

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MARCH 10, 2016
7:00 p.m.

in

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

Constantine Alexander, Chair
Brendan Sullivan, Vice Chair
Slater W. Anderson, Associate Member
Jim Monteverde, Associate Member
Laura Wernick, Associate Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

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(700 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Slater W. Anderson, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And at the outset let me make a statement:

That after notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as to not interfere with the conduct of the meeting.

At the beginning of the meeting the Chair will inform other attendees at the meeting that a recording is being made.

And I will inform people that a recording is being made by a person in attendance. And in addition there's a second recording made. As you may notice we have a

stenographer who prepares the transcript of our hearing, to assist herself in typing up the minutes of the meeting or what transpires at the meeting, she also records. And so she's making a recording, we have another recording here, and so please be advised this is what is happening.

* * * * *

(7:00 p.m.)

(Sitting Members Case BZA-008898-2015: Constantine Alexander, Brendan Sullivan, Slater W. Anderson, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: With that, I'm going to open the meeting up by going to the continued cases which is our usual course of proceeding. And the continued cases are cases that started at an earlier meeting, but for one reason or another were not decided and put off until tonight.

And the first case I'm going to call is case No. 008898, 201 Brookline Street No. 6.

Is there anyone here wishing to be heard on this

matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one wishing to be heard. I missed you sorry, sir.

UNIDENTIFIED AUDIENCE MEMBER: Sorry. So actually I don't know precisely what the situation is but I'm a neighbor.

CONSTANTINE ALEXANDER: Okay, let me -- all right.

UNIDENTIFIED AUDIENCE MEMBER: So I'll find out.

CONSTANTINE ALEXANDER: You'll find out in about two minutes.

Okay, the Chair -- this meeting was continued once before because the petitioner prepared inadequate plans, insufficient for us to make a judgment on the case. We continued it until tonight. The petitioner is required to maintain a new posting sign, as they did before, announcing there's going to be a hearing tonight. The petitioner did not do that. And then also it would appear that the

petitioner has now submitted new plans which we required the first time. So, we're going to have to continue this meeting. The petitioner's requested that we continue it until April 14th.

Can you make it? Is that a date that's convenient for you?

UNIDENTIFIED AUDIENCE MEMBER: I'll make it.

CONSTANTINE ALEXANDER: Okay.

UNIDENTIFIED AUDIENCE MEMBER: I think.

CONSTANTINE ALEXANDER: The Chair will also state, and I asked Mr. O'Grady to inform the petitioner of this, that we've continued the case now twice. It's cluttering our docket and it's now to fish or cut bait. So they better come in here with their final plans, adequate plans with the detail necessary. And as I'll get to it in a second, they better put up a posting sign as required. Because if they don't do these things, there's a very good chance we'll just decide against them and throw the case out on April 14th.

So on the basis of all of this, the Chair moves that we grant the continuance that this case be continued until seven p.m. on April 14th subject to the following conditions:

One, that the petitioner signs an agreement to extend the time for a decision. And he has done that -- or they have done that.

Second, that the posting sign be maintained. It's not there now, for the period of time reflecting the new date, April 14th, the new time, seven p.m. And that it be maintained -- sir, let me just finish before we take a vote. And be maintained for the two weeks before the hearing is required by our Ordinance.

And three, this may be important to you, sir, that the petitioner needs to have final plans together with a table of dimensional requirements in our files, filed with the Inspectional Services Department, no later than five p.m. on the Monday before April 14th. This allows you or

any other interested citizen to go to the Inspectional Services Department and view the plans in advance of the hearing.

Before I take a vote you had a question?

UNIDENTIFIED AUDIENCE MEMBER: I just checked my calendar and I'm actually out of town on April 14th.

CONSTANTINE ALEXANDER: Okay. We'll do another date. What's the next one after that?

SEAN O'GRADY: April 28th.

CONSTANTINE ALEXANDER: 28th?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Amend that motion to make it the 28th still seven p.m.

UNIDENTIFIED AUDIENCE MEMBER: Thank you.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case

continued.

(Alexander, Sullivan, Anderson, Monteverde,
Wernick.)

BRENDAN SULLIVAN: Have you reviewed the plans?

UNIDENTIFIED AUDIENCE MEMBER: I have reviewed the
original plans.

CONSTANTINE ALEXANDER: They're not more than
drawings.

UNIDENTIFIED AUDIENCE MEMBER: Drawings.

BRENDAN SULLIVAN: Okay.

* * * * *

(7:05 p.m.)

(Sitting Members Case BZA-008899-2015: Constantine
Alexander, Brendan Sullivan, Slater W. Anderson, Jim
Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 008899, 201 Brookline Street, No. 5, right next-door.
And what I had said before to No. 6 applies to No. 5.

We continued the case once before because of inadequate plans. We're going to have to continue tonight because the posting sign was not maintained as required by us.

And that we will continue this case until April 28th on a basically a fish or cut bait basis.

The petitioner better be in here with adequate plans and have posted, complied with our posting requirements for the period before the hearing.

So the Chair moves that we continue this case until seven p.m. on April 28th subject to the following conditions:

That the petitioner sign a document for extension of time for rendering a decision. And they have done that.

That the new posting sign reflecting the new date, excuse me, and the new time be posted and maintained for the period of time required under our Ordinance.

And lastly, that plans, adequate and detailed

plans be -- have to be -- for the project proposed have to be in our files no later than five p.m. on the Monday before April 28th.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Motion carried.

(Alexander, Sullivan, Anderson, Monteverde, Wernick.)

* * * * *

(7:05 p.m.)

(Sitting Members Case BZA-008377-2015: Constantine Alexander, Brendan Sullivan, Slater W. Anderson, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The next the Chair will call case No. 008377, 299-301 Columbia Street.

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

UNIDENTIFIED AUDIENCE MEMBER: Yes.

CONSTANTINE ALEXANDER: We let the petitioner go first. For the record, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty, 675 Massachusetts Avenue appearing on behalf of the applicant William Finsthwait, FINSTHWAIT. Seated to my right is Andrew Richard. Mr. Richard is the project architect.

CONSTANTINE ALEXANDER: Project?

ATTORNEY JAMES RAFFERTY: Architect.

So this is an application for a Variance for property located -- and this is Mr. Finsthwait --

WILLIAM FINSTHWAIT: Hi.

ATTORNEY JAMES RAFFERTY: -- for a Variance for property located on Columbia Street in the Residence C-1 District. I think the site plan is the most illustrative plan for the Board's focus and does the best job of explaining what's going on here.

The site contains two, single-family dwellings, two detached single-family dwellings. The front house which is currently under renovation, and is not the subject of the Variance, and the rear house. The rear house today -- both of the houses were -- are of aging and they were purchased by Mr. Finsthwait, the property's on a single lot, and his effort on renovation involved creating a better circulation into the rear house. His objective is to make that a three-bedroom house. He believes it would be an ideal single-family for --

CONSTANTINE ALEXANDER: Isn't it not now a three-bedroom house, is it?

ATTORNEY JAMES RAFFERTY: It is a three-bedroom, but the third bedroom is rather small. And the whole floor plan -- I have photos of the existing conditions, and the floor plan of the existing floor plans.

CONSTANTINE ALEXANDER: It's part of your commission?

ATTORNEY JAMES RAFFERTY: Right. The existing floor plans do in fact show a room that's identified as a third bedroom, correct.

CONSTANTINE ALEXANDER: Right, that's what I thought.

ATTORNEY JAMES RAFFERTY: So the changes, I think they're rather obvious. The Board has certainly seen similar projects before. It allows for a little additional circulation. We're talking here an addition of 180 square feet, 184 to be precise. It's a footprint of approximately twelve-by-seven.

WILLIAM FINSTHWAIT: Eight-by-twelve.

ATTORNEY JAMES RAFFERTY: Okay. Seven and a half I think in the plan. By twelve.

And it's occurring in this area of the home. When we originally filed the application in -- this case was actually scheduled for November, I checked the file, the proposed addition of roughly the same size was going to go

in this area right here.

CONSTANTINE ALEXANDER: Excuse me, Mr. Rafferty.

If any of you folks would like to come up and see what he's showing, feel free. You don't have to look at his back. I just want to make sure they know what's going on.

ATTORNEY JAMES RAFFERTY: Understood.

CONSTANTINE ALEXANDER: Go ahead, I'm sorry.

ATTORNEY JAMES RAFFERTY: So we arrived that night and met some of the abutters, the neighbors, and it was clear that they had strong reservations about the proposal. And at that time we were unaware exactly what they were, but we requested a continuance to allow us an opportunity to explore what they might be. The case was continued, then, to a date in January. I believe it was January 10th. We did have an opportunity for some limited discussion, and it came to primarily my attention that the proposed location here was going to be -- have a negative impact on the closest abutter, the abutting property here. And sure

enough if you go out to the site and study the sun impacts and all of that, we found that to be a legitimate concern. So we discussed our willingness to explore an alternative, and we were -- and in some e-mail communication between myself and one of the abutters, they had identified the areas they were concerned about, sunlight and the like, and we had a productive exchange at that point, I would say, and it allowed us to proceed with an alternative plan that left the proposed addition over here.

I was able to -- we were able to complete the work in that plan and we sent the plans to the neighbors on February 1st, well in advance of this date. This date was selected to accommodate the schedule of neighbors. So to be honest, I heard nothing for nearly a month. And I sent a reminder e-mail last week saying, the applicant is required to submit the plans by five o'clock on Monday, I would appreciate learning any reaction you might have since, you know, we began this exercise in an attempt to respond to

that. And I received an e-mail communication on Saturday saying, thank you, but we do not believe there is a need for a Variance. So we have not had the benefit of any reaction to what we've done despite waiting a month, despite having making changes in an attempt to reference that. Certainly the abutters' prerogative. So, as I'm here tonight I'm not exactly certain what the objection is, but nonetheless, the extent of the communication I've had from the abutters after sending them numerous e-mails and communications, a set of plans, was we do not believe there's a need for a Variance.

CONSTANTINE ALEXANDER: Would it make sense, I don't mean to interrupt you at this point, to recess this case, hear other cases, you can go in the back room with the neighbors that are here, and have your dialogue that you weren't able to have until now?

ATTORNEY JAMES RAFFERTY: Well, if the neighbors feel there's value in that. I mean, I frankly, I frankly took the e-mail to be -a.

LAURA WERNICK: Positive?

ATTORNEY JAMES RAFFERTY: -- an indication that there was an unwillingness to have such an exchange.

CONSTANTINE ALEXANDER: I raise it only because you made a comment you didn't really know why they're unwilling. You can find out if you recess. But it's up to you and the neighbors.

ATTORNEY JAMES RAFFERTY: Well, I certainly -- I imagine my client is prepared to do that.

WILLIAM FINSTHWAIT: We certainly --

ATTORNEY JAMES RAFFERTY: Okay.

WILLIAM FINSTHWAIT: But we've met all their objections, every single one they've asked, we've met. And then we get this e-mail that says no, we don't want to do --

ATTORNEY JAMES RAFFERTY: Okay, to the question of whether you'd meet with them to be responsive to the --

WILLIAM FINSTHWAIT: Yeah.

CONSTANTINE ALEXANDER: Do you feel it's

productive to have a --

UNIDENTIFIED AUDIENCE MEMBER: We don't feel that there's that big of an issue. We are here --

CONSTANTINE ALEXANDER: Okay.

UNIDENTIFIED AUDIENCE MEMBER: -- to hear from these folks and to voice the concerns that remain. But we're appreciative of the willingness to change plans and --

CONSTANTINE ALEXANDER: I'm sorry, I should have asked you to give your name. Give your name to the --

MELISSA TONACHAL: I'm sorry. Melissa Tonachal, T-O-N-A-C-H-A-L and I'm at 303 Columbia. So we don't feel like there's a big thing to do here.

CONSTANTINE ALEXANDER: Okay.

MELISSA TONACHAL: And we just have had other things happening in the course of the month.

CONSTANTINE ALEXANDER: I guess there's no need to recess then.

We also have, by the way, a petition in our file

in support. It's not dated. So I don't know whether the petition is with regard to the earlier plans?

ATTORNEY JAMES RAFFERTY: Oh, no, it was collected this past week by Mr. Finsthwait.

CONSTANTINE ALEXANDER: That's this plan?

ATTORNEY JAMES RAFFERTY: Yeah. That plan hasn't -- the prior plan hasn't been in circulation as I said, since February 1st, this is the plan.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And Mr. Finsthwait has shown in the broader neighborhood, but I had some e-mail communication and I had e-mail communications from the people here tonight because they had attended. So, yes, the petition you see there was collected by Mr. Finsthwait. He's -- so he's communicated with a number of people and he could offer testimony about the positive reaction he got as he showed them the plan and showed them the changed plan.

