

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, SEPTEMBER 24, 2015

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Vice Chair

Brendan Sullivan, Member

Douglas Myers, Associate Member

Jim Monteverde, Associate Member

Alison Hammer, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

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(7:00 p.m.)

(Sitting Members Case No. BZA-007258-2015: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Douglas Myers, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Board of Zoning Appeals to order, and as is our custom, we will start with continued cases. These are cases that we've heard earlier and for one reason or another did not reach a decision and continued the case or usually at the request of the petitioner.

In any event, the first continued case I'm going to call is case No. 007258, 69 Rindge Avenue.

Is there anyone here for this case?
Please come forward.

NANDINI MANI: Good evening.

CONSTANTINE ALEXANDER: You're new

to this. You have to give your name and address to the stenographer. We keep a stenographic record of the transcript.

NANDINI MANI: Nandini Mani, 69 Rindge Avenue. N-a-n-d-i-n-i. The last name is M-a-n-i.

BRETT HANSMEIER: Brett Hansmeier, B-r-e-t-t H-a-n-s-m-e-i-e-r also 69 Rindge Avenue.

CONSTANTINE ALEXANDER: Floor is yours.

BRETT HANSMEIER: All right. We discovered that one of our neighbors has some -- an issue with part of our proposal.

CONSTANTINE ALEXANDER: Right.

BRETT HANSMEIER: At this time we'd like to try to resolve that with them. I don't know if it's possible given

where we're at right now.

NANDINI MANI: We'd like to try.

CONSTANTINE ALEXANDER: That's very good. We commend you for that. So we should continue for this case for a decent time for you to have discussions with your neighbor.

How much time do you think you need? Do you have a date you'd like to continue it to?

NANDINI MANI: We have some written communication to submit to you as part of the record.

CONSTANTINE ALEXANDER: You could give it to us now or later.

NANDINI MANI: Okay.

CONSTANTINE ALEXANDER: We're not going to hear the case tonight.

What's our schedule look like?

NANDINI MANI: When can you give us next?

CONSTANTINE ALEXANDER: Sean?

SEAN O'GRADY: 10/22. October 22nd.

BRETT HANSMEIER: Seems reasonable. We'll try that.

CONSTANTINE ALEXANDER: One other thing before I make a motion to continue the case.

BRETT HANSMEIER: Sure.

CONSTANTINE ALEXANDER: You should talk to your architect to be sure he understands -- I don't think he's an architect that I've seen before our Board. We have dormer guidelines --

NANDINI MANI: Yes, published on the website.

CONSTANTINE ALEXANDER: Okay.

A quick glance at the file indicated to me that you don't comply -- your proposal doesn't comply with them. Now, those are guidelines, and for good reasons we don't necessarily follow them, but you better be prepared at the hearing, besides dealing with the neighbor, if you're not going to be in compliance, that you can give a case as to why you can't be in compliance or don't want to be in compliance. Okay?

BRETT HANSMEIER: Okay.

CONSTANTINE ALEXANDER: Okay, the Chair moves that this case be continued as a case not heard on the following conditions:

That the petitioners sign a waiver of time for decision. It's a piece of paper you should sign.

BRETT HANSMEIER: Okay.

CONSTANTINE ALEXANDER: That the posting sign that you have up there --

BRETT HANSMEIER: Yep.

CONSTANTINE ALEXANDER: -- you have to modify it. Take a magic marker, change the date and the time, and it has to be maintained for the 14 days that your sign before had to be maintained.

BRETT HANSMEIER: Right.

CONSTANTINE ALEXANDER: And lastly, to the extent that there are new plans, revised plans from the architect as a result of whatever, they must be in our file together with the new dimensional form no later than five p.m. on the Monday before October 22nd.

BRETT HANSMEIER: Okay.

CONSTANTINE ALEXANDER: That gives

us and the community time to review them.
If you don't do that, we're going to
continue the case again. Okay?

BRETT HANSMEIER: Okay.

CONSTANTINE ALEXANDER: On the
basis -- that's the motion I've made.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. We'll see you on the 22nd.

BRETT HANSMEIER: Thank you.

NANDINI MANI: Thanks so much.

(Alexander, Hughes, Sullivan,
Myers, Monteverde.)

* * * * *

(7:05 p.m.)

(Sitting Members Case No. BZA-006133-2015:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Douglas Myers, Jim
Monteverde.)

CONSTANTINE ALEXANDER: The Chair
will next call case No. 006133, 209
Broadway.

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

ATTORNEY ANTHONY GALLUCCIO: Good
evening, Mr. Chair.

CONSTANTINE ALEXANDER: Good
evening.

ATTORNEY ANTHONY GALLUCCIO:
Members of the Board. I'm Anthony
Galluccio, attorney for Peter Lee, the

applicant for relief. I'm joined by the architect Jai.

Quick recap: At the last hearing following up on two previous hearings we were asked to take a further look at the project. In summary, we've attempted to address concerns about the Broadway edge.

The -- just to kind of sum up how the project is involved, we started with six units and we were asked to take a look at that. So we've reduced it to five.

Generally what has happened is much of the massing has moved underground just to reduce the size of the above-grade massing. We also initially had asked for open space relief. The architects have done a great job increasing open space really along the neighborhood edge thereby allowing us to eliminate the need for open

space relief. So we're over the required open space, which is good just from a legal standpoint, but I also think it's been something the neighborhood has liked because we've been able to open it up along that neighborhood edge.

CONSTANTINE ALEXANDER: Better from the neighborhood point of view.

ATTORNEY ANTHONY GALLUCCIO: Correct, correct.

I don't want to repeat things, previous things.

We're compliant with every aspect of the Zoning Code other than setback, and we're asking to have setback relief which would be commiserate with commercial setbacks where there is no setback required for this Zone, but I'd ask Jai just to talk about the changes that we've

made. We did create a page that showed the evolution of that, particularly that edge that we were asked to focus on.

JAI SINGH KHALSA: I'm going to stand up just because it's easiest to present.

CONSTANTINE ALEXANDER: Whatever is best for you.

JAI SINGH KHALSA: Rather than going and rehashing everything, I think you're familiar with the case.

This was -- this is where we started in March. This is where we were in July. And this is where we are now. And the concern that the Board had expressed that we understood was that they wanted the prominence of this corner reduced. We went to a skin that squared it off, which was found to be aesthetically not as

pleasing. We went back to rounding it off, and we actually pulled the top deck back even more to open up the corner space visually. So this green part here is your top deck which we're not counting as open space, but it's a large deck. You've got your green at grade here, and your compliant open space here. And part of the evolution of this is the driveway scooted down a little bit so that we could pick up the compliant open space down on Clark Street.

I think we -- other things we did to the building was we changed the detailing on the top floor to a panel system with battens. We changed the color of it to lighten it up, and substantially reduced the scale and the scale of the cornice on the brow or edge of the property that's

closest to Kendall, the Kendall edge of the property. That was complying with the Board's requests. I think we finally got it right.

The other thing we've done is reduced the aboveground FAR. We've shrunk the footprint to some extent. And another thing we did as well is we opened up -- originally we had decked over this area here. We've removed the deck from that area so it's a driveway between the buildings with some bays and other projections in that area.

In terms of landscape, you can see the progression of the landscape plans.

CONSTANTINE ALEXANDER: Which is the -- okay, the --

JAI SINGH KHALSA: This is the most recent. This was the previous. That

was the first.

You can see we've made an attempt to open up the corner again. We have compliant yards down on this end of the property. The overall deck above has been removed in this area here. We do have some smaller balconies and bays.

CONSTANTINE ALEXANDER: It's not possible to get some green landscaping and the prow, right?

JAI SINGH KHALSA: Well, right here we have it.

CONSTANTINE ALEXANDER: That's the deck.

JAI SINGH KHALSA: We don't own that. That's the City land.

CONSTANTINE ALEXANDER: Oh, that's City land?

JAI SINGH KHALSA: Maybe if the

City wants us to put trees or something there, we can certainly do that.

CONSTANTINE ALEXANDER: Oh, okay. I didn't know that.

JAI SINGH KHALSA: You know, the Hasty Pudding's, they keep cutting down the tree at the end of the brow.

CONSTANTINE ALEXANDER: Okay.

JAI SINGH KHALSA: But, yeah, we just own up to here.

We are reinforcing the street trees up to here. Putting in additional new street trees and grading and meeting the Broadway corridor master plan for the landscape. Okay?

If you'd like me to go into any other details, I'm happy to but this was really where we left off last time in what the areas of conversation were around.

CONSTANTINE ALEXANDER: Do members of the Board want further detail?

TIMOTHY HUGHES: No, I'm good.

JAMES MONTEVERDE: I'm good.

JAI SINGH KHALSA: Thank you.

ATTORNEY ANTHONY GALLUCCIO:

That's it. Mr. Chair, you and the Board were very helpful earlier on suggesting that we do some additional recognizance in the neighborhood. We had done that in a neighborhood meeting. There was general support for the previous plan. I think you all understand the state of the property and what's at stake. We've continued to stay in touch with neighbors, and we feel that it's an even better plan than once -- we once had so we appreciate all your input and we still have general support from the community. I think

they're getting, they're getting anxious. There is some gas tanks there. This project has been challenging because of some of those issues which have, you know, I think we've had some, some great interactions where we've conveyed -- there's been some tension just because of those issues, but we're anxious to move forward and get the tanks out and hopefully create a nice residential project for the community.

CONSTANTINE ALEXANDER: Okay.

Thank you.

Questions from members of the Board?

JAMES MONTEVERDE: No.

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently there is nobody here wishing to be heard. Oh, I didn't see you, sorry, sir.

MARTIN JUKOVSKY: I just want to reiterate --

CONSTANTINE ALEXANDER: Your name and address.

MARTIN JUKOVSKY: Martin Jukovsky, J-u-k-o-v-s-k-y, 220 Broadway, Cambridge.

I just want to reiterate what I've said before, this would be a welcome addition to our community. And I've seen the various -- I've seen the latest plans and it's quite lovely and it's sort of outstanding compared to all of the office buildings that are out of scale around us. So I would urge it being approved to go forward.

CONSTANTINE ALEXANDER: Thank you, sir.

I'm just checking quickly. I don't think there are any new letters in the file from our earlier hearings. I'll put them in the record if there are. Let me just check. Apparently not. So there's no other public testimony.

I'm going to close public testimony.
Discussion from members of the Board?
Comments?

JAMES MONTEVERDE: No.

TIMOTHY HUGHES: I'm good.

CONSTANTINE ALEXANDER:
Everybody's okay.

All right, I will now make a motion we'll see how the vote goes.

The Chair moves that we make the following findings with regard to the

Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that this site is a very difficult site, and, therefore, the hardship would be undeveloped and the land would continue as a derelict and abandoned gasoline station.

That the hardship is owing to -- well, the shape of the lot quite clearly. It's a very unusually shaped lot, which in turn makes development very difficult.

And that desirable 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 petitioner has worked diligently to come up with plans that deal -- that meet neighborhood objections or comments and ours. And after three tries have come up with a final proposal.

So on the basis of these findings, the Chair moves that we grant the Variance sought on the condition that the work proceed in accordance with the plans submitted by the petitioner, prepared by Khalsa, K-h-a-l-s-a Design, Inc. They're dated July 22, 2015. There's multiple pages of the plans, but the first page of which has been initialed by the Chair.

And then another condition in particular with regard to the landscaping that's shown on these plans, that the petitioner is required to fulfill those

landscaping designs that are on these plans.

DOUGLAS MYERS: One question for clarification?

CONSTANTINE ALEXANDER: Sure.

DOUGLAS MYERS: You mentioned that the plans are dated July. The plans dated July are going to include the latest version of the design?

JAI SINGH KHALSA: Yes, they do.

DOUGLAS MYERS: Thank you.

CONSTANTINE ALEXANDER: I think -- okay. That was my assumption.

BRENDAN SULLIVAN: That was a landscape plan here July 30th. So something after July 22nd?

CONSTANTINE ALEXANDER: Okay, I just initialled the first page, the cover page. I can initial each page.

JAI SINGH KHALSA: Do we want to put today's date on all of them?

CONSTANTINE ALEXANDER: The date is not important as long as I initial the pages, so we have a record of what we approved.

JAI SINGH KHALSA: Thank you.

CONSTANTINE ALEXANDER: Give me a second. These pages, by the way, on my copy are misassembled and upside down.

JAI SINGH KHALSA: Oh, really?

CONSTANTINE ALEXANDER: Yes, on every other page.

JAI SINGH KHALSA: Oh, really?

CONSTANTINE ALEXANDER: Yes.

JAI SINGH KHALSA: That's embarrassing.

CONSTANTINE ALEXANDER: You're testing us whether we're actually going to

read the plans or not.

BRENDAN SULLIVAN: The plans have changed but the date may not have been.

JAI SINGH KHALSA: I have a feeling the date was not changed.

CONSTANTINE ALEXANDER: That's right. They used the original with the old date.

Anyway, while I'm initialing the pages, on the condition that the work proceed in accordance with the plans initialled by the Chair. And I mentioned the landscaping plans as well.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

ATTORNEY ANTHONY GALLUCCIO: Thank you very much.

(Alexander, Hughes, Sullivan,
Myers, Monteverde.)

* * * * *

(7:30 p.m.)

(Sitting Members Case No. BZA-007941-2015:

Constantine Alexander, Timothy Hughes,

Brendan Sullivan, Douglas Myers, Jim

Monteverde.)

CONSTANTINE ALEXANDER: It being 7:30, the Chair will now convene our regular meeting of the Board. And the first case I'm going to call is case No. 007941, 269 and 273 Putnam Avenue. This is a case brought by Sarah Smith. There's a second case involving the same address.

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

ATTORNEY NEIL HARTZLAN: Yes.

CONSTANTINE ALEXANDER: Name and address to the stenographer, please.

ATTORNEY NEIL HARTZLAN: Good evening, Neil Hartzlan, H-a-r-t-z-l-a-n, and I'm at One International Place in Boston.

CONSTANTINE ALEXANDER: Floor is yours.

ATTORNEY NEIL HARTZLAN: Okay.
Good evening, everyone. Thank you for
hearing us. I represent Sarah Smith who
is sitting here next to me.

JOHN HAWKINSON: Mr. Chair, could
you ask the petitioner to speak up?

CONSTANTINE ALEXANDER: Sure.

ATTORNEY NEIL HARTZLAN: Sure.

CONSTANTINE ALEXANDER: Excuse me.
If anybody is having trouble hearing,
you're free to come behind us and hear or
hear better than you are in the audience.
We have to apologize for this room, it's
not designed for the people in the
audience to hear very well, but this is
all the city will give us. But anyway.

ATTORNEY NEIL HARTZLAN: I'll do
you the best I can.

Sarah Smith lives at 265-267 Putnam

Avenue in Cambridge. And pursuant to General Laws Chapter 40-A, Section 7, on June 25th Ms. Smith petitioned the Inspectional Services Department with respect to a number of violations of the Ordinance on two contiguous lots next-door owned Mr. Mastrangelo. Her property abuts those two lots. And on the notice of appeal on Exhibit 8 and notice of appeal, we've attached the letter to the Commissioner. And we wanted some action taken with respect to violations of the Ordinance on his two lots. And the reason -- let me just walk you through what they are because it's important as to why we're here.

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY NEIL HARTZLAN: The problems with the two lots include, but

not limited to, the construction and use of a full-fledged retail establishment and an apartment that we believe is illegal in contravention of his July 5, 1994, application for a Variance to what was then called garage and office space. The construction, we don't believe there was -- we haven't been able to find the building permit. In the apartment there's a lack of second egress. There has been a construction of a porch and a parking space with virtually no setback from her property line.

There's a retail sale and consumption of seafood and outdoor seating located on both lots without proper Zoning or licensing approval. And the construction of two wooden sheds that virtually abut the property lines, which

we also believe are in violation of a setback.

In addition, over one of the picnic table areas there's a roof that's been constructed that extends from 269 Putnam Avenue all the way to her property line and that's supported by a nine-foot solid wall.

And in addition, the vent fan that comes out of the back of this, what was supposed to be an office, is going -- shortly before they open, which I believe they open around eleven-ish, right?

CONSTANTINE ALEXANDER: Is that a Zoning violation?

ATTORNEY NEIL HARTZLAN: If it's not -- if it's an office, I don't know why you need a vent pouring out.

CONSTANTINE ALEXANDER: Is that a zoning violation?

ATTORNEY NEIL HARTZLAN: I think it is.

CONSTANTINE ALEXANDER: Okay. And what's your authority for that?

ATTORNEY NEIL HARTZLAN: Because I -- this was not what this property was -- what the Building Permit applied for -- it's in a residential area. And I don't think you can run a commercial establishment --

CONSTANTINE ALEXANDER: The answer to your client's complaint is twofold: Is that there is an illegal, I guess, operation of a restaurant and seafood business. In other words, a business use in a residential district.

ATTORNEY NEIL HARTZLAN: Yes.

CONSTANTINE ALEXANDER: And the second is the illegal apartment.

ATTORNEY NEIL HARTZLAN: Yes.

CONSTANTINE ALEXANDER: Everything else is bells and whistles around it. That's the crux of the --

ATTORNEY NEIL HARTZLAN: Those are the two central issues. I actually would agree with you.

The other problem would be sheds and the other things that violate the setback.

So, in any event, after we sent the letter to the Commissioner. He sent out a cease and desist order. Terrific. Great. That's what we expect the Commissioner to do.

However, I don't know what happened, but the issues about the Zoning setbacks and the apartment and the lack of egress,

none of those were addressed. And one of the reasons why we're here tonight is because we believe that time was ticking and those hadn't been addressed and we wanted to make sure we were preserving our rights and so on. So that's why we're here tonight.

If I could just spend a couple of minutes talking about what's happened over time with the property next-door. Originally it was built as an office and there was an -- I think, I'm sorry, a garage to be used for storage and whatnot and an office for his work. And we've attached portions of the hearing transcript from 1994 when that occurred. And what happened was, and I was certainly not there, so I'm just giving you what we've got from documents and memory.

