

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JANUARY 12, 2017
7:10 p.m.

in

Senior Center
806 Massachusetts Avenue
First Floor
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Brendan Sullivan, Vice Chair
Janet Green, Member
Patrick Tedesco, Member
Andrea A. Hickey, Member
Laura Wernick, Associate Member

Sean O'Grady, Zoning Specialist

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I N D E X

CASE

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6:30 p.m. - Executive Session
 BZA Case BZA-010111-2016, 22 Water Street
 To Discuss pending litigation
 (Monogram Residential 22 Water Street Project Owner, LLC
 v. BZA, Land Court Docket No. 16MISC 000631)

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PROCEEDINGS

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: Okay, the Chair will call this meeting to order. And at the outset I want to make announcement:

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

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

And I wish to inform Mr. Hope that a recording is being made. Actually two recordings; one is a citizen has decided to make a recording of our hearing.

Secondly, our stenographer also makes a recording to assist when she prepares the transcript of the meeting. So be advised you're on record.

With that, we'll turn to the business of the meeting and the first business is the election of officers for the coming year; namely, a Chairman and a Vice Chairman.

I'll open the nominations up for the position of Chairman.

BRENDAN SULLIVAN: I'll nominate Constantine Alexander to be Chair for the ensuing year or until a replacement thereof.

CONSTANTINE ALEXANDER: Successor is duly elected and qualified are the magic legal words.

ANDREA HICKEY: I will second that motion.

CONSTANTINE ALEXANDER: I'm going to make my statement that I make every year: If anybody would like to be Chair I would be happy to withdraw my name and support whoever the other nominee is.

Anybody have an interest?

(No Response.)

CONSTANTINE ALEXANDER: Guess not. Thank you, for the -- I think, the vote of support.

I think we'll close nominations.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: And I abstained stain. I guess I'm elected Chair for another year.

JANET GREEN: Thank you.

ANDREA HICKEY: Thank you for your service.

(Sullivan, Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: Thank you.

Second, the next motion is to elect a Vice Chair for the coming year. Nominations are open. Anybody wish to make a nomination?

I'm not sure the Chair should make a nomination, but I nominate Brendan Sullivan.

BRENDAN SULLIVAN: Would anybody like to be Vice
Chair?

CONSTANTINE ALEXANDER: I tried, it didn't work.
No?

ANDREA HICKEY: I can't, I'm just over my head
these days.

PATRICK TEDESCO: I'll second the nomination.

CONSTANTINE ALEXANDER: Okay, any other
nominations?

(No Response.)

CONSTANTINE ALEXANDER: I'll close nominations.

A motion is to elect Brendan Sullivan as Vice
Chair of the Zoning Board for 2017 and until his successor
is duly elected and qualified.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

BRENDAN SULLIVAN: One abstention.

(Alexander, Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: We now have officers for the year to come.

JANET GREEN: Thank you, Brendan.

PATRICK TEDESCO: Yeah, thank you.

CONSTANTINE ALEXANDER: Thank you.

Now we'll turn to actual cases. And we start, as we always do, these are cases --

SEAN O'GRADY: Gus, I'm sorry. Is everybody sitting for the full night?

LAURA WERNICK: Not me.

SEAN O'GRADY: You're not, okay. That's what I was trying to figure out.

LAURA WERNICK: I didn't realize there was a continuance.

CONSTANTINE ALEXANDER: Who's going to come when Laura leaves?

SEAN O'GRADY: We just had an extra member and I

wanted to make sure before I told her to go home that that was the case.

CONSTANTINE ALEXANDER: Okay. So we're going to turn to our continued cases. These are cases that started at earlier session of our Board and for one reason or another was continued until tonight.

* * * * *

(7:10 p.m.)

(Sitting Members Case BZA-011793-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The first case I'm going to call is case No. 011793, 30 Lopez Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, Members of the Board.

For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge here on behalf of the petitioner.

There is a letter on file requesting to continue the case to try to reach some resolution about the driveway and some re-filed plans. We will take any date that the Board wants.

CONSTANTINE ALEXANDER: Just point out this will be the second continuance for this case. And so our patience will be not very good if you want to continue further.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: So fish or cut bait.

ATTORNEY SEAN HOPE: Yeah, understood. That's why I said let me just come down to make sure.

CONSTANTINE ALEXANDER: I appreciate you doing that, and I'm not giving you a hard time.

ATTORNEY SEAN HOPE: No, and we did reach out to the abutters. I know I wasn't here for the initial case, there was a lot of activity --

CONSTANTINE ALEXANDER: There was.

ATTORNEY SEAN HOPE: So I wanted to make sure we tried reached out to the folks and told them we're not going forward tonight.

CONSTANTINE ALEXANDER: I'm going to propose that

we continue this to a date in March. And that will be give you plenty of time to deal with --

ATTORNEY SEAN HOPE: Thank you.

CONSTANTINE ALEXANDER: What are the dates in March?

SEAN O'GRADY: 9th and 17th.

CONSTANTINE ALEXANDER: I'm just trying to do the math in my head. 9th and 17th?

SEAN O'GRADY: 9th and 17th, yes.

CONSTANTINE ALEXANDER: Those aren't two weeks apart.

SEAN O'GRADY: I'm sorry, I read the year. Thank you.

PATRICK TEDESCO: St. Patrick's Day.

SEAN O'GRADY: Let's try 9th and 23rd.

CONSTANTINE ALEXANDER: March 9th?

The Chair moves that this case be continued until seven p.m. on March 9th subject to the following conditions:

The first which has already been satisfied. That the petitioner sign a waiver for a time of decision.

The second, that the posting sign be modified to reflect the new date and the new time, seven o'clock, and it be maintained for the 14 days prior to the 9th.

And lastly, that to the extent that new plans or modified plans or dimensional forms are going to be part of the case on the 9th, that they be in our files no later than five p.m. on the Monday before March 9th.

All those in favor --

JANET GREEN: And this is a case not heard?

CONSTANTINE ALEXANDER: This is a case not heard definitely.

JANET GREEN: Yeah.

CONSTANTINE ALEXANDER: All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case

continued.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

ATTORNEY SEAN HOPE: Thank you.

* * * * *

(7:15 p.m.)

(Sitting Members Case BZA-011794-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,

Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will next call
case No. 011794, 24 Lopez [\[Street\]](#).

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair,

Members of the Board. Attorney Sean Hope, Hope Legal Law Offices in Cambridge. We're here tonight requesting a continuance. We have a letter in the file. And if the March 9th date is available, we would request that date to have that case heard.

CONSTANTINE ALEXANDER: Sean, that's available?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay.

The chair moves that we continue this case as a case not heard until seven p.m. on March 9th subject to the following conditions:

First, that -- and the petitioner's already satisfied this, that a waiver for time of decision be signed.

Second, that a new posting sign or a modified posting sign reflecting the new date and the new time, seven p.m. on March 9th be posted and maintained for the 14 days required under our Ordinance.

And lastly, to the extent that the petitioner is going to submit new plans or modified plans or a new dimensional -- or modified dimensional form, they must be in our file no later than five p.m. on the Monday before March 9th.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

ATTORNEY SEAN HOPE: Thank you.

* * * * *

(7:15 p.m.)

(Sitting Members Case BZA-011491-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will next call case No. 011491, 50 Inman Street.

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

(No Response.)

CONSTANTINE ALEXANDER: No one does. No one is.

And we are in receipt of a letter from the petitioner, which I'll read into the record. It's actually addressed to Maria Pacheco. (Reading) I just wanted to inform you that we are going to withdraw our application for

a Variance and plan to build within right on the property so you can remove the case from the agenda for January.

The Chair moves that we accept the request to withdraw the petition.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The approval of the withdrawal is made.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

PATRICK TEDESCO: That was never heard, right?

CONSTANTINE ALEXANDER: What's that?

PATRICK TEDESCO: That was not heard?

CONSTANTINE ALEXANDER: It was heard but it doesn't make much difference for withdrawal.

PATRICK TEDESCO: Oh, I remember.

CONSTANTINE ALEXANDER: I didn't sit on it. It's not a problem given a withdrawal.

(7:20 p.m.)

(Sitting Members Case BZA-007258: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will actually inform the Board that with regard to a prior decision involving 69 Rindge Avenue, it was case 007258, where we granted relief, a Variance specifically, the petitioner is requesting an extension of time so that the Variance doesn't expire.

