antennas are going to be installed are not -- is not predominantly residential. And I would state that if you look at the photo sims themselves, you can see that it is not a predominantly residential neighborhood. There clearly are residences that surround this building, but there are also a number of businesses, including the building itself, which are non-residential in nature. In addition to that, I would also point out the fact that there is an existing -- two existing wireless antenna installations on this building. They are currently being operated. They have been authorized by this

Board and by the City of Cambridge, and that we are simply proposing to upgrade that existing installation to a more modern installation.

CONSTANTINE ALEXANDER: The point you're making is that we've already made findings in past cases that this requirement for the Special Permit have been satisfied. The neighborhood hasn't changed. There are no high rise buildings built or whatever.

ATTORNEY RICARDO SOUSA: That's right, Mr. Alexander. That's a more eloquent way to say that. That's right.

And so we -- I would once again just echo that we feel that we satisfy footnote 49 in the Cambridge Zoning Code.

BRENDAN SULLIVAN: Okay. Any questions?

TIMOTHY HUGHES: I have a question. I kind of think the definition of stealth means that they don't stand out like a sore

thumb.

ATTORNEY RICARDO SOUSA: Yes.

TIMOTHY HUGHES: But your stealth elements on top of that building stand out like a sore thumb. Is there any way that those could be eliminated and you can facade-mount those antennas?

ATTORNEY RICARDO SOUSA: First of all, I think that, you know, that is a stealth element flues, faux flues have been a stealth element that have been utilized here in the City of Cambridge.

TIMOTHY HUGHES: Yes, but there wasn't anything on the top of the building that looked like those until you added those.

ATTORNEY RICARDO SOUSA: That's right.

TIMOTHY HUGHES: Yes.

ATTORNEY RICARDO SOUSA: There are different ways to stealth antennas. One of the ways is with a stealth chimney, you know?

And I don't specifically recall whether or not I worked on this installation. I've worked on so many. However, we utilize stealth chimneys on a regular basis. They are clearly better than a typical ballast mount that's on a pole. And so we make an effort to try to minimize the impact to a great extent. I think two stealth chimneys would take up more mass. In addition to that, there has been a lot of complaints relative to the upkeep of those stealth chimneys. You know, and the fact that they typically don't look great over time.

I'm sorry, Mr. Hughes.

CONSTANTINE ALEXANDER: I think that's been a problem with --

TIMOTHY HUGHES: The stealth flue is different from the stealth chimney only in what it looks like on the outside. It's still as big, it's still odd looking to the top of the building.

ATTORNEY RICARDO SOUSA: Right. But it's one color versus the number of bricks that can potentially over time, you know, fade more. I've had that problem. You know, we've had installations that are faux brick chimneys in the City of Boston that we've had to upgrade just because they fade so fast over time and it's really hard to mimic that existing brick. I'm sorry.

CONSTANTINE ALEXANDER: My recollection is that we've now imposed this condition about maintaining the installation because in this property itself, the Planning Board has complained to us in the past application that what we have approved had not been maintained which is why we impose that requirement.

ATTORNEY RICARDO SOUSA: You're absolutely right. In fact, I was involved in that and that did involve the Nextel antennas. The paint on the Nextel antennas

faded over time. As you can see in the photos, they actually blend in very well now. And I was involved in the enforcement action against Sprint to go back and repaint those antennas. And by the way, they were hand painted. So it was a lot of labor.

CONSTANTINE ALEXANDER:

Michelangelo came back?

ATTORNEY RICARDO SOUSA: No, they actually took them down and painted them and put them back up. And so I do think, however, that these two cannisters are probably the least you can do from a stealth perspective. It's better than simply an antenna. And I have to say, though, I've been at the BRA where Matt Martin, who regulates all of these installations, has on very rare occasions, but on a few times, said I don't even want a cannister, I just want one antenna because it's less mass. But mostly, almost always he goes with a stealth chimney over a stealth

cannister.

TIMOTHY HUGHES: Now, this stealth here makes it look like it's silver. And this one doesn't look like it's silver. Now the flues, are they mimicking something that is like a --

ATTORNEY RICARDO SOUSA: Yes, a vent pipe.

TIMOTHY HUGHES: So it should be like a gun metal tone or a metal tone; right? It shouldn't be painted orangey; right?

ATTORNEY RICARDO SOUSA: It shouldn't be painted orangey. It should be a grey.

TIMOTHY HUGHES: Well, one of them is definitely.