So he started selling lobsters from a truck outside. Okay.

But then tanks were put in the storage space supposedly in the garage.

And then lobsters started to be sold out of there.

And then at some point later, which we think was around 2005, I could be wrong on that date, they started cooking things and selling these lobster sandwiches. And what's happened over time is that it's been a general creep of the garage selling lobsters out of a truck to now a full-blown operation. It's got a loud speaker going on calling out orders all day long. Trash is blowing around. The exhaust fan is emitting noise and smells, and so forth. And the customers had been creeping closer and closer. Right now

there's picnic tables right outside of Miss Smith's living room window. And I mean --

CONSTANTINE ALEXANDER: I don't mean to interrupt you. You're just elaborating on the fact that the restaurant and retail use, that was your -- one of your major, maybe, a major complaint.

ATTORNEY NEIL HARTZLAN: A major complaint. That's correct.

CONSTANTINE ALEXANDER: A major complaint. The enforcement letter was sent out --

ATTORNEY NEIL HARTZLAN: Yes.

CONSTANTINE ALEXANDER: -- telling the owner of the property to cease and desist. Are you aware that the city has now filed criminal action?

ATTORNEY NEIL HARTZLAN: I was not aware.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY NEIL HARTZLAN: I was not aware.

CONSTANTINE ALEXANDER: One of your complaints in the appeal is that basically, I'm going to use my own words, the Commissioner has not been vigilant enough or the City has not been vigilant enough in enforcing it.

ATTORNEY NEIL HARTZLAN: Well, if they've filed criminal charges, that's a different issue. And to the extent that we were complaining they should have taken additional action, it sounds like they've done it. I haven't seen anything and I wasn't aware of --

TIMOTHY HUGHES: I'm a little

confused about what you're appealing.

CONSTANTINE ALEXANDER: That's what I'm getting at.

What are you appealing?

ATTORNEY NEIL HARTZLAN: Okay, fair enough. Initially we were concerned that the City is not taking strong enough action. It now appears that they have. That's great. What we're appealing is that in addition to the retail operation with the lobster, we have this setback violations. There are these structures that are built right up against her property. And his letter, the Commissioner's letter didn't address those. And so because the clock was running under the time for us to take action, we felt that we had to take an appeal to preserve our rights on that.

CONSTANTINE ALEXANDER: If we were to tonight vote to with regard to those issues that you've identified, the setbacks and like, that your appeal rights have been preserved, but we're not going to hear the case further until after the court proceedings on the major issues regarding the property; the restaurant operation, the illegal apartment have been decided, would that satisfy you? I mean, I don't want us to go into all of these little details if the crux of the case is going to go away, if it's going to go away. If the criminal proceedings --

ATTORNEY NEIL HARTZLAN: As long as our rights were preserved to deal with those, then I would be comfortable with that. I mean as long as the City's taken serious steps to address that, that's what

we want. So that's terrific. But we don't want to --

CONSTANTINE ALEXANDER: I would make a motion that all of the rights that were set forth -- all the complaints that were set forth in your letter to the Inspectional Services, to the extent not addressed in the cease and desist letter in the court proceedings are preserved. And, therefore, you know, if it becomes necessary at an appropriate time in the future you can come back before us and we'll decide those on the merits.

ATTORNEY NEIL HARTZLAN: So they're preserved pending the outcome of the criminal charges?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY NEIL HARTZLAN: I'm fine.

CONSTANTINE ALEXANDER: Is that

all right with other members of the Board?

BRENDAN SULLIVAN: That sounds about right.

JAMES MONTEVERDE: That's good.

DOUGLAS MYERS: And that would include the apartment?

CONSTANTINE ALEXANDER: I'm not sure -- the apartment is subject to the cease and desist order. But the litigation doesn't mention the apartment which is a little puzzling. It just says that --

ATTORNEY NEIL HARTZLAN: What I think happened, with all due respect to the Commissioner --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY NEIL HARTZLAN: -- they may have been focussed on the restaurant and perhaps overlooked it. I don't know.

CONSTANTINE ALEXANDER: The cease and desist letter it does specifically covers the apartment.

TIMOTHY HUGHES: Does or does not?

CONSTANTINE ALEXANDER: Does.

TIMOTHY HUGHES: The apartment and the business?

CONSTANTINE ALEXANDER: Those two things. I suppose the City at some point could go ahead and file a second complaint and deal with the apartment if it wishes to do that.

TIMOTHY HUGHES: And they could file -- Inspectional Services -- the Commissioner could still file an additional complaint about all those other things you just listed, too.

ATTORNEY NEIL HARTZLAN: Right.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: They could do it in a timely manner where your right to appeal won't be breached at all. I don't know how long it's been ticking.

ATTORNEY NEIL HARTZLAN: I think the clock has already run. I don't know why he couldn't continue.

TIMOTHY HUGHES: Well, we preserve your right to do that. He can issue another, you know, letter about those other complaints if after the Inspectional Services Department inspects the property and decides that in fact those are legitimate complaints, encroachments on setback and whatever, you know, illegally built sheds or whatever, and that should preserve your ability to go forward if this thing isn't resolved in a manner that's satisfactory.

ATTORNEY NEIL HARTZLAN: If I may just add one other thing. I was just handed, there were some additional signatures on letters from some abutters.

CONSTANTINE ALEXANDER: I'll keep that in the file.

ATTORNEY NEIL HARTZLAN: If you could put that in.

CONSTANTINE ALEXANDER: Thank you. I'm sorry.

ATTORNEY NEIL HARTZLAN: I'm all set.

CONSTANTINE ALEXANDER: Anybody here wish to comment on the case? I think you'll see -- one second, Mr. Rafferty. -- I think you see where we're going with this. We're not necessarily going to grant the appeal. We're just going to make sure these

individuals or the neighbor hasn't lost any rights. I think, and I think we all are going to think the case is proceeding the way it should proceed, that the major issues that were raised by the complaint were dealt with by Inspectional Services and are now in the courts.

But anyway, Mr. Rafferty, you said you wanted to speak.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chair. For the record, my name is James Rafferty. I'm an attorney with the law firm of Adams and Rafferty at 675 Mass. Avenue in Cambridge. I represent Louis Mastrangelo, who is seated in the front row along my co-counsel Odin Anderson.

I just wanted to raise a couple of procedural issues before the Board. I

certainly understand the wisdom of the approach here. I shared the surprise when I learned of the appeal, because I can attest to the fact that there has been an enforcement action taken. And, in fact, as the Board is well aware, the next case involves my client's appeal of that enforcement action. But it is worth noting since counsel here is establishing positions on the record that Section 7 of Chapter 40-A allows persons, anyone essentially, to allege a Zoning violation. And Zoning violations then get reported to Inspectional Services and appropriate action is taken.

Appeals from those enforcement actions or requests, however, are limited to persons aggrieved within the meeting of the statute Section 8.

Now, as an abutter, there's the same standing position that applies in Section 17 permit -- Variance or Special Permit appeals. As an abutter, the applicant in this case certainly enjoys what's considered the presumption of standing, but it's a well settled principle in land use law that one needs to be able to demonstrate they're a person aggrieved in order to meet the standard to proceed to this level with the appeal. And this applicant is not aggrieved in this case because she does not have an interest in preserving the integrity of the Zoning District because she operates an illegal use at her property. So what's described as a living room is the room of a hotel that is operated at this property.

CONSTANTINE ALEXANDER: I don't

want to get into that tonight.

ATTORNEY JAMES RAFFERTY: I suspected you didn't have much tolerance for it, so I'm going to keep it very limited. I just wanted to establish on the record serious questions as to whether or not this applicant meets the standard of a Section 8 person aggrieved given the manner in which she uses her own property.

ATTORNEY NEIL HARTZLAN: Thank you.

ATTORNEY JAMES RAFFERTY: Thank you.

ATTORNEY NEIL HARTZLAN: If I may respond very briefly, sir.

TIMOTHY HUGHES: Sure.

ATTORNEY NEIL HARTZLAN: It's true that Ms. Smith runs an in-home bed and breakfast. There's nothing illegal about

it.

CONSTANTINE ALEXANDER: I don't want to get into the merits of that. Let's drop it.

ATTORNEY NEIL HARTZLAN: There's no issue of --

CONSTANTINE ALEXANDER: Okay.

The only thing I'm a little puzzled by, Mr. Rafferty, is the notion of standing, a person aggrieved, I think -- I'm not sure it applies in the case that we have here. It seems to me any citizen of the city who believes there's a zoning violation has a right to go to Inspectional Services Department --

ATTORNEY JAMES RAFFERTY: Agreed.

CONSTANTINE ALEXANDER: -- and then Inspectional Services takes it from there. They don't pay any attention to it

or they do what they've done, cease and desist. So I don't know why, I'm not sure where you were going with your grievance.

ATTORNEY JAMES RAFFERTY: Because now -- because this, this property owner has appealed the action -- the enforcement action --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- to this Board --

CONSTANTINE ALEXANDER: Got it. I got it now.

ATTORNEY JAMES RAFFERTY: -- and to be before that Board on that appeal, one needs to be a person aggrieved. And we're raising the issue that this applicant in this case is not a person aggrieved.

CONSTANTINE ALEXANDER: Now I understand your point. I'm slow tonight.

But I still think that given the fact that I'm going to continue -- we're not going to -- we're going to wait until the outcome of the criminal complaint, and then all rights are going to be preserved all around. And that if this case continues, continues after the court proceedings are there, then we'll take up your issue. I don't want to take it up tonight.

ATTORNEY JAMES RAFFERTY: I understand. And just to be clear, there is -- the next case could be dispositive which might then make the issue in the courts. I mean, the Board is about to hear an appeal of that. So it's also possible that the termination in that case

could have impact on this. It's not limited to -- the presumption here in this case is that this, that the Board has reached a conclusion in Mr. Mastrangelo's appeal and I know that hasn't happened yet because we haven't heard that case yet.

CONSTANTINE ALEXANDER: Okay.

Well, if it comes to pass that we grant your appeal or your client's appeal, and then this case now all of a sudden is no longer mute, then we'll schedule -- continue the case in a couple of weeks and we'll hear the case, the rest of the case in the full appeal. But for right now I think there's no need to do anything more than to -- unless you feel otherwise.

ATTORNEY JAMES RAFFERTY: No, I feel completely comfortable. I think it's

a very prudent and efficient approach the Board has taken with the case.

CONSTANTINE ALEXANDER: Okay, thank you. Yes, sir.

ATTORNEY NEIL HARTZLAN: Just so the record is clear --

CONSTANTINE ALEXANDER: Sure.

ATTORNEY NEIL HARTZLAN: -- the statement about illegal use is factual.

CONSTANTINE ALEXANDER: What?

ATTORNEY NEIL HARTZLAN: The statement of alleged illegal use by my client is factually inaccurate.

CONSTANTINE ALEXANDER: I don't want to --

ATTORNEY NEIL HARTZLAN: I know that. I just want to say it for the record.

ATTORNEY JAMES RAFFERTY: It's

not --

CONSTANTINE ALEXANDER: It's on the record.

ATTORNEY JAMES RAFFERTY: It's a two-family, but I'm not going to take any more time. I wouldn't want to jeopardize my position in the next case by annoying you in this case.

CONSTANTINE ALEXANDER: You've already done that and you've lost.

ATTORNEY JAMES RAFFERTY: That occurred months ago. Years ago.

BRENDAN SULLIVAN: That's just not an issue that's before us.

CONSTANTINE ALEXANDER: That's right.

The Chair moves that -- don't go yet.

JAMES MONTEVERDE: Not done yet.

CONSTANTINE ALEXANDER: The Chair moves that this appeal be held abeyance pending the either the outcome of the court case that has been filed or and/or the next case we're going to hear involving the owner of the property in question position that this appeal, that those zoning violations, going to call it the statute of limitations has run. But until then, until one of those things happens, the court case gets decided and we decide in favor of the applicant in the next case, everything is status quo. You'll have your rights. And if need be, at a future date, you can come back before us and you'll hear the case on its merits.

All in favor on that motion say
"Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Myers, Monteverde.)

* * * * *

(7:50 p.m.)

(Sitting Members Case No. BZA-008069-2015: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Douglas Myers, Jim Monteverde.)

CONSTANTINE ALEXANDER: I'll call case No. 008069, 269-273 Putnam Avenue. This is a case brought by Louis Mastrangelo and it's also to appeal the determination of Ranjit Singanayagam regarding the Zoning issues involving this

property. The same thing that was involved in the prior case we heard and suspended.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, again. Excuse me, Mr. Chair, and members of the Board, for the record, James Rafferty on behalf of the applicant Louis Mastrangelo. Mr. Mastrangelo is seated to my right. The spelling on his name is M-a-s-t-r-a-n-g-e-l-o. And attorney Odin Anderson also representing Mr. Mastrangelo. And it's O-d-i-n A-n-d-e-r-s-o-n.

So I know the Board is familiar with the issue. So Mr. Mastrangelo owns and operates an enterprise known as Live and Kicking Lobster and he has done so for more than 20 years at this location on

Putnam Avenue. If you haven't been by it, here's a photo of the place.

CONSTANTINE ALEXANDER: I've been by it and had one of your sandwiches but not recently. I don't want to disqualify myself.

ATTORNEY JAMES RAFFERTY: Well, as noted, Mr. Mastrangelo did receive an enforcement letter from the Building Commissioner in July 30th in response to a complaint that he received from the abutter. And in the enforcement order, two things are noted, one is the Commissioner indicates that the use of the property is not allowed under the Zoning. And then he also indicates that they don't have a Certificate of Occupancy for the apartment. It should be noted that the apartment that's referred to as illegal,

it's an allowed use. And what the enforcement order speaks to of the apartment is that it's necessary to get a Certificate of Occupancy. So that work and effort has begun on our behalf.

The -- as the Court noted -- the Board noted in the earlier case, obviously the crux of the issue here is the question about the use. And the jumping-off point for this case I would suggest is a Variance that was granted to allow for the construction of this structure. At that time in 1994 the -- there was a garage at that location, but at that time when it was Zoned office, Mr. Mastrangelo had already begun operating a seafood business in that location. So his whole purpose in having the building constructed was to support that business. He refers to

himself as a jobber in the transcript which was provided in the prior case if the Board had an opportunity to review it. And the notion of storage here was always intended to involve storage involved with the operation of his lobster business.

So the 1994 Variance here authorized the construction of this structure in an office district. Now at the time --

CONSTANTINE ALEXANDER: Office district or you mean residential district?

ATTORNEY JAMES RAFFERTY: No, it was an Office 3 Zone in 1994.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: That has some relevance to our appeal. So it was an office district that allowed commercial uses in 1994. Now admittedly, a retail use wasn't permitted in an office

district, but it did not -- it was not zoned residential at the time this was in place. And Mr. Mastrangelo had been operating his business at that location. He is involved in the wholesale ordering and sale and purchase of lobsters. He keeps lobster equipment here. The building was built for that purpose. Over time -- the building, by the way, was built pursuant to a Building Permit with the Certificate of Occupancy. So the building has been in place. But from the day the building began operations, it was used in support of the lobster operation. So the structure itself was built to accommodate this use. Now, this use has existed in no way furtively. I mean, it is a very popular, well known. It receives annual permits and inspections

from the Health Department and those city agencies involved in the regulation of food use, and it receives wide acclaim, frankly, in the greater area and it has, it has a loyal following. And Mr. Mastrangelo has collected hundreds of signatures on petitions, but as I explained to Mr. Mastrangelo that isn't really something that we're going to occupy the Board's time with tonight.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JAMES RAFFERTY: Because that's a separate issue because we have prepared, without weakening our position any further than it is at the moment, but we have prepared a Variance application in the event that the Board did not overturn the Commissioner's case. And I have suggested to Mr. Mastrangelo and many of

his loyal supporters and friends were here this evening that that testimony might be more relevant at a later hearing. So I will acknowledge to the Board that we're not going to turn our appeal into a testimonial for all the attributes that are present by his involvement there.

So this office use that was allowed by a Variance when it was an office district, had always been involved in the operation of a seafood business. And it has existed for more than 20 years. And the issue around the statute of limitations involves six years with a permit and ten years without.

Now, there are a few leading cases in this area and they, they -- the cases distinguish between dimensional violations for structures and use violations. And in

this case, while it is clear that the issues involved here are associated with use, they are very much related to the underlying Variance in the structure itself. So for that reason we are asserting a defense, an affirmative defense, asking the Board to recognize that this use has existed for a long enough period of time and with the imprimatur of city agencies of similar jurisdiction that the Commissioner should be overturned and not permitted to enforce the directives contained in his July 30th communication.

CONSTANTINE ALEXANDER: Thank you. Just for the benefit of the audience, because as you point out there are people here interested in this case. You went a little too quickly because you're a

professional, the ten year and six year statute of limitations. What Mr. Rafferty is referring to is Section 7 of Chapter 40-A of the General Laws say that with respect -- I'm going to just focus on the ten year. With respect to a violation of the Ordinance, I'm going to get more specific in a second, that is continued for ten years and no action was taken, that you're okay, you're free. I mean, the community can now not in the 11th or 12th or 20th year enforce a Zoning Ordinance. Too much time has passed.

But the key is the wording of Section 7 of Chapter 40-A, and that's where I have to go. And I also I'm going to refer to the case, at least one of the cases that Mr. Rafferty has alluded to. Chapter 7 says -- I'm going to do a

relevant part. No action, criminal or civil, except the purpose of which is to compel the removal, alteration, or relocation of any structure shall be maintained after 20 years. A structure. It's dimensional things. There is no mention about use. Of a use has been going on improperly for more than ten years, in fact, in my judgment Section 7 does not apply. And in fact there is authority to that effect. There is a case Lord versus Zoning Board of Appeals of Somerset decided by the Massachusetts Appeals Court in 1991 that I'm going to read from their decision. (Reading) In contrast to the six-year limitations period applicable to zoning violations ostensibly authorized by a Building Permit which explicitly covers both structural

violations and use violations, the ten year limitations period for zoning violations unsanctioned by a permit covers only structural violations. The omission of protection for use violations not sanctioned by permit is plain on the face of the statute.