CONSTANTINE ALEXANDER: Right. And to be clear,

the problem here, the problem being why you're here for a Variance, is because of setback issues. You're going to be within the FAR?

ATTORNEY JAMES RAFFERTY: Yes, and that's the last point I wanted to emphasize.

The property, the combined GFAs of the property do fall below the permitted FAR. And Variances are Variances but I do sometimes advise clients that not all Variances are perhaps equal in the sense that some cases result in greater density or bulk or mass on a lot than the Ordinance would allow for.

In this case the proposed addition in this location met the setback requirement. It's a funny lot in terms of measuring setbacks, in terms it's a classic pork chop, and what's a front and what's a rear? And I know it took some effort on the part of the applicant working with Mr. Singanayagam figuring out what's the side and what's the rear. When the addition was proposed here, and one of the

reasons this location was settled upon, is because it was -- it met the setback requirements. We were still seeking the Variance because as in that case and as in this case, the constraint, the 25 percent constraint has already been exceeded due to a prior addition to the property. That wasn't initially known to the applicant. To be candid, I think when they originally looked at this, they saw they were below the allowable FAR and they looked for an opportunity to see where they might locate that. The review of the building permit history revealed that there had been some prior additions, and they were over that.

In either case, but admittedly, this is a case, as is sometimes the case, that what seems to be a preferred location requires more relief than the location that is more impactful.

CONSTANTINE ALEXANDER: But either case, you need relief?

ATTORNEY JAMES RAFFERTY: We need relief. In one

case it is relief merely related to the non-conforming nature of the existing structure in the prior application. This application, because of this setback issue, we need relief as well.

So if you've seen the site, the abutting property here actually is the City of Cambridge. It's a public park. This area over here is surface parking for a multi-family building. So I know when Mr. Finsthwait and his architect were focussed on the dimensions and the siting of this, there's another home right here, and site lines of that home and the notion of holding this back so that it doesn't extend beyond the property line here, and that this will remain a green open space, which it is far from today, but it is nonetheless open. There was an appreciation for a way in which the -- at least the ability to experience that open space at least by way of the view and the like would be respected and enhanced. So this footprint, and if you've had an opportunity to see the floor plan, it does allow for

a more generous and better circulation for the house. The house is an older home.

The hardship is clearly related to the unusual shape of the lot, the position of the house on the lot. If the house was more forward, we could do this without the setback relief. And it's a -- as I said, it's an addition that really makes it more of a functioning three-family home. And it's for that purpose, and in light of the other improvements that are occurring here, if you've had an opportunity to visit the site, had you seen it before and saw it now you would see how the front home is being restored in a very contextual and appropriate manner. The moldings and the clapboards and the trim are being returned. It's a high quality type of work. Mr. Finsthwait is experienced in renovations of homes of this vintage and he's attempting to bring the same attention here. This home currently has green vinyl siding which no longer is popular as it once was. So I'm guessing that that's not going to

remain. That alone ought to in my view encourage neighborhood support.

But nonetheless we find ourselves seeking the approval of the Board to allow for this addition in this zoning district to allow for a single-family home to have the necessary accommodations to hopefully be a home for a family with a three-family house.

CONSTANTINE ALEXANDER: Digression for a second.

ATTORNEY JAMES RAFFERTY: Three-bedroom.

CONSTANTINE ALEXANDER: When I was looking at the plans before the hearing, I raised with Mr. O'Grady the possibility that you might also need a Special Permit because you're moving some windows or adding windows in a prohibited setback. I don't know what came from that.

ATTORNEY JAMES RAFFERTY: You're to be commended for your keen eye, Mr. Chair. I had not seen that -- when I initially responded to that phone call, because I had realized that by relocating here, we were now -- we had

windows in that location, and I questioned Mr. O'Grady. I said well, we used to take the view that the Variance -- we did cite 8.22, that the Variance would cover that. And he was quick to agree that that was the case, he said but the issue here was in the existing structure. That was error and --

ANDREW RICHARD: My error.

ATTORNEY JAMES RAFFERTY: -- and ironically I had been contacted by Mr. Richard that very day saying, oh, we discovered an error and we're getting you a new elevation. So there is no proposal to change the windows in the existing house, and I believe yesterday or maybe this morning we filed a corrected elevation to reflect the -- so the openings in the existing property are unchanged, and but it is true that the addition does contain windows which we would ask the Board to allow the relief contained in the overall Variance to address those.

CONSTANTINE ALEXANDER: Yes, okay.

Where is that file by the way?

SLATER ANDERSON: Right here.

CONSTANTINE ALEXANDER: Okay. Is this the new elevation that you submitted?

ANDREW RICHARD: Yes, I can tell.

CONSTANTINE ALEXANDER: This replaces the --

ATTORNEY JAMES RAFFERTY: Just that sheet.

CONSTANTINE ALEXANDER: -- what's in the other package?

ANDREW RICHARD: Yes, sir.

ATTORNEY JAMES RAFFERTY: Just that sheet, which essentially means that there is no increase in the number of openings on the existing -- on the rear wall of the existing structure. So all of the focus is on the rear house. What I did in the dimensional form on Monday is I did a little bit of a breakout for that house itself, because you have to combine the dimensional information in the forms for both structures and it really gets confusing. So you start

thinking what's the front setback? And technically we're measuring it off here and what the rear setbacks. I did a little breakout because it really is seven-and-a-half, seven, seven. It's eight-by-twelve. It's that addition. It's two story. The floor plans tell the story. It allows for kind of a mudroom style entry into the home.

The big thing it does in talking to Mr. Richard, it allowed him to relocate the stairway to create better circulation over here. And now you can see, you get a kitchen that's more functional. You get a living room. But the scale and context, I would suggest, is completely in keeping with the house. Were the house, were the house more forward into the lot or were there not to have been an earlier addition, the relief wouldn't be needed, but we find ourselves with a category of property that is non-conforming and thus the relief is needed.

CONSTANTINE ALEXANDER: Yes, sir. I'm sorry.

ATTORNEY JAMES RAFFERTY: For the Board's

consideration, I don't think there's any -- I did ask the architect to do a slight sun study because you can see there's absolutely -- there's not even a close call. There is no, given the orientation of the sun and everything, you can see in this location there is no impact on the sun, and that was identified in one of the communications I received, understandably. And in an e-mail I received from one of the neighbors, they said we are -- and this was back on January 7th, we are very concerned about further infringement on light, air, space, density, and privacy, which is certainly a legitimate concern. So I wanted to emphasize to the Board that in citing this here, one of the reasons it's as far back here is to keep it as far away from the other property as well. So again, it's causing a setback issue. If we brought it more forward, we found it would be more impactful on this neighbor who Ms. Raymond, who I believe is here this evening. So the attempt here was to get it as further into the lot -- as far into the lot to be responsive to the

concerns expressed about privacy. So our attempt was to be responsive to those issues and to come up with a modest addition that would enhance the building and be consistent with the character of the street.

CONSTANTINE ALEXANDER: Okay, thank you.

ATTORNEY JAMES RAFFERTY: Thank you.

And in addition, then we have the petitions that were noted. Mr. Finsthwait collected signatures from near abutters.

WILLIAM FINSTHWAIT: You're not going to let me say anything at all?

CONSTANTINE ALEXANDER: I'm sorry?

WILLIAM FINSTHWAIT: Jim's always got that look. Apparently not. I just want to say one thing. Can I say one thing?

I'm William Finsthwait.

CONSTANTINE ALEXANDER: You don't have to stand up.

WILLIAM FINSTHWAIT: I want to, though.

So when I went through, I got 27 people to agree that what I was doing was not asking for very much or was asking for something reasonable, I would show them every time, I would show them this is Columbia Street here, okay? And this is the front building we're doing, and here's the back building. We're asking for an eight-by-twelve addition.

CONSTANTINE ALEXANDER: We're well aware of that.

WILLIAM FINSTHWAIT: I know. But over here is my abutter on 303, okay? I can't see how in the world it would affect them.

Over here is Kim Raymond at 287. I don't know for the life of me how it would affect her.

CONSTANTINE ALEXANDER: Let me -- Mr. Rafferty may know the answer to this, and I'm going to tell you.

WILLIAM FINSTHWAIT: Go.

CONSTANTINE ALEXANDER: Just because this doesn't

affect them in your view, the neighbor over there doesn't mean we have to give you relief.

WILLIAM FINSTHWAIT: Of course not. Of course not.

CONSTANTINE ALEXANDER: We appreciate it. We have the Ordinance.

WILLIAM FINSTHWAIT: I got that.

CONSTANTINE ALEXANDER: We have the standards we have to apply.

WILLIAM FINSTHWAIT: Yeah.

CONSTANTINE ALEXANDER: We listen to neighbors, those -- and I think it's fair to say we pay more attention to those who are more directly affected than the ones who are not, but we listen to them all. And it's not determinative that the people on that side are not going to be impacted on what you're going to put on the other side of the house. Just so you understand.

WILLIAM FINSTHWAIT: I do. And I know you guys

have your system in what you do, and I get that. But I just wanted to let you know that when I went and talked, I got 27 people to agree with me that are in the area. They all said, you know, I don't see how this would be impactful on either people. There's a lot of friendship going on there. There's a lot of comradery, it's lovely, it's Cambridge. You know? And a lot of people say, you know, in all honesty I know the abutters and I want to side with them -- and many did. But I've got some signatures of people that were friends of theirs as well because they couldn't see the reason it would be impactful on them. I understand it's not just the abutters and neighbors, it's the Zoning Law, I get it, but I wanted to mention that.

CONSTANTINE ALEXANDER: Okay.

WILLIAM FINSTHWAIT: I was out there for many hours and that's why.

CONSTANTINE ALEXANDER: Thank you.

I'll open the matter up -- any questions at this

stage?

JAMES MONTEVERDE: No.

SLATER ANDERSON: I have a question.

CONSTANTINE ALEXANDER: Go ahead.

SLATER ANDERSON: Can you tell me a little bit about the prior addition, prior expansion that took place in reference to that that triggered the 25 percent?

ATTORNEY JAMES RAFFERTY: I imagine Mr. Richard knows about that.

ANDREW RICHARD: There was like a three-foot sliver that was added to this side.

CONSTANTINE ALEXANDER: In 1971, Slater. There is --

SLATER ANDERSON: A story, it went up two stories?

ANDREW RICHARD: Yeah, it was two stories. The front of the roof actually kind of comes down and clips and it's almost like a little bit of a saltbox, not quite.

SLATER ANDERSON: And that was a Variance for that

at the time?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: Was there?

CONSTANTINE ALEXANDER: I looked at the files. I saw it in the file. And it's very sparse because it's 1971. They didn't write long decisions in those days.

ATTORNEY JAMES RAFFERTY: The good old days.

CONSTANTINE ALEXANDER: There was a Variance to put on an addition. I didn't go beyond that.

SLATER ANDERSON: Okay, thank you.

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

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

MELISSA TONACHAL: I think I'll speak for a few of us.

CONSTANTINE ALEXANDER: One at a time.

ATTORNEY JAMES RAFFERTY: Would you like to sit?

We'll step back. I'll leave this here if it's helpful.

MELISSA TONACHAL: Thank you. Melissa Tonachal,
T-O-N-A-C-H-E-L.

KIM RAYMOND: Kim Raymond.

LAURA BOOTHE: Laura Boothe, 303 Columbia.

CONSTANTINE ALEXANDER: One at a time.

MELISSA TONACHAL: Sure. I think I'm going to cover most of it. The first is just to really appreciate the responsiveness of the owner and the architect to redraw plans in response to our concerns. That should not go understated or unnoticed. It's a major impact that's been thwarted and so we appreciate that very much.

I think one thing that we are here to say is that we just don't really see the why.

CONSTANTINE ALEXANDER: See the what, I'm sorry?

MELISSA TONACHAL: The why.

CONSTANTINE ALEXANDER: The why.

MELISSA TONACHAL: Of needing to make the house a

little bit bigger. I know it's eight-by-twelve. That's eight-by-twelve times two. And we all live in houses. Ours is about 750 square feet --

CONSTANTINE ALEXANDER: Have you seen the plans of the interior, what they're going to do with the interior as a result of this?

MELISSA TONACHAL: No, we have not.

CONSTANTINE ALEXANDER: You might want to look at that. It does make the kitchen, as Mr. Rafferty pointed out --

MELISSA TONACHAL: Yeah.

CONSTANTINE ALEXANDER: -- the flow, the occupant flow within the structure --

MELISSA TONACHAL: Yeah.