Do they give a letter in here, Sean, as to why? Why they want an extension?

SEAN O'GRADY: I'm not sure. There must be a letter.

CONSTANTINE ALEXANDER: This is the old file. Anyway, I don't see it. You don't need one.

Okay, anyone -- the Chair moves that we grant the requested extension.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Extension
granted.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-012019-2016: Constantine
Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,
Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 012019, 40 Whittemore Street. This is the one that involves an appeal for the determination by Mr. Singanayagam.

ATTORNEY MICHAEL GIAIMO: Yes, and actually it was one of his colleagues who actually ruled on it.

Good evening. Michael Giaimo from Robinson and Cole for the petitioner in this and the next case and I'm with Ann McGuinness who is with Vital Sites the real estate consultant for Verizon Wireless on this.

Yeah, Inspector Burn denied the eligible facility request and referred it to the Board which has been the practice, I know, in Cambridge. And you've heard from me enough times that I have a theory that you shouldn't be issuing Special Permits. You should be upholding the appeal and asking the Building Commissioner to issue the eligibility facility request.

I can go through the application just to explain

what it is the petitioner is asking to do, which is really just a straight antenna replacement. There's been an existing site there --

CONSTANTINE ALEXANDER: That's not the issue, though.

ATTORNEY MICHAEL GIAIMO: -- for 15 years.

CONSTANTINE ALEXANDER: The issue in this case, forget about what you want to do, your point is we shouldn't -- you shouldn't have to be here tonight because it should be, the determination should be made by the Building Inspector, and that --

ATTORNEY MICHAEL GIAIMO: On the eligible facility request. And since we satisfy those requirements, you should reverse him rather than upholding him.

CONSTANTINE ALEXANDER: Right.

ATTORNEY MICHAEL GIAIMO: And that's why I was getting into how we satisfy those requirements if you want to hear from me on that. On the --

CONSTANTINE ALEXANDER: I think save that for the next case.

ATTORNEY MICHAEL GIAIMO: Okay, that's fine.

CONSTANTINE ALEXANDER: I think the issue on this case is, as you say, and you've made your point before, others have too, but it has been the position of the City of Cambridge or based on the advice of the Legal Department, that even though it's a Spectrum Act eligible facilities request, you need to go through the Special Permit requirements, besides meeting the requirements of The Spectrum Act, the Special Permit requirements of our Ordinance with regard to any telecom case. And the basis for that, I think you know, because a letter was written by Mr. Singanayagam to one of your colleagues several months ago when the issue first arose, is that there is case law, at least cited by Mr. Singanayagam in his letter, which as I read it from the letter, indicates that communities can require a Special Permit for Spectrum Act cases. And that

one of the issues, obviously, for Spectrum Act, one of the things we have to make a determination on is whether what you want to do is going to defeat existing concealment elements of the premises.

ATTORNEY MICHAEL GIAIMO: Right.

CONSTANTINE ALEXANDER: And Cambridge says that all things involving telecoms and zoning must go through the Zoning Board of Appeals.

Mr. Singanayagam or whoever the building inspector is does not have authority to make that determination, and that's why he turned you down on the -- he said to you, you have to come and file your case, which is the next case. But on this case, I would suggest that we -- our policy has been to uphold that determination by Mr. Singanayagam, the determination being that he doesn't have the authority on his own to grant you the relief you're seeking. That you must get the Special Permit.

ATTORNEY MICHAEL GIAIMO: Right, and so just for

the record if I could be heard on that.

CONSTANTINE ALEXANDER: Yeah, go ahead.

ATTORNEY MICHAEL GIAIMO: I think this is one of the rare occasions when the Cambridge Law Department is just wrong on their interpretation.

CONSTANTINE ALEXANDER: Very rare, very rare.

ATTORNEY MICHAEL GIAIMO: The cases cited in that letter, and I haven't addressed them this time because they haven't been cited for a while. But I understand he's got dicta from a couple cases. I don't even read the dicta that Ranjit or the Law Department has evidently read it. I don't think it stands for what they're talking about.

In this situation even if Cambridge could require a Special Permit for an eligible facilities request, you haven't done so as a matter of local -- in other words, the Ordinance was never amended to address this type of an application. So we obviously are not in here to go through all the Special Permit standards and you don't -- you

haven't built the eligible facilities process into your Ordinance yet. So you don't really have, the way I look at it, jurisdiction to do what you want to do in terms of the Special Permit, you know. That said, we'd happily accept the Special Permit if it means we get the approval for the site, and that will be the next project. But I do think just as a matter of administrative law and zoning law, Cambridge is on the wrong path for this, and many municipalities have changed the way they do this, recognizing the idea is to expedite these applications and to kind of carve out a category that doesn't require the kind of discretionary review that a Zoning Board does for projects. The category namely of upgrading existing sites or modifying existing sites. So that's what this application is for. It's really just a straight upgrade of a site that you previously issued your relief on.

CONSTANTINE ALEXANDER: Right.

ATTORNEY MICHAEL GIAIMO: And we haven't departed

from any of the federal requirements to fall within that separate category, and that's why, you know, at some point I'm hoping we'll get the Law Department to change their mind or we'll get the supermajority of this Board to change the Law Department's mind. But for now I understand you at least have had an established position that we've managed to get some votes in our favor sometimes, but I don't think we've ever tipped the scale yet and I don't think Rick Sousa or anybody else has tipped the scale for their client. But I'll leave it at that, but that's the position we have.

CONSTANTINE ALEXANDER: Okay.

And unless there's a discussion I can go right to the vote.

BRENDAN SULLIVAN: No, I think, Counselor, your position and speaking for all telecoms, would be that 6409 trumps -- that may be a bad use of word, any Ordinance that we have regulating telecoms now provided that you fall within those six guidelines, those six parameters.

ATTORNEY MICHAEL GIAIMO: That's right.

BRENDAN SULLIVAN: And you're saying that you do fall within all of those six.

ATTORNEY MICHAEL GIAIMO: That's right.

BRENDAN SULLIVAN: The one that I sort of step back, five out of the six anyhow, which would be the aesthetics which of course is what we focus in on most of the time. And, you know, stealth is, you know, well, not seen, not distinguishable, so on and so forth, but yet sitting here for a number of years and the telecoms have always been the bane of our existence in a sense because they could be somewhat easy, they're not always, and whenever I see on the agenda a telecom in prior days -- they're getting a little bit easier because we've already established, and now basically what you're doing is changing out and so on and so forth.

ATTORNEY MICHAEL GIAIMO: That's right.

BRENDAN SULLIVAN: However, a lot of those

decisions, prior decisions have been very hard fought decisions, have not been a one time around decisions, and sometimes it's been over two or three hearings to really nail down and to get what we think is aesthetically acceptable. And so I think that to now later on would bother me about 6409 and the position, and I can understand and advocate for your client, is that then disturbs any of those requirements, discussions that we had and the conditions that we imposed. Because if you're looking at -- we can look at four antenna and now all of a sudden, you know, maybe you're coming down and saying well, we want to add one or two or three more or something like that. That starts to me to change the aesthetics of it all and it becomes less stealthy. You know, if you were to take an antenna, pop that one off and put a new generation of antenna, same size, same shape, same color and so on and so forth, that's one thing.

We get into the wires. We get into the brackets.

We get into all of that stuff which has really been a hard fought battle here with the telecoms. And I think, you know, No. 5 disturbs me because I think it disturbs our prior exercise in all of this. So that's where I'm thinking.

CONSTANTINE ALEXANDER: The only thing -- the only comment I'd make to that is I don't think you're -- I think you acknowledge that somebody's got to make a determination whether you meet the six requirements of the act.

ATTORNEY MICHAEL GIAIMO: That's right.

CONSTANTINE ALEXANDER: But that person or that body should just be the building inspector, Ranjit.

ATTORNEY MICHAEL GIAIMO: Right, so
you --

CONSTANTINE ALEXANDER: It should never -- doesn't involve us. Just that we should -- the City of Cambridge should let Ranjit make the determination about stealth and the like. And you shouldn't have to go through the bother

of all the other and the expense and time of all of the other conditions for Special Permits generally.

