

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JANUARY 28, 2016
7:00 p.m.

in

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

Constantine Alexander, Chair

Janet Green, Member

Douglas Myers, Associate Member

Slater W. Anderson, Associate Member

George S. Best, Associate Member

Sean O'Grady, Zoning Specialist

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I N D E X		
CASE		PAGE
BZA-008696-2015	-- 205 Brattle Street	91
BZA-008957-2015	-- 146 Mt. Auburn Street	6
BZA-009016-2015	-- 11 Tremont Street	64
BZA-009063-2015	-- 14 Holly Avenue	102
BZA-009078-2015	-- 20 Carver Street	128
BZA-009107-2015	-- 8 Acorn Street	122
BZA-009080-2015	-- 47 Roberts Road	144
BZA-009059-2015	-- 1815 Mass. Ave.	182
BZA-009073-2015	-- 141 Portland Street	230
BZA-009089-2015	-- 675 Mass. Ave.	262

KeyWord Index

PROCEEDINGS

(7:00 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Board Zoning Appeals to order. And as is our custom, these are cases that started a while back and we didn't reach a resolution and we're going to hear the case again tonight.

Before I call the continued cases, there's only two, and one will not be called until eight o'clock because the petitioner didn't change the sign; he changed the date, but not the time. But before I start I would like to announce that after notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting.

At the beginning of the meeting the Chair will

inform other attendees at that meeting that a recording is being made.

And I will report that a recording is being made. A member of the audience is recording. There's his device. And also a second recording is being made by our stenographer. We keep a transcript of all of our hearings, those are our minutes. And to assist her, Cathy in doing the minutes, she also records the sessions to fill in gaps or whatever.

So, there will be two recordings, two being made. We don't have a big audience tonight, but I would also ask that if we do have people come and you want to chat in the audience, kibitz or whatever, strategize, please do so outside the meeting or at least way in the back of the room. The reason for that is talking or other noise from the audience interferes with Cathy's ability to transcribe our hearing.

* * * * *

(7:00 p.m.)

(Sitting Members Case No. BZA-008957-2015: Constantine Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: With that, I will call our first case and that case will be case No. 008957, 146 Mount

Auburn Street.

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

THEODORE GALANTE: Yes, I am.

CONSTANTINE ALEXANDER: It is our practice to give your name and address to the stenographer.

THEODORE GALANTE: My name is Theodore Galante, and the address is 146 Mount Auburn Street in Cambridge. And I wanted to set up a board really quickly if I might and share a model or two with you. And this is a building that we'd like to talk about. And that's the piece I'd like to add.

Without making the Board wait, it's a two-fold petition to change the use of the upper floors. These two floors from what is by default, I think, commercial use. Obviously it was originally -- the building was originally built in the 1850s, as a residence in the 1900s, this piece was added on for commercial use at some point, and there's

no record anywhere of when. This piece was -- became commercial use. And so I purchased the building -- and sorry, just to be clear, it's from this ridge that way that we're talking about. It's not the whole building. This is 146. This is 140-something. 144. So I purchased this half a year ago, and my architecture practice is in this commercial portion where these beautiful models were made. And the plan right now is to change this portion from here over, just the upper floors, back to residential for my personal use. Remove -- modify, sorry, not remove, modify this dormer so that it now does that. And just to show clearly, so we're going from that to that.

I have met with my neighbors and talked with my neighbors and have four letters of support for the project both from immediate abutters and adjacent abutters.

The other model that I want to talk about is this model right here. This is Mount Auburn Street going down the center. This is Brewer Street. And the building sits

on the corner of Mount Auburn and Brewer Streets. And this portion of the building is what we're talking about. So this model is really just to show context of the building and the dormers and all of the pieces that are around to say that I feel we're blending in with the context very well, nothing is out of scale or out of proportion or out of size, on what we're proposing to do. There are dormers like this in many places.

The Cambridge Historic Commission has reviewed this and has given us approval as submitted and as designed. And I have some boards. I don't remember exactly -- I think these might be -- so certified plot plan and overall site plan showing Mount Auburn, Brewer. That's the building in question with all of the -- it's existing nonconforming, right, as it currently stands because it was built before the Ordinance. And this is the portion on the roof that we're talking about, this piece, you know, rotated back there.

One of the pieces --

JANET GREEN: Before you go further --

THEODORE GALANTE: Yes.

JANET GREEN: -- could you show that one more time? And say --

THEODORE GALANTE: Yes.

JANET GREEN: No, the one you were looking at. And say which piece we were talking about.

THEODORE GALANTE: So this plan should probably be rotated 180 degrees or just under that. This design right here. That's 146 and this is 144.

CONSTANTINE ALEXANDER: The front half of that.

THEODORE GALANTE: And we're talking about this area right on top of it like that.

JANET GREEN: So that's it, okay. Thank you.

THEODORE GALANTE: Yeah. And then the --

CONSTANTINE ALEXANDER: I thought it was here on this side.

SLATER ANDERSON: Can I see the file?

CONSTANTINE ALEXANDER: I'm sorry, I guess I got disoriented. I thought the dormers are going to be -- was going to be on Mount Auburn.

JANET GREEN: They're facing Brewster.

THEODORE GALANTE: They're facing Brewer, yes.

JANET GREEN: Brewer.

THEODORE GALANTE: Yes.

This is a very historic facade. And in fact, it's not shown on this model. It does show in some of the photos and renderings, this is 144 and there's a railing across the front of this building. And when I bought this building, you can walk out of the restroom that's right behind that window and there's a door to the roof, and one could walk out there and fall off the roof very easily. And so working with Cambridge Historic we talked about removing -- relocating the door from the restroom to one of the offices and changing that door to a window, but also

putting a railing around the entire roof for safety reasons, and working with Cambridge Historic also for aesthetic reasons. And so we've done that. It's not easy to see in these photos.

CONSTANTINE ALEXANDER: How big a residential space will be there if we grant you the relief you're seeking?

THEODORE GALANTE: Just about 1500 square feet.

CONSTANTINE ALEXANDER: And before, this was originally, as you pointed out, and of course it's true, this was originally a residential structure.

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: And then it got converted at some point, the upstairs anyway --

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: -- to offices.

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: Did they modify the

interior? Why can't you just go back to the building the way it was?

THEODORE GALANTE: Oh, I wish I could. The building has been modified. There's --

CONSTANTINE ALEXANDER: Inside?

THEODORE GALANTE: Yes, radically. There's a single stall restroom with a sink, that's all. And not very accommodating with that. There is no kitchen. There are no dedicated bedrooms. There's no dedicated living room. All of those things. So it's not really suitable for a dwelling.

CONSTANTINE ALEXANDER: But you need, you said you need more living space, that's the purpose of the dormer.

THEODORE GALANTE: That's the purpose of the dormer. It does not fit three bedrooms. I need three bedrooms and it does not fit three bedrooms, so that's the purpose of the dormer.

CONSTANTINE ALEXANDER: Okay.

THEODORE GALANTE: And the goal, it looks like that right now. Aluminum siding, pretty awful. That's what we're using as precedence which is right down the street. It is that building on the model right there. And it is, it's a gorgeous historic house. And so I'm trying to do that, working with Cambridge Historic, they've been a great asset to work with. And so I'm trying to make that portion of the building look like that and take what -- the good work that the Historic Commission has guided us in the front, clapboard, six over one windows, a door, do the same thing on that side, get rid of the window shaker, air conditioners, aluminum siding, put the returns back, eave extensions back in, corner boards, and restore it back to what I think it looked -- what we think it looked like as period specific as possible.

So Cambridge Historic has been supportive and they've been great. And there's a photo of the railing, you can see it up there.

CONSTANTINE ALEXANDER: Right.

THEODORE GALANTE: That's what it looked like in 1960. You know, the -- I changed the glass, right? The building hasn't been touched since prior to me being around. So I'm trying to restore the building and renovate the building. And as part of that, it's becoming my residence.

These are renderings showing both the elevations of the building. This is looking from the Brewer Street side with the eave, the eave return lines I just talked about. The six over one windows on the sides. The railing's already been installed, and then that's the dormer that we're talking that's in question.

Looking from the parking lot toward Brewer or from Liz Friedland's house, back toward the place, we're taking part of that dormer down and then lowering it in fact, so then it will look like that on that side and that's a view from the front where we're just really adding a couple of skylights.

CONSTANTINE ALEXANDER: Okay. Let's get to the specifics. And, thank you, it's a very nice presentation.

THEODORE GALANTE: Thank you.

CONSTANTINE ALEXANDER: And very useful visual aids.

To grant you a Variance, we have to make three findings by law.

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: And you need to address all three of those. I can review it with you. You need a substantial hardship that's driving this project. That the hardship is owing to special circumstances; shape of the lot, soil conditions, and the like.

THEODORE GALANTE: Yes, sir.

CONSTANTINE ALEXANDER: And lastly, that granting relief will not derogate from the intent and purpose of our Ordinance.

Could you address all three of those?

THEODORE GALANTE: Yes, I would be happy to address all of those and I have a statement for that:

A literal enforcement of the provision would involve a substantial hardship, financial or otherwise, for the following reasons:

A literal enforcement of the provision of this Ordinance would actually prevent the building from partial conformance with the Zoning Ordinance by impacting the use on the upper floors as a residential unit. This is a C-1 residential zone, so it's zoned for residential. I believe that it was never officially zoned into a commercial entity. It's sort of a default use.

And what was originally residential unit evolved into what I'll calling a class C office, and now personally has evolved for conversion of this into a three-bedroom unit for myself and two children.

A literal enforcement would cause substantial financial hardship as it would not allow residential

occupancy.

At the same time a literal enforcement would allow, would limit the dormer addition making the three bedrooms inaccessible because there's not enough room. This is attic space currently.

CONSTANTINE ALEXANDER: Again, I'm not trying to be difficult, but I have to push the legal aspects. There's no hardship. That you can't have three bedrooms is not a hardship.

THEODORE GALANTE: I have two children.

CONSTANTINE ALEXANDER: That's not a hardship. It's a hardship to you personally. But it's supposed to be a hardship that runs to the land, and anybody who wants to use the premises needs more space. The fact that your circumstances are you have two children, you know, I'm not trying to be difficult. But --

THEODORE GALANTE: I understand.

CONSTANTINE ALEXANDER: -- you find space that

allows you to have the three bedrooms you want. And maybe this space should be for someone who has one child or no children and doesn't need three bedrooms. So that's -- that doesn't get you there.

THEODORE GALANTE: And so explain the question of hardship, because I'm a little --

CONSTANTINE ALEXANDER: A hardship is supposed to be hardship that runs with the land or the building in this case. It's a hardship that applied to anyone who occupies the structure. Whoever would be occupying for whatever legal reasons, it would be -- there's a hardship being caused by the way the land and the property's being used, and then you go on to the next step. And that hardship is owing to blah, blah, blah.

THEODORE GALANTE: Well, I mean I would say that hardship is owing to -- the next one is the hardship is owing to the following circumstances: Related to the soil conditions, shape or topography of the land or structures,

and especially affecting land or structures, but not affecting the zone. The hardship is owing to the shape or structure, and that was originally designed as a residence and is unsuitable for office space. And the shape of the structure is much more suitable to a residential dwelling, and the intent of this is to rebuild the exterior into a historic manner, but to do so in such a way that's consistent with a residential structure, and rebuilding it as a residential structure. So, I think the, you know, circumstances relating to the soil conditions, shape, or topography of the land, the soil conditions here are awful first of all. That's --

CONSTANTINE ALEXANDER: That's not what's driving it. The fact of the matter is you have a non-conforming structure.

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: And any modification requires relief.

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: And it seems to me that's the best way of satisfying the second condition.

The soil conditions would be if you were going to construct from the ground up --

THEODORE GALANTE: Right.

CONSTANTINE ALEXANDER: And you've got problems.

THEODORE GALANTE: Right.

DOUGLAS MYERS: In fact, the non-conforming use is being eliminated.

CONSTANTINE ALEXANDER: In part. In part. Because they're still going to have the commercial use on the ground floor.

DOUGLAS MYERS: Right.

THEODORE GALANTE: Which has a Variance in place.

DOUGLAS MYERS: Closer to conformity.

CONSTANTINE ALEXANDER: Right. And he made that point.

THEODORE GALANTE: Yeah, yeah.

Okay. Desirable relief may be granted without either substantial detriment to the public good for the following reasons:

Since the request is in a Residence C-1 zone and thus designed for such use, that is conforming, the alteration will improve parking provisions, less parking for offices, because currently there's offices up there and people use the parking. Also patients come and go. And so there will be less traffic in a residential zone. Parking for visitors. And increases the open spaces. Former roof area, did not have a railing and we're using that as open space and so that's safety and set by Cambridge -- approved by Cambridge Historic.

CONSTANTINE ALEXANDER: That's an important point. Don't pass over it too lightly. You're not derogating from the intent and purpose of our Ordinance because you're modifying a building in a historically significant district

and Cambridge Historical is supporting you, that's very significant.

THEODORE GALANTE: Relief may be granted without nullifying or substantially derogating from the intent and purpose... so --

CONSTANTINE ALEXANDER: You've touched on all of those. The first one is the most troublesome of all, but let's move on.

We also have something called dormer guidelines. Are you familiar with those?

THEODORE GALANTE: I'm familiar with the dormer guidelines.

CONSTANTINE ALEXANDER: Okay.

And obviously your dormers don't comply with that. Now dormer guidelines are guidelines, they're not a legal requirement like you have for a Variance.

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: On the other hand, our

Board is very sensitive to those guidelines. I mean, we don't like people -- don't like situations where the people are not conforming to the guidelines, but we do make exceptions --

THEODORE GALANTE: Right.

CONSTANTINE ALEXANDER: -- in cases where we think there are circumstances to make exceptions.

Could you just address why you're doing the dormer configuration in this fashion that results in you not complying with the dormer guidelines?

THEODORE GALANTE: Absolutely.

The dormer guidelines suggest three-foot, six setbacks from the edge of the roof. We're unable to do that because the interior space would be quite constrained. 70 square feet is the minimum building code allowable bedroom with seven foot in one direction and a certain ceiling height. We are -- if we were to conform with the dormer guidelines, we were at 80 feet or a very tiny bedroom and

rendering this space almost unusable. And so this is extending out to the edge of the wall and making that, the interior space can be used in an effective way. So the interior space is really driving the size of the dormer. On top of that, this abutter has given us a letter of support saying that they're comfortable with that. So we've done community work to reach out and see what people have thought.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board?

SLATER ANDERSON: I just have a clarification. The -- is the lot -- so the building that you're sharing with 144?

THEODORE GALANTE: Yes.

SLATER ANDERSON: I've seen two plans in the file; one shows a separate lot that you're building sits on, and the other one shows the lot for the hole building. Which is it?

THEODORE GALANTE: So it is two separate legal parcels.

SLATER ANDERSON: Okay.

THEODORE GALANTE: If that's clear. The original site plan did not show that. We sent in a --

SLATER ANDERSON: I think your site plan right there shows the full lot.

THEODORE GALANTE: So this is a certified plot plan that we sent in late. This is a certified plot plan -- actually, I don't know if that's the right one. It is two lots. That -- I own that lot.

SLATER ANDERSON: Because it affects the calculation, floor area and everything.

THEODORE GALANTE: The calculation is, is right here.

SLATER ANDERSON: There is a plan of the lot B I believe it's called.

THEODORE GALANTE: Yes, that is the lot right

there.

SLATER ANDERSON: So the 2500 and change.

THEODORE GALANTE: Yes, 2530-something if I remember right.

CONSTANTINE ALEXANDER: But you --

THEODORE GALANTE: 2570, 2570 is the calculation and is the proper square footage of the lot, yes.

CONSTANTINE ALEXANDER: Your FAR is way over right now.

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: And you're going to increase the amount by --

THEODORE GALANTE: By 0.03 which is 94 square feet in that attic.

CONSTANTINE ALEXANDER: Yes, not a significant amount.

The point is that's one of the reasons that you're here before us is because your FAR issue is --

THEODORE GALANTE: Yes.

CONSTANTINE ALEXANDER: You're already
non-conforming.

THEODORE GALANTE: Yes.

JANET GREEN: I guess I have two comments, Gus.

One is about the hardship, and it seems to me that the hardship is really related to the fact that it had maybe been inappropriately converted to commercial property when in fact it should have been residential. And how that happened or I wasn't clear about that, but it seemed to me it's putting this back, as Doug said, is putting it back into more typical and neighborhood usage for the C-1 District.

My second thought was that the -- regarding the dormer, because I looked at that, too, and it seems to me the dormer guidelines fit in a more, I don't know whether you'd say traditional or customary situation about dormers, and this certainly isn't -- isn't that. It's different than

that.

And I would make a comment to you that it was a difficult application for me to read because you never gave us a floor plan of the existing to compare with the prepared. You've done much more extensive modelling and your rendition of, you know, how it would look was really helpful. I would suggest in that you might circle the point on the rendition that was the part that you were changing. But if you had had the floor plan of what was existing and then we can compare it with what was going to be your projected or what you were applying for relief, that would have been helpful to read your application.

THEODORE GALANTE: Thank you.

CONSTANTINE ALEXANDER: Very good point. Most times we do get it -- although we know zoning is not directed to interior planning, that would be helpful.

THEODORE GALANTE: I wasn't thinking of that, I'm sorry.

SLATER ANDERSON: Including, you know, elevation and sections would be helpful. Particularly with the issue being ceiling height for the primary limited factors understanding that limitation supports your hardship case.

THEODORE GALANTE: Okay.

DOUGLAS MYERS: I'd just like to add it seems to me that this is a case where -- it's very strong case for applying the dormer guidelines in kind of an understanding way because there is good being done by these dormers. The roof lines of the building and the adjoining buildings are very restless and irregular already, and I think your rather placid shed dormers are a big improvement on the irregular high gabled dormer that is there already, and we're going to end up with a structure that I think is harmonious with the buildings around it. And once more, all of this is taking place on the rear portion of the building, and our dormer guidelines encourage us to look more sympathetically when that is the case. Especially here where the rear portion is

a hodge-podge of just historical haphazard occurrences. So I'm inclined to view your application favorably.

THEODORE GALANTE: Thank you.

CONSTANTINE ALEXANDER: Any other comments or I'll open it to public testimony?

(No Response.)

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently no one is wishing to be heard.

As the petitioner's pointed out we are in receipt of letters of support which I will read into the record.

There is a letter from the President John P. Digiovani, President of Trinity Property Management, Inc.

(Reading) I am writing in support of RE Studio, LLC, care of

Theodore Galante. I have known Ted to be longstanding citizen of Cambridge and long-term business owner in Harvard Square. The proposal for change of use from commercial on the upper floors to residential on upper floors with commercial office space below is consistent with overall properties in the City of Cambridge and specifically in Harvard Square. Further, Ted shared the proposed dormer addition to me, as well as the renovations that have been undertaken over the past year. I find the dormer renovations consistent with many other properties in the Half Crown Marsh District as evidence by the approval granted from the Cambridge Historic Commission. The restored building will be an asset to the community. As an abutter on Mount Auburn Street, I support the change of use as well as the addition of a dormer to this property.

We have a letter from Tim Shaw. (Reading) I live at 147 Mount Auburn Street, across the street from Mr. Galante's architectural practice at 146. I am writing

in support of his application for a change in zoning at 146 Mount Auburn Street to allow his conversion of the upper floors of that building from commercial to residential.

I've spoken to Mr. Galante about his plans, which I wholeheartedly support. This sort of conversion to allow his own residence above his architectural practice and replacing the existing multiple psychologist offices is exactly what this part of Mount Auburn Street needs. It counters a trend of encroaching commercial use on the several blocks of Mount Auburn Street so close to Harvard Square. In addition, the exterior renovation work Mr. Galante did last summer seems -- words missing -- seems to be of high quality and a benefit to the neighborhood. Part of this neighborhood's charm lies in the fragile mixture of residential, commercial, and institutional uses that exists throughout it. I believe Mr. Galante's proposed zoning change to residential supports and reinforces the special charter of our neighborhood, and I ask that the

Board of Zoning Appeal approve his application.

We also have an e-mail from a Liz Friedland, F-R-I-E-D-L-A-N-D, 6 Brewer Street. (Reading) I am writing in support of Theodore Galante's application for zoning relief of BZA hearing, etcetera, etcetera. The proposal for change of use from commercial on the upper floors to residential on the upper floors will be a benefit to the neighborhood in the following ways:

Reduction of vehicle and pedestrian traffic on our small side street, historic restoration of property, addition of owner-occupied building which adds value to our neighborhood community. The proposed dormer addition is also consistent with the many dormers in our immediate neighborhood. It has been approved by the Cambridge Historic Commission, and fits the aesthetic language of the building very well. As an immediate abutter on Brewer Street, I support this change of use and the dormer addition as presented and designed.

And lastly, there is a letter or an e-mail again from Donna Lee Marcantonio, M-A-R-C-A-N-T-O-N-I-O and Seth Riskin, R-I-S-K-I-N who reside at 8 Brewer Street, unit 4. (Reading) I'm writing in support of Theodore Galante's application for zoning relief, BZA hearing blah, blah, blah. The proposal for change of use on commercial on the upper floors -- it's the same letter as before, just a different signatory. Before being the letter from Liz Friedland.

And we have a letter from Mr. Shaw, another one, another e-mail this time.

And lastly we have, as the petitioner's pointed out, a Certificate -- he has obtained and has shown to us a Certificate of Appropriateness from the Half Crown Marsh Neighborhood Conservation District approving the work that Mr. Galante wishes to do. And it's tied to plans dated November 23, 2015.

Are those the same plans we have here?

THEODORE GALANTE: Yes, they are.

CONSTANTINE ALEXANDER: Okay, good.

By the way, when get to it, when we grant -- if we grant relief, and I'm going to make a motion to do that, we will tie them to these plans.

THEODORE GALANTE: Okay.

CONSTANTINE ALEXANDER: So if there's going to be any change later, you're going to have to come back before our Board. So I want to make sure you're comfortable with these, these are your final plans.

THEODORE GALANTE: Can I just take a look at exactly what you have?

CONSTANTINE ALEXANDER: I want to read you your rights.

THEODORE GALANTE: Yes, that's the set. Yes, that is the set. Good, thank you.

CONSTANTINE ALEXANDER: Okay, are we ready for discussion or ready for a motion?

UNIDENTIFIED AUDIENCE MEMBER: Testimony finished?

CONSTANTINE ALEXANDER: Okay, I thought I asked for public testimony.

JANET GREEN: She arrived late.

CONSTANTINE ALEXANDER: Oh, you arrived late. I'm sorry. Yes.

Give your name and address to the stenographer.

PEBBLE GIFFORD: Pebble Gifford, 15 Hilliard Street, Cambridge.

This is the model?

THEODORE GALANTE: It is.

PEBBLE GIFFORD: Okay.

I've been working at a disadvantage, because I wish to comment on this because there's no posting of the dimensional requirements on the Board of Zoning Appeals' website at any time. You never put those on. You just state the cases.

Could I make a suggestion that be done for all of us. Because I was -- I couldn't drive last week, couldn't

down here to get that. So I've been operating without the dimensional requirement form. Is there one of those available right now?

CONSTANTINE ALEXANDER: It's in the file, it's right here.

PEBBLE GIFFORD: I know but I couldn't get down to get to the file because I was handicapped.

CONSTANTINE ALEXANDER: Would you like to look at it right now?

PEBBLE GIFFORD: I'd love to. Thank you.

And, Mr. Chairman, how much of this is the proposed dormer? This or this?

THEODORE GALANTE: So this is the building, it's from here over.

PEBBLE GIFFORD: Yes.

THEODORE GALANTE: And this is the current dormer that's there now. And we're proposing to modify that dormer to do that. Mount Auburn Street is here and Brewer Street

is here.

PEBBLE GIFFORD: Okay. So what you're adding is just this section here?

THEODORE GALANTE: Yes, this piece here and lowering this piece that is currently there.

PEBBLE GIFFORD: And the windows will be?

THEODORE GALANTE: The same. It's the same set of windows and the same windows on that side as well.

PEBBLE GIFFORD: Okay. Show me how that works once more.

THEODORE GALANTE: Sorry. So that is there. This roof comes off, that wall stays -- that wall stays, and this goes in its place.

PEBBLE GIFFORD: And so how many additional square feet?

THEODORE GALANTE: In the building? 94 square feet.

CONSTANTINE ALEXANDER: 94 square feet. The

issue -- to save you the time of looking at the dimensional form. You can look at it if you like.

The building is non-conforming.

PEBBLE GIFFORD: Right.

CONSTANTINE ALEXANDER: The FAR is 1.78 -- 1.77 in a district that was supposed to be no more than 0.75. And with the 94 feet, he'll go to 1.8 FAR.

PEBBLE GIFFORD: And what was that last one?

THEODORE GALANTE: It goes from 1.77 to --

CONSTANTINE ALEXANDER: To 1.8.

And the district -- I mean, in that district is not supposed to be more than 0.75. That's why he's here tonight.

PEBBLE GIFFORD: Yep.

Well, I'll make the obvious statement. I don't see the hardship here at all. I should explain where I live. I at Hilliard Street.

CONSTANTINE ALEXANDER: Hilliard.

PEBBLE GIFFORD: 15 Hilliard. Did I tell you that? And I'm in the Marsh Historic District.

THEODORE GALANTE: Half Crown Marsh.

PEBBLE GIFFORD: Half Crown Marsh now. Actually, I was on the Half Crown Board for a number of years when it was first created.

There's no hardship obviously. This is a convenience for Mr. Galante. He says he's gonna build, make it his residence. I'd like to see him sign an Affidavit.

THEODORE GALANTE: Put the Affidavit on the table.

PEBBLE GIFFORD: He has it on the table.

CONSTANTINE ALEXANDER: It's not relevant.

PEBBLE GIFFORD: It's not relevant and a lot of people come up and stand before you and say they're going to do this or that and there's no way to enforce it most of the time. So it's just a precaution I'd like to make.

Now, it's not changing the height in any way of the building?

THEODORE GALANTE: It's reducing the height of the dormer.

PEBBLE GIFFORD: Of the dormer, good.

And it's already non-conforming. So make it more non-conforming.

CONSTANTINE ALEXANDER: As to FAR.

PEBBLE GIFFORD: What?

CONSTANTINE ALEXANDER: As to FAR it's non-conforming.

PEBBLE GIFFORD: Yes. And so it will become more non-conforming by 94 --

CONSTANTINE ALEXANDER: Feet.

PEBBLE GIFFORD: -- square feet.

CONSTANTINE ALEXANDER: That's right.

PEBBLE GIFFORD: Okay.

And the use isn't changing. So what's changing from commercial to residential; is that right?

CONSTANTINE ALEXANDER: Well, partially. I mean,

it is now all commercial. It's going to become, if we grant relief, part, still commercial where he has his studio.

PEBBLE GIFFORD: Yeah.

CONSTANTINE ALEXANDER: And part residential. So he's getting closer to the zoning requirements for the district, which is a residentially-zoned district.

PEBBLE GIFFORD: Yeah, A-2.

THEODORE GALANTE: C-1.

JANET GREEN: It's C-1.

PEBBLE GIFFORD: C-1. I brought my map I guess I read it wrong. What about parking? How is that going to be handled?

THEODORE GALANTE: There are five spots back here right now.

PEBBLE GIFFORD: Right along the side of the house.

THEODORE GALANTE: This is a parking lot right here, there are five spaces, and two of them are currently

rented out to tenants. And those two tenants will be going away. So there'd be fewer parking -- less parking from the tenants and patients often come and some use the drive, so there will be less parking and less pedestrian traffic and moped traffic and car traffic in parking on the reduction.

PEBBLE GIFFORD: And how many offices are in there now?

THEODORE GALANTE: Right now there's five offices. There are five -- there are five rooms, actually seven psychologists because two of them are shared.

JANET GREEN: We're talking about your side of the building.

THEODORE GALANTE: Sorry. That's just this part of the building. Just the area in question, there are currently five rooms, one waiting room, and seven --

PEBBLE GIFFORD: Shrinks.

THEODORE GALANTE: Seven shrinks, thank you, yes, put it that way.

PEBBLE GIFFORD: Okay.

And you will be taking a couple of those rooms?

THEODORE GALANTE: I will be taking the entire portion of this on both floors. The upper floor will be three bedrooms, the lower floor will be a kitchen, dining room, and living room.

PEBBLE GIFFORD: And no more shrinks in those rooms?

THEODORE GALANTE: Other than the ones that I might need, no.

PEBBLE GIFFORD: It's strictly eliminating the offices and putting in --

THEODORE GALANTE: On these two floors only. My office -- my architecture practice is staying down below.

PEBBLE GIFFORD: Yeah, I know where that is.

Okay, what's the rest of the building used for or does that take care of it?

THEODORE GALANTE: I -- there isn't any more rest

of the building. I have a practice that is from this window to this corner on that floor.

PEBBLE GIFFORD: Yep.

THEODORE GALANTE: The conference room is in the lower level and there's a model shop and restrooms in the lower level and that's what's there.

PEBBLE GIFFORD: And back here?

JANET GREEN: That's owned by someone else.

PEBBLE GIFFORD: Oh, it's owned by someone else?

THEODORE GALANTE: Record store and hairstylist.

I have no idea what goes in there.

PEBBLE GIFFORD: Oh, that's right we're going down Mount Auburn.

THEODORE GALANTE: This is Mount Auburn.

CONSTANTINE ALEXANDER: That's Brewer Street.

PEBBLE GIFFORD: And Mount Auburn is where the --

THEODORE GALANTE: Yes, here's Mount Auburn.

PEBBLE GIFFORD: And this is --

CONSTANTINE ALEXANDER: Brewer.

PEBBLE GIFFORD: -- Brewer?

CONSTANTINE ALEXANDER: Yes.

PEBBLE GIFFORD: And this is back -- no street.

It's just the lot.

THEODORE GALANTE: Parking.

JANET GREEN: So it's eliminating seven offices and putting a family in.

PEBBLE GIFFORD: Oh, that's right. Family. And what does your family -- I'm asking what does petitioner's family consist of in numbers?

JANET GREEN: It is what it is. But that's his family.

CONSTANTINE ALEXANDER: That's not relevant.

THEODORE GALANTE: I have 17 children and they're all moving in.

DOUGLAS MYERS: And they all drive.

PEBBLE GIFFORD: I'm speaking in terms of cars. I

mean, how many people drive?

THEODORE GALANTE: I have a 16-year-old son and a 12-year-old daughter.

PEBBLE GIFFORD: Okay. We can wait a while then. And here I'll give you back your file. Thank you for letting me see that.

Well, I always am troubled by granting the Variances when there really is no hardship, and I know the Board is capable of finding hardship when it wants to and it does, so I'll let you figure out that one. But I think given the change in use to a family use, which is what certainly the other side of Mount Auburn along there is primarily, partial I think used commercial, but not very much. Most of it is residential. And certainly around the corner and up Ash Street is residential. I think part of it is to preserve that. I always thought the idea was to have a lot through the commercial sweeping out of Harvard Square because that's what it's done for years. You can see it on

Brattle Street. I have a pizza parlor on my block now that I didn't have before. So the idea is just to sort of protect the residential from creeping commercialism is what I call it from Harvard Square. And I think this does that. I mean, box the creepy commercialism. I'd like to vote present or just note I don't vote. So I'm just --

JANET GREEN: You're for it?

PEBBLE GIFFORD: I'm not going to be for it because I'll get my head in a ringer. But -- Variances with no hardship, but that's my caveat that there is no hardship. But it doesn't seem to bother you at times.

DOUGLAS MYERS: Well, to be fair, we discussed hardship at length at a time that you were not present --

PEBBLE GIFFORD: Oh, I was here when you --

DOUGLAS MYERS: -- and you might not agree with our arguments, but we -- there are -- the opinion was expressed that the legal standard of hardship was satisfied

in this case.

PEBBLE GIFFORD: In this case you discussed it?

DOUGLAS MYERS: We discussed it prior to your arrival.

CONSTANTINE ALEXANDER: We haven't voted on it yet.

DOUGLAS MYERS: It's not as if we've swept it under the rug.

CONSTANTINE ALEXANDER: That's right.

PEBBLE GIFFORD: I'm sure you have not. And that will be reflected in the minutes of how you found hardship here? Do you want to --

DOUGLAS MYERS: It's in the record.

CONSTANTINE ALEXANDER: When I make my motion, you'll hear. Okay?

PEBBLE GIFFORD: Oh, good, thank you very much.

CONSTANTINE ALEXANDER: You're welcome.

James.

JAMES WILLIAMSON: Yeah, hi. My name is James Williamson, 1000 Jackson Place.

It seems to me just looking at it, from what I've heard and what I understand, it's a reasonable and attractive proposal. And I'm hearing the parking situation and the psychiatrists was helpful as far as that goes.

One, my one curiosity is, and I did read the letters, is -- did Steve, you know, Darwin's is right across the street, and I just wondered did Steve Darwin have anything to say or did Mr. --

CONSTANTINE ALEXANDER: Not that I can see in the file. I didn't see any letters in the file.

JAMES WILLIAMSON: I presume --

THEODORE GALANTE: I didn't specifically speak with Steve. I don't know him.

JAMES WILLIAMSON: I presume if he had a problem, he would have expressed it. I was curious if he had expressed any view.

CONSTANTINE ALEXANDER: Not to our knowledge one way or another.

THEODORE GALANTE: If I was going to put a coffee shop, I think he would.

JAMES WILLIAMSON: Anyway, thank you.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: This time no one else.

Right back to where we were, do you want to have a discussion or ready for a motion?

JANET GREEN: Ready.

GEORGE BEST: Ready.

SLATER ANDERSON: Ready.

CONSTANTINE ALEXANDER: Ready, okay.

The Chair moves that this Board make the following findings with regard to the petition, the relief being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being the fact that this is a building that was built as a residence, it is located in a residential district, yet because of this, the interior space of the building and its configuration, it's not at all susceptible to residential use. And the hardship is that one is -- whoever owns this building is left with a residential structure that's not capable of being residentially occupied.

That the hardship is owing to the circumstances relating to the shape of the structure in its location on the lot. This is a non-conforming structure, rather old, predates the Zoning Ordinance and, therefore, any relief or any modification to the structure requires zoning relief.

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

In this regard what the petitioner is seeking to do is to return this property to at least in part to residential use, which is what the district is zoned for. So it's going to reduce the amount of non-conforming use on the building.

That the project seems to have unanimous support of interested neighbors.

That the project has the support of the -- it's been approved by the Cambridge -- I never get the name of it right. The Half Crown Marsh District Historical Commission.

And that generally what is desirable is that it does -- it's a limit to creeping commercialism from a commercial point of view from Harvard Square outward, and it goes away to preserving the residential nature of this general neighborhood.

So on the basis of all these findings, the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with plans

submitted by the petitioner. They've been prepared by the Galante Architectural Studio. They're several pages in length, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

THEODORE GALANTE: Thank you very much.

(Alexander, Green, Myers, Anderson, Best.)

* * * * *

(7:45 p.m.)

(Sitting Members Case No. BZA-009016-2015: Constantine Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will next call one of the cases on our regular agenda, and since people have wandered in since I've opened the meeting, we have one other continued case on our agenda, but the posting sign listed eight o'clock. They did not change the sign from the previous sign and so we can't hear the case until at least eight o'clock.

To keep the ball moving, I'm going to the regular agenda, and the first case I'm going to call from our regular agenda is 11 Tremont Street, No. 009016.

Is there anyone here wishing to be heard on this

matter?

Yes, Ma'am.

I should tell you they're requesting a continuance. We're not going to hear the case tonight. I want to let you know that.

WENDY SHIEH: So what should I say at this point?

CONSTANTINE ALEXANDER: Whatever you want to say, but we're not going to -- first of all, if you're going to say anything, you have to give your name and address to the stenographer.

WENDY SHIEH: Of course.

CONSTANTINE ALEXANDER: But we're not going to do anything tonight but to kick this case to a future date.

JANET GREEN: And we're not going to open it?

CONSTANTINE ALEXANDER: We're not going to open it. It's a case not heard. So I'm sorry, if I had known you were going to be here for that, I would have told you earlier. But....

WENDY SHIEH: But I did write a letter. I talked with Sean yesterday --

CONSTANTINE ALEXANDER: Right.

WENDY SHIEH: -- I was in the office. And I wrote a letter said, you know, because I talked to Sean to know a little bit of detail. I'm not an architect like that gentleman. I need to find out even what is a varying is and all that. So -- but I talk with Sean and he explained the details, and I sort of understand it and I can make my decisions actually today --

CONSTANTINE ALEXANDER: Right.

WENDY SHIEH: -- since I'm here. So if you want to hear it and then --

CONSTANTINE ALEXANDER: No, we don't -- I can't -- I do not want to, for reasons I don't want to get into, I don't want to get into the merits of the case tonight. The petitioner's not here I don't believe.

So I'm sorry, you can express your views in

writing between now -- we're going to in a second decide when we're going to hear the case, if we're going to hear it. The petitioner may decide to withdraw his petition, in which case the case will disappear and everything will stay the way it is. I don't know what he's planning to do. But I gather maybe you're one of the reasons for neighborhood opposition for what he wants to do --

WENDY SHIEH: Yes.

CONSTANTINE ALEXANDER: And because of that he's reconsidering what he wants to do. So....

WENDY SHIEH: Well, the reason I said that is because he told me, you know, we are e-mail communications. He said he's gonna -- well, actually I request to extend it because I don't understand all this, because when I got the letter and there's a hearing is only about a week. I can't grasp the ideas within a week about this. So I said, you know, can I ask to extend it to the 29th? And he said, something like, okay, then you have to sign it. I talked to

the zoning. And then because the storm, you know, I said 29th, maybe have a storm again, you know, and I fly back and I couldn't do it. So I requested again maybe you can do it in April because I -- at that time I was scheduled and I already bought a plane ticket to come back in April which it was no problem. So I requested maybe you can extend it to April, until May because I'm going to be here a whole month. And I never heard from him. So I don't know what's going on. So what is it --

CONSTANTINE ALEXANDER: I'll answer your question in a second.

Has the petitioner requested a specific date for a continuance?

SEAN O'GRADY: I don't remember.

CONSTANTINE ALEXANDER: I don't remember seeing a letter. I'm trying to do it while I was listening.

WENDY SHIEH: Yeah, he told me he extend it to the 29th of February.

JANET GREEN: It said that.

SEAN O'GRADY: It said that.

JANET GREEN: On the placard.

SEAN O'GRADY: He updated his own sign.

JANET GREEN: Somebody did the sign. I don't know
who.

CONSTANTINE ALEXANDER: We have a letter, again
this is not -- we're not going to get into the merits of
this case. We got a letter from the petitioner saying:
This letter is a formal request that the Thursday, January
28, 2016, variance application public hearing for the
proposed extension at 11 Tremont Street be continued to
February 26, 2016.

SEAN O'GRADY: Well, it will actually be the 25th.

CONSTANTINE ALEXANDER: It should be the 25th?

SEAN O'GRADY: It should be the 25th.

CONSTANTINE ALEXANDER: Does that date work for
you?

WENDY SHIEH: You know, I'm a little afraid of the weather factor.

SLATER ANDERSON: Are you coming from somewhere else? Do you live --

WENDY SHIEH: I live in California.

CONSTANTINE ALEXANDER: You came --

SLATER ANDERSON: I hope you didn't come just for this hearing.

CONSTANTINE ALEXANDER: You came just for the hearing?

WENDY SHIEH: Huh?

CONSTANTINE ALEXANDER: You came just for the hearing?

WENDY SHIEH: I came just for the hearing today. I arrived yesterday morning. Because he never, you know, he never called me and then follow up with me. I said, oh, maybe we gonna have the hearing. So I flew, you know, so I flew back. And I don't even know when do you decided to

extend to which date.

CONSTANTINE ALEXANDER: We're going to do that right now.

WENDY SHIEH: If you can extend to April, that would be great. But I don't know he agrees or not. I expect he come here.

CONSTANTINE ALEXANDER: Is there a good chance this case may not go forward, am I right?

JANET GREEN: We don't know.

CONSTANTINE ALEXANDER: We don't know.

SEAN O'GRADY: There's a chance it will not go forward, yes.

CONSTANTINE ALEXANDER: I'm amenable to continuing it to April. I don't think there's any urgency.

SEAN O'GRADY: We have the 14th and the 28th.

CONSTANTINE ALEXANDER: Those two dates in April make a difference to you, the 14th or 28th?

WENDY SHIEH: I want to do the 28th.

CONSTANTINE ALEXANDER: You prefer the 28th?

WENDY SHIEH: Yes, because I'm going to come in the middle of April and then stay for a whole month. 28th will be perfect.

CONSTANTINE ALEXANDER: Other members of the Board feel -- have a problem with going to the 28th? It's a case not heard. But are we being too generous?

DOUGLAS MYERS: It's kind of is, you know, when he reads his mail or picks up the telephone, he could be in for a big shock that we've continued the case with his not being here for --

CONSTANTINE ALEXANDER: Well, that's his problem. He didn't come.

DOUGLAS MYERS: -- two and a half months. Yeah, but he relied on what is usually a standard courtesy of writing a letter.

CONSTANTINE ALEXANDER: No, no. I'm not necessarily sure I agree with that, Doug. We also take into

consideration what neighbors or abutters what date is convenient for them as well.

SLATER ANDERSON: And this is being continued because there are issues with the neighbors?

CONSTANTINE ALEXANDER: Absolutely right.

JANET GREEN: The neighbor.

SLATER ANDERSON: The neighbor.

CONSTANTINE ALEXANDER: I don't know if it's neighbor or neighbors.

JANET GREEN: We only have one opposition.

SEAN O'GRADY: Do you have a waiver?

CONSTANTINE ALEXANDER: Do we have a waiver?

SEAN O'GRADY: It should say it on the corner in the front.

JANET GREEN: Is that the note you mean? I was in today that's why. There was something on the back, a piece of paper.

CONSTANTINE ALEXANDER: Here it is a waiver,

right? This is a waiver of time for a decision. There's nothing about time for reconvening the hearing, though.

SEAN O'GRADY: I just wanted to make sure if we were -- we got --

CONSTANTINE ALEXANDER: We have a waiver of time.

SEAN O'GRADY: Right.

CONSTANTINE ALEXANDER: I'll go back to my question. I'm amenable to continuing it to April 28th, but I'll -- I'm willing to hear from other Members of the Board if they feel otherwise.

SLATER ANDERSON: I want to understand, you said you've been in communication with the applicant?

WENDY SHIEH: Yes.

SLATER ANDERSON: On e-mail or phone?

WENDY SHIEH: E-mail.

Well, let me put it this way, I -- before he, he started the paperwork on this, he did talk to me about it, you know, verbally about my opinion of this. He said he

want to do this, he want to do that. And I said, you know, at that point he said hardship. He said his wife's being old age and there's no bathroom upstairs and that he wanted to -- in the middle of the night it's very inconvenient for them and he want to put a bathroom upstairs. Well, you know, I said fine, put a bathroom upstairs. You know, hardship, you know, for me that, you know, I don't know the regulation, the code and everything. I thought that's the hardship. I said oh, yeah, fine, you know, you apply to that. And then he said, I'm gonna extend it my addition of the entrance to, you know, about this. He just waived it -- his hand over here. And I said, you know, I'm a little concerned at that point because we're already very close, you know. And I said, you know, how, how may feet that you gonna. Just be sure not too close because it's very close. You know, I can from my kitchen window, I can see him cooking in there from the kitchen. And then that's the communication we have. I said, you know, why don't you

go ahead and I'll see, you know, I want to see the map and the final product, right? That's the first communication.

And then I got the letter on this hearing. And then I asked him, I talked to him on the phone. I said how many feet that you gonna be extending out to my fence? And he said we're extending out nine feet. I said nine feet seems a lot, you know. And so I just feel that, you know, it's just -- then we communicate with e-mail, and I just voiced my opinion. I said, you know, nine feet is just a lot. And he send me the map and everything. And I ask him what is the Cambridge Board allowed you to, you know, you have Building Code, right? And he said something like ten feet. Now he extend it out and it's only five feet left after he finished his project. I think it's too close. I really think it's too close.

CONSTANTINE ALEXANDER: I don't want to get into the merits of the case.

WENDY SHIEH: I know, I know. I just want to tell

you how I feel --

CONSTANTINE ALEXANDER: Okay.

WENDY SHIEH: -- and how -- and then he's adding
an open porch as well --

CONSTANTINE ALEXANDER: Okay.

WENDY SHIEH: -- connecting to the addition.

CONSTANTINE ALEXANDER: Okay, okay. Thank you.

Thank you. We don't want to go any farther into this
because we don't want to get into a case heard.

WENDY SHIEH: Okay.

JANET GREEN: I agree. Because I read what we
have so far and numerous going back and forth and changes
and everything, and I don't want it to be a case heard just
because I might not be here.

CONSTANTINE ALEXANDER: April, what was the date
again? April?

SEAN O'GRADY: You got the 14th or 28th.

CONSTANTINE ALEXANDER: 28th was I think you

thought was preferable?

WENDY SHIEH: 28th, yes.

SLATER ANDERSON: Did he know you were flying back today for this hearing?

WENDY SHIEH: Well, I told him at first, I said I'll be here. And then we talking about a change in dates, and then I never heard from him again. So I didn't tell him that I'll be here or not. I thought -- I don't know what he thinking.

SLATER ANDERSON: Yeah, I'm inclined to go with April.

CONSTANTINE ALEXANDER: Okay, I'm ready for a motion. We'll see if the Board Members agree with the motion that I make.

The Chair moves that this case be continued as a case not heard. The significance of that is that any five members, not this five, any five members of the Board can hear the case. As a case not heard until seven p.m. on

April 28th on the following conditions:

That the petitioner sign a waiver of time for a decision. And he has done that. So that condition's been satisfied.

That the posting sign that's there now be modified to reflect the new date, April 28th, and a new time, seven p.m., and that the sign be maintained for the time required under our Ordinance, the 14 days prior to the April 28th hearing.

And lastly, this is relevant to the petitioner, if the petitioner decides to modify the plans or dimensional form that's in our files now, those modifications must be in our possession or must be filed with the zoning office no later than five p.m. on the Monday before April 28th. If that doesn't happen, then we're not going to hear the case on the 28th.

From your perspective if you're going to be flying back in, sometime after April 28th -- I'm sorry, five p.m.

on the Monday before April 28th, any new plans or whatever plans he's proposing to bring before us will be in the files, you can go to the zoning office and you can read them and examine them and make whatever study you want of them. So those plans are publicly available. You don't have to rely on him supplying them to you, but you have to wait to get the most recent plans, the operative plans, you have to wait until at least five p.m. on the Monday before April 28th.

WENDY SHIEH: So I have how many times I have to review his plans, revised plan?

CONSTANTINE ALEXANDER: You have from five p.m. on the Monday before April 28th until the hearing on April 28th. Any citizen of the city can come and read the plans.

WENDY SHIEH: So I need to go there to review his modified plan before the 28th?

CONSTANTINE ALEXANDER: If you want to review them, it's up to you. But anybody -- the point is is that

the process is an open process.

WENDY SHIEH: Sure.

