

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, FEBRUARY 11, 2016
7:00 p.m.

in

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

Constantine Alexander, Chair
Thomas Scott, Member
George S. Best, Associate Member
Jim Monteverde, Associate Member
Andrea A. Hickey, Associate Member
Laura Wernick, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:30 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order.

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

At the beginning of the meeting I will inform the attendees at the meeting that a recording is being made. And I will inform you that a recording is being made by our stenographer. As those of you have been here before, we make a stenographic record of our proceedings and to help Cathy in doing that she records as well as types. So that, other than that that's the only recording that I'm aware of

that's going to be made of this meeting.

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-009112-2015: Thomas Scott, George S. Best, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: So I will now turn to the regular agenda, and the first case to be called is case No. 009112, 40 Concord Avenue. And I'm going to recuse myself

from that case and Mr. Scott is going to Chair the meeting for this case.

THOMAS SCOTT: Good evening. You have to state your name and address for the record.

MARK VERKENNIS: Sure. My name is Mark Verkennis, Harvard Project Management Planning and my address is 1350 Massachusetts Avenue in Cambridge. And I'm here tonight with my colleagues. Do you need their names for the record?

THOMAS SCOTT: Yes.

KATE LUCIEN: I'm Kate Lucien. I work for the Radcliff Institute, Harvard University, and my address is 79 Brattle Street.

JONATHAN AUSTIN: And I'm Jonathan Austin of Austin Architects. And the address is 219 Concord Avenue.

THOMAS SCOTT: Okay. And so this is a Variance request. You can recap for us the items that are being requested.

MARK VERKENNIS: Yes. So tonight we want to

review with you a project at the Radcliffe Institute for Advanced Study. They are seeking Variances to enable the renovation of a property at 40 Concord Avenue. If you're familiar with this part of the Radcliffe campus, it's an area known as the Bunting Quadrangle, and there are four wood frame structures that are on that site. The building that we're looking at tonight is the perpendicular shaded one. It was originally constructed as a residential dwelling in 1877. It's been in institutional use since 1911. Radcliffe has used this property since '85 when the Board of Zoning Appeal granted a Special Permit for a continued institutional use prior to that it was Lesley College.

KATE LUCIEN: Lesley, yep.

MARK VERKENNIS: So all of the buildings that make up the Bunting Quad predate the establishment of zoning in Cambridge, so not surprisingly there are a number of pre-existing non-conformities. And two that are relevant to

the property we're speaking about tonight is one is the parcel does exceed the floor area ratio under the current zoning. Also, we do have some of the buildings which exceed current height requirements. For example, the building that we're looking at tonight exceeds that height requirement by six feet in terms of maximum building height.

Radcliffe is undertaking this renovation. It's a fairly extensive renovation. It does -- the scope of the project is going to trigger certain compliance with Building Code requirements and requirements of the Massachusetts Architectural Access Board. Jonathan will probably go into a little bit more detail on this, but basically the two big ones that are sort of driving the design of the project are the requirement for a means of a second independent means of egress in the building. And also the building right now is totally inaccessible. There is no accessibility for persons who have disabilities. So we will be required to make the building fully accessible which is something Radcliffe wants

to do to meet their programmatic needs as well.

So Radcliffe is proposing to accomplish this by building an addition at the rear of the property. That addition will marginally increase the non-conformity in terms of the floor area ratio, and we also have an additional constraint which is the adjacent parking lot. So we are also seeking relief for the setback from the part of that addition wall that has a window to the parking area.

THOMAS SCOTT: Can you point out, are those specific, are those handicap spaces that are closest to the building?

JONATHAN AUSTIN: This is the handicap space just here.

THOMAS SCOTT: Okay. Right there? Okay.

So the two spaces that are closest to the building are those the ones that are kind of driving the request for a Variance?

JONATHAN AUSTIN: Yes, those two.

MARK VERKENNIS: Those two coming out there.

So I mean what's I think unique about this property in terms of our requesting relief, zoning relief, is the fact that it was built as a single-family residence. It has a layout and a configuration of spaces and a structure that is residential in nature, and to continue to use that for contemporary institutional uses, there are a lot of code requirements that can't readily be met. There's, you know, certain constraints on meeting those within the volume of the building. So this, if we were to try to do that, we, we can see just from looking at the floor plan or the layout plan, the footprint there, you're sacrificing a fair amount of the building's program area, which obviously would have impact to the institute in terms of their utility for the building going forward in the future.

And I'd say the combination of the fact that the building, you know, is historically it was built as a

residence, but it is -- has been an institutional use for over 100 years now in the set of circumstances that is unique to this property and not generally within the residence B Zone District.

So in a nutshell that's, you know, the relief that we're seeking this evening.

THOMAS SCOTT: So it's a modest increase in the FAR from 0.5 to 0.52?

MARK VERKENNIS: 0.5 to 0.52, correct. And that's, you know, overall for the lot.

THOMAS SCOTT: Okay.

And also the addition is placed kind of nicely behind the building so it's not visible from the Concord Ave. So the visible effect from the main road would be essentially the same.

MARK VERKENNIS: Correct.

THOMAS SCOTT: Okay.

JONATHAN AUSTIN: Yeah, the real hardship is that

literally if you were to take this orange block and put it into the footprint of the building to accommodate a viable second means of egress, an elevator, accessible bathroom, it would sort of knock out all of that space. So there is just a stair -- a stair, a toilet, and then the elevator is in the center of this just here. One of the considerations is that we really wanted to hide the volume of the elevator within the mansard roof of the building. I can illustrate that here.

This is the side that faces Concord Avenue which would not be changed.

This is the side that faces the quad, which has the addition to the left here.

This is the side that faces Parker Street with the addition here, and then this is the part that faces the parking lot. You'll see how the volume of the elevator projects above the roof just there. It's a vent which would otherwise be quite unsightly. So it's a very simple

addition. It mimics the details of the original building. And then the details will be the same. And the entrance there is just here, the entrance out on to the parking lot.

THOMAS SCOTT: That's the accessible entrance.

JONATHAN AUSTIN: That's the accessible entrance.

And that provides full accessibility to both the lower level basement area, first, second, and third floors.

THOMAS SCOTT: Okay, thank you.

LAURA WERNICK: Can you show the site plan again?

JONATHAN AUSTIN: Sure.

LAURA WERNICK: So you chose to shift it to the left, I guess to the left, northwest rather than to the --

JONATHAN AUSTIN: Yes, there's a window just here that's nicely placed within this. So the plans simply worked out better that way.

LAURA WERNICK: What is the exact distance from the parking space to the corner of building, two feet?

JONATHAN AUSTIN: It's a couple feet. It's very

tight.

MARK VERKENNIS: Yes. The provision that we're seeking relief from is the Zoning Ordinance requires that any building wall that has a window be at least ten feet away. Now, Jonathan might want to speak to the nature of these windows in this instance because they're probably not what was, what is -- I'm interpreting a Zoning Ordinance, the type of window that you're trying to --

THOMAS SCOTT: Do they operate or are they fixed?

JONATHAN AUSTIN: They're fixed.

THOMAS SCOTT: They're fixed, so --

MARK VERKENNIS: This is illuminating a stairwell.

JONATHAN AUSTIN: Yeah.

They're not some -- I think the Zoning Code is -- literally says window.

MARK VERKENNIS: Window, yeah.

JONATHAN AUSTIN: So it doesn't distinguish with any operable effects.

THOMAS SCOTT: Okay.

MARK VERKENNIS: I just wanted to clarify that because they're inoperable windows.

JAMES MONTEVERDE: And if you were to give up the first parking space closest to that new addition, would that get you the dimension that otherwise you wouldn't need to request a Variance for that?

JONATHAN AUSTIN: It wouldn't quite get it even if we -- we would have to lose two spaces. It's ten feet. And I think that the size of the lot and number of spaces is restricted, and that's sort of an overall equation that we can't tamper with.

MARK VERKENNIS: We have to maintain --

THOMAS SCOTT: You need that number of spaces?

MARK VERKENNIS: Yes. For the Special Permit that the Board granted in '85 we have to number of spaces.

GEORGE BEST: Is there a reason why the windows are not, I would say, in compliance with the rest of the

windows in the building?

JONATHAN AUSTIN: Meaning --

MARK VERKENNIS: In terms of their alignment?

GEORGE BEST: Alignment and size, that small window.

JONATHAN AUSTIN: Well, that's a very good question. The reason why on this side is that this is a window into a bathroom. This is a window into a hallway. So rather than having windows of equal size to the front, we made them slightly narrower just in order to get the windows into both of the spaces. And we took that to the site here mimicking the landing on the stairs here. Likewise here. And then these are actually windows that go straight into the stairwell and we've got the grades of the main floor levels.

GEORGE BEST: Okay.

Back in the day, just my personal opinion, there was some symmetry when they were building those buildings

and that addition sort of looks off to me visually.

JONATHAN AUSTIN: It may well be that we -- we will adjust some of the window locations here, but this is what we were proposing.

THOMAS SCOTT: So if we grant relief, the relief is tied to these drawings.

MARK VERKENNIS: We understand that.

THOMAS SCOTT: And you can't change anything without coming back before this Board. So if that's it, and that's what we approve, that's what you build.

MARK VERKENNIS: That's what we have to, right.

THOMAS SCOTT: Right.

MARK VERKENNIS: I should point out that we have met with Charlie Sullivan --

THOMAS SCOTT: I was going to note that --

MARK VERKENNIS: -- from the Historical Commission.

THOMAS SCOTT: -- when we're done here, yes.

MARK VERKENNIS: And there was a fair amount of discussion with him in terms of the appropriate approach to this. I mean, one of the things, you know, typically you try to do when working with a historic building like this is you want the addition to be sympathetic, but you also want it to read as new. You don't want someone to necessarily mistake this piece for what was the original volume of the building. So it's, you know, it's a bit of an esoteric argument when we get into this. But that was some of the thinking that we had in our discussion with Charlie.

LAURA WERNICK: It's actually the site plan, the tightness to the parking space. I think to me is a greater concern. If you go to the site plan, is there any place to relocate a parking space perpendicular to the handicap parking space? I think you're going to have trouble with snowplowing in that area. People having to walk around the rear of cars rather than around the front of them. So I'm just wondering if there's any way that the parking can be

shifted at all to even get part of the ten feet?

THOMAS SCOTT: I guess to that, how do people get from the parking lot to that entrance? Do they normally walk through the parking lot? Okay. So there would be no change to that activity?

JONATHAN AUSTIN: Yeah.

MARK VERKENNIS: For the new entrance.

LAURA WERNICK: But there is no entrance there now?

MARK VERKENNIS: There's no entrance now.

GEORGE BEST: On the lower left where you have that bump-out that looks like that would accommodate an additional space.

LAURA WERNICK: The handicap parking space is that?

GEORGE BEST: I would say put the handicap parking space closer to the building and the space that you're losing put out, put where that bump-out is.

JAMES MONTEVERDE: So without designing it for you, which I don't think we really want to do, is really just to ask would you be willing to look at, please?

KATE LUCIEN: Well, I was just about to say I think to be fair, Radcliffe doesn't actually -- Harvard being the unbelievably complex place it is, Radcliffe doesn't control the parking lot. The parking office controls the parking lot. But we would be very happy to work with the parking office to try to reconfigure that space away from the building --

JAMES MONTEVERDE: Yes.

KATE LUCIEN: -- if that's the request.

JAMES MONTEVERDE: Yeah, either create a tandem space out of some other zone. The larger tree to the bottom left if there's a way to, you know, if there's a way to find another spot or a tandem spot, or hopefully it's an employee that drives a Smartcar and only ten feet wide and you can get that corner back in green as opposed to paving.

LAURA WERNICK: I wouldn't hold to the ten feet. I would hold you to the Zoning requirement just to provide some breathing room.

MARK VERKENNIS: Sure.

KATE LUCIEN: Yeah, yeah. I think we'd appreciate the opportunity to be honest with you.

JONATHAN AUSTIN: So what would you suggest procedurally?

JAMES MONTEVERDE: I will defer to the Chair.

THOMAS SCOTT: Well, procedurally what do you have to do to get somebody to look at this and make an alternative recommendation based on the Board kind of, you know, having some issue with that particular parking space so close to the building?

MARK VERKENNIS: Well, internally what we would need to do is work with our parking office who controls the lot, to work out a basically a redesign of that lot. And as Kate said, we're certainly open to doing that. We just

can't speak for them this evening.

That said, I mean given your comments, it does appear that there is some ability to redesign that. I mean, I think we've all felt a certain discomfort with the proximity of the parking to that addition. I guess my question for the Board is how is that reflected in your action this evening? I just --

THOMAS SCOTT: Well, I guess to the, board members, how would it affect your vote in some way if in fact -- if we were to take a vote this evening, would it affect your vote? Because otherwise I think we're asking them to, you know, to come back another night with an alternative proposal for the parking so that we could vote on all, you know, all three variance issues.

ANDREA HICKEY: I personally don't have a problem with what they're proposing personally.

THOMAS SCOTT: Okay.

ANDREA HICKEY: I'm not greatly troubled by that

parking space and how close it is, especially since it's on the back of the building. I don't have an issue with it.

LAURA WERNICK: The preference would be to have them come back and see if there's some alternative. You know, just explore the possibility.

JAMES MONTEVERDE: Yeah, I would agree.

GEORGE BEST: And I would agree.

JAMES MONTEVERDE: That's three. There's your vote.

THOMAS SCOTT: Well, it seems like you're not going to get four votes in favor if we proceed with the vote this evening. So the alternative is to come back --

MARK VERKENNIS: Request a continuance.

THOMAS SCOTT: Request a continuance and come back. And obviously we have to bring the same five members before you, so we have to make sure it's convenient for everybody.

MARK VERKENNIS: Sure.

THOMAS SCOTT: And what is the availability?

SEAN O'GRADY: February 25th is the next available.

THOMAS SCOTT: Oh, okay. Within the same month even.

Can you get a decision that quickly?

SEAN O'GRADY: Well, you don't have --

LAURA WERNICK: I can't do the 25th.

ANDREA HICKEY: I'm not sure I can.

THOMAS SCOTT: Oh, boy. Okay.

SEAN O'GRADY: You're out to the end of March now, March 31st.

MARK VERKENNIS: I guess the applicant is wondering is there any way that we can -- I know you're not seeing a plan tonight so you can't really act on it, but is there a way that we can make a commitment to do that? I mean, I guess -- in my mind I'm trying to separate the Variance that's needed for the building separate from the

redesign.

ANDREA HICKEY: Do you have authority to reconfigure the parking lot?

MARK VERKENNIS: Do I?

ANDREA HICKEY: Well --

MARK VERKENNIS: Well, I mean --

KATE LUCIEN: I'm confident in our ability to get to that place. I just -- that conversation is outside of the three of us.

MARK VERKENNIS: Right.

KATE LUCIEN: But I'm not worried about it. I don't even know if I should -- mark might smack me. I'm not worried about our ability to work that out.

MARK VERKENNIS: No, I'm not either.

KATE LUCIEN: I'm worried about -- I'm equally worried about continuance and -- yeah.

MARK VERKENNIS: Yeah, I guess I'm more concerned about that. We're not seeking a Variance for the parking

area tonight. We're seeking, you know.

THOMAS SCOTT: Over the parking is causing one of the Variance requests.

JAMES MONTEVERDE: It's intertwined.

THOMAS SCOTT: We can't separate the requests. There's three variances being requested. We can't say we'll vote on two of them tonight and the third one. We can't do that.

KATE LUCIEN: I understand that.

THOMAS SCOTT: So we have to vote on the case.

I will say that there are two letters of support in the file. We should make note of that. City of Cambridge Commission for Persons with Disabilities wrote a letter in support of the Variance request as well as the Cambridge Historic Commission has written a letter in support of the Variance request as well. Those are the only two letters in the file.

The letter from the Commission on Persons With

Disabilities was written by Michael Muehe, M-U-E-H-E Executive Director. And the Cambridge Historical Commission letter was written by Charles M. Sullivan. So just so we have that in the record.

So the question is do we -- are you willing to request a continuance and come back?

MARK VERKENNIS: I think we need to.

KATE LUCIEN: We have no choice.

JONATHAN AUSTIN: Can I just ask a procedural question here? Because there are two parts to this:

One, is we're seeking increase in FAR. It's simple.

And second is we're asking for a relaxation of this ten-foot setback. My sense is that were we to rework the parking lot, we're still going to need that relief of some kind. We may well improve the condition of the corner there.

THOMAS SCOTT: Right.

JONATHAN AUSTIN: We will still need that.

THOMAS SCOTT: Yes, and that's fine.

JONATHAN AUSTIN: And so, I guess with that might come a moving of a window. Who knows. So the question is, is the approval tied specifically to this plan or the principle that we could have ten-foot -- less than ten-foot setback?

THOMAS SCOTT: It's tied specifically to the plan that's submitted. So we can't, we can't separate it from that. It's the only way that the Inspectional Services Department can control what we approve here. They have to be able to look at a plan and say, this is what was approved.

MARK VERKENNIS: Right.

JONATHAN AUSTIN: Okay.

THOMAS SCOTT: So....

JONATHAN AUSTIN: Don't mind me asking.

KATE LUCIEN: So I'll actually go back to the

question we started with -- what would the date be?

SEAN O'GRADY: The next available date is March 31st.

THOMAS SCOTT: And that's because we have a couple of members that couldn't make it.

ANDREA HICKEY: Yeah, I could make the 25th.

LAURA WERNICK: I'm out of town on the 25th.

THOMAS SCOTT: Okay. So she's out of town. So it jumps all the way to March.

ANDREA HICKEY: Do we need everybody?

SEAN O'GRADY: You always have the option to proceed with four but you would need a unanimous vote.

KATE LUCIEN: Isn't it compelling?

Okay, I defer to my guide here.

MARK VERKENNIS: I think we're going to go for the 25th.

THOMAS SCOTT: Okay. March 25th?

MARK VERKENNIS: March 25th with the four members.

KATE LUCIEN: Or March 31st?

THOMAS SCOTT: It's February 25th.

MARK VERKENNIS: Do you feel comfortable doing that?

(Discussion off the record held by applicants.)

MARK VERKENNIS: I think March 31st. I just realized that I'm away on the 25th.

KATE LUCIEN: There you go, the 31st.

MARK VERKENNIS: I guess the 31st it is.

KATE LUCIEN: Thank you very much.

THOMAS SCOTT: Okay, so I have to make a motion.

The Chair moves that the petitioner will come back with a new proposal on March 31st with a continuance of this case. Just to note, you have to have any new plans in the file on the Monday, five o'clock on Monday the -- Monday prior to the hearing.

You also have to change your posting sign.

MARK VERKENNIS: Right.

THOMAS SCOTT: The posting sign has to -- with a magic marker, a permanent marker, you can change the date. You need to show the new date and time. And the time will be -- it's seven o'clock?

SEAN O'GRADY: Yes.

THOMAS SCOTT: All those in favor say "Aye."

(Aye.)

(Scott, Hickey, Best, Monteverde, Wernick.)

THOMAS SCOTT: We'll see you on the 31st.

* * * * *

(7:55 p.m.)

(Sitting Members Case BZA-009185-2016: Constantine

Alexander, Thomas Scott, Jim Monteverde, Andrea A. Hickey, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 009185, 118R Industrial Park Way. And we have two cases for that premises. This one involves the appeal from

a determination made by the Commissioner of Inspectional Services.

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

ATTORNEY MICHAEL GIAMO: Sure, hello Mr. Chair, Members of the Board.

CONSTANTINE ALEXANDER: Hello.

ATTORNEY MICHAEL GIAMO: Mike Giamo, G-I-A-M-O from Robinson and Cole representing Verizon Wireless.

And we had a conversation a month or two ago on the same subject.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY MICHAEL GIAMO: You know, it remains Verizon Wireless's position as a legal matter this should have been decided in Inspectional Services and not referred to the Zoning Board of Appeals for all the reasons stated in our brief and just in sum because I don't think you want me to go through it in more detail.

CONSTANTINE ALEXANDER: I just have one question for you, though. You cite in your brief a Fourth Circuit decision.

ATTORNEY MICHAEL GIAMO: Yes.

CONSTANTINE ALEXANDER: I haven't read it, but your description it sounds like a very relevant case. Did you bring this to the attention to Mr. Singanayagam, and more importantly, the Legal Department?

ATTORNEY MICHAEL GIAMO: I think we filed it before that decision was issued.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY MICHAEL GIAMO: And I have not talked to the Legal Department about it. That case has been taken up on bond by Fourth Circuit.

CONSTANTINE ALEXANDER: Oh, really?

ATTORNEY MICHAEL GIAMO: So, you know, there may be further proceedings on that.

CONSTANTINE ALEXANDER: That's okay.

ATTORNEY MICHAEL GIAMO: You know.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY MICHAEL GIAMO: And that happened very recently, maybe last week.

And so just in sum the argument is that under state and federal law, there is no authority for the Zoning Board to hear this as a Special Permit. It should have been heard through the building inspector's determination under Section 6409 of The Federal Spectrum Act. And even if there were the ability to do that, Cambridge has affirmatively created a procedure to hear these, I understand you prefer to hear them as a Special Permit. So, but be that as it may, we're preserving our rights to by submitting that brief.

CONSTANTINE ALEXANDER: Understood. The you you're referring to is not necessarily this Board but the Legal Department of City of Cambridge.

ATTORNEY MICHAEL GIAMO: Yes.

CONSTANTINE ALEXANDER: The position of the Legal Department, as you know from our last decision, is that all -- the telecom cases, including under The Spectrum Act, must run through our Special Permit process under our Ordinance because that's where telecom and direction of antennas by telecom is regulated. And so that was, that's the advice we've been given by the Legal Department. As you know, that was the basis for our decision denying your appeal the last time. And so far as I'm aware nothing has changed as far as the Legal Department, so I think you're faced with the same issue there.

