

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MARCH 8, 2018
7:15 p.m.

in

Senior Center
806 Massachusetts Avenue
First Floor
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Brendan Sullivan, Vice Chair
Andrea A. Hickey, Member
George S. Best, Associate Member
Jim Monteverde, Associate Member

Sisia Daglian, Assistant Commissioner

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PROCEEDINGS

(7:15 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Board of Zoning Appeals to order. And before we turn to our regular agenda, the Chair would like to read a statement:

After notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting.

At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made.

And I wish to advise you in the audience that two recordings are being made, at least two. A citizen of the

city is recording and our stenographer records as well to assist her when she prepares the transcript of the meeting.

So be advised that you will be on tape.

With that I will call the first case.

* * * * *

(7:15 p.m.)

(Sitting Members Case BZA-015489-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: Case No. 015489, 170 Erie Street.

Is there anyone wishing to be heard on this matter? Good evening.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman and Members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I'm here tonight on behalf of the Petitioner 170 Erie Street, LLC.

JOHN HAWKINSON: I don't think the mic is actually on.

CONSTANTINE ALEXANDER: It's a small audience, you may not need a mic.

ATTORNEY SEAN HOPE: I don't need it.

CONSTANTINE ALEXANDER: Just speak up a little

louder, because I think people can hear you I think.

ATTORNEY SEAN HOPE: So the application is a Special Permit for windows. This is a two-family dwelling that's in the C-3 Residential District. On the right side the side yard setback is within the -- within the -- outside of the minimum required. Therefore, any alterations, additions to the windows would require a Special Permit. This to the Board to note, that the property, although it's not within the setback, the adjacent property at the corner has a substantial side yard, so issues of privacy that sometimes come with new windows and openings is not an issue.

On the left-hand side of the property is the Cambridge Housing Authority, which is a large building with a large driveway and parking lot adjacent to it. And I also think there's an e-mail of support from the direct abutter who knows the property well. And so we've reached out to our neighbor. We've had support. This is a property that

needed some renovation, and as part of the renovation these windows and openings are part of the application.

CONSTANTINE ALEXANDER: The windows that relate to the living space behind the walls --

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: -- where the windows are and they want to change the lighting if you will.

ATTORNEY SEAN HOPE: That's right the lighting.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board.

JAMES MONTEVERDE: No.

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: I have none.

I'll open the matter up to public testimony. Is there anyone wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt of a e-mail from Theresa Gagnon,

G-A-G-N-O-N who resides at 196 Pearl Street. (Reading) I am sending this e-mail to communicate my full support for the petitioners Special Permit for the windows in the above-referenced case. Which is this case here.

So that's it. Any discussion or ready for a vote?

JAMES MONTEVERDE: Ready.

CONSTANTINE ALEXANDER: Ready.

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

That the requirements of the Ordinance cannot be met without the Special Permit that's being sought.

That traffic generated or patterns of access or egress resulting from the relief being sought will not cause congestion, hazard, or substantial change in established neighborhood character. In this regard it's noted that the -- we're talking about one side of the structure that will be -- have the windows relocated and that the persons most affected by this relocation apparently have no

objection to what is being proposed.

That it's a continued operation or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what is proposed.

And the same reasons I have a cited just seconds ago traffic applies to this as well.

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

And that finally for the, 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.

In this regard the relief being sought is not unusual in the city because of the dense, its density and the often structures which are older do not comply with side yard setbacks. And as structures get modified, there often is a need or desire to relocate windows, and so long as the

neighbors most affected by the relocation of the windows expressed no objection our Board has not found objection as well.

So on the basis of all of these findings, the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with the plan prepared by Susan Suzumori, S-U-Z-U-M-O-R-I Architecture, P, P, LLC. It's dated January 19, 2018, and it has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

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

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-015484-2018: Constantine

Alexander, Brendan Sullivan, Andrea A. Hickey, George S.

Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will next call case No. 015484, 52-70 Linnaean Street.

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

ATTORNEY ARTHUR KRIEGER: Yes. Good evening. My name is Art Krieger representing AT&T. With me is Mike Gentile, site acquisition sitting in the front row. You have a zoning application package that was submitted on or about December 14th.

CONSTANTINE ALEXANDER: Here it is.

ATTORNEY ARTHUR KRIEGER: Good. And that has all the usual pieces, the standard package that we give you including photo simulations, zoning drawings that show the location of the antennas on the roof in various angles, etcetera. This is a relatively, I hope, straightforward --

CONSTANTINE ALEXANDER: Do you have extra copy of the photo simulations with you by any chance?

ATTORNEY ARTHUR KRIEGER: I did not bring -- this I think is so simple I didn't do that. I would be happy to pass around my copy.

CONSTANTINE ALEXANDER: I don't know if other members of the board -- I've seen what's in the file, but maybe other members of the board might like to see it.

ANDREA HICKEY: I've seen the file.

CONSTANTINE ALEXANDER: You've seen it?

ANDREA HICKEY: I've seen the file.

CONSTANTINE ALEXANDER: Anybody want to see it?

BRENDAN SULLIVAN: No, I'm all set.

JIM MONTEVERDE: Can I see it?

ATTORNEY ARTHUR KRIEGER: Yeah, this is just a replacement of three existing antennas that were installed pursuant to a previous permit. Removing three antennas. Replacing them with three new updated models. The new antennas wouldn't be any bigger.

One of them would be behind the screen wall as its

predecessor is.

The second would be behind a faux chimney.

The third one facade mounted all the same as they are now. There would also be remote radio heads and cabling on the roof, but those would not visible from the street. So we think that this both is entitled to a Special Permit and qualifies for Section 6409 treatment under the Telecommunications Act of 1996, which has a five-part test that I know you're familiar with, but if I could just quickly recite it.

CONSTANTINE ALEXANDER: Yeah, why don't you quickly.

ATTORNEY ARTHUR KRIEGER: If a proposed facility meets all of these five criteria, then it is entitled to by-right approval without delay.

One is that it can't increase the height of the structure by more than ten percent or more than ten feet whichever is greater. And this won't increase the height of

the building at all.

It can't protrude from the edge of the building by more than six feet. And these will not.

It can't involve the installation of more than the standard number of new equipment cabinets not to exceed four cabinets. There's no changes in the cabinetry here.

It can't require any excavation or deployment outside of the current site of the base facility, the base station which is the building in this case. And this will not do any of that.

And it can't otherwise defeat the existing concealment elements of the tower or base station. And this will follow the same concealment, same concealment features.

And, again, one behind an existing screen wall, one facade mounted, one in the faux chimney just as they are now.

I would be happy to pass around the photo sims if anybody would like to see them now. But I believe it is

entitled to 6409 treatment as well as a Special Permit, and we do request that relief.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: No questions.

I'll open the matter up to public testimony. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. And we are not in receipt of any correspondence including from the Planning Board. So I think we're ready to -- I'll close public testimony. Any discussion or we ready for a vote?

JIM MONTEVERDE: Ready.

CONSTANTINE ALEXANDER: Ready for a vote.

I've got to make this long motion. By the way, this is in a residentially zoned district so we have to make special findings with regard to -- it's under

section -- footnote really, Footnote 49.

ATTORNEY ARTHUR KRIEGER: Would you like me to address those findings?

CONSTANTINE ALEXANDER: Yeah, would you because we have to include it as part of our decision.

ATTORNEY ARTHUR KRIEGER: Sure. I agree it's part of your decision on the Special Permit. It's not part of your decision on 6409.

CONSTANTINE ALEXANDER: That is correct.

ATTORNEY ARTHUR KRIEGER: Let me find that footnote as well.

CONSTANTINE ALEXANDER: Do you have it handy? I can read it, too.

ATTORNEY ARTHUR KRIEGER: I do have it somewhere. I can read the criterion first if you like. The Board of Zoning Appeal shall consider where it is proposed to erect such a facility in any residential zoning district, the extent to which there is a demonstrated public need for the

facility. I'm gonna paraphrase because it's a long paragraph.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY ARTHUR KRIEGER: The existence of alternatives.

Functionally suitable sites in nonresidential locations.

