

**BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE**

**GENERAL HEARING  
THURSDAY, DECEMBER 6, 2012  
7:00 p.m.  
in  
Senior Center  
806 Massachusetts Avenue  
Cambridge, Massachusetts 02139**

**Brendan Sullivan, Chair  
Constantine Alexander, Vice Chair  
Thomas Scott, Member  
Janet Green, Member  
Douglas Myers, Member**

**Sean O' Grady, Zoning Specialist**

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# INDEX

CASE		<u>PAGE</u>
10342	--	27
10343	--	3
10247	--	194
10114	--	194
10051	--	194
10353	--	102
10354	--	31
10355	--	46
10356	--	61
10357	--	196
10358	--	210
10359	--	238
10360	--	260

P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Janet Green, Douglas Myers.)

BRENDAN SULLIVAN: Let me call the Board of Zoning Appeal to order for December 6, 2012. First case we will hear case No. 10343, which is 80 Sherman Street.

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

BRENDAN SULLIVAN: Good evening.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY RICARDO SOUSA: These are the same photo sims and plans that are in -- that were in the file, but these are just extra copies for your reference.

BRENDAN SULLIVAN: Okay, Mr. Sousa.

ATTORNEY RICARDO SOUSA:  
Mr. Chairman, members of the Board, once again for the record Ricardo Sousa on behalf of the applicant T-Mobile. This is a

continuing effort by T-Mobile to essentially swap out existing antennas and replace them with updated antennas for 4G service and much more improved service. And the nature of this application is that currently we have three panel antennas that are installed within a faux chimney on the rooftop of this building located at 80 Sherman Street. And we are asking to remove those three antennas and replace them with three new air antennas. Our newest antennas. However, the new antennas are larger and also have remote radio heads built into the antennas. And so when you facade-mount them there is some distance that you have to maintain from the wall and from other antennas, and once you put them into a faux structure, in order to prevent them from getting too hot and being able to vent properly, you can't put them in too close of a structure. And so while we tried to maintain the same dimensions for the

faux chimney to put all three of them in, we simply couldn't do it without making the chimney much too large. And so we had the idea of instead keeping two of the antennas inside the faux chimney and placing one facade-mounted to the back of a faux chimney as if it was a real chimney but facade mounting that one antenna.

And what I'd like to do is just go through the plans briefly and show you --

CONSTANTINE ALEXANDER: How big will the chimney be as compared to the existing chimney?

ATTORNEY RICARDO SOUSA: Of course. And if you turn to page A-1 of the plans, that shows the dimensions of the chimney. So, the-- currently the chimney is two feet, six inches by two feet, six inches. And the new chimney will be two feet, six inches. So one dimension is the same. However, the other dimension is going to be three feet, one inch.

CONSTANTINE ALEXANDER: In your submission you said four feet.

ATTORNEY RICARDO SOUSA: Well --

CONSTANTINE ALEXANDER: And that's what you -- Brendan has the file. It says you're going to go to four feet, the height of the chimney.

ATTORNEY RICARDO SOUSA: Yes, I have as it 3, 1 on our plans.

JACKIE SLAGA: It was modified as a result of the Planning Board review. The original application -- do you want me to come up?

ATTORNEY RICARDO SOUSA: That's right. I apologize, Ms. Slaga.

When we first filed the application prior to going to the Planning Board, it was a larger chimney.

BRENDAN SULLIVAN: Right.

ATTORNEY RICARDO SOUSA: Working through the Planning Board process, we

condensed the size and so we made it smaller. So this plan reflects the smaller chimney design.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: This was -- this is a continuation.

CONSTANTINE ALEXANDER: Yes, yes.

BRENDAN SULLIVAN: And the original, there was adverse comments from the Planning Board. Sent them back to the Planning Board, this is the result now.

CONSTANTINE ALEXANDER: I'm aware of all that. But as I read the file, I thought you were originally going to come with a chimney even higher than four feet. And after negotiating and dealing with the Planning Board I thought you were coming down to four feet.

BRENDAN SULLIVAN: No. The original application you're correct. It's just that was not changed after they went to

the Planning Board the second time.

CONSTANTINE ALEXANDER: Okay, okay.  
So the file is --

BRENDAN SULLIVAN: So both of you  
are correct.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: And so the  
design itself, which is a chimney with two  
antennas inside and one on the outside, is the  
same. Okay? And that's a good result.  
Before --

CONSTANTINE ALEXANDER: The  
chimney's five inches higher than the  
existing -- the new chimney will be five  
inches higher --

ATTORNEY RICARDO SOUSA: It  
actually the same height. And so the  
dimensions that I referenced, are the  
dimensions -- and so it will be essentially  
two feet, six is one dimension and 3, 1 is the  
other to make a square or I should say a

rectangle. A rectangle. But the height itself is the same.

CONSTANTINE ALEXANDER: It's not changed?

ATTORNEY RICARDO SOUSA: That's right. And the height -- this is essentially the profile of the faux chimney.

Given the dimensions now of this faux structure, the Planning Board suggested well, it doesn't look like a chimney anymore, let's make it a beige color so that it looks more like a small penthouse because it is slightly larger. And we essentially will be -- so it will be a beige color and that's what you see in the photo sims.

If this Board prefers that it be a chimney color, we're happy to do that instead. However, I think the beige color actually better conforms to the other buildings in this neighborhood. There's a building just adjacent to this one that has

a beige penthouse and I think it will be more consistent with the design of the neighborhood.

CONSTANTINE ALEXANDER: My recollection which is probably dead wrong, and Brendan will have the letter, I thought the planning Board in their letter said they wanted the color to not be beige but to match the brick of the building. Am I just wrong?

ATTORNEY RICARDO SOUSA: I don't recall.

BRENDAN SULLIVAN: The Planning Board does suggest that the color of the facade-mounted antenna be matched as much as possible to the chimney.

CONSTANTINE ALEXANDER: Is that the right -- they had a revised one, Brendan. There's two letters in the file both November 8th. The second one is marked revised. Just make sure you got the right one, that's all.

BRENDAN SULLIVAN: And the question is that it appears that both of you are right again. That maybe you're changing the color and they're saying that the facade-mounted antenna should match that color.

ATTORNEY RICARDO SOUSA: Should match the faux structure?

BRENDAN SULLIVAN: The faux structure.

ATTORNEY RICARDO SOUSA: Okay.

So the question now is what's preferable to this Board as to what the faux structure should be. And my memory of my discussion with the Planning Board was that we could do either one, of course. However, there is a penthouse -- if you look at the last set of photos, there's a penthouse that is beige in color on a building adjacent to this one. And so it is my memory that we discuss the fact that we were going to be painting the structure beige to match yet another

penthouse that was down the street.

However, I think the chimney in its current condition, if you look at the existing conditions, actually looks pretty good. So you keep it as a chimney and simply paint the antenna that's on the outside also to look like a brick structure. Beauty is in the eye of the beholder; right?

BRENDAN SULLIVAN: Yes.

ATTORNEY RICARDO SOUSA: It could be a difference of opinion.

BRENDAN SULLIVAN: My feeling on the existing structure is that it looks a little bit out of scale. If it were a real chimney, it would not be that size. It would be bigger. So that how do we bring that scale, out-of-scaleness down? I somewhat defer to you I think. I'm not sure if the beige would not be all that bad.

THOMAS SCOTT: Yes, I'm kind of in favor of the beige.

BRENDAN SULLIVAN: I think it would just sort of go away a little bit.

THOMAS SCOTT: Absolutely, it makes it disappear. Especially where you view it from Sherman Street and you're looking at the top of the building which is that beige color.

ATTORNEY RICARDO SOUSA: Right.

THOMAS SCOTT: So I think it has a tendency to kind of blend and make it seem like it's not there.

BRENDAN SULLIVAN: Not stand out.

THOMAS SCOTT: Exactly.

ATTORNEY RICARDO SOUSA: The first set of photos, both this one and the next view, that's when you can really see the difference here. That brick stands out quite a bit above the -- as you said, Mr. Scott, above the beige top section of the building.

BRENDAN SULLIVAN: It tones it down quite a bit.

ATTORNEY RICARDO SOUSA: Yes.

So we thought this was a good result in the sense that it minimizes the dimension change to really a five-inch change as far as one of the dimensions goes. And we're able to once again utilize a faux structure by not make it too big. Once again, if we tried to fit all three antennas into a faux structure, it would be fairly substantial.

BRENDAN SULLIVAN: Okay.

Any questions?

CONSTANTINE ALEXANDER: No.

JANET GREEN: No.

DOUGLAS MYERS: Yes.

You mentioned in passing -- I'm in favor of the beige color, too. I think it's a good fit for this property. But you mentioned in passing the exterior surface of the beige.

ATTORNEY RICARDO SOUSA: The faux structure?

DOUGLAS MYERS: Of the faux structure. What are the choices? What are you proposing and what alternatives are there?

ATTORNEY RICARDO SOUSA: The alternatives are to use the same material now which is a fiberglass brick facade, brick-looking facade. That's one alternative. Which it doesn't seem as though the Board is inclined to go in that direction. Or you can go with a flat surface that's painted beige. Once again it would be fiberglass. Or you could go with a vertical seamed look. So the fiberglass itself would have a vertical seam much like you see in vertical penthouses.

DOUGLAS MYERS: And the alternative is which of those?

ATTORNEY RICARDO SOUSA: Is just consistent with the photos which is just a flat surface, flat surface.

CONSTANTINE ALEXANDER: I do have a question.

The antenna that's going to be mounted to the facade. How will it be mounted, the low profile mounts?

ATTORNEY RICARDO SOUSA: Low profile mounts, yes. And that's reflected in the plans. There will be no pipe on the outside.

DOUGLAS MYERS: And there's no way around the one sector antenna being internal to the faux structure?

ATTORNEY RICARDO SOUSA: The only way we could do it is to make the structure itself much larger. And fortunately that back antenna is on the back side of the building not on Sherman Street. We thought that was an appropriate place to put the back antenna. We had a choice to put it on the sides, and I think if you put it on the sides of the structure standing on Sherman Street

looking at the building, you would see one or other of the antenna standing on the side. For consistency purposes we put that one outside antenna on the back of the building.

DOUGLAS MYERS: Nothing further.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on matter case No. 10343, 80 Sherman Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence from the Planning Board dated November 8th.

(Reading) The Planning Board reviewed the revised Special Permit application. The new plan is for a smaller faux chimney containing two of the antenna and one antenna to be mounted on the facade of the faux chimney. This arrangement minimizes the visual impact

of the new chimney on the roof of the building and maintains the scale of the building. It also minimizes the visual impact of the installation on Sherman Street. The Planning Board does suggest that the color of the facade-mounted antenna be matched as much as possible to the chimney.

DOUGLAS MYERS: Meaning the chimney as proposed?

ATTORNEY RICARDO SOUSA: Correct. The chimney as proposed, correct. It could be the existing chimney.

BRENDAN SULLIVAN: Okay, let me close public comment.

Anything else to add?

ATTORNEY RICARDO SOUSA: I don't, Mr. Chairman.

BRENDAN SULLIVAN: Let me just to do some pro forma according to footnote 49 regarding a telecommunication facility.

That in reviewing a Special Permit

application for a mobile communication facility, in particular the Board shall consider the following in reaching its determination:

The scope of, or limitations imposed by any licensed secured from any state or federal agency having jurisdiction over such matters, and as per the application packet. The T-Mobile has no scope or limitations imposed that would preclude the installation of this facility.

The extent to which the visual impact of the various elements of the proposed facility is minimized, and note the revised application. The note from the Planning Board and the good attempt of the Petitioner to minimize the impact to the greatest extent.

Through the use of materials that in texture and color blend with the materials through which the facade are attached. And

we're in agreement that it shall be a flat fiberglass surface.

This is not being erected in a residential district. So this is Industrial A I believe. So that that requirement does not apply.

ATTORNEY RICARDO SOUSA: I believe I have it as Business A.

SEAN O'GRADY: It would be right on the front.

CONSTANTINE ALEXANDER: It's 1-A.

BRENDAN SULLIVAN: Oh, I'm sorry. Industry A, yes.

CONSTANTINE ALEXANDER: Industry A.

BRENDAN SULLIVAN: In granting a Special Permit the Board shall set forth in its decision under which circumstances or procedure the permittee shall be allowed to replace or upgrade its equipment without the necessity of seeking a new Special Permit.

As part of the addition of the granting

of this Special Permit the Board imposes a condition that should the equipment, as part of this application, be rendered not operable or obsolete, that it be removed within 60 days of it becoming obsolete, and that the surface to which it is being mounted is restored to its original position. In the event that the equipment inside of the faux structure become obsolete, then the faux structure itself shall be removed within 60 days, and the roof area and visual impact be restored to the original condition prior to the granting of even the original Special Permit.

ATTORNEY RICARDO SOUSA: Sure.

CONSTANTINE ALEXANDER:

Mr. Chairman, before we take a vote, I think you read into the record the wrong letter from the Planning Board. They have two from November 8th. They have the original and then a revised one. I separated the revised one out. I think -- they're essentially the

same but they are different. So maybe you want to read that into the record as well.

BRENDAN SULLIVAN: Oh.

Referring back to public comment on the Planning Board, the Planning Board reviewed the revised Special Permit application. The new plan is very small faux chimney containing the two antenna and one antenna to be mounted on the facade of the faux chimney. This arrangement minimizes the visual impact of the new chimney of the roof of the building and maintains the scale of the building, and also minimizes the visual impact of the installation on Sherman Street. The Planning Board does suggest that the color of the facade-mounted antenna be matched as possible to the chimney.

Is that not what I originally read?

CONSTANTINE ALEXANDER: You covered it in your motion. It's a little different than the one you read into the record before.

BRENDAN SULLIVAN: Okay.

Well, the one I read was the November 8th one.

CONSTANTINE ALEXANDER: Yes, they both are that, but one says revised and that's what you read the second time.

BRENDAN SULLIVAN: Oh, okay, I see. So that's part of the record.

Okay, shall I make a motion?

CONSTANTINE ALEXANDER: I'm ready to vote.

BRENDAN SULLIVAN: Let me make a motion then to grant the Special Permit for the installation of in-kind replacement of three existing antenna, the expansion of the existing faux chimney as per the application, and proposing the conditions as previously stated and incorporating the letter from the Planning Board.

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

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

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

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

The Board notes the existence of the prior telecommunications facility at this particular location, and there has not been any report of any detriment from that.

The proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the

intent and purpose of the Ordinance to provide telecommunication facilities to the citizens of the city.

All those in favor of granting the --

CONSTANTINE ALEXANDER:

Mr. Chairman, did you condition the relief on compliance with the plans and the photo simulations? I may have missed that.

BRENDAN SULLIVAN: And it's conditioned upon the application as submitted revised plans and photo simulations as submitted, resubmitted.

All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

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

(7:20 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Thomas Scott, Janet Green, Douglas Myers.)

DOUGLAS MYERS: Mr. Chair, has the Board acted tonight on 10342, 71 Fresh Pond Lane.

BRENDAN SULLIVAN: I was going to call it now.

The Board will hear case 10342, 71 Fresh Pond Lane.

Is there anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: Do we have correspondence?

SEAN O'GRADY: I didn't see any. I don't know if it came in or not. We have spoken with both the Petitioners, husband and wife.

BRENDAN SULLIVAN: Okay, we do have a waiver.

CONSTANTINE ALEXANDER: As long as

we have a waiver, we don't need a correspondence from the Petitioner. We can on our own just continue the case for lack of compliance with our Ordinance.

BRENDAN SULLIVAN: I make a motion then to continue this matter due to the failure of the Petitioner to comply with the posting requirement Re: The sign.

A date?

SEAN O'GRADY: January 24th.

BRENDAN SULLIVAN: And the motion then to continue this matter until January 24th. And all the --

CONSTANTINE ALEXANDER: Brendan, this is a case heard. Are you going to be here?

BRENDAN SULLIVAN: And the people who sat on it?

SEAN O'GRADY: The people who sat on it are --

CONSTANTINE ALEXANDER: Myself,

Tom, yourself Brendan, Janet, and Doug.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: Okay. So we'll all be here.

On the motion then to continue this matter to January 24, 2013, at seven p.m. on the condition that the Petitioner maintain and change the existing posting sign to reflect the new date of January 24th, and the time of seven p.m.

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

That any changes to the submissions which are in the file now be in the file by five p.m. on the Monday prior to the January 24th hearing.

All those in favor of continuance?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of the continuance.

(Sullivan, Alexander, Scott, Green,

Myers.)

(A short recess was taken.)

(7:45 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: It being quarter of, the Board will hear case No. 10354, 10 Canal Park.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, members of the Board. For the record once again Ricardo Sousa on behalf of the applicant T-Mobile.

And as part of our modernization program, we are proposing to upgrade this site by essentially replacing the six panel antennas that are facade-mounted on the middle penthouse and essentially swapping them out with six new air antennas. They are going to be facade-mounted, painted to match. We are removing the pipe mounts and replacing them with the low profile brackets so that they could be brought closer to the building. And it's a fairly straight forward application.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY RICARDO SOUSA: We did go to the Planning Board on October 30th. Unfortunately I don't have a copy of their letter. It's not in the file and it's not online. But I don't recall any objection to the application because it's actually fairly straight forward.

BRENDAN SULLIVAN: Did they make any comments, suggestions, alterations?

ATTORNEY RICARDO SOUSA: Not that I recall, Mr. Chairman. I think this one was, we have essentially had a couple of sites that had been difficult. It was 80 Sherman and 678 Mass. Ave. which we had to go back and forth on with the Planning Board. But this one was as really straight forward as it could be.

BRENDAN SULLIVAN: Okay. That for tonight's hearing they basically drew no comment or recommendations for the other

cases except for the other case which was being sent separately. It did come in, I did see it but I didn't read it because the secretary was literally printing it off and was going to insert it in the folder.

ATTORNEY RICARDO SOUSA: Sure.

BRENDAN SULLIVAN: It is not in the folder. I did not spend the time reading it so I don't know what the comments were. I guess my only thought is that we run the risk a little bit of granting something that they may want to change or different opinion from. And I hate to incorporate something that I haven't seen either.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: So, but I will read it after tonight.

ATTORNEY RICARDO SOUSA:

Mr. Chairman, in the interest of time, I wouldn't -- the Applicant wouldn't mind taking that risk. I feel so comfortable that

there was no objection from the Planning Board on this particular design that at least from an Applicant's perspective, we would be fine running that risk that provided that there's no inconsistency perhaps we can use that language, as long as there's no inconsistency with the recommendations of the Planning Board.

BRENDAN SULLIVAN: Okay.

Any questions from the Board at all?

(No Response.)

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter case No. 10354, 10 Canal Park.

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance expressing an interest, and we are absent any correspondence from the Planning Board.

So this is somewhat of a straight forward swap out. It's a very straight forward swap out, six for six in the same exact location. And we'll be improving it by removing pipe mounts and utilizing the low profile brackets. As you can see on that page there.

CONSTANTINE ALEXANDER: And you've -- the antenna's going to match the color of the building.

ATTORNEY RICARDO SOUSA: They will. They will be the same color. It will be a flat finish not the brick.

DOUGLAS MYERS: And, Mr. Sousa, did you actually read the letter from the Planning Board that you referred to tonight?

ATTORNEY RICARDO SOUSA: I recall receiving it, but it came to my associate Jackie Slaga, so the --

DOUGLAS MYERS: So you're relying on your recollection of the hearing --

ATTORNEY RICARDO SOUSA: I recall my recollection.

DOUGLAS MYERS: -- and whatever comments you heard at that time?

ATTORNEY RICARDO SOUSA: That's right. That's correct. And my recollection of actually being at the Planning Board and not recalling any objection to this particular application.

BRENDAN SULLIVAN: Okay.

Let me make a motion then. Well, let me do some pro forma stuff again. I wish I had a tape recorder and just press a button here.

The Board shall consider the following in reaching its determination. The scope of or limitations imposed by any license secured from any state or federal agency having jurisdiction over such matters. And the application packet contains no such scope or limitations imposed by any federal agency.

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

The presentation is and the photo simulations and the drawings contained as part of the application shall then be -- the visual impact will be minimized by the new antenna being painted a solid color to match the background of the surface to which they're being affixed.

ATTORNEY RICARDO SOUSA: That's correct.

BRENDAN SULLIVAN: And through the use of existing mechanical elements through the use of materials that are in texture and color blend with the materials to which the facilities are being attached. The presentation is such that they're going to be a fiberglass -- no, metal.

ATTORNEY RICARDO SOUSA: No.  
The --

BRENDAN SULLIVAN: The antenna?

ATTORNEY RICARDO SOUSA: The  
antennas themselves?

BRENDAN SULLIVAN: Yes.

ATTORNEY RICARDO SOUSA: They are  
sort of a plastic.

BRENDAN SULLIVAN: Yes, okay.

ATTORNEY RICARDO SOUSA: Yes.

BRENDAN SULLIVAN: By a material and  
texture that will receive paint to enhance  
the stealthness of it all.

ATTORNEY RICARDO SOUSA: That's  
correct.

BRENDAN SULLIVAN: It is not in a  
residential district, so that does not apply.

In granting the Special Permit the  
Board shall set forth in its decision under  
which circumstances or procedure, if any, the  
Permittee shall be allowed to replace or  
upgrade its equipment without the necessity  
of seeking the Special Permit.

The condition of this granting of this Special Permit is that should this equipment become obsolete, no longer useful, that it be removed within 60 days of becoming obsolete, not useful.

And that the surface to which it is affixed, be restored to the condition prior to the installation of these six antenna and the previous antennas for which they are replacing.

Any change in equipment would be require a new Special Permit.

Okay, let me make a motion then --

CONSTANTINE ALEXANDER: Tie it to the plans and photo sims.

BRENDAN SULLIVAN: Oh, I'm sorry.

And the Special Permit is being granted on the condition that the work be in compliance with the drawings and the photo simulations initialed by the Chair and submitted as part of this application.

It appears that -- let me make a motion then to grant the Special Permit for in-kind replacement of six existing antenna with new antenna and one small cabinet adjacent to the existing cabinets as per the application.

It appears that the requirements of the Ordinance can be met.

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

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

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

citizens of the city.

The Board notes the existence of an existing antenna at this location, and there has not been any report of any detriment to the health, safety, or welfare of the citizens.

And the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of the Ordinance, and to provide telecommunication facilities for the citizens of the city.

And with that let me make a motion then to grant the Special Permit.

DOUGLAS MYERS: Should there be a reference to the Chair subsequent review of the Planning Board letter?

BRENDAN SULLIVAN: I will -- I would like to stay mute on that. I guess maybe I will review it, though. Well, no, let me -- maybe that's a good point.

CONSTANTINE ALEXANDER: If I may, Mr. Chairman. I don't think we should do that. First of all, I think it's probably an improper delegation because we can't -- we have to make the decision and you can't --

BRENDAN SULLIVAN: I will review it.

CONSTANTINE ALEXANDER: I think you run the risk. I think we pass the risk on to the Petitioner which you've gladly accepted.

ATTORNEY RICARDO SOUSA: I do gladly accept it. In this case I do, absolutely do.

DOUGLAS MYERS: What is the risk that we will be passing on to the Petitioner?

CONSTANTINE ALEXANDER: Well, the risk will be that there's something in the Planning Board that requires change to the plans that have been submitted to us tonight.

DOUGLAS MYERS: I see.

CONSTANTINE ALEXANDER: And we've approved relief on the basis of these plans. So then they'll have to come back with a new

Petition to seek new relief is what it comes down to.

DOUGLAS MYERS: Yes.

BRENDAN SULLIVAN: I think the Petitioner is acting in good faith, and I think the Board is relying upon that, that there is no --

ATTORNEY RICARDO SOUSA:

Mr. Chairman, with your permission --

BRENDAN SULLIVAN: Yes.

ATTORNEY RICARDO SOUSA: -- is this not the recommendation?

BRENDAN SULLIVAN: No.

ATTORNEY RICARDO SOUSA: It's not?

BRENDAN SULLIVAN: But let me say that I will get that and I will -- if there is no change at all, I will be mute on it. If there is a, what I consider something of substance, I'll communicate with that, and I think I probably have your assurance that you would change --

ATTORNEY RICARDO SOUSA: You do on the record, you have my assurance, yes, absolutely.

BRENDAN SULLIVAN: All those in favor of granting the Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(7:55 p.m.)

(Sitting Members: Brendan Sullivan,  
Constantine Alexander, Thomas Scott, Douglas  
Myers, Janet Green.)

BRENDAN SULLIVAN: Anybody hear  
interested in the Berkeley Street case?

(No Response.)

BRENDAN SULLIVAN: We'll have to  
wait until eight o'clock.

(A short recess was taken.)

(8:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: Let me call case No. 10355, 19A Berkeley Street.

Okay, if you would please introduce yourself for the record. Please spell your last name when you're going to speak and whoever is going to speak for the secretary.

JOHN LAFRENIERE: My name is John Lafreniere, architect. Lafreniere is L-a-f-r-e-n-i-e-r-e. And my office is just right down the street here in Cambridge. And this is the owner.

STEVEN SHAY: Well, actually my wife is the owner. My name is Steven Shay, S-h-a-y. My wife is named Wendy Weiss, W-e-i-s-s.

BRENDAN SULLIVAN: And you're going to speak for her?

STEVEN SHAY: I will speak for her at

great risk.

BRENDAN SULLIVAN: Good luck.

STEVEN SHAY: I'm not going to say a thing I don't really understand.

BRENDAN SULLIVAN: What is it that you would like to do?

JOHN LAFRENIERE: The request is -- you've seen all the documentation. I'm sure you've read it.

BRENDAN SULLIVAN: Yes.

JOHN LAFRENIERE: There's the -- it's a two-unit condominium, historic building, 1860 or so that was built about this big, and then there was an addition put on in the 20's. It became a condominium unit building. And it was divided into two at about this location in I think the 1980s. They the Weiss/Shays, I guess Wendy bought the unit and they're living in it.

STEVEN SHAY: I am on the mortgage.

JOHN LAFRENIERE: And you are there,

too.

STEVEN SHAY: Only on the mortgage.  
So this is a great deal.

JOHN LAFRENIERE: I want to make  
sure I don't misstate the situation.

So they're renovating the kitchen.  
And in doing so, in order to make it a more  
open, living experience, they were  
constrained. And this is a storage room on  
the outside and they want to make it more  
open, but it's dimensionally constrained.  
So we went through a whole -- so it's on -- let  
me just explain one more thing.

There's a deck here. And so it sits on  
the deck. It's an expansion of the existing  
deck, but it's -- the deck had a roof on it,  
we would have contained in the FAR but we're  
not. So we're now -- went into a FAR study  
and we looked at all of the, you know, areas  
of the things. We know about all the issues,  
the seven-foot rule in the basement and

everything, but there was really no way to sort of find compensating area or anything to reduce the square footage to get it. So we're -- our -- we're really throwing ourselves at your sort of mercy and good will that -- it is over -- the FAR obviously should be I think on this site is 0.5, and it's actually 0.58 existing as it has been since, you know, whatever, the 20's. And so this will put it from 0.584 to 0.566. So it is, you know, hundreds of FAR but it is true it is. It will make the place much more liveable and that's the desire.

Let me explain what the impact on the outside will be.

STEVEN SHAY: Can I just --

JOHN LAFRENIERE: I'm sorry, go ahead.

STEVEN SHAY: My -- without understanding any of what the FAR stuff, there's a porch there adjacent to what

is -- what we call it a pantry. And so the proposal is to move, expand along the porch but not further out, no additional footprint in terms of what's in the ground. And I don't mean that as a technical term, along the porch about maybe five feet -- I'm --

JOHN LAFRENIERE: Yeah, I think it's about -- I think the total thing is by seven by six or something. So it's a little less than that. So it's about six feet, yeah.

STEVEN SHAY: So we take a portion of the building at I guess is already out, and then extend it back along the porch, and then go up. I mean that part of the porch doesn't have a roof. And I guess that's it.

JOHN LAFRENIERE: And I guess you've seen the photo. So it's -- essentially this is what's there now. And it would be this in the future where we have no windows here and it's a storage thing, and it now has three three windows. It gets extended whatever it

is, it's about five feet or six feet long.

BRENDAN SULLIVAN: This window here is in which room?

JOHN LAFRENIERE: That is -- I forget where that is.

STEVEN SHAY: Which one you looking at?

JOHN LAFRENIERE: That's part of the living room.

STEVEN SHAY: No, that's the hallway.

JOHN LAFRENIERE: Oh, that's the hallway right there, yeah.

BRENDAN SULLIVAN: Which goes from the kitchen to the living area, something sort of a --

JOHN LAFRENIERE: You enter from here and you sort of see through this at the end, and now it will, the kitchen will engage that part of the house.

BRENDAN SULLIVAN: Yes.

STEVEN SHAY: So if we move that window, we're going to the distance of the porch and there will be a window on the other side. So it's just a -- it will actually add light to the house but not much.

JOHN LAFRENIERE: But it doesn't increase any sort of encroachments on setbacks or anything like that. It's all within the existing line of the existing space.

You've seen these, right?

BRENDAN SULLIVAN: So the existing area basically has a form and a function but not a very good purpose?

JOHN LAFRENIERE: Right, yeah. Exactly. Yeah.

BRENDAN SULLIVAN: And that square footage would be better used on the inside of the house?

JOHN LAFRENIERE: Right, yeah.

BRENDAN SULLIVAN: Is basically

what I -- have you seen all of this?

JANET GREEN: Yes.

JOHN LAFRENIERE: We can't quite use it as we like to. If it were slightly bigger, it would make a difference.

BRENDAN SULLIVAN: Okay. Any questions?

CONSTANTINE ALEXANDER: No. I was making the observation about 25 or so years ago when I was looking to buy a place in Cambridge, this place was for sale and I looked at it. I can testify that the kitchen needs some extension.

THOMAS SCOTT: Okay.

DOUGLAS MYERS: Any comment from the abutter on that side of your house?

BRENDAN SULLIVAN: Well, there is. There are some letters in support here.

Tom, any questions at this point?

THOMAS SCOTT: No, I'm good.

BRENDAN SULLIVAN: Janet?

JANET GREEN: I had just one question. It was about the windows that were in the drawing, I wasn't quite sure. Are those consistent with the rest of the house? I think they were six over six?

STEVEN SHAY: They're intended to be identical.

JOHN LAFRENIERE: Yeah, right.

JANET GREEN: You couldn't tell from the other pictures that it was the same.

JOHN LAFRENIERE: Yeah, right.

STEVEN SHAY: Actually the one window that would be removed looks least like the rest of the house. So....

BRENDAN SULLIVAN: Any questions?

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Let me open it public comment.

Is there anybody here who would like to speak on the matter 19A Berkeley Street?

(No Response.)

BRENDAN SULLIVAN: There is correspondence in the file dated September 16th. (Reading) Dear Sirs and Madam: We live at 19 Berkeley Street in an adjoining condominium to 19A. Wendy Weiss and Steven Shay have described their proposed renovations and we have no objection to the proposed work. Accordingly we support their application for a Variance to allow the extension of a room on the porch area on the back side of 19A Berkeley. Adam and Phyllis -- I'm going to butcher this. Sonnenschien?

STEVEN SHAY: Sonnenschien.

BRENDAN SULLIVAN:  
S-o-n-n-e-n-s-c-h-i-e-n.

There is correspondence from Janet Axelrod and Tim Plenk, P-l-e-n-k at 21 Berkeley. (Reading) We live at 21 Berkeley, next to the condominiums 19 and 19A. Weiss and Shay have described their proposed

renovation to us, and we have no objection to their proposed work. We face the side of the house where they would like to do some alterations. We support their application for a Variance to allow the extension of a room on the porch area of their home of 19A Berkeley.

There is correspondence from Maria Tatar, T-a-t-a-r. (Reading) I live at 16 Berkeley, across from the large Victorian house a condominium at 19, 19A. Wendy Weiss and Steven Shay have described their proposed renovations, and I have no objection to the proposed work. Accordingly I support their application for the Variance.

There is correspondence --

STEVEN SHAY: That's forwarded, an e-mail from Professor Pipes (phonetics).

BRENDAN SULLIVAN: Best wishes for a good summer and all of that. Well, it's cordialities anyhow.

The end of the correspondence.

Let me close public comment.

Anything to add or parting words?

JOHN LAFRENIERE: No.

BRENDAN SULLIVAN: No?

Okay. Let me close the presentation part.

Gus, what are your thoughts?

CONSTANTINE ALEXANDER: No problem.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I think it looks good.

BRENDAN SULLIVAN: Okay.

Anything?

DOUGLAS MYERS: It's fine.

BRENDAN SULLIVAN: I think if you go by the house a year from now you wouldn't know anything happened.

THOMAS SCOTT: You wouldn't know.

BRENDAN SULLIVAN: Let me make a motion then to grant the Variance to enclose

approximately plus or minus 40 square feet at the location of the existing deck to allow for the new kitchen area as per the application and the drawing submitted.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner of capturing much needed space which now of which is a porch area, has very limited function, and could be better used on the interior of the house.

The Board finds that the hardship is owing to the fact that the house is existing, non-conforming, built prior to the enactment of the existing Zoning Ordinance. And as such any addition, and this addition being quite slight and de minimus would require some relief from this Board.

And there is an inherent hardship with the size of the house presently.

The Board finds that desirable relief may be granted without substantial detriment to the public good.

The Board notes the tasteful addition, and also comments from the abutting neighbors and also co-owners of the -- not co-owners, owners of the adjoining condominium who are in favor of this addition.

The Board finds that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

And the Board finds that this is quite de minimus and entirely within the jurisdiction of the Board to grant this minor relief.

On the condition that the work comply with the application and the drawings as submitted in that application.

All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

STEVEN SHAY: Thank you very much.

JOHN LAFRENIERE: Thank you very  
much.

(A short recess was taken.)

(8:15 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: If 330 Walden Street wants to come forward and settle in. Okay, Edrick, if you would please introduce yourself for the record.

EDRICK VAN BEUZEKOM: My name is Edrick Van Beuzekom. First named E-d-r-i-c-k. Last name V-a-n B-e-u-z-e-k-o-m. I'm the architect of the project and with BB Design in Somerville in Union Square, and I live in Cambridge. I'll let my clients introduce themselves.

LINDA CALLAHAN: My name is Linda Callahan. I live at 330 Walden Street.

LEAH LORTIE: Leah Lortie, L-o-r-t-i-e.

BRENDAN SULLIVAN: Okay.

EDRICK VAN BEUZEKOM: All right, the project is currently a two-family house, and I have some photos here. It's a supplement to what you have in the file. This is a view. This is just a view from the street. You can see how little of the house you can actually see from the street. Unless you're up close to, you can see that.

The house has a rental unit on the first floor and then the second and third floors are the owner's occupied unit. The house is non-conforming currently, but two side yard setbacks and FAR and -- the house is non-conforming to side yard setback and to floor area ratio. This is a view of the back of the house which has a large deck. There was an addition put on, I believe in the nineties for a master bedroom on the back. That was previous to my clients owning the house.

And I'm just going to show you another

view of this because this ties in with some of our issues. This is just a view of the deck in the back which is quite large. It creates footprint basically that counts towards the floor area ratio.

CONSTANTINE ALEXANDER: But that deck is going to remain -- that's not going to be affected by the project?

EDRICK VAN BEUZEKOM: That's right. What we're proposing --

CONSTANTINE ALEXANDER: Do you by any chance, I notice in your file you have what you're proposing to do, but I didn't see the existing layout so I can compare one against the other.

EDRICK VAN BEUZEKOM: Okay, that should have been in the file.

JANET GREEN: It was in the way back. It was in a funny location. You had to flip back and forth.

CONSTANTINE ALEXANDER: Way in the

back?

EDRICK VAN BEUZEKOM: This is the existing third floor. Here you go.

And the issue on the third floor is there's actually a lot of space in the original part of the house, but it's fairly low and it's basically a very wide corner. My clients have a young child right now who sleeps outside their bedroom on the third floor in the corridor area. And our goal is basically to get -- they also have another child on the way.

LEAH LORTIE: Immanently.

EDRICK VAN BEUZEKOM: So one of the issues for them is having the children live on the same floor as where the master bedroom is especially while they're young. So we wanted to see if we can use the space up there. There was really no way the way the space is currently configured to fit any more bedrooms up there. And so what we were proposing to

do is basically do an addition for two very small bedrooms, but enough to have --

CONSTANTINE ALEXANDER: What is this space used for now, not the bedroom, I can see that. What's this now used for?

EDRICK VAN BEUZEKOM: That's where they have the bed for the child. But it's -- the knee walls are four feet high, and it goes up to about seven and a half feet high in the center. So it's not -- you could make a room out of it, but you have to go through it to get to the master bedroom behind it.

CONSTANTINE ALEXANDER: And the hardship, the reason for what you want to do is so you could have the children live on the same floor?

EDRICK VAN BEUZEKOM: That's --

CONSTANTINE ALEXANDER: I have to tell you, and I don't mean to be a social commentary, but I've raised children who slept in a bedroom on a different floor than

I slept on. I don't know why that's -- I'm troubled by why that should be a basis for changing our Zoning By-Law to allowing a further departure from our Zoning By-Law.

EDRICK VAN BEUZEKOM: Well, I'll let my client address that further as we get further along in the discussion.

CONSTANTINE ALEXANDER: Fine.

EDRICK VAN BEUZEKOM: But, you know, in trying to -- the hardship has to do with the configuration of that third floor where there's a lot of space that's unusable in the way that it's configured. So we're trying to make it usable.

CONSTANTINE ALEXANDER:  
Understood.

EDRICK VAN BEUZEKOM: In addition, our floor area ratio is high -- I mean, we're over the existing allowable floor area ratio, but it appears higher than it is in reality in some ways because of the massive deck on

the back which creates this big footprint. So I think that artificially inflates the FAR by about 0.4. So, you know, which would still leave us over the FAR with the existing house but that's I think --

CONSTANTINE ALEXANDER: Under your plan would the master bedroom suite increase in size than what it is now?

EDRICK VAN BEUZEKOM: No, no. It's staying as it is. We're getting a very small bathroom up there as well. Let me pull that floor plan out.

Okay, so this is the proposed floor plan. The master bedroom is as existing right here. We're squeezing in a bathroom under the eaves of the existing -- well, we're raising the roof, but basically not taking it out to the edge and getting a walk-in closet across the hall from that.

The two bedrooms are basically a little under nine feet in width and ten feet in the

other direction. And they're adjacent to the existing stair that comes down here. This existing stair has a very small dormer over it currently. So the addition on the back as you saw in the photos --

JANET GREEN: Which is the street side?

EDRICK VAN BEUZEKOM: This is the street side.

JANET GREEN: Okay.

EDRICK VAN BEUZEKOM: So that master bedroom -- can you see it in this view, is in the very back. And there are -- I also brought if you're interested, there are some aerial views that we can pass around that show other houses in the neighborhood. There's a number of other similar size dormer additions and third floor additions. So I think it's not --

DOUGLAS MYERS: Would you mind passing those. Those are not in the file?

EDRICK VAN BEUZEKOM: They were not in the file.

DOUGLAS MYERS: Thank you.

EDRICK VAN BEUZEKOM: And these -- I have a couple of views where basically we took photographs of the existing house and then generated off that photograph, a view to show you what it would look like with the proposed addition. So I'll hold these up. So you can see there where you see the new portion in between the existing master bedroom and the dormer over the stairs.

And then I have --

BRENDAN SULLIVAN: I tell you this is a very tough sell for me because the existing master bedroom is not attractive. It's just -- it's not pretty.

EDRICK VAN BEUZEKOM: I agree.

BRENDAN SULLIVAN: And I think that this is only going to exacerbate. And to me it's literally and figuratively over the top

as far as the amount of structure sitting on the roof.

DOUGLAS MYERS: Could I chime in while we're at it just to -- just not to chime in, although functionally de facto I am chiming in so you can have an idea of the range of concerns that the Board has.

My concern was just the effect of the massing on the roof with regard to the neighborhood.

EDRICK VAN BEUZEKOM: Yeah.

DOUGLAS MYERS: I was interested in the photograph you gave of the neighborhood as a whole, but in the immediate neighborhood there's nothing comparable on the other side of the street and there's nothing comparable in the building's immediate left-hand side for several buildings down.

The right-hand side of your building, No. 334 has similar structure but will now be out of symmetry once this addition is made.

EDRICK VAN BEUZEKOM: Well, his is a little more forward.

DOUGLAS MYERS: And plus the building at -- on the right-hand side has a very square, awkward dormer. But aside from that, there's -- this is just this really considerable massing that is not compatible with any of the buildings immediately in the vicinity.

Plus as Brendan has pointed out, that the net result is going to be way, way over FAR. When it's all said and done, even though you start above FAR, you're going to be 32 percent above FAR and you're asking the Board to approve that. So this is -- you have a range of our initial reactions anyway.

EDRICK VAN BEUZEKOM: Yeah. Well, you know, I share your concerns about the mass of the original master bedroom. It is pretty awkward and it doesn't have a lot of glass area. You know, our approach was to try to

do something that would tie that into the house in a way with something that was a little more attractive. But again, brings that in as part of the overall third floor there. So trying not to, not to have to tear it -- we didn't want to tear it down and rebuild it, but you know, one of the other options that we looked at was to keep the roof lower on what we're proposing where we would not go above the existing ridge. And I think, you know, that certainly keeps the scale of it down, the walls are lower out at the edge. The only issue I had with that is I think it then highlights that rear addition as being awkward, you know, when we brought it up to the same roof height, it felt like it was a little more --

BRENDAN SULLIVAN: Basically it looks like a one-family house that has been plunked on top of the roof. And I absolutely hate when they come up and over the ridge.

EDRICK VAN BEUZEKOM: Yeah.

BRENDAN SULLIVAN: And, again, it just, it looks like a single-family house that was just all of a sudden dropped by helicopter on top of the structure. And I mean, there's nothing attractive, appealing, you know, about it. Yeah, you know, it serves your purpose. It gives you more room. But then, you know, in going through the pleadings where you say and, again, going back to Gus's original comment about really I can't sympathize with, okay, we want the kids to be on the same floor with us. I mean, you know, I raised three kids and they were on their own floor. I grew up, and the Board has heard this too many times, with a brother and five other sisters. There were seven of us who were crammed into three bedrooms. And my mother and father were in a -- took a -- you know, we were raised in a two-family house not dissimilar from this. And I don't think any

of us suffered any deep psychological damage because we weren't on the same floor or didn't have our own space and our own bathroom and all that other stuff. And I think it just goes contrary to the charge that's given us is to preserve the amenities of the city by putting in something that just doesn't fit. I mean that's -- so I'm a very hard sell on this. I just --

EDRICK VAN BEUZEKOM: Yeah. I would just add --

BRENDAN SULLIVAN: I don't like the way the building looks now --

EDRICK VAN BEUZEKOM: Yeah.

BRENDAN SULLIVAN: -- and I think, you know, as much lipstick as you can put on the sow, it's still not pleasant looking.

JANET GREEN: Well, I guess for one thing I'm more sympathetic with having the children on the same floor. I think that's much more typical nowadays. I think it would

be very rare to find that somewhere where it isn't. It's just a different style and a different time. So I'm really sympathetic with that.

I think the design is complicated. I mean, you know, you bought the house. They can't -- they're not going to change the whole part about it. But it seems to me that it hasn't, it hasn't sort of improved it and it hasn't sort of moved some of the questions, you know, some of the reasons that like that hasn't sort of diminished them at all. And I don't know -- I know you said you had some idea about lowering the walls or --

EDRICK VAN BEUZEKOM: Yeah, I mean we looked at, again, the addition, keeping the ridge height of that down with what the existing ridge which certainly brings the scale down from the street a little bit, but in terms of how that works with the existing part, that was sort of awkward.

Going back to the issue of being on the same floor, you know, I grew up in a house where my parents were on a different floor, too. I think what's a little bit unique here is just the fact that typically in a situation like the parents are on the lower floor and the kids are on the upper floor. Here it's the other way around, and not only that, the master bedroom is really quite remote from the second floor. So if you have young children, you know, you're pretty far away from them. So, that's really what triggered this.

BRENDAN SULLIVAN: Well, maybe the space needs to be redone or something. I mean, you own the entire house, the two-family. You know, and again, I live in a two-family and we needed more space, we took some of the space from the tenant. You know, yes, we suffered -- there was a loss in rental, but there's a price you pay for what

you get. And at some point if the house doesn't suit your needs, if it's not big enough, if it's not laid out enough, then maybe the alternative is another house that suits that rather than all of a sudden just adding mass upon mass.

CONSTANTINE ALEXANDER: I could be persuaded to find a hardship based upon having the children on the same floor. I mean, I'm skeptical but I could be persuaded. But I can't be persuaded with the architectural project that we have before us. And it's not a criticism by any means of your work. You're starting with a difficult building.

EDRICK VAN BEUZEKOM: Yeah.

CONSTANTINE ALEXANDER: And to compound the difficulty and make the building even worse than it is now is a real problem. I think it all comes together.

EDRICK VAN BEUZEKOM: Yeah.

CONSTANTINE ALEXANDER: I'm wondering whether can you go back to the drawing board, come up with a completely different architectural solution that gives you what you want but is not as -- I don't want to use the word ugly, as not as unattractive as what you're proposing. This doesn't work from my perspective. It's just not the kind of building that we should be allowing as a Zoning Board. So basically according to what Brendan and I think Doug is saying as well.

EDRICK VAN BEUZEKOM: Okay. I hear you.

I'm happy to go back and rework it and see if we can come up with something a little more -- maybe we need to think about changing the refines of the existing master bedroom for instance.

CONSTANTINE ALEXANDER: Right.

EDRICK VAN BEUZEKOM: So if we're --

BRENDAN SULLIVAN: On sheet A-12 can you sort of walk me through that? It says office and then kitchen and yet --

EDRICK VAN BEUZEKOM: Those are mislabelled. Apologize.

BRENDAN SULLIVAN: I was going to say the kitchen looks -- that's just sort of flipped?

EDRICK VAN BEUZEKOM: Yeah, exactly. That is where -- I apologize for that. The labels were left on from the --

BRENDAN SULLIVAN: Okay.

EDRICK VAN BEUZEKOM: -- from the original configuration.

BRENDAN SULLIVAN: Yes, okay. So that's --

EDRICK VAN BEUZEKOM: Yeah. So we've done some reconfiguration here to get -- to open up the kitchen to a dining area. But again, you know, there's just the stair to the third floor is in the front here,

that master bedroom's way in the back. So it's a tough, you know, and it's not wide enough, you know, to do other things with the second floor. So it's, it -- it's a little challenge.

BRENDAN SULLIVAN: It's a typical two-family house that's been there since the twenties or teens, late teens. Families have come on gone. You know, they've raised children, the children have grown up there and gone on and, you know, it's just -- you'd have to reconfigure it or the house itself just doesn't work for the needs. I mean, the third floor is a -- it can almost be a single-family home that's plunked down on top of the roof. I cannot support it. I'm not sure -- I think you have a hard charge, but it's -- for me it's not this one.

EDRICK VAN BEUZEKOM: It's hard to overcome that existing piece in the back.

BRENDAN SULLIVAN: Yes.

EDRICK VAN BEUZEKOM: Well, we probably will want to ask for a continuance but since my clients are here I'd like them to each speak to their issues.

BRENDAN SULLIVAN: Yes.

EDRICK VAN BEUZEKOM: And we've spoken to the neighbors. I think there's a letter in the file from one of the neighbors and Linda has a petition that's been signed by all of the abutters.

LINDA CALLAHAN: (Inaudible).

EDRICK VAN BEUZEKOM: Why don't we start with the petition. This is the petition. Linda took the drawings around to each of the abutters and they're all signed in support of the project. And that's -- I believe one of the signatures on there is from a person who sent in a letter as well.

JANET GREEN: I'm sorry.

EDRICK VAN BEUZEKOM: I say one of the signatures on there is from a person who

sent in a letter of support.

LINDA CALLAHAN: So we, we love living where we are. Actually we love the house and realize that it's architecturally unattractive. It's been a wonderful home for many years and we hoped, hoped to stay there. It's not comfortable for us, for a growing family the way it's configured now. We have agonized and struggled about how to configure this house so that it would work for us and with Rick's help, we've come to this point. And so before we made that decision we looked around in the neighborhood and we could not, we could not find something that we could afford that worked for us. We have a lot of friends and -- in the neighborhood. I don't see how we can be happy in that house if we don't change. We've talked a lot about it and struggled with it. We felt very, very good about having a rental apartment. We have tenants. That's the kind of

neighborhood that we have. So we hoped to go in this direction.

LEAH LORTIE: So for me and I might be, you know, tightly wrapped or overprotective, but it's not possible for me to not have my kids, my soon to be two children on the same floor with me. My three-year-old still wakes up in the middle of the night and I mean, I have to walk like down a corridor, down the stairs, around the corner, through the living room, through the dining room, around another corner to get to a bedroom. It's not possible. And then be up for -- I'm up for three hours every night anyway. I'm not comfortable. Even when I'm not pregnant, it's just not a practical thing. But from an emotional or safety standpoint if somebody were to ever break into our house, it's not possible for my child to be the first person they encounter. I mean obviously that's a worst case scenario. But even the

smaller things, you know, if they have a fever or if they need you, I need to be able to hear the child and soon to be children. You know, we don't know if we're having a boy or a girl. And we have a boy now, likely to be a big guy, and maybe when he's like 16 or something, it would be different to have him on a different floor. But for now, and for the foreseeable future it's really very necessary to me as a parent to be right there, to be able to hear them if they needed me or protect them if I needed to protect them.

Also we did, we looked around, we wanted to see if something else in a sense -- we couldn't afford it. We have -- we want to send our children to Cambridge public school system in January. We're on the lottery for the Tobin Montessori. We keep entering him in the lottery. We don't want to move from Cambridge. We'd love to stay here and we'd love to make it work and we'd love to make it

work in the community where we have a tenant and where our other neighbors have tenants. It's kind of a standard way where we know our -- Linda's been there 16 years. And many of the other owners and families are similar. We love to stay there. We've also made good friends -- one even came today -- with other families that live in our general vicinity and neighborhood. And that community is so critical to having family and raising a child. And I wish I was more sophisticated about what is pretty or what's ugly, but we certainly tried to keep the footprint as small as possible while just making a bedroom. Campbell right now sleeps in, you know, a hallway, a glorified hallway. And that's been fine. He's just three. It was survivable until then. It's not survivable as he becomes a little older and there becomes two and we tiptoe down the hallway at night and in the morning. We would just love, we

would love to make this work rather than having to leave the neighborhood and live in, I don't know where we can even afford. But they also might not be as friendly to our family as Cambridge is. So any time that you go out into the suburbs, you get a little more risk in terms of finding a community that embraces you and your family, too. So we would love to find a way to make this house work for us and hopefully make the attractiveness work for you.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Isn't it possible that there could be another architectural solution?

EDRICK VAN BEUZEKOM: I'm willing to look for it, yeah. You know, that's what I'd like to propose as we did, continue the hearing and we'll spend sometime redesigning until we find another way to make this work.

DOUGLAS MYERS: You realize this is

no personal judgment on the applicant at all in any way, shape, or form. We, as you know, we don't discuss these cases in advance at all. And the fact that a number of Board members independently, without any prior discussions, came to the conclusion that under our Ordinance there were these concerns, indicates to me that there's a high probability that our concerns are well founded. And on the other hand, no one on the Board is interested in closing the door on further revisions that bear in mind what we've said tonight. And in terms of sleeping on one floor while some diversity views have been expressed, also I think the Board has expressed complete open mindedness to considering that along with whatever plans you submit in the future. So I for one would be receptive to your reworking the plans, bearing in mind what we've said tonight and finding a way to go forward.

EDRICK VAN BEUZEKOM: I'm curious how big an issue the FAR is. I mean, if we can come up with a solution that stays within the proposed FAR here or slightly under that, but is a much more attractive architectural solution, is that something that would be considered?

BRENDAN SULLIVAN: I'm more tuned in to the aesthetics than the arithmetic. You know, you can put a little floor area and it looks big and you can do, you know, it depends on how you do it. I mean, it's going to have to be done really craftily. I'm not worried about the number as much as I am with the aesthetics and the impact and the bulkiness that -- that would be my take on that anyhow.

EDRICK VAN BEUZEKOM: All right.

BRENDAN SULLIVAN: Well, on the motion then to continue this matter, how much time?

EDRICK VAN BEUZEKOM: Well, when's

the next available hearing.

DOUG BROWN: Are you taking public comment?

BRENDAN SULLIVAN: Oh, I'm sorry. Let me open it to public comment then.

Is there anybody here who would like to speak on the matter 330 Walden Street. Come forward and state your name for the record.

DOUG BROWN: Doug Brown, B-r-o-w-n and I just wanted to weigh in in support of their proposal. I've known Leah and Linda for three years I think. Our children are the same age and they've been long time owners, 16 plus years, and they are attempting to raise a family and do not want to leave Cambridge. I think that's the starting point to think about this. And I know you want to keep human emotions out of this, but at the same time we're talking about people. The house currently is smaller than either abutters on either side even though

all were built at the same time to the same design. I think what's being proposed, though, may not be exactly the style that everyone approves of, we're not really here to regulate style, and it doesn't represent any change to the front facade. It doesn't represent any change to the overall height. It doesn't exist currently and neither neighbor, including several across the street have gone around it and say they don't mind the design and they're in favor of the project. So as far as it doesn't present a hardship to the neighborhood, the neighborhood doesn't think so. I also -- I think I struggle with the fact that what I've heard here is that there's three options: Either you can move, you can convert your property into a single-family and put your elderly tenant out on the street, or you can come back with a totally different design after spending all of this time and money

getting to where we are now. I think does -- do I like the exact design? No. Does it meet the needs? Yes. Does it present a huge hardship to the neighbor? Apparently not. The neighborhood doesn't mind it. And so, you know, maybe the solution is to consider a more peaked roof or something that something that creates more space on that floor even though it may exceed the height requirement, even though it doesn't look the same as the all the other matching houses. If that's something that you guys would be in favor of, maybe that's a direction that they can seek. It is a strange massing right now but that's partly because it's a swished roof and most two families have a peaked roof so they can have usable space on the third floor which is what I have now. So I'm in favor of going forward with what's here now because there's been a lot of time and energy put into it, but I would

hope that if you object to it, first you look at what the neighbors feel. But also that perhaps you give them a direction beyond just go back and do it again. So that's my opinion.

BRENDAN SULLIVAN: Great, thank you.

Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody and I will then close public comment.

There are letters in the file in support. There is a Petition signed by nine people. There is correspondence from Lucy Patton and David C. Petty at 333 Walden. They are writing in support. They have seen the plans and they endorse the project. It will be architecturally harmonious with other houses nearby and will allow Linda and her growing family to remain comfortably on

Walden Street rather than leaving the area. She's committed to maintaining the first floor as a rental unit. And in this period of increasing condoization, this too is an important contribution to our Walden Street community. We urge you to approve Linda's petition.

And I think that is a sum substance of the correspondence on the file.

Okay, so let me close public comment then. And then on the motion to continue, Sean, are we in January?

SEAN O'GRADY: I'm sorry?

BRENDAN SULLIVAN: January?

SEAN O'GRADY: We just closed January 24th.

BRENDAN SULLIVAN: Anything in -- and that's it?

SEAN O'GRADY: Not unless you wanted to double up on something.

CONSTANTINE ALEXANDER: Any sense,

Sean, of the cases that are in December and January that are continued or likely to continue again?

BRENDAN SULLIVAN: Edrick, what would be your time frame?

EDRICK VAN BEUZEKOM: If I had a months, that's a good time.

BRENDAN SULLIVAN: So sometime in January?

EDRICK VAN BEUZEKOM: Sometime in January would be fine. If I have to go to the first one in February.

BRENDAN SULLIVAN: Yes, I may or may not be here then. I'm hesitant on that. If we can do the last one in January anyhow, if it's okay with the Board.

SEAN O'GRADY: You have an easier time in December 20th.

LINDA CALLAHAN: We're due on the 20th.

SEAN O'GRADY: Okay. That probably

takes precedent.

DOUGLAS MYERS: There are one or two cases on January 6th of the Mass. Avenue.

SEAN O'GRADY: I don't remember that.

DOUGLAS MYERS: 675 Mass. Avenue, it's been continued a couple of times.

SEAN O'GRADY: You're right.

CONSTANTINE ALEXANDER: That's what I meant about maybe our agenda.

DOUGLAS MYERS: It's subject to some revision, I don't know.

SEAN O'GRADY: 1/10.

BRENDAN SULLIVAN: So January 10th.

EDRICK VAN BEUZEKOM: That would be good.

BRENDAN SULLIVAN: Let me make a notion then to continue this matter until January 10, 2013, on the condition that the Petitioner maintain the posting sign. Change the posting sign to reflect the new

date of January 10, 2013, and the time of seven p.m.

Also that if there are any changes to the existing application and drawings, that they be resubmitted and in the file by five p.m. on the Monday prior to the January 10th hearing.

And also that if the drawings change, that a revised dimensional form also accompany that.

CONSTANTINE ALEXANDER: Let me just stress the notion that you have -- that sign that's up there now, you've got to take a magic marker and cross out the today's date and time and put seven o'clock p.m. on January 10th. If you don't do that, we won't be able to hear the case on January. So I don't want to have a technicality.

LEAH LORTIE: Just do it with a marker. Seven p.m. on January 10th.

CONSTANTINE ALEXANDER: Seven p.m.

on January 10th.

LEAH LORTIE: And possibly this is naive, but is it possible to get an idea of what you're looking for? Like a hint towards what might make it more acceptable? Because I mean I don't want to totally go in the wrong direction.

CONSTANTINE ALEXANDER: Something that's not adding to the massing of what you proposed. I can speak for myself. The building, the massing of the building with the proposed addition is too great. It's just --

LEAH LORTIE: It just looks bulky?

CONSTANTINE ALEXANDER: Much too for the neighborhood in particular. It's out of character. If you come up with a solution that's more, as less of a massing impact on the neighborhood, that to the outside world, as you look at it, doesn't look like "Oh, my God, this building" -- it's a

single-family house as Brendan notion on top of a two-family house. If you get away from that, that's what I think that's the best advice I can -- I guess I can give you in terms of redesigning this.

Did I get it right?

BRENDAN SULLIVAN: Yes. I mean, Tom, any thoughts?

THOMAS SCOTT: I think I'm, I'm kind of in tune with the rest of the Board. I think, you know, it's too bad the existing addition is so poorly done because you're really kind of stuck with that. But it's so overwhelming and to add on to that just makes, I think, the appearance of the house almost chaotic. And like Gus says, too big, too overly massed for the size of the house.

My preference would be to try to work within the confines of the existing frame of the house and rework, you know, the layout of the second floor and the third floor together

trying to get to where you want to be. And maybe slightly increasing the third floor if you have to, but not, you know, not going too far. I mean, you're substantially over the FAR in this scheme, and, you know, the Board doesn't normally look favorably on that. So...

