

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JUNE 12, 2014

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Timothy Hughes, Vice Chair
Brendan Sullivan, Member
Thomas Scott, Member
Janet Green, Member
Andrea A. Hickey, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members Case #BZA-003574-2014: Constantine Alexander, Timothy Hughes, Tomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And as is our custom, we're going to begin with our continued cases and then move on to our regular agenda. And the first continued case I'm going to call is 003574, 148-150 Western Avenue.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, Members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight with the owner of 148-150 Western Ave, Mr. Fawaz Mohamed Abu Rubayah.

Identify yourself for the record.

FAWAZ MOHAMED ABU RUBAYAH: Fawaz,

F-a-w-a-z A-b-u A-u-b-a-y-a-h.

ATTORNEY SEAN HOPE: And we have the proposed manager of the restaurant Mr. Hugo Mendez.

HUGO MENDEZ: Hugo Mendez. Hugo, H-u-g-o, Mendez, M-e-n-d-e-z.

ATTORNEY SEAN HOPE: Before we get into the merits of the application, I wanted to -- we were made aware that there were some notice issues with the postings.

One, there was the wrong time, although the date was changed, but even more importantly there was a period of time where the notice wasn't up.

CONSTANTINE ALEXANDER: That's correct.

ATTORNEY SEAN HOPE: And it was also noticed by one of the abutters that might have been impacted. So with respect for the

Board's time and also for any decision the Board makes, we're requesting a continuance. And I understand the Board takes continuances very seriously. So we wouldn't be looking for another continuance but we do want to make sure that actually have a hearing that would actually withstand any appeal and to make sure the public had adequate notice for the hearing.

CONSTANTINE ALEXANDER: We wouldn't hear the case -- well said, Mr. Hope. We wouldn't hear the case tonight because of the issues you've identified. So I think a continuance is in order. I would say, however, two things:

One is this is the second continuance. And we're not going to keep continuing this case.

And No. 2, I think you need to look very

hard at all the facts in this case and think very seriously about going forward on the merits, because you may have problems beyond what you're seeking, the relief you're seeking. So we'll continue one more time. No more continuances as far as I'm concerned unless there is a very compelling reason shown, but I would urge you to rethink whether you want to proceed at all.

With that, it's a case not heard, so what do we have?

SEAN O'GRADY: July 7th -- I'm sorry, July 10th.

ATTORNEY SEAN HOPE: Would you guys be available on July 10th?

FAWAZ MOHAMED ABU RUBAYAH: Yeah.

CONSTANTINE ALEXANDER: I believe there are some neighbors here. Is July 10th a problem for any of you to hear the case?

UNIDENTIFIED AUDIENCE MEMBER: No.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued as a case not heard until seven p.m. on July 10th on the condition that you maintain for the two-week period required under our Ordinance, the sign with the correct date, July 10th and the correct time, seven p.m.

You've already signed a waiver of time for a decision. And I don't think this will be relevant in your case, but if you want to resubmit different plans or dimensional form modifications, they must be in our files by no later than Monday before five p.m. on the Monday before July 10th. Okay?

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

(Aye.)

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

CONSTANTINE ALEXANDER: Five in
favor. Case continued.

* * * * *

(7:05 p.m.)

(Sitting Members Case #BZA-003455-2014:
Constantine Alexander, Timothy Hughes,

Thomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 003455, 47 Oxford Street, also known as 30 Mellen Street.

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

ATTORNEY ARTHUR KREIGER: I do.
Thank you.

CONSTANTINE ALEXANDER: Welcome.

ATTORNEY ARTHUR KREIGER: Good evening, Members of the Board, Mr. Chairman. Thank you for hearing us. My name is Art Kreiger from Anderson Kreiger. You're used to seeing Suzie Roberts from my office. I will try to do as well as she has done. Suzie has moved on to general counsel for a small development company and pursuing some legal dreams of hers as well.

So in any event, I am here tonight with

Dan Bilezikian from (inaudible) and with the engineer Deepak Rathore to describe this application to you.

We were here back in April and it was continued as a case not heard because of the quality of the photo simulations. So you have initially the March 19th application package, and you have a June 9th supplemental letter with photo simulations. There are a few typos with those photo sims.

CONSTANTINE ALEXANDER: Do you have extra copies to distribute to the Board Members?

ATTORNEY ARTHUR KREIGER: Of?

CONSTANTINE ALEXANDER: The photo sims. Sometimes Suzie used to bring a bunch of copies.

ATTORNEY ARTHUR KREIGER: I did not bring a bunch of copies. I brought --

CONSTANTINE ALEXANDER: I have the ones in the files.

ATTORNEY ARTHUR KREIGER: I assumed we submitted a bunch of copies.

CONSTANTINE ALEXANDER: Maybe you have. Let me see.

No, only seems to be one attached to the letter. That's okay. If you don't have it, you don't have it.

ATTORNEY ARTHUR KREIGER: I do not have multiple copies.

CONSTANTINE ALEXANDER: Do you have any copies? Extra copies?

ATTORNEY ARTHUR KREIGER: I have my copies and substitute copies. We'll get there.

What I'd like to do is just start with a quick description of the RF issues, the radio frequency issues with the coverage gap

and what this site will do with the gap. And I'll ask Deepak to bring that over.

DEEPAK RATHORE: My name is Deepak Rathore.

THE STENOGRAPHER: Sir, I'm going to ask that you speak up nice and clear, please.

DEEPAK RATHORE: My name is Deepak Rathore. I'm an AT&T RF engineer. I'm responsible for this site. And the main objective and purpose of this site is to provide better coverage to the (inaudible) campus and the surrounding area.

So right now there is current coverage where you can see. Right in the middle we have the proposed facility and you can see the yellow and red coverage which is weak as compared to the blue and green color. And we want to improve that coverage in this area especially Harvard Campus.

And the next plot shows how this proposed facility is going to coverage -- surrounding the site basically. So if you, there's -- if you see there's not much coverage going beyond this because of the northwest building on the Harvard Campus which is blocking the coverage to the east, east, other than that it's simply the coverage pretty much on the -- around this proposed facility.

JANET GREEN: Can you point out so which one is Oxford Street?

ATTORNEY ARTHUR KREIGER: This one right here. Here's Mass. Ave. This is the facility in, I believe, in the law school building, the law school building and Oxford, Mellen.

CONSTANTINE ALEXANDER: And I'm sorry, the green, it represents what and the

blue represents what in terms of the --

DEEPAK RATHORE: Green is the good in-building signal.

THE STENOGRAPHER: Green is what?

DEEPAK RATHORE: Green is --

ATTORNEY ARTHUR KREIGER: Good in-building signal.

THE STENOGRAPHER: Good in-building signal? Okay.

DEEPAK RATHORE: Blue is good in-car coverage. Yellow is on-street coverage. And the red is probable coverage, it depends on season.

CONSTANTINE ALEXANDER: But it's far away from the site that we're talking about right now. What's the concern? Why do you need more coverage?

ATTORNEY ARTHUR KREIGER: This is proposed.

CONSTANTINE ALEXANDER: Oh, okay.

THOMAS SCOTT: Flip back one.

DEEPAK RATHORE: This is current.

CONSTANTINE ALEXANDER: Okay, got it.

DEEPAK RATHORE: Any questions?

CONSTANTINE ALEXANDER: An off the wall question if you will. Someone brought to my attention that there's, at least on one of your other telecommunication carriers are going to what is called a -- let me get it right -- a distributed antenna system where instead of putting these big dishes on tops of buildings they're putting a cannister on top of a telephone pole which is much less unsightly than what you do and other carriers do.

What's the story on that?

DEEPAK RATHORE: So this, this

facility is that indoor distributed and then --

THE STENOGRAPHER: This facility is what?

DEEPAK RATHORE: Indoor distributed.

THE STENOGRAPHER: Indoor distributed?

DEEPAK RATHORE: Yes.

So that's what we are basically deploying those in-building coverage where we have poor in-building coverage, we want to improve our coverage in those areas.

CONSTANTINE ALEXANDER: And why don't you have that all along the street on the telephone poles? Out-building distributive coverage?

DEEPAK RATHORE: Two reasons: These are low power, low power, really low

power that doesn't cover much area.

CONSTANTINE ALEXANDER: So you need more cannisters?

DEEPAK RATHORE: And, again, that doesn't have enough power to penetrate in-building coverage. Those are the two reasons why we don't, don't -- probably that's why AT&T is not deploying these at this time.

CONSTANTINE ALEXANDER: Do you have -- I'm sure you must service the Town of Wellesley?

DEEPAK RATHORE: What's that?

ATTORNEY ARTHUR KREIGER:
Wellesley?

CONSTANTINE ALEXANDER: Yes.
They've got a proposal out for a distributed antenna system.

DEEPAK RATHORE: Yes.

CONSTANTINE ALEXANDER: And they don't have problems with the buildings being penetrated.

DEEPAK RATHORE: Yeah, mostly those are like two-story building around that area that they are proposing those.

CONSTANTINE ALEXANDER: Okay.

You're not in a -- you're technically in a residential area, and I accept the fact that it's a lot non-residential, but why -- we have cases, other times, when you want to put an antenna in a namely residential area, why isn't it that you don't come back to us with the distributed antenna system and avoid the problems that we always have with the facilities on top of buildings?

DEEPAK RATHORE: So, I will answer -- can't answer that right away. But the reason I explained to you because it is

able to penetrate the buildings as of one site and then again we have to take like every other flag -- probably light pole to have the coverage of one facility versus adding like -- getting the light pole on every other light pole.

CONSTANTINE ALEXANDER: I don't want to pursue this anymore because this is a different situation. I'm going to warn you if you come before us again in a purely residential area, I'm going to want a better answer and more conclusive presentation as to why you need to put things on top of buildings and not on top of telephone poles.

ATTORNEY ARTHUR KREIGER: We are well aware of the Board's concern of residential areas, most recently Concord Avenue, but going back on other matters before that, and if that would work, we work

economically, if it would work in terms of the authorization in the distributed system AT&T would do that.

CONSTANTINE ALEXANDER: I would urge you to urge your client to see if they can get there in a residential area.

ATTORNEY ARTHUR KREIGER: And we have other residential areas and we will look to that.

As you say, I think this is a different kind of proposal and I hope the Board will view it differently and the questions are appropriate at any other times.

Any other questions about RF coverage either existing or proposed?

(No Response.)

ATTORNEY ARTHUR KREIGER: Okay, thanks.

DEEPAK RATHORE: Okay.

ATTORNEY ARTHUR KREIGER: As you know from the application, AT&T is seeking a Special Permit along with the other applications that we submitted. This was referred to the Planning Board and you have a copy of their review which they stated that they found it to be an appropriate installation, that the antennas to be placed were barely visible from the public way, and they commended AT&T on the presentation.

So the building is a Lesley University dormitory, and the proposal is to put four antennas in each three sectors; an alpha, beta, gamma. Two of them will be on an existing penthouse. I'm sorry, two of them on a proposed equipment shelter, two of the sectors, and one of them will be on a proposed penthouse, both of which will be painted and textured to match the building.

Looking at sheet C-1 which is of course one of the tabs in your package. I assume you know the drill by now, you're familiar with -- I don't have to go through the tabs and tell you what we've submitted.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KREIGER: So the two towards -- this, I guess this is south. The south end. That's where the equipment shelter will be. And then the freestanding penthouse will be at the north end connected by cable (inaudible) --

JANET GREEN: And I'm sorry, where is Oxford?

ATTORNEY ARTHUR KREIGER: Yeah, sure. Oxford is here. So this is one building in off Oxford, in from Oxford on Mellen and Mass. Ave. back out there.

JANET GREEN: Okay.

ATTORNEY ARTHUR KREIGER: This is just a close up. So the equipment shelter structural support is adequate. Obviously we don't have authorization for this proposal. So eight antennas here, painted also -- also painted to match. And then four antennas up here enclosed in a penthouse. So no screen walls necessarily, everything should be painted and to match the building.

CONSTANTINE ALEXANDER: What type of mounts are you going to use?

ATTORNEY ARTHUR KREIGER: Last time the Board I think expressed a preference or perhaps more than that --

CONSTANTINE ALEXANDER: Right.

ATTORNEY ARTHUR KREIGER: -- for low profile mounts.

CONSTANTINE ALEXANDER: And do these have low profile mounts?

ATTORNEY ARTHUR KREIGER: Dan is
that --

DAN BILEZIKIAN: That's what these
are.

ATTORNEY ARTHUR KREIGER: The
reason I hesitate is the transition between
Ms. Roberts and me, but I believe these are.

CONSTANTINE ALEXANDER: All of them
are going to be low profile mounts?

DAN BILEZIKIAN: Uh-huh.

ATTORNEY ARTHUR KREIGER: Yeah.

THOMAS SCOTT: The four to the north
are in an enclosure?

ATTORNEY ARTHUR KREIGER: Yes.

THOMAS SCOTT: Is that an enclosure
that you're installing?

ATTORNEY ARTHUR KREIGER: Yes.

THOMAS SCOTT: And that's to conceal
them?

ATTORNEY ARTHUR KREIGER: Correct.

THOMAS SCOTT: Okay.

ATTORNEY ARTHUR KREIGER: This is four antennas going back and across that enclosure.

ANDREA HICKEY: I'm sorry, I didn't hear you.

ATTORNEY ARTHUR KREIGER: I said I can get you the dimensions of the enclosure. I don't have it on the plan here. But that rectangle on the top right is the new enclosure.

DAN BILEZIKIAN: It's 12 by 8 by 10.

ATTORNEY ARTHUR KREIGER: Okay.

CONSTANTINE ALEXANDER: And in addition, it's going to be a gas generator, too, on the roof?

ATTORNEY ARTHUR KREIGER: There will be a natural gas generator in the

equipment shelter down at this end.

CONSTANTINE ALEXANDER: What are you doing with regard to noise when it's fired? Which I understand does not -- it's only a once in a while assuming there's no emergency, but how do we -- from the neighbor's point of view, how do we know that it's -- they're not going to be disturbed by what's going on when you fire these generators?

ATTORNEY ARTHUR KREIGER: Well, there's a tab 11, last tab of your package is a noise study which includes the generator unit. It has recommendations for mitigation measures and those will be taken.

CONSTANTINE ALEXANDER: Will this comply with the Noise Ordinance of Cambridge?

DAN BILEZIKIAN: It will.

ATTORNEY ARTHUR KREIGER: Yes.

ANDREA HICKEY: With the mitigation
or --

ATTORNEY ARTHUR KREIGER: With the
mitigation. Silencers and dampeners as
mentioned in that tab. So mitigation
measured could be conditioned to the permit
to make sure it complies.

CONSTANTINE ALEXANDER: Like
everything else, the mitigation measures
will be improved over time and it will even
be quieter if you will. I would -- is there
any reason why you shouldn't be required to,
as technology improves, that you improve the
sound muffling of the generator? Because
there is a noise that's going to be emitted,
not enough to violate the Noise Ordinance,
but still, again, I'm worried from the
neighbors' point of view, the quieter the
better.

ATTORNEY ARTHUR KREIGER: The quieter to the better to a point. If they neighbors can't hear above the ambient noise of the traffic on Mass. Ave., etcetera. This is a very quiet neighborhood. Certainly if there is some noise and the state of the art improves over time, then more mitigation can be appropriate.

CONSTANTINE ALEXANDER: I think it would be appropriate to put a condition that any relief that we may grant tonight that to the extent that there are developments or improvements in noise mitigation, that those be incorporated in your facility so as to keep the noise mitigation at the lowest possible levels at all times.

ATTORNEY ARTHUR KREIGER: If I might add, to the extent more -- better mitigation becomes available and to the extent that it's

needed to protect the neighbors from
whatever --

CONSTANTINE ALEXANDER: No, I don't
like the second half. If it becomes
available, why not put it in?