The character of the prevailing use.

The prevalence of other existing mechanicals and equipment on nearby roofs.

The Board shall grant a Special Permit for such a facility only upon finding that nonresidential uses predominate in the vicinity.

And that the telecommunications facility is not inconsistent with the character of the surrounding neighborhood.

So this is residentially zoned. This is a Harvard owned building on the Harvard campus. The building itself

is non-residential.

CONSTANTINE ALEXANDER: So the existence of the campus means that the residential -- nonresidential uses predominate in the area.

ATTORNEY ARTHUR KRIEGER: That's what we believe.

CONSTANTINE ALEXANDER: And that what is proposed is not inconsistent with the character that does prevail in the surrounding neighborhood.

ATTORNEY ARTHUR KRIEGER: Which character includes the current antennas. So, right.

CONSTANTINE ALEXANDER: I want to make sure we touch all the bases.

ATTORNEY ARTHUR KRIEGER: Yep.

CONSTANTINE ALEXANDER: Okay, I guess we're ready for a vote. This is laborious.

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

That the requirements of the Ordinance cannot be

met without the grant of the Special Permit.

That traffic generated or patterns of access or egress resulting from what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character. As the petitioner's counsel pointed out, what is being proposed is exactly, if you will, an impact the same as what is there now and has been there pursuant to a Special Permit granted by this Board previously.

That the continued operation or development of adjacent uses will not be adversely affected by what is being proposed. And, again, continued operation of adjacent uses has not been affected by what's there now, and there's no reason to believe that will change with regard to the new antennas that are 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 or the citizens of the city.

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

Further, the Chair moves that what is being proposed will not -- well, rephrase that.

That nonresidential uses predominate in the vicinity of the proposed facility's location, such nonresidential uses being the Harvard, a portion of the Harvard University campus.

And that what is being proposed is not inconsistent with the character that does prevail in the surrounding neighborhood. And in fact, what is being proposed is identical to what's there now, and that by definition will not, it's not inconsistent with the character that prevails in the surrounding neighborhood.

Further, the Board also finds that the -- I so move that the Board also finds that the modification of its

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

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

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

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

Three, that the petitioner shall at all times maintain the proposed work so that its physical appearance

and visual impact will remain consistent with the photo simulations previously referred to.

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

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

And then continuing, inasmuch as the health effects of the transmission of electromagnetic energy waves as a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

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

B, that in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulation, whether with regard to the admissions 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. A Special Permit granted tonight shall ipso facto terminate if any of the petitioner's federal licenses is or are suspended, revoked, or terminated.

C, that to the extent that a Special Permit has 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 considering such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs 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

subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with a geographical area that includes Cambridge stating: That A, he or she has such responsibility.

And B, that the equipment 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.

So on the basis of these -- I made the motion that we grant the Special Permit subject to the conditions that I've read.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY ARTHUR KRIEGER: May I ask the Board also to grant the Section 6409 relief based on some of the findings you already made?

CONSTANTINE ALEXANDER: Sure. But it is not -- it's not -- it doesn't supplement the Special Permit we're granting tonight pursuant to our Ordinance. You don't need to get relief under 6409(a). We've given you all the relief you need.

ATTORNEY ARTHUR KRIEGER: You have. But we'd like to start having boards and this board and other boards grant 6409 relief when it's appropriate.

CONSTANTINE ALEXANDER: Okay. The Chair will move that we grant the relief under 6409(a) as proposed, subject to the same conditions that I've read with regard to the Special Permit we're granting under our Ordinance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Aye?

BRENDAN SULLIVAN: Well, some reservations on acknowledging 6409 as part of our basis, but I would not include that language. I will vote for the granting of the Special Permit but not for that language.

CONSTANTINE ALEXANDER: Well, I think -- okay, I don't have any problem with that.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: So I'll withdraw my motion that we do not --

BRENDAN SULLIVAN: You can. That motion can go four to one.

CONSTANTINE ALEXANDER: Does everybody else feel the same way as Brendan? I don't care either way, frankly.

So all those in favor of the second motion on 6409(a) say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor?

(Alexander, Hickey, Best, Monteverde.)

CONSTANTINE ALEXANDER: Opposed?

BRENDAN SULLIVAN: Opposed to that language.

CONSTANTINE ALEXANDER: One opposed.

(Sullivan.)

ATTORNEY ARTHUR KRIEGER: Thank you.

CONSTANTINE ALEXANDER: Relief granted.

* * * * *

(7:45 p.m.)

(Sitting Members Case BZA-015567-2018: Constantine

Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 015567, 379 Harvard Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge, and I'm here on behalf of the petitioner. We have Mr. Keith Moskow of 379 Harvard Street Trust.

This is an application to legalize two dwelling units that were constructed and are in existence in exceedance of the building permit that was applied for. We understand the uniqueness of the situation, so we want to explain how the situation occurred. What is not lost on the petitioner is the fact that the Board does not generally like to approve or to see things approved that exceeded a

building permit.

CONSTANTINE ALEXANDER: Also you have to satisfy the conditions for a Variance.

ATTORNEY SEAN HOPE: That's right, for the hardship.

So I think if you just give us a brief moment we'd like to kind of walk through. And, Mr. Moskow, you can add any details.

KEITH MOSKOW: Sure.

ATTORNEY SEAN HOPE: The Moskow family purchased the property in and around 1984. This was during rent control. And at that time there was also a history of the property as being rooming houses. And so during rent control, like many large properties, given the inability to raise rents and do repairs, the property fell into disrepair. About ten years ago Mr. Moskow's father who was part of the family, had an element of control over the property and they decided at that point it was time to go

and renovate the units. Initially it was going to be \$100,000 renovation. They were going to -- the attempt was to keep the stairs and do a service renovation to keep the units as a rental unit. During the renovations they found that there was serious structural deficiencies that Mr. Moskow can talk you through. So they changed the program from five-plus units, and that's what the building permit said initially, to seven units. And so there are three reasons why they assume there were seven units at the time.

One, the Assessor's database had assessed the property and listed the property at seven units.

Also in the structure themselves, and we can walk you through it if it's helpful for the Board, that the structure was set up almost like a modern day Airbnb. There was kitchens that were common. There were some bathrooms that were common, and there was long hallways with bedrooms off of those. So when they started doing the renovation,

they realized this was going to be substantially more than they anticipated believing the structure had seven or eight units previously, they decided to go ahead and amend the building permit plans.

CONSTANTINE ALEXANDER: Did they ever go back to the Building Department records to see and notice that the records show five units?

ATTORNEY SEAN HOPE: They did not, it's from my understanding. But the initial building permit said five plus units. That was in 2014 when they applied for the building permit.

2016 they went and amended the plans. So they amended the plans, submitted revised plans showing for the full seven units, including the basement units and amended the plans. It was apparently, it was pretty clear it was missed. We have some correspondence from --

CONSTANTINE ALEXANDER: It was what, I'm sorry?

ATTORNEY SEAN HOPE: It was missed.

CONSTANTINE ALEXANDER: It was missed.

ATTORNEY SEAN HOPE: There was never a reference.

There were some e-mails from Michael Grover, inspector Grover asking about decks and other things and asking for a zoning analysis which Mr. Moskow submitted. All the way through did the full renovation, sprinklered the entire building, made the basement units and the whole building handicap accessible. Only when they went for their final certificate of inspection did the inspector come out and say, hey, wait a minute, you have five units, you don't have seven units. And at that point he contacted counsel and came to the Board.

So I think it was just important for the Board to understand that this was not something that they were trying to have units or create units or circumvent the building permit process. They believed they had seven plus units based on what I mentioned, the history of the property as well as some of the data they received. And so now they're

in a position where they have additional units, which would have required a zoning variance, and at this point the hardship is the fact that they have constructed and spent money on these units.

That if these units were not occupied, it would amount to economic waste.

These are -- you know, Mr. Moskow is a trained architect so they did these in full compliance with the Building Code, but wasn't frankly apprized the implications of these additional units.