And it seems to me that's a true statement. I can't accept the notion that your client is entitled to the benefit of what one would the ten year statute of limitations. It's a use. At the end of the day it's an illegal improper use of the property. It's a business use, in this case a restaurant, in a residential district does not permit such a use. And also in fact Healy Manual on Zoning says the same effect. Is that the ten year limitation is only for uses. And when it

comes to the restaurant, we're talking about a use violation, not a structural violation. So I don't see the basis for the appeal, frankly, Mr. Rafferty. That's my view. I don't know what the other members of the Board feel, but --

ATTORNEY JAMES RAFFERTY: I certainly understand that, and I would only offer the following distinction, and the reason that we raise the issue, that in the Lord case from which there was direction on this, and Mr. Healy does cite it in his treatise, that was a case that involved alterations without a permit to a home that had the effect of creating a second dwelling unit.

CONSTANTINE ALEXANDER: Made it a two-family house.

ATTORNEY JAMES RAFFERTY: Right.

And part of the rationale behind it was that there was no way for the municipality to be aware that that two-family had occurred. That the -- it all occurred within the building, and they said there's -- no one was put on notice in that case. So the public policy would suggest that the reason the statutes exist -- if this goes on for a period of time and it's plainly known and understood, then -- but this, in that case they said the use, there was no way they could have known that. And that formed some of the thinking behind the decision of Lord which was the newest case on that matter.

In this case we do have a permit. We have a Building Permit for a structure. The Building Permit emanates from the

Variance. And in this case, as I said, there is nothing unknown by -- with all due respect, by the City, by the public in general, by the neighbors, by the abutters about Mr. Mastrangelo's operation and for that reason we have asked the Board to consider the protection of the statute of limitations.

CONSTANTINE ALEXANDER:

Understood. And your point is well taken, but at the end of the day, you've got to go back to the starting point. The statute. The statute's quite clear. It's a ten-year limitations, it's only for structural, dimensional things, and not for uses. And so maybe that's a fact, a factor in the Lord case, but it's not relevant. In my judgment it's not relevant. The statute just

doesn't -- that you're relying on, doesn't apply. Anyway, that's my view.

Other questions, questions from members of the Board?

TIMOTHY HUGHES: Not at this time.

JAMES MONTEVERDE: No.

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

And, again, just to be very clear this is not, tonight anyway, the issue tonight is not whether or not the restaurant should be operated or not. Whether -- that's going to be -- that's up to another petition, a Variance some other night. The question is simply is the petitioner entitled to the benefit of the ten-year statute of limitations in Section 7 of Chapter 40-A? Because if he is not, then this appeal should be denied. But I

would also point out is that the petitioner is completely in his right to come back before our Board seeking a Variance and say, okay, maybe I shouldn't -- I can't do it anymore, but please give me a Variance to let me continue what I've done for 20 years. To me that's the more relevant case. But that's not before us tonight.

So I gather you have or you're planning to file?

ATTORNEY JAMES RAFFERTY: We have filed through the on-line system. We don't have a date or a case number yet, but we did.

CONSTANTINE ALEXANDER: Anyway. Okay, I'm going to open the matter up to public -- I did already. I'm going to go one more time, though.

Is there anyone wishing to speak to this matter of ten-year statute of limitations set forth in Section 7 of 40-A.

HEATHER HOFFMAN: I do.

ATTORNEY JAMES RAFFERTY: Behind you. One of your fellow Board Members.

HEATHER HOFFMAN: Heather Hoffman, 213 Hurley Street. And I want to agree with the Chair and add something else that you didn't say, which is that enforcement of our laws and ordinances is considered a matter of benefit to the public. And if the government messes up, there's, there's no, there's no estoppel because --

CONSTANTINE ALEXANDER: You're right.

HEATHER HOFFMAN: -- it is the public's rights and not the government's

rights that are being -- that are at stake in this. And there's -- I cannot recite to you the case, but there are cases to this effect. And so I think that -- and I would also say that in my experience, Mr. Singanayagam and his predecessor, Mr. Bersani were not (inaudible) with their cease and desist orders.

CONSTANTINE ALEXANDER: We're not going to get into that.

HEATHER HOFFMAN: I'm just saying that I have a lot of faith that a cease and desist order that was issued as in this case and which was a matter of appeal here, was, was done after reading, thinking, and consultation.

CONSTANTINE ALEXANDER: The Commissioner -- all of his decisions are made after reading, thinking, and

consultation.

HEATHER HOFFMAN: Yes, I know, but I'm just saying with cease and desist orders I have, I've heard of not a lot of them.

CONSTANTINE ALEXANDER: That's not for tonight. Thank you for pointing out the estoppel. That occurred to me when I was making my laborious comments. And just for the benefit of the audience, essentially it is a longstanding doctrine in the law going back to really English Common Law. Estoppel is a notion that -- it's a fancy word for saying that if you slept on your rights, you can't come back later on and then try to enforce them. The law is going to say you waived, in laymen's terms, you waived your rights. Estoppel generally does not apply to

governmental agencies for the reasons Ms. Hoffman said. And, therefore, the notion that the Commissioner knew about it or whoever the Commissioner was at the time and didn't do anything about it, that does not -- and did it for 20 years, does not preclude an enforcement action right now as a matter of law.

Anything further? Anyone else want to comment?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

Final comments, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: We're going to close public testimony. I don't think we have any letters in the file on

this. On the issue of ten-year statute of limitation. I'm just going to check.

No, there's mostly -- there's a letter in here but it's mostly to the worthiness of the restaurant. And as I said before, I think this is all going to go to apparently the next case, the Variance that you've already filed for.

We're going to close -- comments from members of the Board? Ready for a vote?

JAMES MONTEVERDE: Yes.

CONSTANTINE ALEXANDER: This is an appeal so we've got to vote on the appeal.

The Chair moves that we grant the appellant's appeal with respect to the determination of Commissioner Singanayagam as set forth in his correspondence dated July 30, 2015.

All those favor of granting the appeal please say "Aye."

(No Response.)

CONSTANTINE ALEXANDER: No one is in favor. Obviously the appeal has been denied.

The Chair will also note for the record --

DOUGLAS MYERS: Shouldn't we vote?

CONSTANTINE ALEXANDER: We did take the vote and nobody raised their hand. If not, we took the vote and nobody voted.

For the record, the Chair moves that the appeal has been denied because the ten-year period referred to in Section 7 of Chapter 40-A the General Laws as amended applies only by its terms to structures and not to uses. And I would

reference Lord versus Zoning Board of Appeals, which I referred to before and also the manual by Mr. Healy which is a well-known and respected Zoning manual for Massachusetts. That's the basis for our decision not to grant the appeal. That's all.

ATTORNEY JAMES RAFFERTY: Thank you very much.

* * * * *

(8:05 p.m.)

(Sitting Members Case No. BZA-008072-2015:
Constantine Alexander, Timothy Hughes,

Brendan Sullivan, Douglas Myers, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 008072, 54 Washburn Avenue.

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

GARY HOULE: Yes.

ATTORNEY DEBRA LEGETT: Debra Legett, D-e-b-r-a L-e-g-e-t-t, counsel for North Charles.

GARY HOULE: Gary Houle, H-o-u-l-e.

CONSTANTINE ALEXANDER: This is yet another appeal by an enforcement letter from Inspectional Services Department, am I right?

ATTORNEY DEBRA LEGETT: Correct.

CONSTANTINE ALEXANDER: The floor

is yours.

ATTORNEY DEBRA LEGETT: Some months ago beginning apparently in March of this year, North Charles applied for and obtained a Building Permit as well as a Certificate of Occupancy related to 54 Washburn Street.

CONSTANTINE ALEXANDER: This application, what did it identify the use of the premises for?

ATTORNEY DEBRA LEGETT: It identified the use of the premises in a myriad of ways --

CONSTANTINE ALEXANDER: No, no, no, it doesn't. There's three words: General office use. That's all it says in the application.

ATTORNEY DEBRA LEGETT: The application says Zone B.

CONSTANTINE ALEXANDER: No, no. I'm talking about -- and there's a -- I don't have the -- I can dig it out probably. But there is a space to be filled in as to what you're going to use the space for, and the space was listed general office use.

ATTORNEY DEBRA LEGETT: On the application for the permit?

GARY HOULE: For the permit or the Certificate of Occupancy?

CONSTANTINE ALEXANDER: Unless I'm hallucinating I remember reading that but let me see.

ATTORNEY DEBRA LEGETT: Application for a Building Permit is current use being proposed use B, Zone B.

CONSTANTINE ALEXANDER: You know, I marked it and it's not here.

SEAN O'GRADY: I'll look for you.

CONSTANTINE ALEXANDER: I think this is important so I'm going to take the time. There it is. Here is the application. It's a request for Certificate of Use and Occupancy. Right here.

ATTORNEY DEBRA LEGETT: Yes.

GARY HOULE: Right.

CONSTANTINE ALEXANDER: And right there it says "list occupancies." And on the first floor it was written "medical clinic" and it was scratched out and "general office" is written in. That's the first floor.

Second floor, same thing. "Medical clinic" was originally written in. Someone scratched it out and wrote in "general office."

ATTORNEY DEBRA LEGETT: Correct.

CONSTANTINE ALEXANDER: So you applied -- when you requested your Certificate of Occupancy, you were advising the City that these premises were going to be used for general office.

ATTORNEY DEBRA LEGETT: The Certificate -- the application was originally completed by the construction superintendent. He has signed here as the applicant. He originally filled this out.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY DEBRA LEGETT: As is explained in the statement related to this case. He was not given the Certificate of Occupancy. He did not have the fee with him. He did not have the owner's certificate with him. And the next day Mr. Houle went to Inspectional Services,

had a conversation with the Commissioner regarding the use, and following that conversation, including discussion of all of what North Charles does, the Commissioner advised Mr. Houle to change the permitted use from medical clinic to general office.

CONSTANTINE ALEXANDER: I think we may have a difference of opinion when the time comes for Mr. Singanayagam as to what he advised. Be that as it may, we can move on. The fact of the matter is at the end of the day it's your application and your client's application. And the application says general office use.

GARY HOULE: Right.

CONSTANTINE ALEXANDER: And how you got there is my view neither here nor there. You've told the City you're going

to use it for general office use.

ATTORNEY DEBRA LEGETT: And we contend that we are using it for general office use.

CONSTANTINE ALEXANDER: Okay. I want to hear why. How many doctors are occupying or other medical professionals?

ATTORNEY DEBRA LEGETT: Yeah, I can't answer that question.

CONSTANTINE ALEXANDER: He can. Well, no, wait a minute, how many?

GARY HOULE: Just one.

CONSTANTINE ALEXANDER: You only have one?

GARY HOULE: We have two physicians that probably work -- each of them works probably -- one works six hours a week and the other one is about eight hours a week.

CONSTANTINE ALEXANDER: And any nurses or any other paraprofessionals in the medical field?

GARY HOULE: And they're all counselors so that would be social workers, LMHCs, which is a licensed mental health counselor.

CONSTANTINE ALEXANDER: Okay.

GARY HOULE: And then just regular, just masses of other people.

CONSTANTINE ALEXANDER: How many employees do you have on the property generally, and of that number how many of those would fit in all these categories?

GARY HOULE: Probably, let's see, I'm backing out all of them. I'm trying to back out.

CONSTANTINE ALEXANDER: Just approximation. I'm not going to hold you

to it.

GARY HOULE: Backing out the administrative people. So probably about 15 out of probably about 27.

CONSTANTINE ALEXANDER: So a majority of the -- roughly, roughly a majority of the employees on the premises are people who perform some sort of professional services, either medical, counseling --

GARY HOULE: There's no medical so it's all counseling.

CONSTANTINE ALEXANDER: Are prescriptions written on the premises?

GARY HOULE: One of the doctors occasionally writes psychiatric medication.

CONSTANTINE ALEXANDER: All right. Isn't that practicing medicine?

GARY HOULE: I suppose it is.

CONSTANTINE ALEXANDER: Okay.

So the practice of medicine on the property. There's other counseling services. And you contend, which is basically the crux of your appeal, that all this falls within the rubric of general office? Do I get it right?

ATTORNEY DEBRA LEGETT: Yes.

CONSTANTINE ALEXANDER: Okay, keep going.

ATTORNEY DEBRA LEGETT: To the extent there are prescriptions being written on the premises, it is an ancillary use at best. It is minor compared to the majority of the use of the premises. The -- all of the members of ISD who interacted with North Charles were fully aware of the services that North

Charles offers.

It is grossly disclosed in the Variance that ISD was fully aware of and copied on many times.

ISD itself wrote in e-mails that the tenant is a mental health service provider. And ISD, with that information, issued that Building Permit and issued the occupancy.

CONSTANTINE ALEXANDER: Your issue of estoppel which we discussed in the last case. Even if that's true, and I'm not going to say it's not or it is. Even if it's true that doesn't mean if the city officials upon further examination or whatever have decided that the advice they gave earlier, which is informal advice, it's not for a permit, was not correct or should be revised. They have a right to

do that. You can't -- I'm not going to say to the City of Cambridge that once you've said something, the officials can't change their mind. They can't change it if they've granted an actual permit for something, but a permit for general office use. We go back to the notion is that are you using these premises for general office use or are you using it for something else? Because if it's something else, the legal non-conforming use, which applies to this property, was for general office use.

ATTORNEY DEBRA LEGETT: And it is our position --

CONSTANTINE ALEXANDER: I know that.

ATTORNEY DEBRA LEGETT: -- that ISD has already determined on two separate

occasions by issuing the Building Permit and by issuing the Occupancy Permit that they have made the determination that this use is general office use.

CONSTANTINE ALEXANDER: But they now have obviously, because the cease and desist letter, they have made a determination if they didn't before they're not making it any longer. Clearly that's right that's why you have a cease and desist letter.

ATTORNEY DEBRA LEGETT: I understand that that is why the cease and desist letter was issued. To the extent that the cease and desist letter suggests that there is something going on -- that was going on before and should not have been. What the cease and desist letter says is that drug counsel -- drug

rehabilitation and counseling services. I don't know what drug rehabilitation is under your Zoning Ordinance whatsoever. And as far as counseling services go, it was absolutely disclosed that there was counseling services and it was determined to be general office use.

CONSTANTINE ALEXANDER: Okay, we'll see about that.

In terms of, again, it's not so much -- I got to go back to the notion. It's not so much what those words mean. At the end of the day it's general office use. Does it -- and I think on the common sense interpretation of those words, would someone say the type of services that are provided on the premises by -- with 15 or a majority of the people or your employees on the premises performing services other

than clerical or what I would call general office services, whether that enables you to continue the legal non-conforming use. The Inspectional Services Department, presumably they'll have the chance to speak, that's why they looked at the application and they said it's got to be general office use. Now if they got an informal advice that what you want to do is within general office use, well, he may have changed his mind. He may not have had all the facts before him or he just may have been decided he was wrong. It could be any of the an above. But that doesn't stop Inspectional Services from therefore taking action to -- as they did, a cease and desist.

I think the only way you get there, seems to me, is you've got to convince

this Board is that what you do on these premises is general office use. As you can see from my questioning, and I'm going to shut up in a second, I'm very skeptical about that. That doesn't sound like to me a general office use in the common sense of the word.

ATTORNEY DEBRA LEGETT: I don't know that it needs to be in the common sense of the word. It needs to be only in the sense of how these ordinances are written. And there is no other use that this facility clearly falls under other than general office use.

GARY HOULE: From the state's perspective I think our licensing indicates that we're a general business use in the eyes of the state.

ATTORNEY DEBRA LEGETT: Absolutely

are.

CONSTANTINE ALEXANDER: Okay.

GARY HOULE: Non-medical.

CONSTANTINE ALEXANDER: Okay.

That's important. I appreciate that. I appreciate you telling us that.

GARY HOULE: And we're licensed under non-medical rules.

ATTORNEY DEBRA LEGETT: And they are considered a business use.

CONSTANTINE ALEXANDER: Okay.

GARY HOULE: And even the Variance I think on the left would indicate that the Architectural Access Board in ISD at the time agreed that we were non-medical use.

CONSTANTINE ALEXANDER: Okay.

GARY HOULE: On the Variance that was issued for the lift.

CONSTANTINE ALEXANDER: For the lift. That's the Architectural Board. That's not a Zoning Board.

GARY HOULE: By ISD participated in that entire application.

CONSTANTINE ALEXANDER: How was that?

ATTORNEY DEBRA LEGETT: They referred it to the Access Board. They were copied on all of the communications between the Access Board and --

CONSTANTINE ALEXANDER: But you're getting back to the estoppel notion. You keep going back they did this before and therefore they can't change their mind. That doesn't work in the municipal -- in any kind of governmental function. There's no notion of estoppel.

ATTORNEY DEBRA LEGETT: Putting

aside the notion of estoppel --

CONSTANTINE ALEXANDER: Right.

ATTORNEY DEBRA LEGETT: -- the point being that if there was a question about what it is that North Charles was or was not doing at that facility, then there was every opportunity for that to be explored, and it was not explored, because it was determined by ISD at the time that this fell into the category of general office use.

CONSTANTINE ALEXANDER: But even if I accept that, I'm saying to you is that ISD has a right to change its mind. And in fact, maybe has changed its mind. They can't change its mind then they're estopped. The notion of estoppel, as I said, that doesn't apply to governmental officials. The reason we have estoppel is

that there's a danger of this. There's a lot of verbal communications back and forth. There is no record maintained. No, no, no, there's no --

ATTORNEY DEBRA LEGETT: There's clearly a record here.

CONSTANTINE ALEXANDER: There's no transcript. At the end of the day there's an application that says we're going to use it for general office use.

GARY HOULE: But there was plans and there's prints and there were full working drawings, and I mean --

ATTORNEY DEBRA LEGETT: Every bit of this application was absolutely clear what this use was.

GARY HOULE: We clearly, in the application for the Variance, list -- went into great depth into what we did and why

we do it and why we needed the lift,
because we deal with handicapped folks.

CONSTANTINE ALEXANDER: Okay.