CONSTANTINE ALEXANDER: We want to make sure that everybody in the city, not only neighbors, who have an interest in the case, has an ability to look at the plans and the arguments in advance of the hearing so he or she can come to the hearing and follow what is going on and to make whatever comments he or she wants to make. And the purpose of that is to put everybody on the level playing field so there's no surprises on the night of the hearing.

DOUGLAS MYERS: The final plans will be available for you to review on Tuesday, the 26th, Wednesday, the 27th, and Thursday, the 28th.

CONSTANTINE ALEXANDER: And also Monday from five p.m.

DOUGLAS MYERS: To nine p.m., for sure.

WENDY SHIEH: So like two days?

DOUGLAS MYERS: Three full days.

SLATER ANDERSON: Now, this file is available between now and then.

CONSTANTINE ALEXANDER: It's available --

SLATER ANDERSON: You can look at this at any time, but it may change.

WENDY SHIEH: He may change.

CONSTANTINE ALEXANDER: He may put new plans, maybe new letters coming in, and maybe new arguments.

WENDY SHIEH: Yeah. So I only have to review the final ones that's two or three days --

SLATER ANDERSON: Correct.

JANET GREEN: You have Monday from five o'clock till nine o'clock, all day Tuesday, all day Wednesday, all day Thursday until this hearing. Is that right? Until this hearing or is there a --

CONSTANTINE ALEXANDER: That's exactly right.

WENDY SHIEH: Do I get a notification that he has changed the plan or not?

JANET GREEN: No.

CONSTANTINE ALEXANDER: You can call the zoning office and they'll tell you over the phone.

WENDY SHIEH: Well, do I get a notice --

CONSTANTINE ALEXANDER: No.

WENDY SHIEH: -- to come to the hearing on the --

CONSTANTINE ALEXANDER: There's no more notices.

SLATER ANDERSON: The sign has to be changed.

WENDY SHIEH: Where's the sign?

CONSTANTINE ALEXANDER: It's posted somewhere --

JANET GREEN: The sign is on the front of his house on the fence.

WENDY SHIEH: Oh, on his house, okay.

CONSTANTINE ALEXANDER: The blue cardboard sign.

WENDY SHIEH: Oh, in front of his house. Okay, okay.

CONSTANTINE ALEXANDER: That notify all the citizens of Cambridge that zoning relief is being sought and

roughly what is being sought.

SLATER ANDERSON: And that needs to be updated two weeks prior to the hearing. And it can't change beyond that.

CONSTANTINE ALEXANDER: Correct.

WENDY SHIEH: Okay, no more notice, no more letters. So I have to read the sign in front of his house?

CONSTANTINE ALEXANDER: You don't have to read it. You know tonight that we're going to continue the case until April 28th if the vote passes.

The only thing that can happen from our Board point of view, come April 28th, we may postpone the case further. We're not going to hear the case any earlier.

WENDY SHIEH: Sure. I just want to, you know, know the date, I'm not missing it next time, you know, and all right.

CONSTANTINE ALEXANDER: I made a motion.

All those in favor of continuing the case on the

basis that I made, the motion say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor?

(Alexander, Green, Myers, Anderson.)

CONSTANTINE ALEXANDER: Opposed?

GEORGE BEST: I abstain.

CONSTANTINE ALEXANDER: Abstain.

Okay, the motion carries nevertheless. We'll see you on the 28th if the case continues on that date or if you choose to come. You don't have to come, it's up to you.

Thank you.

SLATER ANDERSON: You can submit comments in writing obviously.

CONSTANTINE ALEXANDER: That's correct.

WENDY SHIEH: But already that counts. Those, it all counts, right?

CONSTANTINE ALEXANDER: And it will be read into the record at the time of the hearing.

WENDY SHIEH: And I don't have to be here you just said.

SLATER ANDERSON: If the plans change substantially, it might be important for you to comment on the updated plans.

WENDY SHIEH: Okay, okay. All right. So coming here doesn't really added to what I just said in the paper or you know? That's why I come here. I wrote, I wrote -- like, I sent in two certified I mailed to you guys, and I also write a letter yesterday and hand delivered to Sean. I just want to make sure my voice is heard.

SLATER ANDERSON: It will be heard.

CONSTANTINE ALEXANDER: Your voice is heard if you put it in writing. If you feel it will be heard better or you can be more eloquent or you can bring additional facts, come here.

WENDY SHIEH: Okay, I got it. This is the first time I'm here. I'm sorry.

CONSTANTINE ALEXANDER: No problem. It's true for most people before us.

SLATER ANDERSON: You've come a long way, it's okay.

CONSTANTINE ALEXANDER: We owe you that courtesy if you came all the way from California.

* * * * *

(8:00 p.m.)

(Sitting Members Case No. BZA-008957-2015: Constantine Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: Now being eight o'clock, the Chair will call other continued case, case No. 008696, 205 Brattle Street.

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

KATRINA ARMSTRONG: Hi everyone. Do I sit?

CONSTANTINE ALEXANDER: Or you can stand or kneel.

If you think it will help to kneel, then kneel.

KATRINA ARMSTRONG: I'm happy to do that. I'm Katrina Armstrong. We live at 205 Brattle. We moved here about two years ago from Philadelphia. It's an incredible neighborhood, a wonderful house, we're incredibly happy there. I have three children and a brother who has just had two kids, and we discovered when we got here it was very hazardous to have everybody in the size house that we have now. And so we are hoping to put a small master bedroom addition essentially on the side of the house. We're incredibly happy where we are in Cambridge. I guess you guys, you know this or you wouldn't be here, it's an incredibly special place and so we are grateful to be heard. And so we found phenomenal architects who have been helping us with this. I would like to apologize for our mistake where we put the sign, my mistake.

CONSTANTINE ALEXANDER: Before we get into the merits of the case, we have a letter in the file from a neighbor who -- it's a letter that was sent to you and a copy was given to us about they wanted to meet with you.

Did you ever have that meeting?

KATRINA ARMSTRONG: Yes. So we sent them all of the information and e-mailed back and forth and gave them all of the elevations which was their concern. We didn't hear back that they had any further concern.

PAUL FIORE: I'm Paul Fiore, the architect. And I did e-mail -- we sent them the plans and I e-mailed them and said please call us.

CONSTANTINE ALEXANDER: That may very well be we'll hear from some of those neighbors, they may be in the audience and we'll hear from them directly but we'll find out.

Okay, I just wanted to make sure you followed up.

KATRINA ARMSTRONG: Yes, absolutely. Thanks very

much.

CONSTANTINE ALEXANDER: Well, anyway, you want a Variance. And you know what the requirements for a Variance are and why you think --

PAUL FIORE: Special Permit.

CONSTANTINE ALEXANDER: I'm sorry, Special Permit, you're right. Conforming addition for a non-conforming structure. Thank you.

PAUL FIORE: Don't scare me.

CONSTANTINE ALEXANDER: Variance on the brain.

PAUL FIORE: So this is the site plan. And the lot is a non-conforming lot because of one dimension, the front setback from Lexington Avenue is only, it's five feet, six inches within that corner setback. Everything else on the lot is conforming, but that's what makes it a non-conforming lot.

The addition that we're proposing is actually on

the opposite side of the house. And the addition itself conforms completely with Section 5 of the -- of all the dimensional requirements of the Zoning Code. So that's it in a -- I could go over the plans of the house and the elevations, but we've done that with the Historic Commission and got the Certificate of Appropriateness from them.

JANET GREEN: Can you turn it this way just a little more?

PAUL FIORE: This the shaded part is the addition.

And I'll just give you a -- show you an elevation, what it looks like. These are all before -- you know already, Katrina.

These are the before and after of the front of the house.

CONSTANTINE ALEXANDER: And these are consistent with what we have in our files?

PAUL FIORE: Those are the same plans, correct.

This is the side furthest from Lexington and this

is the back of the house.

Top floor's the master bedroom, and the bottom floor is just a sunroom.

CONSTANTINE ALEXANDER: Okay.

PAUL FIORE: And that's it.

CONSTANTINE ALEXANDER: I'll let Slater have a chance to look at the dimensional form. You'll find on there, is that there is no -- it's a conforming addition. The addition is in all respects conforms, but because it's a non-conforming structure, they need the Special Permit.

SLATER ANDERSON: Thank you.

CONSTANTINE ALEXANDER: Questions from Members of the Board at this point?

JANET GREEN: No questions from me.

DOUGLAS MYERS: No.

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

Is there anyone here wishing to be heard on this

matter?

(No Response.)

CONSTANTINE ALEXANDER: I could have sworn they'd be here.

Let me see if there are any letters in the file. There was a letter I mentioned that we were copied on or basically asking you to meet with the neighbors from Richard -- the letter was from Richard Grubman, G-R-U-B-M-A-N and Caroline Mortimer (phonetic) who apparently reside at 202 Brattle.

And let me be sure there's nothing else in here. Request for a continuance.

You have also the -- you mentioned the Certificate of Appropriateness from Historical.

PAUL FIORE: Yes.

CONSTANTINE ALEXANDER: I guess there is none. So I assume the neighbors are -- well, I have to assume that they're satisfied to what you presented to them.

KATRINA ARMSTRONG: Okay.

CONSTANTINE ALEXANDER: Other otherwise comment.

Discussion? Oh, I'm sorry. I opened the matter to public testimony. No one wishes to be heard.

No letters in the file other than the request that I have indicated. So I'm going to close public testimony. Okay? Public testimony is closed. I think it's time for deliberation or a vote. I have no -- I'm ready to vote.

JANET GREEN: I'm ready.

DOUGLAS MYERS: Ready for a vote.

CONSTANTINE ALEXANDER: Okay.

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

That the requirements of the Ordinance cannot be met without the Special Permit given the fact that this is a non-conforming structure and, therefore, any addition, even a conforming addition to our Ordinance, requires zoning

relief.

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

Relief being sought is rather -- it's modest in nature. It's an addition of a bedroom and a sunroom on one side of the house.

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

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

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

On the basis of these findings the Chair moves

that we grant the Special Permit requested on the condition that the work proceed in accordance with the plans submitted by the petitioner, prepared by Foley-Fiore Architecture. They're several pages in length. Each page of which has been initialed by the Chair. As you know, sir, these are the final plans, okay? If you want to modify them, you have to come back to see us again.

Okay, on the basis -- that's the condition pursuant to which we grant relief.

All those in favor, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

(Alexander, Green, Myers, Anderson, Best.)

* * * * *

(8:10 p.m.)

(Sitting Members Case No. BZA-009063-2015: Constantine

Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009063, 14 Holly Avenue.

Good evening.

DAVID FREED: Hello.

CONSTANTINE ALEXANDER: Good evening. Floor is yours.

DAVID FREED: My name is David Freed. I'm with Choo C-H-O-O and Company. I'm the architect working on this project. And this is Scott Johnson. He's the owner of the house.

We're here because we are altering a non-conforming structure and we wish to change the fenestration on two sides of the house and in the rear yard.

The existing house is a two-family --

CONSTANTINE ALEXANDER: And you're also seeking a Special Permit for a window relocation.

DAVID FREED: Window relocation and then a landing with stairs.

CONSTANTINE ALEXANDER: Okay. You want two types of relief. I just want to make sure the record is correct.

DAVID FREED: Correct, yeah.

We're converting the two-family into a single-family. And so then the hardship is the existing fenestration doesn't relate to the single-family layout. I can take you through the plans. Scott has --

CONSTANTINE ALEXANDER: Just briefly. And also I would ask you to bring, with regard to the Special Permit, where the windows are -- taken the plan -- you've given us what that's going to look like if we grant you relief, but what does it look like now?

DAVID FREED: This is the present. Yeah. So these are the existing elevations.

CONSTANTINE ALEXANDER: Skip that for a second. Let's go to the Variance.

DAVID FREED: Sure.

CONSTANTINE ALEXANDER: We'll get there. Do the Variance first.

DAVID FREED: The Variance, this is where this board the landing in the back.

CONSTANTINE ALEXANDER: In the back. And basically you're moving -- right now there's a side door entrance into the house?

DAVID FREED: Correct.

CONSTANTINE ALEXANDER: And you're moving that to the back?

DAVID FREED: Yes.

CONSTANTINE ALEXANDER: And that's what the landing's all about?

DAVID FREED: Correct.

CONSTANTINE ALEXANDER: Okay.

DAVID FREED: So, the existing fenestration is -- this is a driveway side. That's the back door that we

want to relocate. That's the rear elevation. We're doing nothing on the front.

The proposed is simply -- we have a dining room here. There are bathrooms up here, bedrooms. There's actually a new fireplace and built-ins on the other side there. And the other side is just windows.

JANET GREEN: So that's the driveway side?

DAVID FREED: Correct, yes.

JANET GREEN: Okay.

DAVID FREED: Scott's got -- he's spoken to both abutters and he's gotten letters of support.

CONSTANTINE ALEXANDER: How about the back. The one most directly affected by the Variance would be the rear.

SCOTT JOHNSON: To the direct rear is the parking lot to the condominium building. I did send mailers and plans out to all the members of the condominium building. I did hear from one of the members of that condominium

building in support, and then I have the support of the direct abutter to my left and the direct abutter to my right.

CONSTANTINE ALEXANDER: Do you have letters?

There's nothing in the file. Oral report is good enough, but I just want to know if you have letters.

SCOTT JOHNSON: Yeah, the abutter to the right called me and gave me an oral, and then I do have e-mails from the abutter to the rear and the abutter to the left and those are right there. I'm happy to submit those for the file.

CONSTANTINE ALEXANDER: Okay. So that's the Variance.

Now let's talk about the window relocation, the door relocation, the Special Permit.

DAVID FREED: Yep. I already went through that with --

CONSTANTINE ALEXANDER: Okay.

SLATER ANDERSON: Show the two side by side.

CONSTANTINE ALEXANDER: Before and after.

SCOTT JOHNSON: This is what we have, this is what we have currently.

DAVID FREED: This is proposed.

SCOTT JOHNSON: And that is -- so current and proposed.

CONSTANTINE ALEXANDER: So you're reducing the amount of windows basically as a general proposition, right?

SCOTT JOHNSON: Yeah. We're certainly reducing the number of double hung windows and changing many of those out in favor of awning windows. And as David had mentioned, under the configuration of a two-family, there were staircases to the back wall, things like that. So we'd end up with say bedrooms with no windows.

CONSTANTINE ALEXANDER: Yeah.

SCOTT JOHNSON: You know, circumstances such as that.

JANET GREEN: I a hard time figuring it out when I was looking at it, because you've very understandably wrapped everything in Tyvek, you know, so that it will be insulated, but I couldn't tell where the windows were.

CONSTANTINE ALEXANDER: Right, that's my issue, too.

JANET GREEN: Oh, you had -- yeah, I just couldn't --

CONSTANTINE ALEXANDER: I made the calls to bring these plans here tonight because they weren't as good as they should have been in the file.

SLATER ANDERSON: Well, what's confusing, too, is that they're all labelled proposed.

SCOTT JOHNSON: It's only here where it says existing versus proposed.

DOUGLAS MYERS: Is the page existing in your plans?

CONSTANTINE ALEXANDER: No.

DAVID FREED: This wasn't submitted with our plans in the set.

DOUGLAS MYERS: There was no -- I could not find any existing elevations.

DAVID FREED: We didn't submit elevations.

CONSTANTINE ALEXANDER: That's the point.

DOUGLAS MYERS: And your plans are very reticent about describing the new work that you're going to do. There's no hatch mark. There's just a little label, new railing. And a little label, new handrail. And if you don't go pick them out on the plan, there's no existing elevation to compare them to, there's no hatch mark or comparison to show what you're adding.

DAVID FREED: Okay.

DOUGLAS MYERS: It was -- I found it very -- I mean, I don't think it's going to affect my vote on the merits, but it was very difficult to work with the plans you submitted. I just wanted to chime in on that point.

JANET GREEN: Yeah, I agree.

CONSTANTINE ALEXANDER: I had the same reaction, too. And I had Sean give you the call because I was not happy with what I saw in the files. The more important one was what it's going to look like in terms of window treatment afterwards, and you did have that in the files. And when it comes to windows, if we have a concern relocating a window, it's usually privacy. You're going to impede upon the privacy of your abutters, and particularly in this neighborhood which is a tight neighborhood. But I gather one of the -- you have the approval of those abutters.

SCOTT JOHNSON: Yes.

CONSTANTINE ALEXANDER: They're not worried about the window changes?

SCOTT JOHNSON: No.

CONSTANTINE ALEXANDER: Is that the, is that Fred Farber who owns --

SCOTT JOHNSON: No. Fred is the abutter in the condominium building.

CONSTANTINE ALEXANDER: Oh.

SCOTT JOHNSON: And then there's one from Jim and Danielle.

CONSTANTINE ALEXANDER: Yes.

SCOTT JOHNSON: They're probably most affected. They're the abutter to the --

JANET GREEN: Where are they?

SCOTT JOHNSON: They are the abutter on this plain on the driveway side.

CONSTANTINE ALEXANDER: Okay.

Further -- any further comments or questions from Members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: I'm going to -- I'm going to open the matter up to public testimony.

Is there anyone here wishing to be heard on this

matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently no one wishes to be heard.

The only thing we have in our files are the two letters you just delivered to us this evening.

One -- or e-mails actually. One is from Fred Farber. (Reading) I am an owner at 140 Huron Avenue and got your note about the 14 Holly Avenue project in the ZBA. I've been watching the renovation with interest. Looks like a lot of work. The proposed changes in the rear look fine to me. Good luck.

And the other is from James Mallet, M-A-L-L-E-T. (Reading) As direct abutters we've -- it's only signed by James, but it is a "We."

(Reading) As direct abutters, we both are happy with the behavior of your workers and with the fact that we don't get disturbed in the evenings, especially after about

6:30 because we have a small child who doesn't nap, so we have to rush him to bed at that time. Thank you for your second letter and the re-enclosed exterior plans and we're sorry we didn't reply to your first. We meant to. We have no problem with the change in the layout of the windows on our side. As you know, we have only a few small windows looking over your property on the ground floor which is the main change from our point of view. I think we'll see into your client's property more than your buyers would see into ours then was the case under the previous arrangement. You might think about the installation of a small tree, say the size of a small flowering dogwood near the fence mostly between your middle window and the big three window looking out at our kitchen back window. The neighbors had a wonderful small tree which sadly died last year and had to be cut down. It had extraordinary flowers, nice leaves, and beautiful fruits. I'll try to get the name from them if you're interested. Since we're still in touch with the

former owners. In any case, from your point of view don't worry about neighborhood -- neighbor opposition from No. 12 to the current changed window plan.

Nice chatty note.

And that's it. Anybody else? Nothing else?

I'm going to close public testimony.

Do you have any final comments you want to make?

Up to you.

SCOTT JOHNSON: No.

CONSTANTINE ALEXANDER: Discussion or ready for a vote?

SLATER ANDERSON: Vote.

DOUGLAS MYERS: Ready.

CONSTANTINE ALEXANDER: Unanimous sentiment for a vote. By the way, before I get to the vote. If we grant relief, we do, you've heard the cases, we tie them to the plans in the file. These -- if you modify these plans after -- if we grant relief and you want to modify these

plans, you're going to have to come back before us. So I want to read you your rights, these should be the final plans as far as you can tell, you understand?

DAVID FREED: Yes.

SCOTT JOHNSON: Yes, thank you.

CONSTANTINE ALEXANDER: I'm going to start with the Variance first.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being is that with the conversion of the structure from a two-family to a single-family better suited to have a rear entry in the rear -- second entry in the rear of the building rather than at the side.

That the hardship is owing to circumstances relating to the fact that this is already a non-conforming structure, and any modification requires zoning relief.

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

In this regard the Chair would note that the relief being sought is rather modest in nature. There appears to be no neighborhood opposition to the matter. And it will facilitate the conversion of this structure from a two-family to a single-family home, which given the nature of the structure, the size of the structure, is probably in the best interest of the City.

So on the basis of all these findings, the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with plans submitted by the petitioner, prepared by Choo C-H-O-O and Company, Inc., the first page of which has been initialled by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Green, Myers, Anderson, Best.

CONSTANTINE ALEXANDER: Turn to the Special Permit.

With regard to the Special Permit being sought the Chair makes -- proposes the following findings:

That the requirements of the Ordinance cannot be met unless we grant the relief with regard to the relocation of windows.

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

That the continued operation of the development of adjacent uses will not be adversely affected by what is being proposed. In this regard we have a letter from the

abutter whose privacy might be invaded or affected by what is proposed supporting the petition.

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

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

So on the basis of these findings, the Chair moves that we grant the Special Permit requested on the condition the work proceed, again, in accordance with the plans identified with regard to the Variance we just granted.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Green, Myers, Anderson, Best.)

DAVID FREED: Thank you very much.

SCOTT JOHNSON: Thank you.

* * * * *

(8:20 p.m.)

(Sitting Members Case No. BZA-009107-2015: Constantine Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will next call 009107, 8 Acorn Street.

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

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

Do we have a letter in the file, Sean?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay.

The Chair would report that the petitioner is requesting a continuance on this case. It is requested the continuance be placed on the next available agenda for the Board.

I should point out that the reason for the continuance is that the file is incomplete. The petitioner did not deal with any of the requirements of our listing why, I guess they, they are entitled to relief, the relief being requested, and it seems to me, the petitioners seemed to be otherwise not knowledgeable with regard to the former guidelines, and I think needs to be brought up to speed with regard to them to address the issues that are raised under the former guidelines by what they are proposing.

So what's the next available date? But I think he needs a little bit of time. What do you think?

SEAN O'GRADY: Well, the architect's here.

CONSTANTINE ALEXANDER: Oh, you are? I'm sorry, you're the architect?

UNIDENTIFIED AUDIENCE MEMBER: I'm not the architect, but I work for the company that came up with the designs originally.

CONSTANTINE ALEXANDER: Okay.

SEAN O'GRADY: Oh, I'm sorry.

CONSTANTINE ALEXANDER: Do you have a date that you'd like to have this case continue to?

UNIDENTIFIED AUDIENCE MEMBER: I know the client is anxious to be heard, but if there's a time convenient in February I think.

CONSTANTINE ALEXANDER: I think both February dates are available.

SEAN O'GRADY: Both dates are available, yes.

CONSTANTINE ALEXANDER: What are the dates?

SEAN O'GRADY: 2/11 or 2/25.

UNIDENTIFIED AUDIENCE MEMBER: Why don't we say 2/25.

CONSTANTINE ALEXANDER: I think that's a safe

date. Now listen carefully to the vote and the conditions to report back to your clients.

So the Chair moves that we continue this case as a case not heard until seven p.m. on February 25th subject of the following conditions:

That the petitioner sign a waiver for a time of decision.

Has that been done?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: That's been satisfied.

Second condition, is that the posting sign that's there now has to be modified to reflect the new date, February 25th, and the new time, seven p.m. We'll hear the case first or one of the first cases we'll hear. If you don't change the time or the date, we won't hear the case. That's -- and it's got to be maintained for the 14 days that our Ordinance requires, just like now, except you need a new date and time.

UNIDENTIFIED AUDIENCE MEMBER: So that is modified by the owner?

CONSTANTINE ALEXANDER: You could do it, yes, just take a magic marker. You don't need to get a new sign, you can, you can do it with a magic marker.

And last and probably most important, to the extent that -- because it has to happen, to the extent that the petitioner wants to modify the plans that are in our files or otherwise the dimensional form that's in our styles or supporting statements which have not been done, those now completed or revised plans must be in our files no later than five p.m. on the Monday before February 25th.

If they're not there, we're not going to hear the case on February 25th. You've got between now and then to, you know, get your act together. I don't mean that sarcastically. Do what you have to do because right now the file is not complete.

All those in favor of continuing the case on this

basis please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. See you on
the 25th.

(Alexander, Green, Myers, Anderson, Best.)

* * * * *

(8:25 p.m.)

(Sitting Members Case No. BZA-009078-2015: Constantine
Alexander, Janet Green, Douglas Myers, Slater W. Anderson,
George S. Best.)

CONSTANTINE ALEXANDER: All right, Mr. Rafferty,
it's time for you you've been waiting patiently.

The Chair will call case No. 009078, 20 Carver
Street.

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

ATTORNEY JAMES RAFFERTY: Good evening,

Mr. Chairman, and Members of the Board. For the record, my name is James Rafferty. I'm an attorney with offices at 675 Massachusetts Avenue. I'm appearing -- in Cambridge, and I'm appearing this evening on behalf of the applicants Marvin and Candace Preston, P-R-E-S-T-O-N, who are seated to my left. And to my right is the architect Steve Hiserodt, H-I-S-E-R-O-D-T and he's with the acclaimed architectural firm of Boyes-Watson Architects.

CONSTANTINE ALEXANDER: Strike acclaimed.

ATTORNEY JAMES RAFFERTY: I throw things out to see how I need to change my tone.

CANDACE PRESTON: Wait a minute, I think they asked us to kneel.

ATTORNEY JAMES RAFFERTY: At any rate, Mr. and Mrs. Preston are planning on relo -- moving to Cambridge. They currently live in Princeton, New Jersey. Obviously have an infinity for the ivy league, they're moving to Cambridge. The reality is --

CONSTANTINE ALEXANDER: Different environment between here and Princeton, New Jersey, but go ahead.

ATTORNEY JAMES RAFFERTY: Nonetheless, an opportunity -- a tremendous opportunity to present itself in a three-family house on Carver Street, where their daughter, Catherine Preston, who is seated here, who I know wrote to the Board acknowledging that she's not a neutral abutter but nonetheless by any definition a party in interest. It will allow Mr. and Mrs. Preston to occupy and live in the ground floor unit of a three-family converted home. And it really is a wonderful opportunity. It's a, it's a classic three-family.

What's being proposed here, though, is just some minor modifications to the floor plan to allow -- to accommodate, frankly, a little more convenience of living. And the two principal opportunities that this will generate is that it will allow for the creation of a bathroom within the bedroom suite, and it will also allow for an expanded

laundry room and easier access. Right now it's very tight into the kitchen. But if you've had an opportunity to view the floor plan, there's nothing elaborate about what is being proposed here.

So the way the current structure lays out, like most three-families it has three covered porches in the back and this involves enclosing or creating a wall over a portion of it. The covered porch itself is, is considered GFA. The rear of the property, if you been there, or really is very deep, it accommodates surface parking. And the rear abutters are actually in Somerville and there's actually -- there's a large development being built behind it. So the setback is unchanged. As I said, it is 70 square feet. I would suggest it's modest by any definition.

The hardship is clearly related to the building itself. The house is over the allowed FAR,, but most notably because a third of that GFA is in the basement, and it's an unfinished basement while each unit has storage. So

when you first look at the numbers, I understand why someone might suggest well this house is over. But what it really means in this case is a recognition that a house of this age just hasn't had any particular upgrading. So when you make the house more accessible, more accommodating for people who are going to be here in their later years, if I may be so bold, and so I would suggest that it is consistent with cases the Board has seen before where encouraging families to remain in the city and to be able to be a part of the community is one of the policy goals of the City. I could go on and on and tell you what lovely people they are.

Their daughter shares your sense of civic engagement. She's served for many years and currently does on the Planning Board, and she -- and I will say their whole approach here has been to really just do what is necessary to make this adjustment. And they're here tonight asking for the Board to recognize the modest nature of this, the age of the structure, and be able to determine that sufficient hardship

exists to allow the relief requested.

CONSTANTINE ALEXANDER: Just out of curiosity, you said it would allow them to remain in the city. But I thought I also heard you say they're moving here from Princeton?

ATTORNEY JAMES RAFFERTY: No, I mean -- so their daughter.

CONSTANTINE ALEXANDER: Oh.

ATTORNEY JAMES RAFFERTY: Their daughter lives upstairs, and if you notice her note, so in terms of they want to be able to live together. So rather than move to the suburbs where Mrs. -- where young Mrs. Preston would be able to be close to her parents. They're going to be in the same building. But you're right, they are moving here from Princeton. I'm told some of the furniture's already here.

MARVIN PRESTON: Yes.

ATTORNEY JAMES RAFFERTY: And so they, that's the goal. It's not a -- I shouldn't say this because some

people sometimes -- it's not someone coming in, gutting a house -- because I've heard it said on occasion here from reviewing transcripts on other cases, none that I've been involved with, but people are purely profit motivated and it's not the role of the Board to enhance investment returns.

CONSTANTINE ALEXANDER: Who said that?

ATTORNEY JAMES RAFFERTY: I may look like I'm nodding off, but I very often am paying very close attention to what's being said here. And now these days I get to watch much of this on You Tube. Unfortunately the camera's always behind me, so it's not a very flattering profile, but I do pay attention.

CONSTANTINE ALEXANDER: Just so we have it in the record, the reason for the need for relief is that the FAR issue, and right now the legal FAR for the property is 1.014. And with the 70 feet it will go to 1.028, and the district is only supposed to have 0.75. So it's a third

over what is permitted under our Ordinance, and that's why you're here tonight.

Questions from Members of the Board?

(No Response.)

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

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

Sure.

FRED MEYER: Yes. I'd like to speak in favor. My name is Fred Meyer, M-E-Y-E-R and I live in a house at 83 Hammond Street which is one short block from the subject property. I'm also the moderator of the Agassiz Neighborhood Council, and I sent out a notice of this hearing to our large mailing list and no one has called me in opposition. The one neighbor, Doctor Eliot Kronstein (phonetic), an abutter, is in strong support.

The other thing I thought might be helpful to the

Board, this is a plot plan and it's -- as you'll see, right at the Somerville line.

CONSTANTINE ALEXANDER: Yes.

FRED MEYER: And there's actually some land owned in Somerville, which might were you to count it, I know you can't, whereas a practical matter that would lower the FAR. And it's being right at the Somerville line, and the Somerville properties are -- the building behind it was a silver plating plant for many years, and then it became a methadone clinic.

CONSTANTINE ALEXANDER: What is the -- what's it going to be now? Because there is work.

FRED MEYER: There is work. It is going to be (inaudible).

CONSTANTINE ALEXANDER: It's going to be what, I'm sorry?

FRED MEYER: On the Somerville side will be apartments.

ATTORNEY JAMES RAFFERTY: It's going to be housing. Highland Development is building in there.

CONSTANTINE ALEXANDER: Okay.

FRED MEYER: But there's no one in Somerville objecting either, including the new developer. I hope that's helpful.

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

Is there anyone else who wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

We are in receipt of a letter as Mr. Rafferty has warned us. It's from Catherine Preston Connolly who resides in unit 3 at 20 Carver Street, and I will read it into the record. (Reading) I am writing in support of case number such-and-such, an application for a Variance to construct an addition to the first floor of a pre-existing non-conforming three-unit dwelling. In addition to being one of the other

condo owners in the question, the applicant are my parents, so I am far from an unbiassed neighbor. That's true. I have lived in Cambridge for approximately 20 years, and when my husband Kevin and I were ready to buy, we made it a priority to buy in Cambridge. My parents have long admired our situation in Cambridge and have talked from time to time about the possibility of relocating to be near us as they got older. Last year our neighbors in unit 1 decided to relocate to be near their own children, just as my parents and I were facing a real need to get serious about planning for them to be near me. It was an incredibly fortuitous confluence of events and we were all delighted that they're able to buy a first floor unit in our own building. The modest addition that they are planning would really facilitate them to live independently as they age. My parents have also had discussions about the addition with our neighbor in unit 2, Marilyn Farber, as well as our neighbors at 16 Carver Street, Eliot Kronstein and Mary Mae

Baldwin, and Highland Development, the property owner to the rear, none of whom have raised a concern about the project. I ask you to support my parents' request for a Variance to build an addition to their unit.

And that's all we have.

Any final comments?

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: Any questions or ready for a vote?

JANET GREEN: Ready.

DOUGLAS MYERS: Ready.

CONSTANTINE ALEXANDER: Ready for a vote.

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

That a literal enforcement of the provisions of the Ordinance will involve a substantial hardship. Such hardship being is that the property to be adequate for living, living uses needs additional bathroom space and this

addition will provide that.

That the hardship is owing to the fact that this is a non-conforming structure as it is. It's the shape of the structure and the size of the structure and that, therefore, relief is required if we're going to grant any zoning relief.

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

In this regard, the Chair would note the relief being sought is rather modest in nature.

It's got support from neighbors, even the daughter of the petitioners. And otherwise --

ATTORNEY JAMES RAFFERTY: I notice the son-in-law didn't sign the letter.

CONSTANTINE ALEXANDER: I was trying to be politic about it.

CANDACE PRESTON: But he has encouraged us I will

say.

CONSTANTINE ALEXANDER: On the basis of these findings the Chair moves that we grant the Variance being requested on the condition that the work proceed in accordance with plans prepared by Boyes-Watson Architects, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Green, Myers, Anderson, Best.)

CONSTANTINE ALEXANDER: Good luck. Welcome to Cambridge.

CANDACE PRESTON: Thank you.

MARVIN PRESTON: Thank you.

* * * * *

(8:40 p.m.)

(Sitting Members Case No. BZA-009080-2015: Constantine Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009080, 47 Roberts Road.

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

ATTORNEY JAMES RAFFERTY: Thank you, again, good evening, Mr. Chairman. James Rafferty appearing on behalf of the applicants. Seated to my left John and Carla Roberts, R-O-B-E-R-T-S. They are the homeowners. And to my right is the architect, Beth or Worell, W-O-R-E-L-L.

So, this is an application for a Variance to allow for the construction of additions to an existing single-family home located on Roberts Road. The property is located in a C-1 Zoning District. The permitted FAR is 0.75.

As the property sits today, as a single-family

dwelling, by including the 350 square feet in the basement, the building exceeds the allowable GFA. Interestingly, as a result of the action of the City Council a few weeks ago, as of May 1st, GFA in single and two-family dwellings will not be included in -- area in the basement will not be included in the area of GFA. So this property, like many others like it, one or two-family houses will actually experience a reduction in GFA. When that occurs, the property will be compliant with FAR but it is nonetheless remains non-conforming because it has a rear setback violation, and that's what places the case before the Board tonight under the regulations associated with Article 8 and non-conforming structures. So, by virtue of the rear setback, the property is limited to additions, as the Board knows, as up to ten percent as-of-right, 25 percent by Special Permit.

But at the time we prepared the application and as things currently stand today, we were over the GFA already so that mechanism around Special Permit wasn't available.

The property's located in the Mid-Cambridge Neighborhood Conservation District. So cases, as you know, in those conservation districts or historic districts require the issuance of a Certificate of Appropriateness for any exterior alteration. And that process took place here, and I believe when I checked the file, that that is -- there's evidence of that from the Historic Commission.

I offer that because I think in this case it has some added significance. This is a somewhat unique house. It's a reasonably-sized house. The Roberts have lived there for?

CARLA ROBERTS: Two years.

JOHN ROBERTS: Two and a half years, yeah.

ATTORNEY JAMES RAFFERTY: What they're actually doing, which is just on the pure math, they're actually removing more GFA than they're adding back. So once again the FAR, regardless of anything else that's happening with definitions of FAR, the FAR is actually going down as a

result of this. So they're going to get a better organization, they're going to get a better layout. There is an unusual aspect to this, and we spent a fair bit of time with the Building Commissioner on it. And I know it's raised some concern because it was very prominent in my thinking when I first looked at the drawings and that is what is being proposed here a dormer, in which case with speaking with Ms. Worell, we need to address the dormer guidelines. And I was able to, you know, share with the Board -- the applicants the Board's attention to those guidelines and the priority that they attach to them in evaluating cases. So given the uncertainty about why this was a dormer, we went to see the Commissioner. And I'd like to share with you where the uncertainty stems from.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY JAMES RAFFERTY: Because this -- and Mr. Roberts actually prepared some sketches that I found very illustrative and helpful. Because what it comes down

to, this -- the conclusion of the Building Commissioner as a result of a meeting we spent with him, was that this was a second floor addition and in fact it was not a dormer. If you look at the language under Article 8, second floor additions operate under a separate section than dormers. In fact dormers, the Commissioner had drawn something to my attention, frankly, that I hadn't previously focussed on, he pointed out that the 15-foot restriction specifically talks to dormers on the third floor in Article 2. And that the first floor addition -- when a dormer or addition to the second floor doesn't contain the same language.

So we then spent a fair bit of time both with Ms. Worell working on and understanding of what defines a dormer, what are the characteristics of a dormer, and what would make something a dormer.

CONSTANTINE ALEXANDER: Can I just interrupt you one second?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: I think it might be useful if you started -- you haven't shown to the Board the plans themselves --

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: -- and then we can focus on the dormer if there is a dormer. Okay?

ATTORNEY JAMES RAFFERTY: That's a great idea.

JOHN ROBERTS: What should we start with?

CONSTANTINE ALEXANDER: I think the plans that Ms. Worell --

CARLA ROBERTS: I was going to point out this used to be a two-family house.

JANET GREEN: And you're the Roberts on Roberts Road?

CARLA ROBERTS: We are.

ATTORNEY JAMES RAFFERTY: That ought to count for something.

SLATER ANDERSON: Only two years and they renamed

the street?

JANET GREEN: They named the street after you.

JOHN ROBERTS: The woman we bought it from her maiden name was Roberts.

CARLA ROBERTS: Yeah. Only the first floor right now is connected, because the people we bought it from bought it as a two-family house, converted to one-family and knocked down the wall between the two houses. So it's one front house 1847, and a back house 1915, and that connecting wall was knocked down. So now it's an open first floor. And the second floor is still two floors. And the huge challenge here is to find some way to adequately connect the houses on the second floor.

JOHN ROBERTS: Without it being ad hoc like the first floor had been.

JANET GREEN: Right. When I looked at the plans, I thought it was really interesting.

CARLA ROBERTS: Very difficult.

BETH WORELL: So the original house was this piece right here, which is the one that you see from Roberts Road. And then the second house is this piece that you had to come down and this was the entrance. So this is the current second floor where you can see there's no connection. Not only are they not connected, they're approximately -- well, we don't know because you can't see through walls, but about 15 inches floor level difference. So the challenge was to figure out a way to connect the existing stair through -- because right now there's no -- there's just these two existing original bedrooms and a bath right here. So our strategy was to push the --

CONSTANTINE ALEXANDER: Can you show the elevations? That might be useful to see it, too.

BETH WORELL: Sure.

CONSTANTINE ALEXANDER: That's where you get the best sense of the dormer issue if there is an issue.

BETH WORELL: The other thing I wanted to point

out, the reason for the link of that second floor addition, here I'll show you the front first, is that currently there's only -- when you get to the top of the main stair of the original house, there's only 46 inches head clearance, you know, on the side rather than 80. So one of the things that -- that's why it comes to where it does, and then it connects back to the other house so that we can get into the other house. So we don't really have the option of making it shorter even if we wanted to because then we couldn't, we couldn't be able to connect the two and give you headroom, you know. Co-headroom at the stairs.

So, here's the existing house with the, the second house in back and you can see they're really not related stylistically in any way. The scale is very different. The big house. The back house is the big house, and then there's this small piece on the front.

So by this addition that we're proposing, and let me show you on the side, we're trying to mediate between the

scale of this back piece and the more, you know, the smaller scale of the front piece by something that kind of bridged the two roof heights. And also allows us to connect --

CONSTANTINE ALEXANDER: And what could be argued to be a dormer is the right -- right in the -- thank you.

JANET GREEN: Right there. Is that the piece?

BETH WORELL: Correct. Correct.

And, you know, the reason that we extended the roof around here, which it's not particularly -- it doesn't function as anything, but it helps the scale. That's really what it was about. And even this little piece coming down, because that's a new side entrance into a mudroom. There's an existing enclosed porch which you can see.

JOHN ROBERTS: When I go through the slides, I can see it.

BETH WORELL: Oh, yeah. Right now the house it looks like that. So they've -- you know, at some point enclosed that piece of the wraparound porch. So we're

getting rid of that, and that's the side entrance. Is that clear?

JANET GREEN: Well, let's put it this way, you're showing us all these papers that's exactly what it was like looking through them. It's a really challenging thing. Not that you did a bad job of explaining it, but it's a challenge.

ATTORNEY JAMES RAFFERTY: I think we recognize the challenge. So what occurred then as a result of all that, and Mr. Roberts is eager to share with you, he prepared a sketch on his computer that really tells the story visually of what's going on. And if -- with the Board's indulgence, I have a hard copy it, but it really is most effective if he could turn -- I don't think there are members of the public here that --

CONSTANTINE ALEXANDER: Is there anyone here interested in seeing?

CARLA ROBERTS: Maybe you can come over and see.

FRED MEYER: I'm here.

CARLA ROBERTS: I'm glad you're here.

ATTORNEY JAMES RAFFERTY: In my view, these are the, this is the order of priority. I would go -- this is what it looks like after that comes down and this is, and this is what it looks like when you're done in that order. If you can do 1, 2, 3 in that order, I think that tells the story quite --

CARLA ROBERTS: I think you better -- yeah. And then there's the scale.

JANET GREEN: Yeah, redo that.

ATTORNEY JAMES RAFFERTY: Isn't that three?

JOHN ROBERTS: I think it's fine for me to go through it. I'll skip over the one that is -- we're not doing.

CARLA ROBERTS: It's hard to get in your head right now.

JOHN ROBERTS: Where would be the best place for

me to turn this around?

JANET GREEN: Doug, can you see?

CONSTANTINE ALEXANDER: Tilt it a little bit so it's straight.

JOHN ROBERTS: So I just wanted to start off by showing you the scale difference between our house and almost all of the houses on this street. Virtually all of them are triple decker houses. Most of them without an extra roof on the top. Just the flat top.

So this is our house on the right obviously. This is the side-view of the house where the addition is going, the one that has been referred to as a dormer, and maybe it is a dormer, but I feel very strongly that it's not the type of dormer that is described by intent in the dormer guidelines.

That's a sketch, a cartoon sketch. Beth did the good parts of it. The center part that's been modified is me filling in the gaps and erasing. This gives you an idea.

ATTORNEY JAMES RAFFERTY: Existing conditions.

JOHN ROBERTS: Existing conditions. So there's a front porch, an enclosed porch, and another enclosed porch. So there's three porches here. There's another porch on the other side, and the only one that's being left in our proposed demolition plans is the original front porch.

BETH WORELL: Which just went across the front of the house. We found that from the Historic Commission.

ATTORNEY JAMES RAFFERTY: So what's in red is what's being removed.

JOHN ROBERTS: All of that is being removed and that includes a deck as well which is very close to the property. I know that doesn't -- isn't relative for these purposes, but it is very close to the property.

Once we take it off and we do some restructuring of the front of the house and renovating the porch to its original character, the structure looks like this. The objectives, like Beth said, is to add a foundation under the

centralized kitchen which is proposed to be in this area.

Other parts are inside the original structure.

Make it code compliant with regards to the second floor bathroom.

Get head space that's code complaint to the top of the stairs here. Now the lowest point is actually 3.9 on the low side of this decline or incline.

Have a second floor connection, because it doesn't have one which is a very peculiar thing to have in a single-family home, and it is designated as a single-family home.

To have an architectural transition, and this is coupled with the second part to have neighbors happy with what we're doing.

So, there are dormer guidelines and I'm gonna just push through this part, we because Jim has suggested that I do, and it wants me to get on wireless here.

This is what we're proposing to do in the gross

sense of the word. We could frame it any which way we could, but as the Building Commissioner, as Ranjit pointed out, you know, this has first floor -- sorry, a foundation, a first floor, a second floor, and the roof lines are tied into the original structure.

ATTORNEY JAMES RAFFERTY: It was at that point that the Commissioner determined that what is here is a two-story addition and not a dormer.

CONSTANTINE ALEXANDER: I follow. Right. Thank you.

JOHN ROBERTS: Now in order, as Beth said, to make the connection between the two houses from an architectural standpoint, so that there is a triangulation on the front that matches the gabled roof to the front and a squared off side since you can't see the triangulation on the back, matches the back and, therefore, it becomes a transition.

That's with the windows actually drawn in. And I just want to point out that all of these objectives are,

which are very difficult, some of them very difficult objectives to meet with a house with all of the characteristics that have already been stated. We have a -- the kitchen foundation. We have a code compliant bathroom on the second floor, that's what this is.

We have stair head space just above this that's code compliant.

We have a second floor connection that's code compliant.

And we have an architectural transition, which I think actually the elevation drawings don't do service. That's an impossible angle. You have to be 20 feet in the air directly across the street to see it that way. Virtually every angle is looking up at this in reality, and we're looking kind of down the, from up the street.

BETH WORELL: That was actually sketched over a photograph. So that was the basis of that.

JOHN ROBERTS: Yes. So the dimensions here are

correct but there's a little bit of twisting in some places, like, these stairs are actually parallel with these stairs.

And finally, we have neighbors who have been following along the design. We've been designing this on and off for a year or so, and they've been following this along. The neighbor that's along -- abuts on this side is actually an architect, and the person who is across the street maybe looking at it more at this angle, but a little bit to the side, he's a real estate lawyer, and they're very supportive of what we've put together. And they were surprised, frankly, when I showed them this that this was being considered as a dormer or that people have pointed to it and said oh, it's a dormer, it has to follow dormer guidelines.

So that's it.

JANET GREEN: Nice presentation.

CONSTANTINE ALEXANDER: Yes.

JOHN ROBERTS: Thank you.

SLATER ANDERSON: That was helpful, thank you.

JANET GREEN: Yeah, really.

ATTORNEY JAMES RAFFERTY: Commissioner

Singanayagam had the benefit of that presentation, and it was at that point that the conclusion was that it isn't a dormer. And it was because of the new mass, it's a two-story mass being added, and for all the reasons, there's a hardship particularly acute given the connection of the two structures. And I would suggest it has some relevance that in a few months from now the FAR in the entire house is going to be compliant. That the relief being sought here meets the hardship standard and we would hope that the Board would be able to allow for the addition recognizing that at the end it still represents a net reduction between what's being removed and what's being added.

CONSTANTINE ALEXANDER: Okay.

Also you have a Special Permit separately you need to address?

ATTORNEY JAMES RAFFERTY: I think we have a window or two.

BETH WORELL: We're relocating two windows on the side.

CONSTANTINE ALEXANDER: You want to show us where they are?

ATTORNEY JAMES RAFFERTY: You want to show the elevation?

BETH WORELL: Sure. My drawings are no longer in order. So you can see currently there's a window here that's in the laundry room. It's just moving over slightly.

That's a new bathroom.

And then this is the rear elevation moving -- and they're both within the side lot line existing so that's why we have to get the Special Permit.

The back door's moving from here to here just because of the new floor plan, and this window is moving from here to here just basically.

CONSTANTINE ALEXANDER: Moved over.

BETH WORELL: You know.

SLATER ANDERSON: And those new windows in the second floor are those out of the setback?

BETH WORELL: Correct. Yeah, because it's in the same plain as this.

CARLA ROBERTS: They're further back.

BETH WORELL: Yeah.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: I think that summarizes. I believe there are some letters?

CONSTANTINE ALEXANDER: Yes, I'm going to get to that. But I want you to finish your presentation.

ATTORNEY JAMES RAFFERTY: I think that covers it.

CONSTANTINE ALEXANDER: I think you're ready.

Questions from Members of the Board beyond what we've asked so far?

(No Response.)

CONSTANTINE ALEXANDER: Okay. I will open the matter up to public testimony.