ATTORNEY MICHAEL GIAMO: Understood.

CONSTANTINE ALEXANDER: But obviously you're doing it to preserve your rights and we understand that.

ATTORNEY MICHAEL GIAMO: Yes. And so I'll rest on the brief as far as that aspect of the case. I don't know if you want to call the Special Permit because we also have brought you a Special Permit.

CONSTANTINE ALEXANDER: We'll do a separate case.

ATTORNEY MICHAEL GIAMO: Oh, okay.

CONSTANTINE ALEXANDER: We'll conclude this case.

ATTORNEY MICHAEL GIAMO: Very good.

CONSTANTINE ALEXANDER: And they are separate cases. It's eight o'clock, we can hear the Special Permit case next.

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

(No Response.)

CONSTANTINE ALEXANDER: Is there anyone in the audience wish to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. There's nothing in the files and no letters of the like.

So, since you made the appeal, I'll make a motion to grant the appeal and we'll see how the vote goes.

The Chair moves that we grant the appeal of the

petitioner with regard to the -- whether the modifications they wish to make to their telecommunications mechanism at 118R Industrial Park Way and to reverse the decision of the Commissioner of Inspectional Services on the grounds that there is no need for them to come before our Board, that Inspectional Services can on its own determine that relief, can be or should not be granted.

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

(Aye.)

CONSTANTINE ALEXANDER: Three in favor.

(Scott, Monteverde, Wernick.)

CONSTANTINE ALEXANDER: Opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Two. You don't have enough votes.

(Alexander, Hickey.)

ATTORNEY MICHAEL GIAMO: We're improving every

time.

CONSTANTINE ALEXANDER: Your appeal has been denied.

ATTORNEY MICHAEL GIAMO: Understood.

CONSTANTINE ALEXANDER: And we have to put in the record why your appeal was denied. I would move, and anyone who could vote on this would be Andrea and myself since we were the ones who voted against.

It's been denied on the grounds that the City of Cambridge has determined that that -- has decided that determinations under The Spectrum Act should be made by the Zoning Board of Appeals inasmuch as Cambridge's Zoning Ordinance generally requires that the erection and modification of telecommunications facilities be the subject of a Special Permit process before the Zoning Board of Appeals.

I move that the Board find it was appropriate that the Board, rather than Inspectional Services Department,

determined by means of a Special Permit under the Ordinance whether approval under The Spectrum Act was warranted.

All those in favor of making those findings please say "Aye."

(Alexander, Hickey.)

CONSTANTINE ALEXANDER: Okay. That's in the record. Case over.

* * * * *

(8:00 p.m.)

(Sitting Members Case BZA-009161-2016: Constantine

Alexander, Thomas Scott, Jim Monteverde, Andrea A. Hickey,

Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 009161, 118R Industrial Park Way.

Is there anyone here wishing to be heard on this
matter? This is a request for a Special Permit.

ATTORNEY MICHAEL GIAMO: Very good, thank you.
Michael Giamo, again, from Robinson and Cole representing
Verizon Wireless.

And this is an existing wireless facility approved

by this Board I think in 1998, modified twice after that, which is building permits to replace antennas and upgrade antennas. But essentially we're doing the same thing. We're just moving some of the antennas around and adding some interior equipment. So I think that probably to walk you through the photos, I don't know if everybody's had a chance to see --

CONSTANTINE ALEXANDER: These are the ones in our file?

ATTORNEY MICHAEL GIAMO: These are the same photos in the file.

So this is the scenic rock. I don't know what this is called, a rock crusher or loader or something.

It's basically the Boston Sand and Gravel site. So this is within the highway cloverleaf. And I will say, I did get -- and I don't know if you have it in your file, but I did get ane mail from the Liza Paden at the Planning Board who said that the Planning Board declined to comment on

this.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY MICHAEL GIAMO: They didn't think there was any reason to comment on this.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY MICHAEL GIAMO: And you can see why. It doesn't have any abutters nearby and it's an industrial facility. It's good location for a wireless site. It's right in the middle of the highway cloverleaf as you can see from this photo.

And we've taken some pictures just to give you a flavor for it. This is the actual current view, and this shows what would change on this side which is the gamma sector side, which is the side facing west I believe. West. Yes.

And that would be to move one of the alpha sector antennas under this side, replace two existing antennas, and add another antenna. So this side of the building would

have five Verizon Wireless antennas now, where in the future -- where it has three now, there's also other carriers up on that tower.

This is the actual view looking at it from -- this is -- this looks like I think the south side. So this is the beta sector. Three antennas being replaced in the same location with similar kind of antennas.

All of these, if you notice, are painted to match the background of the building. They will continued to be painted to match the background of the building.

This is not a particularly easy view to see, but this is on the sign and they're painted yellow to match the background of the sign.

That's the actual view.

This shows that these two antennas are to be replaced on the same location.

This one here in the middle is gonna remain as is. It's not even going to be replaced.

And there's one here that's being moved over to the other side. So it's being picked up from here where it is now and it's being added to that first side that I showed you. And the purpose of that is it aims off in kind of a skewed direction. I think they can reach where they want to reach from this side, but it's easier to reach from the other side. It's just a straighter shot.

CONSTANTINE ALEXANDER: You're not replacing antennas, you're replacing and also adding a few new ones?

ATTORNEY MICHAEL GIAMO: We're going from nine to eleven, to the end, yes.

And we're also adding equipment on the inside, behind the antennas, these radio heads, which you won't see, but help with the service.

CONSTANTINE ALEXANDER: I see.

ATTORNEY MICHAEL GIAMO: And this is a little bit redundant, but just a different angle through the two highway decks and under the highway.

This satisfies all the standards under The Spectrum Act. It doesn't involve any disturbance --

CONSTANTINE ALEXANDER: Yes, why don't you just take them off.

ATTORNEY MICHAEL GIAMO: Yes, I'll run through those.

CONSTANTINE ALEXANDER: Just very briefly so that we have them for the record.

ATTORNEY MICHAEL GIAMO: Yes. Let me just do this from my brief.

So it doesn't involve more than the standard number of equipment cabinets. There's no addition of the equipment cabinets.

It doesn't entail any deployment outside of the existing footprint. All of this work is being done on the building itself. There's nothing going on the ground out there.

It doesn't defeat the concealment elements of the

facility. The concealment elements here are that those antennas were painted to match the background, would still be painted to match the background.

There was a condition that talked about the generator. We're not doing anything with the generator. The generator, in fact, it was conditioned on the generator being painted to match the compound. And I mean, to match the surrounding -- you can see this generator is underneath the metal platform. I don't think it has any zoning interest to anybody. And we're not touching it in any case.

It doesn't increase the height of the building by more than ten percent. In fact, it doesn't increase the height of the building at all.

It doesn't add any impertinences that would protrude by more than six feet. These new antennas aren't going to protrude by more than two feet at most, and similar to what the existing ones protrude. They're just mounted to the outside and maybe a little space behind them, that's

all.

And it complies with all the conditions imposed by the BZA's original decision. And that decision, again, the only condition that's relevant there is the painting the antennas to match. That wasn't even a condition. That was a representation by the applicant, and I'm treating it like a condition because we're willing to do that going forward.

And so based on that, I would ask that you approve this facility on the basis of the Federal Spectrum Act Section 6409 and the standards of the regulations that I just read to you as an eligible facility request.

CONSTANTINE ALEXANDER: Thank you.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Is there anyone in the audience who wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

As the petitioner has said, we have nothing in our files. No correspondence, nothing even from the Planning Board.

ATTORNEY MICHAEL GIAMO: The Planning Board's comment was actually favorable.

CONSTANTINE ALEXANDER: There is a letter, I'm sorry. It came in later. Let me just quickly read it.

(Reading) The Planning Board reviewed the Special Permit application for the communication antennas at the Boston Sand and Gravel and has no objection to this installation which is located on a building in the midst of the highway system.

Okay.

Let's just discuss -- people want to discuss this or ready for a motion?

JAMES MONTEVERDE: Yes.

CONSTANTINE ALEXANDER: The Chair moves -- remember we have to start with the Special Permit

requirements of our Ordinance per the instructions from the Legal Department.

The Chair moves that we make the following findings:

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

That traffic generated or patterns of access or egress are resulting from the project will not cause congestion, hazard, or substantial change in established neighborhood character.

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

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

And that what is being proposed will not impair

the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

In addition, I move we make the finding that the modification to the existing telecommunication facility at 118R Industrial Park Way proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at the facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known as The Spectrum Act. And, therefore, the petitioner is entitled to the Special Permit -- no, I'll put a period there.

Based upon these findings, the Chair moves that:

The petitioner is entitled to the Special Permit it is seeking under our Zoning Ordinance subject to the following requirements -- subject to the compliance with the following conditions:

One, that the work proceed in accordance with the

plans submitted by the petitioner and initialled by the Chair. These are the ones you submitted to us, Mr. Giamo.

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

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

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

And, five, that the petitioner is in compliance and will continue to be in compliance with -- in all respects with the conditions imposed by this Board previously with regard to the premises in connection with Special Permits granted to the petitioner with regard to the site in question.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor relief granted.

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

CONSTANTINE ALEXANDER: Did I go too fast? I know you're taking notes.

ATTORNEY MICHAEL GIAMO: And I think you're caught back up. You're right back on schedule. Thank you for your consideration.

* * * * *

(8:15 p.m.)

(Sitting Members Case BZA-009110-2015: Constantine Alexander, Thomas Scott, Andrea A. Hickey, Jim Monteverde, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009110, 13 Salem Street.

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

WENDY HOLDING: Yes, please.

CONSTANTINE ALEXANDER: Please come forward.

WENDY HOLDING: Okay.

CONSTANTINE ALEXANDER: We have a stenographer, so give your name and address, anyone that's going to speak in connection with your petition, name and address to the

stenographer.

WENDY HOLDING: Okay. I'm Wendy Holding. I know it as 11 Salem Street, but the City knows it as 13. I don't know that's how it came.

LINDSAY MACINDOE: Maybe we can get that changed. Lindsay with an A, MacIndoe, M-A-C-I-N-D-O-E with an a.

This is our architect Doug Dick.

DOUGLAS DICK: Douglas Dick, D-I-C-K.

CONSTANTINE ALEXANDER: Floor is yours.

LINDSAY MACINDOE: Great. I've never been through this process, so I'm not quite sure what to say, but my wife Wendy and I -- Wendy bought the house in 2002 and I moved in in 2005 and we've lived on Salem Street since and have loved it. And it's a great little street. We've got a great rapport with the neighbors, and a little happy little commune happening.

Something that concerned us from the beginning but now concerns us a lot more now that we have two kids, is

that there's only one exit in our house to the outside egress.

CONSTANTINE ALEXANDER: There's only one access and egress to the structure?

LINDSAY MACINDOE: Yeah.

And so we have, I guess, the right to build one out the back, but that would go right into our neighbor's yard and take up a lot of our space. And so we've been thinking for a long time of trying to add an egress elsewhere. And came up with a plan with Doug that we are really excited about.

Additionally I'm a self-employed musician and a workspace in the house would be hugely beneficial to our family and it -- the very small addition, sort of bump that we're proposing would allow us to have a dining room table that you can actually put chairs around, which we struggle with right now. So we feel that it's a small, a very small change, but it would make a huge difference for our family.

And I think that's -- I mean, that's the gist of it.

CONSTANTINE ALEXANDER: I have to point out to you, don't jump to conclusions --

LINDSAY MACINDOE: Sure.

CONSTANTINE ALEXANDER: But from the Zoning point of view it's not a small change you want. It's a densely -- it's a dense neighborhood as you well know. And under our Ordinance, FAR, the floor area ratio, can't be more than -- should be 0.6 or less.

LINDSAY MACINDOE: Okay.

CONSTANTINE ALEXANDER: You're currently at -- the house as it is now, is at 0.85. And you want to go, if we grant relief tonight, to 1.44, almost two and a half times.

DOUGLAS DICK: If I can make a comment here. If -- I think there's an incorrect number here. If you actually take the gross floor area, which is -- sorry, 2,061 square feet and divide that by the lot area which is 1550 square feet, it's actually 1.33.

CONSTANTINE ALEXANDER: Well, who prepared the forms attached to your plans?

DOUGLAS DICK: It is unfortunately a miscalculation. And if you do the calculations of the accurate gross floor area and the --

CONSTANTINE ALEXANDER: But even 1.33 you're twice, roughly twice --

DOUGLAS DICK: The existing is --

CONSTANTINE ALEXANDER: What our Zoning Ordinance says you can do. That's the hurdle you have to jump over.

Tell me what, on the inside, you made the point in your submission that you needed more living space and you've touched on that. But exactly what is the space going to be used for? I know you have three bedrooms now in the house according to the --

LINDSAY MACINDOE: No. We have two bedrooms now on the second floor.

CONSTANTINE ALEXANDER: And something in the

basement?

LINDSAY MACINDOE: They're -- I'm not sure if it's a legal bedroom or not.

CONSTANTINE ALEXANDER: Here are the plans.

DOUGLAS DICK: There is a space in the basement.

CONSTANTINE ALEXANDER: Doesn't it say bedroom?

LINDSAY MACINDOE: We use it as a bedroom. I don't know --

WENDY HOLDING: Well, there's a thing in the wall that you can pull down and go to sleep.

ANDREA HICKEY: But there's no way to get out?

WENDY HOLDING: There's a window well.

LINDSAY MACINDOE: There's a window well.

CONSTANTINE ALEXANDER: There's a stairway up to the front door.

DOUGLAS DICK: So let me just show you the existing plans so you can understand this.

So the first floor, this is the only -- this is

the single egress that she mentioned. It's right here and it's in the side yard not in the street, which is somewhat of a challenge as well, and it's also kind of odd for the neighborhood to have an entrance on the side yard. But the first floor has an area of a sunroom, a little tiny dining area, living room, and kitchen. The basement has this one large space.

CONSTANTINE ALEXANDER: Right.

DOUGLAS DICK: Which is used as a playroom or it could be a bedroom.

And upstairs basically you have these two smaller bedrooms.

CONSTANTINE ALEXANDER: Right.

DOUGLAS DICK: And it's got --

CONSTANTINE ALEXANDER: And now if we grant you relief, what will you have -- you'll have another bedroom on --

WENDY HOLDING: Yeah, we an --

DOUGLAS DICK: So on the second floor, what I've done is I'm showing the actual -- the red shows the actual addition. And so on the --

CONSTANTINE ALEXANDER: Second floor.

DOUGLAS DICK: On the second floor there is an eight-foot, eight-inch by ten-foot space that is an office, perhaps a bedroom in the future, but it's just an added space.

ANDREA HICKEY: But there's no closet.

DOUGLAS DICK: There is no closet.

CONSTANTINE ALEXANDER: So it doesn't count as a bedroom usually. Okay.

And on the first floor? That's on the second floor.

DOUGLAS DICK: And so on the first floor, and this is kind of key to the whole scheme, in that area that is now the sunroom, we're pushing back the wall to create a slightly covered entrance and then doing a little overhang

on it so we can actually get an entrance with the small landing, three-foot landing off the street. This will then provide the second means of egress, the other one will be over here.

CONSTANTINE ALEXANDER: And what will be, quote, the front door?

DOUGLAS DICK: This will be the front door.

CONSTANTINE ALEXANDER: Still will be the front door?

DOUGLAS DICK: Yeah.

CONSTANTINE ALEXANDER: Because you're creating a back door, what I would consider a back door with the addition?

LINDSAY MACINDOE: Yes.

DOUGLAS DICK: And this is -- I mean, this is somewhat problematic as it is because it requires people to go through the yard where the dog is.

LINDSAY MACINDOE: So the reason this red is

more -- there's a deck here currently, so we would be covering over the deck. So that's not new space. That's existing space.

DOUGLAS DICK: Current deck.

CONSTANTINE ALEXANDER: It's going to be your music room where you're going to be --

LINDSAY MACINDOE: I can build hits. That's the point.

DOUGLAS DICK: We're trying to make this about as small as we can and still get that added space. So this, this wall actually follows the existing setbacks, so we're not exceeding the setbacks which is important to --

CONSTANTINE ALEXANDER: Right.

DOUGLAS DICK: This also is within the, it's complies with the setbacks for that little addition. We should mention that this, this bay is existing. So we're only increasing into that side yard by about 12 inches.

CONSTANTINE ALEXANDER: But you are adding 600

feet of building according to your dimensional form.

DOUGLAS DICK: We are adding --

CONSTANTINE ALEXANDER: I'm wrong.

WENDY HOLDING: We did one more aggressive theme and then we scaled it back.

LINDSAY MACINDOE: We had a much bigger plan and then we just thought about the neighborhood and the trees and all of that.

WENDY HOLDING: Are you looking at the first plan?

CONSTANTINE ALEXANDER: No, I'm looking at the revised.

DOUGLAS DICK: And just to add some clarity to this, we did do a larger scheme which was originally submitted. We changed that and reduced the square footage by about 400 square feet and also maintained the open space on the site. And you'll notice on the site plan there is a mistake from the surveyor, in my opinion, and I've addressed this with this note. It says that on the site plan that

we've only got 23 percent open space, but in fact in the existing is 51 percent. But we're actually only reducing the open space by 60 square feet. So that calculates to -- and I can give this to you. An open space of 42 percent, and even more if you include the deck on the second floor open space. So our current -- really what we're asking for is relief on FAR because we're following the setbacks.

CONSTANTINE ALEXANDER: I didn't catch it from the plans. Are you going to have a second floor deck?

DOUGLAS DICK: There is already a second floor deck.

CONSTANTINE ALEXANDER: There is, okay.

You're not adding or making a new one?

DOUGLAS DICK: No.

WENDY HOLDING: No. We want to take over half of it for interior space instead of exterior space.

DOUGLAS DICK: So this is the -- the existing

second floor deck is right here.

CONSTANTINE ALEXANDER: Yes.

DOUGLAS DICK: And we're basically adding to about this line which is where this red line is which follows the setback.

CONSTANTINE ALEXANDER: All right.

DOUGLAS DICK: Again, we're really trying to stay within every possible zoning rule that we can, but we don't really, you know, we don't -- it's impossible to follow the FAR because the FAR only allows a 918 square foot house which is pretty small.

Interestingly enough if this house were put on a -- I mean, this is just an interesting point, if you put this house with the addition on it, a lot that complies with the minimum lot size, then you'd have --

CONSTANTINE ALEXANDER: Well, yes, but that's irrelevant in this course.

DOUGLAS DICK: Of course.

CONSTANTINE ALEXANDER: But that's not your situation. And our job is to, you know, is to -- we take the lots that you have and we apply the Ordinance -- what the Ordinance says the most you can do, and then we decide whether -- because you meet the legal standard, we can go beyond what the Ordinance says and give you the relief you're speaking tonight.

THOMAS SCOTT: So this set of plans is superseded by this set?

DOUGLAS DICK: That's correct.

THOMAS SCOTT: This site plan shows essentially more footprint than this?

DOUGLAS DICK: Correct. That's the one we've changed.

THOMAS SCOTT: So this is void?

CONSTANTINE ALEXANDER: Yes.

DOUGLAS DICK: And let me explain a couple of the reasons why we did that, is first of all, we wanted to

maintain the open space. That was the choice we got along the way. It also means we can maintain the three trees that are on the property. And there's a big tree right on the sidewalk that the previous scheme would have eliminated, and we said that's not what we want to do. Because it is, I think one of the nice things about this house, even though it is -- exceeds the FAR, it's got a nice contiguous open space in the side yard which we're maintaining and we're maintaining the tree.

WENDY HOLDING: Which you probably think is funny, but we spend a lot of time speaking about our trees.

CONSTANTINE ALEXANDER: Say that again?

WENDY HOLDING: And we spend a lot of time speaking about the trees in our yard and how to save them.

CONSTANTINE ALEXANDER: Good for you.

LINDSAY MACINDOE: It's the last tree on the street.

DOUGLAS DICK: And we've tried -- we designed the

house, if you see, and stop me if this is not important, but we designed the house to be compatible with the neighbors as well in terms of architectural style. So this is, this is the addition. This is the portion that's filling in part of the second floor deck, and then this is the part that extends out about four feet. That extends out about one foot -- one foot, excuse me. So we're trying to make the addition compatible and also the scale compatible. So we -- the new roof line extends back to the existing ridge, and it really, it doesn't -- it doesn't extend any shadows on neighboring houses. I don't think it impacts --you know, it doesn't really impact the neighboring abutters.

THOMAS SCOTT: So have you reviewed the plan with your neighbors?

LINDSAY MACINDOE: Yep. We have a few letters and a neighbor is also present.

WENDY HOLDING: Two neighbors.

CONSTANTINE ALEXANDER: We're going to read the

letters into the file, and obviously your neighbors will have the opportunity, pro and con, to speak.

LINDSAY MACINDOE: Right, absolutely.

CONSTANTINE ALEXANDER: Questions at this point from Members of the Board?

JAMES MONTEVERDE: I'm good.

CONSTANTINE ALEXANDER: Okay. I'm going to open the matter up to public testimony. Is there anyone here wishing to be heard on this matter?

Ma'am. You have to give your name and address to the stenographer, if you would, please. It would be helpful if you came forward so we can hear you, too.

GILLIAN McMULLEN: Yes. It's Gillian with a G, G-I-L-L-I-A-N McMullen, M-C-M-U-L-L-E-N. And I'm at 15 Salem Street.

I live at No. 15 but it's actually next-door because there's no No. 13 on our street.