ATTORNEY ARTHUR KREIGER: Right.
Well, I guess I'm getting to the point a
minute ago, if the neighbors can't hear it,
then there's no problem to mitigate. I don't
have a problem with the concept. Right?

DAN BILEZIKIAN: No.

ATTORNEY ARTHUR KREIGER: I think
what you're probably most interested in is
the photo simulations, so we might as well get
to that.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KREIGER: So I've
compiled two sets here in addition to what was
supplied. So I'm sorry that I don't have

copies for everyone.

CONSTANTINE ALEXANDER: And these are different than the -- these are new pages?

ATTORNEY ARTHUR KREIGER: I'm going to get to that.

CONSTANTINE ALEXANDER: All right. I just wanted to make sure.

ATTORNEY ARTHUR KREIGER: Yup, that's right.

So, if you go to -- if you turn to page 2, which is the photo location map. Here is the corrected page. What you have is page 2 simply labelled two of the locations, both photo 5. This one corrects photo 8. So that is now the corrected page in showing what you probably would have figured out because it's a fairly obvious typo.

And the other one that, that they now

have that you don't yet, Mr. Chairman, is this photo 5A, all that was corrected was the date which said just a typo said January which obviously was crab apple was not the case and now it says April.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: So last time I think the thrust of your concern as I understand was the quality of the photo simulations?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KREIGER: They were too dark?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KREIGER: And they weren't zoomed in enough?

TIMOTHY HUGHES: Yeah, they all look like this one.

ATTORNEY ARTHUR KREIGER: So now I

think we've corrected that.

CONSTANTINE ALEXANDER: I'm still, I'm not going to beat you up on this, but I still think you can do better. Be that as it may. You're still a good distance away. It's still quite dark. I don't know why you can't take these photo sims in bright sunlight and get a little closer.

ATTORNEY ARTHUR KREIGER: When you say a good distance away. They're now zooming in at most of these locations, you'll see close-ups as well as --

CONSTANTINE ALEXANDER: Yes, I saw that in the package.

ATTORNEY ARTHUR KREIGER: Okay.

As far as the quality, we will continue to try to get -- submit the best ones we can.

CONSTANTINE ALEXANDER: Your competitors do a much better job, I can tell

you that.

JANET GREEN: Why is that?

CONSTANTINE ALEXANDER: They come in and they have photo sims from Dewberry and they're wonderful. They're clear, they're close. And every time you guys come in, it's always it's like pulling teeth to get even vaguely helpful.

ATTORNEY ARTHUR KREIGER: We've worked with Dewberry, we've worked with Hudson.

DAN BILEZIKIAN: We use various engineers on different projects. So, you know, the work gets spread around. It's impossible to have Dewberry do every site. They just couldn't handle it. It's impossible. Some obviously do a little better than others, but --

CONSTANTINE ALEXANDER: This is not

a plea for Dewberry.

DAN BILEZIKIAN: Yeah, I know.

CONSTANTINE ALEXANDER: This is just -- just urge when you use --

DAN BILEZIKIAN: We've talked to our engineers and used Dewberry as an example of what they should try to emulate. And, you know, they do, they have done a lot better.

JANET GREEN: You should have somebody in-house that looks at them before they come to us and says, you know, they're never going to approve this because they can't see what we're trying to show them.

ATTORNEY ARTHUR KREIGER: Well, what you're looking at is not necessarily the first version of these. There have been cases where we've said that --

CONSTANTINE ALEXANDER: Keep going though.

JANET GREEN: Sometimes I think you stop too early.

ATTORNEY ARTHUR KREIGER: All right, we will work harder to improve the quality.

In any event, you have now eight photo locations and multiple shots from most of those locations A, B, and C. From the point you can see the penthouse and equipment shelter are visible from certain shots. And the antennas themselves are pretty unobtrusive, and the penthouse from the equipment shelter blend in with the building very well.

I'm happy to take questions.

CONSTANTINE ALEXANDER: Why don't you touch -- you have to touch on a number of points in our Ordinance.

AT&T is a licensed FCC carrier in good

standing.

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: And talk about you're in a residential district as you know.

ATTORNEY ARTHUR KREIGER: Right.

CONSTANTINE ALEXANDER: There are additional findings we have to make that we don't make in non-residential districts.

ATTORNEY ARTHUR KREIGER: Right.

CONSTANTINE ALEXANDER: So walk through the drill if you would.

ATTORNEY ARTHUR KREIGER: I would be happy to.

Okay, walking through Section 4.32 and 4.40, AT&T is licensed, complies with its FCC license. The license information is provided at Exhibit 2.

The Board shall consider to the extent

which visual impact is minimized through color, texture, other means, etcetera. And as we have a narrative description of that in the application, but as I've described tonight, things will be painted and textured to match as well as --

CONSTANTINE ALEXANDER: On that point, some Members of the Board, I'm not sure if I'm one of them, have expressed a preference when it comes to the masking not to try to paint brick to match brick. To match the color, but rather than trying to match the brick imprint seems to not be cross purposes. You wouldn't have a problem with that, would you?

DAN BILEZIKIAN: No, not at all.

CONSTANTINE ALEXANDER: Is that something that Members of the Board prefer? I think Brendan usually prefers --

TIMOTHY HUGHES: I think they both look like crap so what difference does it make?

CONSTANTINE ALEXANDER: I couldn't agree with you more. I wanted to give everybody a chance.

TIMOTHY HUGHES: Rarely do they match the color of the brick right. And so yes, if you're not going to match the color of the brick and then they're going to try to put lines on it to make it look like brick on top it. That's a waste of time, you know.

ATTORNEY ARTHUR KREIGER: The alternative would be to do a completely different color.

TIMOTHY HUGHES: No. The alternative would be to actually match the brick and not just use something you've got laying around from another building.

Because not all brick's the same. If the brick in every building is a brick building is not the same color. You can't mass produce these things and then expect them to fit every situation. You got to look at the building, you take a picture of the building, you do the spectrum analysis that they do at a paint store, and you match the brick.

CONSTANTINE ALEXANDER: Exactly.

ATTORNEY ARTHUR KREIGER: Sure.

Even so, you're going to get new brick and weathered brick and you might like it better and it's not like you can make a perfect match no matter what you're doing if you're going up on an 80-year-old building.

In any event --

CONSTANTINE ALEXANDER: And then what about the availability of other sites in the residential district --

ATTORNEY ARTHUR KREIGER: Okay, so now let me get to that criterion. We can demonstrate public need for the facility if you're in a residential district. Municipal alternative functionally suitable sites in non-residential locations, character of the area, and then I'll get to the predominant use issue.

Demonstrated need, I think is the RF presentation you've already heard.

The existence of alternative function in suitable sites. Again, Deepak can speak to this. There were no other sites that met the criteria for which AT&T could get authorization. In this --

CONSTANTINE ALEXANDER: Let me ask you a question: No sites because the landlord or the owners wanted to rent you didn't want to pay or they just wouldn't even

talk to you?

DAN BILEZIKIAN: No, we couldn't -- this was a willing landlord. We couldn't find -- the other willing landlord that we could find, the building was too short. Couldn't get the height that was required. But, no, we, you know, we try to do the best we can to hide these things. We don't want to run in, you know, we don't want to cause ourselves problems. I mean, we look for the most innocuous location we can where we can find a willing landlord, and in this case I think that's what I think we found.

ATTORNEY ARTHUR KREIGER: In tab 6 is an alternative site analysis; 8 to 10 Wendell Street, 21 Wendell, 37 Wendell, 60, 54 Mass. Ave., 60 and 63 Mass. Ave. And a description of why none of those are available.

And some RF grounds, some because the property owner wasn't willing to enter into an agreement. And I don't think the level of rent was the issue. As you found on Concord Avenue when we looked at one of the alternative buildings, we couldn't get ahold of that condo owner.

DAN BILEZIKIAN: That's almost never the issue by the way.

ATTORNEY ARTHUR KREIGER: The rent level?

DAN BILEZIKIAN: Yeah, the rent.

CONSTANTINE ALEXANDER: There have been times when I probed a bit, may not be you, and it comes up to the point well, yeah, we could -- this building, the landlord wanted exorbitant rent. And that doesn't cut it.

DAN BILEZIKIAN: Yeah, I understand

that.

CONSTANTINE ALEXANDER: You're going to have to pay if you want --

DAN BILEZIKIAN: I understand.

CONSTANTINE ALEXANDER: That's not your case now. Understood.

ATTORNEY ARTHUR KREIGER: And in this case, those are the plausible alternatives and each of them was checked out and we can describe more if you need more detail on that.

So then the question is, principally non-residential use predominate in this area.

This is a dorm which of course is residential in a sense, it's also institutional in a sense. But aside from that, around it you have non-residential, non-dormitory buildings. You have several

museums on Oxford Street. You've got stores on Mass. Ave. a block away. You've got a variety of buildings that if you go through the neighborhood building by building, I don't think. I think it's fair to say that non-residential uses do predominate in the area considering the area to be Mass. Ave. passed Oxford to the next block. And I know sometimes the area under consideration for this factor can be larger or smaller --

JANET GREEN: There's a lot. You know there are a lot of residential properties on Mellen Street, right?

ATTORNEY ARTHUR KREIGER: Right.

JANET GREEN: And they're on Wendell is mostly residential.

ATTORNEY ARTHUR KREIGER: Yes.

JANET GREEN: Wendell is residential. I couldn't tell because the

street's -- how far it went. But it is a pretty residential neighborhood. I was really curious how you made the analysis that it wasn't mostly residential?

ATTORNEY ARTHUR KREIGER: Well --

JANET GREEN: I mean, how do you measure the bricks? I mean, the buildings, the footage, or how do you decide that it isn't?

ATTORNEY ARTHUR KREIGER: Well, you're the ones that have to decide that it isn't, of course. We don't think it is. We think it's fair for the Board to say it's not predominantly residential or predominantly non-residential.

JANET GREEN: Yes, but you have to give us --

ATTORNEY ARTHUR KREIGER: Based on some of the uses that I just mentioned. You

can do it by square footage, you could do it by number of buildings, you could do it by population because they live there and because they work there. There's no formula of course. It's largely your sense that it is not unfair to put it in this area. It's not a burden on a residential neighborhood considering first of all, trying to serve that neighborhood among other things, but that there are enough non-residential uses there so that they're not, as the Ordinance says, changing the character of the residence -- residential neighborhood putting it on there. So the corollary of the residential uses predominating is that the facility not be inconsistent with the character that does prevail. So we could, and I will if you like, go through an exercise of counting buildings, people, square

footage, but I think the sense is that with the museums on one side and commercial use on the other, and the non-residential Lesley buildings right around. Clearly they are residential. They are rows of houses there. Otherwise that's why because this is a residential district no question about that.

JANET GREEN: It's actually one of the more complicated ones that we've seen as far as whether it's more residential or less residential, that's why I asked how you came to that conclusion.

ATTORNEY ARTHUR KREIGER: Well, I think it's --

JANET GREEN: Because it usually it's clearer about whether it's one or the other.

ATTORNEY ARTHUR KREIGER: Yeah, I mean I've seen other close calls around the

city, as I'm sure you have, but I don't think this is such a close call because you've got the big institutional uses all around it. Right? The building itself, as I said, is residential in a sense, but it's institutional. You've got the campus around it. You've got the museum complex. You've got the stores. I think it would be real --

CONSTANTINE ALEXANDER: The test is in the finding we have to make is that non-residential uses predominate in the vicinity --

ATTORNEY ARTHUR KREIGER: Right.

CONSTANTINE ALEXANDER: -- of this location.

ATTORNEY ARTHUR KREIGER: Right. So I suggested that what I think is fair vicinity is, but you may agree or disagree. A couple blocks in either direction seems to

cover the neighborhood.

And the other question is what does it mean if non-residential uses predominate? That doesn't actually answer the question of how you measure the predominance call.

CONSTANTINE ALEXANDER: It's a judgment call.

ATTORNEY ARTHUR KREIGER: It's a judgment call, and where you've got the big non-residential buildings on all sides and the active commercial area, I think it would be fair to say that this would be consistent with the character and not a transformation of any kind or an impact on the residential character of the neighborhood.

The houses across the street, I don't think is -- a one way to look at it, the houses on Mellen or on Wendell is one feels one iota more residential than it does today. This is

on the college. That's the functional way I would suggest to look at that.

So AT&T believes that we meet this test of the non-residential uses do predominate and it would be consistent with the character.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: The rest of the Ordinance criteria I think are pretty straight forward. It's the usual no traffic except for --

CONSTANTINE ALEXANDER: No need to go through that.

ATTORNEY ARTHUR KREIGER: Okay.

So I think that the larger qualitative criteria are met. This would be consistent with the Ordinance. It would provide a public need. It would be consistent with the character of the neighborhood. It's

consistent with the urban design objectives. And if the Board agrees that it's reasonably unobtrusive as the Planning Board thought and consistent with the visual impact is not inconsistent with any purview request really Special Permit for this facility.

CONSTANTINE ALEXANDER: There's something I want to address but not at this point.

First, any comments from Members of the Board.

ANDREA HICKEY: Yes, I have a couple of questions. I know your ideal number of antennas is 12. Could you improve signal with fewer than 12?

ATTORNEY ARTHUR KREIGER: I'm gonna let Deepak answer that and then have a more general response.

DEEPAK RATHORE: Yes, so your

question is if we can reduce the number of antennas? That's what your question is?

ANDREA HICKEY: Yes. Could there be less antennas and you're still sort of providing a better signal? And when is that sort of point where it wouldn't be worth putting up any new antennas because the value gained would be not worth it?

DEEPAK RATHORE: So basically when we go down to less than four antenna, that's when we have to start combining different spectrum with different technologies. And when we start doing that, that's when we start getting more loss associated with coverage, and basically it comes down to certain spectrum which we cannot combine together. There has to be different antennas. So that's the reason why we have to have four antenna per sector.

CONSTANTINE ALEXANDER: To follow up on Andrea's question, go back to Concord Avenue if my memory is correct, you came in originally with 12 antennas you wanted. Somehow you were able to reduce it to 10 and then to 8 and then we reached our decision. But you seem to be able to work with less than 12 antennas there and the reason different here?

DEEPAK RATHORE: No. So basically the reason is same because now we have to start combining all those spectrum and we might not able to deploy some of the spectrum which we have due to the fact that we cannot combine with the different with the other two spectrum together on one antenna. That could be the factor which will basically, which might trigger us to get a new site nearby because we cannot offer that same

capacity, same coverage because we are not able to supply certain spectrum in that part of the locations.

ANDREA HICKEY: So, if 4 is unworkable and 12 is your dream, what is the number between 4 and 12 that would still make this a viable location?

DEEPAK RATHORE: Four antenna per sector. So total 12 is what I'm saying.

ANDREA HICKEY: Okay. But my question is you need 12 or this site is unacceptable?

DEEPAK RATHORE: At this moment it's acceptable but, again, it's gonna provide us the limited capability of this particular site.

ANDREA HICKEY: I understand that. You're asking for --

ATTORNEY ARTHUR KREIGER: Let me get

my general response, which I think will cover Deepak's comments as well. There's no, there's no magic line between a site being viable and not viable between it being competitive with other carriers and not competitive in between automatic and needing another site if you only had this many antennas where as if you had more antennas you wouldn't. There are obviously degrees and degrees of signal quality and degrees signal reliability. This is what AT&T believes will provide -- starting point for AT&T is what it believes will be competitive in the marketplace, accommodate reasonable growth without needing to come back, avoid the need for another facility, etcetera.

ANDREA HICKEY: Right, I understand why you're asking for 12.

ATTORNEY ARTHUR KREIGER: That's

where we start.

ANDREA HICKEY: Okay.

