

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, AUGUST 25, 2016
7:00 p.m.

in

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

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Thomas Scott, Member

Janet Green, Member

Patrick Tedesco, Member

Douglas Myers, Associate Member

George S. Best, Associate, Member

Andrea A. Hickey, Associate Member

Sean O'Grady, Zoning Specialist

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I N D E X

CASE

PAGE

BZA-010241-2016 -- 457 Franklin Street	5
BZA-010350-2016 -- 23 Hawthorn Street	126
BZA-010758-2016 -- 2344 Massachusetts Avenue	43
BZA-010779-2016 -- 950 Massachusetts Avenue-C1	158
BZA-010844-2016 -- 307 Fresh Pond Parkway	122
BZA-010976-2016 -- 2265 Massachusetts Avenue	202
BZA-010992-2016 -- 288 Green Street	212
BZA-011007-2016 -- 10 Fawcett Street	277
BZA-011008-2016 -- 1221 Cambridge Street	300
BZA-011034-2016 -- 18-20 Farwell Place	318
KeyWord Index	

PROCEEDINGS

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And as is our custom, we're going to start with continued cases. These are cases that started at an earlier hearing and for one reason or another were continued until tonight.

At the outset let me say that after notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of the equipment used so as to not to interfere with the conduct of the meeting. At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made.

And I wish to inform people that a recording is

being made. There's a tape recorder right here by a citizen of the city. In addition, our stenographer also records the hearing to assist her in preparing the transcript of the meeting. So be forewarned that you're being taped.

* * * * *

(7:00 p.m.)

(Sitting Members BZA-010241-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: Okay, with that I'm going to start the meeting off by calling case No. 010241, 457 Franklin Street.

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

THOMAS ROSE: Okay. All right, Thomas Rose the architect.

CONSTANTINE ALEXANDER: And anybody else who is going to speak, give your name and address to the

stenographer.

THOMAS ROSE: So we took your comments seriously from the last meeting and we resubmitted plans and elevations and a shadow study showing --

CONSTANTINE ALEXANDER: Yeah.

THOMAS ROSE: So we substantially lowered the building, the height of the building over six feet and reduced the footprint of the third floor. Basically the plan's very similar. We took a room off of the third floor and lowered the height so that --

CONSTANTINE ALEXANDER: Yes, according to your dimensional form, before you were proposing a 35-foot building. Oh, no, before -- as of right now, it's 28 feet, eight inches.

THOMAS ROSE: Right.

CONSTANTINE ALEXANDER: Zoning allowed you to go to 35. My recollection was that you were planning to go to 35 the last time. The new plans now are back to 28 feet,

nine inches so essentially you're at the same height the building is right now.

THOMAS ROSE: Correct.

CONSTANTINE ALEXANDER: Okay.

Did you add a deck, too?

THOMAS ROSE: Well, we took, we took a room off of the third floor, we made it -- just to balance the elevation, we added the deck.

CONSTANTINE ALEXANDER: The deck that people can go out on? How big is the deck?

THOMAS ROSE: It's approximately four feet wide by five feet long. One is going to be a garden, one is going to be a deck.

CONSTANTINE ALEXANDER: The only reason I ask is that our Board tends to be very sensitive about decks, second floor decks, because particularly in tight, dense neighborhood because of either privacy issues for neighbors or noise issues for neighbors or both. But sounds like it's

going to be -- it's a deck that's not going to have big parties.

THOMAS ROSE: No. That would be tough.

CONSTANTINE ALEXANDER: All right.

Anything else you want to add about your new plans?

THOMAS ROSE: Well, that's -- that we really made a big effort to reduce the overall footprint.

CONSTANTINE ALEXANDER: Basically you lowered the height?

THOMAS ROSE: And kind of pulled it in. We changed the roofscape, too.

CONSTANTINE ALEXANDER: Yes, I saw that.

THOMAS ROSE: You know, so it's, we really kind of worked it. So it's, I think it's almost a better plan. It's almost better now in some ways. It's a little more successful. It still works with getting the program we needed and I'm pleased with how it's --

CONSTANTINE ALEXANDER: As you know, and we'll probably find out again, there was neighborhood interest, shall we say, in this project. Have you spoken to the neighbors regarding your new plans? Anything you wanted to report to us? Or not. I'm just asking.

RUTH KIRCHWEY: To the --

CONSTANTINE ALEXANDER: Anybody. But mainly the objectors.

RUTH KIRCHWEY: Oh, oh, all of our -- yes, neighbors of ours have come forward and given us letters in support and a lot of letters --

CONSTANTINE ALEXANDER: I didn't see any new letters.

JANET GREEN: Yeah, there are a lot.

RUTH KIRCHWEY: Yeah, and, you know, all of our abutters except for one abutter sent us letters. I got the last one today by e-mail which I didn't think, you know -- we have so many abutters that I didn't think you

needed to have that last one. But there have been -- there's a lot of support not just from the abutters but people across the street from us and two houses, three houses down.

CONSTANTINE ALEXANDER: Do you recall -- now there were -- as I recall, there were more than one neighbor had problems.

RUTH KIRCHWEY: One of --

CONSTANTINE ALEXANDER: And have the neighbors been turned around by what you have proposed?

RUTH KIRCHWEY: I don't know. I hope they have. I assume they looked at the plans. I -- it's been hard to talk with those neighbors because right from the beginning I've left plans in their mailboxes. I didn't have their number, phone number. Left my phone number and they never called. So we never, ever had a discussion. I've had discussions with all the other abutters and addressed, you know, before we even submitted the first plan, their

concerns. One wanted a dust fence up when we had the -- and things like that. But no, I don't know whether the abutter who was objecting or her abutter who doesn't abut us, but she's -- whether after they've seen the letters and the new plan, whether they have changed their mind. I don't know.

CONSTANTINE ALEXANDER: Well, we may find out tonight.

RUTH KIRCHWEY: I think we will.

CONSTANTINE ALEXANDER: Sir.

JAMES KOGER: Yes, my names is James. D. Koger.
I live at 444 Franklin Street.

THE STENOGRAPHER: How do you spell that?

JAMES KOGER: K-O-G-E-R.

And I wrote in my letter there that a number of things were addressed in the plan including flooding issues. It's very low lying, and we've had, in my memory, three major floods in the neighborhood. And the fact that they've gone so far as to leave the driveway and gravel and provide

a -- dry wells for the runoff, it goes further than I think anybody else has really done in the neighborhood including the City itself who should not be laying down asphalt and putting bricks on top just to look right. They should let the bricks drain through. And so I feel that it's a very good plan from that aspect alone and they've, you know, it has less shading. And I was okay with the plan before and I think this may appeal to more folks and I think that there's really been an attempt to deal with every issue that's been brought up and I think they should get their permit ASAP.

CONSTANTINE ALEXANDER: Okay, thank you.

Any questions from members of the Board before I open it up to public testimony?

ANDREA HICKEY: No, I just wanted to see the new elevation for a second when he's done.

JANET GREEN: And there are quite a few letters.

CONSTANTINE ALEXANDER: Yeah.

JANET GREEN: Okay, yeah.

CONSTANTINE ALEXANDER: They weren't there
Wednesday morning when I was in the office.

JANET GREEN: I saw them this morning when I went
in, that there were lots of letters and lists where people
signed.

CONSTANTINE ALEXANDER: Okay.
I'll open the matter up to public testimony.
Is there anyone here wishing to be heard on this
matter? Sir. Please come forward and give your name and
address.

VICTOR ZAROUGIAN: My name is Victor Zarougian and
I'm an abutter --

THE STENOGRAPHER: Spell it, please.

VICTOR ZAROUGIAN: Z-A-R-O-U-G-I-A-N.

I'm an abutter to Ruth and her family. And I
think the last time we were here we talked about the height
of the building.

CONSTANTINE ALEXANDER: Right.

VICTOR ZAROUGIAN: And how it affected the light. That's why we did a shadow study. I think we all agreed to that. And, yes, they did reduce the height, but I have the copy of the first -- I have a copy of the shadow study that was taken first with height, and here's the revised addition of the study. And I don't see any change of the effect of the light of the shadow. So I just want to know what is it we've gained by reducing the height of the building? I just can't see a difference especially here.

THOMAS ROSE: Well, you know, I think shadow studies are a little hard to see it. And you have to see it in the context of the rest of the city. I show a shadow of the existing building --

VICTOR ZAROUGIAN: Yeah. I'm going by what you've shown here.

THOMAS ROSE: You can see it here of the existing building, you can see it's almost as similar to what I have there.

VICTOR ZAROUGIAN: I'm going by what I have in front of me --

THOMAS ROSE: I know.

VICTOR ZAROUGIAN: -- what you were --

THOMAS ROSE, Yeah, I know.

VICTOR ZAROUGIAN: -- I was given me. And I want the Board to see exactly -- if they can find the difference between the earlier one and the newer one.

CONSTANTINE ALEXANDER: Well, I'm not sure if we're worrying about the earlier one. I think I'd like to know what the current shadow is.

VICTOR ZAROUGIAN: And I think the reason why we had this discussion last time not because we're opposing the addition to the house that they want to have.

CONSTANTINE ALEXANDER: Right.

VICTOR ZAROUGIAN: And I think we're all for it. I think we suggested putting the addition on the existing house, either raising it or raising the house and

having -- using the existing lower floor. And it has been done. I mean Juno Diaz (phonetic) did that and several other people have used that space. I have no opposition to that you still will get all the square footage that you want.

THOMAS ROSE: We're making a special effort to preserve the existing building that's why we added the addition on the back. There's photographs in the files showing the interior trusses and things and we feel that was a value that we wanted to preserve. That's why we preserved the building.

CONSTANTINE ALEXANDER: I'm sorry, this is the two shadow studies. This is the current?

THOMAS ROSE: Right. That's the old one.

CONSTANTINE ALEXANDER: I want to see the --

THOMAS ROSE: That's it.

THE STENOGRAPHER: Okay, I need one person to

speak at a time.

THOMAS ROSE: That's it.

CONSTANTINE ALEXANDER: This is the new -- the
current plans --

THOMAS ROSE: Yes.

CONSTANTINE ALEXANDER: This is the shadow study
for that?

THOMAS ROSE: Yeah.

ANDREA HICKEY: And that's the present
condition --

THOMAS ROSE: I'm sorry, this is the worst case
scenario on January 21st.

ANDREA HICKEY: Is that the only picture you have
of present condition showing the shadow?

THOMAS ROSE: Here's another one.

JANET GREEN: Right there.

ANDREA HICKEY: No, that's proposed, isn't it?

CONSTANTINE ALEXANDER: This is proposed.

ANDREA HICKEY: Yes.

CONSTANTINE ALEXANDER: This is the withdrawn
proposal.

ANDREA HICKEY: Right, but the existing.

CONSTANTINE ALEXANDER: That's exactly what I want
to see.

ANDREA HICKEY: Yeah. But those two are existing.

THOMAS ROSE: So existing on January 21st. This
is 3:30 and that's about noon.

RUTH KIRCHWEY: With the house unchanged.

CONSTANTINE ALEXANDER: This is what date, I'm
sorry?

THOMAS ROSE: January 21st.

CONSTANTINE ALEXANDER: And I'm trying to compare
it to what you have.

THOMAS ROSE: So that would be --

CONSTANTINE ALEXANDER: This shows -- the --

THOMAS ROSE: -- the one on the left.

CONSTANTINE ALEXANDER: The lesser of shadow. Not this one.

THOMAS ROSE: That's the one. You can see at that time of day we do get the same kind of conditions.

CONSTANTINE ALEXANDER: Have you seen these?

VICTOR ZAROUGIAN: We've seen this, this is what we got from the Planning Board.

CONSTANTINE ALEXANDER: Well, I mean have you seen what the shadow study is now?

VICTOR ZAROUGIAN: Well, this is the first time I'm seeing it.

CONSTANTINE ALEXANDER: Okay. Do you want to take a look at it?

VICTOR ZAROUGIAN: I'd like to show it also to my --

CONSTANTINE ALEXANDER: Of course.

Anyone else wishes to be heard on this matter?

Ma'am?

JUDY SARYAN: Hi I'm Judy Saryan, S-A-R-Y-A-N.

And I live at 30 Hancock Street and I live with Victor Zarougian and we're abutters. And I just, I just wanted to say, you know, so I'm looking at these. These are the new shadow studies?

THOMAS ROSE: No that's existing.

CONSTANTINE ALEXANDER: No, that's the existing.

JUDY SARYAN: Oh, that's the existing. Okay, sorry. So, again, you know, we can see they cast a shadow.

THOMAS ROSE: You should be used to that.

JUDY SARYAN: Yes, okay. So I just want to say that, you know, since I'm not -- I'm not sure exactly how to judge shadow studies, I mean it is, it is -- these are done and I'm glad to see that the existing shadow study was done, thank you very much. But I do just want to say that because of the extended footprint of the building, you know, there will be an additional shadow. I mean, we don't know how much. It's very hard to predict. It's very hard for me to

know ahead of time until it's actually built. But I just wanted to point out that, you know, that I am significantly affected by light and I know it's not as serious an issue as others that have been raised regarding, you know, the family to move together. But I am very much affected by light particularly in the winter. The lack of light does affect me and in a negative way. And so I -- to me it's a very significant important factor and that's all I just wanted to say.

CONSTANTINE ALEXANDER: Okay. And I understand, and I'm very much understanding, but what do you think about the new plans? And are you opposed or are you supportive?

JUDY SARYAN: I do think that the new plan is an improvement in terms of the effect that it will have on light. I -- but I guess I would say that I don't support it because I think that there could be other things done. I do believe that --you know, I support expanding the house. I recognize that there's a need for a greater space in the

house, 457 Franklin for the entire family. I do think that, that that could be done by raising the height of the current building and adding a whole new floor. I know that you want to preserve the roof timbers that are somewhat unique in this building and, you know, I think that's a great accomplishment and goal to have. So like I -- so I would recommend doing it by lifting the building and then therefore the back of the house would not necessarily need to be quite as large.

So that would be the main factor that I would say. Also, I just want to say that I did call Ruth up, not this time around, but the prior time, to talk with her. And I did leave her my phone number. And so you do have my phone number, Ruth.

RUTH KIRCHWEY: Now, yeah.

JUDY SARYAN: And she didn't get back to me and we haven't heard anything from anyone. We did go to the Planning Commission to pick up the plans on Monday as we

were instructed. And so, you know, I wish you would come to us. I know the first time originally you did and I know that we weren't -- you know, we didn't come out fully and directly with you at that time, but since then we were hoping that we could talk with you about this and that's all I wanted to say.

RUTH KIRCHWEY: May I just say, Judy, that you did leave a message and I called you and we spoke before the last hearing. I haven't heard anything from you since. It was just that at the beginning I wasn't able to talk with you before we submitted plans.

JUDY SARYAN: Yes, that's true.

RUTH KIRCHWEY: We did talk on the phone.

JUDY SARYAN: We did talk on the phone, but not since the third set.

CONSTANTINE ALEXANDER: Okay, all right.

JUDY SARYAN: We tried but not this time around because I only got the plans on --

CONSTANTINE ALEXANDER: I asked the question only I wanted to see whether people were educated about what's going on before the hearing.

JUDY SARYAN: Okay.

CONSTANTINE ALEXANDER: I'm not getting into who called whom and who didn't call whom. Thank you, though. Thank you for taking the time to come down.

JUDY SARYAN: Thank you.

CONSTANTINE ALEXANDER: So I think I hear maybe I'm supportive, maybe I'm not.

ANDREA HICKEY: Can I see those?

RUTH KIRCHWEY: Yes.

ANDREA HICKEY: Thank you.

RUTH KIRCHWEY: Can I say something about that, the current house? I don't understand how if you put a floor on what is existing, how -- I mean, it's gonna make a worse shadow I would think than what we have right now on the existing house.

CONSTANTINE ALEXANDER: It's certainly a question going through my mind, but I'll refer to the professionals on our panel particularly Mr. Scott. You're not planning to raise the height of the building?

RUTH KIRCHWEY: Right.

CONSTANTINE ALEXANDER: You're changing obviously the configuration of the building.

RUTH KIRCHWEY: Yes.

CONSTANTINE ALEXANDER: The height is the same. I'm puzzled as to why the shadows would be dramatically or significantly different.

THOMAS SCOTT: I think the diagrams kind of indicate that they're significantly less than they were in the previous scheme.

ANDREA HICKEY: Yeah.

CONSTANTINE ALEXANDER: Yeah.

ANDREA HICKEY: And that's proposed.

THOMAS SCOTT: And they're not really particularly

different from the existing house shadow study. So, I think because the two portions are similar height now, the shadow study is -- has been practically negated. There's no detrimental effect.

THOMAS ROSE: I wish there was more effect. I mean I was hoping for more so you could see it.

CONSTANTINE ALEXANDER: That's actually -- that was my lay opinion. I'm glad to hear a professional, someone who is experienced have the same view. Okay.

Sir, did you give us back the plans you took with you?

ANDREA HICKEY: Yes, they're right there.

CONSTANTINE ALEXANDER: Oh, okay. I wanted to make sure we got them.

ANDREA HICKEY: Yeah, but they're not labelled or anything. So I don't know if you'd want to put those in the file or not.

CONSTANTINE ALEXANDER: Well, you can tell just by

looking at them what is the existing building or new building. It's a different configuration. This is clearly the existing building. I don't think they need to be marked.

Anyone else wishing to be heard? Ma'am.

SHELBURNE THURBER: Hi, my name is Shelburne Thurber and I'm not a direct abutter but I look out on to the property. And I think what I've never understood completely is why if by going up and increasing square footage that way thereby lessening the impact in the backyard where it affects so many people, why that option hasn't been given more consideration?

CONSTANTINE ALEXANDER: They're not going up, you understand? In the current plans before us will have the building no higher than it is today.

SHELBURNE THURBER: Oh, I understand that.

CONSTANTINE ALEXANDER: Okay.

SHELBURNE THURBER: I understand that. But it's

still -- I mean it comes, it comes back and it's still three stories. It's not, you know -- I think it's lower in the back than it is in the front?

CONSTANTINE ALEXANDER: I guess my only comment is just me personally, we're not an architectural review commission here. There are different, you've got a project, there are different ways of attacking it.

SHELBURNE THURBER: Right.

CONSTANTINE ALEXANDER: And there's not -- at least I don't believe it's up to us to say that this is a better design than that. It's whether legally there's a problem with the design that's being proposed. Legally under our Zoning Ordinance.

SHELBURNE THURBER: Right.

CONSTANTINE ALEXANDER: That's how I look at it.

SHELBURNE THURBER: Okay. Does the design and its impact on neighbors count?

CONSTANTINE ALEXANDER: Well, only to the

extent -- well, it can, that's why we have the shadow study. We wanted to see what the impact on the neighbors. But what we're seeing is that the shadow study shows that the impact on the neighbors from what they now want to do is essentially no different than what exists today in terms of shadows.

SHELBURNE THURBER: Right, right.

And as far as the privacy, I mean it doesn't affect me, but for Judy and Victor, is the privacy an issue? Because the house will then be a lot closer to their house and they will now have this other deck.

CONSTANTINE ALEXANDER: Now -- well, maybe closer, but they comply with all the other setback requirements.

SHELBURNE THURBER: Okay.

CONSTANTINE ALEXANDER: That's how it is. Okay.

SHELBURNE THURBER: All I'm saying is, and I think that I might -- I think I can speak for Victor and Judy, that if all of this were happening in the front of the

house, there would be less impact on the back in terms of size and everything else and there wouldn't be any argument at all. I mean everybody --

CONSTANTINE ALEXANDER: There's always an argument in the neighborhoods.

SHELBURNE THURBER: Well --

CONSTANTINE ALEXANDER: No, no, don't respond, please.

SHELBURNE THURBER: Anyway.

CONSTANTINE ALEXANDER: I'm just being flip.
Thank you, thank you for taking the time to come down.

Anyone else?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We are in receipt of a number of letters. I'm not sure how to handle it. I don't want to spend the next half hour reading letters, but I will, I will say that there's -- I'm going to summarize. I'm going to say who the letters are from and

whether they're in support or opposition to the project.

And we have a letter from Charles D. Parsons,
P-A-R-S-O-N-S and Marjorie Parson, who apparently reside at
22 Hancock Street. They fully support the proposal that's
before us.

We have a letter from Michael J. Amato, A-M-A-T-O
and Mary Woodman Amato who reside at 470 Franklin Street, so
quite close. And they are in support of the plans, the
proposal.

We have a -- basically a petition that's been
signed by the residents at 428 Franklin Street, Edward and
Noelie, N-O-E-L-I-E Biddle, B-I-D-D-L-E, Nicholas Biddle,
Natalie Biddle. And then there are other signatures below
that. It's hard to read, but it looks like Patricia Benson,
James Benson, Sarah Benson.

Another petition in support from a number
of -- some of these people have already, like the Amatos, I
have already read their letter. So they're just signing

again.

There's a petition in support of the resident Susan Vik, V-I-K, 460 Franklin, No. 3, and Irene, it looks like Carman, C-A-R-M-A-N, 460 Franklin Street.

We have a longer letter from John Lambert who -- former abutter for 17 years living at 451 Franklin Street. Full support of the proposal.

Another long letter from Ruth Kirchwey.

I'm trying to see if I can, I think this letter is in support. A letter from Vern Shrauger, S-H-R-A-U-G-E-R, 516 Green Street, unit 2D in support.

A letter from Kate Joyce and Ellen Degenova, D-E-G-E-N-O-V-A reside at 130A Hancock Street in support.

A letter from Sherry Taub, T-A-U-B from -- who resides at 445 Franklin Street in support.

A letter from James D. Koger. This gentleman has already spoken. In support.

And from Maureen Koger in support.

A letter from Cecelia Bennett who resides at 19 Chalk Street, Cambridge, in support.

And I'm -- there's just one more. And there's a letter from John Lambert, 9 Chalk Street.

I'm sorry to say that most of these letters are addressed to the Planning Board. We are not the Planning Board. We are the Board of Zoning Appeals.

And that's it. I'm going to close public testimony. Any final comments you want to make before I close public testimony?

THOMAS ROSE: No.

CONSTANTINE ALEXANDER: And time for a discussion. Does anybody want to say something? I'll be happy to say something first. Don't all speak at once.

I'm in support. I'm driven by the fact that the -- this new building will be no higher than the existing building. They designed with all -- we could all have different views about the design, whether they should move

here or whether they move it there. That's not for us to do. I would point out, too, that this building as modified will be in conformance with all of our zoning requirements. The reason you're here before us tonight is the building today is non-conforming so any addition to a non -- substantial addition to a non-conforming structure requires relief. And that's why you're having to come back to see us.

But I understand these concerns of the neighbors, and those who have concerns, but I just -- there is I think good basis for the relief being sought in terms of the need, a substantial hardship, and we'll get to that when we get to a motion. And so I would be in favor of granting the Variance.

Anyone else wants to speak or I can make a motion?

JANET GREEN: I'm also in favor of granting the Variance. I was struck by the -- not just the quantity of neighborhood support for the project there was, but the fact

that there were many individual letters that were handwritten. I mean, so it wasn't just, you know, signing a petition.

I also appreciated that the historic nature that they were preserving, the front part of the house, the timber frame. And the -- I would agree with the need for more dry wells in the City of Cambridge and I'm happy to see that go in as part of the project, to address a problem that granted seems to have been a neighborhood problem not just an individual problem. So I appreciated that.

And those are some of the reasons that I feel that I'll support this project.

CONSTANTINE ALEXANDER: Anyone else or I'll make a motion?

ANDREA HICKEY: Make a motion.

CONSTANTINE ALEXANDER: Okay.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that this is an older structure that is quite small and there is need for additional living space. And in this case with regard to the current occupant, it allows three generations to reside in the home.

That the hardship is owing to the fact that this is a non-conforming structure. So any modification requires zoning relief.

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

So on the basis of these findings the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans, together with the dimensional form, submitted by the petitioner, application dated August 22nd, the first page of which has been

initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Variance granted.

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

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-010758-2016: Constantine Alexander, Janet Green, Patrick Tedesco, Douglas Myers, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010758, 2344 Mass. Avenue.

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

ATTORNEY JAMES RAFFERTY: Thank you. Good

evening, Mr. Chair.

CONSTANTINE ALEXANDER: Want to start again.

ATTORNEY JAMES RAFFERTY: I was about to say,
Madam Chair. I don't know why that was in my mind.

CONSTANTINE ALEXANDER: You're looking into the
future perhaps.

ATTORNEY JAMES RAFFERTY: Oh, so good evening,
Mr. Chair, members of the Board. For the record, my name is
James Rafferty with an office address at 675 Massachusetts
Avenue in Cambridge. I'm appearing this evening on behalf
of the applicant, Matthew Haymer, H-A-Y-M-E-R. He is the
prospective operator of a Cafe Luna catering business at
this location.

The Board may recall the case was here before the
Board over a month ago and at that time we covered many of
the issues presented in the case there. From a zoning
perspective they're related to height on this residence on
Hawthorne Street.

CONSTANTINE ALEXANDER: No, no, this is
Massachusetts Avenue.

ATTORNEY JAMES RAFFERTY: Oh, this is
Massachusetts Avenue.

CONSTANTINE ALEXANDER: Rewind. Start all over
again.

ATTORNEY JAMES RAFFERTY: It's still Matt Haymer,
it's still Cafe Luna. I apologize. I had a piece of paper
here. The next case....

So Mr. Haymer, we had covered a fair bit of
Mr. Haymer's case. He's looking to operate a catering
business in a location formerly for many years the home of
Verna's Doughnuts in North Cambridge at the corner of Mass.
Ave. and Norris Street. An issue arose at that hearing
regarding the adjacent parking lot, which is not under the
control of Mr. Haymer's landlord, the owner of the building,
but it is in fact owned by the adjacent bank, the North
Cambridge Cooperative Bank. The Board may recall that the

president of the bank was here and expressed reservations about the whole program, and in short didn't have an adequate understanding -- or information had not been properly shared with the bank I would say would be accurate about all of this.

Since we were last here, we have -- Mr. Haymer has had several meetings with the bank, its representatives, and his landlord. The result of all that is that the situation today is that the bank owns the lot which contains its building and approximately, it would appear to be, about 30 feet to the left of the building. And I've identified on the site plan in blue. The area in blue is controlled by the bank.

CONSTANTINE ALEXANDER: I was looking for it.

ATTORNEY JAMES RAFFERTY: So the bank could provide the necessary four spaces to Mr. Haymer's operation in that location to satisfy the Zoning requirements. If the bank did that, however, it would prevent -- excuse me, if

the landlord did that, the landlord owns the area in blue. The bank owns the area in green. If the landlord provided the four spaces on property that he owns, it would preclude the bank's customers from being able to access the parking lot from Massachusetts Avenue. They would always have to come up the one way on Norris Street in the opposite direction. So there has been a marriage of convenience for decades involving the relationship between this commercial building and the bank.

That relationship essentially is that of people living together and not married because it is not documented, it is not formalized, but it's based on mutual interest and convenience such that what the bank allows the tenants of the building to do is to park in locations that they control in exchange for not parking in the area depicted in blue. So when I learned of that, and I candidly was not fully aware of that relationship when we were last here, it then -- it was a source of concern for me both

representing Mr. Haymer because he needs some certainty from a Zoning perspective and from a business perspective that he could have -- he would have access. He needs them operationally and he needs them Zoning wise. But the reality is that if -- and we've had productive meetings and the bank's position is listen, we would never see it coming to that, but, you know, that is, that is the landlord's land and if the landlord if for whatever reason the relationship -- this decades long relationship between the two property owners somehow resulted in a change of thinking around accessing the parking lot, that area does exist.

So what we're -- the manner in which we're going to satisfy the parking, and the bank is here today to confirm that, is that the relationship that has existed historically will continue. And that is four vehicles, the four vehicles that Mr. Haymer intends to use in his business, two of which are delivery vans, two of which are other vehicles associated with the business, will have

access in the rear parking lot. And similarly the dumpster, which has been there for years throughout Verna's tenure, the dumpster is technically located on the bank's land as well. Same thing, if the dumpster were to go in the area controlled by the bank it would adversely -- if the dumpster were to go in the area controlled by the landlord, it would adversely impact the bank's ability to access its own lot.

So, but I'm -- it has been made clear to us by the bank, and I respect their position, that that relationship is not going to be memorialized in writing, but the bank president is here tonight to affirm that that relationship is -- they're going to allow that, the relationship to continue.

CONSTANTINE ALEXANDER: But of course what you're telling me I guess is that it's not in writing, not legally binding. The bank, maybe a new president comes in, could decide next week, next month, next year to change the deal.

ATTORNEY JAMES RAFFERTY: Correct. And were that

to happen, then from a Zoning perspective, the landlord does have the ability to provide, there does exist space on his lot depicted on that plan, the spaces would need to be relocated. So the spaces, the opportunity for spaces exists on land under the control of the landlord.

CONSTANTINE ALEXANDER: Do you have any commitment to the landlord to give you?

ATTORNEY JAMES RAFFERTY: We will.

PATRICK TEDESCO: Mr. Haymer's landlord.

ATTORNEY JAMES RAFFERTY: Mr. Haymer's landlord.

Thank you.

CONSTANTINE ALEXANDER: What's that?

PATRICK TEDESCO: I just wanted to make sure it was Mr. Haymer's landlord.

ATTORNEY JAMES RAFFERTY: Mr. Haymer's landlord.

We have reviewed this today and we made it clear that if that's the relationship, if -- my goal, frankly, had been to encourage the bank and Mr. Haymer's landlord to memorialize

the relationship, but that isn't going to be happening it seems very clear to me. So it really is -- the underlying relationship here is between the bank and the landlord. And Mr. Haymer is somewhat in the middle between the two. So what he's relying upon is a lease that he has with his landlord that tells him he can have access for four parking spaces.

CONSTANTINE ALEXANDER: Oh, so there is something in writing?

ATTORNEY JAMES RAFFERTY: There is a lease that talks of four parking spaces.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: It just so happens that it's referring to parking spaces that --

CONSTANTINE ALEXANDER: Does the lease identify where those four parking spaces?

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: The landlord is

committed --

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: -- committed legally to making four spaces available for you?

ATTORNEY JAMES RAFFERTY: Right. The only thing that's uncertain is the location of those spaces. And that's my point. He has the ability to do it, and we wanted it to be clear with the Board that the spaces that he has the legal ability, and what I have turned, you have to have an enforceable agreement that Mr. Haymer can rely upon. And as we know, the relationship between the bank or even between the landlord wouldn't be enforceable absent a specific identification. So the lease comes with four spaces. The landlord is present this evening. The bank is present this evening. It's my understanding that both the bank and the landlord would affirm that this has been their longstanding practice and this is how they intend to go forward.

DOUGLAS MYERS: Is the lease to which you're referring part of the record to before the Board in this case?

ATTORNEY JAMES RAFFERTY: Not at the moment.

DOUGLAS MYERS: Is there a reason why it's not part of the record?

ATTORNEY JAMES RAFFERTY: Well --

DOUGLAS MYERS: It seems to be important in terms of an absolute sense whether there is compliance by the landlord with an obligation to furnish four parking spaces.

ATTORNEY JAMES RAFFERTY: Well --

DOUGLAS MYERS: If that's the case, don't you think the Board should have a chance to look at the lease?

ATTORNEY JAMES RAFFERTY: I think that's unnecessary candidly, because the reality is that the property owner is here today and has the site plan where there is the ability to park four vehicles. And what we're doing is we're relying upon his ownership of that land to

park four vehicles. So, we're happy to provide it.

Candidly, the lease was in the negotiable form. The final element of the lease -- obviously if the Zoning relief isn't achieved here, there will not be a final executed lease. So everything is contingent upon this. So not being evasive in not providing, it's just that in this case -- I would say it would be highly relevant if we were relying exclusively upon on an abutter's property to park here.

DOUGLAS MYERS: But in an ultimate sense you may be relying exclusively upon the context of that lease.

ATTORNEY JAMES RAFFERTY: Not true. We're relying upon the contents of our lease to occupy the space the business will be in and to occupy four parking spaces. Because the landlord is then going to direct us to park the cars in his neighbor's property and not in the four spaces that he has under his control --

DOUGLAS MYERS: But if the neighbor withdraws the legal permission to park there.

CONSTANTINE ALEXANDER: Isn't a way we're dealing with this --

ATTORNEY JAMES RAFFERTY: Can I just conclude, because maybe I must not be doing an adequate job. If that were to happen, then the area depicted in blue -- I don't understand the question, the area depicted in blue would become parking for this use.

DOUGLAS MYERS: Because of the provisions of the lease.

CONSTANTINE ALEXANDER: The problem is we --

DOUGLAS MYERS: We don't have a lease.

CONSTANTINE ALEXANDER: We don't have the lease.

What if we granted, assuming we want to grant relief, on the condition that the petitioner deliver to the Inspectional Services Department a lease, a binding lease which shows that he has the right to four parking spaces?

ATTORNEY JAMES RAFFERTY: We could do that. I mean, I mean --

CONSTANTINE ALEXANDER: That would --

ATTORNEY JAMES RAFFERTY: -- I do lots of retail tenancies here. But the lease isn't typically an element. It's a unique situation. We're happy to do it. He's obligated to have the premises, so providing the lease is fine.

DOUGLAS MYERS: With all due respect, I fail to see what's gained by deferring delivery of the lease to a time when the Board won't have a chance to look at it and to make the legal interpretation that is evidently concerning me, rightly or wrongly, to have that made by the department when the lease is filed with them. I think the Board is entitled to make sure that if the bank withdraws its permission to park, that the landlord is indeed obligated to furnish four parking spaces in the location indicated by the applicant.

CONSTANTINE ALEXANDER: Well, Doug, that's what I'm trying to get at. There's nothing in the -- putting

aside this parking, there should be nothing in the lease that has any impact in our Zoning decision. Whatever the rent is, whatever -- whatever the lease -- the one thing we need to know is that as a matter -- by contract you have a right, come hell or high water, to have four parking spaces. And that, they could satisfy us by giving us the lease which, you know, we could look at the lease and say, yeah, the lease says that, you know, four parking spaces. They don't deliver that lease that says that, then the condition would not be satisfied. I can understand myself you don't want to negotiate the lease until you know you're going to have the Zoning right to do it.

DOUGLAS MYERS: The lease could be subject to approval to a previous approval of the Zoning Board.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: But I would say there are hours of work left associated with this lease candidly. The hearing date was set. The thinking is the Zoning we

obtain. I, my only concern is that a further delay in these proceedings, but a requirement that we satisfy to the Superintendent of Buildings or the Building Commissioner, evidence of a contractual right to access spaces under control of the landlord depicted on the site plan, sure, we can provide that.

CONSTANTINE ALEXANDER: How long is the lease going to be for? The term of the lease?

ATTORNEY JAMES RAFFERTY: Five years is the initial term. And that will come to our second question, because the bank has talked about a review period -- and I don't want to speak for the bank. They're here. Their counsel is here. A very able attorney who has many years practicing in Cambridge, and he will speak for his client. But we, we have, we heard the Board's comments about the possibility of attaching a review period on the Special Permit. It is problematic and challenging from a business perspective to commit the type of capital that's necessary

for this business and live with the uncertainty that after a period of time they may not be able to continue to operate, so --

CONSTANTINE ALEXANDER: Stop. If you have a five-year lease and we make a review at the end of five years, you're not putting yourself at risk. The landlord may choose not to renew your lease. So if we were going to say, I'm speaking for myself, two years, we'll give you the Special Permit for two years and you've got a five year lease, understand you would really being exposed. But if the condition were at the end of five years you've got to come back before us. You may be gone by then. You may decide you don't want to renew the lease or the landlord may decide doesn't want to renew the lease. But we could see the parking, assuming you're going to say we could see how the parking has worked out during the five-year period.

ATTORNEY JAMES RAFFERTY: I understand that, and the -- I explained to my client the Board typically does

employ that. So if that were the Board's conclusion in this case, we would ask that the review be coterminous with the first term of the lease which is, which is a five-year term.

CONSTANTINE ALEXANDER: Five years, I understand that. It makes entirely reasonable. We can't ask you to be financially exposed --

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: -- if we grant your Special Permit and you still got to pay your rent.

ATTORNEY JAMES RAFFERTY: That's exactly the current.

CONSTANTINE ALEXANDER: Understood.

ATTORNEY JAMES RAFFERTY: Okay.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I'm going to --

CONSTANTINE ALEXANDER: One second, sir. You'll an have opportunity.

Anything further as part of your presentation?

ATTORNEY JAMES RAFFERTY: That's an update. I think we covered -- I hope we covered the other items in the prior hearing associated with the operations. It seemed that --

CONSTANTINE ALEXANDER: You did. And then you also talked to -- we also have a letter from the North Cambridge Stabilization and you responded and they suggested we should impose a number of conditions and you gave us your views as to why that was not necessary.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: And nothing about that testimony has changed. I mean, at the time we said, you know -- so, with -- the conditions are all consistent, most of them are consistent with Mr. Haymer's intentions and the representations he made when he met with the neighborhood association.

PATRICK TEDESCO: Can I just ask a point of

clarification?

CONSTANTINE ALEXANDER: Go ahead.

PATRICK TEDESCO: Just so I understand, you said it's not in the bank's interest to require the parking to be moved off their property because that would prohibit their customers getting access from Mass. Ave.

ATTORNEY JAMES RAFFERTY: Right.

PATRICK TEDESCO: If the tenant were required to use the parking that's been set aside, would potentially be set aside by the landlord.

ATTORNEY JAMES RAFFERTY: Right. If the tenant were required to park on the land owned by the landlord.

PATRICK TEDESCO: Right. The bank's customers would have access.

ATTORNEY JAMES RAFFERTY: Yeah, it's pretty apparent as you can see it. And I think -- the bank is here. But I think the bank would readily admit that, and I think that's what has led to this relationship over the

years. I think in addition to being good neighbors there's a mutuality of interest here that serves them both well.

CONSTANTINE ALEXANDER: Other comments or questions from the Board?

GEORGE BEST: Are all four vans operational at all times?

MATTHEW HAYMER: No.

GEORGE BEST: Okay. So two are stationary.

MATTHEW HAYMER: It really depends on level of business or some days are busier than others. We talked about yesterday I'd say no. But today two of them were coming and going, but our business is in the morning to -- it doesn't go into the evening. So I mentioned that.

GEORGE BEST: Right.

MATTHEW HAYMER: So, it depends. I really does.

GEORGE BEST: At your other location they allow you to park this way all four vans?

MATTHEW HAYMER: I'm not sure if I understand to

understand your question.

GEORGE BEST: Is there another place in Cambridge?

MATTHEW HAYMER: As of now?

GEORGE BEST: Yes.

MATTHEW HAYMER: Yes, there is.

GEORGE BEST: Will that be going away?

MATTHEW HAYMER: I don't know because there's so much -- because it's Central Square on the way to Kendall, there's so much construction there with the potential Mass. and Main project, I honestly don't know.

GEORGE BEST: Sure.

MATTHEW HAYMER: It's why -- parking in Cambridge as you know is very, very difficult.

GEORGE BEST: Yeah.

CONSTANTINE ALEXANDER: But --

ATTORNEY JAMES RAFFERTY: But I think you have said that the your catering business which relies upon the four vehicles is going to be relocated from Central Square

to this location.

MATTHEW HAYMER: Absolutely.

ATTORNEY JAMES RAFFERTY: So I think the member's question was -- yeah.

MATTHEW HAYMER: I apologize. Because it's too far a distance. That is absolutely correct, yeah.

GEORGE BEST: I just wanted to be clear on that because I mean, it's clear to me that this should be straightforward.

MATTHEW HAYMER: That's absolutely correct.

CONSTANTINE ALEXANDER: Okay?

Any other questions or people have anything to say at this point?

JANET GREEN: No questions.

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

Sir? I know you wanted to speak.

MICHAEL CULHANE: Yes. I'm Michael Culhane. I'm

the president of the North Cambridge Cooperative Bank. And I've talked with Matt and it appears as though he's understanding of it, and I get it. And I believe that we'll have a great working relationship going forward. The only, the only thing that I'd like to put up is I'm sure people have come to this Zoning Board and have told you whatever you want to hear.

CONSTANTINE ALEXANDER: Really?

MICHAEL CULHANE: And you grant the zoning and they do whatever the hell they want. Okay? And thank you for considering a time frame on the zoning. I'm just thinking five years might be an awful lot for my business. I think we'll get along and I think Matt's truthful and I think everything he's displayed is that. I think five years might be a little bit long to have a review.

CONSTANTINE ALEXANDER: How do you respond to the point that if we do less than five --

MICHAEL CULHANE: I get it. No, I do. It's a

tricky situation. If he hasn't drawn up the lease, maybe he can draw the lease up for four years rather than five and then in a couple of years we have to really start getting -- it's a long period of time given the situation.

CONSTANTINE ALEXANDER: Well, one way of doing it for example is you make it a two-year lease with a three-year option so that he can continue -- and when we put a two-year condition on it, which means at the end of two years we look at it, we think things are going bad, we don't renew the Special Permit. He's not financially committed. And if everything goes well, he can -- even though the trouble is he's got to get the landlord to agree to this.

ATTORNEY JAMES RAFFERTY: Can I suggest something?

MICHAEL CULHANE: And my suggestion would be three. Could we give him a little more. I understand what his hardship is.

ATTORNEY JAMES RAFFERTY: Here's my point, and I apologize for interrupting you.

MICHAEL CULHANE: Go ahead.

ATTORNEY JAMES RAFFERTY: But he can have a three-year relationship with our landlord. So if at the end of three years the bank is not satisfied, then he can no longer allow the bank to park on property that -- and he can no longer allow my client to park on land the bank owns. What I said to Mr. Culhane is --

CONSTANTINE ALEXANDER: Then your client will be able to go to the landlord and say --

ATTORNEY JAMES RAFFERTY: Right. Mr. Culhane, Mr. Culhane could have a six-month window. He could have a one-year window. His doesn't need to run with your Special Permit review. Because what I don't hear from the bank is that this use is incompatible. The bank is concerned about impacts on its parking. So the relationship between the landlord and the bank with regard to the use of the parking can exist independent of the Special Permit because we do have, and we'll be required to, satisfy the parking

requirements of this use on land owned by the landlord. So I think what Mr. Culhane is looking for in terms of a shorter window, he can have a shorter window as he wants. It doesn't need to affect --

CONSTANTINE ALEXANDER: You're absolutely right. My point is we got to be assured --

ATTORNEY JAMES RAFFERTY: I don't hear that at many of these meetings.

CONSTANTINE ALEXANDER: We have to be assured that for the period of time you're operating this business under the Special Permit, you've got a contractual right to four parking spaces. The bank's land, the blue plan, the landlord, but it's got to be there. And that's what I want. That's my point of view. That's why I'm trying to make the -- if the Board members agree with me, if we're going to put a time frame on the Special Permit. I want to be, I want to have a time frame. Because I want to have a second look to see how the parking is working out and whether you

really do have four parking spaces. Okay?

JANET GREEN: And you feel you would get that from looking at the lease or that you need to --

CONSTANTINE ALEXANDER: The lease will tell you.

JANET GREEN: The lease will tell you.

CONSTANTINE ALEXANDER: It will tell you or better tell us. If not, they're not going to get the Special Permit.

DOUGLAS MYERS: But we're not going to see the lease. We're not going to see the lease with respect to the designation of the blue area. We're not going to see the lease with respect to the term of years to which the Special Permit allegedly will be coterminous.

CONSTANTINE ALEXANDER: No, but what we could do is that I as Chairman would look at the lease, and when the time comes, and I can see whether that lease guarantees to the tenant four parking spaces. That's all I think we need to know as a Zoning Board, because he will then -- with

that, he will satisfy the Zoning requirements for parking.

GEORGE BEST: Okay, but we do have the landlord here so we can hear from him.

CONSTANTINE ALEXANDER: Do we have the landlord here?

CAROL ROURKE: Right here.

CONSTANTINE ALEXANDER: Where?

CAROLE ROURKE: Myself and my brother Bill.

CONSTANTINE ALEXANDER: Okay. But nice to hear from the landlord but -- okay. Do you confirm by the way -- come forward. Both of you, please.

DOUGLAS MYERS: I'd like to hear the bank finish whatever it has to say. Because I don't want you to be cut off.

CONSTANTINE ALEXANDER: I thought you were finished.

MICHAEL CULHANE: That's fine.

CONSTANTINE ALEXANDER: You sure?

MICHAEL CULHANE: Yeah.

CONSTANTINE ALEXANDER: I didn't mean to cut you off. I thought you were done.

MICHAEL CULHANE: You answered my question.

CONSTANTINE ALEXANDER: Okay. You've heard the testimony. The lease that you're eventually going to negotiate and sign is going to grant Mr. Haymer's business four parking spaces.

BILL RAVANIS: My name is Bill Ravanis,
R-A-V-A-N-I-S.

CONSTANTINE ALEXANDER: So, I'm sorry I jumped ahead. You're confirming what's been told by Mr. Haymer, is that the lease has to be negotiated yet, will contain a provision that gives Mr. Haymer's business four parking spaces?

BILL RAVANIS: That's correct, yes.

CONSTANTINE ALEXANDER: For the term of the lease?

BILL RAVANIS: Yes.

CONSTANTINE ALEXANDER: Anything else you want to add for the benefit of the Board?

DOUGLAS MYERS: Will he specify that in the extreme situation that you have to provide those four parking spaces on your land, they will be located in the area marked blue on the site plan?

BILL RAVANIS: Yes.

CAROLE ROURKE: We will.

CONSTANTINE ALEXANDER: Why do we care about where? If the landlord has assured -- guaranteeing four parking spaces, where the spaces are is between the landlord and the tenant. I don't care.

DOUGLAS MYERS: Even if they're miles off premises.

ATTORNEY JAMES RAFFERTY: No, no, they have to appear on the land that the use is attached to.

DOUGLAS MYERS: Okay.

ATTORNEY JAMES RAFFERTY: And the site plan that

we're talking about.

DOUGLAS MYERS: Then they do have to relate to the blue area?

ATTORNEY JAMES RAFFERTY: Yes.

DOUGLAS MYERS: That was my question.

ATTORNEY JAMES RAFFERTY: The subject property, the landlord owns a rectangle on Mass. Ave. which consists of a building in that blue area that's all asphalt. That asphalt now serves largely as a two-way driveway and then there's parking on the right that the bank uses. If the relationship between the landlord and the bank were to change such that the landlord no longer had the ability for his tenant to use the bank's property, he would then use the property under his control and ownership at the site to satisfy the four space --

DOUGLAS MYERS: Which would lead to the complete deterioration of his relationship with the bank but that's not our concern.

CONSTANTINE ALEXANDER: That's not a hardship.

ATTORNEY JAMES RAFFERTY: I think the bank would -- I don't think it would serve either party's interest.

DOUGLAS MYERS: I understand. I understand.

CONSTANTINE ALEXANDER: Thank you. Do you have anything else you wanted to add?

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

MICHAEL BRANDON: I am.

CONSTANTINE ALEXANDER: Mr. Brandon?

MICHAEL BRANDON: Borrow your seat?

ATTORNEY JAMES RAFFERTY: I just said it's the last time I did that.

MICHAEL BRANDON: Michael Brandon, 27 Seven Pines Avenue. I'm the clerk for the North Cambridge Stabilization Committee. I appeared before you last week and gave you a letter with proposing five --

CONSTANTINE ALEXANDER: Several conditions, yeah.

MICHAEL BRANDON: -- conditions.

Our group met last night and did discuss what had happened at the last hearing. So some of this information is new. We had anticipated that Mr. Rafferty and Mr. Culhane would come to some sort of a legal agreement to work out the issues. It sounds like that's not gonna be memorialized in anything firm which I think from our point of view and, you know, all the abutting parties and potential tenant have their interest, but there's also the public interest here that this Board always considers. Should this relationship fall apart, the bank then would have to circulate onto Norris Street, which is why we were -- that was the main concern our group has that this not have traffic or parking impacts on Norris Street. So, you know, that would be a loss for all people involved. So we certainly want to see it go through. We want to see the space occupied by Matt, but we also want the Board to impose

conditions and possibly a potential expiration date and you would -- I don't see why it couldn't be short term. That's how it started, if you recall -- well, some of you will, the Valvoline property on Mass. Ave., where, you know, it's an automotive use in a zone that no longer allows it. And what happened was they were given permits that -- Special Permit that has to be renewed -- initially it was for shorter. I think the first one was one year and then it went to three years and then I think it was ten years. And originally, it recently came up, and again, it was extended for a shorter period because in fact over time people kind of forget what the -- and there are a bunch of conditions on that. People kind of forget. So, you know, like they weren't supposed to have signs. So it gave an opportunity to improve the landscaping, improve compliance with what had been agreed to and, you know, it seemed to work out for the community and the abutters and the business, you know, to have that potential. The conditions we represented were all ones that

we thought Matt and Jim had agreed to and indicated that they were reasonable. Most of them are I think things that they're required to do anyway in terms of sanitation, no terrible smoke. I didn't really understand Mr. Rafferty's argument to say well, you know, he's gonna comply with these or most of them. There's one that we should maybe discuss more. But if that's the case, then why not have them as conditions?

CONSTANTINE ALEXANDER: Let me explain. Again, my personal point of view --

MICHAEL BRANDON: Okay.

CONSTANTINE ALEXANDER: We can put a lot of conditions on. We may, you've identified several. There may be a condition that you haven't thought about that really should have been there, No. 1.

Or No. 2, is that we put conditions in and everybody forgets about them 15 minutes after the decision's rendered and there we are. I think, personally, a time

frame for the Special Permit, no conditions other than to making sure at the outset there are four parking spaces. We can revisit the whole issue. For example, you cited the bank and Mr. -- the landlord have a falling out and now the new parking, the default, I'm going to call default parking kicks in and the bank customers come around Norris Street and that's a mess for the neighborhood. If we had a five-year condition, at the end of those five years if that were the fact, we may very well not renew the lease -- I'm sorry, we may not renew the Special Permit. I think personally a time frame for the Special Permit is the solution. It allows the neighborhood, it allows the city to see how this is all working out, and we're not limited to any specific issue at the end of the five years. We revisit the thing de novo. The only thing I want to make sure is at the outset, and for the five years, there are four parking spaces guaranteed off the city streets. And I -- and I pick the five years because I personally am very sympathetic to

the notion that it's very unfair to this gentleman to make a five-year financial commitment and have no assurance from a zoning point of view that he can stay there for five years. And that's why I suggested -- I would like it to have been shorter, but I understand the economics of this.

MICHAEL BRANDON: I'm sorry, but I guess I still don't understand because I don't see what jeopardy he's in saying I think five years is too long.

CONSTANTINE ALEXANDER: The jeopardy is say we do the Special Permit for two years and we review it and we turn him down because the parking is deteriorated, your example, which is a possibility. He's out. He's got to close the door, lock the doors. Wait a minute. And he's got three years still to pay rent to the landlord unless he could find a subtenant or whatever. That's not fair to him in my judgment.

MICHAEL BRANDON: No, but he's, he complies then by, you know --

CONSTANTINE ALEXANDER: By what?

MICHAEL BRANDON: He still has his four -- the four parking spaces. By the way they, the conditions should make it clear that those are to be used for by the two vans and the other --

CONSTANTINE ALEXANDER: I'm not going to get into details as to how each of the four spaces -- who goes in what space. Four parking spaces --

MICHAEL BRANDON: Well --

CONSTANTINE ALEXANDER: -- the zoning requires. Whether he puts his van on space No. 1, No. 2, No. 4.

MICHAEL BRANDON: No, just that the delivery vehicles park on-site rather than -- if they're registered in Cambridge, they could come around and park on Norris Street and let his customers --

CONSTANTINE ALEXANDER: We're not -- we can't. The zoning office is not going to go around everyday to make sure that the vans are not on the street or in the parking

lot.

MICHAEL BRANDON: They don't have to. At least there's a way to have it enforced.

CONSTANTINE ALEXANDER: No. The fact of the matter is that Zoning says you got to have four parking spaces. They're going to have four parking spaces. Whether they use them is not an issue of our Zoning Board. That's not -- and that's for any business that requires parking spaces. People can use them or they can park on the street. That's up to them to do.

MICHAEL BRANDON: Mr. Rafferty maybe can clarify, but I'm not sure whether in fact parking spaces are required for a catering business.

CONSTANTINE ALEXANDER: Well, I've been told and we've been proceeding for the last how many minutes? On the basis that legally required per our Zoning Ordinance to have more parking spaces.

MICHAEL BRANDON: Okay, I came in late. So if

that's clear.

CONSTANTINE ALEXANDER: Am I correct,
Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: All the time,
Mr. Chairman.

CONSTANTINE ALEXANDER: So, that's my view.

MICHAEL BRANDON: Because, yeah, the issue was originally represented to our group that they have these spaces, how many cars. There's also supposedly a space that the Ravanisses would offer during the day for any overflow that he might need behind Frank's Steakhouse which they also want.

I think five years is too long. We would still like to see, you know, if you wanted to go through those and see.

CONSTANTINE ALEXANDER: I'm not going through the conditions. Other members of the Board can ask them.

MICHAEL BRANDON: Okay, well, I appeal to other

members of the Board to considerate it.

DOUGLAS MYERS: Without indicating that I disagree with the Chair because I basically agree with the Chair, I would like to ask about one condition, not with the expectation that we would include it in our ruling but just to see whether in the course of any discussions it has been addressed in a way that at least there's an informal understanding that's satisfactory to you.

MICHAEL BRANDON: There's one that --

DOUGLAS MYERS: If I'm lucky, I'll hit the jackpot. If not, I'll be off the mark. My question was going to concern the screening of the disposal unit.

MICHAEL BRANDON: That's the one I wanted to --

DOUGLAS MYERS: If I may in fact ask Mr. Brandon a question.

CONSTANTINE ALEXANDER: No, go ahead.

DOUGLAS MYERS: That's, Michael, what is the status of your understanding about that?

MICHAEL BRANDON: So, that was not really discussed at our meeting in-depth. I think I notified -- we definitely talked about sanitation. And, again, the little --

DOUGLAS MYERS: The question was about screening.

MICHAEL BRANDON: Okay. But it relates to the sanitation because that's what we discussed. And the reason we wanted a condition about it, even though he's required to comply with the dumpster ordinance, sanitation, that at the -- the Cafe Luna in Central Square just at the end of last month or the beginning of last month, they had their annual inspection and there were citations, multiple citations for rodents and vermin and other --

MATTHEW HAYMER: I'm sorry, we --

CONSTANTINE ALEXANDER: Thank you. Let's not debate this issue. If there are sanitation issues, there are other bodies in the city who will take care of that. That's not a Zoning issue for us, I'm sorry.

MICHAEL BRANDON: Well, it -- if you impose a condition that they comply.

CONSTANTINE ALEXANDER: And I'm saying there's no need to impose a condition because the city has other ways of making sure that the sanitation --

MICHAEL BRANDON: Right. And they're complaint-driven by the Inspectional Service Department which means the neighbors -- I'll get calls, you know, something is going on, the trucks coming at four in the morning, what can I do? And I refer them and Angela Boyer then investigates and we have to go to another hearing. Where is if they're just there and there are things that he intends to comply with, then, you know, it's a little more --

CONSTANTINE ALEXANDER: No, it's not. In my judgment, no, it's not. It's just paperwork and just adding conditions that as I said before, that are going to be forgotten the moment after the Variance -- the Special

Permit has been granted.

MICHAEL BRANDON: I guess because as long as they're complied with --

CONSTANTINE ALEXANDER: It's a complete second look of this project.

MICHAEL BRANDON: I don't want to debate with you.

DOUGLAS MYERS: So again to return to my question --

MICHAEL BRANDON: The screening issue is not specifically discussed and we were not aware of this whole question of the landownership.

DOUGLAS MYERS: So there's no satisfactory understanding to you with regard to --

MICHAEL BRANDON: We would like to see --

THE STENOGRAPHER: Could you please let Mr. Myers ask his question.

DOUGLAS MYERS: There's no -- you can elaborate on

your answer, but my question is, is there any informal understanding with the landlord, with the applicant about what will be done with regard to screening the dumpsters?

MICHAEL BRANDON: No. As I recall what Matt explained was that if there were sanitary problems with it not being emptied, serviced regularly enough, he would just get more dumpsters or have more frequent pick-ups, you know, but that he would address. But we didn't really discuss the placement except that where Verna's has it and it's been used, it's been a problem. And I think we may have mentioned, we had a big rodent outbreak on Norris and Dudley Street.

DOUGLAS MYERS: So the answer to the question is no.

MICHAEL BRANDON: So, there's no agreement and it sounds like -- my understanding is that the passageway behind the Verna's building is recorded, it's eight-foot wide -- eight-feet wide, each abutter owns it up to halfway,

but it's supposed to be kept open. So theoretically the dumpster shouldn't be there unless it's really narrow. It is a smaller size one, but it would be nice if they could all just kind of work it out and maybe remove the dumpster back.