CONSTANTINE ALEXANDER: -- a lot more rational than it is now.

MELISSA TONACHAL: I'm -- yeah.

KIM RAYMOND: I want to say we respect that, but

that -- but that, I don't feel like in my day-to-day living in that neighborhood is that -- the inside will affect me. It's the outside that will --

CONSTANTINE ALEXANDER: I'm just coming to the reason why --

KIM RAYMOND: We appreciate that.

CONSTANTINE ALEXANDER: -- of just putting an addition --

MELISSA TONACHAL: Right, and that's lovely for the future owners. And, you know, that we all, again, these are all old houses. We all live in small spaces. For us it's a matter of making a bigger space for maybe a bigger family, a higher selling price. You know, we're just not convinced that along sides of incremental loss of open space or incremental addition buildings, to us that doesn't seem particularly -- it seems a bit superfluous I guess.

We are -- we -- I think part of -- we know we're not discussing the front house here, as Mr. Rafferty just

said, all the focus is on the rear house. The front house went up a story without needing a Variance or any attention. That's already -- that's already decreased our sunlight and air. And while it may be true that 27 of our neighbors think it's just fine, they're not trying to grow a garden in our space. They don't have a peach tree that will need to be moved. They don't try to eat dinner outside in our yard. And so -- sorry. And so, that's fine. Our relationships with our neighbors are pretty solid.

LAURA BOOTHE: We haven't seen the petition as a courtesy. We haven't seen the content of what Bill walked around with.

CONSTANTINE ALEXANDER: Okay, well, I'll read it in a second anyway.

MELISSA TONACHAL: It's a noted interest to us that everybody in the neighborhood would petition 27 people and not the direct abutters. And I think --

KIM RAYMOND: And engaged in the conversation.

MELISSA TONACHAL: Right. So again, so we can --

LAURA BOOTHE: Right and we went through counsel.

CONSTANTINE ALEXANDER: One at a time, please.

One at a time for the stenographer.

MELISSA TONACHAL: You know, so again, to sort of wrap back around, we really do appreciate the redesign. And we went from feeling like this is gonna have, you know, major negative impacts on all kinds of quality of life issues, to feeling more at ease about that. We are here I think to say there are outstanding issues, and because in part for us at 303 what's already happened without note in the front house, you know, that makes us anxious, frankly, about ongoing building. We know it's not the matter, sort of the matter before all of you. But the construction site, as a construction site, leads us to be additionally concerned. So we need to figure out where to take those concerns especially as construction moves to the rear house which is just feet from our front door.

LAURA BOOTHE: About five feet from our front door.

CONSTANTINE ALEXANDER: Who's next?

KIM RAYMOND: I think Melissa covered it.

CONSTANTINE ALEXANDER: Okay.

KIM RAYMOND: It's just, I mean I guess my question would be the -- you have to ask for a Variance, the reason -- what are the reasons that he --

CONSTANTINE ALEXANDER: Sure. That's a fair question. Let me try to explain.

By law there are three conditions that we have to -- that have to be satisfied to get a Variance. The one is -- and I'll refer to it. If we enforce the Ordinance as written, it will involve a substantial hardship, financial or otherwise, to the petitioner. So it would be a hardship.

Then, the hardship must be owing to circumstances relating to the soil conditions, shape, or topography of the lot or the structures. And especially affecting such land

or structure, but not affecting the zoning district generally.

And the third is that we can -- that relief can be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance. It's more of a catch-all general policy thing.

So those are -- that's their burden. They've got to -- we have to be persuaded that they satisfied all three of those conditions. If they don't, or we determine that they don't, Variance is denied. Okay? That's how it works.

KIM RAYMOND: That's what I understand.

LAURA BOOTHE: I would just add to that -- again, Laura Boothe, another abutter, just that we don't believe that those conditions have been met. That in keeping with the size and the scale of the project, I agree with Melissa and with Kim and we have other abutters here this evening that we do appreciate the work that Jim and his clients did

around basically cutting off our garden. And you were out over the weekend and saw what that would look like. But just the incremental encroachment I think continues to be an issue for us. We are very dense back in there which in my view is not further license to go and add to that. In terms of the scale and the scope of the program that's being outlined there today, I think he could come out and make the money that he invested in as a speculation. None of these things were in place when he went ahead to buy the properties, and I think it's a given in my view this particular owner already acts like he owns the neighborhood. And you were out there and, again, it's not for this body and we've certainly been on the phone with Mike Grover and Traffic and Parking -- Mike Grover and I -- actually Traffic and Parking routinely around construction vehicles blocking the sidewalk, not having the appropriate permits, increase of rats, plain old garbage. If anyone wants to drive by, it's one of the messiest job sites in the city. This is a

person that claims to be a neighbor. And so, again, I know this is not a matter before us, but there's nothing that indicates a willingness to proceed in a way to have significant impact in all different ways. And, again, not for this committee, but the timeline of this project the quality of life is really an accomplishment at the point.

CONSTANTINE ALEXANDER: Let me make a comment on that. And this is a problem every time we have a Variance for construction. There's a disruption in the neighborhood.

LAURA BOOTHE: Right.

CONSTANTINE ALEXANDER: But it's finite in time. I mean, you'll survive it. It's not a zoning issue for us.

LAURA BOOTHE: Okay.

CONSTANTINE ALEXANDER: You can go to other city bodies that will give you some relief if it gets pretty bad.

LAURA BOOTHE: Fair enough.

CONSTANTINE ALEXANDER: We can't grant -- we should not deny based on that.

LAURA BOOTHE: I understand. I understand, but I could open my sheets of papers and show you what things look like that I think are beyond what is reasonable in terms of a job site, again, not for you, but just in large part, I mean, just we don't feel that the petitioner has met, met the hardship.

CONSTANTINE ALEXANDER: You touched on it. And maybe, Mr. Rafferty, you can confirm this. I take it this is not, this project is not being done for a current occupant of the property who wants an upgrade, whoever owned it or lived in it before is gone and you're upgrading the property generally, presumably for resale?

ATTORNEY JAMES RAFFERTY: Yes.

LAURA BOOTHE: Is that it?

KIM RAYMOND: I just have a random question, because it's one lot with two single-family homes, are they sold as two single-family homes or is it sold as a condo? Or how does the city deal with that?

CONSTANTINE ALEXANDER: I can't answer that.

KIM RAYMOND: Who answers that question?

CONSTANTINE ALEXANDER: I'll try. I mean, you could possibly divide the lot, but I don't think you can because the lot's not big enough. That's one possibility. I assume you can condominiumize the lot, the structure, and you'd have two-unit condominium, each house being one, assuming that there's two -- one living unit in each of the two structures. That's basically what -- or you can sell it as one and the person who buys one house can rent the other one out if we --

LAURA BOOTHE: I would just say in closing to pick up on your point, and this as well, that it is for speculative purposes. I would say that we have been, you predate us. We've raised our families there. We've been -- we're 15, 16 years in a neighborhood that we have made our home and that feels very different experientially and relief-wise to folks who are coming in just to see, to

leave your, it just feels very different to be a resident there, a long-time resident. We'll continue to be living there over time up against folks who are really just trying to figure out what the dollar value is that they can pull out based on what type of relief they'll find here this evening.

KIM RAYMOND: And I would just like to add, too. That I know you mentioned something about the crown molding or the lawyer mentioned something about the quality to make it look pretty. I have asphalt shingles on the side of my house and I don't --

CONSTANTINE ALEXANDER: It's irrelevant.

KIM RAYMOND: -- plan on changing it. But I'm just saying the neighborhood itself is quite a mixed bag, some older stuff and newer stuff and I've renovated as well. But just --

CONSTANTINE ALEXANDER: I'd like to make one statement for the record, since you pointed out correctly --

KIM RAYMOND: Okay.

CONSTANTINE ALEXANDER: -- that you met with me or the like -- I visited the site over the weekend to get a visual and personally see what's involved.

KIM RAYMOND: And we appreciate that.

CONSTANTINE ALEXANDER: Well, but I want to make clear that we did not, during the tour I got of the property, there was no discussion of the merits of this case.

LAURA BOOTHE: Right.

CONSTANTINE ALEXANDER: They just pointed this out and pointed that out.

LAURA BOOTHE: We appreciate that.

LAURA WERNICK: Is the front house a single-family?

LAURA BOOTHE: Yes.

BRENDAN SULLIVAN: Would it be fair to summarize your collective comments towards bulk and mass? I mean,

that's what --

MELISSA TONACHAL: Yes, and I think you're picking up on not just the particular matter of this request, but combined with what's already happened in the front house, again, without need for any comment, that those things pull together on that lot, yes.

BRENDAN SULLIVAN: Both mass encroachment?

MELISSA TONACHAL: Yes.

BRENDAN SULLIVAN: Okay.

LAURA BOOTHE: I can show you a quick picture of something that was -- again, it did not require an action by you, Commissioner. Where we've gone from, this is where the roof line began straight up, and now it's just a face of a wall abutting our property and, yeah, our dogwoods and our peach tree and those kinds of things that won't survive it. But, again, this didn't require an action here. It's a piece, again, of the mass and the bulk that we're already experiencing.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Anything? That's it.

LAURA BOOTHE: Thank you very much. Thank you for your time. We appreciate your consideration.

MELISSA TONACHAL: Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down. It's your neighborhood, though.

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

(No Response.)

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

You can come forward, please.

As has been mentioned several times, there is a petition in our files. The petition is undated and it's appears to be signed by I think you said 27 people. It looks about right. Most of them, all the addresses are Columbia Street. I can't begin to read -- this is all

handwritten, I can't read people's handwriting. But the petition is says: I am in favor of Mr. Finsthwait's proposal to add an addition to the house at 299 Columbia Road, Cambridge, Mass. And that's what's here. Otherwise there's nothing else in the file one way or another.

So I'm going to close public testimony unless -- yes, Ma'am.

MELISSA TONACHAL: I'm sorry, just for the record, we did not go around to our neighbors with the petition that said I am not in favor of this project.

CONSTANTINE ALEXANDER: Okay, thank you.

Now I will close public testimony.

Any final comments, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Just briefly, just a few points in conclusion.

First, I would, as noted by the abutters and by anyone who has been to the location, it's a -- there is close adjacency with the structures. Most of the existing

structures don't conform to the side yard setback or nearly any other dimensional requirement. The down zoning there occurred well after the creation of the housing, so it's not an unusual condition. Frankly, what's unusual about this lot is that it was below the allowable FAR which is not the case in most of the other lots.

As to the question about construction impacts, they're real concerns. We know they're of limited purview for this Board. But I do want to note that the rear house is going to get renovated in either case, with or without this addition. And when this concern was raised to me earlier in this process, I sent a communication to the abutters and said, look it, even in the best of circumstances -- and you may have detected that there's a, there's a little coolness towards my client on the part of these abutters, and I recognize that. And I said that you know what, here's the name of the construction manager, the guy that's running the site. You may find it helpful,

here's his phone number, call him directly. Because there was an incident where there was some work done on a Sunday. A total no-no. Shouldn't have happened. The city was called, came down. Mr. Finsthwait was irate at the contractor to learn about that. He knows the rules. But some stuff showed up or whatever. But Mr. Finsthwait doesn't run the job, his contractor does. It's my understanding that that individual has never been contacted by these people. But we have made efforts to understand that look it, in some cases we're within a few feet of each other, and I implore them, the abutters, and said there are issues of mutual concern as this project wraps up around fencing and landscaping. And in my experience I found that certain collaboration on those things will help. He needs to get some siding on the side of the front house, it's very close to yours. And, you know, there may be something we could work out. So I do want to say that, you know, the comment was that Mr. Finsthwait walks around like he owns

the neighborhood. I don't know what that means. But I think it is indicative of an objection here that is not completely based on the physical aspects of the proposal, notwithstanding the bulk and mass comment. This is, this is an addition that's not much bigger than what we see as a sun porch or something like that. It does require relief. Under the criteria in the Ordinance, the hardship is related to the unique nature of the lot and where the structure is positioned on the lot. The structure was brought forward. Even if the addition was brought forward, it would need less relief. But I think the testimony of these neighbors, even the objecting neighbors -- the reason we continued with this application, even though there was no support for it, it seemed very clear to us, and upon reflection it made more sense that this was far more impactful. So we're seeking greater relief to have less impact, and I think that suggests that what is being proposed here doesn't derogate from the intent of the Ordinance. It's a single-family

home. It's within the allowed density. It satisfies and exceeds the open space requirements in this district which few homes in this district do frankly, if you walk the street. It will satisfy the parking requirements, and it represents 180 square foot addition of gross floor area, but not in excess of the allowed FAR. And for those reasons we think the applicant has met its burden here and ask that the Board grant the Variance.