I did inform Mr. Moskow that even if you had seven units, they were non-conforming, you don't necessarily get to add units to an existing dwelling especially in basement units even under the Ordinance. So he's fully aware of that now.

Under 5.26 the Ordinance says if you're going to add dwelling units to an existing dwelling, there are a series of dimensional requirements that need to be adhered

to. This -- prior to that this would be a pre-existing non-conforming building, and so the addition of these new units, things like open space, things like FAR now have to be complied with.

I would say that the FAR even with the basement GFA counted does meet the 0.75 that's allowed by the Ordinance. So that was --

CONSTANTINE ALEXANDER: But he cannot satisfy 5.26.

ATTORNEY SEAN HOPE: Not fully, which is why we need relief.

CONSTANTINE ALEXANDER: Which is why you need a Variance.

ATTORNEY SEAN HOPE: Which is why we need a Variance.

I would just also note, too, in terms of the parking, there are seven units now and it does have at least seven parking spaces. The FAR is consistent with what's

allowed in the district, but the lot area per dwelling unit, the lot area allows four and a half units and they have seven.

The hardship is somewhat awkward, but it is the fact that they are there, that they would be empty, because you can't take them away.

CONSTANTINE ALEXANDER: I'm going to go back to my what's troubling me very much about this. You're an experienced architect.

KEITH MOSKOW: Yes, may I say something?

CONSTANTINE ALEXANDER: Go ahead.

KEITH MOSKOW: I've had my practice in Boston for 28 years. During that time we've probably done 30 or 40 or more projects in Cambridge. This is not a town where you slip things in. I mean, we work very closely with the Building Department because you want to maintain a good relationship. We have a very good relationship with the inspector. So when it came to our attention, we go, oh, you

know, what did we miss? But I can walk through and show the plans as they existed, as we proposed initially, and as they were finally designed if that's helpful.

CONSTANTINE ALEXANDER: I'll let other members of the Board decide. You still haven't addressed my point. There's a very basic test to be sure you can put seven units in and you didn't do it. And you're experienced. So I'm troubled by -- and what I'm hearing, probably incorrectly, but what I'm hearing is you wanted to renovate a building, you thought it was going to cost X. It's going to cost, it turns out, no fault of your own, it's going to cost 2X or 3X and you said oh, my God, I can make this building much more valuable if we can put two more units in. And it looks like there must have been at some point two more units in a seven-unit building. But the next step would have been to go down to the Building Department and get confirmation and check the records that you could have seven units there. And if you had done that, you would have seen no, you can't,

you can only have five units. Then you can come before us or try to come before us and get a Variance.

But now after the fact you've tried to do the seven units. It was picked up by the Building Department. And now you're coming in and basically asking for mercy if you will, because you have these two units that you should not have started construction on without getting better -- getting the facts straight. And I'm troubled by the fact that that's not a hardship. Your problem now is not a hardship that runs with the land. It's a substantial hardship to you personally or whatever entity owns the structure that you're now forced with a bigger bill with a fewer units than you had hoped to have. That's where I come from. That's where my troubles are.

ATTORNEY SEAN HOPE: I would only say that I do think that the hardship does run with the land. So the financial hardship maybe --

CONSTANTINE ALEXANDER: It's caused by, the

hardship is caused by -- it's not existing, it's caused by your client.

KEITH MOSKOW: Can I speak to that one moment?

Not to be argumentative.

CONSTANTINE ALEXANDER: No, no.

KEITH MOSKOW: It's the back story. When we went in to do the project initially, we were -- our approach, we were going to spend \$100,000; switch windows, put in new kitchens, new baths. As we -- and initially stepping back, we should have looked at it and said, okay, and done that zoning review. We saw seven units. Five units. It made more sense, it was more cost effective to put in five units. Five plus units because we had some unit we didn't know what to do with. And I can show it to you in the plans. When we started opening up the building, the structure -- we ended up rebuilding the whole interior of the building, leaving the exterior as it stands because it was in such awful condition. And in pulling out the stair because it didn't

meet code and it was falling apart and rebuilding the structure, the actual floors, there was a six inch differential from across the building. I mean it was not a place (inaudible). When we had to pull all those things out, we go, okay, you know what, if we're doing all this work, we might as well make it a better building, bring it entirely up to code because nothing was to code previously. And our error is that we went and looked at the record and saw it had always been a seven-unit building, been paying taxes on a seven-unit building. So we assumed it was legit. We submitted plans to the Building Department. Once again we weren't trying to pull this over anybody's eye, and there were other questions. There was no question about the seven units. And so we continued with the project. And unfortunately we weren't flagged then because then we wouldn't be here now but we are.

ANDREA HICKEY: Could I ask a question?

So there's a history of two permits, the first

permit was for five plus?

ATTORNEY SEAN HOPE: Uh-huh.

ANDREA HICKEY: Can you tell me what year that permit was applied for?

BRENDAN SULLIVAN: Gus, can I see the -- there's a copy of the building permit in there.

KEITH MOSKOW: 2014.

ANDREA HICKEY: And you said there was a subsequent permit?

ATTORNEY SEAN HOPE: That's right.

ANDREA HICKEY: And how many units was that?

ATTORNEY SEAN HOPE: I think when you amend the permit, you amend the plans.

ANDREA HICKEY: Okay.

ATTORNEY SEAN HOPE: But so the amended permit showed seven units, which is what we have today. So the amendment of the plans was exactly what they believed they were going to get a CO from.

ANDREA HICKEY: Just so I understand procedurally:

You applied for five plus units in 2014. You went back in to amend that application or was it a new building permit application?

KEITH MOSKOW: No. We just went in with the revised plans to the inspector and we didn't submit for a new building permit. And it is my office. I wasn't working entirely on the project. We do a lot of things. But I -- we did not pull an additional permit. We were working under the same permit.

ANDREA HICKEY: Did a permit issue that said seven or seven plus units?

BRENDAN SULLIVAN: A copy of the building permit is here. You keep on saying five plus, Sean. It says five, there's no plus there. It says five.

CONSTANTINE ALEXANDER: Yeah, I couldn't envision a building permit that says five plus. It makes no sense.

KEITH MOSKOW: Do you have the application or do

I?

ANDREA HICKEY: Brendan is that 2014?

ATTORNEY SEAN HOPE: The petitioner does have a building permit that has five plus on it. And I don't mean the actual permit, it's the application. When you apply for the building permit, he put five plus on it.

JIM MONTEVERDE: I'm assuming the thing that has the document, the legal document is the permit not the application, correct?

ATTORNEY SEAN HOPE: Yeah, so --

JIM MONTEVERDE: I see it. But in the end it's what ends up on the permit.

ATTORNEY SEAN HOPE: We're trying to impress that the intent was saying that we always -- the petitioner always knew that there were more than five units, but the permit itself, correctly, did not say five plus. So the City did not say you could have five or more units. It was the application that he put forward.

JIM MONTEVERDE: Right. And when the amended plans are submitted that shows seven units, the permit itself isn't amended to allow you the seven units or to state that it's seven units. Correct?

ATTORNEY SEAN HOPE: Not in this case.

KEITH MOSKOW: No, no, it was not, because we worked with the inspector. We, we thought we were doing the right thing.

ATTORNEY SEAN HOPE: And they're fully aware they weren't, because the actual CO says five units. And the basement says N/A which is the initial permit.

ANDREA HICKEY: So this is the only permit application? This application --

KEITH MOSKOW: Yeah.

ANDREA HICKEY: -- that says five plus?

And the city didn't issue anything saying seven?

ATTORNEY SEAN HOPE: No.

So, again, I think to be transparent, came in at

five, that's what they had a building permit for, believed there were seven, did not educate themselves.

KEITH MOSKOW: Yeah.

ATTORNEY SEAN HOPE: On how you do this amendment process in the appropriate way.

BRENDAN SULLIVAN: I'm sorry, what was the last statement, did not what?

ATTORNEY SEAN HOPE: I said did not amend the permit in the appropriate way to allow for th two additional units, but did show seven units on the plans -- and it's not -- we're not trying to put any responsibility on the city, but did fully disclose it. And it wasn't flagged until the CO, until the time of CO.

