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PROCEEDINGS

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet O. Green, Andrea A. Hickey, Slater W. Anderson, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call this

meeting of the Zoning Board of Appeals to order. And at the outset let

me make an announcement.

After notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium, subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as 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 advise that not one, but at least two recordings are being made. Our stenographer records the meeting to assist her when she prepares the minutes of the meeting. And a citizen of the city has left his tape recorder there and he is recording the meeting.

Is there anyone else planning to record this meeting or

televised it or whatever?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. So anyway
be advised that you're on tape at the very least if you speak tonight.

With that, it is our normal procedure to start with continued
cases. These are cases that started at an earlier date, but for one reason
or another we needed or the petitioner needed some time to continue the
case and so the case has started already. We do those cases first and
then we'll get to our regular agenda.

* * * * *

(7:00 p.m.)

(Sitting Members BZA Case No. 016194-2018: Constantine Alexander, Brendan Sullivan, Janet O. Green, Andrea A. Hickey, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The first of the continued cases I'm going to call is 955 Massachusetts Avenue.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

If there are people in the audience who are here for that matter, I wish to advise that the petitioner has withdrawn its application for a Variance. And so be it.

What this means for those of you in the audience is that by withdrawing from the case, the petitioner cannot bring another petition for a Variance for two years unless the new Variance is substantially different than what he had originally proposed -- it had originally proposed, and subject to a number of procedures we would have to go through. So if you were here for that case or worried about that case as it stood when the application was filed, you can rest at ease. The case is not going forward.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Thank you.

ANDREA HICKEY: On the withdrawal we have to take a vote.

CONSTANTINE ALEXANDER: To accept a withdrawal? Isn't it unilateral?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Thank you.

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

* * * * *

(7:00 p.m.)

(Sitting Members BZA Case No. 016211-2018: Constantine Alexander,

Brendan Sullivan, Janet O. Green, Andrea A. Hickey, Slater W.

Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case number -- I have to ask you a question, Sean, if I may. The next two cases are your cases. Are you proceeding on both of them?

ATTORNEY SEAN HOPE: I'm proceeding on 254 Franklin.

CONSTANTINE ALEXANDER: But not on Arnold Circle?

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: The Chair will call case No. 016211, 12 Arnold Circle.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I'm here tonight to request a continuance based on the rules -- there are only four available board members. We feel that we might -- we're not sure when the full five would be constituted, and we feel that going forward would potentially unfairly prejudice the result so we would like to request a continuance. And the only way to remedy having four, not five board members, would be to potentially

re-advertise, and that they can reconstitute a full five board members. So just as the Board has done with continued cases, we would like to continue it far enough out so that at least the new case could be heard so that we wouldn't have to continue a case. So --

CONSTANTINE ALEXANDER: I'm sorry, are you going to re-advertise?

ATTORNEY SEAN HOPE: We are going to re-advertise, which would allow for a fresh new five set of board members to sit on the case.

CONSTANTINE ALEXANDER: Okay.

What date would you like to continue this case to?

ATTORNEY SEAN HOPE: I was looking for a date late November. I think that would give the Board enough time to re-advertise and fit this in in the appropriate date and not make the agenda too full.

CONSTANTINE ALEXANDER: Sisia, what's our agenda?

SISIA DAGLIAN: We have November 29th.

ATTORNEY SEAN HOPE: Okay, that would be appropriate.

CONSTANTINE ALEXANDER: That's the week after

Thanksgiving?

SISIA DAGLIAN: Yeah, that's right.

CONSTANTINE ALEXANDER: The Chair moves that we continue this case as a case heard until seven p.m. on November 29th subject to the following conditions:

A waiver of time for decision be signed. And you've already done that.

Second, that the -- there's no posting, this is an appeal.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: So forget about that.

And the last one is to the extent that you're going to bring, submit new plans, dimensions, what have you, they must -- and I'm going to broaden that to include a revised brief or memorandum of law. You had submitted one which I appreciate. But you gave us time to study it. So if you're going to modify it for any reason, please get that in by five p.m. on the Monday before the 29th.

ATTORNEY SEAN HOPE: Yeah. But I think we can even do it in advance of that depending on -- we want to give you time to digest

it. If we do revise it on our own, we'll do it earlier.

JOHN HAWKINSON: Mr. Chair, could I ask does that deadline also apply to others who are submitting briefs?

CONSTANTINE ALEXANDER: I had no --

JOHN HAWKINSON: Because in this case earlier there were some other briefs that were likely --

CONSTANTINE ALEXANDER: The only brief we got or memorandum of law really, was from the City. We didn't get any --

JOHN HAWKINSON: Regardless.

CONSTANTINE ALEXANDER: I'm sorry?

JOHN HAWKINSON: That's not my recollection, but regardless. I'm just asking whether it applies to others.

CONSTANTINE ALEXANDER: We had letters from people. Long letters.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Are you referring to this case? You said you got long letters.

JOHN HAWKINSON: 12 Arnold Circle.

CONSTANTINE ALEXANDER: 12 Arnold Circle.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Sorry.

CONSTANTINE ALEXANDER: It's all right. Anyway, I think
we're there.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

We'll see you probably before November 29th.

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

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SEAN HOPE: Thank you.

* * * * *

(7:05 p.m.)

(Sitting Members BZA Case No. 016549-2018: Constantine Alexander, Brendan Sullivan, Janet O. Green, Andrea A. Hickey, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016549, 254 Franklin Avenue.

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

And this, too, is a continued case that we started before the case heard and causes some issues with neighbors, it was continued. And, Sean, I would like you in your presentation, I'm sure you're going to do it anyway, why don't you highlight the changes that were made between now and the one original submission.

ATTORNEY SEAN HOPE: Yes.

JANET GREEN: And just to make sure, can people in the audience who are interested, can you hear? Can you hear?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yes.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yes, we
can.

CONSTANTINE ALEXANDER: Good point. If you can't
hear, please raise your hand and we'll activate the mics or do something
to make sure you can hear.

Sean.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman,
members of the Board. For the record, attorney Sean Hope, Hope Legal
Law Offices here in Cambridge.

ERIC SIORAS: My name is Eric Sioras, President of the
Parish Council of Saint Constantine, which is the current owner of 254
Franklin Street.

CONSTANTINE ALEXANDER: You were here last time, too.

ERIC SIORAS: Yes, I was.

PETER FOURTOUNIS: My name is Peter Fourtounis and
I'm the architect.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: And just to briefly refresh the Board so we get into the design changes. So this is an application to do an addition to an existing three-family dwelling. This, this three-family is adjacent to the church, and so the church owns both the properties. The reason for the Variance is that the existing structure is sited in some portions less than two feet from the property line. So that any additions on that side of the property would require relief. At the previous hearing we did not -- we were unable to do any neighborhood outreach. So subsequent to that hearing, on July 19th approximately we met at the church and we had a listening session. We explained the plans, because I think the plans initially weren't fully understood. So we explained the plans and also got some feedback. The neighbors were gracious enough to allow them into their condominium units, and so we were able to go in there and see the view that they were looking at. Took some photos. We were able to augment the drawings in hopes to satisfy some of their concerns and change the drawings that Mr. Fourtounis will walk through. But in this discussion one of the roles that I played, is I helped explain to the neighbors, you know, what the zoning allows for this district. Some of

the initial comments I heard were about the fact that Franklin Street is very dense already. There was a large building on the corner, church -- corner apartments, which is a very large building. And so one of the things I explained to them was that in terms of density, FAR, height, that we are all within the allowed limits. So that we weren't asking for more height, more density, more number of units that would be allowed as of right. And that only because the building was shifted away from them and closer to the church, was relief required. That said, we still had a hardship, we still had a burden to prove, but I wanted to make sure that they understood that we weren't asking for more building than was allowed by zoning.

CONSTANTINE ALEXANDER: Good.

ATTORNEY SEAN HOPE: So now I turn it over to Peter, and if you can walk the Board through --

CONSTANTINE ALEXANDER: Before we do that, the new plans, which you're going to review, did you distribute them back to the neighbors?

ATTORNEY SEAN HOPE: We did.

CONSTANTINE ALEXANDER: So they've seen what's.

PETER FOURTOUNIS: Yes, we had a meeting last -- thank you. We had a meeting with them last night and we've reviewed the updated changes.

CONSTANTINE ALEXANDER: Okay.

PETER FOURTOUNIS: Based on our initial discussion.

CONSTANTINE ALEXANDER: So we can have an informed discussion tonight, that's what I wanted to make sure.

PETER FOURTOUNIS: Yes.

CONSTANTINE ALEXANDER: Now the floor is yours, sir.

PETER FOURTOUNIS: Thank you.

So what you see here is basically the changes that were relevant to the discussions we had initially with the neighbors, Adriana and Valerio, are pretty much on the third floor. And this is the original plan of the third floor, and these are the changes to the third floor.

One of their major concerns was getting views into their kitchen. And what we initially had was the bedroom on the third level of the addition all the way out to this facade, which is the south facade. So what we did in this new plan is we rearranged the bedrooms and we were able to pull back that facade and that addition by about eleven feet, ten foot, five. What we also did was we also removed a window. There was a bathroom. We rearranged the bathroom, and we -- actually, the bedroom. And we rearranged the bathroom and we were able to delete any of the public spaces that were facing the neighbors. So what you see here is the new elevation that would be the west elevation. And this is the east elevation. The east elevation is the one facing the existing home. Adriana is on the third floor and Valerio is on the second floor. And what we wanted to do is just give you a sense of -- we took some photos. There was a ground floor, a second floor that shows you basically the massing of the addition. This is the existing outline of the building. There's trees in the way, so it's very difficult to see. But I've outlined the existing profile of the massing of the structure. And then the green is that addition on the third floor that would be just in this area. And

it's approximately 443 square feet. This is the view from the neighbor's windows in the kitchen which would be the green is the outline of the addition that would be new.

This is the view from the third floor, and that's the outline, approximate outline, because it will be starting from the ridge line of the existing higher roof and continue. So that gives you a sense of what the massing will be and how we've tried to accommodate and pull back the addition.

To reduce it anymore would make it very difficult to create the spaces on that unit that were requested and required.

ATTORNEY SEAN HOPE: Do you want to speak about some of the financial portion?

PETER FOURTOUNIS: Yeah, I think maybe Eric can speak a little better to the finance.

ERIC SIORAS: As were pointed out in the last meeting we were here, this is not a project, it's not a condo to turn over, you know, next month or whatever. This is a main source of income for the parish. We really need it and are gonna need it down the road. So that's what

we're trying to do there. There's no such thing as commercializing the property. And personally and on behalf of the church, I think it's going to be a much better building. We're changing the siding. It's -- the aluminum siding is coming off, so it's going to be a beautiful building in our view.

CONSTANTINE ALEXANDER: Is your priest going to occupy the building?

ERIC SIORAS: We're still in the process of getting a new priest. That is an option. Depends who the priest is. And he has a choice to -- he's going to have the choice to live there if he wishes to.

CONSTANTINE ALEXANDER: Okay.

PETER FOURTOUNIS: What I didn't mention and highlight are some of the things that the new construction will do, the renovations. Currently there's an exterior ladder or fire escape. That's gonna be internalized. So what we're doing now is having two means of egress, two stairs from all the apartments.

CONSTANTINE ALEXANDER: I recall from the prior hearing safety issues were one of the concerns that leads you to do the work you

want to do.

PETER FOURTOUNIS: Yes.

ERIC SIORAS: Also, I want to add the new building is going to be sprinklers.

CONSTANTINE ALEXANDER: What? Sprinklers.

ERIC SIORAS: Yes.

CONSTANTINE ALEXANDER: Okay. That's not a zoning issue.

ERIC SIORAS: That's a safety issue. They had a concern about that.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: I think that's it for now.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

(No Response.)

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

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

One at a time.

ADRIANA GUTIERREZ: Hello. My name is Adriana Gutierrez. I live on No. 3 unit of 248 Franklin Street. And, we, the neighbors of 246 and 248, which is the condo that is mostly impacted by the elevation, we have discussed the plans at length with the architect and -- yeah, I'm speaking, what I'm saying is on behalf of the condo association.

VALERIO TOLEDANO: Valerio Toledano, for the record. I'm the owner of unit No. 2. The other owners, Ms. Jianming Fei who's the owner of unit No. 1, and Mr. and Mrs. Dooley were the owners of the 246 Franklin Street could not be here today. But we are representing --

CONSTANTINE ALEXANDER: But you are speaking on behalf of them?

VALERIO TOLEDANO: Yes, we are.

ADRIANA GUTIERREZ: Yes.

So we discussed the plans with Mr. Fourtounis and they confirmed that the third floor would be elevated by between five and six feet over and the length of 24 feet. So that's substantial. We have, we

have pictures, I think you also have pictures of what we can see from our kitchens, of our respective kitchen.

VALERIO TOLEDANO: This is from my unit number.

ADRIANA GUTIERREZ: And we appreciate the architect and the Greek church's effort to reduce the originally proposed length of the elevation from 34 to 24. We, but we think that the revised elevation will nevertheless very significantly impact the view from our building windows as well as the light that it receives.

CONSTANTINE ALEXANDER: But do you understand that they're not seeking zoning relief for the elevation?

ADRIANA GUTIERREZ: Yes.

CONSTANTINE ALEXANDER: They can do that as a matter of right as long as they don't get over 35 feet and they're not increasing the height of the building.

ADRIANA GUTIERREZ: We understand, but we want to express our dissent.

CONSTANTINE ALEXANDER: Okay. I want to make sure you understand.

ADRIANA GUTIERREZ: Yes, we do. We do. And we are just expressing -- therefore, we are very strongly opposed to the raising of the roof line. And we propose that the projected unit 3, because these are three units, be reconfigured to a single floor. A two-bedroom unit of 615 square feet on the second floor of the building which is what they have. And we are, however, amenable to the addition of a dormer on the northern part of the east side of the building so that the proposed unit 2 become a two floor, three bedroom, 998 square feet.

So we understand, but we just want to alert to the Board that for us the view, the impact in the view is going to be significant.

CONSTANTINE ALEXANDER: And did you express that to --

ADRIANA GUTIERREZ: We did, we did. And we -- they again --

CONSTANTINE ALEXANDER: Okay.

ADRIANA GUTIERREZ: We have reach an impasse on our discrepancy.

CONSTANTINE ALEXANDER: Okay, thank you.

Sir, do you want to speak?

VALERIO TOLEDANO: Sure. I want to paraphrase some of the things that Adriana said and also maybe make sure that Adriana and I also understand what the projected proposal is. So it's good that the architect is here so he can correct me if I'm misunderstanding.

So currently the building is on two levels. There's a third level which is unoccupied and in fact not much of a liveable space as we speak. This third level is on two elevations; the lower and the higher. As we understand, the main point of discussion is that both of these levels, the lower and the higher, be made more liveable. So the higher would be made more liveable by two dormers, which will extend the living space, and that will constitute the upper floor of one unit which will be -- half of which will be one floor below. The lower level, which right now is nothing because it's air, is proposed to be elevated and become the upper level of another unit which is further recessed from the street, lower level would be on the second floor. Okay.

Now we do understand that the church is trying to generate revenue. We understand that. They're our neighbors, we're very

sympathetic to that. And in that light we are in agreement with the idea of adding dormers on -- so on the northern side. So the part that's closest to the street that would already create a bigger unit on two floors that is currently not. So it already will generate more revenue. What we are opposed to is the elevation on the other part. And it seems from what our discussions with Peter, Peter can correct me since he's here, that somehow there's no midway. So they did indeed shave off a part of the elevation part ten feet, but even with that part removed, we still are talking about raising 24 feet, I mean a distance of 24 feet. And as you can see from that picture I took there, and you can scroll a couple, not more, because then those are pictures of my kids. But so that would, that would severely impact Adriana's view, my view, the downstairs neighbor view, and the 246 carriage house which is at the back of the building. So we are opposed not to the whole project altogether, but to that part of the project. So the creation of that elevation.

ADRIANA GUTIERREZ: Right.

CONSTANTINE ALEXANDER: Well, first of all thank you for taking the time to come down. We always benefit from the views of

concerned and affected citizens. My only observations at this point is that we have here a quarrel over the design of the building, obviously the elevation, and that's not a zoning issue. If what they wanted to do, raise zoning issues, other issues are raised, they're too close to the side of the building -- their building to the church, too close to the garage in the back, those are legitimate issues for us to consider. For us to say to side with neighbors, we don't like the design of this, even though their design is zoning compliant, for me it's troublesome, not because I don't feel badly for you, but I don't know where -- I think our authority sort of ends -- we don't get into the design generally except when it really relates to the zoning. And it doesn't relate to the zoning here as I see it.

VALERIO TOLEDANO: May I then ask?

CONSTANTINE ALEXANDER: Please.

VALERIO TOLEDANO: I think I understood. But may I ask then why is it that we're being consulted in the first place?

CONSTANTINE ALEXANDER: Well, the hope is that you could come up with a design, they and you, that everybody's happy with and can live with. Obviously that didn't happen. They have a design that

they think they need to have and it's a design that doesn't work for you, and that's why we're having our discussion right now. That's why. We always try on this Board when we have neighborhood opposition, to see if the petitioner and the neighbors could come to some accommodation so that there's no hard feelings after the zoning case is over and everybody -- it's a win/win. Sometimes we succeed, sometimes we don't. It looks like this is one when we don't. I can't say more than that. I don't know why they can't do what you want to do. It's not our business in my opinion. We hear you, though. But, again, I have to say that since it's purely as I see it, maybe I'm wrong, a design issue, I don't know whether we can deny relief based on your dissatisfaction with their design.

VALERIO TOLEDANO: And could you -- sorry, could you explain? I'm a mathematician, so this is very far away -- what exactly is the difference between a zoning issue and a design issue? I'm sorry, I know I'm asking a really, really basic question.

CONSTANTINE ALEXANDER: No. Sure, no, no. No questions are out of line. A zoning issue is we have a Zoning Ordinance with all kinds of requirements. And a zoning issue is a petitioner can't

comply with one or more aspects of our Ordinance and so they come down here and seek relief from our Board; a Variance, sometimes a Special Permit. Design issue is one that doesn't raise any zoning issues. It's a personal issue. It's what someone likes and what someone doesn't like, but it's not a legal issue. We don't have any control over that. We look at -- I'm speaking for myself. We look at design when we're looking at the zoning issues, but when the design doesn't relate to a zoning issue, I feel that I can't go any farther.

VALERIO TOLEDANO: But just from my understanding, there is an issue at the root of this conversation we're having. In other words, there is a reason why --

CONSTANTINE ALEXANDER: Yes.

VALERIO TOLEDANO: -- that they asked for a Variance, right? Otherwise we wouldn't be here in the first place.

CONSTANTINE ALEXANDER: Right.

VALERIO TOLEDANO: And could you explain what that point is?

CONSTANTINE ALEXANDER: Sure. Their building is sort

of not centered on the lot. It's very close to the -- actually the church next-door. And it violates a setback. It's too close to the church. And that's not an issue that's going to get worse or better as a result of this.

Second of all, they're too close to the -- there's a garage behind the structure. You're supposed to have ten feet distance. And they're not -- what they want to do, they're going to have less than ten feet. That's a zoning issues. Those are the zoning issues that cause them to be here.

SLATER ANDERSON: Can I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

SLATER ANDERSON: With the step back that you're proposing, does that eliminate the ten foot issue?

PETER FOURTOUNIS: It probably does, yes.

SLATER ANDERSON: Because you're not altering within ten feet?

CONSTANTINE ALEXANDER: Right.

SLATER ANDERSON: So we're just dealing with what is roughly a half foot to -- because the building tapers a little bit from the line;

is that correct?

PETER FOURTOUNIS: Correct.