ATTORNEY ARTHUR KREIGER: On certain sites -- I mean, and look I saw on Hampshire Street also, right, where AT&T agreed to cut in the middle of the hearing, agreed to cut the number of antennas. And we said at the time you can always squeeze but sometimes it may kill a site to do that or it may make it not worth it for AT&T to do a site. But more to a point, you're degrading service and the question is for what? So on Concord Ave. where the visual impact was such a consideration or on Hampshire, I understand why the Board pushed harder and AT&T decided to live with that. But here I guess the first question is why -- if this is what AT&T needs to be competitive and to be commercially successful, the question is what's the gain

from forcing it from 12 to 8 or 12 to 10?

ANDREA HICKEY: I actually think the mass of this equipment shelter is inappropriate that's why.

ATTORNEY ARTHUR KREIGER: Well, let me ask, does the equipment shelter -- how much smaller would the equipment shelter be with fewer antennas? Not the penthouse.

DEEPAK RATHORE: So with the equipment shelter is going to be whatever is -- it's not going to be shorter than that because of the antennas. So antennas doesn't have affect on that shelter.

ATTORNEY ARTHUR KREIGER: The penthouse if it didn't have to house four antennas for the alpha sector would be smaller, but I thought that was going to be the answer. But the equipment shelter would be the same.

ANDREA HICKEY: That's an answer that would make sense to me. Your answer doesn't make sense to me. Less antennas the shelter size is the same?

ATTORNEY ARTHUR KREIGER: Yes.

DAN BILEZIKIAN: There's no relationship between the two. The shelter houses the radio equipment. In this case we're just -- it happens to be a convenient place to hang the antennas.

ANDREA HICKEY: I understand now. Okay.

ATTORNEY ARTHUR KREIGER: But it's not proportional to the number of antennas that are hung on it. It's the generator, it's the radio equipment, it's whatever other equipment goes in there.

ANDREA HICKEY: You need that anyway.

ATTORNEY ARTHUR KREIGER: The penthouse wouldn't shrink.

ANDREA HICKEY: I understand.

ATTORNEY ARTHUR KREIGER: The shelter wouldn't shrink. The penthouse would shrink if it went from four antennas to three up at the other end of the building. That's a much smaller structure to begin with.

So I would urge the Board to approve this as proposed rather than try and make it a little better by degrading the service and making this facility less competitive and not providing the coverage that you saw on the RF map because I don't think you get -- I don't think there's any real gain, any -- that it's any better for the neighborhood than you would for the service and reliability of service.

JANET GREEN: We've also been told at times and suggestions has been made that there's a -- you have some excess capacity sometimes that you might lease out to another carrier. Is that true?

ATTORNEY ARTHUR KREIGER: I'm not familiar with that.

JANET GREEN: You lease out anything out to the small like little --

ATTORNEY ARTHUR KREIGER: I haven't heard any of that. I represented before AT&T one of the smaller carriers before it was brought up by the competitors. I never heard that. Not, not happening here, right?

DAN BILEZIKIAN: No.

CONSTANTINE ALEXANDER: Andrea, you all set?

ANDREA HICKEY: I'm all set.

TIMOTHY HUGHES: The way I'm looking

at this, the alpha sector of antennas is within the equipment enclosure.

ATTORNEY ARTHUR KREIGER: Within the penthouse. What we're calling the penthouse.

TIMOTHY HUGHES: And they're not hanging outside of, they're screened behind it.

ATTORNEY ARTHUR KREIGER: They're screened within the four walls.

TIMOTHY HUGHES: So why can't you do a screen like that on two sides of the penthouse? Instead of having eight antennas showing why don't you just do a bump-out of 14 inches off the thing and do a screen all the way around so that it looks similar to that?

DAN BILEZIKIAN: Possible.

TIMOTHY HUGHES: It is possible?

ATTORNEY ARTHUR KREIGER: As I heard the question, you want a slightly bigger equipment shelter?

TIMOTHY HUGHES: No. I want you to cover the two sides of the existing penthouse with the same kind of screening material you're building the equipment shelter out of so that you don't see the antennas at all. All you see is the penthouse still.

DAN BILEZIKIAN: You'd want a fiberglass shroud around the antennas?

TIMOTHY HUGHES: And it would only have to be on the two sides. You're only mounting on two sides.

DAN BILEZIKIAN: Yeah, that's cool. Can it be just around the antennas? Does it have to be the full length of the penthouse or do you actually want to make it look like a equipment shelter --

TIMOTHY HUGHES: I want it to look like the wall of the penthouse, you know, so that you don't see any breaks at all.

DAN BILEZIKIAN: Okay. So you want to expand the width and the length of the shelter?

TIMOTHY HUGHES: Yeah, if it's doable. I don't, I couldn't dig out the plan here to see what how close to the edge of the wall, but you -- basically you would need like something like 14 inches to have space between your -- I mean, maybe it doesn't even come out 14 inches. But then whatever the structure of the fiberglass is itself, so 16 inches. Do you have 16 inches on those two sides to come out and cover the whole thing?

ATTORNEY ARTHUR KREIGER: So here's one sector at the end of the shelter. Here's the entrance to the shelter, the stairs up,

and here's the other sector, four antennas on that wall. So you're talking about a screen --

TIMOTHY HUGHES: Screen like that.

ATTORNEY ARTHUR KREIGER: So it wouldn't cover this whole wall because you've got the entrance --

TIMOTHY HUGHES: No, it wouldn't need to if you have an entrance there.

ATTORNEY ARTHUR KREIGER: But now it would cover this wall.

TIMOTHY HUGHES: Right. You go to the top of the penthouse, and if it didn't go to the roof, it would at least go low enough so that any parapet, you wouldn't see the bottom of it. All you would see is a blank wall. You know? Just like you see when you look at the penthouse.

ATTORNEY ARTHUR KREIGER: Or RF.

DEEPAK RATHORE: Yeah.

CONSTANTINE ALEXANDER: I think we're going to require that.

TIMOTHY HUGHES: I would love to see that. I think it would be a much better solution.

DAN BILEZIKIAN: It would look a little bulkier.

TIMOTHY HUGHES: It's going to be a little bulkier, but it's not going to draw your eye like eight pieces that don't match. Even though I know you're going to try to match them but we know they don't match. We've rarely seen one that matches or even blends in.

ATTORNEY ARTHUR KREIGER: I know what you think about matching. I'm not going there. Okay.

TIMOTHY HUGHES: I mean, I just

think the bulkiness on top of a building this size and the distance that you're away from it because the views because it's tucked into the middle of the block would be less obvious than the antennas themselves that you see. That's my opinion. And if we think it could be done that way, I would like to see it.

CONSTANTINE ALEXANDER: I think we can condition any relief we grant with that thought in mind.

ATTORNEY ARTHUR KREIGER: That's not a problem. So that's fine.

TIMOTHY HUGHES: Cool.

CONSTANTINE ALEXANDER: Any other questions from Members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: I'm going to open it up to public testimony.

Is there anyone here wishing to be heard

on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one.

The Chair would report as Mr. Kreiger pointed out, that we are in receipt of a communication from the Planning Board regarding this petition. And it says: The Planning Board -- it's a memo to us from the Planning Board dated April 23rd. (Reading) The Planning Board reviewed the proposed installation and found it to be appropriate. The antennas have been placed to be barely visible from the public way. The application materials were well done and the Planning Board appreciates the proponent's efforts to communicate the Special Permit request.

I want to mention, go on a different tact. As you well know, there are many

people concerned about health issues with regard to these antennas and the electromagnetic waves that are being emitted. And of course I know, we know that the Federal Government, at least, has come to the conclusion that there is not a health risk. Nevertheless, people are concerned. Some scientists are concerned. And we had a case, a different carrier, in a residential district just a month or so ago, it was with one of your competitors. And a number of neighbors came and expressed concerns about the health issues. And we discovered on the back and forth with the counsel for that carrier that you have to resubmit reports on an annual basis on emission of electromagnetic waves to the Federal Government or some agency of the government? I was told, we were told that these reports

are regularly made. And as a result, on the fly we've imposed a condition that those reports be filed, a copy of those be filed with the Inspectional Services Department so that interested citizens can find out more about exactly what's being emitted, the amount of waves that are being emitted, and can consider whatever health issues they have to consider. I propose, and I thought about that ever since that hearing we've made these conditions on the fly, and I've drafted up a more detailed set of conditions regarding this. And none of the Members of the Board have heard this. So I'm going to read out a proposed additional -- on the assumption that we're going to grant relief, another condition besides the ones we usually grant, and the one we're going to grant concerning the penthouse. Let me read it to you. I

have a hard copy if you want it. This will be a part of the decision:

In as much 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:

No later than the first anniversary of the effective date of this decision, and no later than each subsequent anniversary of that date, the Petitioner shall file with the Inspectional Services Department a report detailing the actual electromagnetic energy waves submissions emanating from all of the Petitioner's equipment on the site as of the date of the report, and for comparison purposes, as of the date of immediately preceding reports filed pursuant to this condition. Each such report shall be filed

in the six months after the date of the preceding report, filed pursuant to this condition, and shall be informed content consistent with that required by the federal authorities and industry practice for reports concerning the emission of electromagnetic energy waves. Failure to timely file any such report complying with the foregoing provisions of this condition shall ipso facto terminate the Special Permit granted tonight.

Two: In the event that at any time federal authorities notify the Petitioner that this equipment on the site, including but not limited to the equipment permitted by the Special Permit granted tonight, they also comply with the requirements of the law or governmental regulation whether with regard to the emissions or electromagnetic energy

waves or otherwise. The Petitioner within 10 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, therefore. And 60 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 paragraph 1 or 2

above.

And obviously what I'm trying to address here and I'm anxious to hear comments from my fellow Board Members if they have any, we have a societal concern about the electromagnetic waves. They may be well founded or they may be ill founded. We all know what is good science today could be bad science six months from now. And I think we have an obligation, I think, to the citizens of the city to make them always apprised of what's going on in terms of the health issues in terms of electromagnetic waves. And if your thing goes kablooeey and you start to exceed what is permitted by law or what has been permitted or what is considered to be acceptable from a health point of view, I want the citizens of the city to know that. And I want the Special Permit to be reheard by us

in light of the new developments. So anyway I've said too much.

That's what I would propose. It's an elaboration of what we imposed one more time in a case heard about a month or so again.

Anybody have any problems?

JANET GREEN: I think it's a good idea.

CONSTANTINE ALEXANDER: Do you have any comments?

ATTORNEY ARTHUR KREIGER: I do. I wanted to see what the Board Members felt first.

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY ARTHUR KREIGER: A couple things. I don't have a problem with the concept of filing reports with the FCC. The couple specific things get me concerned.

First of all, it sounded like you were

not merely requiring submission to ISD and what's submitted to the FCC, but you were laying out yourself, you were laying out your own requirements which may, which may go beyond what the FCC requires.

CONSTANTINE ALEXANDER: No, I was very clear I thought on that. The records will be in form and content.

ATTORNEY ARTHUR KREIGER: But before that you spelled out what must be in the reports.

CONSTANTINE ALEXANDER: Just the emissions and the emissions of a year earlier.

ATTORNEY ARTHUR KREIGER: And even before that. Again, maybe I didn't hear it correctly.

CONSTANTINE ALEXANDER: (Handing document to Mr. Kreiger.)

ATTORNEY ARTHUR KREIGER: (Looking over document.)

DAN BILEZIKIAN: I don't know what the FCC filing that you're referring to actually is.

CONSTANTINE ALEXANDER: But the --

ATTORNEY ARTHUR KREIGER: I guess, I mean, I wouldn't have the problem with the conditions whatever gets filed with the FCC and their regulatory authority should be filed with ISD. (Inaudible) to go beyond that --

CONSTANTINE ALEXANDER: Don't you -- what you file with the FCC, doesn't it give information about the emission of electromagnetic waves?

DAN BILEZIKIAN: These sites aren't tested. No, nobody goes out there physically and tests any of these sites on an

annual basis. So that, again, I'm not sure what it, what's stated in the filing that you're referring to. I don't know.

CONSTANTINE ALEXANDER: My memory is and I may be incorrect that we were told that every year you make a -- telecommunications carriers have to make a filing with the FCC about their --

DAN BILEZIKIAN: They probably do. I'm just not sure what the nature of that filing is. But I can tell you that it isn't, it isn't based on physically measuring emissions --

CONSTANTINE ALEXANDER: Nobody's asked you to physically measure --

DAN BILEZIKIAN: Yeah.

CONSTANTINE ALEXANDER:

I can modify the conditions to say whatever you file with the FCC, must be filed

with ISD.

ATTORNEY ARTHUR KREIGER: That's easy.

Just a couple of specific things and maybe now you covered them. But you said the subsequent anniversary and then it said every six months. I wasn't clear --

CONSTANTINE ALEXANDER: I didn't want you to file one two days apart. In other words, I want to be able to --the citizens to do a comparison --

ATTORNEY ARTHUR KREIGER: Sure.

CONSTANTINE ALEXANDER: -- see if the emissions are increasing.

ATTORNEY ARTHUR KREIGER: I understand. The six-month reference confused me. I thought it was supposed to be annual.

CONSTANTINE ALEXANDER: No.

ATTORNEY ARTHUR KREIGER: And then the notion shall ipso facto terminates, not because of a violation as the regulator said, that was a separate paragraph. The failure filing the report on time, that seems to be fairly harsh and inflexible.

CONSTANTINE ALEXANDER: What's your remedy?

ATTORNEY ARTHUR KREIGER: Ten days' grace period or something. I don't know. But to have a Special Permit depend on -- depend on the administering traffic deadline across thousands of sites obviously --

CONSTANTINE ALEXANDER: I'm not going to be in a position where the city is going to notify you your report is due, you have ten days to get it in.

ATTORNEY ARTHUR KREIGER: I

understand you wanted the burden to be on us.

CONSTANTINE ALEXANDER: The burden is on you.

ATTORNEY ARTHUR KREIGER: That's fair. But ordinary for violation of a condition, a show cause or something.

CONSTANTINE ALEXANDER: No, no.

ATTORNEY ARTHUR KREIGER: Depending on the severity.

CONSTANTINE ALEXANDER: I don't think so. In my opinion, no. If we impose a condition and that condition is not satisfied, your permit -- you or anybody's permit is invalid, or a Variance is not, is no longer valid.

ATTORNEY ARTHUR KREIGER: Okay, fine. I'm not going to -- that's fine. If that's what you want to do.

But if it's tailored, if it's just

piggybacked on the FCC filings, when they are and whenever they are, and what each of them are, there's no problem with that, right?

DAN BILEZIKIAN: I can't speak to that.

CONSTANTINE ALEXANDER: By the way, this is what we're going to impose and next time you come around, we're going to have this every time. And not just for you, for all your competitors, too.

ATTORNEY ARTHUR KREIGER: I assume it's for every facility.

CONSTANTINE ALEXANDER: We're not picking on AT&T.

ATTORNEY ARTHUR KREIGER: I understand.

CONSTANTINE ALEXANDER: This is going to be a new condition we're going to be imposing on the condition to what we've

imposed in the passed. Particularly in -- when you're putting up antennas in residential areas when people who live there are concerned rightfully or wrongfully, they are concerned. I can tell you we hear a lot of people come down here and express very serious reservations about --

ATTORNEY ARTHUR KREIGER: We hear it all the time as well. I'm not going to deny that people are concerned by that.

DAN BILEZIKIAN: Would that be complied to just residential facilities?

CONSTANTINE ALEXANDER: No, no, because health issue is a health issue. If you're hurting the health of an office worker in a building, we have an equal concern. So no. I said, it heightens my concerns for the residential area, but it doesn't eliminate it if it's not in a residential area in my view.