ATTORNEY MICHAEL GIAIMO: Right.

BRENDAN SULLIVAN: And the City's position is that he doesn't have the authority to grant that relief or that determination.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: You know, the other thing is that all of the other -- whether you're exceeding height, whether you're exceeding certain percentage, whether you're going, you know, foundations, the base stations, all of that other stuff contained in 1 through 4 -- 2, 3, 4, those are all measurable, okay? It's the stealth and the way it looks, the aesthetics which is sort of a subjective in a sense. That's hard to measure.

ATTORNEY MICHAEL GIAIMO: Right.

BRENDAN SULLIVAN: Each one of us comes up with somewhat of a different determination on that, and I think

that is really what we focus in on is the aesthetics and what this thing looks like. And so once we start changing that, to me, I think it disturbs a prior decision. That's fine.

ATTORNEY MICHAEL GIAIMO: Understood. And I know in the past there have been different kinds of decisions. So for example, this decision doesn't have any stealthing per se other than painting the antennas. I've been before you or before earlier versions of your Board years ago, and, you know, constructed fiberglass enclosures and things on the roof. If we were to come back and propose antennas outside those enclosures, those clearly would trip the requirements and we would be in here for a modification Special Permit not under 6409. But as you said, if you're taking antennas off at an existing location and putting new ones on, you're gonna still give the same treatment that the original Special Permit requires. That's squarely within 6409. And I think that's something the building inspector

can make a determination of. I know in cases where you've issued permits that say on their face the applicant has to come back if they increase the number of antennas or move them but otherwise they can modify the antennas. And there was an iteration of the Zoning Board that went through that phase, and there are some permits out there like that.

That's something that the Building Department can interpret and I don't think they would send us to you on something like that. But they do on these because as you pointed out, there are conditions in there that are maybe subject to interpretation. I would say in this particular case, not really, but on some others where you've required some very detailed architectural treatments in some places, you know, I can understand your point and in even some cases it wouldn't fall within 6409.

BRENDAN SULLIVAN: I think we've all matured over the years as we've gone on. But at any rate.

PATRICK TEDESCO: I mean, Brendan, if I can just

clarify, the Planning Board is reviewing the aesthetics prior to the Zoning Board?

BRENDAN SULLIVAN: Correct. They have a -- that's on their docket to review --

PATRICK TEDESCO: On their docket, right.

BRENDAN SULLIVAN: And they usually chime in.

PATRICK TEDESCO: And what Counselor's arguing is that even that would not be -- in other words, that's also triggered by the building inspector sort of not opining --

BRENDAN SULLIVAN: It would not even get to the Planning Board.

ATTORNEY MICHAEL GIAIMO: Right, well, I think as a routine matter the Planning Board has been reviewing these. I don't think they -- I mean, I know they've made some recommendations on this site, but that's not really within the realm of our application. It's advisory, but it's not something that I think you can deal with or we have to address at this time because it would require completely

redesigning the site. So if we came to you in the first instance and say we want to install new arrays on this building, the usual process is to get comments from the Planning Board and to work with them. We did that in Kendall Square, for example. That was a lot of back and forth on that and a lot of redesign, and we came up with a good solution. And then we came back to you about a year later and changed some antennas out, and that went through this process and there wasn't -- Planning Board didn't really have much to say about it and you granted us an approval. So, you know, I think it's, it's situational really.

CONSTANTINE ALEXANDER: Right.

Well, want to move to a vote?

The Chair moves that we grant the appeal of the petitioner with regard to the determination by Mr. Singanayagam.

All those in favor please say "Aye."

PATRICK TEDESCO: (Raising Hand.)

CONSTANTINE ALEXANDER: One in favor? All those
opposed?

BRENDAN SULLIVAN: For granting the --

CONSTANTINE ALEXANDER: What's that?

BRENDAN SULLIVAN: In other words, the first vote
is in the affirmative.

PATRICK TEDESCO: Okay, I'm sorry.

CONSTANTINE ALEXANDER: I was wondering why.

PATRICK TEDESCO: Okay, I'm sorry.

CONSTANTINE ALEXANDER: So no votes in favor.
Five against.

ATTORNEY MICHAEL GIAIMO: I'm going backwards.

ANDREA HICKEY: You thought you had one.

ATTORNEY MICHAEL GIAIMO: Well, I had a couple
last time I was here. You sent some people on vacation I
think.

CONSTANTINE ALEXANDER: We'll just take a further

vote as to the reasons why we denied the appeal and the reason being that under advice -- based on advice we've received from the Legal Department, that all matters involving telecommunications facilities require a Special Permit under our Ordinance. And that the determination -- and, therefore, Mr. Singanayagam's decision that he can't make the determination is correct.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

CONSTANTINE ALEXANDER: Case dismissed.

* * * * *

(7:45 p.m.)

(Sitting Members Case BZA-012010-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 012010, 40 Whittemore Avenue.

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

ATTORNEY MICHAEL GIAIMO: Okay, thank you, Mr. Chairman. Michael Giaimo, Robinson and Cole for the petitioner with Anne McGuinnes. And we're here tonight to request your approval under the, under the administrative

provisions of Section 6409 through your Special Permit procedures as you've done before.

So Verizon Wireless has had a site at was is called One Alewife Center or 40 Whittemore Avenue for about 15 years and they're proposing to upgrade some antennas and to add radios. The radios would be added behind the parapet so they're completely invisible from the ground or not visible from the ground.

The antennas will be mounted where the existing antennas are mounted and they're roughly the same size. I think there are a few that are few inches longer, a few inches wider, a few inches less wide, but they are in the same order of magnitude size wise.

CONSTANTINE ALEXANDER: Based on the photo simulations, that's clearly the case --

ATTORNEY MICHAEL GIAIMO: Yeah, they look --

CONSTANTINE ALEXANDER: You can't tell.

ATTORNEY MICHAEL GIAIMO: And particularly from the ground you wouldn't be able to tell.

This is, there is a, I think, a house nearby but this is largely it's a, it's an industrial area or an office type area. This is perfectly --

CONSTANTINE ALEXANDER: Have other members of the board seen the photo simulations or want to see them? I have.

ANDREA HICKEY: I've seen the file. If they're in the file I've seen them.

CONSTANTINE ALEXANDER: Those are the ones in the file that you're showing?

ATTORNEY MICHAEL GIAIMO: Yes, that's exactly right. This is what we filed.

CONSTANTINE ALEXANDER: Okay, no, if people have seen them we don't need to --

ATTORNEY MICHAEL GIAIMO: You understand what we're doing, we're taking -- let me see I'll take a good

picture. So we're taking a four antenna array and changing out the antennas. This is just a closeup of what it would look like in this location. There's two and two. They just go on the same locations. They would be painted to match just like the original ones are, which is consistent with your prior decision. And then all of the equipment, if you look at the, we can probably do it just from the top view here.

So if you see the building rooftop has a parapet around the edge, all this radio equipment is going to be mounted inside the edge of that wall so that nobody from down below could see that and then it's just wired into the antennas. So it's gonna provide more robust service, better quality service, and allow us to meet the increasing demand in Cambridge and the new technology, the new uses for wireless services including the data uses. So that's what this is for.

CONSTANTINE ALEXANDER: Questions from Members of

the Board?

ATTORNEY MICHAEL GIAIMO: If you want me to walk through the 6409 requirements?

CONSTANTINE ALEXANDER: Yeah, I'm going to have you -- I want to see if there are any questions at this point. We'll have you walk through the six items.

ATTORNEY MICHAEL GIAIMO: Sure.

CONSTANTINE ALEXANDER: Any questions?

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: Okay, why don't you walk through the six elements of the Spectrum Act.

ATTORNEY MICHAEL GIAIMO: That's fine. And to say we qualify as an eligibility facility request because we are located on an existing base station which is the existing building.

We're replacing transmission equipment.

We're co-locating new transmission equipment in the form of those radio heads and junction boxes for the

electrical service which are going behind the parapet wall.