GARY HOULE: And there was, you know, we made some alterations actually at the request of ISD and Architectural Access Board on the exterior of the building because they didn't like the way the ramp was. That, you know, and in order to comply with even general business uses that we had to make changes to the handrails, to the ramp pitch, etcetera. And so there was a lot of -- I mean, there was extensive discussions about what needed to happen in order for us to be in the building. And I don't think that at any time anyone -- there was no attempt to hide what we were do -- absolutely --

CONSTANTINE ALEXANDER: That's not

a suggestion on my part.

GARY HOULE: There was absolutely no attempt to deceive anyone.

BRENDAN SULLIVAN: Well, there might have been a presentation at the time and then it's the use part after that time. It's the use time. The use of the facility after that CO. So there's a presentation of what we are, and to comply with the requirements of the Certificate of Occupancy, and then once we occupied the space, then apparently what the issue is then it's the use thereafter.

ATTORNEY DEBRA LEGETT: The use has not changed.

BRENDAN SULLIVAN: Are there any, are there any meds in the building at all?

GARY HOULE: None.

BRENDAN SULLIVAN: And so none are

distributed?

GARY HOULE: None.

BRENDAN SULLIVAN: Okay.

ATTORNEY DEBRA LEGETT: There is nothing going on in this building that was not fully disclosed within the application documents. There is no change of use from what was approved by ISD.

BRENDAN SULLIVAN: Which is just general office use?

ATTORNEY DEBRA LEGETT: General office use. And it is disclosed within the Variance application and acknowledged by ISD that the service is primarily a professional practice providing individual assessment and counseling.

BRENDAN SULLIVAN: Right, what I'm trying to say is that --

ATTORNEY DEBRA LEGETT: And that

is consistent with the previous use which was a professional use.

BRENDAN SULLIVAN: Right. But that was before, that was before the actual occupancy and daily routine of the building. All right? So that's one aspect of it. That's prior to.

GARY HOULE: Right.

BRENDAN SULLIVAN: And then you've got your CO and you occupy it. And I think the issue then that is before us is that it's that occupancy after the CO. The use of the building after. So that's what we're -- I'm trying to get at. I don't doubt or question your truthfulness in putting down on a document what you intended the building for. I don't doubt that at all. It's, you know, we may hear testimony that but what was intended, what

was applied for, is different than the normal because I don't think anybody from ISD has gone in on a daily basis and walked up and down to see exactly what was going on the modus operandi of the daily routine.

ATTORNEY DEBRA LEGETT: Well, we can tell you that there has been no change in use from what was disclosed.

BRENDAN SULLIVAN: All right.

ATTORNEY DEBRA LEGETT: Absolutely none.

DOUGLAS MYERS: What permits did you receive from the Inspectional Services?

ATTORNEY DEBRA LEGETT: Building Permit and a Certificate of Occupancy.

DOUGLAS MYERS: You didn't receive a Variance.

ATTORNEY DEBRA LEGETT: No.

GARY HOULE: Only for the lift.

CONSTANTINE ALEXANDER: And that was the Architectural Board.

DOUGLAS MYERS: And you didn't receive any Special Permits?

ATTORNEY DEBRA LEGETT: Correct. We were not requested to apply for Special Permits.

GARY HOULE: At the time -- yeah, we were not requested to apply.

CONSTANTINE ALEXANDER: To put it in context, this is in a residentially zoned district. And this is -- the structure a legal non-conforming use. And the legal non-conforming use for general offices. That was the legal non-conforming use. For someone to use a building -- continue to use a building

without seeking a Zoning Variance to operate a business in a residential district, they have to use, do a general office use. It's got to be consistent with what the earlier use of the building was.

DOUGLAS MYERS: In other words, if a medical use were sought, as a medical office, there would be additional permit requirement that would have to seek a Variance.

CONSTANTINE ALEXANDER: I believe so but that's not before us.

DOUGLAS MYERS: If social services or social counseling were required, they would have to seek a Special Permit.

CONSTANTINE ALEXANDER: That's the question before us.

TIMOTHY HUGHES: Why did this, why

was this building allowed to be a non-conforming use in the first place? Was it --

CONSTANTINE ALEXANDER: I assume because it was being used for general office before the area got zoned residential.

BRENDAN SULLIVAN: Pre-existing non-conforming use.

CONSTANTINE ALEXANDER: Right.

The appellant in this case is always free, should we deny their appeal, to come back with a Variance request and to allow this -- your current use in this residential district. Whether we would grant it that's another issue. Just like Live and Kicking, it looks like they're coming back before us, too. But I just wanted to point that out.

It's not necessarily, if we should deny your appeal, and I haven't said we're going to deny it, it doesn't necessarily mean the case is over yet. Just means round one is over.

Anyway, continue if you have anything more to say.

ATTORNEY DEBRA LEGETT: At this time I don't have any more to say.

CONSTANTINE ALEXANDER:
Mr. Singanayagam, do you want to comment?
It's up to you.

COMMISSIONER RANJIT SINGANAYAGAM:
For me to --

CONSTANTINE ALEXANDER: For the record.

COMMISSIONER RANJIT SINGANAYAGAM:
Ranjit Singanayagam, Inspectional Services
Cambridge.

The Building Permit was applied and in that there's a column or a row asking for existing use and proposed uses. I think the builder, whoever, applied B. B is indication that the Building Code and business use or not. So they put business use. There's no indication that the Building Permit application at all that there's going to be a change in use or different use.

So when it came to the Certificate of Occupancy, I know it's a Residence B pre-existing non-conforming. I told Mr. Houle that use only allowed as general office. He scratched office and put general office. He said fine, general office and use it. But later I got complaints that there are patients coming in and out. And so I found out it's more

like a, what do you call it? Social service like center, service center. So I said you may need a Special Permit if that's the case, because they do some services there. So that's what, that's triggered all this stuff.

And then later there are other uses maybe which I don't know, you know, in that building.

CONSTANTINE ALEXANDER: Okay.
Anything else you wish to add?

COMMISSIONER RANJIT SINGANAYAGAM:
No. On Zoning nobody indicated there was a Zoning change at the time of application.

CONSTANTINE ALEXANDER: Okay.

COMMISSIONER RANJIT SINGANAYAGAM:
And the access Board triggers it, too.

CONSTANTINE ALEXANDER: Okay.

Any members of the Board have any questions of Mr. Singanayagam?

(No Response.)

CONSTANTINE ALEXANDER: Thank you, Ranjit, unless you have anything more to add. Don't go away, though. You can sit back.

I'm going to open the matter up to public testimony. Is there anyone here wishing to be heard in this matter? How come I knew this?

Let me say just -- you'll all have your opportunity to speak. I would just ask that if someone, maybe you want to make a point and someone before you has made that point, please don't take our time up. We're not as stupid as we look. You may believe otherwise. And we get it. We get it the first time. We have

substantial amount of written communications in our file, too, which I'm not going to read, but I'm going to summarize at some point. So with that, by way of caveat, I'm going to open the flood gates. Sir, you go first.

IVAN TOFT: I'm Ivan Toft, T-o-f-t. I live right across the street. I was just going to say I think that part of why we are here, why we're here right now, is the charming trust of just the word of the authority of one person. People began asking what are you doing there, and he just says whatever he needs to say. And that's been happening tonight, too. The idea -- one of the sort of red herrings here is the idea if there are no drugs on the premises then there's no medical care going on. That's a

preposterous notion. The treatment of patients -- these are -- we watch them walking up the street. These are people who need help. We're very sympathetic to their treatment. We don't want to turn NC down. We have great admiration for the mission. But what we've been asserting from the beginning that this is an awful fit for this particular use of this particular site in that particular neighborhood. Not anywhere in Cambridge, but just right there. It's an awful fit. It's a safety hazard. And it's preposterous, the notion, that it's not a medical treatment with patients. We see them. They're patients. They think of themselves as patients. There's been some discussion that we're listening in on them. Well, gosh, we're right across the

street. You can't not hear the patients referring to themselves as patients, showing up for their treatment. This is a medical facility that's giving -- counseling is medical treatment. It's an antiquated notion that you have to have a pill or have your leg or put your arm in a cast to have medical treatment. This is treatment. Those are patients. That's a new use of the facility. It's not standard office use.

I wanted to add one more thing, but I'm getting to -- I'm sure my neighbors can make other points as well. That is the gravamen of this sort of case. It's new use. And him just saying over and over again that it's not, it's an office. Part of it is the procedures are opaque. We don't know what's going on in there.

We're not nosey. We're not going to go in. So all we have is his word. No, no, nothing's going on there. How do we know that's the case? We've been able to put together through research the personnel working there are many medical staff. When they advertise for new people, they advertise for medical staff. People who can treat patients. Okay? And as I said, again, just from being on the street these people think of themselves being patients being treated at the facility.

I'll leave that for others to comment.

CONSTANTINE ALEXANDER: Ma'am, you seem to be very anxious so you can go next.

RACHEL RUBIN: I do, I want to as a person --

CONSTANTINE ALEXANDER: Name and address for the stenographer.

RACHEL RUBIN: Rachel Rubin, R-u-b-i-n, 107 Mead Street. And as an academic who deals with languages, I just feel the need to say that language, that words mean different things in different contexts. So if somebody calls himself informally a patient, that is not the same as the legal definition of the word or the way it will be used at event like this and sort of we know this, right? We can all think of words that we use one way means something else literally. Or that our kids say it literally when they don't mean literally. And I say literally when I say literally. We can't muddy that up here. Right? We can't say somebody walking down the street said the word patient and,

therefore, it applies in a legal sense.
That's just dangerously sloppy.

CONSTANTINE ALEXANDER: The issue before us is what they're doing on this premises is a general office use. Which is the only --

RACHEL RUBIN: Right.

CONSTANTINE ALEXANDER: What is your position on that?

RACHEL RUBIN: That is it is a general office use.

CONSTANTINE ALEXANDER: Thank you.
Ma'am.

ANTJE DANIELSON: Antaje Danielson, A-n-t-j-e D-a-n-i-e-l-s-o-n. I live and own 55 Washburn Avenue. I'm a direct abutter. I would like to mention two things:

We had a neighborhood meeting that

was called by Mr. Houle and attended by a lot of neighbors and quite a number of City Councillors about a week and a half ago, and the staff of NCI came to this meeting and introduced themselves, except for the legal advice here, as medical staff. They all emphasized that they had an affiliation with Harvard Medical School. I believe two of the people there were psychiatrists, one of them was a nurse, and plus Mr. Houle, all four of them said that they had an affiliation with Harvard Medical School. I believe there is research -- oh, they also say that NCI operates in collaboration with Harvard Medical School which makes me believe -- I'm also affiliated with the medical school, that this, this facility is actually performing research in

collaboration with Harvard Medical School.
So I think the notion that this is not a
medical facility is preposterous.

CONSTANTINE ALEXANDER: And,
therefore, your conclusion is that this is
not a general office use?

ANTJE DANIELSON: That is not a
general office use and it's not the right
use for a facility or for a space in
Residential B Zoning neighborhood.

CONSTANTINE ALEXANDER: Thank you.
You seem the next most anxious person. Go
ahead.

JEFF MELNICK: My name is Jeff
Melnick, M-e-l-n-i-c-k. I live on Mead
Street. I've lived in North Cambridge for
18 years. I want to speak in support of
this facility as using it, using the
property in exactly the way that they

applied to be using the property. The notion that anybody who's affiliated with a medical school or other kind of medical establishment is ipso facto a medical person is I think is illogical and shouldn't be in this conversation. There are lots of people who work at medical schools who are not medical professionals. There are physical therapists, there's occupational therapists, and a lot of people. We happen to be in the middle of an opioid crisis in Massachusetts right now. We need to have treatment centers in as many places as possible. They can't all be in Central Square. City Councillor Marc McGovern was at the meeting that was called by the North Cambridge Stabilization Committee spoke very eloquently to exactly that point, which is

to say of course Central Square is zoned differently than Washburn Avenue in North Cambridge, but we need to be more creative about where treatment facilities are. I have every confidence that the Board is going to think very carefully about what a general office building can do and should be doing especially in this moment of crisis that we're living in right now.

CONSTANTINE ALEXANDER: Let me make a comment on that. Clearly this type of facility is a classic NIMBY situation, not in my backyard. No one wants to have, I think it's fair to say, most people don't want to have this type of facility in their neighborhood. Okay?

But the issue here is a zoning issue. The city of Cambridge has adopted a Zoning Ordinance, and they said certain

things can be done in certain districts. And in this district where Washburn Avenue is, is only residential. Now, there is a legal non-conforming use, because this building was used for non-residential purposes before the Zoning got changed to make it residential. But it was used for general office purposes. And, therefore, under -- as a matter -- simple matter of law, can only be continued -- the only use without a Variance anyway, you can always get a Variance, try to get one. Is for this to be a general office use. Your view is, I take it, what they do in this facility sits within the number of general office use?

JEFF MELNICK: Absolutely. I've been reading the all the materials, there's no evidence that any medical

procedures are being done on the premises. There's no evidence that we would call medical practices taking place on these grounds.

I just also want to say since you're the one that said NIMBY. That I live in this neighborhood, it's in my backyard, and I do want my children to know about it. I want them to know that we support this kind of outreach for people who are less fortunate and who are in need of this kind of help. And that's my neighborhood, that's my backyard. I don't live right on the street, but North Cambridge is not that big of a neighborhood and I welcome NCI to North Cambridge.

CONSTANTINE ALEXANDER: Thank you. Ma'am, I waived you off and I shouldn't have done that.

CINDY WEISBART: I appreciate that. I'm Cindy Weisbart, W-e-i-s-b-a-r-t. I live at 5 Tennyson Street, Somerville.

CONSTANTINE ALEXANDER: Is that the continuation of Washburn as it goes in Somerville?

CINDY WEISBART: No, no way. But I have concerns. As I've been looking things up to prepare for understanding this, I note that where I go for mental health counseling in Cambridge is Zoned for general office use. And my insurance pays for my time with my counselor.

CONSTANTINE ALEXANDER: Thank you. I've been going to this side of the room. Let me go to this side of the room.

BOB O'REILLY: Hi. My name is Bob O'Reilly. I live at 34 Washburn. A few

hundred feet from NCI. I was listening to what's being said, and I also looked at NCI's appeal paper that they filed with the Board today or earlier this week. One thing I keep coming away from some of these meetings that I've attended as well, is that North Charles wanted to hear that this was general office space. And when they heard it, they went great, and then they moved in. If they heard it was not gonna be classified as general office, perhaps this lawyer would have been in Ranjit's office a long time ago. That's just kind of my opinion on this.

But I also looked at some of the other things in their documents, and one thing I found particularly -- well, a couple of things. But one, there were very few people in the community notified

about this coming in. They can make all the statements they want that they flyered the neighborhood. I work at home. I work out of my house. My wife works out of the house. We're there a lot. I did not receive a flyer from them. And I only know a couple of people who did because I've asked a lot of folks. So they might think they did it, they didn't do a good job, not at all.

I also find that they, you know, it's hard for me to believe that they don't consider what they're doing medical. They are counseling people who have serious, serious problems and who need our help. And counseling is a form of medical service. My health insurance pays for counseling. I know that in the lexicographer's world that might not, you

know, I might not be slicing up the word the way it should be, but I consider it medical. I'm not a professional.

CONSTANTINE ALEXANDER: I don't mean to interrupt you. Let me make one comment. We usually hear -- I want to be clear about it. We get the debate whether it's medical or not. That's really not the issue. The issue is whether it's general office.

BOB O'REILLY: Okay.

CONSTANTINE ALEXANDER: If it's not general office, they can't do it whether it's medical or --

BOB O'REILLY: Gotcha.

CONSTANTINE ALEXANDER: -- garbage collection, whatever.

BOB O'REILLY: I've lived on the street since August 2001, and there have

been several other businesses occupying that building over the years. One was like a plumbing supply company, or I'm not even sure. I think it was plumbing.

There was a toy company there for a little while. There was then most recently a phone technology company, and they had 80 or so people working there. And those people rolled in, you know, like most people do, tech people, they came in, kind of worked a little later or started earlier, different crowd perhaps, but they were there nine to five basically. They did not have a couple of waves of clients, of patients approaching the building a couple different times during the day. They were a general business. The guy showed up around nine o'clock, went home around five o'clock. It's different.

I think another thing they said in there was that, you know, most of our complaints are related to the behavior of their clients as they leave or enter the building, and those complaints only exist because they, that this operation is going on there. I've talked to some of the folks out there. One of the guys asked me if he could pick tomatoes out of my front yard. I'm like, take them. I can't eat them fast enough, man, go ahead, have a couple. But there are -- and then there are the ones who can barely drive a car and they're going in and out of this place. Now I'm not the oldest person on the street, I'm 61, there are some of my older neighbors who would have a hard time getting out of the way of that sort of thing. And then there's the kids. We

have many, a good -- the neighborhood is cycling like they do. We have a lot of kids about yay big, and they do what kids do, they run around and make noise and do all that good stuff. I'm, you know, concerned about that. That these people may be impaired or maybe not -- maybe they shouldn't be driving whether they're impaired or not because they're unstable in some other ways, but I do think to me a general office is a place where people go to work most of the day and they don't see waves of clients coming in. And that's what I have to say.

Thank you.

CONSTANTINE ALEXANDER: Thank you.
Ma'am.

MONICA TOFT: Yeah, thank you.
Monica Toft, T-o-f-t. I'm at 63 Washburn

Avenue, a direct abutter. So just a couple of things, you know, adding to what my neighbors said. If you look at their 990, which is their non-profit statement that they have to give to the government each year, three-quarters of it their funding comes from patient fees and Medicare and Medicaid.

CONSTANTINE ALEXANDER: Does that mean they're not general office?

MONICA TOFT: I think that that indicates that they have patients coming in, they're predominantly business --

CONSTANTINE ALEXANDER: What about the issue of whether this is a general office use?

