

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, DECEMBER 19, 2013

7:05 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

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

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:05 p.m.)

(Sitting Members Case #10464:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 10464, 28 Andrew Street.

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

You're back again and ready to continue
again.

LILLIAN PORTEN: Sorry.

CHARLES HENEBRY: We thought we were
going to be making the deadline and we were
going to be here in front of you today.

LILLIAN PORTEN: We talked to our
neighbors over the weekend.

CONSTANTINE ALEXANDER: We're not
going to throw you out, don't worry.

TIMOTHY HUGHES: Well, we are but we're not.

CONSTANTINE ALEXANDER: It's Christmas anyway. We're going to continue the case. You don't have the revised plans in the file. And I guess --

CHARLES HENEBRY: That was the issue, yeah.

CONSTANTINE ALEXANDER: The posting is supposed to be there. I think Sean told me you didn't post the sign.

LILLIAN PORTEN: We did post the sign.

CONSTANTINE ALEXANDER: You did?

CHARLES HENEBRY: Yeah, the posting -- the sign --

CONSTANTINE ALEXANDER: Okay.

LILLIAN PORTEN: And then we put up a piece of paper on top when we realized that

we missed the deadline saying that it's going to be postponed and a new date will be forthcoming.

CONSTANTINE ALEXANDER: All right. Maybe I misunderstood what Sean said.

CHARLES HENEGBRY: The posting was up in a month in anticipation of the meeting tonight.

CONSTANTINE ALEXANDER: Sean, can we continue the case, Andrew Street, to what was the date in January?

SEAN O'GRADY: February 13th.

CONSTANTINE ALEXANDER: February 13th?

SEAN O'GRADY: February 13th.

BRENDAN SULLIVAN: That's a case heard, though, right?

CONSTANTINE ALEXANDER: Case heard.

BRENDAN SULLIVAN: I will not be

here on the 13th.

CONSTANTINE ALEXANDER: You're not here on the 13th.

SEAN O'GRADY: You are out to the 27th.

CONSTANTINE ALEXANDER: Everybody who is --

TIMOTHY HUGHES: Andrea and she's not here to ask.

CONSTANTINE ALEXANDER: Andrea and Doug, too.

Well, we'll take a chance. You realize what we're saying. We need to get the same five people here --

CHARLES HENEBRY: I understand.

CONSTANTINE ALEXANDER: -- who were here the first time. And two of those five are not here tonight.

CHARLES HENEBRY: Right.

CONSTANTINE ALEXANDER: We hope they'll be available on the 27th.

CHARLES HENEERY: If it turns out that they're not going to be, will we be called?

CONSTANTINE ALEXANDER: Yes.

LILLIAN PORTEN: So we're tentatively scheduled for February 27th?

CONSTANTINE ALEXANDER: Yes.

The Chair moves that this case be continued until seven p.m. on February 27th. This being a case heard, a waiver of time for a decision having been signed.

Again, to the extent that you have revised plans, they must be in our files by five p.m. on the Monday before the February 27th. And also that the sign has to be maintained for the ten days, two-week period before the 27th with the new date and the new

time. If you don't change the time, you're going to be stuck with your old time. And you want to get out of here early.

CHARLES HENEBRY: Right, seven o'clock. Exactly.

CONSTANTINE ALEXANDER: All those in favor of continuing the case, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: See you in February.

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

* * * * *

(7:10 p.m.)

(Sitting Members Case #10503: Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green, Constantine Alexander.)

TIMOTHY HUGHES: The Board will hear case No. 10503, 23 Sidney Street.

Is there anyone here for that one?

(No Response.)

TIMOTHY HUGHES: I'm going to go with no.

Is there a letter? Is there a request? There's been no communication with the Petitioner, right, so we're going to continue this case?

SEAN O'GRADY: No posting.

TIMOTHY HUGHES: No posting, no communication.

SEAN O'GRADY: Yes. No submission. I called them and got no -- the voice mail is

full.

TIMOTHY HUGHES: Rather than dispense with the case, we're going to give them a little bit more time since it's a farmer's market case and it won't start up until June anyway, right? Or maybe May.

What's the date we're looking at?

SEAN O'GRADY: We could, we could do it as soon as February 13th now or any time after that if people think it would be smarter to wait.

JANET GREEN: I won't be here in March. So February.

SEAN O'GRADY: You won't be here in March.

JANET GREEN: I will not be here in March.

SEAN O'GRADY: So then maybe the 27th to give them the most time?

TIMOTHY HUGHES: Yes, let's do the 27th. I'm already here for that one.

SEAN O'GRADY: Oh, okay.

TIMOTHY HUGHES: AND right now I'm not stacked up on the 13th yet.

SEAN O'GRADY: Sold.

TIMOTHY HUGHES: The Chair would move we continue this case to February 27th on the condition that they sign a waiver, for time of --

CONSTANTINE ALEXANDER: They signed a waiver before.

TIMOTHY HUGHES: That's right. This has already been continued.

And that they change the posting to reflect the new time and date.

All those in favor?

SEAN O'GRADY: And Monday submission.

TIMOTHY HUGHES: And that they have all of their plans in on the Monday before the date of the hearing.

(Show of hands.)

TIMOTHY HUGHES: Five in favor.

Case continued.

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

* * * * *

(7:15 p.m.)

(Sitting Members Case #10448: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 222 Brattle Street also known as 220 Rear Brattle Street. It's case No. 10448.

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

(No Response.)

DAVID TELLER: It depends on what's in the file. I mean, what are they asking for?

CONSTANTINE ALEXANDER: I'm sorry?

DAVID TELLER: It depends on what's in the file.

CONSTANTINE ALEXANDER: I will tell you right in a second. Come closer if you

would.

We are in receipt of a letter from Willits, W-i-l-l-i-t-s Sawyer and Rosalie Hornblower by their Attorney Andrew Bram, B-r-a-m. (Reading) Dear Board Members: The Petitioner in the referenced matter hereby request that the case be further continued from December 19, 2013, to the Board meeting which is closest to six months from December 19, 2013. That projected date would likely be June 19, 2014. The basis for this request is that at the Board meeting of June 13, 2013, when this case was opened, the Board suggested that before it heard the matter, it recommended that the Petitioner first request a ruling from the Commissioner of Inspectional Services as to whether or not any further approval was needed to complete the parking area in question. That was done

by letter to the Commissioner on June 24, 2013, and the Commissioner ruled on August 1, 2013, that no further action was necessary. And the Petitioners could complete their parking area. The complaining neighbor appealed the Commissioner's determination and that appeal was heard and denied by the Board on October 24, 2013. Said neighbor has now appealed the Board's decision to the Land Court, and it is hoped that the matter will be heard and disposed of by the Court within six months. The Petitioners would respectfully request the Board to allow the requested further continuance to preserve their rights to pursue the Variance sought if the court were to rule against the Board and the Petitioner.