CONSTANTINE ALEXANDER: See, if you lived in a building where the church is, we might have concerns because this building is now very -- as modified, as proposed to be modified, very close to yours. It might deal with your privacy. It could cause safety issues. That would be a valid zoning issue. You're not the church. The church is on both sides on this one. It is too close to the church and raises safety issues, the church suffers. They own the building.

VALERIO TOLEDANO: I understand.

SLATER ANDERSON: So the seven and a half feet would be -- like if what they proposed was set back from the church seven and a half feet --

VALERIO TOLEDANO: Then we wouldn't be talking.

SLATER ANDERSON: -- we wouldn't be here. Because they've addressed the ten foot technically with the adjustment that they proposed to you. But they still are within seven -- they're within that seven and a half feet.

VALERIO TOLEDANO: You're saying the ten foot really -- I mean looks like it was actually to accommodate us, but it's really actually to put them in compliance with the garage?

SLATER ANDERSON: They didn't need to go ten feet.

VALERIO TOLEDANO: That -- but that is also another issue. That makes it compliant with the garage? With the distance to the garage?

SLATER ANDERSON: My understanding is that they've fixed that issue. Right?

CONSTANTINE ALEXANDER: Yeah, they said -- I think they said.

PETER FOURTOUNIS: Yes, no, we did. We pulled it back.

CONSTANTINE ALEXANDER: That zoning issue is gone. There's only one zoning issue we have to pass on as a Board, and that's the closeness of the structure to the structure and the church. It's too close.

VALERIO TOLEDANO: So our point of view is totally irrelevant no matter what we say.

CONSTANTINE ALEXANDER: That's what I'm trying to say.

Not that it's irrelevant. We always like to listen to the neighbors' views, but I also have to at the end of the day we have to return to reality, legal reality, and explain what we can do and what we can't do and what our responsibilities are.

BRENDAN SULLIVAN: Perhaps maybe what you're asking what can they do as of right? What could they get a building permit for tomorrow? And what can they not get? What do they need relief for? Is that basically -- how much of this can they do as of right without any of our input?

VALERIO TOLEDANO: Yeah, exactly. Yours and ours.

BRENDAN SULLIVAN: And how much do they need relief for? So if you can maybe in 50 words or less walk us through exactly what you could do as of right and what you need relief for.

PETER FOURTOUNIS: Sean?

ATTORNEY SEAN HOPE: Yeah, so if we pull up the proposed.

So on the neighbor's driveway side which is the east. So in

fact, so I believe that this is right under ten feet, this corner from the garage. Yeah, that corner. So we couldn't bring it all the way out to the corner because we would be within ten feet. We probably could pull it back two feet, have a dormer all along here, so still block the same view, but we wouldn't be able to do a dormer on the opposite side because that's within the side yard setback. So this side yard setback is 13 or 15 feet. So we could add an addition on here, but we couldn't get probably within two feet of this edge. So the point that you're concerned about, this area here, we could still do. We could only do, but we couldn't do maybe the whole roof, but we could do this side, because this side is compliant with the setback, we have enough FAR to be under with, and we just have to make sure we're not within ten feet of this corner.

BRENDAN SULLIVAN: So when I look out his window, which you live on the second floor.

VALERIO TOLEDANO: Yes, that's the side you're seeing.

BRENDAN SULLIVAN: I'm going to see that second and third floor. Actually, I'm going to see the second floor right out there. You can do that as of right.

ATTORNEY SEAN HOPE: That's right.

BRENDAN SULLIVAN: You can get a building permit for that. You can get a building permit for the third floor.

ATTORNEY SEAN HOPE: That's right. We could raise half of the roof. The other half of the roof that's not within seven and a half feet.

BRENDAN SULLIVAN: Right.

SLATER ANDERSON: So you end up with like a 12-foot wide -- technically. That's if you stay within the footprint.

ATTORNEY SEAN HOPE: That's right.

SLATER ANDERSON: But there is space to go --

BRENDAN SULLIVAN: But looking out your window you would still see what they have there in the second floor. And the third floor, it's just on the other side --

ATTORNEY SEAN HOPE: That's right.

BRENDAN SULLIVAN: -- you would have to pull it in.

PETER FOURTOUNIS: Pull it in, right. It actually may get worse because we would be going --

JANET GREEN: The church side, on the church side they would have to pull it in.

BRENDAN SULLIVAN: So if I lived in unit 2 --

VALERIO TOLEDANO: Yes.

BRENDAN SULLIVAN: -- and I looked out that window, I would be sitting there and not here objecting to it also. Because I think, yes, it's going to be a detriment to your view, your unit.

VALERIO TOLEDANO: Mine, Adriana's, the neighbors, and other the other (inaudible) --

ADRIANA GUTIERREZ: Yeah, it's four units that are --

BRENDAN SULLIVAN: But they can do that as of right.

ADRIANA GUTIERREZ: Right. We understand that, but we also -- I mean, I think that the first -- the first time we were here, we were shocked to hear about their plans. And we really think that there was bad faith from the part of the church knowing that they would impact four units and not tell us a thing about it. So, we didn't -- we didn't have a very good start.

CONSTANTINE ALEXANDER: That's true.

ADRIANA GUTIERREZ: After the Board made them show us their plans, they did. Initially reluctantly, and then they were -- and the first thing they told us is oh, it's all right, it's all right, it's all right. You have no -- and that was not a very neighborly thing to do because, again, even if it's their right, we, we are allowed first to be told because, again, they don't seem to understand -- even if they have the right, they don't seem to understand what the impact for us means and why we are so opposed to this because it's gonna change the quality of our lives in a very significant way and neither of them live in that, in that house. The church is an entity that is very abstract. They don't even know whether the priest is gonna live there. So it's not like a known family and a known neighborly person who has lived there. I've lived there for 25 years. In that building they are going to put students who pay a lot of rent for the revenue of the church and who may come and go and really not create the community that we've created. And the idea that the priest is gonna live there or maybe, maybe not, what if we hire a priest that has six kids? Maybe they don't want to live there. So it's, again, it's us who live and enjoy the neighborhood and enjoy our view versus the people from the church who

don't live in that house and who may have the right because they own the property, but they are not gonna live there. So this is a very personal matter. And all along they have been saying, you have no right, you have no right. That may be true, but we have a say and we want to express how much we as families are going to suffer whereas the church is not gonna suffer.

CONSTANTINE ALEXANDER: Very well said by the way.

BRENDAN SULLIVAN: Well, you have rights and you also have presumed standing.

CONSTANTINE ALEXANDER: You can always go to Court. I mean, we're not the final, final word. The courts have the final word. Whether you have a successful case, I'm not going to get into. But you always have that.

Any further comments or questions from members of the Board at this point?

Andrea, you look puzzled.

ANDREA HICKEY: Well, I just don't know if there is still maybe some room for dialogue here. I'm sort of disappointed that you

are so, I guess, feeling like you've not been heard. Is there any --

ERIC SIORAS: May I say something?

CONSTANTINE ALEXANDER: Come a little closer so she can hear you.

ERIC SIORAS: I think what she said wasn't true, that we weren't receptive to hear them. Right after the first meeting they came over and we spent two hours in the office.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can you speak into the mic?

ERIC SIORAS: We spent approximately two hours in the office. Peter and Sean explained to them they have more knowledge about the plans. They explained to them, you know, very receptive. Peter we'll make additions. Peter had changed the plans. And we notified -- they had copies of the plans as soon as we had them for about a month ago. Finally got a call from Adriana at the church that they wanted to meet Monday, 1:30 and 4:30 which there was nobody was in the office. They wanted to meet us that night. So finally we made accommodations and met with them last night. So I don't know -- I don't

see the point we're not accommodating. So that's what I just want to say.

And I think we did that very well.

CONSTANTINE ALEXANDER: I don't want to go any further down this road because we're going to get acrimony pretty soon. She's expressed I think very heartfelt views --

ERIC SIORAS: Thank you.

CONSTANTINE ALEXANDER: -- and rational views I must say. I'm sympathetic to what you're saying. But as I tried to say before, our discretion and powers are limited. We're dealing with legal issues. And you're creating very legitimate very important community issues, but that's where we stand. We can't pass on that. The only way that gets resolved is dialogue between you and the church. And it looks like so far it hasn't succeeded.

JANET GREEN: Well, but didn't they make changes in the plans?

CONSTANTINE ALEXANDER: Oh, yeah.

JANET GREEN: I mean, it wasn't that there was no changes, right? They did.

ERIC SIORAS: We did make changes, yes.

CONSTANTINE ALEXANDER: They did make changes.

JANET GREEN: But it's lower, quite a number of feet.

ATTORNEY SEAN HOPE: Pulled it back ten feet. And to
Ms. Hickey's point --

CONSTANTINE ALEXANDER: I think there's good faith on
all sides. You tried to accommodate, my belief -- you're not being crazy.
I mean, you have a legitimate -- we have some crazy stuff that comes
down here. And you make I think legitimate personal issues. And there
we are.

ANDREA HICKEY: So it seems as if there's really no way
that further revisions could be made that would address their concerns?

ATTORNEY SEAN HOPE: And still allow for the church to
be able to do what it needs to do to achieve its goals. And I think we did
everything that we could do.

ANDREA HICKEY: If the petition was not allowed tonight,
would it be the church's intention to proceed with what they can do of right
which would have the same impact really?

PETER FOURTOUNIS: It would probably have a worse impact.

ANDREA HICKEY: I know it would look lopsided.

PETER FOURTOUNIS: What would happen is --

JOHN HAWKINSON: Could you speak up or use the mic?

PETER FOURTOUNIS: I think what would happen is we would expand towards the driveway and that would be five, six, seven feet closer and also the same height. So they would not get the height relief and they would actually get the building addition closer to where their building is.

ATTORNEY SEAN HOPE: And I'm always a little cautious when we talk as of right, because housing is not just blocks on a building, right? So we could do things as of right, and there's no spite saying we would do this. It wouldn't be as functional.

ANDREA HICKEY: I completely understand.

ATTORNEY SEAN HOPE: Okay, yeah. I'm not saying it's viable, we have to see. But I think this is a plan that makes sense, that makes the property more safe, which is one of the goals on the interior as

well as provide the additional income.

ANDREA HICKEY: I'm satisfied.

CONSTANTINE ALEXANDER: Okay.

At this point I am going to matter up to public testimony besides you folks.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We are in receipt of one letter. It's actually an old letter. It's from the Mayor Marc McGovern. The letter is dated July 12th. And so it's really from your initial petition or initial submission. (Reading) I write in support of the Hellenic Orthodox Community of Cambridge's request at their property at 254 Franklin Street. Living just two blocks away from their Franklin Street location, I have seen the positive impact Saint Constantine and Helen Church has had on the community. They are an asset to our neighborhood, a truth they demonstrate every year at the Hellenic festival and everyday in the services they provide parishioners and residents alike. I'm happy to repay the support they have shown to my community

by speaking favorably on their behalf. I hope you will approve their petition and grant Variance relief to build an addition within the side yard setback on their property.

And that's it.

I'm going to end public testimony. Time for a decision. Any discussion?

JANET GREEN: No.

CONSTANTINE ALEXANDER: I think I've expressed my views indirectly is that I'm very sympathetic to your concerns and your problems. I don't know how we can deny relief to make you happy. I wish they could make you happy, but we can't get there.

Others have anything to say?

JANET GREEN: No.

CONSTANTINE ALEXANDER: Okay. I'm ready for a motion.

The Chair moves that we make the following findings with regard to the variances being sought -- Variance being sought:

A literal enforcement of the provisions of the Ordinance would

involve a substantial hardship. Such hardship being is that this is a structure in need of overhaul and improve the safety of the occupants of the structure. And this not peculiar just to the church. It's whoever owned that building.

That the hardship is owing to the fact that this is already a non-conforming structure and, therefore, any modification to it requires zoning relief.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance. With regard to no substantial detriment to the public good, we've had -- we've heard testimony there may be, at least to the immediate neighborhood, but at the same token, the housing stock of the city will be improved, a structure will be better from a safety point of view after the work is approved, than it is at right now, and just again one more time unfortunately we can't, the petitioner can't come up with a solution that would satisfy all of your legitimate concerns.

On the basis of all of these findings the Chair we grant Variance requested on the condition that the work proceed in accordance

with plans submitted by the petitioner, they're attached to a letter from Mr. Hope dated September 7, 2018, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief is granted. Sorry.

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

* * * * *

(7:40 p.m.)

(Sitting Members BZA Case No. 016955-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: We're going to turn now to our regular agenda and the first two cases we're going to hear in tandem because they're asking for the same relief.

JOHN HAWKINSON: Mr. Chair, it's hard to hear you over the noise.

CONSTANTINE ALEXANDER: Are you counsel?

ATTORNEY NICHOLAS CRAMB: Hello, Mr. Chair, members of the Board.

CONSTANTINE ALEXANDER: We received this memorandum from the City about two hours ago, three hours ago. You probably have not seen it. Out of fairness if you want to wait five minutes to recess.

ATTORNEY NICHOLAS CRAMB: Yes, thank you.

(Case recessed).

* * * * *

(7:45 p.m.)

(Sitting Members BZA Case No. 016955-2018 and BZA Case No.

016960-2018: Constantine Alexander, Brendan Sullivan, Andrea A.

Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will now call -- I'm actually going to call two cases since they're basically identical in terms of

legal relief -- really the facts.

JOHN HAWKINSON: Gus, I think it would be helpful if you would use the mic.

CONSTANTINE ALEXANDER: The Chair will call -- as I was starting to say, two cases. We will hear them simultaneously since they both raise the same issues, have the same facts. And the cases are case No. 016955, 42 Bay State Road and 016960, 277 Broadway.

ATTORNEY NICHOLAS CRAMB: Hello, Mr. Chair, members of the Board. My name is Nick Cramb and I represent Doctor Ling Yi Liu who is here with me tonight at 42 BSR, LLC and 277 Broadway, LLC which are the owners of two apartment buildings located at those addresses. That's 42 Bay State Road and 277 Broadway.

We're here tonight to explain to you why we've appealed the ISD cease and desist letter and Doctor Liu is here to answer any questions that you might have or that might come up during the proceeding that I don't know the answer to.

JOHN HAWKINSON: Counsel, can you use the mic, please.

Thank you.

ATTORNEY NICHOLAS CRAMB: Yeah.

The June 4, 2018, cease and desist demanded that Doctor Liu discontinue offering apartments for rental of less than 30 days at the two buildings without registering with ISD and obtaining a short-term rental certificate for the buildings. We timely appealed the ISD's order because Doctor Liu's use is a protected pre-existing use under the law, General Laws Chapter 40-A, Section 6, and under the City of Cambridge Zoning Ordinance Section 8. Doctor Liu cannot register with the ISD because registration requires proof that he either -- that he lives in one of the units as his primary residence in the building, and he does not. So he's prohibited by the letter of the short-term ordinance from registering.

So Doctor Liu doesn't live in the buildings because they are his business. It's how he makes a living. The buildings provide his livelihood. He invested substantially in Cambridge at a time many years ago before the short-term rental ordinance was on the books, and in fact before it was in anybody's contemplation or before the City had really any concerns about those type of rentals.

Chapter 40-A, Section 6 in the City's Ordinance protects

specifically against changes to the Zoning Ordinance like the STR Ordinance or the short term --

CONSTANTINE ALEXANDER: But you keep, in your written presentation and your comments, you keep leaving out one key word.

ATTORNEY NICHOLAS CRAMB: Yes.

CONSTANTINE ALEXANDER: Legal.

ATTORNEY NICHOLAS CRAMB: Lawful. Absolutely, yes.

CONSTANTINE ALEXANDER: That is the issue.

ATTORNEY NICHOLAS CRAMB: Okay.

CONSTANTINE ALEXANDER: That's the issue before us tonight.

ATTORNEY NICHOLAS CRAMB: Yep.

CONSTANTINE ALEXANDER: Was the use of short-term rentals in the City of Cambridge legal at the time the short-term or rental ordinance was adopted?

ATTORNEY NICHOLAS CRAMB: Right.

CONSTANTINE ALEXANDER: And it was the position of the Inspectional Services Department and the City that short-term rentals

were not legal uses. That the residential uses that are permitted under our Ordinance -- it doesn't spell it out, but it seems to me quite clear, what I'm going to call traditional uses. Either you live in the place, your dwelling unit, or you rent out the dwelling unit on the long-term basis. The short-term rental creates a number of problems for the City or any community.

It first of all, it shrinks the amount of housing that's available to the citizens of the city because these units, which would otherwise be rented to citizens of the city, are now being made available on a short-term basis to strangers to the city.

No. 2, it potentially at least disrupts neighboring dwellers because all of a sudden you've got people coming and going and more traffic, potentially more noise. And just by way of illustration to this, I live in a condominium. One of the other condominium owners a few years ago entered a contract to sell her condominium. When the buyer went to the bank to get financing, the bank looked at our condo documents and says wait a minute, there's nothing here that prohibits short-term rentals. We're not going to loan to a building or to a unit that allows short-term

rentals. I mean, even the third parties will review that short-term rentals were not in the best interest of the city, were not permitted as a matter of right by our, by our Zoning Ordinance. And that's the issue here tonight.

ATTORNEY NICHOLAS CRAMB: So I'll jump right to that issue, and I think you hit it on the head when you began speaking.

CONSTANTINE ALEXANDER: I hope so.

ATTORNEY NICHOLAS CRAMB: You said that the Ordinance doesn't spell it out.

CONSTANTINE ALEXANDER: Right.

ATTORNEY NICHOLAS CRAMB: And you are bound by the Ordinance. And you have to apply its plain language. And I'm a little concerned hearing what you've just expressed about a potential personal bias or conflict you might have on this issue given your experience.

CONSTANTINE ALEXANDER: Oh, no, no, no. Wait a minute. Let me stop you right there. I have no bias. This is a -- it wasn't my unit. I wasn't the lender. I just lived next-door to the person who was selling, and I knew about the bank's request for a change in the condo documents because I'm a trustee of the condominium trust. I

absolutely, unqualifiedly have no conflict of interest.

ATTORNEY NICHOLAS CRAMB: I hope so and I appreciate that. It is a little disconcerting to hear about the Chair's personal experience and personal feelings about this issue --

CONSTANTINE ALEXANDER: Oh, come on, sir. Enough.

ATTORNEY NICHOLAS CRAMB: But for the record.

CONSTANTINE ALEXANDER: All right, you've preserved your record. Go ahead.

ATTORNEY NICHOLAS CRAMB: So the issue is that multi-family dwellings are permitted as of right in both of the districts that these buildings are located in. And apartment buildings, and this is the way the Ordinance looked at this. What type of building is this? Apartment buildings that have multiple bedrooms and separate kitchen and bath facilities for each of the units fall squarely within the definition of a multi-family dwelling. The definition says that a multi-family dwelling is a building that is arranged, intended, or designed to contain three or more dwelling units. Dwelling units is in turn defined to mean a room or a group of rooms that are occupied or capable of being occupied, separate

and apart from other building units by a family equipped with cooking and sanitary facilities for exclusive use of their family. Multi-family dwellings under the Cambridge Zoning Ordinance are apartments and apartment buildings, and that's what this is. And there is nothing. That use is allowed as of right. There is nothing in the Cambridge Ordinance that says: Only for certain periods of time. They cannot be rented on a short-term basis. They have to have a leases of a year or six months or anything.

And in order to take away grandfathering in this case, which would be wholly unfair because of the invest that Mr. Liu has made in the city, you have to read something into the bylaw that doesn't exist. It's not there. And notably, the City -- and this was a total surprise to us as you know, because it just came 30 seconds before we sat down here, it doesn't articulate why it is that it believes that this use isn't permitted. It doesn't get into this issue at all. It doesn't tackle how you have to interpret multi-family dwelling. It just ignores it. And that's because the plain language says this was permitted.