Sir. Again give your name and address to the stenographer, please.

FRED MEYER: Sure. Fred Meyer, M-E-Y-E-R, 83 Hammond Street. I saw this between two-and-a-half and three years ago, and let me tell you the side-view that it will be is -- I have -- this is a plot plan that I find helpful is much more attractive than it looked when I saw it.

Roberts Road, you will recall, is one way from Kirkland to Cambridge. So the view going south is very important. And this is a much more attractive facade.

The next thing I want to say is they're 100 percent right on their dates. I use a lot in my business to work with a meticulous librarian, a Harvard Radcliffe librarian who looked up every building permit in the city, and this was very unusual. You have one house built in 1847 and then in 1849 they build another house and then in 1915

was a two-story addition. So that's the reason why the exterior looks so awkward. And it really is very appropriate to bring some harmony to that historical clash.

And my final thing has nothing to do with the merits of the Variance but you've been sitting a long while and I thought you'd enjoy this story.

I had a house for sale on Roberts Road. I thought it was obviously an amazing coincidence that the top bidder was a family whose name was Roberts. And when I brought my client, the seller, the 12 offers on the property, she went through them and she said, did you know my maiden name is Roberts? And now, if you think about it, I thought about this quite a bit, maybe the chances are one in a thousand that somebody would buy a house that matched their last name as a street name. And maybe it's one in a thousand that the seller would have done the same thing. But in the laws of probability it happening twice, you multiply the two and a thousand times a thousand is a million. So this is a one in

a million chance. And you can reduce it a bit because I've been doing this 52 years, so it's not -- that lowers the odds for a given year. But I just thought you'd enjoy that.

DOUGLAS MYERS: Thank you, Mr. Meyer, although I thought your punch line was going to be Chief Justice Roberts.

FRED MEYER: That would be another thousand. So that would be a thousand million.

JOHN ROBERTS: My name is John, so....

ATTORNEY JAMES RAFFERTY: How is that for a full service broker?

CONSTANTINE ALEXANDER: Okay. Anyone else wishes to speak on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to speak.

We do have letters as Mr. Rafferty has indicated in our file which I'll read into the record.

We have a letter or an e-mail from David Bright,

B-R-I-G-H-T. (Reading) My name is David Bright, with my wife Karen, I am the owner of 46 Roberts Road. We live directly across the street from John and Carla Roberts, the owners at 47 Roberts Road. We understand that there is a zoning hearing on January 28th regarding their proposed renovations to their home. We have discussed the proposed renovations at length with the John and Carla -- like the Donald, huh? With the John and Carla. We're very supportive of the renovations, in particular the exterior renovations will be a considerable improvement over the current configuration of their home. We think the changes will improve the streetscape and we therefore provide our full support for the zoning relief they seek.

And they give a phone number which I'm not going to read into the record.

We also have an e-mail from James J. Gray,
G-R-A-Y. (Reading) We are the next-door neighbors of John and Carla Roberts who live at 47 Roberts Road. Our property

abuts theirs to the north. Our address is 84 Kirkland Street. John and Carla have a BZA hearing on January 28th, and we are writing to you to let you know that John and Carla have reviewed the plans for the renovation of their house with us, and we are in support of their project.

We also have another e-mail from Mike and Jen Jacobs, 44 Roberts Road, unit No. 2. (Reading) My wife Jen and I purchased our condo at 44 Roberts Road, unit 2, in Cambridge in July of 2014. We live directly across the street from John and Carla Roberts who live at 47 Roberts Road. In fact, they were the first neighbors we met when we moved to Roberts Road. We knew right away that we made the right choice by moving here by the love of the area and the street and because we discovered that we would be living across the street from genuinely good people. The reason we are writing is to show our support for the renovation that John and Carla Roberts plan to do to their home at 47 Roberts Road. We're not able to attend the Board of Zoning

Appeal public hearing on January 28th. We wanted to let you know via e-mail that their project has our full support. John and Carla showed and discussed the plans with us and the renovations will truly enhance the character of the street.

That appears to be it, all letters of support.

I will close public testimony.

ATTORNEY JAMES RAFFERTY: Does the file contain the certificate from the neighborhood conservation district?

CONSTANTINE ALEXANDER: I was looking for that before.

CARLA ROBERTS: Oh, yeah, we have it. They approved it.

ATTORNEY JAMES RAFFERTY: I thought the record should reflect that.

CONSTANTINE ALEXANDER: I do have it I'll reference it later.

ATTORNEY JAMES RAFFERTY: Because as you know,

they pay particular attention to design details.

CONSTANTINE ALEXANDER: Oh, yes.

Are the plans that they refer to, the plans before us, the same plans?

BETH WORELL: Yes.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Yes, we do have that and I'll reflect that in the decision.

Ready for a discussion? Ready for a vote or would you like further discussion? I think a vote is in order. Okay.

I'll take the Variance first. The Chair moves that we make the following findings with regard to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being the fact that the building as modified with the addition is somewhat awkward in terms

of the ability to navigate the entire structure with no real good means of egress and access from one part of the structure to the other.

That the hardship is owing to the shape of the structure, and that it requires zoning relief.

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

In this regard the Chair would note that there seems to be unanimous neighborhood support, and that there is a certificate from the Cambridge Historical approving the project as proposed.

On the basis of these findings, the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with the plans prepared by Beth R. Worell, W-O-R-E-L-L. And they are a number of -- several pages -- several pages of plans, the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Variance granted.

(Alexander, Green, Myers, Anderson, Best.)

CONSTANTINE ALEXANDER: And now to the Special Permit. This relates to the window relocations, a door, too -- one door, too.

BETH WORELL: Two windows and one door.

CONSTANTINE ALEXANDER: The Chair moves that we make the following findings with regard to this Special Permit:

That the requirements of the Ordinance cannot be met without the Special Permit being granted given the nature of the current structure.

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

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

And in support of that is the letters we have received from abutters who would be, would be affected if that were really the case.

And then no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant or the citizens of the City.

And that otherwise what is being proposed with regard to the Special Permit will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

So on the basis of these findings the Chair moves that we grant the Special Permit being requested on the condition that work proceed in accordance with the same plans identified with regard to the Variance.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: All in favor. Good luck.

(Alexander, Green, Myers, Anderson, Best.)

CARLA ROBERTS: Thank you, thank you. We're so excited. We can't wait to start and move into our renovated house.

* * * * *

(9:10 p.m.)

(Sitting Members Case BZA-009059-2015: Constantine Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009059, 1815 Massachusetts Avenue.

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

ATTORNEY ARTHUR KREIGER: Yes, thank you.

Mr. Chairman, Members of the Board. My name is Art Kreiger from Anderson and Kreiger. I wish I could say it was Roberts, but apparently that carries some weight.

JANET GREEN: Roberts is big tonight.

ATTORNEY ARTHUR KREIGER: Yeah.

I've given the stenographer my card because my name is not on the application. I'm here with person whose name is on the application, Tim Greene, consultant to the AT&T acquisition consultant. And you have before you an application dated December 16th with ten exhibits. And so you should have that on this site. We're here on three sites tonight. They're all going --

CONSTANTINE ALEXANDER: Excuse me. Does anybody have a paperclip because I'm going to lose the pages here.

SLATER ANDERSON: Three of them.

CONSTANTINE ALEXANDER: Give me one.

DOUGLAS MYERS: I'm sorry, Gus, do you want a big one or a small one?

CONSTANTINE ALEXANDER: This is fine.

DOUGLAS MYERS: All right.

CONSTANTINE ALEXANDER: Go ahead, sir, keep going.

ATTORNEY ARTHUR KREIGER: Okay, we're here on three sites, as you know, they're all going to raise similar issues. I'm going to start out by just setting the legal context, setting the stage legally that will of course apply to all three, and then on each one as we get to them, I'll turn to Tim to describe the proposal.

We have applied for two forms of relief: One is what's called an eligible facilities request under federal law, under the 2012 Middle Class Tax Relief and Job Creation Act. And I'll explain what eligible facilities means in a moment.

And an alternative, Special Permit under your Zoning Ordinance which is the process you're used to.

My understanding is that even in facilities that may be eligible for the federal relief under the Spectrum

Act, and I'll also refer to that as Section 6409 Statute. Even eligible facilities under that statute, my understanding is the City of Cambridge, like some other municipalities, wants it to be done by this Board in a Special Permit process rather than administratively by the Building Commissioner.

CONSTANTINE ALEXANDER: That's correct.

ATTORNEY ARTHUR KREIGER: And that's why we're here tonight.

The Spectrum Act was passed essentially to facilitate co-locations. Co-locations and minor changes and replacements. We're here tonight on three sets of equipment, replacement -- just swapping out antennas for what's called 4G, and I'm sure that's what you've heard of. Much better dated, more robust data transmission, better coverage, more seamless network.

The -- and Tim will describe what equipment is being swapped and show you the photo sims and explain it and

answer questions on that.

To be an eligible facility under that statute, the change must not increase the height by ten percent or ten feet, and we're not close to that. We're not increasing height at all. Or protrude through the building by more than six feet, and we are possibly because the antennas are a little thicker, increasing distance from the face of the building by a couple of inches. And there are other criteria that are not relevant at all; installation of cabinets excavation, etcetera. None of that is happening here. We're just swapping out antennas.

When you're an eligible facility the statute -- the point of the statute was to establish an objective non-discretionary review process. The Attorney General has letters to three towns that you have in the packet in the application explaining that Special Permit -- true discretionary Special Permit, regardless of the process, a discretionary Special Permit decision is not

appropriate if it's a Section 6409 facility. That is the FCC has implemented that statute in the 2014 order that established that there's a 60-day approval timeline, including the Building Permit.

It's deemed granted if it's not approved in that period.

And the only information that the -- a Board, any Board is entitled to request is whether the facility in fact is within 6409. If it's not, of course, then you can go to town with the full Special Permit criteria. If it is, that's it. That's simply a description of federal law. I'm happy to answer questions about it. You may have heard about this --

CONSTANTINE ALEXANDER: We know about it.

ATTORNEY ARTHUR KREIGER: Okay.

I'm trying not to lecture or belabor the point. I didn't know if you were familiar with the standards.

On this facility, the application was submitted

December 16th.

There was -- it's been deemed complete in the sense that there was no notice of incompleteness which would have been by mid-January. And the 60-day deadline is February 14th.

All the applications were filed within a day or two of each other so it's all roughly the same dates.

As described in the application, we think we meet all the Special Permit criteria as well, but I won't go through those unless we need to.

The Planning Board met two nights ago and you may have recommendations --

CONSTANTINE ALEXANDER: We do.

ATTORNEY ARTHUR KREIGER: -- that were transmitted.

CONSTANTINE ALEXANDER: I'll read them into the record.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: They were damning with faint phrase is maybe a way to describe it.

ATTORNEY ARTHUR KREIGER: I think it was praising with faint criticism, but they essentially said they're okay but they should be moved down a little bit or painted a little bit in certain areas. You can go ahead and read it.

CONSTANTINE ALEXANDER: Well, I'll read it at the appropriate time.

ATTORNEY ARTHUR KREIGER: Oh, okay.

CONSTANTINE ALEXANDER: Let me just -- this came up right now. When we granted the Special Permit the last time before the 6409 came in, we had put certain conditions in which were repeated by the Planning Board.

Did you satisfy those conditions the last time around in terms of the roof line? I'm looking for a copy of the old decision.

ATTORNEY ARTHUR KREIGER: These don't stick up above the roof line.

CONSTANTINE ALEXANDER: They don't stick above?

TIMOTHY GREENE: No.

ATTORNEY ARTHUR KREIGER: No.

The only issue is perspective from the street.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ARTHUR KREIGER: But they do not in fact stick up above the roof line.

CONSTANTINE ALEXANDER: Okay. We had -- I wish I had it. There were specific conditions with regard to -- with regard to the roof, not only the above the roof line but the perspective from the street, and I was just wondering if whether you had complied with that.

ATTORNEY ARTHUR KREIGER: I don't know. I don't have --

CONSTANTINE ALEXANDER: I don't have the note with me.

DOUGLAS MYERS: What's your memory about the nature of the condition?

CONSTANTINE ALEXANDER: Just what Mr. Kreiger described, that it's from the street looking up.

DOUGLAS MYERS: That it not look like it's standing above the roof line?

CONSTANTINE ALEXANDER: Yes.

DOUGLAS MYERS: Okay.

CONSTANTINE ALEXANDER: As a matter of fact, the Planning Board repeats that comment this time around which I'll get to in a second. But -- because I think, we do have a basis -- not that we were looking to turn this down, but we do have a basis for turning it down if you're not in compliance right now with the requirements of our Zoning Ordinance. Because we granted a Special Permit with conditions, and you have to satisfy the conditions of the Special Permit is not, it's not effective. And if they haven't been complied with, then I don't know where we are right now.

ATTORNEY ARTHUR KREIGER: As far as I know,

they've been complied with. I've never heard that they haven't. There's never been a complaint from the City. It's the first I've heard of this issue. As far as I know, we're in compliance.

SLATER ANDERSON: Isn't the fifth or sixth criteria under 6409 related to any prior approvals?

CONSTANTINE ALEXANDER: I thought so.

SLATER ANDERSON: You sort of stopped short of the last -- you read through the first floor.

ATTORNEY ARTHUR KREIGER: Only the height and separation, that's right.

SLATER ANDERSON: Yes. And there's another provision in there, and, again, I'm not causing -- you know --

CONSTANTINE ALEXANDER: Yes. I'll read it. I'll read it: The modifications to the transmission equipment comply with prior conditions of approval of the base station unless such compliance was due to an increase in height,

increase in width, addition of equipment cabinets, or new excavation that does not exceed the corresponding substantial change thresholds in numbers 1 through 4. Which is why -- thank you, Slater. That's why I was asking the question, because I wanted to see if whether you meet this requirement of 6409, because maybe you don't comply with the prior conditions. Because we did have a condition on it.

ATTORNEY ARTHUR KREIGER: As far as I know we comply.

CONSTANTINE ALEXANDER: Okay. I wish I had it. I don't know what I did with it. But okay. Be that as it may. It is true there's been complaint filed by the City challenging the facility on the grounds that it didn't comply with the Special Permit we granted before.

ATTORNEY ARTHUR KREIGER: So -- but let me just focus on this issue, that last of the six criteria is this limitation meaning, so it was paraphrased. Let me go through it again.

It has to comply with the conditions associated with the citing approval of, or modification of the eligible support structure base station equipment provided that that limitation does not apply to a modification that is non-compliant only in a matter that will not exceed the threshold identified above. So I take that to mean if it's non-compliant in a way that's not more than ten feet too high or six feet too far out, that that limitation, you know, some minor deviation from previous conditions, according to go what I'm reading here, does not disqualify.

SLATER ANDERSON: Well, that's one element. But there was the other that the modification shouldn't defeat the stealth elements of --

ATTORNEY ARTHUR KREIGER: Right, that's correct, No. 5.

SLATER ANDERSON: -- if it wasn't down properly under the first permit, the stealth element has never been complied with.

CONSTANTINE ALEXANDER: That's -- yes, yes.

ATTORNEY ARTHUR KREIGER: Let me just take a little bit of issue with that also. So that's criterion No. 5.

A modification -- and this is the intro to all the six. The modification substantially changes the physical dimensions of the structure if it meets any of the six following criteria.

If the modification, if it would defeat the concealment elements of the eligible support structure.

So even if there were minor exceedance, and down the road I don't think there's any to be down, but that's fine, the modification would rectify that. Because as the Planning Board has recommended, and as we're willing to do, we will correct that issue. And so the modification would not defeat the concealment elements. It would actually effectuate them, right? It would comply with them whether or not there was previous compliance. So I think --

JANET GREEN: So the new work that you're going to do will not stick up above from street level?

ATTORNEY ARTHUR KREIGER: Correct.

JANET GREEN: Is that what you're saying?

ATTORNEY ARTHUR KREIGER: Correct.

JANET GREEN: I looked at the pictures, they didn't look like that. I'm surprised.

ATTORNEY ARTHUR KREIGER: Well, as I said, the Planning Board has requested that they move down a little bit.

JANET GREEN: Oh, I see.

ATTORNEY ARTHUR KREIGER: And we can move them down a few feet on the existing brackets and the existing pipe and we'll go through --

JANET GREEN: Oh, okay. So it wouldn't be the same as what it looks like on the pictures now?

ATTORNEY ARTHUR KREIGER: It might not be from certain angles if that's necessary. I mean, if you want to

bring them down so that you're sure from all angles, they --

JANET GREEN: That they don't stick up.

ATTORNEY ARTHUR KREIGER: Not an issue.

JANET GREEN: It was just one thing --

ATTORNEY ARTHUR KREIGER: A few inches.

SLATER ANDERSON: I don't have a particular issue with this. I think my point in raising these two elements because we've had this discussion before with other people here, is that there's -- to me there's an open question that somebody comes for a 6409 request, meets that -- satisfies that. What's to prevent them to come back with the same facility for another 64 -- at some point you keep adding to something under 6409 and it's like have you at some point crossed the threshold of defeating the purpose of the original permit and stealth element?

ATTORNEY ARTHUR KREIGER: If you went up nine feet five times in a row? Each time claiming a protection of 6409, I understand you'd have a problem with that.

SLATER ANDERSON: And it's not an issue for tonight. The other things are relatively cut and dry, they're mathematical issues. You've met the standards. You're within those limits.

JANET GREEN: You're willing to make the changes, the visual changes I mean.

ATTORNEY ARTHUR KREIGER: So with the Board's permission unless you have some more questions, Tim can just walk through the photo sims. We have extra copies if you don't have them handy. It doesn't look like you all do.

JANET GREEN: There's only one copy in the --

CONSTANTINE ALEXANDER: I have the copy in our file.

ATTORNEY ARTHUR KREIGER: I have multiple copies.

SLATER ANDERSON: I like pictures.

TIMOTHY GREENE: Pictures make this a whole lot easier.

SLATER ANDERSON: A lot more interesting.

ATTORNEY ARTHUR KREIGER: No question about it.

CONSTANTINE ALEXANDER: These photo sims were before the Planning Board? They don't reflect --

ATTORNEY ARTHUR KREIGER: These are the ones in the application, correct.

JANET GREEN: These are the ones like last September.

TIMOTHY GREENE: Correct. All right. So for the record, my name is Tim Greene, authorization for AT&T, the one that filed all the applications 1815 Mass. Ave., also known at Lesley College.

AT&T set up this facility here for close to two decades. They are the antennas that are on the top. There's another carrier that is below AT&T. And AT&T is proposing to replace three of the panel antennas that are currently on the building. There are currently nine on the building in three separate locations, and they're going to replace three of them.

ATTORNEY ARTHUR KREIGER: So on this top picture that lower orange antenna is not AT&T?

TIMOTHY GREENE: Collect. That is not AT&T. AT&T is up at the top.

The new antennas are actually a little bit shorter, so probably benefit for the whole conversation we had here -- not by much. The antennas themselves are about 54 inches long and the new ones are about 48. And they're -- the old ones were ten and a half inches wide and the new ones are going to be 14 inches wide. So they're getting a little bit smaller, a little bit bigger.

They're going to be painted to match. And obviously we'll ensure that any potential issues -- I know it looks like the antennas are below, so we don't have that issue right now, but if there's a perceived issue with the new mounting, we'll make sure that they don't have this issue.

DOUGLAS MYERS: Well, let me ask in your view

shown on proposed conditions location No. 1 the antenna on the left most antenna in the inset, is that above the roof line?

TIMOTHY GREENE: No, I don't believe it's above the roof line. It's probably flush with it.

DOUGLAS MYERS: In terms of visibility from below, is it inconsistent with --

JANET GREEN: Is that page 4, Doug?

DOUGLAS MYERS: I'm talking about location No. 1. It is page 4.

JANET GREEN: It is page 4, yeah, I noticed that.

DOUGLAS MYERS: I'm just trying to understand what the applicable criteria are in terms of what the Chairman was speaking about before about viewing antennas from below or from street level, is that above the roof line comply?

TIMOTHY GREENE: Well, it's not above the roof line, but if you're sitting on the -- if you're sitting on the ground, of course you're on the ground. No one here is

Superman and fly up. There's a perception it's above the roof line, because as you're looking up, you see the top of the antenna, but unfortunately the antenna is in front of the roof. So it looks like there's a break there.

So the request was, look, let's just -- if you bring that down, it probably only has to go down 14 or 16 inches.

JANET GREEN: Yes.

TIMOTHY GREENE: Then that's it, it solves that potential issue and we go on.

CONSTANTINE ALEXANDER: So that it's just a matter if that can be done?

TIMOTHY GREENE: Yes.

CONSTANTINE ALEXANDER: And you're planning to lower the antennas --

TIMOTHY GREENE: Yes.

CONSTANTINE ALEXANDER: -- from what's on these photo sims so that when views from the street it will not

break the roof line?

TIMOTHY GREENE: Correct.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: So I'm not even -- my understanding is not even 14 or 16 inches. It looks like if you take the left-hand one where the arrow is pointing, on page 4, if you take that one down six inches or so.

TIMOTHY GREENE: Whatever it is --

DOUGLAS MYERS: The idea is to remove --

THE STENOGRAPHER: Okay, one at a time, please.

DOUGLAS MYERS: My concept, subject to discussion, is simply to remove that part of the antenna which is silhouetted against the sky so that it's not visible in that way.

ATTORNEY ARTHUR KREIGER: Well, the antenna will be moved down. We wouldn't remove the top.

CONSTANTINE ALEXANDER: That's what he was saying.

ATTORNEY ARTHUR KREIGER: Yes. We would move it

down so that on the larger, on the large photo as well from that vantage point if that's a representative vantage point, it wouldn't stick up above the inset building behind it.

JANET GREEN: Yes.

ATTORNEY ARTHUR KREIGER: And that could be done.

And that could be done on the right one as well, because you can see the same issue.

And the middle one does not appear to have the same issue, but they could all be moved down together I suppose.

TIMOTHY GREENE: Double check. Have someone on the ground saying bad, good, bad, fix.

JANET GREEN: Right.

TIMOTHY GREENE: Move down, look down, I see it. Good, let's move.

ATTORNEY ARTHUR KREIGER: Location 2 doesn't seem to have that issue because what's sticking up on the left of that -- so I'm on page 5 or 6, is on the roof, that's not

part of the antenna.

Location 3, it doesn't look like it has that issue. So pages 7 and 8.

And location 4 doesn't really either to my eye. But, yeah, it doesn't look like it's a problem. Mostly location 1.

Do you need to see anything else? The plan, you know --

CONSTANTINE ALEXANDER: We have the plan.

ATTORNEY ARTHUR KREIGER: You have everything?

CONSTANTINE ALEXANDER: We have it as part of your submission.

ATTORNEY ARTHUR KREIGER: Yeah. Do you need to go through anything else?

TIMOTHY GREENE: The antennas themselves the only thing you can see, you know, we change out some equipment but it's inside the equipment room.

CONSTANTINE ALEXANDER: The photo

simulations -- to me the photo simulations are the name of the game in all of these cases. Certainly they tell you what the impact's going to be.

SLATER ANDERSON: I'm just curious on the photo sims. I never paid attention to these before, but these photos from April of last year. Is it typical that they're sort of older photos? Not that much has changed there.

TIMOTHY GREENE: This was actually -- well, no, they're not older. This was taken a while between working with the City in Cambridge to move through the process to get to here.

SLATER ANDERSON: Yes.

TIMOTHY GREENE: This was actually filed in June and then withdrawn before it was noticed and then we went through the City of Cambridge.

SLATER ANDERSON: Fair enough.

TIMOTHY GREENE: Because we have two more coming up.

SLATER ANDERSON: Yes.

TIMOTHY GREENE: Two more filing. There's three more on deck behind that. This, you know, you're not going to see the end of us. AT&T -- all of their sites need to be upgraded in Cambridge. So those are a bunch.

JANET GREEN: I was interested, somewhere, you know, I wrote this down but I didn't -- oh, this is the -- so this isn't the Portland one? This is the Porter Square one, right?

ATTORNEY ARTHUR KREIGER: We'll get to the Porter Square.

JANET GREEN: This is Porter Square, okay.

DOUGLAS MYERS: The Sears building.

CONSTANTINE ALEXANDER: The old Sears building.

JANET GREEN: No, it's the Portland one I have had a question about.

ATTORNEY ARTHUR KREIGER: That's it unless the Board has questions.

JANET GREEN: It was just that they stick up and I'm glad they don't now, they won't.

CONSTANTINE ALEXANDER: Questions from Members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Apparently none.

I'll open the matter up to public testimony. Sir, any comments you want to make?

UNIDENTIFIED AUDIENCE MEMBER: No.

CONSTANTINE ALEXANDER: Okay.

The Chair would report that there is no one wishing to comment.

We do have a memo from the Planning Board which I will read into the record. It states: That the Planning Board reviewed the Special Permit application for the communication antenna at Lesley University and finds that this proposal is no worse than the current installations. The Planning Board does suggest that the antennas be located

in such a way as not to break the roof line when viewed from the street, and that they be painted to match the facades, for example, to match either the red brick or the grey stone band around the top of the tower.

Now, we've talked about the photo sims that we have got to be -- you're going to lower some of the antennas so not to break the roof line. But I think the photo sims that you've showed do match the color. That's already identified here?

Am I correct?

ATTORNEY ARTHUR KREIGER: Yes.

TIMOTHY GREENE: The antennas will be painted to match.

CONSTANTINE ALEXANDER: No, no, the photo sims that you're showing show that they match?

TIMOTHY GREENE: Yes.

ATTORNEY ARTHUR KREIGER: Yes. They don't match the grey band around the top.

JANET GREEN: Right. They don't match the grey band. I remember, though, they weathered well, let's put it that way. Because when you first did them, the color wasn't brick. I mean, the bricks were behind it and this was a sort of faux bricky looking color. But they've weathered so they looked --

ATTORNEY ARTHUR KREIGER: Painting to match is always iffy.

JANET GREEN: I know.

ATTORNEY ARTHUR KREIGER: You're right, I've forgotten that phrase, the Planning Board's recommendation on this particular site. It does sort of damning faint praise.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY ARTHUR KREIGER: But I mean there's no secret that I think this Board --

CONSTANTINE ALEXANDER: Planning Board and this Board has been unhappy with that building because of the

maze of antennas up there. It's not the most sightly building in Cambridge, but it is what it is.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: Discussion by Members of the Board or ready for a vote?

Okay, now as you've noted in your presentation, it is the position of the Legal Department of the City of Cambridge is that we -- you have to go through the Special Permit process of under our Zoning Ordinance. It's not just something a matter of 6409 and nothing else. And so I will, I think we have to make the various findings that we would have to make under the Special Permit as well as the findings that are necessary under 6409. So I'm going to --

ATTORNEY ARTHUR KREIGER: May I say something?

CONSTANTINE ALEXANDER: Yes, sure.

ATTORNEY ARTHUR KREIGER: My understanding is that although the Law Department wants a Special Permit process, that it is essential that the substance of it is built with

6409.

CONSTANTINE ALEXANDER: Well, the substance of it, but we still have to deal with everything else it seems to me.

ATTORNEY ARTHUR KREIGER: Well, right.

CONSTANTINE ALEXANDER: Otherwise why do a Special Permit?

ATTORNEY ARTHUR KREIGER: I --

CONSTANTINE ALEXANDER: We're not going to go there.

JANET GREEN: Don't go there.

ATTORNEY ARTHUR KREIGER: Do you need to hear about any of the Special Permit criteria from me?

CONSTANTINE ALEXANDER: No, I don't need to hear from you. I think it's obvious. I'm going to take them off as we go forward.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: Okay, the Chair moves that

we make the following findings with regard to the Special Permit under our Ordinance:

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

That the traffic generated or patterns of access or egress resulting from what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

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

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

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

Further, we make -- I propose that we find that what is being proposed does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known the Spectrum Act.

So based on these findings the Chair moves that we grant the Special Permit being requested under our Ordinance subject to compliance with the following conditions:

And these conditions, which I will read in a second I want to impose with regard to just to your benefit, all Special Permit applications by telecommunications carriers. The conditions are as follows:

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

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

consistent with the photo simulations submitted by the petitioner and initialled by the Chair, which I've done. Except that what will be done when the project is completed, will not break the roof line when viewed from the street. In other words, you've agreed that you're going to lower the antennas so you won't -- down a little bit, so that you won't break the roof line when viewed from the street.

ATTORNEY ARTHUR KREIGER: May I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY ARTHUR KREIGER: There's a big parking lot here, and so I just want to make sure if we comply with exactly with what you just said, that it won't be thought well, if you stand closer to the building --

CONSTANTINE ALEXANDER: Oh, you're right. No, no, I think --

ATTORNEY ARTHUR KREIGER: We can say from the street that makes sense to me.

CONSTANTINE ALEXANDER: We'll leave it as it is.

I mean, you're right. You can get around and fool around and look from a different view. I'm not going to get into that.

ATTORNEY ARTHUR KREIGER: Good.

CONSTANTINE ALEXANDER: We just have the general statement.

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

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

Five, that the petitioner is in compliance with,

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

And last is a condition we've been continually imposing on all telecommunication facility as follows -- it's a little long, but I'll read it. And I think you've heard it already, Mr. Kreiger.

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

That the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic wave emissions emanating from all the petitioner's equipment on the site.

Each such report shall be filed with the

Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities.

Failure to file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

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

The Special Permit granted tonight shall ipso

facto terminate if any of the petitioner's federal licenses are suspended, revoked, or terminated.

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

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

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

geographical area that includes Cambridge stating that:

A, he or she has such responsibility:

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

On the basis of these findings as conditions, all those in favor of granting the Special Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Green, Myers, Anderson, Best.)

ATTORNEY ARTHUR KREIGER: Thank you.

Three things, actually:

One, is for the record, I just want to register an objection to that as we've discussed when I heard this condition before --

CONSTANTINE ALEXANDER: Right.

ATTORNEY ARTHUR KREIGER: -- to the condition regarding filing of reports, particularly the automatic termination provision. Just want to add that.

CONSTANTINE ALEXANDER: It will be part of the record.

ATTORNEY ARTHUR KREIGER: Second point is I would ask, and I don't see how the Law Department could object to this in the alternative, I would ask that you make the section 6409 finding or a decision because --

CONSTANTINE ALEXANDER: We did. I did make the finding.

ATTORNEY ARTHUR KREIGER: Well, that is approve it under 6409.

CONSTANTINE ALEXANDER: Oh, you want a second

approval?

ATTORNEY ARTHUR KREIGER: I want the alternative relief as well, just it's not subject to the same appeals necessarily. It's not the same 20-day appeal period.

CONSTANTINE ALEXANDER: Unfortunately the Legal Department takes the view that that's not appropriate.

ATTORNEY ARTHUR KREIGER: Even in the alternative?

CONSTANTINE ALEXANDER: Right, even in the alternative.

ATTORNEY ARTHUR KREIGER: Okay, so my request is noted.

And the third thing is with the deadline for a Building Permit is about two weeks away. I know how busy staff is. I know how busy the Law Department is. In the past it's taken a while to get -- longer than two weeks to get decisions out. If the Board would like a draft decision from me, I'd happy to supply one.

CONSTANTINE ALEXANDER: Thank you for the offer,

but we'll decline the offer and I'll leave it up to the Building Department and the like to meet the time frames.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: We have our decisions. We do it our way if you will.

ATTORNEY ARTHUR KREIGER: I know you have. But okay.

CONSTANTINE ALEXANDER: That's it for this case. I think we are all done.

ATTORNEY ARTHUR KREIGER: For this case, yes.

* * * * *

(9:45 p.m.)

(Sitting Members Case BZA-009073-2015: Constantine

Alexander, Janet Green, Douglas Myers, Slater W. Anderson,

George S. Best.)

CONSTANTINE ALEXANDER: You can start the case. I actually have to call it. The Chair will call case No. 009073, 141 Portland Street.

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

ATTORNEY ARTHUR KREIGER: Thank you. Art Kreiger from Anderson Kreiger with Timothy Greene consultant to AT&T.

I'd like to incorporate my remarks on the previous site to the extent that this is an independent record of this hearing, incorporate by reference the comments I made in the description of federal law and procedure from the last hearing.

(Statements made in the case BZA-009059-2015, 1815

Massachusetts Avenue:

ATTORNEY ARTHUR KREIGER: We have applied for two forms of relief:

One is what's called an eligible facilities request under federal law, under the 2012 Middle Class Tax Relief and Job Creation Act. And I'll explain what eligible facilities means in a moment.

And an alternative, Special Permit under your Zoning Ordinance which is the process you're used to.

My understanding is that even in facilities that may be eligible for the federal relief under the Spectrum Act, and I'll also refer to that as Section 6409 Statute. Even eligible facilities under that statute, my understanding is the City of Cambridge, like some other municipalities, wants it to be done by this Board in a Special Permit process rather than administratively by the Building Commissioner.

The Spectrum Act was passed essentially to facilitate co-locations. Co-locations and minor changes and replacements. We're here tonight on three sets of equipment, replacement -- just swapping out antennas for

what's called 4G, and I'm sure that's what you've heard of. Much better dated, more robust data transmission, better coverage, more seamless network.

The -- and Tim will describe what equipment is being swapped and show you the photo sims and explain it and answer questions on that.

To be an eligible facility under that statute, the change must not increase the height by ten percent or ten feet, and we're not close to that. We're not increasing height at all. Or protrude through the building by more than six feet, and we are possibly because the antennas are a little thicker, increasing distance from the face of the building by a couple of inches. And there are other criteria that are not relevant at all; installation of cabinets excavation, etcetera. None of that is happening here. We're just swapping out antennas.

When you're an eligible facility the statute -- the point of the statute was to establish an

objective non-discretionary review process. The Attorney General has letters to three towns that you have in the packet in the application explaining that Special Permit -- true discretionary Special Permit, regardless of the process, a discretionary Special Permit decision is not appropriate if it's a Section 6409 facility. That is the FCC has implemented that statute in the 2014 order that established that there's a 60-day approval timeline, including the Building Permit.

It's deemed granted if it's not approved in that period.

And the only information that the -- a Board, any Board is entitled to request is whether the facility in fact is within 6409. If it's not, of course, then you can go to town with the full Special Permit criteria. If it is, that's it. That's simply a description of federal law.

There was -- it's been deemed complete in the sense that there was no notice of incompleteness which would

have been by mid-January. And the 60-day deadline.

All the applications were filed within a day or two of each other so it's all roughly the same dates.

As described in the application, we think we meet all the Special Permit criteria as well, but I won't go through those unless we need to.)

ATTORNEY ARTHUR KREIGER: The only differences here are, as I mentioned, the application was I think a day --

TIMOTHY GREENE: Yeah, 17th.

ATTORNEY ARTHUR KREIGER: -- a day later maybe, the 17th. Meaning the of 60-day deadline is the 15th rather than the 14th. And other than that I think everything we said before applies to this as well. So I'll turn it over to Tim to talk about photo sims. Here are copies of the photos.

CONSTANTINE ALEXANDER: Again, hand them out to others here. I have them in the file.

TIMOTHY GREENE: All right. This is 141 Portland Street, Citizens Bank building, fully know as U.S. Trust building. AT&T is actually one of three carriers that utilize the roof.

AT&T has nine antennas up there, going to continue to have nine antennas up here. The only difference is that one of the antennas is going to be moving due to interference issues with the existing AT&T antenna and T-Mobile in its reference. There's really only one location that you can see these antennas, and that is I believe that's southeast from Broadway is your best, really your best location, other than that you really kind of looking around and things like that.

JANET GREEN: Which number location is that?

TIMOTHY GREENE: Sure, if you look at location No. 4 -- I think. The equipment's not visible from location No. 1, which is west on really on Broadway. Or you can barely see just one antenna on the side. Portland Street

equipment's not avail -- you can't see it at all.

East from Harvard Street, the equipment's not visible. Those antennas you see are Verizon Wireless on the roof.

And then when you get to location No. 4, you can see the existing and the proposed conditions. There will be an antenna -- well, I'm trying to figure out what's the best way of saying where it's located.

CONSTANTINE ALEXANDER: Lower right.

TIMOTHY GREENE: Okay, lower right? Is that the best way? Okay.

CONSTANTINE ALEXANDER: That's how I would describe it.

TIMOTHY GREENE: Single antenna there, lower right. We're gonna place it below --

CONSTANTINE ALEXANDER: You know the roof line. You're going to paint it to match.

TIMOTHY GREENE: We're gonna paint it to match.

And we're also going to place it below the grey strip also.

CONSTANTINE ALEXANDER: I see that.

TIMOTHY GREENE: And that's one of the issues where if you look on the other side, you'll see -- well the antennas above aren't ours. But on the existing conditions, let's see, on the perpendicular to Broadway, you'll see a couple of antennas. One of them is white, that's not ours. The other one beside it is ours. We're going to bring that one down.

ATTORNEY ARTHUR KREIGER: That's where the arrow is pointing to. So we're on sheet -- page 7's location 4.

TIMOTHY GREENE: Okay, good.

ATTORNEY ARTHUR KREIGER: In the inset.

TIMOTHY GREENE: Oh, the inset. Thank you.

ATTORNEY ARTHUR KREIGER: The white is against the dark background. That's not AT&T, the white antenna in the corner of the building.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY ARTHUR KREIGER: To the left of that where the arrow is pointing is the one that's where Tim was talking about.

CONSTANTINE ALEXANDER: Yes, that's the same color as the facade of the building at least from my photo sims.

TIMOTHY GREENE: It is, but then we had the same issue that we had in the previous one, as you look up at the buildings, it looks as -- the antenna is breaking the grey strip around the top.

CONSTANTINE ALEXANDER: That's not the roof line, though?

TIMOTHY GREENE: No, it's not the roof line. So we're not above the roof. That's not an issue in this one at all, but we said we'd talk to the Planning Board. We could bring it down a little.

JANET GREEN: Even the grey line you mean?

TIMOTHY GREENE: So just leave the grey line alone. We'll do what we can do there and that's pretty much

it on that. Any other changes to the equipment it's in the middle of the building, you can't see it. It's on the roof, but it's in the middle and it's all set back probably 50 or 60 feet from the roof line.

CONSTANTINE ALEXANDER: Okay.

TIMOTHY GREENE: That's it. Love to talk more about it, but I really don't have much else to say about it.

JANET GREEN: You know, sometimes it's hard when you're looking at -- when you come in and you're looking to do the plans but to understand what's another carrier and what's the carrier that's presenting the case. And so I mean I look at location No. 3 and it says down here "Equipment not visible." And I wonder what I'm looking at. You know?

TIMOTHY GREENE: I will say --

CONSTANTINE ALEXANDER: Our equipment is not visible.

JANET GREEN: Right. I mean because I looked at

it and I said --

TIMOTHY GREENE: You see an awful lot of equipment visible.

JANET GREEN: I see a lot of equipment there.

TIMOTHY GREENE: I can tell you who it is, but I say it as a factual thing not as a, hey, look at them.

JANET GREEN: But none of that is yours?

TIMOTHY GREENE: No.

ATTORNEY ARTHUR KREIGER: That's why that sheet, page 6 of 8 was existing/proposed. Nothing will look different.

JANET GREEN: Yeah, yeah.

DOUGLAS MYERS: So with respect to location 4 in the inset proposed, on proposed conditions, even though the antenna that we've been talking about is seemingly separate and new and doesn't relate to an existing antenna, it falls within your Section 6409 analysis, Mr. Kreiger; is that correct?

ATTORNEY ARTHUR KREIGER: Yes.

DOUGLAS MYERS: Yes.

ATTORNEY ARTHUR KREIGER: Yes, it's on the same base station. It meets the other criteria.

CONSTANTINE ALEXANDER: That's it?

ATTORNEY ARTHUR KREIGER: That's it.

JANET GREEN: I would suggest that you take our equipment is not visible -- just a point.

SLATER ANDERSON: We're not going to make you come back.

CONSTANTINE ALEXANDER: For future reference.

ATTORNEY ARTHUR KREIGER: In contrast to everyone else's, our equipment is not visible.

JANET GREEN: Blame others.

CONSTANTINE ALEXANDER: Other questions or comments from Members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to

public testimony.

Is there anyone wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt of a memo from the Planning Board which I will read into the record: The Planning Board reviewed the Special Permit application for the communication antenna at the corner of Portland Street and Broadway and suggest that the antennas be located in such a way as not to break the roof line when viewed from the street and that they be painted to match the facades.

And as we've talked about, from the street you might break the grey barrier but not the roof line. So I think your plans as proposed deal -- satisfy the --

JANET GREEN: You were going to droop it even below the --

ATTORNEY ARTHUR KREIGER: We can if you want.

CONSTANTINE ALEXANDER: This is, it's sort of late

and it's pretty informal group, I'm going to suggest, if you don't mind, that we can -- I'll make this same motions I made before with the same conditions, and they all be incorporated from the last decision just incorporate those.

Okay?

ATTORNEY ARTHUR KREIGER: And the same findings?

CONSTANTINE ALEXANDER: And you're going to maintain the same objections.

ATTORNEY ARTHUR KREIGER: And the same findings, also.

CONSTANTINE ALEXANDER: Yes, same findings. I made the same -- make the same findings.

JANET GREEN: You'll make the same comments.

CONSTANTINE ALEXANDER: We'll make the same findings, give the same relief, you'll make your same objections.

ATTORNEY ARTHUR KREIGER: I'll make the same objections, question, and offer.

DOUGLAS MYERS: And we'll give the same votes.

ATTORNEY ARTHUR KREIGER: And you'll give the same answer. And we'll talk the about 1950s ad again.

(Findings made in case BZA-009059-2015, 1815 Massachusetts Avenue:

CONSTANTINE ALEXANDER: Okay, now as you've noted in your presentation, it is the position of the Legal Department of the City of Cambridge is that we -- you have to go through the Special Permit process of under our Zoning Ordinance. It's not just something a matter of 6409 and nothing else. And so I will, I think we have to make the various findings that we would have to make under the Special Permit as well as the findings that are necessary under 6409. So I'm going to --

ATTORNEY ARTHUR KREIGER: May I say something?

CONSTANTINE ALEXANDER: Yes, sure.

ATTORNEY ARTHUR KREIGER: My understanding is that although the Law Department wants a Special Permit process,

that it is essential that the substance of it is built with 6409.

CONSTANTINE ALEXANDER: Well, the substance of it, but we still have to deal with everything else it seems to me.

ATTORNEY ARTHUR KREIGER: Well, right.

CONSTANTINE ALEXANDER: Otherwise why do a Special Permit?

ATTORNEY ARTHUR KREIGER: I --

CONSTANTINE ALEXANDER: We're not going to go there.

JANET GREEN: Don't go there.

ATTORNEY ARTHUR KREIGER: Do you need to hear about any of the Special Permit criteria from me?

CONSTANTINE ALEXANDER: No, I don't need to hear from you. I think it's obvious. I'm going to take them off as we go forward.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we make the following findings with regard to the Special Permit under our Ordinance:

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

That the traffic generated or patterns of access or egress resulting from what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

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

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

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

Ordinance.

Further, we make -- I propose that we find that what is being proposed does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known the Spectrum Act.

So based on these findings the Chair moves that we grant the Special Permit being requested under our Ordinance subject to compliance with the following conditions:

And these conditions, which I will read in a second I want to impose with regard to just to your benefit, all Special Permit applications by telecommunications carriers. The conditions are as follows:

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

Two, that upon completion of the work, the

physical appearance and impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair, which I've done. Except that what will be done when the project is completed, will not break the roof line when viewed from the street. In other words, you've agreed that you're going to lower the antennas so you won't -- down a little bit, so that you won't break the roof line when viewed from the street.

ATTORNEY ARTHUR KREIGER: May I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY ARTHUR KREIGER: And so I just want to make sure if we comply with exactly with what you just said, that it won't be thought well, if you stand closer to the building --

CONSTANTINE ALEXANDER: Oh, you're right. No, no, I think --

ATTORNEY ARTHUR KREIGER: We can say from the street that makes sense to me.

CONSTANTINE ALEXANDER: We'll leave it as it is. I mean, you're right. You can get around and fool around and look from a different view. I'm not going to get into that.

ATTORNEY ARTHUR KREIGER: Good.

CONSTANTINE ALEXANDER: We just have the general statement.

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

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

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

And last is a condition we've been continually imposing on all telecommunication facility as follows -- it's a little long, but I'll read it. And I think you've heard it already, Mr. Kreiger.

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

That the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic wave emissions emanating from all the petitioner's equipment on the site.

Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities.

Failure to file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

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

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

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

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

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

installation of equipment by the petitioner with a geographical area that includes Cambridge stating that:

A, he or she has such responsibility:

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

On the basis of these findings as conditions, all those in favor of granting the Special Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Green, Myers, Anderson, Best.)

ATTORNEY ARTHUR KREIGER: Thank you.

Three things, actually:

One, is for the record, I just want to register an objection to that as we've discussed when I heard this condition before --

CONSTANTINE ALEXANDER: Right.

ATTORNEY ARTHUR KREIGER: -- to the condition regarding filing of reports, particularly the automatic termination provision. Just want to add that.

CONSTANTINE ALEXANDER: It will be part of the record.

ATTORNEY ARTHUR KREIGER: Second point is I would ask, and I don't see how the Law Department could object to this in the alternative, I would ask that you make the section 6409 finding or a decision because --

CONSTANTINE ALEXANDER: We did. I did make the finding.

ATTORNEY ARTHUR KREIGER: Well, that is approve it under 6409.

CONSTANTINE ALEXANDER: Oh, you want a second approval?

ATTORNEY ARTHUR KREIGER: I want the alternative relief as well, just it's not subject to the same appeals necessarily. It's not the same 20-day appeal period.

CONSTANTINE ALEXANDER: Unfortunately the Legal Department takes the view that that's not appropriate.

ATTORNEY ARTHUR KREIGER: Even in the alternative?

CONSTANTINE ALEXANDER: Right, even in the alternative.

ATTORNEY ARTHUR KREIGER: Okay, so my request is noted.

And the third thing is with the deadline for a Building Permit is about two weeks away. I know how busy staff is. I know how busy the Law Department is. In the past it's taken a while to get -- longer than two weeks to get decisions out. If the Board would like a draft decision from me, I'd happy to supply one.

CONSTANTINE ALEXANDER: Thank you for the offer,
but we'll decline the offer and I'll leave it up to the
Building Department and the like to meet the time frames.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: We have our decisions. We
do it our way if you will.)

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

(Aye.)

(Alexander, Green, Myers, Anderson, Best.)

* * * * *

(9:50 p.m.)

(Sitting Members Case BZA-009089-2015: Constantine Alexander, Janet Green, Douglas Myers, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009089, 675 Massachusetts Avenue.

Is there anyone wishing to be heard?

ATTORNEY ARTHUR KREIGER: I was just trying to tell you what we were going to be doing. So, yeah, 675 Mass. Ave.

Incorporate the previous hearings by reference. This application date is December 18th which means --

CONSTANTINE ALEXANDER: Excuse me, Mr. Kreiger, for a minute.

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: Why is this in here?

SEAN O'GRADY: Is it related to this case?

SLATER ANDERSON: I think this is --

TIMOTHY GREENE: That's one of the exhibits.

SLATER ANDERSON: 6409.