CONSTANTINE ALEXANDER: Thank you.

I will now close all public testimony, open it for discussion. People want to have comments about this case before we go to a vote?

SLATER ANDERSON: I have a couple of questions.

CONSTANTINE ALEXANDER: Sure.

SLATER ANDERSON: So in the notice here it talks about construct a conforming addition to a non-conforming single-family dwelling. It's conforming, why and this is just maybe a clarification, why do you consider the

addition --

ATTORNEY JAMES RAFFERTY: It's not conforming. It was conforming. That notice, this particular addition is no longer conforming.

SLATER ANDERSON: Okay. Because it's in the rear yard setback?

ATTORNEY JAMES RAFFERTY: Yes.

SLATER ANDERSON: Okay.

ATTORNEY JAMES RAFFERTY: At the time the notice was drafted. You're correct.

CONSTANTINE ALEXANDER: It's based on an old set of plans.

ATTORNEY JAMES RAFFERTY: Right.

SLATER ANDERSON: Okay.

And I'm just curious, so the -- there was mention, and I know the front house isn't the subject of this, but it sits on the lot, the front house was raised, was that correct?

ANDREW RICHARD: The front house -- we added a dormer along the right side of the house, which I believe is what the neighbors are saying is bothering them. But it wasn't anything that we needed relief for. So nothing, the ridge height was not raised. It's the fact that we added a dormer along that side of the house that I believe that's the --

SLATER ANDERSON: I don't --

WILLIAM FINSTHWAIT: We also raised up the addition.

SLATER ANDERSON: I don't understand the how the dormer in the side yard setback --

KIM RAYMOND: The back of the house was raised.

ATTORNEY JAMES RAFFERTY: There's an exception for one and two-family houses for dormers in second-story addition, so this qualifies.

SLATER ANDERSON: Because it's a second story?

ATTORNEY JAMES RAFFERTY: Yes. It was an

as-of-right building reviewed by ISD --

SLATER ANDERSON: Okay, that's fine.

ATTORNEY JAMES RAFFERTY: -- and the building permit --

ANDREW RICHARD: There was a section in the back where the dormer does extend back where we -- above where we have the existing back part of the building, so it's not, you know, I want to be clear of that.

SLATER ANDERSON: I'm just curious. It seemed like something that we would -- I was curious about that.

ATTORNEY JAMES RAFFERTY: Lastly, I wanted to show the Board the stairway became a big issue in the plan. The existing condition --

CONSTANTINE ALEXANDER: This is in the house we're talking about modifying?

ATTORNEY JAMES RAFFERTY: This is the new house. You can see the current stairway, and the big part of the circulation change is to relocate -- to make that a

fully-code compliant stairway. So those, those would be --

CONSTANTINE ALEXANDER: The stairway is useable now. I mean, it may not be code compliant --

ATTORNEY JAMES RAFFERTY: No, it's true, right.

CONSTANTINE ALEXANDER: You want to improve it?

ATTORNEY JAMES RAFFERTY: It provides for all the reasons we said. And we're not trying to pretend otherwise. It creates a more harmonious --

ANDREW RICHARD: Open floor plan.

ATTORNEY JAMES RAFFERTY: -- contemporary living style.

CONSTANTINE ALEXANDER: No question, I understand that, to me anyway.

BRENDAN SULLIVAN: When you bought the two houses, you obviously ran the numbers and you made a business decision that you had a viable project and that you could make it worth your while. And the way I read this is that

this addition to the back house is a bonus to that.

WILLIAM FINSTHWAIT: I guess you could put it that way.

BRENDAN SULLIVAN: All right, okay.

LAURA BOOTHE: May I show just -- to answer your question, the photographs of actually what happened that Bill was saying to the roof line, that's what they're talking about.

SLATER ANDERSON: So did the ridge shift over?

WILLIAM FINSTHWAIT: Okay, there was, in the rear of the building there was a one-story kitchen area and we were able to, within zoning, get a Variance raise it up to a second story. So now the entire house -- before it was two stories and one story and now it's all two stories. Okay? And we added a dormer in the back.

ATTORNEY JAMES RAFFERTY: So the answer is yes.

CONSTANTINE ALEXANDER: Okay.

I will make a comment and follow up to what

Mr. Sullivan said, and I am very much troubled by the fact that you bought this property, you knew what you were getting, you paid a price to reflect the current zoning, and now you're asking us to basically increase the value of your house by varying the Zoning Ordinance, and that troubles me. That troubles me. I'm sympathetic to people who live in a house who want to improve the quality of their lifestyle in the house. I'm less sympathetic to someone who bought the house and now wants us to help them increase the value of the house, but that's just me.

WILLIAM FINSTHWAIT: Can I respond to that or no?

CONSTANTINE ALEXANDER: No, no we're not into a dialogue.

WILLIAM FINSTHWAIT: That's fine, that's fine.

CONSTANTINE ALEXANDER: It's just an observation.

WILLIAM FINSTHWAIT: That's fine.

CONSTANTINE ALEXANDER: One person's observation.

WILLIAM FINSTHWAIT: Right.

CONSTANTINE ALEXANDER: Other members of the Board want to say anything or go to a vote? I'll leave it up to everybody.

LAURA WERNICK: I'm very torn by this because I do think it improves for this particular lot the quality of the housing for any future resident. We're very obviously concerned about increasing appropriately housing in Cambridge, and this would allow a family to comfortably live there. But at the same time it's -- it would be much easier if it was a resident improving it for his family than for a speculative --

BRENDAN SULLIVAN: I think that the zoning obviously was enacted for protection, separation of uses. And then once you get by the separation of uses, then dimensional, and so on and so forth. And I think the zoning was put in there to protect all people. And I have to be very respectful of when an abutter comes down and asks us to uphold the zoning, because they're seeking protection from

whatever they don't want by what's in this book here. And I think it's incumbent upon us to respect those views and those opinions for whatever reason. They're just asking that -- the Zoning Ordinance is there and we're asking for protection of it.

CONSTANTINE ALEXANDER: Well said.

JAMES MONTEVERDE: But I'm not sure that the specifics of that particular addition are really the objects that are being objected to.

BRENDAN SULLIVAN: Well, I think that it's a matter of --

JAMES MONTEVERDE: -- construction. That's correct. I think it's a matter of what happened in the front house. And it's the fact it's so hard against the side lot. Construction's going to be intrusive, as we've heard and as we understand. It seems, you know -- and the concern about the light that gets to their trees, has no -- it doesn't seem like it's part of this particular

application. So yes, I understand, but I'm not sure if I narrow down to what's being requested --

BRENDAN SULLIVAN: Well, if you look at the particular project in the abstract. And, yes, it is going to improve that particular house.

JAMES MONTEVERDE: Right.

BRENDAN SULLIVAN: I think, again, in toto and, again, they had maybe nothing to say about the front house, this may be their day in court on the back house. But, again, the fact that they have voiced that we really want protection that the Zoning Ordinance affords us.

ATTORNEY JAMES RAFFERTY: But with all due respect, the charge of the Board here has to, you know, the case were to be reviewed in the later forum, abutters with objection would have to demonstrate how the action of the Board adversely impacted their property rights. That's the legal standard on standing.

BRENDAN SULLIVAN: The legal standing would be to

prove a hardship.

CONSTANTINE ALEXANDER: We're at apples and oranges.

ATTORNEY JAMES RAFFERTY: Excuse me, that comes second. The first challenge would be --

BRENDAN SULLIVAN: Standing.

ATTORNEY JAMES RAFFERTY: Standing. What's the adverse, to Mr. Monteverde's point, what's the adverse impact upon the surrounding property owner or the abutting property owner by what the Board is asked to consider? And frankly, I would go so far as to say it is inappropriate for the Board to extract a negative vote in this project because of a -- that ordinance that is there for protection, protects everyone. So the fact that the property owner had rights in that ordinance to construct a conforming addition to the front property, should not then be used against him in this forum to suggest that his decision to elect to use those rights somehow diminishes his ability to seek relief

here if the standards are present. Now, if the standards aren't present, that's the finding the applicant will have to live with. But to suggest this is payback for the front, that's inappropriate for the Board to make that conclusion.

CONSTANTINE ALEXANDER: Let me make a couple comments --

SLATER ANDERSON: That wasn't my -- I was asking for clarification on the front building.

ATTORNEY JAMES RAFFERTY: Understood.

SLATER ANDERSON: I wasn't connecting the two.

CONSTANTINE ALEXANDER: A couple of comments.

One, Mr. Rafferty, you're correct, there may very well be if that if this case were to go to court, these abutters would not have standing. But that's not -- that's a separate issue from the variance, No. 1.

No. 2, you're absolutely right in my opinion, that whatever happened with regard to the front house has no bearing on what is going to happen here. What you did to

the front house is a matter of right. And if there's construction dislocation, it's unfortunate, but so be it, it happens, as I said earlier, almost to any piece of construction in a dense neighborhood.

The issue still before us is you've got to demonstrate the first condition of a substantial hardship. I can understand why you want to do this. It would improve the flow within the house, but there's no hardship. This house could still be occupied by someone afterward should we turn down the relief. It's not the kind of hardship that we need something because we can't use the structure. We can use it. You want to improve the value of the structure, and that's the purpose of this Variance frankly. And you heard Mr. Sullivan, his problem with it, and you heard myself to a lesser extent I think, the same problem.

WILLIAM FINSTHWAIT: Do we care about the end user at all or no?

CONSTANTINE ALEXANDER: I don't know who the end

user is.

WILLIAM FINSTHWAIT: It's going to be a family.

And if you have two bedrooms, it's going to be a young couple. If it's going to be three bedroom, a family can --

CONSTANTINE ALEXANDER: I'm not going to get into who can use the house.

WILLIAM FINSTHWAIT: Okay.

CONSTANTINE ALEXANDER: I don't want to debate this with you either.

WILLIAM FINSTHWAIT: Okay, that's fine.

CONSTANTINE ALEXANDER: The fact of the matter is, that this is -- you have a house that's been used for many, many years apparently as a place where people can live. They've been able to live with the house as it is. You want to change it, as I think I can understand why.

WILLIAM FINSTHWAIT: But I guarantee we'll sell to a family.

CONSTANTINE ALEXANDER: Sir, sir, please. Okay?

It's not a debating society.

Anyway I've made my comments. Anyone else wish to speak or we want to go to a vote?

JAMES MONTEVERDE: Vote.

CONSTANTINE ALEXANDER: Ready for a vote?

Okay, let's see what happens. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the petitioner will not be able to modify the structure to, in a fashion that would make the inhabitability and the people flow within the house better.

That the hardship is owing to the fact that the loc -- shape of the structure, its location on the lot, that it's a non-conforming structure that requires -- almost any modification requires zoning relief.

And that relief may be granted without substantial

detriment to the public good or nullifying or substantially derogating for the intent and purpose the Ordinance.

Based on these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans initialled by the Chair. The first page of which has been initialed by the Chair, prepared by Andrew Richard Architect. I don't see a date on the first page. But the first page has been initialled with the exception that plan A-05 that's in the set will be replaced by A-05 that's been initialled by the Chair.

So, that's the motion. All those in favor of granting the Variance based on this condition, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Two in favor?

(Monteverde, Wernick.)

CONSTANTINE ALEXANDER: All opposed?

(Aye.)

CONSTANTINE ALEXANDER: Three opposed. The motion does not carry. The Variance is denied.

(Alexander, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: We need a further motion to be voted on, only by those who voted against.

The Chair moves that the reason we denied the Variance was that the petitioner has not demonstrated a substantial hardship.

The hardship that the structure is habitable as it is now. It will be habitable if we turned down relief. That basically the burden has not been satisfied a substantial hardship.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Three in favor. Case is over.

LAURA BOOTHE: Thank you.

(Alexander, Sullivan, Anderson.)

* * * * *

(8:00 p.m.)

(Sitting Members Case BZA-009439-2016: Constantine
Alexander, Brendan Sullivan, Slater W. Anderson, Jim
Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009439, 11 Royal Avenue.

Is there anyone here wishing to be heard on this matter? Again, you've heard, name and address for the stenographer, please.

COLLEEN GALLE: Colleen Galle, 11 Royal Avenue.

BRADLEY GALLE: And Brad Galle, 11 Royal Avenue.

HANK REISEN: And Hank Reisen, R-E-I-S-E-N, 20 Ferrara Street.

Good evening.

CONSTANTINE ALEXANDER: Good evening.