CONSTANTINE ALEXANDER: I thought I tried to explain

why -- you're absolutely right. There's no black letter language in the Zoning Ordinance that says what the City's now saying. But there's no question that the City was wrestling for a long time about -- not a long, but for a period of time, with the adverse impact to the City resulting from short-term rentals, particularly where short-term rentals were the result of someone who didn't live in the building or in the dwelling unit. Absentee owner, landlord. And that's it.

I would not -- I would personally readily acknowledge I can't cite rhyme and verse in a Zoning Ordinance that says you were illegally operating. But it was clearly, in my mind, clearly the sense of the city officials, many citizens of the city, that this is not what was intended when the Zoning Ordinance was adopted. It was intend -- one more time, it was intended for when it comes to dwelling units or residential units, either for people who live in their unit that they own or who rented for a significant period of time. So there's stability, there's housing that's not being taken away from residents or potential residents of the city for the benefit of short-term occupancy. That was a -- that's a concern --

ATTORNEY NICHOLAS CRAMB: So --

CONSTANTINE ALEXANDER: That's a concern that leads to the conclusion of the Inspectional Services Department that this was never permitted before. The City decided well, we're going to make it very clear and we're going to try to save the baby. We're going to allow short-term rentals, even though they have detrimental effects, but we're not going to allow all kinds of short-term rentals. And unfortunately, I guess from your point of view, you're on the wrong side of that. They still don't allow, under the short-term rental ordinance absentee owners, significant absentee owners of residential properties.

That's not what the City wants. I don't think it was intended by the City when it adopted the Zoning Ordinance. And as you know, Section 4.13 of our Ordinance provides that no building may be used, in whole or in part, for any use not listed in Section 4.30.

And you point out there's nothing in 4.30 that says you can't have short-term rentals. But everything is -- can be interpreted. This is, in my mind, a fair interpretation by the Inspectional Services Department that it was not intended to allow short-term rentals. And that's why I don't, I personally don't think you satisfy the requirement for zoning relief.

ATTORNEY NICHOLAS CRAMB: With all due respect, on this record twice tonight you've said it's not in the bylaw.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY NICHOLAS CRAMB: And if a Court were to look at this, a Court is gonna say well, what is in the bylaw? And the Board is constrained by the text of its bylaw. And to speak to the point that the City has always intended to interpret its bylaw to prohibit short-term rentals in this way. I don't think it's fair. If you actually look back to when -- the period of time when multi-family dwellings were added and defined in the Zoning Ordinance, it was before this issue was on anyone's radar at all.

Airbnb didn't exist. The thing was defined to allow a certain type of housing. And within the definition, in two places, it doesn't even talk about -- there's nothing about the duration or extent. It even includes when it's not being used as multi-family housing, so long as it is arranged, intended, or designed as multi-family housing. And even the definition of dwelling unit is a room that's occupied or capable of being occupied. Those are words that require there be no temporal limitation. And if you

are to impose one here, this Board is to find that there's temporal limitation here, it's really unfair to Mr. Liu because -- to Doctor Liu. He read these bylaws. He read the City of Cambridge's Ordinance in considering whether to invest and how to invest in the City. And the definition of a multi-family dwelling is plain English and clear as day and that's what he relied upon. And if you're now gonna say, doesn't matter, because the City always didn't like short-term rentals, even though twice the Chair said, well, it's not really in the bylaw, that's wholly unfair.

CONSTANTINE ALEXANDER: Comments from members of the Board?

BRENDAN SULLIVAN: Well, I think what Mr. Liu is running is akin to a hotel. Transient occupancy. Transient use of the property. And so hotels are regulated. Lodging motels they're regulated. But it was never the intention that you turn an apartment into a hotel, akin to a hotel that would not be regulated. And as the Chair says, the City felt that it was in their interest to regulate and to put some belts around I guess the short-term rental much like, you know, ZipCar or Uber, you know, all that other stuff. Have they caught up with technology? Perhaps not. Maybe

they're being reactive rather than proactive. It's hard to sort of foretell the future of what's coming down the road until it's already here.

But as far as being unfair, it doesn't take his rights away from renting the property. He can still rent it.

ATTORNEY NICHOLAS CRAMB: Well, it completely changes the economics and consideration of investment.

BRENDAN SULLIVAN: Well, potential gain or loss is not necessarily a hardship on the zoning either.

ATTORNEY NICHOLAS CRAMB: Well, sure it is. He's entitled to rely on the existing zoning provisions and he's entitled to rely on state law and on Cambridge law which says if we change the Zoning and we preclude you from doing something that was allowed under our bylaw before, you're going to be grandfathered.

BRENDAN SULLIVAN: And he should have availed himself of the knowledge of what is the City's position of my renting, and it's not --

CONSTANTINE ALEXANDER: Did you ever contact -- did your client ever contact the Inspectional Services Department to find out what the read of the Inspectional Services Department is with regard to

short-term rentals?

ATTORNEY NICHOLAS CRAMB: There was no -- when the buildings were starting to be used in this way, there was no concept of short-term rental. There was no phone call to make.

BRENDAN SULLIVAN: Well, they would have looked it up and they would have said what is the use akin to? And it probably would have been it's akin to a hotel. It's akin to a motel because it provides separate bedroom, you know, it's a multi-family. You know, yadda-yadda-yadda. Whatever hotel, motel, you know, category is or characteristics are. And the question could very well have been asked, Is this a permitted use?

ATTORNEY NICHOLAS CRAMB: Can I respond to that, though? Because it's not a hotel and it's not a motel and it's not a lodging house and not a boarding house and it's none of those things, because both in the law, in case law, in the Building Code --

BRENDAN SULLIVAN: Because those are listed.

ATTORNEY NICHOLAS CRAMB: No, but they're defined. And they're defined to mean accommodations that have sleeping and bath

but not sleeping, kitchen, and bath. They're not apartments. This is an apartment building.

ANDREA HICKEY: Could you speak, then, to your definition of multi-family and why you think it encompasses this use?

ATTORNEY NICHOLAS CRAMB: Yeah. Multi-family's apartment building. And when you have apartments that are set up and designed to accommodate an entire life, everything that you need --

ANDREA HICKEY: Irrespective of length of stay or residency --

ATTORNEY NICHOLAS CRAMB: Yes.

ANDREA HICKEY: Completely irrespective?

ATTORNEY NICHOLAS CRAMB: Completely irrespective.

And I completely understand that Cambridge has since decided to prohibit and reign in short-term rentals. And I understand why they did that. But the fact is that they didn't do that until recently.

BRENDAN SULLIVAN: Well, they haven't prohibited it. They have regulated it.

ATTORNEY NICHOLAS CRAMB: Well, they have --

BRENDAN SULLIVAN: There's a difference.

ATTORNEY NICHOLAS CRAMB: Yes.

BRENDAN SULLIVAN: Well, we're getting into semantics
now.

ATTORNEY NICHOLAS CRAMB: Yes.

BRENDAN SULLIVAN: But you're, you know, parsing words
to us.

ATTORNEY NICHOLAS CRAMB: I'll give you that.

BRENDAN SULLIVAN: Okay? They have not prohibited it.

ATTORNEY NICHOLAS CRAMB: Sure.

BRENDAN SULLIVAN: They have regulated it.

ATTORNEY NICHOLAS CRAMB: So the Board can
understand, too. I don't think that the use here is what you might be
thinking of as a typical short-term rental. These are very well taken care
of properties. And the business model that Doctor Liu applies is actually
seeking rental periods of between 30 days and nine months. That's the
goal. And that's what he sees as an underserved niche in the market,
somewhere -- a place that he can make money. But as a result of trying

to find those leases and those tenants, that necessarily creates gaps in the schedule over the year. So he is filling in the gaps with the short-term rentals to maximize the -- his use of the building and his investment in your city.

LAURA WERNICK: That's not our -- under our jurisdiction to determine -- to allow him to maximize his investment.

ATTORNEY NICHOLAS CRAMB: No, but you have to allow him to do what was allowed before the short-term ordinance was put into place.

CONSTANTINE ALEXANDER: That's where we disagree. We can go around and around and around. I don't think -- we don't think -- or I don't think, I can't speak for anybody else. Except for Inspectional Services Department doesn't think that you are allowed to do what you were doing. Just because, you know, we're very simple. You could have contacted Inspectional Services Department and said I'm planning to do what you're doing, are there any problems. You didn't do that.

You went ahead, claimed you're okay under the Zoning

Ordinance, and now you're paying perhaps a price for not doing that.

And I don't know why we should find relief, grant you relief for what it is. I think, again, the City had a -- has a legitimate interest in dealing with short-term rentals. I've cited my view. Some of it. Those are the -- what the City tried to do is in effect accommodate short-term rentals to allow certain kinds that were not permitted before. Unfortunately, you're on -- as I said before, on the wrong side of that and you're not being permitted to do what you were doing, according to the Inspectional Services Department, what you're doing before. That's where we are. I mean I think otherwise we're going to go around and around on this one.

ATTORNEY NICHOLAS CRAMB: Just -- I have a very quick question.

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY NICHOLAS CRAMB: I'd like to make sure that we have addressed exactly what -- how you're seeing the issue. Why is it that you --

CONSTANTINE ALEXANDER: When we take a vote, we'll take a vote and we'll express our reasons for the vote. I don't know what

more we can say. Maybe others can say it better.

ATTORNEY NICHOLAS CRAMB: Well, why is it that you don't see this as multi-family housing?

CONSTANTINE ALEXANDER: I'm saying -- you just -- in my view, blinders. Multi-family housing, okay. It's not as that easy. There's multi-family housing, there are certain uses in multi-family housing that are not permitted. If you were running a distillery in a multi-family housing, unit housing, that wouldn't be permitted. That's clear as in it's not our example. But those are the kinds of things. You just can't look at this, throw three words, multi-unit housing, and say it's okay because there's nothing that specifically says you can't have short-term rentals.

ANDREA HICKEY: If I could speak to that for a second.

CONSTANTINE ALEXANDER: Go ahead.

ANDREA HICKEY: I respect Counsel's position that multi-family is not a defined term in our Ordinance. So how do we decide --

ATTORNEY NICHOLAS CRAMB: No, it is a defined term.

ANDREA HICKEY: Well, I'm looking at the definitions.

ATTORNEY NICHOLAS CRAMB: Multi-family dwelling?

ANDREA HICKEY: In our Ordinance. The definitions
clause.

ATTORNEY NICHOLAS CRAMB: Right. I can point you.

ANDREA HICKEY: So if you have a definition.

ATTORNEY NICHOLAS CRAMB: Yeah. It's under d I
believe.

ANDREA HICKEY: Okay.

ATTORNEY NICHOLAS CRAMB: Page 23.

ANDREA HICKEY: 23. Oh, I was looking under M for multi.

ATTORNEY NICHOLAS CRAMB: There's a comma.

ANDREA HICKEY: Forgive me. Forgive me.

ATTORNEY NICHOLAS CRAMB: But that's the issue
exactly.

ANDREA HICKEY: That's exactly the issue. And --

ATTORNEY NICHOLAS CRAMB: So the issue is that it is
defined, and we fall precisely in that definition.

ANDREA HICKEY: I --

CONSTANTINE ALEXANDER: We have a --

ANDREA HICKEY: -- I think there's a

point --

ATTORNEY NICHOLAS CRAMB: Thank you.

ANDREA HICKEY: -- there.

CONSTANTINE ALEXANDER: Fine. Let's move on. I think we're -- because we're really repeating ourselves.

Mr. Singanayagam, did you want to say --

COMMISSIONER RANJIT SINGANAYAGAM: Yes. The multi-family is a principal use and short-term rental is an accessory use. So you can't have an accessory use in a principal building. Okay?

So whatever he's using as a short-term rental, is not a use allowed. It was not allowed before. Now it's regulated as an accessory use. And so talking about multi-family. And we have a transient accommodation use, too, that is hotels, boarding house, and motels. Either you -- this is what is operating as transient accommodation. Unless he's a hotel, motel, or lodging house, then it's -- a multi-family means a family. It's not short-term rental or transient. That's what I

would say.

CONSTANTINE ALEXANDER: Thank you.

Other comments from members of the Board before I open the matter up to public testimony?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: Okay.

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

Councillor, I'm sorry didn't recognize you. I apologize.

COUNCILLOR CRAIG KELLEY: Thank you very much, everyone. My name is Craig Kelley. I'm a city councillor in Cambridge, Massachusetts, and I was the chief architect of our short-term ordinance -- short-term rental ordinance. I agree with the Board's position that in un-owner occupied unit such as the ones that the counsel is describing is not legal under our current zoning. I think everyone agrees on that.

I would also say it was not legal before we changed the zoning. The zoning did not prohibit anything. The zoning specifically allowed a new type of use, that up until that moment had been clearly not

allowed. It's unfortunate for the petitioner that they chose to invest in something that is not a viable business model in Cambridge, but it has never been a viable business model because it has never been legal in the way that it's currently being used. So I encourage the Board to think very clearly about how it expresses itself, because I suspect this won't be the last discussion on the subject. And we would not want to cause problems down the line in how things were described or voted on or whatever. But I do encourage the Board to deny this application.

And I thank you for your service.

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

Ma'am.

MARIE SACCOCCIO: Yes. Marie Saccoccio --

CONSTANTINE ALEXANDER: Can you come a little closer and use the mic so we all can hear.

MARIE SACCOCCIO: Marie Saccoccio, 55 Otis Street in Cambridge. I've been following the short-term rental issue in Cambridge for quite a while, and I took a particular interest in this case because I

think it has incredible precedential value. So I'm glad to hear the Board understands that. And I did a quick search myself to see how the other jurisdictions actually prohibit pre-existing, non-conforming use in their short-term rental ordinance. And there's a whole bunch of them. So it's Annapolis, Maryland; Alexandria, Virginia; Ashville, North Carolina; Chapel Hill, North Carolina; Saint Augustine, Florida; San Francisco, California; Santa Fe, New Mexico; Savannah, Georgia. So it's not the first time that short-term rental owners have tried to say we were lawful before and we're a pre-existing lawful entity so we're not subject to your ordinance. So it's not the first time --

CONSTANTINE ALEXANDER: In those communities, were those cases were they in courts or boards upheld what's --

MARIE SACCOCCIO: I don't know. All I know -- what I can tell you is I'll supply you with the list because it comes out of Wilmington, North Carolina. A lot of their ordinances are much older than ours: 2011, 2015, 2012, 2009. One of them is still pending.

CONSTANTINE ALEXANDER: The reason I ask is there is no question throughout this country ordinances dealing with short-term

rentals.

MARIE SACCOCCIO: Right.

CONSTANTINE ALEXANDER: This is a specific question under those ordinances --

MARIE SACCOCCIO: Yes.

CONSTANTINE ALEXANDER: -- as to how far they go --

MARIE SACCOCCIO: Yes.

CONSTANTINE ALEXANDER: And I don't any of those ones that you cited are relevant to Cambridge's situation. That's what I don't know.

MARIE SACCOCCIO: Well, I think they are in that owners have come forward once the ordinances were adopted and said we're grandfathered in. That was essentially the assertion.

CONSTANTINE ALEXANDER: You know that for a fact?

MARIE SACCOCCIO: Yeah. That's what the chart is all about.

CONSTANTINE ALEXANDER: Okay.

MARIE SACCOCCIO: So essentially it's not the first time it's

being raised, and obviously it's been settled in these other jurisdictions.

I also want to make clear that, you know, there used to be a lot of illegal lodging houses in Cambridge.

CONSTANTINE ALEXANDER: Yes.

MARIE SACCOCCIO: Those are gone like a generation ago, and I feel that this is just that resuscitated all over again. We don't need that.

CONSTANTINE ALEXANDER: Thank you.

MARIE SACCOCCIO: Thank you.

CONSTANTINE ALEXANDER: Again, thank you for taking the time to come down.

Anyone else wishes to be heard? Heather.

HEATHER HOFFMAN: Hi. Heather Hoffman, 213 Hurley Street. Now, I was present for a lot of the City Council discussion of this, and what Councillor Kelley said is quite true, the position of the City all along has been that this was not a permitted use. Now, when I testified during these proceedings, I raised the issue that there are several types of dwellings, both long and short term, that at least at some time have

existed in the city, and some of them certainly still do. So we have lodging houses. Those, as far as I know everywhere, you have to get a lodging house license in order to do that. Boarding houses. There are co-ops. There are bed and breakfasts. And there are certainly in Cambridge bed and breakfasts that don't have licenses because they're small enough and they fit other criteria which this would not fit because that kind of bed and breakfast, as I understand it, has to have the owner living there. And the other thing I would point out is that the notion that a one night stay could ever be considered residential is nuts. Residential involves moving in for some period of time. Like thinking of it in at least some fashion as home rather than where I'm flopping tonight. So, if you're talking about nine months, I feel that that's certainly within what most of us would think of as residential given an academic community where an awful lot of people have nine-month leases. And in fact three months sublets often, but three months for the summer, between the end and beginning of the academic year. And certainly I know that some of the big apartment buildings that are gracing our fair city do six-month leases. But I have heard of nothing shorter than that. And I really think

that to talk about multi-family dwellings and then talk about a business that is virtually indistinguishable from a hotel or a B&B, is just, it's sophistry. And I think that the Board can see, can see beyond that and the City certainly did in crafting this Ordinance.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard?

BILL DINES: Yes. I'd just like to make a brief comment. I won't be repetitive.

CONSTANTINE ALEXANDER: Yeah, please don't be repetitive.

BILL DINES: My name is Bill D. I live at 69 Otis Street and I've been dealing with this very similar situation on an investor -- which I classify as an investor class type of situation. It's nothing more than a hotel being run by an absentee landlord, and I think it's disrupting our whole communities. It's disrupting our housing stock, and I don't believe it's legal as it stands in this case, in the case that I'm dealing with on Otis Street, and I urge you to not approve this application.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be -- Ma'am.

BETTY LEE SACCOCCIO: Good evening. My name is Betty Lee Saccoccio and I live at 55 Otis Street. As Mr. Dines had pointed out, we are dealing with a situation in our -- on our own street that is very similar to, you know, whatever is happening here.

We live in a very residential neighborhood, but it's being turned into a commercial use neighborhood. Also at this stage in my life, I'm close to 70-years-old and I really don't feel secure as a senior not knowing who my neighbors are everyday, every other day. You know, greeting people, saying hello, who is this? Is the person on my steps? What are you doing here? Oh, that's your Uber coming for you? So it goes on and on as to what makes a neighborhood. And short-term rental under any circumstances really doesn't make a neighborhood, but at least with an owner-occupied, it's a very different situation.

Thank you.

CONSTANTINE ALEXANDER: Thank you very much.

Anyone else wishes to be heard? Ma'am, you just spoke.

MARIE SACCOCCIO: I know. I wanted to give you this.

CONSTANTINE ALEXANDER: Come a little closer so people can hear you.

MARIE SACCOCCIO: This was the -- these were the benchmark cases that were actually on point.

CONSTANTINE ALEXANDER: Oh, okay. You just want to give that to us?

MARIE SACCOCCIO: Yeah.

CONSTANTINE ALEXANDER: Sorry.

Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: I guess not. Finally.

We don't have any letters in the file so I'm going to close public testimony.

Final words?

ATTORNEY NICHOLAS CRAMB: Well, I think it is relevant to point out that we've heard concerns about where this has been a

problem in other parts of the city. It's notable that none of the abutters to either of these two buildings are here tonight to speak out in favor of what I sense your position is at least, Mr. Chair, and against our application. And I think that's because this is a very responsible thing that Doctor Liu is doing with these buildings. They're very well taken care of and that's evident based on what we've heard tonight.

CONSTANTINE ALEXANDER: Thank you.

Here we are. Discussion?