MONICA TOFT: To buttress that, if you look at the flow of traffic like Bob O'Reilly just said, Mr. Houle has told us

(inaudible) last week at the meeting there were 20 to 22 people who worked and now we know that the majority of them are medically trained staff. When they advertise for jobs they advertise under health services. And then the patients start arriving. They arrive between -- after seven a.m. the facility opens, some people go in very quickly. I think they're getting prescriptions and they're coming out. The counseling sessions start at eight. 15 to 20 people arrive for counseling sessions 10 to 11. They have a security guard. A security guard in a residential neighborhood is watching my house. And today I had to go to Aaron's house and he sat there and watched me. Why is there a security guard if normal office use? Because some of the

patients coming are a little bit unnerving. They're intoxicated. They're high. We've noticed some packages missing from front porches. I have reports from the Cambridge Police Department. These are -- this is not neighborly kind of behavior that we're witnessing in the -- it's not general office use.

So Mr. Houle revealed in a Cambridge Chronicle that 15 to 20 patients come for each counseling session. Do you understand that's a turn over of 30 to 40 patients every hour during rush hours. Eight to ten, that is not normal office use. And by the way, that gets repeated again in the evenings. I'm trying to get home from work, my children are going to school, 40 people, 40 cars up and down the street. People walking. And that's in

addition to the 22 staff who are there. This is a parking lot that holds 30 people. Can you imagine the traffic jams on our street? It is a nightmare. When Thinking Phones was there, normal office use, they would arrive, the cars would sit, and then they would leave. And it was sort of a trickle out between five in the afternoon and seven in the evening, and a trickle in in the morning from seven to nine. This is nonstop. And it's particularly bad on Tuesdays, Wednesdays -- Tuesday, Wednesday, Thursday. We've noticed Mondays and Fridays are a little quieter. And by the way, the staff do refer to them as patients and I think that that matters. There's more patients than there are, you know -- I don't see clients coming in

there or being served. So I'll stop there.

CONSTANTINE ALEXANDER: Thank you for taking the time, and to everyone else, for taking the time to come down and express your views in whichever way. It is helpful to the Board.

One second. Ma'am.

HEIKE SCHOTTEN: Hi. My name is Heike, H-e-i-k-e. Last name is spelled S-c-h-o-t-t-e-n. I live at 8 King Street. I've lived there for the last eight years. I'm definitely not a legal expert or a medical expert so I can't offer an anecdote, but when I go to therapy and albeit not in Cambridge, Brookline, right. And it is covered by insurance it's true. When I file the claims, they ask me where the therapeutic treatment took place and

there's a drop down menu of lists of all the places: A hospital, a clinic.

There's like a million options. And one of the options is office. Which is always what I pick because that's where I go. I go to my therapist office and she has an office with all these people with offices and that's where they work. And I wish that my insurance company had general use interpretation of medical as these people are screened, because I get cut off after my sessions for 13 of them because my therapy is not medically necessary.

Right? So I think we need to be -- just the fact that, I mean according to my insurance company, I count as a patient and then I'm, I'm being seen in an office doesn't necessarily make what's happening --

CONSTANTINE ALEXANDER: Are you going to address the issue of whether this is general office use or not?

HEIKE SCHOTTEN: I go and see a therapist who works in an office, and I get apparently therapeutic treatment that is not medically necessary in an office. So it seems to me, not being a medical expert or a legal expert, not knowing Cambridge law, it seems like therapists work in offices. And that's where they dispense treatment.

CONSTANTINE ALEXANDER: Thank you very much.

HEIKE SCHOTTEN: The only thing I just would say about security guards, there are security guards in schools. There are security guards in shops. There are security guards in places where people

live.

MONICA TOFT: Not in residential areas.

HEIKE SCHOTTEN: And someone who didn't grow up in this region I find most people in Boston to be terrifying drivers.

CONSTANTINE ALEXANDER: That's one issue I won't quarrel with you about.

Yes, sir. Bob. I don't remember your last name. I know your first name is Bob.

RICHARD CLAREY: Richard Clarey. I have trouble remembering my last name, also.

I don't want to be redundant.

CONSTANTINE ALEXANDER: Please don't be redundant.

RICHARD CLAREY: I'm the outgoing Chairman of the Cambridge North Cambridge

Stabilization Committee.

MICHAEL BRANDON: Name and address.

RICHARD CLAREY: 15 Brookford Street, Cambridge. And Mr. Melnick referred to a meeting we held. We held that meeting without the benefit of the applicant attending because the applicant repeatedly refused to attend our meeting, which is always a flashing light in our view and declined to answer questions that I was interested in since such as where did they get the approval for what they were doing? And so --

CONSTANTINE ALEXANDER: What decision did the North Cambridge Stabilization Committee reach, if they did reach, with regard to tonight's case? Are you in favor of the granting the appeal or

denying it?

RICHARD CLAREY: Well, it seemed obvious to everyone in attendance that this was not -- this use was not what they represented to the city.

CONSTANTINE ALEXANDER: Okay.

RICHARD CLAREY: And so they left us on our own as to what they thought they were. And as a result, we went to the Somerville Inspectional Services to see what they told the City of Somerville they were, because they were in Somerville until a few days ago. June 1st I guess or sometime in June. So what they told the Somerville Inspectional Service they were is a detox facility and a drug treatment facility. They didn't tell the City of Somerville that they were a general office use.

CONSTANTINE ALEXANDER: Thank you.

RICHARD CLAREY: And so that seemed somewhat telling to me giving the considerable experience that these applicants have and the places of business they have in many communities, they were not naive when it came to knowing what they should do. And I'd like to introduce this statement from the Somerville Inspectional.

CONSTANTINE ALEXANDER: It's not a statement. It's a copy of Certificate of Inspection.

RICHARD CLAREY: 2013 and it expires this month I believe.

CONSTANTINE ALEXANDER: You want to see it?

RICHARD CLAREY: So I believe everyone has concluded that they are not a

general office.

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

SHANE STEFFENS: I'll be brief.

CONSTANTINE ALEXANDER: Please.

SHANE STEFFENS: Shane Steffens
S-t-e-f-f-e-n-s. And it's 81 Yorktown
Street in Somerville. I'm a direct
abutter and I would just basically say
that this is what Zoning is all about, is
to give a community a chance to weigh in
when something different is coming into a
community, and I think the fact that it
just didn't happen is what's created all
the fervor. So I would say it's not
general office use. And that was the
point of the Zoning in the first place,
was to give people a chance to meet and

talk about what's happening in their communities.

Thank you.

CONSTANTINE ALEXANDER: Thank you, too.

AARON BRATHWAITE: Aaron Brathwaite, 61 Washburn Avenue, B-r-a-t-h-w-a-i-t-e. I've been living on the street for 68 years. I've seen all the offices that have been on that facility, and what they used to do, how it was -- the building was planned for community people to go and work. You would see Mrs. Jones who works in the place, I would see her son at school, different things like that. What I want to say there is a -- the new coordinate drug that helps people who OD on heroin and I want to know is that on the premises

of their establishment? Because you have to be certified to apply it. Either be a first responder, as a police officer or a firefighter or a medical person. And I don't see this being a good fit for our neighborhood. I don't know if other people have spoken for it. They -- young people -- I've been a sheriff, I was a sheriff at Norfolk, Virginia, for eight years and I know how the communities will evolve when they first had a mental health place or a drug rehabilitation place. I saw it evolve. Starts off small and then it starts rolling like a snowball. And I used to have to deal with these people in the jail and I don't think this was -- as I see the same type of -- I don't -- what I want to say the same type. There are people who need mental health. There are

some people who need -- they're heroin addicts, they need to be serviced, too. But in this particular area, it doesn't work and that's all I could say.

CONSTANTINE ALEXANDER: James.

JAMES WILLIAMSON: My name is James Williamson, 1000 Jackson Place in North Cambridge. And I went to the meeting, a portion of the meeting that Dick Clarey mentioned and heard a lot of stories from neighbors who were, you know, suddenly having to deal with a lot of serious sounding problems. I didn't experience it myself. On the other hand, as a recovering alcoholic myself, you know, for many years now, I have considerable sympathy for the idea that people in our community need places where they can get help. The key question to me

that I have sitting here listening to the discussion in the back and forth gets back to what, Constantine, you said which is this or is this not general office? I think there are concerns about what might have been done better earlier on in this process and the concerns that neighbors had about consultation and participating in neighborhood meetings. But is there more to the definition of general office that you all are working with than just those two words general office?

CONSTANTINE ALEXANDER: There's nothing in the Zoning Ordinance that defines or elaborates on it.

JAMES WILLIAMSON: There we are.

CONSTANTINE ALEXANDER: I think we're back to the, I think, common usage of the word or common understanding of

what the word means.

JAMES WILLIAMSON: So I don't have an answer to that.

TIMOTHY HUGHES: But there is stuff in the Zoning Ordinance, I will point out, that defines medical facilities and a mental health facility specific from general office use.

JAMES WILLIAMSON: Oh, really? That's pretty meaningful seemingly.

TIMOTHY HUGHES: I was just reading it. Social service facilities. I'll call it social service facility.

CONSTANTINE ALEXANDER: Anyone else wish to be heard? How come I knew you were going to be last.

MICHAEL BRANDON: Mr. Chairman, I go last so I hear --

MONICA TOFT: Can I make one more

point?

TIMOTHY HUGHES: I would rather she didn't speak again. She already had her turn.

CONSTANTINE ALEXANDER: I can't believe that you will say something that we haven't heard already. I'm sorry, so thank you. You had your chance.

MICHAEL BRANDON: So, Mr. Chair, that's why I go last so I won't be tempted to --

CONSTANTINE ALEXANDER: I think you have other reasons to go last.

MICHAEL BRANDON: My name is Michael Brandon, B-r-a-n-d-o-n. I live at 27 Seven Pines Avenue and I'm the clerk for the North Cambridge Stabilization Committee, and we have been trying to help resolve this problem since we became aware

of it. And unfortunately Mr. Houle decided to have a separate meeting rather than come to ours. And Ranjit and the City Manager and the City Solicitor all attended, so they are aware of his description of what happened. I'm a little -- I thank the Chairman for pointing out the estoppel issue. The legal arguments seem to be blaming the City for this predicament that they're in and I don't think that's the case and it's unfair. You mentioned NIMBY. I just want the Board to understand, without going into it, yes, this kind of facility, you know, usually nobody wants it in their backyard, however, North Cambridge, our community, has always welcomed and we're quite aware of the opioid crisis. We all have family members and friends who have

been hurt by it, and we want people to get help, but the point is that this is not a general office where they can get that kind of help. It's a medical clinic.

There are residential facilities in North Cambridge, several I think near Porter Square, where recovering patients can live and that is an appropriate use where it's not tons of people and constant traffic in and out. So, that, you know, that people appreciate the mission and that's why

I -- our group and all the neighbors I've heard from have offered to try to help NCI to find a better location, perhaps get some help from the city in affording a new fit out somewhere else where it does make sense. Also even on Mass. Ave., very near this we have the Marino Medical Center which provides treatment facilities. We

have several office buildings that have multiple psychotherapists and acupuncturists and other healthcare providers in them and those seem to work out okay. But that's not in a Residence B Zone which only allows, as you know, a low density residential use. And in this particular location, because it was grandfathered, general offices.

So I think that your narrowing the question is good. And a little bit broader question is is this an office use under the Ordinance or is it an institutional use? And if you read through those sections of Article 4, the Use Table, you'll see that clearly this is an institutional use. It's a health facility use.

Now there are various categories

there -- under office the only possible argument that this might fit is that you can have, like, a physician's office or a dentist office under some circumstances, but it doesn't, you know, talk about group facilities or -- there's actually an exam room in the facility, but it's associated with this broader thing.

So I would ask if there's any question, that the Board read the definition in the definitions section for a clinic, for community center, for social service center. Those three categories all might encompass the counseling service that NCI offers. But if you drill down and then look at the Use Table, I think you have to conclude that this falls under the rubric of institutional use Section 4.33 and then it's either -- so it's not

any kind of office, general or otherwise. But it's an institutional use as either a healthcare facility, that Section D of 4.33 or social service facility, that's Section E. In my view it falls under No. 5 under the healthcare facility, a clinic affiliated with a hospital or accredited university medical school. And there's clear evidence in the record that that's what they are or what their letterhead calls themselves that. Perhaps not clinic in their terminology. But a clinic in the definitions of the Cambridge Zoning Ordinance is an institutional licensed under Chapter 111, Section 51 for the purpose of providing medical, surgical, dental, or restorative or mental hygiene services to persons not residing therein. So I would argue that this is clearly a

clinic and that it's a medical clinic.

And that if they do, when the Board I am sure will uphold the interpretation that this is not an office, and then they do have the option of appealing your decision which would be a further waste of their legal funds which could be better used to serving their mission, or -- and they can apply for a Variance. But the standards for that are very high. They have no real hardship here.

CONSTANTINE ALEXANDER: We're not going to discuss or decide the Variance case.

MICHAEL BRANDON: Okay, right.

CONSTANTINE ALEXANDER: That's not relevant.

MICHAEL BRANDON: That's right.
On the question before you that's clear.

To the extent that they claim that the City knew what was going on in advance, I'd also point -- I'd just point out that if you take a look at Article 9, Section 23 of the Ordinance, that has to do with Certificates of Occupancy. And in fact, what they failed to do, as they are required to do, was to apply and indicate there what use category they intended to use this for. I gather the Building Permit application, which I haven't seen, just talks about renovating interior spaces. What the Ordinance requires is that in cases where a Building Permit is required as CO shall be applied for at the time of application for a Building Permit.

CONSTANTINE ALEXANDER: They did apply for one. They did apply. That's the point I made many minutes ago, the

fact of the matter is they did and they listed --

MICHAEL BRANDON: At the time they applied for the Building Permit. You're saying they applied for a --

CONSTANTINE ALEXANDER: They got a Certificate of Occupancy from ISD. And ISD has since decided that it shouldn't be granted.

MICHAEL BRANDON: Well, you're missing my point, Mr. Chairman.

CONSTANTINE ALEXANDER: Okay.

MICHAEL BRANDON: They didn't, as far as I can tell, because they came in at the last minute and said medical facility.

CONSTANTINE ALEXANDER: No, the other way around. The other way around. They filled out originally medical, and then someone crossed it out and wrote

in --

MICHAEL BRANDON: I know that.
I'm talking about the timing they applied
for the occupancy --

CONSTANTINE ALEXANDER: What's the
relevance of this, Mr. Brandon? Let's
go --

MICHAEL BRANDON: They're blaming
the City for the changing --

CONSTANTINE ALEXANDER: We're
passed that.

TIMOTHY HUGHES: We understand
that.

CONSTANTINE ALEXANDER: I've
indicated it's not the City's blame or
lack of blame is not the issue here. It's
very narrow, very simple, very direct, is
this a general office use?

MICHAEL BRANDON: All I ask is for

the record Section 9.23 required them to apply before they spent all -- got the Building Permit. They waited until afterwards and then revealed that they wanted to be a medical clinic. Ranjit said no, and then it happened. So they created their own situation and I hope that they will rethink it and work with the neighborhood to move to a better location, to a legal location, and an appropriate location.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY DEBRA LEGETT: May I add one clarification?

CONSTANTINE ALEXANDER: Let me see.

You spoke once before, Ma'am. You have anything new and compelling you have

to bring to our attention?

CINDY WEISBART: And short.

CONSTANTINE ALEXANDER: That's even better.

THE STENOGRAPHER: Your name again, please?

CINDY WEISBART: Cindy Weisbart.

I want to honor your focus on the definition of general office use rather than anything else in this discussion, and second I want to bring to your -- as you're thinking to be cognizant of the discussion of these people and if that affects your thoughts about the general use of the word.

CONSTANTINE ALEXANDER: I'm sorry, repeat that. I didn't get it.

CINDY WEISBART: The phrase "these people" and their impact on the

neighborhood. "These people." So that's a phrase that stuck in my ears that --

CONSTANTINE ALEXANDER: "These people," that phrase has been used and that's not relevant to our decision in any way. At least in my opinion. It's not going to influence my decision that's all I can say.

CINDY WEISBART: Thank you.

CONSTANTINE ALEXANDER: Anyone else wish to be heard?

HEATHER HOFFMAN: Heather Hoffman, 213 Hurley Street and I have one small question. Which is when you have a pre-existing non-conforming use, how much intensification is allowed before you say that it's no longer a continuation of the use? And I don't know the answer to that.

CONSTANTINE ALEXANDER: And I

will -- I don't know -- I'm not going to give you an answer tonight. We decide these cases on a case-by-case basis and we'll deal with it when the case comes up.

I'm going to end public testimony because Mr. Hughes is kicking me under the table.

BRENDAN SULLIVAN: I just have one question.

CONSTANTINE ALEXANDER: Go ahead.

BRENDAN SULLIVAN: Maybe a couple.

CONSTANTINE ALEXANDER: Questions are fine.

BRENDAN SULLIVAN: What are the hours of operation?

GARY HOULE: Generally speaking it's about seven-thirty until about seven at night, but only three days a week is at seven at night.

BRENDAN SULLIVAN: So seven a.m., seven p.m., three days a week?

GARY HOULE: And it's seven a.m. five days a week. And Friday --

BRENDAN SULLIVAN: I'm sorry, seven a.m. to?

GARY HOULE: Well, until about four or five. On Fridays we close -- well, Fridays there are no folks visiting after noontime. And we're not open on the weekends.

BRENDAN SULLIVAN: Okay.

ATTORNEY DEBRA LEGETT: Just a matter --

BRENDAN SULLIVAN: What time -- if you're open until seven p.m. and that's when the offices close?

GARY HOULE: Yes.

BRENDAN SULLIVAN: Everybody,

staff, clients, or I'm getting nervous about how to -- folks.

GARY HOULE: Yes.

BRENDAN SULLIVAN: They would clear up maybe a half hour or something like that, seven-thirty-ish I guess by the time they get through talking --

GARY HOULE: The cleaning guy is there. I mean....

BRENDAN SULLIVAN: Wrapping up.
Okay.

CONSTANTINE ALEXANDER: Any further questions, Brandon?

BRENDAN SULLIVAN: Do you have any other licenses that you're required to get or do you have any registration, professional organization nature or something?