ATTORNEY RICARDO SOUSA: It's hard for me to tell to tell you the truth.

TIMOTHY HUGHES: It's hard for me to tell from this, but I can tell because I can see it outside my kitchen window.

ATTORNEY RICARDO SOUSA: Okay.

TIMOTHY HUGHES: And that's why I don't think it's very stealth. You know?

ATTORNEY RICARDO SOUSA: Okay. Well, if the color is the issue, we can absolutely go back and repaint it so that perhaps it's a mat finish.

TIMOTHY HUGHES: It absolutely does not look like an extension of the building's, you know, HVAC system or infrastructure.

BRENDAN SULLIVAN: Why not just paint it black?

TIMOTHY HUGHES: They could do something to make it more stealth.

ATTORNEY RICARDO SOUSA: We can paint it black. Black is typically, I think it's the most, you know --

BRENDAN SULLIVAN: It's universal.

ATTORNEY RICARDO SOUSA: Universal color. It probably blends in best.

TIMOTHY HUGHES: It probably would,

yes.

ATTORNEY RICARDO SOUSA: Very often you see those copperized, you know, stoke pipes they call them. And they're either black or silver. We would be happy to paint this black. It's actually something that we would prefer to do. So we would have no objection to do that.

BRENDAN SULLIVAN: Just paint it black.

ATTORNEY RICARDO SOUSA: Yes, absolutely.

TIMOTHY HUGHES: I think that would look better.

ATTORNEY RICARDO SOUSA: Of course, yes. We have no objection to that.

BRENDAN SULLIVAN: Any other questions?

Let me open it to public comment. Is there anybody here who would like to speak on the matter at 284 Norfolk Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence from the Planning Board which I will incorporate as part of the record.

Let me go through some of the pro forma again for the last time.

The Board is to consider this application on the condition that the Applicant complies with the wireless communication provisions set forth in Section 4.32G, footnote 49.

The Board finds that pursuant to Section 4.32G of the Ordinance, the Applicant's proposed use for wireless communication facility in the C-1 Zoning District is permitted by Special Permit.

The Applicant's proposed facility further complies with the provisions set forth in Section 4.32G, footnote 49.

The Board shall consider the scope of or limitations imposed by any license secured from any state or federal agency having jurisdiction over such matters.

The Board finds that the Applicant meets all requirements imposed by governmental authorities having jurisdiction over the proposed facility, including the FCC, to provide wireless communications in this market area.

The Board shall consider the extent to which the visual impact of the various elements of the proposed facility is minimized through the use of existing mechanical elements on the building's roof or other features of the building as support and background through the use and materials that in texture and color blend with the materials to which the facilities are attached or other effective means to reduce the visual impact of the facility on the site.

The Board finds that in the submitting drawings Sheet No. A-3 Detail 2 shall be substituted for the low profile bracket as applicable instead of the shown bracket.

Is that correct?

ATTORNEY RICARDO SOUSA: Yes, that's correct, Mr. Chairman.

BRENDAN SULLIVAN: The Board will now incorporate the language from the Planning Board.

The Planning Board reviewed this Special Permit application to replace the existing antenna and faux chimney cannisters with similar ones.

The Planning Board does not object to this proposal and supports the replacements.

The Planning Board suggests that if the Board of Zoning Appeal grants the Special Permit, that a condition be attached to require the removal of all unused brackets associated with the Applicant to move

forward, cleaning up the facade of the brick building. So, part of the condition would be to remove all unused brackets, and that the building facade be made whole by filling in any holes that remain as a result of removing any bracket.

ATTORNEY RICARDO SOUSA: That's correct. There is one bracket that will be removed.

BRENDAN SULLIVAN: Okay.

The Board then finds that the -- and also that one of the protruding antenna be painted black.

ATTORNEY RICARDO SOUSA: Two.  
Both.

BRENDAN SULLIVAN: Two be painted black.

ATTORNEY RICARDO SOUSA: Both stealth cannisters.

BRENDAN SULLIVAN: The Board finds that where it is proposed to erect such a

facility in any Residential Zoning District, the extent to which there is demonstrative public need for the facility at the proposed location, the existence of alternative functionally suitable sites in non-residential locations, a character of the prevailing uses in the area and the prevalence of other existing mechanical systems and equipment carried on or above the roof of the nearby structures.