ANDREA HICKEY: If I could just ask a question?

CONSTANTINE ALEXANDER: Yeah, go ahead.

ANDREA HICKEY: So I think the Commissioner's clarification was important to me and it helped me to sort of frame this issue and put it into perspective. Could I ask counsel to speak a little bit about the Commissioner's raising the principal use as being transient and that being sort of not in line with the multi-family definition?

ATTORNEY NICHOLAS CRAMB: I don't think the principal use is transient here. The use is a multi-family use, but because of the way that he is renting the apartments, if you looked on an annual basis,

more of the time that the units are rented are rented for 30 days or more than 30 days or less. So it's not a principal --

CONSTANTINE ALEXANDER: I have to just comment on that. You've been taking this case and slowly twisting it around to a -- I'm not being cynical, to a wonderful landlord your client is. But if we were to grant the relief you're seeking tonight, it would be citywide. It would give relief to people who are not as good a landlord as you are. So it's a bigger issue than what a wonderful person your client is. It's a big issue for the City of Cambridge.

ATTORNEY NICHOLAS CRAMB: I appreciate that.

CONSTANTINE ALEXANDER: Okay.

BILL DINES: Did you close public comment?

CONSTANTINE ALEXANDER: I did.

BILL DINES: I just had one question.

CONSTANTINE ALEXANDER: A question I'll take. Go ahead.

BILL DINES; I was just wondering how many units in this particular apartment building is owned by this particular individual?

CONSTANTINE ALEXANDER: If you want to answer that, it's up to you.

ATTORNEY NICHOLAS CRAMB: Yeah. Doctor Liu, you can.

LING YI LIU: One building has nine units. The other one has five. For the record. I built both buildings which I kept.

BILL DINES: Okay, I was just curious how many units there were.

ATTORNEY NICHOLAS CRAMB: And maybe you can speak to how they're being rented today for example.

LING YI LIU: If I may.

CONSTANTINE ALEXANDER: I don't want to cut you off, but, again, we're getting down -- you're talking the specific of yours. The issue before us is much broader for the City of Cambridge. And what a good landlord you are or not, it's a question about whether there should be a grandfathering of the type of units, i.e. non-owner occupied from our Ordinance. So I don't know where we're going with this.

ATTORNEY NICHOLAS CRAMB: Well, it's that his use is

actually different than people who are buying a single apartment and renting them only at Airbnb and only for a day or two at a time. His business model is totally different. And if you let him answer the question, which is how the building is being used today, for example.

CONSTANTINE ALEXANDER: Answer the question.

LING YI LIU: If I may, I think that the real difference here is that the principal use -- I started after I built the buildings, I rented them like everybody else, one year leases, sometimes six months leases. Empty. Then I started a furnished rental business, and I found that furnished rentals, a lot of people come for the semester, or actually a little subset of the semester, maybe two weeks after the beginning of the semester to two weeks before the end of the semester and types of things like that. And you also had people coming for -- they're performing in the theatre and stuff like that for two months. So we have been focusing on those folks. When you then have gaps between those longer periods, those over 30-day stays, then we have been using Airbnb to -- for those shorter periods. If the stays, the number of days being used as over 30 days is larger than the short-term rentals, it was my view, and that's why I

didn't approach the Inspectional Services, it was my view that we were principally non-transient and we were fine.

BRENDAN SULLIVAN: I think it would probably be -- and it doesn't matter to me, I'm not -- telling you what the City's view is, it wouldn't matter to me whether it's five units or one unit. I think one unit you step over the line.

ANDREA HICKEY: I think maybe the Commissioner wanted to step in for a moment.

RANJIT SINGANAYAGAM: I think what I'M trying to say is that even if you rent it for more than 30 days, there are three or more people, it becomes a lodging house. So you have to get a lodging house license and an occupancy permit for the lodging house. And none of them -- I think to my deduction that this house was built as a single-family home. So the occupancy permit doesn't say short-term rentals or lodging house or any transient use.

LING YI LIU: Five units.

RANJIT SINGANAYAGAM: Five different units I know. But they're not multi-family. Different units. They're all attached.

LING YI LIU: But each unit we rent to families.

RANJIT SINGANAYAGAM: I understand that. What I'm trying to say that if you use it as a lodging house, you need a lodging house license and an occupancy permit for lodging. I think we gave it as a residential dwelling unit, not as a short-term rental.

CONSTANTINE ALEXANDER: Thank you.

Well, I think we closed public testimony.

Discussion from members of the Board?

BRENDAN SULLIVAN: I think the question before us was a request to allow for pre-existing non-conforming use; is that correct?

Permission to continue?

ATTORNEY NICHOLAS CRAMB: It's to overturn the Commissioner's cease and desist letter.

BRENDAN SULLIVAN: In your pleadings you had written, somebody wrote, black letter law that the prior non-conforming use of land is not subject to the later enacted ordinance or bylaw. And then you cite Derby versus Chelsea. In that, Chapter 48 protected a pre-existing use even in the absence of requisite government approval.

So I think that's what you're pleading. So I pulled down Chelsea and it said -- again, there's another sentence that's sort of missing: A valid non-conforming use is not rendered unlawful by failure to possess requisite government approval provided that such approval can be easily obtained.

So the question I ask the Commissioner, is that approval easily obtained?

RANJIT SINGANAYAGAM: The approval --

BRENDAN SULLIVAN: As a, as would -- if he came down and sought approval for a valid non-conforming use of the property?

RANJIT SINGANAYAGAM: It's not easily obtained because --

BRENDAN SULLIVAN: And the answer would be no to that.

CONSTANTINE ALEXANDER: People want to express -- I think a lot of views have been expressed to the questioning. We can go right to a vote or welcome more discussion. What do people want? Ready for a vote?

JIM MONTEVERDE: Ready for a vote.

CONSTANTINE ALEXANDER: Okay.

Well, I think the vote's very simple. The Chair moves that we grant the -- we overturn the Commissioner's decision and accept a position of the petitioner both with -- this is going to cover both properties because it's the same -- basically the same case. The appellant's position with regard to the ability to continue a short-term rental situation at 42 Bay Street -- Bay State Road and 277 Broadway.

All those in favor of granting this relief please say "Aye."

(No Response.)

CONSTANTINE ALEXANDER: None.

Opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Four opposed. So it's unanimous that we would reject --

JOHN HAWKINSON: Mr. Chair, five or four?

CONSTANTINE ALEXANDER: Oh, five. You're right. I'm sorry. I was thinking back to the other case.

In favor of rejecting it.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

CONSTANTINE ALEXANDER: I think we need to take a further vote as to why we reached a decision we did. I will throw out some thoughts.

That Section 4.13 of our Zoning Ordinance provides that no building may be used in whole or in part for any use not listed in Section 4.30.

Use of a dwelling unit for short-term rentals or not listed in Section 4.30 prior to the adoption of the short-term rental ordinance, the ordinance, and were deemed by the City not to comply with the City's Zoning Ordinance.

The ordinance now permits short-term rentals under certain circumstances and subject to a registration requirement. The properties in question were not and are not -- were not and are not permitted short-term rentals under our ordinance.

The short-term rentals conducted by the petitioner with regard to the properties in question were done so in violation of our ordinance and continue to be conducted under the -- conducted by the petitioner in

violation of our ordinance.

We uphold the decision of the Inspectional Services Department and deny the petitioner's appeal. That's the basis that I would suggest we have decided to deny the appeal.

JIM MONTEVERDE: Agreed.

ANDREA HICKEY: Agreed.

CONSTANTINE ALEXANDER: All of those in favor of stopped use as part of our decision?

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. That's been done. Case is over.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

ATTORNEY NICHOLAS CRAMB: Thank you, Mr. Chair. Members of the Board.

* * * * *

(8:30 p.m.)

(Sitting Members BZA Case No. 016890-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016890, 10 Ware Street.

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

Name and address to the stenographer, please.

ATTORNEY JOHANNA SCHNEIDER: Good evening, Mr. Chairman, members of the Board. My name is Johanna Schneider. I'm an attorney with the law firm of Hemenway and Barnes, 75 State Street in Boston. With me is Nick LiVigne with Verizon.

Mr. Chairman, we do have letters in support that were not submitted previously. Would you like them now or at the end?

CONSTANTINE ALEXANDER: I'll put them in the file, but they'll be dwarfed by the number of letters in opposition.

ATTORNEY JOHANNA SCHNEIDER: I'm not so sure about

that. Let's be optimistic.

CONSTANTINE ALEXANDER: Oh, no, I can count the votes, the number of letters. Anyway, that's not how we decide the cases.

ATTORNEY JOHANNA SCHNEIDER: I would hope not. At least not until after you've heard us.

BRENDAN SULLIVAN: Talk closer to the mic.

ATTORNEY JOHANNA SCHNEIDER: Sorry. Is this one working? I can't tell. And if you can't hear me, please let me know.

We were last before this Board on June 14th appealing the issuance of a cease and --

JOHN HAWKINSON: Can you use the microphone, please.

CONSTANTINE ALEXANDER: She is.

ATTORNEY JOHANNA SCHNEIDER: I am. Is that better?
Can everyone hear me?

As some of the members will recall, we were last before this Board on June 14th and we were appealing the issuance of a cease and desist order, and we were seeking a determination that approximately

10,000 square feet of co-working space within the 10 Ware Street building was permitted as either a pre-existing non-conforming or as a legally permissible accessory use. The Board was not convinced by our arguments at that time, so we are back before you this evening to respectfully request a Use Variance.

I'll just very briefly refresh the Board's recollection as to the use at issue. The 10 Ware Street building was originally constructed in 1932, and it has been owned and operated by Verizon since it was constructed. The building has always housed a significant telecommunications operation along with some office space.

In 2016 the City issued a Building Permit allowing for the renovation of 10,000 square feet of office space on the first floor of the building and a C of O was issued in 2017. Shortly thereafter, the Alley Powered by Verizon co-working space opened for business. Earlier this year we learned that ISD was of the opinion that both the CO and the Building Permit were issued in error which is how this process started.

Nick LiVigne from Verizon and I are going to talk more about the Alley use and how it meets the Variance standard in a moment. But I

think first it's important to make clear what we're seeking relief for and what's already permitted at the site.

There is no dispute that the building at 10 Ware Street houses a pre-existing non-conforming telecommunications use. This means that the telecommunications equipment in the building and the work that Verizon does to operate, maintain, and periodically upgrade that equipment is not the subject of this application.

CONSTANTINE ALEXANDER: Correct.

ATTORNEY JOHANNA SCHNEIDER: During this process some neighbors have made Verizon aware of noise related issues arising out of work done at the building earlier this year. We absolutely acknowledge that that work should have been managed better, and we are committed to doing better with future projects. But I do want to emphasize that the work and its attendant noise were related solely to the permitted telecommunications use at the site and have nothing to do with the co-working space that we're here to discuss tonight.

What we are talking about tonight is the very popular Alley co-working space which needs to be viewed as separate and apart from

the already permitted telecom use.

With that, I'm going to turn it over to Nick who is going to tell you a little bit more about the Alley powered by Verizon.

Sir, do you have a question?

CONSTANTINE ALEXANDER: Yeah, I welcome what you want to say about this. But this is a Variance case. You've got to demonstrate substantial hardship.

ATTORNEY JOHANNA SCHNEIDER: And we will.

CONSTANTINE ALEXANDER: You will? The hardship that you identified in your submission is that Verizon needs an incubator space for new developments for keeping up with new technology. That is not a hardship that justifies -- you know this, that justifies a Variance. It's got to be a hardship that runs with the property. It would be a hardship for anybody who owned this building, not just your hardship. That's -- the Courts are absolutely clear about this.

Second of all, you have to demonstrate that there is -- the hardship arises from soil conditions, shape -- I forget what the requirements are. Even in your written submission you didn't even

address that, because there's nothing to address. There is no special that justifies your -- what you want to do here; soil conditions, shape of lot. This is, this is -- you're asking us to, in my view, to just basically rewrite the Ordinance to allow in this residential district this special business use. And that's not what we have the authority to do and you know that.

ATTORNEY JOHANNA SCHNEIDER: I understand your point and I'm happy to address the Variance criteria immediately if you're more interested in hearing more about the -- about the operation.

CONSTANTINE ALEXANDER: I think you should. Because it really -- and I don't really -- you came down to diss you. But the fact of the matter is we've got a legal case here, and the benefits of what you want to do with the space may be very germane to the business -- Verizon's business, maybe something that's very good, but it ain't what we're supposed to deal with tonight. You got to demonstrate you're legally entitled to a Variance. And as I've tried to say already, and I'll say it again, I don't see it. Maybe you can persuade us now. But I don't see at least in your written submissions anything that justifies the granting of the Variance.

ATTORNEY JOHANNA SCHNEIDER: Well, let me try to convince you.

CONSTANTINE ALEXANDER: Please.

ATTORNEY JOHANNA SCHNEIDER: I think there are -- I'll just walk through the criteria one by one so that we can try to check them off and hopefully move passed some of them.

CONSTANTINE ALEXANDER: Good.

ATTORNEY JOHANNA SCHNEIDER: So criteria No. 1, literal enforcement of the provisions of this ordinance would involve a substantial hardship, financial or otherwise. So that's the first thing that we need to show.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JOHANNA SCHNEIDERS: I think there are two principal ways in which a denial of the Variance would create a hardship:

First, although ISD does now take the position that the Building Permit and the C of O that it issued in 2016 and 2017 were in error. The reality is that Verizon relied on those approvals and spent two million dollar building out and equipping the space.

CONSTANTINE ALEXANDER: There is no notion of estoppel. You know that as well as I do for public officials. That argument is not relevant. I'm sorry.

ATTORNEY JOHANNA SCHNEIDER: It may or may not -- we're not saying that they're not allowed to take the position now which would be an estoppel argument. What we are saying, though, that in reliance on those permits that were issued, we did spend an awful lot of money building out the space. And to not be able to use the space and make the most of that investment, that would be a financial hardship.

CONSTANTINE ALEXANDER: I got to return to what I said before, the hardship has got to run with the land. You're identifying, and I accept it, a hardship to your client. But you've got to have a hardship that will apply to whoever owned that property. We had -- I'm going to cite the Fanning case. Fanning case was a case in the appeals court about a year or so ago, involved this Board, City of Cambridge where we denied a Variance and Land Court overturned us and the Appeals Court overturned the Land Court. And I'm going to read from the Fanning case.

(Reading) It is well settled that hardships streaming from an onus

personal, financial, and even health difficulties rather than factors that affect the land itself are not valid bases for a Variance.

That's the Appeals Court speaking less than a year ago. And so what you're citing are -- just fall within there.

ATTORNEY JOHANNA SCHNEIDER: Okay. I'll keep going. See if I can move the bolder at all.

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JOHANNA SCHNEIDER: So the next thing, and I would say that there are cases, I'm not prepared to cite any of them, but I'm sure the Board is aware of the precedent, which do say that it is not necessarily or limited to the soil condition, shape, or topography. But it's of the land or the structures. And that is actually in 40-A Section 10. It's the land or structures. Correct?

CONSTANTINE ALEXANDER: The structure is there. Nobody is denying the use of the structure.

ATTORNEY JOHANNA SCHNEIDER: The structure is there. But what's interesting about this structure is that this structure, and this is something that is very unique about this structure and this property, is that

there is a significant amount of telecommunications equipment that has been installed at this location. It is below grade, it is within the building, and it is now at this point inextricably linked, to some extent, to the co-working operations at the building.

If we were to decommission the co-working space, there would be equipment that would need to be removed. It could require an extensive amount of soil excavation and disturbance of the site.

I think that that gets us to a soil condition or something related to the land. It's also certainly related to this building, which has been in operation since 1932, which is an existing telecommunications use and which is the platform on which Verizon is building the network and the incubator space that's the entire premise of this co-working space. This is not a co-working space like we work with some of the other co-working spaces throughout the city. This was established for a very specific purpose which is to be a testbed for Verizon's innovative technologies and a way of leveraging the innovation community of Cambridge, and to bring those two pieces together. I think that the hardship of removing this use would render a lot of the equipment that has been installed both in the

building and below grade it would render it obsolete. There would be no need to keep it. And so I do think that well, no, it is not -- this is not a case, and I'm not trying to pretend that it is, where I want to encourage the Board to grant us a Variance for a building where there is ledge beneath, you know, one corner of the property and we can't comply with the setback. I fully recognize that in a situation we are talking about a Use Variance, you have to look at things a little bit differently. But I do also note that Cambridge is, by its own ordinance, entitled and allowed to grants Use Variances.

CONSTANTINE ALEXANDER: True. But also you have to acknowledge that Use Variances are very -- and the courts have said --

ATTORNEY JOHANNA SCHNEIDER: Sparingly granted, sir, I know.

CONSTANTINE ALEXANDER: Very sparingly granted. Mr. Sullivan always likes to read from one of the decisions that says just that. So you're starting -- this is a Use Variance, you're starting in a hole.

Yes.

LAURA WERNICK: Can you explain a little bit more and

maybe your client can do this, why that equipment can't be located elsewhere or what the specific relationship between the equipment and the work space is?

ATTORNEY JOHANNA SCHNEIDER: So there's a -- so this is a very large -- do you want to get the picture of the central office equipment. Can we get that out? We'll use a couple of pictures just to kind of illustrate what's going on in the building. That may be helpful.

But I think, you know, bottom line this is what's called a -- correct me if I'm wrong, a telecommunications central office. And so this is a building from which Verizon provides telecommunications service to most of Cambridge and a portion of Somerville. It's an enormous installation of cables, wires. I'm not a technology person so I'm probably missing something. But, you know, I mean, look at it, right? You see -- and this is all the built in. And what Verizon has been able to do with Alley -- do you want to get the picture of the little 5G thing?

NICK LIVIGNE: Sure.

ATTORNEY JOHANNA SCHNEIDER: Is to take the existing infrastructure in this building and bring it through this little device, but this

is not the only device, this is connected to everything that you just saw in that other picture.

NICK LiVIGNE: This is essentially the fiber backbone on which these, this small cell transmits to the 5G signal.

ATTORNEY JOHANNA SCHNEIDER: So it's all kind of built in together. And the existence of all of the big infrastructure and equipment that we saw with the yellow stuff, for lack of a better word --

LAURA WERNICK: Is that a technical term?

ATTORNEY JOHANNA SCHNEIDER: Isn't it?

NICK LiVIGNE: Yellow means fiber, yes.

ATTORNEY JOHANNA SCHNEIDER: The fiber. So these pieces are inextricably connected. You can't have this, without this. And that's why this is a very unique opportunity for Verizon and also a unique situation where we're talking about a building that already has the infrastructure built in and it is being leveraged to create a new opportunity for entrepreneurs and community members who are operating in this space.

LAURA WERNICK: Can that be remote from, from the

yellow stuff?

NICK LiVIGNE: Well, that's -- yes, a distributed wireless network certainly can be remote. In this case this is connected directly to this backbone here.

ATTORNEY JOHANNA SCHNEIDER: But you need this for 5G, correct?

NICK LiVIGNE: That's correct.

LAURA WERNICK: But could that be a mile away? Does that necessarily have to be that close to --

NICK LiVIGNE: I'm not technical enough to say whether or not, but I know that these units do need to be among a dense network. I don't know what the distances are.

CONSTANTINE ALEXANDER: Jim?

JIM MONTEVERDE: No. I just wanted to hear the answer to that question, because is the issue of just remote from the, from the guts that exist in the building, how far away can you be to operate it or could you be elsewhere in Cambridge with that, the balance of that equipment remaining in that existing building and have issues elsewhere?

How far away could you be?

NICK LiVIGNE: I don't have the answer to that specifically.