ATTORNEY ARTHUR KREIGER: It sounds like what the Board could use is a clearer understanding of what actually gets filed with the FCC.

CONSTANTINE ALEXANDER: That would be wonderful. Next time you're before us why don't you give us that information.

JANET GREEN: That would be great. That would be great.

CONSTANTINE ALEXANDER: One of the problems we have as a Board, I have certainly, is that we're at a disadvantage. You folks it's your line of business. You have Deepak here. We don't have any experts here. We're just lay people trying to do the best we can to protect the citizens of the city to the extent that you can educate us in a fair and reasonable way we would love to hear that.

On that condition that I gave before,

the report is got to be the same report that's filed within the FCC. The FCC you filed them with.

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: The FCC. I can help afterwards to modify.

Ready for a vote?

Okay. The Chair --

TIMOTHY HUGHES: Did we open this up to public testimony?

CONSTANTINE ALEXANDER: I did. I read the letter from the Planning Board.

TIMOTHY HUGHES: Oh, okay.

CONSTANTINE ALEXANDER: Nobody wanted to speak.

Okay, the chair moves that this Board make the following findings with respect to the petition that has been filed:

That the petitioner is a duly licensed

in good standing carrier, duly licensed with the FCC.

That with the conditions we're going to impose as part of this decision, that they have taken steps to minimize -- will take steps to minimize the visual impact of what's being imposed.

That there is a demonstrative public need for the facility in the proposed locations. The facility is at the edge of two universities and there's a great need for effective telecommunications communication.

That there are not any alternative functioning suitable sites in non-residential locations.

That given the character of the prevailing uses in the area; namely, that there is a number -- there are a number of non-residential uses in the neighborhood.

And that non-residential uses do predominate in the vicinity of the proposed facility.

In addition the Board -- I move that the Board make the following findings:

That -- as required for all Special Permits -- that the traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. In this regard the nature of these facilities that they are infrequently serviced, maybe once a month assuming nothing goes wrong, and so there is not any congestion.

That what is being proposed by or any hazard, at least the science as we know it today, or a substantial change in established neighborhood character.

That the continued operation of

adjacent uses will not be adversely affected by what is being proposed.

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

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

On the basis of these findings, the Board moves that the Petitioner be granted the Special Permit requested subject to the following conditions:

That the work proceed in accordance with the plans submitted by the Petitioner under cover of a letter dated March 19th. That's your application.

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: That the work proceed consistent with the photo simulations as supplemented, attached to Petitioner's counselor's letter of June 9th.

ATTORNEY ARTHUR KREIGER: Corrected to the respect that we did.

CONSTANTINE ALEXANDER: I attached the corrected pages to this letter.

ATTORNEY ARTHUR KREIGER: Good.

CONSTANTINE ALEXANDER: That steps be taken to paint the color of the facilities as close as possible to the color of the structure on which it's going to sit with no delineation for brick. It be will be just a flat color, again, as close as possible as to what's on the building now. And that this paint, that the masking be maintained. Not just do it once and then watch the paint chip

away. That the paint starts to chip away, you repaint it.

On the condition that to the extent that you abandon the use of these facilities for any period of six months or more, that they be promptly removed from the structure. And the structure be restored to its original condition to the extent legally possible.

On the condition that the penthouse shown in the plans be modified to disguise on all four sides the eight antennas that are shown to be attached to this penthouse.

TIMOTHY HUGHES: I think it's only going to be required on two sides.

CONSTANTINE ALEXANDER: Two sides, you're right. As soon as I said that I realized I got it was wrong.

On the two sides that the antennas are covered. That this be done in a manner

that's as less obtrusive as possible -- less visible as possible. Minimizing the visual impact, the increased bulk.

On the further condition that to the extent that there are improvements in the sound, the muffling of noises for the gas generator, as you incorporate these in your facilities so that at all times the silence of the noise emission from the gas generator is minimized to the extent then technically feasible.

And lastly on the condition that I read before regarding filing of reports, as I read it before it will be modified to say that your reports, that you must file with the ISD, Inspectional Services Department, be those that are filed with the federal FCC, Federal Communications Commission.

Did I miss anything? Guess not.

All those in favor of granting the Special Permit on this basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY ARTHUR KREIGER: May I address at this point a schedule issue?

We have to find out from Lesley more about the construction schedule that they can live with. When we were here in April, they were thinking of summer construction. I don't, I can't tell the Board exactly what the schedule is yet, but it may be that they would say they'd like to get the construction done in August because part of the construction involves going in the building and the dormitories are going to be occupied at the

end of August. So we -- I'd like to expedite the transcript as we talked about last time. And if it's possible to generate the decision relatively quickly given your workload and other priorities, I hesitate to even go there, but if it's possible, there is that specific reason with Lesley College because the function of the dormitory.

CONSTANTINE ALEXANDER: I think in the past this Board has tried and more importantly the Inspectional Services Department has tried to accommodate requests for accelerated treatment. We'll do the best, we'll do the best we can. No promises.

ATTORNEY ARTHUR KREIGER: Thank you.

* * * * *

(8:05 p.m.)

(Sitting Members Case #BZA-003581-2014:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Andrea A.
Hickey.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 003581, 3 Clement Circle.

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

MONIKA PAULI: I am Monika Pauli. I
am the architect.

JACQUELINE BHABHA: Jacqueline
Bhabha, B-h-a-b-h-a.

MONIKA PAULI: I didn't bring the

tripod. 3 Clement Circle which is located right here and it's a very unique cul-de-sac right off Sparks Street. A very unique homes. A long-term residence, and everybody knows each other. It's a very unique little historical homes. And not really visible from Sparks, and it's sort of like it's own little world. And at -- each house is different and lots are a little bit irregular. And I would like to add that Jackie and Homi have restored and maintained their home beautifully and used all of the proper materials and did some sensitive renovations inside respecting the historical nature of the house and also respecting the historical layout of the beautiful --

CONSTANTINE ALEXANDER: That top one, that's the front of the house?

MONIKA PAULI: That's the front.

CONSTANTINE ALEXANDER: It's not going to be affected.

Where?

MONIKA PAULI: This is the area. And the only area that is sort of substandard in the house is really the kitchen and the deck which is an addition and it's totally falling apart and it's rotten. And the kitchen is also in the old kitchen location and the Bhabhas never expanded it. And they keep it, they don't want to change the existing layout of the living room and things like that to make the kitchen more usable. And it's a very important room in today's lifestyle.

CONSTANTINE ALEXANDER: You're going to expand the size of your kitchen?

JACQUELINE BHABHA: With this exposed extension, it will make the kitchen

a little bit more spacious, because we didn't want to knock down walls inside the house because it had a very nice old flow.

MONIKA PAULI: Fireplaces and things like that. And it's a very, very small addition, but it will allow better light, better circulation, better view of the garden. And also Jackie likes flowers and plants and it will just leave room for plants in the winter especially.

CONSTANTINE ALEXANDER: I just have to tell you or maybe warn you is a better word, you're seeking a Variance. You have a non-conforming structure. You're already over your FAR.

MONIKA PAULI: Yes.

CONSTANTINE ALEXANDER: You're right now at 0.8 is in a 0.5 district. You want to increase it slightly, 0.81. And you

also want to go into your rear yard setback. You're slightly -- you're almost compliant now and now you're going to go come -- required to be 25 feet from your rear yard line. You're going to be 18.4. So you need a Variance. Understood.

You have to demonstrate a hardship, one of the three requirements. It's not a hardship that you can't see the flowers as well as you'd like to see them. Understood?

MONIKA PAULI: Exactly.

CONSTANTINE ALEXANDER: So you have to address that. Nothing about your gardening. I'm sure it's beautiful, but that's not the basis for us of granting relief.

MONIKA PAULI: Well, the kitchen is substandard for the lifestyle in the way that Jackie and Homi use the house since it's an

old kitchen space. Everything happens in the kitchen. And so the addition, as you can see, is very minor and it would follow the -- I mean, the existing deck is right here already, so it only falls on the existing deck and there is a little space here under the second floor. So it fills in a space that already exists. I mean, there's already the bump out.

JACQUELINE BHABHA: We're not actually extending it. It's just really following the line of this deck and enclosing it, but it's not going to protrude any more than it already does.

CONSTANTINE ALEXANDER: Well, except that the deck doesn't as nearly imposing as a structure.

JACQUELINE BHABHA: Of course, that's true.

MONIKA PAULI: Yes. The roof already exists over this part, right. And the reason for this shape is that the Bhabhas talked to every single neighbor and every single neighbor approved this addition because it would not affect them adversely. And the reason for this angle is to respect this neighbor's views and sight lines and so --

CONSTANTINE ALEXANDER: There was one reason, there was one neighbor the last time around.

JACQUELINE BHABHA: Yes, so we changed the plans to accommodate her views.

CONSTANTINE ALEXANDER: I couldn't see the difference in the plans --

JACQUELINE BHABHA: Originally this was going to be straight like that. And so it blocked her view. She said it blocked her

view of our garden actually. Because she has a window here and she likes looking right into our garden.

CONSTANTINE ALEXANDER: Okay.

JACQUELINE BHABHA: And so what Monika did was to reduce this and come around here. So her sight of vision is not affected. So this arrow shows the difference.

CONSTANTINE ALEXANDER: And is she now in support?

JACQUELINE BHABHA: She's now supported.

MONIKA PAULI: We actually have seven letters.

CONSTANTINE ALEXANDER: We have it already in the file.

MONIKA PAULI: You probably have it. Including her letter.

JACQUELINE BHABHA: If I can add what Monika said, I think the hardship point is to really that we, both of us teach and have quite a few evenings at home, and this is the place where the meetings tend to happen around the kitchen table with students or with colleagues. And it's a little cramped. And so to have a little bit more space will really make it easier for us.

CONSTANTINE ALEXANDER: You don't meet in the living room?

JACQUELINE BHABHA: We have a living room, but it doesn't have like a formal table where you can put papers on it with comfortable chairs.

CONSTANTINE ALEXANDER: You have a dining room?

JACQUELINE BHABHA: We have a dining room and a den, it doesn't work in the same

way. I mean the dining room is in the front of the house, it's not a good space for working. We don't tend to use it for that. So this is the space where we sit and put papers out and tend to work.

CONSTANTINE ALEXANDER: Okay.

MONIKA PAULI: That's about it. If there are any questions?

CONSTANTINE ALEXANDER: We'll find out.

Any questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Appear to be no questions.

Anyone in the audience wish to be -- I'm going to open the matter up to public testimony.

Is there anyone in the audience wishes

to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently there is nobody who wishes to be heard.

We are in receipt of letters. I'm not going to read them all, but I'll take the representation that you made that they are from all your neighbors.

JACQUELINE BHABHA: Every single one, both the ones in the circle and so, this is our house. So we've got it from every single person --

CONSTANTINE ALEXANDER: And including the person --

JACQUELINE BHABHA: And including the person --

CONSTANTINE ALEXANDER: -- the person who objected the last time?

JACQUELINE BHABHA: And the person

who objected the last time who is happy with the changes we made as a result of her concerns.

CONSTANTINE ALEXANDER: The Chair, for the record, we are in receipt of letters support from the residence of 184 Huron Avenue, 9 Clement Circle, 88 Sparks Street, 6 Clement Circle, 5 Clement Circle, 86 Sparks Street, 11 Sparks Street. And there are now no letters or no neighborhood opposition.

I'll close public testimony.

Do you have any final comments you want to make?

MONIKA PAULI: Well, this is a charming house and very well loved and maintained and this is just one missing link to make it perfect and for the Bhabhas who stay there forever and enjoy it otherwise it's, it's -- just it doesn't work for them.

CONSTANTINE ALEXANDER: Thank you.

Discussion, Members of the Board?

Anybody have any comments?

TIMOTHY HUGHES: Other than the words forever are perfect, I'm fine with it.

CONSTANTINE ALEXANDER: Okay, I'm ready for a motion then?

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner needs additional space in the kitchen area that can only be achieved by what is being proposed.

That the hardship is owing to the fact that this is a non-conforming structure, and if any modification to the exterior of the

structure would require Zoning relief.

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

In this regard the Chair notes that the relief being sought is rather modest in nature, and that it has unanimous neighborhood support.

So on the basis on these findings the Chair moves that the Petitioner be granted the Variance being sought on the condition that the work proceed in accordance with plans submitted by the Petitioner.

These are the final plans. If you modify them, you're going to have to come back.

And in accordance with the plans submitted by the Petitioner -- plan,

singular, and initialled by the Chair.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Relief granted.

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

* * * * *

(8:15 p.m.)

(Sitting Members Case #BZA-003764-2014:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
is going to call case No. 003764, 650 East
Kendall Street.

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

BRENDAN SULLIVAN: We assume
they're continuing, right?

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: He came, so I wasn't

sure if he wanted to add something.

CONSTANTINE ALEXANDER: With respect to this matter, we're talking about 650 East Kendall Street. The Chair is in receipt of a letter from Dan Winny, the architect on behalf of the Ipsen Bioscience, Inc. (Reading) The applicant, which I'm representing as a consultant, I am writing to respectfully request a continuance of the case scheduled for public hearing on Thursday, June 12th. Ipsen would like to have the opportunity to take additional time to consult with neighborhood representatives and other interested parties prior to presenting the case to the Board.

And in this regard I would also note that even absent your request I congratulate you to reaching out to the neighborhood which is a good idea. There was a problem with the

posting of the signs. We wouldn't have heard the case anyway.

DAN WINNY: Is that right?

CONSTANTINE ALEXANDER: They were not properly posted. Let's not get there.

DAN WINNY: Okay.

CONSTANTINE ALEXANDER: Because we don't have to get into that right now.

DAN WINNY: It's not relevant at the moment.

CONSTANTINE ALEXANDER: It will be relevant the next time.

DAN WINNY: For sure.

CONSTANTINE ALEXANDER: Make sure -- you've got a lot of street space and you've got to have maybe more than one sign and you have to put it on East Kendall Street, and I didn't see the sign when I looked myself. It was on the back of the building

facing like a little alleyway that separates a seating area from the back of the building, what to me, is the back of the building.

Anyway, when would you like to continue this case to?

DAN WINNY: Well, my name is Dan Winny, W-i-n-n-y. And if you have any questions, for Ipsen, there's a representative here tonight as well as the actual applicant which is the contractor. But we wanted to have the opportunity to talk to as many interested parties as possible. We know that these cases do raise interest in various places and it's not always possible to predict ahead of time. And in particular East Cambridge Planning Team, Barbara and Nancy are here tonight, and we think that East Cambridge Planning Team, I think is scheduling a mid-July meeting whether we

would like to attend.

BARBARA BROUSSARD: Unless we find someone from the DOT to speak about the highway otherwise I get a vacation.

CONSTANTINE ALEXANDER: Otherwise you what?

BARBARA BROUSSARD: July and August.

UNIDENTIFIED AUDIENCE MEMBER: We normally don't meet in July and August. It's possible we'll have a meeting in July, but I wouldn't count on it.

CONSTANTINE ALEXANDER: You're looking at September is what you're saying?

BARBARA BROUSSARD: In September. We're just overwhelmed with construction.

UNIDENTIFIED AUDIENCE MEMBER: And the courthouse.

CONSTANTINE ALEXANDER: What's the

first meeting in September?

SEAN O'GRADY: The 4th.

CONSTANTINE ALEXANDER: And the next one after that?

SEAN O'GRADY: 18th.

BARBARA BROUSSARD: Our first meeting in September will be the second Wednesday.

CONSTANTINE ALEXANDER: We can do the 18th.

SEAN O'GRADY: Yes, that would work.

CONSTANTINE ALEXANDER: We're talking about continuing the case until September 18th. And about a week after your meeting I would think. Does that work for you folks?

DAN WINNY: If it has to be, yes.