BRADLEY GALLE: Hi, I'm Brad Galle. My wife Colleen and our architect. We purchased our house at 11 Royal Ave. last spring, and we just love our neighborhood. We have two daughters, one in sixth grade and one in ninth. Our home is ideally located for both of them to get to school and to explore Cambridge and Boston. We currently have both daughters, my wife, and I in the three second

floor bedrooms, sharing a single hall bath. And I've worked with our architect Hank Reisen to design a small addition to add a master bath to the second floor. As we filed our Variance, we sent notes to our abutters and their abutters. We were fortunate to be able to meet with many of them. In fact, there was actually a great opportunity to meet a whole bunch of people in our neighborhood, and we discussed our plans with them. No one raised any concerns for us. Four of our neighbors were kind enough to send letters and e-mails which hopefully you have.

CONSTANTINE ALEXANDER: Right.

BRAD GALLE: And Hank can describe our plans.

HANK REISEN: The existing house has a one-story roof screen porch on the back. And the proposal is to, on that footprint, build an enclosed two-story addition. The first floor will be mudroom entry, a half bath.

The second floor will have the bath, a bathroom on suite with a master.

The way the floor plans of the house, the current -- this is the screen porch on the back. The second floor, it would be very difficult to work a bathroom into this floor plan, Victorian floor plan, existing plumbing. This is the addition. And this is the master.

So this is the shared, the bathroom that everyone shares. Two teen-age daughters or a pre-teen and a teen. So everybody shares this. Everybody tries to get ready for work and school in the morning. And because of the floor plan, it would be very difficult to work a second bathroom within the confines of the existing second floor. So that's the primary hardship.

There's also, on the first floor there's very little room for any storage at all.

This is -- the existing screen porch is there and covered. So to enclose it would have been a Special Permit, but the need for the bathroom really is -- impedes of this. Once we're enclosing this, we're pulling the -- last owner

put a half bath, and because there's no place to good to put it, it's right in the dining room which, you know --

COLLEEN GALLE: Which means we don't use it very often.

HANK REISEN: In this proposal, when this becomes enclosed, the half bath will move into the enclosed first floor of the addition with storage.

It's very difficult, there's no coat closet in the front. There's no closet at the rear entry. And so, enclosing this will help, will alleviate that problem also:

The addition, it's an FAR Variance. The addition is only 164 square feet.

CONSTANTINE ALEXANDER: For the record, basically right now the structure is over. It's non-conforming as to FAR. It's 0.65 in a 0.5 district. No more than 0.5. And you would go to 0.69.

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: Slight increase there.

Slight increase in the amount of total floor space and structure.

TIMOTHY HUGHES: And part of the reason that we are over is that there's a very generous covered front porch. Well, it -- here it is. So there's a very -- there's a covered front porch that's taking -- adding this much square footage. There's a covered rear bulkhead, and there's a very large basement that's unfinished that wouldn't be very nice as finished space. So, that -- all that sort of square footage that's very difficult to use is part of why we were over the FAR.

CONSTANTINE ALEXANDER: Okay. Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. 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 here is wishing to be heard.

We are in receipt of letters or e-mails. As the petitioner has pointed out, we have one from Matt and Marilyn Feinberg, F-E-I-N-B-E-R-G reside at 19 Royal Avenue.

(Reading) As neighbors of the Galles, we have -- did I get it right? Galles?

COLLEEN GALLE: Yes, right. Thank you.

CONSTANTINE ALEXANDER: We totally approve of their request for a Variance.

We have an e-mail from Susan Greenhalgh, G-R-E-E-N-H-A-L-G-H, resides at 17 Royal Avenue. (Reading) I live next-door to Brad and Colleen Galle. I've seen their plans to remodel their home and want to give my full endorsement to their application for a Variance. Please add my name to that of the other abutters who fully approve their application. The changes they propose are minor and

should have little to no impact on life on Royal Avenue other than to make their house more liveable.

We have also an e-mail from Rich McNally, M-c-N-A-L-L-Y, 164 Appleton Street. It's addressed to Mr. Galle. (Reading) Dear Brad, It was nice to chat with you this afternoon. Although I will not be at the Variance meeting, I wanted to register my approval of your plan to enclose your back porch and extend your second floor above the porch enabling you to add a bathroom.

And lastly, we have a letter, a letter this time from a -- from Thomas and Jane Martin, M-A-R-T-I-N, 174 Appleton Street. (Reading) We have met with the owners of 11 Royal Avenue and reviewed their plans. As an abutter, we have no issues with the plan to add an addition to the rear of the house.

And that's it.

Any final comments before we close public testimony? I'm going to close public testimony. Any final

comments?

HANK REISEN: Not unless there are questions from the Board.

CONSTANTINE ALEXANDER: Questions from members of the Board?

JAMES MONTEVERDE: No.

CONSTANTINE ALEXANDER: Discussion or ready for a vote? I think we're ready for a vote.

Okay, the Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being is that with a family of two growing children, the house in its present configuration and dimensions is inadequate.

That the hardship is owing to the fact that this is a non-conforming structure at the outset and, therefore, any addition or 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 proposal seems to have unanimous neighborhood support.

That it is modest in nature in terms of replacing -- it uses the same footprint as a screen porch, and so the amount of use of the lot is not increased, but it is a larger structure.

So, on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans prepared by Reisen Design Associates, 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. Good luck.

(Alexander, Sullivan, Anderson, Monteverde,
Wernick.)

* * * * *

(8:10 p.m.)

(Sitting Members Case BZA-009361-2016: Constantine
Alexander, Brendan Sullivan, Slater W. Anderson, Jim
Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 009361, 10 Ballord Place.

The floor is yours. As you know, you the know the
drill.

ADAM GLASSMAN: Adam Glassman, architect, Two
Worthington Street, Cambridge.

JEREMY ROTHMAN-SHORE: I'm Jeremy Rothman-Shore,
10 Ballord Place.

AVIVA ROTHMAN-SHORE: Aviva Rothman-Shore,
R-O-T-H-M-A-N-S-H-O-R-E.

JEREMY ROTHMAN-SHORE: So we've lived at 10

Ballord Place for over 11 years. So, just you know, for the previous four years we've lived right around the corner on Wakefield for a very long time. When we moved in, we were married about four years, five years at that point. No kids. Lived in a 10 Ballord Place for many years without kids, and then eight years ago had our first child, six years ago.

THE STENOGRAPHER: I'm sorry, I'm having a hard time understanding you.

JEREMY ROTHMAN-SHORE: I'm sorry. Do you want me to start over?

AVIVA ROTHMAN-SHORE: No. We have two children and we've lived there for eleven years. Eight and six. Almost six.

JEREMY ROTHMAN-SHORE: So, now that we have kids, yeah, the house is compact. The -- we're also sort of very active in the Jewish community. We are founders and on a board of the Cambridge Minion which is an egalitarian Jewish

group that meets every other week. We meet at the Unitarian church. And a big part of our life is having sort of Sabbath meals where we invite other members of the community into our home. A lot of these are sort of young Jewish couples or single people who settled in Cambridge and building Jewish lives here. The big part has been, you know, they come and they have a meal with us. As we have had kids as our friends have had kids, the meals have gotten larger and more kids, and so typically we will sit and eat and then the kids will start playing. And I don't know if you have the footprint of the house, it's sort of the dining room, kitchen, and then the living room. We end up with the kids start running around all on top of us as we sort of have --

CONSTANTINE ALEXANDER: Let me interrupt you right there. From a zoning point of view, the fact that you would like to have more room to have a lot of people over is not sufficient. I think I'd like to hear more about why, within

your family --

JEREMY ROTHMAN-SHORE: Yes.

CONSTANTINE ALEXANDER: -- itself you need more room with your growing family. That's a more appropriate thing to talk about.

JEREMY ROTHMAN-SHORE: Oh, absolutely. Thank you for the guidance.

So as the kids are getting older, right now they're sharing a room at sort of six and five. We would like them to be able to have their own rooms. We're also very fortunate that my parents who live in upstate New York, they will come and visit. With one of us has to travel or if for a week during the summer for these long weekends they come and stay. And when kids go to their own rooms, we kind of lose that private -- the space for my parents to sort of come and have a bathroom without having to displace one of the kids sort of out of their room which is kind of a sad thing for when the grandparents come to visit. So a big

part of what we'll do is we want to create a guest room where my parents could have a bathroom of their own not -- or sharing our bathroom or displacing one of the kids and that's one of the big things we want to accomplish on the second floor.

AVIVA ROTHMAN-SHORE: And on the first floor I would say in terms of our own family, it's about having more space. It makes the kitchen bigger and then it adds a little bit. It encloses the porch so it adds a little bit of like a den area so that when I'm painting, the kids could play there and come and hang out and have that additional flexibility in terms of where they are. It's when you -- we -- our five-year-old planned a Lego party and we had ten, five-year-olds plus younger siblings and parents all over, and that's the kind of thing that happens a lot, I mean, when you're at that age -- you know, and in the space that we have, it is constrained in terms of being able to do that. So adding that little bit of extra would provide sort

of the flexibility to do more Lego parties and the like. And we love, love where we live. We, in fact, looked to see if there were other houses in the neighborhood, and we have so much where we are, that -- there is so much -- there wasn't anything else that made sense to move to and we didn't want to leave Cambridge. So given that, we sort of thought if we could get a little bit extra space where we are, then it would give us the flexibility we need in the next couple of years.

CONSTANTINE ALEXANDER: Okay, thank you.

And the reason you're here before us is because your house right now -- well, it's -- you are conforming as to FAR.

AVIVA ROTHMAN-SHORE: Yes.

CONSTANTINE ALEXANDER: You're 0.72 in a 0.75 district, but the addition will put you over, make you a non-conforming which is why you need -- you're going to 0.87.

ADAM GLASSMAN: It's a modest increase.

CONSTANTINE ALEXANDER: And are you adding 300 feet to the house roughly?

ADAM GLASSMAN: Roughly.

CONSTANTINE ALEXANDER: And increasing the volume by 18 percent.

ADAM GLASSMAN: We are, although we would be occupying the footprint of the deck, so use on the property would not be increased.

CONSTANTINE ALEXANDER: Got it, thank you. Okay.

Questions from members of the Board?

Slater, I'll give you a chance to read.

SLATER ANDERSON: I'm okay. Go ahead.

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

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

(No Response.)

CONSTANTINE ALEXANDER: No.

The Chair would note we are in receipt of letters. One is from Linda Brown at Two Ballord Place. (Reading) The house numbers on our small street are not typically dispersed, although my house 2, and the Rothman-Shore's house, 10, are not numbered as such, we are directly across from one another. A narrow short swath of road separates us. These are great neighbors. They are neighbors out of a book of good deeds. They have been very important neighbors playing an active role in this little community between Hoyt's field and Putnam Avenue. When I reviewed with Jeremy and Aviva their plans for an understated, modest two-story addition proposed to the back side of their current home at 10 Ballord Place, I saw it all as an asset to the community; aesthetically, architecturally, functionally the addition makes a very quiet statement and disrupts nothing in the neighborhood. The plans are clear, the designs straightforward, the addition not an impingement on parking

or traffic patterns. What joy the extra space will be for their young and lovely family. I am all for this addition and cannot think that it will be anything but an asset to the community and to the family. I support the modification and addition 100 percent and support the relief necessary for the BZA to let this happen.

We also have a letter from Nien, I guess, N-I-E-N-H-E. I'm not sure I want to pronounce it, H-S-I-E-H and Sara with no H, S-A-R-A L. Toomey. They apparently live at 7 Ballord Place, unit A. (Reading) Jeremy and Aviva Rothman-Shore have reviewed with us their plans for the proposed very modest two-story addition to be attached to the back side of their house at 10 Ballord Place which is across the street from us. We understand the proposed design and fully support their application for BZA relief in order to realize this project. Jeremy and Aviva are considered and thoughtful neighbors and their family is an asset to our little community. As their family grows and

given their children's grandparents stay with them for extended visits, they clearly need the additional space. As parents of children, we understand their situation. We believe that the proposed design is in keeping of the scale and aesthetic of our neighborhood. The proposed addition is both attractive and modest and will be almost entirely out of public view. We can see no reason to oppose this Variance. We fully support this proposed addition and we hope very much that they can continue to be our neighbors in the years to come.

And a letter from a Richard Gonci. G-O-N-C-I and Joanna Fink, F-I-N-K, 6 Ballord Place. Basically it's the same letter that the one I just previously read. I'm not going to read it again.

And then a letter from or an e-mail from John Zinky, Z-I-N-K-Y who resides at 234 Putnam Avenue.

(Reading) My wife and I own and live with our family in a house that abuts 10 Ballord Place in the west. Our property

overlooks the backyard of 10 Ballord Place owned by Jeremy and Aviva Rothman-Shore. I've reviewed the architecture plans for a two-story addition that will extend the back of the house over the current deck. I have no reservations about the plans. I give my approval at the extension that it can be built this year.