I can't give you a 100 percent answer on that. I do know that this facility is the only facility that we have in Cambridge where this operation can happen.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JOHANNA SCHNEIDER: I would also note, and I think I'm still talking about the uniqueness of this particular situation, this property is the only telecommunications center located in the C-1 zoning district. And so this is really a unique situation. This is not creating precedent in any way. This is longstanding telecommunications hub that is building on the existing infrastructure to provide a unique experience with the Alley Powered by Verizon.

I would also note that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose for the office.

The Alley use is entirely self-contained and it's open only to those with Alley memberships, which means that it is a pre-screened and

controlled number of visitors who enter and exit the premises.

There is no noise generated by the Alley use. And, again, this is one of these areas where I think it's important to draw a distinction between noise that may be generated by the existence of the telecommunications building, which unfortunately from time to time has to run a generator, has an HVAC system, etcetera, but the Alley is not what is creating those issues. It's the --

CONSTANTINE ALEXANDER: You realize of course that we have many, many -- you've given us some letters on your side -- many, many letters from neighbors, abutters who don't agree with that.

ATTORNEY JOHANNA SCHNEIDER: Well, I don't know if they -- so, yes, I am aware of that. I would take issue with their characterization and their understanding. I will also note that we have hosted a number of community engagement sessions over the last several months. They have been somewhat sparsely attended, but the neighbors who attended by in large who got to take a tour of the facility, who got to understand the difference between the central office, which is the yellow stuff, and the Alley space, did seem to walk away with a much better

understanding that the uses, while they are linked in terms of the technology platform, are not necessarily the same in terms of impacts.

So -- I'm sorry, go ahead.

LAURA WERNICK: So regardless of whether the Alley's there, those noises would be the same?

ATTORNEY JOHANNA SCHNEIDER: They would be there no matter what. And the periodic construction and upgrading would be there no matter what. The periodic parking of Verizon service vehicles in the rear yard would be there regardless. Those are all things that go along with the pre-existing telecom use.

What's nice about the Alley use is that it not only does it have a limited number of people coming in and out, it also has no traffic or parking impacts on the neighborhood. There is no on-site parking provided for visitors to Alley. And the surrounding streets are permit parking only, which means that visitors are not reducing the supply of parking spaces on the neighborhood streets. In addition, we've got some data which has showed us that -- so since the Alley opened in 2017, they've tracked the transportation patterns of its members, and nearly all

of them access the property by public transportation, walking, or bicycle.

So to that end Verizon has sponsored a Blue Bikes installation immediately in front of the building, and there's also a free bike rack for Alley visitors and also for any Cambridge residents who maybe want to use it.

There are a lot of benefits I think that go along with this. We do host a number of events, programs, workshops to engage local startups, academics, business associations. And some of the letters that we provided in support are people who really do feel like Alley has created a community and a network for them that didn't exist before.

Alley is also supporting the local economy beyond the technology economy. The food and beverage service that are provided to its members are drawn exclusively from local vendors. And we've also started a program where we're offering discounted memberships to all of the residential neighbors within a two block radius of the property.

We think this is a rational use for this space, not only because it is capitalizing on the existing telecomm use but it also links the facility with the local startup community. And it encourages appropriate

economic development.

We would actually say, and hopefully the Board will agree with us, that this use is more compatible with the neighborhood and creates fewer impacts than even expanding the telecommunications use, which is really all we're left with doing with this space in the event that the Variance isn't granted.

I'm happy to answer any more questions. I'm happy to turn it over to Nick who would like to tell you more about the technology, but if you don't consider that relevant to our application, we don't need to tell you about it.

CONSTANTINE ALEXANDER: Members of the Board? I have no questions at this point.

JIM MONTEVERDE: I just had two. One is kind of a repeat of what you heard before. But can you explain what the -- why you need the 10,000 square feet? What drives that?

NICK LiVIGNE: So the point of the space is to develop a community of entrepreneurs and startups who are working on technology that ride on top of our deployment of 5G. So we don't know what the

future of what 4G will bring. Just like with 4G LTE we never could have predicted the app economy. Right? Something as simple as the proliferation of Netflix or Uber is an app environment that was created by the presence of 4G LTE.

A similar type of experience is what we're looking to uncover and develop in this space. And the way we do that is by inviting in entrepreneurs and startups to test on the 5G equipment and develop their technology on the network of the future. You can't access 5G in any other place on the east coast at this point, except other Alley powered by Verizon.

So this is an exclusive access point to that 5G network environment to allow local entrepreneurs and technologists to test their technology, develop new concepts for the future. And so that's, that's the point of the space is to provide an environment for that type of work to be done.

CONSTANTINE ALEXANDER: Any other question?

JIM MONTEVERDE: Just can I follow up? And so then in the description of looking for the Variance to allow as an office use, why

do you call it an office use as opposed to is it a lab? Is it a telecommunication office? Is it a test facility? Is it a -- what is it?

NICK LiVIGNE: Well, it rides on office. I mean, essentially the space is an office. There are desks, there are monitors, there are workstations. And the members of the space reside within the work space, and the network technology that they can use in the space is to simulate the 5G experience and test on that equipment. So they're going about their normal work and their normal business on a day to day basis --

JIM MONTEVERDE: Okay. On the 5G platform.

NICK LiVIGNE: And they can --

JIM MONTEVERDE: -- accessible air.

NICK LiVIGNE: -- the 5G network, yes.

LAURA WERNICK: Can you tell us how many people might be using this -- typically are using this space on a given day and what the hours of operation are?

NICK LiVIGNE: Sure. The hours of operation are from around nine a.m. to six p.m. is when it's staffed by Alley staff members.

LAURA WERNICK: But is it open beyond that?

NICK LiVIGNE: It's open access -- it's 24/7 access to the members only through a key fob security system. So they do have access to the beyond working hours, but it is staffed by our employees. It's fully secure otherwise from the rest of the building. Members do not have access to any of the telecommunications equipment behind -- behind the secured envelope that Verizon has put in.

So, and then to answer your first question, you know, it ranges day-to-day of course. But generally the number of members that can ultimately be in the space -- we're not entirely full at this point, but ultimately it will be right around 150. But they're not there all day and every day. So there's a lot of variable use.

LAURA WERNICK: Okay.

CONSTANTINE ALEXANDER: Any other questions?

BRENDAN SULLIVAN: Well, when you get through all of the good, the bad, and the ugly of the case, it really boils down to a use Variance.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And my name was brought up

earlier, so I will be true to form. *Mendoza versus Licensing Board of Fall River*. And that the Courts found that although all variances are unusual forms of relief from zoning requirements, use variances should be particularly extraordinary because they inherently undermine the local Zoning Ordinances division of uses. In the previous case tonight counsel brought to light a particular case, *Derby versus Chelsea*, and I was able to pull a nugget out of that to use against you, in that *Bridgewater versus Cuckran, C-U-C-K-R-A-N, 351 Mass.*, and they were talking about the judge correctly ruled the issue whether a change or a substantial extension had occurred would be determined by the application of the familiar three part test:

No. 1, whether the current use, as proposed, reflects the nature and purpose of the prior use.

Two, whether there is difference in the quality or character as well as the degree of use.

Three, whether the current use is different in kind in its effect on the neighborhood.

And those are the three questions that I asked myself

regarding this. What may be a deal breaker is the 24/7, 365 days a year in a residential neighborhood. And you said there's 150 people, not fully staffed now. That's going to be a turn style of people coming and going. Techies don't work nine to five days, hours. A lot of times they are home during the day and they decide at eleven o'clock at night or one o'clock in the morning that's the beginning of their day. That's when they're most inspired, whatever, you know. You're going to have 150 different reasons and what have you. But 24/7, 365 days in the middle of a residential neighborhood is a deal breaker for me.

ATTORNEY JOHANNA SCHNEIDER: And is that --

BRENDAN SULLIVAN: Because of those three tests. I think it's going to have an extraordinary change in the character and effect on the neighborhood. But you can think about that and you can reapply later.

ATTORNEY JOHANNA SCHNEIDER: Okay.

CONSTANTINE ALEXANDER: I'm going to open the matter up to public testimony to give you time what Brendan has suggested.

ATTORNEY JOHANNA SCHNEIDER: Thank you. Thanks.

JIM MONTEVERDE: Could I ask one more question?

CONSTANTINE ALEXANDER: Go ahead, sure.

JIM MONTEVERDE: And can you explain, and I think you did partly before, but just so I understand it. The connection to that space that the device you were showing the photograph of, because 5G is wireless, correct?

NICK LiVIGNE: Correct.

JIM MONTEVERDE: So you've got all this hard wired equipment inside the building that's the central switches station.

NICK LiVIGNE: Right.

JIM MONTEVERDE: Is there an umbilical -- is there some physical connection that demands that you be there for that 5G use?

NICK LiVIGNE: So any wireless network is only wireless from the handset to the tower.

JIM MONTEVERDE: Yes.

NICK LiVIGNE: And from there it's wired back to a central office. So, yes, it is -- there is an umbilical as you say, back to that facility. And any network that we would deploy would have that. But

understanding that the deployment of a network of this scale takes significant investment, which we are making in multiple geographies across the country, but in this location because of the make up of the community and understanding where we are best able to tap into the energy of startup and innovation culture, we've chosen this facility --

JIM MONTEVERDE: No, I get it.

NICK LiVIGNE: Okay.

JIM MONTEVERDE: But that's two different things.

NICK LiVIGNE: Okay.

JIM MONTEVERDE: I'm sorry. My question -- so if there was a way to broadcast your antenna analogy, if that device is the antenna, that use doesn't need to be at that antenna? That grouping, that office, that 10,000 square feet doesn't need to be there. You just need to broadcast.

NICK LiVIGNE: It does currently because we don't have any distributed antenna or network or radios elsewhere.

JIM MONTEVERDE: Okay, gotcha.

Thanks.

LAURA WERNICK: So to do something comparable right now, you'd have to wire your antenna --

NICK LiVIGNE: Correct.

LAURA WERNICK: -- to whatever remote location?

NICK LiVIGNE: Correct.

We would have to build a significant amount of infrastructure to the deployment of a dense network across whatever distance there was between the central office and that remote location, that's correct.

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony. And I'll give you time to reflect on the questions that Mr. Sullivan posed to you.

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

You need you to come forward and give your name and address, please.

WILLIAM HARRIS: Hi, I'm William Harris. I'm from Belmont, Massachusetts. And I'm here so you can see one of the entrepreneurs that is with alley and about the hardships that we will face if this, you know, gets closed down.

I started my cold brew coffee company in 2017, and I have an open question: Has anyone recently tried to start a business here in the past like two years?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yeah.

WILLIAM HARRIS: And you know how expensive real estate is for offices and so forth.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yeah, I do.

WILLIAM HARRIS: Yeah, it's absolutely ridiculous. If it wasn't for places like Alley, I wouldn't be able to have a business. There's 20 other hard working companies with entrepreneurs just like me -- and I'm not a transplant from another state. Born and raised here, 30 years old. I have people that depend on me. And then with what Alley is doing is unheard of opening up the 5G API. Because I'm trying to take my cold brew company to the next level. What I do is I do office service. And we're trying to incorporate the 5G technology into our system so we know when to replenish it. If this was to cease, we'd probably end up going out of business because we've spent a tremendous

amount of money and time, you know, trying to do this, as well as other entrepreneurs as well. This is -- and I'm not -- I was never the biggest fan of Verizon back in the day. I'm going to be honest. And I would be the first critic. But here we have big business actually doing something good, and people here they don't like -- I mean, it's not about Verizon. They're not in it for money because you have people like -- no, seriously. No. They spend money on this. They're not -- the prices are the lowest prices in probably the state. \$25 a day or \$500 a month, and sometimes they give even discounts for that. Nowhere else -- we work 900 hours a month. You know, I have part-time people that rely on me. And for us to have this option, it allows us to hire more people. And, you know, there's 20 companies that depend on it. If this was to close down, that's 20 companies that could possibly close. You know? People are gonna lose their jobs. The dreams, you know, we have dreams. I mean, my whole trademark Empower Local. They're actually doing something good here. And I'm here so you can see a face of direct impact. If this was to close, I'd probably close. You know? Because I'm gonna have to spend time finding other -- if I can even afford another mode of real estate, you know?

So let's think beyond big Verizon verse this. And there's a lot of little people here that are gonna be impacted. And, you know, you got to have that on your heart because I gave up everything to start this company just like all the other entrepreneurs there. We're all making sacrifices. And for once a big company is not trying to take money from us and actually help us out. It's really, you know, it's sad that it's come to this.

CONSTANTINE ALEXANDER: Thank you.

WILLIAM HARRIS: Thank you.

CONSTANTINE ALEXANDER: Let me just make -- before I take other public testimony, make this brief observation. You've got to understand what a Zoning Board does. We have limited authority and we deal with by law or given the standards Be applied. The arguments are being made are very heartfelt and make good sense. They need to be directed to the City Council. They write the ordinance. They set the rules. We can just interpret the rules. So I think, and a lot of the arguments you've made, too, they're very good business arguments, but in my view and may be outvoted, they're beyond the authority that we have. We have to apply a legal standard. We are a quasi legal board

we're not a policy making board. And that's what the City Council does or some other organization in the city. Anyway, enough said. Who else would like to be heard? Ma'am.

ANN LYNCH: My name is Ann Lynch. I live at 20 Ware Street. I'm disabled. I have a Section 8. I live in a building where there's about 50 units by Wynn Management. There's a lot of people in my building that are Section 8. There's many, many people in my building that come out in the morning and then we have to wait for transportation truck to come, whether it's the RIDE or another type of company. There's a lot of kids in my building, too. If this happens with what you're talking about, it's gonna impact a lot of people's lives and their homes, their anxiety. Our anxiety level goes up when we have to wait longer and longer for our rides. So that's what I wanted to say.

CONSTANTINE ALEXANDER: Thank you. And thank you for taking the time to come down at this hour of the night.

Anyone else wishes to be heard? Sir.

JACK HEMBRO: Jack Hembro. Thanks for reading my letter.

CONSTANTINE ALEXANDER: Thanks for what?

JACK HEMBRO: For reading my letter. I know it was very long.

CONSTANTINE ALEXANDER: I'm not going to read it tonight.

JACK HEMBRO: No, but I wanted to thank you for reading it. One thing -- three things here. The noise was affected by Alley moving in. I keep hearing it wasn't. I wrote about that. It's the second air conditioner that wasn't baffled, and that was a direct result of Alley moving in. So let's put a spike in that one, in that falsehood's heart.

Financial hardship. I wrote something about the \$2 million. I think that's malarky, too.

But the other thing that I really wanted to get tonight this thing about we got to dig up the yard to get the Alley out of here. Well, you didn't have to dig up the yard to put it in there. I don't think there was a building -- I didn't see anybody digging up the yard to put, you know, to put this stuff in here.

And, Jim, you got it nailed right on. I mean, all you need is a

fiberoptic cable to hook up with that. You don't need these racks of things that sitting up there. Hook it up at 210 Bent Street. I mean, string a wire down to that. I mean, it's not -- you don't require the central office to be next to the 5G antenna. Okay? And I mean, you just don't need it to be next to it. It's convenient, but removing it is gonna be pulling a wire back through a wall and bring it out to somewhere else.

That's it.

CONSTANTINE ALEXANDER: Thank you.

JACK HEMBRO: Thank you for your time.

CONSTANTINE ALEXANDER: Is there anyone else wishes to be heard on this matter?

ALAN GIBBS: My name is Alan Gibbs, 42 Trowbridge Street. I have sent you a letter. I've heard nothing here tonight to change my opinion. I will say that the hearing is not perfect back there, but in either case, the hardship argument is just ridiculous to me when you were talking about a quarter of a trillion -- or a trillion dollar company with many divisions. My concern all along has been changing the zoning bylaw is setting a bad precedent, and not only establishes a future precedent for

Verizon to return, but it also affects other C-1 zones in Cambridge which also are open. I have nothing against Alley per se, but I am concerned about 150 or more people accessing it 24/7. This is a residential neighborhood, not a startup. In terms of technical stuff, I'm no techie, but if the general trend -- if you pay a visit to the Watson Computer at the Harvard Science Center and see the basic trend in technology is toward miniaturization. When you 10, 20 years from now, you know, have more space due to miniaturization or do whatever purposes and you come back and say, we could use more office space, I mean we've already got more than the original 15. So I firmly oppose.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard? Sir.

BRAD GALLEY: Oh, hi there. My name is Brad Galley. I live on Royal Ave. in Cambridge. I actually got a Variance from you guys for my house a couple weeks ago. Thank you very much. It turned out great. My company is a tenant at Alley. And, you know, my company actually does telehealth services. It's sort of on-line physical therapy and, you know, the bandwidth that we get there, and the access to bandwidth is

actually something that is difficult to come by. We were previously located in Cambridge Innovation Center in Kendall Square, and, you know, there's a definite benefit to the infrastructure that is available to us at Alley. You know, when people ask, you know, where did you move the office to? I say it's in the old Verizon building. And basically I guess the switches that used to fill a building, you know, might fit in a, you know, laptop these days. And, you know, I think over time, you know, it's gonna compress more and more, and there's a building there that I guess is, you know, previously industrial. And, you know, I think it's pretty innovative what they've done in terms of finding, you know, finding a use for that that's beneficial. I mean, we are a year round group of people that when the Harvard kids go home, we still go around the corner to buy our lunches. And when the Harvard kids are there, I mean, you know, we sort of blend in and, you know, it doesn't feel like an enormous uptick in, you know, in traffic. I mean, I live on a cut through street. I curse at every Fermagio shopper that parks in front of my house. So I'm with every community complaint. You know, I never in my life thought I would be on Verizon's side of anything. You know, I spent too much time on

hold in my life. But I think that this is -- you know, I think that this is something that fills a, you know, it fills a void in our community both in a uniqueness of the product that they're offering, as well as, you know, something that, you know, you can find in Kendall Square but you really can't find on this side of town. I think there's another one on Concord that's a tiny little thing that just opened up. But it's, you know, I think if the impact on, you know, town economy and the community is something, you know, I do think that this actually brings something positive to, you know, what is otherwise a building that, you know, over time gets antiquated and, you know, sort of miniaturized in its original usage.

Anyway, that's my two cents.

CONSTANTINE ALEXANDER: Thank you. And thank you for sticking around to give your comments.

Anyone else? Yes, sir. Councillor.

COUNCILLOR CRAIG KELLEY: Thanks. Thank you very much. My name is Craig Kelley. I live at 6 Saint Gerard Terrace. I'm a City Councillor in Cambridge. And I think the Board is entirely correct in that guidance from the Council on something like this is super important.

And I have no opinion on whether this is a good idea or not or whether it warrants a Variance. I just think that from a process standpoint as the world changes, we're going to find, and we've already seen it tonight, new or alleged new uses not quite fitting into existing definitions or existing buildings. And as a city, we need to figure out a process that allows us to adapt. And I don't know that the Variance process is the way to go. So I guess what I'm asking from you all. Is if you have the opportunity at some point to share your thoughts on how the Council can think about what the zoning language might look like to keep you from being in this bind in the future, I know the council and Community Development Department is looking at the Table of Uses at some point in life to change it or to alter it. This -- you've had a letter from me in the past about auxiliary basement units. And so I've been caring around the proposed zoning. I've spent writing for months working on it trying to figure out what the heck is this supposed to look like. And it gets complicated. So I appreciate the position you're in. And to the extent that you either as a body or as individuals have the ability to give the Council guidance on what sort of stuff would make this flow easier and more sensibly in the

future, that would be wonderful, because I sense in the future we will have an awful lot more of these, and I'd like to spare everyone the pain of not being certain.

So thank you very much.