CONSTANTINE ALEXANDER: I'm sure they will, Mr. Brandon. I don't want to try to work it out for them by putting conditions in the decision. I would rather take a second look, global second look after a period of time and we'll see all the problems, if there are any problems before us, and we'll decide whether to renew the Special Permit. Rather than trying to be here and nitpick and figure out, this condition and that condition, it doesn't make sense in this case. It really doesn't in my view.

MICHAEL BRANDON: Well --

CONSTANTINE ALEXANDER: Well, anyway, thank you, Mr. Brandon. You had your opportunity.

MICHAEL BRANDON: Well, thank you for listening.

CONSTANTINE ALEXANDER: And after a fact but go ahead.

MICHAEL BRANDON: Thank you. You listened well. You addressed your point of view.

CONSTANTINE ALEXANDER: Thank you.

MICHAEL BRANDON: And we appreciate it and we hope and ensure that --

CONSTANTINE ALEXANDER: We haven't taken a vote yes.

MICHAEL BRANDON: Right. But I get the sense that how the Board will probably proceed and --

CONSTANTINE ALEXANDER: No one else has spoken besides me.

MICHAEL BRANDON: Thank you.

CONSTANTINE ALEXANDER: Sir, you wanted to speak.

YOUNG KIM: Good evening my name is Young Kim and I live at 17 Norris Street which is just two houses down from the parking lot. I'm sorry I have to beg your

indulgence because I'm not too familiar with the BZA hearings.

CONSTANTINE ALEXANDER: That's okay.

YOUNG KIM: So if I step out of bounds, my apologies.

CONSTANTINE ALEXANDER: Thank you.

YOUNG KIM: I like to tell you two experiences as a neighbor of old Verna.

No. 1, is that every night they will come in around midnight and they will work throughout the night and the smell of the donut waffling down the street was just absolutely temptation, you know, tempting. And I look forward to smelling all the good food from down the street.

CONSTANTINE ALEXANDER: You got that, right?

MATTHEW HAYMER: I hope there aren't smells, but I promise you we'll work on that.

ATTORNEY JAMES RAFFERTY: As long as they're good ones.

MATTHEW HAYMER: As long as they're good ones,
yes.

YOUNG KIM: Yeah. The point is that I do not want
any smell because of the catering business to be affecting
the neighborhood. The one thing that we can bring up at the
Planning Board hearing when the Catholic High School was
converted to residential use, is preserving the fabric of
the neighborhood. Verna was very nice, friendly family-run
business that catered to the neighbors. A lot of people
would walk over, have nice donut in the morning and
use -- the best story I tell everybody was there was people
in this favorite donut shop and you know how --

CONSTANTINE ALEXANDER: Let the record show that
he put a big hand like.

YOUNG KIM: I'm sorry, I shouldn't have done that.
Anyway that is, one issue. The smell from the operation.

The noise from the operation. When Verna was
there, they didn't have a delivery.

CONSTANTINE ALEXANDER: Right.

YOUNG KIM: So it was very, very quiet. And people worked there and no cars going in and out during the middle of the night and they will open up at like six o'clock I believe and people would come by and it was very, very quiet. So being second from the place, I do not want the truck to be making clanking noise or making a lot of noise in the morning.

CONSTANTINE ALEXANDER: See one of the reasons -- I'm sorry to interrupt you. The fact of the matter if we take, if we put a time limit on the Special Permit, the issues you raised which are perfectly legitimate, can be examined at the end of the time period, you can come back to us and say, listen, the smells from that catering business were terrible. The trucks, the cars are coming in 17 times a day and including three in the morning and I can't sleep. We may choose at that point when we hear that, not to renew the Special Permit. The issue

unfortunate, and maybe my board members are going to overrule me, is the issue is you're going to have to wait five years -- I think we should wait five years before taking that second look because of the economics of the situation.

YOUNG KIM: But even during that five period -- I mean initially, you know, we would like to have some way that if the noise and smell and traffic gets excessive, we have some recourse. And I try to deal with the -- I'm sorry to say this, but the City -- various city departments with always overlapping authorities, it is very, very difficult to air our complaint. So I just want to let you know how I feel.

CONSTANTINE ALEXANDER: I appreciate that.

YOUNG KIM: As very close abutter.

CONSTANTINE ALEXANDER: I appreciate that.

YOUNG KIM: The other issue is because of other restaurants in the neighborhood, last year we ran into

horrendous problem with rats. My property especially. They had burrowed into the foundation of my garage and it just crumbled. And to control the pest situation and to repair the foundation, was a major, major headache that I spent all summer dealing with. So -- that's another issue that I'm very, very, very strongly feel that there has to be very stringent procedure for controlling rodent problem. So I think I speak for the rest of my neighbors when I speak about that kind of issues. It will probably rises again because it's a catering and then a lot more cooking, therefore, there will be a lot more waste, I believe, and there would be the -- most of the delivery will be the morning and then the lunchtime if I believe. So there will be a lot of potential noise problem. So I just want to air our concerns.

Thank you very much.

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

JANET GREEN: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard? Again?

MICHAEL CULHANE: Yes, just real brief. Thank you for imposing the time limit and I think that ultimately is a fantastic solution. I would like to say Mr. Kim and Mr. Brandon and for the abutters on Norris Street, yes, if we were not to have this arrangement, they would be the ones, they would be severely affected by this. And the traffic would come around Norris and I get it. The time limit is certainly a great idea and where Matt would have to -- and I don't anticipate any problems with Matt. I think we would be able to work everything out. The only thing I would like to say is five years is -- it can be very short or very long. Just depending on what it is. And it seems to me my Norris Street neighbors and myself seem to want it lower, which is great, and I do understand the financial hardship with Matt because he's going to do some

rearrangement in the thing. How about if the Board starts in the middle? Since we don't have a lease drawn up, what if we can draw up the lease for four and also have the zoning time limit at four?

CONSTANTINE ALEXANDER: So you want five years to four? You've got to understand --

MICHAEL CULHANE: No, no, I do. I do.

CONSTANTINE ALEXANDER: You're the banker. I mean he wants some assurance of being there for a period of time.

MICHAEL CULHANE: I think he wants to be there for 20 years --

CONSTANTINE ALEXANDER: I think he does, too, but he wants to be sure he can be there for 20 years.

MICHAEL CULHANE: But there's also -- but as the neighbors also have -- and like I said, five years could be a long period of time and five years could be a short period of time. And that's, I think, the concern of the bank and that's the concern of the neighborhood. Do I anticipate any

problems? Not at all. Not at all. But it's happened before.

CONSTANTINE ALEXANDER: What I would like to see in a perfect world is a two-year lease with a three-year option to extend and therefore -- I can understand why. It doesn't work that way. That would be the best solution because two years we can take a look, take a second look at all that.

MICHAEL CULHANE: Terrible hardship.

CONSTANTINE ALEXANDER: It doesn't make any sense from an economic issue. You will have the assurance. If you can -- if the landlord would agree that you have an option. You're guaranteed five years. But the landlord may not like the fact that he's not guaranteed five years. He's guaranteed two years.

MATTHEW HAYMER: Right.

JANET GREEN: It seems like most of the concerns we're hearing are ones that are addressed by other agencies

in the city. The concern about rats, the concern about noise. I mean, that's not -- I think we can --

ATTORNEY JAMES RAFFERTY: Mr. Chair, I think it's also of significance that the likely impacts from a business of this type, this use, are completely consistent with all of the allowed uses in this zoning district. So were a restaurant to go in here tomorrow as of right and not be before the Board, Mr. Culhane's concerns would be present, the neighbors' concerns about noise and odor, in fact, they would be present and one would have to deal with the City's regulatory agencies. We are here because of a use requirement associated that requires a Special Permit. So if we were, if this was a use that was very inconsistent with the allowed uses in the district, I would say concern about conditions and length of time would even be more prominent -- needed to be more prominent in the Board's thinking. So when you contrast this use against the allowed uses in this wide open business district, I think the

provision that the Board has suggested or that we have asked for at five years is very appropriate.

CONSTANTINE ALEXANDER: Well, I was going to make the same point, Mr. Rafferty, you're correct.

GEORGE BEST: And I just want to say that we're really not in the business to do relationship management.

CONSTANTINE ALEXANDER: Right.

PATRICK TEDESCO: And to your -- and actually just to underscore one other point you made, Mr. Chairman, if the bank is not satisfied with this arrangement for any reason, they can rescind it any time they want. They don't have to wait five years.

MICHAEL CULHANE: I understand there would be a harm to Norris Street.

PATRICK TEDESCO: And no one is suggesting you would do that and I'm sure it would work out. In terms of adding two years or three years or five years for a review period, doesn't seem entirely relevant because the bank

still has the right any time to --

CONSTANTINE ALEXANDER: Mr. Brandon, you've already spoken. Do you have something new to add?

MICHAEL BRANDON: Yes, just in response to this argument that you were gonna take up also that well, if it were a restaurant, they could do this. The difference is it's not a restaurant. Actually most people that I know would prefer another -- like Cafe Luna to open there. Cafe Luna II rather than Cafe Luna Catering.

If it were a restaurant, it would need to be licensed by the License Commission and they are very adept historically at looking at these particular kind of issues and addressing them as conditions on the license, and then there's a quick way to get them in force.

So that's it. Thank you.

CONSTANTINE ALEXANDER: Thank you. Thank you.

Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. Any final comments, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: No, thank you.

GEORGE BEST: Have we sufficiently beaten the horse to death?

ATTORNEY JAMES RAFFERTY: I'm very appreciative of the Board's time. I understand the abutters' concern. I have a sense that the Board is nearing some consensus so I think everything that I need to say --

DOUGLAS MYERS: May I ask what, if any, intention the applicant is willing to stay in a non-binding way simply state his intention with regard to screening the dumpsters?

ATTORNEY JAMES RAFFERTY: We intend to explore that, but much like the parking, we're somewhat subject to the bank. So if the bank is prepared to work with us on that, we would explore that. But the dumpster is on their location and the enclosure around that would require their consent as well.

DOUGLAS MYERS: That's fine.

Thank you.

CONSTANTINE ALEXANDER: We have no letters in the file other than what I identified the last time; namely, the letter from the North Cambridge Stabilization Commission or Board, sorry.

So I'm going to close public testimony. As you gather, and I welcome any input from board members, I'm going to propose that we grant the Special Permit subject to two conditions:

That prior to opening business you deliver to the Inspectional Services Department a lease which in the opinion of the Chairman of the Board, meaning me, creates a binding commitment for four parking spaces on, in the blue area on this here. That's a good point you made, Doug. It could be miles away.

And the second condition would be that the Special Permit would expire five years.

DOUGLAS MYERS: It would be coterminous with the lease not to exceed five years.

CONSTANTINE ALEXANDER: You mean the lease less than five years?

DOUGLAS MYERS: Yeah, not to exceed it. It would be coterminous with the lease. I mean, if they end up with a lease for three years, unlikely, I mean I would like the Special Permit --

CONSTANTINE ALEXANDER: That's a good thought. Okay.

DOUGLAS MYERS: Coterminous with the initial term of the lease not to exceed five years.

JANET GREEN: I guess I don't understand that, Doug.

DOUGLAS MYERS: Well, I don't know what -- we don't see the lease. The lease is not before us. We don't know -- we understand the Chair will look at it, but if they end up for any reason with a three-year lease, I mean I

would not want to have deferred the view of the Special Permit for five years.

CONSTANTINE ALEXANDER: I'm not sure --

ATTORNEY JAMES RAFFERTY: Well, I understand the point.

CONSTANTINE ALEXANDER: So do I.

ATTORNEY JAMES RAFFERTY: There's no way Mr. Haymer would enter into this with a lease term of less than five years given the capital commitment he has to make so we're perfectly fine with that restriction. As a business matter, he can't go into this with a lease term less than five years.

CONSTANTINE ALEXANDER: Any other comments?

DOUGLAS MYERS: No other comments.

CONSTANTINE ALEXANDER: I'll try my best to make a motion.

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

That the requirements of the Ordinance cannot be met without a Special Permit from our Board.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. That would be subject to the conditions that we're going to impose that will deal with that and it is intended.

Two, to the extent that we can, that it will be no congestion, hazard, or substantial change in established neighborhood character.

That as a continued operation or development of adjacent uses as permitted by the Ordinance will not be adversely affected by the nature of the proposed use. Again, that's going to be based on the conditions that we're going to impose.

In 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 we've already heard substantial testimony on that. And, again the belief is that the conditions that I'm going to recommend would deal with that. And if those conditions are satisfied, that there would be no nuisance or hazard.

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

In this regard what the petitioner's proposing is to create a -- is an established operator of an eating establishment in the City of Cambridge already and wants to move to a different part of the city and wants to expand his catering operation that he now runs from a different location in the Central Square area.

So on the basis of all these findings the Chair moves that we grant the Special Permit being sought subject to the following conditions:

One, that before the business can be opened,

before you can open for business, that a lease, binding lease with the landlord for the property must be submitted to the Inspectional Services Department, and be in the condition -- in the opinion, sorry, of the Chairman of the Board such that it gives a binding commitment from the landlord to give you four spaces in the blue area that's listed on the site plan that I've initialed.

And the second is that the Special Permit will terminate -- will be coterminous with the term of the lease but in no event no more than five years. At the outset five years from now, assuming you own the same business here, we'll see you again.

Anything else?

SEAN O'GRADY: Can I just say --

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: Instead of the delivery of the lease to you prior to the opening of the business, could you make it prior to the signing of the decision? Because

there's no control after that point.

CONSTANTINE ALEXANDER: Okay. Prior to the --

SEAN O'GRADY: Prior to your signing.

CONSTANTINE ALEXANDER: Got that modification?

Prior to the signing of the decision.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. All right,
Special Permit granted.

(Alexander, Green, Tedesco, Myers, Best.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-010844-2016: Brendan Sullivan,
Janet Green, Patrick Tedesco, Douglas Myers, George S.
Best.)

BRENDAN SULLIVAN: The Board is going to call case

No. 010844-2016, 307 Fresh Pond Parkway.

Is there anybody here interested in that?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of communication dated August 23rd. (Reading) Dear Marie, I represent Mr. Elie Al-Lakkis. We recently filed a petition for a Special Permit which is currently scheduled for a hearing before the ZBA this Thursday, August 25th. At this time we respectfully request to withdraw our petition from consideration before the Board. Please remove the petition for a Special Permit for parking at 307 Fresh Pond Parkway from the agenda for Thursday evening. Thank you for your kindness and consideration in this matter. Sincerely, Stephen Tobin.

Is there anybody who wishes to speak on the withdrawal?

(No Response.)

BRENDAN SULLIVAN: I see nobody.

Councillor, do you wish....

COUNCILLOR JAN DEVEREUX: I guess I just have a question about --

BRENDAN SULLIVAN: Introduce yourself.

COUNCILLOR JAN DEVEREUX: I'm Jan Devereux, D-E-V-E-R-E-U-X, 255 Lakeview Avenue.

I guess I just would like to clarify what -- if a withdrawal is approved, does that mean that this petitioner cannot reapply within a certain time frame? What does that mean?

BRENDAN SULLIVAN: It means it's withdrawn for two years.

COUNCILLOR JAN DEVEREUX: Two years?

BRENDAN SULLIVAN: The same petition, correct.

COUNCILLOR JAN DEVEREUX: Okay. And since this applicant was asking for permission to use this parking lot for accessory parking with his business, what is our stance on his continued use of it the way he's been using it for

the past two years as a parking lot?

BRENDAN SULLIVAN: Nothing before us but that's enforcement, which I think is my understanding it's ongoing somewhat. Anyway that's administrative.

COUNCILLOR JAN DEVEREUX: So that has no --

BRENDAN SULLIVAN: Nothing to do with us.

COUNCILLOR JAN DEVEREUX: Okay.

BRENDAN SULLIVAN: Unfortunately. That's between administrative and possibly the City Council.

COUNCILLOR JAN DEVEREUX: I'm just here s a neighbor. Thanks.

BRENDAN SULLIVAN: Thank you.

Any other questions from the Board on the withdrawal?

Let me make a motion to accept the withdrawal.

All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor. The matter is

withdrawn.

(Sullivan, Green, Tedesco, Myers, Best.)

BRENDAN SULLIVAN: The matter is withdrawn.

(8:30 p.m.)

(Sitting Members Case BZA-010350-2016: Brendan Sullivan, Janet Green, Patrick Tedesco, Douglas Myers, George S. Best.)

BRENDAN SULLIVAN: The Board will hear case No. 010350-2016, 23 Hawthorn Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair. For the record, James Rafferty appearing on behalf of the applicants. Seated to my right Stephen with a PH and Kristin Mugford, M-U-G-F-O-R-D. And the Mugfords are looking at operating a catering business on Hawthorn Street. Do I have that right? No, that's not it.

BRENDAN SULLIVAN: That's okay, we'll humor you as you go along.

JANET GREEN: As long as it's reciprocal.

ATTORNEY JAMES RAFFERTY: Thank you. This, again, is a case heard by the Board last time. It's a case primarily from a zoning perspective related to the reconstruction or renovations to a home, a single-family home on Hawthorn Street. It's a home of some historical significance. It has been reviewed by the Historic Commission and granted a Certificate of Appropriateness for the work being done. But we covered most of those issues which we're happy to review again with the architects. But at the last hearing, you may recall, there were some abutters present who we had neglected to communicate with prior to the hearing and explain the plans, and that as a result of that primarily the case was continued to allow an opportunity for that level of exchange to occur. I'm pleased to report that it has and in fact there is in the file a letter from Frances Cohen, an abutter across the street on the corner of Acacia Street who indicates her

support. You may recall Ms. Cohen's chief concerns were in the category of construction mitigation. I would say she had appropriate concerns about construction vehicles, impacts associated with construction, and the like. And the Mugfords have had an exchange with them.

Mr. and Mrs. Mugford are moving to Cambridge.

This will be their home. They currently live out in the suburbs and they have three children and they'll -- they're happy and excited to be coming here. The house has some history associated with it. It was the home and office of the well-known pediatrician Barry Brazelton for many years. One of the things that happened to the house in the early eighties there was a significant element attached to the side of the house to accommodate a stair tower to the third floor. That's all being removed as are some other additions in the rear that frankly weren't particularly compatible with the architectural style and historical nature of the house. So that's been a chief focus of the renovations.

Since the application was filed but prior to this past Monday, we did file a modification to the plans. It's a slight modification, but it has to do with, believe it or not, a reduction in the size of the proposed house.

Mr. Hart, Steven Hart is here. He's the project architect.

I apologize. The actual house itself has been reduced by 163 square feet than in the earlier presentation. The house is below the allowable FAR or the project will be by the time we're done based upon the amount of removals that are coming down.

The house is currently just over 6,000 square feet. It's 6,098. When we're done, the house will be at -- slightly over 5,700 square feet.

There is -- at the time we filed the application before the Board, the proposal is for a two car garage in the rear, and the property contained an accessory apartment that would satisfy the second requirement -- the second parking space in the garage would not be subject to gross

floor area.

Further examination of City records and the Mugfords' intentions, they've concluded that they don't wish to have an accessory apartment. So the change in the plans that you'll see are that the lower level, the ground floor level, the basement level which was going to contain an apartment, there is has been an apartment on the third floor and that tower was -- if you review the records when the tower was approved, it was done to accommodate this living space on the third floor. They're removing the tower. That's all going to be part of the house. It's a single-family house.

The relevance of all of that is that there's -- while there's 163 square feet less in the house, there's 198 square feet more associated with the garage, not because of the size of the garage has changed since we were last here, but that the area of the garage that would have been excluded from the definition of gross floor area

because it was accommodating two dwelling units is no longer able to meet that exception. So if I haven't been too obtuse, but that's where the numbers shifted slightly.

The changes to the house itself that led to the 163 square feet Mr. Hart can go through.

But to refresh the Board's memory, it is a height variance. And it's not a Variance we approach lightly because we know it's an area where the Board, frankly, appropriately pays close attention to that. The relief and the hardship are directly related to the slope of the roof and the desire to have the additions on the house be compatible with the profile of the other roof. So I think the -- they're at the peak of the roof or a small portion of the roof slightly exceeds by about two and a half feet?

STEVEN HART: Three feet, eight inches.

ATTORNEY JAMES RAFFERTY: Better said. Three feet, eight inches. And we can, again, isolate that area.

The bulk and mass of the roof is actually lower

with the peak roof than it would with an as-of-right flat roof. And we did a little bit of that analysis last time, and we would be happy to have Mr. Hart continue on with that if you like. But that's the nature of the relief.

Similarly, the garage to qualify as an accessory structure which gets the benefit of the side yard setbacks on the rear and side, needs to not exceed ten feet in height. The Historical Commission actually --

STEVEN HART: 50.

ATTORNEY JAMES RAFFERTY: It needs to not exceed ten feet in height, but the Historical Commission actually supported and preferred a slightly higher roof on that garage. The neighbors were supportive of it. So the relief here does include an additional five feet of height on that garage. And, again, it's a, it's related to the style of the house, the style of the garage. There's some language in the Certificate of Appropriateness issued by the Historical Commission that that was seen as more

appropriate. There is no storage space up there. There is no living space. It doesn't accommodate a greater use of the house. This is going to be a single-family house for this family. This is not an attempt to enhance the development potential for the garage. It simply is again a matter of style and design.

Before we included in the relief, the Mugfords met directly with the principal abutters in the rear and the side to make sure they were comfortable with it, and they have indicated that they are.

So those are the matters that are before the Board in the form of the Variance.

BRENDAN SULLIVAN: So it's really aesthetics to complement the house in a sense?

ATTORNEY JAMES RAFFERTY: Exactly. I think the Board had a similar case a few years ago on Appleton Street where the garage was introduced.

These homes in that district of that scale and

size, the garages when they're detached really tend to be consistent with carriage houses. And so the house is of a certain vintage and the house of this style and size would have had a carriage house which would have had a slightly higher roof. So as I said, the Historical Commission favored it. The Mugfords are perfectly happy to install it. They also agree aesthetically it's an improvement, and it would make for a better compatibility with the house. So those are the two issues before the Board.

BRENDAN SULLIVAN: Okay.

Anybody have any questions?

DOUGLAS MYERS: Question: Did you say that these changes had been filed only recently? I raise this -- I ask this question not in the sense of raising any procedural obstacle, simply to clarify when any changes were filed with respect to when I have reviewed this file personally.

ATTORNEY JAMES RAFFERTY: They were filed on Monday.

DOUGLAS MYERS: They were filed on Monday. I misunderstood you then.

ATTORNEY JAMES RAFFERTY: Yes, I said that being very mindful of the five p.m. Monday deadline. They were filed Monday morning. Actually I think they were filed a week before Monday.

DOUGLAS MYERS: No matter.

ATTORNEY JAMES RAFFERTY: Yes.

DOUGLAS MYERS: No further questions at this time.

BRENDAN SULLIVAN: Any questions at all?

Any questions? Any questions?

(No Response.)

BRENDAN SULLIVAN: Okay, I think the only real issue I had the last time, and I think that you have probably tweaked it a little bit better, was some of the issues regarding the notification and the neighbors being involved and what have you.

Is there anybody -- let me open it to public

comments. Anybody who would like to speak on the matter?

Yes, sir. Please introduce yourself for the record.

RICHARD DENEUFVILLE: I'm Richard Deneufville,
D-E-N-E-U-F-V-I-L-L-E. Nice to meet you.

Yes, and so I was here last time two months ago with Frannie Cohen and we've been discussing it. And we just heard maybe Monday, but not so long ago about the change with the elimination of the apartment. So we're supportive of that. I wish to confirm that on behalf of everybody else that we've been talking to in the neighborhood. And we still are very much concerned about the perspective parking on the Acacia Street which is not wide enough for two rows of cars and the fire trucks turning so that we were very much concerned about that and how that would be dealt with.

BRENDAN SULLIVAN: Okay. So you've been satisfied on that?

RICHARD DENEUFVILLE: They have indicated that

they would be working on the -- using the parking area that's -- as a turn for two vehicles to be able to go through there, but of course it has to be enforced with the attractors who are present in this room. But that's what we're looking for, yes.

BRENDAN SULLIVAN: Right, thank you.

RICHARD DENEUFVILLE: And it's a pleasure to meet you.

BRENDAN SULLIVAN: Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody.

There is correspondence dated August 25th from 28 Hawthorn Street. (Reading) My husband Alan Green and I live at 28 Hawthorn, directly across the street. We support the pending application of Kristin and Stephen Mugford for Zoning relief to exceed the height restriction for the second and third floor addition on the back of the house and

for a five-foot height variance on an accessory garage at the rear of the property. At the June 30th session the Board continued the matter to give the Mugfords the opportunity to consult with neighbors regarding the impact of their construction plan.

It goes on basically to say that they put in effort and sensitivity into developing the plan and to minimize the impact and understand that it is potentially, that this potentially relates not just to the immediate abutters but to Acacia Street as well.

Our discussions are reflective in the attached e-mail. We thank the Board for the opportunity to have these pre-construction discussions. And the correspondence is signed by Frances Cohen.

There is correspondence from the Planning Board, and I don't know if I read this in the last time. But anyhow there was correspondence from the Planning Board dated June 28th. (Reading) The Planning Board has

reviewed -- well, no, they're not commenting. I'm sorry.

ATTORNEY JAMES RAFFERTY: They're not commenting.

BRENDAN SULLIVAN: They did not send anything in.

There was correspondence dated June 9th, on the letterhead of the Cambridge Historical Commission.

(Reading) I am writing to communicate the Commission's support for the above-referenced project which is located in the old Cambridge Historic District. The significant Queen Anne style house at 23 Hawthorn was constructed in 1884 for composer and Harvard music Professor John Knowles Paine. It was later the home of geology professor Reginald A. Daly and Doctor T. Berry Brazelton designed by the firm of rare and bamboo. On April 7th the Commission granted the proponents a Certificate of Appropriateness for the proposed alteration which included an addition to the existing house and construction of a new garage and directed me to inform you of their support for zoning relief necessary to construct the project as intended. They asked me to take

this step because the project will remove or mitigate the several inappropriate alterations in addition. The proposed alterations would reduce the gross floor area. The proposed house is smaller than the existing house. While the proposed gable rear addition is 38.8 inches tall, three foot, eight inches beyond the 35-foot limit, the small triangular volume that extends above the height limit remains at six-foot, three, below the existing main ridge. An alternative that complies with the height limit would contain greater bulk volume and would not be historically appropriate or architecturally attractive. I hope the Board will see fit to grant the relief suggested. Charles Sullivan, Executive Director, who issued a Certificate of Appropriateness which we will incorporate the conditions and all by reference. I don't need to go through two pages of that.

There is a letter from 23 Hawthorn Street.

(Reading) We are writing regarding the Variance and permits

requested by the owners. We are immediate abutters and any change will have a huge impact on our home and yard, this is why we are writing to say that we fully support all the proposed Variances and Special Permits for the property.

Tracy and Bertio, B-E-R-T-I-O, John Chronberg,
C-H-R-O-N-B-E-R-G.

And I think that is the sum and substance of correspondence.

Okay, Mr. Rafferty, let me close public comment.

ATTORNEY JAMES RAFFERTY: Thank you, I think Mr. Sullivan's letter fully amplifies the argument related to the hardship. We would request it is an appropriate candidate for the relief being sought and we would kindly request the Board grant the Variance.

BRENDAN SULLIVAN: Okay, that's on the Variance.

Now the Special Permit is.

JANET GREEN: Can I just make --

BRENDAN SULLIVAN: Oh, sure.

JANET GREEN: Just one thing I wanted to say.

Where are you going to live while all the construction is going on?

KRISTIN MUGFORD: We currently live in the suburbs.

JANET GREEN: Yeah.

KRISTIN MUGFORD: And we're going to be keeping our house in the suburbs until this house is ready.

JANET GREEN: So the thing I would say with a long-term construction of such massive nature is that it can be very complicated for neighbors to actually know how to ask any questions or let you know, so you may have very good intentions, which I think you do, but how will they know if there's some problem with the contractor parking or trash being littered or rats or any of the problems that come with that construction? How -- what --

ATTORNEY JAMES RAFFERTY: I think Ms. Mugford can share with you some of the discussion she's had around

giving contractor information to the abutters, setting up a communication vehicle.

JANET GREEN: Great.

ATTORNEY JAMES RAFFERTY: So those are all the issues that were covered and referred to by Ms. Cohen in her letter. But, yes, you're quite correct.

JANET GREEN: Yeah, I think it is.

ATTORNEY JAMES RAFFERTY: Because at the end of the day the property owner is going to have to rely upon the adherence of their contractor to the City's requirements.

JANET GREEN: Exactly. And I know in that neighborhood they've had seven construction projects in the last couple of years and so they're quite sensitive about that.

ATTORNEY JAMES RAFFERTY: And I think I can share with the Board that the Mugfords in interviewing contractors, substantial contractors have specifically looked at people that have worked in the neighborhood and

got references with regard to how they were perceived. Some had better reputations than others in terms of sensitivity for abutter issues, and it is a priority in their decision making.

JANET GREEN: Great.

BRENDAN SULLIVAN: I think in our attempt the last time was to continue to open up a line of communication which I think we have done.

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: And so that worked.

ATTORNEY JAMES RAFFERTY: I don't know why I was resistant to it, Mr. Chair, because time and again once again your thinking is correct.

BRENDAN SULLIVAN: Steve, if you could just touch upon the Special Permit which -- very briefly, just on the windows. Just to highlight those, if you would.

STEVEN HART: Which windows are on the non-conforming wall, one right?

ATTORNEY JAMES RAFFERTY: Yeah, I don't think we have a window on a non-conforming wall.

STEVEN HART: I saw that in the minutes.

BRENDAN SULLIVAN: Is it because it's in the height, is that what then triggers -- do you still need a Special Permit?

ATTORNEY JAMES RAFFERTY: Well, at the time we prepared the application, we debated whether or not the fact that --

BRENDAN SULLIVAN: Or that those windows could be incorporated in the Variance?

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: And made part of --

ATTORNEY JAMES RAFFERTY: I think it was a bit of a belt and suspenders kind of thinking.

BRENDAN SULLIVAN: Are you comfortable with that?

SEAN O'GRADY: I'm comfortable with that issue.

BRENDAN SULLIVAN: The only thing that doesn't

conform is actually the front of the house which is very -- inches.

STEVEN HART: 1.9, and the other houses are closer.

BRENDAN SULLIVAN: So anyhow.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: And we have two windows changing.

BRENDAN SULLIVAN: So as far as those windows it could be incorporated into the Variance as general relief for the entire project.

ATTORNEY JAMES RAFFERTY: As depicted on the plans.

BRENDAN SULLIVAN: In toto. Correct.

Any other questions? Motion?

DOUGLAS MYERS: I'd appreciate the opportunity to comment briefly.

BRENDAN SULLIVAN: Absolutely.

DOUGLAS MYERS: Especially since I was adamant in

my opposition at the last hearing on the June 30th on the grounds of height.

Although this Board has been the subject of some criticism for granting continuances, I want to join in the Chair and the comments of the applicant's attorney for saying that continuances can have value. And one of the values of continuances is a chance to reflect on comments that have been made, evidence and testimony presented, and another opportunity to review the file, review the transcript, consider the comments of colleagues. And I've done all that since June 30th, and I've really come to the conclusion that the right decision here is to simply vote for the proposal as presented to the Board.

I've revisited the property. And in addition to, as I said, the opinions of fellow Board members and the opinions of Mr. Sullivan and the applicant and the applicant's attorney I was swayed also by the very ample setbacks on the west and south side of the property that

will not be altered. And even on the north side I was swayed by the fact that the setback there, while not as generous, is relatively generous because the addition in question where there will be heightened to where the ridge line, ridge pole will exceed the Zoning Ordinance is nonetheless recessed so that relatively speaking there is greater setback and distance from the neighboring properties there. So for all of these reasons without abjectly climbing down from what I said at the last hearing, I have taken advantage of the continuance and I am not only willing but pleased to vote in favor of the application.

BRENDAN SULLIVAN: So this respite benefitted you --

DOUGLAS MYERS: Yes.

BRENDAN SULLIVAN: -- as well as the neighbors and we're all in a good place.

DOUGLAS MYERS: And even the City possibly.

BRENDAN SULLIVAN: Good, good.

GEORGE BEST: I've always been on board.

BRENDAN SULLIVAN: Good.

JANET GREEN: I'm good.

BRENDAN SULLIVAN: Let me make the motion to grant the relief requested as per the application, the dimensional form and the drawings which are initialled by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner because it would preclude the petitioner from altering the existing house in a more suitable fashion to accommodate the family circumstances, and also would allow to the elimination of an "out of character" elements added over time and restore the house to a better -- to better approximate the historical features of the house.

The Board makes particular notice and affirms the correspondence from the Historical Commission, Director Charles Sullivan, to the suitability and desirability of the

proposed work to be performed.

The Board finds that the hardship is owing to the pre-existing Ordinance status of the house, the size of the lot, the size and placement of the house which renders it non-conforming on the lot, which imposes on the property in an inherent hardship. And that any alteration, improvement even as de minimus and desirable as the proposal before us, would require some relief from the Ordinance.

Desirable relief may be granted without substantial detriment to the public good and would not nullify or substantially derogate from the intent and purpose of the Ordinance to conserve the value of land and buildings to encourage appropriate development, enhancement of buildings with timeless features as this property surely has. And, again, we make notice to the Historical Commission's report regarding the desirability of this.

And one other condition, that the work conform to the plans as submitted.

Any other conditions?

All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Green, Tedesco, Myers, Best.)

ATTORNEY JAMES RAFFERTY: Could you note it's the 8/19 plans, because there really wasn't (inaudible).

BRENDAN SULLIVAN: August 22nd.

ATTORNEY JAMES RAFFERTY: They're dated August 22nd?

BRENDAN SULLIVAN: That's the latest ones I have.

ATTORNEY JAMES RAFFERTY: Okay.

JENNIFER LYFORD: There's two drawings that are 8/22 and then the whole package was 8/19. So the clarification on the --

ATTORNEY JAMES RAFFERTY: Apparently the first two pages of that package have the 8/22 date. And then the remaining pages have 8/19.

Is that correct?

JENNIFER LYFORD: Yes, that's correct.

BRENDAN SULLIVAN: This has 8/19 on it.

ATTORNEY JAMES RAFFERTY: On the first two.

BRENDAN SULLIVAN: On the first two.

ATTORNEY JAMES RAFFERTY: And after

that --

BRENDAN SULLIVAN: The remaining are -- well.

DOUGLAS MYERS: Undated?

BRENDAN SULLIVAN: This is 5/2/16.

JENNIFER LYFORD: That's the previous.

BRENDAN SULLIVAN: Make sure those are the right
ones.

ATTORNEY JAMES RAFFERTY: Thank you. Did you
vote?

BRENDAN SULLIVAN: You're dismissed.

JENNIFER LYFORD: 8/19.

* * * * *

(9:00 p.m.)

(Sitting Members Case BZA-010779-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco,

George S. Best.)

CONSTANTINE ALEXANDER: The Chair will case No.
010779, 950 Massachusetts Avenue.

Is there anyone here wishing to be heard in this
matter? I think Mr. Rafferty.

JANET GREEN: Mr. Rafferty.

CONSTANTINE ALEXANDER: You're not the petitioner,
are you? You'll have an opportunity to speak but the
petitioner goes first.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair.

CONSTANTINE ALEXANDER: You can start. I have to
get the file. Go ahead, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening,
Mr. Chairman, Members of the Board, James Rafferty appearing

on behalf of the applicant. There's a corporate name.

TBaar, T-B-A-A-R Cambridge, Inc. And they're proposing to open a tea bar, healthy fruit, juice outlet at a location on Massachusetts Ave., at 950 Mass. Ave. It's located in the same block -- it's in the condominium association known as Bay Square. I have a site plan that I can orient the Board.

It's a space that abuts the popular restaurant called Dumpling House is right next-door. So this is, this is in the space next-door. I'm mindful of the fact that the -- there's a lot of correspondence and communication in the file with regard to Dumpling House and how it's perceived or impacting some of the neighbors. But I would just emphasize that this use is different. This is a fruit juice. And I've got a copy of the menu. There's no cooking. There are no odors. The preparation is limited to processing of fruit into a blender. They currently -- Mr. Dang is -- did I introduce Jonathan Dang? Jonathan Dang, I apologize. Jonathan Dang is the operator.

And he has one in the Brookline Village? Where in Brookline Village?

JONATHAN DANG: Beacon Street.

CONSTANTINE ALEXANDER: Okay, it may not -- I don't mean to interrupt you. But you may not have cooking odors or the like because of the juice bar, but you will attract people. And one of the issues that the residents of the building have is the amount of traffic and the result the resulting noise, perhaps cigarette smoke, other issues that disrupt the quality of the ability to live in their structure. So your point is well taken, Mr. Rafferty, but I just want to point out that I don't think it's 100 percent an issue that we have to deal with.

We have to find as, you know --

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: --- that, for example, that the continued operation or development of adjacent uses will not be adversely affected by what is being proposed.

And if you're going to increase the amount of foot traffic and use of that premises, you are going to adversely affect. So that's a finding we can't, in my judgment, we can't make. We can't make that finding, we can't grant the Special Permit that's being requested.

ATTORNEY JAMES RAFFERTY: Well, Mr. Chair, I would -- I was merely attempting to distinguish between uses, because much of the communication I saw, correspondence, it specifically focussed on issues associated with Dumpling House. I would say the criteria for 11.31 don't really speak to pedestrian traffic. To the extent it does, it says that the Board should take into account the extent to which access or customers will arrive on foot as opposed to vehicles. So the establishment in this case will primarily rely upon walk-in trade. There are a number of multi-family housing, office buildings in the area. It's the type of product that I don't think people tend to get in their vehicle and drive to. It's somewhat of

an impulse purchase, and so the entire operation is designed to comply with the requirements of 11.31. We've spelled those out in our application materials --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: -- and I would just say that the reduction of available parking, the threatening the public safety, encouraging of double parking, none of that will occur in this case. But having said that, I think we can rely upon the application materials. We wanted to emphasize the nature of the restaurant itself.

The hours of operation, maybe you can speak briefly.

CONSTANTINE ALEXANDER: I'm sorry to interrupt you. You're absolutely correct, you're dealing with Section 11 which is special for fast order food enterprises. But you've also got to meet the general requirements of Special Permits of any sort. That's what I was reading from, 10.4 --

ATTORNEY JAMES RAFFERTY: No, no, I'm well aware of that.

CONSTANTINE ALEXANDER: Okay, I know you are, but I wanted your client to be aware of it, and the people in the audience. What I was trying to do is address even if you meet the Section 11 requirements or considerations, you have problems under 10.43 because of what I identified a few minutes ago.

ATTORNEY JAMES RAFFERTY: Well, I heard what the Board said. I would respectfully suggest that if, if an abutting business proves to be too popular, I am not sure that the law suggests that other allowed uses shouldn't go in because an existing business proves too popular. But in this case, I think there's no question that the, that business is very popular. The vast majority of comments I saw about it related to impacts associated with the operation of the food, although there is one abutter who apparently -- I've seen photos of a number of people

standing on the sidewalk.

But I understand and I know there are many people who wish to speak on this. I think both sections of the Ordinance do apply the generic sections. I don't think patterns of traffic, access, or egress will change as a result of this. I think deliveries are modest and minimal and will not impact existing traffic.

I think the hours of operation are consistent with other uses on this section of Massachusetts Avenue, the principal commercial corridor that exists in this City. Oftentimes residential buildings that have commercial uses on the ground floor, there sometimes is a bit of a conflict, and I would suggest that this use can be effectively managed and it would be going in as of right if it had a more of a sit-down operation and all of those other issues are present. But having said that, I think we would conclude at this point.

PATRICK TEDESCO: Excuse me, what are the proposed

hours of operation?

ATTORNEY JAMES RAFFERTY: I'm sorry, Jonathan.

JONATHAN DANG: Our store in Brookline is open from eleven to ten.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: We can't hear.

PATRICK TEDESCO: Eleven a.m. --

JONATHAN DANG: Eleven a.m. till ten p.m.

JANET GREEN: You can move forward a little bit if you want to hear.

PATRICK TEDESCO: It wasn't clear to me, is this space being carved out of the existing Dumpling House or it's currently separate?

JONATHAN DANG: No.

PATRICK TEDESCO: What's the tenant that's there now --

JONATHAN DANG: It's vacant.

PATRICK TEDESCO: It's vacant?

ATTORNEY JAMES RAFFERTY: I'm sure others in the room know better. I think it's been vacant for a while.

CONSTANTINE ALEXANDER: It had been a Buddhist Tearoom.

JONATHAN DANG: Afterwards it was a convenience store I believe.

PATRICK TEDESCO: And there's no shared services of kitchen or loading?

JONATHAN DANG: No, we don't use a kitchen.

PATRICK TEDESCO: But you own your own company?

JANET GREEN: You own both?

ATTORNEY JAMES RAFFERTY: He doesn't own the Dumpling House.

PATRICK TEDESCO: There's no relationship between the two establishments?

JONATHAN DANG: No.

ATTORNEY JAMES RAFFERTY: Operationally, no.

CONSTANTINE ALEXANDER: These are related

businesses. I was going to get to the technicalities.

You're not completely independent of the Dumpling House?

ATTORNEY JAMES RAFFERTY: No, I wanted to be precise in my response. Jonathan doesn't have any ownership interest in the Dumpling House.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The ownership -- some of the individuals that have an ownership interest in the Dumpling House do have an ownership interest in this entity, yes. I don't want to be evasive about that. It is true.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JAMES RAFFERTY: But as far as the businesses themselves relying upon shared kitchen, shared, you know, they will operate as two separate businesses.

CONSTANTINE ALEXANDER: Okay. Anything more you want to --

BRENDAN SULLIVAN: Both businesses can operate independently of the other?

ATTORNEY JAMES RAFFERTY: Oh, yes. Yes, no shared services, no shared utilities, separate facilities.

BRENDAN SULLIVAN: Just a financial arrangement?

ATTORNEY JAMES RAFFERTY: No, one business has no financial relationship with the other.

BRENDAN SULLIVAN: You're saying that the owner of the Dumpling has an interest in this?

ATTORNEY JAMES RAFFERTY: Yeah.

BRENDAN SULLIVAN: More than a casual interest, a financial interest?

ATTORNEY JAMES RAFFERTY: He has an equity position.

BRENDAN SULLIVAN: An equity position, correct.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: The fact remains in my opinion, you can see where I'm going, the commercial operations on the ground floor of this building are going to be intensified if we grant relief. Because you're going to

have the Dumpling House and now we're going to have a juice bar. And if there are problems with the Dumpling House, it's going to be -- and on top of that are going to be the problems, not all the problems that the Dumpling House, but the things like foot traffic and the noise and general impact on the structure. That's still saves us, I think I'm right. Still stays the same. Whether or not it's common ownership or sounds like sort of an interrelationship here. But nevertheless, we're dealing with the fact of whether we should allow yet another commercial restaurant or food use in this building on the ground floor.

ATTORNEY JAMES RAFFERTY: Well, with all due respect, that's not what you're dealing with.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: Because a food use or a commercial use here is allowed. What you're being asked to address here is whether a fast order food --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- which has a separate use requirement because of the anticipated impacts associated with fast food which are generally related to trash, traffic, congestion, and the like. So the concerns about another commercial use in a building that has already an active commercial use, that isn't the issue before the Board. That is because that's -- the issue before the Board is whether quite frankly the criteria of 11.30 can be met by the applicant. And that may prove disappointing to a number of people who see this as expansion of the Dumpling House and they're unhappy with the way the Dumpling House is operating and we need to stop this. So, but the reality is a shared financial ownership or whatever. I have no reason to suspect that the presence of this place will, this use will cause the Dumpling House to be any less popular. And if the fact that people, I mean the hours of operation, it's a different business, it has a different focus, but we're totally relying on the Board's judgment as to whether or not

we satisfy the criteria.

BRENDAN SULLIVAN: But I think the Chair has really hit on a key spot here because under 10.43, continued operation of development of adjacent uses, as permitted would be adversely affected. And it's one thing if these were two totally separate entities, the Dumpling House and then, you know, you came along and you wanted to do your own thing and so on and so forth, but the there's been a long tortured history of bad behavior. And the very fact that, and again I don't --

ATTORNEY JAMES RAFFERTY: You know, Mr. Sullivan, with all due respect I've represent the Dumpling House. They've never had a complaint they License Commission. It's been there for three years. Two years ago they were granted a beer and wine license. I just can't abide by a characterization of a long tortured history. That's not fair to them. The record does not reflect that. That is simply not accurate.

BRENDAN SULLIVAN: Well, the record I've read does.

ATTORNEY JAMES RAFFERTY: No. You've read comments that were sent in. But a long tortured history, they wouldn't have been given a beer and wine license a year and a half ago if that were the case. They are extremely popular.

CONSTANTINE ALEXANDER: That's true.

ATTORNEY JAMES RAFFERTY: But I didn't mean to interrupt.

JANET GREEN: It's how they manage that popularity --

ATTORNEY JAMES RAFFERTY: Understood.

JANET GREEN: Or not. And that's where, I think that's where the problem.

BRENDAN SULLIVAN: So maybe rather than a long tortured history, it's a short tortured history. So we're talking about a length of time.

ATTORNEY JAMES RAFFERTY: The tortured -- the definition of torture is debatable. But I understand. I understand. And I, I understand where we find ourselves at the moment and I'm going to stop talking.

Thank you.

BRENDAN SULLIVAN: And I'm very concerned, and I think, again, the Chair has really hit on a key spot, I'm very concerned that disregard for adjoining properties may continue somewhat. And because the same people are involved in both places and whether it, you know, whether the guy's got a dollar invested in this thing or that I decided to do this but I know I can't get it through so somebody else is going to maybe get it through, but the management, the day-to-day operations may be co-mingled. And that pattern of disregard for adjoining properties troubles me.

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

Is there anyone wishing to be heard on this

matter?

JACKIE LANDAU: Yes.

CONSTANTINE ALEXANDER: If you would come forward.

Give your name and address to the stenographer.

JACKIE LANDAU: Yeah, we are members of the Board.

I'm Jackie Landau, L-A-N-D-A-U.

CATALINA ARBOLEDA: And Catalina, C-A-T-A-L-I-N-A

Arboleda, A-R-B-O-L-E-D-A.

JACKIE LANDAU: And we live at 950 Mass. Ave. And we are here to talk about the torture that's been going on since they moved in. We were -- we did not oppose the business moving in because we thought well, we had no reason to really. We thought -- we would hope that they would be good neighbors and they would follow our condominium rules. Well, it turns out that they have been very bad neighbors, and we are really concerned. We think they have impacted congestion certainly, our health and our safety in the building, and we're concerned because the same manager is

going to be taking care of the other business. Okay.

And so to tell you what some of these issues have been, first we have congestion. It doesn't matter whether people drive there, although we've had bus loads of tourists come, but okay. We prefer a business do well, so we're happy that we have a popular business. Okay?

But we have a lot of people every night standing outside the restaurant waiting to get in. They are noisy and they smoke often. We are a non-smoking building and that's a big issue. And we don't know, we can't do anything about it because they're on the city sidewalks. But all that smoke is going into the units of the people who live in the front of the building and they are also being disturbed by the noise. We think of fast food restaurant is going to increase this problem, and we're wondering why this restaurant doesn't have a waiting area inside the restaurant so people can smoke there and wait there and that would take care of the problem but they have not done that. Okay.

CONSTANTINE ALEXANDER: If you're in a non-smoking building, how can you have a smoking area in the rest area within the building?

JACKIE LANDAU: It's outside the building.

CONSTANTINE ALEXANDER: Outside the building.
Well, wait a minute. I thought --

JACKIE LANDAU: No, I just said a lot of people wait on the sidewalk --

CONSTANTINE ALEXANDER: Yeah, no, I know.

JACKIE LANDAU: Outside and they smoke.

CONSTANTINE ALEXANDER: You said why not have a smoking area inside the building.

JACKIE LANDAU: No, I didn't mean smoking.

CONSTANTINE ALEXANDER: Maybe I misunderstood you.

JACKIE LANDAU: I'm sorry, I said that. I said that. You can't smoke inside. But that has been a big problem. Okay.

Then of course there is noise both from inside the

restaurant and outside for people who live over the restaurant. And there are, again, a lot of things that could be done to take care of that noise. And the progress was very slow. It took them about I'd say probably eight or nine months to stop the noise that they said could not be stopped. And eventually it was. So there was a solution, but they took forever to do something about it. Okay?

Another big issue that we've had is sewer issues.

CONSTANTINE ALEXANDER: Can I ask you, I don't mean to interrupt you. Did you ever complain to the Licensing Board?

JACKIE LANDAU: Did we complain? Well, we tried to deal with it. Again, we're trying to be neighborly. So when this first started --

CONSTANTINE ALEXANDER: Maybe to a point. Today you're not being neighborly.

JACKIE LANDAU: But so we tried to work it out with them.

CATALINA ARBOLEDA: There are lots of letters.

JACKIE LANDAU: Yeah, we have lots of letters.

CONSTANTINE ALEXANDER: Letters to whom?

CATALINA ARBOLEDA: To the owners and the person
who manages.

CONSTANTINE ALEXANDER: But you have not contacted
the Licensing Board? I'm just curious.

JACKIE LANDAU: I don't think so.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I do.
When you guys are done.

CONSTANTINE ALEXANDER: I'm sorry, you have to
give your name.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I'm sorry.
I can wait when they're done.

CONSTANTINE ALEXANDER: That's fine.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I'll
piggyback off of that.

JACKIE LANDAU: Okay.

So we also had a big sewer issue. We have had no sewer issues in the building for 25 years until the restaurant moves in. Now, they are not the cause of the sewer problem, but we've been told that they significantly contributed to it. We had a sewer backup where two units were completely ruined. Well, the one partially, not once but twice this year. The cost for us to fix the sewer problem now is so far about \$50,000 and we're not done yet. And we were told that there was improper handling of grease. And now they're doing it properly, again, this is restaurant management, they should know how to take care of their grease and they didn't do that until we had inspectors come in. So that's another big issue.

The last straw really for us were the cockroaches. They have had a cockroach problem that they did not tell us about, and they were having people come in to take care of the cockroaches without blocking it out off. So then they took care of them in their unit, then when they go into the

other units and into our trash area. Okay? So that is also now been resolved. We hope. Okay? But we're not happy with the situation.

Another problem is the trash. Okay, the trash, of course, there's much more trash than there used to be. We have to spend a lot more money taking care of the trash than we used to. And, again, having this other restaurant there. And in the past -- I have been in that building since the beginning, and there was only one business in that area the whole time. So it got divided up. I'm not sure how, and I don't know about the zoning, so maybe it was zoned for two businesses.

CONSTANTINE ALEXANDER: I don't know about that. In the interest of full disclosure, 25 years ago I lived in your building.

JACKIE LANDAU: Oh, okay.

CONSTANTINE ALEXANDER: In the upper floor and there was a restaurant on the -- Asian Fusion Restaurant.

It's long gone.

JACKIE LANDAU: Yeah, no problems.

CONSTANTINE ALEXANDER: I don't remember the name.

It's long gone.

JACKIE LANDAU: No problems.

CONSTANTINE ALEXANDER: I don't remember hearing problems at the time.

JACKIE LANDAU: Yeah, we have had other businesses in there with no problems. So we wanted to be good neighbors and that's why we tried to keep it within the building and have the Board deal with it. Okay? But we're fed up basically. And we think another unit, another business managed by the same person -- we don't trust this person anymore to manage the business properly.

CONSTANTINE ALEXANDER: Thank you.

JACKIE LANDAU: Okay.

PATRICK TEDESCO: Can I ask just a question? Is the tenant, the retail space a separate condominium owner or

is it owned by the association?

CATALINA ARBOLEDA: It's a C-1 is one condominium.
It's a commercial unit.

PATRICK TEDESCO: Commercial? So that's a
separate owner, not a resident?

JACKIE LANDAU: A separate owner and they don't
live here.

PATRICK TEDESCO: Who doesn't live there. But
they have their own terms, dues, condominium dues.

JACKIE LANDAU: Yeah, they've been paying their
condominium dues. Another issue we've got, though, is gas.
Because they've got their own gas meter, they're paying for
their gas and we have a problem collecting money from them.

CATALINA ARBOLEDA: They have not been --

JACKIE LANDAU: On time.

CATALINA ARBOLEDA: Yeah, they're not proper
condominium owners. They don't abide by the condominium
rules and it's taken most of our time on the Board this past

year and a half just dealing with the restaurant day in and day out.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down. And I assume you've also written letters?

JACKIE LANDAU: Yes.

CONSTANTINE ALEXANDER: Ma'am, you're going to give us information. Please come forward.

DEBBIE KOPLow: Thank you. I'm Debbie Koplow, and I'm sure you --

CONSTANTINE ALEXANDER: You have a letter in here. I saw it.

DEBBIE KOPLow: Yes. May I sit down?

CONSTANTINE ALEXANDER: Of course.

DEBBIE KOPLow: I've been to all the licensing meetings from the very beginning, and I had very valid concerns from the beginning since I am the unit that lives right on top of them.

CONSTANTINE ALEXANDER: Right.

DEBBIE KOPLow: I live -- I've lived there for 16 years almost, with my daughter. Me and my daughter. I'm not someone who runs the air conditioning and needs to run up my electricity bill. I keep the windows open, ajar. And I've had nothing but problems with the noise. Like, you saw the pictures that I -- I did send the pictures.

CONSTANTINE ALEXANDER: They're in the file.

DEBBIE KOPLow: Okay. Did you see the video?

CONSTANTINE ALEXANDER: No.

DEBBIE KOPLow: Well, I have a short clip. I'll show you that afterwards. About three months ago, two and a half months ago, I did send an e-mail to Andrea Boyer who is the noise ordinance, I went in and I spoke with Elizabeth Lint who is very much involved in them getting their license. And Andrea Boyer had basically written me back an e-mail saying that she had gone to speak to them and told them they had to move their traffic along. And if this

continued, to let her know. So it ceased for a little while. And then I'd say about two weeks ago I sent some more recent pictures. But, you know, these pictures are just one day here, one day there. This is an every -- this is constant for me. As far as the noise that Ms. Landau was referring to, I've respectfully, I tried to deal with them as good neighbors as well. And at one point, you know, like I have a daughter in -- who was in junior high at the time when this all started. Now she's in high school. But, you know, I went down at one point and I respectfully asked them, you know, to do something about their chairs, because we have concrete floors scratch. You know, it's -- with all the chairs in there. Now at the Licensing Board meeting for their wine and liquor license, I remember that they were told, because they had let me speak then, and -- Elizabeth Lint had told them that they had to remove four or five tables in the back of the restaurant so that there wasn't this issue of people all out front. And they haven't done

that. They never did that. They never complied with that. Nor do they, when I did go down and talked to them way back about the -- you know, the chairs, the noise, I got this "you're racist." "We pay a higher condo fee." "We don't have to do anything." You know, and just really not, not nice. And so that's when I said I'm just gonna deal with the City and write letters to the Board. So my concern now, I can show you -- it's like a eleven seconds.

CONSTANTINE ALEXANDER: First, we can't put it -- it won't be part of the record.

JANET GREEN: But we did see the pictures. It's clear.

DEBBIE KOPLow: Because the video shows, like, with my window ajar, the noise while you're laying in the bed for eleven seconds.

CONSTANTINE ALEXANDER: The pictures you sent make that point very clear I think.

DEBBIE KOPLow: Okay. And then the smoke.

CONSTANTINE ALEXANDER: Yeah, you testified as to that.

DEBBIE KOPLow: And then so, one of the other neighbors who is not here tonight, I just wanted to make sure -- he wanted to make sure you got his e-mail. Juan da Shaun (phonetic).

CONSTANTINE ALEXANDER: He has the file but I think --

BRENDAN SULLIVAN: Yes.

DEBBIE KOPLow: You have it, great. Thank you. Okay. Well, thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down. I'm sorry.

Thank you.

Is there anyone else wishes to be heard?

JACKIE LANDAU: I just want to add we do have two of the owners here whose units were destroyed basically, and they don't want to say anything but they did want to hear

what was going on.

CONSTANTINE ALEXANDER: Okay, thank you.

FAN LIU: Well, I did I guess.

CONSTANTINE ALEXANDER: You have to identify yourself.

FAN LIU: My name is Fan Liu. Fan, F-A-N Liu, L-I-U. And I just wanted to thank you for hearing our opinions today, and I know everything that has been said so far and I support the position that the Board has taken in not granting this special license.

CONSTANTINE ALEXANDER: Thank you. And thank you for taking -- and staying here at this late hour.

Anyone else? Yes.

JUDY PIRANI: My name is Judy Pirani, P-I-R-A-N-I. I live in unit 1A at 950 Massachusetts Avenue, and I am one of the units that has been destroyed twice because of the sewer backups that began after the Dumpling House opened in our building. I've lived at this unit for over a decade

with my husband. No problems. Wonderful. And within the last six months sewer backups have pretty much destroyed our building, my condo. I will want to -- so I just wanted to confirm or and support everybody who has voiced their opinions being somebody who has directly been impacted by this.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you. Thank you.