We don't change, substantially change the physical dimensions within the meaning of the regulations because we aren't installing any new equipment cabinets. We are not deploying outside of the current site. Everything is taking place on the building itself. We're not defeating concealment elements. As you pointed out, this is a site where the Board did impose a requirement but the concealment requirement here was to paint the antennas, which we'll do. And then we have hidden the radio heads in the junction boxes instead of mounting them below the antennas as, you know, the engineers would probably rather do. We've put them a little bit distance and behind the parapet wall and completely screened from view. And we haven't increased of the height of this in any way. We haven't had them protrude further out. In fact, a couple of the antennas I think are going to protrude a little less far out than the existing ones. None of them will be more than two feet out. And I

think they're substantially less than that judging from the pictures.

And then the conditions that will be relevant to this proposal are that the antennas be painted to blend into the building and it's satisfied because we will paint them and accept a condition that we will paint them to blend into the building. That's really it. That's what the federal regulations require.

CONSTANTINE ALEXANDER: Okay.

Questions from Members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: None.

I'll open the matter up to public testimony. Is there one here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

We are in receipt of a memo from the Planning Board. Which I will read it into the record. I haven't

read it myself yet. (Reading) The Planning Board reviewed the antenna upgrade application for this location and recommends that if the Board of Zoning Appeal grants a special Permit, that the installation be relocated to the existing mechanical penthouse to minimize the visibility from the public streets. The design can be further improved by locating the antenna lower to prevent breaking the roof line and to position the antennas in an orderly and organized manner. The antennas should be the same size, the mounting brackets and exposed cables should be minimized and finished to match the existing facade finish and color.

Any response to these?

ATTORNEY MICHAEL GIAIMO: Well, they're asking for substantial redesign of this site --

CONSTANTINE ALEXANDER: Yes they are.

ATTORNEY MICHAEL GIAIMO: -- which is not really the intent or the scope of those federal regulations. They talked about them not breaking the roof line. None of these

really do break the roof line.

CONSTANTINE ALEXANDER: I didn't think so.

ATTORNEY MICHAEL GIAIMO: I understand when viewed from an acute angle, it may appear that they do. But none of these from what I can tell are actually above the roof line itself. And that's been something that the Board's been very consistent with over years to require those to be, you know, if they're going to be painted, they're going to be painted against the backdrop of the building face and not sticking above the roof line. So we've observed that here and we would continue to leave them at the same location.

The mounting brackets aren't going to get any bigger. The cabling will be whatever cabling is needed to, you know, upgrade the service, but it's going to be tied in the same way which is behind the antennas.

CONSTANTINE ALEXANDER: Okay.

Well, based upon my viewing of the photo simulations, I don't understand the Planning Board's

comments. I think it's just going to be the way it is now for all intents and purposes in terms of visual impact and so I would respectfully decline.

BRENDAN SULLIVAN: Mike, can I see the photo sims again?

ATTORNEY MICHAEL GIAIMO: Yeah.

CONSTANTINE ALEXANDER: To accept the recommendations of the Planning Board.

ATTORNEY MICHAEL GIAIMO: And I wonder even -- and we weren't there, which is unusual.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY MICHAEL GIAIMO: Usually we get a call saying they're going to consider the application and we didn't this time. Otherwise we would have gone. Somebody would have gone. They may have been under the impression that this was a completely new installation rather than an upgrade of an existing one. I don't know if that came up at the Board. And I can understand if this was, you know, if

we were standing from a blank slate here, I'm sure Verizon Wireless would be receptive to those kinds of design suggestions. But as it is, that's not really within the scope of what this project would be.

BRENDAN SULLIVAN: My only question --

ATTORNEY MICHAEL GIAIMO: Yeah.

BRENDAN SULLIVAN: -- and thought would be, and I know initially we had -- and, again, maybe this goes back to we have all matured over the years to have the antenna match the background. And I think the old Sears building on Mass. Avenue has proved us wrong on that, and I'm just wondering if it should not be a solid color.

JANET GREEN: Yeah, we did the brick.

BRENDAN SULLIVAN: Rather than doing it the brick. Because the brick looks awful.

ATTORNEY MICHAEL GIAIMO: Yeah, we could do a solid color.

PATRICK TEDESCO: It doesn't fool anybody.

ATTORNEY MICHAEL GIAIMO: Yeah, if it's not perfect it's not good.

BRENDAN SULLIVAN: It looks worse.

JANET GREEN: It calls attention.

JOHN HAWKINSON: Mr. Chair?

BRENDAN SULLIVAN: My suggestion would be that it be painted a solid color to --

ATTORNEY MICHAEL GIAIMO: So a brick red color?

PATRICK TEDESCO: The red is fine. It's the pattern.

BRENDAN SULLIVAN: The red is fine.

CONSTANTINE ALEXANDER: The red is fine, but not the brick, the faux brick.

BRENDAN SULLIVAN: Yeah.

ATTORNEY MICHAEL GIAIMO: I'm sure that we can do that, yeah.

BRENDAN SULLIVAN: So that would be my input on that. Now I know I'm going to ride by that three months

from now and say they got the color wrong.

CONSTANTINE ALEXANDER: First you have to find the place.

BRENDAN SULLIVAN: I think right now the faux brick is wrong. So anyhow. And I think from your point, it's a lot easier to get up there and paint the thing.

ATTORNEY MICHAEL GIAIMO: Do they paint them or do they use some kind of an overlay?

ANNE MCGUINNES: I think it depends.

BRENDAN SULLIVAN: Maybe a fiberglass enclosure.

ATTORNEY MICHAEL GIAIMO: Yeah, I think that -- what I'm saying is they're much better now at matching colors than they used to be. I don't know if it's the same building you talked about. But there is a building in Cambridge with multiple carriers on it where they've matched, and some of them have matched much better than the other, and that even exacerbates it.

BRENDAN SULLIVAN: That's the old Sears building.

ATTORNEY MICHAEL GIAIMO: Is that what it is?

Some of them look good and some of them are really too dark or too red.

BRENDAN SULLIVAN: Well, it looks like contact paper.

ATTORNEY MICHAEL GIAIMO: Yeah.

BRENDAN SULLIVAN: So that would be my --

CONSTANTINE ALEXANDER: Okay, when we make the motion, I'll take that up.

BRENDAN SULLIVAN: That's why we like to have input rather than going through 6409, you see? So we proved our point.

CONSTANTINE ALEXANDER: Oh, I'm sorry, John, you had a question.

JOHN HAWKINSON: Yeah, I just wanted to point out, Mr. Chair, that when the Planning Board discussed this on the 3rd of January, they noted that previously they had requested of this applicant that the antennas be relocated

to the penthouse. As they hadn't been successful and they wanted to try again to see if they would prevail this time. They were in fact aware of the existing.

ATTORNEY MICHAEL GIAIMO: They have long memories, because this one was a long time ago, but okay.

JOHN HAWKINSON: I can't testify whether their memory is accurate --

ATTORNEY MICHAEL GIAIMO: Okay.

JOHN HAWKINSON: But that's what they said. And they also noted that at that time they expressed concern that they lose the angle to the ground and lose coverage but then they said whatever.

CONSTANTINE ALEXANDER: Well, I'm -- as I said before, I'm of the mind to respectfully decline the recommendations of the Planning Board. I just don't see it's necessary to hold the matter up any further and go to further expense of new plans and new submissions. I think it's just not a dramatic -- it's not Mass. Ave. Sears

building, the old Sears building, it's quite different.

Also this is an area that doesn't get an awful lot of traffic. I mean, it's not like the citizens of the city go by here everyday to see and say oh, my God what's that thing on the top of the building?

ATTORNEY MICHAEL GIAIMO: That's right.

CONSTANTINE ALEXANDER: Anyway, that's my view.

Ready for a vote?

ANDREA HICKEY: I think so.

CONSTANTINE ALEXANDER: The Chair moves that we make the following findings with regard to the relief being sought:

That the requirements of the Ordinance cannot be met without relief from our Board.

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

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

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

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

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

So based on these findings the Chair moves that we

grant the Special Permit the petitioner is seeking subject to the following conditions:

One, that the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair. And that's part of your commission.

Two, that upon completion of the work, the physical appearance and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialled by the Chair subject to the fact that the photo simulations contemplate that the screening try to replicate the impression of a brick. And that the Chair requires that the color be the same as the brick but not the imprint that makes it look like brick.

That the petitioner shall at all times maintain the proposed work so that its physical appearance and visual impact will remain consistent with the photo simulations previously referred to as modified by what I said earlier.