ATTORNEY ARTHUR KREIGER: Is that a letter from
the AG?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KREIGER: That's the letter to the
three towns who are using --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: -- yeah.

CONSTANTINE ALEXANDER: Thank you. I'm sorry. Go
ahead.

(Statements made in the case BZA-009059-2015, 1815

Massachusetts Avenue:

ATTORNEY ARTHUR KREIGER: We have applied for two
forms of relief:

One is what's called an eligible facilities
request under federal law, under the 2012 Middle Class Tax

Relief and Job Creation Act. And I'll explain what eligible facilities means in a moment.

And an alternative, Special Permit under your Zoning Ordinance which is the process you're used to.

My understanding is that even in facilities that may be eligible for the federal relief under the Spectrum Act, and I'll also refer to that as Section 6409 Statute. Even eligible facilities under that statute, my understanding is the City of Cambridge, like some other municipalities, wants it to be done by this Board in a Special Permit process rather than administratively by the Building Commissioner.

The Spectrum Act was passed essentially to facilitate co-locations. Co-locations and minor changes and replacements. We're here tonight on three sets of equipment, replacement -- just swapping out antennas for what's called 4G, and I'm sure that's what you've heard of. Much better dated, more robust data transmission, better

coverage, more seamless network.

The -- and Tim will describe what equipment is being swapped and show you the photo sims and explain it and answer questions on that.

To be an eligible facility under that statute, the change must not increase the height by ten percent or ten feet, and we're not close to that. We're not increasing height at all. Or protrude through the building by more than six feet, and we are possibly because the antennas are a little thicker, increasing distance from the face of the building by a couple of inches. And there are other criteria that are not relevant at all; installation of cabinets excavation, etcetera. None of that is happening here. We're just swapping out antennas.

When you're an eligible facility the statute -- the point of the statute was to establish an objective non-discretionary review process. The Attorney General has letters to three towns that you have in the

packet in the application explaining that Special Permit -- true discretionary Special Permit, regardless of the process, a discretionary Special Permit decision is not appropriate if it's a Section 6409 facility. That is the FCC has implemented that statute in the 2014 order that established that there's a 60-day approval timeline, including the Building Permit.

It's deemed granted if it's not approved in that period.

And the only information that the -- a Board, any Board is entitled to request is whether the facility in fact is within 6409. If it's not, of course, then you can go to town with the full Special Permit criteria. If it is, that's it. That's simply a description of federal law.

There was -- it's been deemed complete in the sense that there was no notice of incompleteness which would have been by mid-January. And the 60-day deadline.

All the applications were filed within a day or

two of each other so it's all roughly the same dates.

As described in the application, we think we meet all the Special Permit criteria as well, but I won't go through those unless we need to.)

ATTORNEY ARTHUR KREIGER: The only differences this time are the application date is the 18th. The deemed grant, the 60 days is February 16th.

And Tim.

TIMOTHY GREENE: All right, 675 Mass. Ave. up here. Or is it over there?

SEAN O'GRADY: There.

TIMOTHY GREENE: No, there.

As you can see, it's pitch black. It looks perfect in the daytime. Nine antennas up on the roof. Yep.

The antennas' approximately 189 feet in the air. So -- but there are nine antennas.

They're on existing ballast frames.

The antennas are going to be -- three antennas are

going to be replaced in the existing frame.

CONSTANTINE ALEXANDER: The -- I'll read the Planning Board memo in this case into the record. But this one is a little bit different in that they suggest that the antennas be painted in such a manner as to match the sledded mounts.

You want to speak to that? There were -- photo sims don't show them matching, do they?

TIMOTHY GREENE: The -- yeah, I'm sorry, the sled, the frames are galvanized steel so they have a matte grey.

CONSTANTINE ALEXANDER: Right.

TIMOTHY GREENE: And the Planning Board's suggestion was to continue to paint those, not continue -- to paint the antennas matte grey so everything up there is grey.

CONSTANTINE ALEXANDER: And your response? Fine.

TIMOTHY GREENE: We could do it. But, myself, at 190 feet I don't know if that really gets you anything. I

really don't. I don't know, you know, along these photos we're bringing in -- we're zooming in on photos so you can see very specific things. But from eye level, 19 stories up, probably 300 feet back, I don't know if you ever know we painted it or not. But I mean I'm not going to sit here and fall on the sword over that request. I mean....

ATTORNEY ARTHUR KREIGER: There is one other wrinkle here, though, and it's on the plans and we haven't mentioned it. So let me just mention it.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: If you compare, for example, in location 1, sheet 3 to well, it's called 5, I don't know why that is, but it's the existing and a proposed on location 1.

CONSTANTINE ALEXANDER: Let me get there.

ATTORNEY ARTHUR KREIGER: It's three and four pages in.

DOUGLAS MYERS: For some reason pages three and

five as you said.

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: It goes from three to five.

ATTORNEY ARTHUR KREIGER: Yeah, I don't know why.

CONSTANTINE ALEXANDER: All right. Which one?

ATTORNEY ARTHUR KREIGER: If you look at page 5, you can see, and the arrows point to them they're additional RH units there.

CONSTANTINE ALEXANDER: Yes, I noticed that.

ATTORNEY ARTHUR KREIGER: So it's not just swapping out antennas, and it's adding a couple of those -- what do you call them?

TIMOTHY GREENE: Remote radio units.

CONSTANTINE ALEXANDER: My concern is it doesn't really affect the stealth design.

TIMOTHY GREENE: 17 inches -- 17 and a half by -- 17 and a half by I think 16. It's like a desktop

computer.

ATTORNEY ARTHUR KREIGER: I mean and on the big photo, we'll talk about the inset, but on the big photo you can't really see it.

CONSTANTINE ALEXANDER: And one of the big things, and this is from my own personal view, given the 19 stories, the building's so high up. You know, visual impact is not nearly as it would be on 1815 Mass. Ave. That's my personal view.

ATTORNEY ARTHUR KREIGER: Right.

JANET GREEN: And it doesn't have an old style that we really want to match and be part of.

CONSTANTINE ALEXANDER: Anyway.

TIMOTHY GREENE: That's pretty much it. Any other stuff is out of public view.

CONSTANTINE ALEXANDER: Questions from Members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: None.

I'll open the matter up to public testimony. Any comments? Questions?

(No Response.)

CONSTANTINE ALEXANDER: None.

We are in receipt of a memo from the Planning Board which I'll read into the record. (Reading) The Planning Board reviewed Special Permit application for the communication antenna at the corner of Prospect Street and Mass. Ave. and suggest that the antennas be painted in such a manner as to match the sled mounts. This will reduce what visual chaos exists at this very high location and better blend with the sky.

I don't know what the other Members of the Board feel, but I don't think it's necessary to make this --

JANET GREEN: I think you should just paint little clouds on them.

CONSTANTINE ALEXANDER: I'm not going to deal with

this. But other Members of the Board may feel differently. Apparently not.

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

Again, we'll do the shorthand approach going back to 1815 Mass. Ave.

We'll make the same findings, grant you the Special Permit subject to the conditions I've previously identified, and your objections, questions, and the like will be preserved for the record.

ATTORNEY ARTHUR KREIGER: Thank you.

(Findings made in case BZA-009059-2015, 1815 Massachusetts Avenue:

CONSTANTINE ALEXANDER: Okay, now as you've noted in your presentation, it is the position of the Legal Department of the City of Cambridge is that we -- you have to go through the Special Permit process of under our Zoning Ordinance. It's not just something a matter of 6409 and

nothing else. And so I will, I think we have to make the various findings that we would have to make under the Special Permit as well as the findings that are necessary under 6409.

ATTORNEY ARTHUR KREIGER: Do you need to hear about any of the Special Permit criteria from me?

CONSTANTINE ALEXANDER: No, I don't need to hear from you. I think it's obvious. I'm going to take them off as we go forward.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we make the following findings with regard to the Special Permit under our Ordinance:

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

That the traffic generated or patterns of access or egress resulting from what is being proposed will not cause congestion, hazard, or substantial change in

established neighborhood character.

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

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

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

Further, we make -- I propose that we find that what is being proposed does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known the Spectrum Act.

So based on these findings the Chair moves that we

grant the Special Permit being requested under our Ordinance subject to compliance with the following conditions:

And these conditions, which I will read in a second I want to impose with regard to just to your benefit, all Special Permit applications by telecommunications carriers. The conditions are as follows:

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

Two, that upon completion of the work, the physical appearance and impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair, which I've done. Except that what will be done when the project is completed, will not break the roof line when viewed from the street. In other words, you've agreed that you're going to lower the antennas so you won't -- down a little bit, so that you won't break the roof line when viewed from the street.

ARTHUR KREIGER: May I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY ARTHUR KREIGER: And so I just want to make sure if we comply with exactly with what you just said, that it won't be thought well, if you stand closer to the building --

CONSTANTINE ALEXANDER: Oh, you're right. No, no, I think --

ATTORNEY ARTHUR KREIGER: We can say from the street that makes sense to me.

CONSTANTINE ALEXANDER: We'll leave it as it is. I mean, you're right. You can get around and fool around and look from a different view. I'm not going to get into that.

ATTORNEY ARTHUR KREIGER: Good.

CONSTANTINE ALEXANDER: We just have the general statement.

So three, that the petitioner shall at all times

maintain the proposed work so that its physical appearance and impact will remain consistent with the photo simulations previously referred to.

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

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

And last is a condition we've been continually imposing on all telecommunication facility as follows -- it's a little long, but I'll read it. And I

think you've heard it already, Mr. Kreiger.

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

That the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic wave emissions emanating from all the petitioner's equipment on the site.

Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities.

Failure to file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

B, that in the event that at any time federal

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

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

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

filed because of a termination of a Special Permit pursuant to paragraphs A or B above.

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

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

A, he or she has such responsibility:

And, B, that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections such that individuals, including nearby

residents and occupants of nearby structures, will be sufficiently protected from excessive radiofrequency radiation under federal law.

ATTORNEY ARTHUR KREIGER: Thank you.

Three things, actually:

One, is for the record, I just want to register an objection to that as we've discussed when I heard this condition before --

CONSTANTINE ALEXANDER: Right.

ATTORNEY ARTHUR KREIGER: -- to the condition regarding filing of reports, particularly the automatic termination provision. Just want to add that.

CONSTANTINE ALEXANDER: It will be part of the record.

ATTORNEY ARTHUR KREIGER: Second point is I would ask, and I don't see how the Law Department could object to this in the alternative, I would ask that you make the section 6409 finding or a decision because --

CONSTANTINE ALEXANDER: We did. I did make the finding.

ATTORNEY ARTHUR KREIGER: Well, that is approve it under 6409.

CONSTANTINE ALEXANDER: Oh, you want a second approval?

ATTORNEY ARTHUR KREIGER: I want the alternative relief as well, just it's not subject to the same appeals necessarily. It's not the same 20-day appeal period.

CONSTANTINE ALEXANDER: Unfortunately the Legal Department takes the view that that's not appropriate.

ATTORNEY ARTHUR KREIGER: Even in the alternative?

CONSTANTINE ALEXANDER: Right, even in the alternative.

ATTORNEY ARTHUR KREIGER: Okay, so my request is noted.

And the third thing is with the deadline for a Building Permit is about two weeks away. I know how busy

staff is. I know how busy the Law Department is. In the past it's taken a while to get -- longer than two weeks to get decisions out. If the Board would like a draft decision from me, I'd happy to supply one.

CONSTANTINE ALEXANDER: Thank you for the offer, but we'll decline the offer and I'll leave it up to the Building Department and the like to meet the time frames.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: We have our decisions. We do it our way if you will.)

CONSTANTINE ALEXANDER: We're all done. All those in favor?

(Aye.)

CONSTANTINE ALEXANDER: Special Permit granted.

(Alexander, Green, Myers, Anderson, Best.)

CONSTANTINE ALEXANDER: Now we're all done.

ATTORNEY ARTHUR KREIGER: Thank you all for your time.

(Whereupon, at 10:00 p.m., the

Board of Zoning Appeals Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

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

INSTRUCTIONS

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

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

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand
this February 11, 2016.

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

My Commission Expires:
April 29, 2022

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0

0.03 ^[1] - 30:7
0.75 ^[4] - 45:8, 45:16,
 135:16, 145:2
008696 ^[1] - 91:7
008957 ^[1] - 6:7
009016 ^[1] - 64:16
009059 ^[1] - 182:6
009063 ^[1] - 102:6
009073 ^[1] - 230:7
009078 ^[1] - 128:8
009080 ^[1] - 144:6
009089 ^[1] - 262:6
009107 ^[1] - 122:6
02139 ^[1] - 1:7

1

1 ^[9] - 139:18, 157:17,
 194:7, 203:13,
 204:5, 208:11,
 237:1, 270:17,
 271:1
1.014 ^[1] - 135:14
1.028 ^[1] - 135:15
1.77 ^[2] - 45:7, 45:12
1.78 ^[1] - 45:6
1.8 ^[2] - 45:9, 45:14
100 ^[1] - 170:7
1000 ^[1] - 58:3
102 ^[1] - 2:6
10:00 ^[1] - 288:12
11 ^[4] - 2:5, 64:15,
 70:7, 290:8
12 ^[2] - 115:16, 171:7
12-year-old
^[1] - 54:13
122 ^[1] - 2:8
128 ^[1] - 2:7
14 ^[8] - 2:6, 81:15,
 102:6, 113:16,
 126:5, 203:2, 205:6,
 206:4
140 ^[1] - 113:15
140-something
^[1] - 7:15
141 ^[3] - 2:11, 230:7,
 235:18
144 ^[5] - 2:9, 7:16,
 10:12, 11:16, 28:4
146 ^[7] - 2:4, 6:7,
 6:15, 7:15, 10:11,
 36:15, 36:17

147 ^[1] - 36:13
147703 ^[1] - 290:12
14th ^[5] - 72:14,
 72:17, 80:4, 188:14,
 235:11
15 ^[3] - 42:2, 46:5,
 152:18
15-foot ^[1] - 149:9
1500 ^[1] - 12:16
15th ^[1] - 235:11
16 ^[4] - 140:11, 205:6,
 206:4, 272:8
16-year-old
^[1] - 54:12
16th ^[3] - 183:3,
 188:9, 268:5
17 ^[4] - 54:7, 272:7,
 272:8
17th ^[2] - 235:8,
 235:10
180 ^[1] - 10:10
1815 ^[9] - 2:10, 182:6,
 201:18, 231:2,
 247:1, 263:17,
 272:17, 274:18,
 275:7
182 ^[1] - 2:10
1847 ^[2] - 151:17,
 170:11
1849 ^[1] - 170:12
1850s ^[1] - 7:8
189 ^[1] - 268:14
18th ^[2] - 262:13,
 268:4
19 ^[2] - 270:6, 272:15
190 ^[1] - 270:2
1900s ^[1] - 7:8
1915 ^[2] - 151:17,
 170:13
1950s ^[1] - 246:17
1960 ^[1] - 15:18
1st ^[1] - 145:8

2

2 ^[6] - 140:10, 149:11,
 157:17, 174:14,
 174:16, 208:2
2/11 ^[1] - 124:18
2/25 ^[2] - 124:18,
 125:2
20 ^[5] - 2:7, 128:8,
 139:2, 139:12,
 164:6

20-day [3] - 228:2,
 259:17, 286:13
2012 [6] - 184:10,
 218:14, 231:7,
 250:12, 264:4,
 277:17
2014 [4] - 174:17,
 187:8, 234:1,
 266:16
2015 [1] - 40:7
2016 [4] - 1:5, 70:5,
 70:8, 290:8
202 [1] - 98:1
2022 [1] - 290:14
205 [3] - 2:3, 91:7,
 91:16
23 [1] - 40:7
230 [1] - 2:11
25 [1] - 146:4
2500 [1] - 29:13
2530-something
 [1] - 29:14
2570 [2] - 29:17
25th [8] - 70:10,
 70:12, 70:13, 125:8,
 125:18, 127:3,
 127:5, 127:14
26 [1] - 70:8
262 [1] - 2:12
26th [1] - 84:7
27th [1] - 84:8
28 [2] - 1:5, 70:5
28th [28] - 72:15,
 72:18, 73:1, 73:3,
 73:6, 73:9, 76:1,
 80:4, 80:5, 80:7,
 81:7, 81:12, 81:15,
 82:5, 82:6, 82:8,
 82:10, 83:1, 83:5,
 83:6, 83:9, 84:8,
 87:15, 87:18, 88:16,
 173:8, 174:9,
 175:11
29 [1] - 290:14
29th [3] - 68:8, 68:11,
 69:12

3
3 [5] - 139:2, 157:17,
 208:7, 241:9,
 270:17
3.9 [1] - 161:11
300 [1] - 270:7

350 [1] - 145:4

4

4 [11] - 39:10, 194:7,
204:3, 204:5, 204:6,
206:6, 208:9,
236:18, 237:8,
238:18, 242:13

44 [2] - 174:14,
174:16

46 [2] - 153:18, 173:4

47 [6] - 2:9, 144:6,
173:6, 174:6,
174:18, 175:9

48 [1] - 202:18

4G [3] - 185:16,
232:9, 265:6

5

5 [6] - 95:6, 196:7,
196:15, 208:5,
270:18, 271:15

50 [1] - 240:17

52 [1] - 172:1

54 [1] - 202:17

6

6 [4] - 2:4, 38:4,
208:5, 242:9

60 [2] - 240:17, 268:4

60-day [7] - 187:9,
188:13, 234:2,
234:16, 235:10,
266:17, 267:13

617.786.7783/617.63

9.0396 [1] - 1:17

64 [2] - 2:5, 199:12

6409 [31] - 185:2,
187:7, 187:15,
190:5, 193:6,
194:10, 199:10,
199:14, 200:1,
215:11, 215:15,
216:5, 227:10,
227:14, 231:16,
233:18, 234:8,
242:17, 247:9,
247:12, 248:3,
259:7, 259:11,
263:6, 264:13,
266:15, 267:5,
275:15, 275:18,
286:3, 286:7

6409(a) ^[3] - 218:13,
250:11, 277:16
675 ^[5] - 2:12, 128:15,
262:6, 262:10,
268:7
6:30 ^[1] - 114:10

7

7 ^[1] - 208:8
7's ^[1] - 238:18
70 ^[3] - 27:3, 131:18,
135:15
7:00 ^[3] - 1:5, 3:3, 6:1
7:45 ^[1] - 64:1

8

8 ^[7] - 2:8, 39:9,
122:6, 145:18,
149:5, 208:8, 242:9
80 ^[2] - 27:7, 154:1
806 ^[1] - 1:7
83 ^[2] - 136:10,
169:14
84 ^[1] - 174:7
8:00 ^[1] - 91:1
8:10 ^[1] - 102:1
8:20 ^[1] - 122:1
8:25 ^[1] - 128:1
8:40 ^[1] - 144:1

9

91 ^[1] - 2:3
94 ^[5] - 30:7, 44:16,
44:18, 45:8, 48:2
9:10 ^[1] - 182:1
9:45 ^[1] - 230:1
9:50 ^[1] - 262:1

A

A-2 ^[1] - 49:1
ability ^[3] - 5:5, 83:17,
177:15
able ^[9] - 132:17,
133:10, 134:4,
134:6, 140:5, 148:6,
154:7, 166:14,
175:10
absolutely
^[3] - 26:17, 74:11,
93:18
abstain ^[1] - 88:13
Abstain ^[1] - 88:14
abuts ^[2] - 165:3,

174:6

abutter ^[14] - 27:13,
36:8, 39:3, 106:13,
107:1, 107:3, 107:4,
112:6, 112:13,
112:15, 120:9,
130:6, 136:16

abutters ^[10] - 8:10,
74:6, 106:2, 111:14,
111:17, 114:4,
114:7, 131:14,
180:9

access ^[8] - 99:18,
120:3, 131:3,
177:17, 180:2,
217:11, 249:9,
276:14

accessible
^[1] - 132:12

acclaimed ^[2] - 129:3,
129:5

accommodate
^[1] - 130:15

accommodates
^[1] - 131:13

accommodating
^[2] - 13:18, 132:12

accordance
^[10] - 62:14, 101:2,
119:2, 121:5, 143:4,
178:15, 181:5,
219:7, 251:5,
278:10

according
^[1] - 195:18

accurate ^[2] - 289:16,
290:6

acknowledging
^[1] - 130:6

Acorn ^[2] - 2:8, 122:6

acquisition
^[1] - 183:2

act ^[1] - 127:6

Act ^[15] - 184:11,
185:1, 185:11,
218:14, 218:15,
231:8, 231:15,
232:4, 250:12,
250:13, 264:5,
264:12, 265:1,
277:17, 277:18

action ^[1] - 145:7

acute ^[1] - 166:8

ad ^[2] - 152:5, 246:18

add ^[6] - 7:2, 33:9,
 161:2, 227:3,
 258:18, 285:14

added ^[5] - 7:9, 89:15,
 147:2, 166:7,
 166:17

adding ^[7] - 16:17,
 44:2, 79:6, 110:15,
 147:11, 199:13,
 272:2

addition ^[36] - 19:8,
 36:1, 36:10, 37:10,
 38:14, 38:17, 39:5,
 77:7, 79:9, 92:6,
 94:9, 95:3, 95:5,
 95:15, 96:16, 99:14,
 99:15, 100:4, 139:6,
 139:8, 140:7,
 140:10, 140:16,
 141:16, 149:3,
 149:12, 153:15,
 154:16, 159:6,
 162:15, 166:15,
 170:13, 177:14,
 194:4

additional ^[4] - 44:15,
 90:7, 141:15,
 271:16

additions
^[3] - 144:17, 146:3,
 149:5

address ^[13] - 6:12,
 6:15, 17:11, 18:2,
 18:4, 26:13, 41:18,
 65:10, 123:10,
 148:5, 167:2,
 169:11, 174:7

adds ^[1] - 38:15

adequate ^[1] - 141:14

adequately
^[1] - 152:3

adjacent ^[7] - 8:10,
 100:7, 120:7, 180:6,
 217:16, 249:14,
 277:1

adjoining ^[7] - 33:15,
 100:14, 120:18,
 180:17, 218:5,
 250:3, 277:8

Adjourned
^[1] - 288:13

adjustment
^[1] - 133:7

administratively

[3] - 185:7, 232:3,
264:18

admired [1] - 139:15

admissions
[3] - 223:15, 255:12,
282:16

advance [1] - 83:18

adversely [6] - 100:8,
120:8, 180:7,
217:17, 249:15,
277:2

aesthetic [2] - 12:10,
39:2

affect [2] - 111:1,
272:6

affected [10] - 100:8,
106:5, 112:13,
120:8, 120:10,
180:7, 180:10,
217:17, 249:15,
277:2

affecting [2] - 21:12,
21:13

affects [1] - 29:5

Affidavit [5] - 46:15,
46:16, 225:7, 257:4,
284:8

afraid [1] - 70:17

afterwards
[1] - 111:10

AG [1] - 263:8

Agassiz [1] - 136:12

age [4] - 76:16,
132:10, 133:9,
140:9

agenda [5] - 64:6,
64:9, 64:14, 64:15,
122:18

ago [5] - 7:16, 91:17,
145:7, 169:15,
189:3

agree [5] - 56:16,
74:4, 79:15, 81:1,
111:4

agreed [3] - 219:18,
251:16, 279:3

agrees [1] - 72:3

ahead [8] - 77:17,
129:18, 183:16,
189:17, 220:5,
252:3, 263:15,
279:7

aids [1] - 17:6

air [3] - 15:8, 164:6,

268:15

Alexander ^[24] - 1:8,
 6:3, 63:6, 64:3,
 88:11, 91:3, 101:15,
 102:3, 119:11,
 121:11, 122:3,
 127:15, 128:3,
 143:10, 144:3,
 179:6, 181:11,
 182:3, 226:10,
 230:3, 258:7, 261:8,
 262:3, 288:6

ALEXANDER

^[395] - 3:4, 6:5, 6:11,
 10:13, 11:2, 11:5,
 12:13, 12:18, 13:5,
 13:8, 13:10, 13:15,
 14:5, 14:12, 15:16,
 17:1, 17:5, 17:10,
 17:17, 19:12, 19:17,
 20:7, 20:15, 22:9,
 22:13, 22:16, 23:4,
 23:9, 23:16, 24:16,
 25:8, 25:15, 26:3,
 26:10, 27:18, 29:16,
 30:2, 30:5, 30:9,
 30:15, 32:15, 34:12,
 34:15, 35:2, 40:10,
 40:16, 41:5, 41:9,
 41:13, 41:16, 43:1,
 43:6, 44:18, 45:6,
 45:14, 46:4, 47:1,
 47:15, 47:17, 48:3,
 48:5, 48:10, 48:15,
 53:2, 53:9, 53:11,
 54:5, 57:5, 57:9,
 57:14, 57:18, 58:14,
 59:5, 59:10, 59:13,
 60:2, 63:3, 64:5,
 65:7, 65:12, 65:17,
 66:5, 66:14, 66:17,
 67:15, 69:3, 69:8,
 70:1, 70:11, 70:14,
 71:3, 71:6, 71:9,
 71:18, 72:5, 72:8,
 72:11, 72:16, 73:2,
 73:7, 73:16, 74:3,
 74:11, 74:14, 75:1,
 75:8, 75:14, 75:17,
 78:18, 79:4, 79:7,
 79:10, 80:2, 80:5,
 80:17, 83:4, 83:10,
 83:14, 84:9, 84:16,
 85:2, 85:13, 85:18,

86:4, 86:7, 86:12,
86:17, 87:3, 87:9,
87:13, 88:6, 88:10,
88:12, 88:14, 89:4,
89:7, 90:4, 90:10,
90:14, 91:5, 91:12,
92:15, 93:12, 94:2,
94:7, 94:12, 96:3,
96:11, 96:13, 97:3,
97:7, 97:12, 98:8,
98:13, 99:7, 101:13,
102:5, 102:9, 103:2,
103:6, 103:15,
104:5, 104:8,
104:12, 104:16,
105:1, 105:4, 106:4,
106:15, 107:6,
107:13, 107:16,
108:4, 108:14,
109:4, 109:8,
109:18, 110:7,
111:5, 112:1, 112:4,
112:8, 112:11,
112:17, 113:3,
113:9, 116:7,
116:11, 117:5,
119:9, 119:12,
121:9, 122:5,
122:10, 122:14,
123:17, 124:4,
124:6, 124:12,
124:16, 125:3,
125:14, 126:9,
127:13, 128:5,
129:5, 129:16,
133:13, 134:1,
135:3, 135:11,
136:3, 137:4,
137:13, 137:18,
138:7, 138:11,
138:16, 141:3,
141:7, 142:15,
143:1, 143:9,
143:12, 144:5,
148:14, 150:2,
150:5, 150:9,
150:15, 153:7,
153:10, 155:5,
157:6, 158:14,
162:16, 165:15,
166:18, 167:7,
168:6, 168:14,
168:17, 169:4,
169:9, 172:12,

172:15, 176:4,
176:10, 176:15,
177:2, 179:5, 179:8,
179:12, 181:9,
182:5, 183:7,
183:11, 183:14,
183:16, 185:8,
188:3, 189:5, 189:8,
189:11, 189:18,
190:3, 190:13,
191:1, 191:4,
191:12, 191:16,
192:3, 192:5, 193:8,
193:17, 194:15,
196:11, 200:16,
201:8, 205:10,
205:13, 205:16,
206:2, 207:1,
208:14, 208:17,
209:7, 211:8,
211:16, 212:1,
212:5, 213:12,
214:13, 214:16,
215:4, 215:18,
216:6, 216:10,
216:13, 217:1,
217:5, 220:5,
220:11, 220:15,
221:2, 226:8,
226:17, 227:4,
227:11, 227:15,
228:3, 228:8, 229:1,
229:6, 229:10,
230:5, 235:16,
237:13, 237:16,
238:2, 238:7, 239:8,
239:12, 240:2,
240:18, 241:13,
243:6, 243:13,
243:18, 244:4,
244:8, 245:8,
245:18, 246:4,
246:9, 247:3,
247:16, 248:4,
248:8, 248:11,
248:17, 249:3,
252:3, 252:8,
252:12, 252:17,
258:5, 258:14,
259:1, 259:8,
259:12, 259:18,
260:5, 260:16,
261:3, 261:5, 262:5,
262:14, 262:17,

263:9, 263:12,
 263:14, 269:2,
 269:12, 269:17,
 270:15, 271:2,
 271:8, 271:12,
 271:17, 272:5,
 272:13, 273:5,
 273:8, 273:11,
 273:15, 274:12,
 275:9, 276:4, 276:8,
 279:7, 279:12,
 279:16, 280:3,
 285:10, 285:15,
 286:4, 286:8,
 286:14, 287:1,
 287:12, 287:17,
 288:1, 288:4, 288:8
allow ^[12] - 19:6, 19:8,
 36:17, 37:4, 130:8,
 130:15, 130:18,
 131:2, 133:11,
 133:14, 144:17,
 166:14
allowable ^[2] - 27:4,
 145:6
allowed ^[2] - 78:12,
 132:3
allows ^[2] - 20:8,
 155:3
almost ^[2] - 27:8,
 158:18
alone ^[1] - 240:12
alteration ^[2] - 24:6,
 146:15
altering ^[1] - 102:15
alternative
^[15] - 184:14, 227:9,
 227:18, 228:7,
 228:9, 231:10,
 259:6, 259:15,
 260:4, 260:6, 264:7,
 286:2, 286:11,
 286:18, 287:2
aluminum ^[2] - 14:14,
 15:8
amazing ^[1] - 171:4
amenable ^[2] - 72:11,
 75:18
amount ^[4] - 30:6,
 30:10, 61:15, 108:5
analysis ^[1] - 242:17
AND ^[1] - 289:1
AND/OR ^[1] - 290:16
ANDERSON

[51] - 11:4, 28:2,
 28:6, 28:12, 28:16,
 29:5, 29:9, 29:13,
 33:3, 60:1, 70:18,
 71:4, 74:8, 74:13,
 76:4, 76:8, 80:8,
 80:15, 84:14, 84:17,
 85:7, 86:9, 87:6,
 89:2, 89:11, 90:3,
 90:12, 97:2, 107:14,
 109:12, 116:9,
 151:6, 165:17,
 168:8, 183:10,
 193:5, 193:9,
 193:14, 196:2,
 196:8, 199:5, 200:3,
 201:2, 201:5,
 209:12, 210:3,
 210:7, 210:10,
 243:11, 263:3,
 263:6

Anderson [26] - 1:10,
 6:4, 63:6, 64:4,
 88:11, 91:4, 101:15,
 102:4, 119:11,
 121:11, 122:4,
 127:15, 128:4,
 143:10, 144:4,
 179:6, 181:11,
 182:4, 182:11,
 226:10, 230:4,
 230:11, 258:7,
 261:8, 262:4, 288:6

angle [3] - 164:5,
 164:8, 165:5

angles [2] - 198:16,
 198:18

announce [1] - 3:15

answer [6] - 69:3,
 186:3, 188:1,
 232:14, 246:17,
 265:11

antenna [19] - 202:11,
 203:14, 205:1,
 206:14, 206:17,
 208:6, 212:11,
 236:8, 237:3,
 237:10, 237:18,
 239:7, 239:18,
 242:14, 242:16,
 244:12, 274:1

antennas
 [40] - 185:15, 186:9,
 186:15, 202:3,

202:6, 202:14,
 202:17, 203:7,
 204:11, 205:14,
 209:3, 212:14,
 213:4, 213:10,
 214:18, 219:18,
 232:8, 233:2, 233:8,
 236:4, 236:5, 236:6,
 236:10, 237:6,
 238:10, 238:13,
 244:14, 251:16,
 265:5, 265:17,
 266:5, 268:12,
 268:15, 268:17,
 268:18, 269:5,
 269:15, 272:2,
 274:3, 279:3
antennas' [1] - 268:14
anxious [1] - 124:10
ANY [2] - 290:15,
 290:16
anyway [4] - 13:6,
 59:9, 94:2, 273:5
apartments
 [1] - 138:3
apologize [1] - 92:13
APPEAL [1] - 1:2
Appeal [2] - 38:2,
 175:11
appeal [3] - 228:2,
 259:17, 286:13
Appeals [4] - 3:5,
 288:13, 289:6,
 289:15
appeals [3] - 228:1,
 259:16, 286:12
Appeals' [1] - 42:10
appear [1] - 207:12
appearance
 [9] - 219:11, 221:6,
 221:15, 251:9,
 253:3, 253:12,
 278:14, 280:7,
 280:16
appearing
 [3] - 128:16, 128:17,
 144:11
applicable [1] - 204:9
applicant [2] - 76:6,
 139:9
applicants
 [3] - 128:18, 144:11,
 148:7
application

[37] - 32:1, 32:13,
 34:10, 36:16, 38:2,
 38:6, 39:11, 70:6,
 139:5, 144:16,
 146:7, 182:17,
 183:1, 183:3, 187:3,
 188:8, 188:18,
 201:12, 212:11,
 224:12, 224:14,
 224:17, 233:14,
 235:2, 235:7,
 244:12, 256:9,
 256:11, 256:14,
 262:12, 266:11,
 267:17, 268:3,
 274:1, 283:13,
 283:15, 283:18

applications

[7] - 188:15, 201:18,
 219:4, 234:17,
 251:2, 267:14,
 278:7

applied [4] - 20:18,

184:8, 231:3,
 263:18

applies [1] - 235:12

APPLY [1] - 290:15

apply [6] - 77:6,

184:5, 195:11,
 224:10, 256:7,
 283:11

applying [2] - 32:11,

33:11

approach [2] - 133:6,

274:17

appropriate

[11] - 170:15, 187:6,
 190:1, 225:16,
 228:5, 233:17,
 257:13, 260:2,
 266:14, 284:17,
 286:16

Appropriateness

[4] - 40:3, 95:11,
 98:6, 146:14

approval [11] - 9:7,

36:6, 111:16, 187:9,
 194:2, 195:8,
 227:16, 234:2,
 259:13, 266:17,
 286:9

approvals [1] - 193:7

approve [4] - 38:2,

227:14, 259:11,

286:7

approved ^[10] - 24:14,
39:1, 62:2, 176:7,
187:11, 221:11,
234:4, 253:8, 267:1,
280:12

approving ^[2] - 40:5,
178:11

April ^[23] - 68:13,
68:16, 68:17, 72:2,
72:12, 72:17, 73:5,
76:1, 80:2, 80:3,
80:16, 81:6, 81:12,
81:15, 82:5, 82:8,
82:9, 83:1, 83:5,
83:6, 87:15, 87:18,
209:14

april ^[1] - 290:14

architect ^[8] - 66:9,
93:9, 102:13,
123:18, 124:2,
129:2, 144:14,
165:4

architect's
^[1] - 123:15

architects ^[1] - 92:12

Architects ^[2] - 129:4,
143:5

Architectural
^[1] - 62:16

architectural
^[6] - 36:15, 37:5,
129:4, 161:17,
163:2, 164:3

Architecture
^[1] - 101:3

architecture
^[2] - 7:17, 51:13

area ^[11] - 10:16,
24:12, 29:6, 50:11,
145:9, 145:10,
161:4, 175:4, 225:9,
257:6, 284:10

areas ^[1] - 189:17

argued ^[1] - 155:6

arguments
^[3] - 56:16, 83:17,
85:4

ARMSTRONG
^[5] - 91:10, 91:15,
93:3, 93:18, 98:12

Armstrong ^[1] - 91:16

arrangement
^[1] - 115:4

arrival ^[1] - 57:4
arrived ^[3] - 41:15,
 41:16, 71:12
arrow ^[3] - 206:6,
 238:17, 239:10
arrows ^[1] - 271:15
art ^[1] - 230:10
Art ^[1] - 182:11
ARTHUR
^[135] - 182:9, 182:15,
 183:18, 185:9,
 188:4, 189:6,
 189:10, 189:13,
 190:2, 190:11,
 190:16, 191:2,
 191:10, 192:17,
 193:12, 194:13,
 195:3, 196:6,
 196:13, 197:18,
 198:2, 198:5, 198:9,
 198:15, 199:2,
 199:4, 199:17,
 200:9, 200:18,
 201:6, 201:11,
 202:10, 206:3,
 206:16, 207:3,
 207:9, 208:2,
 208:15, 209:1,
 211:3, 211:12,
 213:9, 213:15,
 214:6, 214:9,
 214:14, 215:3,
 215:16, 216:1,
 216:9, 216:12,
 216:16, 217:4,
 220:3, 220:6,
 220:13, 221:1,
 226:12, 226:18,
 227:6, 227:13,
 227:17, 228:6,
 228:10, 229:5,
 229:8, 229:12,
 230:10, 231:3,
 235:5, 235:9,
 238:16, 239:2,
 239:5, 239:9, 242:8,
 243:1, 243:3, 243:7,
 243:15, 245:6,
 245:16, 246:2,
 246:12, 246:16,
 247:14, 247:17,
 248:7, 248:10,
 248:14, 249:2,
 252:1, 252:4,

252:10, 252:16,
 258:9, 258:15,
 259:3, 259:10,
 259:14, 260:3,
 260:7, 261:2, 262:8,
 262:16, 263:7,
 263:10, 263:13,
 263:18, 268:2,
 270:11, 270:16,
 271:3, 271:7,
 271:10, 271:14,
 272:1, 272:10,
 273:1, 275:6, 276:1,
 276:7, 279:6, 279:8,
 279:14, 280:2,
 285:5, 285:11,
 285:17, 286:6,
 286:10, 286:17,
 287:3, 287:16,
 288:10
Article [3] - 145:18,
 149:5, 149:11
as-of-right [1] - 146:4
Ash [1] - 55:9
aspect [1] - 147:16
aspects [1] - 19:14
asset [2] - 15:2, 36:8
assist [1] - 4:12
Associate [3] - 1:9,
 1:10, 1:10
associated
 [2] - 145:18, 195:8
assume [2] - 98:9,
 98:10
AT&T [14] - 183:1,
 201:17, 202:2,
 202:5, 202:11,
 202:13, 210:14,
 230:12, 236:2,
 236:4, 236:8, 239:6
attach [1] - 148:9
attend [1] - 175:10
attendees [1] - 4:5
attention [6] - 135:6,
 135:10, 148:8,
 149:8, 176:13,
 209:13
attic [2] - 19:10, 30:8
ATTORNEY
 [167] - 128:12, 129:6,
 129:10, 130:1,
 133:17, 134:2,
 134:12, 135:4,
 138:4, 141:2,

142:13, 144:9,
147:8, 148:15,
150:4, 150:12,
151:4, 156:14,
157:12, 158:4,
159:15, 160:9,
162:13, 166:2,
167:3, 167:9,
168:15, 169:2,
172:10, 176:1,
176:8, 176:12,
177:1, 182:9,
182:15, 183:18,
185:9, 188:4, 189:6,
189:10, 189:13,
190:2, 190:11,
190:16, 191:2,
191:10, 192:17,
193:12, 194:13,
195:3, 196:6,
196:13, 197:18,
198:2, 198:5, 198:9,
198:15, 199:2,
199:4, 199:17,
200:9, 200:18,
201:6, 201:11,
202:10, 206:3,
206:16, 207:3,
207:9, 208:2,
208:15, 209:1,
211:3, 211:12,
213:9, 213:15,
214:6, 214:9,
214:14, 215:3,
215:16, 216:1,
216:9, 216:12,
216:16, 217:4,
220:3, 220:6,
220:13, 221:1,
226:12, 226:18,
227:6, 227:13,
227:17, 228:6,
228:10, 229:5,
229:8, 229:12,
230:10, 231:3,
235:5, 235:9,
238:16, 239:2,
239:5, 239:9, 242:8,
243:1, 243:3, 243:7,
243:15, 245:6,
245:16, 246:2,
246:12, 246:16,
247:14, 247:17,
248:7, 248:10,

248:14, 249:2,
 252:1, 252:4,
 252:10, 252:16,
 258:9, 258:15,
 259:3, 259:10,
 259:14, 260:3,
 260:7, 261:2, 262:8,
 262:16, 263:7,
 263:10, 263:13,
 263:18, 268:2,
 270:11, 270:16,
 271:3, 271:7,
 271:10, 271:14,
 272:1, 272:10,
 273:1, 275:6, 276:1,
 276:7, 279:8,
 279:14, 280:2,
 285:5, 285:11,
 285:17, 286:6,
 286:10, 286:17,
 287:3, 287:16,
 288:10

Attorney ^[3] - 187:1,
 233:12, 266:9

attorney ^[1] - 128:15

attractive ^[3] - 58:6,
 169:18, 170:5

Auburn ^[18] - 2:4, 6:7,
 6:15, 8:12, 8:15,
 9:11, 11:8, 36:9,
 36:13, 36:17, 37:7,
 37:9, 43:17, 52:18,
 53:1, 53:4, 53:7,
 55:5

AUDIENCE

^[6] - 41:11, 124:1,
 124:9, 125:1, 126:7,
 212:4

audience ^[5] - 4:8,
 4:16, 4:18, 5:4,
 93:14

audio ^[1] - 3:16

authorities

^[9] - 222:17, 223:5,
 223:10, 254:14,
 255:2, 255:7,
 281:18, 282:6,
 282:11

authorization

^[1] - 201:17

automatic ^[3] - 227:2,
 258:17, 285:13

avail ^[1] - 237:4

available ^[10] - 42:18,

82:15, 84:7, 84:15,
84:16, 122:18,
123:12, 124:13,
124:14, 146:9

Ave ^[8] - 2:10, 2:12,
201:18, 262:10,
268:8, 272:17,
274:2, 274:18

Avenue ^[13] - 1:7, 2:6,
94:17, 102:6,
113:16, 113:17,
128:16, 182:6,
231:2, 247:2, 262:6,
263:17, 275:8

awful ^[3] - 14:15,
22:7, 241:17

awkward ^[2] - 170:14,
177:14

awning ^[1] - 108:9

Aye ^[13] - 63:1, 88:8,
88:9, 101:11, 119:7,
121:7, 127:11,
143:7, 179:3, 181:7,
226:6, 258:3, 261:6

aye ^[12] - 63:2,
101:12, 119:8,
121:8, 127:12,
143:8, 179:4, 181:8,
226:7, 258:4, 261:7,
288:3

B

B-R-I-G-H-T

^[1] - 173:3

background

^[1] - 239:6

bad ^[3] - 156:12,
207:16

Baldwin ^[1] - 140:12

ball ^[1] - 64:13

ballast ^[1] - 268:16

band ^[3] - 212:18,
213:16, 213:18

Bank ^[1] - 236:1

barely ^[1] - 237:2

barricades

^[3] - 225:16, 257:13,
284:17

barrier ^[1] - 245:1

base ^[6] - 194:2,
195:10, 218:11,
243:4, 250:9,
277:14

based ^[3] - 218:16,
250:14, 278:1

basement ^[4] - 132:5,
132:6, 145:5,
145:10

basis ^[19] - 62:11,
88:8, 100:17, 101:9,
118:17, 119:7,
121:2, 127:11,
143:1, 164:11,
178:13, 181:2,
192:8, 192:10,
224:3, 226:4,
255:18, 258:1,
283:4

bath ^[1] - 153:5

bathroom ^[8] - 76:16,
77:1, 77:2, 131:1,
141:15, 161:8,
163:15, 167:15

bathrooms
^[1] - 105:11

beautiful ^[2] - 7:18,
115:12

became ^[2] - 7:11,
137:12

become ^[2] - 48:2,
48:12

becomes ^[1] - 163:7

becoming ^[1] - 16:4

bed ^[1] - 114:12

bedroom ^[7] - 19:2,
27:4, 27:8, 92:6,
96:9, 100:4, 131:1

bedrooms ^[12] - 14:2,
14:9, 14:10, 14:11,
19:9, 19:15, 20:8,
20:11, 51:4, 105:12,
108:13, 153:4

beginning ^[1] - 4:4

behalf ^[2] - 128:17,
144:11

behavior ^[1] - 114:8

behind ^[7] - 12:1,
131:16, 135:8,
137:10, 207:7,
210:12, 214:3

belabor ^[1] - 188:5

below ^[9] - 35:16,
51:14, 202:5, 203:8,
204:2, 204:11,
238:1, 238:5, 245:5

benefit ^[7] - 37:13,
38:10, 166:3,

202:15, 219:4,
251:2, 278:7

beside [1] - 238:14

best [8] - 22:17,
118:15, 153:11,
158:11, 236:11,
236:12, 237:11,
237:15

BEST [2] - 59:18,
88:13

Best [23] - 1:10, 6:4,

63:7, 64:4, 91:4,
101:16, 102:4,
119:11, 121:12,
122:4, 127:16,
128:4, 143:11,
144:4, 179:7,
181:12, 182:4,
226:11, 230:4,
258:8, 261:9, 262:4,
288:7

BETH [14] - 152:10,

153:9, 153:13,
155:10, 156:3,
160:6, 164:10,
167:5, 167:11,
168:7, 168:10,
168:13, 176:18,
179:11

Beth [5] - 144:14,

159:11, 161:2,
162:18, 178:16

better [12] - 90:6,

117:15, 147:15,
147:16, 158:1,
185:17, 185:18,
232:10, 232:11,
265:7, 265:8, 274:6

between [12] - 67:5,

84:15, 115:7, 127:6,
129:17, 151:16,
154:18, 158:17,
163:1, 166:16,
169:14, 210:1

beyond [2] - 87:8,

169:7

bidder [1] - 171:5

big [13] - 4:16, 12:13,

33:17, 73:13, 115:7,
154:13, 154:14,
182:14, 183:13,
220:6, 272:11,
272:12, 272:14

bigger [1] - 203:4

bit ^[20] - 66:8, 123:13,
 147:17, 149:15,
 158:15, 164:14,
 165:6, 171:10,
 171:18, 189:16,
 196:14, 198:7,
 202:15, 203:3,
 203:4, 220:1,
 251:17, 269:4,
 279:4
black ^[1] - 268:11
blah ^[6] - 21:5, 21:6,
 39:12
blame ^[1] - 243:17
blend ^[1] - 274:6
blending ^[1] - 9:2
block ^[2] - 55:14,
 136:11
blocks ^[1] - 37:9
blue ^[1] - 86:17
board ^[2] - 6:17,
 104:11
Board ^[81] - 3:5, 7:3,
 26:4, 28:1, 38:2,
 40:18, 42:10, 46:10,
 55:1, 60:3, 73:8,
 76:2, 78:12, 80:18,
 81:5, 87:18, 97:4,
 113:1, 122:18,
 128:13, 130:5,
 132:16, 133:5,
 133:8, 135:2, 136:1,
 137:1, 145:17,
 146:3, 148:7, 150:7,
 166:14, 169:6,
 175:10, 182:10,
 185:6, 187:14,
 189:3, 190:7, 192:6,
 197:8, 198:6, 201:9,
 211:13, 211:17,
 212:8, 212:10,
 212:14, 214:15,
 214:16, 214:17,
 215:5, 222:2,
 224:11, 228:17,
 232:2, 234:7, 240:7,
 244:1, 244:10,
 244:11, 253:17,
 256:8, 260:14,
 264:17, 267:4,
 269:3, 273:9,
 273:17, 273:18,
 274:8, 274:13,
 281:3, 283:12,