CONSTANTINE ALEXANDER: Which is the time you expect it to be flagged. I would think. I'm not familiar with the inner workings of the Building Department. I think they don't focus on the number of units. They look at the plans that were submitted, that's what they're looking at.

And they don't focus on the number of units until the completion of the job. They rely on the petitioner or the applicant to comply, build a number of units within the building permit which is fine.

ATTORNEY SEAN HOPE: I would definitely agree it's the applicant's responsibility to be able to highlight that. I do think on the amended plans, they do highlight and bubble when you make changes. And so the basement is flagged. But to your point, it is the applicant's responsibility to understand the code and highlight that. So we're not trying to push any responsibility off.

KEITH MOSKOW: Yeah, I take that responsibility. I missed it.

CONSTANTINE ALEXANDER: And you're experienced --

KEITH MOSKOW: I'm an experienced architect. Yeah, I missed it. As we all have lots going on. It's a small office, and still lots going on.

BRENDAN SULLIVAN: I'm in the construction

business and do work in a number of community, pull permits in a number of communities. When we make a substantial change, if we make what I consider a little bit of an abnormal change to any project that we're working on, I immediately go right down to the Building Department, explain to the building inspector and ask him what he needs from us. Last year he said he needed full set of structural drawings because we were changing LVLs. We were changing some steel beams and so on and so forth, and not to proceed until after those things were submitted which we did. I brought it in to him, it then became part -- he certified them, acknowledged them. That, became part of the record. All along the way you really have to inform them and inform them in detail exactly what you're doing or you run the risk of later on they come back. And it was fortunate for us, for me, because they changed building inspectors halfway through this project. The new building inspector was questioning, however, where he saw the previous inspector

had approved it, he allowed it. Now, the building inspector obviously is not involved in zoning going from five units, which is what the application says, to whatever you felt justified increasing seven units should have been reviewed for zoning. When you apply for a permit, there is a number of applications, there were a number of approvals that are sought, one of them is zoning. At some point somebody should have been pro-active and said is this okay for zoning? It never saw Sean O'Grady's desk at all. And that's fatal. So to submit that we think it's seven, you know, should have the building inspector then passed it on to Sean O'Grady for review? I wasn't there, I don't know the mechanism. I don't know. The project took how many years to do?

KEITH MOSKOW: Multiple.

BRENDAN SULLIVAN: So that at some point the level of detail may get sort of washed away.

KEITH MOSKOW: Yeah.

BRENDAN SULLIVAN: And focus, focus and detail because it takes so long and the building inspector obviously is focusing not on this particular project.

KEITH MOSKOW: Yeah, many.

BRENDAN SULLIVAN: But many, many, many. And he's relying upon, and I think the onus is on you, to make sure that, and again, I think this is a huge substantial change that everybody all along this approval process is aware of it and has signed off on it.

ANDREA HICKEY: If I could just ask regarding the Assessor's records, I think we'd all agree that they don't sort of allow any particular use. As I read the Assessor's records now, the property's assessed as four through eight, four dash eight units. Was it ever assessed as seven?

ATTORNEY SEAN HOPE: Yes. So on the cover page on the first sheet it will say four through eight, and that's any property I think over three units is four through eight.

ANDREA HICKEY: Correct, I understand that.

ATTORNEY SEAN HOPE: But when they actually -- if you look further down on the Assessor database it actually says seven units. On the second page of the Assessor's database of which I have here, first page says four through eight and then it talks about the number of units on the second page. And so it says seven units.

ANDREA HICKEY: Again, I don't think that's controlling. I don't think --

ATTORNEY SEAN HOPE: It's definitely not. And I said the same thing.

KEITH MOSKOW: And that was my error. I own that. I own that.

CONSTANTINE ALEXANDER: Nobody is discussing --

ATTORNEY SEAN HOPE: I guess the only point I wanted to establish was that this wasn't out of nowhere. Like you'll see this and oh, we have seven units. There is history. There is a building card from 1984 saying that there were eight units in the structure. There was a

history of in 1947 that it was used as a rooming house.

When they looked at the structure, there was the Assessor's database but there was also the layout of the existing structure that led the petitioner to believe that there indeed were seven or eight units, multiple units.

CONSTANTINE ALEXANDER: Yeah, but you also knew that for many years only five units were in the building, maybe at some point and there probably were seven units, you should have come back to the Inspectional Services Department and clarify the zoning. Can I go up to seven units?

ATTORNEY SEAN HOPE: I fully agree.

CONSTANTINE ALEXANDER: That wasn't done. And now after the fact, and I'm troubled by the fact that I think it's tied up with the cost of this project and why he went to seven units. I think if it had been as simple as you thought it was going to be at the outset and just, and did some renovations, you would have stayed as five units.

There's a linkage here that troubles me.

ATTORNEY SEAN HOPE: Correct me if I'm wrong, though, it wasn't that there were five units to begin with and decided to go to seven.

KEITH MOSKOW: Yeah.

ATTORNEY SEAN HOPE: The structure was the same rooming house, the same layout, and we brought the plans.

CONSTANTINE ALEXANDER: But you only had five units, five rentals, five incomes coming in.

KEITH MOSKOW: Well, initially -- when I took over, when I got in there, it was in bad shape no doubt about it. It had not been fully rented for many years. I don't know. This project predates me. When we gutted it out and I looked at the plans, I analyzed the plans which I can show you, and it shows either seven or eight units within the building. And it was a mess. No doubt about it, it was a mess. So....

ATTORNEY SEAN HOPE: I just think that's different

than if it was rented as a five-unit building. You start renovating, all of a sudden you said oh, we have seven, let's get more. I think the idea was it was vacant in disrepair. There was a history of being seven or eight units. It's established by a building permit card. And so I think it's a little different then having five rental units and wanting to get more because of costs versus having a delapidated seven or eight unit building, you wanting to do five because five laid out better, then seeing the cost and saying, hey, let's go back to what we thought was original. This doesn't negate the fact that it's the applicant's responsibility to go check zoning. We're coming here saying this was a mistake, but it was an honest mistake. There was no intent to add more units or to do anything to circumvent the appropriate process.

ANDREA HICKEY: When it was last fully rented, how many units were rented?

KEITH MOSKOW: Last --

ANDREA HICKEY: Fully rented.

KEITH MOSKOW: That predates me. That predates my involvement in the project.

CONSTANTINE ALEXANDER: Before you started your renovations, how many -- I think that's Andrea's question.

ANDREA HICKEY: Yeah.

KEITH MOSKOW: Well, there was, there was time when the building needed to clear out, and as people cleared out because you can't --

CONSTANTINE ALEXANDER: Before you asked people to clear out because you were going to renovate?

KEITH MOSKOW: I can't tell you honestly.

ATTORNEY SEAN HOPE: I think the only thing we can establish, that there is a building card from 1984 that says eight units. And I brought a copy. I think that's the last time someone went in with a building permit, and there was eight units on the building permit card.

KEITH MOSKOW: It was a mess. It was a mess. And

I mean, if we could have done quick and dirty, we would have done it.

ANDREA HICKEY: So when did you take over sort of active management or ownership?

KEITH MOSKOW: I didn't take over ownership. My father took over about six or seven years ago. He's now 84 and still works. And he asked me to go in and he goes, look, he's 84. He wants to get things cleaned up. He goes Keith, go clean this up. And it was a process because it was in bad shape. So I got involved right about the time when these first set of plans were drawn, which was 2013.

ANDREA HICKEY: How many kitchens were in the building at that time?

KEITH MOSKOW: We can look at it together. We're going to look at it together.

JIM MONTEVERDE: When you say units, what's a unit? Is it single room occupancy? Is it an apartment?

KEITH MOSKOW: Do you mind if I mark this?

CONSTANTINE ALEXANDER: No, no, it's yours.

KEITH MOSKOW: Good point. But you can have it.

So there was one apartment that was -- and these were screwy layouts. It was in a very large apartment right here.

CONSTANTINE ALEXANDER: And where's the -- there's kitchen's right at the bottom.

KEITH MOSKOW: Right here. And there was one apartment right there. And there was a kitchen.