That should the petitioner cease to utilize the

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

And next that the petitioner is in compliance with and will continue to comply with all -- in all respects the conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And then continuing, inasmuch as the health effects -- and you've heard this spiel before, but I have to do it before.

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

That the petitioner shall file with the

Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

B, that in the event that at any time federal authorities notify the petitioner that its equipment on the site, including, but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulation, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner within ten business days of receipt of such notification of such failure shall file with the Inspectional Services Department a report disclosing in

reasonable detail that such failure has occurred and the basis for such claimed failure.

The Special Permit granted tonight shall ipso facto terminate if any of the petitioners federal licenses are suspend, revoked, or terminated.

C, that to the extent that a Special Permit has terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to this Board for a new Special Permit provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A or B above. Any such new application shall not be deemed a repetitive petition and, therefore, will not be subject to the two-year period during which repetitive petitions may not be filed.

D, that within ten business days after receipt of a Building Permit for the installation of the equipment subject to this petition, the petitioner shall file with the

Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with a geographical area that includes Cambridge stating that A, he or she has such responsibility.

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

All those in favor of granting the Special Permit.

ATTORNEY MICHAEL GIAIMO: Can I be heard on one thing?

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY MICHAEL GIAIMO: That last provision you've read, you've been putting those in Special Permits

for new sites. This would be the first time that I've heard you put that in a 6409.

CONSTANTINE ALEXANDER: We've been doing it regularly for 6409.

ATTORNEY MICHAEL GIAIMO: I don't think so.

CONSTANTINE ALEXANDER: Oh, yes, sir. Yeah, we've heard unfortunately a good number of 6409 petitions.

ATTORNEY MICHAEL GIAIMO: Okay, maybe not consistently. Okay.

CONSTANTINE ALEXANDER: Maybe not the first, the last several at least.

ATTORNEY MICHAEL GIAIMO: Yeah, I mean I think that one is squarely -- I'm not objecting to it tonight because --

CONSTANTINE ALEXANDER: You can reserve your rights to it.

ATTORNEY MICHAEL GIAIMO: But I am reserving my rights because I think that's beyond the scope of 6409.

CONSTANTINE ALEXANDER: Okay. Fine.

All those in favor of granting the Special Permit
subject to the conditions say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(8:05 p.m.)

(Sitting Members Case BZA-011630-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011630, 1493 Cambridge Street.

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

DAVID FARMER: My name is David Farmer. I'm the architect for Cambridge Health Alliance.

CAROL O'HARE: I cannot hear.

JANET GREEN: Pull that closer.

CONSTANTINE ALEXANDER: You shouldn't need the mic for this. Why don't you come around to the side maybe.

CAROL O'HARE: I just want to make one comment about that. My hearing unfortunately is declining. It's not really declining, but consider -- I mean, it's slightly

declining. So consider me a person who has a hearing impairment. And I'm not saying -- I'm just saying this Board needs to be tuned in to that and I think I've --

CONSTANTINE ALEXANDER: We've been tuned into it for years.

CAROL O'HARE: I know.

CONSTANTINE ALEXANDER: We can't do anything about it. We've been trying.

CAROL O'HARE: I know.

CONSTANTINE ALEXANDER: Trying to get better acoustics and better --

CAROL O'HARE: Well, the Historical Commission has dealt with it and I've written to Ranjit about it and Sean has received copies. They deal with it regularly. So they, just for the record that -- or off the record, they have mics that they pass around. I was here last week and they have audiovisual that they pull down off that wall and I'm only telling you because it's --

CONSTANTINE ALEXANDER: All right, I appreciate it.

CAROL O'HARE: It's occasion to do that. And also the facilities are here.

CONSTANTINE ALEXANDER: Okay.

CAROL O'HARE: Thank you.

CONSTANTINE ALEXANDER: You say you have communicated this to Ranjit and to Sean already?

CAROL O'HARE: I have.

CONSTANTINE ALEXANDER: Okay.

CAROL O'HARE: I have well communicated it thoroughly as you know.

CONSTANTINE ALEXANDER: I'm sure they'll take it under advisement.

Okay.

DAVID FARMER: Want me to start over?

ANDREA HICKEY: See if that mic is turned on.

DAVID FARMER: Hi.

ANDREA HICKEY: Still speak up.

DAVID FARMER: So my name is David Farmer. I'm the architect for Cambridge Health Alliance. And we had submitted an application for replacement of the main hospital sign and we are requesting a continuance probably for about a month, four weeks.

CONSTANTINE ALEXANDER: What if we did it in March?

DAVID FARMER: We can do it in -- yes, whatever works for the Board.

CONSTANTINE ALEXANDER: Okay.

DAVID FARMER: And this just gives us a little bit more time to prepare, have a neighborhood meeting, address any neighbor's concerns.

CONSTANTINE ALEXANDER: We encourage all of that, that's fine.

If we did to March 9th, is that a date that works for you folks?

HEATHER HOFFMAN: Sure, why not. That's ages from now.

CONSTANTINE ALEXANDER: The Chair moves that we continue this case as a case not heard until we have -- we have more room on March 9th, right?

SEAN O'GRADY: This will be the last one.

CONSTANTINE ALEXANDER: We have more cases coming down the road tonight that will be continued?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: I'm sorry, I'm going to interrupt the motion. What else -- oh, the pizza place in Harvard Square?

SEAN O'GRADY: We've got after this Brattle and Mass. Ave., Salt and Olive.

CONSTANTINE ALEXANDER: Okay, so those two will have to go to the second motion in March. We'll have too many cases.

BRENDAN SULLIVAN: You've got the first one in

February.

SEAN O'GRADY: You still have the second -- well, the first one -- yes. Well, the February case. The February hearing is open. But, Brendan, I understand you're not going to be here.

BRENDAN SULLIVAN: This one could go in February.

CONSTANTINE ALEXANDER: Yes, I was thinking -- my only question would you be able ready to do what you want to do -- when February?

SEAN O'GRADY: 16th.

CONSTANTINE ALEXANDER: February 16th. Is that enough time for you?

DAVID FARMER: Yeah, that would work.

CONSTANTINE ALEXANDER: February 16th? Going once, twice?

Okay, the Chair moves that this case be continued as a case not heard until seven p.m. on February 16th subject to the following conditions:

That the petitioner sign a waiver of time for decision. This is required otherwise we have to turn you down tonight. So if you can sign it before you leave. Mr. O'Grady will give it to you. That's first.

The second, is that the posting sign that was up there now has, it should be modified to reflect the new date and the new time, both, and that modified sign be maintained for the 14 days prior to the February hearing date.

And last, and this is important to you, I suppose, as an architect. To the extent that the plans that are in the files now for the sign are going to be changed in any way and the revised plans that you want us to consider, and any changes to your dimensional form, probably wouldn't -- anyway, must be in our files no later than five p.m. on the Monday before the February date.

DAVID FARMER: Okay.

CONSTANTINE ALEXANDER: If you don't do that -- that's to give us time to read it. Gives folks like

Heather and Carol time to read them. If you don't do that, we're going to continue the case again. Okay?

DAVID FARMER: Yeah, that shouldn't be a problem.

CONSTANTINE ALEXANDER: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-011991-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011991, 237 Hampshire Street.

Is anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: There is no one.

We have a request from the petitioner to withdraw his petition.

All those in favor of accepting the requested withdrawal please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case is withdrawn.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-011944-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,

Patrick Tedesco.)

CONSTANTINE ALEXANDER: Case No. 011944, 8 Brattle Street.

Is there anyone here wishing to be heard on this matter? Ma'am. Name and address to the stenographer, please.

ATTORNEY LESLEY ST. GERMAIN: Mr. Chairman, Members of the Board, Lesley St. Germain L-E-S-L-E-Y S-T. G-E-R-M-A-I-N, licensing and permitting counsel with McDermott, Quilty and Miller on behalf of the applicant.

We are here before you tonight to respectfully ask for a continuance of this matter. We appeared as, I believe the Board is aware of, before the Historical Commission and received a significant amount of feedback from both the Commission and the community. We are revising our plans pursuant to those, and we're also continuing to schedule meetings with both the elected officials, community members, and really any invested parties.

IMA pizza is a not a chain. I want to clarify that. It is not a chain. It was founded in Washington, D.C. There are approximately 19 locations throughout the United States.