FAN LIU: One last thing if I may just in response to something that this gentleman has mentioned.

CONSTANTINE ALEXANDER: Mr. Rafferty.

FAN LIU: Despite the fact of it being a fast food restaurant, the amount of waste will increase for our building. Sewer is a main problem for us at the moment and that will be a main concern for us if a new business comes in and that has nothing to do with cooking or the difference in nature between the two establishments.

CONSTANTINE ALEXANDER: Anyone else?

(No Response.)

CONSTANTINE ALEXANDER: Apparently no one else.

We do have many letters and e-mails in our files. You've all summarized them. I don't think I need to read them out loud. I don't think there's -- Brendan, is there anything in support? Any letters?

BRENDAN SULLIVAN: I did not see any.

CONSTANTINE ALEXANDER: Okay. There wasn't any as of two days ago.

Okay, Mr. Rafferty, any concluding remarks?

ATTORNEY JAMES RAFFERTY: Just briefly. Again, the focus of the testimony has been on the adjoining business. I do have some understanding of the sewer issue, and I was grateful that one of the earlier speakers acknowledged that the sewer issue is not a direct cause of the restaurant. But -- there is a report out. But that's largely aside from the issue before the Board.

I would respectfully suggest that the criteria

that the Board's charged with in looking at in fast food cases, things like satisfying a need in the neighborhood, ensuring that the use of non-disposables, trash, and the like. I think this applicant meets those qualifications. We would ask the Board to grant the Special Permit.

CONSTANTINE ALEXANDER: Thank you.

We'll close public testimony.

Discussion from members of the Board?

As I've indicated, I'm not in favor of this, I'm only one vote, but I'm not in favor of granting the Special Permit as being sought because I don't think the requirements -- to get a Special Permit for a fast order food establishment you do what Mr. Rafferty points out, has to meet the requirements of Section 11 or Chapter 11. But as well you must meet the general requirements of all Special Permits under 10.43, and in my view a number of those are not going to be satisfied, can't be satisfied. This fast order food establishment in my view will cause

congestion in the area. It will adversely affect the adjacent uses; namely, the residential use.

There will be, because of the increased foot traffic and people coming by, there will be a nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the citizens of the City.

And that generally what is being proposed will impair the integrity of the district or adjoining district. So I'm going to vote against it. But I'm only one of five.

Anybody else want to speak or I can go to a motion? The only reason I ask is that because I can short circuit, if we know it's not going to happen, I could make a quicker motion than otherwise.

BRENDAN SULLIVAN: I would support your --

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: -- comments.

CONSTANTINE ALEXANDER: Okay.

Well then with two people going to vote against

it, I'm not going to say your votes are irrelevant, but it's not going to happen.

JANET GREEN: Right.

CONSTANTINE ALEXANDER: Okay. All right. The Chair's going to make a motion:

The Chair moves that -- I guess we have to -- the Chair moves that we grant the Special Permit being requested. Period. Stop right there.

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

(No Response.)

CONSTANTINE ALEXANDER: So the motion does not carry.

The second motion we have to, I think we should identify for the record why the motion did not carry.

And the Chair moves that we did not vote to grant the Special Permit because what was being proposed will cause congestion to the neighbor -- to the general

neighborhood and in particular with regard to the building in question.

That the continued uses; namely, residential will be adversely affected by the increased foot traffic and people and business traffic that would result should we have granted the Special Permit.

And that in fact there will be nuisance or hazard created to the detriment of the health, safety, and/or welfare of the citizens of the city should we grant the Special Permit.

So on the basis of these, these are the reasons why we have voted to deny the Special Permit.

All those in favor of that please say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

* * * * *

(9:30 p.m.)

(Sitting Members Case BZA-010976-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco,
George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 010976, 2265 Massachusetts Avenue.

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

CLAIRE CHENEY: Hello.

CONSTANTINE ALEXANDER: As you've heard, identify
your name and address for the record.

CLAIRE CHENEY: My name is Claire Cheney,
C-H-E-N-E-Y. And I am here representing Curio Spice
Company. That's C-U-R-I-O Spice Company. I'm the owner.
And I am applying for a petition for a Special Permit to
manufacture my spice blends which is not zoned.

CONSTANTINE ALEXANDER: No, under the zoning it
means you technically need to get a Special Permit from us.

CLAIRE CHENEY: Yes.

CONSTANTINE ALEXANDER: Because you're doing what
could be --

CLAIRE CHENEY: Manufacturing.

CONSTANTINE ALEXANDER: Manufacturing.

CLAIRE CHENEY: Yes.

CONSTANTINE ALEXANDER: Any odor issues when you
blend your spices? I assume you grind them in the back and
roast them perhaps?

CLAIRE CHENEY: I wouldn't call them an issue, but
they do produce fragrances.

CONSTANTINE ALEXANDER: That would be detectible
outside of the premises?

CLAIRE CHENEY: No.

CONSTANTINE ALEXANDER: Inside the premises?

CLAIRE CHENEY: Inside, yes.

CONSTANTINE ALEXANDER: Fine.

CLAIRE CHENEY: But no -- there's no venting

outside of the building. So other than opening the door and coming inside.

CONSTANTINE ALEXANDER: Right, and air comes in.
Okay.

CLAIRE CHENEY: Yeah.

CONSTANTINE ALEXANDER: Are the spices you plan to sell is it going to be in bulk or is it going to be kind of jars or smallest quantities you would get in a supermarket or both?

CLAIRE CHENEY: Both.

The purpose of moving into the location is both for the retail sale of spices and the spice blends that I'm currently selling at farmer's markets and small retailers.

There will be some sale to hopefully to local chefs. There's a new restaurant going in next-door, for example, that wishes to cooperate and supply some of their spices from me. But nothing so large as to require tractor trailers or any kind of traffic disturbance in the

neighborhood.

CONSTANTINE ALEXANDER: You're aware, I take it,
that there's another spice shop in Inman Square?

CLAIRE CHENEY: Yes.

CONSTANTINE ALEXANDER: Christina's.

CLAIRE CHENEY: Yes, Christina's.

PATRICK TEDESCO: You don't have an establishment
now?

CLAIRE CHENEY: Correct.

PATRICK TEDESCO: You do this out of your home and
you go to farmer's markets?

CLAIRE CHENEY: Correct. I don't do it out of my
home. I do it out of a shared commercial --

PATRICK TEDESCO: Kitchen.

CLAIRE CHENEY: -- kitchen, yes.

CONSTANTINE ALEXANDER: Questions from members of
the Board?

JANET GREEN: I'm good.

CONSTANTINE ALEXANDER: Okay.

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

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

I would report that we are in receipt of -- I'm going to, again, the hour is late, a letter from Suburban Hearth, Erin Miller. She says: I am writing as a business owner and Cambridge resident to heartily support the Curio Spice at such and such an address. This person is a proprietor of Urban Hearth at 2263. That's the one next-door that you're talking about?

CLAIRE CHENEY: Correct.

CONSTANTINE ALEXANDER: There's a letter of support from Spindler Confections who are a couple doors down, and for whom we gave a Special Permit about a year or so ago.

There's a letter of support from Nussli,

N-U-S-S-L-I, 118. What is Nussli anyway?

CLAIRE CHENEY: It's raw treats.

CONSTANTINE ALEXANDER: Raw treats?

CLAIRE CHENEY: I don't really know.

CONSTANTINE ALEXANDER: Fair enough.

JOHN HAWKINSON: It's a breakfast cereal thing.

JANET GREEN: That's Muesli.

CONSTANTINE ALEXANDER: That's Muesli.

CLAIRE CHENEY: Yeah, nutritional --

CONSTANTINE ALEXANDER: They're at 2259 Mass. Ave.

They're not going to be very far from you. Anyway, they're in support. And shock of all shock we have a letter from the North Cambridge Stabilization Committee. Which says -- I have to read this one because it's wonderful.

(Reading) Claire Cheney of Curio Spice Company appeared at last month's neighborhood association forum in North Cambridge to present her plans for operating a spice preparation and packaging business that will sell her

product in the storefront at 2265 Mass. Ave. Since discussion with the proponent indicated that the scale of spice mixing activities and retail sales will have negligible impacts on neighbors, attendees were pleased to welcome this small independently owned enterprise to North Cambridge. We noted that the artisanal nature of Curio Spice meshes well with the existing and planned small restaurants, cafe, and handmade food outlets that will simultaneously occupy space in the same building. We expect that their synergy will benefit the individual entrepreneurs as well as the local community. Assuming that no objections are raised at the public hearing, the North Cambridge Stabilization Commission urges the Board of Zoning Appeals to grant the requested Special Permit.

I say this is unique. No conditions here. No qualifications. First time ever.

CLAIRE CHENEY: Good.

CONSTANTINE ALEXANDER: I'm going to close public

testimony.

Ready for a vote?

BRENDAN SULLIVAN: If they're for it, how can we ever be against it?

CLAIRE CHENEY: It's a small grade.

CONSTANTINE ALEXANDER: That's right.

Okay, this is a Special Permit.

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

That the requirements of the Ordinance can only be met if a Special Permit is granted by this Board.

That what is being proposed 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 the nature of the proposed use. In fact, it may be enhanced given the nature of the adjoining businesses.

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

Based on these findings the Chair moves that we grant the Special Permit requested.

All those in favor say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

CLAIRE CHENEY: Thank you.

(9:40 p.m.)

(Sitting Members Case BZA-010992-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco,

George S. Best.)

CONSTANTINE ALEXANDER: All right, Mr. Hope, why don't we started.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, Members of the Board. Attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight on behalf of Dark Ride Media, LLC. We have the manager of the LLC. Say your name for the record.

ALEX NEWMAN: Alex Newman. 29 Dracut Street, Dorchester, Massachusetts, 02124.

ATTORNEY SEAN HOPE: This is an application requesting Variance relief. And this would be a Use Variance to convert a former function hall space.

CONSTANTINE ALEXANDER: It's really two use variances.

ATTORNEY SEAN HOPE: Yes, two use variances. One for the Central Square Overlay District as well as one for the base zoning district to convert a former function hall space that is in the basement of the Greek-American

Political Club into a theatre, rehearsal space as the primary use, as well as accessory uses of a restaurant that would also be serving beer and wine.

The site is located in the Central Square Overlay District and it has a base zoning district of the Resident C-3 Zoning district.

Just briefly, the building itself is a pre-existing non-conforming building. The building predates zoning. The building has had a series of non-conforming uses. These will be uses that will not be allowed in the Residence C District.

There is the Fraternal Organization of the Greek-American Political Club. There is also the Havana Club which is a salsa destination that's been there for a while and they're quite a popular destination. There is a liquor license that is on the premises that's actually owned by the Greek-American Political Club, and is also used -- and this is a full liquor license. It's also used

for the Havana Club.

And as I mentioned, the basement area has had a history of a function hall space and I was just recently informed as of about three years ago approximately there was a restaurant that was approved to utilize that space believed -- and I wasn't aware of this, and then it also had applied for a liquor license to operate but never actually opened. But even beyond that there was uses as a function hall space as a rental --

CONSTANTINE ALEXANDER: The functional space, the use, was reserved for the members of club, the Greek-American Social Club.

ALEX NEWMAN: Prior to the Greek-American Social Club it was a Veteran of Foreign Wars Hall and they rented it out to whomever to the public.

CONSTANTINE ALEXANDER: I looked at the past history of this property in the zoning offices and we grant -- there have been a number of cases involved in this

case, and all of them involved the Greek -- I don't remember the VFW, maybe I missed it. Greek-American Social Club and was for the club's use. It wasn't open to the public. I mean --

ATTORNEY SEAN HOPE: But they did for special events as opposed to a primary use.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: Special events. But it was a used space, it wasn't a vacant space. But we did actually talk to the Inspectional Services trying to see if this use could possibly be grandfathered.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: This theatre is a different use even, and because even if we were trying to attach to the prior use, it was at least abandoned for at least a two-year period of time, which would have preempted the impact on the use as well as the date of use was not necessarily correlated with that function hall use.

I think the point we're trying to make is that this is a building that has had prior non-conforming uses in an area that was designated Res C3.

I think the fact that this was in the Central Square Overlay District is significant because the Central Overlay District, as the Board is probably aware, has several criteria really aimed at trying to shape the development in Mass. Ave. So they have height, setback restrictions. They also have use restrictions. They have -- and also prohibited uses. Some of them are certain things like banks and drive-through. Retail uses. Really to protect but also to promote the cultural district and the diversity of the retail uses on Mass. Ave.

I would argue that the adjacent streets, like Bishop Allen and Green Street, haven't received the same recent intentions in the Residence C3 District that we're talking about, which is really right on Green Street. So you step over the side of the street, you have Business B

where this use would be allowed as of right, but you're over on this Residence C3.

The Residence C3 is really a block. You have from Pearl Street to Magazine Street, there are seven properties in that block. Three are owned by the city. You have the elderly house, you have the library, and you have a parking garage. So there really only is four other properties in that block. And besides church corner, three of them have non-conforming uses. So this is really an area that hasn't been touched, I would argue, because one, it's already been developed, there's not much opportunity for more development. But I would say this particular use I believe is a use that across the street is promoted within the Central Square District but it's not allowed in the district.

I'd also like to distinguish this from other cases before the Board primarily focusing on the fronting to Mass. Ave. There was a case on Prospect Street that the Board is

familiar with where they came before the Board seeking a Variance to operate because they had the mix of alcohol, entertainment, and under the Central Square Overlay District you would apply for a Use Variance. And in that case, and I think as the Chair may have noted from my memory, there were several uses that could have operated in that space. And only because they had the mix of entertainment and alcohol where they were applying for a Variance, but there were other options.

I would distinguish this use because this use in this location is below grade. It has no street frontage. The basement use that we're proposing so that the space is below grade, it doesn't have any street frontage.

CONSTANTINE ALEXANDER: How do you get out of the basement?

ATTORNEY SEAN HOPE: There's a door that goes downstairs.

CONSTANTINE ALEXANDER: And where does the door

lead to, Green Street?

ATTORNEY SEAN HOPE: When I say street frontage, I'm talking about uses require you street presence. Right? You'd have glass, you'd have, you know, offering --

CONSTANTINE ALEXANDER: That's not what it's all about, Mr. Hope.

ATTORNEY SEAN HOPE: Excuse me.

CONSTANTINE ALEXANDER: Let's cut to the chase. You want two Use Variances. One is to operate a business in a residential district.

ALEX NEWMAN: Correct, sir.

CONSTANTINE ALEXANDER: Personally very sympathetic to that Variance and this is not a residential district.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: It never will be. And so I could see granting the Use Variance to allow to you run your theatre.

ALEX NEWMAN: Thank you, sir.

CONSTANTINE ALEXANDER: To do what you want to do.

The dilemma I have, and I don't see any solution to it, unfortunately, is the fact that you're in the Central Square Overlay District. In -- and that's a section that Mr. Hope has cited correctly.

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: In that district, it says:

The following uses shall be prohibited in the Central Square Overlay district. I'm just abbreviating. Bar or establishment where alcoholic beverages are consumed and where dancing and entertainment is provided shall be permitted only if the principal public entrance or entrances, not street frontages, street entrances are directly from Massachusetts Avenue or Main Street. That was the issue you correctly identified in the Prospect Street case. That's a proscriptive, that's flat out. There's no hardship that you can justify to get a Variance. If I

grant -- if we granted a Variance for this, we have to grants a Variance for every other street in the Central Square Overlay District.

ATTORNEY SEAN HOPE: I would like to explain the difference. So on Prospect Street I know we're using that as an analogy. That was in a district that allowed a myriad of uses in that location. In this location there is no allowable use that would be able to use. This is a residence district and we're asking for --

CONSTANTINE ALEXANDER: You're missing the point, Mr. Hope. The point is that this is a flat out prescription. The City has decided, City Council in its wisdom or lack thereof, that you're going to have -- in the Central Square Overlay District, if you're going to be selling alcoholic beverages, you better do it -- you have to do it on Massachusetts Avenue. I suspect it's for reasons of safety, traffic control, and the like. I don't know. But that's -- it's Massachusetts Avenue. You're not on

Massachusetts Avenue. In my view, you can have your theatre and operate, but you can't have -- serve alcoholic beverages.

ATTORNEY SEAN HOPE: So I would say one on -- and I think you read the language, because I actually think it's appropriate. And I did make this argument. I think that the language as I read the intent, it really wasn't to apply to a theatre use. They talk about a bar or other entertainment with music and dancing.

CONSTANTINE ALEXANDER: But even with a bar, your plans show you're going to have a restaurant and a bar in the back of the theatre.

ATTORNEY SEAN HOPE: But it's not just the bar.

CONSTANTINE ALEXANDER: So what. They're still serving alcoholic beverages.

ATTORNEY SEAN HOPE: I understand that. I mean, so one -- the theories of primary use, the accessory use is the beer and wine. If the Chair feels somehow finds that

this beer and wine license somehow is not consistent with the intent and purpose of the Ordinance, that's not the primary use. I would also say, too, that there is proposed legislation from the Central Square Business Association, that's not zoning yet, that's coming forth in September 12th to actually address this issue.

CONSTANTINE ALEXANDER: Good.

ATTORNEY SEAN HOPE: But I don't think it was the intent. I understand that you're not the City Council, but I do think that the intent is to make sure you're not going to have a bar or a club on these neighborhood edges that would somehow be inconsistent with the residential neighborhood.

As you said, this C3, even though it's C3, is not a residential neighborhood. I would say that.

Two, I would also say that the impact on a neighborhood of a below grade space that's fronting on to Green Street would be less impactful than if it was on

Bishop Allen or other parts of Green Street.

CONSTANTINE ALEXANDER: You may be right, but that's not what the Ordinance says. The Ordinance of the principal -- the bar being a principal use, it's flat out. It's quite clear. I read it again: Bar or establishment where alcoholic beverages are consumed.

And you're going to have -- the theatre is going to seat 99 people. You're going to have 70 or 80 people there for performance. They're going to go in the back and they're going to have some drinks.

ATTORNEY SEAN HOPE: I don't think you read the whole thing.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY SEAN HOPE: You said a bar where alcoholic beverages are consumed, and where dancing and entertainment are provided.

CONSTANTINE ALEXANDER: Well, entertainment is a theatre.

ATTORNEY SEAN HOPE: If you want to categorize it, I just think the intent of that is fairly clear, and we can disagree on that. I think this is a theatre use. This is a use that will actually come where people are not dancing, they're not partying. I think -- my read is this clause was intended to make sure that the nuisances for such as for dance clubs or places where people are actually dancing as opposed to sitting quietly watching a theatre in the dark. So this to me is akin to a movie theatre as opposed to a nightclub. And that's where the distinction should be drawn.

CONSTANTINE ALEXANDER: I think the City had intended that if you're going to serve alcoholic beverages in the Central Square Overlay District, you have to do it in the premises that are on Massachusetts Avenue. Unless that -- period, end of story. That's what this says. And you're not unfortunately on Massachusetts Avenue.

JANET GREEN: Can I --

CONSTANTINE ALEXANDER: Just a second.

What I'm trying to suggest to you is I think this Board, I would be amenable to granting you the Variance to operate your theatre, but I'm not -- along as the theatre or the premises don't serve alcoholic beverages. And then proceed with the Central Square Business Association or the City Council and you get that changed, you'll be able to have -- open up your alcohol, your bar in the back as a matter of right. But I don't see how we can as a matter of law grant you a Variance from this. You have no hardship.

ATTORNEY SEAN HOPE: I would only say --

CONSTANTINE ALEXANDER: You have no special conditions. Soil conditions?

ATTORNEY SEAN HOPE: This may not rise to a substantial hardship, but one of the things with arts, and arts, you can see this with the improv association that's on Prospect Street, that part of what makes arts work is that the idea is that they have another alternative revenue

stream. This is a beer and wine, not a full alcohol. I think part of the business model that would make this work, and I understand this is personal to the petitioner and it's not to the, but I think part of the packages. So this is not just an extra thing. It is also something that is essential to the business model.

I understand that if you feel, and I don't believe that this section, although we had to cite it, because to me it's not very clear, it's very broad, you say it's a bar or it's entertainment. I see the and dancing actually creates a certain category that we should not fall into.

CONSTANTINE ALEXANDER: You keep dropping entertainment. Dancing. You're reading it selectively, Mr. Hope. You're talking -- it says --

ATTORNEY SEAN HOPE: I'm not disagreeing with you.

CONSTANTINE ALEXANDER: Dancing and entertainment is provided.

ATTORNEY SEAN HOPE: I'm not disagreeing with you

on the text. I think the intent of this, the entertainment and dancing speaks to a certain types of use that I think logically would be largely consistent because this is a neighborhood edge. I don't think we would fall into this category. But we had to cite it because it's not clear that we don't. We did cite the relief. We did discuss the idea that the Board may find it objectionable to have the beer and wine. As I said, it's not the primary purpose of this application. It's an accessory use. I do think that it would impact the viability of the business.

ALEX NEWMAN: Yes.

CONSTANTINE ALEXANDER: Unless you got the City to I change the zoning.

ATTORNEY SEAN HOPE: Understood.

CONSTANTINE ALEXANDER: And you said there are efforts afoot already to do that.

ATTORNEY SEAN HOPE: That's right. And, you know, I think that the changing on Prospect Street, I think spoke

to the community that that necessarily wasn't intended to do that, but you're right, they haven't changed it to Green Street. So that could be another use. But so I think that, you know, I think the whole Board hasn't spoken and we haven't heard public testimony, because I do think that's also vital, but the beer and wine is accessory use. It's not the primary part of this application. If the Board would find that objectionable, then, you know, we can proceed without that.

BRENDAN SULLIVAN: Would it be fair to say that in the drafting of the overlay district that it totally forgot about this particular type of use?

ATTORNEY SEAN HOPE: I would say so. I would say, I mean, I think they could have made it more clear.

BRENDAN SULLIVAN: And that when they did draft it, they sort of had the field or they had someplace else in mind where as a straight out bar with music and dancing, and that this sort of falls outside of that norm if you will.

Although they didn't think of theatre. Now entertainment, if you're saying enter -- theatre is entertaining, the dancing part of that is on the stage, I guess, probably not in the aisles.

ALEX NEWMAN: Yes.

BRENDAN SULLIVAN: And that the serving of beer and wine somehow goes together, somewhat, as opposed to a juice bar with theatre. And I think my own time going in, you know, in town and what have you during the intermission, you go back and -- well, anyhow. And it's usually a glass of wine that somebody will have or somebody has a soda or something like that, whatever it may be.

ALEX NEWMAN: Yes, sir.

BRENDAN SULLIVAN: That the only time that you're serving alcohol is when the theatre is on and when the theatre is dark and you're not serving.

ALEX NEWMAN: That is correct, sir.

GEORGE BEST: Sort of intermission.

CONSTANTINE ALEXANDER: Intermission.

BRENDAN SULLIVAN: I say dark meaning that there's no theatre that day.

ALEX NEWMAN: Right, yes.

CONSTANTINE ALEXANDER: After the performance is over.

BRENDAN SULLIVAN: There's no performances that day, being dark.

CONSTANTINE ALEXANDER: You go back and have a pop or two at the bar in the back.

BRENDAN SULLIVAN: Or during intermission.

CONSTANTINE ALEXANDER: And they pour out on to Green Street.

BRENDAN SULLIVAN: Basically it's an amenity that I think theatre people tend to respect and enjoy.

PATRICK TEDESCO: I wanted to say something.

Janet.

CONSTANTINE ALEXANDER: Janet, go ahead.

JANET GREEN: No, go ahead.

PATRICK TEDESCO: I want to see more how you look -- in other words, is there going to be a rock band playing there or it's drama?

ALEX NEWMAN: No. My agreement with the landlords is that there's no amplified music. This is not the Middle East. This is a theatre. 99 fixed seats. There is no place for dancing even if people wanted to dance, sir. It's -- the primary intent is for scripted plays, new works. Boston -- I mean Boston and the Chamber of Greater Boston has lost a great deal of its small theatre houses which is a hardship to the theatre community. And, but there's been no diminishment in demand for places to put on plays.

PATRICK TEDESCO: And do you have, is there a company that you are affiliated with? A theatre company or organization that is looking to be a regular tenant here or it's going to be community?

ALEX NEWMAN: It's going to be -- it is going to

be available to the Greater Boston theatre community. The primary business of the theatre is to be available for weekly or monthly rentals to small theatre companies that are not resident companies at say the American Repertory Theatre. I mean, similar to the Cambridge YMCA.

PATRICK TEDESCO: So there would be periods of time when there would be no shows booked potentially.

ALEX NEWMAN: I certainly hope not because it makes it harder to pay my rent, but that is possible, sir.

PATRICK TEDESCO: And it's exclusively nighttime uses or children's groups that could use it --

ALEX NEWMAN: No, we hope to be of benefit to the community, so I certainly would hope that we will have children theatre or educational programs.

PATRICK TEDESCO: Without the beer and wine?

ALEX NEWMAN: Without the beer and wine, yes, sir. You know, educational programs during the day. Part -- in addition to, it is a performing arts, a small performing

arts complex. So in addition to the theatre itself, there is a multi-purpose room, a classroom or rehearsal hall that we also hope to use for stage readings or educational programs or whatever the community needs.

PATRICK TEDESCO: Okay. I mean --

BRENDAN SULLIVAN: So if somebody wanted to put a production together and they were looking for space and they would come to you and basically rent the space for, again, whether it be a season or whether it be a particular theme type of thing.

ALEX NEWMAN: Yeah, or so my hope, I mean not without getting into too much of the details of the business, Mr. Sullivan, is that what we hope to be able to support them so that they are not simply subletters from us, but in fact that we do co-production with them that we are gonna do -- and one of the ways in which we have the financial resource to do this is by selling beer and wine.

BRENDAN SULLIVAN: I don't mean to be selfish

here, but my grandson just graduated from Burlington High School and spent four years in the drama club and before that was recruited by the drama coach of the theatre production person there. Anyhow, and he has done a bunch of other stuff all over the place which we have followed him all over the place. And I sort of encourage this type of thing, because I think that especially around here -- now I know the high school has the Fitzgerald Theatre and all this other stuff, but there's probably a lot of other small companies that would like to, amateur if you will or whatever it may be --

ALEX NEWMAN: We fringe on small theatre is the size of the theatre according to the New England Theatre Critics Association. The 99 seats or fewer is fringe and small theatre.

BRENDAN SULLIVAN: Yeah, right.

ALEX NEWMAN: And there are a shockingly dwindling number of those in the Greater Boston area.

BRENDAN SULLIVAN: That are affordable in a sense --

ALEX NEWMAN: That simply exist at all.

BRENDAN SULLIVAN: Right.

ALEX NEWMAN: They've just been going away sadly.

BRENDAN SULLIVAN: Yeah. So I see the benefit of it.

CONSTANTINE ALEXANDER: No question about that.

BRENDAN SULLIVAN: And the beer and wine aspect of it doesn't scare me in the least because I mean we go into town all the time, what have you, and we don't -- I see that's sort of an integral part of the ambience, the whole --

ALEX NEWMAN: It is the way theatres support themselves.

BRENDAN SULLIVAN: And you have to pay the rent somehow. More so than ticket sales.

ALEX NEWMAN: I do have to pay the rent.

BRENDAN SULLIVAN: More so than ticket sales?

ALEX NEWMAN: Yes.

PATRICK TEDESCO: Maybe this is a question for the Licensing Board. If there's not a performance going on, I can't go in there and grab a beer on a Friday night.

ALEX NEWMAN: We're not planning on being open if there's no performance. And if you're next-door, you're already at a bar. There's already a bar on Green Street.

PATRICK TEDESCO: Right.

ATTORNEY SEAN HOPE: I think to your point the License Commission will regulate how the alcohol will be used and this Board can set up restrictions as well.

I'd just like to say I do understand Mr. Sullivan's point. To me as I read this, I do think that the dancing and entertainment or it says dance hall or a similar place, I think you can distinguish that and maybe read into an intent theatre that as an accessory use doesn't have a big bar or lots of tables, it's not the intent that

they were meaning to prohibit. You would have to read that within the text.

CONSTANTINE ALEXANDER: But that argument is such -- it really says section whatever it is, 20 -- it doesn't apply. But you applied under it. You've already said to --

ATTORNEY SEAN HOPE: And I spoke with the Commissioner, and it wasn't clear enough that I didn't have to cite the section. And what I'm saying is that the Board would say we distinguish this in terms of the impact and nuisances we can find that this use was not what it was intended to prohibit, and that may not be convincing to the Board, but I do think that it is an integral part of what they're trying to do. It's not essential, and we did discuss the idea that it could be objectionable reading what the Ordinance says. I do think the Board has the discretion to be able to find that the impact of this particular use is not what it was intended to protect. This is Green Street

and I think the Board could find that this use should be allowed even though it's not on Mass. Ave. and it is within Central Square Overlay District. And I think the Board could find that based on the fact that this use is not necessarily broadly, in my read of this, is not the type of use that this section is intended to protect from. And I think the Board could find that if they chose to.

CONSTANTINE ALEXANDER: Janet, you wanted to say something.

JANET GREEN: I really -- Brendan spoke to my interest. I actually know lots of people who are, have been closed out of drama because these little theatres, these little opportunities and places have closed. And I don't think -- it doesn't, it doesn't seem to me like the sort of place where somebody's going to drink a lot and roll out into the street and have a fight or, you know, have -- it's just not a kind of place that people go to have that kind of behavior as opposed --

BRENDAN SULLIVAN: Intermission is not that long.

JANET GREEN: Good point. So I don't see it the time same as I would see a bar.

BRENDAN SULLIVAN: I think use variances as we have discussed many times, is protection against incompatible uses in whatever district it is. I don't see this incompatible. Now, yes, it's written, and to me -- and, again, who knows what they were thinking at the time, but I sort of think that this was not thought of, this type of operation was not thought of.

CONSTANTINE ALEXANDER: Well, let me suggest and I haven't changed my point of view on this. You can't get there by a Variance, with regard to this serving of alcohol. The only way you can -- because you can't meet the requirements of substantial hardship, special conditions. The only way you can get there is to argue or conclude that this section does not apply to this type of operation. That you don't need a Variance under whatever the section is, I

can't remember it. They don't need a Variance under 20.304.5. That 20.304.5 doesn't apply to what they're proposing. That's the only way you can get there.

BRENDAN SULLIVAN: Which is tough.

CONSTANTINE ALEXANDER: Don't get there. You can't get there in my judgment. You can't get there at all by a Variance. And I still say I think it does apply. Unfortunately the way it's written, and I don't see, frankly, whether this project is going to be cratered if we didn't, if we didn't allow them to serve wine and alcohol. Because I think in six months you'll get this straightened out with the City.

ALEX NEWMAN: In six months I won't be able to afford -- I can't sit fallow for six months, sir.

CONSTANTINE ALEXANDER: No, but you can run your theatre and open your theatre. If you're saying to me that it's essential that you have -- that you serve alcohol, to me that undercuts the argument about this is not what was

intended. This is exactly what was intended when they drafted this section. They don't want places that serve alcohol located other than on Massachusetts Avenue. It's flat out clear. I mean, I'm sorry it's the way it's written but that's how it's written. Get it changed. And in the meantime, you know, you can run your theatre, open your theatre, start your work on your theatre. That's how I think this thing should go.

Anyway, George, anything you want to say or not?

GEORGE BEST: Well, my thought is that you have to go word for word. That's basically how I look at the law. And I think it might be a good idea to continue and work that out before you step into the corner.

CONSTANTINE ALEXANDER: Well, we could grant the Variance, the Use Variance which I think there's no objection to that to run a theatre there. And then -- but not grant the other Variance or interpretation, and then you can decide what you want to do from there.

ALEX NEWMAN: All right.

CONSTANTINE ALEXANDER: And try to get the City to make it so you don't need any relief from our Board. I still think that's the way we have to go.

I don't think it's -- not the way I want to go necessarily, but I've got to deal with the statute that's been given to me by the City Council and I can't get there.

PATRICK TEDESCO: Can I ask a question?

CONSTANTINE ALEXANDER: Yes.

PATRICK TEDESCO: Does the sort of contribution to the arts, the community theatre, the financial challenges associated with those, that kind of performance and the reality that alcohol and beer intermission will help offset that, does that not rise to the occasion of the Variance?

CONSTANTINE ALEXANDER: No, it can change -- that would be a good reason to change this section, to say that you can't serve here except where it is an accessory use to theatrical performance. If the statute were rewritten, end

of story, it would be easy I think.

JANET GREEN: But you don't think that rises to a level of a hardship?

CONSTANTINE ALEXANDER: No. Because, no, what's the hardship? And why, if we have a hardship here for this, every other property in the Central Square Overlay district that doesn't front on Massachusetts Avenue would have the same hardship.

PATRICK TEDESCO: Well, you know, I would think of a place like T.T. the Bears which is right off Mass. Ave. They have a liquor license. In other words, the places that already have liquor licenses are, you know, grandfathered.

CONSTANTINE ALEXANDER: No, no, they're not grandfathered. They meet the requirements if they're on Massachusetts Avenue.

PATRICK TEDESCO: But there are precious few on side streets. The Field, there's T.T. the Bears. But I can't imagine.

ALEX NEWMAN: Improv Boston which is on Prospect Street, does serve beer and wine. They're a small theatre that serves beer and wine.

CONSTANTINE ALEXANDER: Maybe people are violating the Zoning Ordinance. I'm sure --

ALEX NEWMAN: I mean I certainly hope not.

CONSTANTINE ALEXANDER: But we did have a case as Sean pointed out on Prospect Street.

ALEX NEWMAN: Yes.

CONSTANTINE ALEXANDER: And didn't grant relief for the reasons I'm citing right now and they got, they got around it in some fashion.

JANET GREEN: There's public comment, too, Gus.

BRENDAN SULLIVAN: You can only at speakeasy.

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

Is there anybody wishing to be heard?

PATRICK BARRETT: Come here?

CONSTANTINE ALEXANDER: Yes, sir. Make sure you give your name and address to the stenographer.

PATRICK BARRETT: My name is Patrick Barrett. I live at 41 Pleasant Street. I'm an attorney in Cambridge.

JOHN HAWKINSON: Can you speak up a little?

PATRICK BARRETT: I'm an attorney in Cambridge, Mr. Hawkinson. Actually, I don't have to listen to him.

I'm an attorney in Cambridge. I own a property at Main Street in Central Square. I'm a member of the Central Square Business Association, and I very respectfully disagree with you about the threshold for a Variance. I believe they actually do meet the Variance threshold in that owing to the structure and the work that they're going to have to do in that building to get it up to speed. The fact that it's been vacant for about 13 years, and that the amount of money that any person would have to go in just to mediate the compliance regulations, rises to the level of the fact that this alcohol use might be the only thing that

makes it viable. The only, it might be the only possible thing that makes it a usable condition in that building.

So it's nice to talk about theatre as we have a cultural district that the City Council could really care less about, and that's too bad. We're -- the zoning issue you had on Prospect Street, that space is still vacant. They got the zoning, that's why you can have drinks on -- and the Field was grandfathered and so is the Improv, but now they're legal uses. But the hardship to the owner that waited 16 months to go and get the change of Zoning, they went out -- they lost all their funding, they lost all their money into the space, the space is still vacant. But for their landlord who is a really nice guy, that happens to be me, they were able to keep the space on Main Street. So I don't think that the uses of a theatre and alcohol are necessarily mutually exclusive. I think they complement each other in a way that none like -- this isn't like an opening up a nightclub. It's not like opening up anything

that you talk to legislative intent. Who the heck knows the legislative intent. The overlay it's chopped up and makes no sense. For this particular situation we have a place that's been vacant. Blighted really. For 13 plus years the theatre use, which you have no issue with, thank goodness, I believe that the threshold for a Variance is met. That there's a substantial hardship in using that basement space and bringing it up to code and bringing it -- I mean I know you can't use like statutory or previous cases. You have, this Board has local situations in which, not necessarily for a use Variance but for other variances where the structure itself presented a myriad of hardships, but Use Variance is a very different animal. It's a weird animal. But you know, by municipalities use can be used. So it's not like any other space along Green Street. It's a very different space and a very different building, and I think that in and of itself makes this a very good case for a Variance to be given for a theatre.

CONSTANTINE ALEXANDER: Again, the Variance -- you're right, it's a Variance to allow a theatre operation. It's a question, and that's the --

PATRICK BARRETT: And I'm talking about the alcohol use, I think they go hand in hand. And if you're looking at those -- if you're justifying the Variance for the use of the theatre, then you have to justify the use of alcohol as well. What other thresholds are you using?

CONSTANTINE ALEXANDER: I don't want to debate any more. Okay?

PATRICK BARRETT: Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

JOHN HAWKINSON: Mr. Chair.

CONSTANTINE ALEXANDER: Yes.

JOHN HAWKINSON: John Hawkinson. Briefly I would say, as I read the Ordinance, I read it very differently and I would ask you to take a second look at it. It's 23.405

prohibition is clearly on dancing and entertainment.

CONSTANTINE ALEXANDER: That's right.

JOHN HAWKINSON: Not just entertainment.

CONSTANTINE ALEXANDER: That's right.

JOHN HAWKINSON: And this use is not described as dancing or entertainment.

CONSTANTINE ALEXANDER: They made that point earlier.

JOHN HAWKINSON: They don't want -- meaning the City Council, don't want places that serve alcohol. It's flat out clear. And, again, the bar in the statute is not on places that serve alcohol, it's on any bar where dancing and entertainment is provided.

CONSTANTINE ALEXANDER: They made that point.

JOHN HAWKINSON: Okay, I just want to be.

CONSTANTINE ALEXANDER: I got that.

JOHN HAWKINSON: Okay. Thank you.

CONSTANTINE ALEXANDER: Sir.

WESLEY AUSTIN: I'm Wesley Austin and I'm a trustee at 243 Franklin Street in Cambridge. And our concern, actually, is primarily the rear exit from the space. So if you are standing by the rear exit, it's surrounded by tall buildings on three sides, and it's a natural amphitheater that focuses sound out on to Franklin Street. And previous uses have caused some problems for us there where the loading and unloading by the rear door or people congregating to smoke or the amplified music of the nightclub serving drinks that was there previously caused some problems for us. And so our primary concern is to make sure that that rear door is not used in that fashion, that it's, it's an emergency exit only.

ALEX NEWMAN: That is the intention of our -- on our plans. Also we don't, we won't have amplified music.

WESLEY AUSTIN: Which is good to hear. And that was primarily our reason to come here, is to make sure that that was reflected as not a, not an operational door or

gathering space.

As for the alcohol, I don't really have any other comment other than to say, it's going in next to a bar that serves entertainment and drinks. So it seems fitting with the character of what's already there.

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

Is there anyone else wishes to be heard?

JOHN JEFFREY: I would be largely speaking to --

CONSTANTINE ALEXANDER: Give your name and address to be heard.

JOHN JEFFREY: All right. My name is John Jeffrey and I live at 61 Plymouth Street.

I've prepared a statement, but I believe I would be largely preaching to the choir because you've already expressed your support for the space being made into a performing arts space. I'm not qualified to speak in terms of overturning the Ordinance about the serving of alcohol.

So I could go ahead with my statement if you like.

CONSTANTINE ALEXANDER: It's up to you.

JOHN JEFFREY: Thanks to the Zoning Board for their time and consideration. I've been a Cambridge resident for about six years and a proud member of the performing arts community in the Greater Boston area as a producer, director, and actor. And I'm here to speak in support of the Thalia. Am I pronouncing it correctly. In the Greater Boston area. There are dozens and the number can vary from year to year of small and emerging performing arts organizations, theatre troupes, improv groups, small scale opera, dance, and chamber of music companies and they all face a difficult shortage of performance space. The closing of the Factory theatre in Boston two years ago made a huge impact on the theatre community as one of the most affordable spaces in the Boston area was converted into a gym, and several fledgling and well-established theatre troupes that used the Factory Theatre as their home base had

to scale back operations, dramatically downsize, go on hiatus, or fold altogether since they had no place to play. I certainly hope that Thalia would be an enormous boom not only to Greater Boston's performing arts community but to the ongoing development of Central Square as well providing numerous cultural offerings drawing economically and culturally diverse audience to the area. And then, of course, we would then have the option to patronize local restaurants and businesses prior to or after the performance. And as I was walking here tonight I was just seeing, and it struck me just how many new businesses had been opening up on Massachusetts Avenue and it seems that there's definitely a Renaissance of the Central Square Business District and I would love to see Thalia be the crown jewel in that Renaissance.

Thank you very much.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one else wishes to be heard.

Any final comments, Mr. Hope?

ATTORNEY SEAN HOPE: Just maybe just to myself and I think Mr. Sullivan probably said it better than I, but I do believe that this section is ambiguous enough that in the way it was drafted with the uses of hands connecting entertainment and alcohol, that you can read this, that this -- because of the unique circumstances where this actual space is located below grade, that's different than any other space on Mass. Ave. I would say, I would make that argument that you could find that the intent of the City Council was not to prohibit alcohol in this manner.

I think -- there is no dancing. I think we've already established that. There's not going to be dancing. There's only going to be performance space. I think that if you think about all the other restaurants on Mass. Ave. or

all the other establishments that have entertainment and alcohol, all of them have some kind of street presence (inaudible). This has a brick wall and a door. There is nothing that says come on in. And I think that's relevant, because in order to be able to bring in the revenue to sustain the business, I think you're going to have to have this accessory use. I think that you can read this, to me it's not crystal clear. I also think the ambiguity worked against us and I think depending on the way you read it. We need four out of five members to be able to find that it wasn't the intent of the City Council to prohibit this type of use for this specific user in this location.

CONSTANTINE ALEXANDER: Are you representing to us that the only person who can obtain alcohol on the premises will be a theatre patron? If someone walking down the street says, I want to have a beer, will they be able to have walk in and have a beer?

ALEX NEWMAN: Only if they buy a ticket.

CONSTANTINE ALEXANDER: Okay. They have to buy a ticket.

ALEX NEWMAN: Yeah. I mean it's not open to the general public except as performances are open to the general public, sir.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: And I do think that distinction is relevant, and I think you can read that into the construction. And so for that I think we'd ask the Board to find in favor of both variances.

BRENDAN SULLIVAN: You know, I really have great sympathy for this and I've sat here many Thursday nights and sometimes hold my nose and say yes to variances and relief and all that other stuff and I, and again, I don't mean to sound like father time here, but I keep going back to my grandson's performances at the Burlington High School, and at intermission the snack bar was to integral to them raising a few dollars for whatever it was. And, again, went

into the coffers of the drama club, and so on and so forth.

And, you know, you buy sodas and water and candy that you wouldn't eat anyhow but just to support them, and again, I think that snack bar, if you will, is such an integral part but it's an accessory part. It's not the main function here.

ALEX NEWMAN: Mr. Chairman -- forgive me for interrupting you.

BRENDAN SULLIVAN: So I think that if you, you know, you granted the Variance for the theatre and then said okay, fine I'll go back to the City Council to have them allow these things, I think it's going to be a long way around the track and I think it's going to come back to the City Council would support it I guess. And I don't think you can say no to something like this. And I don't think the Ordinance really thought of this particular situation; that it's not open to the general public, it's for theatre patron, it's not their primary purpose to sell beverages and

snacks. It is to augment and to help support and to keep the lights on so I would support it.

ALEX NEWMAN: To Mr. Sullivan's point, there are a wide variety of accessory uses that we are, and alternative revenue streams that we must use to support theatre, that any theatre uses to support itself. It is only the serving of beer and wine that requires us to come before this Board. You don't, you don't need to know that we're also going to sell T-shirts or that we're also going to --

CONSTANTINE ALEXANDER: Because it's not --

ALEX NEWMAN: Exactly. So this is the only -- right.

PATRICK TEDESCO: I realize this is not in the Central Square Overlay District, but the Jose Mateo Ballet is a perfect example; beer and wine in intermission and no one feels the sense that's a tavern or nightclub. That sounds to me they're very much the same.

GEORGE BEST: Are you 501(c)3 or are you just --

ALEX NEWMAN: No, we're a community- oriented for profit.

GEORGE BEST: Okay.

ALEX NEWMAN: We have a, we have the development of a 501(c)3 adjunct foundation but that hasn't, that hasn't been granted yet.

CONSTANTINE ALEXANDER: Yeah, I think I'm going to make two motions. I think you're very mistaken to think you need a Variance from -- I don't remember the number. Central Overlay District provision. The better approach is to say that, that section should be interpreted not to cover your operation given the fact that wine and alcohol is being served in a place with dancing and entertainment. You can't meet the requirements. I'm sorry, my fellow members of the Board, because there's absolutely no basis for giving a Variance from that section. You just can't get there. But you could get there, I won't get there, but you could get there by interpreting the section such that doesn't apply.

You do need the Variance, of course, for the Use Variance to operate the theatre. No question about that. And I think you can meet the requirements for that.

So ready for a vote? I think everybody has spoken. I don't want to cut off the discussion.

Okay.

The Chair moves that we make the following findings with regard to the proposed use of these premises for a theatre and rehearsal space:

That a substantial hardship, unless we do this, there would be a substantial hardship. This building -- I'm sorry, I'm not -- the hour is late. This is in a residential district. This is residentially-zoned district and you're seeking this business use; namely, the theatre and rehearsal space. If we don't allow this, there would be a substantial hardship because the space has been used for non-residential purposes for many years. That this area, though zoned residential, is not in any way a residential

district. And so what is being proposed is not really inconsistent with the surrounding premises and uses.

That the Variance is based on the special conditions that this is a building that was built not for residential purposes but for entertainment and other social purposes.

And that granting the relief would not derogate from the intent of the Ordinance.

So on the basis of these findings, the Chair moves that we grant the Variance to allow the space to be used for a theatre and rehearsal space.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. So you've got your theatre.

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

ALEX NEWMAN: Thank you.

CONSTANTINE ALEXANDER: The Chair further moves

that to the extent that an issue has been raised, that because a theatre is going to have a cafe that serves alcohol in the rear of the theatre area, that they may be prohibited from doing this under Section 20.304.5,3b that in fact that this section does not apply on the basis that the -- that what is being done on the premises, although it will not be dancing and entertainment and that what is being -- the alcoholic beverages that are being served will not be available to people other than patrons of the theatre, and that -- I think that's good enough. So on the basis of these --

BRENDAN SULLIVAN: And only served while the theatre is --

CONSTANTINE ALEXANDER: It's not open to anybody other than theatre patrons.

GEORGE BEST: It has to be in operation.

PATRICK TEDESCO: During a performance.

BRENDAN SULLIVAN: Yeah, during a performance,

right.

CONSTANTINE ALEXANDER: So, and on the basis of this motion we don't need to act on the Variance that's being requested with regard to this section that I've just cited.

All those in favor --

JANET GREEN: So explain to me what I'm -- I just want to make sure I get this right.

CONSTANTINE ALEXANDER: Right. We're saying that they don't need -- the Section 20.304.5 doesn't apply --

JANET GREEN: Doesn't apply.

CONSTANTINE ALEXANDER: -- because of the fact of the nature of the alcohol being served.

JANET GREEN: Okay.

CONSTANTINE ALEXANDER: So we don't have to get to the Variance question. There's no need for a Variance because the section doesn't apply in the first place. Okay?

JANET GREEN: So that means that they can go

ahead?

PATRICK TEDESCO: You just have to vote to confirm that interpretation --

JANET GREEN: Confirm. We just have to -- okay, got it.

CONSTANTINE ALEXANDER: Confirm that.

BRENDAN SULLIVAN: Or now if this gets kicked back, is that you can then file an appeal against a determination by the Commissioner that it does apply. We would then have a rehearing and determine that it doesn't apply. We're trying to short circuit that.

ATTORNEY SEAN HOPE: It's probably quicker than the other way.

CONSTANTINE ALEXANDER: Anyway, I think I made the motion.

JANET GREEN: Yes.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Sullivan, Green, Tedesco, Best.)

CONSTANTINE ALEXANDER: One opposed.

(Alexander.)

* * * * *

(10:25 p.m.)

(Sitting Members Case BZA-011007-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco,

George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 011007, 10 Fawcett Street.

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

ATTORNEY DANIEL GLISSMAN: Good evening.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY DANIEL GLISSMAN: Good evening, members
of the Board. My name is Daniel Glissman. I'm an attorney

with Prince, Lobel, Tye. I'm here on behalf of T-Mobile Northeast.

The project before the Board this evening is an upgrade to T-Mobile's existing wireless installation located at 10 Fawcett Street. This is part of T-Mobile's systemwide upgrade to its network in the City of Cambridge. This is the L700 upgrade.

We currently have six antennas mounted to the facade of the existing penthouse, and we are proposing to add three additional L700 antennas and replace three of the existing air antennas with new upgraded air antennas.

As you can see from the photo simulations in the file as well as the -- what I'll hand out now.

CONSTANTINE ALEXANDER: These are the same ones that are in our file?

ATTORNEY DANIEL GLISSMAN: Correct.

As you can see from the photo simulations, this installation will be consistent with the existing

installation. The antennas will be painted to match, and the impact on this existing facility will be de minimus.

We're seeking relief under Section 6409 of the Telecom Relief Act, and I would --

CONSTANTINE ALEXANDER: Are you aware of the Planning Board's comments on your proposal?

ATTORNEY DANIEL GLISSMAN: I am, yes.

CONSTANTINE ALEXANDER: And do you have any problems complying with their recommendations?

ATTORNEY DANIEL GLISSMAN: We've done our best to work with the Planning Board's recommendations and we believe that the plans as existed -- as exist do in fact provide us enough room to work with to comply with the Planning Board's recommendations.

CONSTANTINE ALEXANDER: Well, if we granted relief subject to the condition that you comply with these recommendations, do you have a problem with that?

ATTORNEY DANIEL GLISSMAN: Well, we've -- well,

we've done all we could to comply with the --

CONSTANTINE ALEXANDER: I've heard that. But the fact of the matter is they, they said "We make the following suggestions." Can you live with them or not?

ATTORNEY DANIEL GLISSMAN: We, we can live to great extent with most of them, however, they're somewhat broad in their recommendations.

CONSTANTINE ALEXANDER: Which ones can't you live with?

ATTORNEY DANIEL GLISSMAN: Well, for example, the brackets that they talk about at 10 Fawcett Street, we can't make the existing brackets any smaller. Our current brackets have to span two existing studs so they, they have to be the size that they are.

We can, and I've been assured that the antennas are going to be six inches below the cornice line. So they will in fact be -- you know, they will not break the cornice line.

CONSTANTINE ALEXANDER: Okay, so that's the first condition. I'm going to go through these to get to the decision.

So you will comply with the requirement that they don't appear to break the cornice line?

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: Okay. That's the first one on their list.

Second one, the antennas should be positioned and spaced to align with some of the vertical lines on the existing facade and to create a more balanced and symmetrical layout. Can you reposition and space to align with some of the vertical lines?

ATTORNEY DANIEL GLISSMAN: We'd be happy to oblige with a condition from the Board that we would work to --

CONSTANTINE ALEXANDER: Working doesn't do it. Will you do it or not?

ATTORNEY DANIEL GLISSMAN: Well, we have to work

within the plans that are in the file.

CONSTANTINE ALEXANDER: Yeah. We can modify the plans to reflect the comments from the Planning Board.

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: So you will do it?

ATTORNEY DANIEL GLISSMAN: Absolutely.

CONSTANTINE ALEXANDER: That's going to be a requirement that your plans notwithstanding you're going to meet this suggestion from the Planning Board. I want to be very clear. Okay?

JANET GREEN: What would that look like?

ATTORNEY DANIEL GLISSMAN: Well, we've -- the suggestion from our RF engineers and our site acquisition team is to move them over slightly to try and be in front of the existing cable ports to the best that they can, and, and angle them in a way -- there's a little bit of play on the brackets themselves, so they can be angled slightly, you know, a few inches in each direction. But the antennas

themselves will largely stand in the same place based on the existing conditions of the rooftop and the penthouse.

There's ventilation that we have to be aware of. There's certain studs that we can't install in front of, and there's also existing equipment cabinets. So the installation will remain largely what it appears, but we do believe that we can comply with the --

CONSTANTINE ALEXANDER: Good.

The third one you said you can't comply with because that's considered reducing the width of the brackets, and I think you indicated that's not --

ATTORNEY DANIEL GLISSMAN: Correct. Correct.

CONSTANTINE ALEXANDER: Understood. So that one we're not going to live with.

The next one is, all antennas across each facade should be same length including existing antennas.

Will that be the case?

ATTORNEY DANIEL GLISSMAN: That will not be the

case. These are the L700 antennas. They're a different technology and they require a different size antenna. These are 72-inch antennas. The existing antennas are 56-inch antennas. So the technology is just different. We unfortunately can't.

PATRICK TEDESCO: The tops for the line?

ATTORNEY DANIEL GLISSMAN: Correct. Yeah.

CONSTANTINE ALEXANDER: And then last I think on that issue, all painted materials, including cabling, should have a consistent matte finish. And that's not a problem?

ATTORNEY DANIEL GLISSMAN: No problem.

BRENDAN SULLIVAN: The antenna, and again, being naive here, so you've got the bracket on the wall and then you basically got the guts of the antenna and then you have a covering over that, what we see visually; is that correct? Basically it's just a cover over all of the --

ATTORNEY DANIEL GLISSMAN: The equipment.

BRENDAN SULLIVAN: -- all of the equipment?

ATTORNEY DANIEL GLISSMAN: Correct, that's my understanding.

BRENDAN SULLIVAN: In order to make the three of them the same length could you not take the longer one and put it over the other two even though part of it is not doing anything or it's doing nothing at all?

ATTORNEY DANIEL GLISSMAN: I'm not quite sure I follow the suggestion.

PATRICK TEDESCO: He's saying elongate the existing ones that are shorter. Yeah.

JANET GREEN: Yeah.

PATRICK TEDESCO: I think one of the issues --

JANET GREEN: Just to cover, the longer cover over it.

PATRICK TEDESCO: -- you'd be down over the louver at least in one of them.

CONSTANTINE ALEXANDER: Again, my view would be --

BRENDAN SULLIVAN: (Inaudible).

CONSTANTINE ALEXANDER: -- we're talking about 16 inches and you're looking at this from a good distance. It's not --

PATRICK TEDESCO: I think it's very important that the tops align and that they be below the cornice.

CONSTANTINE ALEXANDER: I mean, it would nice.

BRENDAN SULLIVAN: I mean, there should be some symmetry there somewhere.

CONSTANTINE ALEXANDER: I think the Planning Board is a little anal on this one.

JANET GREEN: Did you tell the Planning Board the same kind of things you're telling us about what you would be able to do and what you wouldn't be able to do?

ATTORNEY DANIEL GLISSMAN: Correct. And we worked with Planning Board staff, you know, immediately before and just after the hearing to further vet some of their suggestions.

CONSTANTINE ALEXANDER: So even though after you

talked to them and told them what you can't do, they still, you're saying they wrote us a memo anyway?

ATTORNEY DANIEL GLISSMAN: Well, there was a bit of a, a bit of confusion amongst the Planning Board staff and myself. I think I was under the impression that the Planning Board had granted the staff the sort of ability to amend their -- the staff's comments. They specifically stated that so long as the staff was okay with any changes, that they would be okay with it. And the staff wasn't eager to make changes to what the Board had approved, and, you know, instead suggested that as they are an advisory Board, that the matter be brought to you guys and this Board and that we flush out any issues that can be --

JANET GREEN: Get the picture.

CONSTANTINE ALEXANDER: They punted.

JANET GREEN: They kicked the can down the road.

CONSTANTINE ALEXANDER: That's right, you got it.

Oh, boy. Any other questions?

I'm sorry, I didn't mean to interrupt your presentation.

ATTORNEY DANIEL GLISSMAN: No, you know, so long as the Board has no more questions, I'm all set.

CONSTANTINE ALEXANDER: All set? Do we have any questions?

(No Response.)

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

IS THERE anybody here wishes to be heard and this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I will close public testimony.

Do you have any final comments?

ATTORNEY DANIEL GLISSMAN: No.

CONSTANTINE ALEXANDER: Okay. I think we're ready for a vote. I love these cases, these telecom cases.

All right, the Chair moves that we make the following findings with regard to the relief being sought:

That the requirements of the Ordinance are such that they cannot be -- the Ordinance is such that the requirements cannot be satisfied unless we grant the relief being -- we grant relief.

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

That the continued operation or development 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 welfare of the occupant of the proposed use or the citizens of the city.

And that what is being proposed will not impair the integrity of the district or adjoining districts or

otherwise derogate from the intent and purpose of the Ordinance.

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

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

That the work proceed in the accordance with the plans submitted by the petitioner and initialled by the Chair. They're in the file. Subject to a further condition I'm going to make in a second regarding the Planning Board's request.

That upon completion of the work, the physical

appearance and visual impact of what is proposed will be consistent with the photo simulations submitted by the petitioner initialled by the Chair.