ATTORNEY DEBRA LEGETT: To the

first point, that's actually what I wanted to follow up on. North Charles is not licensed under Chapter 111, Section 51 which is your definition of clinic. They do have licenses under other sections of Mass. General Law, and I don't know about professional affiliations.

GARY HOULE: Nothing.

Professional? Would that be like --

BRENDAN SULLIVAN: I don't know, if you belong to a registration that you're required or that you keep as some part of a, you know, organization or something like that.

DOUGLAS MYERS: Licensing bureau.

GARY HOULE: Well, the licensing comes from the Department of Public -- through the Department of Public Health. It's through chapter -- what did

I say?

ATTORNEY DEBRA LEGETT: Chapter --

GARY HOULE: It's 111. I don't want to talk out of -- there's three -- I want to say it's -- did I say BCE?

ATTORNEY DEBRA LEGETT: BCE?

BRENDAN SULLIVAN: So the Department of Public Health does --

GARY HOULE: Health, right. That's our licensure.

BRENDAN SULLIVAN: License to operate basically?

GARY HOULE: Yes.

BRENDAN SULLIVAN: Okay. Whatever that -- yes. That's immaterial. That's basically it. I was just trying to get a flavor as to -- okay.

GARY HOULE: And a lot of the licensing, just so you understand, too, is

a lot to do with the facility. In other words, a lot of it, to be honest with you, is a lot of ADA type stuff. You know, corridor widths. Bathrooms are handicapped. That's probably about 75 percent of the licensure is building related as much as it is --

ATTORNEY DEBRA LEGETT: Public access.

GARY HOULE: A lot of it is public access.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Okay, if it's going to be short and this is the last --

BILL BRATHWAITE: My name is Bill Brathwaite, B-r-a-t-h-w-a-i-t-e, 51 Washburn. My question is, is it the function of the Department of Public

Health to issue licenses to involve general business offices?

CONSTANTINE ALEXANDER: I don't have a clue. We have no expert here on the issue. Your question will go unanswered I'm afraid.

I'm going to close public testimony. For the record, we are in receipt of significant written communications. I am not going to read them. They're long. But I'm not going to read them into the record. I want to try to briefly summarize what we have. I mean, they're generally, if not entirely in opposition to the appeal. In other words, to deny the appeal.

We have a letter from a George Kitis K-i-t-i-s, who is from Stone River Properties on 720 Massachusetts Avenue.

He's in support of the decision of the Commissioner and I think he does it because -- well, anyway he's in support. He owns a number of properties in the city apparently.

We have a letter from Craig Kelley, the City Councillor who is opposed to the appeal.

We have a letter from -- I had George Kitis again. Two copies of it. And another one from Craig Kelley. These people want to be heard.

A letter from William -- and some of the people who have written letters you probably have spoken. I'm just going to mention names anyway. William Harnois, H-a-r-n-o-i-s who resides at 54 Washburn Avenue.

A letter from Aaron Brathwaite, 61

Washburn Avenue. And these are all letters in opposition to the appeal. In other words, they all are in support of the decision of the Commissioner.

A resident at 55 Washburn Avenue, opposed.

A letter from someone from at 81 Yorktown Street in Somerville, Mass. A Jessica Steffens. Actually she lives in Topsfield, Mass., and she is the owner of an abutting property which she leases out and she also is opposed.

We have something from Monica -- oh, you've already spoken. Monica and Ivan Toft, T-o-f-t opposed in great detail. Which I appreciate. I'm not being sarcastic. I mean just prevents me from reading it.

I'm sure I'm going to miss some. We

have copies of some police reports which were attached to a letter from maybe Ms. Toft but I'm not going to get into that. And I guess that's it. But as I said, it's very long and detailed these letters, and I think we've -- the message in these letters has really been conveyed to this Board tonight by oral testimony or oral comments in my judgment.

So I'm going to end the public testimony.

You now have an opportunity to make any final statements if you want, if you like to.

BRENDAN SULLIVAN: I'm sorry. The letter there from the Commissioner?

CONSTANTINE ALEXANDER: To Mr. Singanayagam?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Very brief. Here it is. Sorry.

MICHAEL BRANDON: Mr. Chairman, was there a letter from State Rep Rogers? I've seen one.

CONSTANTINE ALEXANDER: If it's there, I may have missed it. It's a very voluminous file. I don't remember one.

MICHAEL BRANDON: He expressed concerns. He lives in the neighborhood himself.

CONSTANTINE ALEXANDER: Okay.

MICHAEL BRANDON: Although he's --

CONSTANTINE ALEXANDER: If the letter is in here, it's part of the record.

MICHAEL BRANDON: Okay.

BRENDAN SULLIVAN: I'm sorry, Counselor, I didn't mean to interrupt.

ATTORNEY DEBRA LEGETT: That's quite all right.

At the risk of repeating myself, I do want to just sum up that in our view ISD has twice made a decision that what North Charles does is general office use and stood by that decision up until certain complaints started occurring. Those complaints do not change the fact of what it is that North Charles does or doesn't do at the premises. And in fact, North Charles is not doing anything at the premise that's not fully disclosed and what is not approved as general office use by ISD.

I appreciate that the neighbors are concerned and that they see it as a difference in use, but we, again, reiterate that ISD, up until complaints

were made, did not see it as a change of use and they determined it to be a general office use and we are asking this Board to uphold that determination notwithstanding that the neighbors are not pleased.

CONSTANTINE ALEXANDER: Thank you.

And that's it for all public testimony. I think it's time for us to deliberate. Take sometime to deliberate. I would be happy to go first but if anybody would like to speak.

TIMOTHY HUGHES: I'll go first.

CONSTANTINE ALEXANDER: Go ahead.

TIMOTHY HUGHES: I wish I could vote against the Commissioner on this one because by upholding the Commissioner's decision you're going to go through a Variance process and we're going to have to go through all over again with the same

group of people. And it's going to be acrimonious. It's going to be worst than just narrowing this focus to whether your use is expanded past general office use. It's really going to be the NIMBY thing. It's really going to be the people that don't want you in their neighborhood versus the people that do want you in their neighborhood and we're going to have to do this thing all over again. And I would rather be able to avoid that, but I can't in good conscious suggest that what you're doing in that space now is general office use so I am going to vote to uphold the Commissioner's decision and deny your appeal.

CONSTANTINE ALEXANDER: To deny the appeal.

TIMOTHY HUGHES: To deny the

appeal.

CONSTANTINE ALEXANDER: I have some views. Anyone else want to go?

JAMES MONTEVERDE: I would concur with Gus.

CONSTANTINE ALEXANDER: Tim.

JAMES MONTEVERDE: Tim, sorry. It's a valuable service. The community has to support it, find the right place for it, welcome it. I congratulate you for doing what you do, but in this definition, I couldn't agree to support what you're asking for.

DOUGLAS MYERS: My feeling is more of the same. I am, although you cling to it like a drowning person's clinging to a plank, I am completely unimpressed with the argument that since you disclosed your purposes to the City somehow there is a

course of dealing which binds the City and binds this Board into some determination that what you have -- that your present function is established as a general office. I completely am unpersuaded by that line of argument. And you applied for the status of a general office, that's what you have, that's what you're entitled to. Words have meanings. These legal categories have significance. If you had applied for a medical office, there was a different procedure. If you applied for a social service, there's a different procedure. I think the evidence is extremely strong tonight that however you slice it, professional services are being rendered in this office and that it is not compatible with the general understanding of a general office, insurance, a real

estate, computer repair, something that's of a general office retail services offered to the public. So on that basis I will vote to deny the appeal.

CONSTANTINE ALEXANDER: And I as well. And I'm not going to say any more than the other three members who preceded me said everything I would say.

And I would also underscore what Jim has said about -- and Tim, too, about the worthiness of what you're doing. It's not a matter of we have a problem with it. It's a question of does Zoning allow this to be happening in this neighborhood. That's the question before us and I can't be -- I'm not persuaded that this falls under the rubric of general office and therefore I would vote to deny the appeal as well.

You want to speak or not? It's up to you.

BRENDAN SULLIVAN: No, this was a little bit more difficult for me because the yardstick that we're measuring by is quite fluid, it's not well defined, ill defined, and so it's a little bit difficult for me to, you know, say yes to you and no to the Commissioner. It's also difficult to say yes to the Commissioner, he was correct. It's fluid. But I do think that the intensity is greatly increased from the prior use, and I think that the intensity in the impact is different than the prior use. And like Doug I think that your advocacy even though well done, misses the mark because they did not necessarily sanction your use, they sanctioned what you submitted

for that was really the gist of what you were saying; is that correct? They approved what you applied for but it was the action after that once occupancy started that is really the crux of what went on here. So I would -- it's difficult, but I would probably concur with the Commissioner's determination.

CONSTANTINE ALEXANDER: Thank you.

Well, since we've all spoken I think it's time for a motion. And, again, since this is an appeal, the motion will be in the form of whether we grant the appeal.

The Chair moves that we grant the appeal of the petitioner seeking to over -- reverse, if you will, the determination by the Commissioner regarding the use of these premises.

All those in favor of granting the

appeal or approving the appeal, please say "Aye."

(No Response.)

CONSTANTINE ALEXANDER: No one's in favor. Therefore, the motion does not carry. The appeal is denied.

I think for the record, I want to add that the Chair moves that the appeal has been denied because with respect to 54 Washburn Avenue, located in a residentially zoned district, a legal non-conforming use exists only with regard to general office use. The petitioner's activities at these premises do not constitute general office use.

The premises used by the petitioner in substantial part by medical professionals performing medical duties such as issuing prescriptions and offering

psychiatric care. These activities do not constitute general office use.

Does the Board concur with that?

That would be part as our record.

TIMOTHY HUGHES: Yes, sure.

JAMES MONTEVERDE: Yes.

CONSTANTINE ALEXANDER: Or add to it?

DOUGLAS MYERS: I would say the word "treatment facility" that's been used widely in relation to these offices or these premises as the business is itself a strong indication that it's not general office use.

CONSTANTINE ALEXANDER: Case over. Thank you very much.

GARY HOULE: Thank you.

CONSTANTINE ALEXANDER: Thank you all for coming down.

* * * * *

(9:25 p.m.)

(Sitting Members Case No. BZA-007892-2015:

Constantine Alexander, timothy Hughes,
Brendan Sullivan, Douglas Myers, Alison
Hammer.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 007892, 1335 Cambridge
Street, No. 1 and 2.

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

ATTORNEY JAMES FERRARO: Good
evening lady and gentlemen. James
Ferraro, attorney for Al Pacheco and his
son Paul Pacheco. And this is Jonathan
Casiola (phonetic).

CONSTANTINE ALEXANDER: You're
seeking a Variance to subdivide 1335?

ATTORNEY JAMES FERRARO: 1335 to 1334. Right. It's one building 1335 to 1334 Cambridge Street.

TIMOTHY HUGHES: 35 to 43 wouldn't it be? 1343. 1335 to 1343 I think is the property.

ATTORNEY JAMES FERRARO: Thank you for the correction, yes.

Yes, it is currently condoed into units 1, 2, and 3. And we're here with the Patels, the owners of the other units.

CONSTANTINE ALEXANDER: To move the case on. You want a Variance. You've got to demonstrate a substantial hardship. What's the substantial hardship that would allow us -- not allow us, but that we would conclude warrant granting a Variance particularly since if we grant a Variance we're going to create an awful lot of

non-conformity with these Zoning Laws in Cambridge. We're going to have two sub-sized lots at least. We're going to have other problems. And the only thing I can see in the papers that were submitted is that you can't get insurance, which I don't believe for a second.

ATTORNEY JAMES FERRARO: It's not that they can't get insurance. The owners have two different management styles. One is a user/owner/occupier and he has different ideas for the building, versus the other owners who have been renting it out to other parties. So their subdivision of their bills, with their water bills, management styles are separate apart. He wants to do one thing to the building that she's not necessarily in agreement with because her tenants

would take on those responsibilities where the tenants don't want to take on the responsibilities. So they're having trouble meeting eye to eye. He has plans to renovate the building, beautify the frontage and what not that they don't necessarily agree. If they had their separate ownership, then they move on with their plans.

To your other comment about creating other problems with the City. Right now the lot is pre-existing, non-conforming. It's built out to the line in all four directions. Nothing is going to change, but we're going to have a division down the middle of the building, where one side was their own ownership, the other two units will be their ownership and nothing else will change as far as the City's

concerned from the visual standpoint on Cambridge Street in the surrounding properties there will be no other impediments.

CONSTANTINE ALEXANDER: Okay.

That's your hardship is that you want to make -- you have a disagreement with your co-owners and you want to resolve that by dividing the baby in half?

ATTORNEY JAMES FERRARO: Exactly. They can do their own thing without input from the other person. No harm, no foul.

TIMOTHY HUGHES: This is more like two babies here. This is not a, you know, this is not cohesive building between the hardware store and the grocery store. You know what I mean?

ATTORNEY JAMES FERRARO: Yeah, I mean currently they are operating this is

Inman Square Hardware. They've been there for over 40 years. They've been a fixture in this part of Cambridge. They would like to remain that way.

On the other side they've had restaurants in there. And it's currently vacant. You know, so as far as it's been inequitable at this point. So a simple division would solve all the problems. They're amicable now but what happens in the future remains to be seen.

BRENDAN SULLIVAN: How long has it been common ownership?

ATTORNEY JAMES FERRARO: In what respect?

CONSTANTINE ALEXANDER: What you're trying to undo?

BRENDAN SULLIVAN: How long has it been this partnership?

ATTORNEY JAMES FERRARO: Well, he's owned -- the Pachecos have owned, yeah, for 40 years.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES FERRARO: They create -- you mean with the Patels?

BRENDAN SULLIVAN: Correct.

ALVARO PACHECO: We bought that years ago together.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Is it owned -- what's the form of ownership of the building? Is it tenants in common or is it a partnership?

ATTORNEY JAMES FERRARO:
Condominium.

CONSTANTINE ALEXANDER: It's condominium?

ATTORNEY JAMES FERRARO: Right.

CONSTANTINE ALEXANDER: Why doesn't a condominium allow each of you to do with your part of the premise you want to do?

ATTORNEY JAMES FERRARO: Because the condominium only allows you to do within your own parameter. The exterior of the building of the common areas are subject to the hole.

CONSTANTINE ALEXANDER: Yes.

And it's the exterior that you're looking to be able to modify? You could still run your -- I mean, in the condominium you could still run your hardware store there.

ALVARO PACHECO: Oh, that's fine. I mean I understand that. But what you say about the insurance you said you don't believe. The reason why -- when the

grocery store left two years ago, Arbella could not honor any more the policy because only 50 percent of the building was occupied. So oh, 50 percent, that's the other part is empty, we cannot longer give you insurance. That was at that time I was kind of upset because it's a hardware store, it has a lot of chemical stuff. So I started looking for it and I got it. I got another company. I don't even know what it is. If I remember the name, but for double of the money in other words. And of course I talked to Osha (phonetic) and they said, Al, I'm sorry, right now I'm trying to -- it's empty. You know, I got no income and this and that. And so the last two years I've been paying one policy for the whole building. That's what it comes to.

What I wanted to do was since it's empty now and since before somebody moves in, and I'm just going to be a good neighbor, bad neighbor. My goal is to separate somehow, I don't know how the law is going to do that, but I'm going to have my policy, she's going to have her policy, you know, for insurance wise.

DOUGLAS MYERS: Question: If we approve this, is this like a first step towards some other legal procedure? Meaning you follow by having deeds and dividing the property?

ATTORNEY JAMES FERRARO: Correct.

DOUGLAS MYERS: So that this is like a precondition --

ATTORNEY JAMES FERRARO: Yes.

DOUGLAS MYERS: -- to other things you want to do among yourselves?

ATTORNEY JAMES FERRARO: They would have to then terminate the condominium, put separate deeds on record, yes.

CONSTANTINE ALEXANDER: By the way, it would allow you or the owner of the other property to sell your building.

ATTORNEY JAMES FERRARO: Individually, yes.

CONSTANTINE ALEXANDER: Without having to go through the condominium.

ATTORNEY JAMES FERRARO: Correct.

CONSTANTINE ALEXANDER: That's what's at stake here.

ATTORNEY JAMES FERRARO: Correct. And then again, you're free to do -- like you said, without the terms of --

DOUGLAS MYERS: But that would happen by the deeds in the condominium

agreement, that doesn't happen.

CONSTANTINE ALEXANDER: No. If we grant them relief tonight --

DOUGLAS MYERS: Yes.

CONSTANTINE ALEXANDER: -- and they take -- follow up, the condominium will be dissolved and there will be like two separate lots.

ATTORNEY JAMES FERRARO: Correct.

CONSTANTINE ALEXANDER: The person can do with the lot that what they wish subject to the Zoning Laws.

DOUGLAS MYERS: I understand.

BRENDAN SULLIVAN: It would appear that for the benefit of the building, buildings, it's probably the way to go, otherwise the building, the streetscape, the public view, and everything like that is liable to suffer. So it may be more

helpful from an aesthetic point of view, from a marketing standpoint of view, from a maintenance standpoint of view, from everything and basically all it is is just a paper line on a piece of paper.

ATTORNEY JAMES FERRARO: That's exactly right.

BRENDAN SULLIVAN: I guess you know what is, even though you hate to see a squabble and that we being Judge Baker's guidance center here, but on the same token, it's what benefits the building, the property, and the general neighborhood.

ATTORNEY JAMES FERRARO: They wouldn't be looking for any other relief. We'll just put a firewall down the middle of the building where the division is and everything as far as the City of Cambridge

will look the same, act the same. They'll be happy to run their business the same.

DOUGLAS MYERS: And the other people?

ATTORNEY JAMES FERRARO: Oh, well the Patels are here now. As I said, her unit is vacant. They're looking for tenants now to rent. I guess whoever -- whatever business they want to put on there.

DOUGLAS MYERS: They will more or less be on their own?

ATTORNEY JAMES FERRARO: They'll be on their own.

BRENDAN SULLIVAN: One part of the property is incumbering the other half of the property. This will help to incumber it which can only be a benefit.