CONSTANTINE ALEXANDER: Well, I can give you -- I don't know, guidance but I can give you points of view. The City Council has done nothing with regard to these issues. They just expect our Board to rewrite the ordinance on a case-by-case basis. And as I've tried to say over and over again, we don't have the authority to do that. We don't. We have -- our -- we're not policy making body. We're a board that interprets a statute and allows -- the statute being the ordinance, certain departures from that. So don't ask for us to help you on that. There are other more knowledgeable people in the city; boards, individuals. There's where you do it, but you've got to start. And I haven't seen -- I'm gonna say it, I haven't seen a start yet and this has been going on for a while.

COUNCILLOR CRAIG KELLEY: Not to sidetrack the discussion, I agree. And I think perhaps some comment from the Board saying, hey, this is where the Council needs to focus might enable us to at

least start what you're suggesting we should have already started.

LAURA WERNICK: Can I say something?

CONSTANTINE ALEXANDER: Go ahead.

LAURA WERNICK: I think what I'm understanding, though, is that this is such a unique situation due to the particular technology. And what I have to presume, and it hasn't been proven to us yet, that the relationship between the office and the infrastructure is -- the closeness is an important piece of that. I'm not -- that's what I'm hearing right now. I'm not convinced of it. At the same time being in a residential neighborhood with the intensive number of people and the 24/7, really, is I would think to be a very antithetical to the residential nature. So we're kind of in the quandary of, yes, perhaps this use should be allowed, but because of the residential nature, it's a very difficult thing to wrap our, wrap my mind around.

ATTORNEY JOHANNA SCHNEIDER: May I respond?

CONSTANTINE ALEXANDER: Sure.

ATTORNEY JOHANNA SCHNEIDER: I'm sorry. I do want to respond briefly about the impacts to the neighborhood. And I would

like to ask the Board to focus closely.

CONSTANTINE ALEXANDER: Excuse me, I don't mean to interrupt you. Why don't we get the rest of the comments.

ATTORNEY JOHANNA SCHNEIDER: I thought they were done.

CONSTANTINE ALEXANDER: I don't think so. I'll give it back to you. I want to keep it organized.

Is there anyone else who wants to be heard in this matter.

Sir.

Save those comments. I'm going to give you an opportunity.

MAHESH VISWANATHAM: Hi. I'm Mahesh Viswanatham. So, yeah, I'm the guy on that card. 40 Bristol Street, Cambridge. I have a startup. We're making a device that will save 20 percent of your water bill by looking at water flow in toilets, which is the main thing you ask any manager or landlord or property manager, there's, you know, when will this be ready so we can test it. The reason I'm saying that is because we were in Mass. Challenge a couple years ago, which is a startup incubator out in Boston. We got some funding from the City of Somerville after

sending them an application. You'll notice that we haven't really done anything in Cambridge. You know, Somerville has green town labs that starts with hardware startups. There's a place called the Cambridge Hack Space, which was started by a couple of people which was situated near the Public Works Department which eventually moved out to Somerville because they didn't really find anything useful -- a useful place in Cambridge. So what we're seeing is that Somerville is getting a lot of the stuff that we should be having because we're not doing a good enough job of maintaining them.

This may not be the right forum for it, but at the same time think about what -- and I just sort of looking at it from a more holistic point of view, if they're offering a space where they provide 5G specifically for people who want to use that, I think that's an amazing thing to have. If you have not just a space where you can have those in a startup, but something that has the kind of facilities that can be useful. I work out of my home. I work out of my bedroom. I use whatever I can, because I can't really afford a space like that yet. And also I can do without it. As a startup, you're as cheap as possible. But a place like that is great for

people because they can contract with other companies as well.

Today I needed something to be installed on this, so I went to a friend of mine who is in a startup in the financial center, and so he is in a fin tech startup out in the -- in front of South Station. So to have something like this -- I'm not saying that might be -- that's the right place for it. But to have something like that and shut it down, would not be a smart move for us.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. The floor is yours again.

ATTORNEY JOHANNA SCHNEIDER: I want to get back to one question that you raised which had to do with the impacts of this space on the residential neighborhood, and I would ask that the Board focus very closely on what the comments in opposition really had to do with. We didn't really hear anything about the number of people coming through the neighborhood day or night. What we really heard was that

people don't like the noise that is generated by the building. We heard some questions about if this happens, this will be terrible. But the reality is that because of the misunderstanding with permitting, this is happening. This has been operational for quite sometime now with people coming in and out on whatever the techie schedule may be. And what we have not heard are neighbors complaining that there are people in the street, people streaming in and out of the building and making them uncomfortable day or night. We have done mode studies so that we understand that this is not generating traffic. This is not taking up parking. This is not a transportation problem for the neighborhood. If you distill down what's in the letters in the file and what we've heard tonight, we've got some people who don't like Verizon generally and we've got people who don't like a central telecommunications office in their neighborhood. But we're not hearing anything really about the Alley space being disruptive or bad for the neighborhood. So while with all due respect, I don't necessarily the case cited by Mr. Sullivan is germane. I think it's a different legal posture and we're really focussed on a Variance question. I think when we talk about, you know, something that is relief

that could be granted without being detrimental to the neighborhood or being -- or relief that is granted and consistent with the overall goals of the Cambridge Ordinance, I think we're there on those pieces. I recognize that the other pieces are a trickier case. But I would also say that this is a highly unique situation. This is a building where it is a longstanding telecom use. And this is a use that is building on it.

The use codes that we're applying under, as you pointed out, are not perfect. And in some part that's because the Cambridge zoning has not caught up to modern use of office technology, other space. If there were a co-working use classification, we'd be here under that. If there were uses that had more to do with the technology platform, we would be here under that. We're doing the best we can with what we've got. And I understand and I understand the Board's position. You're also in a difficult situation. I sit on the Zoning Board in my town. I'm very familiar with the situation where the bylaw or the ordinance has not caught up with the way that people are doing business or using property so we do the best we can.

I would pause that this is not a situation that is likely to repeat

itself. I would pause that this is a very unique case. And, again, I think that when you look at the specific comments that people are making and the specific concerns that people are raising, they're not really relating to the use that we're looking for relief for.

I would also throw out to the Board, and again this is based on my own experience sitting on a Board in sort of uncharted territory. My own Board in Brookline sometimes will grant a temporary, a five year, two year, whatever, permit and, you know, subject to revisiting it with the Board in some amount of time. I don't know if that's something that this Board is in the habit of doing.

CONSTANTINE ALEXANDER: We have done that. I don't mean to interrupt you. I'm not sure we can give a Variance for a period of time. We can?

RANJIT SINGANAYAGAM: I think, yeah. Section 10 of the ordinance says Use Variance can be time limited.

CONSTANTINE ALEXANDER: Can be what?

RANJIT SINGANAYAGAM: Time limited.

CONSTANTINE ALEXANDER: Time limited. Okay.

ATTORNEY JOHANNA SCHNEIDER: So I throw that out as a possibility for the Board to consider. Maybe during that operational period, either it will become clearer that this is quite harmonious with the neighborhood, and that the, you know, technology belongs here and is essential to the technology community, which you've heard from tonight welcomes this and needs it to a large degree. And maybe during that time the City Council in its wisdom will see fit to adopt something that makes this an easier discussion two, three, five years from now. So I would again sort of throw that out as a potential avenue to make sure that people are not losing access to what I think we've heard tonight is a very critical and important and unique function while giving this Board some comfort that if it -- that there may be an easier way to do this when the infrastructure -- the zoning infrastructure is in place.

CONSTANTINE ALEXANDER: Okay. Thank you. A very interesting suggestion. But we usually use Special Permits with a time frame.

Ma'am.

ANN LYNCH: Ann Lynch. Obviously it hasn't been heard

by -- I don't know your name, but I'm a person -- I'm a person that did state that I do live in the building and I'm disabled. There's many, many people in my building. That's 50 units. Most people who are disabled don't come out. I'm one of the few because my legs move. So you -- it was just presented to you that you didn't hear that tonight. Obviously I guess you didn't hear what I said because I am one of the ones that did come out and say how it did impact. I'm a live person. So I'm just saying that's an example that it happens in other ways, too. And I also want to say on Broadway Street anybody can park on that. I don't know about Harvard Ave. Ware Street, yes. That is -- you have to have permit parking, but I know on Broadway you don't, and that's very close.

CONSTANTINE ALEXANDER: Thank you.

MAHESH VISWANATHAM: Something important.

CONSTANTINE ALEXANDER: Unless it's something important and new. I think we've beaten this case to death.

JOHN HAWKINSON: Stand, please.

MAHESH VISWANATHAM: Oh. So I heard about noise and having a lot of people. In my neighborhood it's a residential

neighborhood, there are two bars. One called -- used to be called the Beef Side (phonetic). It's called Lord Hobo now. And there's another one called The Automatic. And so there are a lot of people going around there really late at night, but somehow it seems to work out. So there's obviously -- there are obviously solutions that can be applied over here. What they are is something that -- I mean, this doesn't seem to sound like something that can't be solved.

CONSTANTINE ALEXANDER: Thank you. Anything further you want to add?

ATTORNEY JOHANNA SCHNEIDER: No. Again, if there are further questions from the Board, happy to answer them, but I think we have --

CONSTANTINE ALEXANDER: I'm going to close public testimony.

As I've indicated, we have many, many letters, some of which you brought tonight in support. I think it's fair to say most are in opposition to the relief you're seeking from what I'll call neighbors, people in the general vicinity. But if I try to read them all tonight, we'll be here

until four in the morning. So I want to go home. I don't know about anybody else.

So end of public testimony.

Discussion? I'd like to throw out the notion of granting a Variance -- just changed my mind, with a time frame. I think it's a very good suggestion. I would say since our Councillor is still here, that also puts the pressure I hope on them to do something finally about our Zoning Ordinance, and I would suggest a two year Variance.

I don't know what people's views are.

LAURA WERNICK: I'm sympathetic to that.

JIM MONTEVERDE: Yeah. And build the antenna in two years so you can get out of the residential neighborhood.

LAURA WERNICK: Seriously. That's the key. Can you use that time to really relocate outside of a residential --

CONSTANTINE ALEXANDER: Yeah, I wouldn't. I wouldn't expect to get renewal of the Variance after two years. That will give you two years to try to come up with, deal with it.

JIM MONTEVERDE: Right.

CONSTANTINE ALEXANDER: Gives the City sometime to deal with it so that maybe two years from now we have an ordinance that makes sense that would allow you to do what you want to do, and by the same token pretext the neighborhood.

So anybody?

JIM MONTEVERDE: I think that's the crux of the issue. What you're doing and the work that's happening there and it's related to the equipment that's there, understand all of that. And it's a, you know, it's a terrific opportunity. Wants to be in the city, wants to develop, wants to flourish. But you really want to get out of that neighborhood as soon as you can. So I think that's the purpose of the two year time frame is not to see how it goes, whether the neighbors are happy, but just get it together and get some way that you can be someplace else in the city.

BRENDAN SULLIVAN: Well, I think what we're being asked is to allow, permit, ad infinitum, 10,000 square feet of this type of operation so that if Mr. Saltzman, who is head of Alley, decides I'm selling, I'm closing down, I'm moving on, blah, blah, blah, so on and so forth, that use still stays there and can be opened to anybody. And it's the 24/7, 365

days a year with the comings and goings which I think is very incompatible to the neighborhood and far, far different than the previous use, that even though it was not legal, at least was somewhat benign.

CONSTANTINE ALEXANDER: But if we, we have a two-year -- and let's assume the two-year period, you can see the impact of the 24/7. And if having an adverse impact, the Variance doesn't get renewed and we're back to where the people -- those who are opposed to the Variance tonight want to be. It gives Verizon an opportunity to, as you say, find a better solution to their issues. It gives them an opportunity to demonstrate to the neighborhood what you've been saying, which I don't -- I accept, that there's really not gonna have an adverse impact on the neighborhood. Let's find out. And it also gives the City Council sometime to finally come up with some ground rules for high tech companies and things like this in our city. Let our zoning law catch up to where the world is today.

Ready for a vote?

ANDREA HICKEY: So when would the two-year period run starting?

CONSTANTINE ALEXANDER: It would run from the day the decision becomes binding.

ANDREA HICKEY: Not the day that they began this use?

CONSTANTINE ALEXANDER: No. I think it could either be 18 months from the time they began the use -- I think two years from the time relief is granted, assuming we vote for the Variance, which is going to be about two months or so from now, finally goes to the legal side and getting filed with the City Clerk's office.

JACK HEMBRO: Sir. Sir, do you realize they've been there doing this there for at least 18 months?

CONSTANTINE ALEXANDER: I'm sorry, come forward.

JACK HEMBRO: I'm sorry.

CONSTANTINE ALEXANDER: That's all right.

JACK HEMBRO: It's Jack Hembro --

ATTORNEY JOHANNA SCHNEIDER: Isn't public testimony closed?

CONSTANTINE ALEXANDER: Say it again, please?

ATTORNEY JOHANNA SCHNEIDER: Public testimony is

closed?

CONSTANTINE ALEXANDER: I can reopen it, though. And I'll reopen it. We tend to be casual about that.

JACK HEMBRO: I'm sorry if I'm out of order. But this operation has been there for close to two years now? 18 months?

NICK LiVIGNE: August 1st of 2017.

CONSTANTINE ALEXANDER: When was it?

NICK LiVIGNE: August 1st of 2017.

JACK HEMBRO: August 1st? So it's been there for a year already. Kicking the can down the road for another two years, you're kicking the can down the road.

CONSTANTINE ALEXANDER: I recognize that.

JACK HEMBRO: I mean, you've gotten input you've gotten stuff to be able to make a decision after a year of these people sitting here, if you need to kick the can down the road for another two years to see what happens.

JIM MONTEVERDE: And I may be wrong, but I believe in some of my professional work, some municipalities are rolling out new, it's

really light poles are being adapted so they can be -- they can have antenna, because 5G doesn't go too far. Right? That's only being thought of now. City of Boston doesn't even have a stand. Although they'll tell you you have to do it. Right? So it's really only coming about. So the fact that it's been there 18 months giving them two years to get it together on that location, is at least what it's going to take for my next project to be forced to put in a new street light that has a wireless capability that can broadcast. So I think it all kind of -- it's kind of rolling together. The world is moving there to allow him in that time period to get out of there. Get out of that residential neighborhood. They'll will be the system that doesn't exist now to distribute it or hopefully it will be. And hopefully Cambridge is in their requirements for street lamps or whatever, doing the same thing so they'll all become a broadcast network. So I think the fact that he's been there for 18 months --

LAURA WERNICK: A year.

NICK LIVIGNE: One year.

JIM MONTEVERDE: A year?

The infrastructure to broadcast doesn't excess yet. It's really

just happening. So it doesn't seem so bad.

CONSTANTINE ALEXANDER: Okay. I'm going to make a motion unless people want further discussion.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that there is a valid technology and business purpose to continuing what has been going on apparently for a year for a limited period of time to allow the petitioner to come up with other solutions and move to a neighborhood or have -- either the area gets rezoned in a fashion that allows them to continue to do what they're doing or the petitioner moves to another location.

That the hardship is owing to the -- it's the -- not soil conditions, shape, or topography of the land. It's the fact that this is a unique structure with some costs in terms of the equipment that's in there and it provides a -- it's really special to this property and sort of especially affects such land or structure but not affecting generally the zoning district.

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

In this regard Cambridge prides itself on its technology base and its entrepreneurialship. And this is -- what is being proposed here could further grant Cambridge's standing in the technology community and at least allow an attempt to work further with 5G. But all of this is subject to the fact that there is -- it's still -- I'm going to editorialize for a second. It's still inconsistent with the residential neighborhood. And, therefore, I think a period of time should be imposed upon the Variance to give the petitioner time to solve its issues, its zoning issues. And by the same token give the city time to change the zoning for this district or this plot, if it chooses to do so, in a way that better satisfies the needs of the city as well as the needs of the neighboring community. So the finding I would propose with regard to the findings I've already cited is that this Variance be in effect for a period only of two years and to -- this is not part of the motion, but to indicate that the possibility of extending this Variance beyond two years is not high. That you have to deal with the fact that

you've got to come to an important solution soon, but when there is a solution, that you proposed and there is a potential benefit to the city that I don't think that we should ignore.

So on the basis of all of these findings, the Chair moves that we grant the Variance for a period of two years.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: One, two, three four. Four in favor.

(Alexander, Hickey, Monteverde, Wernick.)

BRENDAN SULLIVAN: Opposed.

CONSTANTINE ALEXANDER: One opposed.

Variance granted.

(9:30 p.m.)

(Sitting Members BZA Case No. 016965-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016970, 203 Erie Street.

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

LAURA WERNICK: Did we skip Rindge Ave.

CONSTANTINE ALEXANDER: I'm sorry. Actually, you're here anyway. The case I'm going to call is case No. 016965, 99 Rindge Avenue.

ATTORNEY VINCENT PANICO: Good evening, Mr. Chairman, members of the Board. My name is Vincent Panico, P-A-N-I-C-O. I'm an attorney at 2343 Mass. Ave. in Cambridge. And we're here for an application for a Special Permit to create an accessory apartment in the basement.

My clients Paul Griffin and his husband Anthony live here. The family has owned this property since 1916. Paul has lived there since 1969. The street is approximately about 60 percent of two families. His reason for making this application, he's getting old.

CONSTANTINE ALEXANDER: Aren't we all?

ATTORNEY VINCENT PANICO: And in his retirement he'd like to live there and have an income from it. Also, he has a brother who is having some difficulties and may require a place to live and put him in

that basement.

He has discussed it with some of the neighbors and no objections so far, but as the Board knows you never know.

The parking should not be a problem. Even though it's not a condition, the driveway has two entrances one from Hollis Street and one from Rindge. And it could accommodate at least three cars. The requirement of 5,000 square feet is met.

CONSTANTINE ALEXANDER: Just let me stop you, because I think -- just to make sure everybody knows what's going on. Your Special Permit is justified by 4.22.1. You've got to meet certain conditions. And I think we should just go down those conditions.

ATTORNEY VINCENT PANICO: Okay.

CONSTANTINE ALEXANDER: The first is a dwelling has not been substantially enlarged since built.

ATTORNEY VINCENT PANICO: It has not.

CONSTANTINE ALEXANDER: It has not?

ATTORNEY VINCENT PANICO: That is correct.

CONSTANTINE ALEXANDER: Prior to alteration the

dwelling continues at least 1,800 square feet of gross floor area.

ATTORNEY VINCENT PANICO: That's correct.

CONSTANTINE ALEXANDER: And your dimensional form indicates that you do meet that requirement.

That the lot on which the accessory apartment is located contains at least 5,000 square feet. And, again, your dimensional form shows that's the case.

ATTORNEY VINCENT PANICO: 5200 square feet.

CONSTANTINE ALEXANDER: Next, is such accessory apartment shall not occupy more than 900 square feet or 35 percent of the gross floor area of the principal dwelling, whichever is less. And shall not be located in a garage. It's not going to be located in a garage. But I can't tell from your file whether you meet this requirement.

ATTORNEY VINCENT PANICO: 600 square feet.

CONSTANTINE ALEXANDER: Where is it on your form?

PAUL GRIFFIN: The architect plans were drawn up.

CONSTANTINE ALEXANDER: Did I miss it?

PAUL GRIFFIN: It's really small. There was a proposed

plan that was. It's a -- I forget it's between 650 feet.

CONSTANTINE ALEXANDER: I couldn't -- reading this plan I couldn't total up, that's just me to show that it's more than 900 square feet.

PAUL GRIFFIN: The architect is well aware of that.

CONSTANTINE ALEXANDER: I should hope so.

PAUL GRIFFIN: Me, too. And the whole basement is a little under 900, but the way it's laid out -- I really don't want to do too big a unit anyway. I didn't want to do a whole basement. I just wanted one bedroom so that primarily maybe a single person can live there. I didn't want it to be too big.