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

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

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

Returning to the question of the compliance with plans, the petitioner -- there's a further that the antennas, notwithstanding the plans, the antennas shall be moved down the facade so they do not appear to break the cornice line.

That the antennas will be positioned and spaced to align with some of the vertical lines on the existing facade and to create a more balanced and symmetrical layout.

And that all painted materials, including cabling, shall have a consistent matte finish.

Last but not least, inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all of the petitioner's

equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

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

The Special Permit granted tonight shall ipso

facto terminate if any of the petitioner's federal licenses are suspended, revoked, or terminated.

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

D, that within ten business days after receipt of a Building Permit for the installation of the equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with a geographical area that includes Cambridge

stating that:

A, he or she has such responsibility.

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

All those in favor of granting the Special Permit under these conditions, please say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

ATTORNEY DANIEL GLISSMAN: Thank you.

* * * * *

(10:40 p.m.)

(Sitting Members Case BZA-011008-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco,

George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 011008, 1221 Cambridge Street.

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

ATTORNEY DANIEL GLISSMAN: Good evening.

JANET GREEN: Good evening.

CONSTANTINE ALEXANDER: Good evening.

And you've seen it, I take it, the Planning
Board's memo on this one?

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: Will you be able to
address, as you did on the other one --

ATTORNEY DANIEL GLISSMAN: Certainly.

CONSTANTINE ALEXANDER: -- point by point?

Let me ask you a question at the outset, here.

You say you comply with The Spectrum Act. There's nothing in your submission that supports that.

ATTORNEY DANIEL GLISSMAN: There should be in the application that we submit as a part of our zoning application, we include what's called a Section 6409 eligible facilities request.

CONSTANTINE ALEXANDER: I didn't see it in here. Maybe I missed it.

ATTORNEY DANIEL GLISSMAN: It's the last tab. It's actually located behind the building permit application. Yes.

CONSTANTINE ALEXANDER: No, this is the old decisions. There is something way in the back. Okay, I found it.

ATTORNEY DANIEL GLISSMAN: It's part of the -- so one of the requirements under 6409 is we actually submit a

building permit application together with our eligible facilities request which ticks off the various prongs of Section 6409.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY DANIEL GLISSMAN: Daniel Glissman, attorney with Prince, Lobel, Tye here on behalf of T-Mobile Northeast, LLC. This is another one of T-Mobile's L700 upgrades, part of their systemwide upgrade. This project is 1221 Cambridge Street.

We currently have six existing antennas located on the facade of the building and the penthouse. And we are proposing to simply add three new L700 antennas. Again, they will be designed consistently with the existing antennas and previous decisions of this Board. And if the Board would like I could get right into the Planning Board comments.

CONSTANTINE ALEXANDER: Yeah, I think we should. I must say the Planning Board's comments -- the comment I

had, not to toot my horn, but the clutter on this building is going to be quite offensive. I'm not sure it's enough to turn it down. But let me read the Planning Board's memo or -- yeah, memo to us and into the record and then we can go through them point by point.

(Reading) The Planning Board reviewed the Special Permit application to modify the existing antenna installations. The facade-mounted antenna appear to be similar to what exists on the penthouse and will be painted to match the existing building. However, the Planning Board notes that there is quite a lot of existing rooftop mechanical equipment in place particularly associated with the penthouse. The proposed antennas are also six feet in height, and the proposed remote radio units will be roof mounted with a height of four feet which further adds to the sense of visual clutter and untidiness on the rooftop. The Planning Board suggests that if the substantial permit is granted, the following design modification should be -- it

says, should be recommended by the BZA. We don't recommend, we propose. So why don't we go through them one by one.

The first one is for the west elevation of the penthouse the proponent should be encouraged to investigate opportunities to conceal the existing and proposed antennas and associated equipment within an enclosure or screen. Can you do that?

PATRICK TEDESCO: That's -- this is the west?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY DANIEL GLISSMAN: Yeah, correct.

CONSTANTINE ALEXANDER: No. 3. Location 3.

ATTORNEY DANIEL GLISSMAN: Location 3. So we looked into the idea of putting a screen here. And we don't control the entire facade, and so we felt that the screen would not fit well here. Also -- so we would only be able to potentially, if we could structurally, screen the antennas. We also don't believe that the existing roof, the penthouse roof will sustain a screen wall there.

CONSTANTINE ALEXANDER: It would be -- it would damage the building or it would be too heavy?

ATTORNEY DANIEL GLISSMAN: Correct. The mounting apparently -- it won't work. So we did investigate this. It was deemed not to be a possibility. So that would be one that we wouldn't be able to comply with.

But in an effort to reduce the visual clutter on that section you'll notice one of the antennas, one of the existing antennas is currently a little faded and no longer appears to paint to match. We will certainly paint that in compliance.

There are also some existing square boxes that contain equipment for the building that we would paint along with the existing cable tray. As you can see, the cable tray that runs up the back of the building has -- it's painted up until the cornice line and then it goes to a steel finish. We would propose to paint that steel finish as well.

And, again, this installation is adding this facade-mounted antenna and is consistent with previous decisions at this installation by this Board and we feel that the impact is de minimus.

BRENDAN SULLIVAN: I'm --

JANET GREEN: Are all those your --

BRENDAN SULLIVAN: What I'm reading is they don't want to do it.

CONSTANTINE ALEXANDER: You got it.

BRENDAN SULLIVAN: But, and I'm just --

CONSTANTINE ALEXANDER: Too bad.

BRENDAN SULLIVAN: -- wondering if they really need to go back and address -- clean this up and then come back to us. Because I don't -- I'm not comfortable with, yeah, we'll try or we -- and, again, I know well intention, what have you, but I think that this stuff that you're talking about should have been taken seriously. The recommendations from the Planning Board should have been

incorporated into a plan, continued tonight and brought back to us.

CONSTANTINE ALEXANDER: I think that's absolutely right. A very good point, Brendan. I don't think we should consider this case tonight. I mean, this is a messy situation from a point of view of visual.

The Planning Board has made some suggestions. I want you -- you say you can't comply with these. I want somebody to come back with real proof and demonstrate why you can't. And I'm hopeful that you will be able to find a way to comply with as many of these conditions as possible.

So I think that's right. I would move that we continue this case it would be a case heard and to another date and you know what you got to do for that hearing.

ATTORNEY DANIEL GLISSMAN: Correct. If I may, we -- so we got these -- we worked as quickly as we could to try to turn around plans and saying --

CONSTANTINE ALEXANDER: No one is suggesting bad

faith on your part.

ATTORNEY DANIEL GLISSMAN: We just weren't able to get it before the Board on time.

CONSTANTINE ALEXANDER: The Planning Board just gave us this memo yesterday so I can understand your problem. But given the nature of what you want to do, given the comments, I think it behooves us to wait to hear this case another time.

PATRICK TEDESCO: Can I offer a suggestion, Mr. Chairman?

CONSTANTINE ALEXANDER: Go ahead.

PATRICK TEDESCO: I can only presume, and it would be the existing antennas, but if you put this on the south side of the penthouse, it appears to me less visible because you're looking across the length of the roof. And this is the area that's already cluttered with other equipment. I realize it's added expense, you've got existing antennas, but that might be a solution if the screen isn't possible.

ATTORNEY DANIEL GLISSMAN: It's actually -- the reason that they have to be on that facade is that's the sector that it's covering --

PATRICK TEDESCO: Understood.

ATTORNEY DANIEL GLISSMAN: So they have to face a certain direction and a certain degree in order to cover an area.

PATRICK TEDESCO: Understood.

CONSTANTINE ALEXANDER: It's a suggestion.

ATTORNEY DANIEL GLISSMAN: Absolutely.

CONSTANTINE ALEXANDER: I mean, you can consider it and come back to us on it.

ATTORNEY DANIEL GLISSMAN: And if I may, I would like to -- the Planning Board had made some comments along the lines of symmetry and location, so I was wondering if the Board would be willing to walk through a few of those comments so I could get further direction from the Board to for us to determine --

CONSTANTINE ALEXANDER: Well, speaking only for me, we would like you to comply with everything that the Planning Board has said. You've told us already you can't do that. Come back to us and tell us why you can't and we want to explore this a little bit more rather than just hearing on the fly. Okay?

ATTORNEY DANIEL GLISSMAN: Understood. It's just with respect to the stylistic questions like the Planning Board had suggested more symmetry one --

BRENDAN SULLIVAN: I would direct those questions back -- go back to Liza possibly and then say, "What do you mean by this? Rather than us trying to interpret.

ATTORNEY DANIEL GLISSMAN: As opposed to getting direction from this Board?

CONSTANTINE ALEXANDER: You need to know more wherever the head is.

PATRICK TEDESCO: So we're punting back?

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: Yeah, punting it back from whence it came.

ATTORNEY DANIEL GLISSMAN: Well, for example, we have three antennas, two shorter and one longer. Would the Board prefer to see two short antennas next to each other and then one long antenna at the end or short, long, short, you know?

CONSTANTINE ALEXANDER: I'm not going to --

BRENDAN SULLIVAN: Speaking for myself I would prefer to see a letter from the Planning Board saying that we have reviewed -- we have consulted with the applicant, we have reviewed their revised plan and we like it, and that would be their recommendation to us.

CONSTANTINE ALEXANDER: Yeah.

BRENDAN SULLIVAN: So I think if you go back to them and say what is it -- "What do you mean by this? What can we do?" And have some back and forth with them and then

we get the bottom line.

CONSTANTINE ALEXANDER: Yeah, I'm sure you have to go back and negotiate a little bit more with the Planning Board. Okay? Or they need to negotiate with you. But we need that to happen before we can act on this case.

Now, this is a case heard. How much time do you think you need and then we'll find out whether we can meet, all five of us can meet. A month from now?

ATTORNEY DANIEL GLISSMAN: I would suggest shorter than that. I think we can --

CONSTANTINE ALEXANDER: Can you do that?

ATTORNEY DANIEL GLISSMAN: Yeah --

CONSTANTINE ALEXANDER: Remember, you have to get the Planning Board to sit down. And you got, this is -- the next two weeks are basically right at the end of summer.

BRENDAN SULLIVAN: Well, I'm not here the first meeting in September. So it would be the second meeting would be the earliest.

SEAN O'GRADY: And that's open.

CONSTANTINE ALEXANDER: What's the date of the second meeting?

SEAN O'GRADY: The 29th.

CONSTANTINE ALEXANDER: The 29th of the September. I think that's a good time. That gives plenty of time for you and the Planning Board to sit down. Okay?

The Chair moves -- can you make the 29th?

JANET GREEN: Oh, yeah, there already is a case heard that night.

CONSTANTINE ALEXANDER: I'm sorry.

JANET GREEN: There already is a case heard that night, the Whitney case. So, yeah, yeah, so I'm here already.

PATRICK TEDESCO: I'm here.

CONSTANTINE ALEXANDER: George?

GEORGE BEST: That's fine.

CONSTANTINE ALEXANDER: The Chair moves that this

case be continued as a case heard subject to the following conditions:

That the petitioner sign a waiver for a time of decision. You know about that. He's going to give it to you in a second.

Two, that the posting sign be modified to reflect the new date, September 29th, the new time, seven p.m. And that sign be maintained for the 14 days required under our Ordinance. You can take it down now but you've got to get it back up for the 14 days before September 29th.

And lastly to the extent that there are going to be revisions to the plans and photo simulations that you submitted, it sounds like there will be, but those must be in our files no later than five p.m. on the Monday before September 29th. Got it?

ATTORNEY DANIEL GLISSMAN: Correct.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor and we'll see you in September.

ATTORNEY DANIEL GLISSMAN: Thank you very much.

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

* * * * *

(10:55 p.m.)

(Sitting Members Case BZA-011034-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011034, 18-20 Farwell Place.

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

Name and address to the stenographer.

ATTORNEY MICHAEL WIGGINS: Good evening, Mr. Chairman, members of the Board. My name is Michael Wiggins

and I'm from the law firm of Weston Patrick at 84 State Street in Boston. Here with me is David Torrey. We also have the owners here, but David's going to make the presentation to you. I'll basically let him proceed and I'll address the standards for the Variance -- for the Special Permit at the end.

CONSTANTINE ALEXANDER: Special Permit? It is a Special Permit, yes. I thought it was a Variance.

DAVID TORREY: Hello. I'm David Torrey. I live on Pearl Street. I'm a principal of Torrey Architecture. We're here for a Special Permit on doors and windows on non-conforming facades on a very narrow lot. You would have had noticed that the Cambridge Historical Commission has approved the work that we're proposing here to follow through with on zoning. So this is the house as seen from Farwell Place. So that's the visuals.

And the plan -- let me just show you the floor plans that show where the facades are located on the

property and they are here. Farwell Place is here. This is the building which has a front, a middle, and a back section. Back lot line is here.

Seven and a half foot lot lines occur close to these facades. And then let me just show on the facade drawings the impact of facades that the Ordinance relates to.

This facade here is a side facade. We are proposing to install a door below grade for a second fire egress from the living space in the basement, and because this is within the -- this facade is under the Ordinance, we're asking for a door.

The other facade under the Ordinance, the side yard here. This is the kitchen wing. We're asking for skylights which will face the sky over the back part of the abutting house. We're asking for the windows to be located on an already approved by the Historic Commission dormer under a by-right dormer. We have the right to do a dormer.

We simply have to ask for the windows.

The rest of the building stays unchanged. So those are the requests. To add the windows on an already approved dormer that's by-right, to add some skylights and to add a door. That is our request under this bylaw.

CONSTANTINE ALEXANDER: Thank you.

DAVID TORREY: For a Special Permit.

And we have, by the way, the abutters on either side have provided letters of support.

CONSTANTINE ALEXANDER: I'm going to read them into the record at the appropriate time.

DAVID TORREY: And you probably got something from Sarah Burks stating that there was an approval. She said she didn't get time to write up the official Certificate of Appropriateness.

CONSTANTINE ALEXANDER: This is from Historical?

DAVID TORREY: Yes.

ATTORNEY MICHAEL WIGGINS: Historical.

CONSTANTINE ALEXANDER: You represented to us that you have a Certificate of Appropriateness, right?

DAVID TORREY: We have the -- it happens to be August, vacation time.

CONSTANTINE ALEXANDER: Yes.

DAVID TORREY: So we have the letter stating right here approved on the date.

CONSTANTINE ALEXANDER: Okay. Could I have this for our files?

DAVID TORREY: You may have that, yes.

CONSTANTINE ALEXANDER: Okay. Now.

ATTORNEY MICHAEL WIGGINS: So, Mr. Chairman, the -- this I think it fits easily into the standard for a Special Permit. It's not going to be a substantially different use than it is now. It's just making it more habitable upstairs and also making it safer.

There is, this is a two-family. It remains a two-family. There's a bedroom in the basement. That's all

there will be is a bedroom in the basement. So it's not changing the use at all.

It's not substantially more detrimental than the existing non-conforming. Just the skylights and these windows.

CONSTANTINE ALEXANDER: And no nuisance or hazard is going to be created by the work.

ATTORNEY MICHAEL WIGGINS: That's --

CONSTANTINE ALEXANDER: I'm looking at the requirements for a Special Permit.

ATTORNEY MICHAEL WIGGINS: Sure.

And I think the thing to mention is it's a small street. I don't know if any of you have been there --

JANET GREEN: Oh, yeah.

ATTORNEY MICHAEL WIGGINS: -- it's a wonderful street. First time I ever been there.

PATRICK TEDESCO: It's a secret parking street.

ATTORNEY MICHAEL WIGGINS: But since

there's -- it's not a three-family. You're not adding living space so there's not going to be any adverse affect on traffic. And it will remain a two-family. And these improvements really are not visible from the street. I mean, the Historic Commission had to really look over to see that dormer. And this door in the back is below grade but there's a gate here. So it's just, there already is a gate I understand and having looked at it. And the gate will just be moved back a little bit. So the effect on the street in the neighborhood at large will be basically nothing and we do have support from several neighbors here.

CONSTANTINE ALEXANDER: Yeah, I'm going to read them into the record. We have two letters of support.

ATTORNEY MICHAEL WIGGINS: So that's about it.

CONSTANTINE ALEXANDER: That's it.

Anyone wishing to be heard? You can't be heard because you're the petitioner.

(No Response.)

CONSTANTINE ALEXANDER: I guess not.

The Chair would report that we do have letters, one is from the Reverend Joseph O. Robison, R-O-B-I-S-O-N. (Reading) This letter is in support of the application of Gary Chafetz and C. Rieder -- did I get it right, Rieder? For a Special Permit to be heard on August 25th, blah, blah, blah.

The Christ Church at Zero Garden Street, the sponsor, manager, and majority owner of the 22-24-24A Farwell Place Condominium Association is in full support of application of Gary Chafetz and C. Rieder, misspelled it this time, 18-20 Farwell Place for a Special Permit to be heard by the Cambridge Board of Zoning Appeals on August 25, 2016. They have discussed their plans with me and I fully support their application for a Special Permit.

The other letter is from Elizabeth Bartholet, B-A-R-T-H-O-L-E-T, who I guess she lives at 10 Farwell Place. (Reading) I am in full support of the application of

Gary Chafetz and C. Rieder for a Special Permit to be heard by the Cambridge Board of Zoning Appeals on August 25, 2016. They have discussed their plans with me and I fully support their application for a Special Permit.

And that's all she wrote.

I will close public testimony. Are we ready for a vote?

Okay. The Chair moves that we make the following findings with regard to the Special Permit being requested. And before I do this, sir, you haven't been before us I don't think that many times.

DAVID TORREY: Right.

CONSTANTINE ALEXANDER: If we grant, we will grant the Special Permit, it will be subject to compliance with these plans.

DAVID TORREY: Right.

CONSTANTINE ALEXANDER: Are these the final plans? Because if you're going to modify them as you go forward,

you're going to have to come before us. God help you, I don't think you want to do that. I want to make sure you signed off, these are the final plans.

DAVID TORREY: Yeah, we have to do some structural details for the Building Commission.

CONSTANTINE ALEXANDER: No, no, no. I'm talking about changing location of the windows.

DAVID TORREY: The elevations are fixed on the plans.

CONSTANTINE ALEXANDER: I just want to make sure.

All right, the Chair moves that we make the following findings:

That the requirements of the Ordinance cannot be met without the Special Permit being sought tonight.

That what is -- the traffic -- there will be no congestion, hazard, or substantial change in established neighborhood resulting from the work that's being proposed.

That the continued operation of or development of

adjacent uses will not adversely affected by the nature of what is being proposed.

And in this regard I would refer back to the two letters which I have read which are the, are the adjacent uses.

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

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

So on the basis of these findings the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with plans prepared by Torrey Architecture, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Special Permit granted.

(Whereupon, at 11:05 p.m., the

Zoning Board of Appeals Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

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

INSTRUCTIONS

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

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

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand
this 14th day of September, 2016.

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

My Commission Expires:
April 29, 2022

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\$50,000 ^[1] - 183:4

0

010241 ^[1] - 5:7

010350-2016

^[1] - 126:6

010758 ^[1] - 43:6

010779 ^[1] - 158:6

010844-2016

^[1] - 122:6

010976 ^[1] - 202:6

011007 ^[1] - 277:6

011008 ^[1] - 300:6

011034 ^[1] - 318:6

02124 ^[1] - 212:14

02139 ^[1] - 1:6

1

1 ^[3] - 84:15, 88:4,
99:14

1.9 ^[1] - 149:16

10 ^[5] - 2:12, 277:6,
277:17, 280:14,
326:17

10.4 ^[1] - 163:14

10.43 ^[3] - 164:4,
173:9, 197:16

100 ^[1] - 160:18

10:25 ^[1] - 277:1

10:40 ^[1] - 300:1

10:55 ^[1] - 318:1

11 ^[4] - 163:10, 164:3,
197:13, 197:14

11.30 ^[1] - 172:11

11.31 ^[2] - 162:2,
162:14

118 ^[1] - 207:11

11:05 ^[1] - 330:15

122 ^[1] - 2:7

1221 ^[3] - 2:13, 300:6,
302:11

126 ^[1] - 2:4

12th ^[1] - 225:5

13 ^[2] - 253:16,
255:11

130A ^[1] - 36:7

14 ^[2] - 316:13,
316:15

147703 ^[1] - 332:12

14th ^[1] - 332:8

15 ^[1] - 84:17

158 ^[1] - 2:6

16 ^[3] - 188:10,

254:14, 287:7
163 [3] - 129:15,
 131:9, 132:2
17 [3] - 35:17, 99:4,
 102:10
18-20 [3] - 2:14,
 318:6, 326:9
1884 [1] - 142:2
19 [1] - 36:16
198 [1] - 131:10
1A [1] - 194:2

2

2 [2] - 84:16, 88:4
20 [3] - 106:17, 107:2,
 243:6
20.304.5 [3] - 246:13,
 275:2
20.304.5,3b
 [1] - 273:12
2012 [1] - 292:11
2016 [4] - 1:4, 326:12,
 327:3, 332:8
202 [1] - 2:10
2022 [1] - 332:13
212 [1] - 2:11
21st [3] - 18:17,
 19:16, 20:2
22 [1] - 34:13
22-24-24A [1] - 326:7
2259 [1] - 208:3
2263 [1] - 207:3
2265 [3] - 2:9, 202:6,
 208:14
22nd [3] - 41:11,
 156:2, 156:4
23 [4] - 2:4, 126:6,
 142:1, 143:15
23.405 [1] - 257:14
2344 [2] - 2:5, 43:6
23rd [1] - 122:11
243 [1] - 258:18
25 [5] - 1:4, 182:15,
 184:16, 326:12,
 327:3
255 [1] - 123:14
25th [3] - 122:16,
 139:15, 326:3
27 [1] - 81:3
277 [1] - 2:12
28 [4] - 6:11, 6:16,
 139:16, 139:17
288 [1] - 2:11

28th ^[1] - 141:6

29 ^[2] - 212:13,
332:13

29th ^[6] - 315:7,
315:8, 315:12,
316:11, 316:15,
317:3

2D ^[1] - 36:5

3

3 ^[4] - 35:13, 305:4,
305:5, 305:6

30 ^[2] - 21:12, 46:9

300 ^[1] - 2:13

307 ^[3] - 2:7, 122:6,
123:1

30th ^[3] - 140:6,
150:16, 151:9

318 ^[1] - 2:14

35 ^[2] - 6:14, 6:15

35-foot ^[2] - 6:10,
143:2

38.8 ^[1] - 143:1

3:30 ^[1] - 19:16

4

4 ^[1] - 88:4

41 ^[1] - 252:18

428 ^[1] - 35:2

43 ^[1] - 2:5

444 ^[1] - 12:2

445 ^[1] - 36:10

451 ^[1] - 35:17

457 ^[3] - 2:3, 5:7, 24:1

460 ^[2] - 35:13, 35:14

470 ^[1] - 34:17

5

5 ^[1] - 2:3

5,700 ^[1] - 130:4

5/2/16 ^[1] - 157:7

50 ^[1] - 133:11

501(c)3 ^[2] - 269:13,
270:1

516 ^[1] - 36:4

56-inch ^[1] - 284:18

6

6,000 ^[1] - 130:2

6,098 ^[1] - 130:3

61 ^[1] - 260:16

617.786.7783/617.63

9.0396 ^[1] - 1:16

6409^[4] - 279:1,
301:9, 302:1, 302:5
6409(a)^[1] - 292:10
675^[1] - 44:3

7

70^[1] - 226:13
72-inch^[1] - 284:17
7:00^[3] - 1:4, 3:3, 5:1
7:30^[1] - 43:1
7th^[1] - 142:6

8

8/19^[5] - 155:18,
156:10, 156:13,
156:16, 157:14
8/22^[2] - 156:9,
156:12
80^[1] - 226:13
806^[1] - 1:6
84^[1] - 318:13
8:30^[2] - 122:1, 126:1

9

9^[1] - 36:18
950^[5] - 2:6, 158:6,
159:5, 177:7, 194:2
99^[3] - 226:12, 236:3,
240:7
9:00^[1] - 158:1
9:30^[1] - 202:1
9:40^[1] - 212:1
9th^[1] - 141:13

A

A-R-B-O-L-E-D-A

^[1] - 177:6
a.m^[2] - 166:10,
166:11
abandoned^[1] - 216:11
abbreviating^[1] - 222:2
abide^[2] - 174:6,
187:5
ability^[8] - 49:17,
50:15, 53:8, 53:10,
55:5, 79:16, 160:15,
288:16
objectly^[1] - 152:10
able^[24] - 25:15, 47:5,
61:1, 61:10, 72:10,
105:16, 131:16,

139:4, 223:2,
 228:18, 239:3,
 244:2, 247:9, 255:1,
 265:4, 265:11,
 265:18, 288:2,
 288:3, 300:15,
 305:10, 306:4,
 308:14, 309:10

above-referenced

[1] - 141:17

absent [1] - 53:14

absolute [1] - 54:13

absolutely

[11] - 68:10, 68:14,
 69:1, 73:9, 99:17,
 150:13, 163:9,
 270:13, 282:14,
 308:6, 311:3

abut [1] - 11:11

abuts [1] - 159:9

abutter [12] - 10:1,
 11:10, 14:9, 14:12,
 30:1, 35:17, 96:15,
 103:12, 127:18,
 147:12, 164:16

abutter's [1] - 55:16

abutters [13] - 10:1,
 10:4, 10:6, 11:6,
 21:13, 83:14, 105:9,
 127:12, 134:13,
 140:14, 143:18,
 146:7, 321:10

abutters' [1] - 112:14

abutting [3] - 81:18,
 164:8, 320:15

Acacia [3] - 128:1,
 138:13, 140:15

accept [1] - 125:10

access [12] - 47:5,
 48:8, 49:9, 49:17,
 52:6, 60:9, 65:5,
 65:15, 117:4, 162:5,
 165:5, 291:8

accessing [1] - 48:17

accessory

[14] - 124:8, 130:9,
 130:15, 133:7,
 140:5, 213:9,
 224:16, 231:10,
 232:10, 242:18,
 250:6, 265:6,
 267:11, 268:13

accommodate

[4] - 129:1, 131:4,

134:6, 153:16

accommodating
^[1] - 131:15

accomplishment
^[1] - 24:7

accordance
^[3] - 41:9, 292:17,
 330:5

according ^[2] - 6:8,
 240:6

account ^[1] - 162:4

accurate ^[4] - 46:2,
 174:9, 331:16,
 332:6

achieved ^[1] - 55:11

acknowledged
^[1] - 196:10

acquisition
^[1] - 283:4

act ^[2] - 274:12, 314:6

Act ^[4] - 279:2,
 292:11, 292:12,
 301:3

active ^[1] - 172:8

activities ^[1] - 208:16

actor ^[1] - 261:13

actual ^[2] - 129:14,
 264:6

adamant ^[1] - 150:15

add ^[11] - 7:3, 8:4,
 78:1, 80:13, 111:5,
 192:18, 278:5,
 302:15, 321:4,
 321:6

added ^[4] - 7:6, 17:12,
 154:1, 310:8

adding ^[5] - 24:4,
 94:8, 110:17, 307:1,
 324:11

addition ^[16] - 4:9,
 15:4, 16:16, 17:3,
 17:12, 38:6, 38:7,
 66:3, 140:3, 142:9,
 142:15, 143:1,
 151:14, 152:4,
 238:4, 238:6

additional ^[4] - 22:13,
 40:12, 133:17,
 278:5

additions ^[2] - 129:3,
 132:9

address ^[17] - 5:13,
 14:7, 39:13, 44:3,
 96:3, 164:2, 171:17,

177:1, 202:11,
 207:2, 225:6,
 252:15, 260:14,
 300:16, 307:14,
 318:9, 318:17
addressed ^[6] - 11:6,
 12:6, 37:3, 91:7,
 98:7, 108:11
addressing
^[1] - 111:16
adds ^[1] - 304:5
adept ^[1] - 111:15
adequate ^[2] - 45:18,
 56:16
adherence
^[1] - 146:17
adjacent ^[11] - 45:11,
 45:14, 117:13,
 161:6, 173:10,
 198:2, 210:16,
 217:14, 291:12,
 329:7, 329:11
adjoining
^[9] - 118:10, 176:2,
 176:10, 196:8,
 198:11, 211:1,
 211:7, 292:1,
 329:17
Adjourned
^[1] - 330:16
adjunct ^[1] - 270:1
administrative
^[2] - 124:15, 125:3
admit ^[1] - 66:1
advantage
^[1] - 152:11
adverse ^[2] - 161:10,
 324:12
adversely
^[10] - 49:15, 49:17,
 117:14, 161:7,
 173:10, 198:1,
 200:12, 210:17,
 291:13, 329:7
advisory ^[1] - 289:4
aesthetically
^[1] - 135:16
aesthetics ^[1] - 135:2
affect ^[6] - 23:5,
 32:11, 73:8, 161:10,
 198:2, 324:12
affected ^[11] - 14:16,
 22:18, 23:3, 105:11,
 117:14, 161:7,

173:11, 200:12,
210:17, 291:13,
329:8

affecting ^[1] - 100:12

affects ^[1] - 30:6

Affidavit ^[1] - 298:2

affiliated ^[1] - 236:12

affirm ^[2] - 50:5, 54:1

affirms ^[1] - 154:5

afford ^[1] - 247:9

affordable
^[2] - 240:13, 262:5

afoot ^[1] - 231:18

afterwards
^[2] - 167:9, 189:5

agencies ^[2] - 108:11,
109:6

agenda ^[1] - 123:2

ago ^[15] - 44:9, 135:5,
138:5, 138:7, 164:5,
174:4, 174:15,
184:16, 189:6,
189:16, 196:3,
207:9, 214:15,
262:4

agree ^[6] - 39:11,
71:11, 74:3, 91:2,
108:4, 135:16

agreed ^[3] - 14:18,
83:13, 83:17

agreement
^[4] - 53:11, 81:15,
96:12, 235:18

ahead ^[12] - 22:16,
64:18, 72:1, 77:10,
92:1, 98:5, 158:16,
235:13, 235:14,
261:5, 275:12,
310:1

aimed ^[1] - 217:6

air ^[6] - 103:8, 104:16,
188:12, 204:6,
278:6, 278:7

aisles ^[1] - 233:11

ajar ^[2] - 188:13,
191:15

akin ^[1] - 227:16

Al ^[1] - 122:13

Al-Lakkis ^[1] - 122:13

Alan ^[1] - 139:17

alcohol ^[26] - 219:7,
219:13, 228:18,
229:14, 234:6,
242:11, 246:5,

247:6, 247:14,
 247:18, 249:18,
 254:1, 255:3,
 256:16, 257:2,
 258:7, 258:9, 260:3,
 261:5, 264:4,
 264:10, 264:18,
 265:16, 270:10,
 273:10, 275:5

alcoholic ^[9] - 222:3,

223:10, 223:17,
 224:13, 226:10,
 227:2, 228:3,
 228:15, 273:17

ALEX ^[37] - 212:13,

215:6, 221:1, 221:9,
 231:13, 233:12,
 234:4, 234:9,
 234:14, 235:18,
 236:16, 237:8,
 237:14, 238:2,
 238:18, 240:5,
 240:10, 240:15,
 240:17, 241:10,
 241:14, 241:17,
 242:4, 247:8, 249:3,
 251:10, 251:16,
 252:2, 259:14,
 266:2, 266:5,
 267:13, 268:12,
 269:5, 269:15,
 269:18, 273:6

Alex ^[1] - 212:13

ALEXANDER

^[432] - 3:7, 5:5, 5:12,
 6:1, 6:8, 6:13, 7:2,
 7:7, 7:12, 8:3, 8:9,
 8:13, 9:2, 9:9, 9:15,
 10:9, 10:13, 11:15,
 11:18, 13:6, 13:13,
 13:15, 14:2, 14:15,
 16:10, 16:18, 17:17,
 18:2, 18:8, 18:11,
 19:6, 19:8, 19:11,
 19:18, 20:3, 20:6,
 20:9, 20:14, 20:18,
 21:4, 21:8, 21:18,
 23:8, 26:3, 26:6,
 26:11, 26:16, 27:9,
 27:15, 27:18, 28:7,
 28:18, 29:7, 29:12,
 30:8, 30:14, 31:2,
 31:8, 31:15, 32:1,
 32:15, 33:1, 33:10,

33:13, 33:16, 34:3,
37:10, 40:1, 40:4,
41:17, 43:5, 43:11,
43:16, 44:14, 44:18,
46:12, 50:8, 51:3,
51:9, 52:7, 52:11,
52:15, 52:18, 53:3,
56:12, 57:4, 57:7,
57:16, 58:16, 59:18,
60:12, 61:11, 62:16,
63:2, 63:7, 63:11,
64:1, 64:8, 64:18,
66:6, 68:5, 69:3,
69:7, 70:1, 70:11,
71:2, 72:9, 73:9,
73:13, 74:12, 74:15,
75:6, 75:16, 76:1,
76:4, 76:11, 76:14,
76:16, 77:2, 77:9,
77:15, 77:18, 78:9,
80:5, 80:12, 80:17,
81:8, 84:8, 84:11,
86:16, 87:9, 87:15,
88:2, 88:10, 88:16,
89:9, 89:16, 90:2,
90:14, 92:1, 93:3,
93:10, 94:6, 94:14,
97:4, 97:17, 98:4,
98:8, 98:11, 98:16,
99:1, 99:8, 99:11,
100:2, 101:4,
101:11, 102:2,
103:10, 103:13,
104:18, 105:3,
106:10, 106:13,
106:18, 107:11,
108:1, 109:18,
110:6, 111:3, 112:2,
112:7, 113:12,
114:14, 115:3,
115:17, 116:2,
116:10, 116:13,
120:5, 120:11,
120:14, 121:3,
158:5, 158:10,
158:15, 160:8,
161:4, 162:16,
163:8, 163:17,
167:7, 168:7,
168:14, 169:2,
169:7, 170:11,
171:14, 172:1,
174:17, 176:12,
176:18, 179:6,

179:11, 179:15,
179:17, 180:3,
181:2, 181:8,
181:16, 182:1,
182:6, 182:10,
184:14, 184:18,
185:4, 185:7,
185:18, 187:9,
187:13, 187:18,
188:3, 188:8,
188:17, 189:3,
191:10, 191:17,
192:3, 192:9,
192:14, 193:5,
193:7, 193:15,
194:15, 195:2,
195:11, 195:13,
196:2, 197:4, 199:2,
199:4, 199:9,
199:18, 201:8,
202:5, 202:10,
202:18, 203:4,
203:7, 203:9,
203:14, 203:17,
204:2, 204:6, 204:9,
205:8, 205:12,
206:6, 206:9,
206:13, 207:6,
207:13, 207:15,
208:1, 208:3,
209:16, 210:4,
211:14, 212:5,
213:1, 215:3, 215:9,
216:1, 216:7, 220:3,
220:7, 220:13,
220:16, 221:2,
221:6, 221:10,
221:17, 223:4,
224:7, 224:12,
225:7, 226:5,
226:18, 227:4,
228:1, 228:10,
229:5, 230:9,
230:15, 231:14,
231:17, 234:11,
234:15, 235:1,
235:5, 235:13,
241:3, 243:4,
244:13, 246:2,
246:17, 247:11,
248:15, 249:4,
249:13, 250:3,
250:11, 251:4,
251:14, 251:18,

252:3, 252:10,
252:14, 256:11,
257:4, 257:7,
257:10, 257:16,
257:18, 258:3,
258:11, 258:14,
258:16, 260:8,
260:13, 261:7,
263:11, 263:14,
265:14, 266:3,
266:8, 269:3, 270:3,
273:2, 273:7, 274:5,
274:11, 274:18,
275:4, 275:7,
275:17, 276:8,
276:11, 276:14,
276:16, 277:5,
277:10, 278:11,
279:3, 279:6,
279:15, 280:4,
280:11, 281:5,
281:11, 282:4,
282:8, 282:12,
282:15, 284:1,
284:8, 285:6, 287:3,
287:6, 287:12,
287:16, 288:8,
289:9, 289:12,
290:2, 290:5,
290:10, 290:14,
299:3, 300:5,
300:11, 300:15,
300:18, 301:10,
301:15, 302:6,
303:3, 305:2, 305:4,
305:15, 307:10,
307:12, 308:5,
309:7, 309:11,
310:1, 311:1, 311:4,
311:13, 312:12,
312:15, 313:6,
313:14, 314:2,
314:13, 314:15,
315:5, 315:8,
315:15, 316:2,
316:4, 317:5, 317:8,
318:5, 319:1, 321:8,
321:12, 322:1,
322:5, 322:10,
322:13, 322:16,
323:13, 323:16,
325:6, 325:11,
325:15, 327:15,
328:1, 328:9,

328:13, 330:10,
330:13
alexander ^[3] - 201:9,
211:16, 276:17
Alexander ^[16] - 1:7,
3:4, 5:3, 42:1, 43:3,
121:5, 158:3, 202:3,
212:3, 273:4, 277:3,
299:5, 300:3,
317:12, 318:3,
330:11
align ^[4] - 281:14,
281:17, 287:10,
294:17
allegedly ^[1] - 75:5
Allen ^[2] - 217:15,
226:3
allow ^[13] - 50:6, 67:5,
72:5, 72:7, 127:15,
153:17, 171:9,
221:8, 247:5,
256:13, 267:18,
271:18, 272:15
allowable
^[2] - 129:16, 223:1
allowed ^[11] - 6:13,
108:17, 109:9,
109:14, 164:10,
171:16, 214:1,
218:2, 218:18,
222:18, 244:5
allows ^[5] - 40:14,
47:16, 82:18, 85:15
almost ^[4] - 8:16,
15:17, 188:10
alone ^[1] - 12:18
alteration ^[2] - 142:8,
154:15
alterations
^[2] - 142:15, 142:16
altered ^[1] - 152:1
altering ^[1] - 153:15
alternative
^[3] - 143:5, 229:12,
268:14
altogether
^[1] - 262:11
amateur ^[1] - 240:3
Amato ^[2] - 34:15,
34:16
AMATO ^[1] - 34:16
Amatos ^[1] - 35:10
ambience ^[1] - 241:9
ambiguity ^[1] - 265:8

ambiguous

[1] - 264:2

amenable [1] - 228:12

amend [1] - 288:16

amenity [1] - 235:8

American [7] - 213:7,
214:4, 214:9, 215:5,
215:6, 215:14,
237:3

amount [5] - 129:18,
160:13, 161:9,
195:4, 253:17

amphitheater

[1] - 259:4

ample [1] - 151:17

amplified [3] - 236:1,
259:9, 259:16

amplifies [1] - 144:11

anal [1] - 287:17

analogy [1] - 222:17

analysis [1] - 133:3

AND [1] - 331:1

AND/OR [1] - 332:16

Andrea [5] - 1:11, 3:5,
5:4, 189:7, 189:10

ANDREA [14] - 13:9,
18:14, 18:18, 19:4,
19:7, 19:10, 19:13,
26:18, 27:2, 28:6,
28:8, 29:6, 29:9,
40:3

Angela [1] - 94:1

angle [1] - 283:6

angled [1] - 283:8

animal [2] - 256:4

Anne [1] - 142:1

annual [1] - 92:17

answer [2] - 95:12,
96:9

answered [1] - 76:18

antenna [7] - 284:17,
285:11, 285:14,
303:13, 303:14,
307:2, 313:4

antennas [29] - 278:3,
278:5, 278:6, 278:7,
278:16, 281:2,
281:13, 283:10,
284:10, 284:12,
284:15, 284:18,
285:1, 294:12,
294:13, 294:16,
302:13, 302:16,
302:17, 304:2,

304:15, 305:12,
306:7, 310:3, 310:9,
313:1, 313:3

anticipate

[2] - 105:15, 107:9

anticipated

[2] - 81:13, 172:4

ANY [2] - 332:15,

332:16

anyhow [5] - 141:5,

149:18, 233:18,

239:14, 267:8

anyway [10] - 33:15,

84:1, 97:17, 101:7,

124:14, 207:11,

208:5, 248:8, 276:8,

288:11

apart [1] - 82:4

apartment [5] - 130:9,

130:15, 131:1,

138:8

apologies [1] - 99:10

apologize [5] - 45:3,

68:13, 71:18,

129:14, 160:4

apparent [1] - 65:17

APPEAL [1] - 1:1

appeal [3] - 13:2,

90:17, 276:1

Appeals [8] - 3:8,

37:5, 209:11,

326:11, 327:2,

330:16, 331:6,

331:15

appear [5] - 46:8,

78:17, 281:9,

294:14, 303:14

appearance

[3] - 293:6, 293:12,

294:2

appeared [2] - 81:5,

208:10

appearing [3] - 44:4,

126:10, 159:1

Appleton [1] - 135:5

applicant [10] - 44:5,

58:15, 95:14,

112:18, 124:7,

151:16, 159:1,

172:12, 197:2,

313:11

applicant's

[2] - 151:2, 151:16

applicants

[1] - 126:10

application

[25] - 41:11, 129:8,
130:7, 140:1, 149:1,
152:13, 153:9,
162:15, 163:4,
212:16, 231:10,
232:11, 297:7,
297:9, 297:11,
301:7, 301:8,
301:14, 302:2,
303:12, 326:1,
326:8, 326:13,
326:18, 327:4

applied [2] - 214:18,
243:6

apply [15] - 165:3,
219:8, 224:4, 243:6,
246:10, 246:13,
247:2, 270:17,
273:13, 275:2,
275:3, 275:9, 276:3,
276:4, 297:5

APPLY [1] - 332:15

applying [2] - 202:15,
219:14

appreciate [4] - 98:9,
103:10, 103:13,
150:11

appreciated
[2] - 39:8, 39:16

appreciative
[1] - 112:13

approach [2] - 132:5,
270:7

appropriate
[9] - 109:17, 128:5,
134:5, 143:8,
144:13, 155:5,
224:2, 298:11,
321:13

appropriately
[1] - 132:6

Appropriateness
[6] - 127:8, 134:3,
142:8, 143:11,
321:18, 322:7

approval [3] - 59:16,
321:16

approved
[9] - 123:16, 131:3,
214:16, 289:3,
293:16, 319:10,
320:17, 321:5,

322:12

approximate

[1] - 154:2

April [1] - 142:6

april [1] - 332:13

ARBOLEDA

[6] - 177:5, 181:12,
181:17, 186:6,
187:2, 187:4

Arboleda [1] - 177:6

architect [2] - 5:11,
129:13

architects

[1] - 127:10

architectural

[2] - 31:4, 129:5

architecturally

[1] - 143:8

Architecture

[2] - 319:6, 330:6

area [44] - 46:11,
47:1, 47:2, 47:18,
48:18, 49:14, 49:16,
56:17, 56:18, 75:2,
78:5, 79:5, 79:11,
114:7, 119:1,
119:13, 130:12,
131:13, 131:15,
132:5, 132:17,
139:3, 142:17,
162:9, 179:2, 179:8,
179:18, 183:18,
184:10, 198:1,
214:12, 216:18,
218:12, 240:12,
261:12, 261:15,
262:6, 262:17,
272:3, 273:11,
298:4, 310:7,
310:17

argue [3] - 217:14,
218:13, 246:9

argument [9] - 33:9,
33:11, 84:3, 111:7,
144:12, 224:3,
243:4, 247:15,
264:9

arose [1] - 45:10

arrangement

[3] - 105:10, 110:10,
169:15

arrive [1] - 162:5

artisanal [1] - 209:2

arts [10] - 229:9,

229:11, 238:5,
 249:15, 261:2,
 261:11, 261:17,
 262:13
as-of-right ^[1] - 133:2
ASAP ^[1] - 13:5
Asian ^[1] - 185:1
aside ^[4] - 58:18,
 65:9, 196:13
aspect ^[2] - 12:17,
 241:6
asphalt ^[3] - 12:14,
 79:11
assist ^[1] - 4:10
Associate ^[3] - 1:10,
 1:10, 1:11
associated
^[13] - 49:8, 60:2,
 63:17, 109:7, 128:6,
 128:14, 131:11,
 161:18, 164:15,
 172:4, 249:16,
 304:1, 304:16
Association
^[5] - 225:4, 228:16,
 240:7, 253:10,
 326:7
association
^[5] - 64:15, 159:7,
 186:5, 208:10,
 229:10
assume ^[3] - 10:17,
 187:11, 203:10
assuming ^[4] - 57:9,
 62:6, 120:1, 209:8
assurance ^[3] - 86:7,
 106:14, 108:3
assured ^[4] - 73:10,
 73:14, 78:10, 281:1
attach ^[1] - 216:10
attached ^[3] - 78:18,
 128:18, 140:17
attaching ^[1] - 61:5
attacking ^[1] - 31:6
attempt ^[3] - 13:3,
 134:9, 147:15
attempting
^[1] - 161:15
attendees ^[2] - 4:4,
 208:17
attention ^[1] - 132:7
Attorney ^[1] - 212:8
ATTORNEY
^[202] - 43:9, 43:13,

43:18, 44:16, 45:2,
46:14, 50:13, 51:5,
51:7, 51:12, 52:9,
52:12, 52:17, 53:2,
53:5, 54:7, 54:11,
54:16, 55:2, 56:3,
56:14, 57:14, 57:17,
60:1, 60:14, 62:9,
63:1, 63:5, 63:8,
63:15, 64:7, 64:9,
65:6, 65:11, 65:16,
68:6, 68:11, 71:12,
71:17, 72:2, 72:11,
73:11, 78:16, 79:2,
79:6, 79:8, 80:7,
81:1, 89:18, 100:6,
108:14, 112:9,
112:12, 113:3,
115:18, 116:3,
121:6, 126:8,
126:18, 132:15,
133:12, 135:3,
136:11, 136:15,
137:3, 141:9,
144:10, 146:4,
146:10, 146:15,
147:5, 147:18,
148:2, 148:12,
148:18, 149:5,
149:7, 150:7,
155:17, 156:3,
156:7, 156:11,
156:17, 157:2,
157:11, 158:13,
158:17, 161:3,
161:14, 162:17,
163:15, 164:6,
166:4, 167:4,
167:18, 168:5,
168:11, 168:15,
169:3, 169:11,
169:16, 170:3,
170:6, 170:10,
171:12, 171:15,
172:2, 173:18,
174:12, 174:18,
175:4, 175:11,
196:6, 201:11,
212:7, 212:15,
213:3, 215:17,
216:2, 216:8, 220:5,
220:9, 220:15,
221:5, 221:16,
222:15, 223:18,

224:10, 224:14,
 225:8, 226:16,
 227:1, 227:6, 229:4,
 229:7, 230:13,
 230:17, 231:16,
 232:1, 232:18,
 242:9, 243:8,
 263:17, 266:9,
 276:6, 277:9,
 277:11, 278:13,
 279:5, 279:9, 280:1,
 280:8, 280:13,
 281:10, 282:1,
 282:6, 282:11,
 282:14, 283:2,
 284:6, 284:14,
 285:4, 285:10,
 285:18, 286:3,
 286:10, 288:4,
 288:12, 289:17,
 290:13, 299:7,
 300:9, 300:14,
 300:17, 301:6,
 301:12, 301:18,
 302:7, 305:3, 305:6,
 305:18, 309:3,
 309:9, 310:11,
 310:15, 311:3,
 311:6, 312:2,
 312:10, 312:18,
 314:11, 314:14,
 317:4, 317:10,
 318:10, 322:4,
 322:17, 323:15,
 323:18, 324:5,
 324:9, 325:9
attorney ^[8] - 61:1,
 151:2, 151:16,
 253:1, 253:4, 253:7,
 277:13, 302:8
attract ^[1] - 160:11
attractive ^[1] - 143:8
attractors ^[1] - 139:5
audience ^[2] - 164:1,
 262:17
AUDIENCE ^[6] - 63:9,
 150:1, 166:8, 182:4,
 182:8, 182:11
audio ^[1] - 3:15
augment ^[1] - 268:9
AUGUST ^[1] - 1:4
August ^[10] - 41:11,
 122:11, 122:15,
 139:15, 156:2,

156:4, 322:9, 326:3,
326:11, 327:2

AUSTIN ^[2] - 258:17,
259:17

Austin ^[1] - 258:17

authorities

^[4] - 103:7, 295:12,
295:18, 296:5

automotive

^[1] - 82:17

available ^[5] - 53:4,
162:18, 236:17,
237:1, 273:18

Ave ^[15] - 45:9, 65:5,
79:10, 82:16, 159:5,
208:4, 208:14,
217:7, 217:13,
219:3, 244:6, 251:1,
264:8, 264:16

ave ^[1] - 177:8

Avenue ^[25] - 1:6, 2:5,
2:6, 2:9, 43:6, 44:3,
44:15, 44:17, 47:6,
81:4, 123:14, 158:6,
165:10, 194:3,
202:6, 222:7,
223:11, 223:14,
223:15, 228:5,
228:8, 248:1,
250:15, 251:6,
263:5

Avenue-C1 ^[1] - 2:6

aware ^[9] - 48:2, 95:3,
163:16, 163:18,
205:8, 214:17,
217:5, 279:3,
283:14

awful ^[1] - 70:6

Aye ^[16] - 41:13,
41:15, 121:1, 121:2,
199:16, 201:6,
211:12, 272:18,
273:1, 276:12,
276:13, 299:1,
317:6, 317:7, 330:8,
330:9

B

backup ^[1] - 183:1

backups ^[2] - 194:5,
194:9

backyard ^[1] - 30:5

bad ^[6] - 71:7, 173:15,

177:15, 254:8,

307:12, 309:8

balance ^[1] - 7:6

balanced ^[2] - 281:16,

295:1

Ballet ^[1] - 269:9

bamboo ^[1] - 142:6

band ^[1] - 235:17

bank ^[45] - 45:14,

45:16, 46:1, 46:5,

46:7, 46:11, 46:14,

46:17, 47:2, 47:11,

47:16, 49:2, 49:14,

50:2, 50:4, 50:10,

51:16, 52:2, 53:13,

53:17, 53:18, 58:12,

60:16, 60:18, 65:18,

72:4, 72:5, 72:7,

72:15, 72:16, 72:18,

76:8, 79:13, 79:14,

80:4, 80:8, 82:4,

85:5, 85:8, 107:7,

110:9, 111:1, 113:5

Bank ^[2] - 45:15,

69:12

bank's ^[8] - 47:4,

48:11, 49:12, 49:17,

65:2, 65:14, 73:17,

79:16

banker ^[1] - 106:14

banks ^[1] - 217:10

bar ^[26] - 159:4,

160:11, 170:17,

222:2, 224:5, 224:8,

224:9, 224:11,

225:11, 226:7,

226:9, 227:1,

228:18, 230:5,

233:6, 233:15,

235:2, 242:6, 242:7,

243:1, 245:11,

258:8, 258:9, 260:5,

267:4, 267:10

BARRETT

^[5] - 252:13, 252:17,

253:4, 256:15,

257:6

Barrett ^[1] - 252:18

barricades

^[1] - 298:11

Barry ^[1] - 128:15

Bartholet ^[1] - 326:16

BARTHOLET

^[1] - 326:16

base ^[4] - 213:5,
 213:13, 262:9,
 292:8

based ^[8] - 47:15,
 117:16, 129:18,
 211:10, 244:8,
 272:8, 283:11,
 292:13

basement
^[9] - 130:18, 213:7,
 214:12, 219:18,
 220:4, 255:15,
 320:9, 323:7, 323:8

basis ^[13] - 38:12,
 41:6, 89:11, 119:2,
 201:2, 270:13,
 272:14, 273:13,
 274:2, 274:12,
 296:16, 317:6,
 330:2

Bay ^[1] - 159:7

Beacon ^[1] - 160:7

Bears ^[2] - 250:18,
 251:9

beaten ^[1] - 112:10

become ^[1] - 56:18

bed ^[1] - 191:16

bedroom ^[2] - 323:6,
 323:7

beer ^[21] - 174:5,
 174:15, 213:10,
 224:16, 224:17,
 229:13, 231:9,
 232:10, 233:14,
 237:18, 238:2,
 239:7, 241:5, 242:3,
 249:18, 251:11,
 251:12, 265:18,
 266:1, 268:17,
 269:9

beg ^[1] - 99:6

began ^[1] - 194:5

beginning ^[7] - 4:3,
 11:1, 25:15, 92:16,
 184:9, 188:5, 188:6

behalf ^[7] - 44:4,
 126:10, 138:10,
 159:1, 212:10,
 277:14, 302:9

behavior ^[2] - 173:16,
 245:6

behind ^[3] - 90:9,
 96:13, 301:13

behooves

[1] - 309:15

belief [1] - 118:5

below [11] - 35:5,

129:16, 143:4,

219:17, 220:1,

226:1, 264:7, 281:2,

287:11, 320:7,

324:17

belt [1] - 149:8

benefit [5] - 78:1,

133:7, 209:7,

237:15, 241:2

benefitted

[1] - 152:15

Bennett [1] - 36:15

Benson [3] - 35:7

Berry [1] - 142:5

Bertio [1] - 144:4

BERTIO [1] - 144:4

best [5] - 101:1,

107:15, 116:13,

279:10, 283:6

Best [20] - 1:10, 43:4,

121:5, 122:4,

125:16, 126:4,

155:16, 158:4,

201:10, 202:4,

211:17, 212:4,

273:5, 276:15,

277:4, 299:6, 300:4,

317:13, 318:4,

330:12

BEST [20] - 66:8,

66:11, 67:1, 67:4,

67:8, 67:11, 67:13,

68:1, 68:4, 68:16,

75:14, 110:3,

112:10, 153:4,

234:10, 248:10,

269:13, 269:17,

274:7, 316:3

better [14] - 8:16,

31:10, 74:16,

132:15, 135:17,

137:11, 147:11,

154:2, 167:5,

223:10, 264:1,

270:7

between [14] - 16:8,

47:10, 48:15, 52:2,

52:3, 53:13, 72:18,

78:12, 79:14, 125:3,

161:16, 168:3,

195:9

beverages

[10] - 222:3, 223:10,
 223:17, 224:13,
 226:10, 227:2,
 228:3, 228:15,
 268:9, 273:17

beyond [2] - 143:2,
 215:1

Biddle [3] - 35:3, 35:4

BIDDLE [1] - 35:4

big [11] - 7:8, 8:1, 8:7,
 96:7, 101:5, 178:12,
 180:7, 180:18,
 182:14, 183:10,
 243:1

Bill [2] - 76:3, 77:7

bill [1] - 188:13

BILL [4] - 77:7, 77:14,
 77:17, 78:7

binding [6] - 50:10,
 57:12, 113:1, 114:6,
 119:7, 119:11

Bishop [2] - 217:15,
 226:3

bit [13] - 45:5, 70:9,
 133:2, 137:11,
 149:8, 165:13,
 166:13, 283:7,
 288:13, 311:18,
 314:3, 325:2

blah [3] - 326:3, 326:4

blend [1] - 203:10

blender [1] - 160:2

blends [2] - 202:17,
 204:17

blighted [1] - 255:11

block [4] - 159:6,
 218:4, 218:6,
 218:10

blocking [1] - 183:15

blue [13] - 46:10,
 46:11, 47:2, 48:1,
 56:17, 56:18, 73:17,
 75:2, 78:5, 79:5,
 79:10, 114:7,
 119:13

board [3] - 102:14,
 113:18, 153:4

Board [153] - 3:8,
 7:13, 13:7, 16:7,
 20:17, 37:3, 37:4,
 40:5, 44:1, 44:8,
 44:9, 45:15, 53:9,
 54:6, 54:18, 58:6,

58:11, 59:17, 62:11,
66:7, 69:17, 74:2,
75:11, 78:1, 82:3,
82:12, 89:2, 90:16,
90:18, 98:14,
100:14, 106:6,
109:2, 109:16,
112:15, 113:15,
114:6, 117:2,
119:11, 122:5,
122:10, 122:18,
125:8, 126:5, 127:1,
130:7, 132:6,
134:18, 135:4,
136:1, 140:6,
140:17, 141:4,
141:6, 141:7, 143:9,
144:15, 147:6,
150:17, 151:12,
151:15, 153:11,
154:4, 154:9,
158:18, 159:8,
162:3, 164:7, 172:9,
172:10, 177:4,
181:4, 182:2,
185:13, 187:7,
190:11, 191:8,
193:13, 196:14,
197:3, 197:6, 206:7,
209:11, 210:11,
212:8, 217:5, 219:2,
219:4, 219:5,
228:12, 231:8,
232:7, 232:12,
242:1, 242:11,
243:11, 243:15,
244:1, 244:5, 244:8,
244:12, 249:6,
255:18, 261:8,
266:12, 268:18,
270:13, 277:12,
277:15, 282:2,
282:10, 282:18,
287:17, 288:1,
288:5, 288:14,
288:15, 289:3,
289:5, 289:6,
289:18, 292:4,
294:7, 297:6,
302:18, 303:1,
303:2, 303:11,
303:16, 304:6,
307:4, 308:2,
308:10, 309:10,