LEAH LORTIE: Does anyone happen to see a house that's similar, that sort of did it that way? Like, can you think of a building that's similar to what you're talking about that we could take a look at?

BRENDAN SULLIVAN: This is unique. I can't, to be honest with you, I mean I really can't. It's hard for me to point you in any one direction.

LEAH LORTIE: Is there somebody who could? Like is there --

DOUGLAS MYERS: Your architect.

THOMAS SCOTT: Right there.

LEAH LORTIE: It's all on you,

Edrick.

JANET GREEN: It's an awkward situation because to live in, it's lived very wonderfully for you, you know? I mean, and it's happy and -- so when you look at that house, you see the sort of sum total of your wonderful memories and all the good qualities and how it works. But then it comes to a point where you're adding something that it runs up against what the City Ordinance can and can't be done. And that's what we've hit tonight. But I think your questions are really good for trying to figure out how to make -- how to get what you need and then make the architecture work.

CONSTANTINE ALEXANDER: You may, for example, and I'm not an architect, so I may be just dead wrong, but you may want to work with the deck that's there and reduce the size of the deck and increase the living space there which would give you more internal

space.

EDRICK VAN BEUZEKOM: Right. About ten years ago I had a project come through here on Grozier Road which was a similar hipped roofed building where we raised the roof but brought it in about four feet from each side. So it kept the hip shape to it but, you know, with a clear story windows going around. That had a much, you know, feels small and, you know, it's hard to make that work with this. That was something I thought about because of the way the stair is here. But maybe if we look at relocating the stair, we can make something like that work.

BRENDAN SULLIVAN: Okay, on the motion to continue it to January 10th?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(8:50 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10353, 175 Huron Avenue.

Okay, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. Good evening. For the record, my name is James Rafferty. I'm an attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive.

I apologize for the confusion in the schedule. I had the last case scheduled with the Historical Commission which I thought would have worked well, but they took that case out of order. So I again apologize to the disruption to your schedule.

175 Huron Ave. is I suspect an address known to some members of the Board. The case

maybe holding a certain distinction, in terms of its age, but there have been a series of cases here, and I know some members may not have participated and been involved in this historically. But just by way of a brief background, this is a -- has been a challenging project.

This is a property located in a Residence B District that abuts a business district. It's on Huron Avenue next to a retail block, and it has been a single-family home with a funeral home since about the 1920s. There were two significant additions to the property; one in the rear which is merely an entire cinderblock addition, and then a front addition which came on in the sixties.

As a result, the total square footage of the structure today is 7300 square feet. 7,367. And that is broken down, 5800 of that is funeral home use. And about 1500 of it was

the single-family home.

The applicant in this case looked at a number of scenarios and had filed earlier petitions. The thinking was that the first petition involved putting some retail or office use in the front portion of the building. That didn't meet with great favor with the abutters and the neighbors.

And then there was a second approach taken where it was a three-unit house but it didn't have parking.

And then we further advanced the design and we've come up with a design that seeks to convert this building into three townhouses. And we've spent a fair bit of time both here and with the Building Commissioner going through the definition of what constitutes a townhouse and whether the proposal, as we have it set forth here, would meet the definition of the townhouse. Suffice it to say that we've reached the understanding from

our meetings with the Building Commissioner that the proposed, the proposal as designed did meet the definition of townhouse but one of the areas of relief that we're seeking the Variance from is the dimensional requirements associated with the townhouse. And those --

CONSTANTINE ALEXANDER: At some point can you be specific on that? Not right now. I'd like to know exactly what in Section 11.15 you need a Variance from. What is required? What you want to do? You can't get that from the dimensional form because it's a townhouse development.

ATTORNEY JAMES RAFFERTY: Right. The short answer is that there are certain, there are specific dimensional requirements associated all throughout 11.15 about bulk plane, about heights, and this building probably, with perhaps one exception, doesn't meet any of those. But it is an

existing structure. Those dimensional requirements I think exist if you were to construct the townhouse. This is a conversion into a townhouse which is perhaps somewhat unique. The definition of the defining element of the definition as we understood it from our meetings with the Building Commissioner is the necessity to create a firewall between at least two of the units. And there was a deficiency in the prior application, it was noted by the Chair, that the garage elements did not carry that firewall all the way down into the basement. So this application changed that plan to make this, to meet the definition of townhouse with -- as that term is defined in Section 2 in the definition section of the Ordinance. So it is a proposal for three townhouses.

We put a lot of effort into that because absent the townhouse designation, this would be a three-unit dwelling in a district where

only two-family or single-family properties are permitted but townhouses are an exception. So the townhouse became very relevant to us because it meant that we would not need Use Variance to allow for a three-family house in a district that had two. And so you can have a three-unit townhouse on this district but this lot is a smaller lot, it is below the minimum lot size, and it doesn't meet the lot size requirements for three units. That is --

BRENDAN SULLIVAN: But see the way I read it is a townhouse is permitted in a B Zone provided that you comply with the requirements of the Townhouse Ordinance. So what you're saying is that that's fine, but we don't comply with the requirements of the Townhouse Ordinance.

ATTORNEY JAMES RAFFERTY:  
Dimensionally that's correct.

BRENDAN SULLIVAN: So that, I keep saying to myself, well it's a townhouse in name only.

CONSTANTINE ALEXANDER: That's exactly my dilemma.

ATTORNEY JAMES RAFFERTY: Well, I mean I understand that analysis. But by contrast, though, if this was a two-family house or you could have a two-family house that didn't meet any of the dimensions of the Res B District. It could be taller than 35 feet, it could have an FAR greater than 0.5, it could have an open space. It doesn't mean it's not a two-family house. It just means it doesn't dimensionally conform to the requirements.

BRENDAN SULLIVAN: But that's an existing. You're creating. You're making new.

ATTORNEY JAMES RAFFERTY: We're converting admittedly, yes.

BRENDAN SULLIVAN: Yes.

ATTORNEY JAMES RAFFERTY: And this is a conversion to a townhouse.

CONSTANTINE ALEXANDER: That's the problem, Mr. Rafferty. I'm sorry to interrupt you. You came before us originally seeking a Use Variance to allow a three-family house in this structure.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: And you got a lot of skepticism from the Board. You don't meet the hardship requirements. Use Variances are very difficult for us to grant, for any board to grant. So now you come back and relabelled it, made some internal structural changes and now we're a townhouse. But we're a townhouse, but you can't build a townhouse on this because we don't meet the dimensional requirements, any of them you tell me under 11.15. So all of a sudden you

just changed the names of what you're going to -- these dwelling units, but it's still the same problem. You want to put three units, dwelling units, in a structure that a Zoning By-Law says you can't do.

ATTORNEY JAMES RAFFERTY: Well, we do need relief from the lot area per dwelling unit requirement, that's correct, whether it's a townhouse or not a townhouse. I think we've done a little more than just label it because there have been structural changes. And as I said, we didn't make the moves, you know, unilaterally. We consulted with the Building Department based on what the definition of a townhouse is. So this -- under the Zoning Ordinance's definition this is a townhouse. Now the issue remains for the Board with regard to the dimensional relief we're seeking, and I think without -- I don't want to be overly semantic but I think the heart of this does comes down

to the lot area per dwelling requirement. And it is three units. But the size of this structure and the size of these units, and we've provided the information, on average, I mean, there's one significantly large unit, 2500 square feet, the other unit is 2,037 square feet, and the smallest of the units is 1500 square feet. Those are very conventional sized townhouses. And we have building that's -- its form is existing. So we looked at the possibility of making this into a two-family house, and it really yields a very unwieldily size house. You might recall early on there was even a proposal to put dormers on this. We got rid of all those things. There's been a considerable amount of effort to come up with a parking solution that while it doesn't meet the dimensional requirements of parking, those are parking spaces. So I don't think that's not a parking facility because it doesn't meet the

dimensional spaces in much the same way that this is a townhouse albeit it doesn't meet the dimensional requirements of a townhouse. But there have been I think some, there have been some cases where townhouses have been converted, but I think they more often occur within a more conventional residential style structure and this -- and the hardship here is very much related to the existing condition of this structure with its two significant additions built not for residential use. So the effort here is to try to convert both of those elements into residential use. And what we're left with is really the original single-family is, approximately speaking, is one unit and then the back addition becomes another unit and the front addition becomes a third unit.

BRENDAN SULLIVAN: And why can't it become a two-family?

CONSTANTINE ALEXANDER: Right,

that's my --

ATTORNEY JAMES RAFFERTY: Well --

BRENDAN SULLIVAN: In other words, where I'm going is regardless of the answer, I guess my question --

CONSTANTINE ALEXANDER: All you've said it's unwieldy to you --

BRENDAN SULLIVAN: Maybe we have too much building.

ATTORNEY JAMES RAFFERTY: Well, but --

CONSTANTINE ALEXANDER: I'm sorry, let me -- if you made it a two-family, you'd have two maybe a little larger units than you might say is typical. It changes the economics of the project. I understand that. But it is still a functioning two-family house. By the way, it solves all your parking problems because you only need two parking units. You wouldn't need any Zoning relief on parking. You could just

conform. I'm sure you could conform to the dimensional requirements for two parking spaces. I beg to differ. I just can't believe you can't do it with three you can't just do it for two.

ATTORNEY JAMES RAFFERTY: We're not doing it for three. The short answer is we don't have the 22-foot backup width and we're never going to get it. But that's an aside. I don't mean to interrupt you.

CONSTANTINE ALEXANDER: The point being is you can be much closer, you can comply with our Zoning By-Law with a two-family house. You don't need Zoning. If you need any Zoning relief, it's very technical. And the hardship as you're saying the economics -- you don't like the economics. Your client doesn't like the economics --

BEN SVENSON: Can I speak?

CONSTANTINE ALEXANDER: Wait, let

me finish.

ATTORNEY JAMES RAFFERTY: I think you should wait.

CONSTANTINE ALEXANDER: The fact of the matter is we're not here to deal with the economics. You have a structure. You can make a two-family house out of it. A two -- nice size brand new units. There's a market for larger units particularly in this neighborhood. It's a different project, different economics, but you do it without complying with the Zoning By-Law. You're asking us to re-write the Zoning By-Law. We're a townhouse, but we can't do this and we can't do that, and please give us relief for all the buts and nos. I'm not here to do that.

BEN SVENSON: Can I speak? I mean, just to say that I agree.

ATTORNEY JAMES RAFFERTY: You want to give your name.

BEN SVENSON: I think you all know my name.

THE STENOGRAPHER: No, I don't.

BEN SVENSON: Ben Svenson.

It is true that the economics of the project may change in the same way that I'm not relating anything related to economics. I feel that in a previous case, a Board Member Tad spoke a lot about economics and I felt that it was really unfounded because that's not what this Board does from my perspective that's sort of how I understand it. And me building these two houses, I can assure you that if two years ago I decided to build a two-family for starters, the project wouldn't look as contextual as what we're able to do with the project that has better economics, and that benefits all the abutters who are in support of the project because we're able to do things. It benefits the neighborhood, which I live in because the

front of the building becomes contextual to the neighborhood. If I take the existing structure and turn it into a two-family, you're right, we would not have a hardship and we could do it and we would not be here. To say that we build nice houses that are large is an understatement. We build houses that are 3500 square feet and they're huge. I live in 800 square feet down the street. I live in the Zip Code an averages a thousand square on the neighborhood. I'm still building very large homes and they're 2,000 square feet on average. I don't know how that fits into Zoning and I may have misspoken in some fashion. Economics is not the only driver in this situation. One other thing I'd say is that the priority for our business is the environment, and I think for young developers more than anything, we feel that it is important. We take a structure that has 7600 square feet that's a finished area

and often times the project encroach into the basement, they go into the attic, and they try to invent square footage, that's one thing. 7600 square feet that is finished, plumbing and all of those things, and you know the benefit of reusing space as an adaptive reuse it's a fundamentally different project. I think that, yeah, destroying a building that is fully functional has an added component that I'm not crossing that line.

ATTORNEY JAMES RAFFERTY: If I could just address that point.

I do think it is of significance of the -- that all the dimensional relief being sought in the application with one exception being the head house out to the back deck, there is no change in the size or shape of the building. So it is admittedly seeking a range of dimensional relief, but it isn't resulting in a building that's any bigger than what's there today.

CONSTANTINE ALEXANDER: But it's resulting in a building that's being used for something that's not permitted in the district, i.e. three dwelling units.

ATTORNEY JAMES RAFFERTY: That's incorrect. A townhouse is -- with all due respect a townhouse is permitted, and this is a townhouse. It meets the definition of a townhouse. I guess with -- I guess if the conclusion is that there isn't adequate hardship for the lot area per dwelling unit, I might find that more accepting than the notion that what the townhouse is not accepted. This is a townhouse. It meets the definition of townhouse. It doesn't meet the dimensional requirements necessary to construct a townhouse. But the reality is that if it was a single unit or if it was two units, I think the real test here is what's the impact that this building having three units has as opposed to having two units?

And that's where you go through I would suggest the layout of this project and come to understand that these units are well sized. They have open space in three different areas. They have parking spaces for each unit and they fit -- in the design in particular, I mean, there are elements of this design that involve removal of existing GFA.

One of the more prominent features is the five-foot setback in the second floor. I mean, we all acknowledge that is an unusual, a very commercial addition in the front that sits right on the sidewalk with zero setback, and it's -- frankly it's been one of the bigger design challenges associated with the building. What do you do with it? And, you know, what if you just ripped it often entirely and began and you put -- well, you can't park in the front, you can't do -- there's been a whole range of

exploration here. And to Mr. Svenson's point there's a certain wastefulness of tearing it down. This does represent adaptable reuse. The exterior changes to a very domestic contextual facade. I think Mr. Svenson did a nice job in creating this photo array that really helps explain the context of this. And if this house sat in the middle of a residential street a few blocks away from here, I think the impact would be more significant. One really needs to take a step back and really appreciate the context here. I mean, there is a commercial building that is hard up against this. There's an alley there. Across the street there's a parking lot, and other commercial. This is on the cusp of a residential neighborhood. This is not in the heart of a Res. B District. And that -- the Zoning line is literally in the driveway of this property. So, I don't think it's unreasonable to view this as some

type of a transitional structure from the commercial uses that it abuts to the more traditional two-family style homes that exist on the street.

So the relief and the hardship is related to the structure. And the most efficient way to make the structure succeed. We included a parking analysis in there from the parking people because it doesn't meet the dimensional requirements for parking, but those dimensional requirements don't contemplate a use like this. But those -- the 22-foot backup requirement if you -- the building itself is only 28 feet long. That's why I said I don't see how you ever get two dimensionally conforming parking spaces in the building. We've tried repeatedly. Because we thought we could go for parking relief. But smaller cars and people who are accustomed to going into those spaces can find themselves getting

comfortable with using them. But I would agree that at the end of the day the relief that is most relevant here is the lot area per dwelling unit relief. It is three units. We recognize that the three units are permitted in this district only in townhouses, but it really has to do with the size of the building and the layout.

CONSTANTINE ALEXANDER: At some point will you walk us through the layout of the three units whenever you're ready.

ATTORNEY JAMES RAFFERTY: Sure. I think Ms. Lim probably would be the best person to walk you through that because she's put a fair bit of time into this.

CONSTANTINE ALEXANDER: Whatever.

ATTORNEY JAMES RAFFERTY: But the thing about the townhouse definition, if you look at Section 2, it has to have separate entrances which it now does. It has to have this firewall separation. So it is a

townhouse within that definition. But how -- the building could be sculpted, frankly, to be a townhouse if it's -- I'd say the most significant deviation from the townhouse standard is the height of this building. So if one started to carve up the building to height and you could theoretically because you could go to 40 feet and then you can bulk plane up, you could kind of get there, but again, we're saying the hardship is not requiring us to meet those dimensional standards and start cutting away at the building.

So maybe Ms. Lim could just walk you through -- I don't know if everyone -- we've filed multiple packages, but you may have -- do you have some to pass out?

CONSTANTINE ALEXANDER: We can share this one here.

ATTORNEY JAMES RAFFERTY: Okay, I have an extra here. Probably the floor plan

would be the best way to do that.

CONSTANTINE ALEXANDER: Yes,  
starting with the first floor.

ATTORNEY JAMES RAFFERTY: It's  
starting on A1 I believe.

CONSTANTINE ALEXANDER: A1.

ATTORNEY JAMES RAFFERTY: I have an  
extra set if anyone....

DIANE LIM: On the Huron Avenue side  
we have an entry into the Unit 1, first unit,  
the middle, because it's close to the -- to  
where the entry door is now.

ATTORNEY JAMES RAFFERTY: Why don't  
you -- can you point to that as you go?

DIANE LIM: Yeah, sure. It's here.

CONSTANTINE ALEXANDER: Yes.

DIANE LIM: So here we have some of  
the front section back four feet back to get  
it from the street level and also gave us an  
opportunity to create entry door that  
actually replacing the entry into the funeral

home now. And the parking space where we use a driveway that is currently the existing, we cut away a lot of space in the middle and the side to the back to create three spaces.

CONSTANTINE ALEXANDER: So anybody who parks -- you have three units.

DIANE LIM: Yeah.

CONSTANTINE ALEXANDER: The person -- you park there in unit 3, you park in that garage, you walk out --

DIANE LIM: Right.

CONSTANTINE ALEXANDER: -- down the alleyway, down Huron Avenue, come up the other side of the building and walk up a couple of flights of stairs.

DIANE LIM: Which is their entry door now. All the entry into the units currently we are using what's there now. We're not -- we're not creating anything new entry door. So the --

BEN SVENSON: The walk, the walk is

this. You walk out here.

CONSTANTINE ALEXANDER: Yes, yes, exactly. Okay.

DIANE LIM: Right. I mean, that was -- this is one of the thing that was different from the last iteration where we had a misunderstanding of the firewall separation. We thought that getting into the unit itself was okay, but apparently it is not. So, by closing off all the walls from the parking space to the back unit so it's -- now we ended up just having that door to go around to the main entry door into the other space from the parking.

CONSTANTINE ALEXANDER: And the first unit, unit 1 --

DIANE LIM: Yeah.

CONSTANTINE ALEXANDER: -- you walk in, you have a mudroom and you have a bedroom slash office.

DIANE LIM: Right.

CONSTANTINE ALEXANDER: And you have a stairway to the second floor where most of the living area is.

DIANE LIM: Correct.

CONSTANTINE ALEXANDER: What's with this long area with the big --

DIANE LIM: Oh.

CONSTANTINE ALEXANDER: What is that?

DIANE LIM: This is a media room or it can be a gym that it's a part of this unit. And then also that my -- since this not doesn't have to be the party wall, we might have extra door into this space on the far end, but that's not part of our discussion earlier. So we don't have, we don't show the door now, but right now it's going to be used as a gym or some other thing. It's not just labeled as such.

CONSTANTINE ALEXANDER: You said you might put a door. Where would the door

be?

ATTORNEY JAMES RAFFERTY: Into the garage.

DIANE LIM: Yeah, into the garage.

ATTORNEY JAMES RAFFERTY: In our most recent conversation, the party wall requirement applies to the back wall.

DIANE LIM: This wall rather than this wall.

ATTORNEY JAMES RAFFERTY: Not to that wall. So it was suggested that we could have direct access from the garage.

DIANE LIM: From the garage.

BEN SVENSON: It's the same parking experience that the Hickeys had, you know, for whatever. Just the parking, you walk around to your house.

DIANE LIM: Right.

So on the second floor. I mean, A-2. So there are currently existing two staircase outside to the -- attached to the side of this

building. And parking lot to the building next-door. So that would create separate entry to both the unit 3 and a unit 2 in the back. So the unit 3 staircase you go up to the landing that's currently existing, and there's a door there now, we probably end up replacing that door, but you enter into the staircase, that directly shoot you up to the third level which is the start of the unit 3. So I think there was some confusion about how the staircase work where the door is, where you get to unit 3. But unit 3 literally is exactly where the door is now to the upper, the residential unit. And we haven't really deviating anything from that.

CONSTANTINE ALEXANDER: Unit 2?

DIANE LIM: Yes, unit 2.

CONSTANTINE ALEXANDER: I'm going to come back to unit 3 on the next floor.

DIANE LIM: Yeah, unit 2 there's a door there now in the staircase that goes

straight back.

CONSTANTINE ALEXANDER: You go in the living area for unit 2, what I call living --

DIANE LIM: Yes.

CONSTANTINE ALEXANDER: -- on this floor. And then there's a staircase down back to the first floor?

DIANE LIM: Yes, on the inside right here. In the back.

CONSTANTINE ALEXANDER: Okay. You go back to the first. There's two stories to that unit 2?

DIANE LIM: Correct.

ATTORNEY JAMES RAFFERTY: The bedrooms are on the garden level.

CONSTANTINE ALEXANDER: No, no, I understand.

ATTORNEY JAMES RAFFERTY: That's a marketing term we don't call that basement. It's the garden level.

CONSTANTINE ALEXANDER: I'm sorry, garden level.

BEN SVENSON: It is on grade.

ATTORNEY JAMES RAFFERTY: It has full size windows.

DIANE LIM: And the third and fourth floor we just changed the interior layout of the existing residential space now, and the only other thing that we had to do was to close up the door that exists out to the deck roof of the back volume here. So we had to close that off, fill that out so we have a continuous party wall uninterrupted all the way up through the roof.

CONSTANTINE ALEXANDER: I don't see it in the plan, though. The plan is space --

ATTORNEY JAMES RAFFERTY: It should be in-filled black.

CONSTANTINE ALEXANDER: Oh, all right.

(Discussion amongst the Board and

Petitioner clarifying plans.)

DIANE LIM: I'm sorry. That's actually filled in. There's no window or any --

CONSTANTINE ALEXANDER: I thought you have to have a party wall. That's a slight error on the plan.

ATTORNEY JAMES RAFFERTY: Yes, the black line should extend fully across, right.

THOMAS SCOTT: Do you have to have a fire separation between unit 2 and 3?

BEN SVENSON: No, you need to have -- there can be two units within --

DIANE LIM: You can have two townhouse unit.

THOMAS SCOTT: You can have two units?

BEN SVENSON: Ranjit said, yeah, you can have two. And then one (inaudible).

THOMAS SCOTT: Okay.

How about second means of egress?

DIANE LIM: So --

BEN SVENSON: Every unit has second means --

THOMAS SCOTT: Can you show us?

DIANE LIM: It's also going to be a fire sprinkle. And sprinkled fully. And we have -- I didn't think that this was going to be reviewed here so sorry we didn't show it on here, but we also have a second staircase that is not shown on the plan.

CONSTANTINE ALEXANDER: What? How can you give us plans and not show a staircase?

BEN SVENSON: I know the building pretty well. There's an existing fire escape on the top of the third unit.

ATTORNEY JAMES RAFFERTY: Can you just show where these egresses are?

DIANE LIM: Oh, sorry.

CONSTANTINE ALEXANDER: And if we do grant relief, we have to tie it to a set of

plans.

DIANE LIM: Yes.

CONSTANTINE ALEXANDER: And these are going to be the plans --

BEN SVENSON: These are the plans absolutely with that one error.

CONSTANTINE ALEXANDER: But there's no second means of egress on these plans.

JANET GREEN: With that one error with the firewall -- when you talk about the one error with the firewall and the potential door down by the car.

BEN SVENSON: There's no door there.

DIANE LIM: There's no opening on the party wall. It's continuous from the lower level all the way up.

JANET GREEN: No, I meant you were talking about somebody coming in from being able to walk into this door?

ATTORNEY JAMES RAFFERTY: Yes. The party wall requirement doesn't apply to that

wall that you're pointing at.

JANET GREEN: Right.

ATTORNEY JAMES RAFFERTY: So we learned that it's possible that a door could go into that wall which would provide direct access into that unit from the garage.

CONSTANTINE ALEXANDER: So you were going to show us a second means of egress.

DIANE LIM: The second means of egress from the upstairs is the existing, there's a -- the fire balcony and the ladder that is coming off from this study right here that gets you to the building next-door which is a townhouse unit No. 2.

THOMAS SCOTT: What?

CONSTANTINE ALEXANDER: I'm sorry, I'm not an architect. I don't follow that at all.

DIANE LIM: So if you look at the elevation A-5, the rear elevation shows an existing balcony and the ladder coming down.

THOMAS SCOTT: Okay.

DIANE LIM: That's there now.

THOMAS SCOTT: But that gets you to where, this deck?

DIANE LIM: To the roof, yes.

THOMAS SCOTT: Now how do you get off this roof? You can't go through the other unit.

CONSTANTINE ALEXANDER: Exactly.

BEN SVENSON: We have that.

ATTORNEY JAMES RAFFERTY: Well, why don't you show them.

BEN SVENSON: Okay. We have an alternate scheme that could work. Because this issue was raised earlier today by Ranjit and we wanted to try to address it.

CONSTANTINE ALEXANDER: I'm sorry, sir, we've been dealing with this case for a couple years and you come here tonight and you still don't have the plans, is that what you're telling me?

BEN SVENSON: It's been a little bit of a contortionist act. Everyone needs really good houses, and so we're trying our absolute best to do it. I don't understand technicalities of what a townhouse is or anything like that. I just know --

ATTORNEY JAMES RAFFERTY: Well, I think it is fair to say that there was a question raised today about the second means of egress, and the question is the adequacy of the existing fire escape which then led to a question of well, where does -- the very question you asked where does that fire escape lead to? And I think that Ms. Lim has come up with -- is proposing an external staircase that at the moment doesn't appear in the plans. And I'm not sure whether you have a draft of it now that you could show?

BRENDAN SULLIVAN: Well, it's a Building Code issue.

DIANE LIM: Yes.

ATTORNEY JAMES RAFFERTY: Yes.

DIANE LIM: So that was one of the reason -- well, we don't have a reason is, it's an excuse. That's one of the issue that we put it aside and address it in the last go-round. And we didn't end up sitting down with Ranjit until very later. So that was a part of -- that was brought up. So we do have a solution for that which doesn't change any of the party walls or other concerns that we have for the layout.

ATTORNEY JAMES RAFFERTY: Well, could you describe the solution briefly where it would go and what it might look like?

THOMAS SCOTT: And don't you have the same problem for this unit, unit 3, I guess? There's no second means of egress.

DIANE LIM: Yeah, so we have the staircase that --

THOMAS SCOTT: That takes care of both units?

DIANE LIM: Yes.

CONSTANTINE ALEXANDER: But it's not shown here.

THOMAS SCOTT: Can you show us where you're proposing?

DIANE LIM: So it would be located off in the back just on this side of the party wall which is above the master bathroom there now. See, right now it's a part of the deck for this unit.

THOMAS SCOTT: Oh.

DIANE LIM: So you go up to -- there's already a door out on the deck from here. And then you go down this way. And the staircase would be open all the way down to the garage which would be, which will work because we have that party wall continuous all the way up.

THOMAS SCOTT: Oh, I got you.

DIANE LIM: Yeah, so that would provide direct access down --

THOMAS SCOTT: Okay. But it's not in these plans?

CONSTANTINE ALEXANDER: Not in these plans.

BRENDAN SULLIVAN: Okay, where were we before we got sidetracked?

ATTORNEY JAMES RAFFERTY: I think we acknowledge that there are some Building Code issues around egress that would result in an amendment. But it seems that a solution exists within the plan to accommodate that, but admittedly the plan at -- the full plans at the moment don't contain that and that's probably somewhat of an oversight in our preparation of the plans, but we could remedy hopefully soon.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: But putting aside that issue, I think, you know, we find ourselves back with the questions of the relief.

The GFA numbers actually go down a little as a result of two things: There's that pulling back of the five feet along the second floor wall which is about a reduction of 175 square feet. And then there's also the change in the GFA in the ground floor garage when it goes from living space to automobile parking.

There is one slight addition that I noted earlier which is the head house that allows that unit, that back unit to get some open space. It's, because of the limited amount of open space, it really is the only significant open space that that unit enjoys. It goes to a deck that has always been there and has been used historically. It's just, it's not being accessed at the same floor level it was before. So the deck frankly is there today and has been used by the prior owner. And there were accommodations made to abutters about the size of the deck,

setting back the deck from the edge of the property. Just to remind the Board, the facade changes, if you look at the photographs and in the booklet, the rear facade is particularly uninviting. It's concrete block. It will have -- it will have a significant amount of landscaping and clapboard siding attached to it to give it a domestic look. That's something that was worked out many, many months ago with the rear abutters. The abutter on the immediate left as you face the property has a very beautiful garden and patio and was not at all supportive of a notion that would put a window into that wall. In one of our earlier schemes we had tried to come up with the least imposing an opening as possible, one that wasn't even operable, but that abutter made it clear to us that he would find that objectionable. They would find that objectionable. So that wall, if you look at that elevation, whatever

elevation that is. It really is --

DIANE LIM: 6.

ATTORNEY JAMES RAFFERTY: -- it is largely unchanged on the elevation.

DIANE LIM: Right here.

ATTORNEY JAMES RAFFERTY: So I'm referring now on A-6. So this remains without openings in it and with some skylights have been introduced to give some natural light into the unit, but it allows for the existing condition to remain unchanged which was the preference for that abutter in its -- it has been reflected. We had earlier designs that really sought to create some natural light and openings there, but we have removed them out of deference to the abutters. So the plan I know has been through many iterations. The Board has shown extreme patience as have abutters who have come to many hearings. The hope is that with each step we took here we did our best.

I think it's fair to say that at the end of the day, the number of units seems to have always been the issue. It is our main arterial street, Huron Avenue, it abuts a commercial district. I think the character of this stretch of Huron would suggest that the presence of a third unit here would not overburden the neighborhood or the surrounding uses. Certainly the commercial uses are not troubled by it. One of the commercial property owners was here tonight and he had no objection. So our hope is that given the effort that's been expended here and the recognition of the existing structure that what is before you is the thoughtful attempt to convert this largely commercial funeral home into three habitable dwelling units that will contribute to the neighborhood and not detract from it.

BRENDAN SULLIVAN: Ms. Lim, in the basement parking area --

DIANE LIM: Yes.

BRENDAN SULLIVAN: -- floor to ceiling, seven-foot, four?

DIANE LIM: Yes.

BRENDAN SULLIVAN: And the requirement is seven-foot, six.

DIANE LIM: Right.

BRENDAN SULLIVAN: So that's all part of the all encompassing parking relief.

ATTORNEY JAMES RAFFERTY: Right.

DIANE LIM: And currently there's a straight shoot of one parking space there that requires a backing out onto the street. So one of the improvements we made was to create three parking spaces for all three units, and also they are all going forward, you know, front and they are also backing out in the front as well. So it's more safer condition than dealing with -- negotiating the sidewalk and also the street. So more unit doesn't necessarily make the situation

harder.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, if we could be permitted a brief moment, our parking consultant who designed the parking layout and did the syncro --

KERI PYKE: Auto turn.

ATTORNEY JAMES RAFFERTY: Just to explain that why this can be -- why this is a workable parking design if we may be permitted to place it on the record.

BRENDAN SULLIVAN: That's fine.

ATTORNEY JAMES RAFFERTY: Want to just give your name?

KERI PYKE: Yes. Keri Pyke.

K-e-r-i, last name P-y-k-e. I have two easy names, I have to spell both of them.

So I have a blown up version of the exhibits that I think are in your packet, but the parking information -- this is Figure 1 and I'll go through each parking space. And

as Diane said, we looked at this so that each person in each space can pull in head first and then also pull out onto the street head first so they're not backing out into the traffic and not being able to see and not knowing if there's a pedestrian on the sidewalk.

So space No. 1 which is this one, and the driveway is over here, basically the car would be able to pull over here straight in. And this is probably the easiest of the three. They would basically back out into this area and then be able pull out head first.

The next page of this, so it's page 2, which is next to, and you can also see here we're also showing presuming that all of the spaces are full that they can still maneuver. So, again, they would pull in from Huron Avenue and then be able to maneuver into their space. And this is based on an average size passenger car. So we're not looking at a

smart car or a mini. We're also not looking at a Humm or an H3.

CONSTANTINE ALEXANDER: That was my question I was going to ask you but you brought it up right now. I think your plans assumed the length of a car was 16 feet, 7 inches or 16.7 feet?

KERI PYKE: Yeah, I think it's 16.7.

CONSTANTINE ALEXANDER: Okay.  
16.7. Give me a sense of what kind of car is 16.7 and what kind of -- I mean, I know a Mini Cooper or a smaller car.

KERI PYKE: Yeah, they're very small. Like a Honda Accord, something like that. A Toyota Corolla.

CONSTANTINE ALEXANDER: That's 16.7? But a larger --

KERI PYKE: Yeah. I mean, that allows a little bit more, you know, extra room at the back. They're probably not quite that long honestly. I guess they're maybe --

CONSTANTINE ALEXANDER: Most SUVs I would assume are more than 16.7 feet?

KERI PYKE: I'm not sure about that. I don't think so.

CONSTANTINE ALEXANDER: I don't know. I'm just asking.

KERI PYKE: Yeah.

CONSTANTINE ALEXANDER: What about larger cars? A large Lexus or are they more --

KERI PYKE: Like a Lexus, like the crossover?

CONSTANTINE ALEXANDER: Or even a non-SUV. I'm trying to get a sense of how many -- what kind of vehicles can maneuver in this parking arrangement and what kind of vehicles can't?

KERI PYKE: Well, as I said, you know, I think you had something that's a very large SUV, a Hummer. Probably the Ford extra large Expedition, I forget what that one's

called, some of those kind of extremely large ones are going to have a very hard time with this.

CONSTANTINE ALEXANDER: Well, let's say they can't do it.

KERI PYKE: I'd say that's true. Certainly for a Hummer, I think they're probably --

CONSTANTINE ALEXANDER: Well, it's more than a Hummer. I think you're --

KERI PYKE: Right, well, I don't think I've ever seen a Hummer in Cambridge, but that's neither here nor there.

CONSTANTINE ALEXANDER: You're not going to see them anyway, because they don't make them anymore.

KERI PYKE: That's what I mean. I think an average size passenger car, I think a Lexus, like I said, I'm not familiar with the models, but a Lexus four door sedan type of vehicle could fit into these spaces.

CONSTANTINE ALEXANDER: And my concern probably is that we've got paper parking places, but not functional parking places and --

KERI PYKE: Well --

CONSTANTINE ALEXANDER: Let me just finish and then you can attack me.

But if it's only -- not really functional, we're going to have phantom parking spaces and we're going to have parking on the street which may not be a bad idea, by the way, rather than having -- given the safety issues I think there are attended even if you drive out.

ATTORNEY JAMES RAFFERTY: I would only say, Mr. Alexander, that the whole purpose of this presentation is to address that very concern. And I would say that throughout the city in some of the more denser neighborhoods there are small driveways and small parking spaces that people frankly I

think select their automobiles based upon what's available to them. So if you go in some of the Marsh District neighborhoods or some of these other places, we know what the dimensions requirements are; they have 16 feet long for compacts or 18 for full size. I think people make automobile selections based on what's available to them. So, I thought it was very relevant to understand that this is not simply a theoretical parking space for you. We wanted to demonstrate that this is a functional parking space, not for every vehicle, but certainly for a wide range of vehicles that are typical to Cambridge households.

DOUGLAS MYERS: On that last point, Mr. Rafferty, but if these units -- I mean I can understand the validity of what you're saying if someone owns the unit and lives there, but if these units are rented would you say the same argument wouldn't apply?

Tenants in there for a year or two would not have any particular incentive to adapt their automobile to the size of the parking place, would they?

ATTORNEY JAMES RAFFERTY: I wouldn't think so, but I think that that's highly speculative. I mean, would a tenant rent a place -- if the tenant cared enough about their vehicle to have parking, would they rent the place for which they couldn't park their car? I suspect some would and some wouldn't. I think we're seeing a range of -- we're seeing households without motor vehicles. We're seeing multi-car households. This by its nature is not, is a modified design in -- I think there is an assumption here that for people to use this, they'll have to have a certain size car. And if they don't, I agree, they probably won't use it.

CONSTANTINE ALEXANDER: And in any

event, you've shown alternative relief so that if we otherwise granted the relief to have the three units in the building, we could if we wanted to, deny the Variance for parking, grant you a Special Permit to only have two parking spaces in the building which would increase the likelihood that the spaces would be used and put one additional car in the street. We have the right to do that. We may not want to do it, but we can do it.

ATTORNEY JAMES RAFFERTY: I can only say such an outcome given the geometry and the constraints here would not yield because we've looked at that. The maneuverability questions -- it's really driven by the width of the driveway as it exits onto the sidewalk. So if one of those spaces went away, say the front space right there, we looked at that.

KERI PYKE: This one?

ATTORNEY JAMES RAFFERTY: No, no. The space closest to Huron.

KERI PYKE: Oh, yeah, sorry.

ATTORNEY JAMES RAFFERTY: Those cars would still have to make the moves we just described. It really doesn't change much of the analysis. We looked at it.

CONSTANTINE ALEXANDER: Okay.

KERI PYKE: We have done a lot of machinations and going back and forth and saying can you move this, you know, a little bit --

ATTORNEY JAMES RAFFERTY: What if we got two really good spaces and said, hey look it, we only got two spaces, it doesn't change the analysis.

BRENDAN SULLIVAN: It's the coming in and going out. That's the, that's the bottleneck there.

KERI PYKE: Exactly.

ATTORNEY JAMES RAFFERTY: But the design does provide an advantage that is not typical for driveways along Huron Avenue

which is no one, there is not another driveway in this neighborhood I would suggest where the homeowner, the automobile driver has the ability to turn around on their property and drive onto Huron Avenue. And Huron Avenue, like many other streets, because it has parking on the street, it is a challenge to back out of a driveway on Huron Ave., you have to get beyond the parked car to see the lane of traffic. So there is an advantage here. There is no parking in front of this property. It's a no parking zone. There's a crosswalk there. And this scheme allows an opportunity for all cars to head out which is not a common condition on driveways in the neighborhood.

KERI PYKE: So continue, I think I left off with -- so backing out of space 2 they would do this. They would back, pull forward a little bit, back into this, again, this is, you know, we went back and forth because we

met quite a lot. Let's see. This is the thing, so when we do this on the screen in the computer, it's all different colors. I want make sure I told you correctly. So let me see. We do this, this, this, and then out.

DOUGLAS MYERS: That's four motions?

KERI PYKE: Yes. Yes, that's four motions.

And the last one --

ATTORNEY JAMES RAFFERTY: It should be noted, that's four motions to be able to drive out. If you wanted to back out, it's one motion.

KERI PYKE: That is correct.

ATTORNEY JAMES RAFFERTY: Which is what other driveways on Huron Avenue do, they back --

DOUGLAS MYERS: We didn't approve those driveways, we're approving this driveway.

ATTORNEY JAMES RAFFERTY: Well, this driveway preexists. If this scheme isn't approved, we have a driveway that can take two vehicles stacked.

DOUGLAS MYERS: And vehicles can back out of it.

ATTORNEY JAMES RAFFERTY: Right.

DOUGLAS MYERS: There's been a lot of previous discussion about how undesirable it is --

ATTORNEY JAMES RAFFERTY: I agree. I agree. Right.

DOUGLAS MYERS: -- on the approval of this project.

KERI PYKE: And so then space 3 which is this one they would come in, pull forward, back in. And then to get out, would be going head first. This is again pull, let's see if I get this right, pull forward like this, back up like this, and --

DOUGLAS MYERS: That's seven

motions.

KERI PYKE: That sounds about right. This is the most challenging one to get in and out of that space because it's right next to the driveway. So, you know, we did do a lot of back and forth on the space. We needed to make sure that the cars could maneuver. And as Mr. Rafferty said, it was -- we're looking at a reasonable size in range of cars that will fit into these spaces. We don't want them to be paper spaces that don't get used.

BRENDAN SULLIVAN: Okay.

THOMAS SCOTT: If this were allowed would you consider a beacon or some type of warning at the exit?

DIANE LIM: Sure.

THOMAS SCOTT: Would you do that?

DIANE LIM: Right. Mirror.

THOMAS SCOTT: I think it's a blind driveway that people are not paying attention, like not looking where they're

going or looking at their phone --

ATTORNEY JAMES RAFFERTY: Even if you didn't have to do all those maneuvers, it still would be beneficial to alert pedestrians.

JANET GREEN: Especially with the crosswalk right there.

BEN SVENSON: It's moving actually down.

JANET GREEN: Oh, it is?

BEN SVENSON: Yeah.

BRENDAN SULLIVAN: Okay. Any questions on the presentation?

CONSTANTINE ALEXANDER: I'm sorry?

BRENDAN SULLIVAN: Any questions on the presentation?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Thank you.

And you were --

ATTORNEY JAMES RAFFERTY: Well, as we stated, the hardship really is related to

the challenges, the physical challenges of the existing structure. There have been attempts made to reduce the size of the structure and to convert it into a reasonable residential dwelling. As I noted, I think the location, the context of the surrounding neighborhood, its immediate adjacency to an active commercial district; real estate office, pizza parlor, dry cleaner. There's a lot of commercial activity. So I think the characteristics are such that the conflict with abutters, which is adverse impact around surrounding uses which is a standard for the Special Permit, certainly for some of the relief, could be supported. And the hardship is directly related to the structure.

BRENDAN SULLIVAN: Okay.

Let me open it to public comment.

Is there anybody here who would like to speak on the matter at 175 Huron Avenue?

Anybody like to speak in opposition to it?

Yes. Nobody in attendance -- oh, I'm sorry.

HEATHER HOFFMAN: I'm actually here to read someone else's letter who couldn't be here.

BRENDAN SULLIVAN: I never know if you want to speak, Heather, or you're just stretching.

HEATHER HOFFMAN: Anyway, my name is Heather Hoffman. I live at 213 Hurley Street which is not particularly relevant to this place. I'm -- I was asked to read into the record a letter from Patricia Nolan and David Rabkin who live across the street at 184 Huron Avenue. (Reading) Dear Board of Zoning Appeals: We are writing to express concern over both the Variance requests and the Special Permit requests by 175 Huron Ave., LLC. The case number 10247, previously 10114 and 10051. We cannot be at the meeting so please read this letter into the record.

And if the prior letter was never read into the record, since the case was put off, please read that also, it follows this one.

In case that hasn't happened, I come prepared with the other letter.

(Reading) We, as well as other neighbors, including 186 Huron and 88 Sparks Street and several others are all opposed. Our understanding is that the neighbors whose yard was threatened are no longer opposing, but do not support the project. Most of the most directly affected neighbors do not support it. Our concerns in the letter the last time this case came before the Board, stand. In fact, we are all more concerned about parking now, since the city is set to take away three existing parking spots from this block of Huron Avenue. The plan to change the location of the existing crosswalk will eliminate two spots on the odd side of Huron plus one spot right at the corner with

Manassas, in front of the 182 Huron Avenue. The metered spots directly across the street from 175 Huron Avenue are not net new spots, they will replace existing metered spots on Concord Avenue with the corner of Huron. We also know that the developer of 293 Huron Avenue, which was bought less than two years ago for \$942,000 has the two units on the market, and is actively looking for two-family properties in the neighborhood to buy. We're confident that Mr. Svenson could sell the property for what he paid, likely including costs to date. And that another developer would happily listen to neighbors, not ask for Special Permits or pretend a building was a townhouse when clearly it is not, and simply develop the property as it was meant to be; a smaller building with two large units and adequate parking. There is no hardship, which is the only basis any application can or should be granted.

Sincerely, Patricia Nolan and David Rabkin.

And I'll offer one comment myself since I was listening to this, and would say that based on my own experience in a case that many of the board members might be familiar with being as how I'm the Plaintiff and you are the Defendants, one of the Variance -- one of the requests for a Variance that is least favored in the law is a request to vary lot area per dwelling unit. Many other dimensional requirements, you know, like setbacks and things are much more favored and --

ATTORNEY JAMES RAFFERTY: Do you have a cite on that?

HEATHER HOFFMAN: I can tell you that in my case the Court was pretty squarely on that side, and it did go up to the Appeals Court.

And the one other thing I was just going to ask is are these side-by-side units? I couldn't quite tell because you can't see the

pictures from back there. But it sounded as though they were stacked? I would just offer that there is a provision in the townhouse section that makes it pretty clear that the concept of townhouses is side-by-side because you're allowed to have less frontage and you can, you know, split through the party wall and subdivide the lots. So I think that it's a reason that many of you were uncomfortable thinking of this as a townhouse because our view is, you know, side-by-side attached dwellings. So thank you very much.

BRENDAN SULLIVAN: Thank you.

Anybody else like to speak on the matter? Please.

RICHARD AICHELMANN: Yes. My name is Richard Aichelmann, A-i-c-h-e-l-m-a-n-n. I live at 179 Huron Avenue which immediately abuts the project property on the western side. I want to just state that we are pleased with the some of the efforts that have

been made so far by the Petitioner. We are pleased that they saw that they could be flexible and put skylights in the rear portion rather than putting windows on our property. I raised this issue in a private meeting not in one of these hearings recently, it was probably about seven, eight months ago. The concern I had was with the proximity of the walkway entrances that are on the side of the building to our property. There's a walkway of less than three feet. To me it's less than two and a half feet, but they show it as two-foot, 10 inches on their plan here. The concern is that, you know, when we use that parking lot, and in particular my upstairs neighbor uses her driveway, it would be hindrance to the people trying to enter the building there, potential to damage to the car, potential for people -- actually the way the design is it would almost be forced to trespass onto our

property to -- or to her property to get into their building with such a narrow walkway. But we discussed that in the past. One of the responses we got from the Petitioner was well, every unit will have an entrance from the garage parking lot area anyway so that wouldn't be an issue they hardly ever use that. Now with the townhouse design those two will be the only entrances for those two units, and so there will be a lot more traffic there. I understand they are existing entrances. Those doors have existed when the Hickeys owned the property. The rear one which is now the entrance to unit 2, was only used an emergency egress for the funeral parlor. No one ever used that door. And even the unit to the entrance to the Hickey's living residence in that building, they rarely ever used it. They would use their business entrance and come and go that way. I have a concern, the Petitioner did say there

were things that would be worked out, and that would be one of our concerns about what would happen. But, again, I would like to say that we're pleased with the efforts. They seem to be moving in the right direction. The improvements of the facade, some improvements in the parking, and particularly the lack of the windows on our rear wall there.

Thank you.

BRENDAN SULLIVAN: Thank you.

DOUG BROWN: Doug Brown from Huron Village.

CONSTANTINE ALEXANDER: From where?

DOUG BROWN: Doug Brown.

CONSTANTINE ALEXANDER: No, after that you said something.

DOUG BROWN: I live on Huron Village.

CONSTANTINE ALEXANDER: Okay.  
Where?

DOUG BROWN: Gurney Street. Not an abutter.

Initially I don't know whether to speak for or against it. I want to speak for it because it's been two years and we need something done. I want to speak against it because I'm still not terribly impressed by what I see. Regarding it being a townhouse and fire escapes and parking and all of the details of that, okay. I'm willing to take everybody's word it's a townhouse, okay? I'm not necessarily willing to take everybody's word that in a B Zone you could have a townhouse. I'm not necessarily willing to believe that it meets the requirements for townhouses which say this Section 11.1 has been adopted to encourage the development of one- and two-family townhouses. That's what it says right up front. It then goes on to say the townhouse development use created here to promote

development designs that are compatible with traditional neighborhood development patterns that have townhouses. This is not one of those.

To encourage a townhouse pattern that are developed over high densities to existing streetscapes. Anyone that has seen this building knows that it's not sensitive to the existing streetscape. To encourage a townhouse pattern developed over high densities are permitted. This demolition is certainly high density. And to discourage the demolition of existing buildings which this doesn't do, but to avoid the excessive in-fill of townhouse then on lots already containing residential structures which this is. So for a number of reasons it doesn't really meet the requirements in that section. Putting all that aside, I think my bigger issue, if I think about the case I spoke on earlier, which was a small house in a B Zone

on a big lot asking for a small improvement.

Okay? This is everything that wasn't.

Okay? If you thought that wasn't

attractive, there's nothing about this

building that's attractive and then never has

been. Okay? If you thought that was a big

increase in space, this is a 5,000 square foot

increase over the permitted FAR on that lot.

Okay? It's a 3800 square foot lot in a B

Zone. The Zoning allows 1900 square feet of

space, not 6800 square feet of space. Okay?

In my opinion this is a single or a two-family

house just like every other house on the

street. Okay? If there is a commercial

space, like it is on the other side, then that

space in the front should exist as a

commercial space. If it's not a commercial

space, that space in the front shouldn't

exist. It should go back to being a house.

Okay? And meet the traditional standards of

the neighborhood. So all that said, if this

meeting gets something done on that property, I'm willing to live with that, but I wouldn't say it's a house that I drive by every day and say wow look at that one, that's a beauty.

BRENDAN SULLIVAN: Thank you.

Anybody else like to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody else in attendance.

There are two letters in correspondence dated December 5th from 36 Royal Avenue.

(Reading) To Whom It May Concern: Due to changes made in the project by the Applicant, we now support the grant of the Variances and Special Permits in case No. 10353 by Antonia, A-n-t-o-n-i-a Van Gottberg, G-o-t-t-b-e-r-g and Frederick Van Gottberg.

Received December 5th from 40 Royal Avenue, (Reading) To Whom It May Concern: Due to changes made in the project by the

Applicant we now support the grant of the Variances and special appeal permits in the case of 10353. Wendy Wornham, W-o-r-n-h-a-m and Howland Shaw Warren, W-a-r-r-e-n.

The Planning Board has reviewed the case but leaves no comments or recommendations to the Board.

And I believe that's all the correspondence.

ATTORNEY JAMES RAFFERTY: I believe that's right, Mr. Chairman, but there was --

BRENDAN SULLIVAN: A letter of -- there is a petition which is in the submissions signed by a number of people.

ATTORNEY JAMES RAFFERTY: Yes. But that involved a prior case I believe, no?

BEN SVENSON: The Petition is case specific.

ATTORNEY JAMES RAFFERTY: Oh, the petition.

BEN SVENSON: It's keeping in the

character of the neighborhood.

ATTORNEY JAMES RAFFERTY: You mean as submitted by the Petitioner?

CONSTANTINE ALEXANDER: By the architect's package, there's a petition.

ATTORNEY JAMES RAFFERTY: Submitted by the Applicant, right, yes.

CONSTANTINE ALEXANDER: I'd like to comment on that petition.

BRENDAN SULLIVAN: In favor of.

ATTORNEY JAMES RAFFERTY: Right. I was recalling there was --

BRENDAN SULLIVAN: Which you're advocating we enter into the record.

ATTORNEY JAMES RAFFERTY: I was also noting that I recall there's an abutter, a neighbor on Manassas Avenue, the Smiths, they have been regular attendees in support of the conversion to three families. I don't know if the Board's prepared to --

BRENDAN SULLIVAN: They have

signed.

CONSTANTINE ALEXANDER:

Mr. Chairman, I want to comment since the petition that the architect has submitted or part of the architectural package, not Mr. Rafferty, has submitted, has been brought up, I would like to observe and I think it should be part of the record that 50 persons have signed this petition. Of that 50, only 13 live on Huron Avenue, about 25 percent. And of the 13, one half of the people who signed all live at 193 Huron Avenue, a piece of property that I think is distinguished for the fact that it appears to be owned by a scrap dealer, certainly his truck is parked on the street all the time. And as to the other seven, they live on 700 Huron Avenue, 11 Huron Avenue, 390 Huron Avenue. None of them are nearby. Most of the other people who signed the petition live on --

ATTORNEY JAMES RAFFERTY: But all of them are closer than Hurley Street, Mr. Alexander.

CONSTANTINE ALEXANDER: That's true. That I'll acknowledge. And I would make the same comment about Hurley Street's comments, it's not relevant to -- I don't give it much weight.

BEN SVENSON: The other signatures --

CONSTANTINE ALEXANDER: But -- wait, let me finish.

BEN SVENSON: Oh, I'm sorry.

CONSTANTINE ALEXANDER: Brattle Street, Grozier Avenue, Lakeview, these are not people who are affected by this project.

BEN SVENSON: So I stood in front of the building for a couple of hours and people walked by.

CONSTANTINE ALEXANDER: Sure, people that go to High Rise Bakery, they

walked by and signed the petition.

BEN SVENSON: I asked do you live or work in the neighborhood? And if somebody said yes, I live or work in the neighborhood I would say --

ATTORNEY JAMES RAFFERTY: The beauty about participative democracy, everyone gets to express a view. What weight you attach to it, I understand. I understand it's your role to assign weight to support.

CONSTANTINE ALEXANDER: That's exactly right.

ATTORNEY JAMES RAFFERTY: So I would hope in that vain the immediate abutters who have testified this evening would be seen as significant views on the project because the rear abutters and the immediate abutters have all testified or written in support of the project.

BRENDAN SULLIVAN: Okay. Let me close public comment part. Refer it back to

Mr. Rafferty for --

ATTORNEY JAMES RAFFERTY: You have been far too generous with your time. I don't know that there's much more to add other than to thank you for your time and to say I think we recognize the issue and we're -- the hardship is entirely related to the structure itself. And I think Ms. Lim has worked very hard try to come up with a practical solution, 2,025 square foot townhouses really represent, I think, a practical housing dwelling unit for this neighborhood and we hope that we persuaded the Board and met our burden.

BRENDAN SULLIVAN: Okay, you're asking for relief to change the preexisting non-conforming structure containing a funeral home in a single-family to a three-unit townhouse. The relief that you're asking is under Article 5, Section 5.31 dimensional requirements. And your

5.26 is conversion. And for the FAR, the max in the area is 0.5 and you're requesting 1.75. The existing is 1.98. The open space requirement is 40 percent, and you are proposing four percent. Currently it's at zero. The lot area per dwelling unit, the minimum in the -- well, it's 2500 per, and you are providing 1200 of 78. And you're asking for relief from the parking almost in all respects except for the number of spaces.

Then on Article 11, which is a dimensional standards for the townhouse development, the minimum lot width from townhouse development in District B would have to be 50 feet. It's what applies in the district. And you're, right now the size of the lot is 40 feet. So we're deficient there. The maximum floor area ratio obviously applies in the district and you're deficient there. The maximum height applies in the district at 35 feet, and the existing

building is at 43 foot, 9.

The minimum private open space in a townhouse development, the minimum ratio of private open space to the lot area shall be 25 percent and you cannot provide that. And the townhouse development shall be subject to the requirements of parking which is Article 6, which you're asking for relief from that.

And Section 8.22.3 which is the alteration of non-conforming structure, and it's whether or not the proposed is any more detrimental to what is there now.

And then the Special Permit being as asked to relocate window openings in a non-conforming walls, and obviously reduction in the amount of parking.

Well, as I said initially my thought is that it's a townhouse in name only, and yet if there is a party wall there which gets you passed the Building Code requirement, but I think that a townhouse should comply with at

least some part of the townhouse regulation, and I don't see where it complies with any of that. I think your thesis is that we have this very large building and we need to make a doable building out of it. My theory is that the commercial space is a nonviable space, as it ceases to exist to be viable, and I think to restore this back to a residential character that it should have some semblance of adjoining properties. And I think that commercial space should be abandoned. It should be eliminated. You know, you've cut into it a little bit. I think you've softened the front of it. I've never liked the front of it, and I think it should have some friendlier sidewalk scape.

And I also notice that, and again very small point, this is very minor, but that you are going to apply I believe shingles or something to the front of that. I think the bricks are right up on the sidewalk line.

BEN SVENSON: We're going to rebuild it.

BRENDAN SULLIVAN: So that once you start adding to that now you're over the sidewalk. But that's again, you know, that's minor I think in the discussion here.

But I think that the building, this is an opportunity to restore the building to a more aesthetically pleasing form, pushing it back from the sidewalk, having some green space in front, and right now it's a hybrid. It's neither fish nor foul. It's neither residential and it's neither commercial. And I think now is the opportunity to make it residential. And I don't see any --

BEN SVENSON: That was our intention.

BRENDAN SULLIVAN: And I had no evidence that it is impossible to not make this a two-family. I mean, it's always been a three-family because we have the space, and

we can't have two or one very enormous unit, but three will work space-wise, money-wise, and I would think that this was an opportunity to restore the building to a much more friendlier streetscape.

That's my thought on it anyhow.

CONSTANTINE ALEXANDER: My view is that this case after two years is back where we started. You want to put a three-family house on this property. You can't do it under the dwelling unit so you came up with the notion of a townhouse. And, yes, the Building Inspector has made a determination that this is a townhouse, and we have to accept that unless a neighbor wants to appeal that decision, it could happen. But it's a townhouse you can't develop under our Ordinance. You can't meet the requirements of Article 11. So where are we at? We're back where we started.

You want to do a three-family house.

You can't do a three-family house in this district or the way you want to do it. Go back to a two-family house with the suggestions that the Chairman has made, all of which are very good, and that's what this neighborhood needs. Not what you're proposing. So I'm not in favor of the relief.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: You stole all my thunder. I mean, my thought was this commercial, this commercial piece in front of the building really has to go. I mean for this to become part of the fabric of the residential district that it's in, this has to be removed. And at that point I think you're back to a two-family structure which we'll have no issue with. So, and I'm also struggling with the definition of a townhouse, and it's a real stretch I think to call this development a townhouse

development. So I'm -- I'm not in favor of this.

BRENDAN SULLIVAN: Okay.

Mr. Myers.

DOUGLAS MYERS: I'm the new kid on the block, and although I've reviewed the transcripts and the record in the previous cases, I realize that there's a lot of history here. I realize the Applicant's made many changes. The Applicant has improved the project considerably, and I respect the considerable efforts. But I have to say when all is said and done, I agree with the members of the Board who have sat through many hearings on this case. I think to grant a Variance requires, even if there is a hardship, requires the exercise of the discretion of this Board. And I just think that too many acts of discretion are required for us to grant a Variance here. Too many acts of discretion. Each one just being just

too difficult for me to get to. And I mean I'm aware -- and I appreciate the certain mitigating factors about commercial zone, commercial zoning, and this being a boundary property. And that may be the case if less discretion were required to grant the Ordinance, but I think on virtually -- not even before we get to parking, I'm just talking about the townhouse, we have to -- we have to -- this is -- virtually for this to be allowed requires us to be, to grant exercise our discretion on virtually every point of conversion on the requirements so I think it's just too much. It is discretion, and I'm just not able to see my way to do it the same way as if it were one to two sections of an applicable Ordinance. This is across the Board, and I think the consequence of having a three-family property in the zone, zoned for two families is serious and not easily overlooked so I concur with those

members of the Board who have expressed the intention.

BRENDAN SULLIVAN: Ms. Green.

JANET GREEN: You know, I'm going to agree with what's been said. I'm not going to repeat everything all these things. But for those reasons they're just too many obstacles. If there's one obstacle or two obstacles to find in favor, that would be one thing, but it does seem like there's too much that needs to be done. And I think the comments about -- I actually think that, you know, you did make an improvement in the design but that's not quite enough to make it fit.