ATTORNEY JAMES FERRARO: He's been

there for 40 years in town, in the city.

ALVARO PACHECO: And they're there almost 30 years, too. They've been there for a long time, too, the Patels.

CONSTANTINE ALEXANDER: Further questions? Any further comments? Anything else you want to say?

ATTORNEY JAMES FERRARO: Unless you have anything more.

CONSTANTINE ALEXANDER: Any other questions that the gentleman can answer?

TIMOTHY HUGHES: No, I'm good with it.

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

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

(No Response.)

CONSTANTINE ALEXANDER: I guess

no.

We are in receipt of some correspondence. We have a letter from City Councillor Timothy Toomey. (Reading) I am writing to you in support of case, the case -- the applicant is applying to subdivide units 1 and 2 of 1335 Cambridge Street for the adjacent unit No. 3 so that it can be treated as separate parcels. I hope you find favor with this application and thank you for taking my comments under consideration.

We also have a letter from Janet M. Slemenda, S-l-e-m-e-n-d-a, who resides at 12 Oak Street. (Reading) This letter is in support of the request of the petitioner Alvaro Pacheco to subdivide 1335 Cambridge Street -- blah, blah, blah -- so they can be treated as separate

parcels. The petitioner Alvaro known in our neighborhood as Al, is a very nice man, a good neighbor, and runs an important small family business in Inman Square. And that's the sum and substance.

BRENDAN SULLIVAN: Did you do a proposed substitution plan?

ATTORNEY JAMES FERRARO: It's in the file, yes.

BRENDAN SULLIVAN: That's the proposed one?

ATTORNEY JAMES FERRARO: Yes. I don't see any variation from the proposed one.

CONSTANTINE ALEXANDER: I want to be sure if we grant relief, we've got to tie it to that plan. I want to make sure -- I know I did see it when I was looking at it.

BRENDAN SULLIVAN: There's two of them in there. One is an old one and the newest one would be rover survey which is dated 2013. Maybe November or something.

TIMOTHY HUGHES: Is that what you're looking at?

ATTORNEY JAMES FERRARO: The date. November 19, 2014. Yes. Do you want to see it?

TIMOTHY HUGHES: No, no, I've seen it. I just want to make sure we were referencing the right document.

DOUGLAS MYERS: I'll take a look.

CONSTANTINE ALEXANDER: Any other comments or questions?

ATTORNEY JAMES FERRARO: So if it will help if you're looking at Cambridge Street, here's Cambridge Street and the property line. Right from there is a

division right here. This division would -- the wall would come along this dark line here, turn 90 degrees here and then run down the property line right there.

CONSTANTINE ALEXANDER: That's different than this plan. It's the same as this one.

DOUGLAS MYERS: This is the line.

CONSTANTINE ALEXANDER: Oh, I see. I'm sorry. I'm mistaken. You're right.

ATTORNEY JAMES FERRARO: Are we good?

CONSTANTINE ALEXANDER: Yes. We're going to tie relief to the plans. My mistake.

DOUGLAS MYERS: Oh, I see. Not to get -- this other line here, this top line that I'm pointing to, that's a line of an

easement?

ATTORNEY JAMES FERRARO: Correct.

DOUGLAS MYERS: The one that has the hashmarks?

ATTORNEY JAMES FERRARO: Right.

ALISON HAMMER: I was just a little bit confused by the plans. Because usually it looks like the property line, the building encroaches on a different property.

ATTORNEY JAMES FERRARO: That's correct.

ALISON HAMMER: So that's not -- that is the property line or that isn't the property line?

ATTORNEY JAMES FERRARO: The dark line is the property line, the hashmark is the building.

ALISON HAMMER: Okay.

ATTORNEY JAMES FERRARO: So, yes, there is an encroachment. It's been constructed that way. It's been there since the beginning of time. None of that will change.

CONSTANTINE ALEXANDER: Are we ready for a motion?

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: We are. The Chair moves that we make the following findings with regard to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the petitioner is in a situation where he is -- doesn't have control over of the property of which he has a substantial investment in because of

the condominium nature -- because the property is now one unit, condominium unit and with different owners who don't want to proceed on the same basis that the petitioner wants to do.

That the hardship is owing to basically the shape of the structure. It is now one structure that given the way it's used, should really be two structures on two separate lots and allows each lot to be better developed or at least developed in consistent with the owner of that property, desires of the owner of that property.

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

Point of fact, the result if we grant relief, everything will look exactly the same as before. There would just be a firewall between the two properties.

And most likely the properties each separately can better be developed by their then owners than having it this one lockstep approach which doesn't work when you have two people and they don't agree with what to do with the piece of property.

So on the basis of all of these findings, the Chair moves that we grant a Variance to allow the property to be developed -- to be subdivided, I'm sorry, as set forth in a plan submitted by the petitioner. It's been initialled by the Chair. It's dated November 19, 2014.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Variance granted.

(Alexander, Hughes, Sullivan,
Myers, Hammer.)

* * * * *

(9:40 p.m.)

(Sitting Members Case No. BZA-007930-2015:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Douglas Myers, Jim
Monteverde.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 007930, 111 Grozier
Road. We've seen you before.

LAUREN HARDER: Yes. This case
was up earlier in the summer. Lauren
Harder, H-a-r-d-e-r at 111 Grozier Road.
I'm the petitioner today for a Special
Permit. This is a single-family home at
the end of a dead end street. The -- in
the -- I'm seeking relief to alter windows
on the north face of the building.
Specifically this application came to you
in May to change windows on the first

floor and lower level and also enclose a porch, Special Permit. In the course of renovations we made a decision to change the windows on the first floor.

CONSTANTINE ALEXANDER: Why?

LAUREN HARDER: So they're slightly different.

CONSTANTINE ALEXANDER: Why?

LAUREN HARDER: Because I relocated the kitchen, the location of the kitchen. So the windows that were kitchen height on one side of the building now became full size and vice versa on the other side.

CONSTANTINE ALEXANDER: Okay.

LAUREN HARDER: I also moved two windows closer together for a floor plan change below. So the, you know, the building itself is close to the lot line

which is why we're seeking a Special Permit.

There's an open field next to the house, so that's one of the reasons we're putting the windows in is to have a view onto that field. There are no abutters there currently.

CONSTANTINE ALEXANDER: That's it.

LAUREN HARDER: That's it. That's all I have.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIMOTHY HUGHES: No, I'm ready for a vote.

CONSTANTINE ALEXANDER: We have to make sure that we have public testimony.

TIMOTHY HUGHES: I know, I know.

CONSTANTINE ALEXANDER: Is there anyone here wishing to be heard on this

matter?

(No Response.)

TIMOTHY HUGHES: Now I'm ready.

CONSTANTINE ALEXANDER: I have to make sure we go through the drill.

DOUGLAS MYERS: When you say no abutters currently, are you aware of any plans of constructions or development of that field?

LAUREN HARDER: Of that field?
No, I'm not aware of any.

CONSTANTINE ALEXANDER: The Chair would report we are in receipt of a letter from Natalie and Andrew Beaumont, B-e-a-u-m-o-n-t-Smith who reside at 109 Grozier Road. So they're obviously an abutter. (Reading) We do not have any objection to the separate request for allowing the windows to be added within

the setback on the property at 111 Grozier Road. We fully support their proposal and look forward to welcoming them to our neighborhood.

And that's all we have.

I'm closing public testimony. I think Mr. Hughes wants us to move to a vote. Is that right?

TIMOTHY HUGHES: I'm not the only one on the Board.

CONSTANTINE ALEXANDER: Any comments or we ready for a vote seriously?

TIMOTHY HUGHES: I'm seriously ready for a vote.

JAMES MONTEVERDE: I'm ready.

BRENDAN SULLIVAN: A serious vote.

CONSTANTINE ALEXANDER: Okay, this is a Special Permit case. So the Chair -- because it's a basically windows

in a setback, prohibited setback.

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

That the requirements of the Ordinance are such that the petitioner can only proceed with the relocation of windows with a Special Permit.

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

That the continued operation or development of adjacent uses will not be adversely affected by what is proposed. In this regard the Chair would note that

we do have a note from most affected abutter, and letter is in support of what relief is being sought.

And that no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the structure, 111 Grozier, or the citizens of the city.

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

The Chair would note that this project has already been approved by our Board and this is basically, if you will, a tweak, one that requires further Zoning relief but a tweak. So the findings we made before, the bigger findings allowing

this renovation to go forward, really apply here as well.

So on the basis of all of these findings, the Chair moves that we grant the Special Permit being sought on the condition that the work proceed in accordance with a set of plans submitted by the petitioner. They are prepared by Boyes-Watson Architects and they're multiple pages, and each page of which has been initialed by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Myers, Monteverde.)

* * * * *

(9:45 p.m.)

(Sitting Members Case No. BZA-007947-2015:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Douglas Myers, Jim
Monteverde.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 007947, 309 Pearl
Street.

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

SAM BATCHELOR: Hello. Shall I

start?

CONSTANTINE ALEXANDER: Sorry?

SAM BATCHELOR: Do I start or do you?

CONSTANTINE ALEXANDER: You start. We'll give you a hard time afterwards. You start.

BRENDAN SULLIVAN: Introduce yourself, name and address.

SAM BATCHELOR: Sure. My name is Sam Batchelor. That's B-a-t-c-h-e-l-o-r. I'm the owner at 309 Pearl Street. And we've recently -- just from my parents who, my parents owned the house for the previous 35 years. I was born in the house and we've been there for a long time. We are applying for a Variance to add a roof deck to the top of the second floor which is an existing flat roof.

The -- we're also seeking to add a deck off the second floor in order to access that roof deck. The lower deck and the upper deck both exceed a little bit into the setback, and in order to access the roof from any of the common areas, we need to be able to access it that way due to the existing inconformities of the lot.

CONSTANTINE ALEXANDER: To grant a Variance, as you may or may not know, we have to find that there's a substantial hardship that justifies the granting -- that's one of the standards of granting the Variance. What is the hardship that requires you to have these two decks?

SAM BATCHELOR: The hardship is the non-conformity of the lot makes it very difficult to do anything to the

house. And so we're hoping that
the -- this is a very modest addition
that --

CONSTANTINE ALEXANDER: It's a
very large deck. One of the decks is
quite large. It's a very large room. And
it's a dense neighborhood. So I'm
very -- I'm personally very troubled by
either -- the problem with decks is always
the issue of privacy and sometimes safety.
But mostly privacy for your neighbors.

SAM BATCHELOR: Right. We do
have, and you should have received a
letter of support from our neighbor.

CONSTANTINE ALEXANDER: We'll get
there. With conditions.

SAM BATCHELOR: Yes.

CONSTANTINE ALEXANDER: You make
some modifications.

SAM BATCHELOR: Yes, and we're perfectly open to those modifications.

CONSTANTINE ALEXANDER: The large deck or both decks, of what rooms do they come off of?

SAM BATCHELOR: The lower deck comes off of a hallway which is immediately off the kitchen. And then the upper deck only abuts a single bedroom.

CONSTANTINE ALEXANDER: Okay.

So one of the issues of privacy is used of decks for parties and other social activities. Not as usual to have those things happen if the deck is off a bedroom. So I'm pleased to hear that. But why such a big deck off the bedroom?

DOUGLAS MYERS: Just to interpolate here. I had a little trouble mastering the scale on your drawings,

though. Could you summarize what the dimensions of the third floor deck are?

SAM BATCHELOR: Sure.

DOUGLAS MYERS: I mean, I had the impression it was a good size, but I couldn't establish the actual dimensions to my satisfaction.

SAM BATCHELOR: Here you go. There are 28 feet long by 12 feet wide, 12 and a half feet wide.

DOUGLAS MYERS: Okay, thank you. Sorry to interrupt.

CONSTANTINE ALEXANDER: No, no. That's important.

SAM BATCHELOR: The deck, the deck is to the forward street facing side of the house. The upper deck which is, as you pointed out, the larger deck we've held well outside of the setback with the

neighbor's house. The end of it that extends into the setback on the other side only extends to provide access to the stair below, and the house to that other side does not have any occupancy at that level or higher.

CONSTANTINE ALEXANDER: I continue to be troubled but that's only me, the hardship part of it.

DOUGLAS MYERS: I'll wait until the time comes to discuss the case. I really have no -- what did you want?

TIMOTHY HUGHES: The plan.

CONSTANTINE ALEXANDER: I'm going to open the matter -- unless you have anything further you want to add right now?

SAM BATCHELOR: No.

CONSTANTINE ALEXANDER: I'm going

to open the matter up to public testimony.

Does anyone wish to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. We are in receipt of a letter as you referred to from Richard Mandel, M-a-n-d-e-l and Judith Motzkin, M-o-t-z-k-i-n. (Reading) This letter is in regard to the request by Sam and Scarlet Batchelor regarding this case, to place a deck on the flat roof, third floor, of their house at 309 Pearl Street. My wife and I Judith Motzkin and Richard Mandel are the only direct abutters to 309 Pearl Street. We are owners and occupants of the 307 Pearl Street and 7 Tufts Street properties. These properties are owned by the Mandel-Motzkin irrevocable trust of

which we are the trustees. We have discussed their plans as presented to us by Sam Batchelor and have agreed to the following modifications:

Since the doorway exiting their house at the proposed landing at the bottom of the spiral staircase from the second floor directly impinges on our privacy for both properties, 7 Tufts Street and 307 Pearl Street, and the yard for 307 Pearl Street, Sam Batchelor has agreed to use an opaque and taller than standard railing on this lower deck landing. With these modifications we can support their request. And they said we will not be available for the hearing. And that's it.

Have you had any other comments with neighbors that you would want to report to

us? Discussions?

SAM BATCHELOR: No, I mean the letter across the street Mr. Cookshane (phonetic) wished me good luck. You know, he's been there a long time. He's 90-something. I don't think he was going to come.

CONSTANTINE ALEXANDER: Okay, thank you. Close public testimony.

Comments from members of the Board?

TIMOTHY HUGHES: Is this a single-family house?

SAM BATCHELOR: It's a two-family.

TIMOTHY HUGHES: It's a two-family. So you're on the second and third floors?

SAM BATCHELOR: We are. Part of the reason for seeking this is that we don't have any outdoor space that we can

access without sort of impinging on the privacy of our tenants.

TIMOTHY HUGHES: Is there any FAR issue or is this just a setback?

SAM BATCHELOR: There is not. We're not creating any additional covered space.

TIMOTHY HUGHES: And is there any way that you could do this as of right?

SAM BATCHELOR: No, I don't think so. We've tried. I mean, I originally thought I could do it as of right because there was no FAR issue. The only way we could do it as of right would be to not do the lower deck and to withhold the upper deck from -- back from the edge, but then we wouldn't be able to access it from the second floor.

CONSTANTINE ALEXANDER: Is that a

problem? You still access the deck, you just go through the bedroom?

SAM BATCHELOR: It wouldn't give us any communal outdoor space which is what we were looking for as a family.

CONSTANTINE ALEXANDER:
That's -- okay. That's the problem I have with this case, I'm sorry. I think the deck is far too big in a neighborhood as dense as yours.

BRENDAN SULLIVAN: Jim, can I see the plan there?

DOUGLAS MYERS: I would say the same thing. I would also raise a couple other considerations. This is an extremely congested neighborhood. It's as far as I can tell by eyeballing it from the cross street which is now eluding me.

CONSTANTINE ALEXANDER: Tufts.

DOUGLAS MYERS: Tufts Street,
thank you.

The distance between yourself and the Mandel/Motzkin house appears to be five or six feet. I realize your deck at a higher level would be further away than five or six feet, but it's indicative of how congested the neighborhood is in terms of the sounds carrying from that deck. The property at 309 on your right-hand side -- you're 309.

SAM BATCHELOR: 307.

DOUGLAS MYERS: The property at 307 is also very close. I mean, that's just like 15 or 16 feet away as best as I can eyeball it. And although your neighbors -- I mean, obvious you're a long-term resident of the neighborhood, well respected, respect other people, have

good relations with your neighbors. But the -- why I see the abutters' consent not really dispositive here is because this is for the ages. Abutters move.

People -- the owner change houses. And what the Board would be doing is really allowing the erection on the third floor of a colossal deck. A 10-by-14 to me is very large deck.

CONSTANTINE ALEXANDER: Wasn't it --

DOUGLAS MYERS: I understand that. But in general a 10-by-14 deck on the third floor, as other Board Members, know it causes my ears to break up. But 12-and-a-half-by-28, this is, this, I just have to say in a relative sense, this is colossal. And in a very congested neighborhood, I'm, I'm very troubled by

what's going to happen. I mean, the noise as -- our experience, my experience, I won't speak for any members of the Board, my experience the decks on the third floor especially in a congested neighborhood are a frequent source of conflict and complaint. And as I said, it's not your neighbors. I accept the fact that they are amicable people, but it's -- this is an intrusion in a very congested neighborhood that's forever. That's the responsibility that I see that we carry in this case.

BRENDAN SULLIVAN: It's a two-family. Do you own the whole house?

SAM BATCHELOR: We do.

BRENDAN SULLIVAN: So you have a tenant on the first floor?

SAM BATCHELOR: We do.

BRENDAN SULLIVAN: And the deck, the primary entry/exit will be from the second floor you see?

SAM BATCHELOR: Yes, from the second floor.

BRENDAN SULLIVAN: Obviously you're not going to be going out that window I guess?

SAM BATCHELOR: Correct.

BRENDAN SULLIVAN: And you said the reason why you need it up there is because you don't have any yard space? I mean, I went by the house.

SAM BATCHELOR: The yard space is -- we have access to it, but we're, you know, essentially right in front of our tenant's kitchen and bedroom any time we're in it. So we feel a little bit as though we're, you know, in their private

space if we --

BRENDAN SULLIVAN: Well, how old is the house? When was it built?

SAM BATCHELOR: Oh, I don't know. A couple hundred years ago. Hundred years ago.

BRENDAN SULLIVAN: Turn of the century? 1910 maybe, somewhere around there?

SAM BATCHELOR: Yeah.

BRENDAN SULLIVAN: So people have used the backyard for the last 105 years maybe.