The Board shall grant a Special Permit to erect such a facility in a Residential Zoning District only upon a finding that non-residential uses predominate in the vicinity of the proposed facility's location, and that the telecommunication facility is not inconsistent with the character that does not prevail in the surrounding neighborhood.

As has been discussed, the Board finds that the proposed facility is not

inconsistent with the character that prevails in the surrounding neighborhood.

The Board finds that this is a replacement of an existing facilities and equipment, and that the Board in a previous decision has found that the proposed use would be suitable at this location.

Now, let me make a motion then to grant a Special Permit to replace the existing three panel antennas with three updated panel antennas on the rooftop together with adding six remote radio heads on low profile mounts and replacing three equipment cabinets to the Applicant's existing and previously approved wireless communication facility currently operating on the rooftop of the building at 284 Norfolk Street.

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

The Board finds that the 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 the existence of existing facilities on this building, and there has not been any deleterious effect from those installations.

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, the Board finds that it would be an enhancement to upgrade the equipment.

There would not be any nuisance or hazard created to the detriment of the health, safety and/or welfare of the occupants of the proposed use or to the citizens of the city.

The Board finds again that the upgrading of equipment would be an

enhancement to the welfare of the citizens of the city. And that the proposed installation would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

All those in favor of granting the Special Permit --

CONSTANTINE ALEXANDER: Did you mention about the replacement?

BRENDAN SULLIVAN: And also that should the equipment become unusable, obsolete, that it be promptly removed within....

CONSTANTINE ALEXANDER: I think six months.

BRENDAN SULLIVAN: Six months. No longer than six months, and that the facade of the building --

TIMOTHY HUGHES: Can we make that 15 minutes?

BRENDAN SULLIVAN: Just don't look out your bedroom.

TIMOTHY HUGHES: It's the kitchen.

BRENDAN SULLIVAN: The kitchen window.

And that the building facade be made whole to a condition.

CONSTANTINE ALEXANDER: To reasonably practical.

And also further that you maintain the installation in its original condition to the maximum extent possible. So repaint when necessary or otherwise repair.

ATTORNEY RICARDO SOUSA: Okay.

BRENDAN SULLIVAN: So said.

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY RICARDO SOUSA: Thank you, members of the Board. Have a good night.

(9:15 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10289, 160R Curbing Street. Is there anybody here interested in that matter?

(Show of hands.)

CONSTANTINE ALEXANDER: Is the Petitioner here though?

BRENDAN SULLIVAN: If you want to, please, introduce yourself for the record.

KAJ VANDKJAER: Yes. I'm Kaj

Vandkjaer. I'm the Applicant and we're representing the owners, Joseph Alonzo and Salvatore Alonzo, two brothers.

CONSTANTINE ALEXANDER: Can you speak up, sir, please?

KAJ VANDKJAER: Speak up?

CONSTANTINE ALEXANDER: Yes.

KAJ VANDKJAER: Okay, thank you.

BRENDAN SULLIVAN: There is a correspondence in the file. (Reading) The owners of the above property hereby request a continuance without prejudice of the case scheduled to be heard by the BZA on July 12th. The owners respectfully request a continuance of 60 days from the date of the scheduled hearing in order to clarify certain legal issues with respect to the subdivision of the land known as 160R Curbing Street for Joseph and Salvatore Alonzo. Signed Kaj Vandkjaer.

So there's a motion then to continue

this matter for 60 days?

KAJ VANDKJAER: Yes.

BRENDAN SULLIVAN: Do we have a date?

MARIA PACHECO: September 27th.

BRENDAN SULLIVAN: September 27th. I'm going to open it up just to public comment just on the request for the continuance. So if anybody has any comments on continuing the matter until September. If you please just give your name and identify yourself. I'm not going to get into the merits or anything at all, just on the continuance.

TIM CUTLER: Mr. Chairman, my name is Tim Cutler. I live at 17 Binney Street. I was wondering is there any chance that we can understand or have a description of what the Variance that's being sought is based on? Based on the information in the file, it's very hard to discern what in fact is being sought for a Variance. I'm not asking for

the argument for it. I'd just like to know more specifically what is the Variance that's being requested?

BRENDAN SULLIVAN: The request is to construct a two-story wood frame single-family dwelling on part of the lot. The question that has risen is whether or not there was in fact either a proper subdivision or not. And that is the question that is before us which is the reason for the continuance. Because there is some question as to whether or not there was a proper subdivision in order to allow for this particular construction to go forward.