BEN SVENSON: Do I say anything?

BRENDAN SULLIVAN: Okay, let me make a motion to grant the relief requested as per the application to change the pre-existing non-conforming structure into a three-unit townhouse as per the application and drawings

and the dimensional form submitted.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from having a vastly oversized, single-family home with a not viable commercial element.

The granting of this Variance would allow the Petitioner to at least provide for a unit size that would be somewhat compatible for typical units in this area.

The Board finds that the hardship is owing to the size and shape of the existing structure, and the siting on the lot which all predates the existing Ordinance and the conversion requirement contained in the Ordinance.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and that relief may be

granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting the Variance as per the application?

(No Response.)

BRENDAN SULLIVAN: No votes in support of. Not receiving the necessary four affirmative votes, then the motion for the Variance and the granting is denied.

Let me make a further finding, that the Board finds that a literal enforcement of the provisions of the Ordinance would not involve a substantial hardship to the Petitioner because no evidence has been presented to the contrary, and that as such the petition fails for lack of merit to grant.

Anything else to add to that?

CONSTANTINE ALEXANDER: I think we should point out that the relief being sought is so significant a departure from our Zoning

By-Law and we're requiring a whole host of hardships that have not been demonstrated.

Further, that if we granted relief, we would derogate from the intent and purpose of our Zoning By-Law. We would create a structure that is incompatible from the residential streetscape.

It is and it would be more dense occupation of the property of three dwelling units, be it townhouse or otherwise in a structure where we have only two family, one and two families down the street. And so this is not the kind of development townhouse development I think our city would like to see happen.

BRENDAN SULLIVAN: Okay.

Anything else to add to that?

(No Response.)

BRENDAN SULLIVAN: Okay. So the motion fails on the Variance.

Regarding the Special Permits, can

entertain a withdrawal from the request for that?

On the motion then to accept the withdrawal for the Special Permit application?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of accepting the withdrawal for the Special Permit.

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

ATTORNEY JAMES RAFFERTY: Thank you very much for your time.

BRENDAN SULLIVAN: Now, regarding --

CONSTANTINE ALEXANDER: We have three more.

(10:05 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10247, 175 Huron Avenue.

ATTORNEY JAMES RAFFERTY: Yes, we withdraw all prior cases.

BRENDAN SULLIVAN: On the motion then to accept the request for a withdrawal of case -- should we do them all as one, Sean?

SEAN O'GRADY: You can.

BRENDAN SULLIVAN: Case No. 10247, 10114, and 10051, on accepting the request for withdrawal --

DOUGLAS MYERS: I would like to point out, Mr. Chairman, I did not sit on those panels in the cases.

CONSTANTINE ALEXANDER: It doesn't make a difference.

DOUGLAS MYERS: It doesn't make a difference on withdrawal?

BRENDAN SULLIVAN: No.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of accepting the withdrawal.

ATTORNEY JAMES RAFFERTY: Thank you very much, have a good night.

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

(10:10 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: All right. The Board will hear case No. 10357, 1 Rockingham Place.

AMY DUWEL: My name is Amy Duwel. I'm a Rockingham Place resident.

LEONARDI ARAY: Leonardi Aray, I'm the architect.

BRENDAN SULLIVAN: You may have to spell that.

LEONARDI ARAY: L-e-o-n-a-r-d-i, first name. And last name A-r-a-y.

BRENDAN SULLIVAN: Okay, whoever wants to tell us what you want to do.

LEONARDI ARAY: You want me to start?

AMY DUWEL: Sure.

LEONARDI ARAY: This project is

about enclosing an existing back porch. There is actually no change on the area of the FAR. There's no changes to the setback. However, the buildings are already encroaching the setbacks. And we, you know, would like to obtain that relief so Amy and her family can simply enclose this area to control water coming into the bulkhead so that way in the summer they can simply have it open, take the stuff out there. It's not going to be winter, winterized enclosure. So openable panels, some spring doors. That's pretty much the project.

AMY DUWEL: Yeah. We want to be able to just not prevent -- we want to prevent a water issue, but we'd love to be able to come out of the basement. And so our thought was to make sort of a sun room under a deck that's already kind of blocking the sunlight anyway. So it's not gonna be part of the house in any sort of fancy way. It's just a --

CONSTANTINE ALEXANDER: And you're going to do this in the backyard, it's secluded --

LEONARDI ARAY: You don't see it from the street.

AMY DUWEL: No one can see it. I don't think it would impose on anyone.

LEONARDI ARAY: And there are already some fences that are pretty tall.

AMY DUWEL: Yeah.

BRENDAN SULLIVAN: The very simple thing to do is to put sort of a roof.

AMY DUWEL: Yeah.

BRENDAN SULLIVAN: Well, but rather than have this structure underneath is to have a roof so that any water that gets onto this deck basically goes on a platform, whatever it is, with a gutter and have a drain leader coming down but that would still allow you open space underneath.

AMY DUWEL: We wanted to change the

door to the basement and even with the roof, people were worried about the water going --

LEONARDI ARAY: Yeah, coming from the sides, from the edges.

AMY DUWEL: Like, from the front yard going in. And ideally, you know, if we could afford it, we would have lots of glass and it would just look open. So there's gonna just be a compromise on how much glass because we don't want it to be too expensive. But the idea is that it feels open. It's just that we're protecting the water from going in.

LEONARDI ARAY: Yeah. And not only the water coming from above, but the water running --

AMY DUWEL: And from the yard.

BRENDAN SULLIVAN: I mean, is it going to be living space?

AMY DUWEL: No.

THOMAS SCOTT: So this has a roof

structure over it.

LEONARDI ARAY: It's a deck.

AMY DUWEL: It's a big deck.

THOMAS SCOTT: But the deck is not going to prevent water from going --

AMY DUWEL: Now, we have to do a sub- roof under it like he's saying.

THOMAS SCOTT: Okay.

LEONARDI ARAY: There is two way we can build that. We can either remove the existing deck and put some sheathing PDM and then the deck above and then do the enclosure. Or at one point we were hoping we probably can suspend something in between and enclose that porch in there but it might be more complicated. You can see the pictures here.

AMY DUWEL: Yeah.

LEONARDI ARAY: There's columns and everything up to the edges. And this is some of the sketches that we're looking to tell. This can be, you know, it's going to be open

for the most part. And, you know, it comes to cost of what kind of panels are those?

THOMAS SCOTT: But it's not intended to be like a three season room with heat or anything like that?

LEONARDI ARAY: No, there's not gonna be heat there or anything.

AMY DUWEL: No. It's mainly -- it's just not very useful space and it's under the deck so you can't plant anything. So if it's got some enclosure to protect from water, you know, it's just -- it might be more useful. We can put the kids' wagons and, you know, it just seems more practical for us. But there won't be heat or it's -- yeah, it's not living space.

LEONARDI ARAY: There won't be any, yeah.

JANET GREEN: The windows, what --

LEONARDI ARAY: It's probably going to be a custom build.

JANET GREEN: Just a custom?

AMY DUWEL: You know how sometimes restaurants open it up and make it feel open and then you can close it when it's raining?

JANET GREEN: Right. And were there two doors?

LEONARDI ARAY: Yeah, just to get them more light into that space, we can get some storm doors, cheapest one.

BRENDAN SULLIVAN: I don't know. I draw a blank.

CONSTANTINE ALEXANDER: So do I. Same thing I did it.

BRENDAN SULLIVAN: I'm neither for it or against it.

CONSTANTINE ALEXANDER: I don't understand the purpose of this. I'm sorry.

AMY DUWEL: Okay.

CONSTANTINE ALEXANDER: I mean, you want a three season room down there, but you said, no, it's not going to be living space.

AMY DUWEL: It's not living space.

CONSTANTINE ALEXANDER: Are you going to use it for storage space. Essentially?

AMY DUWEL: In the summer I like to sit there and but it's really I guess --

CONSTANTINE ALEXANDER: Why not just do something about the water leakage on the deck above and leave it the way it is?

AMY DUWEL: Well, it wouldn't --

CONSTANTINE ALEXANDER: Why spend the money I guess?

LEONARDI ARAY: This is pretty tall. This is like a 12 feet high. So when it rains you really have the water coming through that space.

CONSTANTINE ALEXANDER: There's got to be a better solution. Well not a better solution, but an alternative or cheaper solution of what you want to do it would seem to me.

AMY DUWEL: Well, I just wanted a regular door to the basement. And then this space is paved and it's useless, but if you take away the pavement, you're also going to create a problem with water because no one's going to take away that pavement right next to your foundation.

BRENDAN SULLIVAN: You're looking for a barrier from the elements?

AMY DUWEL: Yeah. And a pretty space for the kids to play besides pavement. So we thought we would make this sort of a sun room.

BRENDAN SULLIVAN: Where they can put their stuff?

AMY DUWEL: Yeah.

CONSTANTINE ALEXANDER: I don't have a problem with it. It's just still puzzled about why you want to do it.

AMY DUWEL: When you come in, you put your boots there. I don't know.

DOUGLAS MYERS: Can you say more about why you wanted to sit there? You started to say that thought and I was just intrigued.

AMY DUWEL: Which?

DOUGLAS MYERS: Well, earlier you started to say that you would like to sit there in the basement?

AMY DUWEL: Yeah, in the summer -- no, no, not in the basement.

DOUGLAS MYERS: Oh, okay.

AMY DUWEL: I would sit sort of maybe I would put a bench there, you know, and sit and while the kids play in the yard if I'm cold and they're not. So, you know.

DOUGLAS MYERS: Okay.

AMY DUWEL: But mainly I think it's about trying to open the door to the basement without creating drainage problems and try to make a functional space out of something that's just pavement.

LEONARDI ARAY: A little more transition between.

DOUGLAS MYERS: Is there any change in the existing porch footprint?

LEONARDI ARAY: No, not at all.

BRENDAN SULLIVAN: So it's within the confines of what's there?

CONSTANTINE ALEXANDER: If that's what you want to do.

AMY DUWEL: I know.

CONSTANTINE ALEXANDER: If that's what you want to do.

BRENDAN SULLIVAN: Let me open it up to public comment.

Is there anyone here who would like to speak on the matter of at 1 Rockingham Place?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance and there's no letters in the file. Okay, I mean that's basically it then.

All right, let me close the

presentation part.

CONSTANTINE ALEXANDER: I'm ready for a vote.

THOMAS SCOTT: I don't have any problem with it.

BRENDAN SULLIVAN: All right. Let me -- any --

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: This is a Special Permit. Let me make a motion then to grant the Special Permit as per the application to enclose the existing first floor porch area as per the application and the drawings contained therein and signed and initialed by the Chair.

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

The Board finds that traffic generated, patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

The Board finds that the alterations of the nonconforming structure will not generate new traffic or patterns of access or egress.

The Board finds that -- I'm sorry, traffic generated or patterns of access would not cause congestion.

The Board finds that continued operations of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use. It would have an absolutely benign affect.

The Board finds that there would not be any nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of the proposed use or to the citizens of the city.

And that the Board find that the proposed use would not impair the integrity of the district or adjoining districts.

All those in favor --

CONSTANTINE ALEXANDER: We have to make one additional finding, too, as part of the motion. Under 8.22.2 we also have to make a determination that what is being proposed will not be more substantially more detrimental to the neighborhood than the existing nonconforming use. And add that to the motion.

BRENDAN SULLIVAN: So said.

All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

CONSTANTINE ALEXANDER: Good luck.

(10:20 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10358, 57 J.F.K. Street.

ATTORNEY ROBERT DUNKLESS: Good evening. I thank the Board for their time this evening. My name is Robert Dunkless from the law firm of Ottenberg and Dunkless in Boston. I'm the attorney for Yogurtland or Y.L. Harvard Square which is a wholly owned subsidiary of Yogurt Man from -- in California.

BRENDAN SULLIVAN: Okay, now before we get to it, Mr. Dunkless. There is the issue of posting or the failure to post as a requirement in the Ordinance. And the signage appears to be inadequate or not in compliance. I think that issue had been brought to your attention and you may want to have some discussion of that or --

ATTORNEY ROBERT DUNKLESS: Yes, and I appreciate the time to be able to do so.

Mr. O'Grady called yesterday afternoon about 2:30 to tell me that there had been an inspection or a drive by, and it was believed that there was not a signage posted of the notice of the meeting. Mr. Sidoti who is the Vice President of Yogurtland was in the air flying in from California at the time, and we tracked down some of the representatives and determined that there actually has been signage posted since November 20th. I have an Affidavit with some photographs. This is an Affidavit from Faron Fares who is the tenant the 57 J.F.K. Street at this time, explaining that the signage was posted and has been continually posted since November 20th in the patio area in front of the entrance to 57 J.F.K. Street. There's a patio that goes across the front. There are two or three ornamental trees that

occasionally on isolated, isolated times get moved and they believe it's moved sometimes by the public at night. And when they're moved, they may partially block the signage.

I have photographs that were taken and affixed to the Affidavit which show here's the sign and here are the trees. And you can see as somebody were to move those, it would block the sign. Ms. Fares in her Affidavit has explained that when it's brought to her attention or when she notices that the trees have been moved, she moves them back.

I also have an Affidavit, and I'd like to provide this to the Board, and I have some colored photographs which actually show the sign and how the trees can have somewhat different locations at the front of the -- in the patio area. Which if they're inadvertently or by a member of the public, a pedestrian, if someone moves that over, it will for a period of time block the sign.

However, the tenant and the landlord have been monitoring and have been able to relocate the sign when they notice that it's -- relocate the trees when they notice the sign has been blocked.

The landlord Raj Dhanda is here this evening also who is prepared to explain that the signage has been continually shown at the site and how the trees can periodically be moved, the ornamental trees, to -- on an isolated and temporary basis block the signage. But there has been posting continually since November 20th which was the day the signs, that the signage became available by the city. And we would submit that there's been compliance with the Ordinance. And Mr. Dhanda can explain, you know, he's familiar --

BRENDAN SULLIVAN: Let me just read under Section 10.42.1.A location. Panels shall be securely mounted on the subject lot

at the street line or within the property. But in any case not more than 20 feet from the street line. However, wherever located, the panels shall be visible, easily identifiable, and legible to persons passing by on the public street without the necessity of trespass on to private properties.

And they have to be, you know, 14 days prior to the hearing.

We're not trying to be hard on this. And that's -- it's as much for the Petitioner's protection as it is, you know, us being sort of nitpicking. We're not being nitpicking. This is a requirement of the Ordinance as much of the submission.

If this were ever challenged, count 1, Board exceeded its authority.

Count 2, failure to comply with the posting requirement 10.42.1.

And we can probably defend count 1. Count 2 we can't defend.

ATTORNEY ROBERT DUNKLESS: Could we explore that because I'm not quite clear why the posting is inadequate?

BRENDAN SULLIVAN: Well, because -- well, a couple of members I think of the Board -- Mr. O'Grady even went by and did not even see it.

CONSTANTINE ALEXANDER: I went by and didn't see it. And what's really puzzling to Chairman Sullivan's point, the address of the property is 57 J.F.K. Street, but there's a front door, a plate glass door on 57 J.F.K. Street that doesn't have any risk of being obscured by movable trees. You could just tape, as other people do, tape the sign on the front door for other things on the front door, be perfectly visible to everybody who goes on J.F.K. Street, complies with our Ordinance. Now you've got a sign that was there, wasn't there, behind a tree, not behind a tree. And to what Mr. Sullivan has

said this is a problem for us.

ATTORNEY ROBERT DUNKLESS: Yes, I would -- in reading the Ordinance, I believe the Ordinance says that the sign should be posted at the site which is seeking relief. This is the specific location that's seeking relief, this individual store.

CONSTANTINE ALEXANDER: The site is 57 J.F.K. Street. This is where -- where you put the sign is that portion of 57 J.F.K. Street where the store's going to be, and it's very good of you to do it, but you should have also put a sign right at 57 J.F.K. Street.

ATTORNEY ROBERT DUNKLESS: Well, I would -- I think the Ordinance can be read differently to require the posting at the specific site, and I think it would be perhaps more confusing to have it around the corner where the specific location that is seeking a Special Permit for a specific use in a specific slot is right here. And I can

understand the visibility on the other side of the lot, however, the public I think I would submit is more readily able to identify exactly where this spot, where this store is going by putting the sign directly on the storefront where it's going otherwise by having --

DOUGLAS MYERS: Let me ask if someone looks at the sign there, what address are they going to associate with that sign with regard to any future reference?

ATTORNEY ROBERT DUNKLESS: There's a number directly on this door of Faron Salon, 57. The sign says 57 J.F.K. Street. So I think it's readily identifiable that we're talking about 57 where that number is. It's shown right on the photograph. It's printed on the door of Faron's Salon where this yogurt shop would go into.

DOUGLAS MYERS: How far is that number on the door -- is that only number that

identifies the address? Is that only place where the No. 57 appears as were it shown in the picture that you're holding?

ATTORNEY ROBERT DUNKLESS: I don't see any place else.

DOUGLAS MYERS: Then how far is that number from where the sign is located?

ATTORNEY ROBERT DUNKLESS: The storefront is only 15 feet across.

DOUGLAS MYERS: Well, how far is that -- how far is the number --

ATTORNEY ROBERT DUNKLESS: Maybe six feet. Five feet. Probably a little -- probably five or six feet.

JANET GREEN: I went yesterday. I think it was yesterday or maybe the day before, and I had a hard time finding it. I wandered all through the building. I went through where it said 57 J.F.K. Street. And I wandered through the building. And then I happen to go into the hair salon and said do

you know any place that's going to be a yogurt shop? I can't find it. And they said well, it's here. And then I said, but there's no sign. So she took me to see the sign. But the sign wasn't -- I mean, to be honest, the sign wasn't even at eye level. The sign is way down here at the bottom of the window. The trees aren't that high. The trees are only about this high, and they covered the sign. And so, you know, it was very hard to see.

ATTORNEY ROBERT DUNKLESS: Well, I don't believe the Ordinance requires that it be at a certain level. I mean --

JANET GREEN: It's visible. I think it's supposed to be visible.

ATTORNEY ROBERT DUNKLESS: Right. And I understand. I'm not questioning the experience you had. But I would submit that that's visible.

JANET GREEN: That's -- the trees

were in front of the sign.

ATTORNEY ROBERT DUNKLESS: Right, and that's been a problem as we have --

DOUGLAS MYERS: How long have you known that's a problem?

ATTORNEY ROBERT DUNKLESS: We just found out yesterday. Mr. O'Grady called.

DOUGLAS MYERS: But you said there's been a problem with moving the trees, and this problem has been known for at least such a length of time that you've been able to identify it as a possible problem. So I'd like to ask how long have you known there's been a problem?

ATTORNEY ROBERT DUNKLESS: The Petitioner --

DOUGLAS MYERS: How long have you known the moving of trees in the courtyard --

ATTORNEY ROBERT DUNKLESS: Not until yesterday.

DOUGLAS MYERS: Okay.

ATTORNEY ROBERT DUNKLESS: The Petitioner is a business located in California. This is not a situation where there's an operator at that location who is applying for the Special Permit. And so they really don't have the day-to-day information that one would have if they were located there.

BRENDAN SULLIVAN: I think a maintenance person, the building manager, somebody, has got to be alerted and, you know -- we're not taking you as a single instance. We hear this all the time and that's why we've taken somewhat of a strict adherence to this. People have renovations going on in the building. The painter takes it out of the window to put off to the side so he can paint the window, but never puts it back. There are innumerable -- you name -- not an excuse, but you name a reason why the sign hasn't been continuously up for

14 days, we've heard it. And, again, it's not that we're being hard here, but there is some protection, again, as I said, for the Petitioner. And I know they're going to say we will take that chance. But it protects you should somebody come back later on and say I never saw the posting. And now we all, and it's on public record, are aware that the sign has not always been visible, easily identifiable, and readable to the general public.

ATTORNEY ROBERT DUNKLESS: Well, and we do appreciate the concern of the Board. And we understand there's a 90-day appeal period where someone could file an appeal. We understand that. However, we're -- we feel confident that the signage has been there and that it's visible. And perhaps Mr. Dhanda who is the landlord who has better experience with the day-to-day location could offer, you know, any information

regarding the frequency of the trees being moved.

BRENDAN SULLIVAN: And, again, I don't doubt the -- your attempt to comply. Don't doubt that in the least. It's just that it -- the law does not comply. The Ordinance was not complied with.

DOUGLAS MYERS: Mr. Chairman, could we hear the account of the code enforcement officer who was specifically sent to observe the sign in this case?

BRENDAN SULLIVAN: Yes, of course.

DOUGLAS MYERS: We were fortunate that one Board member gave a detailed -- an account of --

CONSTANTINE ALEXANDER: I didn't see it also. I visited it site on December 2nd and I went all around and I couldn't find the sign.

ATTORNEY ROBERT DUNKLESS: I would like to offer just one clarification. This

is not a situation where the sign consistent with the example you gave was moved by a contractor or a painter and no one put it back for a few days. It's always been there. There may have been an isolated, one or more isolated situations, for a short period of time where a tree may have blocked part of it and it wasn't as visible as it could have been. But that sign's been there for November 20th.

DOUGLAS MYERS: Why didn't people see it? Why did three able-bodied interested people who went there for the specific purpose of finding the sign, why weren't they able to see it?

ATTORNEY ROBERT DUNKLESS: In the course of a period of two weeks there may have been a or more isolated instances where that sign may have not been visible. But throughout the two-week period we would submit that the sign has been visible

continuously.

JANET GREEN: May I ask how many signs did you have? And who posted them?

ATTORNEY ROBERT DUNKLESS: They were posted by an agent of Yogurtland.

JANET GREEN: And how many signs?

SEAN O'GRADY: Two.

JANET GREEN: Two?

ATTORNEY ROBERT DUNKLESS: There's only --

JANET GREEN: And where is the second sign?

RAJ DHANDA: On the inside of the -- if you go inside the lobby of the building from J.F.K. Street it was --

ATTORNEY ROBERT DUNKLESS: It's not clear that there were even two signs required here because the frontage of where the store is located. There's only 120 feet of frontage there on the -- this location is Winthrop Street and there's only 120 feet.

SEAN O'GRADY: It's property wide.

ATTORNEY ROBERT DUNKLESS: What's that?

SEAN O'GRADY: Frontage on the property. Again, it's the whole building not the address.

DOUGLAS MYERS: Well, I mean the three people in question who have personal knowledge on behalf of the Board visited it separate times, they didn't go all as a delegation. They visited on three separate occasions in the notice period when the sign wasn't visible not only to casual passersby but to people who went in the capacity for the specific purpose of finding the sign concluded that the sign was not posted in a visible manner. I don't know what else could be said. I mean, these people, they're all able-bodied. They're not visually impaired and they had every incentive to try to find the sign. So the defect must be with the

signage and not with them.

BRENDAN SULLIVAN: Well.

DOUGLAS MYERS: If I'm not being too harsh.

CONSTANTINE ALEXANDER: I don't see how we can hear the case tonight.

THOMAS SCOTT: I have to go with the Board members.

BRENDAN SULLIVAN: Okay. And you're feeling is that the requirement was not complied with.

JANET GREEN: It was not complied with.

DOUGLAS MYERS: Agreed.

BRENDAN SULLIVAN: Okay. Well, let me make a motion then to continue this matter, what is the next available? Some 14 days from now?

SEAN O'GRADY: February 14th.

CONSTANTINE ALEXANDER: This is a case not heard.

BRENDAN SULLIVAN: Yes.

SEAN O'GRADY: Well --

BRENDAN SULLIVAN: It will take less time to dispose of the case than what we've already spent on it discussing whether or not we're going to hear it.

SEAN O'GRADY: If you want to put it on the 20th, December 20th.

ATTORNEY ROBERT DUNKLESS:  
Mr. Sidoti came in from California for the hearing.

BRENDAN SULLIVAN: I understand.

ATTORNEY ROBERT DUNKLESS:  
Unfortunately he was in the area yesterday. Is there a hearing other than the 20th of the December because of the Christmas season.

BRENDAN SULLIVAN: We're into January. We can go January 10th.

SEAN O'GRADY: You're already overloaded January 10th.

ATTORNEY ROBERT DUNKLESS: Do you

want to go the 20th?

DOUGLAS MYERS: Obviously time is of the essence. Obviously you care a lot. You all came tonight.

LARRY SIDOTI: How much information are you going to look for from us? I might have to have an east coast representative who is not an officer of the company come out because flying from California to here is going to be --

BRENDAN SULLIVAN: Yes, somebody I think who knows the operation when we ask particular questions.

CONSTANTINE ALEXANDER: He or she will have to know about what Zoning By-Laws for fast order food establishments. You have to designate that person within the area who is going to be able to testify that you can satisfy these various --

ATTORNEY ROBERT DUNKLESS: I think we'll be prepared to do that, sir. Thank

you.

CONSTANTINE ALEXANDER: I just wanted to make sure you understand.

ATTORNEY ROBERT DUNKLESS: We'll be prepared to do that.

BRENDAN SULLIVAN: And in case we would have some specific questions regarding the operation itself, so somebody who is familiar with your operation I would think quite ably.

CONSTANTINE ALEXANDER: Hours of operation for example.

BRENDAN SULLIVAN: You know, your product. That type of thing. How the operation --

DOUGLAS MYERS: (Inaudible).

BRENDAN SULLIVAN: How the operation runs basically would be.

LARRY SIDOTI: Okay.

BRENDAN SULLIVAN: The options December 20th or first one in January.

LARRY SIDOTI: December 20th.

BRENDAN SULLIVAN: Yes? Okay.

Let me make a motion to continue this matter to December 20th --

DOUGLAS MYERS: Case not heard?

BRENDAN SULLIVAN: As a case not heard -- 2012 at seven p.m. on the condition that the Petitioner change now the posting sign to reflect the new date of December 20, 2012, and the time of seven p.m. And whether or not there would be one or two signs, but whatever they are, that they be changed anyhow.

ATTORNEY ROBERT DUNKLESS: May I -- and I thank the Board for their indulgence this evening. That was December 20th at seven o'clock p.m. And the sign will have to be changed. To avoid any further complication with signage, if we may ask for the Board's recommendation in terms of the current location of the sign and whether

there should be a second sign on the J.F.K. side whether that would solve what is perceived as a signage problem. We certainly doesn't don't want to go through the exercise again. We thought and continue to believe that the location of the sign at the actual storefront where the yogurt shop would be applying for a Special Permit to operate within is an appropriate location for a sign. It's been suggested that the J.F.K. side where there's a door that says 57 J.F.K. Street would also be an appropriate location for a sign. Would signage at both those locations be deemed in compliance?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Yes.

Both? Yes. You've got to make sure the one on the location of the site doesn't have the same problem you've had tonight.

DOUGLAS MYERS: You might want to raise it up a few feet.

JANET GREEN: Just raise it up.

DOUGLAS MYERS: Judging by your pictures you can put it higher in the window.

ATTORNEY ROBERT DUNKLESS: Yes, there is a bit of a challenge in raising it because as you'll see, I guess it could be raised a bit.

JANET GREEN: It can be raised.

ATTORNEY ROBERT DUNKLESS: It can be raised a bit without interfering the current tenants.

DOUGLAS MYERS: Put the trees inside for a couple of weeks.

THOMAS SCOTT: Put it on the door.

CONSTANTINE ALEXANDER: That's what I said.

BRENDAN SULLIVAN: It may conflict with the existing tenant and that's a minefield probably, but I think that somebody has to go by there daily. And, again, I'm sure there's maintenance people or whatever

it is, and they just have to be told that that sign has to be visible.

CONSTANTINE ALEXANDER: Remember, December 20th is about 14 days away. You have to have it up for 10 days.

SEAN O'GRADY: 14.

CONSTANTINE ALEXANDER: I'm sorry.

SEAN O'GRADY: 14.

ATTORNEY ROBERT DUNKLESS: It has to be done tomorrow.

BRENDAN SULLIVAN: Well, yes, do it tomorrow, that's fine. Just change the posting date for tomorrow. That's all we can ask for and it will be fine and then everyday that it's visible that's all.

I'm sorry, you were going to say something.

RAJ DHANDA: Yes, my part was that there should be three signs one on the entrance, main entrance to the building at 57 J.F.K. and then one in the inside of the lobby

which also has an entrance on the space and one --

ATTORNEY ROBERT DUNKLESS: You know, we only have two signs and I don't -- we have enough trouble with the two signs. I think we ought to just focus on what to do with these two signs.

BRENDAN SULLIVAN: That's fine. But I think you're right, you're correct in two signs, the locations, change the date tomorrow to reflect the new date and somebody has got to go by there on a daily basis and just make sure that it's visible.

SEAN O'GRADY: Could I just -- the door at 57 J.F.K. is probably too, it's too far back from the street. Is it more than 20 feet from the sidewalk?

RAJ DHANDA: No.

SEAN O'GRADY: Because you walk sort of and go up the street.

RAJ DHANDA: It's probably 15 to 20.

SEAN O'GRADY: Okay. If it's more than 20, you just want to move it sort of out to somewhere so that it's visible.

ATTORNEY ROBERT DUNKLESS: I'm not sure is there a place to put the sign?

RAJ DHANDA: I will find a place to put it.

ATTORNEY ROBERT DUNKLESS: If it's 20 feet from the street?

RAJ DHANDA: It has to be closer. That will be closer than --

ATTORNEY ROBERT DUNKLESS: It will be closer than 20 feet. The door at J.F.K. is closer than 20 feet?

RAJ DHANDA: I will find a spot on that side which will be very visible and it would be not of this nature.

ATTORNEY ROBERT DUNKLESS: Okay. Well, I thank the Board and we look toward --

BRENDAN SULLIVAN: On the motion to continue this matter, and again only that the

requirement be that you change the posting date on the signs plural, and that they may be maintained as per the requirements of the Ordinance. That's all.

On the motion to continue --

CONSTANTINE ALEXANDER: Sign the waiver.

BRENDAN SULLIVAN: He did, yes.

On the motion to continue.

(Show of Hands.)

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY ROBERT DUNKLESS: Do I need to sign the waiver of the 65 days?

CONSTANTINE ALEXANDER: Yes, okay.

(10:45 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10359, 45-7 Cogswell Avenue.

Whoever is going to speak please introduce yourself and spell your last name for the record.

HEZEKIAH PRATT: My name is Hezekiah Pratt, H-e-z-e-k-i-a-h P-r-a-t-t, an architect working with Mr. Brodie.

Yes, Mr. Brodie has lived at his address for about 20 years.

MICHAEL BRODIE: 30.

HEZEKIAH PRATT: 30 years. I'm sorry.

This was a project that was done by the Planning Board back in 1981. At that time everyone had a -- this was designed in such a way that each unit had a garage attached except for Mr. Brodie. His unit does not

have a garage, and because of this over time it's presented somewhat of a hardship and made a difficult situation for him especially during the winter months. If I may just show you a few photographs.

Now we propose to sort of alleviate the situation by proposing a carport. It's not your standard carport, but we think a flat roof, if you will -- it's a carport that's being proposed that is going directly in the location of his parking spot. This carport is going to be -- the dimensions is going to be 8, 7 by about I think 19, 3. Now, we're trying to do this in a very sensitive way. The materials and also the size and the -- of the carport is going to be consistent with the house, especially materials. We're putting clapboard, probably hardy plank, that's going to match that of the house. It's going to have a slope ceiling -- I'm sorry slope roof if you will that resembles the house, and

other features of that carport as best we can. We'll go -- will match the house.

Now, this house actually -- I'm sorry, the carport would actually have very little visual impact if you will. The location of the carport, at least the house, is sort of off the beaten path if you will. This is Cogswell Avenue Circle here. The entry to the association by the way, I forgot to mention, he's a part of an association, is here. You have to travel along the driveway, along here, winding driveway until you get to No. 7 which is Mr. Brodie's home if you will. Now this is -- visually has very little impact for the a number of reasons.

One, is because the location of it. It's sort of set back.

Two is that it's buffered by a row of trees by these houses that are here. It's also in a location where there is very little visibility of it from most of the units except

maybe one of two which is I think important.

Now the other issue which I think is just as important, is that he's brought this to the attention of the association. That's a requirement of particular rules. And they have approved the carport.

Also he has also talked with some of the also surrounding abutters as well, and they are also in support of the carport.

We've done -- he's also done diligence. We've had Dig Safe come out look at the -- where the utilities, electric, underground electricity, the gas, and I think the water as well, to make sure that we are placing the posts, if you will, locations that won't impact any of the utilities as well.

Here's sort of a special situation in that there is a slight easement that's on that parking space which is unusual. The association has agreed to remove that

easement from that parking space. We have developed -- a plot plan has been developed and has been filed at the Registry of Deeds I think a few weeks ago. So that's, you know, that's pretty much it.

I think -- I'm sorry, were you going to say something.

MICHAEL BRODIE: I've been doing this for like two and a half years, and we started off with a rather informal, hey, is this okay with everybody? And everybody but one of the members of the association agreed.

The plot is governed by a covenants that tells all the rules and everything is compliant with the rules. And as I say, everybody but one of the neighbors, who happens to be here this evening, agreed. And then we had a lawyer write up a more formal thing this June. The reason being is that there's a deed impact which was the easement. So everybody agreed, including the people

impacted by the easement change, and it was filed with the Registry. And we have everybody's signature, again, with the exception of one.

BRENDAN SULLIVAN: Okay.

THOMAS SCOTT: Did you say that all of the other units have either a garage or a carport?

MICHAEL BRODIE: Yes. The design of the houses is such that everyone has a garage built in.

THOMAS SCOTT: Okay.

MICHAEL BRODIE: My driveway is such that a car could not turn in which is why it wasn't put there in the first place.

THOMAS SCOTT: Okay.

MICHAEL BRODIE: It couldn't make the turn in or out. So I was given -- I'm the only person who was given a designated parking space. And because I was that, the association agreed to let me build one, but

specifically said no other such structure could be built anywhere else because it was a unique situation.

BRENDAN SULLIVAN: Now the easement, is for right of travel?

MICHAEL BRODIE: Yes. Of one unit, and that is the unit next-door to -- well, two, two lots away. So that she can go around to the back of her house.

BRENDAN SULLIVAN: And if this were built, if would still have access?

MICHAEL BRODIE: Yes.

HEZEKIAH PRATT: It's approximately five feet, five inches from the property line.

BRENDAN SULLIVAN: It's just that you're not allowed to build over an easement without a --

MICHAEL BRODIE: Well, I don't know about that. The odd thing was the easement was over my designated parking space, and

it's rather hard to walk through a car. So it was only -- they always used the grass. So we just legally had it moved to the grass so it's no longer there.

BRENDAN SULLIVAN: Okay. The violation, Section 4, 4.21 Accessory Uses, is the pertinent section, Sean, would be (h) in Residence A, B, C and C1. This is a Residence B, an accessory building of which this is -- shall not be located nearer than 10 feet to the principal building or nearer than five feet to any side or rear lot line or nearer to the front lot line to the minimum setback in the Zoning District. So that's the violation here under 4.

MICHAEL BRODIE: Yes.

BRENDAN SULLIVAN: Under 5.82 -- under 8.22.3 the pertinent section there is an alteration or an enlargement of non-conforming structure not otherwise permitted in 8.22.1, 8.22.2 shall be by

Variance. Hence you're by way of Variance.

And Article 5, 5.3.1 is the table of dimensional requirements.

And, Sean, what does that encompass, do you know offhand? There was no dimensional violations other than distance between buildings.

SEAN O'GRADY: The separation of buildings. There's no setback problems.

CONSTANTINE ALEXANDER: Front yard setback, too.

HEZEKIAH PRATT: Front yard, side yard.

BRENDAN SULLIVAN: Okay, so that basically is addressed at 4 -- I mean, 4.21 accessory use.

SEAN O'GRADY: Yes, there's a little indication, right.

BRENDAN SULLIVAN: Which refers to the dimensional requirements and as picked up by 5. Okay. Just to know what the

violations are and the relief that's being requested.

Okay. Any questions? Tom, any?

THOMAS SCOTT: No.

JANET GREEN: I just wondered when was this built?

MICHAEL BRODIE: The house? 30 years ago. I took residence 30 years ago so it was probably built during that.

HEZEKIAH PRATT: I think 1981.

JANET GREEN: And you said it was an area that the Planning Board -- you mentioned the Planning Board?

HEZEKIAH PRATT: I think the Planning Board pushed that. I tried to find the documents in the Building Department. They didn't have them, go to the Planning Board, and that's when I was told that was done through the Planning Board.

BRENDAN SULLIVAN: I think they got a Special Permit for the development is what

it was.

Let me open to public --

DOUGLAS MYERS: Question here.

Just one.

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: You've mentioned a height of the building and the materials. Refresh my memory, what about the sides of the building? What --

HEZEKIAH PRATT: It's completely open.

DOUGLAS MYERS: It's completely open and that's why you refer to it as a carport?

HEZEKIAH PRATT: Yes, right.

DOUGLAS MYERS: The materials you referred to will be used on the roof?

HEZEKIAH PRATT: The roof and also the front as well.

DOUGLAS MYERS: A little bit of the front and because it comes down the front

where the car will drive?

HEZEKIAH PRATT: Yes.

MICHAEL BRODIE: If I might? One of our neighbors is an architect and he was quite concerned about keeping the openness of the space and even putting a carport there. So that's why we decided to put no sides on it whatsoever. Just the roof.

HEZEKIAH PRATT: Less visual impact.

DOUGLAS MYERS: I understand.  
That's all, thank you.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter at 45-7 Cogswell Avenue?

Yes, if you would please come forward and identify yourself for the record.

ANN GETMAN: My name is Ann Getman.  
I live at 45-11 Cogswell and I'm one of the few houses that has a direct site line to

Michael's front, and I've seen the design and I think it's very compatible with the structure. It's open, it's not gonna limit access to the common areas in any way, and I support it.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Thank you.

DOUGLAS MYERS: Are you -- what unit do you live in?

ANN GETMAN: 11. It fronts on Cogswell and my back sliders look directly on to the front of Michael's building. So I'll be in the direct site line to it and I think it looks very compatible.

MICHAEL BRODIE: 11 here.

DOUGLAS MYERS: Okay, I understand.

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

STEFANAAN HEYVART: I would like to speak as well. My name is Stefanaan Heyvart. First name Stefanaan, S-t-e-f-a-n-a-a-n.

Last name Heyvart, H-e-y-v-a-r-t. I live at 45 No. 8 Cogswell Avenue which is right next to Mr. Brodie and I am in full support of his plan. I am also the one who is affected by the moving of the easement which will now come on to my property which is where it has been de facto anyway, because as was mentioned, the car is always where the easement is officially. So I just wanted to express my support.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Thank you.

HEZEKIAH PRATT: He's here.

BRENDAN SULLIVAN: Anybody else who would like to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: So nobody else in attendance and there is no other correspondence in the file I believe. So let me close the public comment.

DOUGLAS MYERS: Then I have one more

question.

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: Just to establish the basic -- you mentioned that one person is opposed?

MICHAEL BRODIE: Yes.

DOUGLAS MYERS: And the name is not important to me, but is that the resident of unit 2?

MICHAEL BRODIE: Unit 1.

DOUGLAS MYERS: Unit 1?

MICHAEL BRODIE: Unit 1. Not 2. Two's very much in support. And it's a good point. He's making the point they look directly on -- they are most visually impacted.

DOUGLAS MYERS: It seems the greatest impact on visual 2. And they look into the field and the open space.

MICHAEL BRODIE: I have it right here.

DOUGLAS MYERS: No, no, that's fine.  
No occasion for it. That's my point.

MICHAEL BRODIE: Oh, and there are  
other abutters behind who have just an equal  
view as well and I have e-mails from them.

DOUGLAS MYERS: Okay.

BRENDAN SULLIVAN: Okay. Nobody  
else to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: All right. Let  
me close the public comment part.

Anything else to add --

HEZEKIAH PRATT: Nothing from me.

BRENDAN SULLIVAN: -- or change,  
delete?

MICHAEL BRODIE: We have surveys,  
two legal reviews by real estate lawyers.  
We've done quite a bit of due diligence.

HEZEKIAH PRATT: I don't know if you  
want -- I think you submitted the support  
letters?

MICHAEL BRODIE: Yeah.

BRENDAN SULLIVAN: I don't have any support letters.

MICHAEL BRODIE: Oh, support letters. Let me give you -- there's the legal document signed. That's another, the more preliminary one that's a couple years before. And these are some e-mails from abutters that aren't a part of the association but surround the building from another side. They're less involved in this.

BRENDAN SULLIVAN: And these can be submitted in the record or are these your only copy?

MICHAEL BRODIE: No, you're perfectly welcome to have them.

BRENDAN SULLIVAN: Because you'll never see them again. They've been captured.

MICHAEL BRODIE: That's okay.

BRENDAN SULLIVAN: There's correspondence from 35 Cogswell Station Homeowners Association, a written consent regarding the placement of the carport on unit 7's premise and amendment of the No. 45 Cogswell Station Plan. The undersigned being at least the majority of all the members of the 45 Cogswell Station Homeowner's Association do hereby consent to the following actions taken and votes adopted, and basically they're giving they're ascent to the proposal that is before us.

And there is correspondence from Carla Tishler, T-i-s-h-l-e-r who is voicing her support.

And also correspondence from Robijn, R-o-b-i-j-n Hage, H-a-g-e to Mr. Brodie voicing his support for the project.

Okay. So we'll leave those in the file.

All right, let me close the

presentation part.

CONSTANTINE ALEXANDER: I'm not a big fan of carports, but I'm in favor of this. And it's a special situation.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I agree. It's kind of a special situation, and, you know.

BRENDAN SULLIVAN: You can't really see it from Cogswell Avenue at all.

CONSTANTINE ALEXANDER: You can't see it from anywhere.

THOMAS SCOTT: And the neighbors that are affected seem okay.

DOUGLAS MYERS: I'm okay.

JANET GREEN: I'm in favor.

BRENDAN SULLIVAN: All right. I'm not necessarily in favor, but I'm not going to buck a trend here. I think I probably have the same sentiments you do, but it's probably of great benefit to you and is somewhat inconsequential.

Let me make a motion then to grant the relief requested, which is the construction of a carport as per the application and the drawings contained therein and initialed by the Chair.

There won't be any deviation from this now, right?

HEZEKIAH PRATT: Right.

BRENDAN SULLIVAN: Okay.

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

The Board finds that in this particular residential development that this particular unit is the only one without protection for an automobile, and the Petitioner has experienced a great deal of damage from the elements in the past. And as such, the requested relief, the Board finds is quite de minimus.

The hardship is owing to the size of the particular lot that this is located on, the deeded portion of that lot, to this particular owner, and the extreme hardship of relocating this carport and any other location because of the deeded property to this homeowner. And that the requirements of the Ordinance make it prohibitive to locate this any other place.

The Board finds that desirable relief may be granted without substantial detriment to the public good.

The Board notes the letters of support from the association, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

And that the work comply with the drawings contained in the application.

All those in favor of granting the Variance?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

MICHAEL BRODIE: Thank you very  
much. Appreciate it.

(11:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case 10360, 126 Brattle Street.

CHARLES MYER: Hi. I am Charles Myer, Charles Myer and Partners, M-y-e-r, 875 Main Street in Cambridge, Mass., architects.

The house 126 Brattle, it is non-conforming in any number of ways. It's on a corner lot. We have a front yard setback here and here. We're three feet in the front yard setback on Brown Street. We have a garage that is less than five feet from the property, side property line. We are also six feet, three and a half inches from the house which is required by accessory structures, 10 feet. And my client

is -- we're renovating the house and they have little children and needs a mudroom. And one of the thoughts we had to solve it was to fill in the existing covered porch, and which also covers the stairs. So that porch is there. We're going to fill that in and make that a mudroom and then move the stairs out. And so what we're asking for is relief for 15 square feet by setting the stair inside this space that is going towards the garage, and adding to the nonconformity which is why it's a Variance.

CONSTANTINE ALEXANDER: And you've got approval from the Historic Commission?

CHARLES MYER: Historical Commission is fine with it. And we've gone to the neighbors and discussed this with them. Everybody is happy, fine. So I think we're good with everyone.

CONSTANTINE ALEXANDER: You'll find out in a second.

DOUGLAS MYERS: So far.

CHARLES MYER: Exactly.

BRENDAN SULLIVAN: This was owned by Mrs. Mitchell, this house?

CHARLES MYER: Right.

BRENDAN SULLIVAN: Who passed away last year.

CHARLES MYER: Right.

BRENDAN SULLIVAN: Okay. Any comments, questions?

CONSTANTINE ALEXANDER: No, no.

DOUGLAS MYERS: Well, just one.

Did you show the landing, the covered landing in the entry steps on any elevation or did I miss that?

CHARLES MYER: It's right there.

DOUGLAS MYERS: Okay, all right. Obviously I missed it.

CHARLES MYER: There's a little roof.

DOUGLAS MYERS: Okay.

CHARLES MYER: And it's not like we extended the roof. We just did a little cover thing with a bracket.

DOUGLAS MYERS: Okay.

CONSTANTINE ALEXANDER: Doug, I saw one of the plans in the file has the elevation so I can confirm it's in there.

DOUGLAS MYERS: Okay. I believe you. I obviously missed it. That is my question.

BRENDAN SULLIVAN: Any other questions?

(No Response.)

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter at 126 Brattle Street?

(No Response.)

CHARLES MYER: He's in support.

BRENDAN SULLIVAN: He's in support.  
There is no correspondence. There is

nobody in attendance. I'll close public comment part.

There's nothing for you to refute, to add, change? Pretty simple stuff.

Let me make a motion then to grant the Variance to construct a covered landing with steps to the existing mudroom as per the plans submitted, the dimensional form application. You're not going to change any of this, Charles, right?

CHARLES MYER: No.

BRENDAN SULLIVAN: And today is 12/06/12. Let me make a motion then to grant the relief requested.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would prevent the Petitioner from improving and reorientating the exterior steps as the structure -- the existence between the two

structures, the house and garage, is not code compliant, predates the existing Ordinance and as such, any work of this nature would require some relief from this Board.

The Board finds that the hardship as stated is the location of the existing garage in relationship to the house which predates the existing Ordinance.

The desirable relief may be granted without substantial detriment to the public good. The addition of this covering which is some 40 square feet?

CHARLES MYER: 15 square feet.

BRENDAN SULLIVAN: I'm sorry, 15. Would be a benefit to the occupants of the house, especially with small children, and safety of entering and exiting of the house during inclement weather.

The Board finds that it would enhance the public good and especially the occupant the residents.

And relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

CHARLES MYER: Thank you very much.

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

(Whereupon, at 11:05 p.m., the  
Board of Zoning Appeal  
Adjourned.)

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**BRISTOL, SS.**

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

**IN WITNESS WHEREOF**, I have hereunto set my hand this 19th day of December 2012.

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**\$**

**\$942,000** [1] - 165:8

**0**

**0.4** [1] - 67:2

**0.5** [3] - 49:8, 108:10,  
181:1

**0.566** [1] - 49:11

**0.58** [1] - 49:9

**0.584** [1] - 49:11

**02139** [1] - 1:11

**1**

**1** [13] - 6:12, 9:2,

125:8, 127:14,  
 147:18, 148:6,  
 196:6, 206:18,  
 214:17, 214:21,  
 252:10, 252:11,  
 252:12  
**1-A**<sup>[1]</sup> - 20:12  
**1.75**<sup>[1]</sup> - 181:2  
**1.98**<sup>[1]</sup> - 181:3  
**1/10**<sup>[1]</sup> - 95:13  
**10**<sup>[8]</sup> - 31:6, 34:17,  
 95:19, 96:1, 168:15,  
 234:6, 245:13,  
 260:19  
**10.42.1**<sup>[1]</sup> - 214:20  
**10.42.1.A**<sup>[1]</sup> - 213:21  
**10051**<sup>[3]</sup> - 2:7,  
 163:20, 194:15  
**10114**<sup>[3]</sup> - 2:6,  
 163:19, 194:15  
**102**<sup>[1]</sup> - 2:8  
**10247**<sup>[4]</sup> - 2:5,  
 163:19, 194:6,  
 194:14  
**10342**<sup>[3]</sup> - 2:3, 27:6,  
 27:10  
**10343**<sup>[3]</sup> - 2:4, 3:9,  
 17:10  
**10353**<sup>[4]</sup> - 2:8, 102:6,  
 174:18, 175:5  
**10354**<sup>[3]</sup> - 2:9, 31:6,  
 34:17  
**10355**<sup>[2]</sup> - 2:10, 46:6  
**10356**<sup>[1]</sup> - 2:11  
**10357**<sup>[2]</sup> - 2:12, 196:6  
**10358**<sup>[2]</sup> - 2:13, 210:6  
**10359**<sup>[2]</sup> - 2:14, 238:6  
**10360**<sup>[2]</sup> - 2:15, 260:6  
**10:05**<sup>[1]</sup> - 194:1  
**10:10**<sup>[1]</sup> - 196:1  
**10:20**<sup>[1]</sup> - 210:1  
**10:45**<sup>[1]</sup> - 238:1  
**10th**<sup>[8]</sup> - 95:14, 96:5,  
 96:15, 96:19, 96:21,  
 101:15, 228:19,  
 228:21  
**11**<sup>[5]</sup> - 177:19,  
 181:11, 185:19,  
 250:10, 250:15  
**11.1**<sup>[1]</sup> - 171:18  
**11.15**<sup>[3]</sup> - 105:9,  
 105:16, 109:19  
**11:00**<sup>[1]</sup> - 260:1

**11:05** <sup>[1]</sup> - 266:9  
**12** <sup>[1]</sup> - 203:16  
**12/06/12** <sup>[2]</sup> - 264:11,  
 268:1  
**120** <sup>[2]</sup> - 225:20, 226:1  
**1200** <sup>[1]</sup> - 181:7  
**126** <sup>[3]</sup> - 260:6,  
 260:10, 263:15  
**13** <sup>[2]</sup> - 177:11, 177:12  
**130** <sup>[1]</sup> - 102:12  
**14** <sup>[6]</sup> - 214:9, 222:2,  
 227:18, 234:5,  
 234:7, 234:9  
**147703** <sup>[1]</sup> - 269:15  
**14th** <sup>[1]</sup> - 227:20  
**15** <sup>[5]</sup> - 218:11, 236:1,  
 261:6, 265:11,  
 265:12  
**1500** <sup>[2]</sup> - 103:20,  
 111:6  
**16** <sup>[6]</sup> - 56:9, 84:6,  
 85:4, 89:16, 149:5,  
 153:5  
**16.7** <sup>[6]</sup> - 149:6, 149:7,  
 149:8, 149:9,  
 149:15, 150:1  
**16th** <sup>[1]</sup> - 55:4  
**175** <sup>[7]</sup> - 102:6,  
 102:19, 142:3,  
 162:21, 163:18,  
 165:3, 194:6  
**179** <sup>[1]</sup> - 167:20  
**18** <sup>[1]</sup> - 153:6  
**182** <sup>[1]</sup> - 165:1  
**184** <sup>[1]</sup> - 163:14  
**186** <sup>[1]</sup> - 164:7  
**1860** <sup>[1]</sup> - 47:14  
**19** <sup>[4]</sup> - 55:5, 55:20,  
 56:11, 239:14  
**1900** <sup>[1]</sup> - 173:11  
**1920s** <sup>[1]</sup> - 103:12  
**193** <sup>[1]</sup> - 177:13  
**194** <sup>[3]</sup> - 2:5, 2:6, 2:7  
**196** <sup>[1]</sup> - 2:12  
**1980s** <sup>[1]</sup> - 47:18  
**1981** <sup>[2]</sup> - 238:19,  
 247:12  
**19A** <sup>[7]</sup> - 46:6, 54:21,  
 55:6, 55:12, 55:20,  
 56:6, 56:11  
**19th** <sup>[1]</sup> - 269:11

**2**<sup>[18]</sup> - 106:14,  
 123:17, 130:1,  
 130:14, 130:15,  
 130:18, 131:1,  
 131:11, 133:9,  
 136:12, 148:13,  
 157:18, 169:16,  
 214:19, 215:1,  
 252:9, 252:12,  
 252:18  
**2,000**<sup>[1]</sup> - 117:9  
**2,025**<sup>[1]</sup> - 180:10  
**2,037**<sup>[1]</sup> - 111:4  
**20**<sup>[9]</sup> - 214:3, 231:10,  
 235:17, 236:1,  
 236:3, 236:10,  
 236:14, 236:15,  
 238:14  
**20's**<sup>[2]</sup> - 47:16, 49:10  
**2012**<sup>[5]</sup> - 1:7, 3:8,  
 231:8, 231:11,  
 269:11  
**2013**<sup>[3]</sup> - 29:8, 95:19,  
 96:1  
**2015**<sup>[1]</sup> - 269:16  
**20th**<sup>[15]</sup> - 94:18,  
 94:20, 211:13,  
 211:19, 213:14,  
 224:11, 228:9,  
 228:16, 229:2,  
 231:1, 231:2, 231:5,  
 231:17, 234:5  
**21**<sup>[2]</sup> - 55:18, 55:19  
**210**<sup>[1]</sup> - 2:13  
**213**<sup>[1]</sup> - 163:10  
**22-foot**<sup>[2]</sup> - 114:5,  
 122:11  
**23**<sup>[1]</sup> - 269:16  
**238**<sup>[1]</sup> - 2:14  
**24**<sup>[1]</sup> - 29:8  
**24th**<sup>[5]</sup> - 28:12, 28:15,  
 29:11, 29:18, 93:16  
**25**<sup>[3]</sup> - 53:10, 177:11,  
 182:5  
**2500**<sup>[2]</sup> - 111:4, 181:7  
**260**<sup>[1]</sup> - 2:15  
**267**<sup>[1]</sup> - 268:7  
**27**<sup>[1]</sup> - 2:3  
**28**<sup>[1]</sup> - 122:12  
**293**<sup>[1]</sup> - 165:6  
**2:30**<sup>[1]</sup> - 211:5  
**2nd**<sup>[1]</sup> - 223:18

### 3

**3**<sup>[14]</sup> - 2:4, 6:12, 9:2,  
 126:7, 129:21,  
 130:1, 130:7, 130:9,  
 130:10, 130:17,  
 133:9, 139:14,  
 159:15, 239:14  
**30**<sup>[4]</sup> - 238:15,  
 238:16, 247:9,  
 247:10  
**30th**<sup>[1]</sup> - 32:5  
**31**<sup>[1]</sup> - 2:9  
**32**<sup>[1]</sup> - 71:13  
**330**<sup>[3]</sup> - 61:5, 61:17,  
 89:9  
**333**<sup>[1]</sup> - 92:16  
**334**<sup>[1]</sup> - 70:19  
**35**<sup>[3]</sup> - 108:9, 181:21,  
 254:21  
**3500**<sup>[1]</sup> - 117:5  
**36**<sup>[1]</sup> - 174:14  
**3800**<sup>[1]</sup> - 173:10  
**390**<sup>[1]</sup> - 177:19

### 4

**4**<sup>[3]</sup> - 245:8, 245:17,  
 246:17  
**4.21**<sup>[2]</sup> - 245:8,  
 246:17  
**40**<sup>[6]</sup> - 57:21, 124:6,  
 174:21, 181:3,  
 181:17, 265:10  
**43**<sup>[1]</sup> - 182:1  
**45**<sup>[3]</sup> - 251:2, 255:3,  
 255:6  
**45-11**<sup>[1]</sup> - 249:20  
**45-7**<sup>[2]</sup> - 238:6,  
 249:16  
**46**<sup>[1]</sup> - 2:10  
**49**<sup>[1]</sup> - 18:20  
**4G**<sup>[1]</sup> - 4:5

### 5

**5**<sup>[3]</sup> - 180:20, 246:4,  
 247:2  
**5,000**<sup>[1]</sup> - 173:8  
**5.26**<sup>[1]</sup> - 180:21  
**5.3.1**<sup>[1]</sup> - 246:4  
**5.31**<sup>[1]</sup> - 180:20  
**5.82**<sup>[1]</sup> - 245:19  
**50**<sup>[3]</sup> - 177:9, 177:10,  
 181:15  
**57**<sup>[16]</sup> - 210:6,

211:16, 211:20,  
 215:12, 215:14,  
 216:10, 216:11,  
 216:14, 217:16,  
 217:18, 218:4,  
 218:21, 232:12,  
 234:21, 235:16  
**5800**<sup>[1]</sup> - 103:19  
**5th**<sup>[2]</sup> - 174:14,  
 174:21

## 6

**6**<sup>[4]</sup> - 1:7, 3:8, 143:21,  
 182:8  
**60**<sup>[3]</sup> - 21:5, 21:11,  
 39:5  
**61**<sup>[1]</sup> - 2:11  
**617.786.7783/617.63**  
**9.0396**<sup>[1]</sup> - 1:20  
**65**<sup>[1]</sup> - 237:16  
**675**<sup>[1]</sup> - 95:6  
**678**<sup>[1]</sup> - 32:17  
**6800**<sup>[1]</sup> - 173:12  
**6th**<sup>[1]</sup> - 95:3

## 7

**7**<sup>[3]</sup> - 149:5, 239:14,  
 240:15  
**7's**<sup>[1]</sup> - 255:3  
**7,367**<sup>[1]</sup> - 103:19  
**700**<sup>[1]</sup> - 177:18  
**71**<sup>[2]</sup> - 27:6, 27:10  
**7300**<sup>[1]</sup> - 103:18  
**7600**<sup>[2]</sup> - 117:18,  
 118:1  
**78**<sup>[1]</sup> - 181:8  
**7:00**<sup>[2]</sup> - 1:8, 3:2  
**7:20**<sup>[1]</sup> - 27:1  
**7:45**<sup>[1]</sup> - 31:1  
**7:55**<sup>[1]</sup> - 45:1

## 8

**8**<sup>[2]</sup> - 239:14, 251:2  
**8.22.1**<sup>[1]</sup> - 246:2  
**8.22.2**<sup>[2]</sup> - 209:5,  
 246:2  
**8.22.3**<sup>[2]</sup> - 182:9,  
 245:20  
**80**<sup>[4]</sup> - 3:9, 4:10,  
 17:10, 32:16  
**800**<sup>[1]</sup> - 117:6  
**806**<sup>[1]</sup> - 1:11  
**875**<sup>[1]</sup> - 260:8

**88** <sup>[1]</sup> - 164:7  
**8:00** <sup>[1]</sup> - 46:1  
**8:15** <sup>[1]</sup> - 61:1  
**8:50** <sup>[1]</sup> - 102:1  
**8th** <sup>[4]</sup> - 11:1, 17:16,  
 21:21, 23:5