I've been over the plans with Wendy and Lindsay in

detail. They showed me what they want to do, and I think it makes complete sense. I've always worried with that house, even before they moved in, that there was no second exit. And I think that's really dangerous especially when you've got children involved. And the trouble with Cambridge is that people with children can't afford to live here anymore. And for me it's a great -- it's a great pleasure to have two little ones next-door. And I really want them to stay. I think that Wendy and Lindsay contribute a lot to the neighborhood and they're really good people and they're the kind of people that we like to have on our street. It's a very close kind of neighborhood, community. And I think what they're doing is so reasonable. That it doesn't cause me any problems. And I think it would solve a huge problem.

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

GILLIAN McMULLEN: You're welcome.

WENDY HOLDING: On the coldest night ever.

CONSTANTINE ALEXANDER: Is there anyone else who wishes to be heard?

Ma'am.

SARAH MAXWELL: Okay. My name is Sarah Maxwell and I live at Salem -- 7 Salem Street. So on the other side of them. And I support this project, and I also, when I was growing up, my mom was a residential architect which means you spend your whole life learning to judge other people's houses and their plans. And this plan, to me, educated by my mother, is subtle and consistent with the rest of the street. So the door, directly on the street, is consistent with my house right next-door. They're not adding that much to the existing facade, and I think my mother would give it the seal of approval, therefore, I would like to as well.

CONSTANTINE ALEXANDER: How can we turn down your mother if your mother gives the seal of approval we have to give you approval.

SARAH MAXWELL: Exactly. But it's consistent with

the style and it's subtle. And that's very true. And also they're wonderful and bring a lot to the street, and I would be very sad if they had to move with their two little munchkins. So, thank you.

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

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt of a letter as well, or an e-mail, from a Gerry, spelled with a G, Katz, K-A-T-Z.

(Reading) I am writing to you today in support of the Variance request by Wendy Holding and Lindsay MacIndoe at 11 Salem Street, Cambridge. My wife Nicole Cirilo, C-I-R-I-L-O and I are homeowners at 12 Salem Street directly opposite the property in question. We've been neighbors of Wendy and Lindsay since purchasing our property in 2006. Nicole and I have examined the architectural drawings

submitted with the Variance request and discussed the desired work and timetable with Wendy and Lindsay. Without reservation, we are in favor of their plans for renovations to their property at 11 Salem Street.

And that's it.

DOUGLAS DICK: And there's one other letter.

CONSTANTINE ALEXANDER: You have another one?

Thank you.

We've also been presented with a letter from Jill Shulman, S-H-U-L-M-A-N and Merhi, M-E-R-H-I Sater, S-A-T-E-R who reside at 92 Pearl Street.

(Reading) We are writing this letter in support of Wendy Holding and Lindsay MacIndoe. We are direct abutters of their property on Salem Street. We have seen their plans and are happy to support the changes they want to make. They've been wonderful members and consistently made attractive changes to their house, improving the look of the neighborhood.

Nice letter. And that's all.

I'm going to close public testimony. And we can move to a decision. I for one am in favor of the project. If anybody wants to speak to it or I can make a motion and move on.

ANDREA HICKEY: Motion.

LAURA WERNICK: Motion.

THOMAS SCOTT: I just want to say that the modification from the previous plans to these plans is very appreciated in terms of the kind of the newer, modest approach especially in lieu of the fact that you're way over on your FAR. So based on that, I'm in favor of it as well.

CONSTANTINE ALEXANDER: Let me just say, by the way, that sort of makes me jog my mind on something. When we grant relief, we tie it -- we condition it upon compliance on the plans that are in our file. These plans right here. Are these the final plans? Because if they're not, and you modify them as go forward, you're going to have

to come back before us. You understand that?

DOUGLAS DICK: Yes.

CONSTANTINE ALEXANDER: All right. Ready for a motion.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being is that the petitioner is in need with a family and the like, needs more living space within their relatively small structure, small for Cambridge.

The hardship is owing to the fact that the lot is an undersized lot, and restricting without the Zoning relief any modification to the structure.

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

In this regard the Chair would point out that this project has what appears to be unanimous neighborhood support. And that one of the benefits of granting the relief would be to create a second means of access and egress to the structure which is desirable from a safety point of view and which is now required under the building laws of the Commonwealth of Massachusetts. Perhaps they weren't required when this building was built or the structure was built.

In any event, so based upon these findings, the Chair moves that we grant the Variances requested on the condition that the work proceed in accordance with plans prepared by LVA Architecture and Interiors, and they're dated February 8, 2016, and which have been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance

granted.

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

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-009140-2015: Constantine

Alexander, Thomas Scott, Andrea A. Hickey, Jim Monteverde,

Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 009140, 54B Hammond Street.

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

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Mr. Hope.

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

of the petitioners. We have John and Daniela Evan. Our project architect Dan Anderson of Anderson, Porter Designs is actually running late so we're going to start, and when if he comes in -- he's bringing some visuals, but I think it would be appropriate to get started.

This is an application requesting Variance relief to construct an addition to the second story of the existing attached single-family located within the side yard setback. This is -- the property's at 54B in the Residence C-1 residential district. Briefly by way of background, Daniela Evan's family has owned the house since it was constructed in the late 1970s. Daniela has lived there as an only child. Her family is very close to the neighborhood. Approximately eight years ago Daniela and John started a family and now eight years later they have two children under five. And the instance of why we're here, their two children share one bedroom. And by this addition on the second floor, would allow them to have an additional bedroom

for each child. This is a multilevel split level house with an open staircase, and so the siding of the addition is over an existing porch. Now, this porch is within the side yard setback as it is, and so to be able to enclose this area would be within that side yard setback.

This is an attached house. So on the right-hand side there's a zero setback because they share part of the wall. On the left side is about five feet.

As part of this application, the petitioners went out to their neighbors and reached out, showed the plans, and received either non-opposition or support in most cases. I would just say that this type of application when young families or growing families are looking to seek an addition, oftentimes there are additions to the rear based on the size and the shape of the house. By consult with their architect, they felt this was the most appropriate siting for an addition, and would have the least impact on any views and neighbors of the abutters. Also, the way the

house is situated, they're outside of the front yard setback. So that even though the addition is an in-fill addition, it's not violating the front yard setback. And I think most importantly this is gonna allow their family to be able to grow and remain in place.

We did have designs but I think if there are any questions about the style of the house -- it is somewhat unique, I think we can answer those for the Board if you had any questions about the design.

CONSTANTINE ALEXANDER: We would have appreciated a little more detailed plans than we have, but they're -- I think they're --

DANIELA EVAN: Here he comes.

DANIEL ANDERSON: My apologies. Parking.

CONSTANTINE ALEXANDER: Your name and address, please, for the stenographer.

DANIEL ANDERSON: Yeah, I'm Dan Anderson of Anderson, Porter Design, 875 Main Street, Cambridge, 02139.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: We were just talking about the design and we had some boards to show the Board. I think the pictures might, just in terms how to explain this as a multilevel with an open staircase, so it may be a little hard to understand the interior layout. So I think the Board would like to see that.

DANIELA EVAN: It was clearly built in the seventies.

DANIEL ANDERSON: Sure. So --

CONSTANTINE ALEXANDER: Excuse me. Look at the lower pictures. Is the one on your right, the one you pointed to, that open area, that's the deck that's going to be covered by the addition?

ATTORNEY SEAN HOPE: That's right.

DANIEL ANDERSON: So one of the primary reasons that we're pursuing the addition, it is a multilevel unit. So it's very hard to gain any efficiencies and additional

space in the interior with that.

ATTORNEY SEAN HOPE: And that's it.

THOMAS SCOTT: There's not a lot of dimensional information. We have to tie the relief to these plans.

ATTORNEY SEAN HOPE: Right. So the relief is only for setback. We're staying within the allowed 0.75 FAR. I didn't mention this in my opening, but the addition is approximately 250 square feet. So it is just a setback. The footprint of the building isn't changing.

THOMAS SCOTT: Right.

ATTORNEY SEAN HOPE: To your point, are you more referencing interior dimensions?

THOMAS SCOTT: There's no height dimensions or anything. I don't know.

CONSTANTINE ALEXANDER: Yeah, as I say --

THOMAS SCOTT: It's a lack of information.

CONSTANTINE ALEXANDER: -- it's very, very minimal. These plans -- the point of having detailed plans

is so that should we grant relief, we tie the relief to the plans. And then when you go on to get your Building Permit and proceed, Mr. O'Grady has something to look at and to match, see what you showed us is what you're building. And this just barely gets there. I mean, I checked with Mr. O'Grady and he thinks he can live with these, but I would say if you come before us again, sir, this doesn't -- you've got to do better than this in terms of the information that you present to us.

DANIEL ANDERSON: I apologize. And I'm happy to give Sean any additional --

CONSTANTINE ALEXANDER: That doesn't work because you've got to give it to us first. But, okay, we've said our piece I think. You get the message.

All set? I could open it up to public testimony?

ATTORNEY SEAN HOPE: Please.

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

Sir.

RICHARD BARRAN: I'd like to support --

CONSTANTINE ALEXANDER: Give your name to the stenographer.

RICHARD BARRAN: My name is Richard Barran, B-A-R-R-A-N and I'm neighbor. I live at 58C Hammond Street. And my wife and I support this application. And I know that the -- I think there was a -- some correspondence. We signed a letter in support of this application, and we were not the signatories. Did Chris -- (inaudible).

DANIELA EVAN: Yes.

CONSTANTINE ALEXANDER: We do have a letter in the file from you and I assume your wife.

RICHARD BARRAN: Yes. Is that enough? I did know -- did you have something from Chris as well?

DANIELA EVAN: Yes.

ATTORNEY SEAN HOPE: They're in the file.

RICHARD BARRAN: Good. That's all I need to say.

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

Is there anyone else who wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one else.

We do have other letters. Let me just quickly, they're not that long, I'll read them into the file.

There's a letter from Dan Wikler, W-I-K-L-E-R and Sarah Marchand, M-A-R-C-H-A-N-D who reside at 54A Hammond Street.

(Reading) We are writing to express our support for the project proposed by Daniela and Jonathan Evan in connection with the above-referenced case. Daniela and Jonathan met with us to show us the design plan and to explain the proposed construction work they hope to do on 54B Hammond Street. We hope that the Board will approve their request and grant the relief requested.

And also a letter from Herb and Meg Nipson,

N-I-P-S-O-N, who are the owners of 63 and 65 Hammond Street.

(Reading) We have known Daniela and her parents for many years and watched Daniela grow up with them in the house at 54B Hammond Street. In fact, Daniela used to baby-sit for your children and has a deep connection to Cambridge and our neighborhood. We were very excited when Daniela moved back into the house with her husband John and we are now watching their children grow up in the same house from across the street. We are writing to express our support for the project proposed by Daniela and Jonathan Evan so that they can utilize the additional space needed for the growing family. Daniela grew up as an only child in the home so space was not a significant issue. I know that they want to remain in Cambridge, and we respectfully request that the Board make the accommodations necessary to keep their growing family and all families like theirs in the city. Daniela and Jonathan met with us to show us the design plans and we hope that the Board will recognize their

hardship and grant the relief requested.

And one final letter from a Lynn Lazar, L-A-Z-A-R who is the owner at 4 Gorham Street.

(Reading) I'm a long-time Cambridge resident, and Daniela and her parents and now her husband and children have been my neighbors for many years. I write to support Daniela and Jonathan Evan so that they can keep their family in Cambridge in the same house in which Daniela grew up. I know that being able to stay and raise their family in Cambridge is very important to them, and I would certainly love for their wonderful family to stay in the neighborhood. I would respectfully request that the Board recognize their hardship and grant the relief necessary to accommodate their growing family.

And oh, we also have a brief note from a Christine M. Korsgaard, K-O-R-S-G-A-A-R-D, who is the owner at 58 Hammond Street.

(Reading) Daniela and Jonathan Evan have explained

the construction work they hope to do on 54 Hammond and showed me pictures of their plans. I write to say that I have no objection to what they propose.

And that's the sum -- and that's it in terms of the public record.

Any final comments, Mr. Hope?

ATTORNEY SEAN HOPE: I would just say the application we believe it's consistent with City's growth policies in terms of trying to allow Cambridge families to grow and remain in place. I think it's been represented to the Board on different occasions that the idea of finding an alternative housing that has larger space is a financial hardship and very challenging to do. And I also think that adding to Cambridge's housing stock, and including a three-bedroom even eventually if they ever move out, I also think is a benefit to the City. So most importantly it's going to satisfy our hardship and we hope you vote favorably on the application.

CONSTANTINE ALEXANDER: Thank you.

Okay, that's it for public testimony.

Are we ready for a vote or would you like to discuss it?

ANDREA HICKEY: Vote.

CONSTANTINE ALEXANDER: Okay.

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

That a literal enforcement of the provisions of the Ordinance would involve substantial hardship. Such hardship being that the petitioners need additional space for their family and anyone who -- it's not just the current petitioners, but any family that would want to occupy these premises would need more living space than is currently there.

That the hardship is owing to the fact that this is -- basically the fact that this is a non-conforming structure on a non-conforming lot, and, therefore, any

relief -- any modification to their structure, to their -- well, their structure 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 there appears to be unanimous neighborhood support. And that in fact the modification to the structure, particularly in terms of their appearance in the neighborhood, is rather modest.

So on the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the two pages of plans, both of which have been initialled by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(8:45 p.m.)

(Sitting Members Case BZA-009212-2016: Constantine

Alexander, Thomas Scott, Andrea A. Hickey, Jim Monteverde,

Laura Wernick.)

CONSTANTINE ALEXANDER: Okay, this round two of this 6 Emmons Place. You've been before us. Maybe you weren't here but your counsel was last time. You weren't involved.

CAMPBELL ELLSWORTH: Oh, that's correct.

CONSTANTINE ALEXANDER: The public street or not.

CAMPBELL ELLSWORTH: Yes, indeed.

CONSTANTINE ALEXANDER: And that time you had unanimous neighborhood opposition. This time it seems that you've survived that.

CAMPBELL ELLSWORTH: Turned the tide. May I begin?

CONSTANTINE ALEXANDER: Oh, yes.

CAMPBELL ELLSWORTH: My name is Campbell Ellsworth. I'm an architect for my client Lour Ferraro, owner of the property. We're here before you seeking a Variance and a Special Permit for a proposed project at 6-8 Emmons Place. And I'm sorry, I misplaced something here.

Excuse me a minute. Pardon me.

Great, okay. So, the -- this project has a long history, and -- but what's before you now is a proposal to -- the intent is to demolish the existing structure, rebuild it in its existing configuration, but 16 inches to the west. And also to add an addition to the back of that

property.

The status of the project, of the property right now is that Mr. Ferraro is in possession of two building permits; one for the modification of the front house, and one for the creation of a second structure on the property at the back of the lot.

CONSTANTINE ALEXANDER: That was -- that's the existing Building Permit. That structure is a detached, a separate structure?

CAMPBELL ELLSWORTH: It is a separate structure.

CONSTANTINE ALEXANDER: Not what's here before us tonight.

CAMPBELL ELLSWORTH: I understand that. I'm just sort of giving you sort of a status of what --

CONSTANTINE ALEXANDER: Fine, good.

CAMPBELL ELLSWORTH: -- the property has right now.

We understand that there was a lot of concern in

the neighborhood for that rear structure, and so we had gone back to the neighborhood through the point person, contact person, Bill Zambarelli, who lives right across the street on Emmons Place, who was good enough to try to coordinate all of that, and we've come up with a proposal which is before you tonight.

That proposal is compliant in all aspects of the Zoning Ordinance but not with respect to setbacks. The existing structure, or the existing -- the lot itself is a very narrow lot, only 40.2 feet wide. It's very long at 126 feet. So it is a non-conforming structure in and of itself. So anything that we would do to it would -- if we were to leave it alone, would come under the Article 8.000 of non-conforming structures. But the intent would be to move it. One reason would be to create a conforming driveway. Currently the space between the two buildings is only nine feet. Being able to move it that 16 inches, and 16 -- it's funny because the building actually, according to the

surveyor, is over the property line into that driveway by four inches, 0.3 feet. So we wanted to move it 16 inches to get it one foot, full foot off the property line and thus create a compliant conforming ten-foot driveway between.

That is supported greatly by that adjacent building, because that building is three condominiums, they park in the back, and it would just make that a safer access as well.

But thus --

CONSTANTINE ALEXANDER: And in the back used for -- beside the open space is used for parking for the --

CAMPBELL ELLSWORTH: On the abutters or our property?

CONSTANTINE ALEXANDER: Yours.

CAMPBELL ELLSWORTH: Yes, exactly for parking. And that parking currently is -- those two spaces which go with the currently existing two-family house are compliant. Meaning even though that is a non-conforming nine-foot

driveway, because that's a two-family, those two spaces are grandfathered in through that nine-foot space.

CONSTANTINE ALEXANDER: And those spaces are not going to be changed in any way as a result of this project?

CAMPBELL ELLSWORTH: That's correct. I mean you'll see -- you'll see in the proposal before you because we are adding the addition and tail off the back, those spaces move a little further into the back, but it maintains -- it still maintains -- they are basically as close to the structure as they can be leaving a large piece of open space in the back which was also a very positive element for the neighbors.

Okay.

So, the -- you can see in your packet and so I'll get to. This is the site plan. This is in your packet which -- and you can see that this is the envelope of the existing structure albeit moved 16 inches that way. The adjacent structure -- so this is that nine-foot driveway.

It comes down between these two structures. These folks turn in this way, and here we would turn in this way and it would still leave this large -- and we have, I think, the number is 50 percent open space in a C-1 Zone which has a 30 percent requirement. So we're way over on the open space.

The addition itself creates -- obviously creates GFA. The GFA of -- and it's only a two-story building: Second story, first story, and some GFA under this main section which we would lower to some height above seven feet which would then create GFA. All of that is still within the allowable GFA of the lot, of the 0.75. So we've gone through a number of iterations. Just also to say last week we were before the Mid-Cambridge Neighborhood Conservation District -- Commission, Mid-Cambridge. They have -- I'm sure they have submitted to you a report which is here. And they brought up -- you're welcome to have that one if you want.

They brought up a number of points. This was

a -- because we were requesting essentially a full demolition of the structure and the moving the structure, rebuilding of the structure, that came under binding review for them. So essentially all of their suggestions become requirements, which that was a week ago Monday. By this last Monday the City was sort of shut down by the snow, but we were out of my office, we were able to turn around and incorporate all of their design suggestions into the new plans which is what you have before you. And I believe you have it before you. Maria took these via PDF. I have more --

CONSTANTINE ALEXANDER: These are -- the plans we have are -- I'm looking for the date.

CAMPBELL ELLSWORTH: Take a look at --

CONSTANTINE ALEXANDER: 12/28 is what we have.

CAMPBELL ELLSWORTH: Well, I've got new sets. If you --

CONSTANTINE ALEXANDER: Well, you said they were

in our files before --

CAMPBELL ELLSWORTH: Yes, absolutely. No, I e-mailed them to Maria. She had them when she arrived to work first thing Tuesday morning because Monday the city was shut down. I asked her if she wanted me to drop off paper copies, she said no.

CONSTANTINE ALEXANDER: Why don't you give us at least one set.

CAMPBELL ELLSWORTH: Well, no, I mean I've got sets for everybody there.

So it might be more helpful to be working off of this set.

CONSTANTINE ALEXANDER: Yes.

The first page is the one --

CAMPBELL ELLSWORTH: That's right with the site plan with the DYS map from the City. Watch out for the staples there.

So, in December, mid-December we had a community

meeting at Bill Zambarelli's house on Emmons Place. And, I don't know, there must have been about 12 to 15 neighbors there. They have submitted to you -- also, this also should be in your report Bill Zambarelli's letter.

CONSTANTINE ALEXANDER: We have that.

CAMPBELL ELLSWORTH: Okay.

CONSTANTINE ALEXANDER: And by the way, I don't mean to interrupt you, but the plans you just gave us have the same date of 12/28. So what I had might have been the actual plans.

CAMPBELL ELLSWORTH: Okay, well.

CONSTANTINE ALEXANDER: No matter.

LAURA WERNICK: There's something that says 02/04.

CAMPBELL ELLSWORTH: Yes, 2/4.

CONSTANTINE ALEXANDER: Where is that?

CAMPBELL ELLSWORTH: February 4th --

LAURA WERNICK: Site plan.

CAMPBELL ELLSWORTH: -- site plan.

LAURA WERNICK: I think after the site plan 1.1.

CONSTANTINE ALEXANDER: In any event, we have them. We have them. I'm not too worried.

CAMPBELL ELLSWORTH: Okay. Anyway, I'm sort of giving you the background on the -- the background on the communication with the community, with the neighbors. The Mid-Cambridge meeting, the suggestions, the binding suggestions, the binding suggestions, requirements that they made, the turning around of the drawings to incorporate those and of course you've got -- I didn't count the number of signatures that are on the neighborhood support list, but we felt that it was -- they were happy to open up the rear yard.

CONSTANTINE ALEXANDER: One concern I have about that. I don't know if any neighbors are in the audience tonight.

UNIDENTIFIED AUDIENCE MEMBER: Yes.

CONSTANTINE ALEXANDER: Apparently you made a

deal. You got certain concessions that the petitioner has agreed to. That's not going to -- I mean, that's not part of our decision. We're not going to make that a condition, incorporate that in our decision because we don't want to get involved in neighborhood disputes should there be an argument later on if one of these conditions was not being honored. You have to understand that whatever remedies you may have, will not be through the Zoning. If we grant the relief, it will be granted based upon the plans that we have, but nothing more, any other conditions we may impose. But I notice some of these conditions are the kind of things that makes it impossible for Inspectional Services to enforce, and we've had problems in the past where we've tried to put conditions like this in our decisions and then a neighborhood dispute breaks out afterwards and Inspectional Services throws up its hands because it doesn't know what to do. So just so you understand that. You're relying on whatever deal you make with the petitioner and is

carrying it forward. But it's not going to be part of our decision. It will influence our decision, but it's not going to be legally -- it's not going to be an expressed condition of our decision that the petitioner comply with these requirements. Just so you understand.