309:12, 311:7,
 311:9, 311:12,
 311:15, 312:4,
 312:11, 313:2,
 313:10, 314:4,
 314:16, 315:11,
 318:11, 326:11,
 327:2, 330:16,
 331:6, 331:15
BOARD ^[1] - 1:1
Board's ^[14] - 61:4,
 62:12, 109:13,
 112:13, 132:3,
 173:5, 196:16,
 279:4, 279:10,
 279:14, 293:3,
 300:13, 303:4,
 303:8
bodies ^[1] - 93:5
booked ^[1] - 237:7
boom ^[1] - 262:13
borrow ^[1] - 80:18
Boston ^[11] - 236:6,
 236:7, 236:17,
 240:11, 251:10,
 261:12, 261:15,
 262:4, 262:6,
 318:13
Boston's ^[1] - 262:13
bottom ^[1] - 314:1
bounds ^[1] - 99:9
boxes ^[1] - 306:11
boy ^[1] - 289:14
Boyer ^[3] - 94:1,
 189:7, 189:10
bracket ^[1] - 285:13
brackets ^[5] - 280:14,
 280:16, 283:8,
 284:4
BRANDON
^[34] - 80:16, 80:18,
 81:3, 81:10, 84:10,
 86:12, 87:7, 87:10,
 88:1, 88:5, 88:14,
 89:6, 89:14, 90:4,
 90:17, 91:10, 91:15,
 92:4, 92:10, 93:8,
 93:14, 94:12, 94:16,
 95:2, 95:8, 95:16,
 96:11, 97:16, 98:2,
 98:6, 98:9, 98:13,
 98:18, 111:6
Brandon ^[7] - 80:17,
 81:3, 91:18, 97:5,

97:18, 105:8, 111:3

Brazelton

[2] - 128:16, 142:5

break [3] - 281:4,

281:9, 294:14

breakfast [1] - 207:16

BRENDAN

[105] - 122:5, 122:10,

123:8, 123:12,

124:1, 124:4,

124:12, 124:18,

125:2, 125:7,

125:14, 125:17,

126:5, 126:15,

135:1, 136:2, 137:6,

137:9, 138:17,

139:8, 139:11,

139:14, 141:11,

144:16, 145:2,

147:15, 148:1,

148:6, 148:15,

149:3, 149:6, 149:9,

149:13, 149:18,

150:3, 150:9,

150:13, 152:14,

152:17, 153:3,

153:5, 153:7,

155:15, 156:2,

156:5, 156:16,

157:1, 157:4, 157:7,

157:9, 157:13,

169:9, 169:14,

170:1, 170:4, 170:8,

173:7, 174:10,

175:7, 175:17,

192:11, 196:1,

198:18, 199:3,

210:1, 232:14,

233:3, 233:13,

234:5, 234:12,

234:17, 235:3,

235:7, 238:12,

239:9, 240:9,

240:13, 240:16,

241:1, 241:5,

241:12, 241:15,

245:8, 245:12,

246:16, 252:8,

266:14, 267:15,

274:3, 274:9,

275:18, 285:11,

286:1, 286:5, 287:5,

287:14, 307:6,

307:8, 307:11,

307:13, 312:6,
 312:16, 313:8,
 313:15, 315:1
Brendan ^[14] - 1:8,
 3:4, 5:3, 122:2,
 126:2, 158:3,
 195:17, 202:3,
 212:3, 244:15,
 277:3, 300:3, 308:6,
 318:3
brick ^[1] - 265:2
bricks ^[2] - 12:15,
 12:16
brief ^[1] - 105:5
briefly ^[6] - 148:8,
 150:12, 163:7,
 196:6, 213:15,
 257:11
bring ^[2] - 100:13,
 265:4
bringing ^[2] - 255:16
BRISTOL ^[1] - 332:3
broad ^[2] - 230:5,
 280:10
broadly ^[1] - 244:9
Brookline ^[3] - 160:5,
 160:6, 166:6
brother ^[1] - 76:2
brought ^[3] - 13:4,
 289:5, 308:4
Buddhist ^[1] - 167:8
Building ^[3] - 60:7,
 297:17, 328:8
building ^[74] - 6:3,
 6:10, 6:18, 14:14,
 15:7, 15:13, 15:17,
 17:11, 17:16, 22:13,
 24:4, 24:6, 24:9,
 27:13, 27:16, 29:14,
 29:16, 30:10, 37:15,
 37:16, 38:2, 38:5,
 45:13, 46:8, 46:9,
 47:10, 47:17, 79:10,
 96:14, 160:12,
 170:14, 171:10,
 172:7, 177:18,
 178:12, 178:16,
 179:7, 179:8,
 179:10, 179:12,
 179:18, 182:15,
 184:8, 184:16,
 185:12, 194:6,
 194:9, 195:5, 200:9,
 204:4, 209:6,

213:15, 213:16,
 213:17, 216:17,
 253:15, 254:5,
 256:8, 271:14,
 272:9, 294:1,
 301:13, 302:2,
 302:14, 303:6,
 303:16, 305:16,
 306:12, 306:15,
 319:17, 321:3
buildings ^[5] - 155:4,
 155:6, 162:9,
 165:12, 259:3
Buildings ^[1] - 60:7
built ^[2] - 22:16, 272:9
bulk ^[3] - 132:18,
 143:7, 204:10
bunch ^[2] - 83:8,
 239:14
Burks ^[1] - 321:15
Burlington
^[2] - 239:11, 267:3
burrowed ^[1] - 103:18
bus ^[1] - 178:6
busier ^[1] - 66:14
business ^[60] - 44:7,
 45:7, 48:7, 49:7,
 49:9, 56:5, 61:6,
 61:8, 66:14, 66:17,
 68:7, 70:6, 73:15,
 77:5, 77:13, 83:15,
 89:3, 89:8, 100:12,
 100:17, 102:9,
 108:16, 109:15,
 110:4, 114:3, 116:7,
 119:5, 119:6, 120:1,
 120:8, 124:9,
 126:13, 164:8,
 164:11, 164:13,
 169:17, 173:4,
 177:10, 178:2,
 178:7, 178:8,
 184:10, 185:15,
 185:16, 195:7,
 196:8, 200:13,
 206:18, 208:13,
 220:18, 229:14,
 230:1, 231:12,
 236:18, 239:2,
 265:5, 271:17,
 295:17, 296:11,
 297:16
Business ^[5] - 218:2,
 225:4, 228:16,

253:9, 263:7

businesses

[9] - 168:8, 169:4,
169:6, 169:9,
184:13, 185:10,
211:1, 263:1, 263:4

buy [3] - 266:2, 266:4,
267:7

by-right [2] - 320:18,
321:5

bylaw [1] - 321:7

BZA [2] - 99:7, 304:9

BZA-010241-2016

[2] - 2:3, 5:2

BZA-010350-2016

[2] - 2:4, 126:2

BZA-010758-2016

[2] - 2:5, 43:2

BZA-010779-2016

[2] - 2:6, 158:2

BZA-010844-2016

[2] - 2:7, 122:2

BZA-010976-2016

[2] - 2:9, 202:2

BZA-010992-2016

[2] - 2:11, 212:2

BZA-011007-2016

[2] - 2:12, 277:2

BZA-011008-2016

[2] - 2:13, 300:2

BZA-011034-2016

[2] - 2:14, 318:2

C

C-1 [1] - 186:6

C-3 [1] - 213:14

C-H-E-N-E-Y

[1] - 202:13

C-H-R-O-N-B-E-R-G

[1] - 144:5

C1 [1] - 2:6

C3 [6] - 217:1, 217:17,

218:3, 218:4,

225:15, 225:16

cabinets [1] - 283:16

cable [3] - 283:5,

306:13, 306:14

cabling [2] - 285:8,

295:3

cafe [3] - 111:11,

209:4, 273:10

Cafe [5] - 44:6, 45:3,

92:15, 111:11,

111:12
CAMBRIDGE ^[1] - 1:2
Cambridge ^[39] - 1:6,
 2:13, 36:16, 39:12,
 44:4, 45:9, 45:14,
 61:2, 64:3, 67:9,
 68:3, 69:12, 81:5,
 88:7, 113:15,
 118:16, 128:10,
 141:14, 141:18,
 159:3, 207:1, 208:7,
 208:11, 209:1,
 209:10, 212:9,
 237:4, 253:1, 253:5,
 253:7, 258:18,
 261:10, 278:1,
 298:5, 300:6,
 302:12, 319:9,
 326:11, 327:2
candidate
^[1] - 144:13
candidly ^[4] - 48:2,
 55:3, 55:9, 60:3
candy ^[1] - 267:8
cannot ^[5] - 117:1,
 123:17, 291:3,
 291:4, 328:18
capital ^[2] - 61:7,
 116:5
CAPTURING
^[1] - 1:15
car ^[1] - 130:8
care ^[11] - 78:9,
 78:13, 93:6, 178:1,
 179:4, 180:11,
 183:8, 183:14,
 183:16, 184:6,
 254:8
Carman ^[1] - 35:14
CARMAN ^[1] - 35:14
CAROL ^[1] - 75:18
CAROLE ^[2] - 76:2,
 78:8
carriage ^[2] - 135:9,
 135:12
carry ^[2] - 200:1,
 200:4
cars ^[5] - 56:7, 90:6,
 101:13, 102:10,
 138:14
carved ^[1] - 166:15
CASE ^[1] - 2:1
Case ^[9] - 43:2, 122:2,
 126:2, 158:2, 202:2,

212:2, 277:2, 300:2,
318:2

case ^[47] - 5:7, 18:17,
40:13, 43:6, 44:8,
44:11, 45:6, 54:6,
54:17, 55:14, 62:12,
84:7, 97:14, 122:6,
126:6, 127:1, 127:2,
127:15, 135:4,
158:6, 162:7, 163:3,
164:12, 174:16,
202:6, 215:12,
219:3, 219:9, 222:9,
252:1, 256:9, 277:6,
284:13, 284:15,
300:6, 308:7,
308:18, 309:15,
314:6, 314:7,
315:14, 315:16,
315:17, 316:5,
318:6

case... ^[1] - 45:4

cases ^[8] - 3:10,
196:17, 215:12,
219:2, 255:18,
290:15, 290:16

cast ^[1] - 22:4

casual ^[1] - 170:4

CATALINA
^[7] - 177:5, 177:6,
181:12, 181:17,
186:6, 187:2, 187:4

Catalina ^[1] - 177:5

categorize ^[1] - 227:7

category ^[3] - 128:3,
230:7, 231:5

catered ^[1] - 100:17

Catering ^[1] - 111:12

catering ^[9] - 44:7,
45:7, 68:7, 89:8,
100:11, 102:9,
104:10, 118:18,
126:13

Catherine ^[2] - 332:4,
332:10

Catholic ^[1] - 100:14

caused ^[2] - 259:6,
259:10

cease ^[1] - 293:16

ceased ^[1] - 189:14

Cecelia ^[1] - 36:15

Center ^[1] - 1:5

Central ^[24] - 67:15,
68:9, 92:15, 119:1,

213:4, 213:12,
 217:3, 217:4,
 218:17, 219:7,
 221:13, 222:1,
 222:14, 223:8,
 225:3, 228:3,
 228:16, 244:7,
 250:14, 253:8,
 253:9, 262:15,
 263:7, 269:8

central ^[1] - 270:6

cereal ^[1] - 207:16

certain ^[8] - 123:18,
 135:10, 217:10,
 230:7, 231:2,
 283:14, 310:16

certainly ^[10] - 27:9,
 82:9, 105:13,
 177:17, 237:8,
 237:15, 251:16,
 262:12, 300:17,
 306:9

certainty ^[1] - 48:6

Certificate ^[6] - 127:7,
 134:3, 142:7,
 143:11, 321:17,
 322:6

CERTIFICATION

^[1] - 332:15

Certified ^[2] - 332:4,
 332:11

certify ^[1] - 332:5

CERTIFYING

^[1] - 332:16

Chafetz ^[3] - 326:1,
 326:8, 326:18

chair ^[9] - 43:10, 44:1,
 108:14, 126:9,
 148:3, 158:14,
 161:15, 212:8,
 257:9

Chair ^[46] - 1:7, 1:8,
 3:7, 3:14, 3:17, 4:3,
 40:5, 41:7, 41:12,
 43:5, 43:14, 91:2,
 91:3, 115:13,
 116:15, 119:3,
 151:1, 153:10,
 158:5, 173:7,
 175:18, 199:11,
 199:12, 200:5,
 202:5, 210:6,
 211:10, 219:10,
 224:17, 271:8,

272:15, 273:7,
 277:5, 290:17,
 292:13, 293:1,
 293:9, 300:5,
 315:12, 316:4,
 318:5, 325:16,
 327:9, 328:15,
 330:3, 330:7
Chair's ^[1] - 199:10
Chairman ^[10] - 75:7,
 90:1, 110:9, 114:5,
 119:10, 158:18,
 267:13, 309:18,
 318:11, 322:18
chairs ^[3] - 190:9,
 190:10, 191:3
Chalk ^[2] - 36:16,
 36:18
challenges
^[1] - 249:16
challenging ^[1] - 61:6
Chamber ^[1] - 236:6
chamber ^[1] - 262:1
chance ^[3] - 54:18,
 58:7, 151:4
CHANGE ^[6] - 331:8,
 331:9, 331:10,
 331:11, 331:12,
 331:13
change ^[19] - 15:5,
 48:16, 50:12, 79:15,
 117:5, 117:11,
 130:16, 138:7,
 143:18, 165:5,
 210:13, 231:15,
 250:3, 250:4,
 254:15, 291:10,
 292:7, 329:3, 331:6
changed ^[8] - 8:12,
 11:13, 64:10,
 131:12, 228:17,
 232:5, 246:3, 248:3
changes ^[6] - 132:1,
 136:5, 136:8, 289:1,
 289:2, 331:16
changing ^[5] - 27:15,
 150:2, 232:2, 323:8,
 328:10
Chapter ^[1] - 197:14
character ^[6] - 117:6,
 117:11, 153:18,
 210:14, 260:6,
 291:10
characterization

[1] - 174:6
charge [1] - 298:3
charged [1] - 196:16
Charles [3] - 34:11,
 143:10, 154:6
chase [1] - 220:17
chefs [1] - 205:2
CHENEY [23] - 202:9,
 202:12, 203:3,
 203:6, 203:8,
 203:12, 203:16,
 204:1, 204:3, 204:8,
 204:14, 205:11,
 205:13, 205:16,
 206:1, 206:5, 207:5,
 207:12, 207:14,
 208:2, 209:15,
 210:3, 211:18
Cheney [2] - 202:12,
 208:9
chief [2] - 128:3,
 129:6
children [2] - 128:12,
 237:16
children's
 [1] - 237:12
choir [1] - 260:18
choose [2] - 61:14,
 102:12
chopped [1] - 255:9
chose [1] - 244:12
Christ [1] - 326:5
Christina's
 [2] - 205:12, 205:13
Chronberg [1] - 144:5
church [1] - 218:10
Church [1] - 326:5
cigarette [1] - 160:14
circuit [2] - 198:15,
 276:5
circulate [1] - 82:5
circumstances
 [2] - 153:17, 264:6
citations [2] - 92:18
cite [4] - 230:4, 231:5,
 231:7, 243:10
cited [3] - 85:5,
 221:15, 274:14
citing [1] - 252:4
citizen [1] - 4:8
citizens [6] - 118:3,
 198:8, 200:18,
 211:5, 291:17,
 329:14

City ^[28] - 12:13,
 39:12, 103:6, 118:3,
 118:15, 125:3,
 130:13, 153:1,
 165:11, 191:7,
 198:8, 223:6, 223:7,
 225:10, 228:1,
 228:17, 231:15,
 247:7, 249:5,
 249:10, 254:7,
 258:6, 264:10,
 265:12, 267:18,
 268:3, 278:1,
 329:15
city ^[14] - 4:8, 15:12,
 85:15, 86:3, 93:5,
 93:12, 103:6,
 108:11, 118:17,
 178:14, 201:1,
 211:5, 218:7,
 291:17
CITY ^[1] - 1:2
City's ^[2] - 109:5,
 146:18
Citywide ^[1] - 1:5
claimed ^[1] - 296:16
CLAIRE ^[23] - 202:9,
 202:12, 203:3,
 203:6, 203:8,
 203:12, 203:16,
 204:1, 204:3, 204:8,
 204:14, 205:11,
 205:13, 205:16,
 206:1, 206:5, 207:5,
 207:12, 207:14,
 208:2, 209:15,
 210:3, 211:18
Claire ^[2] - 202:12,
 208:9
clanking ^[1] - 101:18
clarification
^[2] - 64:17, 156:10
clarify ^[3] - 89:7,
 123:15, 136:8
Class ^[1] - 292:10
classroom ^[1] - 238:7
clause ^[1] - 227:12
clean ^[1] - 307:14
clear ^[21] - 50:1,
 51:14, 51:18, 53:8,
 68:16, 68:17, 87:12,
 89:15, 166:14,
 191:13, 191:18,
 226:8, 227:8, 230:4,

231:6, 233:2, 243:9,
248:1, 258:7, 265:8,
282:18

clearly ^[2] - 29:15,
257:15

clerk ^[1] - 81:4

client ^[5] - 61:3,
62:10, 72:7, 72:9,
163:18

climbing ^[1] - 152:10

clip ^[1] - 189:5

close ^[13] - 34:17,
37:6, 37:8, 87:2,
103:12, 113:17,
132:7, 144:8, 197:5,
209:17, 290:11,
320:3, 327:7

closed ^[2] - 244:17,
245:1

closer ^[3] - 32:13,
32:16, 149:17

closing ^[1] - 262:3

Club ^[8] - 213:8,
214:4, 214:5, 214:9,
214:11, 215:5,
215:7, 215:14

club ^[4] - 215:5,
225:12, 239:12,
267:6

club's ^[1] - 215:15

clubs ^[1] - 227:13

clutter ^[3] - 303:6,
304:5, 306:6

cluttered ^[1] - 310:7

co ^[2] - 176:9, 239:5

co-mingled

^[1] - 176:9

co-production

^[1] - 239:5

coach ^[1] - 239:13

cockroach

^[1] - 183:12

cockroaches

^[2] - 183:12, 183:15

code ^[1] - 255:16

coffers ^[1] - 267:6

Cohen ^[4] - 127:18,
138:5, 141:2,
146:12

Cohen's ^[1] - 128:3

colleagues ^[1] - 151:8

collecting ^[1] - 187:1

comfortable

^[4] - 134:15, 149:9,

149:11, 307:16

coming ^[9] - 48:12,

66:16, 93:18,

102:10, 128:13,

129:18, 198:5,

204:5, 225:5

comment ^[6] - 31:3,

144:9, 150:12,

252:6, 260:4, 303:5

commenting

^[2] - 141:8, 141:10

comments ^[24] - 5:15,

37:7, 61:4, 66:6,

112:8, 116:11,

116:12, 137:16,

151:1, 151:4, 151:8,

164:14, 174:13,

199:3, 263:16,

279:4, 282:9,

288:17, 290:12,

303:2, 303:4,

309:14, 311:8,

311:11

commercial

^[11] - 47:10, 165:10,

165:12, 170:13,

171:9, 171:16,

172:7, 172:8, 186:7,

186:8, 206:3

Commission

^[19] - 25:3, 111:14,

113:15, 127:7,

133:10, 133:14,

134:4, 135:14,

141:15, 142:6,

154:6, 174:3,

209:10, 242:10,

319:9, 320:17,

324:15, 328:8,

332:13

commission

^[1] - 31:4

Commission's

^[2] - 141:16, 155:8

Commissioner

^[3] - 60:8, 243:9,

276:2

commit ^[1] - 61:7

commitment

^[5] - 51:4, 86:7,

114:6, 116:6,

119:11

committed ^[3] - 53:1,

53:3, 71:9

Committee ^[2] - 81:5,
208:7

common ^[1] - 171:6

COMMONWEALTH
^[1] - 332:2

communicate
^[2] - 127:13, 141:16

communication
^[5] - 122:11, 146:8,
147:17, 159:13,
161:17

community
^[13] - 83:14, 209:8,
232:3, 236:9,
236:15, 236:18,
237:15, 238:9,
249:15, 261:11,
262:5, 262:14,
269:15

companies
^[4] - 237:2, 237:3,
240:3, 262:1

Company
^[3] - 202:14, 208:9

company
^[3] - 167:16, 236:12,
236:13

compare ^[1] - 20:4

compatibility
^[1] - 135:17

compatible
^[2] - 129:4, 132:10

complain ^[2] - 181:4,
181:5

complaint ^[3] - 93:15,
103:8, 174:3

complaint-driven
^[1] - 93:15

complement
^[2] - 135:2, 255:4

complete ^[2] - 80:3,
94:14

completely ^[4] - 30:3,
108:17, 168:9,
183:2

completion
^[1] - 293:5

complex ^[1] - 238:5

compliance
^[7] - 54:14, 83:12,
253:18, 294:5,
294:11, 306:10,
327:17

complicated

[1] - 145:14

complied [2] - 94:13,
190:18

complies [2] - 87:8,
143:6

comply [20] - 32:16,
84:4, 92:13, 93:9,
94:4, 162:13,
279:13, 279:17,
280:2, 281:8,
283:18, 284:2,
294:5, 296:8, 298:9,
301:3, 306:4,
308:12, 308:15,
311:14

complying [1] - 279:7

composure

[1] - 142:2

conceal [1] - 304:15

concern [16] - 48:4,
60:5, 80:4, 82:6,
91:13, 107:7, 107:8,
108:12, 109:10,
112:14, 191:8,
195:7, 259:1,
259:11, 295:7

concerned

[7] - 72:17, 138:12,
138:15, 175:18,
176:1, 177:16,
177:18

concerning [2] - 58:8,
297:7

concerns [11] - 11:7,
38:10, 38:11,
104:16, 108:10,
109:2, 109:3, 128:3,
128:5, 172:6, 188:6

conclude [3] - 56:15,
166:1, 246:9

concluded

[1] - 130:14

concluding

[1] - 196:4

conclusion

[2] - 62:12, 151:10

concrete [1] - 190:9

condition [24] - 18:15,
19:1, 41:8, 57:10,
59:11, 62:1, 71:5,
84:13, 85:10, 91:4,
92:12, 93:9, 93:11,
97:13, 114:10,
119:9, 155:10,

254:4, 279:16,
281:6, 282:2, 293:2,
330:4

conditioning

[1] - 188:12

conditions

[39] - 20:13, 64:5,
64:12, 81:9, 81:10,
82:12, 83:9, 83:16,
84:7, 84:12, 84:16,
85:2, 87:12, 90:15,
94:8, 97:6, 109:11,
111:17, 114:2,
117:7, 117:16,
118:5, 118:7, 119:4,
120:18, 143:12,
155:12, 209:13,
229:6, 246:8, 272:9,
283:12, 292:16,
294:6, 295:9,
298:18, 308:15,
316:6

condo [2] - 191:4,
194:10

Condominium

[1] - 326:7

condominium

[8] - 159:7, 177:14,
186:4, 186:7,
186:13, 186:16,
187:5, 187:6

conduct [1] - 4:2

Confections

[1] - 207:7

configuration

[2] - 27:16, 29:15

confirm [7] - 49:3,
76:6, 138:9, 194:11,
275:14, 275:15,
275:17

confirming [1] - 77:10

conflict [1] - 165:14

conform [2] - 149:14,
155:11

conformance

[1] - 38:3

conforming

[12] - 38:6, 38:7,
40:17, 148:11,
148:13, 154:13,
213:16, 213:18,
216:18, 218:11,
319:7, 323:11

confusion

[1] - 288:13

congestion

[10] - 117:4, 117:10,
172:6, 177:17,
178:4, 198:1, 200:7,
210:13, 291:9,
329:3

congregating

[1] - 259:8

connecting

[1] - 264:3

consensus

[1] - 112:15

consent [1] - 113:9

conserve [1] - 155:4

consider [3] - 151:7,

308:7, 311:5

considerate

[1] - 90:18

consideration

[4] - 30:7, 122:17,
123:3, 261:9

considerations

[1] - 164:3

considered

[1] - 284:3

considering [1] - 70:4

considers [1] - 82:3

consistent

[13] - 64:12, 64:13,
108:17, 135:9,
165:9, 224:18,
231:3, 278:15,
285:8, 293:7,
293:13, 295:3,
307:2

consistently

[1] - 302:17

consists [1] - 79:10

constant [1] - 189:18

Constantine

[10] - 1:7, 3:4, 5:2,
43:3, 158:3, 202:3,
212:3, 277:3, 300:3,
318:3

CONSTANTINE

[432] - 3:7, 5:5, 5:12,
6:1, 6:8, 6:13, 7:2,
7:7, 7:12, 8:3, 8:9,
8:13, 9:2, 9:9, 9:15,
10:9, 10:13, 11:15,
11:18, 13:6, 13:13,
13:15, 14:2, 14:15,
16:10, 16:18, 17:17,

18:2, 18:8, 18:11,
19:6, 19:8, 19:11,
19:18, 20:3, 20:6,
20:9, 20:14, 20:18,
21:4, 21:8, 21:18,
23:8, 26:3, 26:6,
26:11, 26:16, 27:9,
27:15, 27:18, 28:7,
28:18, 29:7, 29:12,
30:8, 30:14, 31:2,
31:8, 31:15, 32:1,
32:15, 33:1, 33:10,
33:13, 33:16, 34:3,
37:10, 40:1, 40:4,
41:17, 43:5, 43:11,
43:16, 44:14, 44:18,
46:12, 50:8, 51:3,
51:9, 52:7, 52:11,
52:15, 52:18, 53:3,
56:12, 57:4, 57:7,
57:16, 58:16, 59:18,
60:12, 61:11, 62:16,
63:2, 63:7, 63:11,
64:1, 64:8, 64:18,
66:6, 68:5, 69:3,
69:7, 70:1, 70:11,
71:2, 72:9, 73:9,
73:13, 74:12, 74:15,
75:6, 75:16, 76:1,
76:4, 76:11, 76:14,
76:16, 77:2, 77:9,
77:15, 77:18, 78:9,
80:5, 80:12, 80:17,
81:8, 84:8, 84:11,
86:16, 87:9, 87:15,
88:2, 88:10, 88:16,
89:9, 89:16, 90:2,
90:14, 92:1, 93:3,
93:10, 94:6, 94:14,
97:4, 97:17, 98:4,
98:8, 98:11, 98:16,
99:1, 99:8, 99:11,
100:2, 101:4,
101:11, 102:2,
103:10, 103:13,
104:18, 105:3,
106:10, 106:13,
106:18, 107:11,
108:1, 109:18,
110:6, 111:3, 112:2,
112:7, 113:12,
114:14, 115:3,
115:17, 116:2,
116:10, 116:13,

120:5, 120:11,
120:14, 121:3,
158:5, 158:10,
158:15, 160:8,
161:4, 162:16,
163:8, 163:17,
167:7, 168:7,
168:14, 169:2,
169:7, 170:11,
171:14, 172:1,
174:17, 176:12,
176:18, 179:6,
179:11, 179:15,
179:17, 180:3,
181:2, 181:8,
181:16, 182:1,
182:6, 182:10,
184:14, 184:18,
185:4, 185:7,
185:18, 187:9,
187:13, 187:18,
188:3, 188:8,
188:17, 189:3,
191:10, 191:17,
192:3, 192:9,
192:14, 193:5,
193:7, 193:15,
194:15, 195:2,
195:11, 195:13,
196:2, 197:4, 199:2,
199:4, 199:9,
199:18, 201:8,
202:5, 202:10,
202:18, 203:4,
203:7, 203:9,
203:14, 203:17,
204:2, 204:6, 204:9,
205:8, 205:12,
206:6, 206:9,
206:13, 207:6,
207:13, 207:15,
208:1, 208:3,
209:16, 210:4,
211:14, 212:5,
213:1, 215:3, 215:9,
216:1, 216:7, 220:3,
220:7, 220:13,
220:16, 221:2,
221:6, 221:10,
221:17, 223:4,
224:7, 224:12,
225:7, 226:5,
226:18, 227:4,
228:1, 228:10,

229:5, 230:9,
230:15, 231:14,
231:17, 234:11,
234:15, 235:1,
235:5, 235:13,
241:3, 243:4,
244:13, 246:2,
246:17, 247:11,
248:15, 249:4,
249:13, 250:3,
250:11, 251:4,
251:14, 251:18,
252:3, 252:10,
252:14, 256:11,
257:4, 257:7,
257:10, 257:16,
257:18, 258:3,
258:11, 258:14,
258:16, 260:8,
260:13, 261:7,
263:11, 263:14,
265:14, 266:3,
266:8, 269:3, 270:3,
273:2, 273:7, 274:5,
274:11, 274:18,
275:4, 275:7,
275:17, 276:8,
276:11, 276:14,
276:16, 277:5,
277:10, 278:11,
279:3, 279:6,
279:15, 280:4,
280:11, 281:5,
281:11, 282:4,
282:8, 282:12,
282:15, 284:1,
284:8, 285:6, 287:3,
287:6, 287:12,
287:16, 288:8,
289:9, 289:12,
290:2, 290:5,
290:10, 290:14,
299:3, 300:5,
300:11, 300:15,
300:18, 301:10,
301:15, 302:6,
303:3, 305:2, 305:4,
305:15, 307:10,
307:12, 308:5,
309:7, 309:11,
310:1, 311:1, 311:4,
311:13, 312:12,
312:15, 313:6,
313:14, 314:2,

314:13, 314:15,
 315:5, 315:8,
 315:15, 316:2,
 316:4, 317:5, 317:8,
 318:5, 319:1, 321:8,
 321:12, 322:1,
 322:5, 322:10,
 322:13, 322:16,
 323:13, 323:16,
 325:6, 325:11,
 325:15, 327:15,
 328:1, 328:9,
 328:13, 330:10,
 330:13

construct ^[1] - 142:12

constructed

^[1] - 142:2

construction

^[12] - 67:16, 128:4,
 128:5, 128:6, 140:9,
 140:18, 142:10,
 145:5, 145:13,
 146:3, 147:2,
 266:11

consult ^[1] - 140:8

consulted

^[1] - 313:11

consumed

^[3] - 222:3, 226:10,
 227:2

contacted ^[1] - 182:2

contain ^[4] - 77:12,

130:18, 143:6,
 306:12

contained ^[1] - 130:9

contains ^[1] - 46:7

contents ^[1] - 56:4

context ^[2] - 15:11,
 56:1

contingent ^[1] - 55:13

continuance

^[1] - 152:12

continuances

^[3] - 150:18, 151:2,
 151:4

continue ^[10] - 49:5,

50:7, 61:10, 71:5,
 133:4, 147:16,
 176:2, 248:13,
 294:5, 308:18

continued ^[15] - 3:10,

3:12, 117:12, 124:9,
 127:15, 140:7,
 161:5, 173:9,

189:14, 200:11,
 210:15, 291:11,
 308:4, 316:5, 329:6
continuing ^[1] - 317:6
continuous
^[1] - 293:17
contract ^[1] - 59:5
contractor
^[3] - 146:1, 146:6,
 146:18
contractors
^[2] - 147:7
contractual ^[2] - 60:8,
 73:16
contrast ^[1] - 109:13
contributed
^[1] - 182:18
contribution
^[1] - 249:15
control ^[10] - 45:12,
 47:18, 51:1, 56:9,
 60:9, 79:18, 104:2,
 120:9, 223:12,
 305:8
CONTROL
^[1] - 332:16
controlled ^[3] - 46:11,
 49:14, 49:16
controlling ^[1] - 104:7
convenience
^[3] - 47:9, 47:15,
 167:10
convert ^[2] - 212:17,
 213:6
converted
^[2] - 100:15, 262:6
convincing
^[1] - 243:14
cooking ^[4] - 104:11,
 159:18, 160:10,
 195:8
cooperate ^[1] - 205:3
Cooperative
^[2] - 45:14, 69:12
copy ^[3] - 15:1, 15:2,
 159:17
corner ^[4] - 45:9,
 128:1, 218:11,
 248:14
cornice ^[6] - 281:3,
 281:4, 281:9,
 287:11, 294:14,
 306:16
corporate ^[1] - 159:2

correct ^[35] - 7:1,
 50:13, 64:7, 68:15,
 69:2, 77:14, 89:16,
 110:2, 124:5,
 146:13, 148:5,
 150:9, 156:14,
 156:15, 163:9,
 170:9, 205:16,
 206:1, 207:5, 221:1,
 234:9, 278:13,
 281:10, 282:11,
 284:6, 284:7, 285:4,
 285:16, 286:3,
 288:4, 300:14,
 305:3, 305:18,
 309:3, 317:4

correction ^[1] - 331:7

corrections

^[1] - 331:16

correctly ^[3] - 221:15,
 222:8, 261:14

correlated

^[1] - 216:14

correspondence

^[9] - 139:15, 141:1,
 141:3, 141:5,
 141:13, 144:7,
 154:5, 159:13,
 161:17

corridor ^[1] - 165:11

cost ^[1] - 183:3

coterminous

^[6] - 62:13, 75:5,
 114:12, 114:17,
 115:5, 119:16

Council ^[11] - 125:4,

223:7, 225:10,
 228:17, 249:11,
 254:7, 258:6,
 264:10, 265:12,
 267:18, 268:3

councillor ^[1] - 123:9

COUNCILLOR

^[7] - 123:10, 123:13,
 124:3, 124:6,
 124:16, 125:1,
 125:5

counsel ^[1] - 60:18

count ^[1] - 31:18

couple ^[3] - 70:17,
 147:3, 207:8

course ^[9] - 21:8,
 50:8, 91:6, 139:4,
 180:8, 184:4, 188:3,

262:18, 270:18
cover ^[5] - 270:9,
 285:16, 286:17,
 286:18, 310:17
covered ^[6] - 44:10,
 45:5, 63:16, 127:9,
 146:11
covering ^[2] - 285:15,
 310:13
cratered ^[1] - 247:4
create ^[3] - 118:14,
 281:16, 294:18
created ^[7] - 117:18,
 198:6, 200:17,
 211:3, 291:15,
 323:14, 329:13
creates ^[2] - 114:6,
 230:7
Creation ^[1] - 292:11
criteria ^[5] - 162:1,
 172:11, 173:6,
 196:16, 217:5
criticism ^[1] - 150:18
Critics ^[1] - 240:7
crown ^[1] - 263:8
crumbled ^[1] - 104:1
crystal ^[1] - 265:8
CULHANE
^[14] - 69:10, 70:2,
 70:14, 71:14, 72:1,
 76:13, 76:15, 76:18,
 105:5, 106:12,
 106:16, 107:3,
 107:18, 110:13
Culhane ^[3] - 69:11,
 72:8, 73:5
culhane ^[3] - 72:12,
 81:14
culhane's ^[1] - 109:2
cultural ^[3] - 217:12,
 254:7, 262:16
culturally ^[1] - 262:17
Curio ^[4] - 202:13,
 207:1, 208:9, 209:2
CURIO ^[1] - 202:14
curious ^[1] - 182:2
current ^[9] - 16:12,
 17:18, 18:9, 24:3,
 27:4, 30:9, 40:13,
 63:6, 280:16
custom ^[1] - 3:9
customers ^[6] - 47:5,
 65:5, 65:15, 85:8,
 88:9, 162:5

cut ^[4] - 76:10, 76:17,
220:16, 271:5

D

D-E-N-E-U-F-V-I-L-L-

E ^[1] - 138:2

daly ^[1] - 142:4

damage ^[1] - 305:16

dance ^[4] - 227:13,
236:4, 242:16,
262:1

dancing ^[20] - 222:4,
224:6, 227:3,
227:10, 227:14,
230:6, 230:10,
230:15, 231:1,
233:6, 233:10,
236:3, 242:15,
257:15, 258:2,
258:9, 264:12,
264:14, 270:11,
273:15

Dang ^[4] - 160:3,
160:4

DANG ^[8] - 160:7,
166:6, 166:11,
166:17, 167:2,
167:9, 167:13,
168:4

DANIEL ^[49] - 277:9,
277:11, 278:13,
279:5, 279:9, 280:1,
280:8, 280:13,
281:10, 282:1,
282:6, 282:11,
282:14, 283:2,
284:6, 284:14,
285:4, 285:10,
285:18, 286:3,
286:10, 288:4,
288:12, 289:17,
290:13, 299:7,
300:9, 300:14,
300:17, 301:6,
301:12, 301:18,
302:7, 305:3, 305:6,
305:18, 309:3,
309:9, 310:11,
310:15, 311:3,
311:6, 312:2,
312:10, 312:18,
314:11, 314:14,
317:4, 317:10

Daniel ^[2] - 277:12,
302:7

dark ^[4] - 227:15,
234:7, 234:12,
234:18

Dark ^[1] - 212:10

date ^[10] - 20:1, 60:3,
82:13, 156:13,
216:13, 309:1,
315:5, 316:11,
322:12, 331:7

dated ^[6] - 41:11,
122:11, 139:15,
141:6, 141:13,
156:3

daughter ^[3] - 188:10,
188:11, 190:4

David ^[2] - 318:14,
319:4

DAVID ^[11] - 319:4,
321:9, 321:14,
322:3, 322:8,
322:11, 322:15,
327:14, 327:18,
328:7, 328:11

David's ^[1] - 318:15

day-to-day ^[1] - 176:9

days ^[7] - 66:14,
196:3, 295:17,
296:12, 297:16,
316:13, 316:15

de ^[4] - 85:18, 154:15,
278:18, 307:4

deadline ^[1] - 136:17

deal ^[13] - 13:3, 50:12,
103:5, 109:5, 117:8,
118:6, 161:1, 181:6,
185:13, 190:2,
191:7, 236:7, 249:9

dealing ^[6] - 56:13,
104:4, 163:10,
171:8, 171:13,
187:8

dealt ^[1] - 138:16

Dear ^[1] - 122:12

death ^[1] - 112:11

debatable
^[1] - 175:12

debate ^[3] - 93:4,
94:16, 257:5

debated ^[1] - 149:1

DEBBIE ^[10] - 187:16,
188:2, 188:4, 188:9,
189:1, 189:4,

191:14, 192:1,
 192:5, 192:12
Debbie ^[1] - 187:16
decade ^[1] - 194:7
decades ^[2] - 47:9,
 48:15
decide ^[5] - 50:11,
 62:4, 62:5, 97:10,
 249:2
decided ^[2] - 176:6,
 223:6
decision ^[8] - 59:2,
 97:7, 120:9, 120:16,
 147:13, 151:10,
 281:7, 316:8
decision's ^[1] - 84:18
decisions
^[3] - 301:16, 302:18,
 307:3
deck ^[7] - 7:3, 7:6,
 7:7, 7:8, 7:11, 7:18,
 32:14
decks ^[2] - 7:14
deemed ^[2] - 297:12,
 306:2
default ^[2] - 85:6,
 85:7
deferred ^[1] - 115:15
deferring ^[1] - 58:5
definitely ^[2] - 92:6,
 263:6
definition
^[2] - 131:14, 175:12
Degenova ^[1] - 36:7
DEGENOVA ^[1] - 36:7
degree ^[1] - 310:16
delay ^[1] - 60:5
deliver ^[3] - 57:11,
 59:10, 114:4
delivered ^[1] - 331:3
deliveries ^[1] - 165:6
delivery ^[6] - 49:7,
 58:5, 88:6, 101:10,
 104:13, 120:6
demand ^[1] - 236:10
demonstrate
^[1] - 308:13
DENEUFVILLE
^[3] - 138:1, 139:1,
 139:9
Deneufville
^[1] - 138:2
dense ^[1] - 7:15
deny ^[1] - 201:3

Department

[10] - 57:12, 93:16,
114:4, 119:9,
295:11, 295:16,
296:2, 296:14,
298:2, 331:4

department

[1] - 58:10

departments

[1] - 103:7

depicted [6] - 48:1,

50:17, 56:17, 56:18,
60:10, 150:7

depth [1] - 92:5**derogate** [7] - 41:4,

118:11, 155:2,
211:8, 272:13,
292:2, 329:18

described [1] - 258:2**design** [6] - 31:10,

31:11, 31:18, 37:18,
134:11, 304:8

designated

[1] - 217:1

designation [1] - 75:2**designed** [4] - 37:16,

142:5, 162:13,
302:17

desirability

[2] - 154:7, 155:9

desirable

[2] - 154:16, 154:18

desire [1] - 132:9**despite** [1] - 195:3**destination**

[2] - 214:5, 214:7

destroyed [3] - 193:2,

194:4, 194:9

detached [1] - 135:8**detail** [2] - 296:15,

297:8

details [3] - 87:16,

239:1, 328:8

detectible

[1] - 203:15

deteriorated

[1] - 87:1

deterioration

[1] - 80:3

determination

[1] - 276:2

determine [2] - 276:4,

311:12

detriment [8] - 41:2,

118:1, 155:1, 198:7,
200:17, 211:3,
291:15, 329:13

detrimental

[2] - 28:14, 323:10

developed

[1] - 218:14

developing

[1] - 140:11

development

[12] - 117:13, 134:9,
155:5, 161:6, 173:9,
210:16, 217:6,
218:15, 262:14,
270:1, 291:12,
329:7

DEVEREUX

[8] - 123:10, 123:13,
123:14, 124:3,
124:6, 124:16,
125:1, 125:5

Devereux [1] - 123:14

diagrams [1] - 28:3

Diaz [1] - 17:6

difference [5] - 15:8,
16:8, 111:9, 195:9,
222:16

different [21] - 28:2,
28:10, 29:14, 31:5,
31:6, 32:7, 37:17,
118:17, 119:1,
159:16, 173:4,
216:9, 256:4, 256:7,
256:8, 264:7,
284:16, 284:17,
285:1, 323:2

differently

[1] - 257:13

difficult [3] - 68:3,
103:8, 262:2

dilemma [1] - 221:11

dimensional [3] - 6:9,
41:10, 153:9

dimensions

[1] - 292:8

diminishment

[1] - 236:9

DIRECT [1] - 332:16

direct [4] - 30:1, 56:7,
196:11, 312:6

directed [1] - 142:10

DIRECTION

[1] - 332:16

direction [5] - 47:8,

283:10, 310:16,
 311:11, 312:11
directly ^[6] - 25:8,
 132:8, 134:13,
 139:17, 194:12,
 222:7
Director ^[2] - 143:10,
 154:6
director ^[1] - 261:12
disagree ^[3] - 91:2,
 227:8, 253:10
disagreeing
^[2] - 230:13, 230:17
disappointing
^[1] - 172:12
discloses ^[1] - 297:8
disclosing
^[1] - 296:14
disclosure
^[1] - 184:15
discretion ^[1] - 244:1
discuss ^[5] - 81:11,
 84:6, 96:4, 231:7,
 243:17
discussed ^[6] - 92:5,
 92:12, 95:3, 245:13,
 326:12, 327:3
discussing
^[1] - 138:6
discussion ^[7] - 11:5,
 16:15, 37:11, 146:6,
 197:6, 208:14,
 271:6
discussions
^[4] - 11:5, 91:6,
 140:16, 141:1
dismissed
^[1] - 157:13
displayed ^[1] - 70:8
disposables
^[1] - 197:1
disposal ^[1] - 91:14
disregard ^[2] - 176:2,
 176:10
disrupt ^[1] - 160:15
distance ^[3] - 68:14,
 152:8, 287:8
distinction
^[2] - 227:18, 266:10
distinguish
^[5] - 161:16, 219:1,
 219:16, 242:17,
 243:11
district ^[31] - 108:18,

109:10, 109:15,
 118:10, 118:11,
 135:7, 198:10,
 198:11, 211:7,
 211:8, 213:6,
 213:14, 217:12,
 218:18, 220:18,
 221:4, 221:17,
 222:1, 222:18,
 223:3, 232:15,
 245:14, 250:14,
 254:7, 271:15,
 271:16, 272:5,
 292:1, 329:17,
 329:18
District ^[17] - 141:18,
 213:5, 213:13,
 214:2, 217:3, 217:4,
 217:17, 218:18,
 219:8, 221:14,
 222:14, 223:9,
 228:4, 244:7, 263:7,
 269:8, 270:7
districts ^[1] - 292:2
disturbance
^[1] - 205:6
disturbed ^[1] - 178:17
diverse ^[1] - 262:17
diversity ^[1] - 217:13
divided ^[1] - 184:11
Doctor ^[1] - 142:5
documented
^[1] - 47:14
DOES ^[1] - 332:15
dollar ^[1] - 176:5
dollars ^[1] - 267:5
done ^[26] - 12:13,
 13:10, 17:5, 22:9,
 22:10, 23:16, 24:3,
 76:17, 95:15, 101:7,
 127:8, 129:17,
 130:3, 131:4,
 147:17, 151:8,
 179:5, 180:11,
 182:5, 182:9, 183:5,
 190:17, 239:14,
 273:14, 279:9,
 280:2
donut ^[3] - 99:16,
 101:1, 101:3
door ^[17] - 87:3,
 159:10, 159:11,
 204:5, 205:3, 207:4,
 220:5, 220:8, 242:6,

259:8, 259:12,
260:2, 265:2, 320:7,
320:11, 321:6,
324:16

doors ^[3] - 87:3,
207:8, 319:7

Dorchester
^[1] - 212:14

dormer ^[5] - 320:18,
321:1, 321:5,
324:16

double ^[1] - 163:2

Doug ^[3] - 58:16,
114:8, 115:9

Doughnuts ^[1] - 45:8

DOUGLAS ^[44] - 54:4,
54:9, 54:12, 54:17,
55:18, 56:10, 57:2,
57:6, 58:4, 59:15,
74:18, 76:8, 78:2,
78:14, 79:1, 79:4,
79:7, 80:2, 80:10,
91:1, 91:11, 91:17,
92:2, 92:8, 94:18,
95:5, 95:11, 96:9,
112:17, 113:10,
114:12, 114:16,
115:5, 115:10,
116:12, 136:4,
136:13, 137:2,
137:4, 150:11,
150:14, 152:16,
153:1, 157:6

Douglas ^[4] - 1:10,
43:4, 122:3, 126:3

down ^[27] - 10:8,
12:14, 26:14, 33:18,
86:18, 99:5, 99:17,
100:1, 105:1, 130:1,
152:10, 165:16,
187:10, 188:2,
190:7, 191:1,
192:15, 207:8,
260:9, 265:17,
287:1, 289:10,
294:13, 303:8,
314:16, 315:11,
316:14

downsize ^[1] - 262:10

downstairs
^[1] - 220:6

dozens ^[1] - 261:15

Dracut ^[1] - 212:13

draft ^[1] - 233:4

drafted ^[2] - 247:17,
264:3

drafting ^[1] - 232:15

drain ^[1] - 12:16

drama ^[5] - 235:17,
239:12, 239:13,
244:17, 267:6

dramatically
^[2] - 28:2, 262:10

draw ^[2] - 70:16,
106:7

drawing ^[1] - 262:16

drawings
^[3] - 153:10, 156:8,
320:4

drawn ^[3] - 70:15,
106:7, 227:18

drink ^[1] - 245:3

drinks ^[4] - 226:15,
254:11, 259:9,
260:6

drive ^[3] - 162:11,
178:5, 217:11

drive-through
^[1] - 217:11

driven ^[2] - 37:14,
93:15

driveway ^[2] - 12:10,
79:12

dropping ^[1] - 230:9

dry ^[2] - 12:11, 39:11

Dudley ^[1] - 96:7

due ^[3] - 58:4, 171:13,
174:1

dues ^[3] - 186:13,
186:14, 186:16

Dumpling
^[18] - 159:10,
159:14, 162:1,
166:16, 168:1,
168:10, 168:13,
168:17, 170:2,
170:16, 170:18,
171:2, 172:14,
172:15, 173:1,
173:12, 174:2,
194:5

dumpster ^[8] - 49:10,
49:12, 49:13, 49:15,
92:14, 96:17, 97:2,
113:7

dumpsters
^[3] - 95:15, 96:2,
113:2

during ^[10] - 62:8,
90:8, 101:14, 103:1,
233:17, 235:3,
238:3, 274:8, 274:9,
297:14

dust ^[1] - 11:8

dwelling ^[1] - 131:16

dwindling

^[1] - 240:11

E

e-mail ^[5] - 10:2,

140:17, 189:7,

189:11, 192:8

e-mails ^[1] - 195:14

eager ^[1] - 289:2

earliest ^[1] - 315:3

early ^[1] - 128:17

easily ^[1] - 322:18

East ^[1] - 236:2

easy ^[1] - 250:8

eat ^[1] - 267:8

eating ^[1] - 118:15

economic ^[1] - 108:2

economically

^[1] - 262:16

economics

^[2] - 86:11, 102:18

edge ^[1] - 231:4

edges ^[1] - 225:12

educated ^[1] - 26:8

educational

^[3] - 237:17, 238:3,
238:9

Edward ^[1] - 35:3

effect ^[5] - 15:5,

23:13, 28:14, 28:16,

325:2

effectively

^[1] - 165:15

effects ^[1] - 295:5

effort ^[4] - 8:7, 17:11,

140:11, 306:5

efforts ^[1] - 231:18

egress ^[4] - 117:4,

165:5, 291:8, 320:8

eight ^[7] - 6:11, 96:14,

96:15, 132:14,

132:16, 143:1,

180:13

eight-feet ^[1] - 96:15

eight-foot ^[1] - 96:14

eighties ^[1] - 128:17

either ^[4] - 7:16, 17:3,
80:8, 321:11

elaborate ^[1] - 95:12

elderly ^[1] - 218:7

electricity
^[1] - 188:13

electromagnetic
^[3] - 295:6, 295:13,
296:10

element ^[3] - 55:10,
58:1, 128:18

elements ^[1] - 153:18

elevation ^[3] - 7:6,
13:10, 304:12

elevations ^[2] - 5:17,
328:11

eleven ^[5] - 166:7,
166:10, 166:11,
191:9, 191:16

Elie ^[1] - 122:12

eligible ^[2] - 301:9,
302:3

elimination
^[2] - 138:8, 153:18

Elizabeth ^[3] - 189:9,
190:14, 326:15

Ellen ^[1] - 36:6

elongate ^[1] - 286:12

emanating
^[1] - 295:13

emergency
^[1] - 259:13

emerging ^[1] - 261:17

emissions
^[2] - 295:13, 296:10

emphasize
^[2] - 159:16, 163:5

employ ^[1] - 62:11

emptied ^[1] - 95:18

enclosure ^[2] - 113:8,
304:16

encourage
^[3] - 51:15, 155:5,
239:16

encouraged
^[1] - 304:14

encouraging
^[1] - 163:1

end ^[16] - 61:13, 62:2,
71:6, 72:4, 85:10,
85:17, 92:16, 102:7,
114:18, 115:13,
146:16, 228:6,
250:7, 313:4,

314:18, 318:18
energy ^[3] - 295:6,
 295:13, 296:10
enforceable
^[2] - 53:11, 53:14
enforced ^[2] - 88:15,
 139:5
enforcement
^[3] - 40:8, 124:13,
 153:12
engineers ^[1] - 283:3
England ^[1] - 240:7
enhance ^[1] - 134:9
enhanced
^[1] - 210:18
enhancement
^[1] - 155:5
enjoy ^[1] - 235:9
enormous
^[1] - 262:12
ensure ^[1] - 98:10
ensuring ^[1] - 196:18
enter ^[2] - 116:4,
 233:9
enterprise ^[1] - 209:1
enterprises
^[1] - 163:11
entertaining
^[1] - 233:10
entertainment
^[22] - 219:7, 219:13,
 222:4, 224:6, 227:3,
 227:5, 230:6,
 230:10, 230:16,
 231:1, 233:8,
 242:15, 257:15,
 257:17, 258:2,
 258:10, 260:5,
 264:4, 264:18,
 270:11, 272:11,
 273:16
entire ^[4] - 24:2,
 150:5, 162:12,
 305:8
entirely ^[2] - 62:17,
 111:1
entities ^[1] - 173:12
entitled ^[1] - 58:11
entity ^[1] - 168:18
entrance ^[1] - 222:5
entrances ^[2] - 222:6,
 222:7
entrepreneurs
^[1] - 209:7

equipment ^[15] - 4:1,
 283:16, 285:18,
 286:2, 293:16,
 293:18, 295:14,
 296:6, 297:18,
 298:3, 298:7,
 303:18, 304:16,
 306:12, 310:8

equity ^[2] - 170:7,
 170:8

Erin ^[1] - 206:17

ERRATA ^[1] - 331:1

Errata ^[2] - 331:2,
 331:7

especially ^[4] - 15:8,
 103:18, 150:14,
 239:18

essential ^[3] - 230:1,
 243:17, 247:13

essentially ^[3] - 6:17,
 32:7, 47:12

established
^[8] - 117:5, 117:11,
 118:14, 210:14,
 262:7, 264:13,
 291:10, 329:4

establishment
^[7] - 118:15, 162:6,
 197:12, 197:18,
 205:15, 222:2,
 226:9

establishments
^[3] - 168:3, 195:10,
 264:17

evasive ^[2] - 55:13,
 169:1

evening ^[20] - 43:10,
 44:1, 44:4, 53:16,
 53:17, 66:18, 99:3,
 123:2, 126:8,
 158:13, 158:17,
 212:7, 277:9,
 277:10, 277:11,
 277:15, 300:9,
 300:10, 300:11,
 318:10

event ^[2] - 119:17,
 296:4

events ^[2] - 215:18,
 216:2

eventually ^[2] - 77:4,
 180:15

everyday ^[1] - 88:12

evidence ^[2] - 60:8,

151:5

evidently ^[1] - 58:8

exactly ^[8] - 16:7,
19:11, 22:8, 63:5,
135:3, 147:1,
247:16, 269:5

examination

^[1] - 130:13

examined ^[1] - 102:6

example ^[8] - 71:3,
85:4, 87:1, 161:5,
205:3, 269:9,
280:14, 313:1

exceed ^[7] - 114:13,
114:16, 115:6,
133:9, 133:13,
140:2, 152:6

exceeds ^[1] - 132:13

except ^[5] - 10:1,
96:4, 250:5, 266:6,
331:15

exception

^[1] - 131:17

excessive ^[2] - 103:4,
298:15

exchange ^[3] - 47:18,
127:16, 128:7

excited ^[1] - 128:13

excluded ^[1] - 131:14

exclusive ^[1] - 255:4

exclusively

^[3] - 55:16, 56:1,
237:11

excuse ^[3] - 46:18,
166:2, 220:15

executed ^[1] - 55:12

Executive

^[1] - 143:10

exist ^[5] - 48:18,
50:16, 73:1, 240:15,
279:12

existed ^[2] - 49:4,
279:12

existing ^[58] - 15:12,
15:17, 17:3, 17:5,
17:11, 19:10, 19:14,
19:15, 21:17, 22:1,
22:2, 22:10, 27:5,
27:7, 28:10, 29:13,
29:15, 37:16, 142:9,
142:18, 143:5,
153:15, 154:10,
164:11, 165:7,
166:15, 209:3,

213:16, 277:16,
 278:4, 278:6,
 278:16, 278:18,
 280:15, 280:17,
 281:15, 283:5,
 283:12, 283:15,
 284:11, 284:18,
 286:13, 292:5,
 292:8, 294:18,
 302:13, 302:17,
 303:12, 303:16,
 303:17, 304:15,
 305:13, 306:7,
 306:11, 306:13,
 310:3, 310:9,
 323:11
exists ^[4] - 32:7, 51:1,
 165:11, 303:14
exit ^[3] - 259:2, 259:3,
 259:13
expand ^[1] - 118:17
expanding ^[1] - 23:17
expansion
^[1] - 172:13
expect ^[1] - 209:6
expectation ^[1] - 91:4
expense ^[1] - 310:8
experienced
^[1] - 29:2
experiences
^[1] - 99:13
expiration ^[1] - 82:13
expire ^[1] - 114:11
Expires ^[1] - 332:13
explain ^[4] - 84:8,
 127:13, 222:16,
 274:16
explained ^[2] - 62:10,
 95:17
explore ^[3] - 113:4,
 113:7, 311:18
exposed ^[2] - 62:1,
 62:18
expressed
^[2] - 45:16, 261:1
extend ^[1] - 107:13
extended ^[2] - 22:12,
 83:6
extends ^[1] - 143:3
extent ^[9] - 32:2,
 117:9, 162:3, 162:4,
 273:8, 280:9, 294:3,
 297:3, 316:16
extra ^[1] - 229:18

extreme ^[1] - 78:3

extremely

^[1] - 174:16

F

fabric ^[1] - 100:16

facade ^[15] - 278:4,

281:15, 284:11,

294:14, 294:18,

302:14, 303:13,

305:8, 307:2,

310:12, 320:4,

320:6, 320:10,

320:12

facade-mounted

^[2] - 303:13, 307:2

facades ^[4] - 319:8,

319:15, 320:3,

320:4

face ^[3] - 262:2,

310:16, 320:14

facilities ^[3] - 169:13,

301:9, 302:3

facility ^[3] - 278:18,

292:6, 292:9

fact ^[37] - 12:9, 37:14,

39:4, 40:16, 45:13,

83:7, 85:11, 88:16,

89:7, 91:17, 98:4,

102:3, 108:6, 109:4,

127:17, 149:2,

152:2, 159:12,

170:11, 171:8,

173:2, 173:16,

195:3, 200:16,

210:18, 217:2,

221:12, 239:4,

244:8, 253:15,

254:1, 270:9,

273:12, 275:5,

279:12, 280:5,

281:3

facto ^[2] - 296:2,

296:18

factor ^[2] - 23:7,

24:12

Factory ^[2] - 262:3,

262:8

faded ^[1] - 306:8

fail ^[1] - 58:5

fails ^[1] - 296:8

failure ^[4] - 295:18,

296:13, 296:15,

296:16
fair ^[5] - 45:5, 87:6,
 174:7, 207:15,
 232:14
fairly ^[1] - 227:8
faith ^[1] - 309:8
fall ^[3] - 82:4, 230:8,
 231:4
falling ^[1] - 85:6
fallow ^[1] - 247:9
falls ^[1] - 233:7
fam ^[1] - 142:5
familiar ^[2] - 99:7,
 219:4
family ^[14] - 14:12,
 23:2, 24:2, 100:17,
 127:4, 131:7, 134:8,
 153:16, 162:8,
 323:5, 323:6,
 324:10, 324:13
family-run
^[1] - 100:17
FAN ^[5] - 193:6,
 193:9, 194:17,
 195:3
Fan ^[2] - 193:9
fantastic ^[1] - 105:7
FAR ^[1] - 129:17
far ^[9] - 12:10, 32:10,
 68:14, 150:3, 169:3,
 183:4, 190:1,
 193:12, 208:4
farmer's ^[2] - 204:18,
 205:18
farwell ^[1] - 319:17
Farwell ^[6] - 2:14,
 318:6, 319:12,
 326:7, 326:10,
 326:17
fashion ^[3] - 153:16,
 252:5, 259:13
fast ^[8] - 163:10,
 171:18, 172:4,
 178:18, 195:4,
 196:17, 197:11,
 197:18
father ^[1] - 267:1
favor ^[30] - 38:15,
 39:1, 41:13, 41:17,
 120:17, 121:3,
 125:12, 125:14,
 152:13, 155:13,
 155:15, 197:7,
 197:8, 199:15,