And that's it. There are no letters of opposition and three letters of support.

Any final comments you want to make?

(No Response.)

CONSTANTINE ALEXANDER: If not, I'll close public testimony.

Discussion or we ready for a vote? Ready for a vote?

LAURA WERNICK: Just one question.

CONSTANTINE ALEXANDER: Okay.

LAURA WERNICK: Does the new deck extend, the first floor deck extend beyond the current deck that you

have or is it the extent of -- that is the extent of your current deck?

JEREMY ROTHMAN-SHORE: So it's a little bit of a landing so we can safely step out.

ADAM GLASSMAN: Yeah, we wouldn't call it an occupiable deck. It is a landing and it extends beyond the current deck.

CONSTANTINE ALEXANDER: Okay.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being is that the petitioner is in a house that is inadequate in size to a growing family.

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

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

In this regard the Chair would note that this project seems to have unanimous neighborhood support. That is it is modest in nature, and it is the kind of addition or relief that would allow young families to consider -- to continue to reside in Cambridge as their family is growing.

So on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans prepared by Adam J. Glassman, G-L-A-S-S-M-A-N, GCD Architects, 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: Five in favor. Good luck.

(Alexander, Sullivan, Anderson, Monteverde,
Wernick.)

* * * * *

(8:20 p.m.)

(Sitting Members Case BZA-009388-2016: Constantine Alexander, Brendan Sullivan, Slater W. Anderson, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: With reluctance I invite you to come to the front of the room.

ATTORNEY RICARDO SOUSA: With reluctance.

CONSTANTINE ALEXANDER: How many of these do you have in your back pocket?

ATTORNEY RICARDO SOUSA: Probably through about half of them.

CONSTANTINE ALEXANDER: The floor is yours.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, members of the Board. For the record, Ricardo Sousa from Prince, Lobel, Tye here on behalf of the applicant T-Mobile. The next two applications, but in

particular the one that's before you for 80 Sherman Street is a continuing attempt by T-Mobile to upgrade its wireless installations, its existing wireless installations here in the City of Cambridge to allow us to upgrade to provide full services and reliable services, wireless services to the residents and businesses within the City of Cambridge.

And if I could, there were some photo sims that have always been part of the file, but I'd like to just hand out extra copies for you if I could, and I'll walk you through the upgrade itself.

And so what T-Mobile is proposing to do is install six additional panel antennas within a faux structure consistent with the stealth structure that's there on the rooftop now.

So as you can see this is a fairly large building, and on one corner of the building there is a faux penthouse that currently houses three panel antennas. In order for us to upgrade it with the newest technology, the L700 antennas,

we're proposing to add antennas and stay with the same consistent faux penthouse or faux chimney, whatever you want to call it, in order to house the six panel antennas.

The panel antennas themselves will not be visible to the public, and will be entirely concealed within the faux structure.

CONSTANTINE ALEXANDER: But you are going to increase the bulk of the faux structure?

ATTORNEY RICARDO SOUSA: Yes, we are.

And so the bulk is going to be increased to a six-by-six dimension. We're not increasing the height. Currently the structure is ten feet off the roof line and the new structure will also be ten feet off the roof line.

LAURA WERNICK: The dimensions of the existing?

ATTORNEY RICARDO SOUSA: The current is three-feet, one by two-feet, six for the current penthouse.

CONSTANTINE ALEXANDER: And it will go to what?

ATTORNEY RICARDO SOUSA: And it will go to

six-by-six.

And so we've submitted some photo sims that are consistent with the ones that are in front of you that show the difference.

We've also met with the Planning Board to look at this application. We submitted it to Historic as well. There were no comments from Historic, and the Planning Board was satisfied and felt this was a good design for --

CONSTANTINE ALEXANDER: I'll read that letter into the file at an appropriate time.

ATTORNEY RICARDO SOUSA: Very good, Mr. Chairman.

And we also feel that it is consistent with the design that's been approved by this Board and allows us to do this upgrade, once again consistent with the methods and means that this Board has requested which is to really try to use stealth structures to hide the antennas from public view.

BRENDAN SULLIVAN: Did we originally approve this

with a faux brick face on it?

ATTORNEY RICARDO SOUSA: Not that I'm aware of.

CONSTANTINE ALEXANDER: I don't think so.

JAMES MONTEVERDE: If you see in the photos, it would have been peculiar if it was faux brick.

BRENDAN SULLIVAN: Well, I thought they had changed the facing on that top level.

JAMES MONTEVERDE: Oh.

LAURA WERNICK: What is it --

BRENDAN SULLIVAN: But, anyhow, that's okay. What's proposed is --

ATTORNEY RICARDO SOUSA: Yes. And, Mr. Sullivan, the next application does have a faux chimney feature to it. I'm sorry.

LAURA WERNICK: What is the surface, the material?

ATTORNEY RICARDO SOUSA: It is a fiberglass. It has to be a material that is radiofrequency transparent so the signal can propagate through the material itself.

LAURA WERNICK: It's fiberglass now and it will be fiberglass?

ATTORNEY RICARDO SOUSA: And it will be fiberglass, the same material, that's correct.

CONSTANTINE ALEXANDER: One thing I was curious about and it's not necessarily relevant, this is a very small old building for antennas. Usually you're putting them on top of much higher structures, and it works because we've been told you have to have a structure that's up a bit so to put the antennas on otherwise you have too much interference. Why is that not the case here?

ATTORNEY RICARDO SOUSA: Yeah, so if there was a taller building, we probably would have selected that one. But this is the tallest building --

CONSTANTINE ALEXANDER: It does work for you obviously.

ATTORNEY RICARDO SOUSA: It does, it very much work for us. And these days, to tell you the truth, we're

migrating closer down to the road than we are above. Now that there's a mature network in place with macro sites on existing structures, we really don't want to be that tall. We don't want to interfere with those other macro installations that are in the area. And it's one of the reasons that you're starting to see a migration towards even DAS installations. And DAS installations are the utilization of streetlights or traffic poles with smaller antennas. Those are closer to the user.

CONSTANTINE ALEXANDER: Yes, much better from our point of view -- my point of view anyway.

ATTORNEY RICARDO SOUSA: Yes.

SLATER ANDERSON: At one point we were talking about doing these backhaul dishes, is that still part of the network, or that's different?

ATTORNEY RICARDO SOUSA: That's something that's a little bit different. That's not part of this application. That usually involves the installation of a dish that

essentially brings a telephone signal to, you know, T1, T3 speeds.

SLATER ANDERSON: But it's part of the network, right?

ATTORNEY RICARDO SOUSA: It is usually part of the network.

SLATER ANDERSON: Yeah.

ATTORNEY RICARDO SOUSA: T-Mobile is not utilizing --

SLATER ANDERSON: But those are the ones you want high up, maybe, right?

ATTORNEY RICARDO SOUSA: Right. Those need a line of sight to the next installation. Yeah.

Where this one -- these antennas operate where they need a line of sight to the user, the actual telephone user.

BRENDAN SULLIVAN: So is the ten-foot height, is that fully utilized?

ATTORNEY RICARDO SOUSA: It is, Mr. Sullivan. It is. If you look at the antennas themselves --

BRENDAN SULLIVAN: On the inside of it?

ATTORNEY RICARDO SOUSA: Yeah.

So what we can't have is a situation where the antennas -- so as you can see, the ten feet is just above the antennas themselves. We don't want a situation where -- because the signal comes out of the antennas kind of like an orb and we can't be too close to the roof, otherwise we'll be blocked by our own roof. The signal propagation will be blocked by our own roof.

And so if you look at all of our installations in the City of Boston, they are consistently ten feet tall or higher depending on the structure.

SLATER ANDERSON: And you say this complies with Section 6409 of The Spectrum Act.

ATTORNEY RICARDO SOUSA: We believe it does. And I can walk you through that.

CONSTANTINE ALEXANDER: Yes, do that quickly for the record.

ATTORNEY RICARDO SOUSA: Yes, of course. We did walk through it in the application itself, but there essentially is, as we talked about in the past, six prongs. That Section 6409 application, in the back of our application, but I'll walk you through just real quickly the six prongs.

Just so I don't speak out of turn, the first prong of which is that the height of the base station is not gonna be increased by more than ten percent or ten feet, and we're not actually increasing the height of the structure in any way beyond the original structure.

That we are not protruding more than six feet from the edge of the structure. We're actually not protruding more than six feet. We're actually on the structure itself and within the outer limits of the building itself. So that condition is usually guided towards a tower so that you

don't have these arms on the tower that extend more than six feet from the edge of the structure itself.

That the modification to the equipment does not include more than four equipment cabinets, which it does not, and that's consistently shown in the plans.

No. 4, that we -- it does not entail excavation which it does not.

No. 5, that it does not defeat the existing concealed or stealth design of the existing installation. And in fact, we're using the same consistent design which is a faux penthouse structure that was acceptable not only to the Planning Board but we hope to this Board as well.

And then lastly, that it does not violate any prior conditions in the original decision. And the original decision was from 2013.

Yes.

LAURA WERNICK: Is there any regulation or standard or guideline that determines across, for instance,

across the City of Cambridge or within any large area within Cambridge, what is the adequate number of antennas or when might there be so many that there's a level of redundancy that's really unnecessary? I mean, how do we know that you're building too many antennas?

ATTORNEY RICARDO SOUSA: Right, right. So there's nothing in your Zoning by-law or Zoning Code that would regulate that. And in fact, there's case law that suggests that that issue would be addressed by the FCC rather than a local municipality just because it's very technical in nature. Each of the four carriers, and there's been a lot of consolidation in the industry. It's gone from seven to four carriers, each of the telecommunications carriers utilizes their own technology. Verizon in many cases will utilize 12 antennas at any one site, partly because they have a much bigger customer base.

AT&T usually uses a different number as well. You'll hear from them later tonight.

T-Mobile originally started with three. They're gaining in popularity. They're getting a lot more customer base and so they need more antennas. In addition to that, they've acquired a lot more spectrum from the FCC. In order to deploy that spectrum, they need additional antennas. That's why we talk about the L700 antennas.

We can deploy that spectrum together with our 1900 spectrum without additional antennas. And so the FCC issues this spectrum out to the carriers, and we need antennas to be able to deploy them.

CONSTANTINE ALEXANDER: But to Laura's comment --

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: -- sometimes, some carriers when they come in, present us a chart which shows the gap in coverage as to why they need --

ATTORNEY RICARDO SOUSA: Right.

CONSTANTINE ALEXANDER: -- this is when they're putting in new antennas?

ATTORNEY RICARDO SOUSA: That's correct.

CONSTANTINE ALEXANDER: And so that would answer your question.

LAURA WERNICK: Right, yes.

ATTORNEY RICARDO SOUSA: That's a very good point.

CONSTANTINE ALEXANDER: That would answer your question. Here they're just basically replacing --

ATTORNEY RICARDO SOUSA: Right.

CONSTANTINE ALEXANDER: -- it's not relevant.

ATTORNEY RICARDO SOUSA: Right, exactly.

This is not necessarily a really gap problem, it's more a capacity issue and to be able to deploy additional spectrum for our customers. Yeah.

LAURA WERNICK: Thank you.

BRENDAN SULLIVAN: There's always -- there was always an overlap of circles whenever you see this.

ATTORNEY RICARDO SOUSA: That's exactly right.
Yeah, right.

LAURA WERNICK: How much overlap is too much or unnecessary?

CONSTANTINE ALEXANDER: We have our views on that, but we don't always prevail. We as a Board.

Any other questions or comments?

SLATER ANDERSON: No.

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

Is there anyone who wishes to be heard?

Competitors don't want to be heard?

ATTORNEY RICARDO SOUSA: He's on my side.

CONSTANTINE ALEXANDER: In the back.

ATTORNEY BRIAN GROSSMAN: We're completely in support.

CONSTANTINE ALEXANDER: I'll close public testimony.

The only thing we have in our files as Mr. Sousa has pointed out, we do have a letter -- or a memo from the

Planning Board. (Reading) The Planning Board reviewed the proposed installation and found it to be appropriate. The antennas have been placed entirely within a resized faux chimney which will be refinished to blend with the sky. This is a fine installation, and the Planning Board appreciates the efforts made to minimize the visual impacts of the installation.

And that's all she wrote. I will close public testimony.

Any final comments?

ATTORNEY RICARDO SOUSA: I do not, Mr. Chairman. I respectfully request that the application for a Special Permit within the guidelines of 6409 be granted.

CONSTANTINE ALEXANDER: Okay.