## 9

**9** <sup>[1]</sup> - 182:1  
**90-day** <sup>[1]</sup> - 222:16

## A

**A-1** <sup>[1]</sup> - 5:17  
**A-12** <sup>[1]</sup> - 78:21  
**A-2** <sup>[1]</sup> - 129:16  
**A-5** <sup>[1]</sup> - 136:18  
**A-6** <sup>[1]</sup> - 144:5  
**A-i-c-h-e-l-m-a-n-n**  
<sup>[1]</sup> - 167:19  
**A-r-a-y** <sup>[1]</sup> - 196:15  
**A1** <sup>[2]</sup> - 125:3, 125:4  
**abandoned**  
<sup>[1]</sup> - 183:12  
**ability** <sup>[2]</sup> - 157:4,  
 269:10  
**able** <sup>[24]</sup> - 4:21, 14:7,  
 84:2, 84:10, 96:16,  
 116:14, 116:17,  
 135:17, 148:3,  
 148:8, 148:11,  
 148:18, 158:12,  
 188:15, 197:15,  
 197:17, 211:3,  
 213:3, 217:5,  
 220:13, 224:13,  
 224:16, 226:20,  
 229:19  
**able-bodied**  
<sup>[2]</sup> - 224:13, 226:20  
**ably** <sup>[1]</sup> - 230:11  
**absent** <sup>[2]</sup> - 35:1,  
 106:18  
**absolute** <sup>[1]</sup> - 138:2  
**absolutely** <sup>[5]</sup> - 42:12,  
 44:4, 72:19, 135:4,  
 208:14  
**Absolutely** <sup>[1]</sup> - 13:5  
**abuts** <sup>[4]</sup> - 103:8,  
 121:21, 145:2,  
 167:21  
**abutter** <sup>[6]</sup> - 53:17,  
 143:9, 143:16,  
 144:11, 171:4,

176:18  
**abutters** <sup>[16]</sup> - 81:9,  
81:14, 90:2, 104:7,  
116:15, 142:19,  
143:8, 144:15,  
144:17, 162:13,  
179:14, 179:17,  
241:11, 253:4,  
254:9  
**abutting** <sup>[1]</sup> - 59:4  
**accept** <sup>[4]</sup> - 42:12,  
185:15, 193:3,  
194:10  
**acceptable** <sup>[1]</sup> - 97:4  
**accepted** <sup>[2]</sup> - 42:10,  
119:12  
**accepting**  
<sup>[4]</sup> - 119:10, 193:8,  
194:15, 195:6  
**access** <sup>[10]</sup> - 24:3,  
40:10, 129:9, 136:4,  
140:19, 207:21,  
208:5, 208:7,  
244:13, 250:4  
**accessed** <sup>[1]</sup> - 142:15  
**Accessory** <sup>[1]</sup> - 245:8  
**accessory**  
<sup>[3]</sup> - 245:11, 246:18,  
260:18  
**accommodate**  
<sup>[1]</sup> - 141:9  
**accommodations**  
<sup>[1]</sup> - 142:18  
**accompany** <sup>[1]</sup> - 96:9  
**Accord** <sup>[1]</sup> - 149:13  
**according** <sup>[2]</sup> - 18:20,  
78:10  
**Accordingly**  
<sup>[2]</sup> - 55:9, 56:14  
**account** <sup>[2]</sup> - 223:10,  
223:16  
**accurate** <sup>[2]</sup> - 268:20,  
269:9  
**accustomed**  
<sup>[1]</sup> - 122:18  
**acknowledge**  
<sup>[3]</sup> - 120:10, 141:6,  
178:5  
**act** <sup>[1]</sup> - 137:21  
**acted** <sup>[1]</sup> - 27:6  
**acting** <sup>[1]</sup> - 43:6  
**actions** <sup>[1]</sup> - 255:8  
**active** <sup>[1]</sup> - 162:9

**actively** <sup>[1]</sup> - 165:9  
**activity** <sup>[1]</sup> - 162:11  
**acts** <sup>[2]</sup> - 187:19,  
 187:21  
**actual** <sup>[1]</sup> - 232:7  
**Adam** <sup>[1]</sup> - 55:12  
**Adams** <sup>[1]</sup> - 102:11  
**adapt** <sup>[1]</sup> - 154:2  
**adaptable** <sup>[1]</sup> - 121:1  
**adaptive** <sup>[1]</sup> - 118:4  
**add** <sup>[11]</sup> - 18:16, 52:5,  
 57:3, 74:10, 98:13,  
 180:4, 191:18,  
 192:17, 209:9,  
 253:12, 264:2  
**added** <sup>[1]</sup> - 118:7  
**adding** <sup>[5]</sup> - 77:5,  
 97:8, 100:8, 184:4,  
 261:9  
**addition** <sup>[23]</sup> - 21:1,  
 47:15, 58:16, 59:3,  
 59:7, 62:16, 64:21,  
 66:16, 68:3, 69:8,  
 70:20, 72:13, 75:15,  
 97:11, 98:11,  
 103:14, 103:15,  
 112:15, 112:16,  
 120:11, 142:7,  
 265:9  
**additional** <sup>[3]</sup> - 50:4,  
 155:7, 209:4  
**additions** <sup>[4]</sup> - 68:17,  
 103:12, 112:9  
**address** <sup>[11]</sup> - 66:6,  
 102:19, 118:10,  
 137:14, 139:3,  
 152:16, 215:12,  
 217:11, 218:3,  
 226:7, 238:14  
**addressed**  
<sup>[1]</sup> - 246:17  
**adequacy** <sup>[1]</sup> - 138:8  
**adequate** <sup>[2]</sup> - 119:8,  
 165:19  
**adherence**  
<sup>[1]</sup> - 221:16  
**adjacency** <sup>[1]</sup> - 162:8  
**adjacent** <sup>[8]</sup> - 10:3,  
 11:20, 24:8, 40:5,  
 40:14, 50:1, 67:21,  
 208:10  
**adjoining** <sup>[6]</sup> - 25:1,  
 41:9, 55:5, 59:6,

183:10, 209:1  
**Adjourned**  
<sup>[1]</sup> - 266:10  
**admittedly**  
<sup>[3]</sup> - 108:19, 118:16,  
 141:10  
**adopted** <sup>[2]</sup> - 171:19,  
 255:8  
**advance** <sup>[1]</sup> - 87:4  
**advanced** <sup>[1]</sup> - 104:11  
**advantage**  
<sup>[2]</sup> - 156:20, 157:11  
**adverse** <sup>[2]</sup> - 7:12,  
 162:13  
**adversely** <sup>[3]</sup> - 24:9,  
 40:15, 208:12  
**advice** <sup>[1]</sup> - 98:2  
**advocating**  
<sup>[1]</sup> - 176:16  
**aerial** <sup>[1]</sup> - 68:14  
**aesthetically**  
<sup>[1]</sup> - 184:9  
**aesthetics** <sup>[2]</sup> - 88:10,  
 88:16  
**affect** <sup>[1]</sup> - 208:14  
**affected** <sup>[8]</sup> - 24:9,  
 40:15, 63:7, 164:12,  
 178:16, 208:12,  
 251:4, 256:11  
**Affidavit** <sup>[5]</sup> - 211:14,  
 211:15, 212:7,  
 212:10, 212:14  
**affixed** <sup>[3]</sup> - 37:12,  
 39:8, 212:7  
**afford** <sup>[4]</sup> - 82:14,  
 84:15, 86:4, 199:8  
**afternoon** <sup>[1]</sup> - 211:4  
**age** <sup>[2]</sup> - 89:15, 103:1  
**agency** <sup>[3]</sup> - 19:8,  
 36:20, 37:2  
**agenda** <sup>[1]</sup> - 95:10  
**agent** <sup>[1]</sup> - 225:6  
**ago** <sup>[9]</sup> - 53:11, 101:2,  
 116:11, 143:8,  
 165:8, 168:10,  
 242:6, 247:10  
**agonized** <sup>[1]</sup> - 82:8  
**agree** <sup>[9]</sup> - 69:17,  
 115:16, 122:20,  
 154:19, 159:11,  
 159:12, 187:13,  
 189:5, 256:4  
**agreed** <sup>[5]</sup> - 242:2,

242:14, 242:19,

243:2, 244:2

**Agreed** <sup>[1]</sup> - 227:15

**agreement** <sup>[1]</sup> - 20:2

**ahead** <sup>[1]</sup> - 49:19

**AICHELMANN**

<sup>[1]</sup> - 167:18

**Aichelmann**

<sup>[1]</sup> - 167:19

**air** <sup>[3]</sup> - 4:12, 31:17,

211:9

**albeit** <sup>[1]</sup> - 111:21

**alert** <sup>[1]</sup> - 161:5

**alerted** <sup>[1]</sup> - 221:13

**ALEXANDER**

<sup>[171]</sup> - 3:13, 5:13, 6:4,

6:7, 7:7, 7:10, 7:15,

8:5, 8:9, 8:15, 9:6,

10:7, 10:19, 14:14,

16:3, 20:12, 20:15,

21:17, 22:21, 23:6,

23:12, 25:7, 28:2,

28:16, 29:2, 32:3,

33:17, 35:10, 39:15,

42:2, 42:8, 42:15,

42:20, 53:9, 57:9,

63:5, 63:10, 63:20,

65:3, 65:13, 65:18,

66:8, 66:15, 67:5,

77:6, 77:16, 77:21,

78:19, 86:14, 93:21,

95:9, 96:10, 96:20,

97:7, 97:14, 100:15,

105:6, 108:2, 109:2,

109:9, 112:19,

113:4, 113:10,

114:8, 114:18,

115:1, 118:20,

123:7, 123:14,

124:16, 124:21,

125:4, 125:14,

126:3, 126:6,

126:10, 126:21,

127:13, 127:16,

127:20, 128:3,

128:6, 128:18,

130:14, 130:16,

130:21, 131:4,

131:9, 131:15,

131:20, 132:13,

132:17, 133:3,

134:9, 134:18,

135:1, 135:5, 136:5,

136:14, 137:7,  
 137:15, 139:21,  
 141:1, 149:2, 149:8,  
 149:15, 149:21,  
 150:4, 150:7,  
 150:12, 151:3,  
 151:8, 151:13,  
 151:21, 152:5,  
 154:20, 156:6,  
 161:15, 161:18,  
 170:16, 170:18,  
 171:1, 176:6,  
 176:10, 177:3,  
 178:4, 178:11,  
 178:14, 178:20,  
 179:11, 185:7,  
 191:19, 193:15,  
 194:20, 198:2,  
 202:14, 202:18,  
 202:21, 203:4,  
 203:9, 203:13,  
 203:19, 204:19,  
 206:10, 206:13,  
 207:4, 209:3,  
 209:17, 215:9,  
 216:9, 223:17,  
 227:6, 227:21,  
 229:15, 230:3,  
 230:12, 232:17,  
 233:16, 234:4,  
 234:8, 237:7,  
 237:17, 246:12,  
 250:7, 251:11,  
 255:21, 256:8,  
 261:11, 261:18,  
 262:9, 263:3

**Alexander** <sup>[26]</sup> - 1:13,  
 3:4, 25:18, 27:3,  
 30:2, 31:3, 44:9,  
 45:3, 46:3, 60:2,  
 61:3, 101:18, 102:3,  
 152:15, 178:3,  
 193:10, 194:3,  
 195:9, 196:3,  
 209:15, 210:3,  
 237:13, 238:3,  
 259:1, 260:3, 266:7

**Allen** <sup>[1]</sup> - 102:12

**alleviate** <sup>[1]</sup> - 239:7

**alley** <sup>[1]</sup> - 121:12

**alleyway** <sup>[1]</sup> - 126:11

**allow** <sup>[8]</sup> - 55:10, 56:5,  
 58:1, 92:20, 107:4,

109:5, 190:10,  
198:21

**allowable** <sup>[1]</sup> - 66:18

**allowed** <sup>[6]</sup> - 20:19,  
38:20, 160:14,  
167:7, 188:11,  
244:19

**allowing** <sup>[2]</sup> - 66:3,  
78:9

**allows** <sup>[5]</sup> - 142:9,  
144:8, 149:18,  
157:14, 173:11

**almost** <sup>[4]</sup> - 80:13,  
98:15, 169:2, 181:9

**alteration** <sup>[2]</sup> - 182:10,  
245:21

**alterations** <sup>[3]</sup> - 32:12,  
56:4, 208:3

**alternate** <sup>[1]</sup> - 137:12

**alternative** <sup>[5]</sup> - 15:11,  
15:19, 77:3, 154:21,  
203:21

**alternatives** <sup>[2]</sup> - 15:5,  
15:8

**amendment**  
<sup>[2]</sup> - 141:8, 255:3

**amenities** <sup>[1]</sup> - 74:6

**amount** <sup>[5]</sup> - 69:21,  
111:14, 142:11,  
143:4, 182:16

**AMY** <sup>[28]</sup> - 196:8,  
196:20, 197:14,  
198:7, 198:11,  
198:14, 199:1,  
199:6, 199:18,  
199:21, 200:4,  
200:7, 200:19,  
201:10, 202:4,  
202:20, 203:3,  
203:7, 203:12,  
204:3, 204:12,  
204:18, 205:1,  
205:7, 205:11,  
205:14, 205:19,  
206:12

**Amy** <sup>[2]</sup> - 196:8, 197:6

**analysis** <sup>[4]</sup> - 108:5,  
122:6, 156:5,  
156:14

**AND** <sup>[2]</sup> - 267:1,  
267:20

**AND/OR** <sup>[1]</sup> - 269:20

**ANN** <sup>[2]</sup> - 249:19,

250:10  
**Ann** <sup>[1]</sup> - 249:19  
**answer** <sup>[3]</sup> - 105:14,  
 113:2, 114:4  
**antenna** <sup>[23]</sup> - 5:10,  
 10:17, 11:7, 12:8,  
 16:5, 16:12, 16:17,  
 16:20, 17:3, 17:5,  
 17:20, 18:7, 22:10,  
 22:18, 23:17, 37:10,  
 38:2, 39:9, 40:4,  
 40:5, 41:4  
**antenna's** <sup>[1]</sup> - 35:11  
**antennas** <sup>[16]</sup> - 4:4,  
 4:5, 4:8, 4:11, 4:12,  
 4:13, 4:14, 4:15,  
 4:18, 5:6, 8:12,  
 14:10, 31:15, 31:17,  
 38:4, 39:10  
**Antonia** <sup>[1]</sup> - 174:18  
**ANTONIA** <sup>[1]</sup> - 174:19  
**ANY** <sup>[2]</sup> - 269:19,  
 269:20  
**anyhow** <sup>[5]</sup> - 56:21,  
 88:18, 94:15, 185:6,  
 231:14  
**anyone...** <sup>[1]</sup> - 125:6  
**Anyway** <sup>[1]</sup> - 163:9  
**anyway** <sup>[6]</sup> - 71:15,  
 83:14, 151:14,  
 169:8, 197:20,  
 251:7  
**apartment** <sup>[1]</sup> - 82:19  
**apologize** <sup>[4]</sup> - 6:18,  
 79:9, 102:13,  
 102:17  
**Apologize** <sup>[1]</sup> - 79:4  
**APPEAL** <sup>[2]</sup> - 1:2,  
 268:1  
**Appeal** <sup>[2]</sup> - 3:7,  
 266:10  
**appeal** <sup>[4]</sup> - 175:4,  
 185:15, 222:16,  
 222:17  
**appealing** <sup>[1]</sup> - 73:5  
**Appeals** <sup>[2]</sup> - 163:16,  
 166:18  
**appear** <sup>[1]</sup> - 138:14  
**appearance**  
<sup>[1]</sup> - 98:14  
**applicable**  
<sup>[1]</sup> - 188:17  
**applicant** <sup>[4]</sup> - 4:2,

31:11, 87:2, 104:1

**Applicant** <sup>[5]</sup> - 34:1,  
174:16, 175:3,  
176:9, 187:10

**Applicant's** <sup>[2]</sup> - 34:5,  
187:9

**application** <sup>[39]</sup> - 4:7,  
6:15, 6:19, 8:2,  
17:18, 19:2, 19:9,  
19:16, 21:4, 22:8,  
23:18, 25:12, 32:2,  
32:9, 36:11, 37:1,  
37:8, 40:1, 40:6,  
55:10, 56:4, 56:15,  
58:3, 59:17, 59:18,  
96:3, 106:8, 106:11,  
118:13, 165:21,  
189:19, 189:21,  
191:5, 193:5,  
207:13, 207:15,  
257:1, 258:17,  
264:7

**applies** <sup>[4]</sup> - 129:4,  
181:15, 181:19,  
181:20

**APPLY** <sup>[1]</sup> - 269:19

**apply** <sup>[5]</sup> - 20:7, 38:16,  
135:19, 153:21,  
183:19

**applying** <sup>[2]</sup> - 221:7,  
232:9

**appreciate**  
<sup>[4]</sup> - 121:10, 188:2,  
211:3, 222:15

**Appreciate** <sup>[1]</sup> - 259:4

**approach** <sup>[2]</sup> - 71:20,  
104:8

**appropriate**  
<sup>[3]</sup> - 16:19, 232:10,  
232:13

**approval** <sup>[2]</sup> - 159:13,  
261:12

**approve** <sup>[3]</sup> - 71:14,  
93:6, 158:19

**approved** <sup>[3]</sup> - 42:21,  
159:3, 241:9

**approves** <sup>[1]</sup> - 90:6

**approving**  
<sup>[1]</sup> - 158:20

**April** <sup>[1]</sup> - 269:16

**ARRAY** <sup>[18]</sup> - 196:10,  
196:14, 196:18,  
196:21, 198:5,

198:9, 199:4,  
 199:15, 200:3,  
 200:10, 200:20,  
 201:8, 201:19,  
 202:1, 202:9,  
 203:15, 206:3,  
 206:7  
**Array** <sup>[1]</sup> - 196:10  
**architect** <sup>[9]</sup> - 46:12,  
 61:12, 99:18,  
 100:16, 136:15,  
 177:5, 196:11,  
 238:12, 249:5  
**architect's** <sup>[1]</sup> - 176:7  
**architects** <sup>[1]</sup> - 260:9  
**architectural**  
<sup>[5]</sup> - 77:11, 78:3,  
 86:16, 88:6, 177:6  
**architecturally**  
<sup>[2]</sup> - 82:3, 92:19  
**architecture**  
<sup>[1]</sup> - 100:14  
**area** <sup>[42]</sup> - 21:12, 49:3,  
 51:16, 52:14, 55:11,  
 56:6, 58:2, 58:10,  
 62:14, 63:4, 64:9,  
 66:17, 66:18, 71:20,  
 79:19, 88:11, 93:1,  
 110:5, 110:20,  
 117:19, 119:9,  
 123:1, 128:1, 128:4,  
 131:1, 145:19,  
 148:11, 166:10,  
 169:8, 181:1, 181:5,  
 181:18, 182:4,  
 190:12, 197:2,  
 197:7, 207:14,  
 211:19, 212:19,  
 228:15, 229:18,  
 247:14  
**areas** <sup>[4]</sup> - 48:20,  
 105:3, 120:3, 250:4  
**argument** <sup>[1]</sup> - 153:21  
**arithmetic** <sup>[1]</sup> - 88:10  
**arrangement**  
<sup>[3]</sup> - 18:1, 22:12,  
 150:15  
**array** <sup>[1]</sup> - 121:4  
**arterial** <sup>[1]</sup> - 145:1  
**Article** <sup>[5]</sup> - 180:20,  
 181:11, 182:7,  
 185:19, 246:4  
**artificially** <sup>[1]</sup> - 67:1

**ascent** <sup>[1]</sup> - 255:9

**aside** <sup>[5]</sup> - 71:4, 114:6,  
139:3, 141:17,  
172:20

**assign** <sup>[1]</sup> - 179:10

**associate** <sup>[2]</sup> - 35:20,  
217:12

**associated**  
<sup>[3]</sup> - 105:5, 105:16,  
120:14

**association**  
<sup>[8]</sup> - 240:11, 240:12,  
241:7, 242:2,  
242:14, 244:2,  
254:10, 258:12

**Association**  
<sup>[2]</sup> - 255:1, 255:7

**assume** <sup>[1]</sup> - 150:1

**assumed** <sup>[1]</sup> - 149:5

**assumption**  
<sup>[1]</sup> - 154:16

**assurance** <sup>[2]</sup> - 43:21,  
44:3

**assure** <sup>[1]</sup> - 116:11

**attach** <sup>[1]</sup> - 179:8

**ATTACH** <sup>[1]</sup> - 268:1

**attached** <sup>[6]</sup> - 20:1,  
37:19, 129:18,  
143:5, 167:13,  
238:21

**attack** <sup>[1]</sup> - 152:6

**attempt** <sup>[3]</sup> - 19:17,  
145:14, 223:5

**attempting** <sup>[1]</sup> - 89:17

**attempts** <sup>[1]</sup> - 162:4

**attendance**  
<sup>[7]</sup> - 17:14, 34:21,  
163:2, 174:12,  
206:21, 251:18,  
263:20

**attended** <sup>[1]</sup> - 152:12

**attendeess** <sup>[1]</sup> - 176:20

**attention** <sup>[4]</sup> - 161:1,  
210:21, 212:12,  
241:7

**attic** <sup>[1]</sup> - 117:20

**ATTORNEY**  
<sup>[159]</sup> - 3:10, 3:15,  
3:20, 5:16, 6:6, 6:11,  
6:17, 7:2, 8:10, 8:19,  
9:8, 10:13, 11:8,  
11:12, 12:12, 13:10,  
13:16, 14:3, 15:1,

15:7, 15:21, 16:8,  
16:14, 18:11, 18:17,  
20:8, 21:16, 25:20,  
31:8, 32:4, 32:13,  
33:8, 33:20, 35:13,  
35:19, 36:3, 36:7,  
37:13, 38:1, 38:3,  
38:6, 38:9, 38:13,  
42:11, 43:9, 43:12,  
43:15, 44:2, 102:8,  
105:13, 107:18,  
108:4, 108:18,  
108:21, 109:7,  
110:4, 112:21,  
113:8, 114:3,  
114:20, 115:17,  
118:9, 119:3,  
123:10, 123:15,  
124:18, 125:2,  
125:5, 125:11,  
128:20, 129:2,  
129:7, 131:13,  
131:17, 132:2,  
132:15, 133:6,  
134:15, 135:18,  
136:1, 137:9, 138:5,  
138:20, 139:10,  
141:5, 141:16,  
144:1, 144:4, 146:8,  
146:21, 147:6,  
147:11, 152:14,  
154:5, 155:10,  
155:20, 156:2,  
156:11, 156:19,  
158:11, 158:16,  
159:1, 159:7,  
159:11, 161:3,  
161:21, 166:14,  
175:12, 175:17,  
175:21, 176:4,  
176:8, 176:13,  
176:17, 178:1,  
179:6, 179:13,  
180:2, 193:12,  
194:7, 195:7, 210:7,  
211:2, 215:2, 216:3,  
216:16, 217:14,  
218:6, 218:10,  
218:14, 219:14,  
219:19, 220:4,  
220:8, 220:17,  
220:21, 221:3,  
222:14, 223:21,

224:17, 225:5,  
 225:10, 225:17,  
 226:3, 228:10,  
 228:14, 229:1,  
 229:21, 230:5,  
 231:15, 233:5,  
 233:10, 234:10,  
 235:4, 236:5, 236:9,  
 236:13, 236:19,  
 237:15

**attorney** <sup>[2]</sup> - 102:10,  
 210:11

**attractive** <sup>[6]</sup> - 69:15,  
 72:2, 73:5, 88:6,  
 173:4, 173:6

**attractiveness**  
<sup>[1]</sup> - 86:11

**authority** <sup>[1]</sup> - 214:18

**Auto** <sup>[1]</sup> - 147:5

**automobile**  
<sup>[5]</sup> - 142:6, 153:7,  
 154:3, 157:3,  
 257:15

**automobiles**  
<sup>[1]</sup> - 153:1

**available** <sup>[5]</sup> - 89:3,  
 153:1, 153:8,  
 213:16, 227:18

**Ave** <sup>[4]</sup> - 32:17,  
 102:19, 157:9,  
 163:18

**Avenue** <sup>[36]</sup> - 1:11,  
 95:3, 95:6, 102:6,  
 103:9, 125:7,  
 126:11, 145:2,  
 148:18, 156:21,  
 157:5, 157:6,  
 158:17, 162:21,  
 163:15, 164:18,  
 165:1, 165:3, 165:5,  
 165:7, 167:20,  
 174:14, 175:1,  
 176:19, 177:11,  
 177:13, 177:18,  
 177:19, 178:15,  
 194:6, 238:6,  
 240:10, 249:16,  
 251:2, 256:7

**average** <sup>[4]</sup> - 111:2,  
 117:10, 148:19,  
 151:17

**averages** <sup>[1]</sup> - 117:7

**avoid** <sup>[2]</sup> - 172:15,

231:19  
**aware** <sup>[3]</sup> - 7:15,  
 188:2, 222:10  
**awkward** <sup>[5]</sup> - 71:4,  
 71:19, 72:14, 75:20,  
 100:1  
**Axelrod** <sup>[1]</sup> - 55:18

## B

**B-e-u-z-e-k-o-m**  
<sup>[1]</sup> - 61:12  
**background**  
<sup>[2]</sup> - 37:11, 103:5  
**backing** <sup>[4]</sup> - 146:11,  
 146:15, 148:2,  
 157:18  
**backup** <sup>[2]</sup> - 114:5,  
 122:11  
**backyard** <sup>[1]</sup> - 198:3  
**bad** <sup>[3]</sup> - 12:21, 98:10,  
 152:10  
**Bakery** <sup>[1]</sup> - 178:21  
**balcony** <sup>[2]</sup> - 136:9,  
 136:19  
**barrier** <sup>[1]</sup> - 204:11  
**based** <sup>[6]</sup> - 77:7,  
 110:12, 148:19,  
 153:1, 153:7, 166:4  
**basement** <sup>[11]</sup> - 49:1,  
 106:11, 117:20,  
 131:18, 145:19,  
 197:17, 199:2,  
 204:4, 205:10,  
 205:12, 205:20  
**basic** <sup>[1]</sup> - 252:4  
**basis** <sup>[5]</sup> - 42:21, 66:2,  
 165:20, 213:12,  
 235:13  
**bathroom** <sup>[4]</sup> - 67:10,  
 67:14, 74:3, 140:6  
**BB** <sup>[1]</sup> - 61:13  
**beacon** <sup>[1]</sup> - 160:15  
**bear** <sup>[1]</sup> - 87:13  
**bearing** <sup>[1]</sup> - 87:21  
**beaten** <sup>[1]</sup> - 240:9  
**beautiful** <sup>[1]</sup> - 143:10  
**beauty** <sup>[2]</sup> - 174:6,  
 179:6  
**Beauty** <sup>[1]</sup> - 12:9  
**became** <sup>[3]</sup> - 47:16,  
 107:2, 213:15  
**become** <sup>[4]</sup> - 21:10,  
 39:4, 112:18,

186:14  
**becomes** <sup>[5]</sup> - 85:19,  
85:20, 112:15,  
112:16, 116:19  
**becoming** <sup>[2]</sup> - 21:6,  
39:5  
**bed** <sup>[1]</sup> - 65:7  
**bedroom** <sup>[17]</sup> - 62:17,  
64:8, 64:15, 65:4,  
65:12, 65:21, 67:6,  
67:13, 68:11, 69:11,  
69:15, 71:18, 76:8,  
78:17, 83:12, 85:15,  
127:17  
**bedroom's** <sup>[1]</sup> - 79:21  
**bedrooms** <sup>[5]</sup> - 64:20,  
65:1, 67:19, 73:17,  
131:14  
**beg** <sup>[1]</sup> - 113:21  
**began** <sup>[1]</sup> - 120:17  
**behalf** <sup>[3]</sup> - 4:1, 31:11,  
226:10  
**behind** <sup>[4]</sup> - 65:12,  
215:21, 216:1,  
253:4  
**beholder** <sup>[1]</sup> - 12:10  
**beige** <sup>[14]</sup> - 9:14, 9:17,  
9:21, 10:4, 10:11,  
11:20, 12:2, 12:20,  
13:2, 13:8, 13:21,  
14:18, 14:21, 15:14  
**below** <sup>[1]</sup> - 107:7  
**BEN** <sup>[27]</sup> - 114:17,  
115:15, 115:19,  
116:1, 126:19,  
129:11, 132:1,  
133:10, 133:16,  
133:21, 134:12,  
135:3, 135:11,  
137:8, 137:11,  
137:20, 161:9,  
161:12, 175:19,  
176:2, 178:9,  
178:13, 178:17,  
179:2, 184:1,  
184:16, 189:16  
**Ben** <sup>[1]</sup> - 116:1  
**bench** <sup>[1]</sup> - 205:15  
**beneficial** <sup>[1]</sup> - 161:5  
**benefit** <sup>[3]</sup> - 118:3,  
256:18, 265:13  
**benefits** <sup>[2]</sup> - 116:15,  
116:17

**benign** <sup>[1]</sup> - 208:14

**Berkeley** <sup>[9]</sup> - 45:6,  
46:6, 54:21, 55:5,  
55:12, 55:19, 56:7,  
56:10

**best** <sup>[7]</sup> - 98:2, 123:11,  
124:20, 138:2,  
144:19, 240:3,  
269:10

**Best** <sup>[1]</sup> - 56:19

**better** <sup>[7]</sup> - 10:1,  
52:19, 58:11,  
116:14, 203:20,  
222:21

**between** <sup>[7]</sup> - 69:10,  
106:6, 133:9,  
200:15, 206:4,  
246:8, 264:19

**BEUZEKOM**  
<sup>[45]</sup> - 61:9, 61:21,  
63:8, 63:15, 64:1,  
64:13, 65:6, 65:17,  
66:5, 66:9, 66:16,  
67:8, 68:7, 68:10,  
68:21, 69:3, 69:17,  
70:10, 70:21, 71:16,  
72:21, 74:9, 74:13,  
75:14, 77:15, 77:20,  
78:12, 78:20, 79:3,  
79:8, 79:12, 79:16,  
80:18, 80:21, 81:5,  
81:11, 81:19, 86:17,  
88:2, 88:19, 89:2,  
94:6, 94:10, 95:15,  
101:1

**Beuzekom** <sup>[1]</sup> - 61:10

**beyond** <sup>[2]</sup> - 92:5,  
157:9

**big** <sup>[14]</sup> - 5:13, 14:9,  
47:15, 66:21, 77:1,  
84:5, 88:3, 88:12,  
98:15, 128:4, 173:2,  
173:7, 200:4, 256:1

**bigger** <sup>[5]</sup> - 12:18,  
53:6, 118:18,  
120:14, 172:20

**Bishop** <sup>[1]</sup> - 102:12

**bit** <sup>[19]</sup> - 12:16, 13:4,  
13:20, 14:2, 33:13,  
75:18, 76:3, 104:14,  
123:13, 137:20,  
149:18, 156:10,  
157:20, 183:13,

233:6, 233:8,  
 233:11, 248:21,  
 253:18  
**black** <sup>[2]</sup> - 132:16,  
 133:7  
**blank** <sup>[1]</sup> - 202:13  
**blend** <sup>[3]</sup> - 13:12,  
 19:21, 37:18  
**blind** <sup>[1]</sup> - 160:20  
**block** <sup>[8]</sup> - 103:10,  
 143:3, 164:18,  
 187:6, 212:5,  
 212:10, 213:1,  
 213:12  
**blocked** <sup>[2]</sup> - 213:6,  
 224:8  
**blocking** <sup>[1]</sup> - 197:19  
**blocks** <sup>[1]</sup> - 121:7  
**blood** <sup>[1]</sup> - 269:6  
**blown** <sup>[1]</sup> - 147:16  
**BOARD** <sup>[2]</sup> - 1:2,  
 268:1  
**board** <sup>[3]</sup> - 78:2,  
 109:13, 166:5  
**Board** <sup>[128]</sup> - 3:7, 3:11,  
 3:21, 6:14, 6:20, 7:3,  
 7:13, 7:20, 8:4, 9:12,  
 9:19, 10:10, 10:16,  
 11:14, 11:16, 15:12,  
 17:16, 17:17, 18:6,  
 19:3, 19:17, 20:17,  
 21:2, 21:20, 22:7,  
 22:17, 23:21, 24:1,  
 24:17, 25:21, 27:6,  
 27:10, 31:6, 31:9,  
 32:5, 32:18, 34:4,  
 34:10, 34:12, 35:2,  
 35:18, 36:9, 36:17,  
 38:18, 41:3, 41:18,  
 42:17, 43:7, 58:4,  
 58:12, 58:18, 58:21,  
 59:3, 59:8, 59:12,  
 59:14, 70:6, 71:14,  
 73:14, 78:9, 87:5,  
 87:12, 87:16, 94:16,  
 98:9, 99:4, 102:5,  
 102:20, 109:10,  
 110:16, 116:5,  
 116:8, 132:19,  
 142:21, 144:16,  
 163:15, 164:14,  
 175:7, 175:9,  
 180:14, 187:14,

187:18, 188:18,  
 189:1, 190:2,  
 190:13, 190:19,  
 191:12, 194:5,  
 196:6, 207:18,  
 207:20, 208:3,  
 208:6, 208:9,  
 208:15, 208:20,  
 210:5, 210:8,  
 212:15, 214:18,  
 215:7, 222:15,  
 223:15, 226:10,  
 227:9, 231:16,  
 236:20, 238:5,  
 238:19, 247:14,  
 247:15, 247:17,  
 247:20, 247:21,  
 257:8, 257:12,  
 257:18, 258:8,  
 258:11, 260:5,  
 264:13, 265:2,  
 265:3, 265:17,  
 266:10  
**Board's** <sup>[2]</sup> - 177:1,  
 231:21  
**bodied** <sup>[2]</sup> - 224:13,  
 226:20  
**booklet** <sup>[1]</sup> - 143:2  
**boots** <sup>[1]</sup> - 205:2  
**Boston** <sup>[1]</sup> - 210:11  
**bottleneck**  
<sup>[1]</sup> - 156:17  
**bottom** <sup>[1]</sup> - 219:9  
**bought** <sup>[3]</sup> - 47:19,  
 75:5, 165:7  
**boundary** <sup>[1]</sup> - 188:4  
**boy** <sup>[2]</sup> - 84:4, 84:5  
**bracket** <sup>[1]</sup> - 263:1  
**brackets** <sup>[2]</sup> - 31:20,  
 35:8  
**brand** <sup>[1]</sup> - 115:5  
**Brattle** <sup>[4]</sup> - 178:14,  
 260:6, 260:10,  
 263:15  
**break** <sup>[1]</sup> - 83:17  
**BRENDAN** <sup>[255]</sup> - 3:6,  
 3:12, 3:19, 7:1, 7:8,  
 7:11, 8:1, 8:7, 10:15,  
 11:3, 11:10, 12:11,  
 12:14, 13:3, 13:14,  
 14:1, 14:12, 17:7,  
 17:13, 18:14, 18:19,  
 20:13, 20:16, 22:5,

23:3, 23:9, 23:14,  
25:11, 25:17, 27:8,  
27:15, 27:21, 28:7,  
28:13, 28:19, 29:5,  
29:21, 31:5, 32:11,  
32:21, 33:9, 33:18,  
34:11, 34:14, 34:20,  
36:12, 37:15, 38:2,  
38:5, 38:8, 38:10,  
38:15, 39:17, 41:19,  
42:7, 43:5, 43:11,  
43:14, 43:16, 44:5,  
44:8, 45:5, 45:8,  
46:5, 46:20, 47:3,  
47:6, 47:11, 51:3,  
51:15, 52:1, 52:13,  
52:18, 53:1, 53:7,  
53:18, 54:1, 54:16,  
54:18, 55:2, 55:15,  
56:19, 57:5, 57:10,  
57:13, 57:15, 57:19,  
60:1, 61:5, 61:20,  
69:13, 69:18, 72:17,  
73:1, 74:11, 74:14,  
76:13, 78:21, 79:5,  
79:11, 79:14, 80:5,  
80:20, 81:4, 86:13,  
88:9, 88:20, 89:6,  
92:7, 92:11, 93:14,  
93:17, 94:4, 94:8,  
94:13, 95:14, 95:17,  
98:6, 99:12, 101:14,  
101:17, 102:5,  
107:11, 107:20,  
108:15, 108:20,  
112:17, 113:1,  
113:6, 138:17,  
141:3, 141:15,  
145:18, 145:21,  
146:3, 146:6,  
147:10, 156:15,  
160:13, 161:13,  
161:16, 161:19,  
162:18, 163:6,  
167:15, 170:13,  
174:7, 174:11,  
175:14, 176:12,  
176:15, 177:2,  
179:20, 180:15,  
184:3, 184:18,  
186:9, 187:3, 189:3,  
189:17, 191:7,  
192:16, 192:19,

193:7, 193:14,  
 194:5, 194:9,  
 194:14, 195:3,  
 195:5, 196:5,  
 196:12, 196:16,  
 198:12, 198:15,  
 199:19, 202:12,  
 202:16, 204:10,  
 204:16, 206:8,  
 206:15, 206:20,  
 207:8, 207:11,  
 209:11, 209:14,  
 210:5, 210:15,  
 213:20, 215:5,  
 221:11, 223:4,  
 223:13, 227:3,  
 227:10, 227:16,  
 228:2, 228:4,  
 228:13, 228:18,  
 229:12, 230:7,  
 230:14, 230:18,  
 230:21, 231:3,  
 231:7, 232:16,  
 233:18, 234:12,  
 235:9, 236:21,  
 237:9, 237:12,  
 238:5, 243:7, 244:6,  
 244:12, 244:18,  
 245:7, 245:19,  
 246:16, 246:21,  
 248:1, 248:7,  
 249:13, 250:6,  
 250:17, 251:12,  
 251:14, 251:17,  
 252:2, 253:7,  
 253:10, 253:14,  
 254:2, 254:12,  
 254:17, 254:20,  
 256:3, 256:6,  
 256:14, 257:7,  
 258:21, 260:5,  
 262:1, 262:4, 262:7,  
 263:9, 263:12,  
 263:18, 264:10,  
 265:12, 266:5

**Brendan** <sup>[21]</sup> - 1:13,  
 3:3, 6:8, 10:9, 10:20,  
 27:2, 28:16, 29:3,  
 31:2, 45:2, 46:2,  
 61:2, 71:9, 78:10,  
 97:21, 102:2, 194:2,  
 196:2, 210:2, 238:2,  
 260:2

**brick** <sup>[6]</sup> - 10:12, 12:9,  
13:19, 15:9, 15:10,  
35:15

**brick-looking**

<sup>[1]</sup> - 15:10

**bricks** <sup>[1]</sup> - 183:21

**brief** <sup>[2]</sup> - 103:4, 147:2

**briefly** <sup>[2]</sup> - 5:12,

139:11

**bring** <sup>[1]</sup> - 12:18

**brings** <sup>[2]</sup> - 72:2,

75:17

**BRISTOL** <sup>[1]</sup> - 269:3

**Brodie** <sup>[5]</sup> - 238:12,

238:13, 239:1,

251:3, 255:15

**BRODIE** <sup>[23]</sup> - 238:15,

242:10, 243:11,

243:15, 243:19,

244:8, 244:14,

244:21, 245:18,

247:9, 249:4,

250:15, 252:6,

252:10, 252:12,

252:20, 253:3,

253:16, 254:1,

254:4, 254:15,

254:19, 259:3

**Brodie's** <sup>[1]</sup> - 240:15

**broken** <sup>[1]</sup> - 103:19

**brother** <sup>[1]</sup> - 73:15

**brought** <sup>[10]</sup> - 31:21,

68:13, 72:14, 101:5,

139:6, 149:4, 177:7,

210:21, 212:11,

241:6

**BROWN** <sup>[7]</sup> - 89:4,

89:11, 170:14,

170:17, 170:20,

171:3

**Brown** <sup>[4]</sup> - 89:11,

170:14, 170:17,

260:14

**buck** <sup>[1]</sup> - 256:16

**buffered** <sup>[1]</sup> - 240:20

**build** <sup>[8]</sup> - 109:16,

116:12, 117:3,

117:4, 200:11,

202:2, 244:2,

244:19

**Building** <sup>[9]</sup> - 104:15,

104:21, 106:5,

110:12, 138:18,

141:6, 182:20,  
185:13, 247:18

**building** <sup>[87]</sup> - 4:10,  
10:3, 10:12, 11:20,  
13:8, 13:21, 16:18,  
17:2, 17:5, 18:2,  
18:3, 22:14, 22:15,  
31:21, 35:12, 47:14,  
47:17, 50:13, 70:18,  
71:3, 74:12, 77:14,  
77:17, 78:8, 97:10,  
97:20, 99:10, 101:4,  
104:6, 104:13,  
105:17, 111:8,  
113:7, 116:10,  
116:19, 117:9,  
118:6, 118:16,  
118:18, 118:21,  
119:18, 120:15,  
121:11, 122:12,  
122:15, 123:6,  
123:21, 124:3,  
124:4, 124:11,  
126:12, 129:19,  
129:20, 134:12,  
136:11, 155:2,  
155:5, 165:16,  
165:18, 168:12,  
168:20, 169:4,  
169:20, 172:9,  
173:5, 178:18,  
182:1, 183:4, 183:5,  
184:7, 184:8, 185:4,  
186:13, 218:20,  
219:1, 221:12,  
221:18, 225:15,  
226:6, 234:21,  
245:11, 245:13,  
248:9, 248:11,  
250:12, 254:10

**building's** <sup>[1]</sup> - 70:16

**buildings** <sup>[7]</sup> - 10:2,  
70:17, 71:7, 172:14,  
197:4, 246:9,  
246:11

**built** <sup>[10]</sup> - 4:15, 47:14,  
58:14, 90:3, 112:9,  
243:13, 244:4,  
244:13, 247:8,  
247:11

**bulk** <sup>[2]</sup> - 105:16,  
124:6

**bulkhead** <sup>[1]</sup> - 197:8

**bulkiness** <sup>[1]</sup> - 88:17  
**bulky** <sup>[1]</sup> - 97:13  
**burden** <sup>[1]</sup> - 180:14  
**Business** <sup>[1]</sup> - 20:9  
**business** <sup>[4]</sup> - 103:8,  
 117:15, 170:1,  
 221:4  
**butcher** <sup>[1]</sup> - 55:13  
**buts** <sup>[1]</sup> - 115:13  
**button** <sup>[1]</sup> - 36:15  
**buy** <sup>[2]</sup> - 53:11, 165:11  
**BY** <sup>[1]</sup> - 269:20  
**By-Law** <sup>[8]</sup> - 66:3,  
 66:4, 110:3, 114:10,  
 115:9, 115:10,  
 192:1, 192:5  
**By-Laws** <sup>[1]</sup> - 229:16

## C

**C1** <sup>[1]</sup> - 245:10  
**cabinet** <sup>[1]</sup> - 40:5  
**cabinets** <sup>[1]</sup> - 40:6  
**California**  
<sup>[5]</sup> - 210:14, 211:10,  
 221:5, 228:11,  
 229:10  
**CALLAHAN**  
<sup>[4]</sup> - 61:16, 81:10,  
 82:1, 94:19  
**Callahan** <sup>[1]</sup> - 61:17  
**CAMBRIDGE** <sup>[1]</sup> - 1:4  
**Cambridge**  
<sup>[11]</sup> - 1:11, 46:14,  
 53:12, 61:14, 84:16,  
 84:20, 86:5, 89:18,  
 151:11, 153:14,  
 260:9  
**Campbell** <sup>[1]</sup> - 85:15  
**Canal** <sup>[2]</sup> - 31:7, 34:17  
**cannot** <sup>[3]</sup> - 80:15,  
 163:20, 182:5  
**capacity** <sup>[1]</sup> - 226:15  
**captured** <sup>[1]</sup> - 254:18  
**capturing** <sup>[1]</sup> - 58:8  
**CAPTURING**  
<sup>[1]</sup> - 1:19  
**car** <sup>[18]</sup> - 135:10,  
 148:7, 148:20,  
 148:21, 149:5,  
 149:9, 149:11,  
 151:17, 154:11,  
 154:14, 154:18,  
 155:7, 157:9,

168:21, 243:16,  
 245:3, 249:2, 251:8  
**care** <sup>[2]</sup> - 139:18,  
 229:4  
**cared** <sup>[1]</sup> - 154:8  
**Carla** <sup>[1]</sup> - 255:11  
**carport** <sup>[16]</sup> - 239:8,  
 239:9, 239:10,  
 239:12, 239:17,  
 240:2, 240:6, 240:8,  
 241:9, 241:12,  
 243:10, 248:15,  
 249:7, 255:2, 257:1,  
 258:3  
**carports** <sup>[1]</sup> - 256:1  
**carry** <sup>[1]</sup> - 106:10  
**cars** <sup>[6]</sup> - 122:17,  
 150:8, 156:2,  
 157:14, 160:7,  
 160:10  
**carve** <sup>[1]</sup> - 124:4  
**Case** <sup>[2]</sup> - 194:14,  
 231:6  
**CASE** <sup>[1]</sup> - 2:2  
**case** <sup>[49]</sup> - 3:8, 17:10,  
 27:10, 28:5, 28:17,  
 31:6, 33:3, 34:17,  
 42:12, 45:6, 46:5,  
 83:20, 96:16, 102:6,  
 102:14, 102:17,  
 102:20, 104:1,  
 116:5, 137:16,  
 163:19, 164:2,  
 164:4, 164:14,  
 166:4, 166:17,  
 172:21, 174:18,  
 175:5, 175:8,  
 175:18, 175:19,  
 185:8, 187:15,  
 188:5, 194:6,  
 194:11, 196:6,  
 210:6, 214:3,  
 223:12, 227:7,  
 228:1, 228:5, 230:7,  
 231:7, 238:6, 260:6  
**cases** <sup>[9]</sup> - 33:3, 87:4,  
 94:1, 95:3, 103:2,  
 112:3, 187:8, 194:8,  
 194:19  
**casual** <sup>[1]</sup> - 226:14  
**Catherine** <sup>[2]</sup> - 269:4,  
 269:13  
**CAZ** <sup>[1]</sup> - 268:2

**ceases** <sup>[1]</sup> - 183:7  
**ceiling** <sup>[2]</sup> - 146:1,  
 239:21  
**center** <sup>[1]</sup> - 65:10  
**Center** <sup>[1]</sup> - 1:10  
**certain** <sup>[6]</sup> - 102:21,  
 105:14, 120:21,  
 154:18, 188:2,  
 219:16  
**Certainly** <sup>[2]</sup> - 145:7,  
 151:6  
**certainly** <sup>[8]</sup> - 72:10,  
 75:17, 85:13,  
 153:13, 162:15,  
 172:13, 177:16,  
 232:4  
**CERTIFICATION**  
<sup>[1]</sup> - 269:19  
**Certified** <sup>[2]</sup> - 269:4,  
 269:14  
**certify** <sup>[2]</sup> - 269:5,  
 269:8  
**CERTIFYING**  
<sup>[1]</sup> - 269:21  
**Chair** <sup>[8]</sup> - 1:13, 1:13,  
 27:5, 39:21, 41:17,  
 106:9, 207:17,  
 257:3  
**Chairman** <sup>[19]</sup> - 3:11,  
 3:21, 18:18, 21:18,  
 25:8, 25:21, 31:9,  
 32:14, 33:21, 42:3,  
 43:10, 102:9, 147:1,  
 175:13, 177:4,  
 186:4, 194:18,  
 215:11, 223:9  
**challenge** <sup>[3]</sup> - 80:4,  
 157:8, 233:6  
**challenged**  
<sup>[1]</sup> - 214:17  
**challenges**  
<sup>[3]</sup> - 120:14, 162:2  
**challenging**  
<sup>[2]</sup> - 103:6, 160:3  
**chance** <sup>[2]</sup> - 63:11,  
 222:7  
**Change** <sup>[1]</sup> - 95:20  
**change** <sup>[37]</sup> - 14:6,  
 24:5, 29:10, 33:14,  
 39:12, 40:11, 42:17,  
 43:18, 44:1, 75:6,  
 82:17, 90:8, 90:9,  
 96:7, 116:3, 118:15,

139:7, 142:4, 156:4,  
 156:13, 164:19,  
 180:16, 189:19,  
 197:2, 199:1, 206:5,  
 208:1, 231:9,  
 234:13, 235:11,  
 237:2, 243:3,  
 253:14, 264:2,  
 264:7, 268:4  
**CHANGE** <sup>[9]</sup> - 268:9,  
 268:10, 268:11,  
 268:12, 268:13,  
 268:14, 268:15,  
 268:16, 268:17  
**changed** <sup>[7]</sup> - 8:3, 9:7,  
 106:12, 109:20,  
 132:5, 231:13,  
 231:19  
**changes** <sup>[13]</sup> - 29:15,  
 96:2, 109:15, 110:9,  
 113:13, 121:2,  
 142:21, 174:16,  
 175:2, 187:10,  
 197:3, 267:14,  
 268:19  
**changing** <sup>[3]</sup> - 11:5,  
 66:3, 78:16  
**chaotic** <sup>[1]</sup> - 98:15  
**character** <sup>[7]</sup> - 24:6,  
 40:12, 97:16, 145:3,  
 176:3, 183:9, 208:2  
**characteristics**  
<sup>[1]</sup> - 162:12  
**charge** <sup>[2]</sup> - 74:5,  
 80:16  
**CHARLES**  
<sup>[12]</sup> - 260:7, 261:13,  
 261:21, 262:3,  
 262:6, 262:14,  
 262:17, 262:20,  
 263:17, 264:9,  
 265:11, 266:6  
**Charles** <sup>[3]</sup> - 260:7,  
 260:8, 264:8  
**cheaper** <sup>[1]</sup> - 203:21  
**cheapest** <sup>[1]</sup> - 202:11  
**child** <sup>[6]</sup> - 64:7, 64:11,  
 65:7, 83:19, 84:2,  
 85:11  
**children** <sup>[14]</sup> - 64:14,  
 65:15, 65:20, 74:19,  
 76:10, 77:8, 80:9,  
 83:6, 84:3, 84:16,

89:14, 260:21,  
265:14  
**chime** <sup>[2]</sup> - 70:2, 70:4  
**chiming** <sup>[1]</sup> - 70:5  
**chimney** <sup>[36]</sup> - 4:9,  
5:3, 5:5, 5:7, 5:8,  
5:9, 5:14, 5:15, 5:18,  
5:19, 5:21, 6:10,  
6:21, 7:5, 7:18, 8:11,  
8:17, 9:10, 9:13,  
9:20, 10:18, 12:4,  
12:7, 12:16, 17:19,  
17:21, 18:2, 18:8,  
18:9, 18:12, 18:13,  
22:9, 22:11, 22:13,  
22:19, 23:18  
**chimney's** <sup>[1]</sup> - 8:16  
**choice** <sup>[1]</sup> - 16:20  
**choices** <sup>[1]</sup> - 15:4  
**Christmas**  
<sup>[1]</sup> - 228:17  
**cinderblock**  
<sup>[1]</sup> - 103:14  
**Circle** <sup>[1]</sup> - 240:10  
**circumstances**  
<sup>[2]</sup> - 20:18, 38:19  
**cite** <sup>[1]</sup> - 166:15  
**citizens** <sup>[6]</sup> - 24:16,  
25:5, 41:2, 41:7,  
41:13, 208:19  
**City** <sup>[1]</sup> - 100:9  
**city** <sup>[10]</sup> - 24:16, 25:5,  
41:2, 41:13, 74:6,  
152:18, 164:16,  
192:14, 208:19,  
213:16  
**CITY** <sup>[1]</sup> - 1:4  
**clapboard** <sup>[2]</sup> - 143:5,  
239:19  
**clarification**  
<sup>[1]</sup> - 224:1  
**clarifying** <sup>[1]</sup> - 132:20  
**cleaner** <sup>[1]</sup> - 162:10  
**clear** <sup>[5]</sup> - 101:7,  
143:16, 167:5,  
215:3, 225:18  
**clearly** <sup>[1]</sup> - 165:16  
**client** <sup>[3]</sup> - 66:6,  
114:15, 260:19  
**clients** <sup>[4]</sup> - 61:15,  
62:18, 64:7, 81:2  
**close** <sup>[17]</sup> - 5:1, 18:15,  
57:2, 57:6, 62:7,

92:12, 93:10, 125:9,  
 132:8, 132:10,  
 179:21, 202:6,  
 207:2, 251:20,  
 253:11, 255:19,  
 263:20  
**closed** <sup>[1]</sup> - 93:15  
**closer** <sup>[7]</sup> - 31:21,  
 114:9, 178:2,  
 236:11, 236:12,  
 236:14, 236:15  
**closest** <sup>[1]</sup> - 155:21  
**closet** <sup>[1]</sup> - 67:18  
**closing** <sup>[2]</sup> - 87:12,  
 127:8  
**co** <sup>[2]</sup> - 59:5  
**co-owners** <sup>[2]</sup> - 59:5  
**coast** <sup>[1]</sup> - 229:8  
**Code** <sup>[4]</sup> - 117:7,  
 138:18, 141:6,  
 182:20  
**code** <sup>[2]</sup> - 223:10,  
 264:20  
**Cogswell** <sup>[10]</sup> - 238:6,  
 240:10, 249:16,  
 249:20, 250:11,  
 251:2, 254:21,  
 255:4, 255:6, 256:7  
**cold** <sup>[1]</sup> - 205:17  
**color** <sup>[18]</sup> - 9:14, 9:17,  
 9:20, 9:21, 10:11,  
 10:16, 11:5, 11:7,  
 11:20, 13:9, 14:18,  
 18:6, 19:21, 22:18,  
 35:11, 35:14, 37:10,  
 37:18  
**colored** <sup>[1]</sup> - 212:16  
**colors** <sup>[1]</sup> - 158:4  
**columns** <sup>[1]</sup> - 200:20  
**comfortable**  
<sup>[4]</sup> - 34:2, 82:6,  
 83:14, 122:19  
**comfortably**  
<sup>[1]</sup> - 92:21  
**coming** <sup>[10]</sup> - 7:20,  
 135:16, 136:10,  
 136:19, 156:15,  
 197:8, 198:20,  
 199:4, 199:16,  
 203:17  
**comment** <sup>[25]</sup> - 17:8,  
 18:15, 22:6, 33:2,  
 34:15, 53:16, 54:19,

57:2, 73:10, 89:5,  
 89:7, 92:12, 93:10,  
 162:19, 166:2,  
 176:11, 177:4,  
 178:6, 179:21,  
 206:16, 249:14,  
 251:20, 253:11,  
 263:13, 263:21

**commentary**

[1] - 65:20

**comments** [9] - 7:12,  
 32:12, 33:11, 36:6,  
 59:4, 175:8, 178:6,  
 189:12, 262:8

**commercial**

[21] - 120:11, 121:11,  
 121:14, 121:21,  
 145:2, 145:7, 145:9,  
 145:14, 162:9,  
 162:11, 173:15,  
 173:18, 183:6,  
 183:11, 184:13,  
 186:12, 188:3,  
 188:4, 190:8

**Commission**

[4] - 102:15, 261:12,  
 261:13, 269:16

**Commissioner**

[3] - 104:15, 104:21,  
 106:5

**committed** [1] - 93:2

**common** [2] - 157:15,  
 250:4

**COMMONWEALTH**

[1] - 269:2

**communicate**

[1] - 43:20

**communication**

[1] - 19:2

**community** [4] - 85:1,  
 85:9, 86:8, 93:6

**compacts** [1] - 153:6

**company** [1] - 229:9

**comparable**

[2] - 70:14, 70:15

**compare** [1] - 63:13

**compared** [1] - 5:14

**compatible** [5] - 71:6,

172:3, 190:11,

250:2, 250:14

**compensating**

[1] - 49:3

**complete** [1] - 87:17

**completed** <sup>[1]</sup> - 267:7

**COMPLETED**

<sup>[1]</sup> - 267:20

**completely** <sup>[3]</sup> - 78:2,

248:12, 248:14

**compliance** <sup>[6]</sup> - 25:9,

28:6, 39:20, 210:20,

213:17, 232:15

**compliant**

<sup>[2]</sup> - 242:17, 264:21

**complicated**

<sup>[2]</sup> - 75:4, 200:17

**complication**

<sup>[1]</sup> - 231:20

**complied** <sup>[3]</sup> - 223:8,

227:12, 227:13

**complies** <sup>[2]</sup> - 183:2,

215:19

**comply** <sup>[10]</sup> - 28:9,

59:16, 107:13,

107:16, 114:10,

182:21, 214:19,

223:5, 223:7,

258:16

**complying** <sup>[1]</sup> - 115:9

**component**

<sup>[1]</sup> - 118:7

**compound** <sup>[1]</sup> - 77:17

**compromise**

<sup>[1]</sup> - 199:10

**computer** <sup>[1]</sup> - 158:3

**concept** <sup>[1]</sup> - 167:6

**concern** <sup>[8]</sup> - 70:7,

152:1, 152:17,

163:16, 168:10,

168:16, 170:2,

222:15

**Concern** <sup>[2]</sup> - 174:15,

175:1

**concerned**

<sup>[2]</sup> - 164:15, 249:6

**concerns** <sup>[7]</sup> - 70:6,

71:17, 87:9, 87:10,

139:8, 164:13,

170:4

**concluded**

<sup>[1]</sup> - 226:17

**conclusion** <sup>[2]</sup> - 87:7,

119:8

**Concord** <sup>[1]</sup> - 165:5

**concrete** <sup>[1]</sup> - 143:3

**concur** <sup>[1]</sup> - 188:21

**condensed** <sup>[1]</sup> - 7:4

**condition** <sup>[15]</sup> - 12:5,  
 21:3, 21:13, 25:8,  
 29:9, 39:2, 39:8,  
 39:19, 59:16, 95:19,  
 112:8, 144:9,  
 146:17, 157:15,  
 231:8

**conditioned**  
<sup>[1]</sup> - 25:12

**conditions** <sup>[2]</sup> - 12:6,  
 23:19

**condoization**  
<sup>[1]</sup> - 93:4

**condominium**  
<sup>[5]</sup> - 47:13, 47:16,  
 55:6, 56:11, 59:6

**condominiums**  
<sup>[1]</sup> - 55:20

**confident** <sup>[2]</sup> - 165:11,  
 222:19

**configuration**  
<sup>[2]</sup> - 66:11, 79:13

**configure** <sup>[1]</sup> - 82:8

**configured**  
<sup>[3]</sup> - 64:19, 66:13,  
 82:7

**confines** <sup>[2]</sup> - 98:18,  
 206:9

**confirm** <sup>[1]</sup> - 263:5

**conflict** <sup>[2]</sup> - 162:12,  
 233:18

**conform** <sup>[3]</sup> - 108:13,  
 113:19, 113:20

**conforming**  
<sup>[10]</sup> - 58:14, 62:11,  
 62:13, 122:14,  
 180:17, 182:10,  
 182:15, 189:20,  
 246:1, 260:11