CONSTANTINE ALEXANDER: But that's not a chain though?

ATTORNEY LESLEY ST. GERMAIN: That does not make it a chain.

We are very excited about the possibility of expanding into the Harvard Square community, but certainly understand the significance of our location and the importance of the design and how it impacts the look of Harvard Square.

Additionally, I do want to say on the record we were approached by the landlord after a decision was made regarding the current tenant. We were in no way involved in those negotiations.

CONSTANTINE ALEXANDER: Thank you, but it's not

relevant to our proceeding.

ATTORNEY LESLEY ST. GERMAIN: Certainly not relevant, but I do feel it's significant to say on the record. But we would greatly appreciate the Board allowing us a continuance to the February 16th meeting or --

CONSTANTINE ALEXANDER: We're going to continue -- if we're going to continue, it's going to be either March 9th -- is that the date?

ATTORNEY LESLEY ST. GERMAIN: Certainly at the Board's discretion.

CONSTANTINE ALEXANDER: We'll take March 9th.

SEAN O'GRADY: We have one 9th and one March 23rd.

CONSTANTINE ALEXANDER: You want the March 27th? Which date would you prefer?

SEAN O'GRADY: 23rd.

CONSTANTINE ALEXANDER: 23rd, I'm sorry you're right.

March 23rd and March 9th, which date would you

like.

ATTORNEY LESLEY ST. GERMAIN: March 9th should be sufficient, and we look forward to meeting with elected officials in the community, too.

CONSTANTINE ALEXANDER: All right, before I take the vote on that. You've heard the discussions going back and forth. If as part -- this is a little bit unusual in our practice, but I want your client to consider very clearly what signage it is going to be -- what is contemplated should it be granted relief and to determine whether it needs zoning relief to have that signing. In other words, a Variance. If they do, if there is a determination, they must file, I'm going to require that they file an application for a Variance. It would be a separate application, separate matter, with a hearing time March 9th so that we hear both cases the same night.

ANDREA HICKEY: Can we take another case?

SEAN O'GRADY: Yeah, we can't guarantee them a

slight on March 9th. I don't know the availability.

ATTORNEY LESLEY ST. GERMAIN: Could we potentially commit to March 9th and in the interim revise our signage prior to the deadline for the next meeting?

CONSTANTINE ALEXANDER: I'm not sure why -- I'm sorry, I'm missing why we can't do March 9th.

ANDREA HICKEY: It's a separate matter.

CONSTANTINE ALEXANDER: Yeah, I know separate matter.

SEAN O'GRADY: If they're going to make a new filing, I just don't know that there's a March 9th date available for the new filing.

CONSTANTINE ALEXANDER: For a new filing?

SEAN O'GRADY: For a new filing.

CONSTANTINE ALEXANDER: We can always make a date and time available. It's our own practice how many cases we hear on a night, right? I mean, there's nothing that says we can't hear 27 cases on a night, not that I want to do

that.

SEAN O'GRADY: I just, I don't know the schedule.

CONSTANTINE ALEXANDER: Okay.

SEAN O'GRADY: Usually what would happen in this case, we would continue this case until the night of the scheduled hearing.

BRENDAN SULLIVAN: So we can mark this one up for the 9th. If you need a Variance, if that can only be plugged into the 23rd, then we would ask for a continuance from the 9th from you to the 23rd.

ATTORNEY LESLEY ST. GERMAIN: And we're happy --

CONSTANTINE ALEXANDER: Yeah. We just want to get you here on one night if there are two cases, we want to hear both cases on one night, that's all.

ATTORNEY LESLEY ST. GERMAIN: Among the issues raised at the community meeting was the process of how many meetings it took and, you know, obviously we can't control that, but we would like to be as helpful as possible.

CONSTANTINE ALEXANDER: You can sign it in the meantime.

Carol, you had your hand up.

CAROL O'HARE: I just had one request and I've made it before. If the petitioner in some cases learns of a continuance that's been granted when the petitioner is not present, why can't the public, like in this case if it is continued, if you learn ahead of time, this Board learns ahead of time that the signage isn't ready and you've continued it to March 9th and then you continue it again at the March 9th hearing because the signage isn't ready for whatever reason, I'd like to find out about it.

CONSTANTINE ALEXANDER: Call Maria.

CAROL O'HARE: Well, they won't -- Sean has told me on the telephone, I cannot tell you. I cannot assure you. That would be fine. I would be glad to call up and find out what the petitioner's been told on the telephone that the case has been continued, but I'm told that one time

you actually -- this Board in ancient history or something, at some time in the past actually decided to go forward when everybody expected that it was continued. And that, therefore, the public cannot be told ahead of time, which the petitioner's told ahead of time and we're in this case, she's paid and we're not.

That's a joke. So....

ATTORNEY LESLEY ST. GERMAIN: My firm's paid not me.

HEATHER HOFFMAN: Presumably you get paid, too.

CAROL O'HARE: So I would ask the Board would ask the staff to please have the courtesy to let the public know if the public calls up.

CONSTANTINE ALEXANDER: The problem may be that we don't know until the night of the hearing whether the case is going to be continued. You don't know necessarily.

CAROL O'HARE: But in some cases you do.

HEATHER HOFFMAN: In this case you would.

CAROL O'HARE: There was a case about a month ago or more than that, when the necessary member was not present. So -- and couldn't be present. And so in that case somebody, the Board knew ahead of time.

CONSTANTINE ALEXANDER: You're wrong, Carol. If someone can't attend, the petitioner has every right to go to the case with four members. It's the petitioner's decision to continue the case because they don't want to run the risk of not giving the necessary four votes. It's not our decision.

CAROL O'HARE: Oh, yes, but I mean --

CONSTANTINE ALEXANDER: No, sometimes -- some petitioners have gone ahead with four people.

CAROL O'HARE: I know, but they're entitled to a Board of five, aren't they?

CONSTANTINE ALEXANDER: They are entitled -- that's why if they feel they want a Board of five, it's their choice. They come down if they were -- we

understand we can only have four. We don't want to wait any longer, let's hear the case. That's choice 1.

Choice 2 is we understand it's four, we would rather have five people hear the case, please continue the case.

CAROL O'HARE: Okay. I'm just saying if you know ahead of time and Sean O'Grady knows ahead of time and has told the petitioner you don't have to come and the petitioner doesn't come, I, you know, why shouldn't the public --

PATRICK TEDESCO: Except that even in that case you may have a conversation with someone about a continuance and it may appear there is a continuance. Even up until that time they have the right --

CONSTANTINE ALEXANDER: Yeah.

PATRICK TEDESCO: -- to decide move forward. And we've had those.

ANDREA HICKEY: And we've had that happen. Where

we think there's going to be a continuance and then the moving party changes their mind and shows up.

CONSTANTINE ALEXANDER: And we will have told you -- or Sean will have told you don't bother coming, the case is going to be continued, and then you're going to be much more unhappy than you are right now. I mean we can't -- there's only so much we can do and I want to move on. You'll just have to check. If you can't get an answer from Sean, you're going to have to come down to the hearing. End of story. I don't know what I can do. We can't solve every problem particularly because there's two sides to each question. We don't know. We don't know until the actual hearing whether the case is really going to be continued or not.

HEATHER HOFFMAN: That's right.

BRENDAN SULLIVAN: The other night at the Historical they disapproved the trellis and also a sign thing. So your new plan coming back to -- you're going to

have to go back through Historical again anyway I believe.

ATTORNEY LESLEY ST. GERMAIN: Correct.

BRENDAN SULLIVAN: And also the advisory. So that will be the final plan reflecting their comments and that will come to us.

ATTORNEY LESLEY ST. GERMAIN: Which is why we didn't want to come before you with what wouldn't obviously be at the final plan.

BRENDAN SULLIVAN: Okay.

ATTORNEY LESLEY ST. GERMAIN: So we are working with obviously the -- we are no longer pursuing the trellis. We're looking at other options that are more in line with the feedback that we received, but we're also going to meet with the Historical Commission to get more direct input.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Let me try to sum it up and move on. We have plenty of time.

ATTORNEY LESLEY ST. GERMAIN: You don't want to

stay here all night?

CONSTANTINE ALEXANDER: We do all the time.