CONSTANTINE ALEXANDER: That's two.

KEITH MOSKOW: Two.

And on the second floor, and this is the floor that was the screwy one. There was one apartment right here. There was a kitchen.

And then there was these rooms -- here's a circulation hall to the egress stair, and then it went back here. There was a room there with a little kitchenette, I mean circa probably 19 probably six year something, a piece of junk. There was one here with a little kitchenette.

There was no bathroom in either of those rooms and they were disconnected. There was a bathroom right here. There was a kitchen, actual kitchen in there. And there was -- this was another room right here, but it wasn't directly connected.

ANDREA HICKEY: Were there full stoves in those kitchenettes? What do you mean by kitchenette?

KEITH MOSKOW: Well, if you imagine now you can get those pre-fabricated, you know, it's about this wide and everything's in it. It was the 1960s or '70s version of that.

ANDREA HICKEY: An oven?

KEITH MOSKOW: Yeah, a little dinky -- oh, a cook top not an oven.

ANDREA HICKEY: All right.

KEITH MOSKOW: A sink.

ANDREA HICKEY: Yeah, I don't consider those kitchens then.

KEITH MOSKOW: Refrigerators.

CONSTANTINE ALEXANDER: This was like a boarding house. Back half was a boarding house.

KEITH MOSKOW: Absolutely.

ANDREA HICKEY: Right, but we're trying to establish how many units?

KEITH MOSKOW: Oh, okay, I didn't finish. So kitchen, kitchen, kitchen, kitchenette, kitchenette. There wasn't anything in there. And then the top floor --

CONSTANTINE ALEXANDER: The kitchen I can see from here.

KEITH MOSKOW: Okay, good. Like my marker.

CONSTANTINE ALEXANDER: In terms of full kitchens, there's one --

ANDREA HICKEY: That's my question.

KEITH MOSKOW: -- two.

JIM MONTEVERDE: Four.

KEITH MOSKOW: Four.

CONSTANTINE ALEXANDER: Four, plus the boarding

house arrangement if you will.

KEITH MOSKOW: Yeah.

ATTORNEY SEAN HOPE: And I mean when we talk about eight units, these are not eight modern units. This was a rooming house and there's versions of that. And so I think maybe that's the point for Ms. Hickey you're saying, there wasn't eight units they way they are. There was a rooming house and it had some of these stairs --

CONSTANTINE ALEXANDER: A combination rooming house and apartment house.

ANDREA HICKEY: Yeah.

KEITH MOSKOW: These stairs met no code. I mean, they were winding.

CONSTANTINE ALEXANDER: Okay. I understand, renovate.

Further questions?

BRENDAN SULLIVAN: When the contractor went to pull the permit and the number of units and he must have

asked you or somebody associated with the family, how many units are there? And they told him five and he put down five regardless of --

KEITH MOSKOW: Well, I -- this I filled out.

JIM MONTEVERDE: But -- sorry.

BRENDAN SULLIVAN: So I guess that's what determines how many units were there at the time was five.

KEITH MOSKOW: Well, that was because our initial idea, our initial plan --

JIM MONTEVERDE: Right, the initial plan that was filed, right?

CONSTANTINE ALEXANDER: Yeah.

KEITH MOSKOW: The initial plan.

CONSTANTINE ALEXANDER: It was only when they got into the actual tearing the place apart you find out things.

KEITH MOSKOW: Same sort of layout. I mean a very large unit here, here, and because we were leaving, we were leaving this hall once again, we made a big apartment here,

made a small one in back and we didn't know what we were doing with that.

JIM MONTEVERDE: Right.

KEITH MOSKOW: But only once we -- that's what we thought we were doing. And only once we started opening it up and saw in what terrible shape it was in, and once again working with Grover, the more we saw, the more we had to do. I thought you were talking about our project, because we had to provide full structural plans after the fact because it was so bad.

CONSTANTINE ALEXANDER: These two, the two units in question, if you will, between five and seven, where are they located in the basement?

ATTORNEY SEAN HOPE: In the basement.

KEITH MOSKOW: That's right.

CONSTANTINE ALEXANDER: And how big are they?

KEITH MOSKOW: They are -- square footage wise?

CONSTANTINE ALEXANDER: Well, give me an idea.

They're not as big as the five apartments above obviously?

KEITH MOSKOW: No, I'll show you.

CONSTANTINE ALEXANDER: So you're talking
about....

JIM MONTEVERDE: So you constructed the five
above, you renovated the five aboveground --

ATTORNEY SEAN HOPE: That's right.

JIM MONTEVERDE: -- and then added two in the
basement.

CONSTANTINE ALEXANDER: Kitchen.

KEITH MOSKOW: Kitchen and bedroom. Kitchen,
living, bedroom. Kitchen, living bedroom.

CONSTANTINE ALEXANDER: One bedroom apartments?

KEITH MOSKOW: One bedroom, yeah. They're studio.
I mean they're one bedroom. You rent them more as a studio.

BRENDAN SULLIVAN: Are these rentals or are they
going to be condoed?

KEITH MOSKOW: Rentals. No intention -- I mean,

there's no intention of condoing them.

ATTORNEY SEAN HOPE: The other thing I would like to say is so there must have been some preexisting use allowed because the zoning says that only four and a half units are allowed. So it wasn't that you had five units, five units was necessarily grandfathered. I think and then close to inspection even five units should have had some sort of relief required or some showing that there was five kitchens. That may have happened or not, but I think the idea is five is what they felt fit best, not necessarily was allowed by zoning, because zoning wouldn't even allow five. So I think they came in and said hey, this is chopped up, let's do five units. The mistake happened and they made these additional units.

But I think getting back to the Chair's hardship point, I do feel that, you know, having -- obviously to the petitioner this is a financial impact. But even if this building was passed on to another user, he would still have

two units fully sprinkled, fully ready, completed, and is sitting vacant. I think that is a hardship. It's economic waste. You may pay less for --

CONSTANTINE ALEXANDER: The hardship is caused by -- and I'm not dispersions, but it's caused by your failure to do --

ATTORNEY SEAN HOPE: Definitely.

CONSTANTINE ALEXANDER: -- maybe what you should have done with regard to the building.

ATTORNEY SEAN HOPE: And I know that's the challenge for the Board, when you cause your own hardship. But I still think the hardship is still there. And I think we hopefully tried to establish there were clean hands. The mistakes shouldn't have been made, but it wasn't intentional nor was it malicious, and so now we're here as the Board recognizes with these two units, you know, I think we eventually would like to get onto the City's housing stock and to be able to be occupied, but we also recognize that

the Board doesn't like to reward behavior which doesn't comply with the City's regulations and that's the situation we're in.

CONSTANTINE ALEXANDER: You summarized it very well.

KEITH MOSKOW: And I agree with him.

CONSTANTINE ALEXANDER: You summarize it very well then, too.

KEITH MOSKOW: I prefer not to be sitting here, but we are.

BRENDAN SULLIVAN: The one possibility that I might allow the two units they're going to be rentals, is that they be affordable rentals.

CONSTANTINE ALEXANDER: I had the same thought.

JIM MONTEVERDE: My question was were all seven market rate or is there some other --

ATTORNEY SEAN HOPE: They're market rate. You know, if you were going to have an affordable unit, either

the city would require you or you'd have to do something else. But this is not an inclusionary project. They're all market rate. The size of the house doesn't reach the point where affordable would be required. It's 10,000 square feet or ten units and this is below that.

CONSTANTINE ALEXANDER: We had a case over where the fire damage was in East Cambridge. They basically wanted another unit. And I think was it you or Mr. Rafferty?

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: So we suggested would have made this extra unit affordable, and we said we would be interested in that and we continued the case and you come back, if it was you, your client said no, he doesn't want to go --

ATTORNEY SEAN HOPE: It was Jim.

CONSTANTINE ALEXANDER: It was Jim?

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: The affordable route and we never got there. But I had the same reaction that Brendan did. Is there a possibility of dedicating, if you will, or whatever the right word is, these two basement units as affordable housing? And it's got to stay as affordable housing? We'd have to put sufficient -- you don't have to decide tonight. If you want to continue the case, I prefer you decide tonight, and to think about it some more, that's your call.