CAMPBELL ELLSWORTH: Might I ask that, and I know we've worked this out, and Mr. Ferraro was happy to agree to all of those.

CONSTANTINE ALEXANDER: Understood.

CAMPBELL ELLSWORTH: Would you be, would you cite those in --

CONSTANTINE ALEXANDER: I will cite the fact that there is an agreement with the neighborhood subject to a number of conditions, those conditions are not part of our decision, but it is part of our decision, but it influences our decision is the fact that you reached some agreement with the neighborhood.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: What happens afterwards with regard to these conditions or these agreements is between the neighbors and you and it's not going to be a matter of Inspectional Services or this Board.

CAMPBELL ELLSWORTH: Right. Very good.

So let me, I guess I can continue with the Variance request.

The rebuilding of the building a foot, 16 inches over creates new non-conformities because it's a new structure. New non-conformities with respect to setback. But as I mentioned, all the other elements of the Zoning Ordinance, open space, number of units, height of the building, conform. GFA as well.

The Special Permit that we're here before you for is that with -- effectively this building, if it's demolished and moved, becomes new construction. New construction must have a driveway. And the last time Mr. Ferraro was here it was because the Commissioner had

determined that that was in fact a driveway. I think that was the legal definition. That a driveway must be five feet from a property line.

I was advised that this application should in fact include the request for a Special Permit.

CONSTANTINE ALEXANDER: You're correctly advised, that's right.

CAMPBELL ELLSWORTH: To waive that. Okay. Very good.

So we're here for that as well.

CONSTANTINE ALEXANDER: The neighbor whose five-foot buffer is going to be invaded by this driveway, have they expressed any opposition? Are they one of the people that signed this petition, do you know?

LOU FERRARO: Yeah.

CAMPBELL ELLSWORTH: Yes, and I think they're here.

CONSTANTINE ALEXANDER: Are you the person that --

CAMPBELL ELLSWORTH: They live in the abutting house.

CONSTANTINE ALEXANDER: You live in the abutting house?

UNIDENTIFIED AUDIENCE MEMBER: Yes.

CONSTANTINE ALEXANDER: Okay. And you understand that under our Ordinance when there is an a driveway, the driveway has got to be at least five feet -- a buffer of five feet from your property line. That's just to -- it's a buffer. If not -- they're asking for relief from that. So you have to understand and don't object, presumably, to the fact that this will not have a five-foot buffer this driveway.

UNIDENTIFIED AUDIENCE MEMBER: Okay. It doesn't now, right?

CONSTANTINE ALEXANDER: It doesn't now.

UNIDENTIFIED AUDIENCE MEMBER: Right, so.

CAMPBELL ELLSWORTH: No.

UNIDENTIFIED AUDIENCE MEMBER: Yeah, that's fine.

CONSTANTINE ALEXANDER: I just wanted to be sure you were aware of it, that's all.

UNIDENTIFIED AUDIENCE MEMBER: Thank you.

CAMPBELL ELLSWORTH: So that's, that's why we're here. We think that this is a terrific solution with respect to the site, open space, the agreement of the neighbors. We were very pleasantly surprised that people got behind this and wanted to support it and there were -- I know that there were some e-mails that came in today also in support of that. But Bill Zambarelli's letter was quite an effective summary we thought.

CONSTANTINE ALEXANDER: Okay.

There were some e-mails that came in. I haven't even seen them until right now, but I will read them into the public record even though they're long. It's important given the fact that this has been a controversial -- this property has been a controversial property within the

neighborhood.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: For the benefit of the Board Members. We -- this is the second -- I know maybe you were sitting on the case.

JAMES MONTEVERDE: I was here.

CONSTANTINE ALEXANDER: You were here?

JAMES MONTEVERDE: Yes.

CONSTANTINE ALEXANDER: Emmons Place? You know what this is about.

JAMES MONTEVERDE: Yes.

CONSTANTINE ALEXANDER: This is a very narrow, private way, very congested, very tight. And what the petitioner wanted to do last time was to build a second unit in the rear, but had to get relief from a Variance -- had to get a determination from Inspectional Services that this driveway constituted a public way, a street. And the Commissioner decided it did not, and our Board upheld the

Commissioner's determination. And that put an end -- and the neighborhood, it was unanimous in agreement, that this should not be treated as a public way and that's stopped that project.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: Now you come back, recapitulate a little bit, come back with an alternative project which doesn't involve a public way as you pointed out, moves the structure over a little bit, widens the driveway, and otherwise invading the buffer of the neighbor. And that's what this is all about.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: And as you pointed out, and I will read into the record, this seems to have the unanimous support now of the neighborhood.

CAMPBELL ELLSWORTH: And just to --

CONSTANTINE ALEXANDER: You'll have a chance, Ma'am, don't worry.

CAMPBELL ELLSWORTH: If I might clarify, between the time that Mr. Ferraro was here on the appeal of the Commissioner's decision and the proposal that is before you today, there was -- there is a -- there was another iteration of design for a modification of the front house and the construction of the rear house which actually has been granted Building Permits. So we, we have Building Permits in hand to do that modification, but now we are, you know, ready to relinquish those permit and that rear lot. And let me just -- if I might. This is the set of drawings of the currently accepted building. I apologize these are not at the same scale or in the same orientation. I'll do it this way.

So this is -- this is what's before you tonight.

This is what is currently permitted and can be built.

This is Emmons Place. That is the existing structure unmoved but modified and renovated.

And this is the third unit. So this is unit 1, unit 2, and then this is unit 3.

LAURA WERNICK: So is that plan being rescinded? You're not --

CAMPBELL ELLSWORTH: This plan will be withdrawn.

CONSTANTINE ALEXANDER: Could you have implemented that plan given the decision we rendered the last time?

CAMPBELL ELLSWORTH: Yes, absolutely.

CONSTANTINE ALEXANDER: Really?

JAMES MONTEVERDE: Beats me.

CONSTANTINE ALEXANDER: I thought that was the whole purpose of the last time.

JAMES MONTEVERDE: That's right.

CAMPBELL ELLSWORTH: Well, that's right. And the --

JAMES MONTEVERDE: Magic.

CAMPBELL ELLSWORTH: -- a little bit of magic.

JAMES MONTEVERDE: Yeah.

CAMPBELL ELLSWORTH: We were able to modify the front building actually to create the conforming ten-foot wide driveway. It was not an optimal solution, but it actually -- optimal solution architecturally, but it did allow this project to actually be granted a Building Permit.

JAMES MONTEVERDE: How did you do that? I'm sorry to interrupt. But the survey is saying that the existing structure is already 0.3 feet over the driveway. How did you make the driveway wider? You didn't move the house.

CONSTANTINE ALEXANDER: And I guess I have to ask you why you're not proceeding with the plans that you have Building Permits for?

CAMPBELL ELLSWORTH: It was, it was a, in a sense a necessary but an unfortunate solution. I'll show you.

JAMES MONTEVERDE: Yeah, that's the --

CAMPBELL ELLSWORTH: Right.

JAMES MONTEVERDE: Gotcha. Took out the Sawzall and ran it down the middle.

CAMPBELL ELLSWORTH: It opened up -- from the street, we were able to open up.

JAMES MONTEVERDE: Right.

CONSTANTINE ALEXANDER: And so you sacrificing -- you're giving up the additional unit in the backyard that you could have built?

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

ANDREA HICKEY: I understand.

CONSTANTINE ALEXANDER: Your call.

LAURA WERNICK: So does that automatically -- so if this -- what you're requesting tonight, the Special Permit are all granted, what happens to those?

CONSTANTINE ALEXANDER: I'm going to make it a condition if we grant the relief that -- we'll end it.

CAMPBELL ELLSWORTH: Yeah.

Really what -- I mean we have to take it -- you know, we went before Mid-Cambridge a week ago, we're here

before you tonight. There is the five to six weeks of waiting for the decision and then the appeal period, then there will be the application of the Building Permit for the new project before you tonight. And what we're really looking for in order to rescind this permit is the granting of the new permit. So that's, that's the kind of --

CONSTANTINE ALEXANDER: Understood.

CAMPBELL ELLSWORTH: -- full thing there.

CONSTANTINE ALEXANDER: You don't want to get rid of your old permits until you know you have this relief.

CAMPBELL ELLSWORTH: Exactly.

CONSTANTINE ALEXANDER: Understood.

CAMPBELL ELLSWORTH: The relief, to be clear, the granting of the relief doesn't necessarily mean the obtaining of the permit. We still have to get it through the building.

CONSTANTINE ALEXANDER: Oh, yes, you're right. But you can't even begin the process unless we grant you

relief tonight.

CAMPBELL ELLSWORTH: Yes, correct. Understood.

CONSTANTINE ALEXANDER: I want to make sure the neighbors understood. But this is the first step. And then what happens, should we grant relief, we're going to do it subject to the plans that we have, presumably you've seen. And then they proceed with their application for a Building Permit. And they'll see Mr. O'Grady. And he will look at these plans and see what they're proposing and to be sure they're consistent. And if they are consistent and the plans otherwise comply with our Zoning requirements, a Building Permit will be issued. That's how it works.

And in terms of the timing, just again for the benefit of the audience. The way this works, we're going to assume we grant relief tonight. We may deny it. But if we grant relief tonight, we then write up the decision. A decision is written up. That takes some weeks to do. When that's done, that's filed with the City Clerk. And at that

point it becomes an official decision. Until then it's not an official decision.

Then there is -- a notice will be sent out to all the people who got notice of the relief being sought tonight, saying relief was granted. And then people have 20 days to -- if they wish, to take an appeal to the courts to challenge the decision that we made. If that does not happen and the 20 days have run, our decision is final. And then we go into what I just described earlier, then they will move on to their next phase, prepare plans for seeking a Building Permit, and see Mr. O'Grady and take it from there. That's how the process works. Okay.

UNIDENTIFIED AUDIENCE MEMBER: That's very helpful, thank you.

CONSTANTINE ALEXANDER: Anything else, Mr. Ellsworth?

CAMPBELL ELLSWORTH: No, sir.

CONSTANTINE ALEXANDER: Okay.

Questions from Members of the Board at this point?

Further questions?

JAMES MONTEVERDE: I'm trying to reconcile in my mind where this is in the universe relative to this plan and this survey. Because it looks like from the survey, if I scale this correctly, this should be something like 20-some-odd feet plus away from that property line.

CAMPBELL ELLSWORTH: That's right.

JAMES MONTEVERDE: And the photo's perspective must be amazingly skewed because it makes it look like it's hard up against it.

LOU FERRARO: It's not.

CAMPBELL ELLSWORTH: It's not. There's actually parking behind that building.

JAMES MONTEVERDE: I'm looking at this view in particular. It looks like a canopy across here at the ground floor air level.

CAMPBELL ELLSWORTH: Right, yeah.

JAMES MONTEVERDE: And it looks like it's within feet of that fence. At that canopy almost looks like -- is it. Is it just the perspective.

CAMPBELL ELLSWORTH: It's a perspective. There's a full parking area that buffers the fence on the property line to that back building.

JAMES MONTEVERDE: Right. So the survey position to this is correct?

CAMPBELL ELLSWORTH: That is correct.

JAMES MONTEVERDE: Right? It's really just the photograph.

CAMPBELL ELLSWORTH: Right.

JAMES MONTEVERDE: And then just a follow-up on that same western edge. When you move this a foot and a half westerly --

CAMPBELL ELLSWORTH: Right.

JAMES MONTEVERDE: -- you don't have any side yard or dimensional issues along that property line?

CAMPBELL ELLSWORTH: Oh, yes. It's non-conforming now.

JAMES MONTEVERDE: At five feet.

CAMPBELL ELLSWORTH: At five feet.

JAMES MONTEVERDE: Or 4.8 and 5.

ANDREA HICKEY: 5.5.

JAMES MONTEVERDE: Right. 4.8 and 5.5.

CAMPBELL ELLSWORTH: That's correct. We are making that -- that's the one aspect of this project that is becoming more non-conforming.

CONSTANTINE ALEXANDER: Yes, understood.

JAMES MONTEVERDE: Right.

CAMPBELL ELLSWORTH: Whereas, I mean but it's a net zero, the other side --

CONSTANTINE ALEXANDER: To widen the driveway and to resolve apparently a boundary problem where you're now encroaching on your neighbor, you're -- the tradeoff is increased non-conformity on the side yard setback.

CAMPBELL ELLSWORTH: That's correct.

CONSTANTINE ALEXANDER: Because you're moving that structure closer to that side yard away from the folks who abut you now and on the side of the driveway.

CAMPBELL ELLSWORTH: Right.

JAMES MONTEVERDE: Right. I would assume you have the option to make the entire structure 1.3 feet narrower. Or something narrower to basically.

CAMPBELL ELLSWORTH: Yeah, it's a pretty small -- it's a small structure. It's a marrow lot now and there isn't a lot of room to move. But the short answer to your question is yes, we could have done that. But we felt it reasonable -- this, let me just describe one other thing. That this, this is Mr. Ferraro's property on Emmons Place. This structure, Mr. Zambarelli is across the street. Our folks who are here tonight, this one and this one, form a kind of a quartet of structures that are all basically the same. They're all built at the same time. They are the

same style. They have the same -- they have or had the same detailing. And this, this is something that the Historical Commission has reviewed and researched and presented.

And so it's -- it was an important thing to maintain the proportion. So we still have that -- those first four houses. And in fact you can see from the photographs that this house in particular has been stripped of a lot of detail over the years. In fact, probably more so than any of the others, but -- and Mr. Ferraro and the -- well, the Mid-Cambridge put some conditions on the reconstruction of that house to bring a great number of those details back in terms of brackets, in terms of smaller brackets up on the front cornice. In terms of the -- right now the current house has a single stair up to two doors, whereas, all the other neighbors have two sets of stairs connected, two sets of stairs up. So we have modified the drawings to accommodate that and to actually take those recommendations from Mid-Cambridge, and, again, try to

enhance this and make it, again, part of that quartet.

CONSTANTINE ALEXANDER: Okay, all of that's true. But it doesn't address Jim's point. I mean you could shrink the size and make that side of the building a little bit smaller to not go as far into -- intrude farther into the setback on the neighboring side. You could have all the same appearances and the like. It would be a small change. And I'm going to ask Members of the Board, particularly Jim, if we get down, when we're ready for a vote, if you don't like what you see here and you want them to shrink the size of the building, I don't want to deny relief, I think we should tell you that before we take a vote and give you the opportunity to continue the case and come back with new plans that meet the suggestion that's being made. Because it's a very valid suggestion.

CAMPBELL ELLSWORTH: Sure.

CONSTANTINE ALEXANDER: Whether we think it's important enough to require it or shrink the house, remains

to be seen.

LOU FERRARO: I would think that Mid-Cambridge would object to the changing the dimensions in the structure. One of the things that they argued all along is that we maintain all the same dimensions on that existing structure, whether it's a demolish and rebuild and whether it be renovated in its current form.

JAMES MONTEVERDE: And I would appreciate what concern they were expressing. I would be surprised if you went back and said in fact this, you'll shrink the overall width by, pick a dimension, one-foot-six, that they there would be any objection given the size or whatever. I would -- and I don't have any authority to say that's exactly what will happen, but I would be astounded.

CONSTANTINE ALEXANDER: I would second that.

JAMES MONTEVERDE: We welcome you to come back next time with a reduced piece even if that Board says I'm sorry, it's too narrow and we can take our vote then.

CONSTANTINE ALEXANDER: Their issue is the appearance, the exterior.

JAMES MONTEVERDE: Correct.

CONSTANTINE ALEXANDER: And that would not change just because you're going to shrink one side a little bit, so I think you're absolutely right.

CAMPBELL ELLSWORTH: If, you know, I respect the observation. I think it's an interesting one. I think you are -- my understanding is that you're sort of protecting the setback.

CONSTANTINE ALEXANDER: Absolutely. That's what it would be about.

CAMPBELL ELLSWORTH: In a sense. Right.

And I think if that were the case, we might want to leave the building in its current place to maintain it. It's not a large footprint, and especially these houses that are split right down the middle. If we were to lose, you know, that's 16 inches. So to move one side but hold the

other, the footprint gets tighter and then the size of the addition on the back is sized so that we can create legitimate egress windows out of a basement or a lower level bedroom. That start -- that would -- the move of shrinking the whole building 16 inches would necessitate shrinking the addition some amount to probably 16 inches and then that really starts to get tight. So I'm just saying that if -- we thought it was reasonable. I understand the Board's position on holding, holding the setback. I think that we would prefer in that case, if that's gonna be a determinant in sort of success or failure, we would prefer to hold the driveway side where it is and maintain the building. But then, again, we have a very tight passageway between which is like, you know. I mean it's -- in name it's nine feet, but then siding comes in, there's an electrical meter on that building and it gets a little messy.

LOU FERRARO: Well, also I would add that if it

came down to reducing the size of the structure versus leaving -- I would rather not reduce the size of the structure. I would rather leave the driveway as it currently is. That would be my preference. Is that what you just said?

CONSTANTINE ALEXANDER: That's what he just said.

JAMES MONTEVERDE: In which case you would still need the Special Permit because you're hard against the driveway.

CAMPBELL ELLSWORTH: That is correct.

JAMES MONTEVERDE: But you maintain the other setback on the west but you would still be in non-conformance from the distance on the driveway as an existing condition.

CAMPBELL ELLSWORTH: That is correct. I think we would need everything we're here for because if we wanted to rebuild, it would still be a new structure that would need all of that relief.

CONSTANTINE ALEXANDER: Right.

JAMES MONTEVERDE: Not that I don't want to belabor a point. But in the scheme that you're currently permitted for, didn't you shave that foot plus off of the structure? So there is a scheme that shaves that dimension off the building at least on the ground floor.

CAMPBELL ELLSWORTH: On the ground floor, yes.

JAMES MONTEVERDE: Okay.

LOU FERRARO: I guess my point is I would like to get this plan approved. And, you know, if it comes down to widening the driveway or not widening the driveway, you know, I would prefer that the plan be approved and the driveway exists as it is if that's necessary. It's not a make or break point in terms of the driveway for me.

CAMPBELL ELLSWORTH: And it's also -- I haven't precisely correlated every signature on Bill Zambarelli's letter to every property, but clearly there were a number of people on Trowbridge Street who back on to this property,

they were very vocal in their concern about having that second structure, the third unit in the permitted setback there and leaving as much of that open as possible. None of those folks who signed this voiced any concern about us moving that structure.

CONSTANTINE ALEXANDER: Are you sure they're aware of what you were doing? Because it's in the -- reading the file frankly, something gets lost in the detail. And everything is focussed on we're only going to move 16 inches and we're going to widen the driveway and oh, by the way, we're going to intrude further into the setback. It doesn't come out. It's there. I'm not suggesting you're not trying to hide it.

CAMPBELL ELLSWORTH: Yeah, no, we're not trying to hide it, no.

CONSTANTINE ALEXANDER: I'm just curious as to whether the neighbors appreciated that and appreciated the alternative of what Jim has just noted.

CAMPBELL ELLSWORTH: I don't know the answer.

CONSTANTINE ALEXANDER: We don't know the answer.

CAMPBELL ELLSWORTH: Yeah, and these three families, these triple deckers on Trowbridge are big. They're big. They're sort of these monster three-families that Cambridge has.

JAMES MONTEVERDE: Yes.

CAMPBELL ELLSWORTH: They're tall. Tall ceilings. They're big. They sit up high, and my sense is that the impact to them would be fairly minimum or minimal.

LAURA WERNICK: Well, we're talking about a foot, not 16 inches, right?

CAMPBELL ELLSWORTH: I'm talking about 16 inches, because the existing house currently is four inches over its own property line. And we want to correct the four and plus 12 to create the conforming ten foot. You know, the conforming ten foot driveway as I mentioned, is not a necessity to doing this project. As I said, these two spots

would be grandfathered on any case if we were to simply renovate the existing structure. It was really trying to -- ten feet seems to be sort of the minimal number for Cambridge. It seemed to be an appropriate number to try to open that up. There has been some concern -- there was some concern that -- and maybe that will come out tonight from the neighbors that was some sort of ploy to allow, create a conforming structure, to create a new structure in the back, but we're actually using up all of our GFA in this building already. There's really nowhere to build out. There's nothing more to build out. So I'm just trying to flesh out that move. But, again, as Mr. Ferraro said, you know, we would prefer to have this plan. If it was, if it was most important to the Board that we not impinge further, I believe we would prefer to leave it where it is and still build the building. And we would be --

CONSTANTINE ALEXANDER: And build the second unit in the back?

LOU FERRARO: No.

ANDREA HICKEY: That's off the table.

LOU FERRARO: Just eliminate that one. Eliminate the shift to the west.

CONSTANTINE ALEXANDER: You withdraw your variance request basically.

CAMPBELL ELLSWORTH: No, because we would still adding that addition. That addition does not exist. We would still be non-conforming.

ANDREA HICKEY: Well, would that addition be in the same location if you don't get the shift?

LAURA WERNICK: In relationship to the other building it would still be centered.

CAMPBELL ELLSWORTH: In relationship to the other building, yes, that's correct. So...

LAURA WERNICK: You would need a new site plan.

CAMPBELL ELLSWORTH: Slightly, right. So now this, this site plan assumes the shift.

ANDREA HICKEY: Right.

CAMPBELL ELLSWORTH: And the setback of the addition to the driveway is five-feet, three-inches. That would then be four foot.

LAURA WERNICK: Eleven.