TIM CUTLER: Whether it's a buildable lot?

BRENDAN SULLIVAN: Correct.

TIM CUTLER: Thank you.

BRENDAN SULLIVAN: Anybody else have any comment at all regarding the -- okay.

CONSTANTINE ALEXANDER: Might I ask, that people since you took the time to come down tonight and to continue this until September 27th, is that a date that's works for everyone? Not everyone, but most of the people in the audience? Is there any reason why we shouldn't do it that day?

TIM CUTLER: Thank you very much for your consideration.

BRENDAN SULLIVAN: And a little bit of information, it appears that there may be a subsequent filing. There may be.

Is that correct?

KAJ VANDKJAER: Yes.

BRENDAN SULLIVAN: Yes. Okay. So we will keep this case alive, but that until the legal issue is determined, there may have to be an additional filing for a subdivision if it's determined that the property was not properly subdivided.

TIM CUTLER: Could we have a date for

setting that so that we could have a chance to look at that in time for the hearing?

BRENDAN SULLIVAN: All those who were notified of this, will be notified of that one also.

TIM CUTLER: When they file subsequent filings?

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: And there will be a second sign that will be put on the property as well. I guess there's no sign on the property right now.

KAJ VANDKJAER: There is a sign.

TIM CUTLER: There is a sign on the street.

CONSTANTINE ALEXANDER: Well, anyway there will be a second sign and advertising and describing the relief that's being sought in the new petition.

UNIDENTIFIED FEMALE: Don't nail it into the tree next time.

BRENDAN SULLIVAN: Okay. On the motion then to continue this matter to September 27, 2012, at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date of September 27th and the time of seven p.m. And that the posting sign be maintained as per the requirements of the Ordinance. And that any changes to this application be in the file by five p.m. on the Monday prior to the September 27th hearing.

CONSTANTINE ALEXANDER: On the condition that they sign a waiver.

MARIA PACHECO: They have.

BRENDAN SULLIVAN: They also have to sign a waiver for a statutory requirement for the decision.

KAJ VANDKJAER: Right.

BRENDAN SULLIVAN: Is that already in?

MARIA PACHECO: Yes.

BRENDAN SULLIVAN: Okay.

Anything else?

UNIDENTIFIED FEMALE: I have a question.

BRENDAN SULLIVAN: I'm in the middle of a motion. But anyhow, I'll answer your question.

But on the motion then to continue this matter until then.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Now your question, yes.

ALEX STEINBERG: I'm Alex Steinberg, I live at 15 (inaudible) Street. Are we going to get another notice for the 27th?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Not for

this case.

TIMOTHY HUGHES: No.

CONSTANTINE ALEXANDER: But the new case they're going to file you will get one.

ALEX STEINBERG: Okay, thank you.

BRENDAN SULLIVAN: This is the only notice for this other than the posting sign will change. That will say -- the sign whether it's there or not. There is a sign there now?

KAJ VANDKJAER: Yes.

BRENDAN SULLIVAN: All right. That will get crossed out and a new date of September 27th will be inserted on that for this particular case. If there is an additional case which may have to precede this one, you'll all be notified. Whoever the abutter to the abutters are who were notified before will be notified again.

ALEX STEINBERG: Thank you.

BRENDAN SULLIVAN: And there will be

another sign that will go up to notify you also.

CONSTANTINE ALEXANDER: And if they change the plans that they submitted for this case, those plans have to be in our files by five p.m. the Monday before the hearing. And that's open to the public. And you can come down to the Building Department and look at those plans. You might want to check sometime after five p.m. on the Monday before to see what's in the file.

TIM CUTLER: And can we transfer our files -- and I apologize. I sent you a lot of stuff. But there's a change in what's being sought, we'd like to take what we filed there and, you know, move it over so we don't have to get people to resign petitions?

BRENDAN SULLIVAN: That's fine.

And, again, Mr. O'Grady, you can always call him. He's very good at answering any questions.

Okay. Continued.

KAJ VANDKJAER: Thank you.

(9:20 p.m.)

(Sitting Members: Brendan Sullivan,  
Constantine Alexander, Timothy Hughes,  
Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will  
hear case No. 10290, 12-14 Meacham Road.  
Anybody here on Meacham Road? No?

Are you interested in that particular  
case at all?

UNIDENTIFIED FEMALE: We're  
abutters on that one so we came down to see  
what's going on with that one.