Close public -- any discussion or ready for a vote?

Okay. Since we have to grant a Special Permit, according to our Legal Department, under the Zoning

Ordinance as well as make a finding under The Spectrum Act, the Chair moves that we make the following findings:

That the requirements of the onus cannot be met without the Special Permit being requested.

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

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

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupants of the proposed use 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 the Ordinance.

On the final finding that the modification to its existing telecommunication facility on Sherman Avenue proposed by the petitioner 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 as The Spectrum Act.

Based on these findings, the Special Permit the petitioner is seeking under our Zoning Ordinance is granted subject to and provided that the petitioner complies with the following conditions:

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

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: Two, that upon completion of the work, the physical appearance, and visual impact of the proposed work will be consistent with the photo

simulations submitted by the petitioner and initialled by the Chair.

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

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

And five, that the petitioner is in compliance with and will continue to be in compliance with all conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And lastly, we have a further condition that we

now impose on telecom cases and it reads as follows:

Inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy wave emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities.

Failure to timely file 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, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions 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 a Special Permit has terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to this Board for a new Special Permit provided that the public notice containing such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to

paragraphs A or B above. Any such 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 installation of equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner of the geographical area that includes Cambridge. Stating that A, he or she has such responsibility, and B that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections, such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radiofrequency radiation under

federal law.

On the basis of all of these findings and conditions, the Chair moves that we grant -- I'm sorry, on the basis of these findings, the Chair moves that we grant the Special Permit being requested subject to the conditions that I've just cited.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

(Alexander, Sullivan, Anderson, Monteverde, Wernick.)

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

* * * * *

(8:35 p.m.)

(Sitting Members Case BZA-009389-2016: Constantine
Alexander, Brendan Sullivan, Slater W. Anderson, Jim
Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case

No. 009389, 237 Putnam Avenue.

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

ATTORNEY RICARDO SOUSA: Very good. For the record, Mr. Chairman, members of the Board, Ricardo Sousa from Prince, Lobel, Tye here on behalf of the applicant T-Mobile.

This is a continuing effort by T-Mobile to upgrade our existing wireless installations, in particular here at 237 Putnam Ave.

CONSTANTINE ALEXANDER: This is on top of a school, right, the Blackstone School?

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: Is it still being used as a school?

ATTORNEY RICARDO SOUSA: You know, I'm not sure, Mr. Chairman.

LAURA WERNICK: I don't think so. I think it's an

office building now.

ATTORNEY RICARDO SOUSA: Yeah, that's right, that's my understanding.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: And so in this case we're actually upgrading our installation. As you can see, there's an existing chimney together with a faux section of the chimney that we constructed a few years back that houses our antennas at the top. This is a bird's-eye view here.

We currently have three antennas that we're operating, and we're upgrading it by -- we can only fit three additional ones for a total of six.

CONSTANTINE ALEXANDER: You're not changing the size of the faux chimney unlike Sherman Street where you increased the bulk of it.

ATTORNEY RICARDO SOUSA: That's exactly right, Mr. Chairman. In this case we're not changing the dimensions at all of the faux chimney section of the

chimney.

In fact, this was reviewed by the Planning Board and also Historic. The one comment was to make the faux chimney aspects darker to match the bottom section of the chimney and the building.

CONSTANTINE ALEXANDER: Where did they come from because it's not in the Planning Board's --

ATTORNEY RICARDO SOUSA: Oh, it's not?

CONSTANTINE ALEXANDER: No.

ATTORNEY RICARDO SOUSA: It was from Historic.

CONSTANTINE ALEXANDER: Historic?

ATTORNEY RICARDO SOUSA: Yeah. Sarah suggested it to us.

CONSTANTINE ALEXANDER: And you're planning to do that?

ATTORNEY RICARDO SOUSA: Yes, we do. In fact, the photo sims in the file reflect the darker, the darker chimney.

CONSTANTINE ALEXANDER: Okay, good.

BRENDAN SULLIVAN: I would go even one step further.

ATTORNEY RICARDO SOUSA: Sure.

BRENDAN SULLIVAN: Is the material of your faux chimney is again fiberglass?

ATTORNEY RICARDO SOUSA: Yes, it is, Mr. Sullivan.

BRENDAN SULLIVAN: And the lower portion is brick?

ATTORNEY RICARDO SOUSA: Yes.

BRENDAN SULLIVAN: In a perfect world --

SLATER ANDERSON: Get rid of the brick.

BRENDAN SULLIVAN: Well, I would cover the brick part with the same material of the upper part to make the whole thing all one.

CONSTANTINE ALEXANDER: You want me to impose that as a condition?

BRENDAN SULLIVAN: It's a suggestion.

ATTORNEY RICARDO SOUSA: Yeah. The one suggestion

I would make is that it would add slightly more mass to the bottom. It would make --

BRENDAN SULLIVAN: That's okay because it's all --

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY RICARDO SOUSA: Yeah, we can do that to make it all consistently one color.

CONSTANTINE ALEXANDER: You may request --

BRENDAN SULLIVAN: Then you might get a favorable vote from me.

ATTORNEY RICARDO SOUSA: That's important to us, Mr. Sullivan.

And so here are the photo sims, as you can see --

JAMES MONTEVERDE: I'll comment later.

ATTORNEY RICARDO SOUSA: Our proposal relative to color is much darker than the existing faux chimney that has really faded over time. And so just to match, not only the bottom section of the brick chimney, the real section, but also the building itself.

Yes.

LAURA WERNICK: So just to follow up on that suggestion. Can you -- is it possible to make the fiberglass more like the -- if you are in fact redoing all the fiberglass, can you make it more like the color of the rest of the building? The simulations look like it's significantly darker, maybe that's just the way the simulations -- is the intent to make it the same color as the --

ATTORNEY RICARDO SOUSA: The intent is to make it the same color as this section here.

LAURA WERNICK: If we're covering that up now.

ATTORNEY RICARDO SOUSA: If we're covering that up -- you're correct, at least from my vantage point that bottom section of the chimney is slightly darker than the building itself.

CONSTANTINE ALEXANDER: It is.

ATTORNEY RICARDO SOUSA: So if you want us to

match the building versus that chimney we can do that.

LAURA WERNICK: That would be great.

ATTORNEY RICARDO SOUSA: Yes.

BRENDAN SULLIVAN: Jim, what's your?

JAMES MONTEVERDE: No, I don't mind the way it's proposed, just the fact that the existing structure has a cap to it, there's a discontinuity between the base and its top. It feels like it actually diminishes its apparent height by a miniscule amount. So I can -- I don't feel a need to cover it all.

ATTORNEY RICARDO SOUSA: Yeah, I tend to agree. That horizontal line does break it up. Is that your point?

JAMES MONTEVERDE: Correct.

BRENDAN SULLIVAN: It just that it looks so obvious I guess a different color -- maybe the photo sims don't do it justice I guess. Obviously the existing is awful. I guess you --

ATTORNEY RICARDO SOUSA: Yeah, from a color

perspective.

LAURA WERNICK: I think having it be all one color and having it be as nearly as possible match the existing brick will also diminish --

JAMES MONTEVERDE: Yeah, make it more unified with the whole facade in total. Yeah, can I see that.

ATTORNEY RICARDO SOUSA: The one thing I would say is that, I wouldn't want to damage the original brick section. We can do either alternative. But I wouldn't want to put a faux material on an existing brick section. And pursuant to your conditions, if we leave, we're supposed to restore it --

BRENDAN SULLIVAN: You need a very good fiberglass guy or a very good painter.

ATTORNEY RICARDO SOUSA: Yes, good.

BRENDAN SULLIVAN: So to me I would like to see it all one. So either/or or something like that. Really make it very stealthy.

ATTORNEY RICARDO SOUSA: Could we do this, could we have -- still covered up with fiberglass on the bottom but also continue to have that line so that it's broken up here? So that we have fiberglass below it and fiberglass above it, but retain that line.

BRENDAN SULLIVAN: Yeah, that's --

ATTORNEY RICARDO SOUSA: Okay. Just that way it's two fiberglass sections, not just one very large tall fiberglass section.

BRENDAN SULLIVAN: Fine. You have to keep that piece of coping in there because otherwise you're going to compromise the integrity of the brick.

ATTORNEY RICARDO SOUSA: Right. Okay.

CONSTANTINE ALEXANDER: And, again, I'm not going to make it as a condition, but it's understood that you will, you'll accept it as a condition and make the change, your client will.

ATTORNEY RICARDO SOUSA: Yes, yes.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Because then when you come back again, we'll see how well it was done.

CONSTANTINE ALEXANDER: That's right. We have long memories on this Board.

ATTORNEY RICARDO SOUSA: Yes, you do.

BRENDAN SULLIVAN: Some of us will still be here.

ATTORNEY RICARDO SOUSA: And they're already starting to talk about 5G.

CONSTANTINE ALEXANDER: Please don't.

ATTORNEY RICARDO SOUSA: So we know we'll be back is my point.

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

Any questions at this point or public testimony?

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

(No Response.)

CONSTANTINE ALEXANDER: No.

The Chair would note that we are in receipt of a memo from the Planning Board as Mr. Sousa pointed out.

(Reading) The Planning Board reviewed the proposed installation and found it to be appropriate. The antennas have been placed entirely within a faux chimney which will be refinished to match the existing brick materials. This is a fine installation and the Planning Board appreciates the efforts made to minimize the visual impacts of the installation.

And that's all she wrote.

Discussion or ready for a vote?

SLATER ANDERSON: Vote.

CONSTANTINE ALEXANDER: All right.

The Chair will make -- propose to make the following findings with regard to the Special Permit being sought, the Special Permit being sought under our Zoning 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 proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted in the Zoning Ordinance will not be adversely affected by the nature of what is being proposed.

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

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

And lastly, finding that the modification to its existing telecommunication facility at the site proposed by

the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station as such facility, within the meaning of Section 6409(a) of The Middle Class Tax Relief and Job Creation Act of 2012 also known as The Spectrum Act.

Based on these findings, the Special Permit the petitioner is seeking under our Ordinance is granted subject to compliance with, and provided to the extent, the petitioner complies with the following conditions:

And with your permission they're going to be the same conditions we imposed in the last case, right?

ATTORNEY RICARDO SOUSA: Yes, Mr. Chairman.

CONSTANTINE ALEXANDER: Just incorporate by reference?

ATTORNEY RICARDO SOUSA: Yes, and please incorporate by reference, correct.

CONSTANTINE ALEXANDER: Save my voice and save your patience.

ATTORNEY RICARDO SOUSA: Yes.

(Conditions incorporated by reference:

Based on these findings, the Special Permit the petitioner is seeking under our Zoning Ordinance is granted subject to and provided that the petitioner complies with the following conditions:

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

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: Two, that upon completion of the work, the physical appearance, and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair.

Three, that the petitioner shall at all times maintain the proposed work so that its physical appearance and visual impact will remain consistent with the photo

simulations previously referred to.

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

And five, that the petitioner is in compliance with and will continue to be in compliance with all conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And lastly, we have a further condition that we now impose on telecom cases and it reads as follows:

Inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy wave emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities.

Failure to timely file 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, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions 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 a Special Permit has terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to this Board for a new Special Permit provided that the public notice containing such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A or B above. Any such 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 installation of equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner of the geographical area that includes Cambridge. Stating that A, he or she has such responsibility, and B that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections, such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radiofrequency radiation under federal law.

On the basis of all of these findings and conditions, the Chair moves that we grant -- I'm sorry, on the basis of these findings, the Chair moves that we grant the Special Permit being requested subject to the conditions

that I've just cited.)

CONSTANTINE ALEXANDER: Okay. So on the basis of these findings, all those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

ATTORNEY RICARDO SOUSA: Thank you, Mr. Chairman.

(Alexander, Sullivan, Anderson, Monteverde, Wernick.)

* * * * *

(8:45 p.m.)

(Sitting Members Case BZA-009352-2016: Constantine Alexander, Brendan Sullivan, Slater W. Anderson, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case

No. 009532, 150 CambridgePark Drive.

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

These are the same that are in our file, right.

ATTORNEY BRIAN GROSSMAN: Yes.

CONSTANTINE ALEXANDER: Name for the record?

ATTORNEY BRIAN GROSSMAN: Sure. Brian Grossman, Anderson and Kreiger, attorney for New Cingular Wireless also known as AT&T. With me is Tim Greene.

Mr. Chairman, members of the Board, thank you. AT&T has the existing installation at 150 CambridgePark Drive that has nine existing panel antennas there now. They're all facade mounted to the existing facade and painted to match. There will be new increase in the number of antennas as part of the AT&T's proposed modification.