ATTORNEY SEAN HOPE: Yeah, I think --

KEITH MOSKOW: I can't make that decision but I'm going to get pushback on that. Big pushback.

CONSTANTINE ALEXANDER: Okay. All right. That's fine. I mean it's your call.

ATTORNEY SEAN HOPE: So I think one, we probably want to establish with the city what that affordable level would be. I mean you probably want to be educated as you talk to the other trustees.

CONSTANTINE ALEXANDER: Oh, yeah, we couldn't do it tonight.

KEITH MOSKOW: Yeah, I'm not a trustee.

ATTORNEY SEAN HOPE: But I think it may be helpful also to the Board to tell the petitioner what the alternative might be.

CONSTANTINE ALEXANDER: Well the alternative is the Variance is denied.

BRENDAN SULLIVAN: As far as the affordable aspect whether it be rental or it be condo, the person who'd you want to talk to is Chris Cotter at Community Development.

KEITH MOSKOW: Yeah, I heard the word condo. These aren't going to be condominiums.

BRENDAN SULLIVAN: No, in the future should you decide not to rent it, to get out of that affordable housing aspect in the basement and say we're going to condo it, I would still push that the units in the basement be affordable.

CONSTANTINE ALEXANDER: Absolutely. If I'm going -- speaking only for myself, if we were going to vote on this basis it would only be that those in perpetuity those are affordable units. Not -- can't be changed unless you come back to this Board and this Board, whoever is sitting here, changes the decision. But, no, it will be locked in forever, affordable housing. That would be the framework we're talking about. Because I would be a little bit nervous about if it's not done quite right, the affordable housing over time like what happened in the past will somehow become a market rental.

BRENDAN SULLIVAN: Would you like the opportunity to talk to your client and then we could go on to the next case and then come back?

CONSTANTINE ALEXANDER: Pushback, you know, you made the decision.

BRENDAN SULLIVAN: Rather than having the spotlight on the table.

KEITH MOSKOW: No, I can't make this decision.

JIM MONTEVERDE: He has to continue.

CONSTANTINE ALEXANDER: Continue?

JIM MONTEVERDE: Right? They need to continue.

ANDREA HICKEY: I still think we should give him
an opportunity to speak to counsel before --

CONSTANTINE ALEXANDER: I don't have a probable
with that. If it's going to be affordable, it's not going to
happen tonight because you can't make the decision.

KEITH MOSKOW: I can't -- I can make a decision
but I may get killed.

CONSTANTINE ALEXANDER: Well, what do you want?
What's your pleasure? You want to talk a little bit?

ATTORNEY SEAN HOPE: Yes, please.

CONSTANTINE ALEXANDER: We'll take the next case
and come back. Okay.

ATTORNEY SEAN HOPE: Yes.

(Case recessed.)

* * * * *

(8:20 p.m.)

(Sitting Members Case BZA-015541-2018: Constantine

Alexander, Brendan Sullivan, Andrea A. Hickey, George S.

Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 015541, 19 Francis Avenue.

Is there anyone here wishing to be heard on this matter? You've been here before and you know the drill.

KELLY SPEAKMAN: My name is Kelly Speakman and my address is 30 Bow Street in Somerville.

CONSTANTINE ALEXANDER: Before we go any further, I want it on the record that -- it should be noted one of the co-owners of this property and, therefore, a petitioner is a regular member of our Zoning Board of Appeals. Obviously she's not here and it's not Andrea. She's not here tonight, but just so everyone knows that we're considering a case involving one of our board members.

KELLY SPEAKMAN: Yes, I'm here on behalf of Allan and Janet Green who live at 19 Francis Ave. They live in a single-family home which is an in a Res A2 zone. And currently they have a rear porch that is not in kind with the rest of their house. I brought some photos. It's right

here.

So this is the current rear porch which has screens on it and a very low roof. It doesn't quite match the rest of the home which is actually a very nicely detailed house. And the petitioner would like to take this porch off which is currently causing leaks in the house, and also really is a hindrance to the circulation between the home and the rear yard. And as they take it off, they would like to put back a porch befitting of the house. So to raise the roof and to match some of the detailing that's currently on the side, take off the screen porch, and add a door to the back that currently isn't there now so that they can see their backyard from their home and enjoy the porch and the yard more. The existing house is non-conforming for GFA. It's slightly too big and slightly too high. The proposed porch addition is not in any setbacks. And they're coming to ask permission to take down the old porch and build a new one which is 81 square feet bigger than the

existing.

CONSTANTINE ALEXANDER: And you touched what I wanted to get on the record. 81 -- you're going to increase the GFA by 81 feet if we grant relief?

KELLY SPEAKMAN: Exactly. Yes, they could put a porch without a roof which would actually be removing some GFA, but it's maybe not in kind with the rest of the detailing of the house, and they're really trying to match the side.

CONSTANTINE ALEXANDER: And it diminishes the use of the -- it would become a deck then.

KELLY SPEAKMAN: Yes, exactly.

CONSTANTINE ALEXANDER: It wouldn't be a real porch.

KELLY SPEAKMAN: Exactly.

JIM MONTEVERDE: Is that the drawing?

KELLY SPEAKMAN: I brought some small sets too if that's easier.

JIM MONTEVERDE: Thank you.

KELLY SPEAKMAN: Anyone else?

CONSTANTINE ALEXANDER: George?

GEORGE BEST: Yes.

KELLY SPEAKMAN: Right on the front page you can see the first floor plan. This pink part is the part we're looking to add, 81 square feet. And we're also looking to change a window now to a door which is not part of the Variance request but just helps to get the circulation through the house out to the back.

CONSTANTINE ALEXANDER: I'll give some of my board members a chance to look at -- you all set?

JIM MONTEVERDE: Yeah.

CONSTANTINE ALEXANDER: George, more time?

GEORGE BEST: No.

CONSTANTINE ALEXANDER: Questions from members of the Board at this time?

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: No.

I'll open the matter up to public testimony. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. The Chair will report that we are in receipt of one e-mail from David and Nancy Smith who reside at 21 Francis Avenue. (Reading) Allan and Janet Green have shared with us the plans for their porch reconstruction at 19 Francis Avenue. We are their nearest neighbor to the north and heartily approve of the changes. The size and design of the new porch are very appropriate to the style of the house, and will be a definite improvement in our view. And that's what we have.

I will close public testimony. Discussion or we ready for a vote?

ANDREA HICKEY: Ready.

CONSTANTINE ALEXANDER: Everybody's ready.

The Chair moves that we make the following finding

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 would be that the petitioner would not be able to modify this clearly inadequate porch, on this as true enough not only for this petitioner, but any person who owns the property. The porch is inappropriate to the rest of the structure.

That the hardship is owing to the shape of the structure. The structure is such that a new porch or a reconstructed porch is called for with respect to the architecture of the building.

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

In this regard the Chair would note that the relief being sought is modest in nature.

That the neighbor most affected by what is being proposed is in support of the relief being granted.

And in general this will improve the living -- the housing stock. I'm sorry, the housing stock of the City of Cambridge.

So on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans prepared by Boyes-Watson Architects, dated, some date.

JIM MONTEVERDE: 3/2/18.

CONSTANTINE ALEXANDER: Thank you.

March 2, 2018, and initialed by the Chair.

All those in favor, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

KELLY SPEAKMAN: Thank you much.

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

* * * * *

(8:25 p.m.)

(Sitting Members Case BZA-015567-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: We're going to reconvene the Harvard Street case first.

ATTORNEY SEAN HOPE: Thank you, Mr. Chair. After discussing with the client, we'd like to explore what the implications of an affordable rental would be with Chris Cotter. I think we, you know, figuring out financially what that would mean and educate ourselves on that. So we would

like to request a continuance to another date that's appropriate for the Board. But I think pretty quickly we can make an appointment with Mr. Cotter and try to figure out --

CONSTANTINE ALEXANDER: One of the things I would ask you to talk to Mr. Cotter about is safeguards to ensure that these two units will remain affordable for the life of the structure and report back to us on that. It's kind of conditions should we grant the relief that need to be imposed.