Thank you for your consideration.

DAVID TELLER: My name is David

Teller, 457 Mount Auburn, No. 5, and I'd like to object to continuing this further. It's been continued several times. Also, the forum of the actual petition is not correct as I understand it, since you rejected it at the first meeting and said it was incorrect. It would be better if the Petitioners were required to submit a petition asking for exactly what they want at the time that they want it, notify all of the abutters, and have people that might be interested have an opportunity to respond. Because at this point at least one of the properties abutting them has changed -- is in the process of changing hands. And, you know, people haven't been notified, you know.

CONSTANTINE ALEXANDER: Your latter point -- the first point is the case was before us and we didn't hear it because it was

inappropriately brought. And as he says in his letter correctly so -- let me finish.

DAVID TELLER: Sure.

CONSTANTINE

ALEXANDER: -- preserving his rights.

However, six months out, that's a long time from when the case was first made. So I think if we're going to continue the case, I would require the Petitioner, the Petitioner at its expense to provide notice to persons entitled to notice as if they going back to whenever, last summer.

DAVID TELLER: But the other issue is that the petition itself doesn't actually specify what they're asking for.

CONSTANTINE ALEXANDER: Yes, it does. They're seeking a Variance. They're seeking a Variance.

DAVID TELLER: No, it asks for a

clarification of a Variance.

CONSTANTINE ALEXANDER: I know that.

DAVID TELLER: But the terms are confusing as to what they're asking. And it seems to me that they would be better served to, if they want a petition, ask for the specific Variance that they want. The petition that they've got, you can't grant because it's asking for a clarification of a Variance, and you can't grant it. So if you dismiss it, they're not prejudiced. They can bring a petition for something and it isn't prohibited because it isn't the same petition.

CONSTANTINE ALEXANDER: The problem before with the continuance -- they were seeking a Variance. The words, in my judgment, continue -- explanation or

modification, clarification of a Variance was their terms. But we would have heard -- if we heard the case then, we would have heard it as a Variance case, a classic Variance case. Because the relief is the same. Just a few words were probably mis-chosen. I don't see -- it's up to the petitioner. If they want to withdraw this and file a new application for a Variance, they can do that if they're afraid of what you're identifying. On the other hand, if they do that, they run a risk. The risk being what I just said before, is that the case that was brought then was really seeking a Variance, and if they withdraw it now, they can't seek a Variance for two years. It's their call. But I do think your first -- one of your points; namely, the requirement of notice is well taken -- in my judgment, is

well taken. It's too long between when the case was first advertised back when and next June if we grant it to that date.

DAVID TELLER: Well, the other issue I have is, you know, the notice of the advertising says it's a clarification of a Variance. It -- it was saying as we want to expand our parking by taking this 12-foot section and turning it into parking. The neighbors might have a different view, especially the neighbors in the condos.

CONSTANTINE ALEXANDER: Neighbors, and I'm sure you'll make sure that the neighbors know about this since you're showing an abiding interest in this case. The neighbors will know what the case is all about. You can make sure they know. You can see it's a clarification of a Variance or a Variance. Same thing. The bottom line

relief is going to be they're seeking is the same thing. It's the same thing they sought as being sought in the court cases now pending. I don't see any base -- for us, in my judgment I'm not prepared to dismiss this case at this point.

DAVID TELLER: All right. Well, I'm going to ask the Board if other people feel, you know, that it could be dismissed --

CONSTANTINE ALEXANDER: Of course. I'm only one person on the Board.

DAVID TELLER: Then I'm asking that -- I'm objecting to it being continued. That's all.

Thank you.

CONSTANTINE ALEXANDER: Discussion on it?

BRENDAN SULLIVAN: I think the situation is a unique one. All the years

I've sat here and I've never seen this. And, Dave, you can sit here and be part of the discussion.

DAVID TELLER: I just wanted my pad.

CONSTANTINE ALEXANDER: The original request.

BRENDAN SULLIVAN: As being before us as an interpretation because it's usually an administrative venue that they go down. Administratively that they want, and not necessarily come to the Board. So it's a little bit unique in that respect. So we somewhat accepted their filing, but at that initial one said, again, it's really the wrong procedure. Go back to the Commissioner. So they got that determination obviously, and then we had that full hearing and so on and so forth. That now is a subject of the litigation I think puts

me in a situation -- I would rather have that resolved first before we proceeded on anything else because that determination which is now Land Court sort of trumps everything else that we could possibly do. And no matter what we do, if we were to say rule, say well, first of all, if we were to dismiss this, I think we try to be somewhat courteous to petitioners. We're not trying to abridge any of your rights or what have you or be discourteous to you, but on the same token I think that we sort of go out of our way a little bit to be a little bit courteous to petitioners where there is no harm. And where now this is in litigation, I think that's what stops any of our action until that higher authority rules. That's my position.

CONSTANTINE ALEXANDER: Right.

And you're not losing any rights if we

continue this case. You can -- for the very same arguments you're making to us tonight not to continue the case, can be made on the merits should we hear this case in June.

BRENDAN SULLIVAN: Right.

DAVID TELLER: Can I speak to that? Because the issue is first of all, I don't know whether to bring my lawyer because I don't know whether they're actually going to ask to have it heard. I didn't know whether they were going to ask it have it heard today. They could have shown up and done that despite of whatever letter they put in the file.

CONSTANTINE ALEXANDER: Right.

DAVID TELLER: That's an inconvenience and an expense to me which I choose not to incur at this time.

CONSTANTINE ALEXANDER: Right.

DAVID TELLER: And so rather than

doing that, if I knew that they had filed a fresh petition and it was on the schedule, then I would know to show with my attorney, I would have paid him to prepare and so on. So it is actually a hardship on me to have to keep coming back and having it keep continuing. They can pick the time for which they wish to have it heard and I don't actually have any notice of that.

CONSTANTINE ALEXANDER: Well, you will.

DAVID TELLER: Well, no, I don't. I know when the meeting is, but I don't know whether it will actually be heard or whether because they're going to continue it. Because the last time there was a letter in the file for them to withdraw it. I called the day before, there was a letter in the file, and I showed up and it turned into a

continuance.