CONSTANTINE ALEXANDER: The next requirement is that the owner of the residence in which of the accessory dwelling unit is created must continue to occupy at least one of the dwelling units as their primary residence. And then it goes on, you have to submit a notarized statement.

Are you planning to stay in the --

PAUL GRIFFIN: It is our intention to stay there.

CONSTANTINE ALEXANDER: Okay. My concern, and I think we can deal with it through a condition is that some day you're going to sell the property, and you're going to sell it to someone who doesn't -- an investor type who doesn't live in the building, and we're left with an accessory apartment that should not, with the benefit of hind sight should not have been granted. So I'm going to impose a condition that if you ever sell this to -- whoever occupies this property at any time doesn't reside, the Special Permit that you're seeking gets revoked. Okay, sir?

PAUL GRIFFIN: That's fine with me. My family's owned it, again, since 1916. It's certainly our plan to be there for the duration. The only question I would have with that -- I'm not opposed to that, and I have no intention of selling the property -- we don't. If we were to sell it to somebody else, would that become -- would it become an illegal unit?

CONSTANTINE ALEXANDER: No. If you sold it to someone who occupies one of the two units, everything is fine.

PAUL GRIFFIN: Oh, okay, that's fine.

CONSTANTINE ALEXANDER: If you sell it to someone who does not occupy either --

PAUL GRIFFIN: Just as an investor.

CONSTANTINE ALEXANDER: -- of the two units, then there's a problem.

PAUL GRIFFIN: Okay, I don't have a problem with that. It's not an issue.

CONSTANTINE ALEXANDER: Okay, Mr. Panico.

ATTORNEY VINCENT PANICO: And then you have the gross floor area.

CONSTANTINE ALEXANDER: Yeah, 545 feet.

PAUL GRIFFIN: It's close.

CONSTANTINE ALEXANDER: You're okay.

ATTORNEY VINCENT PANICO: And it will not cause any adverse effect or nuisance to the neighborhood or effect the adjacent districts. I think it's a very simple request.

PAUL GRIFFIN: I met with -- the genesis of this, a couple of years ago I read an article in the paper that Cambridge allows basement units, which under that headline was deceiving. There are several elements that come into play. I read them. It would appear that this

home would meet those elements. I went and spoke with someone from the zoning office.

ATTORNEY VINCENT PANICO: Sarah.

PAUL GRIFFIN: No, she was from Historical. Someone from across the street and explained the situation. Apparently the City had drawn a map of all the properties that would fall into this, and this was one of the homes that fell into it. They're very good and they said it looks like everything should be in place. They said, just make sure you get an architect's plan and make copies. At no considerable expense to get that engineer plan and that's where we're at.

CONSTANTINE ALEXANDER: Anything further you want to add at this point?

(No Response.)

CONSTANTINE ALEXANDER: Questions from members of the Board?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: None.

Anyone wishing to be heard on this matter? A night for you

to speak about.

COUNCILLOR CRAIG KELLEY: My next gig.

Good evening, my name is Craig Kelley. I live at 6 Saint Gerard Terrace. I live adjacent to the applicant and fully support their application. I guess this is also my night for apologies, because in my perfect world, we would have solved this at the Council level, and one of the suggested amendments I've got written up is that subsequent changes in ownership does not remove the requirement for the owner or owners of the accessory dwelling unit to live in one of the dwelling units of their-

CONSTANTINE ALEXANDER: As I said, I'm going to make sure.

COUNCILLOR CRAIG KELLEY: And so I am in complete agreement and I'm glad you said that and we already had it written down. But this is exactly what I believe the Council wanted to have happen. We just blew it in not writing it better so that they didn't have to come you and I apologize to everyone for the inconvenience.

CONSTANTINE ALEXANDER: Apology is not necessary.

Thank you.

Is there anyone else who wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We have no letters or other communications in the file.

Any final comments you want to make?

ATTORNEY VINCENT PANICO: No.

CONSTANTINE ALEXANDER: Okay, I'll close public testimony. Discussion or are we ready for a vote?

ANDREA HICKEY: Ready.

CONSTANTINE ALEXANDER: Okay. I have to figure out how to phrase this.

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

That the petitioner has demonstrated compliance with Section 4.22.1 provided that he complies with the conditions that we will impose -- or suggest to impose on the Special Permit being sought.

That -- there are general requirements for all Special Permits that I have to deal with.

That the requirements of the Ordinance cannot be met unless we grant you the Special Permit you are seeking.

That traffic generated or patterns of access or egress resulting from what you're proposing will not cause congestion, hazard, or substantial change in established neighborhood character. In this regard the Councillor Kelley gave us testimony that supports this point of view, and given the nature of what is being proposed, there's not any kind of material impact on the neighborhood causing congestion, hazard, or substantial change.

That the continued operation or development of adjacent uses will not be adversely affected by the nature of the proposed use.

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

In regard to all of these, we would point out that what the

petitioner proposes to do is exactly what Section 4.22.1 was intended to allow to be done provided certain safeguards would be met. Most of those safeguards are met by the submission that you've made, but I would suggest additional conditions to the Special Permit.

So that the Special Permit would be granted subject to the following conditions:

That the accessory apartment shall not occupy more than 900 square feet or 35 percent of the gross floor area of the principal dwelling, whichever is less. And this is in connection with people get the idea of expanding the apartment. I want to make it clear that you can't do that without losing the Special Permit.

And that at all times the owner of 99 Rindge Street must occupy one of the dwelling units as his or her primary residence. Failure to comply with this condition at any time, whether by the petitioner or any successor owner, shall result in the Special Permit we are granting -- we propose to granted shall ipso facto terminate.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special

Permit granted. Good luck.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

* * * * *

(9:45 p.m.)

(Sitting Members BZA Case No. 016970-2018: Constantine Alexander,

Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No.

016970, 203 Erie Street.

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

ATTORNEY SEAN HOPE: Good evening. Good evening,

Mr. Chairman, members of the Board. For the record, attorney Sean Hope, hope legal law offices. I'm here with the owners of 203 Erie Street. And I'll let you say and spell your name for the record.

KARIM LAKHANI: Sure. My name is Karim Lakhanai,
K-A-R-I-M L-A-K-H-A-N-I.

SHAHEEN LAKHAN: My name is Shaheen, S-H-A-H-E-E-N.
Same last name, L-A-K-H-A-N-I.

ATTORNEY SEAN HOPE: So this is an application --

CONSTANTINE ALEXANDER: Before you get to the merits
of the application.

ATTORNEY SEAN HOPE: Sure, yeah.

CONSTANTINE ALEXANDER: Will you deal with the notice
issue? As you know, there's a little bit of confusion as to whether it's
been complied with.

ATTORNEY SEAN HOPE: Yeah, I did get a call from
Inspectional Services and I did confirm with the owners that they did pick
up and have the sign posted. Was it Thursday evening, August 30th.
That was the two weeks before. And it hasn't come down throughout the

time it was up.

CONSTANTINE ALEXANDER: I went by last Sunday and there was no sign.

BRENDAN SULLIVAN: I was there Monday and there was a sign.

KARIM LAKHANI: The sign is actually on the fence of our neighbor.

CONSTANTINE ALEXANDER: I looked around, I didn't see it. Just my bad looking.

KARIM LAKHANI: Yeah.

CONSTANTINE ALEXANDER: Okay.

KARIM LAKHANI: Yeah, the sign was right on the neighbor's fence.

ATTORNEY SEAN HOPE: So this is an application requesting a Variance to construct an addition, 155 square foot addition that's connected to the petitioner's existing townhouse. Just brief background, the petitioners have lived in the neighborhood for 12 years, in Cambridge for 20 years. They both work in Cambridge and actually work

from home. They have a daughter who is at Rindge, so they are committed to Cambridge and want to stay --

KARIM LAKHANI: She's at Rindge. She's at BUA.

ATTORNEY SEAN HOPE: Oh. Excuse me, BUA. And so the nature of the relief is that the petitioner's townhouses is part of a series of townhouses that was constructed adjacent to the Blessed Sacrament development, it was the same developer. And so each of the townhouses is approximately 1350 square feet. These are vertical. And so the way the plan -- the house is laid out, the first floor is an open plan live-in kitchen and dining, all the bedrooms are really on the second floor, and then there's a small 300 square foot attic at the top floor. Because of the way this is structured and because of their living environments, there's not a lot of quite or private workspace. As I said, the petitioner both work from home as well as their daughter, obviously, needs a private workspace. So the idea is they have been in this home, they want to stay in Cambridge. And so this addition is really allowed for them to have an additional quiet workspace. When we worked with the architect to design it, we looked at what an accessory structure would be able to do. So in

terms of height, an accessory structure, as the Board knows, can be no greater than 15 feet in height and within five feet of the setback. So we took that concept -- obviously this is not an accessory structure, it's an addition. But we took that concept in terms of creating in terms of size and scope, and as I said, this is really 155 square feet. It does have heat and HVAC, and it is connected to the home through a breezeway. This would allow petitioners to be able to comfortably remain in their home, to be able to -- as they grow and age. Also the petitioners have family that comes to visit on occasion, so when they have family visiting, that additional bonus room, that 300 square feet in the attic, is often used to host other family members. So this auxiliary space allows for, as I mentioned, a quiet workspace to be able to accommodate their home.

Additionally, because there are a series of townhouses, they are in the rear so this is largely shielded from the public view. And we have some elevations, but you may be able to see the very top of it. In preparation for this hearing, they did an outreach to their neighbors and there are some letters of support. Also reached their most direct abutters is the Blessed Sacrament Church. It's a very large building, a mix of

owners and renters. We reached out to them, showed them and shared the plans and answered any questions they had.

Again, this is as application and because of the setback issue, because there's a rear yard setback, even though they're part of a development, we would need relief. And as well as the actual whole lot was maxed out when they built the development so any additional square footage would require relief, and that's the nature that we're requesting.

CONSTANTINE ALEXANDER: Questions from the Board at this point?

(No Response.)

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

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

JEANETTE BRESSI: Good evening. My name is Jeanette Bressi, B-R-E-S-S-I. My partner and I bought the home adjacent to 203. It's 199 Erie. And we're back at the end of the driveway next-door to the Lakhanis. And we have a direct view of their yard and where the addition would be going. We're in full support of having it go there and I'll be

quick. I have a few reasons why. The process, as their attorney said, was inclusive and respectful. Before they even went and had a design done, they informed us. They let us see everything during the design process, and kept open and transparent communication the whole time. So we really appreciated that. Space is desperately needed. The footprint of the house is 22 by 20. So you have a living room, dining room, kitchen, stairway, closets, bathroom in that space. I hope to do the same thing one day if we could afford it. And they're Cantabrigians, this is their home. It's not a developer asking for more space. They want to make their long-term residence more comfortable, and we couldn't be happier and more supportive for them.

CONSTANTINE ALEXANDER: Thank you for sticking around and taking the time to speak with us.

JEANETTE BRESSI: Certainly.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I'll close

public testimony -- well, no. Before I close public testimony, we do have letters of support.

We have a letter from Jeremy Lutz, L-U-T-Z and Lynn Simpson who reside at 199 Erie Street. (Reading) I am writing in support of the Variance application to Cambridge Zoning Board of Appeal to construct an addition at 203 Erie Street. My wife and I have lived at 199 Erie Street part of the 199/205 Erie Street HOA for the past five years. We have met with the owners and have reviewed the site and elevation plans provided. After review of the proposed plans, we are comfortable that the proposed addition will not have a negative impact on our association or the neighborhood. Given the modest size of the structure and the placement towards the rear of the property surrounded by high fences, it will be minimally visible from the street. The additional space will serve to increase the desirability by the property by increasing living space in a way that allows for additional options of current and future owners in customizing their home for family or working needs. We fully support the Variance to allow a Cambridge family the additional room to grow into their home and make it unique to their style.

We have an identical letter really from Jeremy Lutz, L-U-T-Z and -- no, it's the same letter. It's just a copy.

And we have a letter from -- I'm not even going to pronounce the last name, that's my fault. First name is R-A-M-A-K-O-T-I and last name is Suresh, S-U-R-E-S-H. And the second name is Xiaoling, X-I-A-O-L-I-N-G X-I-E, they reside at 205 Erie Street. (Reading) We are writing in support of the Variance application to the Cambridge Zoning Board of Appeal to construct an addition of 203 Erie Street. We live at 205 Erie Street and have lived there for five years. The letter actually -- the rest of the letter is additional, is identical to the one from the Lutz and Mrs. Lutz and Ms. Simpson, so I'm not going to read it. It's in support like the other letter was.

So that's it, we have only letters of support.

I will close public testimony. Any final comments you have?

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: Ready for a vote?

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being given the nature of the townhouse construction on the location of the lot. There is not much living space and there's a need, whether it's for you folks or your successors, to have additional living space.

That the hardship is owing to the shape of the lot and your location of your structure so that you only can move in the direction you're moving to add additional living space that's necessary.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance. In this regard there's neighborhood, unanimous neighborhood support for what is being proposed, and it has a beneficial effect on the City of Cambridge in that it allows couples like you to continue to stay in the area and to grow your structure the same time your family might be growing.

So on the basis of all of these findings the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans prepared by Suzumori S-U-Z-U-M-O-R-I

Architecture, and they're dated June 11, 2018.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

Opposed?

BRENDAN SULLIVAN: Opposed.

CONSTANTINE ALEXANDER: One opposed.

ANDREA HICKEY: I'm opposed.

CONSTANTINE ALEXANDER: Two opposed.

Okay, then the relief will be denied. Sorry you need five,

Mr. Hope knows. You need four votes, that's the state law, and you only have three. So I have to say that your petition's been denied.

KARIM LAKHANI: May I ask why?

CONSTANTINE ALEXANDER: Say it again, please?

KARIM LAKHANI: May I ask why?

BRENDAN SULLIVAN: Well, I just think it's an odd appendage onto the building. You know, when the townhouses were built, as it is, and a lot of these other developments, they build right up to

the Nth letter of the law or the ordinance requirement to allow them to build the Ordinance to allow them to build the development. And just don't look too kindly on them coming down later on wanting to add on to the townhouses, because they were built, you know, just to comply with the Ordinance when they were built. To me this is somewhat of an odd appendage on the back of the building, and I just don't think it fits and I dis -- just opposed to it.

KARIM LAKHANI: Ma'am, your view?

ANDREA HICKEY: I just think -- I reiterate what Brendan said, and I think it's too close. It's too much in that part of the building. Too close in the back to the next structure. The structure in the back.

SHAHEEN LAKHANI: Yeah, it's about five feet away from our back fence and then there's a huge courtyard that's between the fence and the back building. So our house is not actually right up against the lot. Our neighbor's yard is about five feet from that.

CONSTANTINE ALEXANDER: Anyway, the vote's been taken. I'm sorry. But you're denied.

KARIM LAKHANI: Okay. Thank you. Thank you for your

service.

* * * * *

(10:00 p.m.)

(Sitting Members BZA Case No. 016956-2018: Constantine Alexander,

Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016956, 1815 Massachusetts Avenue.

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

ATTORNEY ARTHUR KREIGER: Yes, Mr. Chairman, thank you.

CONSTANTINE ALEXANDER: Before we start, obviously you're an experienced member coming before our Board particularly in telecom cases, and I know you didn't put this package together. I don't think you did.

ATTORNEY ARTHUR KREIGER: Correct.

CONSTANTINE ALEXANDER: Maybe you're the person who did.

ATTORNEY ARTHUR KREIGER: So this is Ryan Lynch.

CONSTANTINE ALEXANDER: Okay, you're new to this process?

RYAN LYNCH: Yes, sir.

CONSTANTINE ALEXANDER: This is not how we do

telecom cases. We require photo simulations showing both -- those are drawings. They're not photo simulations.

ATTORNEY ARTHUR KREIGER: You actually have photo sims in the packet.

CONSTANTINE ALEXANDER: There are?

ATTORNEY ARTHUR KREIGER: Yep, there are.

RYAN LYNCH: Maybe further down in your packet.

ATTORNEY ARTHUR KREIGER: They're about halfway through.

CONSTANTINE ALEXANDER: That's another comment. You should index them so we can get to the sections properly. I looked at them and I showed them to someone else, they didn't think they were actual photographs. But you say they are?

ATTORNEY ARTHUR KREIGER: Yeah. Existing and proposed. Four pages. One is the cover page of the long view of the building and three locations marked in that legend. And then each of the three close ups follows, existing and proposed.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: We will work with Smart Link, with Mr. Lynch to tab future proposals to make things easier to find.

CONSTANTINE ALEXANDER: Yeah. And also the plans which are just scattered. Just one big package doesn't do it for us. We have a lot of cases we have to review. And it would help if you would break it down, segment it.

ATTORNEY ARTHUR KREIGER: So let me go from there to a comment. You have four more of these coming up. These are LTE upgrade from 4G LTE to 5 LTE.

CONSTANTINE ALEXANDER: We know that.

ATTORNEY ARTHUR KREIGER: You have four of them coming up on the 27th. I don't want to restart the clock, but if you would take an amended application that's organized more conveniently on those four, we'll get them to you next week sometime.

CONSTANTINE ALEXANDER: We will do that. Try to do it by the five p.m. on the Monday before.

ATTORNEY ARTHUR KREIGER: We'll get it in by next Friday.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: So, as I said, this is an upgrade. This is the old Porter Exchange building. I don't know what it's called now. It's part of Lesley University. It's just an upgrade. So there are three antennas in each of three sectors, a typical configuration; two of the three in each sector are being swapped out. There's additional equipment that's going up on the roof behind the parapet wall that won't be visible from anywhere including surrounding buildings, certainly not from the street. You actually have to hunt on the photo sims. Once you find the photo sims, you still have to hunt to see what the change is. It's not easy comparing the existing and the proposed. So the only way to do it really is by sort of comparing antennas to the back of the building behind it.

So here's one shot. And it's the -- it's the middle antenna on that one that's extending up a little higher and a little lower. The -- so the -- in each sector one of the ones that's being swapped out is not getting materially bigger. Still going to be about four and a half feet, 55 inches. Maybe an inch or so wider, I'm not sure. The other one is going

from 55 inches to 73. So four and a half roughly to seven feet, one inch -- to six feet, one inch.

So you've got about a foot and a half more length on one of the antennas in each sector, and I think in each case it's divided between going up and going down so that they stay centered.

CONSTANTINE ALEXANDER: Do these antennas go above the roof line? I'm having trouble reading.

ATTORNEY ARTHUR KREIGER: Well, let me if I may, even from here, even looking up at it, it's not above the roof line.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: And these appear to because of the setback of the building, but I don't believe they do. Do you know?

RYAN LYNCH: They do not go above the roof line, no. We always make sure we don't have anything above the roof line for any of these antennas.

ATTORNEY ARTHUR KREIGER: Here's the second set of photo sims looking from the southeast if north is up. And in this one it is

the right-hand antenna that looks like it's getting a little taller against when you compare against the back of the building. It's the building behind it.

CONSTANTINE ALEXANDER: But, again, it's your testimony that it doesn't break through?

RYAN LYNCH: Absolutely correct.

ATTORNEY ARTHUR KREIGER: It doesn't break the roof line. And just for completeness, here is the third sector. And in this case it appears to be the left-hand antenna that's getting taller. Obviously minimal changes. No real visual impact.

BRENDAN SULLIVAN: Let me see that?

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: It's been a long struggle but maybe, maybe trying to clean-up this building somewhat.

And who owns the one that has the simulated brick? That's somebody else. It's always somebody else for some reason another.

CONSTANTINE ALEXANDER: On this building particular.

RYAN LYNCH: I can't tell you who exactly it is, the other carrier is, but it is another carrier with the red brick.

BRENDAN SULLIVAN: And they'll be coming down? Okay.

And so yours are going to be painted to match the background?

ATTORNEY ARTHUR KREIGER: Right.