201:5, 201:8,
 211:12, 211:14,
 266:12, 272:18,
 273:2, 274:15,
 276:12, 276:14,
 298:17, 299:3,
 317:6, 317:8, 330:8,
 330:10
avored ^[1] - 135:14
favorite ^[1] - 101:3
Fawcett ^[4] - 2:12,
 277:6, 277:17,
 280:15
Fax ^[1] - 1:16
features ^[2] - 154:3,
 155:6
fed ^[1] - 185:13
federal ^[6] - 295:12,
 295:18, 296:5,
 297:1, 298:9,
 298:16
fee ^[1] - 191:4
feet ^[21] - 6:4, 6:11,
 6:16, 7:10, 46:9,
 96:15, 129:15,
 130:3, 130:5, 131:9,
 131:10, 132:2,
 132:13, 132:14,
 132:16, 133:9,
 133:13, 133:17,
 304:2, 304:4
fellow ^[2] - 151:14,
 270:12
felt ^[1] - 305:9
fence ^[1] - 11:8
few ^[7] - 13:11, 135:4,
 164:5, 251:8, 267:4,
 283:9, 311:10
fewer ^[1] - 240:8
field ^[1] - 233:4
Field ^[2] - 251:8,
 254:12
fight ^[1] - 245:4
figure ^[1] - 97:12
file ^[19] - 29:11,
 113:13, 127:18,
 129:9, 136:9, 151:7,
 158:16, 159:13,
 188:18, 192:9,
 276:1, 278:9,
 278:12, 282:7,
 293:1, 295:10,
 296:1, 296:13,
 298:1

filed ^[14] - 58:10,
 122:13, 129:8,
 130:6, 136:5, 136:8,
 136:11, 136:13,
 136:17, 136:18,
 295:15, 295:17,
 297:9, 297:15
files ^[5] - 17:13,
 195:15, 295:12,
 317:1, 322:14
final ^[8] - 37:7, 55:10,
 55:12, 112:8,
 263:16, 290:12,
 328:2, 328:6
financial ^[8] - 86:7,
 106:4, 169:14,
 169:17, 170:5,
 172:17, 239:7,
 249:16
financially ^[2] - 62:18,
 71:9
findings ^[13] - 40:6,
 41:6, 116:16, 119:2,
 210:7, 211:10,
 271:9, 272:14,
 290:18, 292:13,
 327:10, 328:16,
 330:2
fine ^[8] - 58:3, 76:13,
 113:10, 116:6,
 182:10, 204:2,
 267:17, 316:3
finish ^[5] - 76:9,
 285:9, 295:3,
 306:17, 306:18
finished ^[1] - 76:12
fire ^[2] - 138:14, 320:8
firm ^[2] - 81:17,
 318:12
First ^[1] - 1:6
first ^[24] - 11:7, 15:2,
 15:3, 21:3, 25:6,
 37:12, 41:11, 62:14,
 83:3, 156:12,
 156:17, 157:1,
 158:12, 178:4,
 181:7, 191:10,
 209:14, 275:10,
 281:6, 281:12,
 304:12, 315:2,
 324:6, 330:6
fit ^[2] - 143:9, 305:9
fits ^[1] - 322:18
fitting ^[1] - 260:6

Fitzgerald ^[1] - 240:1

five ^[63] - 7:10, 41:17,
60:14, 61:12, 61:13,
61:18, 62:2, 62:8,
62:15, 62:16, 70:5,
70:9, 70:13, 70:17,
81:7, 85:10, 85:18,
86:2, 86:4, 86:6,
86:9, 86:14, 90:11,
102:16, 103:1,
105:17, 106:10,
107:5, 107:6, 108:5,
108:6, 109:17,
110:12, 110:18,
114:11, 114:13,
114:15, 115:6,
115:16, 116:5,
116:9, 119:18,
121:3, 125:14,
133:17, 136:16,
140:4, 155:15,
190:15, 198:12,
201:8, 211:14,
265:10, 273:2,
294:4, 299:3, 314:9,
317:2, 317:8,
330:10

five-foot ^[1] - 140:4

five-year ^[5] - 61:12,
62:8, 62:15, 85:10,
86:6

fix ^[1] - 183:3

fixed ^[2] - 236:3,
328:11

flat ^[6] - 133:2,
222:10, 223:6,
226:8, 248:1, 258:7

fledgling ^[1] - 262:7

flip ^[1] - 33:17

flooding ^[1] - 12:7

floods ^[1] - 12:8

Floor ^[1] - 1:6

floor ^[20] - 6:5, 6:6,
7:5, 7:14, 17:5,
24:4, 27:5, 129:2,
130:12, 130:17,
131:2, 131:5,
131:15, 140:3,
142:16, 165:13,
170:13, 171:11,
185:1, 319:15

floors ^[1] - 190:9

flush ^[1] - 289:6

fly ^[1] - 312:1

focus ^[3] - 129:6,
 173:4, 196:7
focuses ^[1] - 259:5
focusing ^[1] - 219:2
focussed ^[1] - 161:18
fold ^[1] - 262:10
folks ^[1] - 13:2
follow ^[3] - 177:13,
 286:11, 319:11
followed ^[1] - 239:15
following ^[14] - 40:6,
 116:16, 119:4,
 210:7, 221:18,
 271:9, 280:6,
 290:18, 292:15,
 295:9, 304:8, 316:6,
 327:10, 328:16
food ^[13] - 100:1,
 163:11, 164:16,
 171:10, 171:15,
 171:18, 172:4,
 178:18, 195:4,
 196:17, 197:11,
 197:18, 209:4
foot ^[10] - 96:14,
 140:4, 143:1, 143:4,
 161:9, 162:5, 171:3,
 198:5, 200:13,
 320:2
footage ^[2] - 17:9,
 30:4
footprint ^[3] - 6:4,
 8:8, 22:12
FOR ^[1] - 1:1
force ^[1] - 111:18
FOREGOING
^[1] - 332:15
foregoing ^[2] - 297:4,
 331:15
Foreign ^[1] - 215:7
forever ^[1] - 180:16
forewarned ^[1] - 4:11
forget ^[2] - 83:8, 83:9
forgets ^[1] - 84:17
forgive ^[1] - 267:13
forgot ^[1] - 232:16
forgotten ^[1] - 94:9
form ^[5] - 6:9, 41:10,
 55:9, 134:18, 153:9
formalized ^[1] - 47:14
former ^[3] - 35:17,
 212:17, 213:6
formerly ^[1] - 45:7
forth ^[5] - 173:14,

225:5, 267:7,
 313:18, 332:6
forum ^[1] - 208:11
forward ^[10] - 9:12,
 14:6, 54:3, 69:15,
 76:6, 99:18, 166:12,
 177:1, 187:15,
 328:3
foundation
^[3] - 104:1, 104:3,
 270:1
four ^[52] - 7:9, 46:15,
 47:3, 49:5, 52:6,
 52:10, 52:16, 53:4,
 53:15, 54:15, 55:5,
 55:7, 56:6, 56:8,
 57:13, 58:13, 59:6,
 59:9, 66:8, 67:5,
 68:8, 70:17, 73:16,
 74:7, 75:9, 77:5,
 77:13, 78:4, 78:11,
 80:1, 85:3, 86:2,
 87:11, 87:16, 87:17,
 88:18, 93:18, 106:8,
 106:9, 106:11,
 114:7, 119:12,
 190:15, 218:9,
 239:11, 265:10,
 276:14, 293:15,
 304:4
fragrances
^[1] - 203:13
frame ^[7] - 39:10,
 70:4, 74:4, 74:5,
 85:1, 85:14, 123:18
Frances ^[2] - 127:18,
 141:2
Frank's ^[1] - 90:9
Franklin ^[12] - 2:3,
 5:7, 12:2, 24:1,
 34:17, 35:2, 35:13,
 35:15, 35:18, 36:10,
 258:18, 259:5
frankly ^[5] - 51:15,
 129:3, 132:6,
 172:11, 247:3
Frannie ^[1] - 138:5
Fraternal ^[1] - 214:3
frequent ^[1] - 96:2
Fresh ^[3] - 2:7, 122:6,
 123:1
Friday ^[1] - 242:3
friendly ^[1] - 100:17
fringe ^[2] - 240:5,

240:8
FROM ^[6] - 63:9,
 150:1, 166:8, 182:4,
 182:8, 182:11
front ^[11] - 16:2, 31:1,
 33:6, 39:9, 149:14,
 178:16, 190:17,
 250:15, 283:5,
 283:15, 319:18
frontage ^[3] - 219:18,
 220:2, 220:10
frontages ^[1] - 222:6
fronting ^[2] - 219:3,
 226:2
fruit ^[3] - 159:4,
 159:17, 160:2
full ^[6] - 35:18,
 184:15, 214:10,
 229:14, 326:8,
 326:18
fully ^[7] - 25:7, 34:14,
 48:2, 144:2, 144:11,
 326:13, 327:4
function ^[6] - 212:18,
 213:6, 214:13,
 215:2, 216:14,
 267:12
functional ^[1] - 215:3
funding ^[1] - 254:16
furnish ^[2] - 54:15,
 58:13
Fusion ^[1] - 185:2
future ^[1] - 43:17

G

gable ^[1] - 142:18
gained ^[2] - 15:7, 58:5
garage ^[15] - 104:1,
 130:8, 130:11,
 131:11, 131:12,
 131:13, 133:6,
 133:15, 133:18,
 134:2, 134:10,
 135:5, 140:5,
 142:10, 218:9
garages ^[1] - 135:8
garden ^[1] - 7:11
Garden ^[1] - 326:5
Gary ^[3] - 326:1,
 326:8, 326:18
gas ^[3] - 186:17,
 186:18
gate ^[3] - 324:17,

324:18, 325:1
gather ^[1] - 113:18
gathering ^[1] - 260:2
general ^[8] - 150:5,
 163:12, 171:3,
 197:15, 200:8,
 266:6, 266:7, 268:7
GENERAL ^[1] - 1:3
generally ^[2] - 172:5,
 198:9
generated ^[2] - 117:3,
 291:7
generations
^[1] - 40:14
generic ^[1] - 165:4
generous ^[2] - 152:3
gentleman
^[3] - 36:13, 86:6,
 194:18
geographical
^[1] - 298:4
geology ^[1] - 142:4
GEORGE ^[20] - 66:8,
 66:11, 67:1, 67:4,
 67:8, 67:11, 67:13,
 68:1, 68:4, 68:16,
 75:14, 110:3,
 112:10, 153:4,
 234:10, 248:10,
 269:13, 269:17,
 274:7, 316:3
George ^[12] - 1:10,
 43:4, 122:4, 126:4,
 158:4, 202:4, 212:4,
 248:8, 277:4, 300:4,
 316:2, 318:4
given ^[13] - 9:13,
 16:6, 30:7, 71:1,
 83:1, 116:5, 174:14,
 210:18, 249:10,
 256:10, 270:9,
 309:13, 309:14
glad ^[2] - 22:9, 29:1
glass ^[2] - 220:11,
 234:1
GLISSMAN
^[49] - 277:9, 277:11,
 278:13, 279:5,
 279:9, 280:1, 280:8,
 280:13, 281:10,
 282:1, 282:6,
 282:11, 282:14,
 283:2, 284:6,
 284:14, 285:4,

285:10, 285:18,
 286:3, 286:10,
 288:4, 288:12,
 289:17, 290:13,
 299:7, 300:9,
 300:14, 300:17,
 301:6, 301:12,
 301:18, 302:7,
 305:3, 305:6,
 305:18, 309:3,
 309:9, 310:11,
 310:15, 311:3,
 311:6, 312:2,
 312:10, 312:18,
 314:11, 314:14,
 317:4, 317:10

Glissman

[2] - 277:13, 302:8

global [1] - 97:8

goal [2] - 24:8, 51:15

God [1] - 328:4

gonna [6] - 27:6,
 81:16, 84:4, 111:7,
 191:7, 239:5

goodness

[1] - 255:13

governmental

[1] - 296:9

grab [1] - 242:3

grade [7] - 210:3,
 219:17, 220:1,
 226:1, 264:7, 320:7,
 324:17

graduated

[1] - 239:10

grandfathered

[4] - 216:6, 251:3,
 251:5, 254:12

grandson [1] - 239:10

grandson's

[1] - 267:2

grant [30] - 41:7,
 57:10, 63:2, 70:2,
 77:5, 114:1, 119:3,
 143:9, 144:15,
 153:8, 161:12,
 170:14, 197:3,
 199:12, 200:6,
 201:1, 209:11,
 211:11, 215:11,
 222:12, 229:2,
 248:16, 248:18,
 252:3, 272:15,
 291:5, 327:15,

327:16, 330:3
granted ^[25] - 39:14,
 41:2, 41:18, 57:9,
 94:11, 121:4, 127:7,
 142:7, 154:18,
 174:5, 200:14,
 210:10, 222:12,
 267:16, 270:2,
 279:16, 288:16,
 292:14, 294:8,
 296:3, 296:7,
 296:17, 299:4,
 304:8, 330:14
granting ^[12] - 38:16,
 39:2, 120:17,
 150:18, 193:13,
 197:9, 199:15,
 221:7, 228:12,
 272:12, 298:9,
 298:17
grants ^[1] - 222:13
grateful ^[1] - 196:9
gravel ^[1] - 12:10
grease ^[2] - 183:6,
 183:9
great ^[10] - 24:7,
 69:15, 105:13,
 106:3, 146:9,
 147:14, 192:12,
 236:7, 266:15,
 280:9
Greater ^[6] - 236:7,
 236:17, 240:11,
 261:12, 261:15,
 262:13
greater ^[4] - 24:1,
 134:7, 143:7, 152:8
Greek ^[7] - 213:7,
 214:4, 214:9, 215:5,
 215:6, 215:13,
 215:14
Greek-American
^[6] - 213:7, 214:4,
 214:9, 215:5, 215:6,
 215:14
GREEN ^[54] - 9:17,
 13:11, 13:14, 13:17,
 19:3, 39:1, 69:6,
 74:9, 74:14, 105:2,
 108:9, 115:8,
 126:17, 145:1,
 145:3, 145:8,
 145:12, 146:9,
 146:14, 147:1,

147:14, 153:6,
 158:9, 166:12,
 167:17, 175:2,
 175:5, 191:12,
 199:8, 206:8,
 207:18, 228:9,
 235:14, 244:15,
 245:10, 250:9,
 252:6, 274:16,
 275:3, 275:6,
 275:11, 275:15,
 276:10, 283:1,
 286:14, 286:17,
 287:18, 289:8,
 289:10, 300:10,
 307:7, 315:13,
 315:16, 324:4

Green ^[36] - 1:9, 2:11,
 3:5, 5:4, 36:4, 42:1,
 43:3, 121:5, 122:3,
 125:16, 126:3,
 139:17, 155:16,
 158:4, 201:9, 202:4,
 211:16, 212:4,
 217:15, 217:18,
 220:8, 226:2, 226:4,
 232:5, 235:6, 242:7,
 244:4, 256:6, 273:4,
 276:15, 277:4,
 299:5, 300:4,
 317:12, 318:4,
 330:11

green ^[1] - 47:2

grind ^[1] - 203:10

gross ^[3] - 130:12,
 131:14, 142:16

ground ^[4] - 130:17,
 165:13, 170:13,
 171:11

grounds ^[1] - 150:16

group ^[3] - 81:11,
 82:6, 90:5

groups ^[2] - 237:12,
 261:18

guaranteed ^[4] - 86:3,
 108:5, 108:6, 108:7

guaranteeing
^[1] - 78:11

guarantees ^[1] - 75:9

guess ^[14] - 23:14,
 31:2, 50:9, 86:12,
 94:12, 115:8,
 123:10, 123:15,
 193:6, 199:11,

233:11, 268:3,
325:15, 326:16

Gus ^[1] - 252:7

guts ^[1] - 285:14

guy ^[1] - 254:18

guys ^[2] - 182:5,
289:5

gym ^[1] - 262:7

H

H-A-Y-M-E-R

^[1] - 44:5

habitable ^[1] - 323:3

half ^[6] - 34:6, 132:13,
174:15, 187:7,
189:6, 320:2

halfway ^[1] - 96:16

hall ^[7] - 212:18,
213:6, 214:13,
215:2, 216:14,
238:7, 242:16

Hall ^[1] - 215:7

Hancock ^[3] - 21:12,
34:13, 36:7

hand ^[5] - 101:5,
256:16, 278:9,
332:8

handle ^[1] - 34:5

handling ^[1] - 183:6

handmade ^[1] - 209:4

hands ^[6] - 125:13,
155:14, 201:7,
211:13, 264:3,
299:2

handwritten ^[1] - 39:6

happy ^[11] - 37:12,
39:12, 55:8, 58:2,
127:9, 128:12,
133:3, 135:15,
178:8, 184:1, 282:1

hard ^[5] - 10:18,
15:10, 22:15, 35:6

harder ^[1] - 237:9

hardship ^[27] - 38:14,
40:10, 40:16, 71:16,
80:6, 106:4, 107:18,
132:8, 144:12,
153:13, 154:9,
154:14, 222:11,
229:3, 229:8, 236:8,
246:7, 250:10,
250:12, 250:13,
250:16, 254:13,

255:15, 271:12,
 271:13, 272:1
hardships ^[1] - 256:3
harm ^[1] - 110:14
HART ^[5] - 132:14,
 133:11, 148:10,
 148:14, 149:16
Hart ^[4] - 129:12,
 129:13, 132:2,
 133:4
Harvard ^[1] - 142:2
Havana ^[2] - 214:5,
 214:11
hawkinson ^[1] - 253:5
Hawkinson
^[1] - 257:11
HAWKINSON
^[9] - 207:16, 253:2,
 257:9, 257:11,
 257:17, 258:1,
 258:5, 258:13,
 258:15
Hawthorn ^[8] - 2:4,
 126:6, 126:13,
 127:5, 139:16,
 139:17, 142:1,
 143:15
Hawthorne ^[1] - 44:13
HAYMER ^[15] - 66:10,
 66:13, 67:2, 67:6,
 67:10, 67:12, 67:14,
 68:2, 68:10, 68:13,
 69:1, 93:2, 100:4,
 100:8, 108:8
haymer ^[8] - 45:5,
 46:4, 48:5, 49:6,
 52:3, 53:11, 77:11,
 116:4
Haymer ^[2] - 44:5,
 45:3
haymer's ^[11] - 45:6,
 45:12, 46:16, 51:6,
 51:7, 51:11, 51:12,
 51:16, 64:13, 77:5,
 77:13
hazard ^[13] - 117:5,
 117:10, 117:18,
 118:8, 198:6,
 200:17, 210:13,
 211:2, 291:9,
 291:14, 323:14,
 329:3, 329:12
head ^[1] - 312:13
headache ^[1] - 104:3

health ^[8] - 118:1,
177:17, 198:7,
200:17, 211:3,
291:15, 295:5,
329:13

healthy ^[1] - 159:4

hear ^[15] - 26:16,
29:2, 69:18, 72:15,
73:11, 75:15, 76:5,
76:8, 102:12, 126:5,
166:9, 166:13,
193:3, 259:17,
309:15

heard ^[45] - 5:8, 14:5,
21:9, 25:2, 25:14,
29:17, 43:7, 61:3,
77:3, 80:14, 105:4,
112:4, 118:4, 127:1,
138:6, 158:7, 164:6,
176:15, 192:17,
202:7, 202:10,
206:10, 206:14,
232:8, 252:12,
257:8, 260:10,
260:14, 263:12,
263:15, 277:7,
280:4, 290:7, 300:7,
309:1, 314:7,
315:14, 315:17,
316:5, 318:7,
325:12, 325:13,
326:3, 326:10,
327:1

hearing ^[23] - 3:11,
4:10, 25:13, 26:9,
45:10, 60:3, 63:17,
81:12, 94:3, 100:14,
108:10, 122:15,
127:11, 127:13,
150:15, 152:11,
185:8, 193:11,
209:9, 288:6, 309:2,
312:1, 332:6

HEARING ^[1] - 1:3

hearings ^[1] - 99:7

Hearth ^[2] - 206:17,
207:3

heartily ^[1] - 207:1

heavy ^[1] - 305:17

heck ^[1] - 255:8

height ^[26] - 6:3, 6:7,
6:17, 8:10, 14:14,
15:1, 15:3, 15:7,
24:3, 27:13, 27:18,

28:12, 44:12, 132:4,
 133:9, 133:13,
 133:18, 140:2,
 140:4, 143:3, 143:6,
 148:16, 150:16,
 217:7, 304:2, 304:4

heightened

[1] - 152:5

hell [2] - 59:5, 70:3

hello [2] - 202:9,
 319:4

help [3] - 249:18,
 268:10, 328:4

hereby [1] - 331:16

herein [1] - 332:6

hereunto [1] - 332:7

hi [2] - 21:11, 29:18

hiatus [1] - 262:10

hickey [1] - 3:6

Hickey [3] - 1:11, 5:4,
 42:2

HICKEY [14] - 13:9,
 18:14, 18:18, 19:4,
 19:7, 19:10, 19:13,
 26:18, 27:2, 28:6,
 28:8, 29:6, 29:9,
 40:3

High [3] - 100:14,
 239:11, 267:3

high [4] - 59:5, 190:5,
 190:6, 239:18

higher [5] - 30:10,
 37:15, 133:15,
 135:13, 191:4

highlight [1] - 148:8

highly [1] - 55:15

Historic [4] - 127:7,
 141:18, 320:17,
 324:15

historic [1] - 39:8

Historical

[10] - 133:9, 133:13,
 134:4, 135:14,
 141:14, 154:5,
 155:8, 319:9, 322:2,
 322:4

historical [3] - 127:5,
 129:5, 154:2

historically [3] - 49:4,
 111:15, 143:7

history [8] - 128:14,
 173:15, 174:7,
 174:14, 175:8,
 175:9, 214:13,

215:10
hit ^[3] - 91:11, 173:8,
 176:1
hold ^[1] - 266:16
home ^[12] - 40:15,
 45:8, 127:4, 127:5,
 128:10, 128:14,
 142:4, 144:1,
 205:18, 206:2,
 262:9
homes ^[1] - 135:7
honestly ^[1] - 67:18
hope ^[21] - 10:16,
 63:16, 98:10, 100:4,
 143:9, 177:12,
 184:1, 212:6,
 220:14, 221:15,
 223:5, 230:11,
 237:8, 237:14,
 237:16, 238:8,
 238:18, 239:3,
 251:16, 262:12,
 263:16
HOPE ^[31] - 212:7,
 212:15, 213:3,
 215:17, 216:2,
 216:8, 220:5, 220:9,
 220:15, 221:5,
 221:16, 222:15,
 223:18, 224:10,
 224:14, 225:8,
 226:16, 227:1,
 227:6, 229:4, 229:7,
 230:13, 230:17,
 231:16, 232:1,
 232:18, 242:9,
 243:8, 263:17,
 266:9, 276:6
Hope ^[2] - 212:9
hopeful ^[1] - 308:14
hopefully ^[1] - 205:1
hoping ^[2] - 25:9,
 28:16
horn ^[1] - 303:5
horrendous
^[1] - 103:17
horse ^[1] - 112:11
hour ^[4] - 34:6,
 193:17, 206:16,
 271:14
hours ^[5] - 60:2,
 163:6, 165:8, 166:3,
 173:3
House ^[17] - 159:10,

159:14, 162:1,
 166:16, 168:1,
 168:10, 168:13,
 168:17, 170:16,
 170:18, 171:2,
 172:14, 172:15,
 173:1, 173:12,
 174:2, 194:5

house ^[52] - 16:16,
 17:3, 17:4, 19:17,
 23:18, 24:1, 24:10,
 27:4, 27:8, 28:10,
 32:12, 32:13, 33:6,
 39:10, 128:13,
 128:17, 129:1,
 129:6, 129:12,
 129:14, 129:16,
 130:2, 130:4, 131:6,
 131:7, 131:10,
 132:1, 132:10,
 134:1, 134:7, 134:8,
 135:2, 135:10,
 135:11, 135:12,
 135:18, 140:4,
 142:1, 142:9,
 142:17, 142:18,
 145:10, 149:15,
 153:15, 154:1,
 154:3, 154:11,
 154:12, 218:7,
 319:12, 320:15

houses ^[6] - 10:7,
 10:8, 99:5, 135:10,
 149:16, 236:8

housing ^[1] - 162:8

huge ^[2] - 144:1,
 262:4

humor ^[1] - 126:16

husband ^[2] - 139:16,
 194:7

I

idea ^[6] - 105:13,
 229:12, 231:7,
 243:17, 248:13,
 305:7

identification

^[1] - 53:15

identified ^[5] - 46:10,

84:12, 113:13,
 164:5, 222:9

identify ^[4] - 52:16,
 193:8, 200:3,

202:11

II ^[1] - 111:12

imagine ^[1] - 251:9

imfactful ^[1] - 226:3

immediate

^[2] - 140:14, 143:18

immediately

^[1] - 288:6

impact ^[23] - 30:5,

31:18, 32:3, 32:5,

33:7, 49:17, 59:2,

140:9, 140:12,

144:1, 165:7, 171:4,

216:12, 225:18,

231:11, 243:12,

244:2, 262:4,

278:17, 293:6,

293:12, 307:4,

320:4

impacted

^[2] - 177:16, 194:13

impacting

^[1] - 159:15

impacts ^[7] - 72:17,

82:7, 108:16, 128:6,

164:15, 172:4,

208:17

impair ^[5] - 118:10,

198:10, 211:7,

292:1, 329:17

important ^[3] - 23:6,

54:12, 287:10

impose ^[7] - 3:18,

64:4, 82:12, 93:9,

93:11, 117:7,

117:17

imposed ^[1] - 294:6

imposes ^[1] - 154:13

imposing ^[1] - 105:6

impression

^[1] - 288:15

improper ^[1] - 183:6

Improv ^[1] - 254:12

improv ^[3] - 229:10,

251:10, 261:18

improve ^[2] - 83:11,

83:12

improvement

^[3] - 23:13, 135:16,

154:15

improvements

^[1] - 324:13

impulse ^[1] - 162:12

IN ^[2] - 332:7, 332:15

in-depth ^[1] - 92:5
inappropriate
^[1] - 142:15
inasmuch ^[1] - 295:4
inaudible ^[3] - 156:1,
 265:1, 287:5
Inc ^[1] - 159:3
INC ^[1] - 1:15
inches ^[10] - 6:11,
 6:16, 132:14,
 132:16, 143:1,
 143:2, 149:15,
 281:2, 283:9, 287:7
include ^[3] - 91:5,
 133:17, 301:8
included ^[2] - 134:12,
 142:9
includes ^[1] - 298:5
including ^[8] - 12:7,
 12:13, 102:10,
 284:11, 285:8,
 295:2, 296:6,
 298:13
incompatible
^[3] - 72:16, 245:14,
 245:15
inconsistent
^[3] - 109:9, 225:13,
 272:6
incorporate
^[1] - 143:12
incorporated
^[3] - 149:4, 150:4,
 308:3
increase ^[3] - 161:8,
 178:18, 195:5
increased ^[2] - 198:4,
 200:13
increasing ^[1] - 30:4
indeed ^[1] - 58:13
independent
^[2] - 73:2, 168:10
independently
^[2] - 169:10, 208:18
Index ^[1] - 2:15
indicate ^[1] - 28:4
indicated ^[7] - 58:14,
 83:17, 134:15,
 139:1, 197:7,
 208:15, 284:4
indicates ^[1] - 128:2
indicating ^[1] - 91:1
individual ^[3] - 39:5,
 39:15, 209:7

individuals

[2] - 168:16, 298:12

indulgence [1] - 99:6

inform [3] - 4:3, 4:6,
142:11

informal [2] - 91:8,
95:13

information

[4] - 45:18, 81:13,
146:7, 187:14

informed [1] - 214:14

inherent [1] - 154:14

initial [2] - 60:15,
115:6

initialed [1] - 119:14

initialled [5] - 41:12,
153:10, 293:1,
293:9, 330:7

Inman [1] - 205:9

input [1] - 113:18

inside [7] - 179:2,
179:18, 180:6,
180:9, 203:17,
204:1, 204:5

inspection [1] - 92:17

Inspectional

[11] - 57:11, 93:15,
114:4, 119:8, 216:4,
295:11, 295:16,
296:1, 296:13,
298:1, 331:3

inspectors

[1] - 183:10

install [3] - 135:15,
283:15, 320:7

installation

[8] - 277:17, 278:15,
278:16, 283:16,
297:17, 298:3,
307:1, 307:3

installations

[1] - 303:13

installed [1] - 298:8

instead [2] - 120:6,
289:4

instructed [1] - 25:4

INSTRUCTIONS

[2] - 331:1, 331:5

integral [4] - 241:9,
243:15, 267:4,
267:10

integrity [5] - 118:10,
198:10, 211:7,
292:1, 329:17

intend ^[2] - 54:2,
113:3

intended ^[10] - 117:8,
142:12, 227:12,
228:2, 232:4,
243:13, 244:3,
244:11, 247:16

intends ^[2] - 49:6,
94:4

intensified
^[1] - 170:14

intent ^[20] - 41:4,
118:11, 155:3,
211:8, 224:4,
224:18, 225:9,
225:10, 227:7,
230:18, 236:5,
242:18, 243:2,
255:7, 255:8, 264:9,
265:11, 272:13,
292:2, 329:18

intention ^[4] - 112:18,
113:1, 259:14,
307:17

intentions ^[4] - 64:13,
130:14, 145:17,
217:16

interest ^[15] - 9:4,
47:15, 65:2, 66:4,
80:9, 82:1, 82:2,
168:13, 168:17,
168:18, 170:2,
170:5, 184:15,
244:16

interested ^[1] - 122:8

interfere ^[1] - 4:1

interior ^[1] - 17:13

intermission
^[8] - 233:17, 234:10,
234:11, 235:4,
245:8, 249:18,
267:3, 269:10

interpret ^[1] - 312:9

interpretation
^[3] - 58:8, 249:1,
275:14

interpreted
^[1] - 270:8

interpreting
^[1] - 270:17

interrelationship
^[1] - 171:7

interrupt ^[6] - 102:3,
160:9, 163:9, 175:1,

181:3, 289:15

interrupting

[2] - 71:18, 267:14

interviewing

[1] - 147:7

introduce

[3] - 123:12, 137:17,
160:3

introduced [1] - 135:6

invested [1] - 176:5

investigate

[2] - 304:14, 306:2

investigates

[1] - 94:2

involve [2] - 40:9,
153:13

involved [6] - 82:9,
137:13, 176:4,
189:9, 215:12,
215:13

involving [1] - 47:9

ipso [2] - 296:2,
296:18

Irene [1] - 35:14

irrelevant [1] - 199:7

IS [1] - 290:7

isolate [1] - 132:17

issue [38] - 13:4, 23:1,
32:12, 45:10, 85:4,
85:17, 89:2, 90:5,
93:4, 93:7, 95:2,
101:7, 102:13,
102:15, 103:15,
104:5, 108:2,
137:10, 149:12,
160:18, 172:9,
172:10, 178:12,
180:18, 182:14,
183:10, 186:16,
190:16, 196:9,
196:11, 196:13,
203:13, 222:8,
225:6, 254:9,
255:12, 273:8,
285:7

issued [2] - 134:3,
143:11

issues [24] - 7:16,
7:17, 12:7, 44:10,
81:16, 93:5, 102:5,
104:9, 111:16,
127:9, 135:18,
137:12, 146:11,
147:12, 160:12,

160:15, 161:18,
 165:17, 178:4,
 181:1, 182:15,
 203:9, 286:16,
 289:6

items ^[1] - 63:17

itself ^[9] - 12:14,
 129:14, 132:1,
 163:5, 213:15,
 238:6, 256:2, 256:9,
 268:16

J

JACKIE ^[23] - 176:17,
 177:3, 177:7, 179:9,
 179:13, 179:16,
 180:1, 180:5, 181:5,
 181:10, 181:14,
 182:3, 182:13,
 184:17, 185:3,
 185:6, 185:9, 186:1,
 186:10, 186:15,
 187:3, 187:12,
 192:18

Jackie ^[1] - 177:4

jackpot ^[1] - 91:12

JAMES ^[116] - 12:1,
 12:4, 43:9, 43:13,
 43:18, 44:16, 45:2,
 46:14, 50:13, 51:5,
 51:7, 51:12, 52:9,
 52:12, 52:17, 53:2,
 53:5, 54:7, 54:11,
 54:16, 55:2, 56:3,
 56:14, 57:14, 57:17,
 60:1, 60:14, 62:9,
 63:1, 63:5, 63:8,
 63:15, 64:7, 64:9,
 65:6, 65:11, 65:16,
 68:6, 68:11, 71:12,
 71:17, 72:2, 72:11,
 73:11, 78:16, 79:2,
 79:6, 79:8, 80:7,
 81:1, 89:18, 100:6,
 108:14, 112:9,
 112:12, 113:3,
 115:18, 116:3,
 121:6, 126:8,
 126:18, 132:15,
 133:12, 135:3,
 136:11, 136:15,
 137:3, 141:9,
 144:10, 146:4,

146:10, 146:15,
 147:5, 147:18,
 148:2, 148:12,
 148:18, 149:5,
 149:7, 150:7,
 155:17, 156:3,
 156:7, 156:11,
 156:17, 157:2,
 157:11, 158:13,
 158:17, 161:3,
 161:14, 162:17,
 163:15, 164:6,
 166:4, 167:4,
 167:18, 168:5,
 168:11, 168:15,
 169:3, 169:11,
 169:16, 170:3,
 170:6, 170:10,
 171:12, 171:15,
 172:2, 173:18,
 174:12, 174:18,
 175:4, 175:11,
 196:6, 201:11
James ^[6] - 12:1,
 35:7, 36:12, 44:2,
 126:9, 158:18
JAN ^[7] - 123:10,
 123:13, 124:3,
 124:6, 124:16,
 125:1, 125:5
Jan ^[1] - 123:13
Janet ^[15] - 1:9, 3:5,
 5:3, 43:3, 122:3,
 126:3, 158:3, 202:3,
 212:3, 235:12,
 235:13, 244:13,
 277:3, 300:3, 318:3
JANET ^[54] - 9:17,
 13:11, 13:14, 13:17,
 19:3, 39:1, 69:6,
 74:9, 74:14, 105:2,
 108:9, 115:8,
 126:17, 145:1,
 145:3, 145:8,
 145:12, 146:9,
 146:14, 147:1,
 147:14, 153:6,
 158:9, 166:12,
 167:17, 175:2,
 175:5, 191:12,
 199:8, 206:8,
 207:18, 228:9,
 235:14, 244:15,
 245:10, 250:9,

252:6, 274:16,
 275:3, 275:6,
 275:11, 275:15,
 276:10, 283:1,
 286:14, 286:17,
 287:18, 289:8,
 289:10, 300:10,
 307:7, 315:13,
 315:16, 324:4
January ^[3] - 18:17,
 19:15, 20:2
jars ^[1] - 204:11
JEFFREY
^[3] - 260:11, 260:15,
 261:8
Jeffrey ^[1] - 260:16
JENNIFER
^[4] - 156:8, 156:15,
 157:8, 157:14
jeopardy ^[2] - 86:14,
 86:16
jewel ^[1] - 263:8
Jim ^[1] - 83:17
job ^[1] - 56:16
Job ^[1] - 292:11
john ^[1] - 257:11
John ^[5] - 35:16,
 36:18, 142:3, 144:4,
 260:16
JOHN ^[12] - 207:16,
 253:2, 257:9,
 257:11, 257:17,
 258:1, 258:5,
 258:13, 258:15,
 260:11, 260:15,
 261:8
join ^[1] - 151:1
Jonathan ^[5] - 160:3,
 160:4, 166:5,
 168:12
JONATHAN
^[8] - 160:7, 166:6,
 166:11, 166:17,
 167:2, 167:9,
 167:13, 168:4
Jose ^[1] - 269:9
Joseph ^[1] - 325:17
Joyce ^[1] - 36:6
Juan ^[1] - 192:8
judge ^[1] - 22:8
judgment ^[5] - 87:6,
 94:7, 161:11, 173:5,
 246:18
JUDY ^[11] - 21:11,

22:2, 22:6, 23:12,
25:1, 25:17, 26:1,
26:4, 26:10, 26:15,
194:1

Judy ^[5] - 21:11,
25:11, 32:11, 33:5,
194:1

juice ^[5] - 159:4,
159:17, 160:11,
170:17, 233:15

jumped ^[1] - 77:10

June ^[5] - 140:6,
141:6, 141:13,
150:16, 151:9

junior ^[1] - 190:5

Juno ^[1] - 17:6

justify ^[2] - 222:11,
257:1

justifying ^[1] - 256:18

K

K-O-G-E-R ^[1] - 12:4

Kate ^[1] - 36:6

keep ^[6] - 185:12,
188:13, 230:9,
255:1, 267:1,
268:10

keeping ^[1] - 145:10

Kendall ^[1] - 67:16

kept ^[1] - 96:16

key ^[2] - 173:8, 176:1

Keyword ^[1] - 2:15

kicked ^[2] - 276:1,
289:10

kicks ^[1] - 85:7

KIM ^[9] - 99:3, 99:9,
99:12, 100:10,
101:6, 101:12,
103:1, 103:12,
103:15

Kim ^[2] - 99:4, 105:8

kind ^[17] - 8:11, 8:15,
20:12, 28:3, 83:7,
83:9, 97:2, 104:9,
111:16, 149:8,
204:11, 205:6,
245:5, 245:6,
249:17, 265:1,
288:1

kindly ^[1] - 144:14

kindness ^[1] - 123:3

Kirchwey ^[1] - 36:1

KIRCHWEY ^[14] - 9:8,

9:11, 9:18, 10:12,
10:16, 11:17, 19:17,
24:18, 25:11, 25:18,
27:1, 27:3, 27:14,
27:17

kitchen ^[6] - 167:12,
167:14, 169:5,
206:4, 206:5,
320:13

Knowles ^[1] - 142:3

known ^[3] - 128:15,
159:7, 292:11

knows ^[2] - 245:16,
255:8

KOGER ^[2] - 12:1,
12:4

Koger ^[3] - 12:2,
36:12, 36:14

KOPLow
^[10] - 187:16, 188:2,
188:4, 188:9, 189:1,
189:4, 191:14,
192:1, 192:5,
192:12

Koplow ^[1] - 187:17

KRISTIN ^[2] - 145:6,
145:9

Kristin ^[2] - 126:11,
140:1

L

L-A-N-D-A-U

^[1] - 177:4

L-I-U ^[1] - 193:10

L700 ^[5] - 278:2,
278:5, 284:15,
302:10, 302:16

labelled ^[1] - 29:10

lack ^[2] - 23:4, 223:7

Lakeview ^[1] - 123:14

Lakkis ^[1] - 122:13

Lambert ^[2] - 35:16,
36:18

land ^[11] - 48:13,
49:13, 51:1, 55:7,
65:12, 72:7, 73:4,
73:17, 78:4, 78:17,
155:4

landau ^[1] - 190:1

LANDAU
^[23] - 176:17, 177:3,
177:7, 179:9,
179:13, 179:16,

180:1, 180:5, 181:5,
 181:10, 181:14,
 182:3, 182:13,
 184:17, 185:3,
 185:6, 185:9, 186:1,
 186:10, 186:15,
 187:3, 187:12,
 192:18

Landau ^[1] - 177:4

landlord ^[51] - 45:12,
 46:5, 47:1, 47:3,
 48:13, 49:16, 50:15,
 51:2, 51:4, 51:6,
 51:8, 51:11, 51:13,
 51:16, 52:2, 52:5,
 52:18, 53:13, 53:16,
 53:18, 54:14, 56:6,
 58:13, 60:9, 61:14,
 62:5, 65:10, 65:13,
 71:11, 72:3, 72:10,
 72:18, 73:5, 73:18,
 75:15, 75:17, 76:5,
 78:10, 78:12, 79:9,
 79:14, 79:15, 85:5,
 87:4, 95:14, 108:3,
 108:5, 119:7,
 119:12, 254:18

landlord's ^[1] - 48:13

landlords ^[1] - 236:1

landownership

^[1] - 95:4

landscaping

^[1] - 83:12

language ^[3] - 134:2,

224:1, 224:3

large ^[3] - 24:11,

205:5, 325:3

largely ^[7] - 79:12,

196:13, 231:3,

260:11, 260:18,

283:11, 283:17

last ^[36] - 5:16, 6:15,

10:2, 10:5, 14:13,

16:15, 25:13, 46:3,

48:3, 81:2, 81:6,

81:11, 81:12, 89:10,

92:16, 103:16,

113:14, 127:1,

127:11, 131:12,

133:3, 137:10,

138:4, 141:5, 147:3,

147:16, 150:15,

152:11, 183:11,

194:8, 194:17,

208:10, 285:6,
 295:4, 301:12
lastly ^[1] - 316:16
late ^[4] - 89:14,
 193:17, 206:16,
 271:15
latest ^[1] - 156:5
law ^[6] - 164:9, 229:2,
 248:12, 296:8,
 298:16, 318:12
Lawson ^[1] - 332:4
lay ^[1] - 29:1
laying ^[2] - 12:14,
 191:16
layout ^[2] - 281:16,
 295:1
lead ^[2] - 80:2, 220:8
learned ^[1] - 48:1
lease ^[70] - 52:4,
 52:10, 52:15, 53:15,
 54:4, 55:1, 55:9,
 55:10, 55:12, 56:2,
 56:4, 57:3, 57:6,
 57:8, 57:12, 57:18,
 58:3, 58:6, 58:10,
 59:1, 59:3, 59:7,
 59:8, 59:9, 59:10,
 59:13, 59:15, 60:3,
 60:13, 61:12, 61:15,
 61:18, 62:4, 62:6,
 62:14, 70:16, 71:4,
 74:10, 74:12, 74:14,
 75:1, 75:3, 75:8,
 75:9, 77:3, 77:11,
 77:16, 85:12, 106:7,
 106:8, 107:12,
 114:5, 114:13,
 114:15, 114:17,
 114:18, 115:6,
 115:11, 115:14,
 116:4, 116:8, 119:7,
 119:17, 120:7
least ^[8] - 31:9, 88:15,
 91:7, 216:11, 241:6,
 287:2, 295:4
leave ^[3] - 12:10,
 24:15, 25:12
led ^[2] - 66:2, 132:1
left ^[5] - 11:1, 11:3,
 20:8, 46:9, 60:2
Legal ^[1] - 212:9
legal ^[5] - 53:10,
 56:11, 58:7, 81:15,
 254:13

legally ^[5] - 31:11,
 31:12, 50:10, 53:4,
 89:11

legislation ^[1] - 225:3

legislative ^[2] - 255:7,
 255:8

legitimate ^[1] - 102:6

length ^[5] - 109:11,
 175:9, 284:11,
 286:6, 310:6

less ^[12] - 12:18, 28:4,
 33:7, 70:12, 114:15,
 116:5, 116:8, 131:9,
 173:2, 226:2, 254:8,
 310:5

lessening ^[1] - 30:5

lesser ^[1] - 20:9

letter ^[29] - 12:5,
 34:11, 34:15, 35:10,
 35:16, 36:1, 36:3,
 36:6, 36:9, 36:12,
 36:15, 36:18, 64:2,
 81:6, 113:14,
 127:18, 143:15,
 144:11, 146:12,
 187:18, 206:17,
 207:6, 207:10,
 208:6, 313:9,
 322:11, 325:18,
 326:15

letterhead
^[1] - 141:14

letters ^[24] - 9:13,
 9:14, 9:16, 10:2,
 11:12, 13:12, 13:18,
 34:4, 34:6, 34:8,
 37:3, 39:5, 113:13,
 181:13, 181:15,
 181:16, 187:11,
 191:7, 195:14,
 195:18, 321:11,
 325:8, 325:17,
 329:10

level ^[7] - 66:14,
 127:16, 130:17,
 130:18, 250:10,
 254:1

library ^[1] - 218:8

License ^[4] - 111:14,
 174:3, 242:10,
 332:12

license ^[11] - 111:17,
 174:5, 174:15,
 189:10, 190:12,

193:14, 214:7,
 214:10, 214:18,
 224:18, 251:1
licensed ^[1] - 111:14
licenses ^[2] - 251:3,
 297:1
licensing ^[1] - 188:5
Licensing ^[4] - 181:4,
 182:2, 190:11,
 242:1
lifting ^[1] - 24:9
light ^[6] - 14:17, 15:5,
 22:18, 23:4, 23:5,
 23:14
lightly ^[1] - 132:5
lights ^[1] - 268:10
likely ^[1] - 108:15
limit ^[7] - 102:4,
 105:6, 105:13,
 106:9, 143:2, 143:4,
 143:6
limited ^[3] - 85:17,
 160:1, 296:7
line ^[10] - 147:16,
 152:5, 281:3, 281:4,
 281:9, 285:3,
 294:15, 306:16,
 314:1, 320:1
LINE ^[1] - 331:8
lines ^[5] - 281:15,
 281:18, 294:17,
 311:8, 320:2
Lint ^[2] - 189:9,
 190:14
liquor ^[6] - 190:12,
 214:7, 214:10,
 214:18, 251:1,
 251:3
list ^[1] - 281:12
listed ^[1] - 119:13
listen ^[3] - 48:11,
 102:8, 253:6
listened ^[1] - 98:7
listening ^[1] - 98:3
lists ^[1] - 14:1
literal ^[2] - 40:8,
 153:11
littered ^[1] - 146:1
LIU ^[4] - 193:6, 193:9,
 194:17, 195:3
Liu ^[2] - 193:9, 193:10
live ^[24] - 12:2, 21:12,
 21:13, 61:8, 99:4,
 128:11, 139:17,

145:4, 145:6,
 160:16, 177:7,
 178:16, 180:10,
 186:11, 186:12,
 188:9, 194:2,
 252:18, 260:16,
 280:6, 280:9,
 280:12, 284:9,
 319:5
lived ^[3] - 184:16,
 188:9, 194:6
lives ^[2] - 188:7,
 326:17
living ^[7] - 35:17,
 40:12, 47:13, 131:4,
 134:6, 320:8,
 324:11
Liza ^[1] - 312:7
LLC ^[3] - 212:10,
 212:11, 302:9
loading ^[2] - 167:12,
 259:7
loads ^[1] - 178:6
Lobel ^[2] - 277:13,
 302:8
local ^[4] - 205:2,
 209:8, 255:18,
 263:1
located ^[13] - 49:12,
 78:5, 141:17, 159:6,
 213:12, 247:18,
 264:6, 277:17,
 294:1, 301:13,
 302:14, 319:16,
 320:16
location ^[20] - 44:7,
 45:7, 46:16, 53:6,
 58:14, 67:4, 68:9,
 113:8, 119:1, 159:5,
 204:15, 219:17,
 223:1, 265:13,
 294:2, 305:4, 305:6,
 311:9, 328:10
locations ^[2] - 47:17,
 298:11
lock ^[1] - 87:3
logically ^[1] - 231:2
long-term ^[1] - 145:13
longstanding
^[1] - 54:2
look ^[23] - 12:15,
 21:5, 30:2, 31:15,
 54:18, 58:7, 59:8,
 71:7, 74:6, 75:7,

94:15, 97:7, 97:8,
 99:18, 102:17,
 107:16, 107:17,
 115:13, 235:16,
 248:12, 257:14,
 283:1, 324:15
looked ^[5] - 10:17,
 147:8, 215:9, 305:7,
 325:1
looking ^[17] - 21:15,
 29:13, 43:16, 45:6,
 46:12, 73:6, 74:10,
 111:15, 126:12,
 139:7, 196:16,
 236:13, 238:14,
 256:17, 287:7,
 310:5, 323:16
looks ^[2] - 35:6, 35:14
loss ^[1] - 82:9
lost ^[3] - 236:7,
 254:15, 254:16
loud ^[1] - 195:16
louver ^[1] - 287:2
love ^[2] - 263:7,
 290:15
low ^[1] - 12:7
lower ^[5] - 17:5,
 30:18, 106:3,
 130:17, 133:1
lowered ^[3] - 6:2, 6:6,
 8:10
luck ^[1] - 211:15
lucky ^[1] - 91:11
Luna ^[6] - 44:6, 45:3,
 92:15, 111:11,
 111:12
lunchtime
^[1] - 104:14
LYFORD ^[4] - 156:8,
 156:15, 157:8,
 157:14
lying ^[1] - 12:7

M

M-U-G-F-O-R-D
^[1] - 126:12
Ma'am ^[3] - 21:10,
 29:17, 187:13
Madam ^[1] - 43:14
Magazine ^[1] - 218:5
mail ^[5] - 10:2,
 140:17, 189:7,
 189:11, 192:8

mailboxes ^[1] - 11:2
mails ^[1] - 195:14
main ^[6] - 24:12, 82:6,
 143:5, 195:5, 195:7,
 267:11
Main ^[4] - 67:17,
 222:8, 253:8, 255:2
maintain ^[1] - 293:11
maintained
^[2] - 298:10, 316:12
major ^[3] - 12:8,
 104:3
majority ^[2] - 164:14,
 326:6
manage ^[2] - 175:2,
 185:16
managed
^[2] - 165:15, 185:15
management
^[3] - 110:5, 176:8,
 183:8
manager ^[3] - 178:1,
 212:11, 326:6
manages ^[1] - 181:18
manner ^[2] - 49:1,
 264:11
manufacture
^[1] - 202:16
manufacturing
^[2] - 203:6, 203:7
Marie ^[1] - 122:12
Marjorie ^[1] - 34:12
mark ^[1] - 91:12
marked ^[2] - 29:16,
 78:5
markets ^[2] - 204:18,
 205:18
marriage ^[1] - 47:9
married ^[1] - 47:13
Mary ^[1] - 34:16
Mass ^[17] - 43:6, 45:9,
 65:5, 67:17, 79:9,
 82:16, 159:5, 177:7,
 208:4, 208:14,
 217:7, 217:13,
 219:3, 244:6, 251:1,
 264:8, 264:16
mass ^[1] - 132:18
MASSACHUSETTS
^[1] - 332:2
Massachusetts
^[25] - 1:6, 1:6, 2:5,
 2:6, 2:9, 44:3,
 44:15, 44:17, 47:6,

158:6, 159:5,
 165:10, 194:3,
 202:6, 212:14,
 222:7, 223:11,
 223:14, 223:15,
 228:5, 228:7, 248:1,
 250:15, 251:6,
 263:5

massive ^[1] - 145:13

match ^[3] - 278:17,
 303:15, 306:9

Mateo ^[1] - 269:9

materials

^[4] - 162:15, 163:4,
 285:7, 295:2

Matt ^[8] - 45:2, 69:13,
 82:11, 83:17, 95:17,
 105:14, 105:15,
 106:4

Matt's ^[1] - 70:7

matte ^[2] - 285:8,
 295:3

matter ^[38] - 5:9, 14:3,
 14:6, 21:10, 43:8,
 59:4, 69:8, 80:15,
 88:17, 102:4, 112:5,
 116:7, 123:4,
 125:15, 125:17,
 134:11, 137:2,
 137:17, 139:12,
 140:7, 158:8,
 176:13, 176:16,
 178:5, 202:8,
 206:11, 229:1,
 229:2, 252:11,
 277:8, 280:5, 289:5,
 290:6, 290:8, 295:6,
 300:8, 318:8

matters ^[1] - 134:17

Matthew ^[1] - 44:5

MATTHEW

^[15] - 66:10, 66:13,
 67:2, 67:6, 67:10,
 67:12, 67:14, 68:2,
 68:10, 68:13, 69:1,
 93:2, 100:4, 100:8,
 108:8

Maureen ^[1] - 36:14

mean ^[51] - 17:6,
 20:18, 22:8, 22:14,
 27:6, 28:16, 30:16,
 32:10, 33:9, 39:6,
 57:15, 64:10, 68:17,
 76:16, 103:2,

106:14, 108:13,
 114:14, 114:17,
 115:1, 115:14,
 123:17, 123:18,
 160:9, 173:3, 175:1,
 180:1, 181:3,
 215:16, 224:15,
 233:1, 236:6, 237:4,
 238:11, 238:18,
 239:9, 241:7, 248:2,
 251:16, 255:16,
 266:5, 266:18,
 287:12, 287:14,
 289:15, 308:8,
 311:4, 312:8,
 313:17, 324:14
meaning ^[5] - 114:6,
 234:12, 243:2,
 258:6, 292:9
means ^[5] - 71:6,
 93:16, 124:1, 203:1,
 275:11
meantime ^[1] - 248:4
mechanical
^[1] - 303:18
Media ^[1] - 212:10
mediate ^[1] - 253:18
medium ^[1] - 3:16
meet ^[15] - 131:16,
 138:2, 139:10,
 163:12, 164:2,
 197:13, 197:14,
 246:6, 251:5,
 253:12, 270:11,
 271:2, 282:17,
 314:9
meeting ^[13] - 3:8,
 3:16, 4:2, 4:3, 4:4,
 4:11, 5:6, 5:16,
 92:5, 190:11, 315:2,
 315:3, 315:6
meetings ^[4] - 46:4,
 48:10, 73:12, 188:5
meets ^[1] - 197:2
member ^[2] - 253:9,
 261:11
MEMBER ^[6] - 63:9,
 150:1, 166:8, 182:4,
 182:8, 182:11
Member ^[6] - 1:8, 1:9,
 1:9, 1:10, 1:10, 1:11
member's ^[1] - 68:12
Members ^[13] - 3:4,
 5:2, 43:2, 122:2,

126:2, 158:2,
158:18, 202:2,
212:2, 212:8, 277:2,
300:2, 318:2

members ^[16] - 13:7,
44:1, 74:3, 90:15,
90:18, 102:14,
114:1, 151:15,
177:3, 197:6, 206:7,
215:4, 265:10,
270:12, 277:12,
318:11

memo ^[5] - 288:11,
300:13, 303:8,
303:9, 309:12

memorialize

^[1] - 51:16

memorialized

^[2] - 50:4, 81:17

memory ^[3] - 12:8,
132:3, 219:10

mention ^[1] - 324:1

mentioned

^[4] - 66:18, 96:6,
195:1, 214:12

menu ^[1] - 159:18

merely ^[1] - 161:15

meshes ^[1] - 209:2

mess ^[1] - 85:9

message ^[1] - 25:12

messy ^[1] - 308:8

met ^[8] - 64:14, 81:11,
117:1, 134:13,
172:11, 210:10,
255:14, 328:18

meter ^[1] - 186:18

MICHAEL

^[56] - 69:10, 70:2,
70:14, 71:14, 72:1,
76:13, 76:15, 76:18,
80:16, 80:18, 81:3,
81:10, 84:10, 86:12,
87:7, 87:10, 88:1,
88:5, 88:14, 89:6,
89:14, 90:4, 90:17,
91:10, 91:15, 92:4,
92:10, 93:8, 93:14,
94:12, 94:16, 95:2,
95:8, 95:16, 96:11,
97:16, 98:2, 98:6,
98:9, 98:13, 98:18,
105:5, 106:12,
106:16, 107:3,
107:18, 110:13,