ATTORNEY SEAN HOPE: Yeah. It's a little different because usually there's an affordable covenant versus the zoning decision.

CONSTANTINE ALEXANDER: You have to figure out how to do it, exactly.

It's a case heard obviously. We'll need -- first of all, what date would you like?

ATTORNEY SEAN HOPE: I think the next.

SISIA DAGLIAN: The next available would be April 12th. The 22nd of March is closed.

ATTORNEY SEAN HOPE: Yeah, I think that's a little soon.

CONSTANTINE ALEXANDER: April 12th okay?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Does that work for everybody here?

ANDREA HICKEY: It's not good for me unfortunately.

CONSTANTINE ALEXANDER: Not good for you?

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: What's the one after that?

SISIA DAGLIAN: April 26th.

ANDREA HICKEY: That I can do.

CONSTANTINE ALEXANDER: April 26th? Going once.

JIM MONTEVERDE: I'm fine.

CONSTANTINE ALEXANDER: You okay?

Okay, April 26th it will be.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: The Chair moves that we continue this case as a case heard subject to the seven p.m. on April 26th subject to the following conditions:

First, that a petitioner sign a waiver of time of decision. That is being drawn up right now.

Two, that the posting sign be modified to reflect the new date April 26th, the new time, seven p.m. And that the sign be maintained for the time that's required under our Ordinance the 14 days prior to the hearing. Be sure you do that. And make sure you modify the sign. People forget to change the date or the time and we can't hear the case. So please do that.

And lastly, and this may not be as relevant, to the extent you're going to modify any plans, which I don't think you've submitted. Well, any new plans or modified plans or dimensional forms must be in our files no later

than five p.m. on the Monday before April 26th. That's to give us time should it be relevant to examine them and also the citizens of the city as well. Okay?

On the basis -- so all those in favor of continuing the case on this basis, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. See on the 26th.

ATTORNEY SEAN HOPE: Thank you very much.

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

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-015524-2018: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case

No. 015524, 288 Norfolk Street.

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

ATTORNEY ARTHUR KRIEGER: Thank you, Mr. Chairman.

CONSTANTINE ALEXANDER: This is a little more complicated than the last one.

ATTORNEY ARTHUR KRIEGER: Members of the Board. Yes. This is a little more complicated.

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

ATTORNEY ARTHUR KRIEGER: Yeah, I'm sorry, sure. Art Krieger from Anderson and Krieger representing AT&T, the petitioner.

I have copies of the photo sims that I will pass out this time because it is a little more complicated. There is a history here that is important and I think supports the application. First of all, with me are Sanket Joshi RF engineer from left to right, Oscar Suarez, civil

engineer, and Dan Bilezikian, site acquisition, should any questions arise that I can't answer.

In 2013 this Board granted the Special Permit for this facility. The Section 6409, the Middle Class Tax Act was 2012, but had not been fleshed out yet and I think that was not as much of an issue at the time. So that was just Special Permit relief. What this Board did was it selected from various designs cannisters, faux penthouses, faux chimneys. It selected chimneys for sectors B and C, beta and gamma. It deleted one of two of each pair. So that it went from four antennas per sector in two chimneys to two antennas in one chimney in each sector. And it wanted to get sector A's antennas off the roof because of the multiple facilities up there by various carriers. And so A was facade mounted below one of the other carrier's antennas.

There are three other carriers already on this building as there were then.

So now that facility was never built for business

reasons.

Now, we're back seeking essentially the same relief, and pursuant to the Board's choice last time, we propose two chimneys in sectors B and G, beta and gamma, and the same facade mounted antenna below the existing one for sector A.

The chimneys are a little bit bigger because antennas have developed with the development of technology and increased data. I can give you dimensions. They are a bit bigger than the previous chimneys that were proposed. This time the Planning Board wanted to hear it unlike the previous one tonight, and the Planning Board had one comment. I think you probably seen their letter dated February 22nd. The Board's only recommendation concerns the one proposed faux chimney enclosure that is rotated at an oblique angle relative to the building and other rooftop enclosures. In other words, they wanted to square it to the building, and if that can not be done, the Planning Board

said they prefer a cylindrical enclosure, i.e. a cannister, painted to match the color of the other existing cannister enclosures. We would be happy with either but pursuant to this Board's choice last time, we came in with the chimneys as I said.

CONSTANTINE ALEXANDER: You would do it, and oblique, it would be --

ATTORNEY ARTHUR KRIEGER: No, for radio frequency reasons, it can not be squared to the building. That would have been the obvious design, but that means the antennas would be shooting at an angle.

CONSTANTINE ALEXANDER: It's either oblique antenna or chimney?

ATTORNEY ARTHUR KRIEGER: Or a cannister.

CONSTANTINE ALEXANDER: A cannister. I'm sorry.

ATTORNEY ARTHUR KRIEGER: An oblique chimney or cannister. And if a cannister you can choose one or two cannisters because there are two cannisters for that sector

still. If it's one cannister, it would be 36 inches wide.

If it's two cannisters, each one would be 18 to 20.

Obviously you can save a little space by putting the two together. So with that. I have the old photo simulations if you want to go there, but I don't think we need to. Let me pass out the current photo sims and we can just walk through them or address whatever the Board wants.

And, again, these were in your package.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KRIEGER: You want one, too?

SISIA DAGLIAN: Is it different?

ATTORNEY ARTHUR KRIEGER: No.

Because the Board's familiarity with the site and the issues and these applications and the previous approval here, I have not addressed the need for the facility of the coverage gap, etcetera. It's the same coverage gap that existed last time. Now with even more demand, I'm happy to talk about those factors, but I think you just want to see

what it looks like.

CONSTANTINE ALEXANDER: You want to deal with the residentially zoned district, too.

ATTORNEY ARTHUR KRIEGER: We'll come back to those findings as well.

Okay, as usual on the second page, there's a variety of perspectives, the red dots show where all the photos were taken from. And then it's the actual and proposed. The sequencing you're used to.

So what is proposed, three pages in, it's called page 4 of 20 down at the bottom left, that's the oblique chimney. That's the chimney the Planning Board would like to rotate or replace with the cannister or two cannisters.

Turning to the next photo, again, actual and proposed. Here is the square chimney that the Planning Board had no problem with.

And the next pair, actual and proposed, again, you get the same views. I think you get the idea.

Let me turn to -- toward the back photo 7A page 15 of 20. On the actual view on that page shows the existing antenna facade mounted on the elevator penthouse. And the proposed view on page 16 of 20 is two antennas mounted below it. One is I think obscured by the tree in this photo and the other is directed by the existing.

Those are the three sectors.

CONSTANTINE ALEXANDER: This building wins an award for the most telecommunication items on a building in the City of Cambridge.

ATTORNEY ARTHUR KRIEGER: I didn't know there was such an award. But, yes, there would be --

ANDREA HICKEY: There is now.

JIM MONTEVERDE: I bet this would not be the award winner. There's more stuff glued on --

ATTORNEY ARTHUR KRIEGER: Well, I know the Board has been concerned in many cases about the proliferation of rooftop antennas. We've had this discussion before. Here

where there are three carriers where one is facade mounted, one of the antennas there proposed, I don't believe it adds significantly to the obtrusiveness of the building.

So I'm happy to stop there on that issue. Let me address the residential for a moment. I mentioned the three existing carriers on the building. This is a nonresidential building, although it's in a C-1 zone. You've a got a City of Cambridge DPW building visible in some of these photos next to it. So they're obviously nonresidential uses around it as well as obviously some residential uses. But we think that the nonresidential uses predominate primarily because of the size and nonresidential nature of this very building. I mean, it's not like it's one small nonresidential building tucked in a residential neighborhood. So between that and the existing facilities on it, we believe it meets those criteria for being in a predominantly nonresidential area and being consistent with the character of its area.