RYAN LYNCH: Correct.

ATTORNEY ARTHUR KREIGER: The brick, yeah.

BRENDAN SULLIVAN: Yeah.

ATTORNEY ARTHUR KREIGER: As the current ones are.

BRENDAN SULLIVAN: Yeah. And we'll get the other guy when he comes and we'll beat him up on that.

ATTORNEY ARTHUR KREIGER: Feel free.

BRENDAN SULLIVAN: Yeah.

Okay.

ATTORNEY ARTHUR KREIGER: So I'm happy to leave those with the Board if that's more convenient to have in your file.

CONSTANTINE ALEXANDER: That probably would be helpful if you don't mind.

ATTORNEY ARTHUR KREIGER: Okay. In that case why don't you take the cover one also.

CONSTANTINE ALEXANDER: Yeah, I'll keep them all.

Okay.

ATTORNEY ARTHUR KREIGER: And we've asked for two forms of relief; a Special Permit under the Ordinance, and an eligible facilities finding that we don't need the Special Permit under Section 6409 of the Telecom Act, the amendments and the FCC order since this is not breaking any quantitative threshold of ten percent or ten feet or anything and really has no significant visual impact at all. So just in the alternative and just for the sake of procedural completeness, if -- we would ask the Board for both forms of relief. Typically in the past you've granted a Special Permit and hesitated on the 6409 finding.

CONSTANTINE ALEXANDER: No, actually we haven't. We've granted --

ATTORNEY ARTHUR KREIGER: Okay. Then we would ask for both of those. We don't think there's any real issue about whether it's qualified for the eligible facilities request or whether it meets the by-law of the ordinance conditions.

CONSTANTINE ALEXANDER: Questions from members of

the Board?

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: Never are on these. Okay.

JIM MONTEVERDE: Every once in a while.

CONSTANTINE ALEXANDER: Yeah. I wish we didn't have these cases.

JIM MONTEVERDE: I know. There's that, too.

CONSTANTINE ALEXANDER: The Chair moves -- we've got to make the special findings for a special -- we have to make the findings for a Special Permit, that's generally applicable, and then also we'll go into the Spectrum Act finding that you referenced.

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

That the requirements of the Ordinance cannot be met without the Special Permit you are seeking.

That traffic generated or patterns of access or egress resulting from what you want to do will not cause congestion, hazard, or substantial change in established neighborhood character. In this regard we're

talking about antennas on the roof of a building that have very little impact in terms of affecting the established neighborhood character however defined in that area of the city.

That continued operation or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what is proposed. And that will be dealt with to some extent in the further conditions that I will suggest later, and which you've heard before.

And that generally what you're proposing will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

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

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

conditions:

One, that the work proceed in accordance with the plans submitted by the petitioner.

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

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

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

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

with regard to the site in question.

And then there is this long one that you've heard before, and I know -- can you, with your permission can this be incorporated into the record or you want me to read it all out?

ATTORNEY ARTHUR KREIGER: You're referring to the conditions on reports --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KREIGER: -- and emission reports --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KREIGER: -- or violations reports?

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY ARTHUR KREIGER: That's fine. And just incorporate my previous objection.

CONSTANTINE ALEXANDER: Your standing objection.

ATTORNEY ARTHUR KREIGER: That's right.

CONSTANTINE ALEXANDER: You know what I'm referring to.

(Inasmuch as the health effects of the transmission of

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

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

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

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

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

(Attorney Kreiger's objection noted to these conditions.)

CONSTANTINE ALEXANDER: So on the basis of all this, the Chair moves that the Board grant the Special Permit requested.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

ATTORNEY ARTHUR KREIGER: And the Section 6409?

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

BRENDAN SULLIVAN: You're Ryan, right?

RYAN LYNCH: Yes.

BRENDAN SULLIVAN: AT&T is the carrier. What is New Cingular Wireless?

RYAN LYNCH: That's the legal entity that AT&T uses for their --

BRENDAN SULLIVAN: For their wireless.

RYAN LYNCH: Yes.

BRENDAN SULLIVAN: And then Smart Links is you?

RYAN LYNCH: That's me. I'm a site development contractor for AT&T.

BRENDAN SULLIVAN: So you go physically and put it all together?

RYAN LYNCH: I don't actually build the site.

BRENDAN SULLIVAN: But you arrange for the --

RYAN LYNCH: Yes.

BRENDAN SULLIVAN: No, okay. I'm just trying to figure

out the players in the act here.

CONSTANTINE ALEXANDER: I thought I covered The Spectrum Act with the finding about the modification does not substantially change the physical dimensions of the existing --

ATTORNEY ARTHUR KREIGER: I would just ask the Board then to make the conclusion that therefore qualifies eligible facility and doesn't need --

CONSTANTINE ALEXANDER: I think it's obvious.

ATTORNEY ARTHUR KREIGER: -- does not need Special Permit relief as well.

Your statement that it's obvious is fine.

CONSTANTINE ALEXANDER: Okay. Thank you.

ATTORNEY ARTHUR KREIGER: May I make a suggestion or a proposal for next time when you have four of these, because I know you hate them, and doing four of them back-to-back and reading all of that, if you want to consolidate them somehow next time, assuming you will grant all four --

CONSTANTINE ALEXANDER: I would be very happy to.

ATTORNEY ARTHUR KREIGER: We'll do whatever, you know, present as efficiently. It will be me or one of my colleagues with Ryan.

CONSTANTINE ALEXANDER: I have to look at the files see the similarities and dissimilarities between the four cases to see if we can --

ATTORNEY ARTHUR KREIGER: I haven't looked at them in detail and open them all and just do the same set of conditions.

CONSTANTINE ALEXANDER: Thank you. And we probably will do that subject to checking out the files.

RYAN LYNCH: Of course.

ATTORNEY ARTHUR KREIGER: Thank you, all.

* * * * *

(10:10 p.m.)

(Sitting Members BZA Case No. 016973-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016973, 5 Leonard Avenue.

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

Mr. Kim. For the record, name and address.

THOMAS CAMERON: Thomas Cameron, Three Saint Paul Street, Cambridge.

MICHAEL KIM: Michael Kim, architect, One Holden Street, Brookline.

CONSTANTINE ALEXANDER: Are you a purchaser or about to be a purchaser of the property?

THOMAS CAMERON: Yes. We purchased the property in December I believe.

CONSTANTINE ALEXANDER: Oh, you haven't moved in yet?

THOMAS CAMERON: No, we haven't moved in yet.

CONSTANTINE ALEXANDER: Oh, okay.

THOMAS CAMERON: So I live currently with my wife and two kids on Saint Paul Street, right around the corner from here. I anticipate my in-laws joining us within about a year, and we needed a bedroom on the first floor.

CONSTANTINE ALEXANDER: You don't have to go into all that. I heard the different address.

THOMAS CAMERON: Fair enough.

CONSTANTINE ALEXANDER: I got a little curious. Anyway, Mr. Kim.

MICHAEL KIM: Okay. What we have is an -- is a very modest addition. It's 145 square feet. It houses the extension of the current kitchen and a small mudroom. And like my client was saying, they are anticipating housing their in-laws. They bought this house, they're retaining the rental unit and necessary rear rental unit, and are intending to convert it for their own family use. And having in-laws would be a need for a larger kitchen. I would point out that a big part of the design was the maintenance of this setback line. So we are matching the setback of the existing bay. I will admit that was my hope to then might

qualify for 8.22.1 but we were sent here instead. So I argued, I lost, and here I am.

But I believe the intent of those provisions, both 8.22.1 and 8.22.2 are well reasoned and we stuck to that constraint, partly because that's what the Ordinance says and partly because it just fits better on the site. So it allows for a circulation. It fits well, we believe, with the house. And because it's in the rear and because there is an existing fence, it would be all but invisible to any passer-by. It's a rather wonderful Queen Anne house and we feel it will have very minimal impact.

So if there are any questions, I'd be happy to answer.

CONSTANTINE ALEXANDER: Questions?

(No Response.)

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I don't think we have any letters in our file. So I will close public testimony.

Discussion or we ready for a vote? I'm ready for a vote.

ANDREA HICKEY: I'm okay.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we make the following findings with regard to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being given the architecture of the structure now, there is a need for a mudroom, and this would apply not only for you, but anybody who owned the property.

The hardship is owing to the fact that this is already a non-conforming structure. And, therefore, any modification to it requires zoning relief.

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

In this regard the Chair would note that the relief being sought is modest in nature. It is appropriate to the architecture of the building and it makes the building more inhabitable and more amenable to family use, including in-law use.

So on the basis of all of these findings, the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with plans prepared by Michael Kim Associates, dated July 17, 2018.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

* * * * *

(10:15 p.m.)

(Sitting Members BZA Case No. 016981-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016981, 26 Lowell Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices. I'm here tonight on behalf of the petitioner.

REBECCA SPARKES: Hi. Rebecca Sparkes of 26

Lowell Street.

AMANDA PIERRE: I'm with the architects. Amanda Pierre, P-I-E-R-R-E Hisel Flynn Architects, H-I-S-E-L, F-L-Y-N-N.

ATTORNEY SEAN HOPE: So this is an application requesting a mudroom -- an addition for a mudroom and a portion of a kitchen of an existing single-family home in the Res B district. The square footage of the addition is approximately 26 square feet. This property is -- is it the Half Crown?

REBECCA SPARKES: Yes, the Half Crown.

ATTORNEY SEAN HOPE: Yeah, it's in the Half Crown Marsh District. So prior to coming before the Board, we had to go before the Half Crown for a design review. I think the plans in the file probably have more detail than most zoning plans because the materials used in different parts of the exterior features were also reviewed and received a Certificate of Appropriateness for the dwelling.

So this is a non-conforming dwelling. So this is a non-conforming dwelling. So it's partially in one of the side yard setbacks and it's already over the allowed FAR. So even though the request is 26

square feet, it is de minimus in nature, it still triggers Variance relief.

And petitioner could probably speak better than I can, but part of the relief is for a mudroom but also to increase some of the functionality of the home.

And maybe you can speak to that in detail because I think it's important.

REBECCA SPARKES: Sure. We have -- my husband's not here because he's home. We have two small children, a two-year-old and a five-year-old and we are committed to staying in Cambridge. So one of the things that we're trying to do is make a very old and wonderful home a little bit easier for us to function with our family. One of the things that we will be doing with our project is actually switching the flow of the kitchen within the inside of the home. And the request for the mudroom access is to allow us to use the driveway and the rear access to the house with the kids and for a little bit better security and in and out of the home. Right now we have to use the front door and it's -- we're right on the street. It's not a great thing as you've got two little kids kind of running in and out of the car and into the front door and onto the sidewalk.

We really love the home. We moved in three -- just over three years ago. We actually built it from Frank Duhay (phonetic) who I know some of you may know because he was on the Board -- or on the Council for many, many, many years. And we love it and we really are very happy there. So this is going to be hopefully something that let's us stay for a long time. Our son just started junior kindergarten at Haggerty. So we're in it.

ATTORNEY SEAN HOPE: I don't think I have anything more to add.

CONSTANTINE ALEXANDER: I don't you should try to add. I'm going to close public testimony -- any questions from -- one second. First any questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Sorry, I didn't mean to cut you off.

MARY CANNER: My name is Mary Canner. I live at 12 Gibson Street in Cambridge. So you see me on the plans. I'm right behind and to the side a little. And I just want to say before I give you my

reservations, that I've always tried to be a really good neighbor. So when Frank was there and we moved in 18 years ago, when we put a fence up in the back, his fence was on our property. And rather than asking him to move it, we just did an, okay, we'll make it go like this around your fence. So I really want to be a good neighbor.

I have some concerns. We all live in the same house. There are about ten of them in our neighborhood. They all look about the same. Most of them have been rehabbed so they have an open flow downstairs. Many of them have two children, one child, one has three I think right now. My children are grown so it's only grandchildren.

So the first problem I have with the design is that it's extending the footprint and it's extending the footprint further in towards my house. And my computer is broken at the moment. Apple's great but, you know, it's got to be fixed. So I just took a picture to kind of let you know, because the houses are all really, really close to each other. So this is just a picture of where there will be an extension. And I can point it out on there. It's where you want the mudroom. I totally understand. So it's coming even closer to me.

This is a picture from inside my house. This is in the dining room. I also see it from the kitchen. So it's impacting me a lot because we just have tiny, tiny yards. I guess mine's smaller than yours.

And the second concern that I have is that right now the back of the house has a porch on it and so this is a picture from last night of how much light during the evening hours impacts us from inside the house. And the drawings that I see, the pictures or renditions that I've seen, maybe we can put it up, instead of you saw that dark area, you see almost no light because the light is from inside here. Now we're going to have four large windows. And I believe this is gonna be living area in here. Am I right?

So this is the living room, which is gonna be very lit up and is really gonna impact me. I can't speak for the neighbor directly behind because I'm here at an angle. But I know having lived in my house for 18 years and being all in for many, many years to come as well, that the house directly next to this house, which I'm directly in front of, I had years of being able to know when somebody was going into the refrigerator. You know? And it's a little bit living like -- but anyway. Over time I've

planted a green screen, which finally after 18 years, is letting me only see occasionally in. But it's really gonna have a large impact on my house. And I do believe, although they aren't here tonight, they can't, and I won't speak for them because that's not fair, but a very large impact on the house that's directly here. The topography goes down, and so you, like, look into the other person's house. For me, the one that's directly in front of me. Their living -- the kitchen is up one level. And so I know that reality. So while I'd like to be able to support a neighbor, I feel like it's going to have a very large impact on what it feels like to live in my house and to be in my garden area as well.

Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down although you're defending your property. Do you have any consideration? You probably didn't know about the opposition until right now.

MARY CANNING: Can I say one more thing right now? I don't know why the Historic Commission or --

CONSTANTINE ALEXANDER: Half Crown.

MARY CANNING: Whatever it's called. I've been there myself. Okay.

I don't know why neither I nor 18 Gibson Street weren't notified of those hearings. I don't know if it's because we are behind rather than on the street side on Lowell. But neither one of us got --

CONSTANTINE ALEXANDER: I don't know the answer. Maybe you know the answer.

ATTORNEY SEAN HOPE: No, I mean --

MARY CANNING: So I didn't even know that any plans were afoot. Because I know that was a meeting in mid August --

REBECCA SPARKES: Yes.

MARY CANNING: -- until a couple days ago. I was away for a while, opening all my mail and discovered this. I didn't mean to interrupt.

CONSTANTINE ALEXANDER: No, no. That's all right. She raises some I think legitimate concerns. I assume they're accurate. And I'm wondering whether this thing -- you need to go back and rethink the design of this addition to see if you, or other steps to take to deal with

the issues that she's raised.

ATTORNEY SEAN HOPE: Yeah, and no fault of yours. I think it is unfortunate because I do think part of the design was approved and reviewed during the Half Crown and that usually helps, because when the design's taken care of, the Board can focus on just the zoning piece. And I did hear comments about windows and things which, you know, design elements that -- there are things that neighbors can talk about without maybe changing all the plans. So, you know, you're a direct abutter. Your concerns are important, and I think that having time to discuss this would make it easier for the Board if we can resolve some of those things either through shades, design, or other elements.

REBECCA SPARKES: I mean, we absolutely will be putting shades in. They won't just be, like I said, we have two small children, and even though it's the back of our property, we tend to keep our shades down. We aren't actually adding much glass space. We'll just be using it differently than we have before. Because there are windows and a full glass door all the way around that current porch and we use it much of the year.

MARY CANNING: Yeah, but it's rarely used in the evening. You know, I live right there, I know. You know, there's no light emitting from here out. And so it's from a porch that, you know, I'm not nosey so I don't know that you have things on and you go in and out from. This is now a large living space. It's a very, it's a very, very different feel. I also don't, I don't doubt you, but I don't understand, and it's because I haven't walked by your -- on Lowell Street for a while, why if your concern is your young children, and I totally sympathize, I have a two-and-a-half year and three-and-half grandkids. They live in New York City, so I get the concern. Why, why they can't right now get out of your car and come in through the back if that's your --

REBECCA SPARKES: Because those steps are completely non-conforming. They're actually very, very steep. And I don't ever -- I rarely have the kids use it. The back door is a fully different locking system. It's just not part of the house.

MARY CANNING: I don't want to waste people's time. I just wonder --

REBECCA SPARKES: It's not feasible. Right now our

entryway is kind of our de facto. We leave a stroller in there and trip over it and scooters and shoes and all of that.

ATTORNEY SEAN HOPE: And, you know, while I think the glass is a design element, I do think that mudrooms and entryways, whether you have family or not, is something that typically people do and build and are normal. But, again, we didn't have time to talk to you about it. And maybe having you over and maybe having some of this conversation would benefit the Board.

CONSTANTINE ALEXANDER: I think that would be the case. In a case like this to, you know, steamroll or ignore the comments from a person who took the time out to come down. So I think we'll have to continue this case as a case heard.

How much time do you think you'll need -- all of you need before you come back?

ATTORNEY SEAN HOPE: Sounds like you're close abutters and motivated to work things out. So I think -- I mean --

CONSTANTINE ALEXANDER: I don't think we have time in two weeks, the next hearing.

ATTORNEY SEAN HOPE: Okay.

MARY CANNING: Well, and I think it would be good to have conversations with people directly behind you.

CONSTANTINE ALEXANDER: Say it again.

SISIA DAGLIAN: We're already full.

CONSTANTINE ALEXANDER: I know. So what's the one after that?

SISIA DAGLIAN: October 11th.

CONSTANTINE ALEXANDER: October 11th.

REBECCA SPARKES: Is there any way to be seen before? That means we'll have to move -- - we're moving our project all the way to next spring then. We had the foundation --

CONSTANTINE ALEXANDER: First, we have to make sure can other members of the Board make October 11th?

BRENDAN SULLIVAN: I can.

CONSTANTINE ALEXANDER: I can I know that.

ANDREA HICKEY: I can.

JIM MONTEVERDE: I cannot.

CONSTANTINE ALEXANDER: You cant? That pushes it back even farther then.

SISIA DAGLIAN: October 25th is the next date.

CONSTANTINE ALEXANDER: October 25th? That's your problem even worse.

REBECCA SPARKES: I mean, it is.

JIM MONTEVERDE: That works.

LAURA WERNICK: Either one is fine with me.

CONSTANTINE ALEXANDER: I think we should -- I think as a matter of good neighbor relations, we should continue the case to October 25th and give you time to talk, maybe make some modifications if necessary.

REBECCA SPARKES: Okay.

CONSTANTINE ALEXANDER: I think a lot of this is just education and discussing things.

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we continue this case as a case heard

until seven p.m. on October 25th subject to the following conditions:

One, Mr. Hope knows what these are. One, that the petitioner sign an extension of time for decision. You have to do that otherwise we have to turn you down tonight.

Two, that the posting sign that you've maintained, be modified to reflect the new date, October 25th, new date, new time, seven p.m., hopefully won't be as late as this. And that that sign be maintained for the 14 days before October 25th.

REBECCA SPARKES: So it can come down now and then go back up.

CONSTANTINE ALEXANDER: That's right. As long as you get the 14 days before October 25th.

And lastly, to the extent if there is going to be modification in the plans that you submitted, that these modified plans be in our files no later than five p.m. on the Monday before October 25th. That's to give us time to review what modifications have been made. It also gives members, citizens of the city time to go down and look at it and to educate themselves. I trust you won't have to do that with her because you'll be

having conversations but one never knows.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. See you
October 25th.

(Alexander, Sullivan, Hickey, Monteverde, Wernick.)

(Whereupon, at 10:30 p.m., the
Zoning Board of Appeals Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to
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After reading this volume of the Zoning Board of Appeals
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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 28th day of September, 2018.

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

My Commission Expires:
April 29, 2022

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