**conforms** <sup>[1]</sup> - 10:1

**confusing** <sup>[1]</sup> - 216:20

**confusion**  
<sup>[2]</sup> - 102:13, 130:8

**congestion** <sup>[4]</sup> - 24:4,  
 40:11, 208:1, 208:8

**consent** <sup>[2]</sup> - 255:1,  
 255:7

**consequence**  
<sup>[1]</sup> - 188:18

**consider** <sup>[5]</sup> - 19:4,  
 36:17, 43:19, 91:8,  
 160:15

**considerable**

[3] - 71:6, 111:14,  
187:12

**considerably**

[1] - 187:11

**considered** [1] - 88:8

**considering**

[1] - 87:18

**consistency** [1] - 17:4

**consistent** [5] - 10:5,  
16:1, 54:5, 224:2,  
239:17

**CONSTANTINE**

[171] - 3:13, 5:13, 6:4,  
6:7, 7:7, 7:10, 7:15,  
8:5, 8:9, 8:15, 9:6,  
10:7, 10:19, 14:14,  
16:3, 20:12, 20:15,  
21:17, 22:21, 23:6,  
23:12, 25:7, 28:2,  
28:16, 29:2, 32:3,  
33:17, 35:10, 39:15,  
42:2, 42:8, 42:15,  
42:20, 53:9, 57:9,  
63:5, 63:10, 63:20,  
65:3, 65:13, 65:18,  
66:8, 66:15, 67:5,  
77:6, 77:16, 77:21,  
78:19, 86:14, 93:21,  
95:9, 96:10, 96:20,  
97:7, 97:14, 100:15,  
105:6, 108:2, 109:2,  
109:9, 112:19,  
113:4, 113:10,  
114:8, 114:18,  
115:1, 118:20,  
123:7, 123:14,  
124:16, 124:21,  
125:4, 125:14,  
126:3, 126:6,  
126:10, 126:21,  
127:13, 127:16,  
127:20, 128:3,  
128:6, 128:18,  
130:14, 130:16,  
130:21, 131:4,  
131:9, 131:15,  
131:20, 132:13,  
132:17, 133:3,  
134:9, 134:18,  
135:1, 135:5, 136:5,  
136:14, 137:7,  
137:15, 139:21,  
141:1, 149:2, 149:8,

149:15, 149:21,  
 150:4, 150:7,  
 150:12, 151:3,  
 151:8, 151:13,  
 151:21, 152:5,  
 154:20, 156:6,  
 161:15, 161:18,  
 170:16, 170:18,  
 171:1, 176:6,  
 176:10, 177:3,  
 178:4, 178:11,  
 178:14, 178:20,  
 179:11, 185:7,  
 191:19, 193:15,  
 194:20, 198:2,  
 202:14, 202:18,  
 202:21, 203:4,  
 203:9, 203:13,  
 203:19, 204:19,  
 206:10, 206:13,  
 207:4, 209:3,  
 209:17, 215:9,  
 216:9, 223:17,  
 227:6, 227:21,  
 229:15, 230:3,  
 230:12, 232:17,  
 233:16, 234:4,  
 234:8, 237:7,  
 237:17, 246:12,  
 250:7, 251:11,  
 255:21, 256:8,  
 261:11, 261:18,  
 262:9, 263:3

#### **Constantine**

[13] - 1:13, 3:4, 27:3,  
 31:3, 45:3, 46:3,  
 61:3, 102:3, 194:3,  
 196:3, 210:3, 238:3,  
 260:3

#### **constitutes**

[1] - 104:16

#### **constrained**

[2] - 48:9, 48:12

#### **constraints**

[1] - 155:12

#### **construct**

[3] - 105:21, 119:15,  
 264:4

#### **construction**

[1] - 256:21

**consultant** [1] - 147:2

**consulted** [1] - 110:11

**contain** [1] - 141:11

**contained** <sup>[6]</sup> - 37:7,  
 48:18, 190:17,  
 207:16, 257:2,  
 258:17

**containing** <sup>[4]</sup> - 17:19,  
 22:10, 172:17,  
 180:17

**contains** <sup>[1]</sup> - 37:1

**contemplate**  
<sup>[1]</sup> - 122:10

**context** <sup>[3]</sup> - 121:5,  
 121:10, 162:7

**contextual**  
<sup>[3]</sup> - 116:13, 116:19,  
 121:3

**continually**  
<sup>[3]</sup> - 211:18, 213:9,  
 213:14

**continuance**  
<sup>[3]</sup> - 29:19, 30:1, 81:1

**continuation** <sup>[1]</sup> - 7:9

**continue** <sup>[17]</sup> - 28:5,  
 28:8, 28:14, 29:7,  
 86:19, 88:21, 93:11,  
 94:3, 95:18, 101:15,  
 157:17, 227:17,  
 231:4, 232:6, 237:1,  
 237:6, 237:10

**Continued** <sup>[2]</sup> - 24:7,  
 40:13

**continued** <sup>[3]</sup> - 94:2,  
 95:7, 208:9

**continuing** <sup>[1]</sup> - 4:3

**continuous**  
<sup>[3]</sup> - 132:11, 135:13,  
 140:15

**continuously**  
<sup>[2]</sup> - 222:2, 225:2

**contortionist**  
<sup>[1]</sup> - 137:21

**contractor** <sup>[1]</sup> - 224:4

**contrary** <sup>[2]</sup> - 74:4,  
 191:16

**contrast** <sup>[1]</sup> - 108:6

**contribute**  
<sup>[1]</sup> - 145:16

**contribution** <sup>[1]</sup> - 93:5

**control** <sup>[1]</sup> - 197:8

**CONTROL**  
<sup>[1]</sup> - 269:20

**conventional**  
<sup>[2]</sup> - 111:7, 112:5

**conversation**

[1] - 129:3

**conversion**

[6] - 106:1, 109:1,  
176:21, 180:21,  
188:13, 190:17

**convert** [5] - 90:19,  
104:13, 112:11,  
145:14, 162:5

**converted** [1] - 112:4

**converting**

[1] - 108:19

**Cooper** [1] - 149:11

**copies** [1] - 3:18

**copy** [3] - 32:6,  
254:14, 267:7

**cordialities** [1] - 56:21

**corner** [7] - 64:6,

83:10, 83:11,  
164:21, 165:5,  
216:21, 260:12

**Corolla** [1] - 149:14

**correct** [10] - 8:2, 8:8,  
18:12, 36:8, 37:14,  
38:14, 107:19,  
110:6, 158:15,  
235:10

**Correct** [3] - 18:11,  
128:2, 131:12

**correction** [1] - 268:4

**corrections**

[2] - 267:13, 268:19

**correctly** [1] - 158:5

**correspondence**

[18] - 17:15, 27:16,  
28:4, 35:1, 55:3,  
55:17, 56:8, 56:16,  
57:1, 92:15, 93:9,  
174:13, 175:11,  
251:19, 254:21,  
255:11, 255:14,  
263:19

**corridor** [2] - 64:9,  
83:9

**cost** [1] - 201:4

**costs** [1] - 165:13

**count** [2] - 214:17,  
214:21

**Count** [2] - 214:19,  
215:1

**counts** [1] - 63:3

**couple** [9] - 32:15,  
69:4, 95:7, 126:13,  
137:17, 178:18,

215:6, 233:14,  
 254:7  
**course** <sup>[4]</sup> - 5:16,  
 11:17, 223:13,  
 224:18  
**Court** <sup>[2]</sup> - 166:17,  
 166:19  
**courtyard** <sup>[1]</sup> - 220:20  
**covenants**  
<sup>[1]</sup> - 242:15  
**cover** <sup>[1]</sup> - 263:1  
**covered** <sup>[5]</sup> - 22:21,  
 219:12, 261:2,  
 262:11, 264:4  
**covering** <sup>[1]</sup> - 265:9  
**covers** <sup>[1]</sup> - 261:3  
**craftily** <sup>[1]</sup> - 88:14  
**crammed** <sup>[1]</sup> - 73:17  
**create** <sup>[8]</sup> - 106:6,  
 125:18, 126:2,  
 129:20, 144:13,  
 146:13, 192:5,  
 204:7  
**created** <sup>[4]</sup> - 24:14,  
 40:20, 172:1,  
 208:16  
**creates** <sup>[3]</sup> - 63:3,  
 66:21, 91:10  
**creating** <sup>[4]</sup> - 108:16,  
 121:4, 126:17,  
 205:21  
**critical** <sup>[1]</sup> - 85:10  
**criticism** <sup>[1]</sup> - 77:12  
**cross** <sup>[1]</sup> - 96:13  
**crossing** <sup>[1]</sup> - 118:8  
**crossover** <sup>[1]</sup> - 150:11  
**crosswalk**  
<sup>[3]</sup> - 157:13, 161:8,  
 164:19  
**curious** <sup>[1]</sup> - 88:2  
**current** <sup>[3]</sup> - 12:4,  
 232:1, 233:11  
**cusp** <sup>[1]</sup> - 121:15  
**custom** <sup>[2]</sup> - 202:2,  
 202:3  
**cut** <sup>[2]</sup> - 126:1, 183:13  
**cutting** <sup>[1]</sup> - 124:10

## D

**daily** <sup>[2]</sup> - 233:21,  
 235:13  
**damage** <sup>[3]</sup> - 74:1,  
 168:21, 257:16

**DATE** <sup>[1]</sup> - 268:1  
**date** <sup>[11]</sup> - 28:11,  
 29:11, 95:21, 96:13,  
 165:13, 231:10,  
 234:14, 235:11,  
 235:12, 237:3,  
 268:6  
**dated** <sup>[3]</sup> - 17:16,  
 55:3, 174:14  
**David** <sup>[3]</sup> - 92:16,  
 163:13, 166:1  
**day-to-day** <sup>[2]</sup> - 221:8,  
 223:1  
**days** <sup>[10]</sup> - 21:6,  
 21:12, 39:5, 214:9,  
 222:2, 224:5,  
 227:19, 234:5,  
 234:6, 237:16  
**de** <sup>[5]</sup> - 58:17, 59:13,  
 70:4, 251:7, 257:18  
**dead** <sup>[2]</sup> - 10:8, 100:17  
**deal** <sup>[3]</sup> - 48:4, 115:2,  
 257:16  
**dealer** <sup>[1]</sup> - 177:16  
**dealing** <sup>[3]</sup> - 7:19,  
 137:16, 146:17  
**Dear** <sup>[2]</sup> - 55:4, 163:15  
**December** <sup>[15]</sup> - 3:7,  
 94:1, 94:18, 174:14,  
 174:21, 223:18,  
 228:9, 228:17,  
 231:1, 231:2, 231:5,  
 231:10, 231:17,  
 234:5, 269:11  
**DECEMBER** <sup>[1]</sup> - 1:7  
**decided** <sup>[2]</sup> - 116:11,  
 249:8  
**decision** <sup>[5]</sup> - 20:18,  
 38:18, 42:6, 82:11,  
 185:16  
**deck** <sup>[29]</sup> - 48:15,  
 48:16, 48:17, 58:1,  
 62:15, 63:2, 63:6,  
 66:20, 100:18,  
 100:19, 118:14,  
 132:8, 137:2, 140:8,  
 140:11, 142:13,  
 142:16, 142:19,  
 142:20, 197:19,  
 198:18, 200:3,  
 200:4, 200:5,  
 200:12, 200:13,  
 201:12, 203:11

**deed** <sup>[1]</sup> - 243:1  
**deeded** <sup>[2]</sup> - 258:1,  
 258:4  
**Deeds** <sup>[1]</sup> - 242:5  
**deemed** <sup>[1]</sup> - 232:15  
**deep** <sup>[1]</sup> - 73:21  
**defect** <sup>[1]</sup> - 227:1  
**defend** <sup>[2]</sup> - 214:21,  
 215:1  
**Defendants**  
<sup>[1]</sup> - 166:7  
**defer** <sup>[1]</sup> - 12:19  
**deference** <sup>[1]</sup> - 144:14  
**deficiency** <sup>[1]</sup> - 106:8  
**deficient** <sup>[2]</sup> - 181:17,  
 181:20  
**defined** <sup>[1]</sup> - 106:14  
**defining** <sup>[1]</sup> - 106:3  
**definition**  
<sup>[14]</sup> - 104:16, 104:19,  
 105:2, 106:3, 106:4,  
 106:13, 106:14,  
 110:13, 110:14,  
 119:6, 119:13,  
 123:16, 123:20,  
 186:19  
**delegation** <sup>[2]</sup> - 42:5,  
 226:12  
**delete** <sup>[1]</sup> - 253:15  
**delivered** <sup>[4]</sup> - 267:4,  
 267:8, 267:9,  
 267:11  
**democracy** <sup>[1]</sup> - 179:7  
**demolition**  
<sup>[2]</sup> - 172:12, 172:14  
**demonstrate**  
<sup>[1]</sup> - 153:11  
**demonstrated**  
<sup>[1]</sup> - 192:2  
**denied** <sup>[1]</sup> - 191:10  
**dense** <sup>[1]</sup> - 192:8  
**denser** <sup>[1]</sup> - 152:19  
**densities** <sup>[2]</sup> - 172:7,  
 172:12  
**density** <sup>[1]</sup> - 172:13  
**deny** <sup>[1]</sup> - 155:3  
**Department**  
<sup>[4]</sup> - 110:12, 247:18,  
 267:5, 267:10  
**departure** <sup>[2]</sup> - 66:4,  
 191:21  
**derogate** <sup>[3]</sup> - 25:2,  
 41:10, 192:4

**derogating**

[4] - 59:10, 191:2,  
258:14, 265:21

**describe** [1] - 139:11**described** [4] - 55:7,  
55:21, 56:12, 156:4**design** [22] - 7:6, 8:11,

10:5, 34:4, 75:4,  
90:4, 90:13, 91:1,  
91:4, 104:11,  
104:12, 120:4,  
120:6, 120:14,  
147:8, 154:16,  
156:20, 169:1,  
169:10, 189:14,  
243:11, 250:1

**Design** [1] - 61:13**designate** [1] - 229:18**designated**

[2] - 243:21, 245:2

**designation**

[1] - 106:18

**designed** [3] - 105:1,

147:3, 238:20

**designs** [2] - 144:12,

172:2

**desirable** [4] - 58:21,

190:19, 258:8,  
265:7

**desire** [1] - 49:14**destroying** [1] - 118:6**detailed** [1] - 223:15**details** [1] - 171:12**determination**

[4] - 19:5, 36:18,  
185:13, 209:6

**determined**

[1] - 211:12

**detract** [1] - 145:17**detriment** [8] - 24:20,

40:20, 41:5, 59:1,  
190:20, 208:17,  
258:9, 265:8

**detrimental**

[2] - 182:12, 209:8

**develop** [2] - 165:17,

185:17

**developed** [4] - 172:7,

172:11, 242:4

**developer** [2] - 165:6,

165:14

**developers**

[1] - 117:16

**development**

[18] - 24:7, 40:13,  
 105:12, 171:19,  
 172:1, 172:2, 172:4,  
 181:13, 181:14,  
 182:3, 182:6,  
 186:21, 187:1,  
 192:13, 192:14,  
 208:10, 248:2,  
 257:13

**deviating** [1] - 130:12

**deviation** [2] - 124:2,  
 257:4

**DHANDA** [7] - 225:14,  
 234:19, 235:19,  
 236:1, 236:7,  
 236:11, 236:16

**Dhanda** [3] - 213:7,  
 213:18, 222:21

**DIANE** [48] - 125:7,  
 125:13, 125:15,  
 126:5, 126:9,  
 126:14, 127:2,  
 127:15, 127:19,  
 128:2, 128:5, 128:8,  
 129:1, 129:5,  
 129:10, 129:15,  
 130:15, 130:18,  
 131:3, 131:7,  
 131:12, 132:4,  
 132:21, 133:12,  
 133:20, 134:3,  
 134:17, 134:21,  
 135:12, 136:7,  
 136:17, 136:21,  
 137:3, 138:19,  
 138:21, 139:16,  
 139:20, 140:4,  
 140:10, 140:18,  
 143:21, 144:3,  
 145:20, 146:2,  
 146:5, 146:9,  
 160:17, 160:19

**Diane** [1] - 147:20

**differ** [1] - 114:1

**difference** [5] - 12:13,  
 13:19, 53:6, 194:21,  
 195:2

**different** [18] - 22:3,  
 23:1, 33:14, 65:21,  
 75:1, 75:2, 76:2,  
 78:3, 84:7, 91:1,  
 115:7, 115:8, 118:5,

120:3, 127:4, 158:3,  
212:18

**differently**

[1] - 216:18

**difficult** [5] - 32:16,

77:13, 109:12,

188:1, 239:4

**difficulty** [1] - 77:17

**Dig** [1] - 241:14

**dilemma** [1] - 108:3

**diligence** [2] - 241:13,

253:18

**dimension** [4] - 6:1,

6:2, 9:2, 14:5

**dimensional**

[25] - 96:8, 105:4,

105:11, 105:15,

105:20, 109:18,

110:16, 111:16,

111:20, 112:1,

113:20, 118:12,

118:17, 119:14,

122:8, 122:9, 124:9,

166:11, 180:20,

181:12, 190:1,

246:5, 246:7, 247:1,

264:6

**Dimensionally**

[1] - 107:19

**dimensionally**

[3] - 48:12, 108:13,

122:14

**dimensions** [9] - 5:2,

5:18, 8:20, 8:21,

9:11, 14:7, 108:8,

153:4, 239:13

**diminished** [1] - 75:11

**dining** [2] - 79:18,

83:11

**direct** [5] - 129:9,

136:3, 140:19,

249:21, 250:13

**DIRECT** [1] - 269:20

**direction** [8] - 15:13,

67:21, 83:1, 91:15,

92:5, 97:6, 99:15,

170:8

**DIRECTION**

[1] - 269:20

**directly** [9] - 130:5,

162:17, 164:12,

165:2, 217:7,

217:15, 239:11,

250:11, 252:15

**disappear** <sup>[1]</sup> - 13:6

**discourage**

<sup>[1]</sup> - 172:13

**discretion**

<sup>[6]</sup> - 187:18, 187:19,

187:21, 188:6,

188:12, 188:14

**discuss** <sup>[2]</sup> - 12:1,

87:4

**discussed** <sup>[2]</sup> - 169:5,

261:15

**discussing** <sup>[1]</sup> - 228:6

**Discussion**

<sup>[1]</sup> - 132:19

**discussion**

<sup>[6]</sup> - 11:16, 66:7,

128:14, 159:9,

184:6, 211:1

**discussions** <sup>[1]</sup> - 87:7

**dispose** <sup>[1]</sup> - 228:5

**disruption**

<sup>[1]</sup> - 102:18

**dissimilar** <sup>[1]</sup> - 73:20

**distance** <sup>[3]</sup> - 4:17,

52:3, 246:8

**distinction**

<sup>[1]</sup> - 102:21

**distinguished**

<sup>[1]</sup> - 177:14

**distribution**

<sup>[1]</sup> - 268:7

**District** <sup>[6]</sup> - 103:8,

108:9, 121:16,

153:3, 181:14,

245:16

**district** <sup>[20]</sup> - 20:5,

25:1, 25:2, 38:16,

41:9, 41:10, 103:9,

106:20, 107:5,

107:6, 119:2, 123:4,

145:3, 162:9,

181:16, 181:19,

181:21, 186:2,

186:15, 209:1

**districts** <sup>[1]</sup> - 209:1

**diversity** <sup>[1]</sup> - 87:15

**divided** <sup>[1]</sup> - 47:17

**DO** <sup>[2]</sup> - 267:15, 268:5

**doable** <sup>[1]</sup> - 183:5

**document** <sup>[1]</sup> - 254:6

**documentation**

<sup>[1]</sup> - 47:9

**documents**

[1] - 247:18

**DOES** [1] - 269:19

**domestic** [2] - 121:2,  
143:6

**done** [17] - 71:11,  
79:17, 88:14, 98:11,  
100:10, 110:8,  
156:7, 171:8, 174:2,  
187:13, 189:11,  
234:11, 238:18,  
241:13, 247:21,  
253:18

**door** [41] - 87:12,  
125:10, 125:18,  
126:15, 126:18,  
127:10, 127:11,  
128:12, 128:15,  
128:19, 129:20,  
130:3, 130:4, 130:9,  
130:10, 130:19,  
132:8, 135:10,  
135:11, 135:17,  
136:2, 136:11,  
140:11, 151:19,  
169:18, 199:2,  
204:4, 205:20,  
215:13, 215:17,  
215:18, 217:15,  
217:20, 218:2,  
232:12, 233:15,  
235:16, 236:14,  
244:9

**doors** [4] - 169:14,  
197:12, 202:8,  
202:11

**dormer** [4] - 68:2,  
68:16, 69:11, 71:4

**dormers** [1] - 111:13

**double** [1] - 93:20

**doubt** [2] - 223:5,  
223:6

**Doug** [6] - 29:3, 78:10,  
89:11, 170:14,  
170:17, 263:3

**DOUG** [6] - 89:4,  
89:11, 170:14,  
170:17, 170:20,  
171:3

**DOUGLAS**

[85] - 14:16, 15:3,  
15:19, 16:11, 17:6,  
18:9, 27:5, 35:16,

36:1, 36:5, 41:16,  
 42:13, 42:19, 43:4,  
 53:16, 54:17, 57:14,  
 68:19, 69:2, 70:2,  
 70:11, 71:2, 87:1,  
 95:2, 95:6, 95:11,  
 99:18, 153:16,  
 158:7, 158:19,  
 159:5, 159:8,  
 159:13, 159:21,  
 187:5, 194:17,  
 195:1, 205:3, 205:8,  
 205:13, 205:18,  
 206:5, 207:10,  
 217:10, 218:1,  
 218:8, 218:12,  
 220:6, 220:10,  
 220:19, 221:2,  
 223:9, 223:14,  
 224:12, 226:8,  
 227:4, 227:15,  
 229:3, 230:17,  
 231:6, 232:21,  
 233:3, 233:13,  
 248:5, 248:8,  
 248:14, 248:17,  
 248:21, 249:11,  
 250:8, 250:16,  
 251:21, 252:3,  
 252:7, 252:11,  
 252:17, 253:1,  
 253:6, 256:12,  
 261:20, 262:10,  
 262:15, 262:19,  
 263:2, 263:6

**Douglas** <sup>[13]</sup> - 1:15,  
 3:5, 27:4, 31:3, 45:3,  
 46:3, 61:3, 102:3,  
 194:3, 196:3, 210:3,  
 238:3, 260:3

**down** <sup>[37]</sup> - 7:20, 12:3,  
 12:19, 14:1, 43:3,  
 46:14, 68:1, 70:17,  
 72:5, 72:11, 75:16,  
 75:18, 80:14, 83:9,  
 85:20, 103:19,  
 106:10, 110:19,  
 117:6, 120:21,  
 126:10, 126:11,  
 131:5, 135:10,  
 136:19, 139:4,  
 140:12, 140:13,  
 140:19, 141:20,

161:10, 192:12,  
 198:20, 203:1,  
 211:11, 219:9  
**downs** <sup>[1]</sup> - 249:1  
**draft** <sup>[1]</sup> - 138:16  
**drain** <sup>[1]</sup> - 198:20  
**drainage** <sup>[1]</sup> - 205:21  
**draw** <sup>[1]</sup> - 202:13  
**drawing** <sup>[3]</sup> - 54:4,  
 58:3, 78:2  
**drawings** <sup>[10]</sup> - 37:7,  
 39:20, 59:17, 81:13,  
 96:3, 96:7, 189:21,  
 207:15, 257:2,  
 258:17  
**drew** <sup>[1]</sup> - 33:1  
**Drive** <sup>[1]</sup> - 102:12  
**drive** <sup>[6]</sup> - 152:13,  
 157:5, 158:13,  
 174:4, 211:6, 249:2  
**driven** <sup>[1]</sup> - 155:14  
**driver** <sup>[2]</sup> - 117:13,  
 157:3  
**driveway**  
<sup>[15]</sup> - 121:18, 125:21,  
 148:7, 155:15,  
 157:2, 157:8,  
 158:21, 159:2,  
 159:3, 160:5,  
 160:21, 168:19,  
 240:13, 240:14,  
 243:15  
**driveways**  
<sup>[5]</sup> - 152:20, 156:21,  
 157:16, 158:17,  
 158:20  
**dropped** <sup>[1]</sup> - 73:3  
**dry** <sup>[1]</sup> - 162:10  
**Due** <sup>[2]</sup> - 174:15,  
 175:2  
**due** <sup>[4]</sup> - 28:8, 94:19,  
 119:4, 253:18  
**DUNKLESS**  
<sup>[38]</sup> - 210:7, 211:2,  
 215:2, 216:3,  
 216:16, 217:14,  
 218:6, 218:10,  
 218:14, 219:14,  
 219:19, 220:4,  
 220:8, 220:17,  
 220:21, 221:3,  
 222:14, 223:21,  
 224:17, 225:5,

225:10, 225:17,  
 226:3, 228:10,  
 228:14, 229:1,  
 229:21, 230:5,  
 231:15, 233:5,  
 233:10, 234:10,  
 235:4, 236:5, 236:9,  
 236:13, 236:19,  
 237:15

**Dunkless** <sup>[3]</sup> - 210:9,  
 210:10, 210:16

**during** <sup>[3]</sup> - 239:5,  
 247:11, 265:16

**DUWEL** <sup>[28]</sup> - 196:8,  
 196:20, 197:14,  
 198:7, 198:11,  
 198:14, 199:1,  
 199:6, 199:18,  
 199:21, 200:4,  
 200:7, 200:19,  
 201:10, 202:4,  
 202:20, 203:3,  
 203:7, 203:12,  
 204:3, 204:12,  
 204:18, 205:1,  
 205:7, 205:11,  
 205:14, 205:19,  
 206:12

**Duvel** <sup>[1]</sup> - 196:8

**dwelling** <sup>[15]</sup> - 106:19,  
 109:21, 110:2,  
 110:5, 110:20,  
 119:2, 119:9, 123:1,  
 145:15, 162:6,  
 166:10, 180:12,  
 181:6, 185:11,  
 192:9

**dwellings** <sup>[1]</sup> - 167:13

## E

**E-d-r-i-c-k** <sup>[1]</sup> - 61:11

**e-mail** <sup>[1]</sup> - 56:18

**e-mails** <sup>[2]</sup> - 253:5,  
 254:8

**early** <sup>[1]</sup> - 111:12

**easement**  
<sup>[9]</sup> - 241:21, 242:3,  
 243:1, 243:3, 244:6,  
 244:19, 245:1,  
 251:5, 251:9

**easier** <sup>[1]</sup> - 94:17

**easiest** <sup>[1]</sup> - 148:9

**easily** <sup>[3]</sup> - 188:21,

214:5, 222:11  
**east** <sup>[1]</sup> - 229:8  
**easy** <sup>[1]</sup> - 147:14  
**eaves** <sup>[1]</sup> - 67:15  
**Economics**  
<sup>[1]</sup> - 117:12  
**economics**  
<sup>[10]</sup> - 113:14, 114:14,  
114:15, 114:16,  
115:3, 115:8, 116:2,  
116:4, 116:6,  
116:15  
**edge** <sup>[3]</sup> - 67:17,  
72:12, 142:20  
**edges** <sup>[2]</sup> - 199:5,  
200:21  
**Edrick** <sup>[4]</sup> - 61:7,  
61:10, 94:4, 99:21  
**EDRICK** <sup>[45]</sup> - 61:9,  
61:21, 63:8, 63:15,  
64:1, 64:13, 65:6,  
65:17, 66:5, 66:9,  
66:16, 67:8, 68:7,  
68:10, 68:21, 69:3,  
69:17, 70:10, 70:21,  
71:16, 72:21, 74:9,  
74:13, 75:14, 77:15,  
77:20, 78:12, 78:20,  
79:3, 79:8, 79:12,  
79:16, 80:18, 80:21,  
81:5, 81:11, 81:19,  
86:17, 88:2, 88:19,  
89:2, 94:6, 94:10,  
95:15, 101:1  
**effect** <sup>[1]</sup> - 70:7  
**efficient** <sup>[1]</sup> - 122:5  
**effort** <sup>[5]</sup> - 4:3, 106:17,  
111:15, 112:10,  
145:11  
**efforts** <sup>[3]</sup> - 168:2,  
170:7, 187:12  
**egress** <sup>[12]</sup> - 24:4,  
40:10, 133:19,  
135:6, 136:6, 136:8,  
138:8, 139:15,  
141:7, 169:17,  
207:21, 208:5  
**egresses** <sup>[1]</sup> - 134:16  
**eight** <sup>[2]</sup> - 45:9, 168:9  
**Either** <sup>[1]</sup> - 90:19  
**either** <sup>[6]</sup> - 11:17,  
33:16, 90:2, 200:11,  
243:9

**elderly** <sup>[1]</sup> - 90:21  
**electric** <sup>[1]</sup> - 241:15  
**electricity** <sup>[1]</sup> - 241:16  
**element** <sup>[2]</sup> - 106:3,  
 190:8  
**elements** <sup>[8]</sup> - 19:14,  
 37:4, 37:16, 106:9,  
 112:11, 120:5,  
 204:11, 257:17  
**elevation** <sup>[7]</sup> - 136:18,  
 143:19, 143:20,  
 144:2, 262:12,  
 263:5  
**eliminate** <sup>[1]</sup> - 164:20  
**eliminated**  
<sup>[1]</sup> - 183:12  
**embraces** <sup>[1]</sup> - 86:8  
**emergency**  
<sup>[1]</sup> - 169:17  
**emotional** <sup>[1]</sup> - 83:16  
**emotions** <sup>[1]</sup> - 89:20  
**enactment** <sup>[1]</sup> - 58:14  
**enclose** <sup>[4]</sup> - 57:20,  
 197:7, 200:16,  
 207:14  
**enclosing** <sup>[1]</sup> - 197:1  
**enclosure**  
<sup>[3]</sup> - 197:11, 200:14,  
 201:13  
**encompass**  
<sup>[1]</sup> - 246:6  
**encompassing**  
<sup>[1]</sup> - 146:7  
**encounter** <sup>[1]</sup> - 83:19  
**encourage**  
<sup>[3]</sup> - 171:19, 172:6,  
 172:10  
**encroach** <sup>[1]</sup> - 117:19  
**encroaching**  
<sup>[1]</sup> - 197:5  
**encroachments**  
<sup>[1]</sup> - 52:8  
**end** <sup>[7]</sup> - 51:20, 57:1,  
 122:21, 128:13,  
 130:4, 139:4,  
 144:20  
**ended** <sup>[1]</sup> - 127:10  
**endorse** <sup>[1]</sup> - 92:18  
**energy** <sup>[1]</sup> - 92:1  
**enforcement**  
<sup>[6]</sup> - 58:5, 190:3,  
 191:12, 223:10,  
 257:9, 264:14

**engage** <sup>[1]</sup> - 51:20  
**enhance** <sup>[2]</sup> - 38:11,  
 265:17  
**enhanced** <sup>[2]</sup> - 24:11,  
 40:17  
**enjoys** <sup>[1]</sup> - 142:12  
**enlargement**  
<sup>[1]</sup> - 245:21  
**enormous** <sup>[1]</sup> - 185:1  
**enter** <sup>[4]</sup> - 51:18,  
 130:5, 168:20,  
 176:16  
**entering** <sup>[2]</sup> - 84:18,  
 265:15  
**entertain** <sup>[1]</sup> - 193:1  
**entire** <sup>[2]</sup> - 76:15,  
 103:14  
**entirely** <sup>[3]</sup> - 59:13,  
 120:17, 180:7  
**entrance** <sup>[8]</sup> - 169:7,  
 169:16, 169:19,  
 170:1, 211:20,  
 234:21, 235:2  
**entrances**  
<sup>[4]</sup> - 123:18, 168:11,  
 169:11, 169:14  
**entry** <sup>[11]</sup> - 125:8,  
 125:10, 125:18,  
 125:19, 126:14,  
 126:15, 126:18,  
 127:11, 129:21,  
 240:10, 262:12  
**environment**  
<sup>[1]</sup> - 117:15  
**equal** <sup>[1]</sup> - 253:4  
**equipment** <sup>[8]</sup> - 20:20,  
 21:3, 21:9, 24:12,  
 38:21, 39:3, 39:12,  
 40:18  
**erected** <sup>[1]</sup> - 20:4  
**ERRATA** <sup>[3]</sup> - 267:1,  
 267:20, 268:3  
**Errata** <sup>[4]</sup> - 267:3,  
 267:6, 267:14,  
 268:7  
**errata** <sup>[1]</sup> - 268:6  
**error** <sup>[4]</sup> - 133:5,  
 135:4, 135:7, 135:9  
**escape** <sup>[3]</sup> - 134:13,  
 138:9, 138:12  
**escapes** <sup>[1]</sup> - 171:11  
**Especially** <sup>[2]</sup> - 13:6,  
 161:7

**especially** <sup>[5]</sup> - 64:16,  
239:4, 239:18,  
265:14, 265:18

**essence** <sup>[1]</sup> - 229:4

**essentially** <sup>[9]</sup> - 4:3,  
9:1, 9:9, 9:16, 22:2,  
31:14, 31:16, 32:15,  
50:18

**Essentially** <sup>[1]</sup> - 203:6

**establish** <sup>[1]</sup> - 252:3

**established** <sup>[3]</sup> - 24:5,  
40:12, 208:2

**establishments**  
<sup>[1]</sup> - 229:17

**estate** <sup>[2]</sup> - 162:9,  
253:17

**evening** <sup>[11]</sup> - 3:11,  
3:12, 3:14, 31:9,  
102:9, 179:15,  
210:8, 210:9, 213:8,  
231:17, 242:19

**event** <sup>[2]</sup> - 21:9,  
154:21

**everyday** <sup>[1]</sup> - 234:15

**evidence** <sup>[2]</sup> - 184:19,  
191:15

**exacerbate** <sup>[1]</sup> - 69:19

**exact** <sup>[2]</sup> - 35:6, 91:4

**exactly** <sup>[8]</sup> - 79:8,  
90:5, 105:8, 108:3,  
127:1, 130:10,  
179:12, 217:6

**Exactly** <sup>[5]</sup> - 13:15,  
52:17, 137:7,  
156:18, 261:21

**example** <sup>[3]</sup> - 100:16,  
224:3, 230:13

**exceed** <sup>[1]</sup> - 91:11

**exceeded** <sup>[1]</sup> - 214:18

**except** <sup>[5]</sup> - 33:3,  
181:9, 239:1, 241:3,  
268:19

**exception**  
<sup>[4]</sup> - 105:18, 107:1,  
118:13, 243:6

**excessive** <sup>[1]</sup> - 172:15

**excuse** <sup>[2]</sup> - 139:2,  
222:1

**exercise** <sup>[3]</sup> - 187:17,  
188:12, 232:5

**exhibits** <sup>[1]</sup> - 147:17

**exist** <sup>[6]</sup> - 90:10,  
105:21, 122:1,

173:17, 173:20,  
183:7

**existed** <sup>[1]</sup> - 169:14

**existence** <sup>[3]</sup> - 24:17,  
41:3, 264:19

**existing** <sup>[80]</sup> - 4:4,  
5:14, 8:17, 12:5,  
12:15, 18:13, 23:17,  
23:18, 29:10, 37:16,  
40:4, 40:6, 41:4,  
48:16, 49:9, 52:10,  
52:13, 58:1, 58:13,  
58:15, 63:13, 64:2,  
66:18, 67:3, 67:13,  
67:15, 68:1, 68:2,  
69:5, 69:10, 69:15,  
72:9, 75:17, 75:19,  
78:17, 80:19, 96:3,  
98:10, 98:18,  
105:19, 108:16,  
111:8, 112:7,  
116:20, 120:6,  
125:21, 129:17,  
130:3, 132:6,  
134:13, 136:8,  
136:19, 138:9,  
144:9, 145:12,  
162:3, 164:17,  
164:19, 165:4,  
169:14, 172:7,  
172:10, 172:14,  
181:2, 181:21,  
189:19, 190:14,  
190:16, 197:1,  
200:12, 206:6,  
207:14, 209:9,  
233:19, 261:2,  
264:5, 264:21,  
265:4, 265:6

**exists** <sup>[2]</sup> - 132:8,  
141:9

**exit** <sup>[1]</sup> - 160:16

**exiting** <sup>[1]</sup> - 265:15

**exits** <sup>[1]</sup> - 155:15

**expand** <sup>[1]</sup> - 50:3

**expansion** <sup>[2]</sup> - 23:17,  
48:16

**Expedition**

<sup>[1]</sup> - 150:20

**expended** <sup>[1]</sup> - 145:11

**expensive**

<sup>[1]</sup> - 199:11

**experience** <sup>[5]</sup> - 48:9,

129:12, 166:4,  
219:21, 223:1

**experienced**

[1] - 257:16

**Expires** [1] - 269:16

**explain** [6] - 48:14,  
49:15, 121:5, 147:7,  
213:8, 213:18

**explained** [1] - 212:11

**explaining**

[1] - 211:17

**exploration**

[1] - 120:19

**explore** [1] - 215:3

**express** [3] - 163:16,  
179:8, 251:10

**expressed** [3] - 87:16,  
87:17, 189:1

**expressing** [1] - 34:21

**extend** [2] - 50:14,  
133:7

**extended** [2] - 51:1,  
262:21

**extension** [3] - 53:14,  
55:11, 56:5

**extent** [3] - 19:13,  
19:19, 37:3

**exterior** [3] - 14:20,  
121:2, 264:18

**external** [1] - 138:13

**extra** [6] - 3:18,  
124:19, 125:6,  
128:12, 149:18,  
150:19

**extreme** [2] - 144:17,  
258:2

**extremely** [1] - 150:21

**eye** [2] - 12:9, 219:8

## F

**fabric** [1] - 186:14

**facade** [20] - 4:16, 5:8,  
5:9, 10:17, 11:6,  
15:9, 15:10, 16:6,  
17:21, 18:7, 20:1,  
22:11, 22:18, 31:15,  
31:18, 90:8, 121:3,  
142:21, 143:2,  
170:8

**facade-mount**

[1] - 4:16

**facade-mounted**

[7] - 5:8, 10:17, 11:6,

18:7, 22:18, 31:15,  
31:18  
**face** <sup>[2]</sup> - 56:2, 143:9  
**facilities** <sup>[3]</sup> - 25:4,  
37:19, 41:12  
**facility** <sup>[7]</sup> - 18:21,  
19:3, 19:12, 19:15,  
24:18, 37:5, 111:19  
**fact** <sup>[10]</sup> - 12:1, 24:10,  
40:16, 58:13, 76:4,  
87:5, 90:17, 115:1,  
164:15, 177:15  
**facto** <sup>[2]</sup> - 70:4, 251:7  
**factors** <sup>[1]</sup> - 188:3  
**fails** <sup>[2]</sup> - 191:16,  
192:20  
**failure** <sup>[3]</sup> - 28:9,  
210:17, 214:19  
**fair** <sup>[4]</sup> - 104:14,  
123:13, 138:6,  
144:20  
**fairly** <sup>[4]</sup> - 14:11, 32:1,  
32:9, 64:5  
**faith** <sup>[1]</sup> - 43:6  
**familiar** <sup>[4]</sup> - 151:18,  
166:5, 213:19,  
230:10  
**Families** <sup>[1]</sup> - 80:7  
**families** <sup>[6]</sup> - 85:5,  
85:8, 91:18, 176:21,  
188:20, 192:12  
**family** <sup>[51]</sup> - 62:1,  
72:18, 73:2, 73:19,  
76:16, 76:17, 80:6,  
80:14, 82:7, 85:10,  
86:5, 86:9, 89:17,  
90:20, 92:21, 97:20,  
98:1, 103:10,  
103:21, 106:20,  
106:21, 107:4,  
108:6, 108:7,  
108:12, 109:6,  
111:10, 112:13,  
112:18, 113:11,  
113:15, 114:11,  
115:4, 116:12,  
116:21, 122:1,  
165:10, 171:20,  
173:13, 180:18,  
184:20, 184:21,  
185:9, 185:21,  
186:1, 186:3,  
186:17, 188:19,

190:7, 192:11,  
197:7

**fan** <sup>[1]</sup> - 256:1

**fancy** <sup>[1]</sup> - 197:21

**far** <sup>[14]</sup> - 14:6, 69:21,  
76:10, 90:14, 99:3,  
128:13, 168:3,  
180:3, 218:1, 218:8,  
218:12, 218:13,  
235:17, 261:20

**FAR** <sup>[18]</sup> - 48:18,  
48:19, 49:7, 49:12,  
49:21, 62:12, 67:1,  
67:3, 71:11, 71:12,  
71:13, 88:3, 88:5,  
99:4, 108:10, 173:9,  
181:1, 197:3

**Fares** <sup>[2]</sup> - 211:15,  
212:10

**Faron** <sup>[2]</sup> - 211:15,  
217:15

**Faron's** <sup>[1]</sup> - 217:20

**fashion** <sup>[1]</sup> - 117:12

**fast** <sup>[1]</sup> - 229:17

**father** <sup>[1]</sup> - 73:18

**faux** <sup>[22]</sup> - 4:9, 4:19,  
5:3, 5:7, 5:8, 9:10,  
9:11, 11:9, 11:10,  
11:14, 14:8, 14:10,  
15:1, 15:3, 16:13,  
17:19, 17:21, 21:9,  
21:10, 22:9, 22:11,  
23:18

**favor** <sup>[35]</sup> - 13:2,  
14:18, 25:6, 25:15,  
25:17, 29:19, 29:21,  
44:6, 44:8, 59:7,  
59:19, 60:1, 90:13,  
91:14, 91:20,  
101:17, 104:6,  
176:12, 186:7,  
187:1, 189:9, 191:4,  
193:7, 195:5, 209:2,  
209:12, 209:14,  
237:12, 256:1,  
256:13, 256:15,  
258:18, 258:21,  
266:2, 266:5

**favorably** <sup>[1]</sup> - 99:5

**favored** <sup>[2]</sup> - 166:9,  
166:12

**Fax** <sup>[1]</sup> - 1:20

**features** <sup>[2]</sup> - 120:8,

240:2

**February** <sup>[2]</sup> - 94:12,

227:20

**federal** <sup>[3]</sup> - 19:8,

36:20, 37:2

**feet** <sup>[68]</sup> - 5:19, 5:20,

5:21, 6:2, 6:5, 6:9,

7:18, 7:21, 9:1, 50:7,

50:11, 51:2, 57:21,

65:8, 65:9, 67:20,

101:5, 103:18,

108:10, 111:4,

111:5, 111:6, 117:5,

117:6, 117:10,

117:18, 118:1,

122:12, 124:6,

125:16, 142:1,

142:3, 149:5, 149:6,

150:1, 153:5,

168:13, 168:14,

173:11, 173:12,

181:15, 181:17,

181:21, 203:16,

214:3, 218:11,

218:15, 218:16,

225:20, 226:1,

233:1, 235:18,

236:10, 236:14,

236:15, 244:16,

245:13, 245:14,

260:13, 260:15,

260:17, 260:19,

261:7, 265:10,

265:11

**felt** <sup>[3]</sup> - 72:15, 82:18,

116:7

**fences** <sup>[1]</sup> - 198:10

**fever** <sup>[1]</sup> - 84:1

**few** <sup>[6]</sup> - 121:7, 224:5,

233:1, 239:6, 242:6,

249:21

**fiberglass** <sup>[5]</sup> - 15:9,

15:15, 15:16, 20:3,

37:21

**field** <sup>[1]</sup> - 252:19

**figuratively** <sup>[1]</sup> - 69:20

**figure** <sup>[1]</sup> - 100:12

**Figure** <sup>[1]</sup> - 147:18

**file** <sup>[23]</sup> - 3:17, 6:8,

7:16, 8:6, 10:21,

29:16, 32:7, 55:3,

62:3, 63:11, 63:16,

68:20, 69:1, 81:7,

92:13, 93:9, 96:4,  
 207:1, 222:17,  
 251:19, 255:18,  
 263:4  
**filed** <sup>[5]</sup> - 6:19, 104:2,  
 124:14, 242:5,  
 243:4  
**fill** <sup>[4]</sup> - 132:10,  
 172:16, 261:2,  
 261:4  
**filled** <sup>[2]</sup> - 132:16,  
 133:1  
**fine** <sup>[12]</sup> - 34:6, 57:14,  
 85:17, 94:11,  
 107:15, 147:10,  
 234:13, 234:15,  
 235:9, 253:1,  
 261:14, 261:16  
**Fine** <sup>[1]</sup> - 66:8  
**finish** <sup>[4]</sup> - 35:15,  
 114:19, 152:6,  
 178:12  
**finished** <sup>[2]</sup> - 117:18,  
 118:2  
**fire** <sup>[7]</sup> - 133:9, 134:4,  
 134:13, 136:9,  
 138:9, 138:11,  
 171:11  
**firewall** <sup>[6]</sup> - 106:6,  
 106:10, 123:19,  
 127:5, 135:8, 135:9  
**firm** <sup>[2]</sup> - 102:11,  
 210:10  
**first** <sup>[21]</sup> - 6:19, 13:16,  
 62:9, 83:19, 92:3,  
 93:2, 94:12, 104:3,  
 125:1, 125:8,  
 127:14, 131:6,  
 131:10, 147:21,  
 148:2, 148:12,  
 159:18, 196:15,  
 207:14, 231:1,  
 243:17  
**First** <sup>[4]</sup> - 3:8, 42:4,  
 61:10, 250:21  
**fish** <sup>[1]</sup> - 184:12  
**fit** <sup>[8]</sup> - 14:10, 14:19,  
 64:19, 74:7, 120:4,  
 151:20, 160:10,  
 189:15  
**fits** <sup>[1]</sup> - 117:11  
**Five** <sup>[12]</sup> - 25:17,  
 29:21, 44:8, 60:1,

101:17, 193:7,  
 195:5, 209:14,  
 218:15, 237:12,  
 258:21, 266:5  
**five** <sup>[15]</sup> - 8:16, 8:17,  
 14:6, 29:17, 50:7,  
 51:2, 73:16, 96:4,  
 120:9, 142:1,  
 218:16, 244:16,  
 245:14, 260:15  
**five-foot** <sup>[1]</sup> - 120:9  
**five-inch** <sup>[1]</sup> - 14:6  
**flat** <sup>[6]</sup> - 15:13, 16:2,  
 20:2, 35:15, 239:9  
**flexible** <sup>[1]</sup> - 168:5  
**flights** <sup>[1]</sup> - 126:13  
**flip** <sup>[1]</sup> - 63:19  
**flipped** <sup>[1]</sup> - 79:7  
**floor** <sup>[54]</sup> - 62:9,  
 62:14, 63:4, 64:2,  
 64:3, 64:9, 64:15,  
 65:16, 65:21, 66:11,  
 66:17, 66:18, 67:11,  
 67:12, 68:17, 72:3,  
 73:12, 73:14, 74:2,  
 74:19, 76:1, 76:2,  
 76:6, 76:9, 77:8,  
 79:20, 80:3, 80:13,  
 83:6, 84:7, 87:15,  
 88:11, 91:10, 91:19,  
 93:3, 98:20, 99:1,  
 120:9, 124:19,  
 125:1, 127:21,  
 129:16, 130:17,  
 131:5, 131:6, 132:5,  
 142:2, 142:4,  
 142:15, 145:21,  
 181:18, 207:14  
**floors** <sup>[1]</sup> - 62:10  
**flying** <sup>[2]</sup> - 211:10,  
 229:10  
**focus** <sup>[1]</sup> - 235:7  
**folder** <sup>[2]</sup> - 33:7, 33:10  
**follow** <sup>[1]</sup> - 136:15  
**following** <sup>[3]</sup> - 19:4,  
 36:17, 255:8  
**follows** <sup>[1]</sup> - 164:3  
**food** <sup>[1]</sup> - 229:17  
**foot** <sup>[9]</sup> - 49:1, 120:9,  
 146:1, 146:4,  
 168:15, 173:8,  
 173:10, 180:10,  
 182:1

**footage** <sup>[4]</sup> - 49:4,  
52:19, 103:17,  
117:21

**footnote** <sup>[1]</sup> - 18:20

**footprint** <sup>[5]</sup> - 50:4,  
63:3, 66:21, 85:13,  
206:6

**FOR** <sup>[1]</sup> - 1:3

**forced** <sup>[1]</sup> - 169:2

**Ford** <sup>[1]</sup> - 150:19

**FOREGOING**  
<sup>[1]</sup> - 269:19

**foregoing** <sup>[1]</sup> - 268:18

**foreseeable** <sup>[1]</sup> - 84:8

**forget** <sup>[2]</sup> - 51:6,  
150:20

**forgot** <sup>[1]</sup> - 240:11

**form** <sup>[8]</sup> - 52:14, 87:3,  
96:8, 105:11, 111:8,  
184:9, 190:1, 264:6

**forma** <sup>[2]</sup> - 18:20,  
36:14

**formal** <sup>[1]</sup> - 242:20

**forth** <sup>[9]</sup> - 20:17,  
32:18, 38:18, 63:19,  
104:18, 156:8,  
157:21, 160:6,  
269:9

**fortunate** <sup>[1]</sup> - 223:14

**fortunately** <sup>[1]</sup> - 16:16

**forward** <sup>[15]</sup> - 32:1,  
32:10, 32:19, 35:4,  
35:5, 61:6, 71:1,  
88:1, 89:10, 91:21,  
146:14, 157:20,  
159:17, 159:19,  
249:17

**forwarded** <sup>[1]</sup> - 56:17

**foul** <sup>[1]</sup> - 184:12

**foundation** <sup>[1]</sup> - 204:9

**founded** <sup>[1]</sup> - 87:11

**four** <sup>[14]</sup> - 6:5, 6:9,  
7:18, 7:21, 65:8,  
101:5, 125:16,  
146:1, 151:19,  
158:7, 158:8,  
158:12, 181:4,  
191:8

**fourth** <sup>[1]</sup> - 132:4

**frame** <sup>[2]</sup> - 94:5, 98:18

**frankly** <sup>[4]</sup> - 120:13,  
123:21, 142:16,  
152:21

**Frederick** <sup>[1]</sup> - 174:20  
**frequency** <sup>[1]</sup> - 223:3  
**Fresh** <sup>[2]</sup> - 27:6, 27:11  
**friendlier** <sup>[2]</sup> - 183:16,  
 185:5  
**friendly** <sup>[1]</sup> - 86:5  
**friends** <sup>[2]</sup> - 82:15,  
 85:7  
**front** <sup>[40]</sup> - 20:11,  
 79:20, 90:8, 103:15,  
 104:5, 112:16,  
 116:19, 120:11,  
 120:18, 125:16,  
 146:15, 146:16,  
 155:17, 157:11,  
 165:1, 171:21,  
 173:17, 173:19,  
 178:17, 183:14,  
 183:15, 183:20,  
 184:11, 186:12,  
 199:6, 211:19,  
 211:21, 212:18,  
 215:13, 215:17,  
 215:18, 220:3,  
 245:15, 248:20,  
 249:1, 250:1,  
 250:12, 260:12,  
 260:14  
**Front** <sup>[2]</sup> - 246:12,  
 246:14  
**Frontage** <sup>[1]</sup> - 226:5  
**frontage** <sup>[3]</sup> - 167:8,  
 225:19, 225:21  
**fronts** <sup>[1]</sup> - 250:10  
**full** <sup>[5]</sup> - 132:3, 141:10,  
 148:16, 153:6,  
 251:3  
**fully** <sup>[3]</sup> - 118:6, 133:7,  
 134:4  
**function** <sup>[2]</sup> - 52:14,  
 58:10  
**functional** <sup>[5]</sup> - 118:7,  
 152:2, 152:8,  
 153:12, 206:1  
**functionally** <sup>[1]</sup> - 70:4  
**functioning**  
<sup>[1]</sup> - 113:15  
**fundamentally**  
<sup>[1]</sup> - 118:4  
**funeral** <sup>[6]</sup> - 103:11,  
 103:20, 125:19,  
 145:15, 169:18,  
 180:17

**funny** <sup>[1]</sup> - 63:18  
**future** <sup>[4]</sup> - 50:20,  
 84:8, 87:19, 217:13

## G

**garage** <sup>[18]</sup> - 106:9,  
 126:8, 128:21,  
 129:1, 129:9,  
 129:10, 136:4,  
 140:14, 142:5,  
 169:8, 238:21,  
 239:2, 243:9,  
 243:12, 260:15,  
 261:8, 264:20,  
 265:4  
**garden** <sup>[4]</sup> - 131:14,  
 131:19, 131:21,  
 143:10  
**gas** <sup>[1]</sup> - 241:16  
**general** <sup>[2]</sup> - 85:8,  
 222:12  
**GENERAL** <sup>[1]</sup> - 1:6  
**generate** <sup>[1]</sup> - 208:4  
**generated** <sup>[5]</sup> - 24:3,  
 40:9, 69:6, 207:20,  
 208:7  
**generous** <sup>[1]</sup> - 180:3  
**geometry** <sup>[1]</sup> - 155:11  
**GETMAN** <sup>[2]</sup> - 249:19,  
 250:10  
**Getman** <sup>[1]</sup> - 249:19  
**GFA** <sup>[3]</sup> - 120:7,  
 141:20, 142:4  
**girl** <sup>[1]</sup> - 84:4  
**Given** <sup>[1]</sup> - 9:11  
**given** <sup>[6]</sup> - 74:5,  
 145:11, 152:11,  
 155:11, 243:20,  
 243:21  
**gladly** <sup>[2]</sup> - 42:10,  
 42:11  
**glass** <sup>[4]</sup> - 71:20,  
 199:8, 199:10,  
 215:13  
**glorified** <sup>[1]</sup> - 85:16  
**go-round** <sup>[1]</sup> - 139:4  
**goal** <sup>[1]</sup> - 64:9  
**God** <sup>[1]</sup> - 97:20  
**gonna** <sup>[4]</sup> - 197:20,  
 199:10, 201:9,  
 250:3  
**Gottberg** <sup>[2]</sup> - 174:19,  
 174:20

**GOTTBERG**

[1] - 174:19

**governed** [1] - 242:15

**grade** [1] - 132:1

**Grady** [1] - 1:16

**grant** [21] - 23:15,  
40:3, 41:15, 57:20,  
59:14, 109:12,  
109:13, 134:19,  
155:4, 174:17,  
175:3, 187:15,  
187:20, 188:6,  
188:11, 189:18,  
191:17, 207:12,  
256:20, 264:3,  
264:11

**granted** [12] - 39:18,  
59:1, 59:9, 155:1,  
165:21, 190:20,  
191:1, 192:3, 258:9,  
258:13, 265:7,  
265:20

**granting** [14] - 20:16,  
21:1, 21:14, 25:6,  
33:13, 38:17, 39:2,  
44:6, 59:19, 190:9,  
191:4, 191:10,  
258:18, 266:2

**grass** [2] - 245:4,  
245:5

**great** [6] - 47:2, 48:4,  
97:11, 104:6,  
256:18, 257:16

**Great** [1] - 92:7

**greater** [1] - 108:10

**greatest** [2] - 19:18,  
252:18

**green** [1] - 184:10

**Green** [25] - 1:14, 3:5,  
25:19, 27:4, 30:2,  
31:4, 44:10, 45:4,  
46:4, 60:3, 61:4,  
101:19, 102:4,  
189:3, 193:11,  
194:4, 195:10,  
196:4, 209:16,  
210:4, 237:14,  
238:4, 259:2, 260:4,  
266:8

**GREEN** [32] - 14:15,  
53:3, 54:2, 54:10,  
63:17, 68:5, 68:9,  
74:17, 81:18, 100:1,

135:7, 135:15,  
 135:21, 161:7,  
 161:11, 189:4,  
 201:21, 202:3,  
 202:7, 218:17,  
 219:17, 220:2,  
 225:3, 225:7, 225:9,  
 225:12, 227:13,  
 233:2, 233:9, 247:7,  
 247:13, 256:13

**grew** <sup>[2]</sup> - 73:14, 76:1

**ground** <sup>[2]</sup> - 50:5,  
 142:4

**growing** <sup>[2]</sup> - 82:6,  
 92:21

**grown** <sup>[1]</sup> - 80:9

**Grozier** <sup>[2]</sup> - 101:3,  
 178:15

**guess** <sup>[16]</sup> - 33:12,  
 41:20, 47:19, 50:13,  
 50:16, 50:17, 74:17,  
 98:3, 113:3, 119:7,  
 139:15, 149:20,  
 203:8, 203:14,  
 233:7

**Gurney** <sup>[1]</sup> - 171:3

**Gus** <sup>[2]</sup> - 57:8, 98:15

**Gus's** <sup>[1]</sup> - 73:10

**gutter** <sup>[1]</sup> - 198:19

**guy** <sup>[1]</sup> - 84:5

**guys** <sup>[1]</sup> - 91:14

**gym** <sup>[2]</sup> - 128:9,  
 128:16

## H

**H-e-y-v-a-r-t**

<sup>[1]</sup> - 251:1

**H3** <sup>[1]</sup> - 149:1

**habitable** <sup>[1]</sup> - 145:15

**Hage** <sup>[1]</sup> - 255:15

**HAGE** <sup>[1]</sup> - 255:15

**hair** <sup>[1]</sup> - 219:2

**half** <sup>[5]</sup> - 65:9, 168:14,  
 177:12, 242:11,  
 260:17

**hall** <sup>[1]</sup> - 67:18

**hallway** <sup>[5]</sup> - 51:12,  
 51:14, 85:16, 85:20

**hand** <sup>[5]</sup> - 70:16,  
 70:18, 71:3, 87:11,  
 269:11

**hands** <sup>[10]</sup> - 25:16,  
 29:20, 44:7, 59:21,

101:16, 193:6,  
 195:4, 209:13,  
 258:20, 266:4  
**Hands** <sup>[1]</sup> - 237:11  
**happily** <sup>[1]</sup> - 165:14  
**happy** <sup>[5]</sup> - 9:20,  
 78:14, 82:16, 100:4,  
 261:16  
**hard** <sup>[13]</sup> - 74:8, 80:16,  
 80:18, 99:14, 101:9,  
 121:12, 151:1,  
 180:9, 214:11,  
 218:19, 219:13,  
 222:4, 245:3  
**harder** <sup>[1]</sup> - 146:20  
**hardly** <sup>[1]</sup> - 169:9  
**hardship** <sup>[29]</sup> - 58:7,  
 58:12, 58:19, 65:14,  
 66:10, 77:7, 90:15,  
 91:6, 109:11, 112:6,  
 114:13, 117:1,  
 119:9, 122:3, 124:8,  
 162:1, 162:16,  
 165:20, 180:7,  
 187:17, 190:5,  
 190:13, 191:14,  
 239:3, 257:11,  
 257:20, 258:2,  
 264:16, 265:3  
**hardships** <sup>[1]</sup> - 192:2  
**hardy** <sup>[1]</sup> - 239:19  
**harmonious**  
<sup>[1]</sup> - 92:19  
**harsh** <sup>[1]</sup> - 227:5  
**Harvard** <sup>[1]</sup> - 210:12  
**hate** <sup>[2]</sup> - 33:15, 72:20  
**hazard** <sup>[6]</sup> - 24:4,  
 24:13, 40:11, 40:20,  
 208:1, 208:16  
**head** <sup>[7]</sup> - 118:14,  
 142:8, 147:21,  
 148:1, 148:11,  
 157:14, 159:18  
**heads** <sup>[1]</sup> - 4:15  
**health** <sup>[4]</sup> - 24:14,  
 40:21, 41:6, 208:17  
**hear** <sup>[18]</sup> - 3:8, 27:10,  
 31:6, 45:5, 78:12,  
 84:2, 84:10, 96:16,  
 102:6, 194:6, 196:6,  
 210:6, 221:15,  
 223:10, 227:7,  
 228:7, 238:6, 260:6