CONSTANTINE ALEXANDER: Sir, my suggestion to you is you contact -- whatever the date we continue, if we continue it -- let me finish. You call up the Zoning office a day or two before, you'll find out -- or however long, whether the case is going to be heard. If you feel you've been disadvantaged, you were blind sided, I'll represent to you we'll continue the case further until you have a chance to be there. We're not looking to in any way skew this one way or the other. This is, this is what they're doing is a procedural step that's appropriate from their perspective. I, you know, the fact that you had to come down here tonight, if you had called Sean O'Grady up, he would have told you we're not going to hear the case tonight. Be that as it may, I am

cognizant of your concerns. I know of your abiding interest in this case. I'm going to require further notice be given, and I'm going to tell you, assuming that I'm still on the Board at that time, I hope I will be, that we will not do anything where you're taken advantage of by not having sufficient notice.

DAVID TELLER: Okay, I'll accept your word.

Thank you.

CONSTANTINE ALEXANDER: Anyway, anyone feel differently?

TIMOTHY HUGHES: I would reinforce what Brendan says, we won't act on this until the Land Court decision is in so you can follow that case, too, to know when exactly we might have something to say about this or make a decision.

CONSTANTINE ALEXANDER: Sure. And

since you're the Plaintiff in that case, you would know even before we know.

DAVID TELLER: Yes, I probably will.

CONSTANTINE ALEXANDER: Janet, you're not sitting on this case that's being continued? This is the one before you joined the Board.

JANET GREEN: Yes, this is before I joined the Board.

DAVID TELLER: This is a case not heard?

CONSTANTINE ALEXANDER: This was before she joined the Board.

Tom, anything you want to say?

THOMAS SCOTT: No.

CONSTANTINE ALEXANDER: Ready for a motion? What's the date, Sean, the exact date?

SEAN O'GRADY: June 26th.

CONSTANTINE ALEXANDER: Is that date a convenient date for you?

DAVID TELLER: I'm not sure. If I knew my schedule six months in advance.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this case be continued as a case heard until seven p.m. on June 26th on the following conditions:

That -- this being a case heard, we have a waiver of time for a decision in the file.

That the posting sign be modified and maintained in accordance with our Ordinance reflecting the new date and the new time.

On the condition that to the extent that any materials -- well, any plans, drawings, or the like that will be submitted for our consideration at the June 26th meeting, must be in our files by five p.m. on the Monday before June 26th. Let me just interrupt.

That means, sir, you might want to check on the Tuesday, let's say, of that week to see if there's anything in the file and if anything new has come in so you're not at a disadvantage there.

And lastly, on the condition that inasmuch as this case was first noticed, oh, gees, almost six months ago and we're pushing that six months out, that new notices be sent to the interested parties. The parties who are entitled to receive notice at the first hearing need to be re-notified. And to the extent that there is an expense involved, the expense to be bourn by the petitioner in this case, Sawyer and Hornblower.

On the basis of all these, the Chair moves -- all those in favor of continuing this case on this basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

SEAN O'GRADY: And Gus, I'm sorry, re-notice mail only to the statutory required people?

CONSTANTINE ALEXANDER: The people who were entitled to receive mailed notice the last time, get notice -- mailed notice again this time. And in addition the sign will be up.

DAVID TELLER: Does that mean new properties owners, people who have bought property? You already have a list in the file.

CONSTANTINE ALEXANDER: Well, this often happens and not just in your case. People -- we have the list that's several

months old, Inspectional Services Department. If property has changed in the meantime, that's how it works. If the old owners don't give the notice to the new owners, the new owners may not be aware. That's why you have postings of the sign as well. It's a safeguard.

BRENDAN SULLIVAN: We go by the Assessor's records. So sometimes there's a lag from catching it until the Assessor gets the notice.

DAVID TELLER: Thanks very much. Have a great holiday.

CONSTANTINE ALEXANDER: You too.

* * * * *

(7:30 p.m.)

(Sitting Members Case #BZA-002383-2013:
Constantine Alexander, Timothy Hughes,

Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 002383-2013, 250 Monsignor O'Brien Highway.

Is there anyone wishing to be heard? Ms. Roberts, is the rest of your team here?

ATTORNEY SUSAN ROBERTS: I've spoken to him. He's on his way.

CONSTANTINE ALEXANDER: He's late?

ATTORNEY SUSAN ROBERTS: Is it okay to table this for now?

CONSTANTINE ALEXANDER: Sure. We'll take another case.

(Case recessed.)

(7:30 p.m.)

(Sitting Members Case #BZA-002749-2013:

Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Slater Anderson.)

CONSTANTINE ALEXANDER: We'll now move to our regular agenda, and the Chair will call case No. 002749-2013, 24 Clinton Street.

Is there anyone wishing to be heard in this matter?

You know the drill.

ATTORNEY MAHMOOD FIROUZBAKHT: Good evening, Mr. Chair, members of the Board. I'm Mahmood Firouzbakht. I live at 7 Crescent Street in Cambridge. And this is Kelly Speakman from Boyes-Watson Architects. What's the address?

KELLY SPEAKMAN: 30 Bows Street in Somerville.

CONSTANTINE ALEXANDER: And I think you know, Mr. Firouzbakht, we have a problem with notice in this case. I went to view the

property and I could not find any posting -- sign posting. I contacted Mr. O'Grady to make sure, to have him do it as well, he at first couldn't find the sign either. When he did, I don't know exactly where it was, but it was pretty obscure and it was upside down. So, therefore, it's not readable to anybody passing by. Under these circumstances I don't think it's appropriate for us to proceed tonight. I think this case should be continued until you can comply with the posting requirements of the Ordinance.

ATTORNEY MAHMOOD FIROUZBAKHT: So the notice was, as you maybe saw later, or as Sean saw, was posted in the center window of the protruding bay of the property, and after I had heard that there may be some issue with the visibility of the notice, I went to the property to look at it. And although it's

not sort of, you know, doesn't have lights on it showcasing that there's a notice there, I thought in my reasonable judgment it was visible from the street. To the extent someone looked at the front facade of the house, the notice was in the window. And I took pictures to reflect that it is visible from the sidewalk. So to the extent that I could, you know, put that in the file, I -- I mean, that's probably the best location that that notice could be posted at the property other than doing an A frame sign and, you know, having it somewhere else on the property. I thought it was adequate and properly posted. In terms of it being upside down, I think it fell at one point and the tenants in the property put it back up again and they put it back up upside down. But as soon as I heard of that, I went and put it

right side up.

CONSTANTINE ALEXANDER: But by the time you heard of it it was probably a day or two, a couple days ago.

ATTORNEY MAHMOOD FIROUZBAKHT: A couple days ago.