111:6, 318:10,
 322:4, 322:17,
 323:15, 323:18,
 324:5, 324:9, 325:9
Michael ^[5] - 34:15,
 69:10, 81:3, 92:2,
 318:12
Middle ^[2] - 236:2,
 292:10
middle ^[4] - 52:3,
 101:14, 106:6,
 319:18
midnight ^[1] - 99:15
might ^[8] - 33:4, 70:6,
 70:9, 90:9, 248:12,
 254:2, 254:3, 310:9
miles ^[2] - 78:14,
 114:9
Miller ^[1] - 206:17
mind ^[4] - 11:13,
 27:10, 43:15, 233:5
mindful ^[2] - 136:16,
 159:12
mingled ^[1] - 176:9
minimal ^[1] - 165:7
minimize ^[1] - 140:12
minimus ^[3] - 154:15,
 278:18, 307:5
minute ^[2] - 87:3,
 179:12
minutes ^[4] - 84:17,
 89:11, 148:14,
 164:5
missed ^[2] - 215:14,
 301:11
missing ^[1] - 223:4
misspelled ^[1] - 326:9
mistaken ^[1] - 270:5
misunderstood
^[2] - 136:14, 180:4
mitigate ^[1] - 142:14
mitigation ^[1] - 128:4
mix ^[2] - 219:6,
 219:12
mixing ^[1] - 208:16
Mobile ^[2] - 277:14,
 302:9
Mobile's ^[3] - 277:16,
 277:18, 302:10
model ^[2] - 229:14,
 230:1
modest ^[1] - 165:6
modification
^[6] - 40:18, 120:15,

129:9, 129:10,
 292:5, 304:8
modified ^[2] - 38:3,
 316:10
modify ^[3] - 282:9,
 303:12, 328:2
moment ^[4] - 54:8,
 94:9, 175:14, 195:6
Monday ^[9] - 25:4,
 129:9, 136:12,
 136:14, 136:16,
 136:17, 137:1,
 138:6, 317:2
money ^[4] - 184:6,
 187:1, 253:17,
 254:16
month ^[6] - 44:9,
 50:12, 72:12, 92:16,
 92:17, 314:10
month's ^[1] - 208:10
monthly ^[1] - 237:1
months ^[10] - 138:5,
 180:14, 189:6,
 194:8, 247:6, 247:8,
 247:10, 254:14,
 293:17
morning ^[9] - 13:16,
 13:17, 66:17, 93:18,
 101:1, 102:1,
 102:11, 104:13,
 136:17
most ^[11] - 37:2,
 64:12, 83:18, 84:5,
 104:13, 108:9,
 111:10, 127:9,
 187:6, 262:5, 280:9
motion ^[16] - 38:15,
 38:18, 40:2, 40:3,
 116:14, 125:10,
 150:10, 153:7,
 198:14, 198:16,
 199:10, 199:18,
 200:2, 200:3,
 274:12, 276:9
motions ^[1] - 270:4
mounted ^[4] - 278:3,
 303:13, 304:4,
 307:2
mounting ^[1] - 306:1
move ^[8] - 23:3,
 37:18, 38:1, 118:16,
 166:12, 189:13,
 283:4, 308:17
moved ^[4] - 65:3,

177:9, 294:13,
325:2

moves ^[20] - 40:5,
41:7, 116:15, 119:3,
182:16, 199:11,
199:12, 200:5,
210:6, 211:10,
271:8, 272:15,
273:8, 290:17,
292:13, 315:12,
316:4, 327:9,
328:15, 330:3

movie ^[1] - 227:16

moving ^[3] - 128:9,
177:10, 204:15

Muesli ^[2] - 207:18,
208:1

MUGFORD
^[2] - 145:6, 145:9

Mugford ^[2] - 126:11,
140:1

mugford ^[2] - 128:9,
146:5

Mugfords
^[6] - 126:12, 128:7,
134:13, 135:14,
140:7, 147:6

Mugfords'
^[1] - 130:14

multi ^[2] - 162:8,
238:7

multi-family
^[1] - 162:8

multi-purpose
^[1] - 238:7

multiple ^[1] - 92:18

municipalities
^[1] - 256:5

music ^[7] - 142:3,
224:6, 233:6, 236:1,
259:9, 259:16,
262:1

must ^[6] - 56:15,
119:8, 197:14,
268:15, 303:4,
317:1

mutual ^[1] - 47:15

mutuality ^[1] - 66:4

mutually ^[1] - 255:3

MYERS ^[44] - 54:4,
54:9, 54:12, 54:17,
55:18, 56:10, 57:2,
57:6, 58:4, 59:15,
74:18, 76:8, 78:2,

78:14, 79:1, 79:4,
 79:7, 80:2, 80:10,
 91:1, 91:11, 91:17,
 92:2, 92:8, 94:18,
 95:5, 95:11, 96:9,
 112:17, 113:10,
 114:12, 114:16,
 115:5, 115:10,
 116:12, 136:4,
 136:13, 137:2,
 137:4, 150:11,
 150:14, 152:16,
 153:1, 157:6

Myers ^[8] - 1:10, 43:4,
 95:10, 121:5, 122:4,
 125:16, 126:4,
 155:16

myriad ^[2] - 222:18,
 256:3

N

naive ^[1] - 285:12

name ^[23] - 5:13,
 14:7, 14:8, 29:18,
 44:2, 77:7, 99:3,
 159:2, 177:1, 182:7,
 185:5, 193:9, 194:1,
 202:11, 202:12,
 212:11, 252:15,
 252:17, 260:13,
 260:15, 277:12,
 318:9, 318:11

namely ^[4] - 113:14,
 198:2, 200:11,
 271:17

names ^[1] - 12:1

narrow ^[2] - 96:18,
 319:8

Natalie ^[1] - 35:4

natural ^[1] - 259:4

nature ^[13] - 39:9,
 117:15, 129:5,
 133:5, 145:14,
 163:5, 195:9, 209:2,
 210:17, 211:1,
 275:5, 309:13,
 329:8

nearby ^[2] - 298:13,
 298:14

nearing ^[1] - 112:15

necessarily
^[7] - 24:11, 216:14,
 232:4, 244:9, 249:9,

255:3, 256:1

necessary ^[4] - 46:15,

61:8, 64:6, 142:12

need ^[38] - 18:5,

23:18, 24:11, 29:16,

38:13, 39:11, 40:12,

50:17, 59:4, 72:14,

73:8, 74:10, 75:10,

90:9, 93:11, 111:13,

112:16, 143:13,

148:17, 172:15,

195:16, 196:18,

203:1, 246:11,

246:12, 249:5,

265:10, 268:18,

270:5, 270:18,

274:12, 275:1,

275:8, 307:14,

312:12, 314:5,

314:8

needed ^[3] - 8:18,

10:4, 109:12

needs ^[7] - 48:5, 48:8,

48:9, 133:8, 133:12,

188:12, 238:10

negated ^[1] - 28:13

negative ^[1] - 23:5

neglected

^[1] - 127:12

negligible

^[1] - 208:17

negotiable ^[1] - 55:9

negotiate ^[4] - 59:13,

77:4, 314:3, 314:5

negotiated ^[1] - 77:12

neighbor ^[5] - 10:11,

56:10, 99:13, 125:6,

200:8

neighbor's ^[1] - 56:8

neighborhood

^[31] - 7:15, 9:4, 12:9,

12:13, 39:3, 39:15,

64:15, 85:9, 85:15,

100:12, 100:16,

103:16, 107:8,

117:6, 117:11,

138:11, 147:2,

147:9, 196:18,

200:8, 205:7,

208:10, 210:14,

225:12, 225:14,

225:16, 226:1,

231:4, 291:10,

325:3, 329:4

neighborhoods

[1] - 33:11

neighboring

[1] - 152:8

neighborly

[2] - 181:7, 181:9

neighbors [29] - 7:16,

7:17, 9:5, 9:12,

10:14, 10:18, 31:18,

32:4, 32:6, 38:11,

66:3, 93:16, 100:18,

104:8, 106:2, 107:4,

133:16, 137:13,

140:8, 145:15,

152:18, 159:15,

177:13, 177:15,

185:11, 190:3,

192:6, 208:17,

325:5

neighbors' [1] - 109:3**network** [1] - 278:1**never** [9] - 11:4, 30:3,

48:11, 174:2,

190:18, 214:18,

221:6

nevertheless

[1] - 171:8

New [1] - 240:6**new** [27] - 6:15, 8:5,

9:6, 9:16, 11:12,

13:10, 18:8, 21:15,

23:10, 23:12, 24:4,

29:14, 37:15, 50:11,

81:13, 85:6, 111:4,

142:10, 195:7,

205:2, 236:5, 263:4,

278:7, 297:6,

302:16, 316:11

newer [1] - 16:9**NEWMAN**

[37] - 212:13, 215:6,

221:1, 221:9,

231:13, 233:12,

234:4, 234:9,

234:14, 235:18,

236:16, 237:8,

237:14, 238:2,

238:18, 240:5,

240:10, 240:15,

240:17, 241:10,

241:14, 241:17,

242:4, 247:8, 249:3,

251:10, 251:16,

252:2, 259:14,

266:2, 266:5,
 267:13, 268:12,
 269:5, 269:15,
 269:18, 273:6

Newman ^[1] - 212:13

next ^[14] - 34:6, 45:4,
 50:11, 50:12,
 159:10, 159:11,
 205:3, 207:4, 242:6,
 260:5, 284:10,
 313:3, 314:17

next-door

^[5] - 159:10, 159:11,
 205:3, 207:4, 242:6

nice ^[9] - 76:4, 97:1,
 100:16, 101:1,
 138:2, 191:6, 254:6,
 254:18, 287:13

Nicholas ^[1] - 35:4

night ^[8] - 81:11,
 99:14, 99:16,
 101:14, 178:9,
 242:3, 315:14,
 315:17

nightclub

^[4] - 227:17, 255:6,
 259:9, 269:11

nights ^[1] - 266:16

nighttime ^[1] - 237:12

nine ^[2] - 6:16, 180:13

nitpick ^[1] - 97:12

nobody ^[2] - 123:8,
 139:14

Noelie ^[1] - 35:3

NOELIE ^[1] - 35:3

noise ^[19] - 7:16,
 101:9, 101:18,
 102:1, 103:3,
 104:15, 108:12,
 109:4, 160:14,
 171:3, 178:17,
 180:8, 180:12,
 180:14, 188:14,
 189:8, 190:1, 191:3,
 191:15

noisy ^[1] - 178:11

non ^[18] - 38:6, 38:7,
 40:17, 113:1,
 148:11, 148:13,
 154:13, 178:12,
 179:7, 197:1,
 213:16, 213:18,
 216:18, 218:11,
 272:2, 319:7,

323:11

non-binding

[1] - 113:1

non-conforming

[12] - 38:6, 38:7,
40:17, 148:11,
148:13, 154:13,
213:16, 213:18,
216:18, 218:11,
319:7, 323:11

non-disposables

[1] - 197:1

non-residential

[1] - 272:2

non-smoking

[2] - 178:12, 179:7

none [2] - 163:2,

255:5

nonetheless

[1] - 152:6

noon [1] - 19:16

norm [1] - 233:7

Norris [12] - 45:9,

47:7, 82:5, 82:8,
85:8, 88:8, 96:7,
99:4, 105:9, 105:12,
106:1, 110:14

north [1] - 152:1

North [10] - 45:8,

45:14, 64:3, 69:11,
81:4, 113:14, 208:6,
208:11, 209:1,
209:9

Northeast

[2] - 277:14, 302:9

nose [1] - 266:16

NOT [1] - 332:15

Notary [2] - 332:4,

332:11

note [3] - 155:17,

261:3, 331:6

noted [3] - 209:1,

219:10, 331:16

notes [1] - 303:17

nothing [12] - 58:18,

59:1, 64:9, 124:12,
124:18, 188:14,
195:8, 205:5, 265:2,
286:9, 301:4, 325:4

notice [4] - 154:4,

155:7, 297:7, 306:6

noticed [1] - 319:9

notification

[2] - 137:12, 296:12

notified ^[1] - 92:6
notify ^[1] - 296:5
notifying ^[1] - 3:14
notion ^[1] - 86:5
novo ^[1] - 85:18
nuisance ^[8] - 117:18,
 118:8, 198:6,
 200:16, 211:2,
 291:14, 323:13,
 329:12
nuisances
^[2] - 227:13, 243:12
nullify ^[1] - 155:2
nullifying ^[1] - 41:3
number ^[18] - 3:18,
 11:2, 11:3, 12:6,
 24:16, 24:17, 34:4,
 35:8, 64:5, 162:8,
 164:17, 172:13,
 197:16, 215:11,
 240:11, 261:16,
 270:6
numbers ^[1] - 131:18
numerous
^[1] - 262:15
Nussli ^[2] - 207:10,
 207:11
NUSSLI ^[1] - 207:11
nutritional ^[1] - 208:2

O

o'clock ^[1] - 101:15
O'Grady ^[1] - 1:12
O'GRADY ^[6] - 120:4,
 120:6, 120:13,
 149:11, 315:4,
 315:7
objecting ^[1] - 11:10
objection ^[1] - 248:17
objectionable
^[3] - 231:8, 232:12,
 243:18
objections ^[1] - 209:8
objectors ^[1] - 9:10
obligated ^[2] - 58:2,
 58:13
obligation ^[1] - 54:14
oblige ^[1] - 282:2
obstacle ^[1] - 136:7
obtain ^[2] - 60:4,
 265:16
obtuse ^[1] - 131:17
obviously ^[2] - 27:16,

55:10
occasion ^[1] - 250:1
occupant ^[5] - 40:14,
 118:2, 211:4,
 291:16, 329:14
occupants
^[1] - 298:13
occupied ^[1] - 82:11
occupy ^[3] - 56:5,
 56:6, 209:5
occur ^[3] - 127:16,
 163:2, 320:2
occurred ^[1] - 296:15
odor ^[2] - 109:4,
 203:9
odors ^[2] - 160:1,
 160:10
OF ^[6] - 1:1, 1:2,
 332:2, 332:15,
 332:15, 332:16
offensive ^[1] - 303:7
offer ^[2] - 90:8,
 309:17
offering ^[1] - 220:12
offerings ^[1] - 262:16
office ^[5] - 13:16,
 44:3, 88:11, 128:15,
 162:9
offices ^[1] - 215:11
Offices ^[1] - 212:9
official ^[1] - 321:17
OFFICIAL ^[1] - 1:15
offset ^[1] - 249:18
oft ^[1] - 165:6
often ^[1] - 178:11
oftentimes
^[1] - 165:11
old ^[4] - 18:1, 99:13,
 141:18, 301:16
older ^[1] - 40:11
on-site ^[1] - 88:6
once ^[3] - 37:13,
 148:4, 183:3
one ^[102] - 3:11, 7:10,
 7:11, 10:1, 10:2,
 10:5, 10:11, 10:12,
 11:8, 16:8, 16:9,
 16:11, 18:1, 18:5,
 19:2, 20:8, 20:10,
 20:11, 36:17, 47:7,
 59:3, 63:11, 71:2,
 72:13, 83:3, 84:5,
 91:3, 91:10, 91:15,
 97:1, 98:16, 100:13,

101:7, 102:2, 109:5,
 110:8, 110:15,
 119:5, 128:16,
 145:3, 148:11,
 151:3, 155:10,
 160:5, 160:11,
 164:16, 169:16,
 173:11, 183:2,
 184:9, 186:6,
 189:17, 190:3,
 190:7, 192:5, 194:3,
 194:17, 195:13,
 196:9, 197:8,
 198:12, 206:13,
 207:4, 208:8, 213:4,
 213:5, 218:13,
 220:17, 223:18,
 224:15, 229:8,
 239:6, 262:5,
 263:14, 269:10,
 276:16, 281:12,
 281:13, 284:2,
 284:9, 284:10,
 286:7, 286:15,
 287:2, 287:17,
 300:13, 300:16,
 302:1, 302:10,
 304:11, 304:12,
 306:3, 306:6, 306:7,
 309:7, 312:5, 313:2,
 313:3, 325:17

one-year ^[1] - 72:13

ones ^[10] - 83:16,
 100:7, 100:9,
 105:10, 108:10,
 156:5, 157:10,
 278:12, 280:11,
 286:13

ongoing ^[3] - 124:14,
 262:14, 295:7

open ^[28] - 3:15, 13:8,
 14:3, 69:7, 96:16,
 101:15, 109:14,
 111:11, 119:6,
 137:15, 147:16,
 159:3, 166:7,
 176:12, 176:13,
 188:13, 215:15,
 228:18, 242:5,
 247:12, 248:5,
 252:10, 266:5,
 266:7, 268:7, 274:5,
 290:6, 315:4

opened ^[3] - 119:6,

194:6, 215:1
opening ^[6] - 114:3,
 120:7, 204:5, 255:6,
 263:5
opera ^[1] - 262:1
operate ^[10] - 45:6,
 61:10, 169:5,
 169:10, 214:18,
 219:6, 220:18,
 223:16, 228:13,
 271:1
operated ^[1] - 219:11
operating ^[4] - 73:15,
 126:13, 172:15,
 208:12
operation ^[23] - 3:18,
 46:16, 101:8, 101:9,
 117:12, 118:18,
 161:5, 162:12,
 163:6, 164:15,
 165:8, 165:17,
 166:3, 173:3, 173:9,
 210:15, 246:1,
 246:10, 256:13,
 270:9, 274:7,
 291:11, 329:6
operational ^[2] - 66:9,
 260:2
operationally
^[2] - 48:8, 168:5
operations
^[4] - 63:18, 170:13,
 176:9, 262:9
operator ^[3] - 44:6,
 118:15, 160:5
opinion ^[4] - 29:1,
 114:5, 119:10,
 170:12
opinions ^[4] - 151:14,
 151:15, 193:11,
 194:12
opportunities
^[2] - 244:18, 304:14
opportunity
^[11] - 50:18, 63:12,
 83:11, 98:1, 127:15,
 140:8, 140:18,
 150:12, 151:6,
 158:11, 218:14
oppose ^[1] - 177:10
opposed ^[9] - 23:11,
 162:6, 215:18,
 227:14, 227:17,
 233:15, 245:7,

276:16, 312:10

opposing ^[1] - 16:16

opposite ^[1] - 47:8

opposition ^[3] - 17:8,
34:9, 150:15

option ^[5] - 30:6,
71:4, 107:13, 108:4,
262:18

options ^[1] - 219:15

order ^[8] - 3:9,
163:11, 171:18,
197:11, 197:18,
265:4, 286:5,
310:17

ordinance ^[2] - 92:14,
189:8

Ordinance

^[33] - 31:13, 40:9,
41:5, 89:12, 116:18,
117:14, 118:12,
152:6, 153:12,
154:10, 154:17,
155:3, 165:3, 210:9,
211:9, 225:1, 226:6,
226:7, 243:18,
251:15, 257:12,
261:4, 268:5,
272:13, 291:2,
291:3, 292:3,
316:13, 320:5,
320:10, 320:12,
328:17, 330:1

Organization

^[1] - 214:3

organization

^[1] - 236:13

organizations

^[1] - 261:17

orient ^[1] - 159:8

oriented ^[1] - 269:16

original ^[1] - 331:2

originally ^[3] - 25:6,
83:5, 90:5

otherwise

^[6] - 118:11, 198:17,
211:8, 292:2,
296:11, 329:18

ourselves

^[1] - 175:14

outbreak ^[1] - 96:7

outlet ^[1] - 159:4

outlets ^[1] - 209:4

outset ^[5] - 3:13,
85:3, 86:1, 119:18,

301:2

outside ^[8] - 178:10,
179:9, 179:11,
179:16, 180:9,
203:15, 204:4,
233:7

overall ^[1] - 8:7

overflow ^[1] - 90:9

overlapping

^[1] - 103:7

overlay ^[2] - 232:15,
255:9

Overlay ^[14] - 213:4,
213:13, 217:3,
217:4, 219:8,
221:13, 222:1,
222:14, 223:9,
228:3, 244:7,
250:14, 269:8,
270:6

override ^[1] - 102:14

overturning

^[1] - 261:4

owing ^[3] - 40:16,
154:10, 253:13

own ^[11] - 49:18,
120:1, 167:15,
167:17, 167:18,
173:14, 186:13,
186:17, 233:16,
253:7

owned ^[7] - 45:13,
65:12, 73:4, 186:4,
209:1, 214:8, 218:7

owner ^[11] - 45:12,
55:4, 146:16, 170:2,
186:4, 186:9,
186:10, 202:15,
206:18, 254:14,
326:6

owners ^[6] - 48:16,
143:17, 181:17,
187:5, 193:1,
318:15

ownership ^[8] - 55:7,
79:18, 168:13,
168:15, 168:16,
168:18, 171:6,
172:17

owns ^[7] - 46:7, 47:1,
47:2, 47:4, 72:7,
79:9, 96:15

P

P-I-R-A-N-I ^[1] - 194:2

p.m ^[17] - 1:4, 3:3,
5:1, 43:1, 122:1,
126:1, 136:16,
158:1, 166:11,
202:1, 212:1, 277:1,
300:1, 316:12,
317:2, 318:1,
330:15

package ^[2] - 156:9,
156:12

packages ^[1] - 229:17

packaging
^[1] - 208:12

PAGE ^[2] - 2:1, 331:8

page ^[2] - 41:11,
330:6

pages ^[3] - 143:13,
156:12, 156:13

Paine ^[1] - 142:3

paint ^[4] - 306:9,
306:13, 306:17

painted ^[5] - 278:17,
285:7, 295:2,
303:15, 306:15

panel ^[1] - 27:11

paper ^[1] - 45:4

paperwork ^[1] - 94:7

paragraph
^[1] - 297:11

paragraphs
^[1] - 297:5

park ^[14] - 47:17,
55:5, 55:7, 55:17,
56:7, 56:11, 58:12,
65:12, 67:5, 72:6,
72:7, 88:6, 88:8,
89:4

parking ^[65] - 45:11,
47:5, 47:18, 48:17,
49:2, 49:9, 52:6,
52:10, 52:13, 52:16,
54:15, 56:6, 57:1,
57:13, 58:14, 58:18,
59:6, 59:10, 62:6,
62:7, 65:3, 65:8,
68:2, 72:17, 73:1,
73:4, 73:16, 74:6,
74:8, 75:10, 75:13,
77:5, 77:13, 78:4,
78:11, 79:13, 82:7,
85:3, 85:6, 85:7,

86:2, 87:1, 87:11,
 87:17, 88:13, 88:18,
 89:1, 89:3, 89:7,
 89:12, 99:5, 113:4,
 114:7, 123:1, 124:8,
 124:11, 130:11,
 138:12, 139:3,
 146:1, 162:18,
 163:2, 218:8, 324:7

Parkway ^[3] - 2:7,
 122:7, 123:2

Parson ^[1] - 34:12

Parsons ^[1] - 34:12

PARSONS ^[1] - 34:12

part ^[26] - 39:9, 39:13,
 54:5, 54:10, 63:13,
 118:17, 131:6,
 149:6, 191:11,
 229:11, 229:14,
 229:17, 232:11,
 233:10, 238:4,
 241:9, 243:16,
 267:10, 267:11,
 277:18, 286:8,
 301:7, 301:18,
 302:10, 309:8,
 320:15

partially ^[1] - 183:2

particular
^[9] - 111:16, 154:4,
 200:9, 218:16,
 232:16, 238:16,
 244:3, 255:10,
 268:6

particularly ^[6] - 7:15,
 23:4, 27:11, 28:10,
 129:4, 304:1

parties ^[2] - 8:1, 82:1

parts ^[1] - 226:4

party's ^[1] - 80:9

partying ^[1] - 227:11

passageway

^[1] - 96:13

past ^[5] - 124:10,
 129:9, 184:8, 187:7,
 215:10

Patricia ^[1] - 35:6

PATRICK ^[56] - 51:6,
 51:10, 64:16, 65:1,
 65:7, 65:14, 110:7,
 110:15, 166:2,
 166:10, 166:14,
 166:18, 167:3,
 167:11, 167:15,

168:2, 186:2, 186:8,
 186:12, 205:14,
 205:17, 206:4,
 235:10, 235:15,
 236:11, 237:5,
 237:11, 237:18,
 238:11, 241:18,
 242:8, 249:12,
 249:14, 250:17,
 251:7, 252:13,
 252:17, 253:4,
 256:15, 257:6,
 269:7, 274:8,
 275:13, 285:3,
 286:12, 286:15,
 287:1, 287:9,
 304:18, 309:17,
 310:2, 310:14,
 310:18, 312:14,
 316:1, 324:7
Patrick ^[12] - 1:9,
 43:3, 122:3, 126:3,
 158:4, 202:4, 212:4,
 252:17, 277:4,
 300:4, 318:4,
 318:13
patron ^[2] - 265:17,
 268:8
patronize ^[1] - 263:1
patrons ^[2] - 273:18,
 274:6
pattern ^[1] - 176:10
patterns ^[3] - 117:3,
 165:4, 291:7
pay ^[6] - 63:3, 87:4,
 191:4, 237:9,
 241:12, 241:14
paying ^[2] - 186:15,
 186:18
pays ^[1] - 132:6
peak ^[2] - 132:11,
 133:1
Pearl ^[2] - 218:5,
 319:5
pedestrian ^[1] - 162:2
pediatrician
^[1] - 128:15
pending ^[1] - 139:18
penthouse
^[8] - 278:4, 283:13,
 302:15, 303:15,
 304:1, 304:13,
 305:13, 310:4
people ^[51] - 4:6, 7:8,

10:7, 14:1, 17:7,
 26:7, 30:6, 35:9,
 47:13, 69:4, 69:17,
 82:9, 83:7, 83:9,
 89:4, 100:18, 101:2,
 101:13, 101:15,
 111:10, 147:8,
 160:11, 162:10,
 164:1, 164:18,
 165:2, 172:13,
 173:3, 176:3, 178:5,
 178:9, 178:15,
 179:3, 179:14,
 180:9, 183:14,
 190:17, 198:5,
 199:5, 200:13,
 226:12, 226:13,
 227:10, 227:14,
 235:8, 236:4,
 244:16, 245:6,
 251:14, 259:8,
 273:18

per ^[2] - 89:12, 153:8

perceived

^[2] - 147:10, 159:14

percent ^[1] - 160:18

perfect ^[2] - 107:12,
 269:9

perfectly ^[3] - 102:6,
 116:6, 135:15

performance

^[11] - 226:13,
 234:16, 242:2,
 242:5, 249:17,
 250:7, 262:2, 263:2,
 264:15, 274:8,
 274:10

performances

^[3] - 234:18, 266:6,
 267:2

performed ^[1] - 154:8

performing

^[6] - 238:5, 261:2,
 261:11, 261:17,
 262:13

perhaps ^[3] - 43:17,
 160:14, 203:11

Period ^[1] - 199:13

period ^[18] - 60:17,
 61:5, 61:9, 62:8,
 71:1, 73:14, 83:7,
 97:8, 102:7, 103:2,
 106:15, 107:5,
 107:6, 110:18,

216:11, 228:6,

293:17, 297:14

periods ^[1] - 237:6

permission

^[3] - 56:11, 58:12,

124:7

permit ^[4] - 13:5,

301:14, 302:2,

304:7

Permit ^[83] - 61:5,

61:17, 63:3, 71:8,

72:14, 73:2, 73:15,

74:4, 74:17, 75:4,

83:1, 85:2, 85:13,

85:14, 86:17, 94:10,

97:11, 102:5,

102:13, 109:8,

114:2, 114:11,

115:2, 115:16,

116:17, 117:1,

119:3, 119:15,

120:18, 121:4,

122:14, 123:1,

144:18, 148:7,

148:17, 161:13,

197:3, 197:9,

197:11, 199:13,

199:16, 200:6,

200:15, 201:1,

201:4, 202:16,

203:2, 207:9,

209:12, 210:5,

210:8, 210:10,

211:11, 292:14,

295:8, 296:3, 296:7,

296:17, 297:3,

297:6, 297:10,

297:17, 298:8,

298:18, 299:4,

303:12, 318:18,

319:1, 319:2, 319:7,

321:9, 323:1,

323:17, 326:3,

326:10, 326:14,

327:1, 327:5,

327:11, 327:16,

328:18, 330:3,

330:13

permits ^[2] - 83:1,

143:17

Permits ^[4] - 144:3,

163:12, 197:15,

294:7

permitted

[3] - 117:13, 173:10,
222:5

person [10] - 3:14,
18:6, 181:18,
185:15, 185:16,
207:2, 239:13,
253:17, 265:15,
298:3

personal [2] - 84:9,
229:16

personally [6] - 31:3,
85:1, 85:13, 86:4,
136:10, 221:2

perspective
[7] - 44:11, 48:6,
48:7, 50:15, 61:7,
127:3, 138:12

pest [1] - 104:2

petition [11] - 35:1,
35:8, 35:12, 39:7,
122:13, 122:17,
122:18, 124:4,
202:15, 297:12,
297:18

petitioner
[25] - 41:10, 57:11,
123:17, 153:14,
153:15, 158:11,
158:12, 229:16,
292:6, 292:14,
292:18, 293:8,
293:10, 293:15,
294:4, 294:8,
294:11, 295:10,
296:5, 296:11,
297:5, 298:1, 298:4,
316:7, 325:13

petitioner's
[3] - 118:13, 295:14,
296:18

petitions [1] - 297:14

PH [1] - 126:11

phone [6] - 11:3,
24:16, 25:18, 26:1

phonetic [1] - 17:6

phonetic) [1] - 192:8

photo [5] - 278:8,
278:14, 293:7,
293:13, 316:17

photographs
[1] - 17:13

photos [1] - 164:17

physical [3] - 292:7,
293:6, 293:11

pick ^[3] - 25:3, 86:4,
96:2

pick-ups ^[1] - 96:2

picture ^[2] - 18:18,
289:8

pictures ^[6] - 188:15,
188:16, 189:16,
189:17, 191:13,
191:17

piece ^[1] - 45:4

piggyback
^[1] - 182:12

Pines ^[1] - 81:4

PIRANI ^[1] - 194:1

Pirani ^[1] - 194:1

place ^[17] - 67:8,
101:17, 152:18,
172:18, 236:3,
239:15, 239:16,
242:16, 245:3,
245:5, 250:18,
255:10, 262:11,
270:10, 275:10,
283:11, 303:18

Place ^[7] - 2:14,
318:6, 319:12,
319:17, 326:7,
326:10, 326:17

placement ^[3] - 3:18,
96:4, 154:12

places ^[8] - 176:4,
227:13, 236:10,
245:1, 247:18,
251:2, 258:6, 258:8

plan ^[22] - 8:16, 11:7,
11:12, 12:6, 12:17,
13:1, 23:13, 46:10,
50:17, 55:5, 60:10,
73:17, 78:6, 79:3,
119:13, 140:9,
140:12, 159:8,
204:10, 308:3,
313:12, 319:14

plan's ^[1] - 6:5

planned ^[1] - 209:3

Planning ^[36] - 20:17,
25:3, 37:3, 37:4,
100:13, 141:3,
141:6, 141:7, 279:4,
279:10, 279:13,
282:10, 282:18,
287:17, 287:18,
288:5, 288:14,
288:15, 293:3,

300:13, 303:2,
 303:4, 303:8,
 303:11, 303:16,
 304:6, 308:2,
 308:10, 309:11,
 311:7, 311:15,
 312:4, 313:9, 314:4,
 314:16, 315:10
planning ^[3] - 6:15,
 27:12, 242:4
plans ^[41] - 5:17,
 6:16, 8:5, 9:6,
 10:17, 11:1, 18:9,
 23:10, 25:4, 25:16,
 26:5, 29:4, 30:9,
 34:18, 41:9, 127:14,
 129:10, 130:16,
 150:8, 155:11,
 155:18, 208:11,
 224:8, 259:15,
 279:11, 282:7,
 282:9, 282:16,
 292:18, 294:11,
 294:13, 309:5,
 316:17, 319:15,
 326:12, 327:3,
 327:17, 328:2,
 328:6, 328:12,
 330:5
play ^[2] - 262:11,
 283:7
playing ^[1] - 235:17
plays ^[2] - 236:5,
 236:10
Pleasant ^[1] - 252:18
pleased ^[4] - 9:1,
 127:16, 152:13,
 208:18
pleasure ^[1] - 139:9
plenty ^[1] - 315:10
plus ^[1] - 255:11
Plymouth ^[1] - 260:16
point ^[43] - 22:17,
 38:2, 53:7, 64:16,
 69:5, 70:12, 71:18,
 73:10, 74:1, 81:18,
 84:9, 86:8, 98:7,
 100:10, 102:12,
 110:1, 110:8, 114:8,
 116:1, 120:10,
 160:16, 160:17,
 166:1, 181:8, 190:4,
 190:7, 191:18,
 216:16, 223:5,

242:10, 242:14,
 245:10, 246:3,
 258:4, 258:12,
 268:12, 300:18,
 301:1, 303:10,
 308:6, 308:8
pointed ^[1] - 252:1
points ^[1] - 197:12
pole ^[1] - 152:5
Political ^[3] - 213:8,
 214:4, 214:9
Pond ^[3] - 2:7, 122:6,
 123:1
pop ^[1] - 235:2
popular ^[8] - 159:9,
 164:9, 164:11,
 164:13, 173:2,
 174:16, 178:8,
 214:7
popularity ^[1] - 175:3
portion ^[1] - 132:12
portions ^[1] - 28:12
ports ^[1] - 283:5
position ^[5] - 48:11,
 50:2, 170:7, 170:8,
 193:13
positioned
^[2] - 281:14, 294:16
possibility ^[3] - 61:4,
 87:2, 306:3
possible ^[4] - 237:10,
 254:3, 308:16,
 310:10
possibly ^[5] - 82:12,
 125:3, 153:2, 216:5,
 312:7
posting ^[1] - 316:10
potential ^[6] - 67:17,
 82:1, 82:13, 83:15,
 104:15, 134:10
potentially ^[5] - 65:9,
 140:13, 237:7,
 305:11
pour ^[1] - 235:5
practicable
^[1] - 294:3
practically ^[1] - 28:13
practice ^[1] - 54:2
practicing ^[1] - 61:2
pre ^[3] - 140:18,
 154:10, 213:16
pre-construction
^[1] - 140:18
pre-existing

[2] - 154:10, 213:16

preaching

[1] - 260:18

precious [1] - 251:7

precise [1] - 168:12

preclude [2] - 47:4,
153:14

predates [1] - 213:17

predict [1] - 22:15

preempted

[1] - 216:12

prefer [4] - 111:10,
178:7, 313:2, 313:9

preferred [1] - 133:14

premises [12] - 58:3,
78:15, 161:9,
203:15, 203:18,
214:8, 228:4,
228:14, 265:16,
271:10, 272:6,
273:15

preparation

[2] - 160:1, 208:12

prepared [4] - 113:6,
149:1, 260:17,
330:5

preparing [1] - 4:10

prescription

[1] - 223:6

presence

[3] - 172:18, 220:11,
265:1

present [10] - 18:14,
19:1, 53:16, 53:17,
109:3, 109:4,
127:12, 139:6,
165:18, 208:11

presentation

[4] - 63:14, 129:16,
289:16, 318:16

presented [4] - 44:10,
151:6, 151:11,
256:3

preserve [3] - 17:11,
17:15, 24:5

preserved [1] - 17:16

preserving [2] - 39:9,
100:15

president [4] - 45:15,
50:4, 50:11, 69:11

presume [1] - 310:2

pretty [2] - 65:17,
194:9

prevent [1] - 46:18

previous ^[8] - 28:5,
59:16, 157:8,
255:17, 259:6,
294:7, 302:18,
307:3

previously
^[2] - 259:10, 293:13

primarily ^[6] - 127:2,
127:14, 162:7,
219:2, 259:1,
259:18

primary ^[10] - 213:9,
215:18, 224:15,
225:2, 231:9,
232:11, 236:5,
236:18, 259:11,
268:8

Prince ^[2] - 277:13,
302:8

principal ^[6] - 134:13,
165:10, 222:5,
226:7, 226:8, 319:5

priority ^[1] - 147:13

privacy ^[3] - 7:16,
32:10, 32:12

problem ^[24] - 31:11,
39:14, 39:15, 39:16,
57:4, 96:6, 103:17,
104:7, 104:15,
145:18, 175:6,
179:1, 179:4, 180:7,
182:17, 183:4,
183:12, 184:3,
187:1, 195:6,
279:18, 285:9,
285:10, 309:13

problematic ^[1] - 61:6

problems ^[20] - 10:11,
95:18, 97:9, 97:10,
105:15, 107:9,
146:2, 164:4,
170:17, 171:1,
171:2, 185:3, 185:6,
185:8, 185:10,
188:14, 194:7,
259:6, 259:10,
279:7

procedural ^[1] - 136:7

procedure ^[1] - 104:7

proceed ^[7] - 41:8,
98:14, 228:15,
232:13, 292:17,
318:17, 330:4

proceeding

[1] - 89:10

proceedings

[2] - 60:6, 332:6

processing

[1] - 160:1

produce [1] - 203:13

producer [1] - 261:12

product [2] - 162:10,
208:13

production

[3] - 238:13, 239:5,
239:13

productive [1] - 48:10

professional

[1] - 29:2

professionals

[1] - 27:11

Professor [1] - 142:3

professor [1] - 142:4

profile [1] - 132:10

profit [1] - 269:16

program [2] - 8:18,
45:17

programs

[3] - 237:17, 238:3,
238:9

progress [1] - 180:12

prohibit [5] - 65:4,
243:2, 243:14,
264:10, 265:12

prohibited [3] - 217:9,
221:18, 273:11

prohibition

[1] - 257:14

project [17] - 9:5,
31:5, 34:10, 39:4,
39:13, 39:18, 67:17,
94:15, 129:13,
129:17, 141:17,
142:12, 142:14,
150:6, 247:4,
277:15, 302:11

projects [1] - 147:3

prominent

[2] - 109:12

promise [1] - 100:5

promote [1] - 217:12

promoted [1] - 218:17

promptly [1] - 293:18

prongs [1] - 302:4

pronouncing

[1] - 261:14

proof [1] - 308:13

proper [1] - 187:5

properly ^[3] - 46:1,
183:7, 185:17

properties ^[5] - 152:9,
176:2, 176:11,
218:6, 218:10

property ^[26] - 30:2,
47:3, 48:16, 55:4,
55:16, 56:8, 65:4,
72:6, 79:9, 79:17,
82:16, 103:18,
119:8, 130:8, 140:6,
144:4, 146:16,
151:13, 151:18,
154:14, 155:6,
215:10, 250:13,
253:8, 319:16

proponent
^[2] - 208:15, 304:13

proponents
^[1] - 142:7

proposal ^[8] - 19:9,
34:14, 34:18, 35:18,
130:7, 151:11,
154:16, 279:4

propose ^[3] - 114:1,
304:10, 306:17

proposed
^[39] - 10:15, 19:4,
19:6, 28:8, 31:12,
117:15, 118:2,
118:9, 129:12,
142:8, 142:16,
142:17, 142:18,
144:3, 154:7, 161:7,
166:3, 198:9, 200:7,
210:12, 210:17,
211:4, 211:6, 225:3,
271:9, 272:5, 291:8,
291:13, 291:16,
291:18, 292:6,
293:7, 293:11,
304:2, 304:3,
304:15, 329:5,
329:8, 329:16

proposing ^[10] - 6:9,
81:7, 118:14, 159:3,
220:1, 246:14,
278:5, 302:15,
319:10, 320:7

proprietor ^[1] - 207:3

proscriptive
^[1] - 222:10

Prospect ^[8] - 219:4,
222:9, 222:16,

229:10, 232:2,
 251:11, 252:1,
 254:9
prospective ^[1] - 44:6
protect ^[3] - 217:11,
 244:4, 244:11
protected ^[1] - 298:14
protection
^[1] - 245:13
protections
^[1] - 298:12
proud ^[1] - 261:11
prove ^[1] - 172:12
proves ^[2] - 164:8,
 164:11
provide ^[7] - 12:11,
 46:15, 50:16, 55:8,
 60:10, 78:3, 279:12
provided ^[7] - 47:3,
 222:4, 227:3,
 230:16, 258:10,
 297:6, 321:11
providing ^[3] - 55:14,
 58:3, 262:15
provision ^[3] - 77:12,
 109:15, 270:7
provisions ^[3] - 40:9,
 57:2, 153:12
public ^[29] - 13:8,
 14:3, 37:6, 37:8,
 41:3, 69:8, 82:2,
 113:17, 137:16,
 144:8, 155:1, 163:1,
 176:13, 197:5,
 209:9, 209:17,
 215:8, 215:16,
 222:5, 232:8, 252:6,
 252:11, 266:6,
 266:7, 268:7, 290:6,
 290:11, 297:7,
 327:7
Public ^[2] - 332:4,
 332:11
pulled ^[1] - 8:11
punted ^[1] - 289:9
punting ^[2] - 312:14,
 312:16
purchase ^[1] - 162:12
purpose ^[11] - 41:4,
 118:12, 155:3,
 204:15, 211:9,
 225:1, 231:10,
 238:7, 268:8, 292:3,
 330:1

purposes ^[3] - 272:2,
272:10, 272:11

pursuant ^[3] - 297:4,
297:10, 298:8

put ^[15] - 27:5, 29:11,
69:16, 71:5, 74:3,
84:11, 84:16, 101:5,
102:4, 140:10,
191:11, 236:10,
238:13, 286:7,
310:3

puts ^[1] - 88:3

putting ^[6] - 12:15,
17:2, 58:18, 61:13,
97:6, 305:7

puzzled ^[1] - 28:1

Q

qualifications
^[2] - 197:2, 209:14

qualified ^[1] - 261:3

qualify ^[1] - 133:6

quality ^[1] - 160:15

quantities
^[1] - 204:12

quantity ^[1] - 39:3

Queen ^[1] - 142:1

questions ^[18] - 13:7,
66:7, 69:4, 69:6,
125:8, 136:3, 137:4,
137:6, 137:7,
145:16, 150:10,
206:6, 289:14,
289:18, 290:3,
312:3, 312:7

quick ^[1] - 111:18

quicker ^[2] - 198:16,
276:7

quickly ^[1] - 309:5

quiet ^[2] - 101:12,
101:16

quietly ^[1] - 227:15

quite ^[12] - 13:11,
24:11, 34:17, 40:11,
146:13, 147:4,
172:10, 214:6,
226:8, 286:10,
303:6, 303:17

R

R-A-V-A-N-I-S
^[1] - 77:8

R-O-B-I-S-O-N

[1] - 325:18

racist [1] - 191:4

radiation [1] - 298:15

radio [1] - 304:3

radiofrequency

[1] - 298:15

RAFFERTY

[114] - 43:9, 43:13,
 43:18, 44:16, 45:2,
 46:14, 50:13, 51:5,
 51:7, 51:12, 52:9,
 52:12, 52:17, 53:2,
 53:5, 54:7, 54:11,
 54:16, 55:2, 56:3,
 56:14, 57:14, 57:17,
 60:1, 60:14, 62:9,
 63:1, 63:5, 63:8,
 63:15, 64:7, 64:9,
 65:6, 65:11, 65:16,
 68:6, 68:11, 71:12,
 71:17, 72:2, 72:11,
 73:11, 78:16, 79:2,
 79:6, 79:8, 80:7,
 81:1, 89:18, 100:6,
 108:14, 112:9,
 112:12, 113:3,
 115:18, 116:3,
 121:6, 126:8,
 126:18, 132:15,
 133:12, 135:3,
 136:11, 136:15,
 137:3, 141:9,
 144:10, 146:4,
 146:10, 146:15,
 147:5, 147:18,
 148:2, 148:12,
 148:18, 149:5,
 149:7, 150:7,
 155:17, 156:3,
 156:7, 156:11,
 156:17, 157:2,
 157:11, 158:13,
 158:17, 161:3,
 161:14, 162:17,
 163:15, 164:6,
 166:4, 167:4,
 167:18, 168:5,
 168:11, 168:15,
 169:3, 169:11,
 169:16, 170:3,
 170:6, 170:10,
 171:12, 171:15,
 172:2, 173:18,
 174:12, 174:18,

175:4, 175:11,
196:6, 201:11

Rafferty ^[17] - 44:2,
81:14, 89:6, 89:17,
110:1, 112:8, 126:7,
126:9, 144:8, 158:8,
158:9, 158:16,
159:1, 160:17,
195:2, 196:4,
197:12

Rafferty's ^[1] - 84:3

raise ^[2] - 27:12,
136:6

raised ^[4] - 23:2,
102:5, 209:9, 273:9

raising ^[5] - 17:3,
17:4, 24:3, 136:7,
267:4

ran ^[1] - 103:17

rare ^[1] - 142:6

rather ^[8] - 70:17,
88:6, 97:7, 97:11,
111:12, 175:7,
311:18, 312:8

rats ^[3] - 103:17,
108:12, 146:2

RAVANIS ^[4] - 77:7,
77:14, 77:17, 78:7

Ravanis ^[1] - 77:7

Ravanisses ^[1] - 90:8

raw ^[2] - 207:12,
207:13

read ^[27] - 35:6,
35:10, 141:4,
174:11, 174:13,
195:16, 208:8,
224:1, 224:4, 226:9,
226:17, 227:11,
242:14, 242:17,
243:3, 244:10,
257:12, 264:4,
265:7, 265:10,
266:10, 303:8,
321:12, 325:7,
329:10, 331:15

readily ^[1] - 66:1

reading ^[7] - 34:6,
163:13, 230:10,
243:18, 307:8,
326:17, 331:6

Reading ^[8] - 122:12,
139:16, 141:7,
141:15, 143:16,
208:9, 303:11,

325:18

readings ^[1] - 238:8

ready ^[5] - 145:11,

209:18, 271:4,

290:15, 327:8

real ^[3] - 105:5,

137:10, 308:13

reality ^[4] - 48:9, 55:3,

172:16, 249:17

realize ^[2] - 269:7,

310:8

really ^[51] - 8:7, 8:15,

12:12, 13:3, 28:9,

52:1, 62:1, 66:13,

67:3, 70:1, 70:18,

74:7, 84:3, 84:14,

92:4, 96:4, 96:18,

97:14, 110:4, 135:1,

135:9, 151:9,

155:18, 162:2,

173:8, 176:1,

177:12, 177:15,

183:11, 191:5,

207:14, 213:1,

217:6, 217:11,

217:18, 218:4,

218:9, 218:12,

224:4, 243:5,

244:15, 254:8,

254:18, 255:11,

260:3, 266:14,

268:5, 272:6,

307:14, 324:14,

324:15

reapply ^[1] - 123:17

rear ^[12] - 49:9, 129:3,

130:8, 133:8,

134:14, 140:5,

142:18, 259:1,

259:3, 259:8,

259:12, 273:10

rearrangement

^[1] - 106:5

reason ^[16] - 3:11,

7:12, 16:14, 38:4,

48:14, 54:9, 92:12,

110:10, 115:14,

172:18, 177:11,

198:14, 250:4,

259:18, 310:12,

331:7

REASON ^[6] - 331:9,

331:10, 331:11,

331:12, 331:13,

331:14

reasonable ^[5] - 3:17,
62:17, 83:18,
296:15, 297:8

reasonably
^[1] - 294:3

reasons ^[6] - 39:17,
102:3, 152:9, 201:3,
223:12, 252:4

receipt ^[5] - 34:4,
122:11, 206:15,
296:12, 297:17

received ^[1] - 217:16

recent ^[2] - 189:16,
217:16

recently ^[4] - 83:5,
122:13, 136:5,
214:14

recessed ^[1] - 152:7

reciprocal
^[1] - 126:17

recognize ^[1] - 23:18

recollection ^[1] - 6:14

recommend
^[3] - 24:8, 118:6,
304:10

recommendation
^[1] - 313:13

recommendations
^[6] - 279:8, 279:11,
279:14, 279:17,
280:10, 308:2

recommended
^[1] - 304:9

reconstruction
^[1] - 127:3

record ^[17] - 44:2,
54:5, 54:10, 101:4,
126:9, 137:18,
174:7, 174:10,
191:11, 200:3,
202:11, 212:12,
303:9, 321:13,
325:7, 331:16,
332:6

RECORD ^[1] - 1:15

recorded ^[1] - 96:14

recorder ^[1] - 4:7

recording ^[3] - 3:15,
4:4, 4:7

records ^[3] - 4:9,
130:13, 131:3

recourse ^[1] - 103:5

recruited ^[1] - 239:12

rectangle ^[1] - 79:9
reduce ^[4] - 8:7, 15:1,
 142:16, 306:5
reduced ^[2] - 6:4,
 129:15
reducing ^[2] - 15:7,
 284:3
reduction
^[2] - 129:11, 162:18
refer ^[3] - 27:10, 94:1,
 329:9
reference ^[1] - 143:13
referenced
^[1] - 141:17
references ^[1] - 147:9
referred ^[2] - 146:11,
 293:14
referring ^[3] - 52:13,
 54:5, 190:2
reflect ^[4] - 151:4,
 174:8, 282:9,
 316:11
reflected ^[1] - 260:1
reflective ^[1] - 140:16
refresh ^[1] - 132:3
regard ^[21] - 40:6,
 40:13, 73:1, 95:6,
 95:15, 113:2,
 116:16, 118:13,
 147:10, 159:14,
 200:9, 210:7, 246:5,
 271:9, 274:13,
 290:18, 294:7,
 294:8, 296:9,
 327:10, 329:9
regarding ^[9] - 9:6,
 23:2, 45:10, 137:12,
 140:8, 143:16,
 155:8, 293:3,
 295:12
Reginald ^[1] - 142:4
registered ^[1] - 88:7
regular ^[1] - 236:14
regularly ^[1] - 96:1
regulate ^[1] - 242:10
regulation ^[1] - 296:9
regulations
^[1] - 253:18
regulatory ^[1] - 109:6
rehearing ^[1] - 276:3
rehearsal ^[5] - 213:8,
 238:7, 271:10,
 271:18, 272:16
relate ^[1] - 79:5

related ^[8] - 44:12,
127:3, 132:8, 134:1,
144:12, 164:14,
168:7, 172:5

relates ^[3] - 92:10,
140:14, 320:5

relationship
^[23] - 47:10, 47:12,
48:3, 48:14, 48:15,
49:4, 50:3, 50:5,
50:7, 51:14, 51:17,
52:1, 53:12, 66:2,
69:15, 72:3, 72:18,
79:14, 80:3, 82:4,
110:5, 168:2,
169:17

relatively ^[2] - 152:3,
152:7

relevance ^[1] - 131:8

relevant ^[4] - 55:15,
111:1, 265:3,
266:10

relief ^[30] - 38:8,
38:13, 40:18, 41:1,
55:11, 57:10, 132:7,
133:5, 133:16,
134:12, 140:2,
142:11, 143:9,
144:14, 150:5,
153:8, 154:17,
154:18, 170:15,
212:16, 231:7,
249:5, 252:4,
266:17, 272:12,
279:1, 279:16,
290:18, 291:5,
291:6

Relief ^[2] - 279:2,
292:10

relies ^[1] - 68:8

relocated ^[2] - 50:18,
68:9

rely ^[4] - 53:12,
146:17, 162:7,
163:3

relying ^[7] - 52:4,
55:6, 55:16, 56:1,
56:4, 169:4, 173:5

remain ^[3] - 283:17,
293:12, 324:13

remaining
^[2] - 156:13, 157:4

remains ^[3] - 143:4,
170:11, 323:6

remarks ^[1] - 196:5
remember ^[7] - 185:4,
 185:7, 190:12,
 215:13, 246:12,
 270:6, 314:15
remote ^[1] - 304:3
removals ^[1] - 129:18
remove ^[5] - 97:2,
 122:18, 142:14,
 190:15, 293:18
removed ^[1] - 129:2
removing ^[1] - 131:5
Renaissance
^[2] - 263:6, 263:9
rendered ^[1] - 84:18
renders ^[1] - 154:12
renew ^[8] - 61:15,
 62:4, 62:5, 71:8,
 85:12, 97:11,
 102:13
renewed ^[1] - 83:2
renovations
^[2] - 127:4, 129:7
rent ^[7] - 59:2, 63:4,
 87:4, 237:9, 238:15,
 241:13, 241:14
rental ^[1] - 215:2
rentals ^[1] - 237:2
rented ^[1] - 215:8
repair ^[1] - 104:2
Repertory ^[1] - 237:3
repetitive
^[2] - 297:12, 297:14
replace ^[1] - 278:6
report ^[11] - 9:7,
 127:17, 155:8,
 196:12, 206:15,
 295:11, 295:15,
 295:17, 296:1,
 296:14, 325:16
REPORTER
^[1] - 332:16
Reporter ^[2] - 332:4,
 332:11
REPORTERS
^[1] - 1:15
reposition
^[1] - 281:17
represent
^[2] - 122:12, 174:1
representations
^[1] - 64:14
representatives
^[1] - 46:5

represented

[3] - 83:16, 90:5,
322:5

representing

[3] - 48:5, 202:13,
265:15

REPRODUCTION

[1] - 332:15

reputations

[1] - 147:11

request [7] - 122:16,

144:13, 144:14,
293:4, 301:9, 302:3,
321:7

requested [10] - 41:7,

143:17, 153:8,
161:13, 199:13,
209:11, 211:11,
274:13, 327:11,
330:4

requesting

[1] - 212:16

requests [1] - 321:4**require** [6] - 65:3,

113:9, 154:17,
205:5, 220:10,
284:16

required [8] - 65:8,

65:12, 73:3, 84:1,
89:8, 89:11, 92:13,
316:13

requirement

[6] - 60:6, 109:7,
130:10, 172:3,
281:8, 282:16

requirements

[25] - 3:17, 32:17,
38:4, 46:17, 73:4,
75:13, 116:18,
146:18, 162:13,
163:12, 164:3,
197:10, 197:13,
197:15, 210:9,
246:7, 251:5,
270:12, 271:3,
291:2, 291:4, 296:8,
302:1, 323:17,
328:17

requires [6] - 38:8,

40:18, 88:3, 89:3,
109:7, 268:17

Res [1] - 217:1**rescind** [1] - 110:11**reservations**

[1] - 45:16

reserved [1] - 215:4

reside [4] - 34:13,
34:16, 36:7, 40:14

residence [2] - 44:12,
223:3

Residence

[4] - 214:1, 217:17,
218:3, 218:4

resident [5] - 35:13,
186:9, 207:1, 237:3,
261:10

Resident [1] - 213:14

residential

[13] - 100:15,
165:12, 198:2,
200:12, 220:18,
221:4, 225:13,
225:16, 271:15,
272:2, 272:4,
272:10

residentially

[1] - 271:16

residentially-zoned

[1] - 271:16

residents [3] - 35:2,
160:12, 298:13

resides [2] - 36:10,
36:15

resistant [1] - 148:3

resolved [1] - 183:18

resource [1] - 239:7

respect [9] - 50:2,
58:4, 75:2, 75:3,
136:9, 171:13,
174:1, 235:9, 312:3

RESPECT

[1] - 332:16

respectfully

[6] - 122:16, 164:7,
190:2, 190:7,
196:15, 253:10

respects [1] - 294:6

respite [1] - 152:14

respond [2] - 33:14,
70:12

responded [1] - 64:4

response [3] - 111:6,
168:12, 194:18

Response [13] - 34:2,
112:6, 122:9, 123:7,
137:8, 139:13,
195:12, 199:17,
206:12, 263:13,