**heard** <sup>[8]</sup> - 28:17,  
 36:6, 73:15, 90:18,  
 222:3, 228:1, 231:6,  
 231:8

**HEARING** <sup>[1]</sup> - 1:6

**hearing** <sup>[9]</sup> - 29:18,  
 33:1, 36:2, 86:20,  
 89:3, 96:6, 214:10,  
 228:12, 228:16

**hearings** <sup>[3]</sup> - 144:18,  
 168:8, 187:15

**heart** <sup>[2]</sup> - 110:19,  
 121:16

**heat** <sup>[3]</sup> - 201:6, 201:9,  
 201:17

**HEATHER** <sup>[3]</sup> - 163:3,  
 163:9, 166:16

**Heather** <sup>[2]</sup> - 163:7,  
 163:10

**height** <sup>[12]</sup> - 6:9, 8:20,  
 9:4, 9:9, 72:15,  
 75:16, 90:9, 91:11,  
 124:3, 124:5,  
 181:20, 248:9

**heights** <sup>[1]</sup> - 105:17

**helicopter** <sup>[1]</sup> - 73:4

**help** <sup>[1]</sup> - 82:10

**helps** <sup>[1]</sup> - 121:5

**Hence** <sup>[1]</sup> - 246:3

**hereby** <sup>[2]</sup> - 255:7,  
 268:19

**hereinbefore**  
<sup>[1]</sup> - 269:9

**hereunto** <sup>[1]</sup> - 269:11

**hesitant** <sup>[1]</sup> - 94:14

**HEYVART** <sup>[1]</sup> - 250:19

**Heyvart** <sup>[2]</sup> - 250:20,  
 251:1

**HEZEKIAH**  
<sup>[16]</sup> - 238:10, 238:11,  
 238:16, 244:15,  
 246:14, 247:12,  
 247:16, 248:12,  
 248:16, 248:19,  
 249:3, 249:10,  
 251:13, 253:13,  
 253:19, 257:6

**Hezekiah** <sup>[1]</sup> - 238:10

**Hi** <sup>[1]</sup> - 260:7

**Hickey's** <sup>[1]</sup> - 169:20

**Hickeys** <sup>[2]</sup> - 129:12,  
 169:15

**high** <sup>[10]</sup> - 65:8, 65:9,

66:17, 87:9, 172:7,  
 172:11, 172:13,  
 203:16, 219:10,  
 219:11  
**High** <sup>[1]</sup> - 178:21  
**higher** <sup>[5]</sup> - 7:18, 8:16,  
 8:18, 66:19, 233:4  
**highlights** <sup>[1]</sup> - 72:13  
**highly** <sup>[1]</sup> - 154:6  
**hindrance** <sup>[1]</sup> - 168:19  
**hint** <sup>[1]</sup> - 97:3  
**hip** <sup>[1]</sup> - 101:6  
**hipped** <sup>[1]</sup> - 101:4  
**Historic** <sup>[1]</sup> - 261:12  
**historic** <sup>[1]</sup> - 47:13  
**Historical**  
<sup>[2]</sup> - 102:15, 261:13  
**historically**  
<sup>[2]</sup> - 103:4, 142:14  
**history** <sup>[1]</sup> - 187:9  
**hit** <sup>[1]</sup> - 100:10  
**HOFFMAN** <sup>[3]</sup> - 163:3,  
 163:9, 166:16  
**Hoffman** <sup>[1]</sup> - 163:10  
**hold** <sup>[1]</sup> - 69:8  
**holding** <sup>[2]</sup> - 102:21,  
 218:5  
**home** <sup>[12]</sup> - 56:6,  
 80:14, 82:4, 103:11,  
 103:20, 103:21,  
 125:20, 145:15,  
 180:18, 190:7,  
 240:15  
**homeowner**  
<sup>[2]</sup> - 157:3, 258:5  
**Homeowner's**  
<sup>[1]</sup> - 255:6  
**Homeowners**  
<sup>[1]</sup> - 255:1  
**homes** <sup>[2]</sup> - 117:9,  
 122:1  
**Honda** <sup>[1]</sup> - 149:13  
**honest** <sup>[2]</sup> - 99:13,  
 219:8  
**honestly** <sup>[1]</sup> - 149:20  
**hope** <sup>[5]</sup> - 92:2,  
 144:18, 145:10,  
 179:14, 180:13  
**hoped** <sup>[3]</sup> - 82:5,  
 82:21  
**hopefully** <sup>[2]</sup> - 86:11,  
 141:14  
**hoping** <sup>[1]</sup> - 200:14

**host** <sup>[1]</sup> - 192:1  
**hot** <sup>[1]</sup> - 4:20  
**Hours** <sup>[1]</sup> - 230:12  
**hours** <sup>[2]</sup> - 83:13,  
 178:18  
**house** <sup>[87]</sup> - 51:21,  
 52:6, 52:20, 53:17,  
 54:5, 54:15, 56:3,  
 56:11, 57:16, 58:11,  
 58:13, 58:20, 62:1,  
 62:5, 62:8, 62:11,  
 62:12, 62:15, 62:19,  
 64:5, 67:4, 69:5,  
 72:1, 72:18, 73:2,  
 73:20, 75:5, 76:1,  
 76:15, 76:21, 77:3,  
 80:6, 80:11, 82:3,  
 82:9, 82:16, 83:18,  
 86:10, 90:1, 97:21,  
 98:1, 98:14, 98:16,  
 98:19, 99:8, 100:5,  
 104:9, 107:4, 108:7,  
 108:12, 109:6,  
 111:10, 111:11,  
 113:16, 114:11,  
 115:4, 118:14,  
 121:6, 129:14,  
 142:8, 173:1,  
 173:14, 173:20,  
 174:4, 185:10,  
 185:21, 186:1,  
 186:3, 197:21,  
 239:18, 239:20,  
 240:2, 240:4, 240:5,  
 240:8, 244:11,  
 247:9, 260:10,  
 260:18, 260:20,  
 262:2, 264:20,  
 265:5, 265:14,  
 265:15  
**households**  
<sup>[3]</sup> - 153:15, 154:13,  
 154:14  
**houses** <sup>[10]</sup> - 68:15,  
 91:13, 92:20,  
 116:10, 117:3,  
 117:4, 138:1,  
 240:21, 243:12,  
 249:21  
**housing** <sup>[1]</sup> - 180:12  
**Howland** <sup>[1]</sup> - 175:6  
**huge** <sup>[2]</sup> - 91:5, 117:5  
**human** <sup>[1]</sup> - 89:20

**Humm** <sup>[1]</sup> - 149:1  
**Hummer** <sup>[4]</sup> - 150:19,  
 151:6, 151:9,  
 151:11  
**hundreds** <sup>[1]</sup> - 49:12  
**Hurley** <sup>[3]</sup> - 163:10,  
 178:2, 178:6  
**Huron** <sup>[33]</sup> - 102:6,  
 102:19, 103:9,  
 125:7, 126:11,  
 145:2, 145:4,  
 148:17, 155:21,  
 156:21, 157:5,  
 157:6, 157:8,  
 158:17, 162:21,  
 163:15, 163:18,  
 164:7, 164:18,  
 164:21, 165:1,  
 165:3, 165:5, 165:6,  
 167:20, 170:14,  
 170:20, 177:11,  
 177:13, 177:18,  
 177:19, 194:6  
**husband** <sup>[1]</sup> - 27:19  
**hybrid** <sup>[1]</sup> - 184:11

## I

**i.e** <sup>[1]</sup> - 119:2  
**idea** <sup>[6]</sup> - 5:6, 70:5,  
 75:13, 97:2, 152:11,  
 199:12  
**ideally** <sup>[1]</sup> - 199:7  
**identical** <sup>[1]</sup> - 54:8  
**identifiable**  
<sup>[3]</sup> - 214:6, 217:17,  
 222:12  
**identifies** <sup>[1]</sup> - 218:3  
**identify** <sup>[3]</sup> - 217:5,  
 220:14, 249:18  
**Immanently**  
<sup>[1]</sup> - 64:12  
**immediate** <sup>[6]</sup> - 70:13,  
 70:16, 143:9, 162:8,  
 179:14, 179:17  
**immediately**  
<sup>[2]</sup> - 71:7, 167:20  
**impact** <sup>[21]</sup> - 18:1,  
 18:4, 19:13, 19:18,  
 21:12, 22:12, 22:16,  
 37:3, 37:9, 49:15,  
 88:16, 97:17,  
 119:18, 121:8,  
 162:13, 240:7,

240:17, 241:19,  
 243:1, 249:10,  
 252:18  
**impacted** <sup>[2]</sup> - 243:3,  
 252:16  
**impair** <sup>[3]</sup> - 24:21,  
 41:8, 208:21  
**impaired** <sup>[1]</sup> - 226:20  
**important** <sup>[5]</sup> - 93:5,  
 117:17, 241:4,  
 241:6, 252:8  
**impose** <sup>[1]</sup> - 198:8  
**imposed** <sup>[4]</sup> - 19:6,  
 19:11, 36:19, 37:2  
**imposes** <sup>[1]</sup> - 21:2  
**imposing** <sup>[1]</sup> - 143:14  
**impossible**  
<sup>[1]</sup> - 184:19  
**impressed** <sup>[1]</sup> - 171:9  
**improper** <sup>[1]</sup> - 42:5  
**improved** <sup>[3]</sup> - 4:6,  
 75:8, 187:10  
**improvement**  
<sup>[2]</sup> - 173:2, 189:13  
**improvements**  
<sup>[3]</sup> - 146:12, 170:8,  
 170:9  
**improving** <sup>[2]</sup> - 35:6,  
 264:17  
**IN** <sup>[1]</sup> - 269:11  
**in-fill** <sup>[1]</sup> - 172:16  
**in-filled** <sup>[1]</sup> - 132:16  
**in-kind** <sup>[2]</sup> - 23:16,  
 40:3  
**inadequate**  
<sup>[2]</sup> - 210:19, 215:4  
**inadvertently**  
<sup>[1]</sup> - 212:20  
**Inaudible)** <sup>[2]</sup> - 81:10,  
 230:17  
**inaudible)** <sup>[1]</sup> - 133:17  
**INC** <sup>[1]</sup> - 1:19  
**incentive** <sup>[2]</sup> - 154:2,  
 226:21  
**inch** <sup>[2]</sup> - 6:3, 14:6  
**inches** <sup>[9]</sup> - 5:20, 5:21,  
 8:16, 8:18, 149:6,  
 168:15, 244:16,  
 260:17  
**inclement** <sup>[1]</sup> - 265:16  
**inclined** <sup>[1]</sup> - 15:12  
**included** <sup>[1]</sup> - 122:6  
**including** <sup>[4]</sup> - 90:11,

164:7, 165:13,  
243:2

**incompatible**

[1] - 192:6

**inconsequential**

[1] - 256:19

**inconsistency**

[2] - 34:7, 34:9

**incorporate**

[1] - 33:15

**incorporating**

[1] - 23:20

**incorrect** [1] - 119:4

**increase** [6] - 52:8,  
67:6, 100:19, 155:6,  
173:7, 173:8

**increasing** [2] - 93:4,  
99:1

**independently**

[1] - 87:6

**indicate** [1] - 267:13

**indicates** [1] - 87:9

**indication** [1] - 246:20

**individual** [1] - 216:8

**indulgence**

[1] - 231:16

**Industrial** [1] - 20:5

**Industry** [2] - 20:14,  
20:15

**inflates** [1] - 67:1

**informal** [1] - 242:12

**information**

[5] - 111:2, 147:18,  
221:8, 223:2, 229:6

**inherent** [1] - 58:19

**initial** [1] - 71:15

**initialed** [3] - 39:21,  
207:16, 257:2

**innumerable**

[1] - 221:21

**insert** [1] - 33:7

**inside** [10] - 5:7, 8:12,  
21:9, 52:19, 131:7,

225:14, 225:15,

233:13, 235:1,

261:7

**inspection** [1] - 211:6

**Inspectional**

[2] - 267:4, 267:9

**Inspector** [1] - 185:13

**installation** [5] - 18:5,  
19:11, 22:16, 23:16,  
39:9

**installed** <sup>[1]</sup> - 4:8  
**instance** <sup>[2]</sup> - 78:18,  
 221:14  
**instances** <sup>[1]</sup> - 224:19  
**instead** <sup>[2]</sup> - 5:6, 9:21  
**INSTRUCTIONS**  
<sup>[3]</sup> - 267:1, 267:12,  
 268:4  
**instructions**  
<sup>[1]</sup> - 268:7  
**integrity** <sup>[3]</sup> - 25:1,  
 41:9, 208:21  
**intended** <sup>[2]</sup> - 54:7,  
 201:5  
**intent** <sup>[7]</sup> - 25:3,  
 41:11, 59:10, 191:2,  
 192:4, 258:14,  
 266:1  
**intention** <sup>[2]</sup> - 184:17,  
 189:2  
**interest** <sup>[2]</sup> - 33:21,  
 34:21  
**interested** <sup>[7]</sup> - 27:12,  
 45:6, 68:13, 70:11,  
 87:12, 224:13,  
 269:7  
**interfering**  
<sup>[1]</sup> - 233:11  
**interior** <sup>[2]</sup> - 58:11,  
 132:5  
**internal** <sup>[3]</sup> - 16:12,  
 100:21, 109:14  
**interrupt** <sup>[2]</sup> - 109:4,  
 114:7  
**intrigued** <sup>[1]</sup> - 205:6  
**introduce** <sup>[4]</sup> - 46:7,  
 61:7, 61:15, 238:8  
**introduced** <sup>[1]</sup> - 144:7  
**invent** <sup>[1]</sup> - 117:21  
**involve** <sup>[6]</sup> - 58:6,  
 120:6, 190:4,  
 191:13, 257:10,  
 264:15  
**involved** <sup>[4]</sup> - 103:3,  
 104:4, 175:18,  
 254:11  
**isolated** <sup>[6]</sup> - 212:2,  
 213:12, 224:6,  
 224:7, 224:19  
**issue** <sup>[19]</sup> - 64:3,  
 72:12, 75:21, 88:3,  
 110:15, 137:13,  
 138:18, 139:2,

141:17, 145:1,  
 168:7, 169:9,  
 172:21, 180:6,  
 186:18, 197:16,  
 210:17, 210:20,  
 241:5  
**issues** <sup>[6]</sup> - 48:21,  
 63:1, 64:14, 81:3,  
 141:7, 152:12  
**iteration** <sup>[1]</sup> - 127:4  
**iterations** <sup>[1]</sup> - 144:16  
**itself** <sup>[12]</sup> - 8:11, 9:4,  
 15:16, 16:16, 21:11,  
 80:11, 122:12,  
 127:7, 180:8, 230:9,  
 267:15, 268:6

## J

**J.F.K** <sup>[18]</sup> - 210:6,  
 211:16, 211:20,  
 215:12, 215:14,  
 215:19, 216:10,  
 216:11, 216:15,  
 217:16, 218:21,  
 225:16, 232:2,  
 232:11, 232:12,  
 235:1, 235:16,  
 236:14  
**Jackie** <sup>[1]</sup> - 35:21  
**JACKIE** <sup>[1]</sup> - 6:13  
**JAMES** <sup>[73]</sup> - 102:8,  
 105:13, 107:18,  
 108:4, 108:18,  
 108:21, 109:7,  
 110:4, 112:21,  
 113:8, 114:3,  
 114:20, 115:17,  
 118:9, 119:3,  
 123:10, 123:15,  
 124:18, 125:2,  
 125:5, 125:11,  
 128:20, 129:2,  
 129:7, 131:13,  
 131:17, 132:2,  
 132:15, 133:6,  
 134:15, 135:18,  
 136:1, 137:9, 138:5,  
 138:20, 139:10,  
 141:5, 141:16,  
 144:1, 144:4, 146:8,  
 146:21, 147:6,  
 147:11, 152:14,  
 154:5, 155:10,

155:20, 156:2,  
 156:11, 156:19,  
 158:11, 158:16,  
 159:1, 159:7,  
 159:11, 161:3,  
 161:21, 166:14,  
 175:12, 175:17,  
 175:21, 176:4,  
 176:8, 176:13,  
 176:17, 178:1,  
 179:6, 179:13,  
 180:2, 193:12,  
 194:7, 195:7

**James** <sup>[1]</sup> - 102:10

**JANET** <sup>[32]</sup> - 14:15,  
 53:3, 54:2, 54:10,  
 63:17, 68:5, 68:9,  
 74:17, 81:18, 100:1,  
 135:7, 135:15,  
 135:21, 161:7,  
 161:11, 189:4,  
 201:21, 202:3,  
 202:7, 218:17,  
 219:17, 220:2,  
 225:3, 225:7, 225:9,  
 225:12, 227:13,  
 233:2, 233:9, 247:7,  
 247:13, 256:13

**Janet** <sup>[16]</sup> - 1:14, 3:4,  
 27:3, 29:3, 31:4,  
 45:4, 46:4, 54:1,  
 55:17, 61:4, 102:4,  
 194:4, 196:4, 210:4,  
 238:4, 260:4

**January** <sup>[27]</sup> - 28:12,  
 28:14, 29:8, 29:11,  
 29:17, 84:17, 93:12,  
 93:14, 93:16, 94:2,  
 94:9, 94:11, 94:15,  
 95:3, 95:14, 95:19,  
 96:1, 96:5, 96:15,  
 96:16, 96:19, 96:21,  
 101:15, 228:19,  
 228:21, 231:1

**job** <sup>[1]</sup> - 121:4

**JOHN** <sup>[20]</sup> - 46:11,  
 47:8, 47:12, 48:1,  
 48:5, 49:18, 50:8,  
 50:17, 51:5, 51:9,  
 51:13, 51:18, 52:7,  
 52:16, 52:21, 53:4,  
 54:9, 54:12, 57:4,  
 60:5

**John** <sup>[1]</sup> - 46:11  
**Judging** <sup>[1]</sup> - 233:3  
**judgment** <sup>[1]</sup> - 87:2  
**June** <sup>[1]</sup> - 242:21  
**jurisdiction** <sup>[3]</sup> - 19:8,  
 36:21, 59:14

## K

**keep** <sup>[6]</sup> - 12:7, 72:7,  
 84:18, 85:13, 89:20,  
 107:20  
**keeping** <sup>[4]</sup> - 5:6,  
 75:15, 176:2, 249:6  
**keeps** <sup>[1]</sup> - 72:10  
**kept** <sup>[1]</sup> - 101:6  
**KERI** <sup>[23]</sup> - 147:5,  
 147:13, 147:14,  
 149:7, 149:12,  
 149:17, 150:2,  
 150:6, 150:10,  
 150:17, 151:5,  
 151:10, 151:16,  
 152:4, 155:19,  
 156:1, 156:7,  
 156:18, 157:17,  
 158:8, 158:15,  
 159:15, 160:2  
**Keri** <sup>[1]</sup> - 147:13  
**kid** <sup>[1]</sup> - 187:5  
**kids** <sup>[6]</sup> - 73:11, 73:13,  
 76:6, 83:5, 204:13,  
 205:16  
**kids'** <sup>[1]</sup> - 201:15  
**kind** <sup>[19]</sup> - 13:1, 13:12,  
 23:16, 40:3, 78:8,  
 82:20, 85:3, 98:8,  
 98:12, 124:7, 149:9,  
 149:10, 150:14,  
 150:15, 150:21,  
 192:13, 197:19,  
 201:4, 256:4  
**kitchen** <sup>[8]</sup> - 48:7,  
 51:16, 51:20, 53:13,  
 58:2, 79:2, 79:6,  
 79:18  
**knee** <sup>[1]</sup> - 65:8  
**knowing** <sup>[1]</sup> - 148:4  
**knowledge**  
<sup>[2]</sup> - 226:10, 269:10  
**known** <sup>[6]</sup> - 89:13,  
 102:20, 220:7,  
 220:12, 220:15,  
 220:20

**knows** <sup>[2]</sup> - 172:9,  
229:13

## L

**L-a-f-r-e-n-i-e-r-e**

<sup>[1]</sup> - 46:13

**L-o-r-t-i-e** <sup>[1]</sup> - 61:19

**label** <sup>[1]</sup> - 110:8

**labeled** <sup>[1]</sup> - 128:17

**labels** <sup>[1]</sup> - 79:10

**lack** <sup>[3]</sup> - 28:5, 170:10,  
191:17

**ladder** <sup>[2]</sup> - 136:9,  
136:19

**LAFRENIERE**

<sup>[20]</sup> - 46:11, 47:8,  
47:12, 48:1, 48:5,  
49:18, 50:8, 50:17,  
51:5, 51:9, 51:13,  
51:18, 52:7, 52:16,  
52:21, 53:4, 54:9,  
54:12, 57:4, 60:5

**Lafreniere** <sup>[2]</sup> - 46:12

**laid** <sup>[1]</sup> - 77:2

**Lakeview** <sup>[1]</sup> - 178:15

**landing** <sup>[4]</sup> - 130:2,  
262:11, 262:12,  
264:4

**landlord** <sup>[3]</sup> - 213:2,  
213:7, 222:21

**landscaping**

<sup>[1]</sup> - 143:5

**Lane** <sup>[2]</sup> - 27:7, 27:11

**lane** <sup>[1]</sup> - 157:10

**language** <sup>[1]</sup> - 34:8

**large** <sup>[13]</sup> - 5:5, 56:10,  
62:15, 63:2, 111:3,  
117:4, 117:9, 150:8,  
150:19, 150:20,  
150:21, 165:19,  
183:4

**largely** <sup>[2]</sup> - 144:2,  
145:14

**larger** <sup>[8]</sup> - 4:14, 6:21,  
9:16, 16:16, 113:12,  
115:6, 149:16,  
150:8

**LARRY** <sup>[3]</sup> - 229:6,  
230:20, 231:2

**last** <sup>[13]</sup> - 11:19, 46:9,  
94:15, 102:14,  
127:4, 139:3,  
147:14, 153:16,

158:10, 164:14,  
 196:15, 238:8,  
 262:5  
**Last** <sup>[2]</sup> - 61:11, 251:1  
**late** <sup>[1]</sup> - 80:7  
**Law** <sup>[8]</sup> - 66:3, 66:4,  
 110:3, 114:10,  
 115:9, 115:10,  
 192:1, 192:5  
**law** <sup>[4]</sup> - 102:11,  
 166:9, 210:10,  
 223:7  
**Laws** <sup>[1]</sup> - 229:16  
**Lawson** <sup>[1]</sup> - 269:4  
**lawyer** <sup>[1]</sup> - 242:20  
**lawyers** <sup>[1]</sup> - 253:17  
**layout** <sup>[8]</sup> - 63:13,  
 98:19, 119:21,  
 123:6, 123:8, 132:5,  
 139:9, 147:3  
**lead** <sup>[1]</sup> - 138:12  
**leader** <sup>[1]</sup> - 198:20  
**Leah** <sup>[2]</sup> - 61:18, 89:13  
**LEAH** <sup>[9]</sup> - 61:18,  
 64:12, 83:2, 96:18,  
 97:1, 97:13, 99:7,  
 99:16, 99:20  
**leakage** <sup>[1]</sup> - 203:10  
**learned** <sup>[1]</sup> - 136:2  
**least** <sup>[11]</sup> - 34:4,  
 54:14, 106:7,  
 143:14, 166:9,  
 183:1, 190:10,  
 220:12, 223:6,  
 240:8, 255:5  
**leave** <sup>[5]</sup> - 67:3, 86:2,  
 89:18, 203:11,  
 255:17  
**leaves** <sup>[1]</sup> - 175:8  
**leaving** <sup>[1]</sup> - 93:1  
**led** <sup>[1]</sup> - 138:9  
**left** <sup>[5]</sup> - 70:16, 79:10,  
 112:12, 143:9,  
 157:18  
**left-hand** <sup>[1]</sup> - 70:16  
**legal** <sup>[2]</sup> - 253:17,  
 254:6  
**legally** <sup>[1]</sup> - 245:5  
**legible** <sup>[1]</sup> - 214:6  
**length** <sup>[2]</sup> - 149:5,  
 220:13  
**LEONARDI**  
<sup>[19]</sup> - 196:10, 196:14,

196:18, 196:21,  
 198:5, 198:9, 199:4,  
 199:15, 200:3,  
 200:10, 200:20,  
 201:8, 201:19,  
 202:1, 202:9,  
 203:15, 206:3,  
 206:7

**Leonardi** <sup>[1]</sup> - 196:10

**less** <sup>[10]</sup> - 50:10,  
 97:17, 165:7, 167:8,  
 168:13, 168:14,  
 188:5, 228:4,  
 254:11, 260:15

**Less** <sup>[1]</sup> - 249:10

**letter** <sup>[17]</sup> - 10:9,  
 10:10, 21:19, 23:20,  
 32:7, 35:17, 41:18,  
 81:7, 81:17, 81:21,  
 163:4, 163:13,  
 163:21, 164:1,  
 164:5, 164:13,  
 175:14

**letters** <sup>[9]</sup> - 10:21,  
 53:19, 92:13,  
 174:13, 206:21,  
 253:21, 254:3,  
 254:5, 258:11

**level** <sup>[9]</sup> - 125:17,  
 130:6, 131:14,  
 131:19, 131:21,  
 135:14, 142:16,  
 219:8, 219:16

**Lexus** <sup>[4]</sup> - 150:8,  
 150:10, 151:18,  
 151:19

**license** <sup>[1]</sup> - 36:19

**License** <sup>[1]</sup> - 269:15

**licensed** <sup>[1]</sup> - 19:7

**light** <sup>[4]</sup> - 52:6, 144:8,  
 144:13, 202:10

**likelihood** <sup>[1]</sup> - 155:6

**likely** <sup>[3]</sup> - 84:5, 94:2,  
 165:12

**Lim** <sup>[5]</sup> - 123:11,  
 124:12, 138:12,  
 145:18, 180:8

**LIM** <sup>[48]</sup> - 125:7,  
 125:13, 125:15,  
 126:5, 126:9,  
 126:14, 127:2,  
 127:15, 127:19,  
 128:2, 128:5, 128:8,

129:1, 129:5,  
 129:10, 129:15,  
 130:15, 130:18,  
 131:3, 131:7,  
 131:12, 132:4,  
 132:21, 133:12,  
 133:20, 134:3,  
 134:17, 134:21,  
 135:12, 136:7,  
 136:17, 136:21,  
 137:3, 138:19,  
 138:21, 139:16,  
 139:20, 140:4,  
 140:10, 140:18,  
 143:21, 144:3,  
 145:20, 146:2,  
 146:5, 146:9,  
 160:17, 160:19  
**limit** <sup>[1]</sup> - 250:3  
**limitations** <sup>[4]</sup> - 19:6,  
 19:10, 36:19, 37:2  
**limited** <sup>[2]</sup> - 58:10,  
 142:10  
**LINDA** <sup>[4]</sup> - 61:16,  
 81:10, 82:1, 94:19  
**Linda** <sup>[5]</sup> - 61:16,  
 81:8, 81:13, 89:13,  
 92:20  
**Linda's** <sup>[2]</sup> - 85:4, 93:6  
**LINE** <sup>[1]</sup> - 268:8  
**line** <sup>[13]</sup> - 52:10,  
 118:8, 121:17,  
 133:7, 183:21,  
 214:2, 214:4,  
 244:17, 245:14,  
 245:15, 249:21,  
 250:13, 260:16  
**lipstick** <sup>[1]</sup> - 74:15  
**listen** <sup>[1]</sup> - 165:14  
**listening** <sup>[1]</sup> - 166:3  
**literal** <sup>[5]</sup> - 58:4,  
 190:2, 191:12,  
 257:8, 264:13  
**literally** <sup>[4]</sup> - 33:6,  
 69:20, 121:17,  
 130:10  
**live** <sup>[28]</sup> - 55:5, 55:19,  
 56:9, 61:14, 61:17,  
 64:14, 65:15, 76:16,  
 85:8, 86:3, 100:2,  
 116:18, 117:6,  
 117:7, 163:10,  
 163:14, 167:20,

170:20, 174:3,  
 177:11, 177:13,  
 177:18, 177:21,  
 179:2, 179:4,  
 249:20, 250:9,  
 251:1  
**liveable** <sup>[1]</sup> - 49:14  
**lived** <sup>[2]</sup> - 100:2,  
 238:13  
**lives** <sup>[1]</sup> - 153:19  
**living** <sup>[16]</sup> - 47:20,  
 48:9, 51:10, 51:16,  
 82:2, 83:10, 100:19,  
 128:1, 131:1, 131:2,  
 142:5, 169:20,  
 199:20, 201:18,  
 203:2, 203:3  
**LLC** <sup>[1]</sup> - 163:19  
**lobby** <sup>[2]</sup> - 225:15,  
 235:2  
**locate** <sup>[1]</sup> - 258:6  
**located** <sup>[11]</sup> - 4:10,  
 102:12, 103:7,  
 140:4, 214:4, 218:9,  
 221:4, 221:9,  
 225:20, 245:12,  
 257:21  
**location** <sup>[25]</sup> - 24:19,  
 35:6, 41:4, 47:18,  
 58:1, 63:18, 162:7,  
 164:19, 213:21,  
 216:7, 216:21,  
 221:6, 223:1,  
 225:21, 232:1,  
 232:7, 232:10,  
 232:13, 232:19,  
 239:12, 240:7,  
 240:18, 241:1,  
 258:4, 265:4  
**locations** <sup>[4]</sup> - 212:18,  
 232:15, 235:11,  
 241:18  
**look** <sup>[31]</sup> - 9:13, 11:18,  
 12:5, 12:8, 15:16,  
 69:7, 86:18, 91:12,  
 92:3, 97:19, 99:5,  
 99:11, 100:4,  
 101:12, 116:13,  
 123:17, 136:17,  
 139:12, 143:1,  
 143:6, 143:19,  
 156:12, 174:5,  
 199:9, 229:7,

236:20, 241:14,  
 250:11, 252:14,  
 252:18  
**looked** <sup>[12]</sup> - 48:20,  
 53:13, 72:7, 75:15,  
 82:11, 84:13, 104:1,  
 111:9, 147:20,  
 155:13, 155:18,  
 156:5  
**looking** <sup>[15]</sup> - 13:7,  
 15:10, 17:2, 51:7,  
 53:11, 74:16, 97:3,  
 148:20, 149:1,  
 160:9, 161:1, 161:2,  
 165:9, 201:1,  
 204:10  
**looks** <sup>[13]</sup> - 9:14, 12:6,  
 12:15, 54:14, 57:11,  
 72:18, 73:2, 74:12,  
 79:6, 88:12, 97:13,  
 217:11, 250:14  
**LORTIE** <sup>[9]</sup> - 61:18,  
 64:12, 83:2, 96:18,  
 97:1, 97:13, 99:7,  
 99:16, 99:20  
**Lortie** <sup>[1]</sup> - 61:18  
**loss** <sup>[1]</sup> - 76:19  
**lottery** <sup>[2]</sup> - 84:17,  
 84:19  
**love** <sup>[10]</sup> - 82:1, 82:2,  
 84:20, 84:21, 85:6,  
 86:1, 86:9, 197:16  
**low** <sup>[4]</sup> - 16:7, 31:20,  
 35:7, 64:6  
**Low** <sup>[1]</sup> - 16:8  
**lower** <sup>[4]</sup> - 72:8, 72:11,  
 76:5, 135:14  
**lowering** <sup>[1]</sup> - 75:13  
**luck** <sup>[2]</sup> - 47:3, 209:17  
**Lucy** <sup>[1]</sup> - 92:15

## M

**machinations**  
<sup>[1]</sup> - 156:8  
**Madam** <sup>[1]</sup> - 55:4  
**magic** <sup>[1]</sup> - 96:13  
**mail** <sup>[1]</sup> - 56:18  
**mails** <sup>[2]</sup> - 253:5,  
 254:8  
**Main** <sup>[1]</sup> - 260:9  
**main** <sup>[3]</sup> - 127:11,  
 145:1, 234:21  
**maintain** <sup>[4]</sup> - 4:17,

5:2, 29:9, 95:20  
**maintained**  
<sup>[2]</sup> - 29:13, 237:4  
**maintaining** <sup>[1]</sup> - 93:2  
**maintains** <sup>[2]</sup> - 18:3, 22:14  
**maintenance**  
<sup>[2]</sup> - 221:12, 234:1  
**majority** <sup>[1]</sup> - 255:5  
**Man** <sup>[1]</sup> - 210:13  
**manager** <sup>[1]</sup> - 221:12  
**Manassas** <sup>[2]</sup> - 165:1, 176:19  
**maneuver**  
<sup>[4]</sup> - 148:16, 148:18, 150:14, 160:8  
**maneuverability**  
<sup>[1]</sup> - 155:13  
**maneuvers** <sup>[1]</sup> - 161:4  
**manner** <sup>[1]</sup> - 226:18  
**Maria** <sup>[1]</sup> - 56:8  
**marked** <sup>[1]</sup> - 11:1  
**marker** <sup>[2]</sup> - 96:13, 96:19  
**market** <sup>[2]</sup> - 115:5, 165:9  
**marketing** <sup>[1]</sup> - 131:18  
**marks** <sup>[2]</sup> - 267:15, 268:5  
**marriage** <sup>[1]</sup> - 269:6  
**Marsh** <sup>[1]</sup> - 153:2  
**Mass** <sup>[4]</sup> - 32:17, 95:3, 95:6, 260:9  
**mass** <sup>[3]</sup> - 71:18, 77:5  
**Massachusetts**  
<sup>[2]</sup> - 1:11, 1:11  
**MASSACHUSETTS**  
<sup>[1]</sup> - 269:2  
**massed** <sup>[1]</sup> - 98:16  
**massing** <sup>[6]</sup> - 70:8, 71:6, 91:16, 97:8, 97:10, 97:17  
**massive** <sup>[1]</sup> - 66:20  
**master** <sup>[13]</sup> - 62:17, 64:15, 65:12, 67:6, 67:13, 68:10, 69:10, 69:15, 71:18, 76:8, 78:17, 79:21, 140:6  
**match** <sup>[9]</sup> - 10:11, 11:7, 11:9, 12:2, 31:18, 35:11, 37:10, 239:20, 240:3  
**matched** <sup>[3]</sup> - 10:17,

18:7, 22:19

**matching** <sup>[1]</sup> - 91:13

**material** <sup>[2]</sup> - 15:8,  
38:10

**materials** <sup>[8]</sup> - 19:20,  
19:21, 37:17, 37:18,  
239:16, 239:18,  
248:9, 248:17

**matter** <sup>[26]</sup> - 17:10,  
27:13, 28:8, 28:14,  
29:8, 34:17, 54:21,  
88:21, 89:9, 92:9,  
95:18, 115:2,  
162:21, 167:17,  
174:9, 206:18,  
227:18, 231:5,  
237:1, 249:16,  
250:18, 251:15,  
253:8, 263:15,  
269:6, 269:7

**matters** <sup>[2]</sup> - 19:9,  
36:21

**max** <sup>[1]</sup> - 181:1

**maximum**  
<sup>[2]</sup> - 181:18, 181:20

**mean** <sup>[49]</sup> - 50:6,  
50:15, 65:19, 66:17,  
73:5, 73:12, 74:7,  
75:5, 75:14, 76:15,  
77:9, 80:12, 83:8,  
83:20, 88:3, 88:13,  
97:5, 98:6, 99:3,  
99:13, 100:3, 108:5,  
108:11, 111:3,  
114:7, 115:15,  
120:5, 120:10,  
121:11, 127:2,  
129:16, 149:10,  
149:17, 151:16,  
153:17, 154:7,  
176:4, 184:20,  
186:11, 186:13,  
188:1, 199:19,  
202:21, 207:1,  
219:7, 219:16,  
226:8, 226:19,  
246:17

**Meaning** <sup>[1]</sup> - 18:9

**MEANS** <sup>[1]</sup> - 269:20

**means** <sup>[9]</sup> - 77:12,  
108:12, 133:19,  
134:1, 135:6, 136:6,  
136:7, 138:7,

139:15  
**meant** <sup>[4]</sup> - 95:10,  
 107:3, 135:15,  
 165:18  
**mechanical**  
<sup>[1]</sup> - 37:16  
**media** <sup>[1]</sup> - 128:8  
**meet** <sup>[19]</sup> - 91:5,  
 104:6, 104:18,  
 105:2, 105:19,  
 106:12, 107:8,  
 108:8, 109:11,  
 109:17, 111:16,  
 111:19, 111:21,  
 119:13, 122:7,  
 124:9, 172:19,  
 173:21, 185:18  
**meeting** <sup>[4]</sup> - 163:20,  
 168:8, 174:2, 211:8  
**meetings** <sup>[2]</sup> - 104:21,  
 106:5  
**meets** <sup>[3]</sup> - 119:6,  
 119:12, 171:17  
**member** <sup>[2]</sup> - 212:20,  
 223:15  
**Member** <sup>[4]</sup> - 1:14,  
 1:14, 1:15, 116:6  
**Members** <sup>[12]</sup> - 3:3,  
 27:2, 31:2, 45:2,  
 46:2, 61:2, 102:2,  
 194:2, 196:2, 210:2,  
 238:2, 260:2  
**members** <sup>[14]</sup> - 3:11,  
 3:21, 25:21, 31:9,  
 87:6, 102:20, 103:2,  
 166:5, 187:14,  
 189:1, 215:6, 227:9,  
 242:14, 255:5  
**memories** <sup>[1]</sup> - 100:6  
**memory** <sup>[3]</sup> - 11:15,  
 11:21, 248:10  
**mention** <sup>[1]</sup> - 240:12  
**mentioned** <sup>[6]</sup> - 14:17,  
 14:20, 247:14,  
 248:8, 251:8, 252:4  
**mercy** <sup>[1]</sup> - 49:6  
**merely** <sup>[1]</sup> - 103:14  
**merit** <sup>[1]</sup> - 191:17  
**met** <sup>[5]</sup> - 24:2, 40:8,  
 158:1, 180:14,  
 207:19  
**metal** <sup>[1]</sup> - 37:21  
**metered** <sup>[2]</sup> - 165:2,

165:4

# **MICHAEL**

[23] - 238:15, 242:10,  
243:11, 243:15,  
243:19, 244:8,  
244:14, 244:21,  
245:18, 247:9,  
249:4, 250:15,  
252:6, 252:10,  
252:12, 252:20,  
253:3, 253:16,  
254:1, 254:4,  
254:15, 254:19,  
259:3

**Michael's** [2] - 250:1,  
250:12

**middle** [5] - 31:16,  
83:7, 121:6, 125:9,  
126:1

**might** [15] - 83:2, 86:4,  
97:4, 111:11,  
113:13, 119:10,  
128:12, 128:19,  
139:12, 166:5,  
200:16, 201:14,  
229:7, 232:21,  
249:4

**mind** [6] - 34:1, 68:19,  
87:13, 87:21, 90:12,  
91:7

# **mindedness**

[1] - 87:17

**minefield** [1] - 233:20

**mini** [1] - 148:21

**Mini** [1] - 149:10

**minimize** [1] - 19:18

**minimized** [3] - 19:15,  
37:5, 37:9

**minimizes** [5] - 14:5,  
18:1, 18:4, 22:12,  
22:15

**minimum** [6] - 107:8,  
181:6, 181:13,  
182:2, 182:3,  
245:16

**minus** [3] - 58:17,  
59:13, 257:19

**minor** [3] - 59:14,  
183:18, 184:6

**minus** [1] - 57:21

**Mirror** [1] - 160:19

**mislabelled** [1] - 79:4

**miss** [1] - 262:13

**missed** <sup>[3]</sup> - 25:10,  
 262:16, 263:7  
**misspoken**  
<sup>[1]</sup> - 117:12  
**misstate** <sup>[1]</sup> - 48:6  
**misunderstanding**  
<sup>[1]</sup> - 127:5  
**Mitchell** <sup>[1]</sup> - 262:2  
**mitigating** <sup>[1]</sup> - 188:3  
**mobile** <sup>[1]</sup> - 19:2  
**Mobile** <sup>[4]</sup> - 4:2, 4:3,  
 19:10, 31:11  
**models** <sup>[1]</sup> - 151:19  
**modernization**  
<sup>[1]</sup> - 31:12  
**modified** <sup>[2]</sup> - 6:13,  
 154:15  
**moment** <sup>[3]</sup> - 138:14,  
 141:11, 147:2  
**Monday** <sup>[2]</sup> - 29:17,  
 96:5  
**money** <sup>[3]</sup> - 91:2,  
 185:2, 203:14  
**money-wise**  
<sup>[1]</sup> - 185:2  
**monitoring** <sup>[1]</sup> - 213:3  
**Montessori** <sup>[1]</sup> - 84:18  
**months** <sup>[4]</sup> - 94:7,  
 143:8, 168:10,  
 239:5  
**morning** <sup>[1]</sup> - 85:21  
**mortgage** <sup>[2]</sup> - 47:21,  
 48:3  
**Most** <sup>[3]</sup> - 149:21,  
 164:11, 177:20  
**most** <sup>[11]</sup> - 91:17,  
 122:4, 122:21,  
 124:1, 127:21,  
 129:3, 160:3,  
 164:12, 201:3,  
 241:2, 252:15  
**mother** <sup>[1]</sup> - 73:18  
**motion** <sup>[31]</sup> - 23:1,  
 23:11, 23:15, 28:7,  
 28:13, 29:7, 36:13,  
 39:14, 40:2, 41:14,  
 57:20, 88:21, 93:11,  
 101:15, 158:14,  
 189:18, 191:9,  
 192:20, 193:3,  
 194:9, 207:12,  
 209:5, 209:10,  
 227:17, 231:4,

236:21, 237:6,  
 237:10, 256:20,  
 264:3, 264:11  
**motions** <sup>[4]</sup> - 158:7,  
 158:9, 158:12,  
 160:1  
**motor** <sup>[1]</sup> - 154:13  
**mount** <sup>[1]</sup> - 4:16  
**mounted** <sup>[13]</sup> - 5:8,  
 10:17, 11:6, 16:5,  
 16:6, 17:20, 18:7,  
 21:7, 22:11, 22:18,  
 31:15, 31:18, 214:1  
**mounting** <sup>[1]</sup> - 5:10  
**mounts** <sup>[4]</sup> - 16:7,  
 16:9, 31:19, 35:7  
**movable** <sup>[1]</sup> - 215:15  
**move** <sup>[8]</sup> - 50:3, 52:2,  
 84:19, 90:19, 156:9,  
 212:9, 236:3, 261:5  
**moved** <sup>[9]</sup> - 75:9,  
 212:3, 212:5,  
 212:13, 213:11,  
 223:3, 224:3, 245:5  
**moves** <sup>[4]</sup> - 110:10,  
 156:3, 212:13,  
 212:21  
**moving** <sup>[5]</sup> - 161:9,  
 170:7, 220:11,  
 220:20, 251:5  
**mudroom**  
<sup>[4]</sup> - 127:17, 260:21,  
 261:5, 264:5  
**multi** <sup>[1]</sup> - 154:14  
**multi-car** <sup>[1]</sup> - 154:14  
**multiple** <sup>[1]</sup> - 124:14  
**must** <sup>[1]</sup> - 227:1  
**mute** <sup>[2]</sup> - 41:20,  
 43:18  
**MYER** <sup>[13]</sup> - 260:7,  
 260:8, 261:13,  
 261:21, 262:3,  
 262:6, 262:14,  
 262:17, 262:20,  
 263:17, 264:9,  
 265:11, 266:6  
**Myer** <sup>[2]</sup> - 260:8  
**Myers** <sup>[25]</sup> - 1:15, 3:5,  
 25:18, 27:4, 30:3,  
 31:4, 44:9, 45:4,  
 46:4, 60:2, 61:4,  
 101:18, 102:4,  
 187:4, 193:10,

194:4, 195:9, 196:4,  
209:15, 210:4,  
237:13, 238:4,  
259:1, 260:4, 266:7

**MYERS** <sup>[85]</sup> - 14:16,  
15:3, 15:19, 16:11,  
17:6, 18:9, 27:5,  
35:16, 36:1, 36:5,  
41:16, 42:13, 42:19,  
43:4, 53:16, 54:17,  
57:14, 68:19, 69:2,  
70:2, 70:11, 71:2,  
87:1, 95:2, 95:6,  
95:11, 99:18,  
153:16, 158:7,  
158:19, 159:5,  
159:8, 159:13,  
159:21, 187:5,  
194:17, 195:1,  
205:3, 205:8,  
205:13, 205:18,  
206:5, 207:10,  
217:10, 218:1,  
218:8, 218:12,  
220:6, 220:10,  
220:19, 221:2,  
223:9, 223:14,  
224:12, 226:8,  
227:4, 227:15,  
229:3, 230:17,  
231:6, 232:21,  
233:3, 233:13,  
248:5, 248:8,  
248:14, 248:17,  
248:21, 249:11,  
250:8, 250:16,  
251:21, 252:3,  
252:7, 252:11,  
252:17, 253:1,  
253:6, 256:12,  
261:20, 262:10,  
262:15, 262:19,  
263:2, 263:6

## N

**naive** <sup>[1]</sup> - 97:2

**name** <sup>[29]</sup> - 46:9,  
46:11, 46:17, 61:9,  
61:11, 61:16, 89:10,  
102:10, 108:1,  
115:18, 115:20,  
147:12, 147:14,  
163:9, 167:18,

182:18, 196:8,  
 196:15, 210:9,  
 221:21, 222:1,  
 238:8, 238:10,  
 249:19, 250:20,  
 250:21, 251:1,  
 252:7  
**named** <sup>[2]</sup> - 46:18,  
 61:10  
**names** <sup>[2]</sup> - 109:20,  
 147:15  
**narrow** <sup>[1]</sup> - 169:4  
**natural** <sup>[2]</sup> - 144:8,  
 144:13  
**nature** <sup>[7]</sup> - 4:6, 24:10,  
 40:16, 154:15,  
 208:12, 236:18,  
 265:1  
**nearby** <sup>[2]</sup> - 92:20,  
 177:20  
**nearer** <sup>[3]</sup> - 245:12,  
 245:13, 245:15  
**necessarily**  
<sup>[4]</sup> - 146:19, 171:14,  
 171:16, 256:15  
**necessary** <sup>[3]</sup> - 84:9,  
 119:14, 191:8  
**necessity** <sup>[4]</sup> - 20:21,  
 38:21, 106:6, 214:7  
**need** <sup>[16]</sup> - 28:3,  
 78:16, 84:1, 84:2,  
 100:13, 105:9,  
 107:3, 110:5,  
 113:17, 113:18,  
 114:11, 114:12,  
 133:10, 171:7,  
 183:4, 237:15  
**needed** <sup>[5]</sup> - 58:9,  
 76:17, 84:11, 160:7  
**needs** <sup>[10]</sup> - 53:14,  
 76:14, 77:1, 80:12,  
 91:5, 121:9, 137:21,  
 186:6, 189:11,  
 260:21  
**negotiating** <sup>[2]</sup> - 7:19,  
 146:17  
**neighbor** <sup>[5]</sup> - 90:11,  
 91:6, 168:18,  
 176:19, 185:15  
**neighborhood**  
<sup>[38]</sup> - 10:2, 10:6,  
 24:6, 40:12, 68:15,  
 70:9, 70:12, 70:13,

82:12, 82:15, 82:21,  
 85:9, 86:2, 90:15,  
 90:16, 91:7, 97:15,  
 97:18, 115:7,  
 116:18, 116:20,  
 117:8, 121:15,  
 145:6, 145:17,  
 157:2, 157:16,  
 162:8, 165:10,  
 172:3, 174:1, 176:3,  
 179:3, 179:4,  
 180:13, 186:6,  
 208:2, 209:8

### **neighborhoods**

[2] - 152:19, 153:3

### **neighbors** [14] - 59:4,

81:6, 81:7, 85:2,  
 92:3, 104:7, 164:7,  
 164:9, 164:12,  
 165:14, 242:18,  
 249:5, 256:10,  
 261:15

### **net** [2] - 71:10, 165:3

### **never** [8] - 114:6,

163:6, 164:1, 173:6,  
 183:15, 221:20,  
 222:9, 254:18

### **new** [27] - 4:12, 4:13,

5:21, 8:17, 17:18,  
 18:2, 20:21, 22:9,  
 22:13, 29:11, 31:17,  
 37:9, 39:13, 40:4,  
 43:1, 43:2, 58:2,  
 69:9, 95:21, 108:17,  
 115:5, 126:17,  
 165:3, 187:5, 208:5,  
 231:10, 235:12

### **newest** [1] - 4:13

### **next** [14] - 13:17,

55:20, 89:3, 103:9,  
 129:20, 130:17,  
 136:11, 148:13,  
 148:14, 160:4,  
 204:8, 227:18,  
 244:9, 251:2

### **next-door**

[3] - 129:20, 136:11,  
 244:9

### **nice** [3] - 115:5, 117:3, 121:4

### **night** [5] - 83:8, 83:13, 85:21, 195:8, 212:4

### **nine** [2] - 67:20, 92:14

**nineties** <sup>[1]</sup> - 62:17  
**nitpicking**  
<sup>[2]</sup> - 214:14, 214:15  
**Nobody** <sup>[2]</sup> - 163:2,  
 253:7  
**nobody** <sup>[7]</sup> - 17:13,  
 34:20, 92:11,  
 174:11, 206:20,  
 251:17, 263:20  
**Nolan** <sup>[2]</sup> - 163:13,  
 166:1  
**non** <sup>[10]</sup> - 58:14,  
 62:11, 62:13,  
 150:13, 180:17,  
 182:10, 182:15,  
 189:20, 246:1,  
 260:11  
**non-conforming**  
<sup>[9]</sup> - 58:14, 62:11,  
 62:13, 180:17,  
 182:10, 182:15,  
 189:20, 246:1,  
 260:11  
**non-SUV** <sup>[1]</sup> - 150:13  
**nonconforming**  
<sup>[2]</sup> - 208:4, 209:9  
**nonconformity**  
<sup>[1]</sup> - 261:9  
**None** <sup>[1]</sup> - 177:19  
**nonviable** <sup>[1]</sup> - 183:6  
**normally** <sup>[1]</sup> - 99:5  
**nos** <sup>[1]</sup> - 115:13  
**NOT** <sup>[3]</sup> - 267:15,  
 268:5, 269:19  
**Notary** <sup>[3]</sup> - 268:6,  
 269:5, 269:14  
**notations** <sup>[2]</sup> - 267:15,  
 268:5  
**note** <sup>[3]</sup> - 19:15,  
 19:16, 268:4  
**noted** <sup>[5]</sup> - 106:9,  
 142:8, 158:12,  
 162:6, 268:19  
**notes** <sup>[5]</sup> - 24:17,  
 41:3, 59:3, 258:11,  
 269:9  
**Nothing** <sup>[2]</sup> - 17:6,  
 253:13  
**nothing** <sup>[5]</sup> - 70:14,  
 70:15, 73:5, 173:5,  
 264:1  
**notice** <sup>[6]</sup> - 63:11,  
 183:17, 211:8,

213:4, 213:5,  
 226:13  
**notices** <sup>[1]</sup> - 212:12  
**noting** <sup>[1]</sup> - 176:18  
**notion** <sup>[6]</sup> - 95:18,  
 96:11, 97:21,  
 119:11, 143:12,  
 185:12  
**November** <sup>[8]</sup> - 10:21,  
 17:16, 21:21, 23:4,  
 211:13, 211:18,  
 213:14, 224:11  
**nowadays** <sup>[1]</sup> - 74:20  
**nuisance** <sup>[3]</sup> - 24:13,  
 40:19, 208:16  
**nullifying** <sup>[4]</sup> - 59:9,  
 191:1, 258:13,  
 265:21  
**number** <sup>[17]</sup> - 68:16,  
 87:5, 88:15, 104:2,  
 144:21, 163:19,  
 172:18, 175:16,  
 181:10, 217:15,  
 217:18, 218:2,  
 218:9, 218:13,  
 240:17, 260:11  
**numbers** <sup>[1]</sup> - 141:20

## O

**O'** <sup>[1]</sup> - 1:16  
**o'clock** <sup>[3]</sup> - 45:9,  
 96:14, 231:18  
**O'Grady** <sup>[3]</sup> - 211:4,  
 215:7, 220:9  
**O'GRADY** <sup>[28]</sup> - 20:10,  
 27:17, 28:12, 28:21,  
 29:4, 93:13, 93:15,  
 93:19, 94:17, 94:21,  
 95:4, 95:8, 95:13,  
 194:13, 225:8,  
 226:2, 226:5,  
 227:20, 228:3,  
 228:8, 228:20,  
 234:7, 234:9,  
 235:15, 235:20,  
 236:2, 246:10,  
 246:19  
**object** <sup>[1]</sup> - 92:2  
**objection** <sup>[7]</sup> - 32:8,  
 34:3, 36:10, 55:8,  
 56:1, 56:13, 145:10  
**objectionable**  
<sup>[2]</sup> - 143:17, 143:18

**obscured** <sup>[1]</sup> - 215:15

**observation**

<sup>[1]</sup> - 53:10

**observe** <sup>[2]</sup> - 177:8,  
223:11

**obsolete** <sup>[5]</sup> - 21:5,  
21:6, 21:10, 39:4,  
39:5

**obstacle** <sup>[1]</sup> - 189:8

**obstacles** <sup>[2]</sup> - 189:8,  
189:9

**obtain** <sup>[1]</sup> - 197:6

**Obviously** <sup>[3]</sup> - 229:3,  
229:4, 262:16

**obviously** <sup>[5]</sup> - 49:7,  
83:20, 181:19,  
182:15, 263:7

**occasion** <sup>[1]</sup> - 253:2

**occasionally**

<sup>[1]</sup> - 212:2

**occasions**

<sup>[1]</sup> - 226:13

**occupant** <sup>[3]</sup> - 24:15,  
41:1, 265:18

**occupants**

<sup>[2]</sup> - 208:18, 265:13

**occupation** <sup>[1]</sup> - 192:9

**occupied** <sup>[1]</sup> - 62:10

**occur** <sup>[1]</sup> - 112:4

**October** <sup>[1]</sup> - 32:5

**odd** <sup>[2]</sup> - 164:20,  
245:1

**OF** <sup>[8]</sup> - 1:2, 1:4,  
267:19, 268:1,  
269:2, 269:19,  
269:20, 269:20

**offer** <sup>[4]</sup> - 166:2,  
167:4, 223:2, 224:1

**offhand** <sup>[1]</sup> - 246:7

**office** <sup>[5]</sup> - 46:13,  
79:2, 104:5, 127:18,  
162:10

**officer** <sup>[2]</sup> - 223:11,  
229:9

**OFFICIAL** <sup>[1]</sup> - 1:19

**officially** <sup>[1]</sup> - 251:9

**often** <sup>[3]</sup> - 112:4,  
117:19, 120:16

**old** <sup>[1]</sup> - 83:7

**older** <sup>[1]</sup> - 85:19

**Once** <sup>[2]</sup> - 14:9, 15:14

**once** <sup>[6]</sup> - 3:21, 4:18,  
14:8, 31:10, 70:20,

184:3

**One** <sup>[7]</sup> - 117:13,  
120:8, 121:9, 145:8,  
169:5, 240:18,  
249:4

**one** <sup>[133]</sup> - 5:7, 5:10,  
6:1, 6:3, 8:12, 9:1,  
10:3, 10:20, 11:1,  
11:2, 11:17, 11:21,  
13:17, 14:7, 15:10,  
16:12, 17:2, 17:4,  
17:20, 22:1, 22:2,  
22:10, 23:2, 23:4,  
23:5, 23:7, 32:14,  
32:19, 40:5, 48:14,  
51:7, 54:2, 54:13,  
63:13, 64:13, 72:6,  
72:18, 74:17, 80:17,  
81:7, 81:16, 81:19,  
85:7, 87:11, 87:15,  
87:19, 94:12, 94:15,  
95:2, 99:15, 103:13,  
105:2, 105:18,  
111:3, 112:14,  
118:1, 118:13,  
120:13, 124:4,  
124:17, 127:3,  
133:17, 135:4,  
135:7, 135:9,  
138:21, 139:2,  
142:7, 143:13,  
143:15, 146:10,  
146:12, 148:6,  
155:7, 155:16,  
155:19, 157:1,  
158:10, 158:14,  
159:16, 160:3,  
164:3, 164:21,  
166:2, 166:7, 166:8,  
166:20, 168:8,  
169:16, 169:18,  
170:4, 171:20,  
172:5, 174:5,  
177:12, 185:1,  
187:21, 188:16,  
189:8, 189:9,  
192:11, 194:11,  
198:7, 200:14,  
202:11, 209:4,  
221:9, 223:15,  
224:1, 224:4, 224:6,  
231:1, 231:12,  
232:18, 234:20,

235:1, 235:3, 241:3,  
 242:14, 242:18,  
 243:6, 244:2, 244:8,  
 248:6, 249:20,  
 251:4, 251:21,  
 252:4, 254:7,  
 257:14, 260:21,  
 262:10, 263:4  
**one's** <sup>[2]</sup> - 150:20,  
 204:7  
**one-family** <sup>[1]</sup> - 72:18  
**ones** <sup>[1]</sup> - 151:1  
**online** <sup>[1]</sup> - 32:8  
**open** <sup>[34]</sup> - 17:7,  
 34:14, 48:8, 48:11,  
 54:18, 79:18, 87:17,  
 89:7, 108:11, 120:2,  
 140:13, 142:10,  
 142:11, 142:12,  
 162:19, 181:3,  
 182:2, 182:4,  
 197:10, 198:21,  
 199:9, 199:12,  
 201:2, 202:5,  
 205:20, 206:15,  
 248:4, 248:13,  
 248:14, 249:13,  
 250:3, 252:19,  
 263:12  
**openable** <sup>[1]</sup> - 197:12  
**opening** <sup>[2]</sup> - 135:12,  
 143:15  
**openings** <sup>[3]</sup> - 144:6,  
 144:13, 182:14  
**openness** <sup>[1]</sup> - 249:6  
**operable** <sup>[2]</sup> - 21:4,  
 143:16  
**operate** <sup>[1]</sup> - 232:9  
**operation**  
<sup>[6]</sup> - 229:13, 230:9,  
 230:10, 230:13,  
 230:16, 230:18  
**operations** <sup>[3]</sup> - 24:7,  
 40:13, 208:10  
**operator** <sup>[1]</sup> - 221:6  
**opinion** <sup>[4]</sup> - 12:13,  
 33:14, 92:6, 173:13  
**opportunity**  
<sup>[5]</sup> - 125:18, 157:14,  
 184:8, 184:14,  
 185:4  
**opposed** <sup>[3]</sup> - 119:19,  
 164:8, 252:5