CONSTANTINE ALEXANDER: Works for you, Ma'am, yes?

CAROL O'HARE: I'm not going to speak this evening, but Carol O'Hare from Cambridgeport and all I'm going to do is hand out a memo.

CONSTANTINE ALEXANDER: Sure. We can put it in the file. We don't want to speak to the merits, though, tonight.

CAROL O'HARE: I understand but this is to the merits.

CONSTANTINE ALEXANDER: Give me a copy and I'll put it in the file.

CAROL O'HARE: I'm going to give you each a copy that I've made. I hope you read it.

CONSTANTINE ALEXANDER: We read everything that's in our files.

CAROL O'HARE: Thank you. It's the same, it's just two pages.

CONSTANTINE ALEXANDER: This is one

page. Is it two sides?

CAROL O'HARE: It's two sides and some of them are stapled.

CONSTANTINE ALEXANDER: Okay, thank you. I think we're ready for a motion to continue the case until September 18th.

The Chair moves that this case be continued as a case not heard until Wednesday, September 18th at seven p.m.

BRENDAN SULLIVAN: Thursday.

CONSTANTINE ALEXANDER: Thursday, I'm sorry. Thursday, September 18th.

On the condition that the Petitioner signs a waiver of time for decision.

DAN WINNY: Yes.

CONSTANTINE ALEXANDER: And that the posting be changed to reflect and be maintained for the two weeks prior to September 18th to reflect the new date,

September 18th, and the time of seven p.m.
Not -- if you don't change the time from the
sign you have now, we're not going to be able
to hear the case right away. I want to hear
it at seven p.m.

DAN WINNY: Understand.

CONSTANTINE ALEXANDER: To the
extent you want to modify what's in our file
now, the plans that are in our files now or
dimensional form, that they must be in our
files before, by the Monday before September
18th before five p.m.

DAN WINNY: Correct.

CONSTANTINE ALEXANDER: And then I
think it goes without saying, you'll give
copies whatever plans you put in our files to
the folks at the East Cambridge Planning
Team.

DAN WINNY: Certainly.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Case continued.

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

DAN WINNY: Thank you.

* * * * *

(8:20 p.m.)

(Sitting Members Case #BZA-003850-2014:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 003850, 39 Fairmont
Street.

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

Okay, for the record your name and
address.

MONROE HEARN: Monroe Hearn, 39
Fairmont Street.

EBONY HEARN: Ebony Hearn, 39
Fairmont Street.

CONSTANTINE ALEXANDER: Before we
get into the case, I have to bring
your -- call your attention to something and
I want to do it in a sense to avoid
complications going down the road. We have,
and you may be aware of something called
dormer guidelines which are guidelines. But
which we very, try to rigorously adhere to.
In other words, we expect people to build
their dormers, if we grant relief, to comply
with these guidelines. One of the
guidelines, the main guideline is that the
dormer can't be more than 15 feet in length
or more than one dormer combined, 15 feet.
The dormer you're proposing is 22 feet. It's

50 percent more than our Ordinance or I should say the guidelines recommend. We very rarely grant relief if ever for a dormer this far away from the dormer guidelines. And what happens if we start the case and we go back and forth and it becomes clear that you're not going to get the votes, what you would do, what most petitioners do is go back and rethink your plans and come back with a dormer that doesn't comply with the guidelines, get a lot closer than 22 feet. If we do that, then when we hear the case again, it's got to be the same five people here. And there may be trouble getting all five of us together in the summertime. The one thing we can do is to continue the case right now. Go back, because I think your chances -- I'm just speaking for myself, I may be wrong. The chances of you getting

relief on the plans you submitted are not good. Just let me finish and I'll -- the idea would be if we continued the case now before we get into the merits. As soon as you're ready to come back, we'll get five people together. You don't have to worry about getting the same five of us which again may be a problem in the summertime. That's just a suggestion I'm throwing out to you.

MONROE HEARN: I'm not sure if you received -- I submitted something, revised plan.

CONSTANTINE ALEXANDER: When?

MONROE HEARN: Today.

CONSTANTINE ALEXANDER: Not good. You have to have it in our files by five p.m. on the Monday before.

MONROE HEARN: And the reason that was was because the phone call I received

yesterday which I appreciated. So I got together with my architect and we were able to do a revised plan.

CONSTANTINE ALEXANDER: Good. We still can't hear the case tonight because you've got -- our rules are very clear that any plans we're going to consider, and dimensional form, have to be in our files no later than five p.m. on the Monday before the hearing. So if they got in today, that doesn't comply with our rules. We still have to continue the case for a different reason, and maybe it's just a matter of continuing it to the time and hopefully you've got new plans that are going to be okay with our former guidelines. We can't -- if you want to go forward with those plans, we can't go forward tonight. I'm sorry. It's just the way our rules work.

So, I know -- I'm sure you wanted to find an answer to your petition as soon as possible. When can we hear it?

SEAN O'GRADY: July 10th.

CONSTANTINE ALEXANDER: July 10th.
Can you make it July 10th?

MONROE HEARN: Yes.

CONSTANTINE ALEXANDER: Okay.
This is a case not heard. We don't have to worry about the rest. Why don't you give me those new plans, I'll put them in the file.

MONROE HEARN: And there were a couple of other letters of -- letters of support I submitted.

CONSTANTINE ALEXANDER: They're in the file. How about the dimensional form? Did that get straightened away?

MONROE HEARN: There was a handwritten form that I submitted with the

hard copy and it is in the file.

CONSTANTINE ALEXANDER: It's in the file. Perfect.

SEAN O'GRADY: It's going to change though, right?

MONROE HEARN: Yes.

SEAN O'GRADY: It's going to change. We can work on it together if you want.

TIMOTHY HUGHES: The Ordinance requirements for FAR said not available. Why is that not available?

CONSTANTINE ALEXANDER: That's what I meant.

TIMOTHY HUGHES: It's going to be in the new dimensional form.

SEAN O'GRADY: There is a second dimensional form in there.

MONROE HEARN: When I came to submit the form, I wasn't aware that you're on-line

now. When I entered the information, I wanted to get it in in order to get on the docket for tonight. So the handwritten one is submitted.

TIMOTHY HUGHES: Okay, great.

CONSTANTINE ALEXANDER: My suggestion before five p.m. on the Monday before July 10th, you might want to take a visit to see Mr. O'Grady and go over the file with him to make sure everything is okay so we don't have to continue the case further. Okay?

TIMOTHY HUGHES: I mean, make sure all the pieces are there.

CONSTANTINE ALEXANDER: That's right.

JANET GREEN: The reason it has to be on Monday is so that if anybody wanted to come in and look at it, they would have an

opportunity before you're presenting the case.

CONSTANTINE ALEXANDER: And the same for us. We go to look at the files before the hearing, too.

JANET GREEN: We need it, too. But also the public has a right to do that.

CONSTANTINE ALEXANDER: Okay, the Chair moves that this case be continued as a case not heard, which means you don't have to have the five of us here, on the condition that you sign a waiver of time for a decision. Which everybody has to do.

And that you change the posting sign. You've got to maintain for two weeks before July 10th. Take a magic marker, put a new date, July 10th, a new time, seven p.m.

And lastly, if any new plans beyond what you gave us tonight or new dimensional form,

they must be in our file no later than five p.m. on the Monday before July 10th. Just like tonight.

Okay, on the basis of -- subject to these conditions, I move that we grant the continuance.

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. See you July 10TH. I'm sorry, but this is the way our rules work.

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

* * * * *

(8:30 p.m.)

(Sitting Members Case #BZA-00385-2014:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 003855, 2269 Massachusetts
Avenue.

Is there anyone here wishing to be heard
on this matter? My apologies for skipping
over you. I just missed it.

ATTORNEY SEAN HOPE: Some good housekeeping cases out of the way.

Good evening, Mr. Chair, Members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight on behalf of the owner Mr. Gary O'Neil and also project architect Milton Hugh.

CONSTANTINE ALEXANDER: Are you the owner of the restaurant or owner of the building?

GARY O'NEIL: Owner of the building.

ATTORNEY SEAN HOPE: The building is owned by an LLC.

So this is an application requesting Variance relief from the allowed FAR to enclose an existing staircase that accesses the basement. The property is located on a corner lot and it's in a BA-2 District as well

as the North Mass. Ave. Subdistrict. The basis of the application, and as you can see, there's an existing staircase. At the bottom of the staircase there's a drain. That drain, because of debris and other things, often times gets clogged during heavy flooding. The impact of that flooding once that stairwell fills up, the restaurant utilizes a basement space for storage, and on three separate occasions there was such flooding that the water entered into the basement and it caused damage which the owner had to pay for.

Also, if you look at the picture closely, there was a self-help remedy where the owner tried to build up the access of the stairs, probably about six to eight inches of a lip there to prevent water from flowing inside. That, one, is a safety hazard to

have that type of lip there on any of the stairs. And so the thought was to enclose that existing staircase in order to mitigate, to eliminate the flooding issue that caused damage in the basement.

The existing sign that's there, Cafe Barada is going to be relocated on the exterior, that sign complies with the sign guidelines. It's not -- there's no change in the illumination. We're only seeking to replicate what's there on the side of the property. There is --

CONSTANTINE ALEXANDER: Is there any window in addition to the coverage?

GARY O'NEIL: No.

CONSTANTINE ALEXANDER: Just a complete shed light, if you would?

GARY O'NEIL: Yeah.

ATTORNEY SEAN HOPE: And there's

some basic detailing, vinyl siding, but it's not necessarily trying to extend the facade. We want to make it clear that the entrance is on that side and that this is on the side.

From the picture that can look like the existing staircase comes right up to the street line, but this actually -- this staircase is outside of the front yard setback. So part of the Petitioner's property is paved like sidewalk. So if you're seeking a site plan, this is outside of the front yard setback on the Dover Street side. The only relief we're asking for is the approximate 164 square feet because this area --

CONSTANTINE ALEXANDER: FAR.

ATTORNEY SEAN HOPE: FAR.

CONSTANTINE ALEXANDER: No setback relief?

ATTORNEY SEAN HOPE: No setback relief.

As I said before, the hardship is really due to the topography and the shape. It's a non-conforming structure such that without this covered awning, we would be dealing with flooding issues that --

CONSTANTINE ALEXANDER: How long, just out of curiosity, that configuration there's for a very long time. The flooding just recently or you've always had problems with flooding?

GARY O'NEIL: We bought the building in 19 -- in 2006. I think those renovations may have been done in the late 80s. So, you know, since we have owned the building, we've had three episodes of flooding. I'm presuming that it's happened before.

CONSTANTINE ALEXANDER: Okay.

Just curious.

Anything else?

ATTORNEY SEAN HOPE: Not at this point.

CONSTANTINE ALEXANDER: Questions from members of the Board?

THOMAS SCOTT: I have a question. Do you have to lose those windows on the side? Why does the -- why does the addition have to extend all the way to the front of the building so we lose those windows into the cafe? It looks as though there's some kind of storage room that's being constructed in addition to this the stair enclosure and what's that for?

JANET GREEN: You have two doors there.

THOMAS SCOTT: Yes, what's that --

JANET GREEN: One that opens in and

one that opens out.

MILTON HUGH: Part of the idea was to -- we already have a concrete curb that's existing, and the idea is to use that curb as it is where it is and then to build the structure over that. We thought for constructibility that would be an easier solution to box off the space.

JANET GREEN: But in the new construction there are actually two doors, right? One that opens in and goes down the stairs.

MILTON HUGH: Correct.

JANET GREEN: And then at the other end there's another one that seems to open out.

THOMAS SCOTT: Yes, what is that space enclosing where the door opens out? Is that some kind of storage area that's being

created?

ATTORNEY SEAN HOPE: It is.

THOMAS SCOTT: And so -- so we're losing the windows in order to gain the storage area? Is that what's happening?

MILTON HUGH: Well, what would happen if we stopped here, we'd have one and a half windows being taken out. So if we had a little bit more building forward than we would have the two windows and have more usable space.

THOMAS SCOTT: I mean, I think it's a shame to lose those two windows on the side of the building because now you're really turning this edge of the building into a solid side of a building, and where now the front, the front of the building kind of extends around the corner, it's a much more pleasing's aesthetic and I think losing that

is detrimental. But so my question is do you have to have that storage area, can we keep the windows somehow?

GARY O'NEIL: Can I --

MILTON HUGH: Sure.

GARY O'NEIL: Well, when you look at, if we just enclose this space that's defined by the concrete block and turn the corner 90 degrees, it would intersect the plane of the building about here. So just, if we just enclosed to meet the dimensions of the stairway, this window would be concealed. And this one is about one-third of it would have to go because that's where the projection of this end of the staircase -- that doesn't line up with this divider. It ends up coming in over here. So since we were taking most of it to achieve the flooding engagement, we just decided to go to

the corner.

THOMAS SCOTT: Sure.

Well, what's the width of that room and what's the width of that window?

MILTON HUGH: The enclosure?

THOMAS SCOTT: No. What's the width of the room, the additional room you're creating, how deep is it?

MILTON HUGH: Eight and a half feet.

THOMAS SCOTT: And so how far back to do those windows come?

GARY O'NEIL: Not eight.

THOMAS SCOTT: Well, it looks pretty close to eight and a half feet to me. It looks to me like you're grabbing some space there and you're losing the windows.

MILTON HUGH: It's more like five or six judging by the spacing of the concrete.

THOMAS SCOTT: Those windows look

like they're four feet wide to me.

GARY O'NEIL: That's about right.

THOMAS SCOTT: Yeah, four feet times two. So they're eight feet. The combination of those two windows is about eight feet or approximately the size of that additional room you've added.

GARY O'NEIL: Well, see the storage is -- floor of the storage would go over the part of the footprint of the stairs not so much that you can't descend underneath.

THOMAS SCOTT: Right.

So I guess my question is why, if you can do that, then you can -- you could cut off the enclosure at that point as well and retain those windows.

GARY O'NEIL: I'm not sure I understand. If we enclose the stairway just without regard for the storage, we're going

to have to take the first window and part of the second.

THOMAS SCOTT: But you're not understanding what I'm asking. Your storage room is a lot bigger than that. You're extending the storage room back and you're saying it's not going to affect your headroom. So my point is cut off the addition at that point and leave the windows.

GARY O'NEIL: So you're saying --

THOMAS SCOTT: I know you want to try to reuse the foundation there, but --

GARY O'NEIL: -- you're saying something like this?

THOMAS SCOTT: No.

GARY O'NEIL: Or like this?

TIMOTHY HUGHES: Cap that. Where does the landing fall at the bottom of the stairs? Is it all the way out?

GARY O'NEIL: The landing is about here.

MILTON HUGH: It's about --

TIMOTHY HUGHES: Just put a bulkhead over that stuff and not extend the enclosure passed the edge of the building where it is now.

GARY O'NEIL: You're saying do something like this and then --

THOMAS SCOTT: Yes.

TIMOTHY HUGHES: Exactly.

JANET GREEN: Right.

MILTON HUGH: We have to look at the headroom.

TIMOTHY HUGHES: Well, if you can put a building over it, you can put a floor over it, you could put a bulkhead over it, right?

GARY O'NEIL: You're right.

TIMOTHY HUGHES: The headroom is going to be the same.

ATTORNEY SEAN HOPE: I would only add, I would think that, you know, that was part of the discussion about the windows versus building that space, and I think when we looked at it, trying to keep the footprint and also the fact that if we added the storage area, we still would be within the setback. We had this additional room, I think it was, the design choice wasn't missed. It was an intentional decision that the owner made in order to alleviate the --

CONSTANTINE ALEXANDER: I think what you're hearing, though, is you made that decision but the Board members think you should reach a different decision.

TIMOTHY HUGHES: Yes. I think Tom is absolutely right. It compromises the

look of the building on that corner which looks nice now. I mean, you're going to create a blank wall and darken the interior.