287:10, 288:13,
289:6, 289:15
BOARD ^[1] - 1:2
Board's ^[5] - 148:7,
157:1, 200:10,
214:10, 269:13
boards ^[2] - 9:9,
15:10
bold ^[1] - 132:14
bother ^[1] - 56:9
bottom ^[1] - 96:10
bought ^[5] - 11:18,
68:15, 151:10,
151:14
box ^[1] - 55:18
Boyes ^[2] - 129:4,
143:5
Boyes-Watson
^[2] - 129:4, 143:5
brackets ^[1] - 198:10
brain ^[1] - 94:13
Brattle ^[5] - 2:3,
55:13, 91:7, 91:16,
98:2
break ^[12] - 205:3,
205:18, 212:15,
213:4, 219:16,
220:2, 244:15,
245:1, 251:14,
251:18, 279:1,
279:5
breaking ^[1] - 239:18
Brewer ^[14] - 8:13,
8:15, 9:11, 11:10,
11:12, 16:7, 16:13,
38:4, 39:3, 39:9,
43:17, 53:2, 53:9,
53:10
Brewster ^[1] - 11:9
brick ^[2] - 212:18,
214:2
bricks ^[1] - 214:3
bricky ^[1] - 214:4
bridged ^[1] - 155:2
briefly ^[1] - 103:15
Bright ^[2] - 173:3,
173:4
bring ^[9] - 82:11,
90:7, 103:16, 109:9,
170:15, 198:17,
205:5, 238:15,
240:7
bringing ^[1] - 270:4
BRISTOL ^[1] - 290:3

Broadway

[4] - 236:11, 237:2,
238:12, 244:13

broker [1] - 172:11

brother [1] - 92:2

brought [3] - 49:4,

123:9, 171:6

build [3] - 46:14,

140:16, 170:12

Building [19] - 78:13,

147:18, 149:1,

162:8, 185:7,

187:10, 225:4,

228:13, 229:3,

232:3, 234:3, 257:1,

260:10, 260:18,

264:18, 266:18,

284:5, 287:6,

287:14

building [80] - 6:18,

7:7, 7:12, 7:15,

8:14, 8:16, 8:18,

9:12, 11:18, 13:12,

13:14, 14:17, 15:4,

16:1, 16:3, 16:6,

18:11, 20:17, 25:2,

27:4, 28:4, 28:8,

28:9, 33:14, 34:5,

36:7, 36:18, 38:15,

39:2, 43:12, 44:16,

45:4, 47:9, 50:9,

50:11, 51:17, 52:2,

60:9, 60:12, 60:15,

61:16, 106:8,

106:10, 106:11,

112:7, 117:16,

132:3, 134:8,

137:10, 138:5,

140:6, 145:5,

170:10, 177:13,

186:8, 186:11,

202:7, 202:8, 207:7,

211:7, 211:9,

214:18, 215:1,

220:10, 221:14,

233:1, 233:4, 236:1,

236:2, 239:7,

239:13, 240:15,

252:7, 253:11,

265:16, 266:1,

279:11, 280:15

building's

[1] - 272:15

buildings [3] - 33:15,

34:3, 239:17

built [8] - 7:8, 9:14,
60:9, 105:13,
131:16, 170:11,
216:4, 248:2

built-ins [1] - 105:13

bunch [1] - 210:15

business [11] - 35:12,
170:8, 223:4,
223:16, 225:3,
255:1, 255:13,
256:18, 282:5,
282:17, 284:4

busy [6] - 228:14,
260:11, 287:7

but... [1] - 66:2

buy [4] - 139:13,
139:14, 140:5,
171:12

buyers [1] - 115:3

BZA [3] - 38:6, 39:11,
174:8

BZA-008696-2015
[1] - 2:3

BZA-008957-2015
[3] - 2:4, 6:2, 91:2

BZA-009016-2015
[2] - 2:5, 64:2

BZA-009059-2015
[6] - 2:10, 182:2,
231:1, 247:1,
263:16, 275:7

BZA-009063-2015
[2] - 2:6, 102:2

BZA-009073-2015
[2] - 2:11, 230:2

BZA-009078-2015
[2] - 2:7, 128:2

BZA-009080-2015
[2] - 2:9, 144:2

BZA-009089-2015
[2] - 2:12, 262:2

BZA-009107-2015
[2] - 2:8, 122:2

C

C-1 [7] - 18:13, 24:4,
31:10, 49:2, 49:3,
49:4, 145:1

cabinets [4] - 186:13,
194:5, 233:6, 266:3

calculation [3] - 29:6,
29:7, 29:18

California ^[2] - 71:2,
90:15

CAMBRIDGE ^[1] - 1:3

Cambridge ^[43] - 1:7,
6:16, 9:6, 12:4,
12:9, 15:1, 15:13,
24:14, 24:15, 25:3,
35:12, 35:17, 36:6,
39:1, 42:3, 62:2,
78:12, 87:4, 92:8,
128:16, 129:12,
129:15, 139:12,
139:14, 139:15,
143:13, 146:11,
170:3, 174:16,
178:11, 185:4,
210:1, 210:6,
210:15, 215:2,
215:8, 225:9,
231:18, 247:6,
257:6, 264:15,
275:12, 284:10

camera's ^[1] - 135:8

Candace ^[1] - 128:18

CANDACE
^[3] - 129:8, 142:17,
143:14

cannot ^[6] - 99:12,
119:18, 179:16,
217:9, 249:7,
276:12

capable ^[2] - 55:1,
60:16

CAPTURING
^[1] - 1:16

car ^[1] - 49:18

card ^[1] - 182:16

cardboard ^[1] - 86:18

care ^[2] - 35:10, 51:18

carefully ^[1] - 125:4

Carla ^[10] - 144:12,
173:6, 173:11,
173:12, 174:5,
174:8, 174:10,
174:18, 175:8,
175:13

CARLA ^[12] - 147:5,
150:17, 151:3,
151:12, 152:9,
157:8, 157:11,
158:1, 158:9,
168:12, 176:6,
181:13

Caroline ^[1] - 97:18

carrier ^[3] - 202:4,
 241:7, 241:8
carriers ^[4] - 219:5,
 236:3, 251:3, 278:8
carries ^[2] - 88:15,
 182:13
cars ^[1] - 54:11
cartoon ^[1] - 159:11
Carver ^[5] - 2:7,
 128:9, 130:3, 139:3,
 140:11
Case ^[10] - 6:2, 64:2,
 91:2, 102:2, 122:2,
 128:2, 144:2, 182:2,
 230:2, 262:2
CASE ^[1] - 2:1
case ^[74] - 3:8, 6:6,
 20:17, 33:7, 33:10,
 33:11, 34:7, 56:18,
 57:1, 64:9, 64:11,
 64:14, 65:3, 65:14,
 65:18, 67:2, 67:6,
 67:8, 67:9, 70:3,
 72:6, 73:9, 73:14,
 79:1, 79:13, 79:18,
 81:2, 81:3, 81:5,
 81:6, 82:6, 83:16,
 87:15, 88:1, 88:2,
 88:7, 88:16, 91:7,
 92:16, 102:6, 115:3,
 115:15, 122:17,
 124:7, 125:7, 126:1,
 126:4, 127:5,
 127:10, 128:8,
 132:9, 139:5, 144:6,
 145:17, 147:1,
 148:4, 180:10,
 182:6, 229:11,
 229:12, 230:6,
 230:7, 231:1, 241:8,
 247:1, 262:6, 263:2,
 263:16, 269:3,
 275:7
cases ^[12] - 3:6, 3:10,
 26:10, 42:12, 64:6,
 116:14, 126:2,
 132:15, 134:17,
 146:12, 148:9,
 209:9
Catherine ^[4] - 130:4,
 139:1, 290:4,
 290:11
Cathy ^[1] - 4:13
Cathy's ^[1] - 5:5

caused ^[1] - 21:3
causing ^[1] - 193:16
caveat ^[1] - 56:7
cease ^[3] - 221:9,
 253:6, 280:10
ceiling ^[2] - 27:5, 33:5
Center ^[1] - 1:6
center ^[2] - 8:13,
 159:12
centralized
^[1] - 161:3
certain ^[4] - 27:5,
 189:17, 190:6,
 198:16
certainly ^[5] - 31:16,
 55:5, 55:8, 108:7,
 209:10
Certificate ^[5] - 40:2,
 40:3, 95:10, 98:6,
 146:14
certificate ^[2] - 176:2,
 178:10
CERTIFICATION
^[1] - 290:15
certified ^[4] - 9:10,
 28:18, 29:2, 89:18
Certified ^[2] - 290:4,
 290:12
certify ^[1] - 290:5
CERTIFYING
^[1] - 290:16
Chair ^[52] - 1:8, 3:4,
 3:15, 4:1, 4:4, 60:3,
 62:12, 62:18, 64:5,
 81:2, 91:6, 99:8,
 100:17, 101:5,
 102:5, 117:7, 118:8,
 118:18, 119:5,
 119:15, 121:3,
 122:5, 122:15,
 125:6, 128:8, 141:8,
 142:9, 143:2, 143:6,
 144:5, 177:7, 178:8,
 178:13, 179:1,
 179:12, 181:3,
 182:5, 212:6, 217:5,
 218:16, 219:9,
 219:14, 230:6,
 249:3, 250:14,
 251:7, 251:12,
 262:5, 276:8, 278:1,
 278:12, 278:17
Chairman ^[5] - 43:9,
 128:13, 144:10,

182:10, 204:10

challenge ^[4] - 152:2,
153:1, 156:13,
156:15

challenging

^[2] - 156:11, 194:18

chance ^[4] - 72:6,
72:9, 96:14, 171:18

chances ^[1] - 171:11

change ^[40] - 3:13,
7:4, 8:1, 29:13,
35:13, 36:9, 36:16,
37:17, 38:8, 39:4,
39:13, 40:17, 55:4,
64:10, 80:12, 84:18,
85:1, 87:8, 89:11,
100:2, 102:16,
114:15, 115:1,
120:3, 120:5, 126:3,
129:7, 180:3, 186:5,
194:6, 209:4,
217:13, 218:10,
232:16, 249:11,
250:8, 265:13,
276:16, 277:13,
289:6

CHANGE ^[6] - 289:8,
289:9, 289:10,
289:11, 289:12,
289:13

changed ^[6] - 3:13,
15:18, 85:16, 86:10,
115:17, 209:16

changes ^[12] - 79:17,
112:2, 114:1,
173:16, 185:13,
196:18, 200:8,
232:6, 240:13,
265:3, 289:16

changing ^[6] - 12:7,
32:8, 47:8, 48:7,
48:8, 108:9

chaos ^[1] - 274:5

character ^[8] - 100:2,
120:5, 160:18,
175:15, 180:4,
217:14, 249:12,
276:17

characteristics

^[2] - 149:18, 163:12

charge ^[3] - 225:7,
257:4, 284:8

charm ^[1] - 37:14

charter ^[1] - 38:1

chat ^[1] - 4:18
chatty ^[1] - 115:18
check ^[1] - 207:15
checked ^[1] - 146:16
Chief ^[1] - 172:6
child ^[2] - 20:10,
 114:11
children ^[7] - 19:3,
 19:16, 20:4, 20:10,
 54:7, 92:2, 140:1
chime ^[1] - 111:3
choice ^[1] - 175:3
Choo ^[2] - 102:12,
 119:3
CHOO ^[2] - 102:12,
 119:3
choose ^[1] - 88:17
circle ^[1] - 32:7
circumstances
^[8] - 17:14, 20:4,
 21:10, 22:5, 26:11,
 61:1, 108:15, 118:1
citing ^[1] - 195:8
citizen ^[2] - 35:12,
 83:6
Citizens ^[1] - 236:1
citizens ^[7] - 87:4,
 100:11, 120:14,
 180:13, 218:3,
 250:1, 277:6
CITY ^[1] - 1:3
City ^[20] - 35:17,
 100:12, 118:16,
 120:15, 133:1,
 145:7, 180:14,
 185:4, 193:2,
 194:18, 210:1,
 210:6, 215:8, 218:3,
 231:18, 247:5,
 250:1, 264:15,
 275:11, 277:6
city ^[5] - 83:7, 83:15,
 132:17, 133:15,
 170:10
Citywide ^[1] - 1:6
civic ^[1] - 133:3
claimed ^[3] - 224:3,
 255:18, 283:4
claiming ^[1] - 200:1
clapboard ^[1] - 15:6
clarification ^[1] - 28:3
clash ^[1] - 170:16
class ^[1] - 18:18
Class ^[6] - 184:11,

218:13, 231:7,
 250:11, 264:4,
 277:16

classic [1] - 130:11

clear [4] - 7:13, 28:13,
 31:7, 156:7

clearance [1] - 153:18

clearly [2] - 8:5, 132:2

client [2] - 124:10,
 171:6

client's [1] - 115:2

clients [1] - 125:5

clinic [1] - 137:12

close [18] - 37:10,
 77:11, 77:13, 78:16,
 78:17, 99:2, 116:3,
 134:7, 135:6,
 160:13, 160:15,
 175:18, 186:6,
 202:2, 232:17,
 265:14, 274:15

closed [1] - 99:3

closer [5] - 23:15,
 48:16, 220:10,
 252:7, 279:11

clouds [1] - 274:11

co [7] - 154:8, 185:12,
 232:5, 265:2

co-headroom
 [1] - 154:8

co-locations
 [6] - 185:12, 232:5,
 265:2

Code [2] - 78:13, 95:7

code [7] - 27:4, 77:4,
 161:7, 161:9,
 163:14, 163:18,
 164:2

coffee [1] - 59:8

coincidence
 [1] - 171:4

collect [1] - 202:12

College [1] - 202:1

color [4] - 213:6,
 214:2, 214:4,
 239:13

comfortable
 [2] - 27:15, 41:1

coming [6] - 70:18,
 85:3, 89:15, 134:15,
 155:15, 210:9

comment [6] - 31:18,
 42:8, 89:13, 98:14,
 192:6, 212:7

comments ^[13] - 28:1,
31:1, 34:13, 84:2,
89:2, 112:18, 116:4,
141:1, 212:3,
230:16, 244:1,
246:8, 273:13

commercial ^[20] - 7:6,
7:9, 7:11, 7:17,
18:16, 23:11, 31:5,
35:14, 35:15, 37:1,
37:8, 37:15, 38:8,
39:13, 48:8, 48:11,
48:13, 55:7, 55:11,
62:7

commercialism
^[3] - 55:17, 56:1,
62:7

Commission ^[9] - 9:6,
15:5, 36:7, 39:1,
62:4, 95:10, 146:18,
160:8, 290:13

Commissioner
^[9] - 147:18, 148:11,
149:1, 149:7, 162:9,
162:14, 185:7,
232:3, 264:18

commissioner
^[1] - 166:2

COMMONWEALTH
^[1] - 290:2

communicate
^[1] - 78:8

communication
^[6] - 76:5, 77:16,
78:1, 212:11,
244:12, 274:1

communications
^[1] - 68:2

community
^[4] - 27:15, 36:8,
38:16, 132:18

company ^[1] - 124:2
Company

^[2] - 102:12, 119:3

compare ^[4] - 32:3,
32:10, 110:14,
270:16

comparison
^[1] - 110:15

complaint ^[3] - 161:9,
193:2, 194:18

complete ^[4] - 127:9,
188:10, 234:13,
267:10

completed

[4] - 127:1, 219:16,
251:14, 279:1

completely [1] - 95:5**completion**

[3] - 219:10, 251:8,
278:13

compliance

[10] - 192:11, 193:4,
194:3, 197:14,
219:1, 221:18,
250:17, 253:15,
278:4, 281:1

compliant

[8] - 145:14, 161:7,
163:14, 163:18,
164:2, 166:12,
195:12, 195:14

complied [4] - 191:9,

192:15, 192:18,
196:10

comply [20] - 25:16,

194:1, 194:11,
194:14, 195:1,
195:7, 197:13,
204:12, 220:8,
221:18, 223:13,
225:14, 252:5,
253:15, 255:10,
257:11, 279:9,
281:1, 282:14,
284:15

complying [1] - 26:15**computer**

[2] - 156:18, 272:9

concealment

[2] - 197:3, 197:11

concept [1] - 206:12**concern** [9] - 93:6,

93:7, 111:12,
140:14, 148:1,
222:13, 254:10,
272:5, 281:14

concerned [1] - 77:10**concerning**

[3] - 224:12, 256:9,
283:13

conclusion

[2] - 149:1, 166:5

condition [27] - 22:18,

62:13, 101:1,
101:10, 119:1,
121:4, 125:16,
143:3, 178:15,

181:4, 191:15,
 194:12, 221:15,
 222:5, 222:10,
 226:16, 227:1,
 253:12, 254:2,
 254:7, 258:13,
 258:16, 280:16,
 281:6, 281:11,
 285:9, 285:12

condition's

[1] - 81:10

conditioners

[1] - 15:8

conditions

[42] - 17:15, 21:10,
 22:5, 22:7, 23:1,
 81:7, 125:5, 125:9,
 159:16, 159:17,
 190:6, 190:8, 191:5,
 192:13, 192:14,
 194:2, 194:11,
 195:7, 195:17,
 203:13, 219:1,
 219:2, 219:5, 222:1,
 222:14, 226:5,
 237:10, 238:11,
 242:14, 245:12,
 250:17, 250:18,
 251:3, 253:16,
 254:11, 258:2,
 275:2, 278:4, 278:5,
 278:8, 281:2,
 281:15

condo [2] - 139:9,

174:15

condominium

[4] - 106:8, 106:10,
 106:11, 112:7

conduct [1] - 4:3

conference [1] - 52:6

configuration

[4] - 26:14, 60:12,
 108:11, 173:15

confluence

[1] - 140:4

conform [1] - 27:6

conformance

[1] - 18:11

conforming

[27] - 22:11, 23:8,
 24:6, 26:7, 30:16,
 45:4, 47:13, 47:14,
 47:18, 48:2, 61:3,
 61:15, 94:8, 94:9,

94:15, 95:1, 95:2,
 96:16, 96:18, 99:13,
 99:14, 102:16,
 118:2, 139:7,
 141:18, 145:15,
 146:1

conformity ^[1] - 23:15

conforms ^[2] - 95:5,
 96:17

confusing

^[1] - 109:12

congestion

^[6] - 100:1, 120:4,
 180:2, 217:12,
 249:10, 276:15

connect ^[4] - 152:3,
 153:2, 154:7, 155:4

connected

^[2] - 151:13, 152:16

connecting ^[2] - 79:8,
 151:18

connection

^[5] - 152:15, 161:13,
 163:1, 164:1, 166:9

connects ^[1] - 154:3

Connolly ^[1] - 139:2

conservation

^[2] - 146:12, 176:3

Conservation

^[2] - 40:5, 146:11

considerable

^[1] - 173:14

consideration

^[1] - 74:5

considered

^[2] - 131:11, 165:10

consist ^[1] - 54:1

consistent ^[12] - 22:2,

35:16, 36:4, 38:17,
 96:4, 132:15,
 219:12, 221:7,
 251:10, 253:4,
 278:15, 280:8

Constantine ^[9] - 1:8,

6:3, 64:3, 91:3,
 102:3, 122:3, 182:3,
 230:3, 262:3

CONSTANTINE

^[395] - 3:4, 6:5, 6:11,
 10:13, 11:2, 11:5,
 12:13, 12:18, 13:5,
 13:8, 13:10, 13:15,
 14:5, 14:12, 15:16,
 17:1, 17:5, 17:10,

17:17, 19:12, 19:17,
20:7, 20:15, 22:9,
22:13, 22:16, 23:4,
23:9, 23:16, 24:16,
25:8, 25:15, 26:3,
26:10, 27:18, 29:16,
30:2, 30:5, 30:9,
30:15, 32:15, 34:12,
34:15, 35:2, 40:10,
40:16, 41:5, 41:9,
41:13, 41:16, 43:1,
43:6, 44:18, 45:6,
45:14, 46:4, 47:1,
47:15, 47:17, 48:3,
48:5, 48:10, 48:15,
53:2, 53:9, 53:11,
54:5, 57:5, 57:9,
57:14, 57:18, 58:14,
59:5, 59:10, 59:13,
60:2, 63:3, 64:5,
65:7, 65:12, 65:17,
66:5, 66:14, 66:17,
67:15, 69:3, 69:8,
70:1, 70:11, 70:14,
71:3, 71:6, 71:9,
71:18, 72:5, 72:8,
72:11, 72:16, 73:2,
73:7, 73:16, 74:3,
74:11, 74:14, 75:1,
75:8, 75:14, 75:17,
78:18, 79:4, 79:7,
79:10, 80:2, 80:5,
80:17, 83:4, 83:10,
83:14, 84:9, 84:16,
85:2, 85:13, 85:18,
86:4, 86:7, 86:12,
86:17, 87:3, 87:9,
87:13, 88:6, 88:10,
88:12, 88:14, 89:4,
89:7, 90:4, 90:10,
90:14, 91:5, 91:12,
92:15, 93:12, 94:2,
94:7, 94:12, 96:3,
96:11, 96:13, 97:3,
97:7, 97:12, 98:8,
98:13, 99:7, 101:13,
102:5, 102:9, 103:2,
103:6, 103:15,
104:5, 104:8,
104:12, 104:16,
105:1, 105:4, 106:4,
106:15, 107:6,
107:13, 107:16,
108:4, 108:14,

109:4, 109:8,
109:18, 110:7,
111:5, 112:1, 112:4,
112:8, 112:11,
112:17, 113:3,
113:9, 116:7,
116:11, 117:5,
119:9, 119:12,
121:9, 122:5,
122:10, 122:14,
123:17, 124:4,
124:6, 124:12,
124:16, 125:3,
125:14, 126:9,
127:13, 128:5,
129:5, 129:16,
133:13, 134:1,
135:3, 135:11,
136:3, 137:4,
137:13, 137:18,
138:7, 138:11,
138:16, 141:3,
141:7, 142:15,
143:1, 143:9,
143:12, 144:5,
148:14, 150:2,
150:5, 150:9,
150:15, 153:7,
153:10, 155:5,
157:6, 158:14,
162:16, 165:15,
166:18, 167:7,
168:6, 168:14,
168:17, 169:4,
169:9, 172:12,
172:15, 176:4,
176:10, 176:15,
177:2, 179:5, 179:8,
179:12, 181:9,
182:5, 183:7,
183:11, 183:14,
183:16, 185:8,
188:3, 189:5, 189:8,
189:11, 189:18,
190:3, 190:13,
191:1, 191:4,
191:12, 191:16,
192:3, 192:5, 193:8,
193:17, 194:15,
196:11, 200:16,
201:8, 205:10,
205:13, 205:16,
206:2, 207:1,
208:14, 208:17,

209:7, 211:8,
 211:16, 212:1,
 212:5, 213:12,
 214:13, 214:16,
 215:4, 215:18,
 216:6, 216:10,
 216:13, 217:1,
 217:5, 220:5,
 220:11, 220:15,
 221:2, 226:8,
 226:17, 227:4,
 227:11, 227:15,
 228:3, 228:8, 229:1,
 229:6, 229:10,
 230:5, 235:16,
 237:13, 237:16,
 238:2, 238:7, 239:8,
 239:12, 240:2,
 240:18, 241:13,
 243:6, 243:13,
 243:18, 244:4,
 244:8, 245:8,
 245:18, 246:4,
 246:9, 247:3,
 247:16, 248:4,
 248:8, 248:11,
 248:17, 249:3,
 252:3, 252:8,
 252:12, 252:17,
 258:5, 258:14,
 259:1, 259:8,
 259:12, 259:18,
 260:5, 260:16,
 261:3, 261:5, 262:5,
 262:14, 262:17,
 263:9, 263:12,
 263:14, 269:2,
 269:12, 269:17,
 270:15, 271:2,
 271:8, 271:12,
 271:17, 272:5,
 272:13, 273:5,
 273:8, 273:11,
 273:15, 274:12,
 275:9, 276:4, 276:8,
 279:7, 279:12,
 279:16, 280:3,
 285:10, 285:15,
 286:4, 286:8,
 286:14, 287:1,
 287:12, 287:17,
 288:1, 288:4, 288:8

constantine

[2] - 128:3, 144:3

constrained ^[1] - 27:3

construct ^[2] - 23:2,
139:6

construction

^[1] - 144:17

consultant

^[3] - 183:1, 183:2,
230:12

contain ^[2] - 149:13,
176:2

context ^[3] - 8:18,
9:2, 184:3

continually

^[3] - 222:6, 254:3,
281:7

continuance

^[6] - 65:3, 69:6, 98:4,
122:16, 122:17,
123:2

continue ^[9] - 87:15,
124:7, 125:6,
221:18, 236:5,
253:15, 269:14,
269:15, 281:1

continued ^[13] - 3:10,
64:8, 70:8, 73:14,
74:9, 81:3, 91:6,
100:6, 120:6, 180:5,
217:15, 249:13,
276:18

continues ^[1] - 88:16

continuing

^[4] - 72:12, 75:18,
88:7, 127:10

continuous

^[3] - 221:12, 253:9,
280:13

contrast ^[1] - 243:15

CONTROL

^[1] - 290:16

convenience

^[2] - 46:13, 130:16

convenient ^[2] - 74:6,
124:11

conversation

^[1] - 202:16

conversion ^[5] - 19:1,
36:18, 37:3, 117:13,
118:12

converted ^[4] - 13:6,
31:5, 130:10,
151:15

converting

^[1] - 103:10

cooking ^[1] - 77:15
copied ^[1] - 97:16
copies ^[3] - 200:12,
 201:1, 235:14
copy ^[5] - 92:18,
 157:2, 190:10,
 200:14, 200:16
corner ^[9] - 8:14,
 15:10, 52:3, 55:8,
 75:4, 94:18, 239:7,
 244:13, 274:2
correct ^[22] - 85:7,
 87:9, 89:4, 96:6,
 103:8, 104:15,
 105:3, 105:17,
 155:10, 164:14,
 168:10, 185:8,
 196:7, 197:10,
 197:18, 198:2,
 201:12, 201:15,
 206:1, 213:8,
 242:18
Correct ^[1] - 103:9
correction ^[1] - 289:7
corrections
^[1] - 289:16
corresponding
^[1] - 194:6
Council ^[2] - 136:13,
 145:7
count ^[2] - 137:7,
 151:5
counters ^[1] - 37:8
counts ^[2] - 89:5,
 89:6
couple ^[7] - 16:18,
 50:18, 186:11,
 233:4, 238:13,
 266:1, 272:3
coupled ^[1] - 161:18
course ^[7] - 13:1,
 65:11, 184:4,
 187:16, 204:15,
 234:9, 267:6
courtesy ^[2] - 74:2,
 90:15
coverage
^[3] - 185:18, 232:11,
 265:8
covered ^[2] - 131:9,
 131:11
covers ^[1] - 169:3
created ^[7] - 46:11,
 100:10, 120:13,

180:12, 218:1,
249:17, 277:4
creating [1] - 131:10
Creation [6] - 184:11,
218:14, 231:7,
250:12, 264:4,
277:17
creation [1] - 130:18
creeping [2] - 55:16,
62:6
creepy [1] - 56:1
criteria [17] - 186:12,
187:17, 189:1,
193:6, 195:5, 197:1,
204:9, 216:17,
233:5, 234:10,
235:3, 243:5,
248:15, 266:2,
267:7, 267:18,
276:2
criterion [1] - 196:15
criticism [1] - 189:14
crossed [1] - 199:14
Crown [6] - 36:5,
40:4, 46:8, 46:9,
46:10, 62:3
curiosity [2] - 58:9,
133:14
curious [2] - 59:4,
209:12
current [8] - 43:15,
108:2, 115:17,
131:7, 152:14,
173:15, 179:17,
212:13
custom [1] - 3:6
customary [1] - 31:15
cut [2] - 115:10, 200:4

D

damning [2] - 189:11,
214:12
Danielle [1] - 112:10
dark [1] - 239:6
Darwin [1] - 58:12
Darwin's [1] - 58:10
data [3] - 185:17,
232:10, 265:7
date [19] - 3:13,
65:14, 69:6, 70:14,
71:17, 74:6, 80:3,
81:12, 88:4, 88:17,
123:12, 124:7,

125:4, 125:18,
 126:3, 126:6,
 262:12, 268:3,
 289:7

dated ^[5] - 40:7,
 183:3, 185:17,
 232:10, 265:7

dates ^[9] - 72:16,
 80:12, 124:13,
 124:14, 124:17,
 170:7, 188:17,
 235:1, 267:16

daughter ^[6] - 54:13,
 130:4, 133:2,
 133:18, 134:2,
 142:12

DAVID ^[20] - 102:8,
 102:11, 103:4,
 103:9, 104:3, 104:7,
 104:10, 104:15,
 104:18, 105:3,
 105:5, 105:17,
 106:1, 107:11,
 108:1, 110:1, 110:5,
 110:16, 117:3,
 121:13

David ^[4] - 102:11,
 108:10, 173:2,
 173:3

days ^[16] - 81:15,
 84:12, 84:13, 85:6,
 126:5, 135:7, 223:4,
 223:17, 225:3,
 255:1, 255:14,
 256:18, 268:4,
 282:5, 282:18,
 284:4

daytime ^[1] - 268:12

deadline ^[7] - 188:13,
 228:12, 234:16,
 235:10, 260:9,
 267:13, 287:5

deal ^[5] - 123:3,
 216:7, 245:3, 248:5,
 274:13

decades ^[1] - 202:3

December ^[3] - 183:3,
 188:9, 262:12

decide ^[2] - 67:6, 67:8

decided ^[2] - 71:16,
 139:18

decides ^[1] - 81:18

decision ^[15] - 75:10,
 81:9, 125:11, 177:3,

187:6, 190:10,
 227:10, 228:17,
 233:17, 245:13,
 259:7, 260:14,
 266:14, 286:3,
 287:10

decisions [7] - 66:13,
 228:16, 229:7,
 260:13, 261:4,
 287:9, 287:18

deck [2] - 160:12,
 210:12

decker [1] - 159:1

decline [4] - 161:11,
 229:2, 260:17,
 287:13

dedicated [2] - 14:2

deemed [10] - 187:11,
 188:10, 224:18,
 234:4, 234:13,
 256:15, 267:1,
 267:10, 268:4,
 284:1

deep [1] - 131:13

default [2] - 7:6,
 18:16

defeat [3] - 196:4,
 197:2, 197:11

defeating [1] - 199:15

defines [1] - 149:17

definition [2] - 130:7,
 132:1

definitions
 [1] - 147:13

degrees [1] - 10:10

deliberation [1] - 99:3

delighted [1] - 140:5

delivered [3] - 90:1,
 113:12, 289:3

demolition [1] - 160:4

Department
 [33] - 215:8, 216:2,
 222:16, 223:3,
 223:7, 224:1, 225:6,
 227:8, 228:4,
 228:15, 229:3,
 247:5, 247:18,
 254:13, 254:18,
 255:4, 255:16,
 257:3, 259:5, 260:1,
 260:12, 260:18,
 275:11, 281:17,
 282:4, 282:8, 283:2,
 284:7, 286:1,

286:15, 287:8,
287:14, 289:4

derogate [7] - 17:18,
100:15, 120:18,
180:18, 218:6,
250:4, 277:9

derogating
[6] - 24:18, 25:6,
61:9, 118:6, 142:7,
178:6

describe [6] - 184:6,
186:1, 189:12,
232:12, 237:17,
265:9

described [5] - 159:9,
188:18, 191:17,
235:2, 267:17

describing [1] - 110:9

description
[4] - 187:18, 230:17,
234:11, 267:8

design [4] - 10:11,
164:18, 176:13,
272:6

designated
[1] - 161:16

designed [4] - 9:8,
21:15, 24:5, 39:5

designing [1] - 165:1

designs [1] - 124:3

desirable [2] - 24:1,
62:5

desktop [1] - 272:9

detail [7] - 66:8,
224:2, 224:13,
255:17, 256:10,
283:3, 283:14

details [2] - 66:12,
176:14

determine
[1] - 133:10

determined
[1] - 162:14

detriment [11] - 24:2,
61:8, 100:10, 118:5,
120:13, 142:6,
178:5, 180:12,
218:1, 249:17,
277:4

developer
[1] - 138:10

development
[7] - 100:7, 120:7,
131:16, 180:6,

217:16, 249:14,
277:1

Development

[2] - 138:5, 140:13

deviation [1] - 195:17

device [1] - 4:9

died [1] - 115:10

difference [4] - 72:17,

153:1, 158:17,

236:6

differences

[2] - 235:6, 268:3

different [9] - 31:17,

39:15, 129:16,

154:13, 220:17,

242:10, 252:14,

269:4, 279:18

differently

[1] - 274:14

difficult [7] - 19:13,

20:5, 32:1, 111:2,

152:9, 163:10,

163:11

Digiovani [1] - 35:8

dimension [1] - 94:16

dimensional

[7] - 42:9, 42:16,

45:2, 82:1, 95:6,

96:14, 126:17

dimensions

[5] - 164:13, 196:18,

218:10, 250:8,

277:13

dining [2] - 51:5,

105:11

DIRECT [1] - 290:16

direct [5] - 106:7,

106:13, 114:4,

114:7

directed [1] - 32:17

direction [1] - 27:5

DIRECTION

[1] - 290:16

directly [5] - 93:15,

106:5, 164:6, 173:5,

174:17

disadvantage

[1] - 42:7

disappear [1] - 67:9

discloses

[3] - 224:13, 256:10,

283:14

disclosing

[3] - 224:1, 255:16,

283:2

discovered [2] - 92:3,
175:5

discretionary

[9] - 186:18, 187:4,
187:5, 233:11,
233:15, 233:16,
266:8, 266:12,
266:13

discussed [8] - 56:11,
57:2, 57:3, 173:10,
175:14, 226:15,
258:12, 285:8

discussion

[9] - 41:10, 59:16,
98:15, 116:7, 177:4,
177:5, 199:8,
206:13, 215:4

discussions

[1] - 140:9

disoriented [1] - 11:6

disqualify [1] - 196:1

distance [3] - 186:10,
233:3, 265:18

District [7] - 31:10,

36:5, 40:5, 46:7,
62:4, 145:2, 146:11

district [22] - 25:2,

45:7, 45:15, 45:16,
48:17, 48:18, 60:11,
61:14, 100:14,
100:15, 120:17,
120:18, 135:15,
176:3, 180:17,
180:18, 218:5,
218:6, 250:3, 250:4,
277:8, 277:9

districts [2] - 146:13

disturbed [1] - 114:9

Doctor [1] - 136:15

DOES [1] - 290:15

dogwood [1] - 115:6

Donald [1] - 173:11

done [27] - 12:11,

27:15, 32:4, 33:13,
42:13, 55:13, 81:9,
95:9, 125:12,
126:18, 157:16,
171:14, 185:5,
205:11, 207:10,
219:14, 219:15,
229:11, 232:1,
251:12, 251:13,
264:16, 278:17,

278:18, 288:1,
288:9

Donna ^[1] - 39:7

door ^[11] - 12:2, 12:6,
12:7, 15:7, 104:14,
105:7, 107:9, 174:4,
179:10, 179:11

door's ^[1] - 168:2

dormer ^[54] - 8:4,
14:7, 14:9, 14:11,
16:10, 16:14, 19:8,
25:11, 25:14, 25:17,
26:14, 26:15, 26:18,
27:7, 27:13, 31:12,
31:13, 33:11, 33:18,
34:5, 36:1, 36:3,
36:10, 38:16, 39:5,
43:10, 43:15, 43:16,
47:11, 47:12, 123:8,
123:11, 148:4,
148:5, 148:11,
149:4, 149:12,
149:17, 149:18,
150:1, 150:10,
153:11, 155:6,
159:7, 159:8, 159:9,
159:10, 162:2,
162:15, 165:10,
165:11, 165:12,
166:5

dormers ^[11] - 8:18,

9:5, 11:6, 25:16,
31:15, 33:14, 33:17,
38:17, 149:6, 149:7,
149:10

double ^[2] - 108:8,

207:15

Doug ^[4] - 31:8, 74:4,

158:13, 204:3

DOUGLAS ^[40] - 23:7,

23:12, 23:15, 33:9,
54:9, 56:10, 56:15,
57:3, 57:7, 57:13,
73:11, 73:18, 84:6,
84:11, 84:13, 97:6,
99:6, 109:16, 110:3,
110:8, 110:17,
116:10, 141:6,
172:4, 183:12,
183:15, 191:14,
192:1, 192:4,
203:12, 204:1,
204:4, 204:8, 206:9,
206:12, 211:7,

242:12, 243:2,
 246:14, 271:5
Douglas ^[11] - 1:9,
 6:3, 64:3, 91:3,
 102:3, 122:3, 128:3,
 144:3, 182:3, 230:3,
 262:3
down ^[41] - 8:13,
 14:16, 16:14, 42:15,
 43:4, 51:14, 52:18,
 115:11, 138:12,
 147:14, 148:18,
 151:15, 151:18,
 152:13, 155:16,
 157:15, 164:9,
 189:16, 192:9,
 192:10, 196:8,
 197:6, 197:7, 198:7,
 198:10, 198:17,
 205:5, 205:6, 206:7,
 206:17, 207:4,
 207:14, 207:18,
 210:17, 220:1,
 238:15, 240:8,
 241:9, 251:17,
 279:4
draft ^[3] - 228:17,
 260:14, 287:10
drawings ^[3] - 148:3,
 164:4, 167:11
drawn ^[2] - 149:7,
 163:8
drive ^[4] - 42:14,
 49:16, 54:9, 54:11
driveway ^[3] - 105:6,
 105:15, 112:16
driving ^[3] - 17:13,
 22:10, 27:12
droop ^[1] - 245:4
dry ^[1] - 200:5
due ^[2] - 194:3, 236:7
during ^[3] - 225:1,
 256:16, 284:2
dwelling ^[4] - 14:4,
 21:17, 139:8, 145:4
dwelling ^[1] - 145:9

E

e-mail ^[12] - 38:3,
 39:7, 39:18, 68:2,
 76:8, 76:9, 78:9,
 93:9, 173:2, 174:3,
 174:13, 175:12

e-mailed [2] - 93:4,
93:10

e-mails [2] - 107:3,
113:14

eager [1] - 156:16

easier [2] - 131:3,
201:4

easily [1] - 12:4

east [1] - 237:5

easy [1] - 12:11

eave [3] - 15:9, 16:7

edge [2] - 27:1, 27:10

effective [3] - 27:11,
157:3, 192:15

effects [3] - 222:11,
254:8, 281:12

effectuate
[1] - 197:12

egress [7] - 99:18,
120:3, 177:16,
180:2, 217:11,
249:9, 276:14

eight [4] - 3:12, 64:10,
64:12, 91:5

either [4] - 24:2,
138:9, 208:9,
212:18

elaborate [1] - 131:5

electromagnetic
[9] - 222:11, 222:18,
223:15, 254:8,
254:15, 255:12,
281:12, 282:1,
282:16

element [3] - 196:3,
196:10, 199:16

elements [4] - 196:5,
197:3, 197:11,
199:7

elevation [7] - 33:4,
95:17, 105:8,
110:14, 164:4,
167:10, 167:16

elevations [7] - 16:6,
93:5, 95:9, 104:4,
110:4, 110:6, 153:8

eligible [20] - 184:9,
184:12, 184:18,
185:3, 186:4,
186:16, 195:9,
197:3, 231:5, 231:8,
231:14, 231:17,
232:15, 233:9,
264:2, 264:5,

264:11, 264:14,
 265:12, 266:6
eliminated ^[1] - 23:8
eliminating
^[2] - 51:11, 53:15
Eliot ^[2] - 136:15,
 140:12
eloquent ^[1] - 90:6
emanating
^[3] - 222:18, 254:15,
 282:1
emissions
^[3] - 222:18, 254:15,
 282:1
enclosed ^[5] - 114:13,
 155:17, 156:5,
 159:18, 160:1
enclosing
^[1] - 131:10
encourage ^[1] - 34:5
encouraged
^[1] - 142:17
encouraging
^[1] - 132:16
encroaching
^[1] - 37:8
end ^[4] - 34:1, 108:13,
 166:15, 210:13
energy ^[6] - 222:12,
 223:15, 254:9,
 255:12, 281:13,
 282:16
enforce ^[1] - 47:6
enforcement
^[8] - 18:6, 18:9, 19:4,
 19:7, 60:6, 117:10,
 141:11, 177:10
engagement
^[1] - 133:3
enhance ^[2] - 135:2,
 175:15
enjoy ^[2] - 171:1,
 172:3
ensure ^[1] - 203:6
entire ^[4] - 12:8, 51:3,
 166:11, 177:15
entitled ^[4] - 123:5,
 187:14, 234:7,
 267:4
entity ^[1] - 18:16
entrance ^[5] - 77:7,
 104:14, 152:14,
 155:16, 156:7
entry ^[2] - 117:15,

117:16

environment

[1] - 129:17

Equipment

[1] - 241:10

equipment [39] - 4:2,

185:14, 186:2,
194:1, 194:4,
195:10, 209:5,
221:11, 221:13,
223:1, 223:11,
225:5, 225:8,
225:12, 232:7,
232:13, 240:14,
241:13, 241:18,
242:1, 243:9,
243:16, 253:8,
253:10, 254:16,
255:8, 257:2, 257:5,
257:9, 265:4,
265:10, 280:12,
280:14, 282:2,
282:12, 284:6,
284:9, 284:13

equipment's

[3] - 236:18, 237:4,
237:5

erasing [1] - 159:14

ERRATA [1] - 289:1

Errata [2] - 289:2,

289:7

especially [3] - 21:12,

34:7, 114:10

essential [2] - 216:4,

248:2

essentially [5] - 92:7,

185:11, 189:15,
232:4, 265:1

establish [3] - 186:18,

233:11, 266:8

established

[9] - 100:2, 120:5,
180:3, 187:8,
217:13, 234:1,
249:11, 266:16,
276:16

estate [1] - 165:6

etcetera [5] - 38:7,

186:14, 233:7,
266:4

evaluating [1] - 148:9

evening [6] - 102:7,

102:9, 113:13,
128:12, 128:17,

144:10

evenings ^[1] - 114:10

event ^[3] - 223:9,

255:6, 282:10

events ^[1] - 140:4

evidence ^[2] - 36:5,

146:17

evolved ^[2] - 18:18,

19:1

exactly ^[8] - 9:9, 37:6,

41:4, 85:13, 156:10,

220:8, 252:5, 279:9

examine ^[1] - 82:13

example ^[2] - 212:17,

270:17

excavation

^[4] - 186:14, 194:5,

233:7, 266:4

exceed ^[2] - 194:5,

195:13

exceedance

^[1] - 197:5

exceeds ^[1] - 145:5

except ^[5] - 126:6,

219:14, 251:12,

278:17, 289:15

exceptions ^[2] - 26:8,

26:12

excessive ^[3] - 226:2,

257:17, 285:3

excited ^[1] - 181:14

excuse ^[2] - 183:7,

262:14

exhibits ^[2] - 183:4,

263:5

existing ^[33] - 9:13,

32:3, 32:9, 37:5,

103:1, 103:12,

104:4, 105:5,

109:15, 109:16,

110:4, 110:13,

139:7, 144:18,

153:2, 153:4,

154:10, 155:17,

159:15, 159:17,

167:18, 198:10,

198:11, 218:11,

236:8, 237:9,

238:11, 242:16,

250:9, 268:16,

268:18, 271:1,

277:14

existing/proposed

^[1] - 242:9

exists [3] - 37:16,
 133:11, 274:5
expanded [1] - 131:2
expect [1] - 72:4
experience
 [1] - 145:12
Expires [1] - 290:13
explain [8] - 20:13,
 46:3, 184:12, 186:3,
 231:8, 232:14,
 264:5, 265:11
explained [1] - 66:12
explaining
 [4] - 156:12, 187:3,
 233:14, 266:11
express [1] - 67:4
expressed
 [3] - 56:17, 59:3,
 59:4
extend [8] - 68:3,
 68:8, 68:17, 69:11,
 71:17, 72:2, 77:7,
 78:14
extended [1] - 155:12
extending [3] - 27:9,
 78:5, 78:6
extension [1] - 70:7
extensions [1] - 15:9
extensive [1] - 32:4
extent [9] - 126:14,
 126:15, 221:16,
 224:8, 230:14,
 253:13, 256:5,
 280:17, 283:9
exterior [6] - 21:18,
 37:11, 114:13,
 146:15, 170:14,
 173:13
extra [2] - 159:2,
 200:12
extraordinary
 [1] - 115:11
eye [2] - 208:10,
 270:6

F

facade [3] - 11:14,
 170:5, 239:13
facades [2] - 212:17,
 244:17
face [3] - 186:11,
 233:4, 266:1
facilitate [5] - 118:11,

140:8, 185:12,
232:5, 265:2

facilities ^[12] - 184:9,
184:12, 184:18,
185:3, 231:6, 231:8,
231:14, 231:17,
264:3, 264:5,
264:11, 264:14

facility ^[22] - 186:4,
186:16, 187:7,
187:15, 188:8,
195:1, 199:12,
202:2, 218:12,
222:7, 232:15,
233:9, 233:18,
234:8, 250:10,
254:4, 265:12,
266:6, 266:15,
267:5, 277:15,
281:8

facing ^[3] - 11:9,
11:10, 140:2

fact ^[21] - 11:15,
16:15, 20:3, 22:10,
23:7, 31:4, 31:5,
60:9, 99:13, 114:9,
118:1, 141:17,
149:3, 149:6, 175:1,
177:13, 187:15,
191:3, 192:6, 234:8,
267:5

facto ^[6] - 223:7,
224:5, 255:4, 256:2,
282:8, 283:6

factor ^[1] - 70:17

factors ^[1] - 33:6

facts ^[1] - 90:7

factual ^[1] - 242:4

fails ^[3] - 223:13,
255:10, 282:14

failure ^[12] - 223:6,
223:18, 224:2,
224:3, 255:3,
255:15, 255:17,
255:18, 282:7,
283:1, 283:3, 283:4

faint ^[3] - 189:12,
189:14, 214:12

fair ^[4] - 56:10,
147:17, 149:15,
210:7

fall ^[2] - 12:3, 270:9

falls ^[1] - 242:17

familiar ^[3] - 25:12,

25:13, 188:6

families [2] - 131:8,
132:16

family [28] - 53:16,
53:18, 54:1, 54:4,
55:4, 103:1, 103:10,
103:11, 103:13,
108:11, 117:14,
118:13, 130:3,
130:10, 130:12,
144:18, 145:4,
145:8, 145:12,
150:18, 151:14,
151:15, 161:15,
161:16, 171:5