CAMPBELL ELLSWORTH: Something. Or four feet. Four-feet, three or something like that. Everything would just move right back into place, pinned in place by the existing structure itself which would continue to be non-conforming because it's still spilling over onto....

JAMES MONTEVERDE: Right. And the other I'll call them pertinences, that you say are on the existing structure that impede further on to the driveway. You said there's a panel box outside of the building?

CAMPBELL ELLSWORTH: There's wiring down there and yeah.

JAMES MONTEVERDE: If you take that down and rebuild it, could those in fact be --

CAMPBELL ELLSWORTH: It's on the neighboring structure.

JAMES MONTEVERDE: There's nothing on your structure that further impedes --

CAMPBELL ELLSWORTH: That could all be corrected, sure.

JAMES MONTEVERDE: Okay. Sure.

CONSTANTINE ALEXANDER: Let me ask you a question that we don't usually ask or get involved with at the Zoning Board. If you're going to demolish the structure and move it over, that's what you're seeking relief for. What about the impact on the demolition on the neighborhood? It's a very tight neighborhood. It's really going to impact the lives of the people who abut. What steps are you planning to take to alleviate the impact on the neighborhood? And what have you discussed with the neighbors with regard to this?

CAMPBELL ELLSWORTH: Those are great questions. I

don't have a good answer. I would leave that to the builder, but we would certainly, I mean, I agree with you, demolition is a disturbance. The goal is to get it done as quickly as possible.

LOU FERRARO: A lot of the demolition's been done. The only thing that's left is the shell of the structure alone. The interior has been completely removed. The -- all that's left on the structure is the sheathing and framing.

CONSTANTINE ALEXANDER: I can see that. You're going to have to take that all down.

LOU FERRARO: Right.

CONSTANTINE ALEXANDER: And then you're going to build up?

LOU FERRARO: Yeah, right.

CONSTANTINE ALEXANDER: It's just construction.

CAMPBELL ELLSWORTH: It's construction.

CONSTANTINE ALEXANDER: It's a problem.

CAMPBELL ELLSWORTH: Yeah, right.

CONSTANTINE ALEXANDER: But as long as everybody understands that. As I said, we can't -- we don't turn down zoning requests because of that, but it is something that the neighbors are often very sensitive to, and I guess I would implore you to, and I'm sure you will, if we do grant you the relief and you do the work, that you do whatever you can to minimize the impact on the neighbors.

CAMPBELL ELLSWORTH: Sure.

CONSTANTINE ALEXANDER: Because like I said, it's a very tight area.

LOU FERRARO: Sure.

CONSTANTINE ALEXANDER: Further questions? I'm sorry, have you finished? We can deal with the Special Permit to any extent or did you --

CAMPBELL ELLSWORTH: I just presented it. I mean, we need the Special Permit for the five-foot buffer --

CONSTANTINE ALEXANDER: Okay.

CAMPBELL ELLSWORTH: -- on a new structure.

If we didn't -- you bring up an interesting point.

If we didn't move the structure, we would not -- I don't believe we would need that relief. I don't know if Sean, you know, because if the relief is a requirement of new construction, if we were to leave the structure as it is, leave the nine-foot passageway as it is, we would not need relief from the driveway. We would still need the Variance setback relief on the addition, but we would not need the Special Permit relief.

CONSTANTINE ALEXANDER: I think that's correct.

Further questions from Members of the Board?

JAMES MONTEVERDE: No.

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: I'm going to open the matter up to public testimony and then I'm going to read the letters into the file that we have, particularly the -- I won't call it petition or the letter of agreement or

whatever you want to refer to the petitioner has submitted that. But anyway, anyone wish to speak on this matter?

Sir. Give your name and address to the stenographer.

KEN McLAUGHLIN: Ken McLaughlin, I live at 23 Roberts Road.

CONSTANTINE ALEXANDER: Can you come up, please?

KEN McLAUGHLIN: Ken McLaughlin. I live at 23 Roberts road. The rear of my property abuts the entire rear of this property. My question was, and I'm not sure I understood this, the signatures that you have that Bill Zambarelli collected, were based on an agreement that we had, the neighborhood with Mr. Ferraro -- the agreement that we had with Mr. Ferraro. You said I think now, that it was not binding, that there was nothing that --

CONSTANTINE ALEXANDER: No, what I was trying to say maybe I didn't say it as well as I should have. The agreement that you have will not be part of our decision.

So that agreement rises and falls on whatever steps you've taken with the petitioner. You could have -- you could have a contract drawn up and that would be something you could enforce in a court, but it's not going to be a part of our decision. In other words, if we were to grant relief tonight, and you felt that the petitioner didn't live up to the agreement that he, that we have, you can't come back to this Board and say, "Stop this," or "Do something about this," or Inspectional Services. It's a private dispute between you, the neighborhood, and this petitioner. We just can't get involved in things like that.

KEN McLAUGHLIN: I just wanted to be sure I understood that. That being the case, for all intents and purposes, I can't see this being what we signed for. We collected signatures and those signatures were supposed to be for this to happen. Now you're saying that if this doesn't happen, there's nothing you can do about it. Granted that's fine. What do we have to enforce the fact

that what we signed for actually happens?

CONSTANTINE ALEXANDER: The only thing, and I don't want to give you legal advice, but you have to have a contract. It could be -- this agreement could constitute a contract. I'm not going to get into that. Or you could have a written, formal contract.

DAPHNE HOLT: Could I say something? My understanding is that --

ANDREA HICKEY: You might want to give your name as well.

CONSTANTINE ALEXANDER: Thank you.

DAPHNE HOLT: I'm Daphne Holt. I live in the building next-door. 2-4, I live in 4 Emmons Place.

If -- I forgot what the term is, but if they expand the front house, they are not going to be able to build another unit, right because of FAR?

CAMPBELL ELLSWORTH: Right.

DAPHNE HOLT: Yeah. So by definition if they

relinquish the old permit, get the new permit, the main thing that we care about, we have all those things on there, but the main thing that we care about is we don't want the rear house. So that's gonna be --

CONSTANTINE ALEXANDER: That will be off the table.

DAPHNE HOLT: Yeah.

CONSTANTINE ALEXANDER: That, our decision would protect against. Our decision would also protect against, they have to build or do the work in accordance with the plans that you presumably have seen and which we have seen.

DAPHNE HOLT: Yes.

CONSTANTINE ALEXANDER: That is our -- that's our jurisdiction. We get involved in that. And if there's a problem, you have recourse. You can go to the Inspectional Services and they can challenge what's been done. I'm just trying to get at things that are not part of that.

DAPHNE HOLT: I mean, I think these other things

there's time as he also said before this decision is finalized, where we can, you know, have a contract or do other things. But I think the --

KEN McLAUGHLIN: That's fine.

DAPHNE HOLT: -- the fundamental thing we care about is whether there's a rear house built there as right.

KEN McLAUGHLIN: Could I have read into the minutes the fact that I questioned our ability as the neighborhood to deal with Mr. Ferraro knowing that we have no legal basis to back up what we've decided upon?

CONSTANTINE ALEXANDER: Okay, I want to be very clear. I'm not saying you have no legal basis. You may.

KEN McLAUGHLIN: Through you I mean.

CONSTANTINE ALEXANDER: Yes, through us, that's right. Our Board is not getting involved in that. That's right.

KEN McLAUGHLIN: Okay. That's right.

CONSTANTINE ALEXANDER: We're keeping a transcript

and that's part of the record.

KEN McLAUGHLIN: That's fine.

CAMPBELL ELLSWORTH: May I make a comment to this gentleman?

CONSTANTINE ALEXANDER: Yes.

CAMPBELL ELLSWORTH: So the agreement has 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 bullet points. The first 1, 2, 3, 4, 5 are based on the criterion that this Board would be approving tonight. Meaning to say, and you added to that, Mr. Chairman, that, you know, you would make it a requirement that if this were granted tonight and permitted, then Mr. Ferraro would relinquish the other Building Permits. I mean, you said you would be able to link that --

CONSTANTINE ALEXANDER: I wouldn't say it quite that way.

CAMPBELL ELLSWORTH: Okay.

CONSTANTINE ALEXANDER: The condition, if we grant the relief, work would proceed in accordance with your

plans --

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: -- and that you surrender, relinquish or whatever the word is going to be the other two Building Permits.

CAMPBELL ELLSWORTH: Right. So to that -- and the first bullet is the current approved construction permits for the three units, including the rear house, will be abandoned. So that's what the Chairman is discussing now.

The second is the existing front building to be expanded to create two, three-bedroom units, which is articulated in the plans, which will add a 19-foot deep addition. That's in the plans. So if they approve these plans, we can't all of a sudden make it a 23-foot addition. I mean we're stuck.

KEN McLAUGHLIN: I understand that.

CAMPBELL ELLSWORTH: Okay.

And the deck as well. The developer may replace

the existing building foundation as needed. The 6,11 -- six-foot, eleven height in the basement area in each unit must only be used as non-bedroom. That's the Zoning Ordinance. And we are --

KEN McLAUGHLIN: I understand that. And anything that this Board can control, they will and I understand that.

CAMPBELL ELLSWORTH: Right.

KEN McLAUGHLIN: What the Board cannot control, part of what's here, that's what I'm questioning.

CAMPBELL ELLSWORTH: I see.

And I'm saying that what they -- what is questionable about what they --

KEN McLAUGHLIN: There is nothing questionable about what they can control. There is nothing questionable about what they can control. My question was what they cannot control.

CAMPBELL ELLSWORTH: What can they not control.

Right.

And my comment is the first five points they control.

KEN McLAUGHLIN: I understand.

CAMPBELL ELLSWORTH: Perfect.

CONSTANTINE ALEXANDER: All set? Thank you.

Anyone else wishes to be heard? Ma'am, you had your hand up before.

JOYCE BOWDEN: Joyce Bowden, 112 Trowbridge Street. Thank you for seeing us late. I'll make it short because I know it's already.

CONSTANTINE ALEXANDER: That's okay. Thank you for coming down and staying this late.

JOYCE BOWDEN: Almost 9:30 at night. I just want to look very quickly at the past. My -- I didn't get to attend one of the previous meetings because my uncle who had lived in our house at 112 Trowbridge Street was ill and then subsequently passed away. He lived on the top floor. He

enjoyed looking out and seeing all of the abutting yards. And that's one of the things that you really do need to consider. That's why we didn't want to have another house in the back yards that are adjoining. You mentioned, you kindly mentioned the historical society, and the parameters of the house and how they wanted to keep, have everything in keeping with the neighborhood, and part of the neighborhood is that all of the back yards adjoin in addition to the physical descriptions of the houses. So that's one of the things that we thought was important.

Our main concern is if you approve this current Variance, permit, forgive my ignorance, I'm not exactly sure which, how binding either of those are. We've been through this process a number of times with different proposals and if you approve this particular proposal that says it will be a bigger house and we'll move it off to the side, our concern is the driveway is being enlarged because it will allow larger construction equipment to be brought in. When

the developer swore to us in a previous meeting that he wasn't going to take a tree down -- a large shade tree, he did anyways, and then the Cambridge tree removal service said that he was very frustrated because he couldn't bring large equipment in. He had to bring everything in by hand. I'm fairly certain that if he built a second house in the backyard, he would have to build -- bring everything in by hand if he didn't enlarge the driveway. So our concern is that if you approve this current proposal in which he enlarges the driveway, that maybe a year and a half from now, he'll propose another Variance in which to build a second house in the backyard again. And that's our concern. And as you said, we have no recourse if that happens.

CONSTANTINE ALEXANDER: Let me address that and that's a very fair point.

As we pointed out, if we grant relief tonight, there's going to be a condition that those Building Permits that he has to build a second unit will be surrendered and

cannot be used. Now he could come back in the future for another Variance and say I want to build a unit anyway.

JOYCE BOWDEN: Yes.

CONSTANTINE ALEXANDER: I would like to think that this Board, whoever is sitting on this Board at this time, will have the benefit of this record and the representations from the petitioner and that Variance request would be denied so that he won't be able to do it. He would have to come back before us, get further, different relief, and it would be in the face of what we're hearing tonight and what we made very clear before. So I think it's -- I like to think it's very unlikely we could grant the Variance. But I can't say he wouldn't -- he could try, he or a successor could always try.

JOYCE BOWDEN: Well, that is our concern. If not him, then another developer who has the advantage of the wider driveway and the trees removed and that sort of thing.

CONSTANTINE ALEXANDER: I assume that you or some

other neighbor would come in and remind the Board, whoever is sitting here, about this discussion that we had and all of this and I, as I said, again, one more time, I don't think he would get the relief but I can't promise you that.

DAPHNE HOLT: Couldn't we say that the FAR is all used up with the bigger house? I guess I'm confused.

CONSTANTINE ALEXANDER: He could come in and ask for a Variance for that as well.

JOYCE BOWDEN: So I'd like to go on record saying that while we agree to the current proposal, we are absolutely against any further development or in-fill of our Cambridge Historical District.

CONSTANTINE ALEXANDER: Thank you.

DAPHNE HOLT: So when you say you support the current proposal, you mean this new proposal?

JOYCE BOWDEN: Yes, with no second house in the back of our adjoining yards.

CONSTANTINE ALEXANDER: I got it.

DAPHNE HOLT: Okay.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard? Yes, Ma'am, one more time.

DAPHNE HOLT: I actually wrote a little e-mail today because I thought I wasn't going to be able to make it, but because of the discussion I have a couple other things I want to say. I mean, I'm at 4 Emmons Place. I represent three units that's in the house next-door. So we're all in agreement in our building that we are very much in support of this new plan. We think it's very much superior to the previous plan. We felt that Mr. Ferraro has been very responsive to our concerns. And actually we were just very surprised and, you know, in a very positive way with this new plan. And I think our meetings in the neighborhood have reflected that. We have, as a larger group, you know, as Campbell was saying that we've had some meetings where we've all expressed that. I think my letter says that and the other two owners, you know, were on that

e-mail and also feel very strongly in support of this.

CONSTANTINE ALEXANDER: Thank you. I'm not going to -- I would have otherwise read your letter into the file, I don't have to do that now.

DAPHNE HOLT: No need to read it.

Well, the other thing I wanted to say to add is, you know, this whole issue of expanding the driveway. I'll just put one little vote in for it. I realize it's not a key aspect of the proposal for us particularly in 2-4 Emmons Place, it's a very, very attractive part of the proposal. So, you know, we would be supporting it anyway, but, you know, you were talking about impact on the neighborhood and the construction and how that's going to be inconvenient and, you know, difficult and it's going to be the worst for us basically. Although, you know, they have been very considerate so far, but one positive would be that we would get this sort of gift, you know, this narrow driveway is very difficult for us. I mean, you can -- there's some cars

that don't go through it. A snowplow doesn't go through it. You know, there are safety concerns. And, you know, the fact that they decided to do that completely on their own, you know, was a positive for us.

But anyway, we support it regardless. But just wanted to put a plug in for that.

CONSTANTINE ALEXANDER: Thank you, and thank you for taking the time to come down and stick around at this late hour.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We do have this agreement, a letter of support as signed by many, many neighbors. I am going to read it into the record. I'm also going to read into the record a letter from Mr. Zambarelli since he seems to be the coordinator, if you will, of the neighborhood.

JOYCE BOWDEN: I also sent an e-mail today.

CONSTANTINE ALEXANDER: I'm sorry, your last name, please.

JOYCE BOWDEN: Bowden, 112 Trowbridge Street.

CONSTANTINE ALEXANDER: Well, you --

JOYCE BOWDEN: At 5:45.

CONSTANTINE ALEXANDER: Well, I assume whatever you said in your e-mail you said right now so nothing more to add so I don't have to read it.

DAPHNE HOLT: I think they had to be sent before three.

JOYCE BOWDEN: Thank you. Thank you for your consideration.

CONSTANTINE ALEXANDER: We do actually do have a second letter I just see now from an Allie Adler which is very short and I will read that into the record, too.

Anyway, I will start with Mr. Zambarelli's letter.
(Reading) Please find attached a letter of support for alternative development plans for 6-8 Emmons Place,

Cambridge, Mass., that's this which I'm going to read next.

Signed by 24 immediate abutters and neighbors of 6-8 Emmons Place. We, the undersigned strong support Mr. Ferraro's alternate building plan to erect two expanded three-bedroom units in the front building only in lieu of the already permitted three-building units consisting of two units in the existing front buildings and adding a freestanding third building unit in the rear of the property. Members of the neighborhood and Mr. Ferraro have met over several months to negotiate this alternative development plan which was carefully crafted to minimize the impact on the neighborhood and address many abutters' concerns while allowing Mr. Ferraro to utilize his property to the fullest reasonable extent possible. Mr. Ferraro has agreed to a series of conditions spelled out in the attached agreement and we urge the Board of Zoning Appeal to consider these conditions and stipulations as the basis and framework for the required Variances.

We urge the Board of Zoning Appeal to grant the required Variances to allow this proposed building plan to be substituted for the existing permitted building plan. Much work and effort has been extended to try to reach this agreement, and we urge the BZA to rule favorably for Mr. Ferraro's alternate building plan. On February 1, 2016, the Cambridge Conservation Commission approved the plan with conditions based in part on the terms of this neighborhood letter of support. We urge the BZA to similarly approve this plan with the reasonable conditions contained in this letter of support. We are very grateful to Mr. Ferraro for his willingness to work cooperatively with the neighborhood to reach accommodations to best serve the neighborhood and the City of Cambridge for the years to come. I personally intended to speak in favor of this proposed project at the February 11th BZA hearing but unfortunately I had an unavoidable public hearing for work and I will be unavailable until after eleven p.m. -- hang

around -- Thursday evening. I will try to make an appearance if it is at all possible to speak in favor of this petition.

Then we have the letter of support which I'm going to read at least in part. (Reading) We, the neighbors and abutters, and it's signed by 24 individuals or persons as indicated in Mr. Zambarelli's letter. We the neighbors and abutters to 6-8 Emmons Place after careful review and consideration of the attached proposed alternative development plan for 6-8 Emmons Place, Cambridge, strongly urge and request that the Mid-Cambridge Neighborhood Association, the Cambridge Historical Commission, the Cambridge Inspectional Services Department, and the Cambridge Board of Zoning Appeal grant the required approvals and BZA Variances to allow the construction of only two expanded three-bedroom apartments/units as described in the attached plans in lieu of the currently permitted for construction three units, which includes two

renovated units in the existing building on the property and a third freestanding unit in the rear of the property. This recommendation of support is contingent upon and offers with the understanding that: -- and as Mr. Ellsworth has pointed out there are ten bullet points.

We strongly feel this alternative development plan will best protect the existing neighborhood character.

Avoid inappropriate unsafe backyard development and mitigate the fire risk, excessive noise, traffic, parking, and construction impacts in the neighborhood particularly if ten or more bedrooms are allowed to be constructed in the currently permitted three bed units. And there is the plan.

Let me say one more time, because I want to make sure that I'm not misleading anybody. We're not saying that this -- this may be a bounding contract, the agreement you've reached. That's for a court to decide and you decide later on. I'm simply saying that's not part of our

decision. It's obviously influenced us -- influenced me anyway, I could say, but it will not be part of my decision. I don't want to get Inspectional Services in the middle of a neighborhood dispute that doesn't really involve our building laws or zoning laws. Okay.

And that's it. Any final comments, sir?

JOYCE BOWDEN: Sir, I just wanted to have my e-mail in the record. You can either take it personally or you can read it, but I just wanted to make sure that you got it.

CONSTANTINE ALEXANDER: Do you want me to read it? I'll read it if you want me to.

JOYCE BOWDEN: Sure.

CONSTANTINE ALEXANDER: Okay, thank you. We have also an e-mail from Joyce Bowden, B-O-W-D-E-N who resides at 112 Trowbridge Street.

(Reading) It is simply not true that all of the abutters agree with the plan proposed. I personally do not

approve of the plan to move the house in order to make the driveway accessible to snowplows. This is completely disingenuous and is in my considered opinion just a way to make it wide enough to declare the passageway a street in order to eventually build another house in the back lot. Also, moving the house will make it easier for the developer to bring in heavy construction equipment to accomplish building another residence in the backyard which has been Mr. Ferraro's stated goals since the beginning. The contractor has shown that he is not to be trusted with agreements set forth verbally or otherwise. Immediately upon leaving a meeting in which he agreed to make every effort to spare the large shade tree, he immediately cut -- he immediately cut it down much to the dismay of all of the neighbors.

I do not believe that once this project is approved, that Ferraro will not build in the back as was requested in your proposal.

And then it goes on, (Reading) In what way is there to enforce that in the future? Or if he changes his mind or sells the property with the access for construction equipment and the passageway widened to conform to the requirements of a street or way? We will have wasted much time and effort only to accomplish nothing with no preservation of our green space and open backyards and even more in-fill and unwanted development in our historic neighborhood.

And I think as best I can is try to address -- answer the question that you've raised.

JOYCE BOWDEN: Thank you, sir.

CONSTANTINE ALEXANDER: And I will -- when I frame a motion at some point, I'll try to address that as well.

JOYCE BOWDEN: Thank you.

CONSTANTINE ALEXANDER: Thank you.

Any final comments?

CAMPBELL ELLSWORTH: I don't think so.

CONSTANTINE ALEXANDER: Any comments or discussion by Members of the Board?

JAMES MONTEVERDE: No.

ANDREA HICKEY: No. I'm thinking personally I'm less inclined to allow the movement of the house. I don't know whether.

CONSTANTINE ALEXANDER: I'm glad you raised that. If one other person feels the same way, then we better -- do you feel the same way?

JAMES MONTEVERDE: Uh-huh.

LAURA WERNICK: I'm finally leaning the other way of the safety -- I mean, I'm appreciative of the concern of the house in the future, but I don't think there's much likelihood of that. And living in a neighborhood or living in a neighborhood who is narrow as a similar situation. That going from nine foot to ten foot is just -- creates so much day-to-day ease and safety, I'm kind of thinking that that's an important part of the plan. So I'm not, I'm not

convinced.