JANET GREEN: I was curious about why you took out the long rectangle window.

THOMAS SCOTT: That's the sign I think.

JANET GREEN: That's the sign that you're moving around? I was surprised that there wasn't some kind of lighting, you know, a window for lighting to the stairwell. I mean, I was just struck by the fact that there was such a solid wall.

MILTON HUGH: You know, it's not like a -- ceremonial stair. It's more like a utilitarian basement stair.

CONSTANTINE ALEXANDER: What I think you're hearing from the board members is we'd like to go back to the drawing board

and take into account the comments you've received. What is being proposed tonight is just not, it doesn't cut the mustard for us.

ATTORNEY SEAN HOPE: I definitely hear that recommendation from the Board. And I also think we could possibly take a look at it and see if you want to move forward. And the basis is the bulkhead, and it's not this additional piece. If there's a way to design it to keep the windows and to be able to alleviate the real hardship, then I think it would be worth looking at even though it will take sometime.

GARY O'NEIL: Well, if that's the way it has to go and we agree to do that, does it mean we're coming back again regardless?

CONSTANTINE ALEXANDER: You have to come -- submit new plans and then we would have a hearing again. It would have to

be -- we call it a case heard, so it's got to be a time when all five of us sitting here can meet. We have to find out what that date is. I don't think it would take you an awful long time for you to do new plans.

MILTON HUGH: No.

CONSTANTINE ALEXANDER: So what's the schedule like for July 10th?

SEAN O'GRADY: You just closed July 10th. July 24th is now your next option.

CONSTANTINE ALEXANDER: July 24th. We would be hearing the case on July 24th. Can everybody make it on July 24th?

TIMOTHY HUGHES: I know the World Cup is over by then so I could probably make it.

MILTON HUGH: I have a question.

CONSTANTINE ALEXANDER: Yes.

MILTON HUGH: So if the structure

that we're proposing takes out one of the windows, how would the Board feel about that?

TIMOTHY HUGHES: I think you better come up with a couple of options. I think you should have an option that doesn't take out any windows. You can show us one that takes out one window. And you can make a case for what you've got there if you think it's strong enough, but --

THOMAS SCOTT: I mean if I were the restaurant operator, I'd hate to lose those two windows.

TIMOTHY HUGHES: Absolutely. I mean, I hate to lose them just as the guy that walks by it, you know?

THOMAS SCOTT: Right.

TIMOTHY HUGHES: So I think you might have to draw a couple different options.

BRENDAN SULLIVAN: There's a third option. I acknowledge that there is a potential problem with the drain being where it is and that flooding occurs occasionally. There are two solutions:

One solution is to put a structure over it a la that or a couple of other variations, which is bringing the mass of the building forward, a very prominent corner. And I think was going to have an adverse impact on the streetscape.

The other solution would be to redo the drain work. Is to put either a larger pipe in and then do a sufficient ejection system inside.

GARY O'NEIL: The issue is clogging of the drain. It's not the capacity of the drain. It's debris.

BRENDAN SULLIVAN: And that's a

maintenance.

GARY O'NEIL: Right.

BRENDAN SULLIVAN: But lack of maintenance then in my mind does not excuse the fact of pushing that building forward and enclosing and creating massing.

TIMOTHY HUGHES: And it doesn't meet the legal standard of hardship either, just the lack of maintenance.

BRENDAN SULLIVAN: Right.

And it's no different than -- there's a lot of -- I mean, I am familiar with these type of problems. I have dealt with it in the contracting business, and you can tell the store owner, and I can think of two, that they occasionally have to go out there, and they have to put a cover over it to -- so debris doesn't get down into the drain. They do have to maintain it, and that let's put in a

larger pipe and a reliable ejection system and it works. Because I think that to mitigate -- I think there is a solution without adding on and bringing the massing of that building forward.

CONSTANTINE ALEXANDER: Let me just express a slightly --

BRENDAN SULLIVAN: I'm not sure how many variations of the addition will satisfy me.

CONSTANTINE ALEXANDER: Well, my observation is where it is now, the stairwell, is decidedly unattractive. And I think a solution that preserves the windows, mitigates the massing -- increased massing, and I think if properly designed, would be better off with a little covering of the staircase and leaving it the way it is and improving the position of the wastewater in

the basement. So I am --

GARY O'NEIL: I can tell you right now we will come back and preserve the windows and just enclose the --

CONSTANTINE ALEXANDER: You're hearing one member of the Board may not vote for it.

GARY O'NEIL: I understand. But if you're open to saving the windows, I mean, the storage was just a secondary idea, but it's not the driver. Obviously we want to cover that and not have to --

CONSTANTINE ALEXANDER: The other thing, too, is that -- I'm not going to suggest this is going to be the case, if we turn you down on whatever plans you bring back, you're not without a solution. You can do the solution what Brendan suggested and you can do that without any Zoning relief at

all. Be that as it may, we can continue the case unless we want to talk a little further about it? No?

TIMOTHY HUGHES: No, I think it should be continued. We need to see some alternatives.

CONSTANTINE ALEXANDER: And everybody can make July 24th?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: Guess so.

Okay. The Chair moves that this case be continued as a case heard until seven p.m. on July 24th on the conditions that the Petitioner sign a waiver of time for decision.

That the posting sign be maintained for the two weeks prior to July 24th except showing the new date, July 24th, new time, seven p.m. So we'll hear the case earlier in

the evening.

And lastly, and most importantly, on the condition that to the extent that you've got to submit revised plans or plans and they must be in our files no later than five p.m. on the Monday before July 24th.

And to the extent that the new plans change the dimensional form change, a new dimensional form or amended dimensional form must be filed.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(8:50 p.m.)

(Sitting Members Case #BZA-003767-2014:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 003767, 235 Lexington
Avenue.

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

CAMPBELL ELLSWORTH: Good evening.

My name is Campbell Ellsworth. I'm at 267 Norfolk Street in Cambridge. I'm here with Janet Lloyd, owner of 235 Lexington Avenue in Cambridge. We are -- have originally put in an application for a Variance and a Special Permit. We are here also to say that Ms. Lloyd is withdrawing the request to be heard on the Variance so we would just like to discuss the Special Permit.

CONSTANTINE ALEXANDER: And these are all summarized on the one drawing, the Special Permit, the window treatment?

CAMPBELL ELLSWORTH: Yes, sir, that's correct.

So, Ms. Lloyd lives in this house which is -- and she's undergoing a project which she can discuss further, but the left side as you look at the house, is sitting within the left yard setback and, therefore, any

arrangement of windows on that facade would require a Special Permit and that's why we're here. You can see that in the drawing that is labelled A-41 it is a simple realignment of these four internal windows. We think that it's a reasonable request and it will reorganize the facade in a clean way. And Ms. Lloyd can speak to the project that she's taking on internally.

JANET LLOYD: So the project will begin next spring. Basically the bathrooms upstairs have -- are all in disrepair essentially, and the effort will be to fix them up but enlarge one of the bathrooms which currently serves, if you will -- there's a master bedroom with a bathroom there that basically needs to be internally worked on but no changes there. But the windows that will be

affected -- basically there's a bathroom up there that serves as a guest bathroom.

Bathroom, and when I have my family over, it's basically four people sharing a tiny little space. And you can see the floor plan. So the plan is to bump the wall over to incorporate the space that's currently being used by the laundry room and increase the size of that bathroom. But as a result of that, some of the windows are gonna have to be changed.

CONSTANTINE ALEXANDER: You said you're going to do the work next spring?

JANET LLOYD: Yeah.

CONSTANTINE ALEXANDER: Keep in mind, you know, if we grant relief, it expires if you don't do the work or draw the Building Permit within a period of time. You better be careful you don't -- if we grant the

relief, it doesn't lapse and you'll have to come back before us.

What's the rules on that, Sean?

SEAN O'GRADY: I'm sorry?

CONSTANTINE ALEXANDER: With regard if we grant a Special Permit.

THOMAS SCOTT: It's a year, isn't it?

CONSTANTINE ALEXANDER: Is it one year?

SEAN O'GRADY: One year for a Variance, two years for a Special Permit.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

(No Response.)

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

JOSEPH POTO: I'm Janet's neighbor Joseph Poto, P-o-t-o and I want to give my

support on the Special Permit.

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

Any other people wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Appear to
be none.

We have a letter in the file.
From -- that's from you, sir, Mr. Coyle. No,
no. Poto.

JOSEPH POTO: Poto.

CONSTANTINE ALEXANDER: We have a
letter from Genevieve and Joseph Coyle, 32
Lakeview Avenue. (Reading) We are neighbors
of Janet Lloyd and approve of the plans to
enlarge and enclose the front porch. But
that's not going to happen. And she
gave -- front yard setback and rear yard
setback. We would like you to grant a

Variance. It's only about the Variance and that's gone.

That's it.

Any final comments, Mr. Ellsworth?

CAMPBELL ELLSWORTH: No, sir.

CONSTANTINE ALEXANDER: Comments from members of the Board or ready for a vote?

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this Board make the following findings with respect to the relief being sought, the Special Permit being sought, and the Chair would reiterate that the request for a Variance as advertised has been withdrawn by the petitioners and, therefore, is not before us tonight.

By the way, you understand that the withdrawing of the Variance is like being turned down. So you can't come back with a

similar project for two years.

JANET LLOYD: Correct.

CONSTANTINE ALEXANDER: Okay. I wanted to make sure you understood.

CAMPBELL ELLSWORTH: I wasn't aware of that. Withdrawing the Variance is like a rejection?

CONSTANTINE ALEXANDER: It's the same in our Ordinance as being turned down for the Variance and, therefore, you can't come back before us with a substantially similar project for two years. You have to go through a whole procedure where in which you want to do now is different than what you did before, and you've got to make a finding to that effect and the Planning Board has to make a finding to that effect and then we can consider it.

CAMPBELL ELLSWORTH: I wasn't aware

of that. What's the logic if the Petitioner wants to pull it away?

CONSTANTINE ALEXANDER: The logic is what our Ordinance says. You have to ask the City Council.

TIMOTHY HUGHES: There is no logic just so you know. That's the way it's written. Withdrawal is basically with prejudice as same as being denied, just the way it's written.

CAMPBELL ELLSWORTH: Is there any way to stop that procedure --

CONSTANTINE ALEXANDER: No.

CAMPBELL ELLSWORTH: -- to reserve the right to --

CONSTANTINE ALEXANDER: You can come back with a different, arguably different proposal in terms of enclosing the front porch, but then you've got to come

before us and we've got to make a finding that's different. Then you go to the Planning Board and they got to make a finding that it's different. And then if we both make those findings, then we can consider your new proposal. We don't have to wait the two years. But it will take you almost a year to get through that process anyway. That's the only other alternative that you have.

CAMPBELL ELLSWORTH: Thank you.

CONSTANTINE ALEXANDER: All right. The Chair moves that we make the following findings with respect to the relief being sought for the Special Permit:

That what's being proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of

adjacent uses will not be adversely affected by the nature of what you're proposing. In this regard the window modifications are minimal in nature and will not impede then upon the privacy of the abutters of these windows and that's been demonstrated by the fact, I assume the person who knows affected, that's you, sir. You have no problem obviously.

JOSEPH POTO: No, not at all.

CONSTANTINE ALEXANDER: No nuisance or hazard will be created to the detriment of the health, safety, and welfare of the occupant or the citizens of the city.

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

With regard to the relief being sought is very modest in nature. That the only person affected by it, is the abutter who has spoken in favor of the relief being sought.

So, therefore, the Chair moves that we grant the Special Permit being requested on the condition that the work proceed in accordance with the plan prepared by C&J Cat Studio. It's numbered A-41 and it's initialled by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

JANET LLOYD: Thank you.

* * * * *

(9:00 p.m.)

(Sitting Members Case #BZA-0038764-2014:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 229, Lakeview Avenue.

Is there anyone here wishing to be heard on this matter. I think the biggest problem is how do we pronounce your name.

WOJCIECH SZCZERBA: Szczrerba.
It's spelled W-o-j-c-i-e-c-h and
S-z-c-z-e-r-b-a and we meet again.

TIMOTHY HUGHES: Say it out loud.

WOJCIECH SZCZERBA: (Pronouncing
name).

CAMPBELL ELLSWORTH: My name is
Campbell Ellsworth of 267 Norfolk Street in
Cambridge. I'm here with Wojciech Szczrerba.
Well, I'm married to a Polish woman so I know
how to do these things -- of 229 Lakeview
Avenue in Cambridge.

We're here before you seeking a
variance for the covering of a small roof on
the second -- over the second floor rear deck
of the house. Mr. Szczrerba has bought the

house in April of 2012. They -- the house was in rough shape. It was a two-family house. He and his wife took on this work and created a single-family house for themselves and their daughter. At that time they built a conforming dormer on the driveway side of the house to -- because the stairs -- for two reasons: The stairs up to the attic were non-conforming and they needed to be brought up to code, and they put a bathroom up there for their daughter as well.

At the time of that construction the roof that we're talking about desiring to replace was in bad condition and it was taken down. It also allowed the FAR calculations at the time to work and the owner now finds that already having lived in the house now for sometime, that it makes sense to put that back for a variety of reasons.

CONSTANTINE ALEXANDER: You know, just an alarm set off in my mind. You're suggesting that you did something to get relief once and get the FAR down and now a little time has gone by and you're going to throw it back up? It's a bait and switch?

CAMPBELL ELLSWORTH: No. We decided that it wasn't needed. I think the owner might speak to that.

WOJCIECH SZCZERBA: We did not seek to enlarge the house. We constructed the dormer purely because the dormer didn't have enough headroom and to create a bathroom. Had -- if we didn't have to do the stairs, we probably could have contained of the shape bathroom within the existing structure of the bidding. When we took the roof down, I didn't think I needed it at all because the changing, having changed the house into the

single-family house, the social life that happens on the deck happens in the lower deck from living quarters. Deck is at the back of our master bedroom. However, having lived there for now almost two years, we've discovered the weather issues; the door from the bedroom open outwards. When it's snowing, we are not able to open it. There's a very -- for some reason because of the wind and exposure, there is very odd sound when it's raining. And also especially from fall to spring when the trees have no leaves, we have direct sunshine onto our faces every sunny morning. So these are the main....

CONSTANTINE ALEXANDER: The roof is not going to cover the entire deck either is it?

WOJCIECH SZCZERBA: No, no, I'm aware.

CONSTANTINE ALEXANDER: I'm not asking you a question.

CAMPBELL ELLSWORTH: That is correct.

WOJCIECH SZCZERBA: No, no, no, no. It's a sort of half width of the deck exactly the same way the other neighboring houses have it. We also have neighbor support which you should have on file.

CONSTANTINE ALEXANDER: We do.

WOJCIECH SZCZERBA: Two or three letters supporting the application. So, no, it wasn't intentional. I didn't think I would need a roof over the deck. Actually, I didn't want one initially because I wanted to have -- we have bathroom next to it and we lose some light, morning light, in the bathroom when the roof is back on again.

CONSTANTINE ALEXANDER: My question

was, and I just want to get it on the record.
The roof you want to put on now is no larger
than the roof that you removed?

WOJCIECH SZCZERBA: No.

CAMPBELL ELLSWORTH: That is
correct.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: The dormer was
done as of right, is that what we're saying?

CAMPBELL ELLSWORTH: Yes, it was.

BRENDAN SULLIVAN: And the reason
why it was done as of right is because by
removing the roof lowered the amount of FAR
which then allowed for the dormer?

CAMPBELL ELLSWORTH: And we tried to
reduce the dormer.

BRENDAN SULLIVAN: But I mean that's
a yes or a no, basically.

CAMPBELL ELLSWORTH: Yes, correct.