I -- I don't know, it's not in my backyard.

CONSTANTINE ALEXANDER: I'm going to make one final comment myself. I thought Mr. Hughes asked a very telling question. You have an as-of-right

solution. It's not ideal from your perspective but that's sometimes how the zoning law works. So it's not like you would be completely bereft to any access to the outdoors if we were to turn you down.

SAM BATCHELOR: No, I mean there's -- we're a family of five and au pair trying to live in a three-bedroom apartment. And the children and the au pair live on the upstairs, so we wouldn't be able --

CONSTANTINE ALEXANDER: But the family of five and au pair would be occupying this deck. That's exactly the issue that Doug is referring to. There's going to be noise. There's going to be activity and it's going to affect your neighbors. I mean current neighbors and

future neighbors. That's the problem with granting the relief that you want. I mean, you'll still be able to do a deck as of right.

SAM BATCHELOR: Well, I mean in effect still be able to make just as much noise up there.

CONSTANTINE ALEXANDER: Then we can't stop you from doing what you can do as a matter of right. You're asking us to tweak the zoning laws to let you do more than what you can do as a matter of right, that's why you're here tonight. We can't stop you, not that we want to, from doing what you can do as a matter of right, but we allow to you do even more than that.

SAM BATCHELOR: The area in question of the lower deck, this is the picture of it. It clearly had a deck

there at one point, you know.

BRENDAN SULLIVAN: Now it's a porch.

TIMOTHY HUGHES: Also known as a porch.

BRENDAN SULLIVAN: Right. We call it a porch.

SAM BATCHELOR: Okay, a porch.

TIMOTHY HUGHES: Generally speaking I like decks. I'm a big fan of decks --

CONSTANTINE ALEXANDER: I know.

TIMOTHY HUGHES: -- and I butt heads, you know, with Board members all the time. But I have to admit that this is a really big deck. And I can understand the reluctance to -- and once again at the risk of repeating what's being said, you know, the Variance goes

with the land. It's in perpetuity, you know, people change in the neighborhood. You know, this may not be a welcome thing for future, you know, people in the neighborhood. I think you need to pursue an as-of-right solution or at least show us the as-of-right solution and show us how much more you need to make this thing work for yourself without asking for everything you're asking for. I'm not sure you would get even -- and I'm not sure you would get a compromise deck between this and an as-of-right solution, but it might be worth a try, you know, if you want to continue this case and redesign this one time and show us the difference between what you can do without our help and what this is right now which is way too big.

SAM BATCHELOR: Okay.

TIMOTHY HUGHES: And then explain why, you know, why the, you know, the compromise is necessary. But I don't -- this isn't going to fly.

SAM BATCHELOR: Okay.

TIMOTHY HUGHES: As much as I love decks, it's still not going to fly.

CONSTANTINE ALEXANDER: Well, what Tim is suggesting, we can continue this case to a further date so you can provide the information to us that Tim has suggested. It would have to be a case heard so it would have to be a night when all five of us could be present or we could take a vote tonight.

TIMOTHY HUGHES: Which you most assuredly are going to lose.

JAMES MONTEVERDE: And if he loses

what's the --

TIMOTHY HUGHES: Then it's two years -- then he can do an as-of-right solution --

DOUGLAS MYERS: Any time.

TIMOTHY HUGHES: -- where he doesn't need us. Any time. Or he can redesign and come back in two years.

CONSTANTINE ALEXANDER: But the Ordinance says it's got to be substantially different plans.

JAMES MONTEVERDE: Just so you understand.

TIMOTHY HUGHES: So if you were to lose, we would have to first decide that there was -- your redesign was substantially different from the original design.

BRENDAN SULLIVAN: Has to go

before the Planning Board.

TIMOTHY HUGHES: And then the Planning Board.

BRENDAN SULLIVAN: And then a layer above us, before us.

JAMES MONTEVERDE: Just so you understand the process.

SAM BATCHELOR: Sorry, I don't fully -- so if we take a vote and I lose, does that preclude me from pursuing any other renovations that require relief?

TIMOTHY HUGHES: No, just the deck.

SAM BATCHELOR: Just the deck. So I could do another renovation in a year or so --

TIMOTHY HUGHES: Right.

SAM BATCHELOR: -- that included an as-of-right deck solution or something

else?

CONSTANTINE ALEXANDER: Or a renovation other than the deck that requires a Variance. I mean, that would be a completely different case.

SAM BATCHELOR: Right.

DOUGLAS MYERS: Or you could do the deck only of right.

TIMOTHY HUGHES: As a matter of right.

SAM BATCHELOR: So there's no two year waiting period on any of that?

TIMOTHY HUGHES: Only on the plan that got voted down basically.

JAMES MONTEVERDE: On this.

CONSTANTINE ALEXANDER: Yes.

SAM BATCHELOR: You know, I mean I appreciate your suggestion. I've looked at it six ways from Sunday to try to

figure out a way to do it as of right and, you know, still, you know, essentially what we were trying to do is use this existing door which is --

TIMOTHY HUGHES: Right. I understand that.

SAM BATCHELOR: The door to nowhere.

TIMOTHY HUGHES: The only place you can put the staircase is away from that existing door, so you needed the space on the second floor deck. I understand why, you know, how it all ties together.

SAM BATCHELOR: I just don't think that there's --

TIMOTHY HUGHES: But therein is your violation. You know, that's what's putting you in the setback.

SAM BATCHELOR: Yeah. So I don't -- appreciate I can come back with a compromise that is less of a violation. I'm either in it.

TIMOTHY HUGHES: Do you want to think about this? Because you can always continue this case and then decide that you can't come up with another design and withdraw it.

SAM BATCHELOR: And withdraw it?

TIMOTHY HUGHES: Which is the same result if we deny it tonight. I'm just giving you the opportunity to think about it --

SAM BATCHELOR: Sure, let's do that.

TIMOTHY HUGHES: -- you know, in a month or so because that's possibly when we can get you in here again.

CONSTANTINE ALEXANDER: The standard if we went tonight and we voted you down, if we said couldn't come back for two years. You can come back within two years if there are specific and material changes in the conditions upon which we turned you down tonight.

TIMOTHY HUGHES: Right.

SAM BATCHELOR: Okay.

CONSTANTINE ALEXANDER: That's the standard we would have to apply. Otherwise you have to wait -- that standard doesn't apply, we turn you down tonight, you can't come back for two years.

TIMOTHY HUGHES: And if we turn you down tonight because it's too big, then you know, anything less than an as-of-right solution might not be a

substantial enough change, it's still too big because that's the reason we turned you down.

CONSTANTINE ALEXANDER: I take it you want to continue the case?

SAM BATCHELOR: Yes, please.

CONSTANTINE ALEXANDER: It's a case heard. Sean, what's the date and see whether we all can make it.

SEAN O'GRADY: November 5th.

CONSTANTINE ALEXANDER: November 5th. Does that work for you?

SAM BATCHELOR: Yes, I think so.

CONSTANTINE ALEXANDER: I can make November 5th.

DOUGLAS MYERS: I'm fine.

TIMOTHY HUGHES: I have to be here anyway.

DOUGLAS MYERS: Right. I've got

another case on November 5th.

JAMES MONTEVERDE: Yes, works for me.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued until seven p.m. on November 5th subject to the following conditions:

That you sign a waiver of time for decision. Mr. O'Grady will give that to you.

That the posting sign that you have there now must be modified, you can do it with a magic marker, to reflect the new date, November 5th and the new time, seven p.m. We'll take you first, or one of the first cases.

And that this modified sign be maintained for the 14 days prior to November 5th. Just as you did the 14 days

now for this hearing, 14 days before November 5th.

SAM BATCHELOR: So it can come down and then has to go back up?

TIMOTHY HUGHES: That's correct.

CONSTANTINE ALEXANDER: That's right, it can come down and go back up. That's right, you're absolutely right. Make sure you get it up in the 14 days.

SEAN O'GRADY: Technically it should stay up.

CONSTANTINE ALEXANDER: Okay, really?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: I learned something. It has to stay up.

And if there are elements or whatever affect the sign, go down to the ISD and get a new sign. Because we just

can't -- the sign has got to be maintained.

And lastly, to the extent you do want to come back to us with revised plans, those new plans and any related dimensional form must be in our files no later than five p.m. on the Monday before November 5th. That gives us and the citizens of the city the opportunity to study what you're now proposing and have an informed discussion. So five p.m. on the Monday -- by five p.m. on the Monday before November 5th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued?

(Alexander, Hughes, Sullivan,

Myers, Monteverde.)

* * * * *

(10:05 p.m.)

(Sitting Members Case No. BZA-007966-2015:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Douglas Myers, Jim
Monteverde.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 007966, 610 Main
Street.

Is there anyone here wishing to be
heard on this hearing? You're not Ricardo
Sousa.

ATTORNEY DANIEL GLISSMAN: No, not this evening. I'm here in place of Mr. Sousa. My name is Daniel Glissman. I'm an attorney with Prince, Lobel, Tye, 100 Cambridge Street, suite 2200, Boston, Massachusetts. So then good evening, members of the Board. I'll try to keep my comments succinct. I know it's late.

My name is Daniel Glissman. I'm here on behalf of Pfizer in relation to a Special Permit application for a whip antenna installation on top of 610 Main Street. Pursuant to Article 4, Section 4.32.g.1 this installation is permitted by Special Permit.

This is a very straightforward application. We are installing a 13-foot whip style antenna. It's about a foot and a half in diameter. It will be installed

at a total height of 196 feet attached to a penthouse which is located behind a stealth, a screen wall.

Essentially from the street level this antenna installation is virtually invisible, very thin, and very high up in the air.

This is a replacement of a previous installation which was at 200 CambridgePark Drive and Pfizer deemed that this was a better location. This isn't your typical wireless installation. It's solely for air to ground communication between Pfizer's aviation group and their corporate plane.

CONSTANTINE ALEXANDER: But nevertheless, to do what you want to do it's got to be licensed by the Federal Government?

ATTORNEY DANIEL GLISSMAN:

Correct.

CONSTANTINE ALEXANDER: That's important for our Ordinance.

ATTORNEY DANIEL GLISSMAN: Yes, it does. And we do have an FCC license that's included in the application you received.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY DANIEL GLISSMAN: I have copies of plans and photo sims. Would anybody like to see them?

CONSTANTINE ALEXANDER: They're unique in that nothing's visible.

BRENDAN SULLIVAN: What was the dimension of the whip again?

ATTORNEY DANIEL GLISSMAN: One foot five inches.

JAMES MONTEVERDE: Not 1.5 inches?

ATTORNEY DANIEL GLISSMAN: Oh,
excuse me. I'm sorry. Much bigger. That
was a --

JAMES MONTEVERDE: Impressive
antenna.

TIMOTHY HUGHES: That's some whip.

JIM MONTEVERDE: We're just
testing you at the end of the night.

ATTORNEY DANIEL GLISSMAN: Sorry,
1.5 inches.

BRENDAN SULLIVAN: That woke me up
when you said that.

ATTORNEY DANIEL GLISSMAN: Misread
my own notes.

BRENDAN SULLIVAN: What are they
trying to reach with this?

TIMOTHY HUGHES: Corporate plane.

ATTORNEY DANIEL GLISSMAN:
Correct. Yes, it's their corporate plane.

CONSTANTINE ALEXANDER: So when the CEO is flying in the plane, he can do his internet.

BRENDAN SULLIVAN: This was up in the Alewife area initially; is that correct?

ATTORNEY DANIEL GLISSMAN: 200 CambridgePark.

BRENDAN SULLIVAN: Right. We had this a couple three years ago.

CONSTANTINE ALEXANDER: I don't remember that. Good memory.

TIMOTHY HUGHES: I don't think I was on the case.

BRENDAN SULLIVAN: All right, so they're taking it from there? Or are they maintaining that one also?

ATTORNEY DANIEL GLISSMAN: No, that's -- that one is no longer active.

BRENDAN SULLIVAN: You're abandoning that one --

ATTORNEY DANIEL GLISSMAN: Yeah.

BRENDAN SULLIVAN: -- and bringing it down to Main Street?

ATTORNEY DANIEL GLISSMAN: Correct. And they deemed that this building is more suitable for the network.

BRENDAN SULLIVAN: And what is the reach of this whip? In other words, if somebody's in Cambridge Street talking to CEO, CFO, or their chief legal or something, what --

ATTORNEY DANIEL GLISSMAN: My understanding is that this whip antenna will provide a tremendous coverage range.

BRENDAN SULLIVAN: Telecommunication?

ATTORNEY DANIEL GLISSMAN: Yes.

BRENDAN SULLIVAN: Okay.

ATTORNEY DANIEL GLISSMAN: Let's see.

DOUGLAS MYERS: Hundreds of miles?

ATTORNEY DANIEL GLISSMAN: It's 20 nautical miles under the best conditions.

TIMOTHY HUGHES: Do we get a free ride in the plane?

ATTORNEY DANIEL GLISSMAN: I wish.

BRENDAN SULLIVAN: 20 nautical miles?

TIMOTHY HUGHES: Whatever that means.

CONSTANTINE ALEXANDER: Yes.

DOUGLAS MYERS: That's roughly 20 miles.

BRENDAN SULLIVAN: No, you're talking -- I guess what they felt at the time on CambridgePark Drive was that they

needed this whip more for confidentiality or something that a cellphone doesn't give them, that any other type of communication does not give them. Landline obviously can't give them. And so they needed this because of the sensitive nature of conversations. Is that basically the reason for it?

ATTORNEY DANIEL GLISSMAN: Right.

BRENDAN SULLIVAN: The same reason as they did it on CambridgePark Drive.

ATTORNEY DANIEL GLISSMAN: Right, right.

And it's my understanding that the CEO of Pfizer is dubbed, per the IRS, a controlled employee with security risks. So that's why they've given them privilege to this specific frequency and that's what this whip antenna would give them access

to is this specific frequency.

BRENDAN SULLIVAN: Yes, I think that came up the last time, too.

ATTORNEY DANIEL GLISSMAN: Right.

BRENDAN SULLIVAN: Is that they deemed it to be essential and vital to their operations.

DOUGLAS MYERS: Yes.

BRENDAN SULLIVAN: Because of the confidentiality.

DOUGLAS MYERS: The CEO of Pfizer is an important person.

CONSTANTINE ALEXANDER: Am I correct, and one of the issues that we always have, or the citizens of the City often have with telecommunications cases and the Special Permits, is the -- at least by some people, perceived risk of microwave emissions causing health

problems. That's not at all present with what we're talking about here?

ATTORNEY DANIEL GLISSMAN: Not to my knowledge, no.

CONSTANTINE ALEXANDER: This is really basically like a beam -- it's like a phone line, if you will. Simply a way of contacting one place to the other and you're not sending out beams of waves all the time?

ATTORNEY DANIEL GLISSMAN:
Correct, yes.

CONSTANTINE ALEXANDER: I think that's important.

BRENDAN SULLIVAN: It's like a hand radio operator.

CONSTANTINE ALEXANDER: Yes, that's what I'm trying to get at.

BRENDAN SULLIVAN: If you break it

down to basics.

TIMOTHY HUGHES: It's like the antenna on your car --

BRENDAN SULLIVAN: That's it.

TIMOTHY HUGHES: -- basically. But they're just going to use one frequency.

ATTORNEY DANIEL GLISSMAN: Broadcasting a specific signal.

TIMOTHY HUGHES: One or two frequencies. And I don't think you'll be able to tune in to the Patriots game, though.

CONSTANTINE ALEXANDER: Anything further?

ATTORNEY DANIEL GLISSMAN: No, that would be it.

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

Is there anyone here wishing to be heard? There's no one in the audience so I guess no one is wishing to be heard.

We are in receipt of a memo from planning -- you've been here. You're from the telephone company.

PETER COOKE: I actually do a lot of consulting work. Pfizer is a client of ours.

CONSTANTINE ALEXANDER: You were here for the last case we had. One of the telecom cases.

PETER COOKE: I was trying to come up with one of the antennas and I'm trying to find one you like. And you succeeded.

DOUGLAS MYERS: Are you a consulting engineer?

PETER COOKE: No, I'm not. They actually have a -- this is such a

specialized communications. I just do permitting and compliance work. Local permitting and compliance work for them. This is actually their aviation people out of the New Jersey office have responsibility for this.

CONSTANTINE ALEXANDER: We do have a memo from the Planning Board. (Reading) The Planning Board staff reviewed the Special Permit application for the communication antenna at 610 Main Street. Good. The single antenna is installed on the mechanical penthouse set back from the facade of the building and is not visible from the public streets as shown on the submitted photo simulations. Right. Where's your conclusion? No conclusion. This is just stated facts that are obvious to anybody who looked at the file.

TIMOTHY HUGHES: Are we beating up on the Planning Board?

CONSTANTINE ALEXANDER: Not that there's anything momentous about this case, but at least you can give us a recommendation.

Anyway, that's all we have. Ready for a vote?

TIMOTHY HUGHES: Yes.

JAMES MONTEVERDE: Ready.

CONSTANTINE ALEXANDER: Okay. The Chair moves that with respect to the Special Permit being sought, that the petitioner is a -- is licensed by under federal law to operate the system that this antenna will serve.

That it is in good standing.

That there is no need to deal with visual -- which I'll get to in a second,

visual impact of this antenna since it apparently will not be visible from any point in the street.

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

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

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

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

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

On the basis of these findings the Chair moves that we grant the Special Permit requested subject to the following conditions:

That the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair.

And the impact of what is proposed will be consistent with the photo simulations also initialed by the Chair.

Such photo simulations showing that there will be no visual impact, or the antennas will not be visible from any area on the streetscape.

And lastly, that to the extent that this whip antenna is not used for a period of six months, that it must be removed and the building restored to its prior conditions to the extent reasonable practical under the circumstances.

That's the only conditions I think we need to impose for this type of relief.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Hughes, Sullivan, Myers, Monteverde.)

(Whereupon, at 10:20 p.m., the
Zoning Board of Appeals
Adjourned.)

* * * * *

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Errata Sheet has been delivered to
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**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of October, 2015.

Catherine L. Zelinski
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