**opposing** <sup>[1]</sup> - 164:10

**opposition** <sup>[1]</sup> - 163:1

**options** <sup>[3]</sup> - 72:7,  
90:18, 230:21

**order** <sup>[5]</sup> - 3:7, 4:19,  
48:8, 102:17,  
229:17

**Ordinance** <sup>[43]</sup> - 24:2,  
24:9, 25:3, 28:6,  
29:14, 40:8, 40:15,  
41:11, 58:6, 58:15,  
59:11, 87:8, 100:9,  
106:15, 107:14,  
107:17, 185:18,  
188:7, 188:17,  
190:4, 190:16,  
190:18, 191:3,  
191:13, 207:19,  
208:11, 210:18,  
213:18, 214:16,  
215:20, 216:4,  
216:5, 216:17,  
219:15, 223:8,  
237:5, 257:10,  
258:6, 258:15,  
264:15, 264:21,  
265:6, 266:1

**Ordinance's**

<sup>[1]</sup> - 110:14

**original** <sup>[14]</sup> - 6:15,  
7:11, 8:1, 21:8,  
21:13, 21:14, 21:21,  
64:5, 71:18, 73:10,  
79:13, 112:13,  
267:3, 267:10

**ORIGINAL** <sup>[1]</sup> - 267:9

**originally** <sup>[3]</sup> - 7:17,  
22:20, 109:4

**ornamental**

<sup>[2]</sup> - 212:1, 213:11

**otherwise** <sup>[6]</sup> - 25:2,  
41:10, 155:1,  
192:10, 217:8,  
246:1

**Ottenberg** <sup>[1]</sup> - 210:10

**ought** <sup>[1]</sup> - 235:7

**ourselves** <sup>[2]</sup> - 49:6,  
141:18

**out-of-scaleness**

<sup>[1]</sup> - 12:19

**outcome** <sup>[2]</sup> - 155:11,  
269:7

**outside** <sup>[9]</sup> - 8:12,

12:8, 16:10, 17:5,  
48:10, 49:16, 64:8,  
97:18, 129:18

**overall** <sup>[2]</sup> - 72:3, 90:9

**overburden**

<sup>[1]</sup> - 145:6

**overcome** <sup>[1]</sup> - 80:19

**overloaded**

<sup>[1]</sup> - 228:21

**overlooked**

<sup>[1]</sup> - 188:21

**overly** <sup>[2]</sup> - 98:16,

110:18

**overprotective**

<sup>[1]</sup> - 83:4

**oversight** <sup>[1]</sup> - 141:12

**oversized** <sup>[1]</sup> - 190:7

**overwhelming**

<sup>[1]</sup> - 98:13

**owing** <sup>[3]</sup> - 58:13,

190:14, 257:20

**own** <sup>[6]</sup> - 28:5, 73:14,

74:2, 74:3, 76:15,

166:4

**owned** <sup>[4]</sup> - 169:15,

177:15, 210:13,

262:1

**owner** <sup>[4]</sup> - 46:15,

46:17, 142:18,

258:2

**owner's** <sup>[1]</sup> - 62:10

**owners** <sup>[6]</sup> - 59:5,

59:6, 85:5, 89:16,

145:9

**owning** <sup>[1]</sup> - 62:18

**owns** <sup>[1]</sup> - 153:19

## P

**P-y-k-e** <sup>[1]</sup> - 147:14

**p.m** <sup>[25]</sup> - 1:8, 3:2,

27:1, 29:8, 29:12,

29:17, 31:1, 45:1,

46:1, 61:1, 96:1,

96:5, 96:14, 96:19,

96:20, 102:1, 194:1,

196:1, 210:1, 231:8,

231:11, 231:18,

238:1, 260:1, 266:9

**paces** <sup>[1]</sup> - 155:5

**package** <sup>[2]</sup> - 176:7,

177:6

**packages** <sup>[1]</sup> - 124:14

**packet** <sup>[3]</sup> - 19:9, 37:1,

147:17  
**page** <sup>[4]</sup> - 5:17, 35:9,  
148:13  
**PAGE** <sup>[3]</sup> - 2:2,  
267:19, 268:8  
**Page** <sup>[1]</sup> - 268:7  
**paid** <sup>[1]</sup> - 165:12  
**paint** <sup>[3]</sup> - 12:7, 38:11,  
221:20  
**painted** <sup>[3]</sup> - 15:14,  
31:18, 37:10  
**painter** <sup>[2]</sup> - 221:18,  
224:4  
**painting** <sup>[1]</sup> - 12:2  
**panel** <sup>[2]</sup> - 4:8, 31:14  
**panels** <sup>[4]</sup> - 194:19,  
197:12, 201:4,  
214:5  
**Panels** <sup>[1]</sup> - 213:21  
**pantry** <sup>[1]</sup> - 50:2  
**paper** <sup>[2]</sup> - 152:1,  
160:11  
**parent** <sup>[1]</sup> - 84:9  
**parents** <sup>[2]</sup> - 76:2,  
76:5  
**park** <sup>[4]</sup> - 120:18,  
126:7, 154:10  
**Park** <sup>[2]</sup> - 31:7, 34:18  
**parked** <sup>[2]</sup> - 157:9,  
177:16  
**parking** <sup>[63]</sup> - 104:10,  
111:15, 111:17,  
111:19, 113:17,  
113:18, 113:19,  
113:21, 120:3,  
121:13, 122:6,  
122:7, 122:8,  
122:14, 122:16,  
125:20, 127:9,  
127:12, 129:11,  
129:13, 129:19,  
142:6, 145:19,  
146:7, 146:10,  
146:13, 147:2,  
147:3, 147:8,  
147:18, 147:19,  
150:15, 152:2,  
152:9, 152:10,  
152:20, 153:10,  
153:12, 154:3,  
154:9, 155:4, 155:5,  
157:7, 157:11,  
157:12, 164:16,

164:17, 165:19,  
 168:17, 169:8,  
 170:9, 171:11,  
 181:9, 182:7,  
 182:16, 188:8,  
 239:12, 242:1,  
 242:3, 244:1, 245:2

**parks** <sup>[1]</sup> - 126:4

**parlor** <sup>[2]</sup> - 162:10,  
 169:18

**part** <sup>[35]</sup> - 21:1, 21:3,  
 23:10, 31:12, 37:8,  
 40:1, 50:15, 51:9,  
 51:21, 57:7, 64:5,  
 72:3, 75:7, 75:20,  
 128:9, 128:13,  
 139:6, 140:7, 146:7,  
 177:6, 177:9,  
 179:21, 183:1,  
 186:14, 197:20,  
 201:3, 207:3, 209:4,  
 224:8, 234:19,  
 240:12, 253:11,  
 254:9, 255:20,  
 263:21

**partially** <sup>[1]</sup> - 212:5

**participated**

<sup>[1]</sup> - 103:3

**participative**

<sup>[1]</sup> - 179:7

**particular** <sup>[14]</sup> - 19:3,  
 24:19, 34:4, 36:11,  
 97:15, 120:5, 154:2,  
 168:18, 229:14,  
 241:8, 257:12,  
 257:13, 257:21,  
 258:2

**particularly**

<sup>[4]</sup> - 115:6, 143:2,  
 163:11, 170:10

**parties** <sup>[1]</sup> - 269:6

**parting** <sup>[1]</sup> - 57:3

**partly** <sup>[1]</sup> - 91:17

**Partners** <sup>[1]</sup> - 260:8

**party** <sup>[12]</sup> - 128:11,  
 129:3, 132:11,  
 133:4, 135:13,  
 135:19, 139:8,  
 140:6, 140:15,  
 167:9, 182:19,  
 267:8

**pass** <sup>[3]</sup> - 42:9, 68:14,  
 124:15

**passed** <sup>[2]</sup> - 182:20,  
262:4

**passenger**  
<sup>[2]</sup> - 148:20, 151:17

**passersby**  
<sup>[1]</sup> - 226:14

**passing** <sup>[5]</sup> - 14:17,  
14:20, 42:14, 68:20,  
214:6

**past** <sup>[2]</sup> - 169:5,  
257:17

**path** <sup>[1]</sup> - 240:9

**patience** <sup>[1]</sup> - 144:17

**patio** <sup>[4]</sup> - 143:11,  
211:19, 211:21,  
212:19

**Patricia** <sup>[2]</sup> - 163:13,  
166:1

**pattern** <sup>[2]</sup> - 172:6,  
172:11

**patterns** <sup>[6]</sup> - 24:3,  
40:10, 172:4,  
207:21, 208:5,  
208:7

**Patton** <sup>[1]</sup> - 92:16

**paved** <sup>[1]</sup> - 204:5

**pavement** <sup>[4]</sup> - 204:6,  
204:8, 204:13,  
206:2

**pay** <sup>[1]</sup> - 76:20

**paying** <sup>[1]</sup> - 160:21

**PDM** <sup>[1]</sup> - 200:12

**peaked** <sup>[2]</sup> - 91:9,  
91:18

**pedestrian** <sup>[2]</sup> - 148:4,  
212:21

**pedestrians**  
<sup>[1]</sup> - 161:6

**penthouse** <sup>[6]</sup> - 9:15,  
10:4, 11:18, 11:19,  
12:3, 31:16

**penthouses**  
<sup>[1]</sup> - 15:18

**people** <sup>[27]</sup> - 28:19,  
28:21, 90:1, 92:15,  
122:7, 122:17,  
152:21, 153:6,  
154:17, 160:21,  
168:19, 168:21,  
175:16, 177:12,  
177:20, 178:16,  
178:18, 178:20,  
199:3, 215:16,

224:12, 224:14,  
226:9, 226:15,  
226:19, 234:1,  
243:2

**People** <sup>[1]</sup> - 221:17

**per** <sup>[20]</sup> - 19:9, 23:18,  
29:13, 40:6, 58:2,  
110:5, 110:20,  
119:9, 123:1,  
166:10, 181:5,  
181:7, 189:18,  
189:21, 191:5,  
207:13, 207:15,  
237:4, 257:1, 264:5

**perceived** <sup>[1]</sup> - 232:4

**percent** <sup>[5]</sup> - 71:13,  
177:11, 181:4,  
182:5

**perfectly** <sup>[2]</sup> - 215:18,  
254:16

**perhaps** <sup>[6]</sup> - 34:7,  
92:4, 105:18, 106:2,  
216:20, 222:20

**period** <sup>[7]</sup> - 93:3,  
213:1, 222:17,  
224:7, 224:18,  
224:21, 226:13

**periodically**  
<sup>[1]</sup> - 213:10

**permission** <sup>[1]</sup> - 43:10

**Permit** <sup>[28]</sup> - 17:18,  
19:1, 20:17, 20:21,  
21:2, 21:15, 22:8,  
23:15, 38:17, 39:1,  
39:3, 39:13, 39:18,  
40:3, 41:15, 44:6,  
155:4, 162:15,  
163:18, 182:13,  
193:4, 193:9,  
207:12, 207:13,  
217:1, 221:7, 232:9,  
248:2

**permits** <sup>[1]</sup> - 175:4

**Permits** <sup>[3]</sup> - 165:15,  
174:18, 192:21

**permitted** <sup>[13]</sup> - 24:8,  
40:14, 106:21,  
107:12, 119:1,  
119:5, 123:3, 147:1,  
147:9, 172:12,  
173:9, 208:11,  
246:2

**Permittee** <sup>[1]</sup> - 38:20

**permittee** <sup>[1]</sup> - 20:19

**person** <sup>[10]</sup> - 81:17,  
81:20, 83:19,  
123:12, 126:6,  
147:21, 221:12,  
229:18, 243:21,  
252:4

**personal** <sup>[2]</sup> - 87:2,  
226:9

**persons** <sup>[2]</sup> - 177:9,  
214:6

**perspective** <sup>[3]</sup> - 34:5,  
78:7, 116:9

**persuaded** <sup>[4]</sup> - 77:7,  
77:9, 77:10, 180:13

**pertinent** <sup>[2]</sup> - 245:9,  
245:20

**Petition** <sup>[3]</sup> - 43:2,  
92:14, 175:19

**petition** <sup>[14]</sup> - 81:8,  
81:12, 81:13, 93:7,  
104:4, 175:15,  
176:1, 176:7,  
176:11, 177:5,  
177:10, 177:21,  
179:1, 191:16

**Petitioner** <sup>[27]</sup> - 19:17,  
28:4, 28:9, 29:9,  
42:10, 42:14, 43:6,  
58:7, 58:8, 95:20,  
132:20, 168:3,  
169:6, 170:2, 176:5,  
190:5, 190:6,  
190:10, 191:14,  
220:18, 221:4,  
222:6, 231:9,  
257:11, 257:15,  
264:16, 264:17

**Petitioner's**  
<sup>[1]</sup> - 214:13

**Petitioners** <sup>[1]</sup> - 27:19

**petitions** <sup>[1]</sup> - 104:3

**Petty** <sup>[1]</sup> - 92:16

**phantom** <sup>[1]</sup> - 152:8

**phone** <sup>[1]</sup> - 161:2

**phonetics** <sup>[1]</sup> - 56:18

**photo** <sup>[9]</sup> - 3:16, 9:18,  
25:9, 25:13, 37:6,  
39:16, 39:20, 50:18,  
121:4

**photograph** <sup>[3]</sup> - 69:6,  
70:12, 217:19

**photographs**

[6] - 69:5, 143:1,  
 211:14, 212:6,  
 212:16, 239:6  
**photos** [5] - 11:19,  
 13:17, 16:1, 62:2,  
 68:4  
**Phyllis** [1] - 55:12  
**physical** [1] - 162:2  
**picked** [1] - 247:1  
**picture** [1] - 218:5  
**pictures** [4] - 54:11,  
 167:2, 200:17,  
 233:4  
**piece** [3] - 80:19,  
 177:13, 186:12  
**pipe** [3] - 16:10, 31:19,  
 35:7  
**Pipes** [1] - 56:18  
**pizza** [1] - 162:10  
**Place** [3] - 196:7,  
 196:9, 206:18  
**place** [16] - 16:19,  
 49:13, 53:11, 53:12,  
 147:9, 154:3, 154:8,  
 154:10, 163:12,  
 218:4, 218:7, 219:3,  
 236:6, 236:7,  
 243:17, 258:7  
**placement** [1] - 255:2  
**places** [3] - 152:2,  
 152:3, 153:4  
**placing** [2] - 5:7,  
 241:17  
**Plaintiff** [1] - 166:6  
**plan** [19] - 7:5, 17:18,  
 22:9, 67:6, 67:11,  
 67:13, 106:12,  
 124:19, 132:14,  
 133:5, 134:8, 141:9,  
 141:10, 144:15,  
 164:18, 168:16,  
 242:4, 251:4  
**Plan** [1] - 255:4  
**plane** [2] - 105:17,  
 124:7  
**plank** [1] - 239:19  
**Planning** [35] - 6:14,  
 6:20, 7:3, 7:12, 7:13,  
 7:20, 8:4, 9:12,  
 10:15, 11:16, 17:16,  
 17:17, 18:5, 19:16,  
 21:20, 22:7, 22:17,  
 23:21, 32:5, 32:18,

34:3, 34:10, 35:1,  
 35:18, 36:9, 41:18,  
 42:17, 175:7,  
 238:19, 247:14,  
 247:15, 247:17,  
 247:19, 247:21  
**planning** <sup>[1]</sup> - 10:10  
**plans** <sup>[28]</sup> - 3:16, 5:12,  
 5:17, 6:12, 16:10,  
 25:9, 25:13, 39:16,  
 42:18, 42:21, 87:18,  
 87:20, 92:18,  
 132:20, 134:10,  
 134:20, 135:2,  
 135:3, 135:6,  
 137:18, 138:15,  
 140:21, 141:2,  
 141:10, 141:13,  
 149:4, 263:4, 264:6  
**plant** <sup>[1]</sup> - 201:12  
**plastic** <sup>[1]</sup> - 38:7  
**plate** <sup>[1]</sup> - 215:13  
**platform** <sup>[1]</sup> - 198:18  
**play** <sup>[2]</sup> - 204:13,  
 205:16  
**pleadings** <sup>[1]</sup> - 73:9  
**pleasant** <sup>[1]</sup> - 74:16  
**pleased** <sup>[3]</sup> - 168:2,  
 168:4, 170:6  
**pleasing** <sup>[1]</sup> - 184:9  
**Plenk** <sup>[1]</sup> - 55:18  
**PLENK** <sup>[1]</sup> - 55:18  
**plot** <sup>[2]</sup> - 242:4,  
 242:15  
**plumbing** <sup>[1]</sup> - 118:2  
**plunked** <sup>[2]</sup> - 72:19,  
 80:14  
**plural** <sup>[1]</sup> - 237:3  
**plus** <sup>[4]</sup> - 57:21, 71:2,  
 89:16, 164:21  
**Plus** <sup>[1]</sup> - 71:9  
**point** <sup>[24]</sup> - 42:1,  
 53:20, 76:21, 82:10,  
 89:19, 99:14, 100:8,  
 105:7, 114:8,  
 118:10, 120:20,  
 123:8, 125:12,  
 153:16, 183:18,  
 186:16, 188:13,  
 191:20, 194:18,  
 200:14, 215:11,  
 252:14, 253:2  
**pointed** <sup>[1]</sup> - 71:9

**pointing** <sup>[1]</sup> - 135:20

**Pond** <sup>[2]</sup> - 27:6, 27:11

**poorly** <sup>[1]</sup> - 98:11

**porch** <sup>[15]</sup> - 50:1,  
50:3, 50:7, 50:14,  
50:15, 52:4, 55:11,  
56:6, 58:9, 197:1,  
200:16, 206:6,  
207:14, 261:2,  
261:3

**portion** <sup>[6]</sup> - 50:12,  
69:10, 104:5, 168:6,  
216:11, 258:1

**position** <sup>[1]</sup> - 21:8

**possibility** <sup>[1]</sup> - 111:9

**possible** <sup>[12]</sup> - 10:18,  
18:8, 22:19, 83:4,  
83:12, 83:18, 85:14,  
86:15, 97:2, 136:2,  
143:15, 220:14

**possibly** <sup>[1]</sup> - 97:1

**post** <sup>[1]</sup> - 210:17

**posted** <sup>[8]</sup> - 211:7,  
211:13, 211:17,  
211:18, 216:6,  
225:4, 225:6,  
226:17

**posting** <sup>[13]</sup> - 28:10,  
29:10, 95:20, 95:21,  
210:17, 213:13,  
214:20, 215:4,  
216:18, 222:9,  
231:9, 234:14,  
237:2

**posts** <sup>[1]</sup> - 241:18

**potential** <sup>[3]</sup> - 135:9,  
168:20, 168:21

**practical** <sup>[4]</sup> - 83:15,  
180:10, 180:12,  
201:16

**PRATT** <sup>[16]</sup> - 238:10,  
238:11, 238:16,  
244:15, 246:14,  
247:12, 247:16,  
248:12, 248:16,  
248:19, 249:3,  
249:10, 251:13,  
253:13, 253:19,  
257:6

**Pratt** <sup>[1]</sup> - 238:11

**pre** <sup>[1]</sup> - 189:19

**pre-existing**  
<sup>[1]</sup> - 189:19

**precedent** <sup>[1]</sup> - 95:1  
**preclude** <sup>[3]</sup> - 19:11,  
58:8, 190:6  
**predates** <sup>[3]</sup> - 190:16,  
264:21, 265:5  
**preexisting**  
<sup>[1]</sup> - 180:16  
**preexists** <sup>[1]</sup> - 159:2  
**preferable** <sup>[1]</sup> - 11:14  
**preference**  
<sup>[2]</sup> - 98:17, 144:10  
**prefers** <sup>[1]</sup> - 9:19  
**pregnant** <sup>[1]</sup> - 83:15  
**preliminary**  
<sup>[1]</sup> - 254:7  
**premise** <sup>[1]</sup> - 255:3  
**preparation**  
<sup>[1]</sup> - 141:13  
**prepared** <sup>[5]</sup> - 164:5,  
177:1, 213:8, 230:1,  
230:6  
**presence** <sup>[1]</sup> - 145:5  
**present** <sup>[2]</sup> - 90:14,  
91:5  
**presentation**  
<sup>[8]</sup> - 37:6, 37:20,  
57:6, 152:16,  
161:14, 161:17,  
207:3, 255:20  
**presented**  
<sup>[2]</sup> - 191:15, 239:3  
**presently** <sup>[1]</sup> - 58:20  
**preserve** <sup>[1]</sup> - 74:5  
**President** <sup>[1]</sup> - 211:9  
**press** <sup>[1]</sup> - 36:15  
**presuming**  
<sup>[1]</sup> - 148:15  
**pretend** <sup>[1]</sup> - 165:15  
**Pretty** <sup>[1]</sup> - 264:2  
**pretty** <sup>[13]</sup> - 12:6,  
69:16, 71:19, 76:10,  
85:12, 134:13,  
166:17, 167:5,  
197:13, 198:10,  
203:15, 204:12,  
242:7  
**prevent** <sup>[5]</sup> - 4:20,  
197:15, 197:16,  
200:6, 264:17  
**previous** <sup>[5]</sup> - 39:10,  
62:18, 116:5, 159:9,  
187:7  
**previously** <sup>[2]</sup> - 23:19,

163:19  
**price** <sup>[1]</sup> - 76:20  
**principal** <sup>[1]</sup> - 245:13  
**printed** <sup>[1]</sup> - 217:19  
**printing** <sup>[1]</sup> - 33:6  
**priority** <sup>[1]</sup> - 117:14  
**private** <sup>[4]</sup> - 168:7,  
 182:2, 182:4, 214:8  
**pro** <sup>[2]</sup> - 18:20, 36:14  
**probability** <sup>[1]</sup> - 87:10  
**problem** <sup>[17]</sup> - 57:9,  
 77:18, 109:3, 110:1,  
 139:14, 204:7,  
 204:20, 207:7,  
 216:2, 220:5, 220:7,  
 220:11, 220:12,  
 220:14, 220:16,  
 232:4, 232:20  
**problems** <sup>[3]</sup> - 113:17,  
 205:21, 246:11  
**procedure** <sup>[2]</sup> - 20:19,  
 38:19  
**process** <sup>[1]</sup> - 7:3  
**product** <sup>[1]</sup> - 230:15  
**Professor** <sup>[1]</sup> - 56:18  
**profile** <sup>[5]</sup> - 9:10, 16:7,  
 16:8, 31:20, 35:8  
**program** <sup>[1]</sup> - 31:13  
**prohibitive** <sup>[1]</sup> - 258:6  
**project** <sup>[31]</sup> - 61:13,  
 62:1, 63:7, 77:11,  
 81:15, 90:14, 92:18,  
 101:2, 103:6,  
 113:14, 115:7,  
 116:3, 116:12,  
 116:14, 116:16,  
 117:19, 118:5,  
 119:21, 159:14,  
 164:11, 167:21,  
 174:16, 175:2,  
 178:16, 179:16,  
 179:19, 187:11,  
 196:21, 197:13,  
 238:18, 255:16  
**prominent** <sup>[1]</sup> - 120:8  
**promote** <sup>[1]</sup> - 172:2  
**properly** <sup>[1]</sup> - 4:21  
**properties**  
<sup>[4]</sup> - 106:21, 165:10,  
 183:10, 214:8  
**property** <sup>[33]</sup> - 14:19,  
 90:20, 103:7,  
 103:13, 121:18,

142:20, 143:10,  
 145:9, 157:5,  
 157:12, 165:12,  
 165:17, 167:21,  
 168:7, 168:12,  
 169:3, 169:15,  
 174:2, 177:14,  
 185:10, 188:5,  
 188:19, 192:9,  
 214:2, 215:12,  
 226:2, 226:6,  
 244:16, 251:6,  
 258:4, 260:16  
**proposal** <sup>[7]</sup> - 50:3,  
 89:13, 104:17,  
 105:1, 106:16,  
 111:12, 255:10  
**propose** <sup>[2]</sup> - 86:19,  
 239:7  
**proposed** <sup>[29]</sup> - 18:10,  
 18:12, 19:14, 24:10,  
 24:15, 24:21, 37:4,  
 40:16, 41:1, 41:8,  
 55:7, 55:9, 55:21,  
 56:2, 56:12, 56:14,  
 67:12, 69:8, 88:5,  
 90:4, 97:9, 97:11,  
 105:1, 182:11,  
 208:13, 208:18,  
 208:21, 209:7,  
 239:11  
**proposing** <sup>[13]</sup> - 15:5,  
 23:19, 31:13, 63:9,  
 63:12, 64:21, 72:8,  
 78:6, 138:13, 140:3,  
 181:4, 186:7, 239:8  
**protect** <sup>[3]</sup> - 84:11,  
 84:12, 201:13  
**protecting**  
<sup>[1]</sup> - 199:13  
**protection**  
<sup>[3]</sup> - 214:13, 222:5,  
 257:14  
**protects** <sup>[1]</sup> - 222:7  
**provide** <sup>[8]</sup> - 25:4,  
 41:12, 136:3,  
 140:19, 156:20,  
 182:5, 190:10,  
 212:15  
**provided** <sup>[3]</sup> - 34:6,  
 107:13, 111:2  
**providing** <sup>[1]</sup> - 181:7  
**provision** <sup>[1]</sup> - 167:4

**provisions** <sup>[5]</sup> - 58:5,  
190:3, 191:13,  
257:9, 264:14

**proximity** <sup>[1]</sup> - 168:11

**psychological**

<sup>[1]</sup> - 74:1

**Public** <sup>[3]</sup> - 268:6,

269:5, 269:14

**public** <sup>[31]</sup> - 17:8,

18:15, 22:6, 34:15,

54:19, 57:2, 59:2,

84:16, 89:4, 89:7,

92:12, 93:10,

162:19, 179:21,

190:21, 206:16,

212:4, 212:20,

214:7, 217:4,

222:10, 222:13,

248:4, 249:14,

251:20, 253:11,

258:10, 263:13,

263:20, 265:8,

265:18

**pull** <sup>[10]</sup> - 67:10,

147:21, 148:1,

148:8, 148:11,

148:17, 157:19,

159:16, 159:18,

159:19

**pulling** <sup>[1]</sup> - 142:1

**purpose** <sup>[13]</sup> - 25:3,

41:11, 52:15, 59:10,

73:7, 152:16, 191:2,

192:4, 202:19,

224:15, 226:16,

258:14, 266:1

**purposes** <sup>[1]</sup> - 17:4

**pushed** <sup>[1]</sup> - 247:17

**pushing** <sup>[1]</sup> - 184:9

**Put** <sup>[2]</sup> - 233:13,

233:15

**put** <sup>[43]</sup> - 4:19, 4:21,

5:3, 16:19, 16:20,

16:21, 17:4, 47:15,

49:11, 62:16, 74:15,

88:11, 90:20, 92:1,

96:14, 106:17,

110:1, 111:13,

120:17, 123:13,

128:19, 139:3,

143:12, 155:7,

164:2, 168:5, 185:9,

198:13, 200:12,

201:15, 204:17,  
 205:2, 205:15,  
 216:11, 216:14,  
 221:19, 224:4,  
 228:8, 233:4, 236:6,  
 236:8, 243:17,  
 249:8

**puts** <sup>[1]</sup> - 221:20

**putting** <sup>[7]</sup> - 74:6,  
 104:4, 141:17,  
 168:6, 217:7,  
 239:19, 249:7

**Putting** <sup>[1]</sup> - 172:20

**puzzled** <sup>[1]</sup> - 204:20

**puzzling** <sup>[1]</sup> - 215:11

**PYKE** <sup>[22]</sup> - 147:5,

147:13, 149:7,  
 149:12, 149:17,  
 150:2, 150:6,  
 150:10, 150:17,  
 151:5, 151:10,  
 151:16, 152:4,  
 155:19, 156:1,  
 156:7, 156:18,  
 157:17, 158:8,  
 158:15, 159:15,  
 160:2

**Pyke** <sup>[1]</sup> - 147:13

## Q

**qualities** <sup>[1]</sup> - 100:6

**quarter** <sup>[1]</sup> - 31:5

**questioning**

<sup>[1]</sup> - 219:20

**questions**

<sup>[16]</sup> - 14:13, 34:12,  
 53:8, 53:20, 54:16,  
 75:10, 100:11,  
 141:18, 155:14,  
 161:14, 161:16,  
 229:14, 230:8,  
 247:5, 262:8,  
 263:10

**quite** <sup>[17]</sup> - 13:19,

14:2, 53:4, 54:4,  
 58:17, 59:12, 63:2,  
 76:8, 149:19, 158:1,  
 167:1, 189:14,  
 215:3, 230:11,  
 249:6, 253:18,  
 257:18

## R

**Rabkin** <sup>[2]</sup> - 163:14,  
166:1

**radio** <sup>[1]</sup> - 4:15

**Rafferty** <sup>[8]</sup> - 102:7,  
102:10, 102:11,  
109:3, 153:17,  
160:8, 177:7, 180:1

**RAFFERTY**

<sup>[73]</sup> - 102:8, 105:13,  
107:18, 108:4,  
108:18, 108:21,  
109:7, 110:4,  
112:21, 113:8,  
114:3, 114:20,  
115:17, 118:9,  
119:3, 123:10,  
123:15, 124:18,  
125:2, 125:5,  
125:11, 128:20,  
129:2, 129:7,  
131:13, 131:17,  
132:2, 132:15,  
133:6, 134:15,  
135:18, 136:1,  
137:9, 138:5,  
138:20, 139:10,  
141:5, 141:16,  
144:1, 144:4, 146:8,  
146:21, 147:6,  
147:11, 152:14,  
154:5, 155:10,  
155:20, 156:2,  
156:11, 156:19,  
158:11, 158:16,  
159:1, 159:7,  
159:11, 161:3,  
161:21, 166:14,  
175:12, 175:17,  
175:21, 176:4,  
176:8, 176:13,  
176:17, 178:1,  
179:6, 179:13,  
180:2, 193:12,  
194:7, 195:7

**raining** <sup>[1]</sup> - 202:6

**rains** <sup>[1]</sup> - 203:17

**raise** <sup>[3]</sup> - 89:17,  
233:1, 233:2

**raised** <sup>[11]</sup> - 65:20,  
73:13, 73:19, 80:8,  
101:4, 137:13,  
138:7, 168:7, 233:8,  
233:9, 233:11

**raising** <sup>[3]</sup> - 67:16,  
 85:10, 233:6  
**Raj** <sup>[1]</sup> - 213:7  
**RAJ** <sup>[7]</sup> - 225:14,  
 234:19, 235:19,  
 236:1, 236:7,  
 236:11, 236:16  
**range** <sup>[7]</sup> - 70:6,  
 71:15, 118:17,  
 120:19, 153:13,  
 154:12, 160:10  
**Ranjit** <sup>[3]</sup> - 133:16,  
 137:13, 139:5  
**rare** <sup>[1]</sup> - 74:21  
**rarely** <sup>[1]</sup> - 169:21  
**rather** <sup>[9]</sup> - 77:4, 86:1,  
 93:1, 129:5, 152:11,  
 168:6, 198:15,  
 242:12, 245:3  
**ratio** <sup>[6]</sup> - 62:14, 63:4,  
 66:17, 66:18,  
 181:18, 182:3  
**re** <sup>[1]</sup> - 115:10  
**Re** <sup>[1]</sup> - 28:10  
**re-write** <sup>[1]</sup> - 115:10  
**reached** <sup>[1]</sup> - 104:20  
**reaching** <sup>[2]</sup> - 19:4,  
 36:18  
**reactions** <sup>[1]</sup> - 71:15  
**read** <sup>[20]</sup> - 7:16, 21:19,  
 22:4, 22:20, 23:2,  
 23:4, 23:8, 33:5,  
 33:19, 35:17, 47:10,  
 107:12, 163:4,  
 163:12, 163:21,  
 164:1, 164:3,  
 213:20, 216:17,  
 268:18  
**readable** <sup>[1]</sup> - 222:12  
**readily** <sup>[2]</sup> - 217:5,  
 217:17  
**reading** <sup>[4]</sup> - 33:10,  
 216:4, 267:13,  
 268:4  
**Reading** <sup>[8]</sup> - 17:16,  
 55:4, 55:19, 56:9,  
 163:15, 164:6,  
 174:15, 175:1  
**ready** <sup>[3]</sup> - 23:12,  
 123:9, 207:4  
**real** <sup>[7]</sup> - 5:9, 12:16,  
 77:18, 119:17,  
 162:9, 186:20,

253:17  
**reality** <sup>[2]</sup> - 66:19,  
 119:15  
**realize** <sup>[4]</sup> - 82:3, 87:1,  
 187:8, 187:9  
**really** <sup>[43]</sup> - 13:18,  
 14:6, 32:19, 47:5,  
 49:2, 49:5, 64:18,  
 71:5, 73:10, 75:2,  
 76:8, 76:11, 84:9,  
 88:14, 90:6, 98:12,  
 99:14, 100:12,  
 111:10, 112:13,  
 116:7, 121:5, 121:9,  
 121:10, 123:5,  
 130:12, 138:1,  
 142:11, 143:20,  
 144:12, 152:7,  
 155:14, 156:4,  
 156:12, 162:1,  
 172:19, 180:11,  
 186:13, 203:8,  
 203:17, 215:10,  
 221:8, 256:6  
**rear** <sup>[10]</sup> - 72:13,  
 103:13, 136:18,  
 143:2, 143:8, 168:5,  
 169:16, 170:11,  
 179:17, 245:14  
**reason** <sup>[7]</sup> - 65:14,  
 139:1, 167:10,  
 222:1, 242:21,  
 268:4  
**REASON** <sup>[9]</sup> - 268:9,  
 268:10, 268:11,  
 268:12, 268:13,  
 268:14, 268:15,  
 268:16, 268:17  
**reasonable**  
<sup>[2]</sup> - 160:9, 162:5  
**reasons** <sup>[5]</sup> - 75:10,  
 172:18, 189:7,  
 240:17, 267:14  
**rebuild** <sup>[2]</sup> - 72:6,  
 184:1  
**recalling** <sup>[2]</sup> - 36:10,  
 176:14  
**receive** <sup>[1]</sup> - 38:11  
**Received** <sup>[1]</sup> - 174:21  
**RECEIVED**  
<sup>[1]</sup> - 267:21  
**receiving** <sup>[2]</sup> - 35:20,  
 191:8

**recent** <sup>[1]</sup> - 129:3  
**recently** <sup>[1]</sup> - 168:9  
**receptive** <sup>[1]</sup> - 87:20  
**recess** <sup>[3]</sup> - 30:4,  
 45:10, 60:7  
**recognition**  
<sup>[1]</sup> - 145:12  
**recognize** <sup>[2]</sup> - 123:3,  
 180:6  
**recollection** <sup>[4]</sup> - 10:8,  
 36:2, 36:4, 36:8  
**recommendation**  
<sup>[2]</sup> - 43:13, 231:21  
**recommendations**  
<sup>[3]</sup> - 33:2, 34:9, 175:9  
**reconfiguration**  
<sup>[1]</sup> - 79:17  
**reconfigure**  
<sup>[1]</sup> - 80:11  
**record** <sup>[24]</sup> - 4:1,  
 21:19, 22:4, 23:2,  
 23:10, 31:10, 44:3,  
 46:8, 61:8, 89:10,  
 102:9, 147:9,  
 163:13, 163:21,  
 164:2, 176:16,  
 177:9, 187:7,  
 222:10, 238:9,  
 249:18, 254:13,  
 267:8, 268:20  
**RECORD** <sup>[1]</sup> - 1:19  
**recorder** <sup>[1]</sup> - 36:15  
**rectangle** <sup>[2]</sup> - 9:3, 9:4  
**redesigning**  
<sup>[2]</sup> - 86:20, 98:4  
**redone** <sup>[1]</sup> - 76:14  
**reduce** <sup>[3]</sup> - 49:4,  
 100:18, 162:4  
**reduction** <sup>[2]</sup> - 142:2,  
 182:15  
**refer** <sup>[1]</sup> - 248:15  
**Refer** <sup>[2]</sup> - 179:21,  
 268:6  
**reference** <sup>[3]</sup> - 3:18,  
 41:17, 217:13  
**referenced** <sup>[1]</sup> - 8:21  
**referred** <sup>[2]</sup> - 35:18,  
 248:18  
**Referring** <sup>[1]</sup> - 22:6  
**referring** <sup>[1]</sup> - 144:5  
**refers** <sup>[1]</sup> - 246:21  
**refines** <sup>[1]</sup> - 78:17  
**reflect** <sup>[4]</sup> - 29:11,

95:21, 231:10,  
 235:12  
**reflected** <sup>[2]</sup> - 16:9,  
 144:11  
**reflects** <sup>[1]</sup> - 7:5  
**Refresh** <sup>[1]</sup> - 248:10  
**refute** <sup>[1]</sup> - 264:1  
**regard** <sup>[3]</sup> - 70:8,  
 110:16, 217:13  
**regarding** <sup>[5]</sup> - 18:21,  
 193:14, 223:2,  
 230:8, 255:2  
**Regarding**  
<sup>[2]</sup> - 171:10, 192:21  
**regardless** <sup>[1]</sup> - 113:2  
**Registry** <sup>[2]</sup> - 242:5,  
 243:4  
**regular** <sup>[2]</sup> - 176:20,  
 204:4  
**regulate** <sup>[1]</sup> - 90:7  
**regulation** <sup>[1]</sup> - 183:1  
**relabelled** <sup>[1]</sup> - 109:14  
**related** <sup>[7]</sup> - 112:7,  
 116:4, 122:4, 162:1,  
 162:17, 180:7,  
 269:6  
**relating** <sup>[1]</sup> - 116:4  
**relationship**  
<sup>[1]</sup> - 265:5  
**relevant** <sup>[5]</sup> - 107:2,  
 123:1, 153:9,  
 163:11, 178:7  
**relief** <sup>[50]</sup> - 25:8,  
 42:21, 43:2, 58:18,  
 58:21, 59:8, 59:15,  
 59:20, 105:3, 110:5,  
 110:17, 113:19,  
 114:12, 115:12,  
 118:12, 118:17,  
 122:3, 122:17,  
 122:21, 123:2,  
 134:19, 141:19,  
 146:7, 154:21,  
 155:1, 162:16,  
 180:16, 180:19,  
 181:8, 182:8, 186:8,  
 189:18, 190:19,  
 190:21, 191:20,  
 192:3, 197:6, 216:6,  
 216:8, 247:3,  
 256:21, 257:18,  
 258:8, 258:12,  
 261:6, 264:12,

265:2, 265:7,  
265:20, 266:3  
**relocate** <sup>[3]</sup> - 182:14,  
213:4, 213:5  
**relocating**  
<sup>[2]</sup> - 101:12, 258:3  
**relying** <sup>[2]</sup> - 36:1, 43:7  
**remain** <sup>[3]</sup> - 63:6,  
92:21, 144:9  
**remains** <sup>[2]</sup> - 110:15,  
144:5  
**remedy** <sup>[1]</sup> - 141:13  
**Remember** <sup>[1]</sup> - 234:4  
**remember** <sup>[1]</sup> - 95:4  
**remind** <sup>[1]</sup> - 142:21  
**remote** <sup>[2]</sup> - 4:14, 76:9  
**removal** <sup>[1]</sup> - 120:6  
**remove** <sup>[3]</sup> - 4:11,  
200:11, 242:2  
**removed** <sup>[6]</sup> - 21:5,  
21:11, 39:5, 54:14,  
144:14, 186:16  
**removing** <sup>[2]</sup> - 31:19,  
35:7  
**rendered** <sup>[1]</sup> - 21:4  
**renovating** <sup>[2]</sup> - 48:7,  
260:20  
**renovation** <sup>[1]</sup> - 56:1  
**renovations**  
<sup>[3]</sup> - 55:8, 56:13,  
221:17  
**rent** <sup>[2]</sup> - 154:7,  
154:10  
**rental** <sup>[4]</sup> - 62:8,  
76:20, 82:19, 93:3  
**rented** <sup>[1]</sup> - 153:20  
**reorientating**  
<sup>[1]</sup> - 264:18  
**REP** <sup>[1]</sup> - 268:2  
**repeat** <sup>[1]</sup> - 189:6  
**repeatedly**  
<sup>[1]</sup> - 122:15  
**REPLACE** <sup>[1]</sup> - 267:19  
**replace** <sup>[5]</sup> - 4:4, 4:12,  
20:20, 38:20, 165:4  
**replacement**  
<sup>[2]</sup> - 23:16, 40:4  
**replacing** <sup>[5]</sup> - 31:14,  
31:19, 39:11,  
125:19, 130:4  
**report** <sup>[2]</sup> - 24:20, 41:5  
**Reporter** <sup>[2]</sup> - 269:4,  
269:14

**REPORTER**

[1] - 269:21

**REPORTERS**

[1] - 1:19

**represent** [4] - 90:7,  
90:9, 121:1, 180:11

**representative**

[1] - 229:8

**representatives**

[1] - 211:11

**REPRODUCTION**

[1] - 269:19

**request** [5] - 47:8,  
166:9, 193:1,  
194:10, 194:15

**requested**

[5] - 189:18, 247:4,  
256:21, 257:18,  
264:12

**requesting** [1] - 181:2

**requests** [3] - 163:17,  
163:18, 166:8

**require** [4] - 39:13,  
58:17, 216:18,  
265:2

**required** [5] - 105:10,  
187:19, 188:6,  
225:18, 260:18

**required)** [1] - 268:6

**requirement**

[18] - 20:6, 28:10,  
91:11, 110:6,  
110:20, 122:11,  
129:4, 135:19,  
146:4, 181:3,  
182:20, 190:17,  
210:18, 214:15,  
214:20, 227:11,  
237:2, 241:8

**requirements**

[31] - 24:2, 29:14,  
40:7, 105:4, 105:15,  
105:20, 107:9,  
107:14, 107:16,  
108:14, 109:11,  
109:18, 111:17,  
112:1, 113:21,  
119:14, 122:8,  
122:9, 153:5,  
166:11, 171:17,  
172:19, 180:21,  
182:7, 185:18,  
188:13, 207:18,

237:4, 246:5, 247:1,  
258:5

**requires** <sup>[6]</sup> - 42:17,  
146:11, 187:16,  
187:17, 188:11,  
219:15

**requiring** <sup>[2]</sup> - 124:9,  
192:1

**Res** <sup>[2]</sup> - 108:9,  
121:16

**resembles** <sup>[1]</sup> - 240:1

**Residence** <sup>[3]</sup> - 103:8,  
245:10, 245:11

**residence**  
<sup>[2]</sup> - 169:20, 247:10

**resident** <sup>[2]</sup> - 196:9,  
252:8

**residential** <sup>[17]</sup> - 20:5,  
38:16, 112:5,  
112:10, 112:12,  
121:7, 121:15,  
130:11, 132:6,  
162:6, 172:17,  
183:9, 184:13,  
184:15, 186:15,  
192:7, 257:13

**residents** <sup>[1]</sup> - 265:19

**respect** <sup>[2]</sup> - 119:5,  
187:11

**respects** <sup>[1]</sup> - 181:9

**Response**  
<sup>[15]</sup> - 17:12, 27:14,  
34:13, 34:19, 45:7,  
55:1, 92:10, 174:10,  
191:6, 192:18,  
206:19, 251:16,  
253:9, 263:11,  
263:16

**responses** <sup>[1]</sup> - 169:6

**rest** <sup>[3]</sup> - 54:5, 54:15,  
98:9

**restaurants**  
<sup>[1]</sup> - 202:5

**restore** <sup>[3]</sup> - 183:8,  
184:8, 185:4

**restored** <sup>[3]</sup> - 21:8,  
21:13, 39:8

**resubmitted**  
<sup>[2]</sup> - 25:14, 96:4

**result** <sup>[8]</sup> - 6:14, 7:14,  
8:13, 14:4, 71:10,  
103:17, 141:7,  
141:21

**resulting** <sup>[2]</sup> - 118:18,  
 118:21  
**retail** <sup>[2]</sup> - 103:10,  
 104:4  
**reuse** <sup>[2]</sup> - 118:4,  
 121:1  
**reusing** <sup>[1]</sup> - 118:3  
**review** <sup>[4]</sup> - 6:14,  
 41:17, 41:21, 42:7  
**reviewed** <sup>[5]</sup> - 17:17,  
 22:7, 134:6, 175:7,  
 187:6  
**reviewing** <sup>[1]</sup> - 19:1  
**reviews** <sup>[1]</sup> - 253:17  
**revised** <sup>[10]</sup> - 10:20,  
 11:1, 17:17, 19:15,  
 22:1, 22:8, 23:7,  
 25:13, 96:8  
**revision** <sup>[1]</sup> - 95:12  
**revisions** <sup>[1]</sup> - 87:13  
**rework** <sup>[2]</sup> - 78:14,  
 98:19  
**reworking** <sup>[1]</sup> - 87:20  
**RICARDO** <sup>[48]</sup> - 3:10,  
 3:15, 3:20, 5:16, 6:6,  
 6:11, 6:17, 7:2, 8:10,  
 8:19, 9:8, 10:13,  
 11:8, 11:12, 12:12,  
 13:10, 13:16, 14:3,  
 15:1, 15:7, 15:21,  
 16:8, 16:14, 18:11,  
 18:17, 20:8, 21:16,  
 25:20, 31:8, 32:4,  
 32:13, 33:8, 33:20,  
 35:13, 35:19, 36:3,  
 36:7, 37:13, 38:1,  
 38:3, 38:6, 38:9,  
 38:13, 42:11, 43:9,  
 43:12, 43:15, 44:2  
**Ricardo** <sup>[2]</sup> - 4:1,  
 31:10  
**RICHARD** <sup>[1]</sup> - 167:18  
**Richard** <sup>[1]</sup> - 167:19  
**Rick's** <sup>[1]</sup> - 82:10  
**rid** <sup>[1]</sup> - 111:13  
**ridge** <sup>[4]</sup> - 72:9, 72:20,  
 75:16, 75:17  
**right-hand** <sup>[2]</sup> - 70:18,  
 71:3  
**ripped** <sup>[1]</sup> - 120:16  
**Rise** <sup>[1]</sup> - 178:21  
**risk** <sup>[10]</sup> - 33:12, 34:2,  
 34:6, 42:9, 42:13,

42:16, 47:2, 86:7,  
215:15

**Road** <sup>[1]</sup> - 101:3

**ROBERT** <sup>[38]</sup> - 210:7,  
211:2, 215:2, 216:3,  
216:16, 217:14,  
218:6, 218:10,  
218:14, 219:14,  
219:19, 220:4,  
220:8, 220:17,  
220:21, 221:3,  
222:14, 223:21,  
224:17, 225:5,  
225:10, 225:17,  
226:3, 228:10,  
228:14, 229:1,  
229:21, 230:5,  
231:15, 233:5,  
233:10, 234:10,  
235:4, 236:5, 236:9,  
236:13, 236:19,  
237:15

**Robert** <sup>[1]</sup> - 210:9

**Robijn** <sup>[1]</sup> - 255:14

**ROBIJN** <sup>[1]</sup> - 255:15

**Rockingham**

<sup>[3]</sup> - 196:6, 196:9,  
206:18

**role** <sup>[1]</sup> - 179:10

**roof** <sup>[32]</sup> - 18:2, 21:12,  
22:13, 48:17, 50:16,  
67:16, 70:1, 70:8,  
72:8, 72:15, 72:19,  
80:15, 91:9, 91:17,  
91:18, 101:5, 132:9,  
132:12, 137:3,  
137:5, 198:13,  
198:17, 199:2,  
200:1, 200:8,  
239:10, 240:1,  
248:18, 248:19,  
249:9, 262:18,  
262:21

**roofed** <sup>[1]</sup> - 101:4

**rooftop** <sup>[1]</sup> - 4:9

**room** <sup>[15]</sup> - 48:10,  
51:4, 51:10, 55:11,  
56:6, 65:11, 73:7,  
83:10, 83:11, 128:8,  
149:19, 197:18,  
201:6, 203:1,  
204:15

**round** <sup>[1]</sup> - 139:4

**row** <sup>[1]</sup> - 240:20  
**Royal** <sup>[2]</sup> - 174:14,  
 174:21

**rule** <sup>[1]</sup> - 49:1  
**rules** <sup>[3]</sup> - 241:8,  
 242:16, 242:17  
**run** <sup>[2]</sup> - 33:12, 42:9  
**running** <sup>[2]</sup> - 34:6,  
 199:17  
**runs** <sup>[2]</sup> - 100:9,  
 230:19

## S

**S-h-a-y** <sup>[1]</sup> - 46:18  
**S-o-n-n-e-n-s-c-h-i-e**  
**-n** <sup>[1]</sup> - 55:16  
**S-t-e-f-a-n-a-a-n**  
<sup>[1]</sup> - 250:21  
**Safe** <sup>[1]</sup> - 241:14  
**safer** <sup>[1]</sup> - 146:16  
**safety** <sup>[7]</sup> - 24:14,  
 40:21, 41:6, 83:16,  
 152:12, 208:17,  
 265:15  
**sale** <sup>[1]</sup> - 53:12  
**Salon** <sup>[2]</sup> - 217:15,  
 217:20  
**salon** <sup>[1]</sup> - 219:2  
**SAME** <sup>[1]</sup> - 269:20  
**sat** <sup>[4]</sup> - 28:20, 28:21,  
 121:6, 187:14  
**satisfy** <sup>[1]</sup> - 229:20  
**saw** <sup>[4]</sup> - 68:4, 168:4,  
 222:9, 263:3  
**scale** <sup>[6]</sup> - 12:16,  
 12:18, 18:3, 22:14,  
 72:11, 75:18  
**scaleness** <sup>[1]</sup> - 12:19  
**scape** <sup>[1]</sup> - 183:16  
**scenario** <sup>[1]</sup> - 83:21  
**scenarios** <sup>[1]</sup> - 104:2  
**schedule** <sup>[2]</sup> - 102:14,  
 102:18  
**scheduled**  
<sup>[1]</sup> - 102:14  
**scheme** <sup>[4]</sup> - 99:4,  
 137:12, 157:13,  
 159:2  
**schemes** <sup>[1]</sup> - 143:13  
**school** <sup>[1]</sup> - 84:16  
**scope** <sup>[4]</sup> - 19:6,  
 19:10, 36:18, 37:1  
**SCOTT** <sup>[41]</sup> - 13:1,

13:5, 13:11, 13:15,  
 53:15, 53:21, 57:11,  
 57:18, 98:8, 99:19,  
 133:8, 133:14,  
 133:18, 134:2,  
 136:13, 136:20,  
 137:1, 137:4,  
 139:13, 139:18,  
 140:2, 140:9,  
 140:17, 140:20,  
 160:14, 160:18,  
 160:20, 186:10,  
 200:1, 200:5, 200:9,  
 201:5, 207:6, 227:8,  
 233:15, 243:8,  
 243:14, 243:18,  
 247:6, 256:4,  
 256:10

**Scott** <sup>[25]</sup> - 1:14, 3:4,  
 13:20, 25:18, 27:3,  
 30:2, 31:3, 44:9,  
 45:3, 46:3, 60:2,  
 61:3, 101:18, 102:3,  
 193:10, 194:3,  
 195:9, 196:3,  
 209:15, 210:3,  
 237:13, 238:3,  
 259:1, 260:3, 266:7

**scrap** <sup>[1]</sup> - 177:16

**screen** <sup>[1]</sup> - 158:3

**sculpted** <sup>[1]</sup> - 123:21

**seam** <sup>[1]</sup> - 15:17

**seamed** <sup>[1]</sup> - 15:16

**SEAN** <sup>[28]</sup> - 20:10,  
 27:17, 28:12, 28:21,  
 29:4, 93:13, 93:15,  
 93:19, 94:17, 94:21,  
 95:4, 95:8, 95:13,  
 194:13, 225:8,  
 226:2, 226:5,  
 227:20, 228:3,  
 228:8, 228:20,  
 234:7, 234:9,  
 235:15, 235:20,  
 236:2, 246:10,  
 246:19

**Sean** <sup>[6]</sup> - 1:16, 93:12,  
 94:1, 194:12, 245:9,  
 246:6

**season** <sup>[3]</sup> - 201:6,  
 203:1, 228:17

**secluded** <sup>[1]</sup> - 198:4

**second** <sup>[23]</sup> - 8:4,

11:1, 23:8, 62:9,  
 76:9, 80:3, 98:20,  
 104:8, 120:9,  
 127:21, 129:16,  
 133:19, 133:21,  
 134:7, 135:6, 136:6,  
 136:7, 138:7,  
 139:15, 142:2,  
 225:13, 232:2,  
 261:19  
**secretary** <sup>[2]</sup> - 33:6,  
 46:10  
**Section** <sup>[8]</sup> - 105:9,  
 106:14, 123:17,  
 171:18, 180:20,  
 182:9, 213:21,  
 245:8  
**section** <sup>[7]</sup> - 13:21,  
 106:15, 125:16,  
 167:5, 172:19,  
 245:9, 245:20  
**sections** <sup>[1]</sup> - 188:17  
**sector** <sup>[1]</sup> - 16:12  
**secured** <sup>[2]</sup> - 19:7,  
 36:19  
**securely** <sup>[1]</sup> - 214:1  
**sedan** <sup>[1]</sup> - 151:19  
**See** <sup>[1]</sup> - 140:7  
**see** <sup>[62]</sup> - 9:17, 13:18,  
 15:17, 17:2, 17:13,  
 23:9, 27:17, 33:5,  
 34:20, 35:8, 42:19,  
 51:19, 62:5, 62:6,  
 62:7, 63:12, 64:17,  
 65:5, 68:11, 69:9,  
 78:15, 82:16, 84:14,  
 92:11, 99:8, 100:5,  
 107:11, 122:13,  
 132:13, 148:3,  
 148:14, 151:14,  
 157:10, 158:1,  
 158:5, 159:19,  
 167:1, 171:10,  
 174:11, 183:2,  
 184:15, 188:15,  
 192:15, 198:5,  
 198:7, 200:17,  
 206:20, 212:9,  
 215:8, 215:10,  
 218:7, 219:6,  
 219:13, 223:17,  
 224:13, 224:16,  
 227:6, 233:7,

254:18, 256:7,  
256:9

**seeing** <sup>[3]</sup> - 154:12,  
154:13, 154:14

**seek** <sup>[2]</sup> - 43:2, 91:15

**seeking** <sup>[9]</sup> - 20:21,  
39:1, 105:3, 109:5,  
110:17, 118:16,  
216:6, 216:7, 217:1

**seeks** <sup>[1]</sup> - 104:12

**seem** <sup>[6]</sup> - 13:12,  
15:11, 170:7,  
189:10, 204:1,  
256:11

**select** <sup>[1]</sup> - 152:21

**selections** <sup>[1]</sup> - 153:7

**sell** <sup>[3]</sup> - 69:14, 74:8,  
165:12

**semantic** <sup>[1]</sup> - 110:18

**semblance**  
<sup>[1]</sup> - 183:10

**send** <sup>[1]</sup> - 84:16

**Senior** <sup>[1]</sup> - 1:10

**sense** <sup>[5]</sup> - 14:5,  
84:14, 93:21, 149:9,  
150:13

**sensitive** <sup>[2]</sup> - 172:9,  
239:15

**sent** <sup>[4]</sup> - 33:4, 81:17,  
81:21, 223:11

**Sent** <sup>[1]</sup> - 7:13

**sentiments**  
<sup>[1]</sup> - 256:17

**separate** <sup>[4]</sup> - 123:17,  
129:21, 226:11,  
226:12

**separated** <sup>[1]</sup> - 22:1

**separately** <sup>[1]</sup> - 33:4

**separation**  
<sup>[4]</sup> - 123:19, 127:6,  
133:9, 246:10

**September** <sup>[1]</sup> - 55:3

**series** <sup>[1]</sup> - 103:1

**serious** <sup>[1]</sup> - 188:20

**serves** <sup>[1]</sup> - 73:7

**service** <sup>[2]</sup> - 4:5, 4:6

**Services** <sup>[2]</sup> - 267:4,  
267:10

**set** <sup>[11]</sup> - 11:19, 13:17,  
20:17, 38:18,  
104:18, 125:6,  
134:19, 164:16,  
240:19, 269:9,

269:11  
**setback** <sup>[9]</sup> - 62:13,  
 120:9, 120:12,  
 197:3, 245:16,  
 246:11, 246:13,  
 260:13, 260:14  
**setbacks** <sup>[4]</sup> - 52:9,  
 62:12, 166:12,  
 197:5  
**setting** <sup>[2]</sup> - 142:19,  
 261:7  
**settle** <sup>[1]</sup> - 61:6  
**Seven** <sup>[2]</sup> - 96:19,  
 96:20  
**seven** <sup>[16]</sup> - 29:8,  
 29:12, 49:1, 50:9,  
 65:9, 73:16, 96:1,  
 96:14, 146:1, 146:4,  
 159:21, 168:9,  
 177:18, 231:8,  
 231:11, 231:18  
**seven-foot** <sup>[3]</sup> - 49:1,  
 146:1, 146:4  
**several** <sup>[3]</sup> - 70:17,  
 90:11, 164:8  
**shall** <sup>[16]</sup> - 19:3, 20:2,  
 20:17, 20:19, 21:11,  
 23:11, 36:17, 37:8,  
 38:18, 38:20, 182:4,  
 182:6, 214:1, 214:5,  
 245:12, 246:2  
**shape** <sup>[4]</sup> - 87:3,  
 101:6, 118:15,  
 190:14  
**share** <sup>[2]</sup> - 71:17,  
 124:16  
**Shaw** <sup>[1]</sup> - 175:6  
**SHAY** <sup>[16]</sup> - 46:16,  
 47:1, 47:4, 47:21,  
 48:3, 49:17, 49:20,  
 50:12, 51:7, 51:11,  
 52:2, 54:7, 54:13,  
 55:14, 56:17, 60:4  
**Shay** <sup>[4]</sup> - 46:17, 55:7,  
 55:21, 56:12  
**sheathing** <sup>[1]</sup> - 200:12  
**SHEET** <sup>[3]</sup> - 267:1,  
 267:20, 268:3  
**sheet** <sup>[3]</sup> - 78:21,  
 268:5, 268:6  
**Sheet** <sup>[4]</sup> - 267:3,  
 267:6, 267:14,  
 268:7