CONSTANTINE ALEXANDER: We don't know how long, none of us know how long the sign was upside down. Under all the circumstances, as you know, we take posting requirements very seriously, and it's important for people who pass by to be able to understand what's going on and know about the case. And it's my view, it's obviously I'm only one of five, it's my view we should not hear the case tonight.

ATTORNEY MAHMOOD FIROUZBAKHT:
Mr. Alexander, I certainly understand and have sympathy for, you know, notice

requirements. And I think in this particular case -- so I understand, you know, there's a tree in front of the building. You know, so through the tree I think that the sign is still visible. And then if you're coming to the house from sort of the Harvard Street side of the Clinton Street, in my mind that sign is fully visible.

CONSTANTINE ALEXANDER: Even it is, for purposes of argument, it's upside down.

ATTORNEY MAHMOOD FIROUZBAKHT: But that wasn't -- when I posted it, like, when Maria gave it to me, it was right side up. So I don't know how long, you know, it was upside down. I will say this, Mr. Alexander, this -- this is not a contentious case. In fact, this is a case where there's been an incredible amount of neighborhood outreach. And in terms of the actual notice of the

parties who would be interested in this case, there's been a plethora of e-mail correspondence going back and forth, you know, among the neighborhood association, among abutters, among the neighbors on the street and so with respect -- and also written correspondence for me to all the neighbors and the neighbors to neighbors who may be interested in this case. So I've certainly done a ton of outreach, and I think anyone who really reasonable would have an interest in this case knows about the fact that this hearing is happening tonight and what the substance of this matter is. So if you were to ask me in my reasonable judgment am I worried about this defect in notice, I'd say A, I'm not worried about a defect in the notice, because I think it was properly posted. And B, to the extent that would I be

willing to proceed at the risk of notice perhaps being defective, I absolutely would because I think the chances that there is, that is an issue is remote and unlikely and I think, you know, in terms of what your interests are to make sure that the public is notified of this case, that I'm very comfortable and confident that that's happened here. And with respect to this sign and also all of the other background correspondence that's been had.

CONSTANTINE ALEXANDER: Well, I've spoken my views. I'm not prepared to hear the case. I vote to continue it, but I'm only one of five.

Does anyone else wish to be heard?

BRENDAN SULLIVAN: No, I think we take it seriously and would concur with your reluctance to hear it.

JANET GREEN: I have a question about the upside down nature of the sign. I don't -- I'm -- I'm not convinced by the picture that it's the most visible place that it could be. I'm not -- I don't feel swayed by the upsidedownness of it. First of all, we don't know how long it's been upside down. It could have happened the same day, it could have happened a few days. I mean, we really don't know how long it's been that way for that long, but I -- so I don't feel the upsidedownness makes it impossible to read. I'm not convinced it's in the best location. That's all I would say.

CONSTANTINE ALEXANDER: Okay. Go for a vote or Tom or Slater if you want to express any views?

SLATER ANDERSON: I concur with continuing it.

THOMAS SCOTT: I didn't actually go out and see the sign, so I have to just trust your judgment and the fact that you went out and verified it.

CONSTANTINE ALEXANDER: I'll make a motion. I'll need a date. Sean, when would be a continuance?

SEAN O'GRADY: February 13th.

ATTORNEY MAHMOOD FIROUZBAKHT: I believe one of my cases is being continued to January 9th. Can we perhaps do it on that same night?

SEAN O'GRADY: That's -- we overbooked that night because of our schedule otherwise.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this case be continued until seven p.m. on February 13th. This being a case not heard, on the condition that the

Petitioner sign a waiver of time for decision.

And on the further condition that any revision to the plans or other dimensional form with respect to this matter be in the files no later -- our files, no later than five p.m. on the Monday before the February date.

And on the final condition, important condition, that the sign be maintained. I think you can find a -- if I can interject, a more visible location than this. I didn't see it at all, but maybe I'm a bad looker. But anyway, on the condition that the sign be posted. A sign disclosing the new date and time be posted and maintained for the period required under our Ordinance.

And I would suggest just by way of suggestion, you may want to every couple of

days go by and if it came by and a workman put it upside down again, or often -- sometimes the workmen don't put it up at all. You better go and find out otherwise you're going to have the same mess come February. Just stop by and check it out.

All those in favor of granting a continuance on this basis say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(7:40 p.m.)

(Sitting Members Case #BZA-002383-2013:
Constantine Alexander, Timothy Hughes,

Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will now recall case No. 002383-2013, 250 Monsignor O'Brien Highway.

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

ATTORNEY SUSAN ROBERTS: What we've been doing is electronically submitting and then bringing the hard copies.

CONSTANTINE ALEXANDER: It's important that we get something in the file before the meeting.

ATTORNEY SUSAN ROBERTS: Yes, I was there on Thursday so you know it's there.

All set?

DAVID FORD: Yes.

CONSTANTINE ALEXANDER: These are the plans?

ATTORNEY SUSAN ROBERTS: All set?

CONSTANTINE ALEXANDER: The floor is yours.

ATTORNEY SUSAN ROBERTS: Good evening. Thank you very much for holding this case for a few minutes for us to all be here. With me is -- I'm Susan Roberts from Anderson and Kreiger representing AT&T. With me is David Ford from Centerline Communications also for AT&T. We're here as you may recall because our last hearing on November 14th was continued so that we could redesign our facility by moving the antennas that were in the -- in the front section of the hotel.

Originally as you may recall, the facade-mounted antennas that were, that were shown and submitted for the November 14th hearing were just above the hotel entrance

and there was some objection by the Board to have antennas in such a prominent location. So we actually were able to shift them to the right of the entrance.

CONSTANTINE ALEXANDER: Could I ask you a question to interrupt you, I'm sorry. Look on your board, it's in the photo sims here as well. Look at the actual view, the top row, a middle one.

DAVID FORD: Yes.

CONSTANTINE ALEXANDER: The middle one? The actual view has a -- that's not the actual view.

ATTORNEY SUSAN ROBERTS: Those are the original Nextel antennas though that --

CONSTANTINE ALEXANDER: Oh, they are?

ATTORNEY SUSAN ROBERTS: Yeah.

CONSTANTINE ALEXANDER: Oh, I'm

sorry. I thought they were not there and you were putting them there for the first time. My mistake.