CONSTANTINE ALEXANDER: No, Ma'am, you've had your opportunity to speak.

LAURA WERNICK: So, yes, it's a concern.

JAMES MONTEVERDE: Can we talk?

CONSTANTINE ALEXANDER: Oh, yeah.

JAMES MONTEVERDE: Nine foot is a legal parking stall. Anything can drive in and drive out. It doesn't seem to rise to the hardship. Yes, you can't get a semi in there, but, you know, the -- with the couple parking spaces in the back there, ambulance I'm assuming would fit. A small fire truck. It's, and it serves it now as an existing condition. So I'm, I'm just more concerned with the concept, and I think the neighbors' concern about if the shift happens and then that becomes by definition a drive, if that has some other implications, that to me, it's tangential to just the fact that you're making it already non-conforming setback or side yard setback worse to me is

the paramount piece. I think it goes along and addresses the neighbors' concern about what they take as a -- see as the potential once you widen that passageway that it becomes technically a driveway for could be somehow interpreted in the future or used. So to me it's -- I don't favor moving it. And if there isn't an option to reduce it, and if they're willing to replace the structure in place, in the same dimension and the same location, and I'm assuming that driveway would remain as usable as it is now and has been in the past.

CONSTANTINE ALEXANDER: Let me just play this out a little bit so we all understand what's involved here.

What you're hearing right now is you're not going to get the votes to go forward with the plans you have, because you've got to get four votes. And at least two members --

LAURA WERNICK: I'm listening to my fellow Board Members.

CONSTANTINE ALEXANDER: Well, okay, it wouldn't -- but even if you -- whichever way you go, if Andrea and Jim are not going to support, want the building moved over, so we don't -- it's not going to happen tonight. That happens, then you have the existing Building Permits. You can abandon -- you have two choices -- well, several choices:

You can ask to continue this case tonight and come back, redraft the plans, deal with the setback and come back before us. That's one alternative you would have.

Another alternative is just to go down in defeat and go back to what you have right now. You have your Building Permits you say for a second unit and you, one way or another you can try to build a second unit. One of the benefits, I think, of granting the relief tonight is we can put to bed, to the maximum extent possible, the possibility that another unit will be built in the rear yard. Because we're going to ask you to surrender your Building Permits,

and we're going to make it very clear as a matter of record for future boards that if somebody comes before this Board seeking to build another unit in the backyard, that we believe that would never happen and our Board was influencing in granting the relief happened because of that. And I'd like to think, I can't promise it, I'd like to think any future Board would honor what we've said and turn down any attempt to build another unit in the backyard. Put that issue to rest which I know, for example, Ms. Bowden's main concern. That's the price we pay if we say to them --

JAMES MONTEVERDE: Yes, understand.

LOU FERRARO: Can I ask a question? Could you approve it without moving the house? Is that what you're saying? Or it's either reject it or approved, it's one or the other?

ANDREA HICKEY: Or continued and you come back.

CONSTANTINE ALEXANDER: We can continue the case and come back.

CAMPBELL ELLSWORTH: I mean since the -- if we were to continue the case and come back, it would be exactly the same thing but in its current position. You know, not moving it that 16 inches.

JAMES MONTEVERDE: Correct.

CONSTANTINE ALEXANDER: Yes. And you came back for that, and if we granted the relief that you sought at that time, we would have the same condition about no, nothing's getting built in the backyard.

JAMES MONTEVERDE: Correct.

CAMPBELL ELLSWORTH: Right.

Is it within your power to craft an agreement with us now for us to eliminate that aspect of this proposal? Because we -- we just think that the proposal in front of you is a far superior, you know, we don't want to -- your option No. 2 of go back to the three units, that was a, you know, we had to figure out -- we were backed up against a wall about the Commissioner's decision and this Board

upholding it, upholding that decision that that nine-foot passageway was in fact a driveway and so the new building in the back could not be created. And, therefore, you know, we took that bite to everybody's dismay, mine included, out of the building. It was -- we -- but we found our way through it to get permits. The proposal in front of you is far, far superior.

And let me -- and so I guess my initial question was is it within the power of the Board tonight -- because it seems to continue the case and then come back with simply a 16-inch shift, seems a little silly and we could all agree and modify the drawings, sign off on the drawings, I could re -- you know, if you felt that that was approvable. I have another, I have another thought.

CONSTANTINE ALEXANDER: Before you get to that thought.

CAMPBELL ELLSWORTH: Okay. It's actually even more interesting.

JIM MONTEVERDE: I was going to say if you can address that.

CONSTANTINE ALEXANDER: Yes. I think what you want we could do, but I would point out this risk to you. That's not part of the advertisement. You advertised just to move the -- to demolish the building and rebuild in the same envelope but 16 inches to the west.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: So if we allow you to -- you still need a Variance to do what you want to do because you've got the addition in the back.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: If we granted that relief, and I think we could, you have to understand that there's a possibility that the relief could be challenged, the Variance, if we grant it, could be challenged that it's not properly advertised. It's not our risk but it's yours.

CAMPBELL ELLSWORTH: What if instead of a 16-inch

shift we agreed on a 15-inch shift which would, which would then put nine feet, eleven inches between the buildings. It would make a safer, more accessible driveway, but it would still be a non-conforming driveway because a driveway is ten feet. I mean, it's not our interest to -- we picked that number not with any magic about creating a conforming driveway, but there is -- ten feet is not only a conforming driveway in the Zoning Ordinance, but it is the minimum distance required between any two structures. This is a very -- these lots, this building is very odd. I hadn't gone into it. We did this research. The reason that this, this driveway, quote/unquote, is not owned by either property.

JAMES MONTEVERDE: Correct.

CAMPBELL ELLSWORTH: And nor is it owned or controlled by the City. It is this limbo land. Nobody's claiming it. It used to be an access way to a back lot. The back lots of both of these buildings used to be a

rectangle by some farmer in the 1870s. And that was their way to get into it. So it was one large rectangular lot in the back and two smaller rectangular lots. And at some point that back lot was split, absorbed into the adjacent lots, but nothing was ever clarified about that nine-foot passageway. It's a very odd history.

So there is nothing particularly -- well, I get back to my -- I guess the first point was can we agree to not move the house? And I think Mr. Ferraro would be happy with that. And we would like to do, if it's, it's not unreasonable, though, to widen it because it is uncomfortable. Nine feet I would just respectfully disagree, it's really tight there.

JAMES MONTEVERDE: I'm not saying it's not tight.

CAMPBELL ELLSWORTH: Yeah, right.

CONSTANTINE ALEXANDER: Please, if you don't
move --

DAPHNE HOLT: Not allowed.

CONSTANTINE ALEXANDER: How are you going to get the additional space to get the driveway?

JAMES MONTEVERDE: You can't. You have to move the structure.

CONSTANTINE ALEXANDER: You have to move the structure.

CAMPBELL ELLSWORTH: No, no, no. We don't need to widen the driveway. We do not need it.

CONSTANTINE ALEXANDER: But you want to?

CAMPBELL ELLSWORTH: We want to.

CONSTANTINE ALEXANDER: Okay.

LAURA WERNICK: Your 15-inch proposal moves the structure.

CAMPBELL ELLSWORTH: Our 15-inch proposal moves the structure. Our 16-inch proposal moves the structure. It's simply to widen the driveway, make that life a little bit easier getting in and out. But nothing of this, the Variance before you is -- well, is not about -- the Variance

before you and the reason we're here is not so that we create a conforming driveway. The Variance before you is that we want to create a wider driveway for ease of those five units.

CONSTANTINE ALEXANDER: I understand that.

CAMPBELL ELLSWORTH: And, therefore, it creates the non-conformity.

CONSTANTINE ALEXANDER: If you abandon -- moving the structure over --

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: -- then, I still don't see how you're going to get additional space?

ANDREA HICKEY: He can't.

CAMPBELL ELLSWORTH: We can't. No, we can't.

ANDREA HICKEY: He can't. He's not saying that.

JAMES MONTEVERDE: The 15 versus 16.

ANDREA HICKEY: Yes.

JAMES MONTEVERDE: It's -- I mean at this rate an

hour for an inch, I'd be willing to sit here for another
15 --

ANDREA HICKEY: No, the inch is important. It's
very important.

CAMPBELL ELLSWORTH: There's some concern from the
public that creating a con -- it's -- it was the ten feet --

ANDREA HICKEY: In the driveway.

CAMPBELL ELLSWORTH: -- in the driveway that
allowed --

ANDREA HICKEY: The rear unit.

CAMPBELL ELLSWORTH: -- for the building to be
built in the back. Right? And that's why the permitted
plans take the bite out of the building to create that.

LOU FERRARO: So moving it 15 inches allows us to
still be non-conforming. So that prevents the building in
the back as well.

ANDREA HICKEY: I think it's a clever solution, I
do.

LOU FERRARO: It is a clever solution.

ANDREA HICKEY: I do.

Are we -- are allowed to -- they can't amend their petition. Do we still have the issue in terms of posting? Or do they have the issue?

CONSTANTINE ALEXANDER: They have the issue.

ANDREA HICKEY: Do you acknowledge or understand that?

CONSTANTINE ALEXANDER: At some point the Variance could be challenged, that's all, if we grant it.

CAMPBELL ELLSWORTH: Oh, I see.

ANDREA HICKEY: Because the number is different.

CAMPBELL ELLSWORTH: The number's different. Well, I don't know how to judge the risk.

CONSTANTINE ALEXANDER: I don't either.

CAMPBELL ELLSWORTH: I mean, so the risk is we say, we say don't move it 16, move it 15, we all agree, we sign off, and then somebody challenges because it wasn't

advertised --

ANDREA HICKEY: Posted as that number.

CAMPBELL ELLSWORTH: -- at that --

LAURA WERNICK: The alternative is to wait until February 25th and come back for a continuance and get your paperwork in order.

CAMPBELL ELLSWORTH: Yeah, the plans can be ready tomorrow morning.

SEAN O'GRADY: Well, that problem won't go away.

CAMPBELL ELLSWORTH: Which?

SEAN O'GRADY: Whether you do 15 inches tonight or 15 inches on February 25th. It's still -- the advertisement is set.

CAMPBELL ELLSWORTH: Right, okay.

CONSTANTINE ALEXANDER: You have to live with the advertisement.

ANDREA HICKEY: I like the clever solution. I think it addresses concerns about the widening of the

driveway and what that might allow down the line. I also think it takes the Building Permit for the second house in the back off the table, which is really important to get done.

CAMPBELL ELLSWORTH: It's important to everybody.

ANDREA HICKEY: So conceptually I like that idea if you're willing to take the risk that someone might call you on the 20-day appeal period. So that's where I am.

JAMES MONTEVERDE: So instead of moving the house 16 inches to the west, you're moving the house 15 inches to the left. So instead of a nine-foot wide passageway, you'll have a nine-foot, one-inch passageway?

CAMPBELL ELLSWORTH: No.

ANDREA HICKEY: No.

CAMPBELL ELLSWORTH: Instead of a ten-foot wide --

ANDREA HICKEY: 9, 11.

CAMPBELL ELLSWORTH: -- passageway, we go to nine-foot, eleven. It is currently a nine-foot passageway.

JAMES MONTEVERDE: Oh, okay.

CAMPBELL ELLSWORTH: Right? With the house.

JAMES MONTEVERDE: Yep, yep.

CAMPBELL ELLSWORTH: Three and four inches over.

CONSTANTINE ALEXANDER: I'm not getting it. If we go to 15 inches, you're still going to intrude further into the side yard setback.

ANDREA HICKEY: That's true. We don't change.

CONSTANTINE ALEXANDER: That's where we started.

CAMPBELL ELLSWORTH: Yeah, that's right.

JAMES MONTEVERDE: I'm not there yet. I still have the same issue.

ANDREA HICKEY: I don't. I'm in a different place right now.

LAURA WERNICK: I'm not as concerned about the side yard either.

CONSTANTINE ALEXANDER: Tom, you have any comments?

THOMAS SCOTT: And there was no opposition to the side yard, moving the house closer?

CAMPBELL ELLSWORTH: No. We presented that at the December 19th meeting. It hadn't occurred to us until then. And that was at Bill Zambarelli's house. There were 15 neighbors there who had signed off, and all the plans from that point forward reflected the move.

CONSTANTINE ALEXANDER: Well, in point of fact, you sent the people who are affected by it, the people's whose side yard is getting reduced, received a notice of your application.

CAMPBELL ELLSWORTH: Certainly.

CONSTANTINE ALEXANDER: And they've been put on notice.

CAMPBELL ELLSWORTH: Right.

CONSTANTINE ALEXANDER: And your plans have been available obviously all the neighborhood was there. So if they had a concern about it, presumably, you would have

heard about it.

CAMPBELL ELLSWORTH: Yes.

CONSTANTINE ALEXANDER: Or somebody would have heard about it. I'm going to draw from that fact that has not occurred, that the neighbor who is affected by the side yard reduction is not concerned about that. That's a conclusion I'm going to draw, right or wrong, but that's the conclusion I'm going to draw.

Sir.

LOU FERRARO: If we go forward with this and we do the 15-inch, and we'll take on the risk, if there's appeal, how does that process work? I've never been through that.

CONSTANTINE ALEXANDER: Well, I want to be very careful. I don't want to give out legal advice. The way the appeal works -- maybe you weren't here before, we render a written decision.

LOU FERRARO: Yes. I understand about the waiting period with an appeal. Do they appeal directly to this

Board?

CONSTANTINE ALEXANDER: No, no, no, they go to court.

LOU FERRARO: They go to court.

CONSTANTINE ALEXANDER: In any challenge initial here is whether they're just limited during the 20-day period. They might -- I don't want to get into it giving legal advice. It could be a year from now and they could come in and say, you know, the Variance was improperly granted. There's a statute of limitations, but it's not necessarily the 20 days. So it's not just that. But I don't really -- I just --

LOU FERRARO: That's enough. You don't have to go any further. I understand that.

CONSTANTINE ALEXANDER: So that's your risk.

Anyway, if Andrea is okay with that, even if Jim wants to vote against it. We could have the vote, looks like you would have the votes assuming the rest of the

motion I make is satisfactory to my colleagues. You would have the votes to go ahead and move it 15 inches and not 16 inches. So....

Further?

LOU FERRARO: I have no objection to that.

CONSTANTINE ALEXANDER: Any further comments or discussion among the Members of the Board?

Okay. I'm going to try to frame a motion, and please help me if I get it wrong. Let's see.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the petitioner now has a structure that encroaches on a neighbor's property. It is otherwise and affects the ability of the utilization of the structure and the creation of an ongoing legal risk to the petitioner.

That the hardship is owing to the fact that this is a non-conforming lot, non-conforming structures, and therefore any relief -- any modification requires 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 there has been an agreement reached with at least 24 neighbors who have signed off on it.

That agreement has conditions, which this Board has acknowledged and appreciates but does not incorporate in our decision.

Further, that this project has the approval of the Mid-Cambridge Conservation?

CAMPBELL ELLSWORTH: Neighborhood Conservation District Commission.

CONSTANTINE ALEXANDER: So on the basis of these findings, the Chair moves that we grant the Variance here

being requested subject to the following conditions:

That the building be -- the building be moved no more than 15 inches to the west of the property.

That the -- but otherwise would proceed in accordance with plans submitted by the petitioner prepared by Ellsworth Associates, Inc. and initialled by the Chair.

And lastly, on the condition that the petitioner withdraw, irrevocably surrender the two Building Permits that he now has with regard to the premises involved here, and that it is -- the Board is rendering its decision on the basis and upon the reliance upon the fact that no second, no additional unit will be erected in the backyard.

So that to the extent that we would tell -- we would signal to future Zoning Boards that should you come back -- I'm not suggesting you will, but should you come back, you or some other people seeking a Building Permit to create another structure, either actually be it a garage or another dwelling unit in the rear yard, that this be denied.

No Variance should be granted to allow that. That's part and parcel for us granting you the relief you're seeking tonight. Okay?

LAURA WERNICK: Do you just want to add, maybe this is totally redundant, to say that the driveway should be no more than nine feet, eleven inches?

ANDREA HICKEY: Yes.

CONSTANTINE ALEXANDER: And there's a further condition that the driveway that's there now, to the extent that it be widened, be no more than nine feet, eleven inches.

THOMAS SCOTT: Can I also request that this plan be modified by the architect to indicate the eleven inches so that we have it?

CAMPBELL ELLSWORTH: Absolutely.

CONSTANTINE ALEXANDER: You can do it right now.

CAMPBELL ELLSWORTH: Oh, sure.

CONSTANTINE ALEXANDER: Yes, use that one.

THOMAS SCOTT: It says shift structure one foot off property line to create conforming driveway. We want to take that language out.

CAMPBELL ELLSWORTH: The site plan.

THOMAS SCOTT: 1.1.

Discussion between architect and applicant regarding change in plans.)

CAMPBELL ELLSWORTH: See if it meets your....

THOMAS SCOTT: Just cross out the one foot.

CAMPBELL ELLSWORTH: Okay, sure.

CONSTANTINE ALEXANDER: Andrea, do you want to take a look at these?

Laura, too?

THOMAS SCOTT: Okay, thank you.

CAMPBELL ELLSWORTH: I just struck through the word conforming and put in nine foot, eleven inches which would be read by --

THOMAS SCOTT: It was one foot.

ANDREA HICKEY: Okay, got it. Yeah, okay, got it.
I'm fine with that.

CONSTANTINE ALEXANDER: Okay.

Let me just, I want to make just a -- just slightly modify what I said before. I want to make it very clear that in granting the relief tonight, and assuming the motion is to grant the relief, that we're doing so on reliance on the assumption that no structure will ever be built in the rear yard of these premises. So that's for purposes of educating future Boards of Appeal should an attempt be made to get a building permit to build something in the backyard. That should be reflected clearly in the decision.

Okay, I think I made the motion and got the conditions.

All those in favor of granting the Variance -- oh, and you've got the Special Permit next.

All those in granting the Variance subject to the

conditions that I've just enumerated, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Scott, Hickey, Wernick.)

CONSTANTINE ALEXANDER: Opposed?

(Monteverde.)

CONSTANTINE ALEXANDER: One opposed. The motion carries.

And now to the Special Permit. I don't think we -- is there a need for a discussion on this, five-foot setback -- buffer. I'm happy. Just go right to a motion if everybody else is.

ANDREA HICKEY: I'm fine with it.

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

That the requirements of the Ordinance can only be complied with if we grant the Special Permit that traffic

generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character.

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

In this connection I would point out the neighbor most affected or maybe only affected by the reduction of the buffer space has indicated that she has no objection to the relief being sought.

That the 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 for other reasons the proposed use will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

Based on these findings, the Chair moves we grant

the Special Permit requested on the condition that the work proceed in accordance with plans identified with regard to the Variance.

I don't think we need anything else with regard to the building -- no, I think everything else was tied into the Variance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor?

JAMES MONTEVERDE: Can I vote on that?

CONSTANTINE ALEXANDER: If you want.

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

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

Thank you for all coming tonight and having the patience to stay here.

* * * * *

(10:20 p.m.)

(Sitting Members Case BZA-009221-2016: Constantine

Alexander, Thomas Scott, Andrea Hickey, Jim Monteverde,

Laura Wernick.)

CONSTANTINE ALEXANDER: Let me, before I call the next case, let me point out that this meeting is now being tape recorded not only by the stenographer, as I identified earlier at the outset of the meeting, but by another person in the audience. So he has a right to do so. I just want you to be aware that you're being recorded.

The Chair will now call case No. 009221, 44 Market Street.

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

MARK BOYES-WATSON: Thank you. Mark Boyes-Watson, Boyes-Watson Architects, 30 Bowes Street, Somerville.

FLORENCE DUBOULOZ: I'm Florence Dubouloz, D-U-B-O-U-L-O-Z. I'm representing my husband Stephan Dubouloz who is out of town right now.

CONSTANTINE ALEXANDER: Okay.

MARK BOYES-WATSON: So, 44 Market Street is a property that's 6500 square feet -- slightly over 6500

square foot property. It actually was here for a Variance in 2002.

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: And I think that's one of the main reasons we're back here, because we don't have a whole lot of relief, but we are altering the Variance that was here before.

CONSTANTINE ALEXANDER: The Variance, just for the benefit of the Board Members if they hadn't read the files. The relief we granted in 2002, and correct me if I'm wrong --

MARK BOYES-WATSON: Yeah.

CONSTANTINE ALEXANDER: -- was to build a two-unit building in the rear of the lot.

MARK BOYES-WATSON: That's right.

CONSTANTINE ALEXANDER: So before that there was just a single-family --

MARK BOYES-WATSON: Just this building here was

there. And that Variance used to build this which replaced a set of five garages --

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: -- and at the time the Board found that owing to that circumstance, etcetera, and the -- this is multi-family all around, that the density here, and the configuration of the lot of the garages was worth granting the Variance and it actually started to -- started the process and we're continuing actually in getting more green space onto the lot. What we're here for today, we're slightly altering -- we're altering the parking configuration of the lot, and we are adding the fourth unit that -- actually, I'll show the plans and I'll show you how it works. It goes actually shortening this and adding a fourth unit here. That fourth unit actually is as of right in terms of the zoning, 5500 square foot lot.

CONSTANTINE ALEXANDER: It is not unless we grant you --

MARK BOYES-WATSON: Exactly, but in terms of the square footage and the unit count. So it's a conforming project for unit count and for square footage, but where we're reconfiguring the lot slightly, and I'm just going to go quickly over what that is and then I'll go over the relief that's warranted.