TIMOTHY HUGHES: I don't know what's

going on for that one. Does anybody know what's going on?

BRENDAN SULLIVAN: There was a question regarding the posting sign. Are you here also on Meacham Road? Are you interested on that? Oh, okay. You're observing?

CONSTANTINE ALEXANDER: Nothing better to do?

UNIDENTIFIED MALE: Thursday night entertainment.

MARIA PACHECO: They have a case coming up.

TIMOTHY HUGHES: Getting their feet wet, are they?

BRENDAN SULLIVAN: There's nothing else on cable tonight?

JANET GREEN: I bet their sign will be up.

TIMOTHY HUGHES: Make sure your sign is up 14 days ahead of time.

BRENDAN SULLIVAN: Well, we have received no communication from them?

MARIA PACHECO: No.

BRENDAN SULLIVAN: The issue was whether or not the sign was properly posted. It was posted on the telephone pole in front of the house.

TIMOTHY HUGHES: That's what I heard.

BRENDAN SULLIVAN: Facing the house. The issue was raised with the Petitioner that it appeared to be improperly posted, hence a failure to comply with the Ordinance. We understood that they were going to come down and sort of plead why they put it there, but they did not.

CONSTANTINE ALEXANDER:

Mr. Chairman, I suggest that we make a finding tonight that a posting was not compliant with our Ordinance because they haven't signed a waiver for time of decision.

And I don't want inadvertence for them to grant relief. So make that finding that they can't get the relief.

BRENDAN SULLIVAN: Can we put them on for the 26th?

MARIA PACHECO: We have three right now.

BRENDAN SULLIVAN: Sure, why not?

MARIA PACHECO: Okay.

BRENDAN SULLIVAN: We're here till two o'clock anyway, aren't we?

TIMOTHY HUGHES: I don't care, I'm not going to be here on the 26th.

MARIA PACHECO: And neither is he.

BRENDAN SULLIVAN: That's right, that's why I'm loading up the 26th.

CONSTANTINE ALEXANDER: He has to abstain. He can't vote on this. He has a conflict of interest.

BRENDAN SULLIVAN: For the record, some members of the Board have questioned the

compliance with the posting requirement.

Let the Board note that the posting sign was posted on a telephone pole on the sidewalk facing the house, which some members of the Board would feel that it was not properly -- not in proper compliance with the requirements of the Ordinance.

I would make a motion that we continue this matter until July 26th, 2012, at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date and time. Also, that the sign be affixed to the front facade of the building as securely secured reflecting the new date. And that any changes to the plan in the file now be in the file by five p.m. on the Monday prior to the July 26th hearing.

CONSTANTINE ALEXANDER: I just would like us to go one step further and make an affirmative finding tonight that where the sign is posted does not comply with our

Ordinance.

BRENDAN SULLIVAN: Right. We can throw that in there someplace, Cathy.

The time on this, we have plenty of time anyhow I would think do we, or not?

MARIA PACHECO: Yes, I think so.

BRENDAN SULLIVAN: Where do you have that buried in the back someplace?

MARIA PACHECO: Right in the end. Stapled in the back of the folder.

BRENDAN SULLIVAN: Hearing dates required 7/27 and the decision by 8/31. So anyhow 7/27 that works so we're good by one day.

CONSTANTINE ALEXANDER: Does that work for you by the way, since you took the time to come down. Does that work for you?

UNIDENTIFIED FEMALE: July 26th?

BRENDAN SULLIVAN: Right.

Have you reviewed the file at all? You reviewed what's in the file?

UNIDENTIFIED FEMALE: No, we haven't.

CONSTANTINE ALEXANDER: You have the opportunity, it will be at seven p.m. or at least theoretically at seven p.m. that night, not 9:15.

UNIDENTIFIED MALE: Can you review it before?

UNIDENTIFIED FEMALE: We can stop by before.

BRENDAN SULLIVAN: You can talk to the Petitioner. I can't believe they haven't talked to you. So talk to the Petitioner.

UNIDENTIFIED FEMALE: We talked to them a long time ago when they were first preparing everything.

BRENDAN SULLIVAN: Okay. Anyhow, the file is Inspectional Services.

On the motion then to continue this matter?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

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

## **ERRATA SHEET AND SIGNATURE INSTRUCTIONS**

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

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**DATE:** 07/12/2012

**REP:** CAZ

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**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 27th day of July 2012.

---

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

My Commission Expires:  
April 23, 2015

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