If, you know or your client knows before March 9th that you are going to need sign relief, that you will request a continuance until such date.

ATTORNEY LESLEY ST. GERMAIN: Yes.

CONSTANTINE ALEXANDER: Further continuance to such date as you can -- we can hear both cases at the same time.

ATTORNEY LESLEY ST. GERMAIN: Yes, we certainly will.

CONSTANTINE ALEXANDER: And that, on that basis if we know that, and if you -- as a matter -- well, no, I don't want to go there. Just know that and if you show up and find out it's going to be further continued, I'm sorry but I don't know what else to do about it.

HEATHER HOFFMAN: It will either be on the agenda for that night or not.

ATTORNEY LESLEY ST. GERMAIN: We will inform you and I believe we informed your office when we were requesting the continuance tonight.

CAROL O'HARE: I don't have an office.

ATTORNEY LESLEY ST. GERMAIN: I informed someone.

HEATHER HOFFMAN: Yeah, probably the --

ATTORNEY LESLEY ST. GERMAIN: But we're happy to do that again.

CONSTANTINE ALEXANDER: I think we're ready for a vote on the continuance.

The Chair moves that this case be continued as a case not heard despite all that's been said. It never went to the merits. So it's a case not heard, subject to the following conditions:

First, that you sign a waiver of time for decision. That's the piece of paper that Sean has given you.

Second, that the sign that's been posted now for

the hearing --

ATTORNEY LESLEY ST. GERMAIN: We will amend it.

CONSTANTINE ALEXANDER: -- modify new date and new time, seven p.m. otherwise we won't be able to hear that night until whatever it is tonight. And that you maintain it for the 14 days or your client does, for the 14 days prior to March 9th.

And last, this may not be relevant, to the extent that any plans or dimensional forms that you filed with the Board going to be modified, based on your further discussions with the neighborhood, that those revised plans must be in our files no later than five p.m. on the Monday before March 9th. That's to allow our board members to read them in advance of the hearing on March 9th and allow the citizens of the city to come in. If you don't do that, if you come in on the night of hearing, and say, oh, we want to do this, change the plans, we'll just continue the case further. We won't hear it.

ATTORNEY LESLEY ST. GERMAIN: Nope, we don't want to waste the Board or the public's time.

CONSTANTINE ALEXANDER: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Case continued until March 9th.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(8:45 p.m.)

(Sitting Members Case BZA-012016-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 012016, 1160 Massachusetts Avenue.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, Members of the Board, for the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here with the petitioner.

Say your name.

MARY TAYLOR: Mary Taylor, I'm the owner of Salt

and Olive at 1160 Mass. Ave.

ATTORNEY SEAN HOPE: I don't we actually have a letter in the file, but we are requesting a continuance. Part of looking at the spaces, not to get into the merits of the petition, but in recent months there has been some opportunities to look at the space again. As you know, this is a space that is in residential district but with commercial uses, and so we thought it might be appropriate to actually have a full picture of what we're looking to do, talk with the landlord and the neighbors and come back with one petition and not trying to do it piecemeal.

CONSTANTINE ALEXANDER: Salami. Don't salami.

ATTORNEY SEAN HOPE: And Ms. Taylor also wanted to come down as well. This is actually the second case we filed on this property and so we just wanted to make sure the Board knew there was seriousness about it and really trying to be diligent about what we go before the Board with.

CONSTANTINE ALEXANDER: We appreciate that.

Do you have a date in mind you want to continue it to? When would you want us to hear the case?

MARY TAYLOR: Well, I don't know whether it has to do with your schedule, but we need just about another month's time.

CONSTANTINE ALEXANDER: Well, we can -- if shorter, it might be a problem. February 17th we've hearing.

Do we have any room in March? What's the March schedule now that we have all these continued cases?

SEAN O'GRADY: We only have the 23rd.

Do I understand another filing might be coming?

ATTORNEY SEAN HOPE: I do believe so. This is actually not going to be -- so we'd like to continue this out so that we could file a new case potentially.

CONSTANTINE ALEXANDER: Continue it to April?

ATTORNEY SEAN HOPE: That would be appropriate

just so that we don't run into the repetitive petition.

CONSTANTINE ALEXANDER: What's the dates in April, the first date in April?

SEAN O'GRADY: 13th.

CONSTANTINE ALEXANDER: April 13th. Are you superstitious?

ANDREA HICKEY: It's not a Friday.

ATTORNEY SEAN HOPE: I'll wing it.

CONSTANTINE ALEXANDER: The Chair moves that we continue this case as a case not heard until seven p.m. on April 13th subject to the following conditions:

Mr. Hope is very familiar with. That you sign -- the petitioner file a waiver of time for decision. We have to have that otherwise we would be forced to hear the case tonight and you don't want that to happen. So legally that gives us a waiver from you. That's the first condition.

The second condition is that the posting sign that

you have up there right now, be modified or get a new one to reflect the new date and the new time, the time would be seven p.m. And that the sign be maintained for the 14 days prior to the April continued date.

And lastly, and this may be relevant, to the extent that the plans you have in our files now are going to be changed, any revised plans or new plans and any changes to your dimensional form that's been in our file must be in our files no later than five p.m. on the Monday before April 9th?

JANET GREEN: 13th.

SEAN O'GRADY: April 13th.

CONSTANTINE ALEXANDER: April 13th.

The purpose of that is to allow us to read them in advance of the hearing. Allow citizens to come and read them in advance of the hearing. If you don't do that, we will not hear the case on April 13th. We'll further continue it. Just keep that in mind. Sean will make sure

you do that. Okay?

MARY TAYLOR: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

* * * * *

(9:00 p.m.)

(Sitting Members Case BZA-011993-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011993, 51 Brattle Street.

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

ATTORNEY DANIEL GLISSMAN: Me again. Good evening.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY DANIEL GLISSMAN: This is a first actually for being right at nine o'clock. I'm very impressed.

JANET GREEN: You wouldn't believe the evening we've had.

BRENDAN SULLIVAN: We cleared the agenda for you.

ATTORNEY DANIEL GLISSMAN: If I can just get started. 51 Brattle Square. My name's Daniel Glissman, attorney with Prince, Lobel, Tye, One International Place, Suite 3700, Boston, Massachusetts, here on behalf of our client T-Mobile Northeast.

T-Mobile is seeking relief under Section 6409 of The Middle Class Tax Relief Act as well as the Special Permit criteria for the modification and upgrade of its existing wireless facility at 51 Brattle Street. We currently operate six antennas facade mounted to the penthouse of 51 Brattle Street and we're proposing to add an additional three antennas. All the antennas will be facade mounted and painted to match. I have some photo simulations that I'm handing out now.

CONSTANTINE ALEXANDER: I have them they're in the

files.

ANDREA HICKEY: Thank you.

ATTORNEY DANIEL GLISSMAN: The antennas are centered in between the six existing antennas in each sector and will be installed on low profile mounts and designed to blend in to the building to the greatest extent possible.

[This] site went before the Harvard Square Advisory Committee on Monday evening and they voted to support the proposal. Actually, there were two T-Mobile users on the committee, both of whom were very excited to hear about the upgrades so it was nice.

CONSTANTINE ALEXANDER: What about the Planning Board? I didn't see anything from the Planning Board in our file.

ATTORNEY DANIEL GLISSMAN: So the Planning Board, I exchanged numerous e-mails with CDD staff, and it's my understanding that they had no comment and I believe the staff sent an e-mail to that effect.

CONSTANTINE ALEXANDER: Not in our files. But the fact that there's nothing in our file means they have no comment. So it speaks for itself.

ATTORNEY DANIEL GLISSMAN: Yeah.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY DANIEL GLISSMAN: I'm happy to answer any questions.

CONSTANTINE ALEXANDER: Why don't you just briefly summarize the relief, what you want to do as compared to what's there now. And just lightly touch on the six points of The Spectrum Act.

ATTORNEY DANIEL GLISSMAN: Absolutely.

So T-Mobile, which is an FCC licensed carrier, is seeking to add three additional antennas adjacent to the six existing antennas and they're seeking relief under Section 6409. We believe our modification does not substantially increase the existing base station. There's a five-part test to 6409:

First that the modifications don't increase the height of the existing facility. This facility is at approximately 78 feet. We won't be increasing the height whatsoever.