But just to give you a sense of that, these are pictures from now and you can see this is that rear house that was built, and these are views of the lot and there's still a lot of asphalt. And actually if you read the file of the Variance in 2002, there was a lot of discussion about green space and how it was gonna work. And actually we are, we are -- we took on this, one of the challenges of the project actually to improve that situation. This is a board that's essentially not in your presentation, but I just wanted to quickly show how that works just to orient, orient you to what we're trying to achieve sort of with the design.

So this is the current condition and this is the

open space. It was actually -- there was always green along here and a deck out here and green space here.

This is the existing. Abstracted I would say.

And here's the proposed. And what you're seeing here is the front house, middle house, and the back house that was granted by Variance. So this house in and of itself conforms to setbacks, conforms to all of the parameters of the Zoning Code, as does the fact that there are four units on the site.

We also, for the first time now, bring the site into conformity for open space. So actually this and a combination of usable are now in conformance with zoning.

Where you see the continuing non-conformity, obviously is the Variance that was granted for the back building which was too close to the rear lot line and the site levels. And we are continuing -- so the -- a parking, a situation for parking that was previous. So previously there are cars parked down here and there's a garage under

here and under here, but this one actually had been discontinued already. This one was always rather difficult to get into given the configuration of this deck. So there was always parking down this side. So in order to get this additional green space, we've actually -- there used to be five, 1, 2, 3, 4, 5 parking spaces on the lot. And we're dropping it down to the three that were already along the side here, and we're adding a conforming parking space that serves as the new house. So this, so we've actually curtailed the parking and consolidated it and that's how we get up to be conforming.

CONSTANTINE ALEXANDER: The three spaces up there, those are on the plans that were approved in 2002?

MARK BOYES-WATSON: Well, there was very little on the plans approved in 2002.

CONSTANTINE ALEXANDER: Yes, that's right.

MARK BOYES-WATSON: But there were. And I actually have the plan there if that would be helpful. I

have the plan. This was the -- it was there was a lot of confusion about the site plan. I actually have it. If you didn't see it in the file.

CONSTANTINE ALEXANDER: I saw this in the file.

MARK BOYES-WATSON: Yeah, it's very confusing. It was actually produced at the hearing I think.

CONSTANTINE ALEXANDER: That's what the decision says, it was handwritten by the vice chair.

MARK BOYES-WATSON: Right.

And certainly if you can see on the survey that accompanies our application is the current condition as well. So it actually does comport with that plan, and if you go through the whole transcript, you can see how they're figuring out where the new parking is and the garage is and the existing parking servicing the house. It's not exactly clear but it's kind of there.

ANDREA HICKEY: There's no parking on this plan.

MARK BOYES-WATSON: Right. It's a very cryptic

plan.

CONSTANTINE ALEXANDER: The assumption you have two garages, you don't need on-site parking on the lot because you've got garages for each of the units.

MARK BOYES-WATSON: If you read the transcript, you still need it for this one.

CONSTANTINE ALEXANDER: To be sure, understood.

MARK BOYES-WATSON: Right.

CONSTANTINE ALEXANDER: You only need one space somewhere. You don't need three along the side lot. You would need --

MARK BOYES-WATSON: And I actually have pictures from the original condition and it was entirely asphalt at the time that they applied for the Variance.

CONSTANTINE ALEXANDER: Let me get to the crux of my problem with this petition.

MARK BOYES-WATSON: Yeah.

CONSTANTINE ALEXANDER: This is not about a

parkway. This is about allowing you to build a fourth unit on the property. I mean, it's nice to say you can build a unit and conforms to setbacks. You can't do it unless we grant you the parking relief tonight.

MARK BOYES-WATSON: I think that that would be true except for this, which is that we could do it if we demolished the 1854 house in the front of the lot.

CONSTANTINE ALEXANDER: You always have the privilege to do that.

MARK BOYES-WATSON: We could. We could. So we've been here before. And here what we're doing is we're asking to be allowed to continue an existing non-conforming -- well, the Variance actually -- there isn't really a Variance. The Variance is not for anything. But we do continue to have -- we came because we're altering the previous Variance, right?

CONSTANTINE ALEXANDER: Right.

MARK BOYES-WATSON: And it's kind of a bit

ambiguous just how you do that even. We cited the same hardship as for the original Variance, because per se there's nothing that triggers the Variance. But it is true that we are seeking, and meeting the requirements for a Special Permit in terms of -- for the side yard setback to continue a situation that there is there today.

CONSTANTINE ALEXANDER: I guess my problem, and also you're also going to create other parking problems for which you're seeking a Special Permit. You're going to have three spaces, one of which I guess is going to be in the front yard.

MARK BOYES-WATSON: Well --

CONSTANTINE ALEXANDER: That's what it says. It says front yard.

MARK BOYES-WATSON: It's pretty much there now.

CONSTANTINE ALEXANDER: I know, but you're asking us to -- it's maybe even there now. Although I was very interested when I went by the property to see a big sign

posted on the front of the property saying "No parking in the driveway." So somebody's been using that driveway, and it can't be the people who live on the property, they don't need a sign in the street. So there might -- this is a tight-knit neighborhood. It's a densely occupied neighborhood. You're talking about, I think, four very unrealistic parking spaces all to justify the building of a fourth unit. And I don't see where you have a hardship with regard to modifying the Variance you're seeking because the hardship relates not to parking doesn't work. The hardship is we need to reconfigure it so we can build another unit and I'm troubled by that.

MARK BOYES-WATSON: But the hardship, the Variance that found -- if you read the hardship that was granted for the first Variance, it said, you know, that there's actually -- it's a big multi-family buildings all around it. It's within the Zoning, which we still are within the Zoning. And actually, so we're modifying under those -- and

it was an oddly shaped lot. Those things are all still true today. The -- we don't need -- the driveway is not a Variance, it's a Special Permit standard.

CONSTANTINE ALEXANDER: The parking spaces, but you need the Variance to change the part -- the plans that were approved in 2002 that's why you're seeking the Variance.

MARK BOYES-WATSON: Right.

CONSTANTINE ALEXANDER: But the subject matter of this is not the parking, it's the ability to build another dwelling unit on the property.

MARK BOYES-WATSON: But albeit a conforming dwelling unit.

CONSTANTINE ALEXANDER: Conforming only as to dimensional requirements. It's not conforming as to parking. If we don't grant you the relief, you can't have -- you don't four units. Four parking spaces on the property you don't meet our Ordinance.

MARK BOYES-WATSON: Well, I would argue that -- well, I would argue that the parking spaces are already there, right?

CONSTANTINE ALEXANDER: Well, then don't seek relief.

MARK BOYES-WATSON: I never thought we actually needed the relief because the space we're creating is conforming. And I think that it's held -- I didn't know it would be contentious since it's a fairly straightforward one. But the space that's associated with the new building is a conforming space. I think we're coming back here because, you know, it is a modification to the Variance. It's -- clearly. And, you know, it does need your blessing, clearly which we are seeking. But I don't think that this, the, the, the -- I don't the parking per se is -- increases and creates any of those detrimental impacts that the Special Permit would have us review in terms of to the neighborhood. It's not actually any different than the five

parking spaces that were on the lot today. It actually goes down to four.

CONSTANTINE ALEXANDER: One more time and then I'm going to shut up. No, I don't mean to monopolize the discussion.

You need to show a hardship for a Variance. That's the first requirement. You're well aware of that. The hardship here is not that you -- the parking that's there now doesn't work. It -- the hardship is that unless we grant the you relief, you can't build dimensionally conforming fourth unit on the property because you can't produce a requisite parking.

MARK BOYES-WATSON: But I don't understand what you're leaning to -- when you go to the relief, though, you're saying the parking -- where is the relief?

CONSTANTINE ALEXANDER: The relief is -- no. What are your justifications for getting the relief your seeking? What is the hardship?

MARK BOYES-WATSON: What relief am I seeking?

CONSTANTINE ALEXANDER: You're seeking change the parking plan.

MARK BOYES-WATSON: Yes, but that's part of our Variance. It's a five-foot setback.

CONSTANTINE ALEXANDER: No, no, no, no.

MARK BOYES-WATSON: But to change the parking, the parking is conforming in every respect except for being close to the property line.

CONSTANTINE ALEXANDER: Then why are you seeking the Variance?

MARK BOYES-WATSON: Well, I think the -- because it's held in the City, I don't fully understand this, but it makes sense to me and I think that it's confusing, the Building Department. We had some confusion. We nearly came in here as-of-right. There was a long discussion with the Commissioner about whether there is an as-of-right project or not. And in the end we decided we should come here. It

was clearer and cleaner to come. And the reason being that that house that's being constructed is completely conforming. Right? And -- but it is a modification of the prior Variance, but it is interesting. So what are you -- what relief are you requesting when you come in to modify a prior Variance if the new one doesn't create (inaudible) --

CONSTANTINE ALEXANDER: The way the case --

MARK BOYES-WATSON: -- and that is where we are.

CONSTANTINE ALEXANDER: The case should have come before us, you should have applied for a Building Permit to build a fourth unit. You would have gotten turned down by, I presume, by Inspectional Services on the grounds that although the building you want to build complies with the dimensional requirements, it doesn't have the requisite four, the requisite parking. And you would come down before us and say we want to build this unit, this house, but we

need a Variance for parking to do that. You came before us and you didn't even give us any suggestion. I can see nothing, which sort of offends me frankly. I see nothing in your application that suggests what this is really about.

MARK BOYES-WATSON: You know, Mr. Chairman, I would have loved to -- I would love that process. We don't have it, right.

CONSTANTINE ALEXANDER: Why not?

MARK BOYES-WATSON: I don't know why we don't. I would love that process of submitting -- we had all the drawings ready. We could have submitted such a plan. What it is, the crafting of this was done absolutely with the Commissioner and under his guidance. So I didn't mean to mislead you. So where we're at, where we're at is -- I mean really literally we were ready several months ago.

Where we're at is, and I, you know, it's really interesting. I often find this, I can't get my brain to see it quite the way you're seeing it because the thing is that

if we had a five-foot setback, we -- it really would be hard to find anything to bring us back here. In other words, the things that we're doing, entirely conforming to the Code.

This is not. It was granted by a Variance and it's non-conforming. But all the new interventions, including in fact adding a house if the -- the way that, as I understand it, the Commissioner holds it. If that parking is servicing an existing building, even if it's non-conforming, it may remain. And the one I'm producing is actually conforming. So we really barely are triggering any transgressions of the Ordinance such that, you know, it's hard to see why this -- why this is in any way detrimental to the City or worse than if you were to clean this lot out and build a conforming four-unit building. Which we, you know somebody could do. So here we get to save the historic structure, continue with the Variance previously granted, and simply exercise the rights that are in line, albeit, very importantly that we need to come and ask you to say, wow,

this is, you know, well designed and fits with what's here and is not -- doesn't meet the criteria of over leading the streets and all the rest for the parking so that's what we came for.

CONSTANTINE ALEXANDER: And you think this doesn't -- this parking is actually, this arrangement will actually be functioning parking with people who live in the four units, assuming we grant relief, that are going to be parking, including a front yard, this Board doesn't like nor does the Planning Board like.

MARK BOYES-WATSON: We can shift that out of the front yard, yes. We were making a characterization here and it wasn't cynical. We were trying to maximize the open space. We could shift that parking back by five feet and not be in that. I think we're four, four or five feet over. It would just encroach a little bit -- we were just using the existing conditions and internally consistent it's not important. We could move it back.

CONSTANTINE ALEXANDER: I'll shut up. Any further discussion?

MARK BOYES-WATSON: Well, I could go further with the thing. But that really is the kernel. I think as always, we're right on constantly an interesting issue. This is just a little rendering that shows that little house and the back house. And as I say per se, the building per se is a conforming building the new building.

CONSTANTINE ALEXANDER: You've made that point at least ten times.

MARK BOYES-WATSON: I tried.

LAURA WERNICK: Is there any input from neighbors?

CONSTANTINE ALEXANDER: I didn't see any before. There's one letter of support as I recall unless some new ones have come in. Let me see.

MARK BOYES-WATSON: No, I'd like to just say that the site is actually surrounded by a single owner, the abutters with whom actually, they're a client of mine which

is actually one of the affordable housing agencies in the city. So that's partly -- and they are, they have no problem with this. So actually, I didn't really say, it's not necessarily significant, but actually interestingly all of this constitutes Lynnwood -- it's known as Lynnwood Court. It's owned by one of the city's agencies.

CONSTANTINE ALEXANDER: The parking in the area that's in between is all owned --

MARK BOYES-WATSON: The whole thing.

CONSTANTINE ALEXANDER: And is that parking restricted to --

MARK BOYES-WATSON: Yes.

CONSTANTINE ALEXANDER: So it's not available to --

MARK BOYES-WATSON: To the general public, right.

THOMAS SCOTT: So what's the documentation of the existing parking on the site? That plan?

CONSTANTINE ALEXANDER: Yes.

MARK BOYES-WATSON: Yeah, you have to read the -- and there's subsequent --

CONSTANTINE ALEXANDER: It's a mess.

MARK BOYES-WATSON: Yeah. The transcript is pretty hilarious. It makes me happy to be here under your tight supervision.

CONSTANTINE ALEXANDER: Our Board has improved since then.

ANDREA HICKEY: Is there anything in the record that talks about sanctioning three spaces along that driveway?

MARK BOYES-WATSON: It's -- I brought the transcript and it is -- oh, I didn't. Yes, I did. It's heavy reading, but yes, it's absolute -- it's absolute -- I would say --

ANDREA HICKEY: Not just parking, three spaces along that driveway.

MARK BOYES-WATSON: I would say that there is a

history to it and it is absolutely intimate in here, it's not clear. It wasn't clear in the submitted documents. I got all the -- these were all filed in support of the previous Variance. This was done at the table in fronted of the Board at the Variance hearing. This I think was a rejected one.

CONSTANTINE ALEXANDER: The Board was focusing more on two more units.

MARK BOYES-WATSON: Well, they were focusing on -- I think, actually, in terms of the open space and the parking, they were very focussed on having the -- I think they had decided that it was perfectly reasonable to put the building in the back.

CONSTANTINE ALEXANDER: Yes.

MARK BOYES-WATSON: But they were really worried that the site would be as desolate as it was on the day -- I think the survey -- and I think there are photos in the file that support that. On the day that the Variance was -- it

was, it was just asphalt, the entire thing. So I think what they did is they did that drawing and it was completely contemplating the driveway and the parked car next to the driveway, but it was never drawn on any drawing that I could find.

ANDREA HICKEY: So there's nothing that required five spaces; the two garage spaces and three along the way. Then why not give this new building of yours one of those spaces along the driveway?

MARK BOYES-WATSON: We could do.

ANDREA HICKEY: No, instead of a fourth one in front of the new building. You've got three along the driveway. Give them --

MARK BOYES-WATSON: We need four. We need four. We could do that, and then we wouldn't have quite as much open space. That's an alternative plan. We can absolutely do that.

ANDREA HICKEY: When you say you need four --

CONSTANTINE ALEXANDER: Every building unit has to have parking space.

THOMAS SCOTT: One of the tenants is giving up their garage?

JAMES MONTEVERDE: You're getting rid of both.

MARK BOYES-WATSON: Yes, we are.

JAMES MONTEVERDE: That's why you need the --

CONSTANTINE ALEXANDER: One of the garages is not functional.

ANDREA HICKEY: Got it.

MARK BOYES-WATSON: Yes, sorry.

CONSTANTINE ALEXANDER: One is not functional.

MARK BOYES-WATSON: And understandably.

ANDREA HICKEY: I didn't understand that.

MARK BOYES-WATSON: Truthfully, I'm serious when I say if we were able to pass this by, we would be doing a favor for the site, because it was a bit ambiguous. The left-hand garage hadn't been abandoned by the time the

current owner bought it. The right-hand garage you couldn't even get into it anyway. So, it was not a great situation. So what we were hoping, frankly, is to come here, throw ourselves at your good graces with a better plan and to move forward.

CONSTANTINE ALEXANDER: And what we're exploring now is Andrea's suggested is maybe there's a better plan than you put before us.

MARK BOYES-WATSON: I know there's better or equivalent. But we certainly -- there is a plan which we continue to put one more car on that left-hand side setback, and I have a simple driveway that goes straight down, is an alternative plan and we would slightly reduce the amount of open space.

ANDREA HICKEY: Is there enough room to have legal size parking spaces --

MARK BOYES-WATSON: All the way down?

ANDREA HICKEY: -- all the way down? Would they

be long enough?

CONSTANTINE ALEXANDER: Particularly if we were to ask you to move the line back so we don't go to the front yard.

ANDREA HICKEY: Yes.

MARK BOYES-WATSON: Yeah. And in fact, if it came to it, we could put one car, I think back in that garage.

JAMES MONTEVERDE: Right, that's what I'm looking at. If you put the car here, don't do this, that would take care of one. If you slide these, if you say that's the front yard and you want to slide that back, so that that could be planted and get your 1, 2, 3.

LAURA WERNICK: Four.

MARK BOYES-WATSON: We absolutely could do that. We could actually reactivate the garage --

JAMES MONTEVERDE: Yeah.

MARK BOYES-WATSON: -- and slide is it out of the front yard and be done.

CONSTANTINE ALEXANDER: What is the deactivated garage?

MARK BOYES-WATSON: It's bicycle storage. Bicycle storage.

CONSTANTINE ALEXANDER: Well, how can you get the people -- don't you need the consent of the owner?

MARK BOYES-WATSON: No, this is controlled, fully controlled by one person.

CONSTANTINE ALEXANDER: It's not condos?

MARK BOYES-WATSON: It's not condos yet.

LAURA WERNICK: Oh, got it.

MARK BOYES-WATSON: It was rented. It's currently rented, but it's sort of -- we're trying to get it together.

LAURA WERNICK: So the owner has a car but that owner is -- that tenant using the driveway?

MARK BOYES-WATSON: I'll tell you what it -- what happened here was that the owner is a long, long time owner of the front building. And they, back in 2002, they came

here and they asked permission to build this which they rented. So they just sold to my client in the last six months.

LAURA WERNICK: The whole site?

MARK BOYES-WATSON: And so now, and so now my client is now the petitioner, and that's how it is. So historically there are cars, and I'm not even going to represent whether they're car from this lot or from wherever.

CONSTANTINE ALEXANDER: Probably not because they have the sign up in front.

MARK BOYES-WATSON: But it's always been fully parked all the way down there. And occasionally parked in here. I don't know how they got in and out. But back in the garage as well, but that's been the historical plan.

LAURA WERNICK: So typically there are four cars parked along the driveway?

MARK BOYES-WATSON: Yes, yes, at least.

STEPHEN HISERODT: Five cars.

MARK BOYES-WATSON: Four cars. That's Stephen Hiserodt from Boyes-Watson Architects.

So, yes, what you're suggesting would very much how it's being used. Which is if we were to -- except we were to improve it by hiding one of the four cars. If we put one car in the garage and put the other three a little further from the street, all doable.

ANDREA HICKEY: I like that.

JAMES MONTEVERDE: Yeah, keep the parking no further to the street than the face of the existing building, plant that instead of having a space.

ANDREA HICKEY: Yeah, the parking I don't --

JAMES MONTEVERDE: Yeah, plant that instead of having a putaminous space to the street and you're good to go.

MARK BOYES-WATSON: Yeah, that's totally doable.

JAMES MONTEVERDE: You want a pen?

CONSTANTINE ALEXANDER: You want a pen to mark up the plans?

JAMES MONTEVERDE: I think you want to do this one. This is the record.

ANDREA HICKEY: Can I just go back for a second, though?

Is there enough distance here for proper space, size spaces?

MARK BOYES-WATSON: Yes, there is.

ANDREA HICKEY: Okay.

MARK BOYES-WATSON: There is plenty of space. If you go to the site, you'll see that it's like generous.

CONSTANTINE ALEXANDER: So with these modified plan in your Special Permit you're going to surrender -- you're going to abandon the request for front yard setback because you're going to comply?

MARK BOYES-WATSON: Right.

So that's what I did there.

CONSTANTINE ALEXANDER: I can see it.

MARK BOYES-WATSON: It's going to come under scrutiny now.

LAURA WERNICK: So that now we're putting paved, we're making this all paved again?

MARK BOYES-WATSON: That's the tradeoff.

ANDREA HICKEY: You can make it green if you want to make it green.

MARK BOYES-WATSON: You can do the green pavers or something like that.

THOMAS SCOTT: Well, can't you do more green upfront?

MARK BOYES-WATSON: We could where that car isn't. Yeah, we can do that.

THOMAS SCOTT: I would green that up.

MARK BOYES-WATSON: Yep. Let me show that.

In fact, you can green it all the way to the driveway.

CONSTANTINE ALEXANDER: When you say "green," you mean you're going to tear up the asphalt?

MARK BOYES-WATSON: Yes.

ANDREA HICKEY: Yeah.

MARK BOYES-WATSON: That's what it means.

CONSTANTINE ALEXANDER: I mean, you can do it, I just want to make sure you were going to do.

MARK BOYES-WATSON: Sounds like the other hearing. History repeats itself.

JAMES MONTEVERDE: Buy those oak trees and plant it there.

MARK BOYES-WATSON: Illustrating that. This would be -- maybe I should note it.

CONSTANTINE ALEXANDER: Please. And hopefully these plans will have a better life than the plans that were done the last time.

MARK BOYES-WATSON: Yeah. Actually strictly speaking one of you should be doing this and not me under

the terms of the previous Variance.

JAMES MONTEVERDE: I don't think we're allowed.

MARK BOYES-WATSON: You should read the transcript.

CONSTANTINE ALEXANDER: You don't want to read the transcript.

MARK BOYES-WATSON: It was teamwork.

ANDREA HICKEY: Could you date that, too, please?