290:4, 290:9,
325:14

responsibility

[1] - 298:6

rest [4] - 15:11, 104:8,
179:8, 321:3

Restaurant

[1] - 185:2

restaurant

[25] - 109:1, 111:8,
111:9, 111:13,
159:9, 163:5,
171:10, 178:10,
178:18, 179:1,
179:2, 180:9,
180:10, 182:16,
183:7, 184:7, 185:1,
187:8, 190:16,
195:4, 196:12,
205:2, 213:10,
214:15, 224:9

restaurants

[4] - 103:16, 209:4,
263:1, 264:16

restore [2] - 154:1,
294:1

restriction [2] - 116:7,
140:2

restrictions

[3] - 217:8, 242:12

resubmitted [1] - 5:17

result [5] - 46:6,
127:14, 160:13,
165:6, 200:14

resulted [1] - 48:16

resulting [3] - 160:14,
291:8, 329:4

retail [6] - 57:18,
186:3, 204:16,
208:16, 217:11,
217:13

retailers [1] - 204:18

return [1] - 94:18

returning [1] - 294:10

revenue [3] - 229:13,
265:5, 268:14

Reverend [1] - 325:17

review [13] - 31:4,
60:17, 61:5, 61:12,
62:13, 70:10, 72:15,
86:18, 110:18,
127:10, 131:2,
151:6, 151:7

reviewed [7] - 51:13,

127:6, 136:9, 141:7,
 303:11, 313:10,
 313:11
revised ^[2] - 15:4,
 313:12
revisions ^[1] - 316:17
revisit ^[2] - 85:4,
 85:18
revisited ^[1] - 151:13
revoked ^[1] - 297:1
rewind ^[1] - 44:18
rewritten ^[1] - 250:7
RF ^[1] - 283:3
RICHARD ^[3] - 138:1,
 139:1, 139:9
Richard ^[1] - 138:1
Ride ^[1] - 212:10
ridge ^[3] - 143:5,
 152:5
Rieder ^[4] - 326:2,
 326:9, 327:1
rightly ^[1] - 58:9
rise ^[2] - 229:7, 250:1
rises ^[3] - 104:10,
 250:10, 254:1
risk ^[1] - 61:14
road ^[1] - 289:11
roast ^[1] - 203:11
robison ^[1] - 325:18
rock ^[1] - 235:17
rodent ^[2] - 96:7,
 104:7
rodents ^[1] - 92:18
roll ^[1] - 245:4
roof ^[14] - 24:5, 132:9,
 132:11, 132:12,
 132:18, 133:1,
 133:2, 133:15,
 135:13, 304:3,
 305:13, 310:6
roofscape ^[1] - 8:12
rooftop ^[3] - 283:12,
 303:18, 304:6
room ^[6] - 6:6, 7:5,
 139:6, 167:5, 238:7,
 279:13
ROSE ^[32] - 5:10,
 5:15, 6:2, 6:12, 7:1,
 7:4, 7:9, 8:2, 8:6,
 8:11, 8:14, 15:9,
 15:16, 16:3, 16:5,
 17:10, 18:1, 18:4,
 18:7, 18:10, 18:13,
 18:16, 19:2, 19:15,

20:2, 20:5, 20:8,
20:11, 21:17, 22:5,
28:15, 37:9

Rose ^[1] - 5:11

ROURKE ^[3] - 75:18,
76:2, 78:8

rows ^[1] - 138:14

ruined ^[1] - 183:2

rules ^[3] - 177:14,
187:6, 298:10

ruling ^[1] - 91:5

run ^[7] - 72:14,
100:17, 188:12,
221:8, 247:12,
248:4, 248:17

runoff ^[1] - 12:11

runs ^[3] - 118:18,
188:11, 306:14

RUTH ^[14] - 9:8, 9:11,
9:18, 10:12, 10:16,
11:17, 19:17, 24:18,
25:11, 25:18, 27:1,
27:3, 27:14, 27:17

Ruth ^[4] - 14:12,
24:14, 24:17, 36:1

S

S-A-R-Y-A-N

^[1] - 21:12

sadly ^[1] - 240:18

safer ^[1] - 323:4

safety ^[10] - 118:1,
163:1, 177:17,
198:7, 200:18,
211:3, 223:12,
291:15, 298:10,
329:13

sale ^[2] - 204:16,
205:1

sales ^[3] - 208:16,
241:13, 241:16

salsa ^[1] - 214:5

SAME ^[1] - 332:15

sanitary ^[1] - 95:17

sanitation ^[6] - 84:2,
92:7, 92:11, 92:14,
93:4, 93:13

Sarah ^[2] - 35:7,
321:15

SARYAN ^[10] - 21:11,
22:2, 22:6, 23:12,
25:1, 25:17, 26:1,
26:4, 26:10, 26:15

Saryan ^[1] - 21:11
sat ^[1] - 266:15
satisfactory
^[2] - 91:8, 95:6
satisfied ^[8] - 59:12,
 72:5, 110:9, 118:7,
 138:18, 197:17,
 291:4
satisfy ^[9] - 46:17,
 49:2, 59:7, 60:6,
 73:3, 75:12, 79:18,
 130:10, 173:6
satisfying
^[1] - 196:17
saves ^[1] - 171:4
saw ^[7] - 8:13, 13:17,
 148:14, 161:17,
 164:14, 188:1,
 188:15
scale ^[4] - 135:8,
 208:15, 261:18,
 262:9
scare ^[1] - 241:6
scenario ^[1] - 18:17
scheduled
^[1] - 122:14
scheme ^[1] - 28:5
School ^[3] - 100:14,
 239:11, 267:3
school ^[2] - 190:6,
 240:1
scientific ^[1] - 295:7
SCOTT ^[2] - 28:3,
 28:9
Scott ^[5] - 1:8, 3:5,
 5:3, 27:12, 42:1
scratch ^[1] - 190:9
screen ^[6] - 304:17,
 305:7, 305:9,
 305:11, 305:14,
 310:10
screening ^[5] - 91:13,
 92:9, 95:2, 95:15,
 113:2
scripted ^[1] - 236:5
Sean ^[3] - 1:12, 212:8,
 252:1
SEAN ^[37] - 120:4,
 120:6, 120:13,
 149:11, 212:7,
 212:15, 213:3,
 215:17, 216:2,
 216:8, 220:5, 220:9,
 220:15, 221:5,

221:16, 222:15,
 223:18, 224:10,
 224:14, 225:8,
 226:16, 227:1,
 227:6, 229:4, 229:7,
 230:13, 230:17,
 231:16, 232:1,
 232:18, 242:9,
 243:8, 263:17,
 266:9, 276:6, 315:4,
 315:7
season ^[1] - 238:16
seat ^[2] - 80:18,
 226:12
seated ^[1] - 126:10
seats ^[2] - 236:3,
 240:8
second ^[25] - 7:14,
 13:10, 60:16, 63:11,
 74:6, 94:15, 97:7,
 97:8, 101:17,
 102:17, 107:17,
 114:10, 119:15,
 130:10, 140:3,
 200:2, 228:10,
 257:14, 281:13,
 293:3, 315:3, 315:6,
 316:9, 320:8
seconds ^[2] - 191:9,
 191:16
secret ^[1] - 324:7
Section ^[9] - 163:10,
 164:3, 197:13,
 273:12, 275:1,
 279:1, 292:10,
 301:9, 302:4
section ^[19] - 165:9,
 221:14, 230:3,
 243:5, 243:10,
 244:11, 246:9,
 246:11, 247:17,
 250:5, 264:1, 270:8,
 270:14, 270:17,
 273:13, 274:14,
 275:9, 306:6,
 319:18
sections ^[2] - 165:3,
 165:4
sector ^[1] - 310:13
see ^[77] - 9:15, 13:9,
 15:4, 15:8, 15:10,
 15:11, 15:16, 15:17,
 16:7, 18:2, 19:12,
 20:12, 22:3, 22:10,

26:7, 26:18, 28:17,
 32:3, 36:2, 38:9,
 39:12, 48:12, 58:5,
 62:6, 62:7, 65:17,
 74:6, 75:1, 75:3,
 75:8, 82:10, 82:14,
 85:16, 86:13, 90:12,
 90:13, 91:5, 95:8,
 97:9, 102:2, 107:12,
 115:11, 120:2,
 123:8, 130:16,
 139:14, 143:9,
 170:12, 172:13,
 189:1, 191:12,
 196:1, 216:5, 221:7,
 221:11, 229:1,
 229:9, 230:6,
 235:15, 241:1,
 241:8, 245:10,
 245:11, 245:15,
 247:3, 263:8, 278:8,
 278:14, 285:15,
 301:10, 306:14,
 313:2, 313:9, 317:9,
 324:16

seeing ^[3] - 21:3,
 32:4, 263:3

seeking ^[4] - 219:5,
 271:17, 279:1,
 292:15

seem ^[3] - 106:2,
 111:1, 245:2

selectively
^[1] - 230:11

selfish ^[1] - 239:10

sell ^[4] - 204:10,
 208:13, 268:8,
 269:1

selling ^[3] - 204:17,
 223:9, 239:7

send ^[3] - 141:11,
 188:15, 189:7

Senior ^[1] - 1:5

sense ^[12] - 54:13,
 55:18, 97:14, 98:14,
 108:2, 112:14,
 135:2, 136:7,
 240:14, 255:9,
 269:10, 304:5

sensitive ^[2] - 7:13,
 147:4

sensitivity
^[2] - 140:11, 147:12

sent ^[4] - 10:1,

174:13, 189:16,
 191:18
separate ^[8] - 166:16,
 169:6, 169:12,
 172:3, 173:12,
 186:4, 186:9,
 186:10
September
^[8] - 225:5, 315:2,
 315:9, 316:11,
 316:15, 317:3,
 317:9, 332:8
series ^[1] - 213:18
serious ^[1] - 23:1
seriously ^[2] - 5:16,
 308:1
serve ^[11] - 80:8,
 223:17, 228:2,
 228:15, 247:5,
 247:14, 247:18,
 250:5, 251:11,
 258:7, 258:9
served ^[4] - 270:10,
 273:17, 274:3,
 275:5
serves ^[5] - 66:4,
 79:11, 251:12,
 260:5, 273:10
Service ^[1] - 93:15
serviced ^[1] - 95:18
Services ^[10] - 57:11,
 114:4, 119:9, 216:5,
 295:11, 295:16,
 296:2, 296:14,
 298:2, 331:3
services ^[2] - 167:12,
 169:12
serving ^[9] - 213:10,
 224:13, 233:13,
 234:6, 234:8, 246:5,
 259:9, 261:4,
 268:16
session ^[1] - 140:6
sessions ^[1] - 3:15
set ^[9] - 26:2, 60:3,
 65:8, 65:9, 242:11,
 290:1, 290:2, 332:6,
 332:7
setback ^[4] - 32:17,
 152:2, 152:8, 217:7
setbacks ^[2] - 133:8,
 151:17
setting ^[1] - 146:7
Seven ^[1] - 81:4

seven ^[4] - 147:2,
 218:6, 316:12,
 320:2

several ^[9] - 17:6,
 46:4, 81:8, 84:13,
 142:14, 217:5,
 219:11, 262:7,
 325:5

severely ^[1] - 105:11

sewer ^[11] - 180:18,
 182:14, 182:15,
 182:17, 183:1,
 183:4, 194:5, 194:8,
 195:5, 196:9,
 196:11

shading ^[1] - 12:18

shadow ^[22] - 5:17,
 14:17, 15:2, 15:6,
 15:10, 15:12, 16:12,
 17:18, 18:12, 19:1,
 20:10, 21:1, 21:15,
 22:4, 22:8, 22:10,
 22:14, 27:6, 28:11,
 28:12, 32:3, 32:5

shadows ^[2] - 28:1,
 32:8

shall ^[14] - 9:4,
 221:18, 222:4,
 293:10, 293:18,
 294:13, 295:3,
 295:10, 295:15,
 296:2, 296:13,
 296:17, 297:12,
 298:1

shape ^[1] - 217:6

share ^[2] - 146:5,
 147:6

shared ^[8] - 46:1,
 167:11, 169:4,
 169:5, 169:12,
 172:16, 206:2

Shaun ^[1] - 192:8

SHEET ^[1] - 331:1

Sheet ^[2] - 331:2,
 331:7

sheet ^[1] - 331:7

SHELBURNE
^[11] - 29:18, 30:12,
 30:15, 31:7, 31:14,
 31:17, 32:9, 32:18,
 33:3, 33:12, 33:15

Shelburne ^[1] - 30:1

Sherry ^[1] - 36:9

shifted ^[1] - 131:18

shirts ^[1] - 269:1

shock ^[2] - 208:5,
208:6

shockingly
^[1] - 240:10

shop ^[2] - 101:3,
205:9

short ^[11] - 45:17,
82:14, 105:18,
107:6, 175:8, 189:4,
198:15, 276:5,
313:3, 313:4

shortage ^[1] - 262:2

shorter ^[8] - 73:6,
73:7, 83:3, 83:6,
86:10, 286:13,
313:1, 314:12

Shorthand
^[2] - 332:4, 332:11

show ^[9] - 15:12,
21:6, 101:5, 189:5,
191:8, 224:8,
319:14, 319:15,
320:4

Show ^[5] - 125:13,
155:14, 201:7,
211:13, 299:2

showing ^[3] - 5:18,
17:13, 19:1

shown ^[1] - 15:15

shows ^[5] - 20:6,
32:5, 57:12, 191:14,
237:6

Shrauger ^[1] - 36:4

SHRAUGER ^[1] - 36:4

side ^[12] - 128:18,
133:8, 134:14,
151:18, 152:1,
218:1, 251:8, 310:4,
320:6, 320:13,
321:11

sides ^[1] - 259:4

sidewalk ^[2] - 164:18,
179:14

sidewalks
^[1] - 178:14

Sign ^[1] - 331:7

sign ^[4] - 77:4, 316:7,
316:10, 316:12

SIGNATURE
^[1] - 331:1

signatures ^[1] - 35:5

signed ^[4] - 14:1,
35:2, 141:1, 328:5

significance

[2] - 108:15, 127:6

significant [4] - 23:6,

128:18, 141:18,

217:3

significantly

[4] - 22:18, 28:2,

28:4, 182:18

signing [5] - 35:11,

39:7, 120:8, 120:13,

120:15

signs [1] - 83:11**similar** [7] - 6:5,

15:18, 28:12, 135:4,

237:4, 242:16,

303:14

similarly [2] - 49:10,

133:6

simply [9] - 113:1,

134:10, 136:7,

151:11, 174:8,

239:4, 240:15,

302:15, 321:1

simulations

[5] - 278:8, 278:15,

293:8, 293:13,

316:18

simultaneously

[1] - 209:5

sincerely [1] - 123:4**single** [3] - 127:4,

131:7, 134:8

single-family

[3] - 127:4, 131:7,

134:8

sit [5] - 165:16, 188:2,

247:9, 314:16,

315:11

sit-down [1] - 165:16**site** [15] - 46:10, 55:4,

60:10, 78:5, 79:2,

79:18, 88:6, 119:13,

159:8, 213:12,

283:3, 292:6, 294:8,

295:15, 296:6

Sitting [11] - 3:4, 5:2,

43:2, 122:2, 126:2,

158:2, 202:2, 212:2,

277:2, 300:2, 318:2

sitting [1] - 227:15**situated** [1] - 298:10**situation** [11] - 46:6,

58:1, 70:15, 71:1,

78:3, 102:18, 104:2,

184:2, 255:10,
268:6, 308:8

situations

[1] - 255:18

six [14] - 6:3, 72:12,
101:15, 143:4,
194:8, 247:6, 247:8,
247:9, 261:10,
278:3, 281:2,
293:17, 302:13,
304:2

six-foot [1] - 143:4

six-month [1] - 72:12

size [11] - 33:7, 96:18,
129:12, 131:12,
135:8, 135:11,
154:11, 240:6,
280:18, 284:17

sky [1] - 320:14

skylights [3] - 320:14,
321:6, 323:12

sleep [1] - 102:11

slight [1] - 129:10

slightly [7] - 130:4,
131:18, 132:12,
133:15, 135:13,
283:4, 283:9

slope [1] - 132:8

slow [1] - 180:12

small [17] - 40:11,
132:12, 143:2,
204:18, 208:18,
209:3, 210:3, 236:7,
237:2, 238:5, 240:3,
240:5, 240:8,
251:12, 261:16,
261:18, 324:2

smaller [3] - 96:18,
142:17, 280:16

smallest [1] - 204:11

smell [4] - 99:16,
100:11, 101:7,
103:3

smelling [1] - 100:1

smells [2] - 100:5,
102:8

smoke [9] - 84:2,
160:14, 178:11,
178:15, 179:3,
179:16, 180:6,
192:2, 259:8

smoking [5] - 178:12,
179:7, 179:18,
180:2

snack ^[2] - 267:4,
267:9

snacks ^[1] - 268:9

social ^[1] - 272:11

Social ^[3] - 215:5,
215:7, 215:14

societal ^[1] - 295:7

soda ^[1] - 234:2

sodas ^[1] - 267:7

soil ^[1] - 229:6

solution ^[6] - 85:14,
105:7, 107:15,
180:16, 221:12,
310:10

someone ^[3] - 29:2,
188:11, 265:17

someplace ^[1] - 233:5

sometimes
^[2] - 165:13, 266:16

somewhat ^[8] - 24:6,
52:3, 113:5, 124:14,
162:11, 176:3,
233:14, 280:10

somewhere
^[1] - 287:15

sorry ^[28] - 17:17,
18:16, 20:1, 22:3,
37:2, 77:9, 85:12,
86:12, 93:2, 93:7,
99:5, 101:6, 102:3,
103:6, 113:16,
119:10, 141:8,
163:8, 166:4, 180:5,
182:6, 182:9,
192:15, 248:2,
270:12, 271:14,
289:15, 315:15

sort ^[12] - 81:15,
163:13, 171:7,
233:4, 233:6,
234:10, 239:16,
241:8, 245:2,
245:17, 249:14,
288:16

sought ^[9] - 38:13,
40:7, 116:17, 119:4,
144:14, 197:9,
210:8, 291:1, 329:1

sound ^[2] - 259:5,
267:1

sounds ^[6] - 7:17,
81:16, 96:12, 171:6,
269:11, 316:18

source ^[1] - 48:4

south ^[2] - 151:18,
310:4

space ^[56] - 17:7,
24:1, 40:12, 50:16,
56:5, 80:1, 82:11,
87:17, 88:3, 90:7,
130:11, 131:4,
134:5, 134:6, 159:9,
159:11, 166:15,
186:3, 209:5,
212:18, 213:6,
213:8, 214:13,
214:16, 215:2,
215:4, 216:3,
219:12, 220:1,
226:1, 238:14,
238:15, 254:10,
254:17, 255:1,
255:15, 256:6,
256:7, 259:2, 260:2,
261:2, 262:3, 264:6,
264:8, 264:15,
271:11, 271:18,
272:2, 272:16,
272:17, 281:17,
320:8, 324:11

spaced ^[2] - 281:14,
294:17

spaces ^[43] - 46:15,
47:3, 50:17, 50:18,
51:1, 52:6, 52:10,
52:13, 52:16, 53:4,
53:7, 53:9, 53:16,
54:15, 56:6, 56:9,
57:13, 58:14, 59:6,
59:10, 60:9, 73:17,
74:8, 75:10, 77:6,
77:13, 78:4, 78:11,
78:12, 85:3, 86:3,
87:11, 87:17, 87:18,
88:18, 89:1, 89:4,
89:8, 89:13, 90:6,
114:7, 119:12,
262:6

span ^[1] - 280:17

speakeasy ^[1] - 252:9

speakers ^[1] - 196:10

speaking ^[5] - 61:16,
152:7, 260:12,
311:13, 313:8

speaks ^[1] - 231:1

special ^[8] - 17:10,
163:10, 193:14,
215:18, 216:2,

229:6, 246:7, 272:8

Special ^[86] - 61:5,
 61:17, 63:3, 71:8,
 72:14, 73:2, 73:15,
 74:4, 74:17, 75:4,
 83:1, 85:1, 85:13,
 85:14, 86:17, 94:10,
 97:11, 102:5,
 102:13, 109:8,
 114:2, 114:11,
 115:1, 115:15,
 116:16, 117:1,
 119:3, 119:15,
 120:18, 121:4,
 122:14, 123:1,
 144:3, 144:18,
 148:7, 148:17,
 161:13, 163:12,
 197:3, 197:9,
 197:11, 197:15,
 199:12, 199:16,
 200:6, 200:15,
 201:1, 201:3,
 202:16, 203:2,
 207:8, 209:12,
 210:5, 210:7,
 210:10, 211:11,
 292:14, 294:7,
 295:8, 296:3, 296:7,
 296:17, 297:3,
 297:6, 297:10,
 298:8, 298:18,
 299:4, 303:12,
 318:18, 319:1,
 319:2, 319:6, 321:9,
 323:1, 323:17,
 326:3, 326:10,
 326:14, 327:1,
 327:5, 327:10,
 327:16, 328:18,
 330:3, 330:13

Specialist ^[1] - 1:12

specific ^[3] - 53:14,
 85:17, 265:13

specifically ^[4] - 95:3,
 147:8, 161:18,
 288:17

specify ^[1] - 78:2

Spectrum

^[2] - 292:12, 301:3

speed ^[1] - 253:15

spell ^[2] - 12:3, 14:10

spelled ^[1] - 162:14

spend ^[2] - 34:5,

184:5
spent ^[2] - 104:4,
 239:11
Spice ^[5] - 202:14,
 207:2, 208:9, 209:2
spice ^[5] - 202:16,
 204:17, 205:9,
 208:12, 208:16
spices ^[4] - 203:10,
 204:9, 204:16,
 205:4
Spindler ^[1] - 207:7
spoken ^[6] - 9:5,
 36:13, 98:17, 111:4,
 232:8, 271:5
sponsor ^[1] - 326:6
spot ^[2] - 173:8, 176:1
square ^[9] - 17:9,
 30:4, 129:15, 130:3,
 130:4, 131:9,
 131:10, 132:2,
 306:11
Square ^[25] - 67:15,
 68:9, 92:15, 119:1,
 159:7, 205:10,
 213:4, 213:12,
 217:3, 218:17,
 219:8, 221:13,
 222:1, 222:14,
 223:8, 225:3, 228:3,
 228:16, 244:7,
 250:14, 253:8,
 253:9, 262:15,
 263:7, 269:8
SS ^[1] - 332:3
Stabilization
^[5] - 64:3, 81:5,
 113:15, 208:7,
 209:10
staff ^[5] - 288:5,
 288:14, 288:16,
 288:18, 289:2
staff's ^[1] - 288:17
stage ^[2] - 233:11,
 238:8
stair ^[1] - 129:1
stance ^[1] - 124:9
stand ^[1] - 283:11
standard ^[1] - 323:1
standards
^[1] - 318:17
standing ^[3] - 164:18,
 178:10, 259:2
start ^[7] - 3:10, 5:6,

43:11, 44:18, 70:18,
158:15, 248:5
started ^[5] - 3:11,
82:15, 181:7, 190:6,
212:6
starts ^[1] - 106:6
state ^[1] - 113:1
State ^[1] - 318:13
statement
^[2] - 260:17, 261:5
statement(s)
^[1] - 331:17
stating ^[3] - 298:5,
321:15, 322:12
station ^[1] - 292:9
stationary ^[1] - 66:12
status ^[2] - 92:3,
154:10
statute ^[3] - 249:10,
250:7, 258:8
statutory ^[1] - 255:17
stay ^[2] - 86:8, 112:18
staying ^[1] - 193:16
stays ^[2] - 171:5,
321:3
Steakhouse
^[1] - 90:10
steel ^[2] - 306:16,
306:17
stenographer
^[5] - 4:9, 5:14, 177:2,
252:16, 318:9
STENOGRAPHER
^[4] - 12:3, 14:10,
18:5, 95:9
step ^[4] - 99:9,
142:13, 218:1,
248:14
Stephen ^[3] - 123:4,
126:11, 140:1
Steve ^[1] - 148:6
Steven ^[1] - 129:12
STEVEN ^[5] - 132:14,
133:11, 148:10,
148:14, 149:16
still ^[22] - 8:18, 17:8,
30:16, 30:17, 45:2,
45:3, 63:3, 86:13,
87:4, 87:10, 90:12,
111:2, 138:11,
148:17, 171:4,
171:5, 224:13,
247:1, 249:6,
254:10, 254:17,

288:10
stop ^[5] - 61:11,
 172:16, 175:15,
 180:14, 199:13
stopped ^[1] - 180:15
storage ^[1] - 134:5
store ^[2] - 166:6,
 167:10
storefront
^[1] - 208:14
stories ^[1] - 30:17
story ^[3] - 101:2,
 228:6, 250:8
straight ^[1] - 233:5
straightened
^[1] - 247:7
straightforward
^[1] - 68:18
straw ^[1] - 183:11
stream ^[1] - 229:13
streams ^[1] - 268:14
street ^[24] - 10:7,
 88:13, 89:5, 99:17,
 100:1, 128:1,
 139:18, 218:1,
 218:17, 219:18,
 220:2, 220:9,
 220:11, 222:6,
 222:14, 245:4,
 265:1, 265:17,
 324:2, 324:6, 324:8,
 324:14, 325:3
Street ^[76] - 2:3, 2:4,
 2:11, 2:12, 2:13,
 5:7, 12:2, 21:12,
 34:13, 34:17, 35:3,
 35:15, 35:18, 36:4,
 36:8, 36:10, 36:16,
 37:1, 44:13, 45:10,
 47:7, 82:5, 82:8,
 85:8, 88:8, 96:8,
 99:4, 105:9, 106:2,
 110:14, 126:6,
 126:13, 127:5,
 128:1, 135:5,
 138:13, 139:16,
 140:15, 143:16,
 160:7, 212:14,
 217:15, 217:18,
 218:5, 219:4, 220:8,
 222:8, 222:9,
 222:16, 226:2,
 226:4, 229:10,
 232:3, 232:6, 235:6,

242:7, 244:4,
 251:11, 252:1,
 252:18, 253:8,
 254:10, 255:2,
 256:7, 258:18,
 259:5, 260:16,
 277:6, 277:17,
 280:15, 300:6,
 302:12, 318:13,
 319:5, 326:5
streets ^[3] - 86:3,
 217:14, 251:8
stringent ^[1] - 104:6
strongly ^[1] - 104:5
struck ^[2] - 39:2,
 263:4
structural ^[1] - 328:8
structurally
^[1] - 305:11
structure ^[8] - 38:8,
 40:11, 40:17, 133:7,
 160:16, 171:4,
 253:13, 256:2
structures
^[1] - 298:14
studies ^[4] - 15:10,
 17:18, 21:16, 22:8
studs ^[2] - 280:17,
 283:14
study ^[12] - 5:18,
 14:17, 15:2, 15:4,
 18:12, 21:1, 22:10,
 28:11, 28:12, 32:3,
 32:5, 295:7
stuff ^[4] - 239:15,
 240:2, 266:18,
 307:18
style ^[6] - 129:5,
 134:1, 134:11,
 135:11, 142:1
stylistic ^[1] - 312:3
subject ^[18] - 3:16,
 59:16, 79:8, 113:5,
 114:2, 117:6, 119:4,
 120:18, 130:11,
 150:17, 279:16,
 292:15, 293:2,
 295:8, 297:13,
 297:18, 316:6,
 327:16
subletters ^[1] - 239:4
submission
^[1] - 301:4
submit ^[2] - 301:7,

302:2

submitted ^[8] - 11:7,
25:16, 41:10, 119:8,
155:11, 292:18,
293:8, 316:18

subscribe
^[1] - 331:16

substance ^[1] - 144:6

substantial
^[20] - 38:7, 38:14,
40:10, 41:2, 117:5,
117:10, 118:4,
147:7, 153:13,
155:1, 210:13,
229:8, 246:7,
255:14, 271:12,
271:13, 272:1,
291:9, 304:7, 329:3

substantially
^[6] - 6:2, 41:3, 155:2,
292:7, 323:2,
323:10

subtenant ^[1] - 87:5

Suburban
^[1] - 206:17

suburbs ^[3] - 128:11,
145:7, 145:10

successful ^[1] - 8:17

sufficiently
^[2] - 112:10, 298:14

suggest ^[7] - 71:12,
164:8, 165:14,
196:15, 228:11,
246:3, 314:12

suggested ^[7] - 17:2,
64:4, 86:9, 109:16,
143:10, 289:4,
312:4

suggesting
^[2] - 110:16, 309:8

suggestion
^[6] - 71:14, 282:17,
283:3, 286:11,
309:18, 311:2

suggestions
^[3] - 280:6, 288:7,
308:11

suggests
^[2] - 164:10, 304:7

suitability ^[1] - 154:7

suitable ^[1] - 153:16

SULLIVAN
^[105] - 122:5, 122:10,
123:8, 123:12,

124:1, 124:4,
 124:12, 124:18,
 125:2, 125:7,
 125:14, 125:17,
 126:5, 126:15,
 135:1, 136:2, 137:6,
 137:9, 138:17,
 139:8, 139:11,
 139:14, 141:11,
 144:16, 145:2,
 147:15, 148:1,
 148:6, 148:15,
 149:3, 149:6, 149:9,
 149:13, 149:18,
 150:3, 150:9,
 150:13, 152:14,
 152:17, 153:3,
 153:5, 153:7,
 155:15, 156:2,
 156:5, 156:16,
 157:1, 157:4, 157:7,
 157:9, 157:13,
 169:9, 169:14,
 170:1, 170:4, 170:8,
 173:7, 174:10,
 175:7, 175:17,
 192:11, 196:1,
 198:18, 199:3,
 210:1, 232:14,
 233:3, 233:13,
 234:5, 234:12,
 234:17, 235:3,
 235:7, 238:12,
 239:9, 240:9,
 240:13, 240:16,
 241:1, 241:5,
 241:12, 241:15,
 245:8, 245:12,
 246:16, 252:8,
 266:14, 267:15,
 274:3, 274:9,
 275:18, 285:11,
 286:1, 286:5, 287:5,
 287:14, 307:6,
 307:8, 307:11,
 307:13, 312:6,
 312:16, 313:8,
 313:15, 315:1
Sullivan ^[27] - 1:8,
 3:5, 5:3, 42:1,
 122:3, 125:16,
 126:3, 143:10,
 151:15, 154:6,
 155:16, 158:3,

174:1, 201:9, 202:3,
 211:16, 212:3,
 239:2, 263:18,
 273:4, 276:15,
 277:3, 299:5, 300:3,
 317:12, 318:3,
 330:11

Sullivan's

[3] - 144:11, 242:14,
 268:12

sum [1] - 144:6

summarize [1] - 34:7

summarized

[1] - 195:15

summer [2] - 104:4,
 314:18

Superintendent

[1] - 60:7

supermarket

[1] - 204:12

supply [1] - 205:4

support [51] - 9:13,
 10:6, 23:15, 23:17,
 34:9, 34:14, 34:18,
 35:8, 35:12, 35:18,
 36:3, 36:5, 36:8,
 36:11, 36:13, 36:14,
 36:16, 37:14, 39:3,
 39:18, 128:2,
 139:18, 141:16,
 142:11, 144:2,
 193:12, 194:11,
 195:18, 198:18,
 207:1, 207:7,
 207:10, 208:5,
 239:3, 241:11,
 261:1, 261:13,
 267:9, 268:3,
 268:10, 268:11,
 268:15, 268:16,
 321:11, 325:4,
 325:8, 326:1, 326:8,
 326:13, 326:18,
 327:4

supported

[1] - 133:14

supportive

[4] - 23:11, 26:17,
 133:16, 138:9

supports [1] - 301:4

supposed [2] - 83:10,
 96:16

supposedly [1] - 90:7

surely [1] - 155:7

surrounded

[1] - 259:3

surrounding

[1] - 272:6

Susan [1] - 35:13**suspect** [2] - 172:18,
223:11**suspended**

[1] - 297:1

suspenders

[1] - 149:8

sustain [2] - 265:5,
305:13**swayed** [2] - 151:17,
152:2**sworn** [1] - 298:2**symmetrical**

[2] - 281:16, 295:1

symmetry[3] - 287:15, 311:8,
312:5**sympathetic**

[2] - 86:5, 221:3

sympathy

[1] - 266:15

synergy [1] - 209:6**systemwide**

[2] - 277:18, 302:11

T**T-Mobile** [2] - 277:14,
302:9**T-Mobile's**[3] - 277:16, 277:18,
302:10**T-shirts** [1] - 269:1**T.T** [2] - 250:18, 251:8**tab** [1] - 301:13**tables** [2] - 190:15,
243:1**talks** [1] - 52:10**tall** [2] - 143:1, 259:3**tape** [1] - 4:7**taped** [1] - 4:12**Taub** [1] - 36:9**TAUB** [1] - 36:9**tavern** [1] - 269:11**Tax** [1] - 292:10**TBaar** [1] - 159:2**TBAAR** [1] - 159:2**tea** [1] - 159:4**team** [1] - 283:4**Tearoom** [1] - 167:8

technicalities

[1] - 168:9

technically

[2] - 49:12, 203:1

technology

[2] - 284:16, 285:1

Tedesco [20] - 1:9,

43:4, 121:5, 122:3,

125:16, 126:3,

155:16, 158:4,

201:9, 202:4,

211:16, 212:4,

273:4, 276:15,

277:4, 299:5, 300:4,

317:12, 318:4,

330:11

TEDESCO [51] - 51:6,

51:10, 64:16, 65:1,

65:7, 65:14, 110:7,

110:15, 166:2,

166:10, 166:14,

166:18, 167:3,

167:11, 167:15,

168:2, 186:2, 186:8,

186:12, 205:14,

205:17, 206:4,

235:10, 235:15,

236:11, 237:5,

237:11, 237:18,

238:11, 241:18,

242:8, 249:12,

249:14, 250:17,

251:7, 269:7, 274:8,

275:13, 285:3,

286:12, 286:15,

287:1, 287:9,

304:18, 309:17,

310:2, 310:14,

310:18, 312:14,

316:1, 324:7

telecom [1] - 290:16**Telecom** [1] - 279:2**telecommunication**

[1] - 292:5

temptation [1] - 99:17**tempting** [1] - 99:18**ten** [8] - 83:5, 133:9,

133:13, 166:7,

166:11, 295:17,

296:11, 297:16

tenancies [1] - 57:18**tenant** [9] - 65:7,

65:12, 75:9, 78:13,

79:16, 82:1, 166:18,

186:3, 236:14

tenants ^[1] - 47:16

tend ^[3] - 135:9,
162:10, 235:8

tends ^[1] - 7:13

tenure ^[1] - 49:11

term ^[12] - 60:13,
60:15, 62:14, 62:15,
75:4, 77:15, 82:14,
115:6, 116:5, 116:8,
119:17, 145:13

terminate

^[3] - 119:16, 296:2,
296:18

terminated

^[2] - 297:2, 297:4

termination

^[1] - 297:10

terms ^[12] - 23:13,
32:8, 33:7, 38:13,
54:13, 73:6, 84:2,
110:17, 147:11,
186:13, 243:12,
261:3

terrible ^[3] - 84:2,
102:9, 107:18

testified ^[1] - 192:4

testimony ^[19] - 13:8,
14:4, 37:7, 37:8,
64:10, 69:8, 77:3,
113:17, 118:4,
151:5, 176:14,
196:7, 197:5,
209:17, 232:9,
252:11, 290:6,
290:11, 327:7

text ^[2] - 230:18,
243:3

Thalia ^[3] - 261:14,
262:12, 263:8

THE ^[16] - 1:1, 1:15,
12:3, 14:10, 18:5,
63:9, 95:9, 150:1,
166:8, 182:4, 182:8,
182:11, 332:15,
332:15, 332:16,
332:16

theatre ^[67] - 213:8,
216:8, 221:8,
223:16, 224:5,
224:9, 226:11,
227:5, 227:9,
227:15, 227:16,
228:13, 228:14,

233:8, 233:9,
 233:15, 234:6,
 234:7, 234:13,
 235:8, 236:2, 236:8,
 236:13, 236:18,
 237:1, 237:2,
 237:16, 238:6,
 239:13, 240:5,
 240:6, 240:8,
 242:18, 247:12,
 248:4, 248:5, 248:6,
 248:18, 249:15,
 251:12, 254:6,
 255:3, 255:12,
 256:10, 256:13,
 257:1, 261:18,
 262:3, 262:5, 262:8,
 265:16, 267:17,
 268:7, 268:15,
 271:1, 271:10,
 271:17, 272:16,
 273:3, 273:9,
 273:11, 274:1,
 274:4, 274:6
Theatre ^[4] - 237:4,
 240:1, 240:7, 262:8
theatres ^[2] - 241:10,
 244:18
theatrical ^[1] - 250:6
theme ^[1] - 238:16
themselves
^[4] - 169:4, 241:11,
 283:8, 283:10
theoretically
^[1] - 96:17
theories ^[1] - 224:15
THERE ^[1] - 290:7
thereafter ^[1] - 293:18
thereby ^[1] - 30:5
therefor ^[1] - 331:7
therefore ^[4] - 24:10,
 104:11, 107:14,
 297:13
thereof ^[1] - 223:7
they've ^[9] - 11:12,
 12:9, 12:18, 130:14,
 147:2, 174:2,
 186:15, 186:17,
 240:17
thinking ^[7] - 48:17,
 60:4, 70:5, 109:13,
 148:4, 149:8,
 245:17
third ^[10] - 6:4, 6:6,

7:5, 26:2, 41:1,
129:2, 131:2, 131:5,
140:3, 284:2

THIS ^[1] - 332:15

Thomas ^[4] - 1:8, 3:5,
5:3, 5:10

THOMAS ^[34] - 5:10,
5:15, 6:2, 6:12, 7:1,
7:4, 7:9, 8:2, 8:6,
8:11, 8:14, 15:9,
15:16, 16:3, 16:5,
17:10, 18:1, 18:4,
18:7, 18:10, 18:13,
18:16, 19:2, 19:15,
20:2, 20:5, 20:8,
20:11, 21:17, 22:5,
28:3, 28:9, 28:15,
37:9

threatening

^[1] - 163:1

three ^[32] - 10:8, 12:8,
30:17, 40:14, 71:4,
71:15, 72:3, 72:4,
83:4, 87:4, 102:11,
107:13, 110:18,
114:18, 115:14,
128:12, 132:14,
132:16, 143:1,
143:4, 174:4, 189:6,
214:14, 218:6,
218:11, 259:4,
278:5, 278:6, 286:6,
302:16, 313:1,
324:10

three-family

^[1] - 324:10

three-year ^[4] - 71:4,
72:3, 107:13,
115:14

threshold

^[3] - 253:11, 253:13,
255:13

thresholds ^[1] - 257:2

throughout

^[2] - 49:11, 99:15

THURBER

^[11] - 29:18, 30:12,
30:15, 31:7, 31:14,
31:17, 32:9, 32:18,
33:3, 33:12, 33:15

Thurber ^[1] - 30:1

Thursday

^[3] - 122:15, 123:2,
266:16

THURSDAY ^[1] - 1:4

ticket ^[4] - 241:13,
241:15, 266:2,
266:4

ticks ^[1] - 302:4

tight ^[1] - 7:15

timber ^[1] - 39:10

timbers ^[1] - 24:5

timeless ^[1] - 155:6

timely ^[1] - 295:18

TO ^[1] - 332:15

Tobin ^[1] - 123:4

today ^[11] - 10:2,
30:11, 32:7, 38:5,
46:6, 49:3, 51:13,
55:4, 66:16, 181:9,
193:11

together ^[6] - 23:3,
41:9, 47:13, 233:14,
238:13, 302:3

tomorrow ^[1] - 109:1

tonight ^[15] - 3:12,
11:16, 38:5, 50:5,
192:6, 212:10,
263:3, 293:16,
296:3, 296:7,
296:17, 298:9,
308:4, 308:7, 329:1

took ^[8] - 5:15, 6:6,
7:4, 29:5, 180:13,
180:16, 183:16

toot ^[1] - 303:5

top ^[3] - 12:15,
170:18, 188:7

tops ^[2] - 285:3,
287:10

Torrey ^[4] - 318:14,
319:4, 319:6, 330:5

TORREY ^[11] - 319:4,
321:9, 321:14,
322:3, 322:8,
322:11, 322:15,
327:14, 327:18,
328:7, 328:11

torture ^[2] - 175:12,
177:8

tortured ^[6] - 173:15,
174:6, 174:14,
175:8, 175:11

totally ^[3] - 173:5,
173:12, 232:16

toto ^[1] - 150:9

touch ^[1] - 148:7

touched ^[1] - 218:13

tough ^[2] - 8:2,
246:16

tourists ^[1] - 178:6

tower ^[5] - 129:1,
131:2, 131:3, 131:5,
292:8

town ^[2] - 233:16,
241:7

track ^[1] - 268:2

tractor ^[1] - 205:5

Tracy ^[1] - 144:4

trade ^[1] - 162:7

traffic ^[20] - 82:7,
103:4, 105:12,
117:3, 160:13,
161:9, 162:2, 165:5,
165:7, 171:3, 172:5,
189:13, 198:5,
200:13, 200:14,
205:6, 223:12,
291:7, 324:12,
329:2

trailers ^[1] - 205:5

transcript ^[6] - 4:10,
151:7, 331:2, 331:6,
331:15, 331:16

TRANSCRIPT
^[1] - 332:15

transmission
^[1] - 295:5

transmit ^[1] - 3:16

trash ^[8] - 146:1,
172:5, 183:17,
184:3, 184:4, 184:6,
197:1

tray ^[2] - 306:13,
306:14

treats ^[2] - 207:12,
207:13

triangular ^[1] - 143:3

tricky ^[1] - 70:15

tried ^[5] - 26:4, 181:6,
181:10, 185:12,
190:2

triggers ^[1] - 148:16

trouble ^[1] - 71:10

troubles ^[1] - 176:11

troupes ^[2] - 261:18,
262:8

truck ^[1] - 101:18

trucks ^[3] - 93:18,
102:9, 138:14

true ^[5] - 25:17, 56:3,
169:1, 174:17,

332:6

trusses ^[1] - 17:14

trust ^[1] - 185:16

trustee ^[1] - 258:18

truthful ^[1] - 70:7

try ^[7] - 97:5, 103:5,

116:13, 249:4,

283:5, 307:16,

309:5

trying ^[15] - 20:3,

36:2, 58:17, 74:2,

97:11, 164:2, 181:6,

216:5, 216:10,

216:16, 217:6,

228:11, 243:16,

276:5, 312:9

turn ^[4] - 86:18,

139:3, 303:7, 309:5

turned ^[2] - 10:14,

53:10

turning ^[1] - 138:14

turns ^[1] - 177:14

tweaked ^[1] - 137:11

twice ^[2] - 183:3,

194:4

two ^[74] - 10:7, 17:18,

19:13, 28:11, 48:15,

49:7, 52:4, 61:16,

61:17, 66:11, 66:16,

71:3, 71:5, 71:6,

79:12, 86:17, 87:13,

99:5, 99:12, 107:12,

107:16, 108:7,

110:17, 114:2,

117:9, 124:2, 124:3,

124:11, 130:8,

131:15, 132:13,

135:18, 138:4,

138:14, 139:3,

143:13, 150:2,

156:8, 156:12,

156:18, 157:1,

168:3, 169:6,

173:11, 174:4,

183:1, 184:12,

189:6, 189:15,

193:1, 195:9, 196:3,

199:5, 213:1, 213:3,

216:11, 220:17,

225:18, 235:2,

262:4, 270:4,

280:17, 286:7,

297:13, 313:1,

313:2, 314:17,

316:10, 323:5,
323:6, 324:13,
325:7, 329:10

two-family

[3] - 323:5, 323:6,
324:13

two-way [1] - 79:12

two-year [4] - 71:3,

71:5, 107:12,
216:11

Tye [2] - 277:14,

302:8

type [10] - 61:7,

108:16, 162:9,

232:16, 238:17,

239:17, 244:10,

245:18, 246:10,

265:12

types [1] - 231:2

typically [2] - 58:1,

62:11

U

ultimate [1] - 55:18

ultimately [1] - 105:7

uncertain [1] - 53:6

uncertainty [1] - 61:9

unchanged

[2] - 19:17, 321:3

undated [1] - 157:6

UNDER [1] - 332:16

under [26] - 31:12,

45:11, 51:1, 56:9,

60:9, 73:15, 79:17,

164:4, 173:8,

197:15, 202:18,

219:7, 243:6,

246:11, 246:13,

273:12, 279:1,

288:15, 298:15,

298:18, 302:1,

316:13, 320:10,

320:12, 320:18,

321:7

undercuts

[1] - 247:15

underlying [1] - 52:1

underscore

[1] - 110:8

undersigned

[1] - 332:4

understood

[8] - 30:3, 63:7,

175:4, 231:16,
284:8, 310:14,
310:18, 312:2

unfair ^[1] - 86:6

unfortunate

^[1] - 102:13

unfortunately

^[5] - 125:2, 221:12,
228:7, 247:2, 285:2

unhappy ^[1] - 172:14

UNIDENTIFIED

^[6] - 63:9, 150:1,
166:8, 182:4, 182:8,
182:11

unique ^[4] - 24:6,

58:1, 209:13, 264:5

unit ^[8] - 36:4, 91:14,

183:16, 185:14,
186:7, 188:7, 194:2,
194:6

units ^[7] - 131:16,

178:15, 183:1,
183:17, 193:1,
194:3, 304:3

UNLESS ^[1] - 332:16

unless ^[6] - 87:5,

96:18, 228:5,
231:14, 271:12,
291:5

unlikely ^[1] - 115:1

unloading ^[1] - 259:7

unnecessary

^[1] - 55:3

untidiness ^[1] - 304:6

up ^[47] - 11:8, 13:4,

13:8, 14:3, 24:14,
25:3, 30:4, 30:9,
31:9, 47:7, 69:8,
69:16, 70:15, 70:16,
83:6, 89:5, 96:15,
100:13, 101:15,
106:7, 106:8, 111:7,
114:18, 115:13,
134:5, 146:7,
147:16, 176:13,
184:11, 185:13,
188:12, 228:18,
242:12, 253:2,
253:15, 255:6,
255:9, 255:16,
261:7, 263:5, 290:6,
306:14, 306:15,
307:15, 316:15,
321:17

update ^[1] - 63:16
upgrade ^[4] - 277:16,
 277:18, 278:2,
 302:11
upgraded ^[1] - 278:7
upgrades ^[1] - 302:10
upper ^[1] - 184:18
ups ^[1] - 96:2
upstairs ^[1] - 323:4
Urban ^[1] - 207:3
urges ^[1] - 209:10
usable ^[1] - 254:4
user ^[1] - 265:13
uses ^[39] - 79:13,
 108:18, 109:9,
 109:14, 117:13,
 161:6, 161:16,
 164:10, 165:9,
 165:12, 173:10,
 198:2, 200:11,
 210:16, 213:9,
 213:18, 214:1,
 215:2, 216:18,
 217:9, 217:11,
 217:13, 218:11,
 219:11, 220:10,
 221:18, 222:18,
 237:12, 245:14,
 254:13, 255:2,
 259:6, 264:3,
 268:13, 268:16,
 272:7, 291:12,
 329:7, 329:11
utilities ^[1] - 169:12
utilize ^[2] - 214:16,
 293:16

V

vacant ^[8] - 167:2,
 167:3, 167:6, 216:3,
 253:16, 254:10,
 254:17, 255:11
vacation ^[1] - 322:9
valid ^[1] - 188:6
value ^[3] - 17:14,
 151:3, 155:4
values ^[1] - 151:3
Valvoline ^[1] - 82:16
van ^[1] - 88:3
vans ^[5] - 49:7, 66:8,
 67:5, 87:13, 88:12
variance ^[2] - 132:4,
 140:5

Variance ^[54] - 38:16,
 39:2, 40:6, 41:7,
 41:18, 94:10, 132:4,
 134:18, 143:17,
 144:15, 144:17,
 149:4, 150:5,
 212:16, 212:17,
 219:6, 219:9,
 219:14, 221:3,
 221:7, 222:11,
 222:12, 222:13,
 228:13, 229:3,
 246:4, 246:11,
 246:12, 247:1,
 248:16, 249:1,
 250:2, 253:11,
 253:12, 255:14,
 256:1, 256:3, 256:9,
 256:12, 256:18,
 267:16, 270:5,
 270:14, 270:18,
 271:1, 272:8,
 272:15, 274:13,
 275:8, 275:9,
 318:18, 319:3
variances ^[6] - 213:2,
 213:4, 245:12,
 256:2, 266:13,
 266:17
Variances ^[2] - 144:3,
 220:17
variety ^[1] - 268:13
various ^[2] - 103:6,
 302:4
vary ^[1] - 261:16
vast ^[1] - 164:14
vehicle ^[2] - 146:8,
 162:11
vehicles ^[10] - 49:5,
 49:6, 49:8, 55:6,
 55:8, 68:8, 88:6,
 128:5, 139:3, 162:6
ventilation
^[1] - 283:13
venting ^[1] - 204:4
vermin ^[1] - 93:1
Vern ^[1] - 36:3
Verna ^[3] - 99:13,
 100:16, 101:9
Verna's ^[4] - 45:8,
 49:11, 96:5, 96:13
vertical ^[3] - 281:15,
 281:18, 294:17
vet ^[1] - 288:7

Veteran ^[1] - 215:7
VFW ^[1] - 215:13
viability ^[1] - 231:12
viable ^[1] - 254:2
Vice ^[1] - 1:8
VICTOR ^[12] - 14:8,
 14:11, 14:16, 15:14,
 16:1, 16:4, 16:6,
 16:14, 17:1, 20:16,
 21:2, 21:6
Victor ^[4] - 14:8,
 21:13, 32:11, 33:5
video ^[3] - 3:14,
 189:2, 191:14
view ^[15] - 29:3, 74:1,
 81:18, 84:9, 86:8,
 90:3, 97:15, 98:7,
 115:15, 197:16,
 197:18, 223:15,
 246:3, 287:3, 308:9
views ^[2] - 37:17,
 64:5
Vik ^[1] - 35:13
VIK ^[1] - 35:13
Village ^[2] - 160:6
vintage ^[1] - 135:10
violating ^[1] - 251:15
visible ^[2] - 310:5,
 324:14
visual ^[5] - 293:6,
 293:12, 304:5,
 306:5, 308:9
visually ^[1] - 285:15
visuals ^[1] - 319:13
vital ^[1] - 232:9
voiced ^[1] - 194:11
volume ^[3] - 143:3,
 143:7, 331:6
vote ^[13] - 98:12,
 151:11, 152:13,
 157:12, 197:8,
 198:11, 199:5,
 200:5, 209:18,
 271:4, 275:13,
 290:15, 327:8
voted ^[1] - 201:3
votes ^[1] - 199:6

W

waffling ^[1] - 99:16
wait ^[9] - 87:3,
 102:15, 102:16,
 110:12, 179:3,

179:12, 179:14,
 182:9, 309:15
waited ^[1] - 254:14
waiting ^[2] - 178:10,
 179:2
waiver ^[1] - 316:7
walk ^[4] - 100:18,
 162:7, 266:1,
 311:10
walk-in ^[1] - 162:7
walking ^[2] - 263:3,
 265:17
wall ^[5] - 148:11,
 148:13, 265:2,
 285:13, 305:14
wants ^[7] - 38:17,
 73:7, 106:14,
 106:16, 107:1,
 118:16, 118:17
Wars ^[1] - 215:7
waste ^[2] - 104:12,
 195:4
watching ^[1] - 227:15
water ^[2] - 59:6, 267:7
waves ^[3] - 295:6,
 295:13, 296:10
ways ^[4] - 8:17, 31:6,
 93:12, 239:6
Wednesday
^[1] - 13:16
week ^[3] - 50:11,
 81:6, 136:18
weekly ^[1] - 237:1
weeks ^[2] - 189:15,
 314:17
weird ^[1] - 256:4
welcome ^[2] - 113:18,
 208:18
welfare ^[6] - 118:2,
 198:7, 200:18,
 211:4, 291:16,
 329:14
well-established
^[1] - 262:7
well-known
^[1] - 128:15
wells ^[2] - 12:11,
 39:11
WESLEY ^[2] - 258:17,
 259:17
Wesley ^[1] - 258:17
west ^[3] - 151:18,
 304:12, 305:1
Weston ^[1] - 318:13

whence ^[1] - 312:17
WHEREOF ^[1] - 332:7
Whitney ^[1] - 315:17
whole ^[9] - 24:4,
 45:17, 85:4, 95:4,
 156:9, 184:10,
 226:17, 232:7,
 241:9
wide ^[6] - 7:10, 96:14,
 96:15, 109:14,
 138:13, 268:13
width ^[1] - 284:3
WIGGINS
^[8] - 318:10, 322:4,
 322:17, 323:15,
 323:18, 324:5,
 324:9, 325:9
Wiggins ^[1] - 318:12
willing ^[3] - 112:18,
 152:12, 311:10
window ^[6] - 72:13,
 73:6, 73:7, 148:13,
 191:15
windows ^[12] - 148:8,
 148:10, 149:3,
 150:2, 150:4,
 188:13, 319:7,
 320:16, 321:2,
 321:4, 323:12,
 328:10
wine ^[21] - 174:5,
 174:15, 190:11,
 213:11, 224:16,
 224:17, 229:13,
 231:9, 232:10,
 233:14, 234:1,
 238:1, 238:2, 239:8,
 241:5, 247:5,
 251:11, 251:13,
 268:17, 269:10,
 270:9
wing ^[1] - 320:13
winter ^[1] - 23:4
wireless ^[2] - 277:16,
 292:8
wisdom ^[1] - 223:7
wise ^[1] - 48:9
wish ^[7] - 4:6, 25:5,
 28:15, 130:15,
 138:9, 139:11,
 165:2
wish... ^[1] - 123:9
wishes ^[11] - 21:9,
 105:4, 112:4, 123:5,

192:17, 205:3,
 206:13, 260:10,
 263:12, 263:15,
 290:7
wishing ^[15] - 5:8,
 14:5, 29:17, 43:7,
 80:14, 158:7,
 176:15, 202:7,
 206:10, 252:12,
 257:8, 277:7, 300:7,
 318:7, 325:12
withdraw ^[1] - 122:17
withdrawal
^[4] - 123:6, 123:16,
 125:9, 125:11
withdrawn ^[4] - 19:9,
 124:2, 125:15,
 125:18
withdraws ^[2] - 56:11,
 58:12
withstanding
^[2] - 282:16, 294:12
WITNESS ^[1] - 332:7
wonderful ^[3] - 194:8,
 208:8, 324:6
wondering
^[3] - 179:1, 307:13,
 311:9
Woodman ^[1] - 34:16
word ^[2] - 248:11
words ^[2] - 235:16,
 251:2
works ^[2] - 8:18,
 236:5
world ^[1] - 107:12
worrying ^[1] - 16:11
worse ^[1] - 27:6
worst ^[1] - 18:17
write ^[2] - 191:7,
 321:17
writing ^[7] - 50:4,
 50:10, 52:8, 141:15,
 143:16, 144:2,
 206:18
written ^[6] - 187:11,
 189:11, 245:16,
 247:3, 248:2, 248:3
wrongly ^[1] - 58:9
wrote ^[3] - 12:5,
 288:10, 327:6
www.reportersinc.c
om ^[1] - 1:16

Y

yard ^[3] - 133:8,
 144:1, 320:13

year ^[25] - 50:12,
 61:12, 61:18, 62:8,
 62:15, 71:3, 71:4,
 71:5, 72:3, 72:13,
 83:3, 85:10, 86:6,
 103:16, 107:12,
 107:13, 115:14,
 174:15, 183:3,
 187:7, 207:9,
 216:11, 261:16,
 297:13

years ^[74] - 35:17,
 45:8, 49:11, 60:14,
 61:1, 61:13, 61:16,
 61:17, 62:2, 62:16,
 66:2, 70:5, 70:9,
 70:17, 70:18, 71:6,
 72:4, 75:4, 83:4,
 83:5, 85:11, 85:18,
 86:2, 86:4, 86:9,
 86:14, 86:17, 87:4,
 90:11, 102:16,
 105:17, 106:11,
 106:17, 107:2,
 107:5, 107:6,
 107:16, 108:5,
 108:7, 109:17,
 110:12, 110:17,
 110:18, 114:11,
 114:13, 114:15,
 114:18, 115:7,
 115:16, 116:5,
 116:9, 119:18,
 124:2, 124:3,
 124:11, 128:16,
 135:4, 147:3, 174:4,
 182:16, 184:16,
 188:10, 214:14,
 239:11, 253:16,
 255:11, 261:10,
 262:4, 272:3

yesterday ^[2] - 66:15,
 309:12

YMCA ^[1] - 237:4

YOUNG ^[9] - 99:3,
 99:9, 99:12, 100:10,
 101:6, 101:12,
 103:1, 103:12,
 103:15

Young ^[1] - 99:3

yourself ^[4] - 61:14,
123:12, 137:18,
193:8

Z

Z-A-R-O-U-G-I-A-N

^[1] - 14:11

ZAROUGIAN

^[12] - 14:8, 14:11,
14:16, 15:14, 16:1,
16:4, 16:6, 16:14,
17:1, 20:16, 21:2,
21:6

Zarougian ^[2] - 14:9,
21:13

ZBA ^[1] - 122:15

Zelinski ^[2] - 332:4,
332:10

Zero ^[1] - 326:5

zone ^[1] - 82:17

zoned ^[4] - 184:12,
202:17, 271:16,
272:3

zoning ^[25] - 6:13,
38:4, 40:18, 44:11,
70:3, 70:5, 86:8,
88:2, 88:11, 106:8,
108:18, 127:2,
142:11, 184:12,
203:1, 213:5,
213:13, 213:17,
215:10, 225:4,
231:15, 254:9,
254:11, 301:8,
319:11

ZONING ^[1] - 1:1

Zoning ^[32] - 1:12,
3:8, 31:12, 37:5,
46:17, 48:6, 48:9,
50:14, 55:11, 59:2,
59:14, 59:17, 60:4,
69:17, 75:11, 75:12,
88:17, 89:2, 89:12,
93:6, 140:2, 152:6,
209:11, 213:14,
251:15, 254:15,
261:8, 326:11,
327:2, 330:16,
331:6, 331:15