The antennas -- on the second part of the test is that the antennas do not protrude from the existing installation by more than six feet. These antennas are facade mounted to the penthouse. They won't exceed from the -- they won't protrude from the existing building at all.

The third part is that the modification does not include the installation of more than the standard number of cabinets which is generally four. There's currently two equipment cabinets that will be -- we will not be adding any additional equipment cabinets.

The fourth part of the test is that the installation does not entail any excavation. This is a roof mount. There won't be any excavation.

And finally, the modification does not defeat any of the existing concealed or stealth design and it complies with the previous conditions of any previous approvals. And, again, we believe this installation is consistent with previous, the previous decision and previous installations approved by this Board in that it's painted to match, installed on low profile mounts, and will not break the cornice line.

CONSTANTINE ALEXANDER: Did you see the memo from the Harvard Square Advisory Committee?

ATTORNEY DANIEL GLISSMAN: I did, yes.

CONSTANTINE ALEXANDER: Okay. Because they make a number of suggestions which I'll read in a second. But am I not correct that what you're proposing sort of meet these, like ships passing in the night, what you propose is what they're asking?

ATTORNEY DANIEL GLISSMAN: Generally, yes, with one exception. They asked that all the equipment should be

the same length. However, the L700 antennas are larger than the air antennas.

CONSTANTINE ALEXANDER: How much larger?

ATTORNEY DANIEL GLISSMAN: About two feet I believe. And so, yeah, they're seven foot antennas and generally they're about five.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY DANIEL GLISSMAN: So, but that -- almost all carriers, I believe all carriers have -- contain equipment that is large, you know, different size based on frequencies and the necessary capacity.

CONSTANTINE ALEXANDER: Okay.

Questions from Members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: None.

I'll open the matter up to public testimony.

Is there anyone wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one wishing to be heard.

The Chair is in receipt of a memo from the Harvard Square Advisory Committee, or the Board is in receipt, which I will read their comments. (Reading) Members of the advisory Committee expressed no objections to the proposed antenna replacement and addition. The committee did suggest that the antenna be finished to match the facade and that all associated wiring be installed to be as close to the building as possible. All antennas should be of uniform height, width, and depth equally spaced to prevent a scattered appearance of the installation. All antennas should be installed low enough to not interrupt the roof line of the facade. Overall the committee members find the proposal to be consistent with the goals of the overlay district.

That's the district in which you're located.

And as you've indicated, basically your plans do

comply or meet these suggestions except to the length of the antenna which is longer than what's there now.

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: With that, I will close public testimony.

Ready for a vote?

JANET GREEN: Yes.

ANDREA HICKEY: Yes.

CONSTANTINE ALEXANDER: I guess so.

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

That the requirements of the Ordinance cannot be met without a Special Permit that you're seeking tonight.

That traffic generated or patterns of access or egress which will result from the work you want to do will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of

adjacent uses as permitted in this Ordinance will not be adversely affected by the nature of what you're proposing.

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

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

We will also make the further finding that the -- I propose that we make the further finding:

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

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

One, that the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair. That's what you've submitted to us.

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

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

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

its prior condition and appearance to the extent reasonably practicable.

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

And then lastly, there's my -- a long thing about health effects. And I think we've agreed in the past you know what they are. We'll incorporate them into the record and your objection will be noted as well. Just so that you do have to comply with this.

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

One, the petitioner shall file with the Inspectional Services Department each report it files with

the federal authorities regarding electromagnetic energy waves emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

Two, in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to the equipment permitted by the Special Permit granted tonight, fails to comply with requirements of law or governmental regulation, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner within ten business days of receipt of notification of such failure shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the

basis for such claimed failure, and sixty calendar days after receipt by the petitioner of such notification of failure, the Special Permit granted tonight shall ipso facto terminate.

Three, to the extent that a Special Permit has terminated pursuant to the foregoing paragraphs 1 and 2, the petitioner may apply to this Board for a new Special Permit, provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special permit pursuant to paragraphs 1 and 2 above.)

Based on all of this, the Chair moves that we grant the Special Permit as I said subject to these conditions.

All those in favor please see "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Special Permit granted for this.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

ATTORNEY DANIEL GLISSMAN: Thank you.

* * * * *

(9:15 p.m.)

(Sitting Members Case: BZA-012071-2016: Constantine
Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,
Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 012071, Ten Canal Park.

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

ATTORNEY DANIEL GLISSMAN: Good evening, Daniel Glissman, attorney with Prince, Lobel, Tye, One International Place, Suite 3700, Boston, Massachusetts.

I'm here on behalf of my client T-Mobile Northeast, and we're here seeking relief for the upgrade and modification of our existing facility at Ten Canal Park.

T-Mobile currently operates six antennas, facade mounted to the penthouse of this building and they're proposing to add three and replace three; three new L700 antennas and three upgraded air antennas.

CONSTANTINE ALEXANDER: So there would three more antennas on the building than there is now?

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: As I recall, this property has been before us a number of times. And there's another telecommunications carrier whose got antennas on the

building, right?

ATTORNEY DANIEL GLISSMAN: Correct. I believe it's Sprint.

CONSTANTINE ALEXANDER: Okay.

And not tonight, I guess, but in the past there was opposition from people who lived in the apartments across the way about concerns about radiation and obstructing views, but I didn't see any comments this time around.

ATTORNEY DANIEL GLISSMAN: Yeah, not to my knowledge we haven't gotten any comments from any neighbors.

CONSTANTINE ALEXANDER: Continue.

ATTORNEY DANIEL GLISSMAN: This site's located in the BA district and, again, we're seeking relief under Section 6409, and I could just briefly run through the criterion.

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY DANIEL GLISSMAN: The first criterion is

that the proposed modifications don't extend the height of the existing base station. This is currently at approximately 84 feet in height. We won't be increasing the height. All the antennas will be located at the same top height.

The second prong is that the modifications won't protrude from the edge of the building by more than six feet. Again, these are installed on the penthouse and, therefore, will not exceed the edge of the building.

We currently have two cabinets on the -- in the existing facility and we will not be increasing that. We also will not include any excavation as this is a rooftop mount.

Finally, we believe this site is compliant with previous decisions and does not defeat the existing stealth as what we will be mounting on low profile mounts about a foot beneath the cornice line so as to not to break it, and all antennas will be painted to match. We're also doing our

best to evenly space the antennas for proper symmetry.

CONSTANTINE ALEXANDER: Okay.

Questions from Members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: None.

I'll open the matter up to public testimony.

Is there anyone here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: I guess not. Close public testimony.

We're not in receipt of any correspondence. Did you meet with the Planning Board on this one?

ATTORNEY DANIEL GLISSMAN: Again, this site, I corresponded with members of CDD and they said the Planning Board did not request to review this site, and I was under the impression that they had sent an e-mail to that effect.

CONSTANTINE ALEXANDER: So, again, no comment. Basically by not commenting, their comment is no comment.

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: All right. We ready for a vote?

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: The Chair moves that we make the following findings with regard to the relief being sought:

That the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair. Which we've done.

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

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

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

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

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

Act.

And there is the last condition, some length dealing with electromagnetic waves and energy waves and their impact. As we've agreed in the past, you know what they are, we know what they are, and we'll incorporate the record with this gentleman's reservation of his rights with regard to them.

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

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

federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

Two, in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to the equipment permitted by the Special Permit granted tonight, fails to comply with requirements of law or governmental regulation, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner within ten business days of receipt of notification of such failure shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure, and sixty calendar days after receipt by the petitioner of such notification of failure, the Special Permit granted tonight shall ipso facto terminate.

Three, to the extent that a Special Permit has

terminated pursuant to the foregoing paragraphs 1 and 2, the petitioner may apply to this Board for a new Special Permit, provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special permit pursuant to paragraphs 1 and 2 above.)

CONSTANTINE ALEXANDER: All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Relief granted.

(Alexander, Sullivan, Green, Hickey, Tedesco.)

(Whereupon, at 9:20 p.m., the

Board of Zoning Appeals Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

INSTRUCTIONS

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

I, Catherine Lawson Zelinski, a Certified Shorthand Reporter, the undersigned Notary Public, certify:

That the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of January, 2017.

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

My Commission Expires:
April 29, 2022

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