FAR [16] - 30:2,
30:12, 45:6, 45:9,
47:15, 47:17, 132:4,
135:13, 135:14,
137:8, 145:2,
145:14, 147:11,
147:13, 166:11

far [9] - 58:8, 79:16,
117:1, 139:10,
169:7, 192:17,
193:3, 194:13,
195:16

Farber [3] - 112:5,
113:15, 140:11

fashion [1] - 26:14

faux [1] - 214:4

favor [25] - 63:1, 63:3,
88:7, 88:10, 101:11,
101:13, 108:9,
119:6, 119:9, 121:7,
121:9, 127:10,
127:13, 136:9,
143:7, 143:9, 179:2,
181:7, 181:9, 226:5,
226:8, 258:2, 258:5,
261:6, 288:2

favorably [1] - 34:10

Fax [1] - 1:17

FCC [3] - 187:7,
233:18, 266:15

February [11] - 69:12,
70:8, 124:11,
124:13, 125:8,
125:18, 127:3,
127:5, 188:13,
268:5, 290:8

federal [28] - 184:10,
184:18, 188:1,
222:17, 223:5,

223:10, 224:6,
 225:14, 226:3,
 230:17, 231:6,
 231:14, 234:12,
 254:14, 255:2,
 255:7, 256:3,
 257:11, 257:18,
 264:3, 264:11,
 267:9, 281:18,
 282:6, 282:11,
 283:7, 284:15,
 285:4

feet ^[36] - 12:17, 27:3,

27:7, 30:8, 44:15,
 44:17, 44:18, 45:8,
 48:3, 48:4, 77:12,
 78:4, 78:6, 78:10,
 78:14, 78:15, 94:17,
 131:18, 135:15,
 145:5, 164:6, 186:6,
 186:9, 195:15,
 195:16, 198:10,
 199:18, 232:17,
 233:2, 240:17,
 265:14, 265:17,
 268:14, 270:2,
 270:7

fence ^[3] - 78:5,

86:15, 115:6

fenestration

^[3] - 102:17, 103:12,
 105:6

few ^[5] - 114:17,

145:7, 166:10,
 198:10, 199:4

fewer ^[1] - 49:15

field ^[1] - 84:4

fifth ^[1] - 193:5

figure ^[3] - 55:3,

153:2, 237:11

figuring ^[1] - 108:17

file ^[35] - 11:4, 28:7,

43:1, 43:4, 54:16,
 58:15, 58:16, 84:14,
 92:17, 97:15, 98:18,
 106:16, 107:5,
 109:11, 116:15,
 122:12, 123:2,
 127:8, 146:17,
 172:18, 176:1,
 200:17, 222:15,
 223:6, 223:18,
 225:5, 235:17,
 254:12, 255:3,

255:15, 257:2,
 281:16, 282:7,
 283:1, 284:6
filed ^[19] - 82:3,
 188:15, 194:18,
 201:17, 210:4,
 223:2, 223:4,
 224:14, 225:2,
 234:17, 254:17,
 255:1, 256:11,
 256:17, 267:14,
 282:3, 282:5,
 283:15, 284:3
files ^[11] - 82:1, 82:12,
 96:4, 111:8, 111:10,
 113:11, 126:16,
 127:2, 222:17,
 254:14, 281:18
filing ^[4] - 210:11,
 227:1, 258:16,
 285:12
fill ^[1] - 4:14
filling ^[1] - 159:13
final ^[9] - 41:2, 77:18,
 84:6, 85:6, 101:6,
 116:4, 117:1, 141:1,
 170:17
finally ^[1] - 164:17
financial ^[2] - 18:7,
 19:5
Findings ^[2] - 247:1,
 275:7
findings ^[35] - 17:8,
 60:4, 62:11, 99:9,
 100:17, 117:8,
 118:17, 119:16,
 121:2, 141:9, 143:2,
 177:8, 178:13,
 179:13, 181:2,
 215:13, 215:14,
 217:6, 218:16,
 226:4, 245:17,
 246:3, 246:5, 246:6,
 246:10, 247:10,
 247:12, 249:4,
 250:14, 258:1,
 275:1, 275:16,
 275:18, 276:9,
 278:1
fine ^[7] - 77:1, 77:5,
 114:2, 158:6,
 183:14, 197:7,
 269:18
finish ^[1] - 168:18

finished [2] - 41:12,
 78:15
FIORE [8] - 93:8,
 94:6, 94:11, 94:14,
 95:14, 96:5, 96:12,
 98:7
Fiore [2] - 93:8, 101:3
fireplace [1] - 105:12
firm [1] - 129:4
first [35] - 6:6, 22:7,
 25:9, 46:11, 62:17,
 64:14, 65:8, 78:1,
 80:10, 90:9, 104:9,
 114:14, 117:6,
 119:4, 126:1, 126:2,
 132:7, 139:6, 140:6,
 143:5, 148:2,
 149:11, 151:12,
 152:1, 152:6,
 153:16, 162:10,
 162:11, 175:1,
 177:7, 178:18,
 193:2, 193:10,
 196:9, 214:2
First [1] - 1:7
fit [3] - 14:9, 14:10,
 31:13
fits [1] - 39:2
five [32] - 49:7, 49:12,
 50:4, 50:5, 50:12,
 63:3, 78:15, 81:4,
 81:5, 82:4, 82:9,
 82:18, 83:5, 84:10,
 85:8, 94:17, 101:13,
 119:9, 121:9, 127:2,
 127:13, 143:9,
 199:18, 221:17,
 226:8, 253:14,
 258:5, 271:6, 271:9,
 280:18
fix [1] - 207:16
flat [1] - 159:3
flattering [1] - 135:9
flew [2] - 71:15
floor [38] - 23:11,
 29:6, 32:2, 32:9,
 51:4, 52:4, 96:10,
 102:10, 114:18,
 130:9, 130:14,
 131:5, 139:7, 140:6,
 149:3, 149:5,
 149:11, 149:12,
 149:13, 151:13,
 152:1, 152:4, 152:6,

152:15, 153:1,
 153:15, 161:8,
 161:13, 162:10,
 162:11, 163:15,
 164:1, 168:3, 168:9,
 193:11

Floor ^[1] - 1:7

floor's ^[1] - 96:9

floors ^[13] - 7:5, 8:2,
 18:13, 35:14, 35:15,
 36:18, 38:8, 38:9,
 39:13, 51:3, 51:12,
 152:2

flowering ^[1] - 115:6

flowers ^[1] - 115:11

flush ^[1] - 203:17

fly ^[2] - 68:12, 204:16

flying ^[2] - 80:9, 82:8

focus ^[2] - 150:10,
 195:4

focussed ^[1] - 149:9

fold ^[1] - 7:4

Foley ^[1] - 101:3

Foley-Fiore

^[1] - 101:3

follow ^[4] - 71:14,

84:1, 162:16,
 165:12

followed ^[1] - 93:17

following ^[25] - 18:8,

21:9, 24:3, 38:10,
 60:4, 81:7, 99:9,
 117:8, 119:15,
 125:8, 141:9,
 164:18, 165:2,
 177:8, 179:13,
 197:1, 217:6, 219:1,
 222:14, 249:4,
 250:17, 254:11,
 276:9, 278:4,
 281:15

follows ^[6] - 219:6,

222:7, 251:4, 254:4,
 278:9, 281:8

fool ^[3] - 220:17,

252:14, 279:18

foot ^[2] - 26:18, 27:5

footage ^[1] - 29:18

FOR ^[1] - 1:2

foregoing ^[4] - 224:9,

256:6, 283:10,
 289:15

FOREGOING

^[1] - 290:15

forgotten [1] - 214:10

form [5] - 42:17, 45:2,
82:1, 96:14, 126:17

formal [1] - 70:4

former [2] - 24:12,
115:14

forms [3] - 184:8,
231:4, 264:1

forth [3] - 79:17, 93:5,
290:6

fortuitus [1] - 140:4

forward [5] - 72:6,
72:10, 217:3, 249:1,
276:6

foundation

[3] - 161:2, 162:10,
163:14

four [6] - 8:8, 88:10,
221:9, 253:6, 271:4,
280:10

fragile [1] - 37:15

frame [2] - 162:7,
269:1

frames [5] - 229:4,
261:1, 268:16,
269:10, 287:15

frankly [3] - 130:15,
149:8, 165:8

Fred [5] - 112:5,
112:6, 113:15,
136:9, 169:13

FRED [8] - 136:8,
137:5, 137:16,
138:2, 138:8,
157:10, 169:13,
172:7

FREED [20] - 102:8,
102:11, 103:4,
103:9, 104:3, 104:7,
104:10, 104:15,
104:18, 105:3,
105:5, 105:17,
106:1, 107:11,
108:1, 110:1, 110:5,
110:16, 117:3,
121:13

Freed [1] - 102:11

Friedland [2] - 38:4,
39:16

FRIEDLAND

[1] - 38:4

Friedland's

[1] - 16:13

front [22] - 10:13,

11:17, 15:6, 16:17,
75:4, 86:14, 87:1,
87:12, 94:16, 96:2,
105:9, 151:17,
153:15, 154:15,
155:2, 159:18,
160:4, 160:7,
160:17, 163:3,
163:4, 205:2

fruits ^[1] - 115:12

full ^[8] - 28:17, 84:13,
172:11, 173:17,
175:13, 187:17,
234:10, 267:7

fully ^[1] - 236:1

function ^[1] - 155:13

furniture's
^[1] - 134:10

furthest ^[1] - 96:7

future ^[2] - 65:14,
243:13

G

G-R-A-Y ^[1] - 174:4

gabled ^[2] - 33:18,
163:4

Galante ^[4] - 6:15,
35:11, 37:2, 62:15

galante ^[3] - 37:11,
40:6, 46:13

GALANTE ^[88] - 6:10,
6:14, 10:2, 10:5,
10:9, 10:15, 11:1,
11:10, 11:13, 12:16,
13:4, 13:7, 13:9,
13:13, 13:16, 14:8,
14:13, 15:17, 17:4,
17:9, 17:16, 18:3,
19:16, 20:6, 20:13,
21:7, 22:12, 22:15,
23:3, 23:6, 23:13,
23:18, 25:5, 25:13,
26:2, 26:9, 26:17,
28:5, 28:10, 28:13,
28:18, 29:7, 29:11,
29:14, 29:17, 30:4,
30:7, 30:14, 30:17,
32:14, 33:1, 33:8,
34:11, 40:9, 40:15,
41:3, 41:7, 42:5,
43:11, 43:14, 44:3,
44:6, 44:11, 44:16,
45:12, 46:8, 46:16,

47:10, 49:2, 49:7,
 49:11, 50:4, 50:10,
 50:15, 51:2, 51:8,
 51:12, 52:1, 52:6,
 52:15, 53:1, 53:6,
 53:14, 54:7, 54:12,
 58:18, 59:7, 63:5

Galante's ^[3] - 37:17,
 38:6, 39:11

galante's ^[1] - 36:14

galvanized
^[1] - 269:10

game ^[1] - 209:9

gaps ^[2] - 4:14,
 159:13

gather ^[2] - 67:11,
 111:16

General ^[3] - 187:1,
 233:12, 266:9

general ^[5] - 62:9,
 108:6, 221:3,
 252:18, 280:4

GENERAL ^[1] - 1:4

generally ^[1] - 62:5

generate ^[1] - 130:17

generated ^[6] - 99:18,
 120:2, 180:1,
 217:10, 249:8,
 276:13

generous ^[1] - 73:10

gentleman ^[1] - 66:9

genuinely ^[1] - 175:6

geographical
^[3] - 225:9, 257:6,
 284:10

GEORGE ^[2] - 59:18,
 88:13

George ^[11] - 1:10,
 6:4, 64:4, 91:4,
 102:4, 122:4, 128:4,
 144:4, 182:4, 230:4,
 262:4

GFA ^[8] - 131:12,
 132:5, 145:6, 145:8,
 145:10, 145:13,
 146:8, 147:10

GIFFORD ^[47] - 42:2,
 42:6, 43:3, 43:8,
 43:13, 44:1, 44:5,
 44:9, 44:14, 45:5,
 45:10, 45:18, 46:5,
 46:9, 46:18, 47:3,
 47:12, 47:16, 48:1,
 48:4, 48:6, 48:14,

49:1, 49:4, 49:9,
 50:2, 50:14, 50:17,
 51:6, 51:10, 51:15,
 52:5, 52:10, 52:13,
 52:17, 53:4, 53:8,
 53:10, 53:12, 53:17,
 54:10, 54:14, 56:5,
 56:13, 57:1, 57:10,
 57:16

Gifford ^[1] - 42:2

given ^[13] - 9:7,
 27:13, 55:3, 92:18,
 99:12, 103:18,
 118:13, 148:10,
 166:8, 172:2,
 179:17, 182:16,
 272:15

glad ^[2] - 157:11,
 211:15

glass ^[1] - 16:1

goal ^[2] - 14:13,
 134:13

goals ^[1] - 132:18

gonna ^[9] - 46:13,
 68:2, 71:14, 77:7,
 77:12, 78:5, 162:3,
 238:1, 238:4

gorgeous ^[1] - 14:18

governmental
^[3] - 223:14, 255:11,
 282:15

grant ^[23] - 12:14,
 17:7, 40:11, 40:12,
 48:12, 62:12,
 100:18, 101:10,
 104:1, 116:13,
 116:16, 118:18,
 119:18, 121:3,
 142:3, 143:2,
 178:14, 181:3,
 218:17, 250:15,
 268:4, 275:1, 278:2

granted ^[34] - 24:1,
 25:5, 36:6, 61:7,
 63:4, 101:14, 118:4,
 119:10, 121:6,
 142:5, 178:4, 179:5,
 179:17, 187:11,
 190:4, 192:12,
 195:2, 222:3, 223:8,
 223:12, 224:4,
 226:9, 234:4,
 253:18, 255:5,
 255:9, 256:1, 258:6,

267:1, 281:4, 282:9,
282:13, 283:5,
288:5

granting [9] - 17:18,
54:17, 119:6, 179:2,
225:14, 226:5,
257:11, 258:2,
284:15

grasp [1] - 68:6

grateful [1] - 92:11

gray [1] - 174:4

great [4] - 15:2,
15:14, 72:3, 150:12

GREEN [84] - 10:1,
10:3, 10:6, 10:17,
11:9, 11:12, 30:18,
41:15, 49:3, 50:8,
52:11, 53:15, 54:3,
56:4, 59:17, 65:15,
69:13, 69:15, 69:17,
72:7, 74:12, 74:16,
75:5, 79:15, 85:8,
85:17, 86:14, 95:12,
97:5, 99:5, 105:15,
105:18, 108:17,
109:6, 111:4,
112:14, 141:5,
150:8, 151:1, 151:8,
152:7, 155:8, 156:8,
158:3, 158:13,
165:14, 166:1,
182:14, 197:15,
198:1, 198:3, 198:8,
198:12, 199:1,
199:3, 200:7,
200:14, 201:13,
204:3, 204:6, 205:7,
207:8, 207:17,
210:16, 211:5,
211:10, 211:14,
213:17, 214:8,
216:15, 236:15,
240:9, 241:4,
241:15, 242:1,
242:6, 242:11,
243:8, 243:17,
245:4, 246:7,
248:13, 273:2,
274:10

Green [24] - 1:9, 6:3,
63:6, 64:3, 88:11,
91:3, 101:15, 102:3,
119:11, 121:11,
122:3, 127:15,

128:3, 143:10,
 144:3, 179:6,
 181:11, 182:3,
 226:10, 230:3,
 258:7, 261:8, 262:3,
 288:6

GREENE

[46] - 190:15, 201:3,
 201:15, 202:12,
 203:16, 204:13,
 205:8, 205:12,
 205:15, 206:1,
 206:8, 207:15,
 207:18, 209:3,
 209:17, 210:4,
 210:8, 210:11,
 213:10, 213:14,
 235:8, 235:18,
 236:17, 237:14,
 237:18, 238:4,
 238:8, 239:1, 239:3,
 239:15, 240:4,
 240:11, 241:1,
 241:12, 241:17,
 242:3, 242:7, 263:4,
 268:7, 268:10,
 269:9, 269:13,
 270:1, 272:4, 272:7,
 273:6

Greene [3] - 183:1,
 201:16, 230:12

grey [11] - 212:18,
 213:16, 213:18,
 238:6, 239:18,
 240:9, 240:11,
 245:1, 269:11,
 269:15, 269:16

gross [1] - 162:7

ground [7] - 23:2,
 23:11, 114:18,
 130:9, 204:15,
 204:16, 207:16

grounds [1] - 195:1

group [1] - 245:9

Grubman [1] - 97:18

GRUBMAN

[1] - 97:18

guess [6] - 11:6,
 30:18, 49:5, 92:9,
 98:8, 123:4

guided [1] - 15:5

guidelines

[19] - 25:12, 25:14,
 25:17, 26:5, 26:7,

26:16, 26:18, 27:7,
31:13, 33:12, 34:5,
123:8, 123:11,
148:6, 148:8,
159:10, 162:2,
165:12

Gus ^[2] - 31:1, 183:12
gutting ^[1] - 134:15
guys ^[2] - 89:18, 92:9

H

hairstylist ^[1] - 52:16
half ^[9] - 7:16, 10:13,
46:8, 73:18, 147:6,
169:15, 203:1,
272:8

Half ^[5] - 36:5, 40:4,
46:9, 46:10, 62:3

Hammond
^[2] - 136:10, 169:14

hand ^[6] - 26:4, 77:9,
90:1, 206:5, 235:16,
290:8

handicapped
^[1] - 43:5

handled ^[1] - 49:6

handrail ^[1] - 110:12

handy ^[1] - 200:13

haphazard ^[1] - 34:8

happy ^[12] - 18:3,
91:15, 92:1, 92:8,
107:5, 111:7, 114:8,
162:1, 188:1,
228:18, 260:15,
287:11

hard ^[4] - 108:17,
157:2, 158:9, 241:5

hardship ^[51] - 17:12,
17:13, 18:7, 19:5,
19:14, 19:15, 19:18,
20:1, 20:14, 20:15,
20:16, 20:17, 21:3,
21:5, 21:8, 21:9,
21:13, 31:2, 31:3,
33:7, 46:2, 46:12,
54:18, 55:2, 56:7,
56:8, 56:11, 56:18,
57:12, 60:8, 60:14,
60:18, 76:15, 77:2,
77:5, 103:11,
117:12, 117:13,
117:18, 132:2,
133:11, 141:13,

141:17, 166:8,
166:13, 177:12,
177:13, 178:1

harmonious ^[1] - 34:2

harmony ^[1] - 170:15

Harvard ^[8] - 35:13,
35:18, 37:10, 55:12,
55:17, 62:8, 170:9,
237:5

hatch ^[2] - 110:10,
110:14

hazard ^[12] - 100:1,
100:9, 120:4,
120:12, 180:3,
180:11, 217:12,
217:18, 249:10,
249:16, 276:15,
277:3

hazardous ^[1] - 92:4

head ^[5] - 56:6,
153:18, 158:10,
161:9, 163:17

headroom ^[2] - 154:8

health ^[9] - 100:10,
120:13, 180:12,
218:1, 222:10,
249:17, 254:7,
277:4, 281:11

hear ^[26] - 3:8, 6:8,
57:15, 64:11, 65:3,
66:16, 67:6, 67:7,
76:1, 81:5, 82:6,
88:2, 93:6, 93:13,
93:14, 106:10,
126:1, 126:2, 126:3,
127:5, 216:17,
217:2, 248:15,
248:18, 276:2,
276:5

heard ^[52] - 6:8,
34:17, 35:3, 58:5,
59:11, 64:17, 65:18,
69:1, 73:9, 79:13,
79:18, 80:12, 81:3,
81:6, 90:2, 90:3,
90:5, 90:6, 91:8,
92:11, 97:9, 98:17,
113:6, 113:10,
116:14, 122:7,
122:11, 124:10,
125:7, 128:10,
133:15, 134:16,
136:5, 138:14,
138:17, 144:7,

182:7, 185:16,
 188:2, 193:1, 193:3,
 222:8, 226:16,
 230:8, 232:9, 244:6,
 254:5, 258:13,
 262:7, 265:6, 281:9,
 285:9

HEARING ^[1] - 1:4

hearing ^[31] - 5:5,
 38:7, 39:12, 58:7,
 68:5, 70:6, 71:5,
 71:7, 71:10, 71:11,
 71:15, 75:11, 78:3,
 80:9, 81:16, 83:6,
 83:18, 84:1, 84:5,
 85:11, 86:5, 87:7,
 89:8, 136:13, 173:8,
 174:8, 175:11,
 230:15, 230:18,
 290:6

hearings ^[2] - 4:12,
 262:11

height ^[12] - 27:6,
 33:5, 47:8, 47:11,
 186:5, 186:7,
 193:12, 194:3,
 232:16, 232:18,
 265:13, 265:15

heights ^[1] - 155:3

hello ^[1] - 102:8

help ^[1] - 91:13

helpful ^[10] - 32:6,
 32:12, 32:18, 33:4,
 58:8, 137:1, 138:10,
 148:17, 165:17,
 169:17

helping ^[1] - 92:12

helps ^[1] - 155:14

hereby ^[1] - 289:16

herein ^[1] - 290:6

hereunto ^[1] - 290:7

hi ^[2] - 58:2, 91:10

high ^[5] - 33:18,
 37:13, 195:15,
 272:16, 274:5

Highland ^[2] - 138:5,
 140:13

Hilliard ^[4] - 42:3,
 46:3, 46:4, 46:5

Hiserodt ^[1] - 129:2

HISERODT ^[1] - 129:3

Historic ^[13] - 9:6,
 12:5, 12:10, 15:2,
 15:5, 15:13, 24:15,

36:6, 39:1, 46:6,
95:10, 146:18,
160:8

historic ^[5] - 11:14,
14:18, 22:1, 38:13,
146:13

historical ^[2] - 34:8,
170:16

Historical ^[4] - 25:3,
62:4, 98:6, 178:11

historically ^[1] - 25:2

hoc ^[1] - 152:5

hodge ^[1] - 34:8

hodge-podge

^[1] - 34:8

hole ^[1] - 28:9

Holly ^[3] - 2:6, 102:6,
113:16

home ^[8] - 118:13,
130:10, 144:18,
161:15, 161:16,
173:9, 173:15,
175:9

homeowners

^[1] - 144:13

hope ^[3] - 71:4,
138:10, 166:14

hoping ^[1] - 92:6

house ^[56] - 14:18,
16:13, 49:10, 86:15,
86:16, 87:1, 87:12,
92:1, 92:5, 92:7,
95:4, 95:8, 96:2,
96:8, 100:5, 102:14,
102:17, 103:1,
104:14, 130:3,
132:3, 132:8,
132:10, 132:12,
134:15, 136:10,
147:3, 147:4,
150:18, 151:15,
151:17, 152:10,
152:12, 153:18,
154:4, 154:10,
154:11, 154:13,
154:14, 156:4,
158:18, 159:4,
159:5, 160:7,
160:17, 163:12,
166:11, 170:11,
170:12, 171:3,
171:12, 174:11,
181:15

houses ^[6] - 145:12,

151:16, 152:3,
158:18, 159:2,
163:2

housing ^[1] - 138:5

huge ^[1] - 152:2

hung ^[1] - 108:8

Huron ^[1] - 113:16

husband ^[1] - 139:13

I

idea ^[6] - 52:16,

55:10, 55:15,
150:13, 159:14,
206:9

ideas ^[1] - 68:6

identified ^[5] - 121:5,

181:6, 195:13,
213:7, 275:3

iffy ^[1] - 214:7

illustrative

^[1] - 148:17

immediate ^[3] - 8:9,

38:18, 39:3

impact ^[7] - 219:11,

221:6, 251:9, 253:3,
272:16, 278:14,
280:7

impact's ^[1] - 209:10

impacting ^[1] - 18:12

impair ^[6] - 100:13,

120:17, 180:16,
218:5, 250:3, 277:8

impede ^[1] - 111:13

implemented

^[3] - 187:7, 233:18,
266:15

important ^[5] - 24:17,

89:12, 111:8,
126:13, 170:4

impose ^[4] - 4:1,

219:3, 251:1, 278:6

imposed ^[3] - 222:1,

253:16, 281:2

imposing ^[3] - 222:6,

254:3, 281:7

impossible

^[1] - 164:5

improve ^[2] - 24:6,

173:16

improvement

^[2] - 33:17, 173:14

IN ^[2] - 290:7, 290:15

inaccessible

[1] - 19:9

inappropriately

[1] - 31:4

inasmuch

[3] - 222:10, 254:7,
281:11

inaudible)

[1] - 137:17

INC [1] - 1:16

Inc [2] - 35:9, 119:4

inches [14] - 94:17,

152:18, 153:18,
186:11, 199:4,
202:17, 203:1,
203:2, 205:6, 206:5,
206:7, 233:4, 266:1,
272:7

incline [1] - 161:12

inclined [2] - 34:9,

80:15

included [2] - 145:9,

145:10

includes [4] - 160:12,

225:9, 257:6,

284:10

including [12] - 33:3,

138:9, 145:4,

187:10, 223:11,

225:18, 234:3,

255:8, 257:15,

266:18, 282:12,

285:1

incomplete

[1] - 123:2

incompleteness

[3] - 188:12, 234:15,

267:12

inconsistent

[1] - 204:2

inconvenient

[1] - 76:18

incorporate

[4] - 230:13, 230:15,

245:14, 262:11

incorporated

[1] - 245:13

increase [6] - 30:6,

186:5, 194:3, 194:4,

232:16, 265:13

increases [1] - 24:11

increasing

[6] - 186:7, 186:10,

232:18, 233:3,

265:15, 265:18

incredible ^[1] - 91:18

incredibly ^[4] - 92:1,
92:8, 92:10, 140:4

independent

^[1] - 230:15

independently

^[1] - 140:8

Index ^[1] - 2:13

indicated ^[2] - 99:1,
172:18

individuals

^[3] - 225:17, 257:14,
284:18

indulgence

^[1] - 157:2

infinity ^[1] - 129:14

inform ^[1] - 4:5

informal ^[1] - 245:9

information

^[4] - 93:4, 187:13,
234:6, 267:3

initialed ^[2] - 101:5,

179:1

initialled ^[9] - 62:18,

119:4, 143:6, 219:9,

219:14, 251:7,

251:12, 278:12,

278:17

inset ^[6] - 203:15,

207:7, 239:2, 239:3,

242:13, 272:11

inside ^[3] - 13:15,

161:5, 209:5

Inspectional

^[16] - 222:16, 223:3,

223:7, 223:18,

225:6, 254:13,

254:18, 255:4,

255:15, 257:3,

281:17, 282:4,

282:8, 283:1, 284:7,

289:3

installation

^[10] - 115:5, 186:13,

225:4, 225:8, 233:6,

257:1, 257:5, 266:3,

284:5, 284:9

installations

^[1] - 212:13

installed ^[4] - 16:10,

225:13, 257:10,

284:14

institutional

^[1] - 37:16

INSTRUCTIONS

[2] - 289:1, 289:5

insulated [1] - 109:2

integrity [6] - 100:14,
120:17, 180:17,
218:5, 250:3, 277:8

intent [15] - 17:18,
21:18, 24:18, 25:7,
61:10, 100:15,
118:7, 121:1, 142:8,
159:9, 178:7,
180:18, 218:6,
250:4, 277:9

interest [4] - 83:16,
113:18, 118:15,
130:8

interested [4] - 61:18,
115:13, 157:7,
210:16

interesting
[2] - 152:8, 201:5

interestingly

[1] - 145:6

interfere [1] - 4:3

interference

[1] - 236:7

interferes [1] - 5:4

interior [6] - 13:11,
27:2, 27:10, 27:12,
32:17, 60:11

interrupt [1] - 150:3

intro [1] - 196:16

invaded [1] - 120:10

investment

[1] - 135:2

involve [5] - 18:7,

60:7, 117:11,
141:12, 177:11

involved [1] - 134:18

involves [1] - 131:9

ipso [6] - 223:7,

224:5, 255:4, 256:2,
282:8, 283:6

irregular [2] - 33:16,

33:18

issuance [1] - 146:14

issue [25] - 30:13,

33:5, 45:1, 109:5,
135:13, 153:11,
153:12, 190:17,
193:3, 195:4,
196:14, 197:10,
199:2, 199:6, 200:3,
203:8, 203:9,

203:11, 205:9,
 207:11, 207:13,
 208:3, 208:8,
 239:16, 240:6
issues ^[7] - 74:9,
 123:10, 184:2,
 200:5, 203:7, 236:7,
 238:9
itself ^[4] - 95:5, 130:3,
 131:11, 132:3
ivy ^[1] - 129:14

J

Jackson ^[1] - 58:3
Jacobs ^[1] - 174:14
James ^[7] - 58:1,
 58:3, 114:3, 114:5,
 128:14, 144:10,
 174:3
JAMES ^[37] - 58:2,
 58:17, 59:2, 59:9,
 128:12, 129:6,
 129:10, 130:1,
 133:17, 134:2,
 134:12, 135:4,
 138:4, 141:2,
 142:13, 144:9,
 147:8, 148:15,
 150:4, 150:12,
 151:4, 156:14,
 157:12, 158:4,
 159:15, 160:9,
 162:13, 166:2,
 167:3, 167:9,
 168:15, 169:2,
 172:10, 176:1,
 176:8, 176:12,
 177:1
JANET ^[84] - 10:1,
 10:3, 10:6, 10:17,
 11:9, 11:12, 30:18,
 41:15, 49:3, 50:8,
 52:11, 53:15, 54:3,
 56:4, 59:17, 65:15,
 69:13, 69:15, 69:17,
 72:7, 74:12, 74:16,
 75:5, 79:15, 85:8,
 85:17, 86:14, 95:12,
 97:5, 99:5, 105:15,
 105:18, 108:17,
 109:6, 111:4,
 112:14, 141:5,
 150:8, 151:1, 151:8,

152:7, 155:8, 156:8,
 158:3, 158:13,
 165:14, 166:1,
 182:14, 197:15,
 198:1, 198:3, 198:8,
 198:12, 199:1,
 199:3, 200:7,
 200:14, 201:13,
 204:3, 204:6, 205:7,
 207:8, 207:17,
 210:16, 211:5,
 211:10, 211:14,
 213:17, 214:8,
 216:15, 236:15,
 240:9, 241:4,
 241:15, 242:1,
 242:6, 242:11,
 243:8, 243:17,
 245:4, 246:7,
 248:13, 273:2,
 274:10

Janet ^[11] - 1:9, 6:3,
 64:3, 91:3, 102:3,
 122:3, 128:3, 144:3,
 182:3, 230:3, 262:3

January ^[7] - 70:5,
 173:8, 174:8,
 175:11, 188:13,
 234:16, 267:13

JANUARY ^[1] - 1:5

Jen ^[2] - 174:14,
 174:15

Jersey ^[2] - 129:13,
 129:18

Jim ^[2] - 112:10,
 162:3

job ^[1] - 156:12

Job ^[6] - 184:11,
 218:13, 231:7,
 250:11, 264:4,
 277:16

JOHN ^[14] - 147:6,
 150:14, 151:10,
 152:5, 156:1, 158:6,
 158:11, 158:16,
 159:17, 160:11,
 162:18, 164:13,
 165:16, 172:9

John ^[12] - 35:7,
 144:12, 172:9,
 173:6, 173:11,
 173:12, 174:5,
 174:8, 174:10,
 174:18, 175:8,

175:13

Johnson ^[1] - 102:14

JOHNSON

^[16] - 106:7, 107:1,
107:17, 108:2,
108:7, 108:15,
109:14, 111:18,
112:3, 112:6, 112:9,
112:12, 112:15,
116:6, 117:4,
121:14

July ^[1] - 174:16

June ^[1] - 210:5

Justice ^[1] - 172:6

K

Karen ^[1] - 173:4

KATRINA ^[5] - 91:10,
91:15, 93:3, 93:18,
98:12

Katrina ^[2] - 91:16,
95:18

keep ^[4] - 4:11, 64:13,
183:17, 199:13

Kevin ^[1] - 139:13

Keyword ^[1] - 2:13

kibitz ^[1] - 5:1

kick ^[1] - 65:13

kids ^[1] - 92:3

kind ^[5] - 33:12,
73:11, 155:2, 164:9,
236:13

Kirkland ^[2] - 170:3,
174:7

kitchen ^[8] - 14:1,
51:5, 77:14, 77:15,
115:8, 131:4, 161:3,
163:14

kneel ^[4] - 91:13,
91:14, 129:9

knocked ^[2] - 151:15,
151:18

knowledge ^[1] - 59:6

knowledgeable
^[1] - 123:7

known ^[6] - 35:11,
66:1, 201:18,
218:14, 250:12,
277:17

knows ^[1] - 146:3

KREIGER

^[135] - 182:9, 182:15,
183:18, 185:9,

188:4, 189:6,
189:10, 189:13,
190:2, 190:11,
190:16, 191:2,
191:10, 192:17,
193:12, 194:13,
195:3, 196:6,
196:13, 197:18,
198:2, 198:5, 198:9,
198:15, 199:2,
199:4, 199:17,
200:9, 200:18,
201:6, 201:11,
202:10, 206:3,
206:16, 207:3,
207:9, 208:2,
208:15, 209:1,
211:3, 211:12,
213:9, 213:15,
214:6, 214:9,
214:14, 215:3,
215:16, 216:1,
216:9, 216:12,
216:16, 217:4,
220:3, 220:6,
220:13, 221:1,
226:12, 226:18,
227:6, 227:13,
227:17, 228:6,
228:10, 229:5,
229:8, 229:12,
230:10, 231:3,
235:5, 235:9,
238:16, 239:2,
239:5, 239:9, 242:8,
243:1, 243:3, 243:7,
243:15, 245:6,
245:16, 246:2,
246:12, 246:16,
247:14, 247:17,
248:7, 248:10,
248:14, 249:2,
252:1, 252:4,
252:10, 252:16,
258:9, 258:15,
259:3, 259:10,
259:14, 260:3,
260:7, 261:2, 262:8,
262:16, 263:7,
263:10, 263:13,
263:18, 268:2,
270:11, 270:16,
271:3, 271:7,
271:10, 271:14,

272:1, 272:10,
 273:1, 275:6, 276:1,
 276:7, 279:6, 279:8,
 279:14, 280:2,
 285:5, 285:11,
 285:17, 286:6,
 286:10, 286:17,
 287:3, 287:16,
 288:10

Kreiger ^[10] - 182:11,
 191:17, 222:9,
 230:11, 242:18,
 254:6, 262:15,
 281:10

Kronstein
^[2] - 136:16, 140:12

L

label ^[2] - 110:11,
 110:12

labelled ^[1] - 109:13

land ^[7] - 20:2, 20:16,
 21:3, 21:11, 21:12,
 22:6, 137:6

landing ^[2] - 103:5,
 104:11

landing's ^[1] - 105:2

language ^[3] - 39:2,
 149:4, 149:14

large ^[3] - 131:16,
 136:14, 207:4

larger ^[1] - 207:4

last ^[18] - 37:11,
 42:15, 45:10,
 115:10, 126:13,
 139:17, 171:12,
 190:5, 190:8,
 193:10, 195:4,
 201:14, 209:14,
 222:5, 230:18,
 245:13, 254:2,
 281:6

lastly ^[4] - 17:17,
 39:6, 40:1, 81:17

late ^[4] - 29:1, 41:15,
 41:17, 245:9

laundry ^[2] - 131:2,
 167:13

law ^[15] - 17:8,
 142:14, 184:10,
 188:1, 223:13,
 226:3, 230:17,
 231:6, 234:12,

255:10, 257:18,
 264:3, 267:9,
 282:14, 285:4
Law ^[8] - 216:2,
 227:7, 228:14,
 247:18, 259:4,
 260:11, 285:18,
 287:7
laws ^[1] - 171:15
Lawson ^[1] - 290:4
lawyer ^[1] - 165:7
layout ^[3] - 103:13,
 114:16, 147:16
lays ^[1] - 131:7
league ^[1] - 129:14
least ^[5] - 5:2, 61:13,
 64:12, 82:18,
 239:13
leave ^[7] - 220:15,
 229:2, 240:11,
 252:12, 260:17,
 279:16, 287:13
leaves ^[1] - 115:11
lecture ^[1] - 188:5
Lee ^[1] - 39:7
left ^[11] - 60:15,
 78:15, 106:13,
 107:4, 129:1,
 144:12, 160:3,
 203:14, 206:5,
 208:4, 239:9
left-hand ^[1] - 206:5
Legal ^[6] - 215:7,
 228:4, 247:5, 260:1,
 275:11, 286:15
legal ^[7] - 19:14, 21:2,
 25:18, 28:11, 56:17,
 135:14, 184:3
legally ^[1] - 184:4
length ^[4] - 56:11,
 62:17, 101:4,
 173:10
Lesley ^[2] - 202:1,
 212:12
less ^[5] - 24:7, 24:10,
 49:15, 49:17
letter ^[29] - 27:14,
 35:7, 36:12, 39:6,
 39:14, 39:15, 39:17,
 66:3, 66:7, 68:5,
 69:9, 70:1, 70:3,
 70:4, 74:2, 78:2,
 90:1, 92:16, 92:17,
 97:15, 97:17,

114:13, 120:9,
 122:12, 138:18,
 142:14, 173:2,
 263:8, 263:11
letters ^[19] - 8:8, 35:5,
 58:10, 58:15, 85:3,
 87:11, 97:14, 98:18,
 106:2, 106:16,
 106:18, 113:12,
 168:16, 172:17,
 175:16, 180:8,
 187:1, 233:12,
 266:9
letting ^[1] - 54:16
level ^[7] - 52:7, 52:8,
 84:4, 153:1, 197:17,
 204:12, 270:6
Lexington ^[2] - 94:16,
 96:7
librarian ^[2] - 170:8,
 170:9
License ^[1] - 290:12
licenses ^[3] - 224:6,
 256:3, 283:7
lies ^[1] - 37:14
lightly ^[1] - 24:17
limit ^[2] - 19:8, 62:6
limitation ^[4] - 33:7,
 195:5, 195:11,
 195:16
limited ^[5] - 33:6,
 146:2, 223:12,
 255:9, 282:13
limits ^[1] - 200:6
LINE ^[1] - 289:8
line ^[31] - 137:3,
 137:9, 167:18,
 172:5, 190:9,
 190:12, 191:3,
 191:7, 192:2,
 203:15, 203:17,
 204:12, 204:14,
 204:17, 205:18,
 212:16, 213:5,
 219:16, 220:2,
 238:3, 240:3, 240:5,
 240:9, 240:12,
 240:17, 244:15,
 245:2, 251:14,
 251:18, 279:1,
 279:5
lines ^[3] - 16:8, 33:14,
 162:11
link ^[1] - 153:14

list ^[1] - 136:14
listed ^[1] - 64:9
listen ^[1] - 125:4
listening ^[1] - 69:10
listing ^[1] - 123:4
literal ^[8] - 18:6, 18:9,
 19:4, 19:7, 60:6,
 117:10, 141:11,
 177:10
live ^[14] - 36:13, 46:3,
 71:1, 71:2, 91:16,
 129:12, 130:9,
 134:4, 136:10,
 140:8, 173:5, 174:5,
 174:17, 174:18
lived ^[2] - 139:11,
 147:4
lives ^[1] - 134:3
living ^[7] - 14:2, 14:6,
 51:5, 130:16,
 141:14, 141:15,
 175:5
Liz ^[3] - 16:13, 38:3,
 39:16
LLC ^[1] - 35:10
located ^[10] - 60:10,
 144:18, 145:1,
 146:10, 212:15,
 221:14, 237:12,
 244:14, 253:11,
 280:15
location ^[19] - 61:2,
 203:13, 204:5,
 208:2, 208:7, 208:9,
 208:11, 236:9,
 236:12, 236:15,
 236:18, 237:1,
 237:8, 238:18,
 241:9, 242:13,
 270:17, 271:1,
 274:6
locations
^[10] - 185:12, 202:8,
 225:16, 232:5,
 257:13, 265:2,
 284:17
long-term ^[1] - 35:12
longstanding
^[1] - 35:11
look ^[34] - 15:4,
 16:16, 32:5, 34:6,
 41:3, 43:7, 45:2,
 83:17, 84:17, 96:14,
 104:1, 104:2, 111:9,

114:1, 132:7, 135:4,
 149:4, 192:1, 198:4,
 200:13, 205:4,
 207:18, 208:7,
 208:10, 220:17,
 236:17, 238:9,
 239:17, 241:9,
 242:5, 242:10,
 252:14, 271:14,
 279:18

looked ^[11] - 15:11,
 15:17, 31:12, 148:2,
 152:7, 169:18,
 170:9, 198:3, 214:5,
 241:16

looking ^[22] - 10:7,
 16:6, 16:12, 45:1,
 58:4, 108:18,
 114:17, 115:8,
 156:10, 164:8,
 164:9, 165:5, 176:4,
 190:10, 191:18,
 192:9, 204:18,
 214:4, 236:13,
 241:5, 241:6,
 241:11

looks ^[14] - 14:13,
 95:17, 113:18,
 156:4, 157:14,
 157:15, 161:1,
 170:14, 198:13,
 203:7, 205:2, 206:5,
 239:17, 268:12

lose ^[1] - 183:9

love ^[3] - 43:8, 175:4,
 241:1

lovely ^[1] - 133:2

low ^[1] - 161:11

lower ^[13] - 51:4,
 52:7, 52:8, 137:8,
 202:11, 205:14,
 213:3, 219:18,
 237:13, 237:14,
 238:1, 251:16,
 279:3

lowering ^[2] - 16:15,
 44:4

lowers ^[1] - 172:2

lowest ^[1] - 161:10

luck ^[4] - 114:2,
 121:10, 143:12,
 181:10

M**M-A-L-L-E-T**

[1] - 114:4

Ma'am [1] - 65:1

Mae [1] - 140:12

magic [2] - 126:10,
126:12

maiden [2] - 151:11,
171:8

mail [13] - 38:3, 39:7,
39:18, 68:2, 73:12,
76:8, 76:9, 78:9,
93:9, 173:2, 174:3,
174:13, 175:12

mailed [3] - 89:18,
93:4, 93:10

mailers [1] - 106:9

mailing [1] - 136:14

mails [2] - 107:3,
113:14

main [2] - 115:1,
153:17

maintain [7] - 221:5,
221:10, 246:1,
253:2, 253:7, 280:6,
280:11

maintained

[5] - 81:14, 126:4,
225:15, 257:12,
284:16

Mallet [1] - 114:3

Management

[1] - 35:9

manner [3] - 22:1,
269:6, 274:4

map [3] - 49:4, 77:18,
78:11

Marcantonio

[1] - 39:7

MARCANTONIO

[1] - 39:8

Marilyn [1] - 140:10

mark [2] - 110:10,
110:15

marker [2] - 126:10,
126:12

Marsh [6] - 36:5, 40:4,
46:6, 46:8, 46:9,
62:4

Marvin [1] - 128:18

MARVIN [2] - 134:11,
143:15

Mary [1] - 140:12

mass ^[2] - 166:6,
166:7

Mass ^[8] - 2:10, 2:12,
201:18, 262:10,
268:7, 272:17,
274:2, 274:18

MASSACHUSETTS

^[1] - 290:2

Massachusetts

^[9] - 1:7, 1:7, 128:15,
182:6, 231:2, 247:2,
262:6, 263:17,
275:8

master ^[2] - 92:6,
96:9

match ^[15] - 203:5,
212:17, 212:18,
213:6, 213:11,
213:13, 213:16,
213:17, 214:7,
238:3, 238:5,
244:16, 269:6,
273:3, 274:4

matched ^[1] - 171:12

matches ^[2] - 163:4,
163:6

matching ^[1] - 269:8

math ^[1] - 147:9

mathematical

^[1] - 200:5

matte ^[2] - 269:11,
269:15

matter ^[34] - 6:9,
22:10, 34:16, 34:18,
64:18, 91:9, 97:8,
97:10, 98:16, 113:4,
113:7, 118:11,
122:8, 128:11,
136:4, 136:6, 137:8,
144:8, 169:10,
172:13, 182:8,
192:5, 195:12,
205:11, 212:2,
215:11, 222:12,
230:9, 244:5, 247:8,
254:9, 273:12,
275:14, 281:13

maze ^[1] - 214:18

mean ^[23] - 21:7,
26:5, 45:15, 48:11,
54:11, 55:18, 75:5,
110:18, 127:7,
133:17, 195:14,
198:16, 200:8,

214:3, 214:14,
 220:16, 240:10,
 241:9, 241:15,
 252:13, 270:9,
 272:10, 279:17

mean... [1] - 270:10

meaning [5] - 195:5,
 218:12, 235:10,
 250:10, 277:15

means [6] - 132:9,
 177:16, 184:12,
 231:9, 262:13,
 264:6

meant [1] - 114:15

mechanism
 [1] - 146:8

mediate [1] - 154:18

medium [1] - 3:18

meet [10] - 93:1,
 97:16, 163:11,
 189:1, 194:10,
 229:4, 235:3, 261:1,
 267:18, 287:15

meeting [9] - 3:5,
 3:17, 4:3, 4:4, 4:5,
 5:2, 64:8, 93:2,
 149:2

meets [4] - 166:13,
 197:1, 199:10,
 243:4

MEMBER [6] - 41:11,
 124:1, 124:9, 125:1,
 126:7, 212:4

Member [4] - 1:9, 1:9,
 1:10, 1:10

member [1] - 4:8

members [7] - 28:1,
 73:7, 81:4, 81:5,
 106:9, 106:11,
 157:4

Members [24] - 6:2,
 64:2, 76:2, 80:18,
 91:2, 97:4, 102:2,
 113:1, 122:2, 128:2,
 128:13, 136:1,
 144:2, 169:6, 182:2,
 182:10, 211:17,
 215:5, 230:2, 244:1,
 262:2, 273:9, 274:7,
 274:13

memo [4] - 212:8,
 244:9, 269:3,
 273:16

memory [1] - 191:14

mention ^[1] - 270:14

mentioned

^[5] - 97:15, 98:5,
108:10, 235:6,
270:13

merits ^[6] - 67:2,

70:3, 79:1, 92:16,
111:1, 170:18

met ^[10] - 8:7, 99:12,

119:18, 175:2,
179:16, 189:3,
200:5, 217:9, 249:7,
276:12

methadone

^[1] - 137:12

meticulous

^[1] - 170:8

MEYER ^[10] - 136:8,

136:9, 137:5,
137:16, 138:2,
138:8, 157:10,
169:13, 169:14,
172:7

Meyer ^[3] - 136:9,

169:13, 172:4

Mid ^[1] - 146:11

mid ^[3] - 188:13,

234:16, 267:13

Mid-Cambridge

^[1] - 146:11

mid-January

^[3] - 188:13, 234:16,
267:13

Middle ^[6] - 184:10,

218:13, 231:7,
250:11, 264:4,
277:16

middle ^[6] - 73:5,

76:17, 115:7,
207:12, 240:14,
240:16

might ^[16] - 6:17,

9:10, 32:7, 51:9,
56:15, 79:18, 89:12,
115:4, 120:10,
132:8, 136:18,
137:6, 150:5, 153:8,
198:15, 245:1