DAVID FORD: So just to clarify. Nextel submitted their decommissioned letter to the hotel and to the rooftop manager who is Global Tower Partners. They haven't physically taken them down yet. That's part of our process.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SUSAN ROBERTS: Yes, I should have summarized to say that we are taking over parts of the former Nextel facility. So one of the locations for the antennas that we'll be installing are on the west facade of the building -- yeah, on the west facade. And those are Nextel antennas and we'll be putting ours instead of Nextel's, the two remaining facades that

we're proposing to go on include the rear of the hotel and the front entrance. So you've seen both the west side and the rear side antennas last time, and the changes now are twofold really.

And by the way, before I forget, I just want to make sure that I bring something to your attention which is that we don't yet have the Holiday Inn authorization for this design. We have GTP, but not Holiday Inn. We will -- what I was going to propose is that we hear this case, hopefully you'll issue a Special Permit, and then at the time that AT&T goes for the Building Permit, we submit the authorization from the Holiday Inn. I guess with all of the holidays it's been busy and they have not been able to --

CONSTANTINE ALEXANDER: And if they don't grant you the authorization, where are

we, all of us?

DAVID FORD: Just to clarify, they have authorized page 2 of the BZ application, they signed and notarized. So they are for our design. It's just the last relocation. So if I may point out, photo 1B and photo 3B were last time reviewed by the Board. And you guys liked those mounting locations. It was only the mounting locations in 2B that were changed. The original drawing -- I mean, the original design that was submitted was approved by the hotel. The only thing they haven't approved yet is the moving from here to there.

CONSTANTINE ALEXANDER: Again, but my question remains.

ATTORNEY SUSAN ROBERTS: I understand your question. If we can't get the authorization, then we won't be able to

get our Building Permit. We'll have to come back if there's a design change. If there's an objection to moving the antennas, you know, to where we're proposing them tonight on behalf of Holiday Inn, then we'll come back to you if we have to change the design and they don't like it.

CONSTANTINE ALEXANDER: Other than the fact we have nothing to do tonight, it's a light agenda, it would have been better to get that authorization --

DAVID FORD: We've been trying for over a month now.

CONSTANTINE ALEXANDER: You could have continued this case one more time to get it. I hate to see us doing things theoretically at least could be just an exercise in futility.

DAVID FORD: Just to clarify, I mean

GTP who is the rooftop manager, they have approved of the new location. We submitted the corrected amendments. They said due to the holiday season and the --

CONSTANTINE ALEXANDER: I understand that.

DAVID FORD: It's an aesthetic improvement over the original design. So they see no reason why the hotel wouldn't improve. They just haven't gotten back to, you know, to us regarding that. So they are -- GTP at least -- we don't deal with hotel. We deal directly with GTP. They are more than confident that once we receive our approval, we take it back to them for one final okay before we move forward to go with the building application.

CONSTANTINE ALEXANDER: They expect that you're going to get the approval.

DAVID FORD: Right.

CONSTANTINE ALEXANDER:

Nevertheless --

DAVID FORD: Right.

CONSTANTINE ALEXANDER: -- it would have been a little bit more --

DAVID FORD: Understood.

CONSTANTINE

ALEXANDER: -- accepted, more of a courtesy to us not to bring before us what could be a theoretical case.

DAVID FORD: Right.

CONSTANTINE ALEXANDER: But, you're hear anyway.

DAVID FORD: Right.

CONSTANTINE ALEXANDER: So keep going.

ATTORNEY SUSAN ROBERTS: Anyway, that is -- that's just something I wanted you

to be aware of.

CONSTANTINE ALEXANDER: I appreciate that.

ATTORNEY SUSAN ROBERTS: I appreciate the discussion.

But going back to how the design has changed, again, we've moved the antennas over the entrance to the right. What we've also done is added some additional remote radio head units. So originally we had --

DAVID FORD: 15.

ATTORNEY SUSAN ROBERTS: -- 15 that were going to be clustered in back of the antennas, five per sector. We have three sectors. Now we're going to do nine per sector. And so these will not be seen from the roof. They'll be on the roof. So the antennas are on the building. The remote radio head units, the RRUs are going to be on

the roof, and those are not to be seen. They were to be seen originally, but we're just adding more. So that is another design change that you would notice on the -- from the drawings.

DAVID FORD: Right. And just to clarify, the radio heads will be sitting on top of the current cables and you can't see the cables right now. So the exact same thing.

ATTORNEY SUSAN ROBERTS: So the -- yeah, I don't know if you have any other questions?

BRENDAN SULLIVAN: The existing ones are going to be removed. It says to be removed by others.

DAVID FORD: Right.

BRENDAN SULLIVAN: So is that not part of the contract in toto or I'm just

trying to --

DAVID FORD: It's GTP's contract. So they are the ones who would be decommissioning the Nextel site before we can go up there. So because we're using two of Nextel's monitor locations --

ATTORNEY SUSAN ROBERTS: No, just one.

DAVID FORD: I mean, a little bit shifting but, yes. Because we're using similar locations for Nextel, their antennas have to come down even for the AT&T site to work. And we're taking over Nextel's equipment in the basement.

BRENDAN SULLIVAN: So in the scenario of the events, which -

DAVID FORD: Nextel has to leave before we even join.

BRENDAN SULLIVAN: So their stuff

comes down first.

DAVID FORD: Right.

BRENDAN SULLIVAN: And that whatever is going to be removed, be removed prior to their installation which is okay --

DAVID FORD: Right.

BRENDAN SULLIVAN: Because I just wouldn't want to see the installation and then all of a sudden the other thing sort of lags. But you're saying they're not comparable and compatible.

DAVID FORD: Right exactly. We can't even technically move in there until Nextel leaves.

ATTORNEY SUSAN ROBERTS: Yeah, we're using, you know, their basement area. We're using one of the locations on the west side of the building.

BRENDAN SULLIVAN: Yes.

ATTORNEY SUSAN ROBERTS: So they have come down on the west side of the building.

THOMAS SCOTT: How do we ensure that the facade is being repaired when they remove the antennas? Because that's always one of our stipulations, you know, if the facility no longer exists in that location that it be removed and the building be restored --

DAVID FORD: Right.

THOMAS SCOTT: -- you know, to its original.

DAVID FORD: I can say right now that the current antennas that are up there are pipe mounted so it's as simple as just removing a pipe. That's the locations on all three sectors. So that would be part of decommissioning. I mean that could definitely be a condition as well. But just

to clarify, it's not actually directly mounted on the building.

THOMAS SCOTT: I would hate to see the pipes left behind or a series of holes left in the facade.

DAVID FORD: I understand.

CONSTANTINE ALEXANDER: In fact, that was a condition, as you pointed out, that we allowed Nextel to be allowed in the building. It's their obligation as well to get those off and to restore the building to its original condition as nearly as practical.