MARK BOYES-WATSON: Today is the 11th.

CONSTANTINE ALEXANDER: Satisfied?

THOMAS SCOTT: Yes.

LAURA WERNICK: How is the drive going to go here?

CONSTANTINE ALEXANDER: Cross out that car. Cross out the car.

MARK BOYES-WATSON: Yeah.

LAURA WERNICK: Where the pavement is it says entrance to driveway.

MARK BOYES-WATSON: I'm going to put edge of

pavement for that.

Did you push that garage door back.

STEPHEN HISERODT: You did? So maybe have the front door still go.

CONSTANTINE ALEXANDER: By the way, what are you going to do with the trash barrels where your parking spaces are? When I went by, there were trash barrels up the whole length of the driveway almost. Now that you have cars parked there, where are they going to go? I still think these are phantom parking spaces myself.

MARK BOYES-WATSON: They're truly actually, actually not. Right, do we have photos?

STEPHEN HISERODT: We have various photos of people filling up those spaces.

MARK BOYES-WATSON: This will alter, just for the record, it does alter the open space calcs.

STEPHEN HISERODT: The open space will no longer comply.

MARK BOYES-WATSON: The usable open space.

STEPHEN HISERODT: The usable open space.

CONSTANTINE ALEXANDER: No longer comply with?

MARK BOYES-WATSON: The 30 percent. Yes, and, you know, how it's supposed to be 15 and 15. There will still be 30 percent of total, is that true or close?

STEPHEN HISERODT: It will be close.

CONSTANTINE ALEXANDER: What this means is you realize you may have to come back when you want -- we grant you relief tonight, presumably, you go to the Building Department with your plans, with dimensionally conforming structure for the fourth unit, and I'm going to assume Inspectional Services says wait a minute, with the building of this, you're not going to meet the open space requirements. So you need to get a Variance from that. Am I right?

SEAN O'GRADY: Yes.

MARK BOYES-WATSON: We did ask for relief under

Article 5.31 so I don't know if you can say that. If we make this change, we trigger that relief.

CONSTANTINE ALEXANDER: Okay.

MARK BOYES-WATSON: Which we have asked for.

CONSTANTINE ALEXANDER: Okay, let me get back to the question about proper advertising because it's your risk not ours.

SEAN O'GRADY: I didn't follow that logic.

MARK BOYES-WATSON: My logic is when we came, we advertised --

CONSTANTINE ALEXANDER: He advertised under 5.31.

MARK BOYES-WATSON: We advertised --

THE STENOGRAPHER: You have to stop talking while he's talking.

SEAN O'GRADY: That's apples and oranges. The Variance request for a parking layout and open space configuration to the existing Variance is the modification of that Variance, but that doesn't --

MARK BOYES-WATSON: That's what we're doing.

CONSTANTINE ALEXANDER: I agree with you, that's the very same issue we had in the other case.

MARK BOYES-WATSON: It is. We are repeating the other --

CONSTANTINE ALEXANDER: The fact of the matter is you're running a risk.

MARK BOYES-WATSON: Yes, well, with advertisement.

CONSTANTINE ALEXANDER: It's your call.

MARK BOYES-WATSON: And in terms also with the Board and in terms of what they're looking at, this significantly improves the open space on the lot. As we add this unit, we actually increase open space, not decrease it.

SEAN O'GRADY: Mark, when you get to the Building Permit application, you've got to satisfy open space.

MARK BOYES-WATSON: I don't think so.

CONSTANTINE ALEXANDER: We're going to grant the Variance tonight --

MARK BOYES-WATSON: To modify it.

SEAN O'GRADY: Well, right. The only reason there's an open space problem is because you're assuming that the house that's going to be built --

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: -- is not going to be -- they're not coming for that house.

CONSTANTINE ALEXANDER: I understand that.

SEAN O'GRADY: They're coming only for the lot as it exists prior to the house.

STEPHEN HISERODT: But it doesn't currently comply with open space.

MARK BOYES-WATSON: Right. We're increasing the open space. So what we came for was to be allowed to modify the prior Variance, right, with two respects: Open space and parking, which is what we've just been discussing. So hopefully it's well after --

CONSTANTINE ALEXANDER: Let me cut this discussion

shorter than that.

You and Inspectional Services will have to go to the mat on this one when you go in, if we grant you the relief tonight, as I think we will, when that time comes, you may have a problem. That's what Sean is telling you. And I'm telling you, too, you may have a problem. But we can't solve that problem tonight.

MARK BOYES-WATSON: I'm sure you will draft the motion really brilliantly.

CONSTANTINE ALEXANDER: Well, no, I'm going to draft it, this is the plan. And then we'll see what happens. But it's not our issue any longer unless you bring it back before us.

MARK BOYES-WATSON: Time is one of those things I've learned to be very calm about.

CONSTANTINE ALEXANDER: Okay.

Well, if you were persuasive with Ranjit with regard to this plan, I think you are assuming you're going

to be persuasive the next time. Good luck.

MARK BOYES-WATSON: I was nearly persuasive.

CONSTANTINE ALEXANDER: I think that's where it's at. I mean, we haven't resolved -- you raise a valid point.

SEAN O'GRADY: As long as everybody understands. As long as Mark understands.

CONSTANTINE ALEXANDER: Yeah, everybody understands. We've read him his rights.

LAURA WERNICK: There seems like there should be enough of play in here that you can get equivalent open space by narrowing down the driveway at the entrance.

MARK BOYES-WATSON: Where there's a will there's a way.

CONSTANTINE ALEXANDER: I'm sorry?

MARK BOYES-WATSON: Where there's a will there's a way.

CONSTANTINE ALEXANDER: You usually find a way, Mr. Boyes-Watson.

Okay, any other comments? But I think you talked about the Special Permit. You're withdrawing the request for the Special Permit with regard to the front yard setback and otherwise your Special Permit request stands with the relocated parking space pushed farther back.

THOMAS SCOTT: Do we meet the buffer requirement to the property line? Like, what is it?

MARK BOYES-WATSON: That's the relief. That's the Special Permit.

THOMAS SCOTT: That is the relief. So what is the buffer then? Is it three feet?

STEPHEN HISERODT: Two feet.

MARK BOYES-WATSON: Two feet.

STEPHEN HISERODT: What's there now.

JAMES MONTEVERDE: It remains what it is.

THOMAS SCOTT: Okay.

CONSTANTINE ALEXANDER: Questions from Members of the Board at this point?

JAMES MONTEVERDE: No.

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

Is there anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: I don't think so. You have telecommunications on the brain.

I have one letter. It's from Jim and Florrie, F-L-O-R-R-I-E Westcoat, W-E-S-T-C-O-A-T who resides at 33 Market Street. (Reading) We've received notice of the February 11, 2016, public hearing regarding a parking variance for 44 Market Street. As close neighbors, we are writing to say we have no objection to the proposed parking reconfiguration put forth by Mr. Dubouloz.

And that's all we have.

I'll close public testimony.

Any final comments, Mr. Boyes-Watson?

MARK BOYES-WATSON: No.

CONSTANTINE ALEXANDER: Ready for a vote or you want to discuss it?

ANDREA HICKEY: Ready.

THOMAS SCOTT: Good.

CONSTANTINE ALEXANDER: I think we've discussed it already.

JAMES MONTEVERDE: Yes.

CONSTANTINE ALEXANDER: Okay, I'll deal with the Variance first.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the petitioner would be, without this relief would be precluded from building an otherwise as-of-right additional structure, unit, dwelling

unit on the property.

That the hardship is owing to the shape of the lot. It's a non-conforming lot and a very odd-shaped lot, very elongated, narrow, and deep.

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 plan as modified at our hearing does go to not creating a substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

On the basis of these findings, the Chair moves that we grant the Variance being requested on the condition that the work proceed in accordance with the plans prepared by Boyes-Watson Architects. There are several pages -- several pages, each page of which has been initialled by the Chair. And in particular plan A-023 which

has been modified at our hearing and is the plan that will be, with regard to parking, will be the one that's operative.

So all of those in favor of granting the Variance on this basis, please says "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor for the Variance.

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

CONSTANTINE ALEXANDER: We'll now turn to the Special Permit which now is related to -- does not involve relief from -- but based on these revised plans does not require front yard parking relief.

That we make the following findings with regard to this the Special Permit:

That the requirements of the Ordinance can only be satisfied by relief from our Board through the Special Permit process.

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

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

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

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

On the basis of these findings, the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with the plans submitted by the petitioner and identified with regard to the

Variance. In particular that the parking will be located as indicated on these marked-up plans and that they will be no intrusion into the front yard setback and that open -- green open space will be created in the area where the front yard -- where the parking was proposed to do in the front yard, and I think that's all.

MARK BOYES-WATSON: And the path to the front doors because the garage is being reused. If we can do something like that.

CONSTANTINE ALEXANDER: On the basis of this, I move that we grant the Special Permit.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Special Permit granted.

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

* * * * *

(11:00 p.m.)

(Sitting Members Case BZA-009279-2016: Constantine Alexander, Thomas Scott, Jim Monteverde, Andrea A. Hickey, Laura Wernick.)

CONSTANTINE ALEXANDER: And now the case we've been long waiting to hear all night.

ATTORNEY RICARDO SOUSA: That's right. Saved the best for last, Mr. Chairman.

CONSTANTINE ALEXANDER: Right, that's what we always do. You've got to use your influence with the Inspectional Services Department to get your case earlier on

the agenda.

ATTORNEY RICARDO SOUSA: I think so, too. I would appreciate that treatment.

I think it's all random, right, Sean?

SEAN O'GRADY: First come, first served.

ATTORNEY RICARDO SOUSA: First come, first served.

These are additional copies.

CONSTANTINE ALEXANDER: These are in the package?

ATTORNEY RICARDO SOUSA: Same package, yes. Just some additional for your convenience.

CONSTANTINE ALEXANDER: Okay. So you've given up the ghost with respect to fighting about whether our Board should be acting on Spectrum Act cases. We're just going right to the Special Permit, right?

ATTORNEY RICARDO SOUSA: I think it's the course least resistant and it's worked well for us and I think we're going to continue --

CONSTANTINE ALEXANDER: Save a filing fee anyway.

ATTORNEY RICARDO SOUSA: That's right.

Good evening, Mr. Chairman, Members of the Board. For the record, Ricardo Sousa from Prince, Lobel, Tye here on behalf of the petitioner T-Mobile. We are here as part of our continuing effort to upgrade our existing wireless sites here in the City of Cambridge. And in particular here at 66 Homer Avenue.

This is a site that T-Mobile has been operating since 2006. It consists of currently consists of three panel antennas; two of which are located on this middle penthouse and one is located inside of a stealth cannister. Excuse me, one on the penthouse and two inside of a stealth cannister currently.

And so what we're proposing to do is to increase the number of antennas to six. We're adding three panel antennas, what we call L-700 antennas, so that we can provide the latest and greatest in wireless communications.

And we've -- we're requesting relief pursuant to

Special Permit, but also under the guidelines of Section 6409 of The Spectrum Act consistent with the other applications that we've made.

I've submitted some photo simulations. These were also submitted to the Planning Board. And we worked with the Planning Board to find a design that was consistent with the existing installation, a stealth installation, but that would accommodate the additional antennas.

CONSTANTINE ALEXANDER: The Planning Board had one comment about --

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: -- the painting be -- painted -- the faux chimney be painted a grey color to blend with the sky rather than a contrasting color. That's reflected in the -- you've done that I assume?

ATTORNEY RICARDO SOUSA: We have.

CONSTANTINE ALEXANDER: And it's reflected in the photo sims?

ATTORNEY RICARDO SOUSA: We have done that, and we submitted it to the file I believe it was last Friday.

Those are consistent. The ones that are in the file show the grey.

CONSTANTINE ALEXANDER: That's what I thought, I wanted to make sure.

ATTORNEY RICARDO SOUSA: Exactly, the grey penthouse. And so that's shown here. So this is the existing -- what looks like a stovepipe, that's what's there now. There are two antennas in there now, and there's one antenna on that penthouse. And what we're proposing to do is this right here.

CONSTANTINE ALEXANDER: That's an improvement frankly.

ATTORNEY RICARDO SOUSA: Yeah, I think it is. I think it's a good suggestion. It sort of blends in with the grey skies of New England I think unfortunately. And I think it blends in with the other penthouse as well.

And this is just another viewpoint coming from this side to that side, and here is the chimney.

And so we had to go from a cannister, a round cannister, because we were not able to fit two additional antennas in there without making the diameter significantly larger. And so instead the new chimney is four-by-four and that's shown on the plans. It will be four antennas in there. And then two antennas are facade mounted on this existing penthouse. And we think that satisfies the six elements of Section 6409 of The Spectrum Act as we set forth in the application. But if you have any questions, I'm happy to address those.

CONSTANTINE ALEXANDER: You should address the fact this is a residentially zoned district. We have to make a finding on that.

ATTORNEY RICARDO SOUSA: Yes, of course, Mr. Chairman.

And given that it is in a residential zone and

pursuant to Section 4.23(g) of your Zoning By-Law we have to make a finding, and the Board --

CONSTANTINE ALEXANDER: We have to make the finding.

ATTORNEY RICARDO SOUSA: You have to make a finding, that's right. And you did make a finding in 2006 that the residence or that the building is not in a predominantly residential area. And in fact, on page 5 of our supporting statement, and I'll read it to you, because I think it addresses directly your question whereby we feel this is not a predominantly residential area. We state that along Homer Avenue there's auto mechanic garage, and office complex containing companies like Charles River Analytics, Cambridge Medical Associates, Palean Technologies (phonetic), and a shopping plaza that contains a Star Market, an Osco Pharmacy, a shoe repair store, and a Starbucks, and a nail salon. So there's a fair amount of mixed uses in this area, and that has not changed since

2006. In fact, it's consistently non -- not a predominantly residential location. So we also feel that we satisfied the conditions of the by-law with respect to that issue.

CONSTANTINE ALEXANDER: I'm just checking to see what other findings we have to make specifically in our decision.

ATTORNEY RICARDO SOUSA: Mr. Chairman, I think it would be simply that with respect to that issue.

CONSTANTINE ALEXANDER: I'm just reading from -- we have to -- the extent to which there is a demonstrated public need for the facility at the proposed locations.

Just address the need you have to upgrade your service.

ATTORNEY RICARDO SOUSA: That's correct. So T-Mobile and Metro PCS merged a few years back, and we are continuing to service a greater customer base. In addition to that, we acquired some additional spectrum. These

additional antennas will allow us to fully deploy that spectrum so that we can better serve our customers in all respects, both from a voice and data perspective at higher speeds, more reliability, and with a more robust services. And that's also articulated in our supporting statement.

CONSTANTINE ALEXANDER: Right.

And we're supposed to deal with the existence of alternative functioning suitable sites in a non-residential location. In other words, we made that finding the last time around and I think your position, in your words, is nothing has changed since the last time we granted this Special Permit.

ATTORNEY RICARDO SOUSA: That's right, nothing has changed in this area.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICARDO SOUSA: We feel that the modification -- the existing wireless installation is always a better solution.

CONSTANTINE ALEXANDER: Okay, thank you.

ATTORNEY RICARDO SOUSA: So with that I respectfully request that the Special Permit be grand under the conditions and guidelines of Section 6409 of The Spectrum Act. And I'm happy to answer any additional questions that you may have of course.

CONSTANTINE ALEXANDER: When we get to making the motion, because we didn't do it the last time, I'm going to add that long condition that you've heard many times before about the compliance.

ATTORNEY RICARDO SOUSA: Yes.

CONSTANTINE ALEXANDER: You lose your permit that we grant you tonight.

ATTORNEY RICARDO SOUSA: Understood.

SEAN O'GRADY: Gus, I was asked to just -- I know -- I think we've talked about this before. The very last paragraph of footnote 49.

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: About laying -- it says granting Special Permit shall set forth decision under the circumstances of procedures for any modifications.

CONSTANTINE ALEXANDER: I'm sorry, I was reading. I didn't catch it. One more time.

SEAN O'GRADY: So that last paragraph.

CONSTANTINE ALEXANDER: Look at the footnote?

SEAN O'GRADY: Yes, where on footnote 49.

CONSTANTINE ALEXANDER: Nine, yeah, paragraph 3?

SEAN O'GRADY: Very last paragraph. I just wanted you to make that finding.

ATTORNEY RICARDO SOUSA: Regarding further modifications, Sean?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: How do we make the finding? We're not going to allow any upgrade. We're going to allow them some service equipment. And they're going to remove it if they abandon the property. I'm not sure what

finding we would make.

SEAN O'GRADY: If there are any circumstances under which you would allow a replacement or upgrade.

CONSTANTINE ALEXANDER: But I think if we make the motion that -- and we will, that they have to comply with the photo simulations. If they can replace the equipment without affecting the general appearance, they've taken care of it.

SEAN O'GRADY: That was my argument and it didn't prevail.

CONSTANTINE ALEXANDER: I got the feeling the Legal Department has weighed in on this.

SEAN O'GRADY: It came through to Ranjit from Legal, yeah.

ATTORNEY RICARDO SOUSA: And that practically that's something that we've also lobbied for, because like/kind replacements would be allowed without having to come back before the Board.

SEAN O'GRADY: Well, that's....

CONSTANTINE ALEXANDER: I'm going to handle that by making the finding -- I'm going to say so long as the photo simulations continue to be substantially as you presented tonight --

ATTORNEY RICARDO SOUSA: Right.

CONSTANTINE ALEXANDER: -- you're free to replace.

ATTORNEY RICARDO SOUSA: Okay. That would be welcome relief.

Thank you.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

JAMES MONTEVERDE: Nope.

CONSTANTINE ALEXANDER: I assume you guys are all on the same side?

UNIDENTIFIED AUDIENCE MEMBER: We are. Thank you.

ATTORNEY RICARDO SOUSA: They are.

CONSTANTINE ALEXANDER: All right. If you want to

speak in favor, we don't need to hear that. If you want to speak against, that's your problem.

The only thing -- so I'm going to close public testimony.

The only thing we have in our files is a very brief memo from the Planning Board which I'll read into the record.

(Reading) The Planning Board reviewed the Special Permit application for the communication antennas at 66 Homer Avenue and suggested that if the Board of Zoning Appeal grant the special -- the special -- that the faux chimney be painted a grey color to blend with the sky rather than a contrasting color. The surrounding trees and type of installation minimize the visual impact of this installation.

And the Chair would note that the petitioner has exceeded to this request and it's reflected in the photo simulations that we have. So this has been -- we've -- this

has been taken care of.

ATTORNEY RICARDO SOUSA: Right, correct.

CONSTANTINE ALEXANDER: All right. Ready for a motion?

ANDREA HICKEY: Ready.

JAMES MONTEVERDE: Yes.

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

That this project, these antennas are going to be in a residentially zoned district, but this Board finds that non-residential uses predominant in the vicinity of the proposed facility's location, and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood. In this regard the Board made that same finding with regard to the original Special Permit being granted, and that the neighborhood has not changed in terms of non-residential uses in any dramatic

effects.

The finding we made before continues to be in effect.

That the petitioner -- I guess we'll get to the -- next one will be part of the decision.

Further, that -- I got to make all the other findings with Special Permits.

That the petitioner can only proceed -- can only meet the requirements of the Ordinance by granting -- by receiving a Special Permit from our Board.

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

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

That no nuisance or hazard will be created to the

detriment of the health, safety, and/or welfare of the occupant of the proposed use, the people that live in the apartment house, or the citizens of the city.

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

The additional finding that this Board makes is that the modification to its existing telecommunication facility at 66 Homer Avenue proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known The Spectrum Act.

So based on all of these foregoing findings, the Chair finds -- moves that we determine that the petitioner is entitled to the Special Permit it is seeking under our

Zoning Ordinance subject to the compliance with the following conditions:

That the work proceed in accordance with the plans submitted by the petitioner, and initialled by the Chair.

And I've done that.

That upon completion of the work, the physical appearance and 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 the physical appearance and impact will remain consistent with the photo simulations previously referred to.

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

practicable.

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

And lastly as a condition, additional condition, there's one as a standard one we impose in residentially zoned districts in particular reads as follows:

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

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic wave emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the

Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

B, that in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emission of electromagnetic energy waves or otherwise, the petitioner, within ten business days of receipt of such notification of such failure, shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure. The Special Permit granted tonight shall ipso facto terminate if any of the petitioner's federal licenses is, are suspended, revoked, or

terminated.

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

D, that within ten business days after receipt of a Building Permit for the installation of the equipment, the petitioner shall file with the Inspectional Services Department a Sworn Affidavit of the person in charge of the installation of equipment by the petitioner of the geographical area that includes Cambridge, stating that:

A, he or she has such responsibility.

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

And last but not least, I have to make the finding that Mr. O'Grady tells me has been requested of us. What section was that again, Sean?

SEAN O'GRADY: The last paragraph of 49. Footnote 49.

CONSTANTINE ALEXANDER: 49. I have to find footnote 49.

ATTORNEY RICARDO SOUSA: 4.23(g).

CONSTANTINE ALEXANDER: I got it, here it is.

Finally, that the petitioner shall be allowed to

replace and upgrade its equipment approved tonight without the necessity of seeking a new Special Permit provided that the replacement and upgrade does not materially change the photo simulations that you've submitted in connection with this petition tonight.

ATTORNEY RICARDO SOUSA: Right.

CONSTANTINE ALEXANDER: All those in favor of this long-winded motion, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

ATTORNEY RICARDO SOUSA: Thank you, Mr. Chairman. Thank you, Members of the Board. Good night.

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

(Whereupon, at 11:20 p.m., the Board of Zoning Appeal Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

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

INSTRUCTIONS

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

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

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand
this 22nd day of February, 2016.

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

My Commission Expires:
April 29, 2022

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