Mike ^[1] - 174:13

million ^[3] - 171:17,

171:18, 172:8

mind ^[1] - 245:10

minimum ^[1] - 27:4

minor ^[6] - 130:14,

185:13, 195:17,
197:5, 232:6, 265:3

minute [2] - 129:8,
262:15

minutes [3] - 4:12,
4:13, 57:11

missing [2] - 37:12,
88:4

mistake [2] - 92:14

mixture [1] - 37:15

Mobile [1] - 236:8

model [8] - 6:17, 8:11,

8:12, 8:17, 11:15,

14:17, 42:4, 52:7

modelling [1] - 32:4

models [1] - 7:18

moderator

[1] - 136:12

modest [6] - 100:4,

118:9, 131:18,

133:9, 140:6,

142:10

modification

[11] - 22:14, 61:5,

118:3, 195:9,

195:11, 196:4,

196:16, 196:17,

197:2, 197:7,

197:10

modifications

[3] - 82:2, 130:14,

193:18

modified [7] - 13:14,

81:12, 83:9, 125:17,

126:8, 159:13,

177:14

modify [9] - 8:4,

13:10, 43:16, 81:18,

101:7, 116:15,

116:17, 126:15

modifying [1] - 25:1

moment [3] - 184:13,

231:9, 264:6

Monday [7] - 82:4,

82:9, 83:1, 83:5,

84:9, 85:8, 127:2

month [2] - 68:18,

73:6

months [5] - 73:18,

166:11, 221:12,

253:9, 280:13

moped [1] - 49:18

morning [1] - 71:12

Mortimer [1] - 98:1

most ^[15] - 25:9,
 32:16, 47:6, 55:7,
 82:17, 90:11, 106:5,
 112:12, 126:13,
 131:8, 132:4, 157:3,
 159:2, 203:14,
 215:1
mostly ^[2] - 115:7,
 208:11
motion ^[9] - 40:13,
 41:10, 57:15, 59:16,
 80:18, 81:1, 88:6,
 88:8, 88:15
motions ^[1] - 245:11
motivated ^[1] - 135:1
mount ^[1] - 43:17
Mount ^[16] - 6:7, 6:15,
 8:12, 8:15, 9:11,
 11:7, 36:8, 36:13,
 36:17, 37:7, 37:9,
 52:18, 53:1, 53:4,
 53:6, 55:5
mounting ^[1] - 203:10
mounts ^[2] - 269:6,
 274:4
move ^[9] - 25:10,
 134:5, 181:15,
 198:7, 198:9, 207:4,
 207:18, 208:1,
 210:2
moved ^[6] - 91:17,
 168:6, 175:2,
 189:16, 206:17,
 207:13
moves ^[21] - 60:3,
 62:12, 81:2, 99:8,
 100:18, 117:7,
 118:18, 121:3,
 125:6, 141:8, 143:2,
 177:8, 178:14,
 179:12, 181:3,
 217:6, 218:17,
 249:4, 250:15,
 276:9, 278:2
moving ^[14] - 54:8,
 64:13, 104:13,
 104:16, 129:12,
 129:14, 133:16,
 134:8, 167:14,
 167:17, 168:2,
 168:4, 175:3, 236:7
Mt ^[1] - 2:4
mudroom ^[1] - 155:17
multiple ^[2] - 37:6,

200:18

multiply ^[1] - 171:16

municipalities

^[3] - 185:5, 232:1,
264:16

must ^[6] - 82:2, 82:3,
127:1, 186:5,
232:16, 265:13

MYERS ^[40] - 23:7,
23:12, 23:15, 33:9,
54:9, 56:10, 56:15,
57:3, 57:7, 57:13,
73:11, 73:18, 84:6,
84:11, 84:13, 97:6,
99:6, 109:16, 110:3,
110:8, 110:17,
116:10, 141:6,
172:4, 183:12,
183:15, 191:14,
192:1, 192:4,
203:12, 204:1,
204:4, 204:8, 206:9,
206:12, 211:7,
242:12, 243:2,
246:14, 271:5

Myers ^[24] - 1:9, 6:4,
63:6, 64:4, 88:11,
91:4, 101:15, 102:4,
119:11, 121:11,
122:4, 127:15,
128:4, 143:10,
144:4, 179:6,
181:11, 182:4,
226:10, 230:4,
258:7, 261:8, 262:4,
288:6

N

name ^[23] - 6:12,
6:14, 41:18, 58:2,
62:3, 65:10, 102:11,
115:12, 128:14,
136:9, 151:11,
169:11, 171:5,
171:9, 171:12,
171:13, 172:9,
173:3, 182:10,
182:17, 182:18,
201:16, 209:9

named ^[1] - 151:8

nap ^[1] - 114:11

nature ^[8] - 62:9,
100:4, 118:10,

118:14, 133:9,
142:10, 179:17,
191:15

navigate ^[1] - 177:15

near ^[4] - 115:6,
139:17, 140:1,
140:3

nearby ^[6] - 225:18,
226:1, 257:15,
257:16, 285:1,
285:2

nearly ^[1] - 272:16

necessarily ^[4] - 74:4,
228:1, 259:16,
286:12

necessary ^[6] - 133:7,
198:16, 215:15,
247:12, 274:8,
275:18

need ^[29] - 14:5, 14:6,
14:10, 17:10, 17:12,
20:10, 51:9, 66:9,
83:8, 96:18, 126:6,
126:10, 129:7,
135:12, 140:2,
148:5, 167:2, 189:2,
208:12, 209:2,
210:14, 216:16,
217:1, 235:4,
248:14, 248:17,
268:1, 276:1, 276:4

needs ^[6] - 20:3, 37:7,
87:6, 123:9, 123:13,
141:15

neighbor ^[9] - 74:12,
74:13, 74:15, 92:17,
115:16, 136:15,
139:11, 140:10,
165:2

Neighborhood

^[3] - 40:4, 136:12,
146:11

neighborhood

^[21] - 31:10, 37:13,
38:1, 38:10, 38:16,
38:18, 62:10, 67:12,
91:18, 100:2,
111:15, 115:16,
118:10, 120:5,
176:2, 178:9, 180:4,
217:13, 249:11,
276:16

neighborhood's

^[1] - 37:14

neighbors [18] - 8:7,
 8:8, 61:18, 74:5,
 74:10, 74:15, 83:16,
 93:13, 97:17, 98:9,
 115:9, 139:18,
 140:11, 142:11,
 162:1, 164:17,
 174:5, 175:1
net [1] - 166:16
network [3] - 185:18,
 232:11, 265:8
neutral [1] - 130:6
never [12] - 18:15,
 32:2, 42:11, 62:3,
 69:1, 71:13, 80:12,
 192:18, 193:1,
 196:10, 209:13
nevertheless
 [1] - 88:15
new [33] - 81:12,
 81:13, 82:10, 85:2,
 85:3, 105:12, 110:9,
 110:11, 110:12,
 125:18, 126:6,
 126:11, 138:9,
 155:16, 166:6,
 167:15, 168:3,
 168:8, 194:5,
 197:15, 202:14,
 202:18, 203:2,
 203:9, 224:11,
 224:17, 242:15,
 256:8, 256:14,
 283:12, 283:18
New [2] - 129:13,
 129:17
next [9] - 21:5, 21:8,
 64:6, 88:4, 122:6,
 122:18, 123:12,
 170:6, 174:4
next-door [1] - 174:4
nice [4] - 17:3,
 115:11, 115:18,
 165:14
night [2] - 76:17, 84:5
nights [1] - 189:3
nine [11] - 78:6,
 78:10, 84:11, 85:9,
 199:18, 202:7,
 236:4, 236:5,
 268:12, 268:15
noise [1] - 5:4
non [26] - 22:11, 23:8,
 30:16, 45:4, 47:13,

47:14, 47:18, 48:2,
61:3, 61:15, 94:9,
94:15, 95:2, 96:18,
99:13, 102:16,
118:2, 139:7,
141:18, 145:15,
146:1, 186:18,
195:12, 195:14,
233:11, 266:8

non-compliant

[2] - 195:12, 195:14

non-conforming

[21] - 22:11, 23:8,
30:16, 45:4, 47:13,
47:14, 47:18, 48:2,
61:3, 61:15, 94:9,
94:15, 95:2, 96:18,
99:13, 102:16,
118:2, 139:7,
141:18, 145:15,
146:1

non-discretionary

[3] - 186:18, 233:11,
266:8

nonconforming

[1] - 9:13

none [10] - 98:9,

134:17, 140:14,
186:14, 212:1,
233:7, 242:6, 266:4,
273:11, 273:15

nonetheless

[3] - 130:1, 130:7,
145:14

north [1] - 174:7

NOT [1] - 290:15

notably [1] - 132:4

Notary [2] - 290:4,
290:11

note [10] - 56:2, 75:5,

113:16, 115:18,
118:8, 134:3, 142:9,
178:8, 191:13,
289:6

noted [7] - 215:6,

228:11, 247:4,
260:8, 275:10,
287:4, 289:16

nothing [12] - 9:3,

75:10, 98:3, 105:8,
106:16, 116:1,
131:5, 170:17,
215:11, 242:10,
247:9, 275:15

notice ^[11] - 86:3,
 87:10, 134:3,
 136:13, 142:13,
 188:11, 224:12,
 234:14, 256:9,
 267:11, 283:13
noticed ^[3] - 204:7,
 210:5, 271:17
notices ^[1] - 86:8
notification
^[4] - 85:15, 223:17,
 255:14, 282:18
notify ^[4] - 87:3,
 223:10, 255:7,
 282:11
notifying ^[1] - 3:15
November ^[1] - 40:7
nuisance ^[6] - 100:9,
 120:12, 180:11,
 217:18, 249:16,
 277:3
nullifying ^[5] - 25:6,
 61:9, 118:6, 142:7,
 178:6
number ^[7] - 4:1,
 46:11, 108:8, 139:5,
 174:1, 178:17,
 236:15
numbers ^[3] - 54:2,
 132:7, 194:7
numerous ^[1] - 79:16

O

o'clock ^[6] - 3:12,
 64:10, 64:12, 85:9,
 91:6
O'GRADY ^[20] - 69:7,
 69:14, 69:16, 70:9,
 70:13, 72:9, 72:14,
 74:18, 75:3, 75:12,
 75:16, 80:4, 122:13,
 123:15, 124:5,
 124:14, 124:18,
 125:13, 263:1,
 268:9
O'Grady ^[1] - 1:11
object ^[3] - 227:8,
 259:5, 286:1
objecting ^[1] - 138:9
objection
^[3] - 226:15, 258:12,
 285:8
objections

[4] - 246:1, 246:11,
246:13, 275:3

objective [3] - 186:18,
233:11, 266:8

objectives [3] - 161:1,
163:10, 163:11

obtained [1] - 40:2

obvious [4] - 46:1,
217:2, 248:18,
276:5

obviously [8] - 7:6,
25:16, 46:12, 89:3,
129:13, 159:5,
171:4, 203:6

occasion [1] - 134:16

occupancy [1] - 19:6

occupant
[6] - 100:11, 120:14,
180:13, 218:2,
249:18, 277:5

occupants
[3] - 225:18, 257:15,
285:1

occupied [2] - 38:15,
60:17

occupies [1] - 20:18

occupy [1] - 130:9

occupying [1] - 21:1

occurred [4] - 156:15,
224:2, 255:17,
283:3

occurrences
[1] - 34:9

occurs [1] - 145:13

odds [1] - 172:2

OF [6] - 1:2, 1:3,
290:2, 290:15,
290:15, 290:16

offer [8] - 147:1,
229:2, 246:13,
260:17, 287:13

offers [1] - 171:7

office [8] - 18:18,
21:16, 35:16, 51:13,
66:6, 82:4, 82:12,
86:1

offices [10] - 12:6,
13:8, 24:7, 24:8,
37:6, 50:2, 50:5,
51:11, 53:16,
128:15

OFFICIAL [1] - 1:16

officially [1] - 18:15

often [2] - 49:16,

135:5

old [6] - 61:3, 76:16,
 190:10, 203:1,
 211:8, 273:2
older [3] - 139:17,
 209:15, 209:18
once [4] - 34:3, 44:10,
 147:11, 160:16
one [117] - 3:11, 9:18,
 10:3, 10:6, 12:3,
 12:6, 15:6, 16:9,
 20:10, 21:8, 25:9,
 27:5, 28:7, 28:8,
 29:3, 30:11, 31:2,
 35:2, 39:18, 42:17,
 45:11, 50:12, 55:3,
 58:9, 59:6, 59:13,
 60:14, 64:6, 64:8,
 67:11, 74:16, 94:16,
 98:16, 100:5, 106:5,
 106:10, 111:8,
 111:16, 112:9,
 113:9, 113:14,
 122:10, 126:2,
 132:18, 136:10,
 136:14, 136:15,
 138:8, 138:16,
 139:8, 145:11,
 150:3, 151:15,
 151:16, 152:11,
 154:1, 158:7, 159:6,
 160:3, 161:14,
 170:2, 170:11,
 171:11, 171:13,
 171:17, 172:15,
 177:17, 179:10,
 179:11, 183:11,
 183:13, 184:5,
 184:9, 196:2, 199:3,
 200:14, 201:17,
 204:16, 206:6,
 206:7, 206:10,
 207:10, 207:12,
 211:1, 211:10,
 212:7, 219:7,
 226:14, 228:18,
 231:5, 236:3, 236:6,
 236:9, 237:3, 238:8,
 238:13, 238:14,
 238:15, 239:10,
 239:16, 240:6,
 251:5, 258:11,
 260:15, 263:4,
 264:2, 269:4,

270:11, 271:13,
272:13, 278:10,
285:7, 287:11

one-family

[1] - 151:15

ones [7] - 51:8, 85:6,
201:12, 201:13,
202:18, 203:1,
203:2

ongoing [3] - 222:12,
254:9, 281:13

open [18] - 3:17,
24:11, 24:13, 34:13,
34:15, 65:15, 65:18,
79:6, 83:12, 97:7,
113:4, 136:3, 152:1,
169:10, 199:9,
212:2, 244:4,
273:12

opened [2] - 64:8,
98:15

operate [1] - 149:5

operating [1] - 42:16

operation [7] - 4:2,
100:6, 120:6, 180:5,
217:15, 249:13,
276:18

operative [1] - 82:17

opinion [3] - 56:17,
76:13, 78:9

opportunities

[1] - 130:17

opportunity

[4] - 130:2, 130:11,
131:4

opposed [1] - 88:12

opposite [1] - 95:4

opposition

[5] - 67:12, 74:17,
115:16, 118:11,
136:15

option [1] - 154:5

oral [2] - 106:16,
107:2

orange [1] - 202:11

order [10] - 3:6,
157:13, 157:16,
157:17, 162:18,
167:12, 177:6,
187:8, 234:1,
266:16

Ordinance [43] - 9:15,
18:1, 18:10, 18:12,
25:1, 60:7, 61:4,

61:10, 81:15, 99:11,
 99:15, 100:16,
 117:11, 118:7,
 119:17, 121:1,
 126:5, 135:17,
 141:12, 142:8,
 177:11, 178:7,
 179:15, 181:1,
 184:15, 192:12,
 215:10, 217:7,
 217:8, 218:7,
 218:18, 231:11,
 247:8, 249:5, 249:6,
 250:5, 250:16,
 264:8, 275:14,
 276:10, 276:11,
 277:10, 278:3

organization

[1] - 147:15

original [10] - 28:14,

152:10, 153:4,
 153:17, 160:4,
 160:18, 161:5,
 162:12, 199:16,
 289:2

originally [7] - 7:7,

13:1, 13:2, 18:17,
 21:14, 124:3

otherwise [18] - 18:8,

76:3, 98:13, 100:15,
 120:18, 123:7,
 126:16, 142:12,
 180:15, 180:18,
 216:10, 218:6,
 223:16, 248:8,
 250:4, 255:13,
 277:9, 282:17

ought [1] - 151:4

outside [1] - 5:2

outward [1] - 62:8

overall [2] - 9:11,

35:16

owe [1] - 90:14

owing [9] - 17:13,

21:5, 21:8, 21:9,
 21:13, 60:18,
 117:18, 141:17,
 178:1

own [6] - 29:4, 37:4,

69:16, 140:1, 140:6,
 272:14

owned [3] - 52:11,

52:13, 137:6

owner [7] - 35:12,

38:15, 102:14,
113:15, 126:8,
140:13, 173:4

owner-occupied

[1] - 38:15

owners [3] - 115:14,
139:9, 173:6

owns [2] - 60:14,
112:5

P

p.m [24] - 1:5, 3:3,
6:1, 64:1, 81:6,
81:13, 82:4, 82:9,
82:18, 83:5, 84:10,
84:11, 91:1, 102:1,
122:1, 125:7, 126:1,
127:2, 128:1, 144:1,
182:1, 230:1, 262:1,
288:12

packet [3] - 187:2,
233:13, 266:10

page [14] - 62:17,
101:4, 109:16,
119:4, 143:6,
178:18, 204:3,
204:5, 204:6, 206:6,
208:4, 238:18,
242:9, 271:15

PAGE [2] - 2:1, 289:8

pages [8] - 62:16,
101:4, 178:18,
183:9, 208:8, 271:4,
271:5

paid [1] - 209:13

paint [5] - 238:3,
238:4, 269:14,
269:15, 274:11

painted [8] - 189:16,
203:5, 212:17,
213:11, 244:16,
269:5, 270:8, 274:3

painting [1] - 214:6

panel [1] - 202:6

paper [2] - 75:7,
89:16

paperclip [1] - 183:8

papers [1] - 156:9

paperwork [1] - 76:11

paragraphs

[6] - 224:10, 224:16,
256:7, 256:13,
283:11, 283:17

parallel ^[1] - 164:16

paraphrased

^[1] - 195:6

parcels ^[1] - 28:11

parents ^[5] - 134:7,

139:10, 139:14,

140:1, 140:9

parents' ^[1] - 140:15

parking ^[16] - 16:12,

24:6, 24:7, 24:9,

24:11, 49:5, 49:11,

49:15, 49:17, 50:1,

53:14, 58:7, 106:8,

131:14, 220:7

parlor ^[1] - 55:14

part ^[25] - 16:4, 16:14,

23:9, 23:10, 32:8,

37:7, 37:14, 48:12,

48:15, 50:11, 55:9,

61:13, 95:14,

132:17, 159:12,

161:18, 162:3,

177:17, 206:13,

208:5, 208:18,

227:4, 259:1, 273:3,

285:15

partial ^[2] - 18:11,

55:6

partially ^[1] - 48:10

particular

^[5] - 132:11, 173:13,

176:13, 199:6,

214:11

particularly ^[7] - 33:5,

111:14, 155:13,

166:8, 227:2,

258:17, 285:13

parts ^[2] - 159:12,

161:5

party ^[1] - 130:7

pass ^[1] - 24:17

passed ^[3] - 185:11,

232:4, 265:1

passes ^[1] - 87:16

past ^[4] - 36:3,

228:15, 260:12,

287:8

patiently ^[1] - 128:7

patients ^[2] - 24:9,

49:16

patterns ^[6] - 99:18,

120:2, 180:1,

217:10, 249:8,

276:13

PAUL ^[8] - 93:8, 94:6,
94:11, 94:14, 95:14,
96:5, 96:12, 98:7

Paul ^[1] - 93:8

pay ^[2] - 135:10,
176:13

paying ^[1] - 135:5

PEBBLE ^[47] - 42:2,
42:6, 43:3, 43:8,
43:13, 44:1, 44:5,
44:9, 44:14, 45:5,
45:10, 45:18, 46:5,
46:9, 46:18, 47:3,
47:12, 47:16, 48:1,
48:4, 48:6, 48:14,
49:1, 49:4, 49:9,
50:2, 50:14, 50:17,
51:6, 51:10, 51:15,
52:5, 52:10, 52:13,
52:17, 53:4, 53:8,
53:10, 53:12, 53:17,
54:10, 54:14, 56:5,
56:13, 57:1, 57:10,
57:16

pebble ^[1] - 42:2

peculiar ^[1] - 161:14

pedestrian

^[2] - 38:12, 49:17

people ^[17] - 4:18,
24:8, 26:5, 26:6,
27:16, 47:4, 54:11,
64:7, 90:11, 132:13,
133:2, 134:14,
134:18, 151:13,
165:10, 175:6,
199:8

perceived ^[1] - 203:9

percent ^[6] - 146:4,
170:7, 186:6,
232:17, 265:14

perception

^[1] - 204:17

perfect ^[2] - 73:6,
268:12

period ^[16] - 15:12,
187:12, 221:11,
221:12, 225:1,
228:2, 234:5, 253:8,
253:9, 256:16,
259:17, 267:2,
280:12, 280:13,
284:2, 286:13

permission

^[1] - 200:10

permit [3] - 170:10,
196:9, 199:16

Permit [113] - 94:6,
94:8, 97:1, 99:10,
99:12, 100:18,
103:3, 103:17,
107:10, 119:13,
119:14, 121:3,
146:5, 146:9, 167:1,
168:1, 179:9,
179:14, 179:16,
180:16, 181:3,
184:14, 185:6,
187:3, 187:4, 187:5,
187:10, 187:17,
189:1, 190:5,
192:13, 192:14,
195:2, 212:11,
215:9, 215:14,
216:3, 216:11,
216:17, 217:7,
217:9, 218:17,
219:4, 222:13,
223:8, 223:12,
224:4, 224:9,
224:11, 224:15,
225:4, 225:13,
226:6, 226:9,
228:13, 231:10,
232:2, 233:14,
233:15, 233:16,
234:3, 234:10,
235:3, 244:11,
247:7, 247:11,
248:1, 248:9,
248:15, 249:5,
249:7, 250:15,
251:2, 254:10,
255:5, 255:9, 256:1,
256:6, 256:8,
256:12, 257:1,
257:10, 258:3,
258:6, 260:10,
264:7, 264:17,
266:11, 266:12,
266:13, 266:18,
267:7, 267:18,
274:1, 275:2,
275:13, 275:17,
276:2, 276:10,
276:12, 278:2,
278:7, 281:14,
282:9, 282:13,
283:5, 283:10,

283:12, 283:16,
284:5, 284:14,
287:6, 288:4

Permits ^[3] - 222:3,
253:18, 281:4

permitted

^[2] - 135:17, 145:2

perpendicular

^[1] - 238:12

person ^[6] - 3:16,

165:4, 182:18,
225:7, 257:4, 284:8

personal ^[3] - 8:3,

272:14, 272:18

personally ^[2] - 19:1,

19:18

perspective

^[3] - 82:7, 190:17,
191:7

petition ^[7] - 7:4,

60:4, 67:8, 120:11,
224:18, 256:15,
284:1

petitioner ^[53] - 3:12,

61:11, 62:15, 67:7,
69:5, 70:4, 81:8,
81:18, 101:3,
117:12, 119:3,
122:16, 123:3,
125:10, 126:15,
177:12, 219:8,
219:13, 221:4,
221:9, 221:17,
222:3, 222:15,
223:10, 223:16,
224:10, 225:5,
225:8, 251:6,
251:11, 253:1,
253:6, 253:14,
253:18, 254:12,
255:7, 255:13,
256:7, 257:2, 257:5,
278:11, 278:16,
280:5, 280:10,
280:18, 281:4,
281:16, 282:11,
282:17, 283:11,
284:6, 284:9

petitioner's

^[10] - 35:4, 40:1,
54:1, 67:2, 223:1,
224:5, 254:16,
256:2, 282:2, 283:6

petitioners

[2] - 123:6, 142:12

petitions [3] - 225:2,
256:17, 284:3

phenomenal

[1] - 92:12

Philadelphia

[1] - 91:18

phone [4] - 76:8,
78:4, 86:2, 174:1

phonetic [2] - 98:1,
136:16

photo [25] - 15:14,
186:2, 200:11,
201:8, 205:17,
207:5, 209:7, 209:8,
209:13, 213:2,
213:5, 213:12,
219:12, 221:7,
232:13, 235:14,
239:14, 251:10,
253:4, 265:10,
269:8, 272:11,
272:12, 278:15,
280:8

photograph

[1] - 164:11

photos [7] - 11:16,
12:12, 209:14,
209:15, 235:15,
270:4, 270:5

phrase [2] - 189:12,
214:10

physical

[10] - 196:18,
218:10, 219:11,
221:6, 250:8, 251:9,
253:3, 277:13,
278:14, 280:7

pick [1] - 110:13

picks [1] - 73:12

picture [1] - 202:11

pictures [4] - 198:3,
198:13, 201:2,
201:3

piece [16] - 7:1, 7:9,
7:11, 9:16, 10:7,
44:3, 44:4, 75:7,
152:11, 152:13,
154:15, 154:18,
155:2, 155:9,
155:15, 156:5

pieces [2] - 9:1, 9:18

pipe [1] - 198:11

pitch [1] - 268:11

pizza ^[1] - 55:14
placard ^[1] - 69:15
place ^[9] - 16:14,
 23:14, 34:4, 44:13,
 92:10, 146:16,
 158:12, 238:1,
 238:5
Place ^[1] - 58:3
placed ^[1] - 122:17
placement ^[1] - 4:2
places ^[3] - 9:5,
 145:16, 164:15
placid ^[1] - 33:16
plain ^[2] - 112:16,
 168:11
plan ^[26] - 8:1, 9:10,
 9:11, 10:9, 28:14,
 28:16, 29:1, 29:2,
 29:9, 32:2, 32:9,
 83:3, 83:9, 85:16,
 94:14, 103:18,
 110:13, 115:17,
 130:14, 131:5,
 137:1, 168:3,
 169:17, 175:9,
 208:13, 208:14
plane ^[1] - 68:15
planning ^[6] - 32:17,
 67:10, 129:11,
 140:3, 140:7,
 205:14
Planning ^[19] - 133:4,
 189:3, 190:7, 192:6,
 197:8, 198:6, 201:9,
 212:8, 212:10,
 212:14, 214:10,
 214:16, 240:7,
 244:10, 244:11,
 269:3, 269:13,
 273:17, 273:18
plans ^[60] - 28:6,
 37:2, 40:6, 40:8,
 40:14, 41:2, 62:14,
 82:1, 82:10, 82:14,
 82:17, 82:18, 83:3,
 83:7, 83:17, 84:6,
 85:3, 89:11, 89:13,
 93:10, 95:8, 96:5,
 101:2, 101:6,
 103:14, 106:9,
 109:9, 109:17,
 110:2, 110:8, 111:2,
 114:13, 116:14,
 116:15, 116:17,

117:1, 119:2, 121:5,
 126:16, 127:1,
 143:4, 150:7,
 150:15, 152:8,
 160:4, 174:10,
 175:14, 176:16,
 176:17, 178:16,
 178:18, 181:5,
 219:8, 241:6, 245:2,
 251:6, 270:12,
 278:11

plant ^[1] - 137:11

plating ^[1] - 137:11

playing ^[1] - 84:4

plot ^[5] - 9:10, 29:1,
 29:2, 137:1, 169:17

podge ^[1] - 34:8

point ^[41] - 7:10, 13:6,
 23:17, 24:17, 30:11,
 32:7, 32:15, 62:7,
 65:6, 76:15, 77:10,
 83:12, 87:18, 97:4,
 110:7, 111:3, 115:1,
 115:15, 123:1,
 150:17, 153:14,
 156:5, 161:10,
 162:14, 163:9,
 166:4, 186:17,
 188:6, 199:6,
 199:13, 199:14,
 207:5, 207:6, 227:6,
 233:10, 243:10,
 244:2, 259:3, 266:7,
 271:15, 285:17

pointed ^[6] - 13:1,
 35:4, 40:2, 149:9,
 162:9, 165:11

pointing ^[3] - 206:6,
 238:17, 239:10

policy ^[1] - 132:18

politic ^[1] - 142:16

porch ^[10] - 79:6,
 131:11, 155:17,
 156:6, 159:18,
 160:1, 160:2, 160:5,
 160:18

porches ^[2] - 131:9,
 160:1

Porter ^[3] - 211:1,
 211:4, 211:5

portion ^[9] - 7:18, 8:1,
 8:16, 9:15, 15:3,
 34:4, 34:7, 51:3,
 131:10

Portland [7] - 2:11,
 211:1, 211:10,
 230:7, 236:1, 237:3,
 244:13
position [3] - 215:7,
 247:5, 275:11
possession [1] - 82:3
possibility
 [1] - 139:16
possible [1] - 15:12
possibly [3] - 186:9,
 233:2, 265:17
posted [1] - 86:12
posting [4] - 42:9,
 64:9, 81:11, 125:16
postpone [1] - 88:1
potential [2] - 203:6,
 205:9
practical [4] - 137:7,
 221:16, 253:13,
 280:17
practice [6] - 6:12,
 7:17, 36:15, 37:5,
 51:13, 52:2
praise [1] - 214:12
praising [1] - 189:14
pre [1] - 139:7
pre-existing
 [1] - 139:7
precaution [1] - 47:7
precedence
 [1] - 14:15
predates [1] - 61:3
prefer [1] - 73:2
preferable [1] - 80:6
premises [1] - 20:3
prepared [9] - 32:3,
 62:15, 101:3, 119:3,
 143:5, 146:6,
 148:16, 156:17,
 178:16
present [4] - 56:2,
 56:12, 104:3, 130:3
presentation
 [7] - 17:3, 165:14,
 166:4, 169:1, 215:7,
 247:4, 275:10
presented [2] - 39:5,
 98:11
presenting [1] - 241:8
preserve [1] - 55:10
preserved [1] - 275:4
preserving [1] - 62:9
President [2] - 35:7,

35:8

Preston ^[3] - 128:18,
130:4, 139:2

PRESTON ^[6] - 129:1,
129:8, 134:11,
142:17, 143:14,
143:15

preston ^[3] - 129:11,
130:8, 134:6

presume ^[2] - 58:17,
59:2

pretty ^[4] - 14:14,
240:13, 245:9,
273:6

prevent ^[2] - 18:10,
199:11

previous ^[10] - 64:11,
115:4, 195:17,
197:14, 222:2,
230:14, 239:16,
253:17, 262:11,
281:3

previously
^[5] - 149:8, 221:7,
253:4, 275:3, 280:8

primarily ^[1] - 55:6

primary ^[1] - 33:6

Princeton
^[4] - 129:13, 129:17,
133:16, 134:9

principal ^[1] - 130:17

priority ^[3] - 139:14,
148:8, 157:13

privacy ^[3] - 111:13,
120:10

probability
^[1] - 171:15

problem ^[8] - 59:3,
68:16, 73:8, 73:17,
90:10, 114:15,
200:2, 208:11

problems ^[1] - 23:5

procedure
^[1] - 230:17

proceed ^[10] - 62:13,
101:1, 119:1, 121:4,
143:4, 178:15,
181:5, 219:7, 251:5,
278:10

proceedings
^[1] - 290:6

process ^[21] - 83:12,
146:15, 184:15,
185:6, 187:1, 187:5,

210:2, 215:9, 216:3,
 231:11, 232:2,
 233:12, 233:16,
 247:7, 248:1, 264:8,
 264:17, 266:9,
 266:13, 275:13

product ^[1] - 78:1

profile ^[1] - 135:9

profit ^[1] - 135:1

project ^[14] - 8:9,

17:13, 61:17, 62:1,

78:16, 102:13,

113:17, 140:15,

174:12, 175:12,

178:11, 219:15,

251:13, 278:18

projected ^[1] - 32:11

prominent ^[1] - 148:1

promptly ^[3] - 221:13,

253:10, 280:14

proper ^[1] - 29:18

properly ^[1] - 196:9

properties ^[3] - 35:17,

36:4, 137:10

property ^[20] - 31:5,

36:11, 38:14, 61:12,

114:18, 115:2,

131:12, 135:14,

136:11, 140:13,

141:14, 145:1,

145:3, 145:11,

145:13, 146:2,

160:13, 160:15,

171:7, 174:6

Property ^[1] - 35:8

property's ^[2] - 21:4,

146:10

proportion ^[1] - 9:3

proposal ^[6] - 35:13,

38:7, 39:12, 58:6,

184:7, 212:12

propose ^[3] - 218:8,

250:6, 277:11

proposed ^[51] - 36:1,

37:17, 38:16, 43:10,

70:7, 99:17, 100:8,

100:13, 105:10,

108:1, 108:3,

109:13, 109:15,

114:1, 120:8,

120:11, 120:16,

130:13, 131:6,

148:3, 160:4, 161:3,

173:9, 173:10,

178:12, 180:7,
 180:15, 203:13,
 217:12, 217:17,
 218:4, 218:9,
 219:12, 221:5,
 237:9, 242:13,
 245:2, 249:10,
 249:15, 250:2,
 250:7, 251:10,
 253:2, 271:1,
 276:15, 277:2,
 277:7, 277:12,
 278:15, 280:6

proposes ^[1] - 119:15

proposing ^[8] - 9:4,
 43:16, 82:11, 95:3,
 123:11, 154:16,
 162:6, 202:5

proposition
^[1] - 108:6

Prospect ^[1] - 274:2

protect ^[1] - 55:16

protected ^[3] - 226:1,
 257:16, 285:2

protection ^[1] - 200:1

protections
^[3] - 225:17, 257:14,
 284:18

protrude ^[3] - 186:8,
 233:1, 265:16

provide ^[2] - 141:16,
 173:17

provided ^[4] - 195:10,
 224:11, 256:8,
 283:12

provision ^[6] - 18:6,
 18:9, 193:15, 227:2,
 258:17, 285:13

provisions ^[5] - 24:7,
 60:7, 117:11,
 141:12, 177:11

psychiatrists
^[1] - 58:8

psychologist
^[1] - 37:6

psychologists
^[1] - 50:6

Public ^[2] - 290:4,
 290:11

public ^[28] - 24:3,
 34:13, 34:16, 41:14,
 61:8, 70:6, 97:8,
 98:16, 99:2, 113:4,
 116:3, 118:5, 136:4,

142:6, 157:4,
 169:10, 175:11,
 175:18, 178:5,
 212:2, 224:12,
 244:5, 256:9, 273:7,
 273:12, 274:15,
 283:13

publicly ^[1] - 82:15

punch ^[1] - 172:5

purchased ^[3] - 7:12,
 7:16, 174:15

pure ^[1] - 147:9

purely ^[1] - 134:18

purpose ^[17] - 14:7,
 14:8, 14:11, 18:1,
 24:18, 61:10, 84:3,
 100:16, 118:7,
 121:1, 142:8, 178:7,
 181:1, 199:15,
 218:7, 250:5,
 277:10

purpose.. ^[1] - 25:7

purposes ^[1] - 160:14

pursuant

^[10] - 101:10, 224:9,
 224:15, 225:13,
 256:6, 256:12,
 257:10, 283:10,
 283:16, 284:14

push ^[3] - 19:13,
 153:6, 162:3

put ^[17] - 15:9, 42:11,
 46:16, 50:16, 59:7,
 76:10, 76:18, 77:2,
 84:3, 85:2, 90:5,
 92:6, 92:14, 156:8,
 165:8, 190:6, 214:1

putting ^[5] - 12:8,
 31:8, 31:9, 51:11,
 53:16

Q

quality ^[1] - 37:13

questions

^[18] - 27:18, 97:3,
 97:5, 113:1, 136:1,
 141:3, 169:6, 186:3,
 188:1, 200:11,
 211:13, 211:16,
 232:14, 243:18,
 265:11, 273:8,
 273:13, 275:4

quickly ^[1] - 6:17

quite ^[3] - 27:3,
157:18, 171:10

R

R-O-B-E-R-T-S

^[1] - 144:13

Radcliffe ^[1] - 170:9

radiation ^[3] - 226:2,
257:17, 285:3

radically ^[1] - 13:16

radio ^[1] - 272:4

radiofrequency

^[3] - 226:2, 257:17,
285:3

Rafferty ^[5] - 128:6,

128:14, 139:1,

144:11, 172:17

RAFFERTY

^[33] - 128:12, 129:6,

129:10, 130:1,

133:17, 134:2,

134:12, 135:4,

138:4, 141:2,

142:13, 144:9,

147:8, 148:15,

150:4, 150:12,

151:4, 156:14,

157:12, 158:4,

159:15, 160:9,

162:13, 166:2,

167:3, 167:9,

168:15, 169:2,

172:10, 176:1,

176:8, 176:12,

177:1

railing ^[5] - 11:17,

12:8, 15:15, 24:12,

110:11

railing's ^[1] - 16:9

raise ^[1] - 184:2

raised ^[3] - 123:10,

140:14, 148:1

raising ^[1] - 199:7

Ranjit ^[1] - 162:9

rate ^[1] - 129:10

rather ^[12] - 33:16,

61:3, 100:3, 117:16,

118:9, 134:5,

142:10, 154:1,

185:6, 232:2,

235:11, 264:17

re ^[1] - 114:13

RE ^[1] - 35:10

re-enclosed

[1] - 114:13

reach [2] - 3:7, 27:16

reaction [1] - 111:6

read [33] - 32:1,
32:12, 35:5, 41:5,
49:5, 58:9, 79:15,
82:13, 83:7, 87:11,
87:14, 89:8, 116:18,
139:3, 172:18,
174:2, 189:8,
189:17, 189:18,
193:10, 193:17,
193:18, 212:9,
219:2, 222:8,
244:10, 250:18,
254:5, 269:2,
273:17, 278:5,
281:9, 289:15

reading [2] - 195:18,
289:6

Reading [12] - 35:9,
36:13, 38:5, 39:10,
113:15, 114:4,
114:7, 139:4, 173:3,
174:4, 174:15,
273:18

reads [1] - 73:12

ready [23] - 41:10,
59:16, 59:17, 59:18,
60:1, 60:2, 80:17,
99:4, 99:5, 99:6,
116:8, 116:10,
139:13, 141:4,
141:5, 141:6, 141:7,
169:5, 177:4, 215:5,
274:16

real [3] - 140:2, 165:6,
177:16

reality [2] - 129:15,
164:8

really [36] - 6:17,
8:17, 14:3, 16:17,
27:12, 31:3, 32:6,
54:18, 78:16, 89:15,
130:10, 131:13,
132:9, 133:6, 140:7,
152:8, 154:5,
154:12, 155:14,
156:11, 156:18,
157:2, 166:1,
170:15, 180:10,
208:9, 236:9,
236:12, 236:13,

237:2, 241:2, 270:2,
270:3, 272:6,
272:12, 273:3

rear ^[17] - 34:4, 34:7,
102:18, 105:8,
106:6, 106:7, 107:3,
114:1, 117:15,
117:16, 131:12,
131:14, 140:14,
145:15, 146:2,
167:16

reason ^[10] - 5:3,
67:18, 123:1,
135:12, 153:14,
155:11, 170:14,
175:7, 271:5, 289:7

REASON ^[6] - 289:9,
289:10, 289:11,
289:12, 289:13,
289:14

reasonable ^[8] - 3:18,
58:6, 224:2, 224:13,
255:17, 256:10,
283:3, 283:14

reasonably
^[4] - 147:3, 221:16,
253:13, 280:17

reasonably-sized
^[1] - 147:3

reasons ^[9] - 12:9,
12:10, 18:8, 21:2,
24:3, 30:11, 66:18,
67:12, 166:7

rebuild ^[1] - 21:18

rebuilding ^[1] - 22:3

receipt ^[10] - 35:5,
138:18, 223:17,
225:4, 244:9,
255:14, 257:1,
273:16, 282:18,
284:5

received ^[1] - 180:9

recent ^[1] - 82:17

recognition
^[1] - 132:10

recognize ^[2] - 133:8,
156:15

recognizing
^[1] - 166:15

recommendation
^[1] - 214:11

recommendations
^[1] - 189:4

recommended

[1] - 197:9

reconsidering

[1] - 67:16

reconvening

[1] - 75:11

record [28] - 7:10,

35:6, 52:15, 57:13,
89:8, 103:8, 128:14,
135:12, 139:4,
173:1, 174:2, 176:9,
189:9, 201:16,
212:9, 226:14,
227:5, 230:15,
244:10, 258:11,
259:2, 269:4,
273:17, 275:5,
285:7, 285:16,
289:16, 290:6

RECORD [1] - 1:16

recording [5] - 3:16,

4:6, 4:7, 4:9, 4:10

recordings [1] - 4:15

records [1] - 4:13

rectify [1] - 197:8

red [2] - 160:10,

212:18

redo [1] - 158:3

reduce [3] - 61:15,

171:18, 274:5

reducing [3] - 47:10,

108:5, 108:8

reduction [4] - 38:12,

50:1, 145:13,
166:16

refer [4] - 176:16,

185:2, 231:16,
264:13

reference

[5] - 176:11, 230:16,

236:9, 243:14,
262:12

referred [4] - 159:7,

221:8, 253:5, 280:9

reflect [5] - 81:12,

125:18, 176:9,
177:3, 201:10

reflected [1] - 57:11

regard [36] - 60:4,

61:11, 99:9, 103:16,
117:8, 118:8,
119:14, 120:1,
120:9, 121:6, 123:8,
123:9, 141:9, 142:9,
177:9, 178:8,

179:13, 180:16,
 181:6, 191:6, 217:7,
 219:3, 222:2, 222:3,
 223:14, 249:5,
 251:1, 253:17,
 253:18, 255:11,
 276:10, 278:6,
 281:3, 281:4,
 282:15

regarding [8] - 31:12,

173:8, 222:17,
 227:1, 254:14,
 258:16, 281:18,
 285:12

regardless

[4] - 147:11, 187:4,
 233:15, 266:12

regards [1] - 161:7

register [3] - 226:15,
 258:12, 285:8

regular [3] - 64:6,

64:14, 64:15

regulation [4] - 77:4,

223:14, 255:11,
 282:15

regulations

[1] - 145:18

reinforces [1] - 37:18

relate [2] - 103:12,
 242:16

related [6] - 21:10,

31:3, 132:2, 154:12,
 193:6, 263:1

relates [1] - 179:9

relating [3] - 22:5,

61:1, 118:1

relative [1] - 160:14

relatively [1] - 200:4

relevance [1] - 166:10

relevant [7] - 47:2,

47:3, 54:6, 81:17,
 186:13, 233:6,
 266:3

relied [1] - 74:1

Relief [6] - 184:11,

218:13, 231:7,
 250:11, 264:4,
 277:16

relief [49] - 12:15,

17:18, 22:14, 24:1,
 25:5, 32:11, 38:6,
 39:11, 40:12, 48:12,
 60:5, 61:4, 61:6,
 61:7, 87:4, 99:16,

100:3, 101:10,
 101:14, 103:7,
 104:1, 116:13,
 116:16, 118:3,
 118:4, 118:9,
 119:18, 123:5,
 133:11, 135:13,
 142:2, 142:4, 142:5,
 142:10, 166:12,
 173:18, 178:3,
 178:4, 184:8, 185:1,
 227:18, 231:4,
 231:15, 246:10,
 259:15, 264:1,
 264:12, 286:11
relo ^[1] - 129:11
relocate ^[2] - 105:7,
 139:18
relocating ^[4] - 12:5,
 111:12, 139:17,
 167:5
relocation ^[5] - 103:3,
 103:4, 107:9, 120:1
relocations
^[1] - 179:10
rely ^[1] - 82:15
remain ^[5] - 132:17,
 133:14, 221:6,
 253:3, 280:7
remains ^[1] - 145:15
remarks ^[1] - 230:13
remember ^[5] - 9:9,
 29:15, 69:7, 69:8,
 213:18
remote ^[1] - 272:4
remove ^[8] - 8:3, 8:4,
 206:9, 206:13,
 206:17, 221:13,
 253:10, 280:14
removed ^[3] - 160:10,
 160:12, 166:17
removing ^[2] - 12:5,
 147:10
renamed ^[1] - 151:7
rendering ^[1] - 27:8
renderings
^[2] - 11:16, 16:5
rendition ^[2] - 32:5,
 32:7
renovate ^[1] - 16:3
renovated
^[1] - 181:15
renovating
^[1] - 160:18

renovation

[4] - 37:11, 113:18,
174:11, 175:8

renovations

[7] - 36:2, 36:4,
173:9, 173:10,
173:13, 173:14,
175:14

rented [1] - 49:13

repeated [1] - 190:7

repeats [1] - 192:6

repetitive

[6] - 224:18, 225:2,
256:15, 256:17,
284:1, 284:3

replace [2] - 202:5,

202:9

replaced [1] - 268:18

replacement

[3] - 185:14, 232:7,
265:4

replacements

[3] - 185:13, 232:6,
265:3

replacing [1] - 37:5

reply [1] - 114:14

report [20] - 4:7,

106:17, 122:15,
125:5, 212:6,
222:16, 223:2,
223:4, 223:6, 224:1,
254:13, 254:17,
255:1, 255:3,
255:16, 281:17,
282:3, 282:5, 282:7,
283:2

Reporter [2] - 290:4,

290:12

REPORTER

[1] - 290:16

REPORTERS

[1] - 1:16

reports [3] - 227:1,

258:16, 285:12

representative

[1] - 207:6

represents

[1] - 166:16

REPRODUCTION

[1] - 290:15

request [18] - 24:4,

68:3, 70:5, 98:4,
99:1, 140:16,
184:10, 187:14,

199:10, 205:4,
 228:11, 231:6,
 234:7, 260:8, 264:3,
 267:4, 270:10,
 287:4

requested

[14] - 68:13, 68:16,
 69:5, 100:18, 121:4,
 122:17, 123:6,
 133:12, 143:3,
 181:4, 198:6,
 218:18, 250:16,
 278:3

requesting [2] - 65:2,

122:16

require [1] - 146:13

required [2] - 81:14,

142:3

requirement

[3] - 25:18, 42:17,
 194:10

requirements

[16] - 3:18, 42:9,
 48:17, 94:4, 95:7,
 99:11, 119:17,
 123:4, 179:15,
 192:11, 217:8,
 223:13, 249:6,
 255:10, 276:11,
 282:14

requires [6] - 22:14,

61:5, 99:15, 118:3,
 126:5, 178:2

reside [2] - 39:9, 98:1

residence [6] - 7:8,

16:4, 21:15, 37:4,
 46:14, 60:10

Residence [1] - 24:4

residential [28] - 8:3,

12:14, 13:2, 18:13,
 18:14, 18:17, 19:6,
 21:17, 22:2, 22:3,
 24:10, 31:6, 35:15,
 37:1, 37:15, 37:18,
 38:9, 48:8, 48:16,
 55:8, 55:9, 55:16,
 60:10, 60:13, 60:15,
 61:13, 62:9

residentially

[2] - 48:18, 60:16

residentially-zoned

[1] - 48:18

residents

[3] - 225:18, 257:15,

285:1

resides ^[1] - 139:2

resolution ^[1] - 3:8

RESPECT

^[1] - 290:16

respect ^[1] - 242:12

respects ^[4] - 96:17,

222:1, 253:16,

281:2

Response

^[16] - 34:14, 35:1,

59:12, 97:11, 113:2,

113:8, 122:9, 136:2,

138:15, 169:8,

172:14, 211:18,

244:3, 244:7,

273:10, 273:14

response ^[1] - 269:18

responsibility

^[3] - 225:11, 257:8,

284:12

rest ^[2] - 51:17, 52:2

restless ^[1] - 33:15

restoration

^[1] - 38:14

restore ^[5] - 15:10,

16:3, 221:14,

253:11, 280:15

restored ^[1] - 36:7

restriction

^[1] - 149:10

restroom ^[3] - 12:1,

12:6, 13:17

restrooms ^[1] - 52:8

restructuring

^[1] - 160:17

result ^[4] - 145:6,

147:14, 149:2,

156:16

resulting ^[4] - 120:3,

217:11, 249:9,

276:14

results ^[1] - 26:15

reticent ^[1] - 110:9

return ^[2] - 16:8,

61:12

returns ^[2] - 15:9,

135:2

review ^[9] - 17:11,

83:3, 83:9, 83:11,

84:7, 85:6, 186:18,

233:11, 266:8

reviewed ^[5] - 9:7,

174:10, 212:10,

244:11, 273:18

reviewing ^[1] - 134:17

revised ^[2] - 83:3,
127:1

revoked ^[3] - 224:6,
256:3, 283:7

RH ^[1] - 271:16

Richard ^[2] - 97:17,
97:18

rid ^[2] - 15:7, 156:6

ridge ^[1] - 7:13

rights ^[2] - 41:6,
117:1

ringer ^[1] - 56:6

Riskin ^[1] - 39:8

RISKIN ^[1] - 39:9

Road ^[15] - 2:9, 144:6,
145:1, 151:2,
152:12, 170:2,
171:3, 173:5, 173:7,
174:6, 174:14,
174:16, 175:1,
175:2, 175:9

road ^[1] - 197:6

ROBERTS

^[26] - 147:5, 147:6,
150:14, 150:17,
151:3, 151:10,
151:12, 152:5,
152:9, 156:1, 157:8,
157:11, 158:1,
158:6, 158:9,
158:11, 158:16,
159:17, 160:11,
162:18, 164:13,
165:16, 168:12,
172:9, 176:6,
181:13