BRENDAN SULLIVAN: Yes. Okay.

CONSTANTINE ALEXANDER: That was the point I was getting at with my comment.

BRENDAN SULLIVAN: Right.

WOJCIECH SZCZERBA: But if may repeat, the intention was not to enlarge the house but to make the attic space liveable to create some sort of suite for my daughter so there's a bedroom and a bathroom.

BRENDAN SULLIVAN: The creation of a dormer is enlarging the house. I mean, it's --

CONSTANTINE ALEXANDER: Creates more living area in the house. That's enlarging the house.

WOJCIECH SZCZERBA: Yes, but without dormer we would not be able to use the attic. We wouldn't be able to get up to it. Having the stairs --

CONSTANTINE ALEXANDER: I think the strongest point in support of what your case now is that if you had gone before us for a dormer relief years ago, you probably would have gotten it on the grounds that you needed the dormer, it was only to create head space to use the floor, and we tend to be more sympathetic to dormers for that purpose as opposed to grandiose dormers that create lots more living space.

CAMPBELL ELLSWORTH: This is less than the maximum 15 feet. It's about 14 feet, something like that.

WOJCIECH SZCZERBA: We also --

CONSTANTINE ALEXANDER: That's a good point. Thank you.

WOJCIECH SZCZERBA: -- we had the situation where we bought the house on -- in the beginning of April. Our lease on the

rental house was expiring at the end of July. And we bought the house for August and we needed to move in at end of August. Speed was also of essence although I don't think we discussed it.

TIMOTHY HUGHES: Are you saying that the wheels of government move slowly?

CONSTANTINE ALEXANDER: So you were a non-conforming house before. You took away the -- took off the roof of the deck. That allowed you to build a dormer as a matter of right.

CAMPBELL ELLSWORTH: Conforming to FAR.

CONSTANTINE ALEXANDER: Conforming to FAR.

And so now you decide well, you want to come back and take, create more FAR, only a slight change, and you also are now intruding

into the left side setback.

CAMPBELL ELLSWORTH: Right.

No, we're not extending the non-conformity but we are -- the house currently is four and a half feet, and the deck is about six feet. But we would be up to that six, six-and-a-half foot as opposed to the seven-and-a-half.

CONSTANTINE ALEXANDER: Other questions from Members of the Board?

(No Response.)

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

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair would note that there is no one who wishes to be heard.

We are in receipt of several letters which I'll read into the record.

A letter from Joseph T. and Genevieve Coyle, 230 Lakeview Avenue. (Reading) We are neighbors of the Petitioner and approve of this plan to construct a roof over the existing second floor rear deck. We would like you to grant him a Variance.

A letter from Elizabeth Anderson, s-o-n and Michael Zibello, Z-i-b-e-l-l-o who reside at 233 Lakeview Avenue. (Reading) We are writing to express our support for our abutting neighbor, the petitioner, who has requested a Variance to construct a roof over the existing second floor rear deck of his home.

And last we are in receipt of a letter from Paul Demosthense. That's D-e-m-o-s-t-h-e-n-s-e and Jean, J-e-a-n

Redmon, R-e-d-m-o-n who reside at 225-227 Lakeview Avenue. (Reading) As owners of an abutting house, we are in complete support of the proposed roof over the rear deck. The roof will return the porch to its original appearance and will fit well with the neighboring houses.

And I think you made this point but I'll repeat it. Your abutters have decks roof -- second floor decks and roofs identical to what you want to do. So it's not like you're going to be different from anybody else?

WOJCIECH SZCZERBA: Yes, it does.

CONSTANTINE ALEXANDER: That's it for public comments.

Any final comments, Mr. Ellsworth?

CAMPBELL ELLSWORTH: No sir.

You have anything.

WOJCIECH SZCZERBA: No, thank you.

CONSTANTINE ALEXANDER: Close
public testimony.

Comments from members of the Board or
ready for a vote?

(No Response.)

CONSTANTINE ALEXANDER: I guess
we're ready for a vote.

BRENDAN SULLIVAN: The only thought
I would have as a condition because what this
potentially sets up is by putting a roof on
a -- all they have to do is come down to get
a Special Permit to enclose the area
underneath this roof that we are allowing.
The only condition that I would vote for in
this petition would be to preclude to not ever
allow them to enclose the area underneath
this roof.

CONSTANTINE ALEXANDER: I

don't -- I'm not sure we can legally do that. I think we can say that if they want to enclose the space that's going to be covered by the rear deck or more, that they have to get a Variance and come back and meet the variance requirements. I don't think we can't say you can never seek a Variance. I understand where you're going and I like it, but I don't think we can get there legally.

CAMPBELL ELLSWORTH: May I comment?

CONSTANTINE ALEXANDER: Go ahead.

CAMPBELL ELLSWORTH: I wrote in my text here that I said it would be unlikely that the covered area would be enclosed in the future since it would leave a remaining portion of the second floor deck exposed that would be less than three feet in-depth. That would be a very awkward.

CONSTANTINE ALEXANDER: You can

cover the whole -- you might come back -- you might decide to extend the roof and enclose the whole space.

CAMPBELL ELLSWORTH: And that would take a Variance?

WOJCIECH SZCZERBA: I'm happy to confirm that we have no intention of doing so.

CONSTANTINE ALEXANDER: We understand that. But you may sell the house and the next person comes in might want to do it. You can't do it forever. I think what we can do is require them to seek a Variance if they want to or someone wants to enclose this area and be covered by the roof. I don't think we can do better than that.

BRENDAN SULLIVAN: Well, yes, and I know that there are, knowing is highly unlikely but it was also highly unlikely once you took the roof to allow you to put the

dormer on that you ever going to come back and want to put a roof deck on. So it's the highly unlikely scenario in situations that we tend to see occasionally down here on Thursday nights, but at any rate I would like to make it as stringent and as difficult as possible.

CONSTANTINE ALEXANDER: I'll do the best I can when I make my motion. I hear you and I agree with you with where you're going.

Anything else from members of the Board?

JANET GREEN: No.

BRENDAN SULLIVAN: A lot of the enclosing underneath roofs and porches are becoming the soup du jour lately.

CONSTANTINE ALEXANDER: Yes.

Okay. The Chair moves that we make the following findings with respect to the

Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being is that the porch, the rear deck or porch, whatever you want to call it, as unenclosed, creates living problems with respect to the second floor, the occupancy of the second floor of the structure.

That the circumstance -- that the hardship is owing to circumstance relating to the fact that this is a non-conforming structure in terms of setbacks and, therefore, any relief with respect to the -- putting the roof over the deck requires Zoning relief.

And relief may be granted without substantial detriment to the public good or

nullifying or substantially derogating from the intent or purpose of the Ordinance.

And in this regard the Chair would note that there is apparently a unanimous neighborhood support for what is being proposed and what the Petitioner is proposing to do in terms of the structure itself returning it to the way it was until the roof was removed several years ago.

Therefore, on the basis of these findings the Chair moves that we grant the Variance being sought subject to the following conditions:

That the work proceed in accordance with the plans submitted by the Petitioner, prepared by Ellsworth Associates, Inc. They're 1, 2, 3, 4, 5, pages, all of which have been initialled by the Chair.

And on the further condition that this

area to be covered by the roof cannot be enclosed and that this would be understood by the Petitioner that to the extent this Petitioner or any owner of the property seeks to Zoning relief, that with regard to the enclosing of the area to be covered by the roof or the rest of the deck that this Board will not look in favor upon such a Variance. We think it would -- substantially it would be nullifying or substantially derogating from the intent and purpose of the Ordinance. And, therefore, the petitioner has put a notice, and that anybody who owns this property put on notice that don't try to enclose the area that's going to be covered by the roof.

BRENDAN SULLIVAN: And also that the -- it would be an attempt to enclose it would be contrary to the presentation before

us tonight.

CONSTANTINE ALEXANDER: Good.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

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

WOJCIECH SZCZERBA: Thank you.

* * * * *

(9:15 p.m.)

(Sitting Members Case #BZA-003875-2014:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair

will call case No. 003699, 48 Lopez Street.

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

Now, before we proceed with the Variance that you're seeking, I think you've now been made aware of the fact that you're still going to need a Special Permit. That's going to be an extra hearing because you're relocating windows in the rear setback. Did Mr. O'Grady advise you of that?

JAY ROGERS: We hadn't gotten to that, no.

CONSTANTINE ALEXANDER: Okay. Well, just so you know, if we were to grant you relief tonight, you can't go ahead with the plans we're submitting because you want to relocate windows. And as you heard from the prior case or two cases ago, that requires a Special Permit. Because where you're

going to relocating the windows extends into a setback.

JAY ROGERS: I see.

CONSTANTINE ALEXANDER: You should have thought -- let me make it this way. To get everything you want in these plans, you needed a variance and a Special Permit.

JAY ROGERS: I see.

CONSTANTINE ALEXANDER: You only advertised for the Variance. You're going to have to see us again unfortunately for you for the Special Permit.

JAY ROGERS: Okay.

CONSTANTINE ALEXANDER: Anyway, your name and address.

JAY ROGERS: My name is Jay Rogers. With me is my wife.

LISA ROGERS: Lisa Rogers.

JAY ROGERS: And we live at 47

Highland Road, Somerville, Mass. We're seeking a Variance for 48 Lopez Street in Cambridge. It's a house that I bought back in 1996 when I was single. And lived in while renting out the downstairs apartment. I lived upstairs. And then a while after that, I met Lisa and we got married. She declined to move -- to join me at 48 Lopez Street.

CONSTANTINE ALEXANDER: That's your hardship.

JAY ROGERS: Well, it's in part because of the conditions there. Particularly the bedrooms. So we moved to Somerville. I had, the property is now vacant and the relief we're seeking is really on the upstairs two bedrooms. It's a converted attic. It's not code compliant with today's standards. I think the ceilings are about six feet, nine.

What we're looking to do is to create two fully code compliant and habitable bedrooms up there. As well there's a very steep, kind of like a galley stairway up the middle, and we'd like to move that to the side and have it run in conformance with general standards. And so that we'll have a roof dormer to allow the headroom to exit on the third floor.

So to do that we began talking with our neighbors, went over various plans at the beginning of April. And originally we had some windows and a dormer on the side of the house, those were the original plans that we submitted. Based on their feedback, they said they would much prefer not to have a dormer on that side. So we went, worked with Arch and he came up with an alternate design that raises the overall roof ridge, about I

think about two feet, seven inches, something like that, which would give us the headroom up there on the two bedrooms and then the side dormer would go ahead and give us the stairway. I've talked with the owner on the side where that side dormer is and they didn't have any objections. So based on that, we'd like to proceed with the plans and answer any questions you have.

CONSTANTINE ALEXANDER: Your dormer, I believe does comply with the dormer guidelines which I'm pleased to see.

JAY ROGERS: Yes.

CONSTANTINE ALEXANDER: I have a question that is troubling to me. I understand why you want to do what you're going to do by raising the roof, but I also see as part of your plans you're going to create a roof deck. But I also see as part

of your plans you're going to create a roof deck. Seven feet, eight inches by twelve feet seven inches -- three inches. It's the size of a room.

JAY ROGERS: Yeah.

CONSTANTINE ALEXANDER: You live in a very tight neighborhood. A very congested neighborhood. You intrude on the setbacks on all four sides, your structure does.

JAY ROGERS: Yes.

CONSTANTINE ALEXANDER: To me, I can't support a project -- I'm only one person, that has going to have such a roof deck in this area. It's just going to invade on the privacy of your neighbors and the potential for noise, for just visual impact is great. I would -- to get my vote and I'm only one of five, you've got to eliminate the porch, the roof deck.

JAY ROGERS: Well, let me explain. The actual roof deck is designed because it's a very small yard, to give the people upstairs a little bit more of an outdoor feel. It wouldn't be for parties or anything like that. It is actually -- and we discussed this with our neighbors, to the neighbor to the -- on the Pearl Street side, it's a good, I think, 30 feet or so from their building. And the neighbor in the back is also even further than that. It's only really the neighbor on the side. And that neighbor only the roof actually only comes up I think about two floors, and so that roof deck actually looks out on their roof rather than into their windows or anything like that. So, I understand what you're saying, but I don't think -- and in talking with the neighbors, they didn't feel that it infringed on their

area. I know they also have roof decks similar to this, at least the neighbors on the north elevation and the other elevation. And what I did say, so there would be some privacy there, even though it's a good deal away, the only thing we can see is actually their roof deck and also there are slats on it. We would put up a climbing hydrangea so there would be some floral there, a trellis.

I understand your concern. I think in actuality in talking to the neighbors, it's not proved to be a major concern in us looking over them or us infringing on them.

As well there are also some trees that are there along the property line on that north elevation, so that we can't actually see into a good part of their property because of the trees.

CONSTANTINE ALEXANDER: I don't

want to prolong the debate.

JAY ROGERS: I think it's a valid point.

CONSTANTINE ALEXANDER: You make very good points. You heard my point and let's move on.

Questions from members of the Board?

TIMOTHY HUGHES: The roof deck comes off of a bedroom on the second floor?

JAY ROGERS: Yes, that's correct.

ARCH HORST: Third floor.

JAY ROGERS: Yes, it's on the top of the second floor and comes off the third floor bedroom. So we anticipate it's only really only going to be used by people in that bedroom. Actually that was my anticipation. If I can, I'm reaching retirement age. At future years should I convince my wife to move into that, you know, that was one amenity that

I thought would be appealing. And but it's -- the point is I'm trying to make is that it's for use for people in that bedroom really. It's not going to be a big party place or anything like that.

CONSTANTINE ALEXANDER: Why so big? Why a roof deck so big?

JAY ROGERS: I actually wanted to put some plants out there was the main thing. The climbing hydrangea and I guess a few other things.

CONSTANTINE ALEXANDER: Okay.

JANET GREEN: Can you explain again who has also a deck and where they are in proximity?

JAY ROGERS: Yes. I think it's 116 and 118 Pearl. They have decks along the third floor.

JANET GREEN: The same height as

the --

JAY ROGERS: It's actually a little higher. It's a mansard. We look out and it's about six feet higher.

And but as I say, they're a good 30 feet away.

And then the property directly abutting us in the back also has a small deck out that they built.

JANET GREEN: And which floor is that on?

JAY ROGERS: That is also on the seconds floor. I think that's it. It is on the second floor.

LISA ROGERS: It is on the second floor.

JANET GREEN: It's at the same level?

JAY ROGERS: Yes.

The house next to us is actually a -- the one that's closest does not. But as I say, they, it's a rental unit. I think it has something like eight or six units. They have a back porch that comes out but they, because it's the flat roof, they don't have any deck there. But I did speak with the owner of that and they said they would be fine with it.

CONSTANTINE ALEXANDER: Other questions or comments? Questions from members of the Board at this point?

(No Response.)

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

Is there anyone here who wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently nobody wishes to be heard.

I don't think we have any letters in our file.

So, any final comments before we close public testimony and debate this among ourselves?

JAY ROGERS: I can't think of anything else.

CONSTANTINE ALEXANDER: You don't have to have anything else.

Okay, I'll close public testimony.

Comments members of the Board? Ready for a vote.

TIMOTHY HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

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

That a literal enforcement of the provisions of the Ordinance would involve a

substantial hardship to the Petitioner.

Such hardship that additional living space is necessary in this smallish house and it can only be achieved by the relief being sought by the height of the roof and to bring the third floor area into compliance with our Building Code.

That the hardship is owing to basically the fact that it is a non-conforming structure. And any relief to expand the living space would require a Zoning relief.

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

In this regard the Chair would note that there appears to be no opposition from the neighborhood for what is being sought. And what is being sought will, with respect to the

Variance being sought, will improve the housing stock of the City of Cambridge.