As you noted, we applied for a Special Permit under the Cambridge Zoning Ordinance as well as under -- pursuant to Section 6409 in the FCC order.

The proposal is to replace two antennas per sector, utilize the same mounts that are on the existing building now. The --

CONSTANTINE ALEXANDER: The appearance doesn't change one bit?

ATTORNEY BRIAN GROSSMAN: The appearance doesn't really change. The antennas, as we talked about before, two inches shorter but four inches wider. So in terms of overall appearance from that distance it's imperceptible.

CONSTANTINE ALEXANDER: Is that the reason why the Planning Board didn't comment on your petition?

ATTORNEY BRIAN GROSSMAN: They did. We have -- we met with them on Tuesday, we had -- we received comments.

CONSTANTINE ALEXANDER: It wasn't in the file.

ATTORNEY BRIAN GROSSMAN: They were very, very brief.

TIMOTHY GREENE: Not as eloquent as the other ones, I was kind of disappointed.

JOHN HAWKINSON: Because it was an eleven o'clock meeting.

ATTORNEY BRIAN GROSSMAN: It was pretty late on Tuesday to be sure.

We are replacing three surge arresters, one per sector, and installing three remote radio heads, again, one per sector. Those are not visible from the public way.

With this particular installation there is no change in the cabinets whatsoever as well. And so the facility does comply with the 6409 criteria.

They're facade mounted and so there's no increase in height in the building, and they will not extend more than six feet off the facade and utilize the same existing mounts. There's no additional cabinets so the number of additional cabinets will not exceed four.

The equipment isn't changing so there's no deployment or change in the equipment space.

We'll paint to match, which is the existing

consumer element, and it will be consistent with that, and so we'll continue to comply with the existing conditions for the facility.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board? None.

I'll open the matter up to public testimony.

There's no one here unless, Mr. Hawkinson, you want -- you'll never make it on this Board if you love 6409 or not.

The Board is in receipt of a memo from the Planning Board. (Reading) The Planning Board reviewed the proposed installation and found it to be appropriate. The antennas have been located on the existing building facade in the same location as existing antennas. All new equipment, if approved, should be finished to match the existing facade and below the roof line. And it will be based on your photo simulations.

ATTORNEY BRIAN GROSSMAN: Yes.

TIMOTHY GREENE: Yes.

CONSTANTINE ALEXANDER: That's all she wrote.

Ready for a vote or do people want to talk? Ready for a vote.

The Chair moves that this Board make the following findings that with regard to the Special Permit being requested:

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

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

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

That no nuisance or hazard will be created to the detriment of the, health, safety, and welfare of the

occupant of the proposed use or the citizens of the City.

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

And lastly, that the modification to which existing telecommunication facility at the site proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of Section 6409(a) the Middle Class Tax Relief and Job Creation Act of 2012 also known as The Spectrum Act.

Based on these findings, the Chair moves that we grant the Special Permit being requested under or Zoning Ordinance subject to and provided that the petitioner complies with the following conditions:

And you've heard me read the conditions before.

You want me to read them again or can we just --

ATTORNEY BRIAN GROSSMAN: We can waive it and --

CONSTANTINE ALEXANDER: We'll put in by reference.

Incorporated by reference.

ATTORNEY BRIAN GROSSMAN: We can waive the reading. As you know, Mr. Chairman, AT&T does object to condition No. 6 as preempted by The Telecommunications Act as well as an inappropriate condition under 6409 and the FCC order. We understand you're going to include it. I just want to make sure it's on the record.

CONSTANTINE ALEXANDER: Your objection is duly noted and should be part of the record.

(Conditions incorporated by reference:

Based on these findings, the Special Permit the petitioner is seeking under our Zoning Ordinance is granted subject to and provided that the petitioner complies with the following conditions:

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

Two, that upon completion of the work, the physical appearance, and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair.

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

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

And five, that the petitioner is in compliance with and will continue to be in compliance with all conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the

site in question.

And lastly, we have a further condition that we now impose on telecom cases and it reads as follows:

Inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy wave emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities.

Failure to timely file 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, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions 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 a Special Permit has terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to this Board for a new Special Permit provided that the public notice containing such application

discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A or B above. Any such 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 installation of equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner of the geographical area that includes Cambridge. Stating that A, he or she has such responsibility, and B that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections, such that individuals, including nearby residents and

occupants of nearby structures, will be sufficiently protected from excessive radiofrequency radiation under federal law.

On the basis of all of these findings and conditions, the Chair moves that we grant -- I'm sorry, on the basis of these findings, the Chair moves that we grant the Special Permit being requested subject to the conditions that I've just cited.)

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

(Aye.)

CONSTANTINE ALEXANDER: All in favor. Special Permit granted.

(Alexander, Sullivan, Anderson, Monteverde, Wernick.)

* * * * *

(8:55 p.m.)

(Sitting Members Case BZA-009402-2016: Constantine Alexander, Brendan Sullivan, Slater W. Anderson, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009402, 64 Linnaean Street.

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

ATTORNEY BRIAN GROSSMAN: Just us.

CONSTANTINE ALEXANDER: Just you, right.

ATTORNEY BRIAN GROSSMAN: Again, for the record, Brian Grossman, Anderson and Kreiger on behalf of New Cingular Wireless PCS, LLC, AT&T. Also with me this evening is Tim Greene.

CONSTANTINE ALEXANDER: Before we get into the

merits of the case, as you know from a call you got from Mr. O'Grady, just speak to me about the signage issue because I had trouble finding the sign and so did Mr. O'Grady. After you talked to Mr. O'Grady, I did find one sign on Garden Street.

ATTORNEY BRIAN GROSSMAN: There were three signs that were posted, and Tim would know more about this than I would. There were three signs that were originally posted, and then I got the call yesterday, as you know, it's on Harvard. The three had been posted. Something had happened to two of them. We don't know, someone removed them or what, but they had been posted in the same manner.

CONSTANTINE ALEXANDER: Oh, they were removed?
Okay.

ATTORNEY BRIAN GROSSMAN: And then one sign was able to be located and reposted. The third sign has vanished. But given the fact that the one sign has always been up, the signs were up.

CONSTANTINE ALEXANDER: In the past we've had this sometimes had this problem where people comply with -- try to comply with the Ordinance in terms of posting the signs and either the weather or vandalism results in the signs disappearing or maybe inadvertent, but I will accept that --

ATTORNEY BRIAN GROSSMAN: Thank you.

CONSTANTINE ALEXANDER: -- as properly advertised.

ATTORNEY BRIAN GROSSMAN: We appreciate that.

CONSTANTINE ALEXANDER: Let's go into the merits.

ATTORNEY BRIAN GROSSMAN: And we appreciate that.

And I know in the past couple of occasions we've had people forgot to post a sign. That was not the issue here.

CONSTANTINE ALEXANDER: That was not the issue here, I know.

ATTORNEY BRIAN GROSSMAN: Very similar to the previous application with 150 CambridgePark Drive, AT&T is proposing to replace three antennas at this particular installation. There's no increase in the number of

antennas.

The installation -- we've given you photos of the existing installation and there's only one set of antennas that are visible at all.

Two sectors are actually located behind a screen wall as well as -- and that screen wall also includes the existing equipment as well. So the vast majority of the changes to the site to actually take place behind that screen wall won't be visible. There won't be an increase in the size of the screen wall. The antennas will not stick up above the screen wall, and none of those changes inside the area protected by the screen wall will be visible to the public.

TIMOTHY GREENE: The only location you're looking at the photos is the one off of Garden Street.

CONSTANTINE ALEXANDER: Right.

TIMOTHY GREENE: It's not visible.

ATTORNEY BRIAN GROSSMAN: There's the one sector,

as Tim noted, off Garden Street that is moderately visible, particularly with the zoomed in view. And it is the antenna that is on the wall on its own to the left of the door that will be changed out. It will, again, be painted and textured to match the existing facade similar to the last application. The antennas will be two inches shorter and a couple inches wider, but won't otherwise substantially change visually.

LAURA WERNICK: Which number?

ATTORNEY BRIAN GROSSMAN: Photo location 1. So it's actually -- I'll circle it. Actually that antenna.

LAURA WERNICK: Yep.

ATTORNEY BRIAN GROSSMAN: That will change.

CONSTANTINE ALEXANDER: I've seen it.

JAMES MONTEVERDE: I've seen it.

SLATER ANDERSON: All set.

ATTORNEY BRIAN GROSSMAN: Two remote radio heads will be added behind the screen wall. A third will be added

for that one sector that is not behind the screen wall, but it will be added next to and adjacent to an existing RRH and will not generally be visible from the public way.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY BRIAN GROSSMAN: Otherwise the application is consistent with 6409.

As noted, there's no increase in height.

No increase in footprint or groundwork or excavation of the site.

The one antenna that projects from the facade, the one antenna is being changed that projects from the side. We will utilize the existing mount. It won't extend more than six feet from the existing facade.

The facility is compliant with the existing conditions. And as I've noted, the concealment element here is twofold:

One the existing screen wall, which won't be modified after the two antennas that are being changed

behind it, and the one antenna that's being changed that's physical, will be painted and textured to match as the current antenna is now.

CONSTANTINE ALEXANDER: Thank you.

I note there is no one in the audience --

BRENDAN SULLIVAN: There is.

CONSTANTINE ALEXANDER: Oh, yes, there is. No comments beyond the sign that you've raised.

The Chair will note that we are in receipt of a memo from the Planning Board. (Reading) The Planning Board reviewed the proposed installation and found it to be appropriate. The antennas have been located on the existing building facade in the same locations as existing antennas. It says not changed, that's not quite accurate. Right?

ATTORNEY BRIAN GROSSMAN: Say that again?

CONSTANTINE ALEXANDER: It says: The antennas have been located on the existing building facade in the same locations as existing antennas.

You're going to make one change as you pointed out to us.

ATTORNEY BRIAN GROSSMAN: Well, the location is not changing.

CONSTANTINE ALEXANDER: Oh, that's the location.

ATTORNEY BRIAN GROSSMAN: Right. The location is not changing.

CONSTANTINE ALEXANDER: Right.

JAMES MONTEVERDE: That's the only one you can see.

CONSTANTINE ALEXANDER: I'm sorry.

All new equipment as approved should be finished to match the existing facade and below the roof line. And that's it.

Any further discussion or we're ready for a vote?

JAMES MONTEVERDE: Vote.

ATTORNEY BRIAN GROSSMAN: If you want to incorporate the conditions by reference and I'll incorporate

my prior objection by reference.

CONSTANTINE ALEXANDER: Yeah, we'll incorporate all those reference, your objection, your standard objection incorporated by reference.

ATTORNEY BRIAN GROSSMAN: Please.

CONSTANTINE ALEXANDER: And when you do the transcript, you'll elaborate it all out. Okay?

(Conditions and Objection incorporated by reference:

ATTORNEY BRIAN GROSSMAN: As you know, Mr. Chairman, AT&T does object to condition No. 6 as preempted by The Telecommunications Act as well as an inappropriate condition under 6409 and the FCC order. We understand you're going to include it. I just want to make sure it's on the record.

CONSTANTINE ALEXANDER: Your objection is duly noted and should be part of the record.

Based on these findings, the Special Permit the

petitioner is seeking under our Zoning Ordinance is granted subject to and provided that the petitioner complies with the following conditions:

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

Two, that upon completion of the work, the physical appearance, and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair.

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

Four, that should the petitioner cease to utilize the equipment approved tonight for a continuous period of six months or more, it shall promptly thereafter remove such equipment and restore the building on which it is located to

its prior condition and appearance to the extent reasonably practicable.

And five, that the petitioner is in compliance with and will continue to be in compliance with all conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And lastly, we have a further condition that we now impose on telecom cases and it reads as follows:

Inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy wave emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with

the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities.

Failure to timely file 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, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions 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 a Special Permit has terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to this Board for a new Special Permit provided that the public notice containing such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A or B above. Any such 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 installation of equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner of the geographical area that includes Cambridge.

Stating that A, he or she has such responsibility, and B that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections, such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radiofrequency radiation under federal law.

On the basis of all of these findings and conditions, the Chair moves that we grant -- I'm sorry, on the basis of these findings, the Chair moves that we grant the Special Permit being requested subject to the conditions that I've just cited.)

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special

Permit granted.

Thank you very much.

(Alexander, Sullivan, Anderson, Monteverde,
Wernick.)

(Whereupon, at 9:00 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.

| PAGE | LINE | |
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| _____ | _____ | CHANGE: _____ REASON: _____ |

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 25th day of March, 2016.

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

My Commission Expires:
April 29, 2022

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