Roberts ^[30] - 2:9,

144:6, 144:12,
144:18, 147:4,
148:16, 151:1,
151:2, 151:11,
152:12, 156:16,
170:2, 171:3, 171:6,
171:9, 172:6, 173:5,
173:6, 173:7, 174:5,
174:6, 174:14,
174:16, 174:18,
175:2, 175:8, 175:9,
182:12, 182:14

robust ^[3] - 185:17,
232:10, 265:7

role ^[1] - 135:1

roof ^[46] - 9:15, 12:2,
 12:3, 12:8, 24:12,
 27:1, 33:14, 44:12,
 155:3, 155:12,
 159:2, 162:11,
 163:4, 190:9,
 190:12, 191:3,
 191:6, 191:7, 192:2,
 203:15, 203:17,
 204:12, 204:14,
 204:17, 205:2,
 205:18, 208:5,
 212:15, 213:4,
 219:16, 220:2,
 236:3, 237:7, 238:2,
 240:3, 240:4, 240:5,
 240:15, 240:17,
 244:15, 245:2,
 251:14, 251:18,
 268:13, 279:1,
 279:5

room ^[11] - 5:3, 14:3,
 19:10, 50:13, 51:5,
 52:6, 105:11, 131:2,
 167:13, 209:6

rooms ^[4] - 50:5,
 50:12, 51:1, 51:7

rotated ^[2] - 9:17,
 10:10

roughly ^[4] - 87:5,
 188:16, 234:18,
 267:15

row ^[1] - 199:18

rug ^[1] - 57:8

rules ^[3] - 225:15,
 257:12, 284:16

runs ^[2] - 20:1, 20:16

rush ^[1] - 114:12

S

sadly ^[1] - 115:10

safe ^[1] - 125:4

safety ^[11] - 12:9,
 24:14, 100:10,
 120:13, 180:12,
 218:1, 225:15,
 249:17, 257:12,
 277:4, 284:16

sale ^[1] - 171:3

SAME ^[1] - 290:15

sarcastically

^[1] - 127:7

satisfied ^[4] - 56:18,

81:10, 98:10,
125:15

satisfies ^[1] - 199:11

satisfy ^[3] - 190:8,
192:13, 245:3

satisfying ^[1] - 22:17

save ^[1] - 45:1

saw ^[3] - 111:7,
169:14, 169:18

scale ^[7] - 9:3,
154:13, 154:18,
155:1, 155:14,
158:2, 158:17

scare ^[1] - 94:11

scheduled ^[1] - 68:14

scientific ^[3] - 222:13,
254:10, 281:14

Scott ^[2] - 102:14,
103:14

SCOTT ^[16] - 106:7,
107:1, 107:17,
108:2, 108:7,
108:15, 109:14,
111:18, 112:3,
112:6, 112:9,
112:12, 112:15,
116:6, 117:4,
121:14

Scott's ^[1] - 106:1

seamless
^[3] - 185:18, 232:11,
265:8

Sean ^[7] - 1:11, 66:4,
66:8, 66:11, 90:1,
111:6, 122:12

SEAN ^[20] - 69:7,
69:14, 69:16, 70:9,
70:13, 72:9, 72:14,
74:18, 75:3, 75:12,
75:16, 80:4, 122:13,
123:15, 124:5,
124:14, 124:18,
125:13, 263:1,
268:9

Sears ^[2] - 211:7,
211:8

seated ^[3] - 129:1,
130:5, 144:12

second ^[36] - 4:10,
22:17, 31:11, 67:6,
69:4, 104:6, 114:13,
117:16, 125:16,
149:3, 149:5,
149:13, 150:3,

152:1, 152:4,
 152:12, 152:14,
 153:14, 154:11,
 161:8, 161:13,
 161:18, 162:11,
 163:15, 164:1,
 168:9, 192:7, 219:3,
 227:6, 227:16,
 251:1, 259:3,
 259:13, 278:6,
 285:17, 286:9
secret ^[1] - 214:15
section ^[5] - 44:2,
 149:6, 227:10,
 259:7, 286:3
Section ^[11] - 95:6,
 185:2, 187:6,
 218:12, 231:16,
 233:17, 242:17,
 250:10, 264:13,
 266:14, 277:15
sections ^[1] - 33:4
see ^[62] - 11:4, 12:11,
 15:15, 27:16, 46:2,
 46:14, 54:16, 55:13,
 58:15, 77:14, 77:17,
 77:18, 80:18, 88:16,
 97:14, 101:8, 115:2,
 115:3, 127:14,
 129:7, 137:2,
 148:11, 152:12,
 152:15, 152:18,
 153:8, 154:11,
 155:18, 156:2,
 157:9, 158:13,
 163:5, 164:7,
 167:12, 194:9,
 198:8, 204:18,
 207:11, 208:1,
 208:12, 209:4,
 210:13, 227:7,
 236:10, 237:2,
 237:4, 237:6, 237:9,
 238:7, 238:10,
 238:11, 238:12,
 240:15, 241:17,
 242:1, 259:4,
 268:11, 270:5,
 271:15, 272:12,
 285:18
seeing ^[2] - 69:9,
 157:7
seek ^[1] - 173:18
seeking ^[3] - 12:15,

61:12, 103:3
seem [2] - 56:8, 208:3
seemingly
 [1] - 242:15
seller [2] - 171:7,
 171:14
send [2] - 78:10,
 106:9
Senior [1] - 1:6
sense [9] - 133:3,
 153:11, 162:7,
 188:11, 220:14,
 234:14, 252:11,
 267:11, 279:15
sensitive [1] - 26:4
sent [7] - 28:14, 29:1,
 89:17, 92:18, 93:3,
 93:9, 136:13
sentiment
 [1] - 116:12
separate [5] - 28:7,
 28:10, 149:6, 202:8,
 242:15
separately [1] - 167:1
separation
 [1] - 193:13
September
 [1] - 201:14
serious [1] - 140:2
served [1] - 133:3
service [2] - 164:5,
 172:11
Services
 [16] - 222:16, 223:3,
 223:7, 224:1, 225:6,
 254:13, 254:18,
 255:4, 255:16,
 257:3, 281:17,
 282:4, 282:8, 283:2,
 284:7, 289:3
sessions [2] - 3:17,
 4:14
set [10] - 6:16, 24:14,
 41:7, 41:8, 44:7,
 110:2, 202:2,
 240:16, 290:6,
 290:7
setback [6] - 94:16,
 94:18, 131:17,
 145:16, 146:2,
 168:9
setbacks [1] - 27:1
Seth [1] - 39:8
sets [3] - 185:14,

232:7, 265:4

setting ^[2] - 184:3,
184:4

seven ^[9] - 27:5, 50:6,
50:13, 50:15, 53:15,
81:6, 81:13, 125:7,
126:1

several ^[5] - 37:9,
62:16, 101:4,
178:17, 178:18

shaded ^[1] - 95:14

shaker ^[1] - 15:8

shall ^[27] - 221:4,
221:12, 222:15,
223:2, 223:7,
223:18, 224:4,
224:17, 225:5,
253:1, 253:9,
254:12, 254:17,
255:4, 255:15,
256:1, 256:14,
257:2, 280:5,
280:13, 281:16,
282:3, 282:8, 283:1,
283:5, 283:18,
284:6

shape ^[8] - 17:14,
21:11, 21:14, 21:16,
22:6, 61:1, 142:1,
178:1

share ^[4] - 6:17,
148:6, 148:12,
156:17

shared ^[2] - 36:1,
50:7

shares ^[1] - 133:2

sharing ^[1] - 28:4

Shaw ^[2] - 36:12,
39:17

shed ^[1] - 33:17

sheet ^[4] - 238:17,
242:9, 270:17,
289:7

SHEET ^[1] - 289:1

Sheet ^[2] - 289:2,
289:7

SHIEH ^[41] - 65:5,
65:11, 66:3, 66:6,
66:15, 67:14, 67:18,
69:11, 70:16, 71:2,
71:8, 71:11, 72:2,
73:1, 73:4, 76:7,
76:9, 79:2, 79:5,
79:8, 79:14, 80:7,

80:10, 83:2, 83:8,
83:13, 84:12, 85:1,
85:5, 85:15, 86:3,
86:5, 86:11, 86:16,
87:1, 87:10, 88:3,
89:5, 89:9, 89:14,
90:8

shock ^[1] - 73:13

shop ^[2] - 52:7, 59:8

short ^[2] - 136:11,
193:10

shorter ^[2] - 154:6,
202:15

Shorthand

^[2] - 290:4, 290:12

shorthand

^[1] - 274:17

show ^[20] - 8:5, 8:17,
10:3, 11:15, 28:14,
44:9, 95:16, 107:14,
110:15, 153:7,
153:15, 154:17,
167:7, 167:10,
175:7, 186:2,
213:13, 232:13,
265:10, 269:8

showed ^[3] - 165:9,
175:13, 213:6

showing ^[5] - 9:11,
16:5, 156:9, 158:17,
213:13

shown ^[4] - 11:15,
40:3, 150:6, 203:13

shows ^[3] - 28:7,
28:8, 28:17

shrinks ^[3] - 50:14,
50:15, 51:6

side ^[39] - 11:3, 15:7,
16:7, 16:16, 38:13,
44:8, 49:9, 50:9,
55:5, 92:7, 95:4,
96:7, 100:5, 104:14,
105:6, 105:13,
105:14, 105:16,
107:14, 107:15,
112:16, 114:16,
117:17, 138:2,
154:1, 154:17,
155:16, 156:7,
159:5, 160:2,
161:11, 163:5,
165:3, 165:6, 167:6,
167:17, 169:16,
237:3, 238:9

side-view [2] - 159:5,
169:16

sides [2] - 16:9,
102:17

siding [2] - 14:14,
15:9

sightly [1] - 215:1

Sign [1] - 289:7

sign [21] - 3:13,
46:15, 64:9, 64:10,
64:11, 68:9, 69:16,
69:17, 81:8, 81:11,
81:13, 86:9, 86:11,
86:14, 86:18, 87:11,
92:14, 125:10,
125:17, 126:11,
142:14

signatory [1] - 39:15

SIGNATURE

[1] - 289:1

signed [1] - 114:5

significance

[2] - 81:3, 147:2

significant [3] - 25:2,

25:4, 30:10

silhouetted

[1] - 206:14

silver [1] - 137:11

similar [1] - 184:2

simply [5] - 105:10,

187:18, 206:13,

234:11, 267:8

sims [13] - 186:3,

200:12, 201:8,

205:17, 209:13,

213:2, 213:5,

213:13, 232:14,

235:14, 239:14,

265:11, 269:8

simulations

[8] - 209:8, 219:13,

221:7, 251:11,

253:4, 278:16,

280:8

Singanayagam

[1] - 166:3

single [11] - 13:17,

103:11, 103:13,

117:14, 118:13,

144:18, 145:4,

145:8, 161:15,

161:16, 237:18

single-family

[8] - 103:11, 103:13,

117:14, 118:13,
 144:18, 145:4,
 161:15, 161:16
sink ^[1] - 13:17
sit ^[2] - 91:11, 270:9
site ^[16] - 9:11, 28:14,
 28:16, 94:14, 183:5,
 214:11, 222:4,
 223:1, 223:11,
 230:14, 254:1,
 254:16, 255:8,
 281:5, 282:2,
 282:12
sites ^[3] - 183:5,
 184:1, 210:14
sits ^[3] - 8:14, 28:8,
 145:3
sitting ^[3] - 171:1,
 204:14, 204:15
Sitting ^[10] - 6:2, 64:2,
 91:2, 102:2, 122:2,
 128:2, 144:2, 182:2,
 230:2, 262:2
situated ^[3] - 225:15,
 257:12, 284:16
situation ^[3] - 31:15,
 58:7, 139:15
situations ^[1] - 26:6
six ^[15] - 15:6, 16:8,
 27:1, 94:17, 186:8,
 195:4, 195:15,
 196:17, 197:1,
 206:7, 221:12,
 233:1, 253:9,
 265:16, 280:13
sixth ^[1] - 193:6
size ^[6] - 9:4, 27:12,
 92:5, 115:6, 118:14,
 142:1
sized ^[1] - 147:3
sketch ^[3] - 156:17,
 159:11
sketched ^[1] - 164:10
sketches ^[1] - 148:16
skip ^[2] - 104:5, 158:7
sky ^[2] - 206:14,
 274:6
skylights ^[1] - 16:18
SLATER ^[51] - 11:4,
 28:2, 28:6, 28:12,
 28:16, 29:5, 29:9,
 29:13, 33:3, 60:1,
 70:18, 71:4, 74:8,
 74:13, 76:4, 76:8,

80:8, 80:15, 84:14,
84:17, 85:7, 86:9,
87:6, 89:2, 89:11,
90:3, 90:12, 97:2,
107:14, 109:12,
116:9, 151:6,
165:17, 168:8,
183:10, 193:5,
193:9, 193:14,
196:2, 196:8, 199:5,
200:3, 201:2, 201:5,
209:12, 210:3,
210:7, 210:10,
243:11, 263:3,
263:6

Slater ^[13] - 1:10, 6:4,
64:4, 91:4, 96:13,
102:4, 122:4, 128:4,
144:4, 182:4, 194:8,
230:4, 262:4

sled ^[2] - 269:10,
274:4

sledded ^[1] - 269:6

slides ^[1] - 156:2

slightly ^[1] - 167:14

small ^[9] - 38:13,
92:6, 114:11,
114:17, 115:5,
115:6, 115:9,
154:15, 183:13

smaller ^[2] - 155:1,
203:3

so... ^[2] - 67:17, 172:9

societal ^[3] - 222:12,
254:9, 281:13

soil ^[5] - 17:14, 21:10,
22:5, 22:6, 23:1

solves ^[1] - 205:9

someone ^[6] - 20:9,
52:11, 52:14, 132:8,
134:15, 207:16

Somerville
^[7] - 131:15, 137:2,
137:6, 137:9, 138:2,
138:9

sometime ^[1] - 82:8

sometimes
^[2] - 134:14, 241:4

somewhat ^[2] - 147:3,
177:14

somewhere
^[3] - 71:1, 86:13,
210:17

son ^[2] - 54:13,

142:14

son-in-law

[1] - 142:14

sorry [24] - 7:12, 8:4,

11:5, 33:2, 41:17,
44:11, 50:10, 66:1,
67:4, 82:9, 90:9,
94:7, 98:15, 114:14,
123:18, 124:5,
138:1, 162:10,
183:12, 221:10,
253:7, 263:15,
269:9, 280:11

sort [9] - 18:16, 37:3,

55:16, 66:12, 193:9,
209:15, 214:4,
214:12, 245:9

sought [15] - 60:5,

62:13, 87:5, 99:10,
100:3, 117:9, 118:9,
119:1, 119:15,
141:10, 142:10,
166:13, 177:9,
178:14

south [1] - 170:4

southeast

[1] - 236:11

space [17] - 12:14,

14:6, 19:10, 20:3,
20:7, 20:9, 21:16,
24:13, 27:2, 27:8,
27:11, 27:12, 35:16,
60:11, 141:15,
161:9, 163:17

spaces [2] - 24:12,

49:12

speaking [3] - 54:10,

148:4, 204:10

Special [107] - 94:6,

94:8, 96:18, 99:9,
99:12, 100:18,
103:3, 103:17,
107:9, 119:13,
119:14, 121:3,
146:4, 146:9, 167:1,
168:1, 179:9,
179:14, 179:16,
180:16, 181:3,
184:14, 185:6,
187:3, 187:4, 187:5,
187:17, 189:1,
190:5, 192:12,
192:14, 195:2,
212:10, 215:9,

215:14, 216:3,
 216:11, 216:17,
 217:7, 217:9,
 218:17, 219:4,
 222:2, 222:13,
 223:8, 223:12,
 224:4, 224:8,
 224:11, 224:15,
 225:13, 226:6,
 226:9, 231:10,
 232:2, 233:14,
 233:15, 233:16,
 234:10, 235:3,
 244:11, 247:7,
 247:11, 248:1,
 248:9, 248:15,
 249:5, 249:7,
 250:15, 251:2,
 253:17, 254:10,
 255:5, 255:9, 256:1,
 256:5, 256:8,
 256:12, 257:10,
 258:3, 258:6, 264:7,
 264:17, 266:11,
 266:12, 266:13,
 267:7, 267:18,
 273:18, 275:2,
 275:13, 275:17,
 276:2, 276:10,
 276:12, 278:2,
 278:7, 281:3,
 281:14, 282:9,
 282:13, 283:5,
 283:9, 283:12,
 283:16, 284:14,
 288:4

special ^[3] - 17:14,
 37:18, 92:10

Specialist ^[1] - 1:11

specific ^[4] - 15:12,
 69:5, 191:5, 270:6

specifically
^[3] - 35:18, 58:18,
 149:10

specifics ^[1] - 17:2

Spectrum ^[9] - 185:1,
 185:11, 218:14,
 231:15, 232:4,
 250:12, 264:12,
 265:1, 277:17

speed ^[1] - 123:9

spent ^[3] - 147:17,
 149:2, 149:15

spoken ^[2] - 37:1,

106:1

spots ^[1] - 49:7

square ^[10] - 12:16,
27:3, 29:18, 30:8,
44:15, 44:17, 44:18,
48:4, 131:18, 145:5

Square ^[9] - 35:13,
35:18, 37:10, 55:12,
55:18, 62:8, 211:1,
211:4, 211:5

squared ^[1] - 163:5

SS ^[1] - 290:3

staff ^[3] - 228:14,
260:11, 287:7

stage ^[1] - 184:4

stair ^[3] - 153:2,
153:17, 163:17

staircases

^[1] - 108:12

stairs ^[5] - 103:5,
154:9, 161:10,
164:15, 164:16

stall ^[1] - 13:17

stand ^[6] - 47:4,
91:12, 146:7, 220:9,
252:7, 279:11

standard ^[3] - 56:17,
74:1, 166:13

standards ^[2] - 188:7,
200:6

standing ^[1] - 192:2

standpoint ^[1] - 163:2

stands ^[1] - 9:14

start ^[7] - 3:14, 117:6,
150:14, 158:16,
181:14, 184:3,
230:5

started ^[3] - 3:7,
76:11, 150:6

state ^[1] - 42:11

statement ^[5] - 18:4,
46:1, 221:3, 252:18,
280:4

statement(s)

^[1] - 289:17

statements

^[1] - 126:18

Statements

^[2] - 231:1, 263:16

states ^[1] - 212:9

stating ^[3] - 225:10,
257:7, 284:11

station ^[6] - 194:2,
195:10, 218:11,

243:4, 250:9,
277:14

Statute [3] - 185:2,
231:16, 264:13

statute [15] - 185:3,
186:5, 186:17,
187:8, 231:17,
232:16, 233:10,
234:1, 264:14,
265:13, 266:7,
266:16

stay [2] - 67:9, 73:5

staying [1] - 51:14

stays [2] - 44:12,
44:13

stealth [4] - 196:4,
196:9, 199:16,
272:6

steel [1] - 269:10

stems [1] - 148:13

STENOGRAPHER
[1] - 206:10

stenographer
[6] - 4:11, 6:13, 42:1,
65:10, 169:12,
182:16

step [1] - 21:5

Steve [4] - 58:10,
58:12, 59:1, 129:2

stick [7] - 190:12,
190:13, 191:3,
197:16, 199:1,
207:6, 211:14

sticking [1] - 208:4

still [7] - 23:10, 48:12,
115:14, 152:1,
166:16, 216:7,
248:5

stone [1] - 212:18

stopped [1] - 193:9

storage [1] - 132:6

store [1] - 52:15

stories [2] - 270:7,
272:15

storm [2] - 68:10,
68:11

story [6] - 156:18,
157:18, 162:15,
166:6, 170:13,
171:2

straight [1] - 158:15

strategize [1] - 5:1

strategy [1] - 153:5

street [35] - 14:16,

36:14, 38:13, 53:13,
 58:11, 151:7, 151:8,
 159:1, 164:7, 164:9,
 165:5, 171:13,
 173:5, 174:17,
 175:4, 175:6,
 175:15, 190:18,
 191:8, 191:17,
 197:16, 204:12,
 205:18, 212:16,
 219:17, 220:2,
 220:14, 244:16,
 245:1, 251:15,
 251:18, 252:11,
 279:2, 279:5,
 279:15

Street ^[43] - 2:3, 2:4,
 2:5, 2:7, 2:8, 2:11,
 6:7, 6:16, 8:13,
 8:14, 16:7, 36:9,
 36:13, 36:17, 37:7,
 37:9, 38:4, 39:4,
 39:9, 42:3, 43:17,
 46:3, 53:3, 55:9,
 55:14, 64:16, 70:7,
 91:7, 122:6, 128:9,
 130:4, 136:10,
 139:3, 140:12,
 169:14, 174:7,
 230:7, 236:1, 237:3,
 237:5, 244:13,
 274:2

Streets ^[1] - 8:15

streetscape

^[1] - 173:16

strictly ^[1] - 51:10

strike ^[1] - 129:5

strip ^[2] - 238:6,

239:18

strong ^[2] - 33:11,

136:16

strongly ^[1] - 159:8

structure ^[39] - 13:3,

21:1, 21:14, 21:16,

22:3, 22:4, 22:11,

34:2, 60:15, 61:2,

61:3, 61:5, 94:9,

96:18, 99:13,

102:16, 117:14,

118:2, 118:12,

118:14, 118:15,

131:7, 133:10,

141:18, 142:1,

142:2, 161:1, 161:6,

162:12, 177:16,
 177:17, 178:2,
 179:18, 195:9,
 196:18, 197:4,
 218:2, 249:18,
 277:5

structures [7] - 21:11,
 21:12, 146:1, 166:9,
 226:1, 257:16,
 285:2

studio [1] - 48:13

Studio [2] - 35:10,
 62:16

study [4] - 82:14,
 222:13, 254:10,
 281:14

stuff [1] - 273:7

style [1] - 273:3

styles [1] - 126:17

stylistically
 [1] - 154:12

subject [17] - 3:18,
 125:8, 136:11,
 206:12, 218:18,
 222:14, 225:1,
 227:18, 250:16,
 254:11, 256:16,
 259:15, 275:2,
 278:3, 281:15,
 284:2, 286:11

submission
 [1] - 208:18

submit [3] - 89:2,
 107:5, 110:5

submitted [13] - 9:8,
 62:14, 101:2, 110:1,
 111:2, 119:2, 188:9,
 219:8, 219:13,
 251:6, 251:11,
 278:11, 278:16

subscribe
 [1] - 289:16

substance
 [4] - 216:4, 216:7,
 248:2, 248:5

substantial
 [19] - 17:12, 18:7,
 19:5, 24:2, 60:8,
 61:8, 100:1, 117:12,
 118:5, 120:4,
 141:13, 142:6,
 177:12, 178:5,
 180:3, 194:6,
 217:13, 249:11,

276:16

substantially

[10] - 25:6, 61:9,
89:12, 118:6, 142:7,
178:6, 196:17,
218:10, 250:8,
277:13

suburbs [1] - 134:5

such-and-such

[1] - 139:5

sufficient [1] - 133:11

sufficiently

[3] - 226:1, 257:16,
285:2

suggest [12] - 26:18,

32:6, 131:18, 132:8,
132:15, 166:10,
212:14, 243:8,
244:14, 245:10,
269:5, 274:3

suggested [1] - 162:4

suggestion

[2] - 42:13, 269:14

suitable [2] - 14:4,

21:17

suite [1] - 131:1

suited [1] - 117:15

summarizes

[1] - 168:16

summer [1] - 37:12

sunroom [2] - 96:10,

100:5

Superman

[1] - 204:16

supply [3] - 228:18,

260:15, 287:11

supplying [1] - 82:16

support [28] - 8:9,

27:14, 35:5, 35:10,
36:9, 36:16, 37:3,
38:5, 39:4, 39:10,
61:18, 62:1, 106:3,
106:12, 136:17,
139:4, 140:15,
142:11, 173:17,
174:12, 175:7,
175:13, 175:17,
178:9, 180:8, 195:9,
197:3

supporting [3] - 25:3,

120:11, 126:18

supportive

[3] - 15:13, 165:7,
173:12

supports [2] - 33:7,
37:18
suppose [1] - 207:14
supposed [5] - 20:1,
20:16, 45:7, 45:16,
135:16
surface [1] - 131:14
surprised [2] - 165:8,
198:4
surprises [1] - 84:4
susceptible
[1] - 60:13
suspended
[3] - 224:6, 256:3,
283:7
swapped [3] - 186:2,
232:13, 265:10
swapping
[7] - 185:15, 186:15,
232:8, 233:8, 265:5,
266:5, 272:2
sweeping [1] - 55:11
swept [1] - 57:8
sword [1] - 270:10
sworn [4] - 97:13,
225:6, 257:3, 284:7
sympathetically
[1] - 34:6

T

T-Mobile [1] - 236:8
table [2] - 46:17,
46:18
talks [1] - 149:10
Tax [6] - 184:11,
218:13, 231:7,
250:11, 264:4,
277:16
Ted [2] - 35:11, 35:18
telecommunication
[3] - 222:6, 254:3,
281:7
telecommunication
s [3] - 219:5, 251:3,
278:8
telephone [1] - 73:13
ten [20] - 78:14,
146:3, 183:3, 186:6,
195:15, 203:1,
223:4, 223:16,
225:3, 232:17,
255:1, 255:13,
256:18, 265:14,

282:5, 282:17,
284:4

tenants ^[3] - 49:13,
49:14, 49:15

term ^[1] - 35:12

terminate ^[6] - 223:8,
224:5, 255:5, 256:2,
282:9, 283:6

terminated
^[6] - 224:7, 224:9,
256:4, 256:6, 283:8,
283:10

termination
^[6] - 224:15, 227:2,
256:12, 258:17,
283:16, 285:13

terms ^[8] - 54:10,
99:17, 111:9, 134:4,
177:15, 190:9,
204:1, 204:10

testimony
^[17] - 34:13, 34:16,
41:11, 41:14, 97:8,
98:16, 99:2, 113:5,
116:3, 136:4,
169:10, 175:18,
212:3, 244:5,
273:13, 274:15

THE ^[7] - 1:2, 1:16,
206:10, 290:15,
290:15, 290:16,
290:16

theirs ^[1] - 174:6

themselves
^[3] - 150:7, 202:17,
209:3

THEODORE
^[88] - 6:10, 6:14,
10:2, 10:5, 10:9,
10:15, 11:1, 11:10,
11:13, 12:16, 13:4,
13:7, 13:9, 13:13,
13:16, 14:8, 14:13,
15:17, 17:4, 17:9,
17:16, 18:3, 19:16,
20:6, 20:13, 21:7,
22:12, 22:15, 23:3,
23:6, 23:13, 23:18,
25:5, 25:13, 26:2,
26:9, 26:17, 28:5,
28:10, 28:13, 28:18,
29:7, 29:11, 29:14,
29:17, 30:4, 30:7,
30:14, 30:17, 32:14,

33:1, 33:8, 34:11,
 40:9, 40:15, 41:3,
 41:7, 42:5, 43:11,
 43:14, 44:3, 44:6,
 44:11, 44:16, 45:12,
 46:8, 46:16, 47:10,
 49:2, 49:7, 49:11,
 50:4, 50:10, 50:15,
 51:2, 51:8, 51:12,
 52:1, 52:6, 52:15,
 53:1, 53:6, 53:14,
 54:7, 54:12, 58:18,
 59:7, 63:5

Theodore ^[4] - 6:14,
 35:10, 38:5, 39:10

there'd ^[1] - 49:14

thereafter
^[3] - 221:13, 253:10,
 280:14

therefor ^[1] - 289:7

therefore ^[8] - 61:4,
 99:14, 142:2, 163:7,
 173:17, 224:18,
 256:15, 284:1

they've ^[7] - 15:2,
 15:14, 62:15, 156:4,
 165:2, 192:18,
 214:4

thicker ^[3] - 186:10,
 233:3, 265:18

thinking ^[3] - 33:1,
 80:14, 148:2

third ^[6] - 132:4,
 135:16, 149:11,
 228:12, 260:9,
 287:5

THIS ^[1] - 290:15

thousand
^[6] - 171:11, 171:13,
 171:16, 171:17,
 172:8

three ^[52] - 14:9,
 14:10, 17:8, 17:11,
 18:2, 19:2, 19:9,
 19:15, 20:8, 20:11,
 26:18, 51:4, 84:13,
 85:6, 92:2, 115:8,
 130:3, 130:10,
 130:12, 131:8,
 139:7, 158:5, 160:1,
 169:15, 183:5,
 183:10, 184:1,
 184:5, 185:14,
 187:2, 202:6, 202:8,

202:9, 210:12,
 221:4, 226:13,
 232:7, 233:13,
 236:3, 253:1,
 258:10, 263:11,
 265:4, 266:10,
 268:17, 271:3,
 271:6, 271:9, 280:5,
 285:6

three-bedroom

[1] - 19:2

three-families

[1] - 131:8

three-family

[3] - 130:3, 130:10,
 130:12

three-foot [1] - 26:18

three-unit [1] - 139:7

threshold

[2] - 195:13, 199:15

thresholds [1] - 194:6

throughout

[1] - 37:16

throw [1] - 129:6

Thursday [3] - 70:5,

84:8, 85:10

THURSDAY [1] - 1:5

ticket [1] - 68:15

tie [2] - 40:13, 116:14

tied [2] - 40:6, 162:12

tight [2] - 111:15,

131:3

tilt [1] - 158:14

Tim [11] - 36:12,

183:1, 184:6, 186:1,

200:11, 201:16,

232:12, 235:13,

239:11, 265:9,

268:6

timeline [3] - 187:9,

234:2, 266:17

TIMOTHY

[46] - 190:15, 201:3,

201:15, 202:12,

203:16, 204:13,

205:8, 205:12,

205:15, 206:1,

206:8, 207:15,

207:18, 209:3,

209:17, 210:4,

210:8, 210:11,

213:10, 213:14,

235:8, 235:18,

236:17, 237:14,

237:18, 238:4,
 238:8, 239:1, 239:3,
 239:15, 240:4,
 240:11, 241:1,
 241:12, 241:17,
 242:3, 242:7, 263:4,
 268:7, 268:10,
 269:9, 269:13,
 270:1, 272:4, 272:7,
 273:6

Timothy ^[1] - 230:12

tiny ^[1] - 27:8

TO ^[1] - 290:15

today ^[6] - 66:13,

71:12, 75:6, 80:9,

145:3, 146:7

together ^[4] - 127:7,

134:4, 165:8,

207:14

tone ^[1] - 129:7

tonight ^[33] - 3:9,

4:17, 45:17, 65:4,

65:13, 67:2, 87:14,

109:9, 133:8,

135:18, 145:17,

182:14, 183:5,

185:10, 185:14,

200:4, 221:11,

223:8, 223:12,

224:4, 225:14,

232:7, 253:8, 255:5,

255:9, 256:1,

257:11, 265:4,

280:12, 282:9,

282:13, 283:5,

284:15

took ^[1] - 146:15

top ^[16] - 10:16,

27:13, 96:9, 153:17,

159:3, 161:10,

171:5, 202:4,

202:10, 202:13,

204:18, 206:18,

213:1, 213:16,

240:1

topography

^[2] - 21:11, 22:6

touch ^[1] - 115:14

touched ^[2] - 16:1,

25:8

toward ^[2] - 16:12,

16:13

tower ^[4] - 213:1,

218:11, 250:9,

277:14

town [3] - 187:16,
234:9, 267:6

towns [4] - 187:2,
233:13, 263:11,
266:10

traditional [1] - 31:15

traffic [11] - 24:10,
38:13, 49:18, 99:18,
120:2, 180:1,
217:10, 249:8,
276:13

transcribe [1] - 5:5

TRANSCRIPT

[1] - 290:15

transcript [5] - 4:11,
289:2, 289:6,
289:15, 289:16

transcripts

[1] - 134:17

transition

[3] - 161:17, 163:7,
164:3

transmission

[7] - 185:17, 194:1,
222:11, 232:10,
254:8, 265:7,
281:12

transmit [1] - 3:17

transmitted

[1] - 189:7

treatment [1] - 111:9

tree [2] - 115:5, 115:9

tremendous

[1] - 130:2

Tremont [3] - 2:5,

64:15, 70:7

trend [1] - 37:8

triangulation

[2] - 163:3, 163:6

Trinity [1] - 35:8

triple [1] - 159:1

troubled [1] - 54:17

troublesome

[1] - 25:10

true [8] - 13:2, 90:11,
139:11, 187:4,
194:17, 233:15,
266:12, 290:6

truly [1] - 175:15

Trust [1] - 236:2

try [1] - 115:12

trying [12] - 15:1,
15:3, 16:2, 19:13,

20:5, 69:9, 142:15,
154:17, 188:5,
204:8, 237:11,
262:9

Tube ^[1] - 135:8

Tuesday ^[2] - 84:7,
85:9

turn ^[7] - 95:12,

119:12, 157:3,

158:12, 184:6,

192:9, 235:13

turning ^[1] - 192:10

twice ^[1] - 171:16

twisting ^[1] - 164:15

two ^[80] - 3:11, 4:15,

6:18, 7:4, 7:5, 19:2,

19:16, 20:4, 28:6,

28:10, 29:3, 30:18,

49:12, 49:14, 50:6,

51:12, 72:16, 73:18,

84:12, 85:6, 87:7,

89:17, 91:17, 92:3,

102:17, 103:1,

103:7, 103:10,

107:14, 108:11,

113:12, 117:14,

118:13, 130:16,

145:8, 145:12,

147:5, 147:6,

150:18, 151:6,

151:14, 151:16,

152:2, 153:4, 154:7,

155:3, 162:15,

163:1, 166:6, 166:9,

167:4, 167:5,

169:15, 170:13,

171:16, 179:11,

184:8, 188:16,

189:3, 199:7, 202:3,

210:8, 210:11,

219:10, 225:1,

228:13, 228:16,

231:4, 234:18,

251:8, 256:16,

260:10, 260:13,

264:1, 267:15,

278:13, 284:2,

287:6, 287:9

two-and-a-half

^[1] - 169:15

two-family

^[9] - 103:1, 103:10,

108:11, 117:14,

118:13, 145:8,

145:12, 150:18,
151:14

two-fold ^[1] - 7:4

two-story

^[3] - 162:15, 166:6,
170:13

two-year ^[3] - 225:1,

256:16, 284:2

type ^[1] - 159:9

types ^[1] - 103:7

typical ^[2] - 31:9,

209:15

Tyvek ^[1] - 109:1

U

U.S. ^[1] - 236:2

unable ^[1] - 27:2

unanimous

^[3] - 61:17, 116:11,
178:9

unbiased

^[1] - 139:10

uncertainty

^[2] - 148:10, 148:12

unchanged

^[1] - 131:17

UNDER ^[1] - 290:16

under ^[53] - 10:10,

57:8, 81:14, 108:10,

115:4, 123:10,

135:17, 145:17,

149:5, 149:6, 161:2,

184:10, 184:14,

185:1, 185:3, 186:4,

193:6, 196:9,

199:13, 215:10,

215:13, 215:15,

217:7, 218:18,

226:2, 227:14,

231:6, 231:10,

231:15, 231:17,

232:15, 247:7,

247:11, 247:12,

249:5, 250:16,

257:17, 259:11,

264:3, 264:7,

264:12, 264:14,

265:12, 275:13,

275:17, 275:18,

276:10, 278:3,

285:3, 286:7

undersigned

^[1] - 290:4

understandably

[1] - 109:1

undertaken [1] - 36:2**unfinished** [1] - 132:5**unfortunately**

[5] - 135:8, 205:1,
228:3, 259:18,
286:14

unhappy [1] - 214:17**UNIDENTIFIED**

[6] - 41:11, 124:1,
124:9, 125:1, 126:7,
212:4

unique [1] - 147:3**unit** [14] - 18:13,

18:17, 19:2, 39:9,
130:9, 132:6, 139:2,
139:7, 139:18,
140:6, 140:10,
140:17, 174:14,
174:16

units [2] - 271:16,

272:4

University

[1] - 212:12

UNLESS [1] - 290:16**unless** [7] - 119:18,

189:2, 194:2,
200:10, 211:13,
235:4, 268:1

unsuitable [1] - 21:15**unusable** [1] - 27:9**unusual** [2] - 147:16,

170:11

up [57] - 6:16, 15:15,

23:2, 24:8, 34:1,
34:16, 47:4, 55:9,
71:14, 73:12, 83:11,
88:18, 93:17, 97:8,
105:11, 108:13,
113:4, 116:5, 123:9,
124:3, 136:4, 146:3,
164:8, 164:9,
169:10, 170:9,
190:4, 190:12,
191:3, 191:18,
195:15, 197:16,
199:1, 199:17,
202:2, 202:13,
204:16, 204:18,
207:7, 208:4, 210:9,
211:15, 212:2,
214:18, 229:3,
236:4, 236:5,

239:17, 244:5,
 260:18, 268:8,
 268:12, 269:16,
 270:7, 272:16,
 273:12, 287:14
updated [3] - 69:16,
 87:7, 89:13
upgraded [1] - 210:14
upgrading
 [1] - 132:11
upper [10] - 7:4, 8:2,
 18:12, 35:14, 35:15,
 36:18, 38:8, 38:9,
 39:13, 51:3
upstairs [5] - 13:6,
 76:16, 77:1, 77:2,
 134:3
urgency [1] - 72:13
usage [1] - 31:10
useful [3] - 17:5,
 150:6, 153:8
uses [8] - 37:16,
 100:7, 120:7,
 141:15, 180:6,
 217:16, 249:14,
 277:1
utilize [7] - 221:10,
 236:3, 253:7,
 280:11

V

value [1] - 38:15
vantage [2] - 207:5,
 207:6
variance [4] - 63:4,
 70:6, 94:12, 119:10
Variance [28] - 17:7,
 23:13, 26:1, 62:12,
 94:3, 94:4, 104:6,
 104:9, 104:10,
 106:6, 107:7, 117:6,
 117:8, 118:18,
 119:7, 121:6, 139:6,
 140:16, 141:9,
 143:3, 144:16,
 170:18, 177:7,
 177:9, 178:14,
 179:3, 179:5, 181:6
Variances [2] - 54:18,
 56:7
various [3] - 215:12,
 247:10, 275:16
varying [1] - 66:10

vehicle ^[1] - 38:12
verbally ^[1] - 76:12
Verizon ^[1] - 237:6
versus ^[1] - 109:15
via ^[1] - 175:12
video ^[1] - 3:16
view ^[22] - 16:16,
 34:9, 59:4, 62:7,
 87:18, 115:1,
 115:15, 131:5,
 157:12, 159:5,
 169:16, 170:3,
 203:13, 220:17,
 228:4, 252:14,
 260:1, 272:15,
 272:18, 273:7,
 279:18, 286:15
viewed ^[8] - 212:16,
 219:17, 220:2,
 244:15, 251:15,
 251:18, 279:2,
 279:5
viewing ^[1] - 204:11
views ^[2] - 67:4,
 205:17
violation ^[1] - 145:16
virtually ^[2] - 159:1,
 164:7
virtue ^[1] - 146:1
visibility ^[1] - 204:1
visible ^[8] - 206:15,
 237:1, 237:6,
 241:10, 241:14,
 241:18, 243:9,
 243:16
visitors ^[1] - 24:11
visual ^[4] - 17:6,
 200:8, 272:16,
 274:5
visually ^[1] - 156:18
voice ^[2] - 90:2, 90:4
voiced ^[1] - 78:9
volume ^[1] - 289:6
vote ^[18] - 56:1, 56:2,
 87:15, 99:4, 99:6,
 111:1, 116:8, 116:9,
 116:12, 116:13,
 125:4, 141:4, 141:7,
 177:4, 177:6, 215:5,
 274:16
voted ^[1] - 57:5
votes ^[1] - 246:15

W

W-O-R-E-L-L

[2] - 144:15, 178:17

wait [6] - 7:3, 54:14,
82:16, 82:18, 129:8,
181:14

waiting [2] - 50:13,
128:7

waived [1] - 77:8

waiver [7] - 74:18,
75:2, 75:9, 75:14,
81:8, 125:10

waives [3] - 222:12,
254:9, 281:13

walk [3] - 12:1, 12:3,
200:11

wall [7] - 27:10,
44:12, 44:13,
108:12, 131:10,
151:16, 151:18

walls [1] - 152:18

wandered [1] - 64:7

wants [12] - 20:2,
55:2, 67:13, 67:16,
84:2, 126:15, 162:4,
185:5, 216:3, 232:1,
248:1, 264:16

warned [1] - 139:1

watch [1] - 135:7

watching [1] - 113:17

Watson [2] - 129:4,
143:5

wave [3] - 222:18,
254:15, 282:1

waves [3] - 223:15,
255:12, 282:16

ways [1] - 38:11

weather [1] - 70:17

weathered

[2] - 214:1, 214:5

website [1] - 42:10

Wednesday

[2] - 84:8, 85:10

week [3] - 42:15, 68:6

weeks [8] - 87:7,
145:7, 228:13,
228:16, 260:10,
260:13, 287:6,
287:9

weight [1] - 182:13

welcome [2] - 57:18,
143:13

welfare [6] - 100:11,

120:14, 180:13,
218:2, 249:18,
277:5

WENDY ^[41] - 65:5,
65:11, 66:3, 66:6,
66:15, 67:14, 67:18,
69:11, 70:16, 71:2,
71:8, 71:11, 72:2,
73:1, 73:4, 76:7,
76:9, 79:2, 79:5,
79:8, 79:14, 80:7,
80:10, 83:2, 83:8,
83:13, 84:12, 85:1,
85:5, 85:15, 86:3,
86:5, 86:11, 86:16,
87:1, 87:10, 88:3,
89:5, 89:9, 89:14,
90:8

west ^[1] - 237:1

whereas ^[1] - 137:7

WHEREOF ^[1] - 290:7

white ^[3] - 238:13,
239:5, 239:7

whole ^[6] - 7:14,
68:18, 73:6, 133:5,
201:4, 202:15

wholeheartedly
^[1] - 37:3

wide ^[2] - 203:1,
203:2

width ^[1] - 194:4

wife ^[2] - 173:4,
174:15

wife's ^[1] - 76:15

WILLIAMSON
^[4] - 58:2, 58:17,
59:2, 59:9

Williamson ^[1] - 58:3

willing ^[3] - 76:1,
197:9, 200:7

window ^[19] - 12:2,
12:7, 15:8, 52:3,
77:14, 103:3, 103:4,
107:8, 111:9,
111:12, 112:2,
115:7, 115:8, 115:9,
115:17, 167:4,
167:13, 168:4,
179:9

windows ^[20] - 15:6,
16:9, 44:5, 44:7,
103:17, 105:14,
108:5, 108:8,
108:10, 108:13,

109:3, 111:11,
114:16, 114:17,
120:1, 163:8, 167:6,
168:8, 179:11

wireless ^[4] - 162:5,
218:11, 250:9,
277:14

Wireless ^[1] - 237:7

wish ^[6] - 13:13, 42:8,
102:16, 182:11,
191:5, 194:15

wishes ^[9] - 40:6,
59:11, 98:16,
113:10, 122:10,
138:13, 138:16,
172:13, 172:15

wishing ^[16] - 6:8,
34:17, 35:3, 64:17,
91:8, 97:9, 113:6,
122:7, 128:10,
136:5, 144:7, 182:7,
212:7, 230:8, 244:6,
262:7

withdraw ^[1] - 67:8

withdrawn ^[1] - 210:5

WITNESS ^[1] - 290:7

woman ^[1] - 151:10

wonder ^[1] - 241:10

wondered ^[1] - 58:11

wonderful ^[3] - 92:1,
115:9, 130:11

wondering ^[1] - 191:8

word ^[1] - 162:7

words ^[4] - 37:12,
219:17, 251:15,
279:2

Worell ^[5] - 144:14,

148:5, 149:16,
150:16, 178:16

WORELL

^[14] - 152:10, 153:9,
153:13, 155:10,
156:3, 160:6,
164:10, 167:5,
167:11, 168:7,
168:10, 168:13,
176:18, 179:11

workers ^[1] - 114:8

works ^[1] - 44:10

worried ^[1] - 112:2

worry ^[1] - 115:15

worse ^[1] - 212:13

wraparound

^[1] - 156:6

wrapped ^[1] - 109:1
wrinkle ^[1] - 270:12
write ^[2] - 66:3, 89:18
writing ^[11] - 35:9,
 36:15, 38:5, 39:10,
 67:5, 74:2, 89:3,
 90:5, 139:4, 174:9,
 175:7
wrote ^[5] - 66:7,
 89:17, 130:5,
 210:17
www.reportersinc.c
om ^[1] - 1:17

Y

yard ^[1] - 102:18
year ^[10] - 7:16, 36:3,
 115:10, 139:18,
 165:1, 172:2,
 209:14, 225:1,
 256:16, 284:2
years ^[12] - 46:11,
 55:13, 91:17,
 132:14, 133:4,
 137:11, 139:12,
 147:5, 147:6, 151:6,
 169:15, 172:1
yesterday ^[3] - 66:4,
 71:12, 90:1
young ^[1] - 134:6

Z

ZBA ^[1] - 113:17
Zelinski ^[2] - 290:4,
 290:11
zone ^[4] - 18:14,
 21:13, 24:5, 24:10
zoned ^[4] - 18:14,
 18:15, 48:18, 61:14
zoning ^[18] - 32:17,
 36:16, 37:17, 38:6,
 39:11, 48:17, 61:6,
 68:10, 82:3, 82:12,
 86:1, 87:4, 99:15,
 118:3, 142:3, 173:8,
 173:18, 178:2
ZONING ^[1] - 1:2
Zoning ^[19] - 1:11,
 3:5, 18:11, 38:2,
 42:10, 61:4, 95:7,
 145:1, 175:10,
 184:15, 192:12,
 215:10, 231:11,

247:7, 264:8,
275:13, 288:13,
289:6, 289:15
zooming [1] - 270:5