DAVID FORD: Okay.

CONSTANTINE ALEXANDER: That would be another condition of this, too.

DAVID FORD: And just to add further we looked at roughly 12 buildings in this area. And once we found out we actually had

a primary candidate, we received the notification from Gold Tower Partners that Nextel was decommissioning. Once we learned that, this was the obvious choice. So rather than, you know, add antennas on an additional building, it seemed like really the perfect choice.

CONSTANTINE ALEXANDER: Okay.

TIMOTHY HUGHES: Until the next time.

DAVID FORD: Right.

ATTORNEY SUSAN ROBERTS: Does anyone else have questions?

CONSTANTINE ALEXANDER: Questions or comments from the Board at this point?

The Chair will open this matter to public discussion.

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

(No Response.)

CONSTANTINE ALEXANDER: I don't think they do. There is no one here wishing to be heard.

There is nothing in our files. As I recall, the last project, I can look, the Planning Board signed off on it?

ATTORNEY SUSAN ROBERTS: The Planning Board heard this, I believe it was the 19th of November.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SUSAN ROBERTS: We were before them, and they said that it was fine.

CONSTANTINE ALEXANDER: Yes. The old design.

ATTORNEY SUSAN ROBERTS: Right, the old design.

CONSTANTINE ALEXANDER: Therefore, I'm going to take the assumption that if they

loved the old design they'll like this one.

ATTORNEY SUSAN ROBERTS:

Actually --

BRENDAN SULLIVAN: If you liked the old plan, you can keep it.

CONSTANTINE ALEXANDER: Okay. There's nothing else in the file.

Further discussion or we ready for a vote? We can kill time, too, you know, and have a lot of discussion.

TIMOTHY HUGHES: Let's have a vote this is my last case then I'm out of here.

THOMAS SCOTT: I'm just glad that you took our suggestions into consideration and made that improvement because I think that's a huge improvement.

CONSTANTINE ALEXANDER: I agree with that. I should have said that myself, yes.

ATTORNEY SUSAN ROBERTS: It was, it worked for the radio frequency engineer.

THOMAS SCOTT: That's good.

JANET GREEN: It's a win/win/win.

ATTORNEY SUSAN ROBERTS: If it works for them, we're all happy.

CONSTANTINE ALEXANDER: I also -- the photo sims from Newbury improved a little bit. They're actually daytime, not nighttime.

ATTORNEY SUSAN ROBERTS: They're lighter.

DAVID FORD: We did speak to them about that. So moving forward....

CONSTANTINE ALEXANDER: I won't hear a case in the future if we have inappropriate photo sims.

Okay, I think we're ready for a motion.

The Chair moves that this Board make the

following findings:

That the petitioner is a duly licensed and in good standing telecommunication carrier. Licensed by the Federal Government or by the federal agency having jurisdiction over such matters.

That the Petitioner particularly with respect to the revised plans has taken steps to minimize the visual impact of the various elements of what is being proposed.

That this facility is not located in a residentially zoned district and, therefore, further findings that need to be made with respect to a residentially zoned district are inappropriate here or don't apply, are inapplicable here.

That traffic generated or patterns of access and egress as a result of this proposal will not cause congestion, hazard, or

substantial change in established neighborhood character.

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

In this regard the Chair would note that there are already telecommunications carrier equipment on the building so it is not something new to the neighborhood. And there will be no problems with respect to the development of adjoining uses by reason of the Nextel equipment.

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

And that what is being proposed will not impair the integrity of the district or

adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

Based on these findings, the Chair moves that the Petitioner be granted the Special Permit it is seeking on the -- subject to the following conditions:

That the work proceed in accordance with the photo simulations and the plans submitted by the Petitioner. The first page of which on each has been initialled by the Chair.

That the existing telecommunication carrier equipment that is on the building right now be removed before the equipment you wish to install now is installed, and that to the -- and that this, the material you're going to have on the rooftop as part of your proposal not be visible from the public way

as is the case with the current equipment.

That to the extent that you're going to have to remove equipment that's on the facade of Nextel, that's on the facade of the building, that the building be restored to its prior condition to the extent reasonably possible. But the intent being is that there should be no equipment or pipes remaining on the structure, not -- besides what you're seeking. And that to the extent the facade of the structure is going to be damaged or marred by the removal that you're going to have to restore it to the maximum extent possible.

And lastly to the extent that you abandon the use of this equipment that you're proposing for a period of six months or more, that the equipment be promptly removed, your equipment, and that the building be restored

to its prior condition to the extent reasonably possible.

Is that it?

All those in favor of granting Special Permit -- I'm sorry.

ATTORNEY SUSAN ROBERTS: Could I just ask you to clarify, because I think at one point you said that you wanted AT&T to restore any -- to restore the building to the extent reasonably possible, and then another time you said to the maximum extent possible. So --

CONSTANTINE ALEXANDER: Thank you. I like the maximum extent possible.

ATTORNEY SUSAN ROBERTS: Does that mean we have to go with toothbrushes?

THOMAS SCOTT: Duct tape.

CONSTANTINE ALEXANDER: I think you can assume that you're not going to see

Mr. O'Grady on a scaffold up there checking out what you've done. You know where we're going.

BRENDAN SULLIVAN: The attempt is not to have any visible sign of the prior installation.

CONSTANTINE ALEXANDER: Exactly, that's right. From street level.

ATTORNEY SUSAN ROBERTS: Just to clarify as well, Nextel will be responsible for removing it. And to the extent that Nextel doesn't do a good job, AT&T will be there to restore it.

CONSTANTINE ALEXANDER: That's exactly right.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: You should be contacting Nextel, if I might suggest, and remind them of their obligation to take the

stuff down.

ATTORNEY SUSAN ROBERTS: Right.

CONSTANTINE ALEXANDER: Because that was imposed on them when we granted the Special Permit on them before.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: All those in favor of granting the Special Permit subject to the conditions stated, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Motion granted.

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

* * * * *

(8:00 p.m.)

(Sitting Members Case #BZA-002701-2013:
Constantine Alexander, Brendan Sullivan,
Thomas Scott, Janet Green, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002701-2013, 53 Smith
Place.

Is there anyone here wishing to be
heard? Please give your name and address.

JULIO MADRID: My name is Julio
Madrid from Euro-Tech Auto Body.

NERY LEAL: My name is Nery Leal.
N-e-r-y L-e-a-l.

CONSTANTINE ALEXANDER: Okay.
You're seeking a Variance to transfer a Class
2 used car license from your prior location
of 45 New Street in Cambridge.