So on the basis of these findings, the Chair moves that we grant the Variance on the condition that the work proceed in accordance with plans submitted by the Petitioner.

There are two pages prepared by Black River Architects. They're numbered A101 and A102, initialled by the Chair.

Before I take the vote, these have to be the final plans. If you modify them, you're going to have to come back before us. You understand that?

JAY ROGERS: Yes.

JANET GREEN: You said the Special Permit. They have to come back.

CONSTANTINE ALEXANDER: That's another day.

JANET GREEN: Yes, so that's a

different -- those plans don't have the correct windows in them, was that it?

CONSTANTINE ALEXANDER: Well, we can still approve the plans because they have the roof, but the same plans will come back before us, assuming they want to put the windows in as shown on the plans.

All those in favor of granting the Variance -- oh, on the condition, I said, the work proceed in accordance with these two pages of plans initialled by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Sullivan, Hughes, Scott, Green.)

CONSTANTINE ALEXANDER: One opposed. Variance granted.

(Alexander Opposed.)

* * * * *

(9:25 p.m.)

(Sitting Members Case #BZA -- 003714-2014:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, Janet
Green.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 003714, 136 Lakeview
Avenue.

Is there anyone here wishing to be heard

on this matter?

ATTORNEY ANDREW BRAM: Good evening, members of the Board my name is Andrew Bram. I represent Gillien Todd on this property and her husband. And to my right is the architect on this project.

What is before the Board tonight two requests: One is a Special Permit. This house on Lakeview Ave. I think the Board has plans. These are essentially the plans.

CONSTANTINE ALEXANDER:
Essentially.

ATTORNEY ANDREW BRAM: Well, the same design plans particularly with respect to the dormers to show floor plans. Nothing changes. But to show the relationship of the walls to the dormer. They've been added and they may be of some benefit to the Board.

CONSTANTINE ALEXANDER: Speaking of

dormers, I'm going to make the same speech which I made for someone else earlier in the evening. Your dormers don't comply with our dormer guidelines and not as substantially departing. It doesn't depart as substantially as the earlier case, but it does and the question is, you know, let me just finish, and the question is, you know, we don't look with favor on departures from the dormer guidelines and you really want to go forward tonight and have to continue the case as a case heard? It may be the case, maybe not. I can't tell you what's going to happen.

ATTORNEY ANDREW BRAM: Yes, I think what we'd like to do is explain to the Board why we're asking for what is essentially a small variation of the dormer guidelines. The dormer guidelines will permit

seven-and-a-half foot dormers each. These are, by the way, existing dormers.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ANDREW BRAM: Because of the need to get additional windows and light into this room, these rooms on the third floor. I guess we'll take the dormers up first. These two rooms on the third floor will be children's rooms. Mrs. Todd and Mr. Taft have two children, twins ages seven. They will be living in these rooms for the next ten years and studying as they go through school in these rooms. The rooms have been designed so that this dormer alcove can be a desk space and there really isn't another suitable place in the room to place furniture without having a desk. And when as I -- if the Board looks at those, the last pages of the what Mr. Hecht has prepared, it shows

that the way the rooms are constructed right now with the existing roof. That there's really difficult to get furniture in there, and giving us two windows, which is the principal reason for widening these things, will substantially increase the light and the air into the room.

CONSTANTINE ALEXANDER: Can't you widen them with two windows and just shrink them a little bit to get within our dormer guidelines?

ATTORNEY ANDREW BRAM: From a framing point of view, no. From a framing point of view this works best. Again, I understand we're asking for something that's beyond the guidelines. As the Chair himself noted before, they are guidelines, and we're varying them slightly. Yes, this is a big house. And if you look at the proportion of

these dormers to the rest of the house, the windows are going to follow the windows in the -- on the second floor. This is the side of the house that is furthest away from the other neighbors. And one side of this house is very close to the lot line. The dormers are on this side where there's a substantial distance between us and the neighbors. The neighbor on this side actually is in favor of this. He doesn't have a problem with this at all and supports it. He thinks that the work that we're doing to change the house and modernize the house is a benefit for the neighborhood. He's the one that's most directly affected by it. And so, you know, again, because it's a personal thing in terms of living space for two, you know, young children now, but they will grow and become teenagers at some point and they will need a

bigger room.

GILLIEN TODD: Not too soon.

ATTORNEY ANDREW BRAM: Not too soon, right. You need a bigger room. The guidelines themselves talk about window area and encourage window area, and 50 percent of the size of the dormers and so we are asking the Board to allow this variation from the departure from the guidelines because of the special circumstances of these -- the way these rooms are.

One room in particular which I'll let Mr. Hecht address this, but an alcove that is not conducive to being additional living space the way the house is constructed, but we'd like to have these two rooms, these dormers be the same for the benefit of the two children. They are twins. And having twin dormers has a certain appeal to it. So

that's what we're asking the Board to do. We think that there is this sufficient hardship to warrant this given the size of the house and the placement of the house on the lot, and in particular the age of the house and the configuration of the third floor. We believe that the case for hardship is in fact made out.

Also, I think the Board is aware from looking at the dimensional requirements that we, besides the guidelines, we're asking for what would be new space under the wider dormers of 30 feet, but we've reduced the FAR of the house by removing the covered front porch.

CONSTANTINE ALEXANDER: You're still not conforming.

ATTORNEY ANDREW BRAM: We're still not conforming, but we're not adding to the

non-conformity. Overall the project will reduce the non-conformity slightly, but it does go in the right direction as far as compliance with the Ordinance.

CONSTANTINE ALEXANDER: The question, and maybe I just -- my memory's faulty. I went by the property and I noticed work is going on. And I see these drawings and I see this on the south elevation, like a second floor roof deck and an extension. I didn't see that when I went by the house. Is that going to be new construction or is that --

ATTORNEY ANDREW BRAM: There is -- right, there are two sets of drawings and I believe --

CONSTANTINE ALEXANDER: I'm looking at the ones you just gave us right now.

ATTORNEY ANDREW BRAM: Well,

there's a set of drawings called permit drawings and a set of drawings called Variance drawings. Certain work is being done is being done pursuant to a Building Permit as of right. In other words, it meets all of the requirements of a Zoning Ordinance.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ANDREW BRAM: The only thing that we're here for to the Variance drawings is one for the windows, changes the windows on the bay side and Special Permit and these dormers. So what you see may not yet be built, but it is permitted.

CONSTANTINE ALEXANDER: Okay, thank you.

BRENDAN SULLIVAN: But, I guess that raises a question in my mind is did you get the Building Permit based on numbers without

adding the dormers?

ATTORNEY ANDREW BRAM: No. The permit -- I'll let Mr. Hecht address that specifically. But the --

BRENDAN SULLIVAN: Because we had an earlier case where somebody removed a roof to get the number so that they could do an addition as of right and now they're coming back and wanted to add the roof back. And so my question is in your initial review, Zoning review, obviously it did not include the additional space of the dormer. And how close was that number in order to get the initial Building Permit which then once you have the initial Building Permit, now you're coming back and saying well, now we want to do some work up in the dormer. Now we are going to need a --

ATTORNEY ANDREW BRAM: Right. I

don't think that, again, I'll have Tom address this. But I don't think any of the work that's shown on the permit drawings increases FAR or changes, or changes anything. These are either window --

BRENDAN SULLIVAN: Okay, well, that was my question.

ATTORNEY ANDREW BRAM: -- window changes or, I'll let Mr. Hecht, you know, he's more familiar with the permit than I am.

THOMAS HECHT: The drawing No. 3 is the permit drawing and with -- we did not, this is not an addition on the rear -- this was existing FAR footprint. And we actually reduced the FAR by removing some of the front porch. So we did not remove something in order to increase something else. The footprint of the house is unchanged.

BRENDAN SULLIVAN: Okay.

GILLIEN TODD: And the front porch was reduced to add more light to the living room not reduce FAR.

ATTORNEY ANDREW BRAM: And so I don't know if there are other questions about that. I want to address also the Special Permit. The Special Permit's obviously less controversial.

There's a bay on the other side of the house and this is the north side of the house. And the north side of the house that is a -- is a bathroom and has two windows now.

KINGSLEY TAFT: Page 2.

CONSTANTINE ALEXANDER: Yes, page 2.

ATTORNEY ANDREW BRAM: Right. That exists that face the neighbor. We want to remove those windows and move them to the edge of the, to the bay.

BRENDAN SULLIVAN: Oh, yeah.

ATTORNEY ANDREW BRAM: Where they will be less intrusive to the neighbors and give us and the neighbors more privacy. One of those windows could be as of right because it faces the street, but because they're on opposite sides of this dormer, we came and asked for a Special Permit on both. They will be symmetrical on either end of that bay. I think we stated the reasons in the application why the -- it meets the Special Permit guidelines.

CONSTANTINE ALEXANDER: I'm still back to where I was before. Still troubled by the fact why you can't get the dormers to be 15 feet rather than 18 feet. I mean, it's not going to affect any of the lighting or any of the -- anything else in terms of the construction and complies with our dormer

guidelines. I don't hear a persuasive case why you need to depart from the guidelines is what I'm saying.

ATTORNEY ANDREW BRAM: I guess the persuasive case is because they, if -- yes, they could be shrunk and they make the interior space that much smaller and that much less desirable. I guess the problem is, and this is the problem I have with the guidelines, they're guidelines or they're law.

CONSTANTINE ALEXANDER: No.

ATTORNEY ANDREW BRAM: If they're guidelines, then the Board should be able to in an appropriate case, say yes, we understand there's a third floor, this is a big house, it's got great separation with the neighbors, this is not an imposition from an architectural point of view, this house will

look better with dormers that are proportionate with the rest of the house and it's an appropriate case --

CONSTANTINE ALEXANDER: Guidelines are guidelines, and we do vary them. But we do it on the basis of compelling reasons. And I haven't heard the compelling reason. Me anyway.

ATTORNEY ANDREW BRAM: I asked Tom to just show that diagram on the third floor to show what the floor space looks inside with the peaked roof and why this alcove should be bigger in size to make this room really useful for growing children.

THOMAS HECHT: I mean I think what Andrew is saying is that the -- what's driving this is really the rear bedroom. The front bedroom has these three windows on the front. And although it's small, it's not totally

inadequate as a room. The rear room, it meets light and air because it has this window on the back which is sort of the tail of that room which is -- and the reason we brought you these sections in the last page, this sort of top right drawing shows that it's a really small space. It's not furnishable. It's, you know, perhaps it's play space when you're seven-years-old but when you're 15, it's not going to afford a lot of use.

So what it really means to us is that there's one window currently facing the, you know, in that one dormer for really, you know, which we feel sort of disproportionately small for the amount of space. And we feel that the room would be measurably improved. And, you know, this was, this was sort of inadequate space that we're trying to make good, useful room for a child and I think as

Andrew is saying, we feel that we have met all the other guidelines, dormer guidelines. The one that we're not is the width. But, you know, this is a fairly large house, and in our viewpoint we can accommodate very comfortably two dormers which in toto exceed the 15 feet. So that's why we're really asking for --

BRENDAN SULLIVAN: The existing area is being used as a study area. I mean, a desk area; is that correct? And the proposed will be a desk study area?

ATTORNEY ANDREW BRAM: I don't know what these rooms are used for. The people --

BRENDAN SULLIVAN: No, no, I mean, the area of the dormer. Right now it shows a desk. So in other words, an occupant or that child or young adolescent will use that niche area as a desk.

GILLIEN TODD: The niche currently is that big.

BRENDAN SULLIVAN: That's what I mean. That's what it's being used for currently. Okay. So that's maybe fine when a younger child -- I guess what I'm trying to do is put myself into your house. And now as the child gets older, and knowing from my own experience with computer, printer, yadda, yadda, yadda, so on and so forth, that area is just too small. Looking around the room there is really no place else. The bed is over there, the chair is here, there's a closet, so on and so forth. So that maybe the only saving grace, my thought, is that for a high school student, college student, whatever, that the area really needs to grow with the person because the technology there accrue what they require to study also

grows. And hence the need for additional space in order to make it a viable space for study, for whatever. Is that --

GILLIEN TODD: Absolutely.

BRENDAN SULLIVAN: -- somewhat in a nutshell?

GILLIEN TODD: Yes.

KINGSLEY TAFT: Yeah.

GILLIEN TODD: Thank you.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

(No Response.)

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

Is anyone here wishing to be heard?
You just like to listen.

JOHN HAWKINSON: We'll talk after.

TIMOTHY HUGHES: He's writing an expose.

CONSTANTINE ALEXANDER: The Chair would note that there appears to be no letters in the file one way or another from the abutters. You mentioned you have talked to abutters?

ATTORNEY ANDREW BRAM: Yes. We sent letters on every abutter on the notice list from the city.

CONSTANTINE ALEXANDER: Okay.
I'll close public testimony.
Any further comments or final comments?

ATTORNEY ANDREW BRAM: No.

CONSTANTINE ALEXANDER: You want to discuss it, ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote. But in addition to Brendan's comments about the need for more interior space in those little alcoves with a desk, I do think proportionately it does look better from the

outside, the larger dormers. And two out of three ain't bad, you know?

THOMAS SCOTT: And another interesting point is that the right and left side of the existing dormers is the same. They're growing inward. So the effect, the net effect of the visual impact is going to be almost zero. You're just not going to know that they're --

TIMOTHY HUGHES: And I moved by the argument by additional light for the back bedroom and then you can't expand one dormer and have the awkward look of two different size dormers. You know, I'm good with it.

CONSTANTINE ALEXANDER: Ready for a vote?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: We'll start with the Variance first.

The Chair moves that we make the following findings with respect to the Variance being sought to add two small dormers to the third floor.

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the living requirements for the Petitioner in this structure with their children require more light and more space with respect to the third, the rooms on the third floor.

The hardship is owing to the fact of the topography of the land and the structures, that -- and also on the grounds that this is a non-conforming structure.

Right now this structure is at 0.49 FAR. It will be reduced to 0.48 if we grant the relief being sought with regard to the

Variance, but the code requires 0.42. So you're a non-conforming structure to any modification, any addition of FAR or deletion of FAR still requires Zoning relief.

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

In this regard, the Chair would note that the relief being sought is modest in nature and there appears to be no neighborhood opposition.

So on the basis of these findings, the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with the plans submitted by the Petitioner. There are five pages. All five of which have been initialled by the Chair.

These are the final plans. So you

can't modify them without having to come back before us. Understood?

All those in favor of granting the Variance on this condition say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: Now the Special Permit is to permit the addition of two new windows; two existing bay on the east side of the building.

The Chair moves that this Board make the following findings with respect to the Special Permit being sought.

ATTORNEY ANDREW BRAM: North side, Mr. Chairman.

CONSTANTINE ALEXANDER: It says

east side on your advertisement.

ATTORNEY ANDREW BRAM: North side.

CONSTANTINE ALEXANDER: All right,
on the north side of your building.

THOMAS SCOTT: Mr. Chairman, it
says north here.

CONSTANTINE ALEXANDER: North
there. They made a mistake in the
advertisement.

On the north side of the building.

Make the following findings: That
what is being proposed will not cause
congestion, hazard, or substantial change in
established neighborhood character. We're
talking about the removal of two windows
only.

That the development or use of adjacent
uses will not be adversely affected by what
is being proposed. That's self-evident by

the nature of removal of two windows.

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

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

Based on these findings, the Chair moves that we grant the Special Permit being sought, again, on the condition that the work proceed in accordance with the plans, five pages of plans, all of which have been initialled by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Special Permit granted. Good luck.

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

(Whereupon, at 9:50 p.m., the
Board of Zoning Appeal
Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Inspectional Services.

When the Errata Sheet has been completed and signed, a copy thereof should be delivered to each party of record and the **ORIGINAL** delivered to Inspectional Services to whom the original transcript was delivered.

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