**Sherman** <sup>[9]</sup> - 3:9,  
 4:10, 13:7, 16:18,  
 17:1, 17:10, 18:5,  
 22:16, 32:16  
**shingles** <sup>[1]</sup> - 183:19  
**shoot** <sup>[2]</sup> - 130:5,  
 146:10  
**shop** <sup>[3]</sup> - 217:21,  
 219:4, 232:8  
**short** <sup>[6]</sup> - 30:4, 45:10,  
 60:7, 105:14, 114:4,  
 224:7  
**Shorthand** <sup>[2]</sup> - 269:4,  
 269:14  
**Show** <sup>[11]</sup> - 25:16,  
 29:20, 44:7, 59:21,  
 101:16, 193:6,  
 195:4, 209:13,  
 237:11, 258:20,  
 266:4  
**show** <sup>[18]</sup> - 5:12,  
 62:20, 68:15, 69:7,  
 128:15, 134:2,  
 134:6, 134:10,  
 134:16, 136:6,  
 137:10, 138:16,  
 140:2, 168:15,  
 212:7, 212:16,  
 239:5, 262:11  
**showing** <sup>[1]</sup> - 148:15  
**shown** <sup>[7]</sup> - 134:8,  
 140:1, 144:16,  
 154:21, 213:9,  
 217:19, 218:5  
**shows** <sup>[2]</sup> - 5:18,  
 136:18  
**side** <sup>[41]</sup> - 16:17, 17:3,  
 52:5, 53:17, 55:12,  
 56:2, 62:12, 62:13,  
 68:6, 68:8, 70:14,  
 70:16, 70:18, 71:3,  
 90:2, 101:6, 125:7,  
 126:2, 126:12,  
 129:18, 140:5,  
 164:20, 166:18,  
 166:21, 167:7,  
 167:13, 168:1,  
 168:12, 173:16,  
 217:3, 221:19,  
 232:3, 232:11,  
 236:17, 245:14,  
 246:14, 254:11,  
 260:16

**side-by-side**

[3] - 166:21, 167:7,  
167:13

**sides** [5] - 16:21,

199:5, 248:10,  
249:8

**sidetracked**

[1] - 141:4

**sidewalk** [9] - 120:12,

146:18, 148:5,  
155:16, 183:16,  
183:21, 184:5,  
184:10, 235:18

**siding** [1] - 143:5**Sidoti** [2] - 211:8,

228:11

**SIDOTI** [3] - 229:6,

230:20, 231:2

**sign** [53] - 28:10,

29:10, 29:13, 95:20,  
95:21, 96:11, 212:8,  
212:10, 212:17,  
213:1, 213:4, 213:6,  
215:17, 215:20,  
216:5, 216:11,  
216:14, 217:7,  
217:11, 217:12,  
217:16, 218:9,  
219:6, 219:7, 219:8,  
219:9, 219:12,  
220:3, 222:1,  
222:11, 223:12,  
223:20, 224:2,  
224:15, 224:20,  
225:1, 225:13,  
226:13, 226:16,  
226:17, 227:1,  
231:10, 231:18,  
232:1, 232:2, 232:7,  
232:10, 232:14,  
234:3, 236:6,  
237:16, 267:14

**Sign** [2] - 237:7, 268:6**sign's** [1] - 224:10**signage** [13] - 210:19,

211:7, 211:13,  
211:17, 212:5,  
213:9, 213:13,  
213:15, 222:19,  
227:2, 231:20,  
232:4, 232:14

**signature** [1] - 243:5**SIGNATURE**

[1] - 267:1  
**signatures** [3] - 81:16,  
81:20, 178:10  
**SIGNED** [1] - 267:20  
**signed** [12] - 81:8,  
81:14, 92:14,  
175:16, 177:2,  
177:10, 177:13,  
177:21, 179:1,  
207:16, 254:6,  
267:7  
**significance**  
[1] - 118:11  
**significant**  
[8] - 103:12, 112:9,  
121:9, 124:2,  
142:12, 143:4,  
179:16, 191:21  
**significantly**  
[1] - 111:3  
**signs** [11] - 213:15,  
225:4, 225:7,  
225:18, 231:12,  
234:20, 235:5,  
235:6, 235:8,  
235:11, 237:3  
**similar** [6] - 68:16,  
70:19, 85:5, 99:8,  
99:10, 101:3  
**simple** [2] - 198:12,  
264:2  
**simply** [6] - 5:4, 12:7,  
153:10, 165:17,  
197:7, 197:9  
**sims** [3] - 3:16, 9:18,  
39:16  
**simulations**  
[4] - 25:10, 25:13,  
37:7, 39:21  
**Sincerely** [1] - 166:1  
**single** [13] - 73:2,  
80:14, 90:20, 97:20,  
103:10, 103:21,  
106:21, 112:13,  
119:16, 173:13,  
180:18, 190:7,  
221:14  
**single-family**  
[10] - 73:2, 80:14,  
90:20, 97:20,  
103:10, 103:21,  
106:21, 112:13,  
180:18, 190:7

**Sirs** <sup>[1]</sup> - 55:4  
**sisters** <sup>[1]</sup> - 73:16  
**sit** <sup>[6]</sup> - 194:18, 203:8,  
 205:4, 205:9,  
 205:14, 205:16  
**site** <sup>[10]</sup> - 31:14, 49:8,  
 213:10, 216:6,  
 216:9, 216:19,  
 223:18, 232:19,  
 249:21, 250:13  
**sites** <sup>[1]</sup> - 32:15  
**siting** <sup>[1]</sup> - 190:15  
**sits** <sup>[2]</sup> - 48:15, 120:12  
**sitting** <sup>[2]</sup> - 69:21,  
 139:4  
**Sitting** <sup>[12]</sup> - 3:3, 27:2,  
 31:2, 45:2, 46:2,  
 61:2, 102:2, 194:2,  
 196:2, 210:2, 238:2,  
 260:2  
**situation** <sup>[13]</sup> - 48:6,  
 76:5, 100:2, 117:13,  
 146:19, 221:5,  
 224:2, 239:4, 239:8,  
 241:20, 244:5,  
 256:2, 256:5  
**situations** <sup>[1]</sup> - 224:7  
**six** <sup>[19]</sup> - 5:20, 5:21,  
 9:1, 31:14, 31:17,  
 35:5, 39:9, 40:4,  
 50:10, 50:11, 51:2,  
 54:6, 146:4, 218:14,  
 218:16, 260:17  
**sixties** <sup>[1]</sup> - 103:16  
**size** <sup>[29]</sup> - 7:4, 12:17,  
 58:20, 67:7, 68:16,  
 98:16, 100:19,  
 107:8, 107:9,  
 110:21, 111:1,  
 111:11, 115:5,  
 118:15, 123:5,  
 132:3, 142:19,  
 148:20, 151:17,  
 153:6, 154:3,  
 154:18, 160:9,  
 162:4, 181:16,  
 190:11, 190:14,  
 239:16, 257:20  
**sized** <sup>[2]</sup> - 111:7,  
 120:2  
**skeptical** <sup>[1]</sup> - 77:9  
**skepticism**  
<sup>[1]</sup> - 109:10

**sketches** <sup>[1]</sup> - 201:1  
**skill** <sup>[1]</sup> - 269:10  
**skylights** <sup>[2]</sup> - 144:7,  
 168:5  
**Slaga** <sup>[2]</sup> - 6:18, 35:21  
**SLAGA** <sup>[1]</sup> - 6:13  
**slash** <sup>[1]</sup> - 127:18  
**sleeping** <sup>[1]</sup> - 87:14  
**sleeps** <sup>[2]</sup> - 64:8,  
 85:15  
**slept** <sup>[2]</sup> - 65:21, 66:1  
**sliders** <sup>[1]</sup> - 250:11  
**slight** <sup>[4]</sup> - 58:17,  
 133:5, 142:7,  
 241:21  
**slightly** <sup>[4]</sup> - 9:15,  
 53:5, 88:5, 99:1  
**slope** <sup>[2]</sup> - 239:21,  
 240:1  
**slot** <sup>[1]</sup> - 217:2  
**small** <sup>[15]</sup> - 9:15, 22:9,  
 40:5, 65:1, 67:9,  
 68:2, 85:14, 101:9,  
 149:13, 152:19,  
 152:20, 173:1,  
 173:2, 183:18,  
 265:14  
**smaller** <sup>[9]</sup> - 7:4, 7:5,  
 17:19, 83:21, 90:1,  
 107:7, 122:17,  
 149:11, 165:18  
**smallest** <sup>[1]</sup> - 111:5  
**smart** <sup>[1]</sup> - 148:21  
**Smiths** <sup>[1]</sup> - 176:19  
**So..** <sup>[1]</sup> - 99:6  
**So...** <sup>[1]</sup> - 54:15  
**social** <sup>[1]</sup> - 65:19  
**softened** <sup>[1]</sup> - 183:14  
**solid** <sup>[1]</sup> - 37:10  
**solution** <sup>[14]</sup> - 78:3,  
 86:16, 88:4, 88:7,  
 91:8, 97:16, 111:15,  
 139:7, 139:11,  
 141:8, 180:10,  
 203:20, 203:21,  
 204:1  
**solve** <sup>[2]</sup> - 232:3,  
 261:1  
**solves** <sup>[1]</sup> - 113:16  
**someone** <sup>[5]</sup> - 153:19,  
 163:4, 212:21,  
 217:11, 222:17  
**Somerville** <sup>[1]</sup> - 61:13

**Sometime** <sup>[1]</sup> - 94:10

**sometime** <sup>[2]</sup> - 86:20,  
94:8

**sometimes**  
<sup>[2]</sup> - 202:4, 212:3

**somewhat** <sup>[9]</sup> - 12:19,  
35:3, 106:2, 141:12,  
190:11, 212:17,  
221:16, 239:3,  
256:19

**somewhere**  
<sup>[2]</sup> - 74:21, 236:4

**Sonnenschien**  
<sup>[2]</sup> - 55:13, 55:14

**soon** <sup>[3]</sup> - 83:5, 84:3,  
141:14

**sophisticated**  
<sup>[1]</sup> - 85:11

**sorry** <sup>[27]</sup> - 20:13,  
39:17, 49:18, 81:18,  
89:6, 93:13, 109:3,  
113:10, 131:20,  
132:21, 134:6,  
134:17, 136:14,  
137:15, 156:1,  
161:15, 163:2,  
178:13, 202:19,  
208:6, 234:8,  
234:17, 238:17,  
240:1, 240:5, 242:8,  
265:12

**sort** <sup>[28]</sup> - 13:4, 38:7,  
49:3, 49:6, 51:17,  
51:19, 52:8, 75:8,  
75:9, 75:11, 75:20,  
79:1, 79:6, 99:8,  
100:5, 116:9,  
197:18, 197:21,  
198:13, 204:14,  
205:14, 214:14,  
235:20, 236:3,  
239:7, 240:8,  
240:19, 241:20

**sought** <sup>[3]</sup> - 118:13,  
144:12, 191:20

**sounded** <sup>[1]</sup> - 167:2

**sounds** <sup>[1]</sup> - 160:2

**SOUSA** <sup>[48]</sup> - 3:10,  
3:15, 3:20, 5:16, 6:6,  
6:11, 6:17, 7:2, 8:10,  
8:19, 9:8, 10:13,  
11:8, 11:12, 12:12,  
13:10, 13:16, 14:3,

15:1, 15:7, 15:21,  
 16:8, 16:14, 18:11,  
 18:17, 20:8, 21:16,  
 25:20, 31:8, 32:4,  
 32:13, 33:8, 33:20,  
 35:13, 35:19, 36:3,  
 36:7, 37:13, 38:1,  
 38:3, 38:6, 38:9,  
 38:13, 42:11, 43:9,  
 43:12, 43:15, 44:2

**Sousa** <sup>[4]</sup> - 3:19, 4:1,  
 31:10, 35:16

**sow** <sup>[1]</sup> - 74:16

**space** <sup>[79]</sup> - 52:11,  
 58:9, 64:4, 64:17,  
 64:19, 65:4, 66:12,  
 74:2, 76:14, 76:17,  
 76:18, 91:10, 91:19,  
 100:20, 100:21,  
 108:11, 118:3,  
 120:2, 125:20,  
 126:1, 127:9,  
 127:12, 128:12,  
 132:6, 132:14,  
 142:5, 142:10,  
 142:11, 142:12,  
 146:10, 147:19,  
 147:21, 148:6,  
 148:19, 153:10,  
 153:12, 155:17,  
 155:21, 157:18,  
 159:15, 160:4,  
 160:6, 173:8,  
 173:11, 173:12,  
 173:16, 173:17,  
 173:18, 173:19,  
 181:3, 182:2, 182:4,  
 183:6, 183:7,  
 183:11, 184:11,  
 184:21, 185:2,  
 198:21, 199:20,  
 201:11, 201:18,  
 202:10, 203:2,  
 203:3, 203:5,  
 203:18, 204:5,  
 204:13, 206:1,  
 235:2, 242:1, 242:3,  
 244:1, 245:2, 249:7,  
 252:19, 261:8

**space-wise** <sup>[1]</sup> - 185:2

**spaces** <sup>[19]</sup> - 111:18,  
 111:20, 113:21,  
 120:3, 122:14,

122:18, 126:2,  
 146:13, 148:16,  
 151:20, 152:9,  
 152:20, 155:6,  
 155:16, 156:12,  
 156:13, 160:11,  
 160:12, 181:10

**Sparks** <sup>[1]</sup> - 164:7

**speaking** <sup>[1]</sup> - 112:14

**Special** <sup>[31]</sup> - 17:18,

19:1, 20:17, 20:21,  
 21:2, 21:14, 22:8,  
 23:15, 38:17, 39:1,  
 39:3, 39:13, 39:18,  
 40:3, 41:15, 44:6,  
 155:4, 162:15,  
 163:18, 165:15,  
 174:18, 182:13,  
 192:21, 193:4,  
 193:8, 207:11,  
 207:13, 217:1,  
 221:7, 232:9, 248:2

**special** <sup>[4]</sup> - 175:4,

241:20, 256:2,  
 256:5

**Specialist** <sup>[1]</sup> - 1:16

**specific** <sup>[11]</sup> - 105:7,

105:15, 175:20,  
 216:7, 216:19,  
 216:21, 217:1,  
 217:2, 224:14,  
 226:16, 230:8

**specifically**

<sup>[2]</sup> - 223:11, 244:3

**speculative**

<sup>[1]</sup> - 154:7

**spell** <sup>[4]</sup> - 46:8,

147:15, 196:13,  
 238:8

**spend** <sup>[3]</sup> - 33:10,

86:20, 203:13

**spending** <sup>[1]</sup> - 91:2

**spent** <sup>[2]</sup> - 104:14,

228:6

**split** <sup>[1]</sup> - 167:8

**spoken** <sup>[2]</sup> - 27:19,

81:6

**spot** <sup>[4]</sup> - 164:21,

217:6, 236:16,  
 239:12

**spots** <sup>[5]</sup> - 164:17,

164:20, 165:2,  
 165:3, 165:4

**spring** <sup>[1]</sup> - 197:12  
**sprinkle** <sup>[1]</sup> - 134:4  
**sprinkled** <sup>[1]</sup> - 134:4  
**Square** <sup>[2]</sup> - 61:14,  
 210:12  
**square** <sup>[26]</sup> - 9:3, 49:4,  
 52:18, 57:21, 71:4,  
 103:17, 103:18,  
 111:4, 111:5, 111:6,  
 117:5, 117:6, 117:8,  
 117:10, 117:18,  
 117:21, 118:1,  
 142:3, 173:8,  
 173:10, 173:11,  
 173:12, 180:10,  
 261:7, 265:10,  
 265:11  
**squarely** <sup>[1]</sup> - 166:17  
**squeezing** <sup>[1]</sup> - 67:14  
**SS** <sup>[1]</sup> - 269:3  
**stacked** <sup>[2]</sup> - 159:4,  
 167:3  
**stair** <sup>[6]</sup> - 68:1, 68:2,  
 79:20, 101:11,  
 101:13, 261:7  
**staircase**  
<sup>[11]</sup> - 129:17, 130:1,  
 130:5, 130:8,  
 130:19, 131:5,  
 134:7, 134:11,  
 138:14, 139:17,  
 140:13  
**stairs** <sup>[5]</sup> - 69:11,  
 83:9, 126:13, 261:3,  
 261:5  
**stairway** <sup>[1]</sup> - 127:21  
**stand** <sup>[2]</sup> - 13:14,  
 164:15  
**standard** <sup>[4]</sup> - 85:3,  
 124:3, 162:14,  
 239:9  
**standards**  
<sup>[3]</sup> - 124:10, 173:21,  
 181:12  
**standing** <sup>[2]</sup> - 17:1,  
 17:3  
**standpoint** <sup>[1]</sup> - 83:17  
**stands** <sup>[1]</sup> - 13:19  
**start** <sup>[6]</sup> - 71:12,  
 81:12, 124:10,  
 130:6, 184:4,  
 196:19  
**started** <sup>[6]</sup> - 124:4,

185:9, 185:20,  
 205:5, 205:9,  
 242:12  
**starters** <sup>[1]</sup> - 116:12  
**starting** <sup>[4]</sup> - 77:13,  
 89:19, 125:1, 125:3  
**state** <sup>[4]</sup> - 19:7, 36:20,  
 89:10, 168:1  
**statements**  
<sup>[1]</sup> - 268:20  
**Station** <sup>[3]</sup> - 254:21,  
 255:4, 255:6  
**stay** <sup>[4]</sup> - 41:20, 82:5,  
 84:20, 85:6  
**staying** <sup>[1]</sup> - 67:9  
**stays** <sup>[1]</sup> - 88:4  
**stealthness**  
<sup>[1]</sup> - 38:12  
**STEFANAAN**  
<sup>[1]</sup> - 250:19  
**Stefanaan**  
<sup>[2]</sup> - 250:20, 250:21  
**STENOGRAPHER**  
<sup>[1]</sup> - 115:21  
**stenographic**  
<sup>[1]</sup> - 269:9  
**step** <sup>[2]</sup> - 121:9,  
 144:19  
**steps** <sup>[3]</sup> - 262:12,  
 264:5, 264:18  
**STEVEN** <sup>[16]</sup> - 46:16,  
 47:1, 47:4, 47:21,  
 48:3, 49:17, 49:20,  
 50:12, 51:7, 51:11,  
 52:2, 54:7, 54:13,  
 55:14, 56:17, 60:4  
**Steven** <sup>[3]</sup> - 46:17,  
 55:6, 56:12  
**still** <sup>[14]</sup> - 67:3, 74:16,  
 83:7, 109:21,  
 113:15, 117:8,  
 137:18, 148:16,  
 156:3, 161:5, 171:9,  
 198:20, 204:20,  
 244:13  
**stole** <sup>[1]</sup> - 186:10  
**stood** <sup>[1]</sup> - 178:17  
**storage** <sup>[3]</sup> - 48:10,  
 50:21, 203:5  
**store** <sup>[3]</sup> - 216:8,  
 217:6, 225:19  
**store's** <sup>[1]</sup> - 216:12  
**storefront** <sup>[3]</sup> - 217:8,

218:11, 232:8  
**stories** <sup>[1]</sup> - 131:10  
**storm** <sup>[1]</sup> - 202:11  
**story** <sup>[1]</sup> - 101:7  
**straight** <sup>[8]</sup> - 32:1,  
 32:10, 32:19, 35:3,  
 35:4, 130:20,  
 146:10, 148:8  
**strange** <sup>[1]</sup> - 91:16  
**street** <sup>[34]</sup> - 12:3,  
 46:14, 62:4, 62:6,  
 68:5, 68:8, 70:15,  
 75:18, 90:11, 90:21,  
 117:6, 121:7,  
 121:13, 122:2,  
 125:17, 145:2,  
 146:11, 146:18,  
 148:1, 152:10,  
 155:8, 157:7,  
 163:14, 165:2,  
 173:15, 177:17,  
 192:12, 198:6,  
 214:2, 214:4, 214:7,  
 235:17, 235:21,  
 236:10  
**Street** <sup>[40]</sup> - 3:9, 4:10,  
 13:7, 16:18, 17:1,  
 17:11, 18:5, 22:16,  
 45:6, 46:6, 54:21,  
 55:5, 61:6, 61:17,  
 89:9, 93:1, 93:5,  
 163:10, 164:8,  
 171:3, 178:2,  
 178:15, 210:6,  
 211:16, 211:20,  
 215:12, 215:14,  
 215:19, 216:10,  
 216:12, 216:15,  
 217:16, 218:21,  
 225:16, 226:1,  
 232:13, 260:6,  
 260:9, 260:14,  
 263:15  
**Street's** <sup>[1]</sup> - 178:6  
**streets** <sup>[1]</sup> - 157:6  
**streetscape**  
<sup>[3]</sup> - 172:10, 185:5,  
 192:7  
**streetscapes**  
<sup>[1]</sup> - 172:8  
**stress** <sup>[1]</sup> - 96:11  
**stretch** <sup>[2]</sup> - 145:4,  
 186:20

**stretching** <sup>[1]</sup> - 163:8

**strict** <sup>[1]</sup> - 221:16

**structural**

<sup>[2]</sup> - 109:15, 110:9

**structure** <sup>[53]</sup> - 4:19,

5:1, 9:12, 11:9,

11:11, 11:15, 12:2,

12:9, 12:15, 14:8,

14:10, 15:2, 15:4,

16:13, 16:15, 17:1,

21:10, 21:11, 69:21,

70:19, 73:4, 103:18,

105:20, 109:6,

110:2, 111:1, 112:6,

112:8, 115:3,

116:21, 117:17,

121:20, 122:4,

122:5, 145:12,

162:3, 162:5,

162:17, 180:8,

180:17, 182:10,

186:17, 189:20,

190:15, 192:6,

192:11, 198:16,

200:2, 208:4, 244:3,

246:1, 250:3,

264:19

**structures**

<sup>[3]</sup> - 172:17, 260:19,

264:20

**struggle** <sup>[1]</sup> - 90:17

**struggled** <sup>[2]</sup> - 82:8,

82:18

**struggling**

<sup>[1]</sup> - 186:19

**stuck** <sup>[1]</sup> - 98:12

**study** <sup>[2]</sup> - 48:19,

136:10

**stuff** <sup>[6]</sup> - 36:14,

49:21, 74:4, 197:10,

204:17, 264:2

**style** <sup>[5]</sup> - 75:1, 90:5,

90:7, 112:5, 122:1

**sub** <sup>[1]</sup> - 200:8

**subdivide** <sup>[1]</sup> - 167:9

**subject** <sup>[3]</sup> - 95:11,

182:6, 214:1

**submission** <sup>[2]</sup> - 6:5,

214:16

**submissions**

<sup>[2]</sup> - 29:15, 175:16

**submit** <sup>[5]</sup> - 87:19,

213:16, 217:5,

219:21, 225:1

**submitted**

[13] - 25:12, 25:14,  
40:1, 42:18, 58:3,  
59:18, 176:5, 177:5,  
177:7, 190:1,  
253:20, 254:13,  
264:6

**Submitted** [1] - 176:8

**subscribe** [1] - 268:19

**subsequent**

[1] - 41:17

**subsidiary**

[1] - 210:13

**substance** [2] - 43:20,

93:8

**substantial**

[13] - 14:11, 24:5,  
40:11, 58:6, 59:1,  
190:4, 190:20,  
191:14, 208:1,  
257:10, 258:9,  
264:15, 265:8

**substantially**

[6] - 59:9, 99:3,  
191:1, 209:7,  
258:13, 265:21

**suburbs** [1] - 86:6

**succeed** [1] - 122:5

**sudden** [3] - 73:3,

77:4, 109:19

**suffered** [2] - 73:21,

76:19

**Suffice** [1] - 104:19

**suggest** [6] - 10:16,

18:6, 22:17, 119:21,  
145:4, 157:2

**suggested** [3] - 9:12,

129:8, 232:11

**suggestions**

[2] - 32:12, 186:4

**suit** [1] - 77:1

**suite** [1] - 67:6

**suits** [1] - 77:4

**SULLIVAN** [255] - 3:6,

3:12, 3:19, 7:1, 7:8,  
7:11, 8:1, 8:7, 10:15,  
11:3, 11:10, 12:11,  
12:14, 13:3, 13:14,  
14:1, 14:12, 17:7,  
17:13, 18:14, 18:19,  
20:13, 20:16, 22:5,  
23:3, 23:9, 23:14,

25:11, 25:17, 27:8,  
27:15, 27:21, 28:7,  
28:13, 28:19, 29:5,  
29:21, 31:5, 32:11,  
32:21, 33:9, 33:18,  
34:11, 34:14, 34:20,  
36:12, 37:15, 38:2,  
38:5, 38:8, 38:10,  
38:15, 39:17, 41:19,  
42:7, 43:5, 43:11,  
43:14, 43:16, 44:5,  
44:8, 45:5, 45:8,  
46:5, 46:20, 47:3,  
47:6, 47:11, 51:3,  
51:15, 52:1, 52:13,  
52:18, 53:1, 53:7,  
53:18, 54:1, 54:16,  
54:18, 55:2, 55:15,  
56:19, 57:5, 57:10,  
57:13, 57:15, 57:19,  
60:1, 61:5, 61:20,  
69:13, 69:18, 72:17,  
73:1, 74:11, 74:14,  
76:13, 78:21, 79:5,  
79:11, 79:14, 80:5,  
80:20, 81:4, 86:13,  
88:9, 88:20, 89:6,  
92:7, 92:11, 93:14,  
93:17, 94:4, 94:8,  
94:13, 95:14, 95:17,  
98:6, 99:12, 101:14,  
101:17, 102:5,  
107:11, 107:20,  
108:15, 108:20,  
112:17, 113:1,  
113:6, 138:17,  
141:3, 141:15,  
145:18, 145:21,  
146:3, 146:6,  
147:10, 156:15,  
160:13, 161:13,  
161:16, 161:19,  
162:18, 163:6,  
167:15, 170:13,  
174:7, 174:11,  
175:14, 176:12,  
176:15, 177:2,  
179:20, 180:15,  
184:3, 184:18,  
186:9, 187:3, 189:3,  
189:17, 191:7,  
192:16, 192:19,  
193:7, 193:14,

194:5, 194:9,  
 194:14, 195:3,  
 195:5, 196:5,  
 196:12, 196:16,  
 198:12, 198:15,  
 199:19, 202:12,  
 202:16, 204:10,  
 204:16, 206:8,  
 206:15, 206:20,  
 207:8, 207:11,  
 209:11, 209:14,  
 210:5, 210:15,  
 213:20, 215:5,  
 221:11, 223:4,  
 223:13, 227:3,  
 227:10, 227:16,  
 228:2, 228:4,  
 228:13, 228:18,  
 229:12, 230:7,  
 230:14, 230:18,  
 230:21, 231:3,  
 231:7, 232:16,  
 233:18, 234:12,  
 235:9, 236:21,  
 237:9, 237:12,  
 238:5, 243:7, 244:6,  
 244:12, 244:18,  
 245:7, 245:19,  
 246:16, 246:21,  
 248:1, 248:7,  
 249:13, 250:6,  
 250:17, 251:12,  
 251:14, 251:17,  
 252:2, 253:7,  
 253:10, 253:14,  
 254:2, 254:12,  
 254:17, 254:20,  
 256:3, 256:6,  
 256:14, 257:7,  
 258:21, 260:5,  
 262:1, 262:4, 262:7,  
 263:9, 263:12,  
 263:18, 264:10,  
 265:12, 266:5  
**Sullivan** <sup>[25]</sup> - 1:13,  
 3:3, 25:18, 27:2,  
 30:2, 31:2, 44:9,  
 45:2, 46:2, 60:2,  
 61:2, 101:18, 102:2,  
 193:10, 194:2,  
 195:9, 196:2,  
 209:15, 210:2,  
 216:1, 237:13,

238:2, 259:1, 260:2,  
266:7

**Sullivan's** <sup>[1]</sup> - 215:11

**sum** <sup>[2]</sup> - 93:8, 100:5

**summer** <sup>[4]</sup> - 56:20,  
197:9, 203:7,  
205:11

**sun** <sup>[2]</sup> - 197:18,  
204:15

**sunlight** <sup>[1]</sup> - 197:20

**supplement** <sup>[1]</sup> - 62:2

**supplied** <sup>[1]</sup> - 267:14

**support** <sup>[32]</sup> - 53:19,  
55:9, 56:4, 56:14,  
80:15, 81:15, 81:21,  
89:12, 92:14, 92:17,  
116:16, 164:11,  
164:13, 174:17,  
175:3, 176:20,  
179:10, 179:18,  
191:8, 241:12,  
250:5, 251:3,  
251:10, 252:13,  
253:20, 254:3,  
254:4, 255:13,  
255:16, 258:11,  
263:17, 263:18

**supported**  
<sup>[1]</sup> - 162:16

**supportive**  
<sup>[1]</sup> - 143:11

**supposed** <sup>[1]</sup> - 219:18

**surface** <sup>[8]</sup> - 14:20,  
15:13, 16:2, 20:3,  
21:7, 37:11, 39:7

**surround** <sup>[1]</sup> - 254:10

**surrounding**  
<sup>[4]</sup> - 145:7, 162:7,  
162:14, 241:11

**surveys** <sup>[1]</sup> - 253:16

**survivable** <sup>[2]</sup> - 85:18

**suspect** <sup>[2]</sup> - 102:19,  
154:11

**suspend** <sup>[1]</sup> - 200:15

**SUV** <sup>[2]</sup> - 150:13,  
150:19

**SUVs** <sup>[1]</sup> - 149:21

**SVENSON**  
<sup>[27]</sup> - 114:17, 115:15,  
115:19, 116:1,  
126:19, 129:11,  
132:1, 133:10,  
133:16, 133:21,

134:12, 135:3,  
 135:11, 137:8,  
 137:11, 137:20,  
 161:9, 161:12,  
 175:19, 176:2,  
 178:9, 178:13,  
 178:17, 179:2,  
 184:1, 184:16,  
 189:16  
**Svenson** <sup>[3]</sup> - 116:1,  
 121:3, 165:11  
**Svenson's**  
<sup>[1]</sup> - 120:20  
**swap** <sup>[3]</sup> - 4:4, 35:4,  
 35:5  
**swapping** <sup>[1]</sup> - 31:16  
**swished** <sup>[1]</sup> - 91:17  
**symmetry** <sup>[1]</sup> - 70:20  
**sympathetic**  
<sup>[2]</sup> - 74:18, 75:2  
**sympathize**  
<sup>[1]</sup> - 73:11  
**syncro** <sup>[1]</sup> - 147:4  
**system** <sup>[1]</sup> - 84:17

## T

**T-a-t-a-r** <sup>[1]</sup> - 56:9  
**T-Mobile** <sup>[4]</sup> - 4:2, 4:3,  
 19:10, 31:11  
**table** <sup>[1]</sup> - 246:4  
**Tad** <sup>[1]</sup> - 116:6  
**tall** <sup>[2]</sup> - 198:10,  
 203:15  
**taller** <sup>[1]</sup> - 108:9  
**tape** <sup>[3]</sup> - 36:15,  
 215:16  
**tasteful** <sup>[1]</sup> - 59:3  
**Tatar** <sup>[1]</sup> - 56:9  
**tear** <sup>[2]</sup> - 72:4, 72:5  
**tearing** <sup>[1]</sup> - 120:21  
**technical** <sup>[2]</sup> - 50:6,  
 114:13  
**technicalities**  
<sup>[1]</sup> - 138:3  
**technicality**  
<sup>[1]</sup> - 96:17  
**teens** <sup>[2]</sup> - 80:7  
**telecommunication**  
<sup>[3]</sup> - 18:21, 25:4,  
 41:12  
**telecommunication**  
**s** <sup>[1]</sup> - 24:18  
**temporary**

[1] - 213:12  
**ten** [2] - 67:20, 101:2  
**tenant** [8] - 76:18,  
85:1, 90:21, 154:7,  
154:8, 211:16,  
213:2, 233:19  
**Tenants** [1] - 154:1  
**tenants** [3] - 82:20,  
85:2, 233:12  
**tendency** [1] - 13:12  
**term** [3] - 50:6,  
106:13, 131:18  
**terms** [7] - 50:5,  
75:19, 86:7, 87:14,  
98:3, 102:21,  
231:21  
**terribly** [1] - 171:9  
**test** [1] - 119:17  
**testified** [2] - 179:15,  
179:18  
**testify** [2] - 53:13,  
229:19  
**testimony**  
[2] - 267:14, 269:8  
**texture** [3] - 19:21,  
37:17, 38:11  
**THE** [9] - 1:3, 1:19,  
115:21, 267:19,  
269:19, 269:20,  
269:20  
**themselves** [3] - 38:4,  
61:15, 122:19  
**theoretical**  
[1] - 153:10  
**theoretically**  
[1] - 124:5  
**theory** [1] - 183:5  
**therefor** [2] - 267:14,  
268:5  
**therein** [2] - 207:16,  
257:2  
**thereof** [1] - 267:7  
**thesis** [1] - 183:3  
**They've** [1] - 254:18  
**they've** [2] - 80:8,  
89:15  
**thinking** [2] - 104:3,  
167:11  
**third** [17] - 62:9, 64:2,  
64:3, 64:8, 66:11,  
68:17, 72:3, 79:20,  
80:13, 91:19, 98:20,  
99:1, 112:16, 130:6,

132:4, 134:14,  
145:5

**THIS** <sup>[2]</sup> - 267:19,  
269:19

**Thomas** <sup>[13]</sup> - 1:14,  
3:4, 27:3, 31:3, 45:3,  
46:3, 61:3, 102:3,  
194:3, 196:3, 210:3,  
238:3, 260:3

**THOMAS** <sup>[41]</sup> - 13:1,  
13:5, 13:11, 13:15,  
53:15, 53:21, 57:11,  
57:18, 98:8, 99:19,  
133:8, 133:14,  
133:18, 134:2,  
136:13, 136:20,  
137:1, 137:4,  
139:13, 139:18,  
140:2, 140:9,  
140:17, 140:20,  
160:14, 160:18,  
160:20, 186:10,  
200:1, 200:5, 200:9,  
201:5, 207:6, 227:8,  
233:15, 243:8,  
243:14, 243:18,  
247:6, 256:4,  
256:10

**thoughtful**

<sup>[1]</sup> - 145:13

**thoughts** <sup>[3]</sup> - 57:8,  
98:7, 261:1

**thousand** <sup>[1]</sup> - 117:7

**threatened**

<sup>[1]</sup> - 164:10

**three** <sup>[63]</sup> - 4:8, 4:11,  
4:12, 5:3, 6:2, 14:10,  
23:17, 50:21, 51:1,  
73:13, 73:17, 83:7,  
83:13, 85:17, 89:14,  
90:18, 104:9,  
104:13, 106:16,  
106:19, 107:4,  
107:6, 107:9, 109:6,  
110:1, 110:21,  
114:2, 114:4, 119:2,  
119:18, 120:2,  
123:2, 123:3, 123:9,  
126:2, 126:4,  
145:15, 146:13,  
148:10, 155:2,  
164:17, 168:13,  
176:21, 180:18,

184:21, 185:2,  
 185:9, 185:21,  
 186:1, 188:19,  
 189:20, 192:9,  
 193:16, 201:6,  
 203:1, 212:1,  
 224:13, 226:9,  
 226:12, 234:20,  
 260:13, 260:17

### **three-family**

[7] - 107:4, 109:6,  
 184:21, 185:9,  
 185:21, 186:1,  
 188:19

### **three-unit** [5] - 104:9,

106:19, 107:6,  
 180:18, 189:20

### **three-year-old**

[1] - 83:7

### **throughout**

[3] - 105:16, 152:18,  
 224:21

### **throwing** [1] - 49:5

### **thunder** [1] - 186:11

### **THURSDAY** [1] - 1:7

### **tie** [2] - 71:21, 134:19

### **Tie** [1] - 39:15

### **ties** [1] - 62:21

### **tightly** [1] - 83:3

### **Tim** [1] - 55:18

### **tiptoe** [1] - 85:20

### **Tishler** [1] - 255:12

### **TISHLER** [1] - 255:12

### **TO** [2] - 268:1, 269:19

### **Tobin** [1] - 84:18

**today** [7] - 85:7,  
 103:18, 118:19,  
 137:13, 138:7,  
 142:17, 264:10

### **today's** [1] - 96:13

### **together** [2] - 77:19, 98:20

**Tom** [7] - 29:2, 53:20,  
 57:10, 98:7, 186:9,  
 247:5, 256:3

### **tomorrow**

[4] - 234:11, 234:13,  
 234:14, 235:12

### **tones** [1] - 14:1

**tonight** [12] - 27:6,  
 33:19, 35:18, 42:18,  
 87:14, 87:21,  
 100:11, 137:17,

145:9, 227:7, 229:5,  
232:20

**tonight's** <sup>[1]</sup> - 33:1

**took** <sup>[8]</sup> - 69:5, 73:18,  
76:17, 81:13,  
102:16, 144:19,  
219:6, 247:10

**top** <sup>[8]</sup> - 13:8, 13:21,  
69:20, 72:19, 73:4,  
80:14, 97:21,  
134:14

**total** <sup>[3]</sup> - 50:9, 100:5,  
103:17

**totally** <sup>[2]</sup> - 91:1, 97:5

**tough** <sup>[2]</sup> - 69:14, 80:1

**toward** <sup>[1]</sup> - 236:20

**towards** <sup>[3]</sup> - 63:4,  
97:3, 261:8

**townhouse**

<sup>[67]</sup> - 104:17, 104:19,  
105:2, 105:5,  
105:12, 106:1,  
106:2, 106:13,  
106:18, 107:2,  
107:6, 107:12,  
107:21, 109:1,  
109:15, 109:16,  
109:17, 110:7,  
110:13, 110:15,  
111:21, 112:1,  
115:11, 119:4,  
119:5, 119:6, 119:7,  
119:11, 119:12,  
119:13, 119:15,  
123:16, 123:20,  
124:1, 124:2,  
133:13, 136:12,  
138:3, 165:16,  
167:5, 167:12,  
169:10, 171:10,  
171:13, 171:16,  
172:1, 172:6,  
172:11, 172:16,  
180:19, 181:12,  
181:14, 182:3,  
182:6, 182:18,  
182:21, 183:1,  
185:12, 185:14,  
185:17, 186:20,  
186:21, 188:9,  
189:21, 192:10,  
192:13

**Townhouse**

[2] - 107:14, 107:17

**townhouses**

[11] - 104:13, 106:16,  
107:1, 111:7, 112:3,  
123:4, 167:6,  
171:18, 171:20,  
172:4, 180:11

**Toyota** [1] - 149:14

**tracked** [1] - 211:11

**traditional** [3] - 122:1,  
172:3, 173:21

**traffic** [8] - 24:3, 40:9,  
148:3, 157:10,  
169:13, 207:20,  
208:5, 208:7

**transcript**

[8] - 267:11, 267:13,  
267:15, 268:4,  
268:5, 268:7,  
268:18, 268:20

**TRANSCRIPT**

[2] - 267:19, 269:19

**transcription**

[1] - 269:9

**transcripts** [1] - 187:7

**transition** [1] - 206:4

**transitional**

[1] - 121:20

**travel** [2] - 240:13,  
244:7

**tree** [3] - 215:21,  
216:1, 224:8

**trees** [16] - 212:1,  
212:8, 212:12,  
212:17, 213:5,  
213:10, 213:11,  
215:15, 219:10,  
219:11, 220:2,  
220:11, 220:20,  
223:3, 233:13,  
240:21

**trend** [1] - 256:16

**trespass** [2] - 169:2,  
214:8

**tried** [6] - 5:2, 14:9,  
85:13, 122:15,  
143:14, 247:17

**triggered** [1] - 76:12

**trouble** [1] - 235:6

**troubled** [2] - 66:2,  
145:8

**truck** [1] - 177:16

**true** [5] - 49:12, 116:2,

151:5, 178:4, 269:9

**try** [8] - 71:21, 98:17,

112:11, 117:21,

137:14, 180:9,

205:21, 226:21

**trying** [11] - 66:10,

66:13, 72:4, 98:21,

100:12, 138:1,

150:13, 168:20,

205:20, 214:11,

239:15

**tune** [1] - 98:9

**tuned** [1] - 88:9

**turn** [6] - 5:17, 116:21,

147:5, 157:4,

243:16, 243:20

**twenties** [1] - 80:7

**Two** [3] - 225:8, 225:9,

240:20

**two** [105] - 5:6, 5:19,

5:20, 5:21, 8:11, 9:1,

10:21, 17:19, 21:20,

22:10, 47:13, 47:17,

62:1, 62:11, 65:1,

67:19, 73:19, 76:16,

76:17, 80:6, 83:5,

85:20, 91:18, 95:2,

98:1, 103:12, 106:7,

106:20, 107:5,

108:6, 108:7,

108:12, 111:10,

112:8, 112:18,

113:11, 113:12,

113:15, 113:17,

113:21, 114:2,

114:11, 115:4,

116:10, 116:11,

116:12, 116:21,

119:16, 119:19,

122:1, 122:13,

129:17, 131:10,

133:11, 133:12,

133:14, 133:17,

141:21, 147:14,

154:1, 155:5,

156:12, 156:13,

159:4, 164:20,

165:7, 165:8,

165:10, 165:18,

168:14, 168:15,

169:11, 171:7,

171:20, 173:13,

174:13, 184:20,

185:1, 185:8, 186:3,  
 186:17, 188:16,  
 188:20, 189:8,  
 192:11, 192:12,  
 200:10, 202:8,  
 212:1, 224:18,  
 224:21, 225:18,  
 231:12, 235:5,  
 235:6, 235:8,  
 235:10, 241:3,  
 242:11, 244:10,  
 253:17, 264:19

**Two's** <sup>[1]</sup> - 252:13

**two-family** <sup>[25]</sup> - 62:1,  
 73:19, 76:16, 76:17,  
 80:6, 98:1, 106:20,  
 108:6, 108:7,  
 108:12, 111:10,  
 112:18, 113:11,  
 113:15, 114:11,  
 115:4, 116:12,  
 116:21, 122:1,  
 165:10, 171:20,  
 173:13, 184:20,  
 186:3, 186:17

**two-foot** <sup>[1]</sup> - 168:15

**two-unit** <sup>[1]</sup> - 47:13

**two-week** <sup>[1]</sup> - 224:21

**type** <sup>[4]</sup> - 121:19,  
 151:19, 160:15,  
 230:15

**typical** <sup>[6]</sup> - 74:20,  
 80:5, 113:13,  
 153:14, 156:21,  
 190:12

**typically** <sup>[1]</sup> - 76:4

## U

**ugly** <sup>[2]</sup> - 78:5, 85:12

**unattractive**  
<sup>[2]</sup> - 78:6, 82:4

**unchanged**  
<sup>[2]</sup> - 144:2, 144:10

**uncomfortable**  
<sup>[1]</sup> - 167:11

**Under** <sup>[3]</sup> - 67:5,  
 209:5, 245:19

**under** <sup>[17]</sup> - 20:18,  
 38:18, 67:15, 67:20,  
 87:8, 88:5, 109:19,  
 110:14, 180:20,  
 185:11, 185:17,  
 197:18, 200:8,

201:11, 213:21,  
 245:17, 245:20  
**UNDER** <sup>[1]</sup> - 269:20  
**underground**  
<sup>[1]</sup> - 241:15  
**underneath**  
<sup>[2]</sup> - 198:16, 198:21  
**undersigned**  
<sup>[2]</sup> - 255:4, 269:4  
**understatement**  
<sup>[1]</sup> - 117:4  
**understood**  
<sup>[1]</sup> - 106:4  
**Understood**  
<sup>[1]</sup> - 66:15  
**undesirable**  
<sup>[1]</sup> - 159:9  
**Unfortunately**  
<sup>[2]</sup> - 32:6, 228:15  
**unfounded** <sup>[1]</sup> - 116:7  
**unilaterally**  
<sup>[1]</sup> - 110:11  
**uninterrupted**  
<sup>[1]</sup> - 132:11  
**uninviting** <sup>[1]</sup> - 143:3  
**Union** <sup>[1]</sup> - 61:14  
**unique** <sup>[4]</sup> - 76:3,  
 99:12, 106:2, 244:5  
**unit** <sup>[74]</sup> - 47:13,  
 47:16, 47:20, 62:8,  
 62:10, 93:3, 104:9,  
 106:19, 107:6,  
 110:6, 111:3, 111:4,  
 112:14, 112:15,  
 112:16, 119:9,  
 119:16, 120:4,  
 123:2, 125:8, 126:7,  
 127:7, 127:9,  
 127:14, 128:10,  
 129:21, 130:1,  
 130:7, 130:9,  
 130:10, 130:11,  
 130:15, 130:17,  
 130:18, 131:1,  
 131:11, 133:9,  
 133:13, 133:21,  
 134:14, 136:4,  
 136:12, 137:6,  
 139:14, 140:8,  
 142:9, 142:12,  
 144:8, 145:5,  
 146:19, 153:19,  
 166:10, 169:7,

169:16, 169:19,  
 180:12, 180:18,  
 181:6, 185:1,  
 185:11, 189:20,  
 190:11, 238:21,  
 239:1, 244:8, 244:9,  
 250:8, 252:9, 255:3,  
 257:14  
**Unit** <sup>[5]</sup> - 125:8,  
 130:14, 252:10,  
 252:11, 252:12  
**units** <sup>[39]</sup> - 106:7,  
 107:9, 109:21,  
 110:2, 110:21,  
 111:1, 111:5,  
 113:12, 113:18,  
 115:5, 115:6, 119:2,  
 119:17, 119:19,  
 120:1, 123:2, 123:3,  
 123:9, 126:4,  
 126:15, 133:11,  
 133:15, 139:19,  
 144:21, 145:16,  
 146:14, 153:17,  
 153:20, 155:2,  
 165:8, 165:19,  
 166:21, 169:12,  
 190:12, 192:10,  
 241:2, 243:9  
**unless** <sup>[2]</sup> - 93:19,  
 185:15  
**Unless** <sup>[1]</sup> - 62:6  
**UNLESS** <sup>[1]</sup> - 269:20  
**unreasonable**  
<sup>[1]</sup> - 121:19  
**unusable** <sup>[1]</sup> - 66:12  
**unusual** <sup>[2]</sup> - 120:10,  
 242:1  
**unwieldily**  
<sup>[1]</sup> - 111:11  
**unwielding** <sup>[1]</sup> - 113:5  
**up** <sup>[63]</sup> - 6:16, 50:15,  
 62:7, 64:17, 64:20,  
 65:9, 67:10, 69:8,  
 72:15, 72:20, 73:14,  
 76:1, 78:2, 78:15,  
 79:18, 80:9, 83:7,  
 83:13, 88:4, 93:20,  
 96:12, 97:16, 100:9,  
 104:12, 111:15,  
 121:12, 124:4,  
 124:7, 126:11,  
 126:12, 127:10,

130:2, 130:4, 130:6,  
 132:8, 132:12,  
 135:14, 138:13,  
 139:4, 139:6,  
 140:10, 140:16,  
 143:14, 147:16,  
 149:4, 159:20,  
 166:18, 171:21,  
 177:8, 180:9,  
 183:21, 185:11,  
 200:21, 202:5,  
 206:15, 222:2,  
 233:1, 233:2, 234:6,  
 235:21, 242:20,  
 247:1  
**updated** <sup>[1]</sup> - 4:5  
**upgrade** <sup>[4]</sup> - 20:20,  
 24:11, 31:13, 38:21  
**upgraded** <sup>[1]</sup> - 40:17  
**upper** <sup>[2]</sup> - 76:6,  
 130:11  
**upstairs** <sup>[2]</sup> - 136:8,  
 168:18  
**urge** <sup>[1]</sup> - 93:6  
**usable** <sup>[2]</sup> - 66:14,  
 91:19  
**useful** <sup>[4]</sup> - 39:4, 39:6,  
 201:11, 201:14  
**useless** <sup>[1]</sup> - 204:5  
**uses** <sup>[8]</sup> - 24:8, 40:14,  
 121:21, 145:7,  
 145:8, 162:14,  
 168:18, 208:10  
**Uses** <sup>[1]</sup> - 245:8  
**utilities** <sup>[2]</sup> - 241:15,  
 241:19  
**utilize** <sup>[1]</sup> - 14:8  
**utilizing** <sup>[1]</sup> - 35:7

## V

**vain** <sup>[1]</sup> - 179:14  
**validity** <sup>[1]</sup> - 153:18  
**VAN** <sup>[46]</sup> - 61:9, 61:11,  
 61:21, 63:8, 63:15,  
 64:1, 64:13, 65:6,  
 65:17, 66:5, 66:9,  
 66:16, 67:8, 68:7,  
 68:10, 68:21, 69:3,  
 69:17, 70:10, 70:21,  
 71:16, 72:21, 74:9,  
 74:13, 75:14, 77:15,  
 77:20, 78:12, 78:20,  
 79:3, 79:8, 79:12,

79:16, 80:18, 80:21,  
81:5, 81:11, 81:19,  
86:17, 88:2, 88:19,  
89:2, 94:6, 94:10,  
95:15, 101:1  
**Van** <sup>[3]</sup> - 61:10,  
174:19, 174:20  
**Variance** <sup>[23]</sup> - 55:10,  
56:5, 56:15, 57:20,  
105:4, 105:9, 107:3,  
109:5, 155:3,  
163:17, 166:7,  
166:8, 187:16,  
187:20, 190:9,  
191:5, 191:10,  
192:20, 246:3,  
258:19, 261:10,  
264:4  
**Variances**  
<sup>[3]</sup> - 109:12, 174:17,  
175:4  
**various** <sup>[3]</sup> - 19:14,  
37:4, 229:20  
**vary** <sup>[1]</sup> - 166:9  
**vastly** <sup>[1]</sup> - 190:6  
**vehicle** <sup>[3]</sup> - 151:20,  
153:13, 154:9  
**vehicles** <sup>[6]</sup> - 150:14,  
150:16, 153:14,  
154:14, 159:4,  
159:5  
**vent** <sup>[1]</sup> - 4:21  
**version** <sup>[1]</sup> - 147:16  
**vertical** <sup>[3]</sup> - 15:15,  
15:17, 15:18  
**viable** <sup>[2]</sup> - 183:7,  
190:8  
**Vice** <sup>[2]</sup> - 1:13, 211:9  
**vicinity** <sup>[2]</sup> - 71:8, 85:8  
**Victorian** <sup>[1]</sup> - 56:10  
**view** <sup>[14]</sup> - 13:6, 13:18,  
62:4, 62:14, 62:21,  
63:1, 68:11, 69:6,  
121:19, 167:12,  
179:8, 185:7, 253:5  
**views** <sup>[4]</sup> - 68:14,  
69:4, 87:15, 179:16  
**Village** <sup>[2]</sup> - 170:15,  
170:21  
**violation** <sup>[2]</sup> - 245:8,  
245:17  
**violations** <sup>[2]</sup> - 246:8,  
247:3

**virtually** <sup>[3]</sup> - 188:7,  
188:10, 188:12

**visibility** <sup>[2]</sup> - 217:3,  
241:2

**visible** <sup>[17]</sup> - 214:5,  
215:18, 219:17,  
219:18, 220:1,  
222:11, 222:20,  
224:9, 224:20,  
225:1, 226:14,  
226:18, 234:3,  
234:16, 235:14,  
236:4, 236:17

**visited** <sup>[3]</sup> - 223:18,  
226:10, 226:12

**visual** <sup>[11]</sup> - 18:1,  
18:4, 19:13, 21:12,  
22:12, 22:15, 37:3,  
37:9, 240:7, 249:10,  
252:18

**visually** <sup>[3]</sup> - 226:20,  
240:16, 252:15

**voicing** <sup>[2]</sup> - 255:12,  
255:16

**volume** <sup>[4]</sup> - 132:9,  
267:13, 267:15,  
268:5

**vote** <sup>[3]</sup> - 21:18, 23:13,  
207:5

**votes** <sup>[3]</sup> - 191:7,  
191:9, 255:8

# W

**W-a-r-r-e-n** <sup>[1]</sup> - 175:6

**W-e-i-s-s** <sup>[1]</sup> - 46:19

**wagons** <sup>[1]</sup> - 201:15

**wait** <sup>[3]</sup> - 45:9, 114:21,  
178:11

**Wait** <sup>[1]</sup> - 114:18

**waiver** <sup>[4]</sup> - 28:1, 28:3,  
237:8, 237:16

**wakes** <sup>[1]</sup> - 83:7

**Walden** <sup>[6]</sup> - 61:5,  
61:17, 89:9, 92:16,  
93:1, 93:5

**walk** <sup>[16]</sup> - 67:18, 79:1,  
83:8, 123:8, 123:12,  
124:12, 126:8,  
126:12, 126:19,  
126:20, 127:16,  
129:13, 135:17,  
235:20, 245:3

**walk-in** <sup>[1]</sup> - 67:18

**walked** <sup>[2]</sup> - 178:19,  
178:21

**walkway** <sup>[3]</sup> - 168:11,  
168:13, 169:4

**wall** <sup>[21]</sup> - 4:18,  
128:11, 129:3,  
129:4, 129:5, 129:6,  
129:8, 132:11,  
133:4, 135:13,  
135:19, 135:20,  
136:3, 140:6,  
140:15, 142:2,  
143:13, 143:19,  
167:9, 170:11,  
182:19

**walls** <sup>[6]</sup> - 65:8, 72:11,  
75:13, 127:8, 139:8,  
182:15

**wandered**  
<sup>[2]</sup> - 218:20, 219:1

**wants** <sup>[3]</sup> - 61:6,  
185:15, 196:17

**warning** <sup>[1]</sup> - 160:16

**Warren** <sup>[1]</sup> - 175:6

**wastefulness**  
<sup>[1]</sup> - 120:21

**water** <sup>[13]</sup> - 197:8,  
197:16, 198:17,  
199:3, 199:13,  
199:16, 200:6,  
201:13, 203:10,  
203:17, 204:7,  
241:16

**ways** <sup>[2]</sup> - 66:20,  
260:11

**weather** <sup>[1]</sup> - 265:16

**week** <sup>[1]</sup> - 224:21

**weeks** <sup>[3]</sup> - 224:18,  
233:14, 242:6

**weigh** <sup>[1]</sup> - 89:12

**weight** <sup>[3]</sup> - 178:8,  
179:8, 179:10

**Weiss** <sup>[4]</sup> - 46:18,  
55:6, 55:20, 56:11

**Weiss/Shays**  
<sup>[1]</sup> - 47:19

**welcome** <sup>[1]</sup> - 254:16

**welfare** <sup>[4]</sup> - 24:14,  
40:21, 41:6, 208:17

**Wendy** <sup>[5]</sup> - 46:18,  
47:19, 55:6, 56:11,  
175:5

**western** <sup>[1]</sup> - 167:21

**whatsoever**

[1] - 249:9

**WHEN** [1] - 267:20**WHEREOF**

[1] - 269:11

**whole** [7] - 48:13,

70:13, 75:7, 120:19,

152:15, 192:1,

226:6

**wholly** [1] - 210:12**wide** [4] - 64:6, 80:1,

153:13, 226:2

**width** [4] - 67:20,

114:5, 155:14,

181:13

**wife** [3] - 27:20, 46:16,

46:18

**willing** [5] - 86:17,

171:12, 171:14,

171:16, 174:3

**winding** [1] - 240:14**window** [11] - 51:3,

52:3, 52:4, 54:14,

133:1, 143:12,

182:14, 219:10,

221:19, 221:20,

233:4

**windows** [8] - 50:20,

51:1, 54:3, 101:7,

132:3, 168:6,

170:10, 201:21

**winter** [2] - 197:11,

239:5

**winterized**

[1] - 197:11

**Winthrop** [1] - 226:1**wise** [2] - 185:2**wish** [3] - 36:14,

85:11, 92:8

**wishes** [1] - 56:19**WITH** [1] - 267:19**withdraw** [1] - 194:8**withdrawal**

[7] - 193:1, 193:4,

193:8, 194:10,

194:16, 195:2,

195:6

**WITNESS** [1] - 269:11**wondered** [1] - 247:7**wonderful** [2] - 82:4,

100:6

**wonderfully**

[1] - 100:3

**wondering** <sup>[1]</sup> - 78:1

**word** <sup>[3]</sup> - 78:5,  
171:13, 171:15

**words** <sup>[2]</sup> - 57:3,  
113:1

**workable** <sup>[1]</sup> - 147:8

**works** <sup>[2]</sup> - 75:19,  
100:7

**world** <sup>[1]</sup> - 97:18

**Wornham** <sup>[1]</sup> - 175:5

**WORNHAM**

<sup>[1]</sup> - 175:5

**worried** <sup>[2]</sup> - 88:15,  
199:3

**worse** <sup>[1]</sup> - 77:18

**worst** <sup>[1]</sup> - 83:20

**wow** <sup>[1]</sup> - 174:5

**wrapped** <sup>[1]</sup> - 83:3

**write** <sup>[2]</sup> - 115:10,  
242:20

**writing** <sup>[2]</sup> - 92:17,  
163:16

**written** <sup>[2]</sup> - 179:18,  
255:1

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**om** <sup>[1]</sup> - 1:20

## Y

**Y.L** <sup>[1]</sup> - 210:12

**yard** <sup>[11]</sup> - 62:12,  
62:13, 164:10,  
199:7, 199:18,  
205:16, 246:12,  
246:14, 246:15,  
260:12, 260:14

**year** <sup>[4]</sup> - 57:16, 83:7,  
154:1, 262:5

**years** <sup>[17]</sup> - 53:10,  
82:5, 85:4, 89:14,  
89:16, 101:2,  
116:11, 137:17,  
165:7, 171:7, 185:8,  
238:14, 238:16,  
242:11, 247:10,  
254:7

**yesterday** <sup>[6]</sup> - 211:4,  
218:17, 218:18,  
220:9, 221:1,  
228:15

**yield** <sup>[1]</sup> - 155:12

**yields** <sup>[1]</sup> - 111:10

**yogurt** <sup>[3]</sup> - 217:21,  
219:4, 232:8

**Yogurt** <sup>[1]</sup> - 210:13

**Yogurtland**

<sup>[3]</sup> - 210:11, 211:9,  
225:6

**young** <sup>[4]</sup> - 64:7,

64:16, 76:10,

117:16

**yourself** <sup>[5]</sup> - 29:3,

46:8, 61:8, 238:8,

249:18

## Z

**Zelinski** <sup>[2]</sup> - 269:4,

269:13

**zero** <sup>[2]</sup> - 120:12,

181:5

**Zip** <sup>[1]</sup> - 117:7

**Zone** <sup>[4]</sup> - 107:13,

171:15, 173:1,

173:10

**zone** <sup>[3]</sup> - 157:12,

188:3, 188:20

**zoned** <sup>[1]</sup> - 188:20

**ZONING** <sup>[2]</sup> - 1:2,

268:1

**zoning** <sup>[1]</sup> - 188:4

**Zoning** <sup>[26]</sup> - 1:16, 3:7,

24:8, 40:14, 58:15,

66:3, 66:4, 78:9,

110:3, 110:14,

113:18, 114:10,

114:11, 114:12,

115:9, 115:10,

117:11, 121:17,

163:15, 173:11,

191:21, 192:5,

208:11, 229:16,

245:16, 266:10