JULIO MADRID: That's correct.

CONSTANTINE ALEXANDER: To your location at 53 Smith Place. The property is zoned industrial and therefore auto body shops and used car operations are not permitted under our Ordinance.

You came before us for a Variance before for the auto body shop.

JULIO MADRID: Yes.

CONSTANTINE ALEXANDER: And we granted you the Variance.

JULIO MADRID: Yeah, that's right.

CONSTANTINE ALEXANDER: And now you're here before us for a second one, the used car license, the transfer. And I've got to assume that this basically is an oversight. You should have probably brought this sought this the last time around? Why now?

JULIO MADRID: Well, basically what we're doing is we're going to have cars like overflow. Some people leave them there. We want to be able to resell them. We don't want to have any cars advertised for sale or parked. No advertisement or anything, just like get rid of the overflow.

CONSTANTINE ALEXANDER: But did you do that in your old location?

JULIO MADRID: Yes, we did.

CONSTANTINE ALEXANDER: I think what I said is probably correct. This probably should have been part of your other petition.

JULIO MADRID: That's correct.

CONSTANTINE ALEXANDER: And now you've discovered -- and you didn't realize.

JULIO MADRID: Yeah, we didn't think that it was that hard to get it. And we

transfer it and that would have been it, but I guess I was wrong about it.

CONSTANTINE ALEXANDER: Have you had any problems with neighbors or abutters or with the city in regard to your auto body shop?

JULIO MADRID: No, not at all. We get along really well with the neighbors. As a matter of fact, I spoke with the John Digiovani (phonetic) a couple days ago, he called me, he asked me about it. I explained it to him what was the -- you know, what we were going to do. And I also spoke to the other abutters, and everybody is fine with it.

CONSTANTINE ALEXANDER: Last I knew we had nothing in the file from anybody.

JULIO MADRID: Yes.

CONSTANTINE ALEXANDER: You're

permitted under the old Variance that we granted to you to only have six parking spaces around the building.

JULIO MADRID: Yeah.

CONSTANTINE ALEXANDER: You're not seeking to increase the number of spaces?

JULIO MADRID: No, no.

CONSTANTINE ALEXANDER: To the extent that you put a used -- a car that may be booked for sale in one of those spaces that's one less space you're going to have --

JULIO MADRID: Yeah, but we don't really go -- like I said, we just location, they come in.

CONSTANTINE ALEXANDER: Some people abandon them.

JULIO MADRID: Exactly.

NERY LEAL: And we want to do it the right way.

CONSTANTINE ALEXANDER: So you're not proposing to do any advertising?

JULIO MADRID: No.

CONSTANTINE ALEXANDER: No banners?

JANET GREEN: No balloons?

NERY LEAL: No, no.

CONSTANTINE ALEXANDER: No balloons or banners like you see --

NERY LEAL: No traffic or anything.

JULIO MADRID: No, we plan to get along with the neighbors for a long time, you know.

CONSTANTINE ALEXANDER: What will be your hours of business for the used car business? It would be the same hours --

NERY LEAL: The same hours as the body shop.

CONSTANTINE ALEXANDER: No, you're not going to have midnight madness sales?

JULIO MADRID: Everything is going to be the same. We're not going to change anything.

CONSTANTINE ALEXANDER: Okay.

And you said you're not even going to advertise in the papers or otherwise?

JULIO MADRID: No, no.

CONSTANTINE ALEXANDER: And, again, this is an incidental use to your auto body shop?

JULIO MADRID: We just think it's a really good thing to have. You know, people abandon the cars and we need to get rid of them, you know.

CONSTANTINE ALEXANDER: Okay. I have no further questions.

Any questions from members of the Board?

THOMAS SCOTT: Who abandons their

cars?

JULIO MADRID: Well, some people it gets so hard so they don't want it no more.

THOMAS SCOTT: Oh, you mean like the repair is so exorbitant --

JULIO MADRID: Yeah.

THOMAS SCOTT: -- you guys can fix it --

NERY LEAL: We can fix it and we sell it.

THOMAS SCOTT: Okay.

JULIO MADRID: And occasionally friends and family ask us for a car, so we get it, fix it, and turn it around, you know. Because it's not going to be parked there. No cars.

NERY LEAL: No signs or nothing for sale.

SLATER ANDERSON: How many a year

would you say?

JULIO MADRID: Because we had a couple of cars we sell like maybe like four cars? For the whole year, four or five cars. And then, and it was car that were there they came to the shop, you know.

CONSTANTINE ALEXANDER: Let me ask you a question I probably shouldn't ask. How did you find out you needed this license in the first place? You needed to transfer the license.

JULIO MADRID: Because we thought it was a great idea.

CONSTANTINE ALEXANDER: No. Somebody in the city, you went to the city and they said you can't do it without a Variance?

JULIO MADRID: Well, yeah, of course we went to the City Hall and transfer it just like that and they said you needed a Variance.

CONSTANTINE ALEXANDER: Wow, good for the city.

JANET GREEN: Very efficient.

NERY LEAL: We had to go through the process.

CONSTANTINE ALEXANDER: Any further questions?

THOMAS SCOTT: No.

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

(No Response.)

CONSTANTINE ALEXANDER: No one wishing to be heard.

There were no letters in the files.
Any come in, Sean?

SEAN O'GRADY: No.

BRENDAN SULLIVAN: The only one that would probably have any -- would be the ambulance or the John Digiovani would have

any opinion at all. If they're satisfied, I'm satisfied.

JULIO MADRID: I had a conversation with him a couple days ago.

BRENDAN SULLIVAN: And we would hear if they had concerns.

JULIO MADRID: He'll be here. You better believe he'll be here.

CONSTANTINE ALEXANDER: Okay, I think we're ready for a motion.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner would not be able to conduct the business incidental to the business that it now conducts on the premises, that of an auto body

repair shop and which is permitted by a Variance granted by this Board earlier.

That the hardship is owing to circumstances relating to the location of the land and structures. In this regard the hardship that we found with regard to granting the Variance to operate an auto body repair shop apply equally here and are incorporated by reference in our decision here.

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

Such condition will be satisfied -- such requirement will be satisfied by virtue of the conditions I propose we impose on the Variance to be granted.

So on the basis of these findings the Chair moves that a Variance be granted to the Petitioner to transfer a Class 2 used car license from 45 New Street, Cambridge, to 53 Smith Place, Cambridge, subject to the following conditions:

That the used car business will be only incidental to your auto body repair business.

That any parking of cars outside of the structure will have to be in the six spaces that we identified and conditioned your prior Variance to. So that you only have a total now of six for both your used car business and your auto body repair business.

That your hours of business with regard to your used car operations will be the same or no more than the hours of business that you actively conduct your auto body repair shop. That there will be no signage on the property

identifying the used car business or other banners, balloons, or other elements to call attention to the fact that you're running a used car business.

And that there will be no signs on your structure identifying that you're running a used car operation on these premises.

Any other conditions people want?

On this basis the Chair moves that we grant the Variance sought subject to the conditions I've just identified.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

JULIO MADRID: Thank you, gentlemen.

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

* * * * *

(8:15 p.m.)

(Sitting Members Case #BZA-002695-2013:
Constantine Alexander, Brendan Sullivan,
Thomas Scott, Janet Green, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002695-2013, 159
Fayerweather.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair
notes that there's no one who wishes to be
heard.

The Chair would advise the Board that
under Section -- this is a case seeking a
Special Permit. Under Section 10.42 of our

Zoning Ordinance, we have to notify -- any Special Permit application, we have to notify the Planning Board. And the Planning Board within 35 days of the receipt of the notice from us is supposed to give a report with regard to the relief being sought. And I'm now reading from 10.42. It says: The Board of Zoning Appeal shall not render any decision on an application for a Special Permit until said report has been received and considered or until the 35-day period has expired. That's 35 days from the -- well, from the time we notify the Planning Board.

The Chair would further advise and make part of the record that the Planning Board did not meet because of weather conditions, so we did not receive a report from them as required and as we always receive, and the 35-day period has not expired. Therefore, we have

no ability to consider this case tonight and we need to continue it to a different date.

The date being?

SEAN O'GRADY: January 9th.

CONSTANTINE ALEXANDER: January 9th. And we don't need a waiver for the time of decision because it's within the time?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued until seven p.m. as a case not heard on January 9th on the condition that the Petitioner be advised that the extent, revised plans or dimensional forms are going to be necessary for the hearing on January 9th, that they be in our files no later than five p.m. on the Monday before the January 9th.

And on the further condition that the

sign for advertising the relief being sought be posted and maintained in accordance with our Zoning Ordinance. Except that the date should be changed and the time. The date now being January 9th, the time being seven p.m.

And on the further condition, but a request to Mr. O'Grady, that tell the Petitioner not to put the sign in the front door because the front -- the workmen on their property and the front door is open --

SEAN O'GRADY: Over on 159?

CONSTANTINE ALEXANDER: Yes. I would advise the Board I went by there and didn't see any sign again. And Sean went by and say no sign as well. It turns out the sign's in the front door, the workmen are there, and the front door is open and so you can't see it. At least during daylight hours and the workmen are there. So ask them to put

it in a window. They're putting windows on either side of the door and we don't have to worry about this.

So anyway, on the basis of all the foregoing, the Chair moves that this case be continued.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

BRENDAN SULLIVAN: I would strongly urge that signs not be put in windows. They should be on the building.

CONSTANTINE ALEXANDER: Okay, fine.

BRENDAN SULLIVAN: You put it in the window and you've got a screen there and it really screens the sign.

THOMAS SCOTT: Good point.

BRENDAN SULLIVAN: And people don't know if it's a declaration or what it is. So going forward, I feel that people have to -- you'll notice a sign on a building. You don't notice it in a window.

SLATER ANDERSON: I agree. I think people's inclination is not to look in people's windows. It may be a vacant house but your tendency is not to peer around in people's windows.

CONSTANTINE ALEXANDER: Convey this message to Mahmood with regard to 24 Clinton Street.

* * * * *

(8:20 p.m.)

(Sitting Members Case #BZA-002711-2013:
Constantine Alexander, Brendan Sullivan,
Thomas Scott, Janet Green, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002711-2013, 7 Gladstone
Street.

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

(No Response.)

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

The Chair would with respect to this
case, the same drill each time, the Chair
would note that this is a request for a
Special Permit. That under Section 10.42 of

our Ordinance any request for a Special Permit must be forwarded to the Planning Board so that it can render a report to our Board. And the 10.42 states specifically the Board of Zoning Appeal shall not render any decision on an application for a Special Permit unless until said report has been received and considered or until a 35-day period has expired. The 35-day, in our case, the 35-day period has not expired and we have no report from the Planning Board because the Planning Board was unable to meet or its meeting was canceled because of weather conditions. Therefore, under our Ordinance we cannot consider this case this evening.

So I move that we continue this case until January 9th.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: So the

Chair moves that this case be continued until seven p.m. on January 9th. It being a case not heard on the conditions that to the extent that the Petitioner wants to modify the plans or dimensional form, it must have these modified plans or form in our files no later than five p.m. on the Monday prior to January 9th.

On the further condition that the sign advertising as required by our Ordinance advertising this petition be maintained for the period of time prior to January 9th as required by our Ordinance. And that the sign that's existing there now be modified to reflect the new date, January 9th, and the new time, seven p.m.

All those in favor of granting the continuance say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Done.

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

* * * * *

(8:35 p.m.)

(Sitting Members Case #BZA-002818-2013:
Constantine Alexander, Brendan Sullivan,
Janet Green, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 002818-2013, 541
Massachusetts Avenue.

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

(No Response.)

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

The Chair would advise that this case
is a case involving a Special Permit. That
under Section 10.42 of our Ordinance we have
all Special Permit cases are referred to the
Planning Board which in turn is supposed to

give us a report with regard to the case within 35 days. And 10.42 specifically states, quote: The Board of Zoning Appeal shall not render any decision on an application for a Special Permit until said report from the Planning Board has been received and considered or until the 35-day period has expired without receipt of the report.

The Chair would note that the 35-day period has not expired and we have not received a report from the Planning Board because the Planning Board meeting, the most recent meeting was canceled due to weather conditions.

Consequentially we are not able to consider this case tonight. We have to continue it to a future date.

The Chair moves that we continue this

case until January 9th at seven p.m. on the condition that the Petitioner modify the sign that's now posted on the premises to reflect the new date, January 9th, new time, seven p.m.

And on the further condition that the extent that drawings, plans, or the like from the Petitioner or new plans or drawings are going to be submitted before January 9th, that they must be in our files no later than five p.m. on the Monday before January 9th.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Sullivan, Green, Anderson.)

(Whereupon, at 8:40 p.m., the

Board of Zoning Appeal

Adjourned.)

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ATTACH TO ZONING BOARD OF APPEALS

DATE: 12/19/13

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 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 3rd day of January, 2014.

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

My Commission Expires:
April 23, 2015

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