With that, I would request the same two forms of

relief, the Special Permit and Section 6409 relief. I'd be happy to go over Section 6409 criteria again, but you heard them in the previous hearing and you know them. I would think we'd pass the same five tests: Wouldn't increase the height, wouldn't protrude, wouldn't affect the base station, etcetera.

And I'm happy to answer questions or go over any of the other factors.

CONSTANTINE ALEXANDER: Questions from members of the Board?

JIM MONTEVERDE: I have a question.

CONSTANTINE ALEXANDER: Yeah.

JIM MONTEVERDE: So of the two chimneys that are proposed, one of them in the proposed view was the one that was slightly rotated.

ATTORNEY ARTHUR KRIEGER: Yes.

JIM MONTEVERDE: That's the one Planning Board took exception to?

ATTORNEY ARTHUR KRIEGER: Correct.

JIM MONTEVERDE: Of the two then, would there be one cannister and one chimney or both would be -- what would it be?

ATTORNEY ARTHUR KRIEGER: No, no. The chimney that is square to the building, which is photo 2B can stay as it is according to the Planning Board. So I would hope this Board would approve that.

The only change would be taking oblique one and replacing that with one or two cannisters at this Board's choice and that would satisfy the Planning Board.

JIM MONTEVERDE: It would be square, one chimney would be --

ATTORNEY ARTHUR KRIEGER: No, so you'd have one chimney squared to the building. One cannister or pair of cannisters, and one facade-mounted sector.

JIM MONTEVERDE: Yeah, I got it.

ATTORNEY ARTHUR KRIEGER: The Planning Board

seemed to prefer just by its wording one cannister, but I don't know that they thought about that issue.

CONSTANTINE ALEXANDER: And, again, the one or two, what's the difference in visual impact as you can describe it? We don't have any photo sims. You gave us dimensions before.

ATTORNEY ARTHUR KRIEGER: Yeah, the dimensions are either, one of them would be 36 inches wide and I think that either --

CONSTANTINE ALEXANDER: I'm sorry.

ATTORNEY ARTHUR KRIEGER: I think either Sanket or Dan can compare it to the other existing cannisters perhaps, and two of them would be 18 to 20 inches wide each separated by a few feet.

CONSTANTINE ALEXANDER: So the two would be slightly larger in terms of the visual impact. Two 20s is 40 as opposed to 36 inches.

ATTORNEY ARTHUR KRIEGER: Yeah, and it would

be -- you'd then have three cannisters on that edge of the roof instead of two. I think the cannisters, they may be a little bit bigger than the existing ones there because as I said the technology's changed and the cannisters need to be a little bit bigger for bigger antennas.

CONSTANTINE ALEXANDER: Let's ask the question right now. We have to answer it at some point, which do the board members prefer, the oblique chimney as described by the Planning Board or the cannisters, two I guess in nature?

I prefer the oblique chimney.

GEORGE BEST: Aesthetically the chimney.

CONSTANTINE ALEXANDER: The oblique chimney?

JIM MONTEVERDE: I would frankly prefer I think the combined cannister.

CONSTANTINE ALEXANDER: Two for the obliques, two for the cannister.

JIM MONTEVERDE: Sorry.

ANDREA HICKEY: I don't have a strong preference

as between the two. I think it's a --

CONSTANTINE ALEXANDER: Okay. Brendan?

BRENDAN SULLIVAN: It all looks bad.

ANDREA HICKEY: It's a tie.

BRENDAN SULLIVAN: It doesn't matter how much lipstick you put on it.

JIM MONTEVERDE: Can you put more lipstick on it?

CONSTANTINE ALEXANDER: If you don't mind, Jim, I'm going to tie it into the photo sims to show exactly what the oblique chimney looks like. We wouldn't be able to do that with the cannisters.

JIM MONTEVERDE: Okay.

ATTORNEY ARTHUR KRIEGER: I'm sorry, you're going to --

CONSTANTINE ALEXANDER: If we required you to have the cannisters, we can't -- the photo simulations don't show the cannister that will replaced the oblique chimneys in these photo sims.

ATTORNEY ARTHUR KRIEGER: So what we have from 2013 where there were a variety of these design choices all presented, we could show you the picture with two cannisters there.

CONSTANTINE ALEXANDER: You don't have it tonight, though.

ATTORNEY ARTHUR KRIEGER: We don't have a current one.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ARTHUR KRIEGER: Right. This is one with a slightly thinner cannister.

CONSTANTINE ALEXANDER: I just assume stay with what you've given us here.

ATTORNEY ARTHUR KRIEGER: That's fine.

CONSTANTINE ALEXANDER: Is it okay with you, Jim?

JIM MONTEVERDE: I can live with that.

CONSTANTINE ALEXANDER: Okay.

Any other questions from members or comments from

members of the board at this point?

(No Response.)

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

Is there anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. And we -- the only written communication we've received is the memo from the Planning Board that you've discussed already. So we've dealt with that. Otherwise the Planning Board is in support, or at least has not -- I should put it, not in opposition to the relief being sought.

I'll close public testimony. I think we're ready for a vote.

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

Mainly that the requirements of our Ordinance

cannot be met unless we grant the zoning relief requested.

That traffic generated or patterns of access or egress resulting from what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character. I got to make some other findings, too.

Next, that the continued operation of or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what is proposed. I guess there's been no adverse affect so far with all the other stuff that you have on the roof, this is not going to change life very much.

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

Ordinance.

Further, the Chair moves that we find that -- I'm looking for the language here.

That nonresidential uses predominate in the vicinity of the proposed facility's location. And as identified by petitioner's counsel, there are city buildings and other non- -- goes to the residential district, is not a pristine residential area.

And that what is being proposed is not inconsistent with the character that does prevail in the surrounding neighborhood. And if you take into account all the stuff that's on the roof right now, it certainly does -- it's not inconsistent with the character that does prevail in the surrounding neighborhood.

Further, the Board makes the following findings:
That the modification of its existing telecommunication facility at the site proposed by the petitioner does not substantially change the physical dimensions of the existing

wireless tower or base station at such facility within the meeting of Section 6490(a) of The Middle Class Tax Relief and Job Creation Act of 2012, also known as The Spectrum Act.

So based on all of these findings the Chair moves that the petitioner be granted the Special Permit it is seeking subject to the following conditions:

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

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

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

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

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

And then further, what follows can save you the bother of reading and get you out of here earlier, can we agree that we incorporate the same stuff we put in Linnaean Street we put it here?

ATTORNEY ARTHUR KRIEGER: About the FCC reporting?

CONSTANTINE ALEXANDER: Yes, and all that stuff.

ATTORNEY ARTHUR KRIEGER: Yes.

(Inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

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

Two, in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to the equipment permitted by the Special Permit granted tonight, fails to comply with

requirements of law or governmental regulation, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner within ten business days of receipt of notification of such failure shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure, and sixty calendar days after receipt by the petitioner of such notification of failure, the Special Permit granted tonight shall ipso facto terminate.

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

ATTORNEY ARTHUR KRIEGER: And as I've done in

other evenings, although not to tonight, for the record I object to it.

CONSTANTINE ALEXANDER: For the record, you oppose it. We understand that.

Okay, so on the basis of all of these --

ATTORNEY ARTHUR KRIEGER: May I ask a question before the deliberations?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ARTHUR KRIEGER: So you're opting for one cannister? I understand it.

CONSTANTINE ALEXANDER: No, no. We're asking for what's on the photo sims, the oblique chimney.

ATTORNEY ARTHUR KRIEGER: Oh, I'm sorry. You went with the chimney.

CONSTANTINE ALEXANDER: Yeah. He wanted the cannister, but he got outvoted.

ATTORNEY ARTHUR KRIEGER: Oh, okay, I'm sorry. So you've got the photo sims you need. That's fine.

CONSTANTINE ALEXANDER: Just what you've shown to us.

ATTORNEY ARTHUR KRIEGER: Sorry.

CONSTANTINE ALEXANDER: All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Now you want a separate vote on The Spectrum Act?

ATTORNEY ARTHUR KRIEGER: Yes, please.

CONSTANTINE ALEXANDER: The same vote we took before with regard to Linnaean Street subject to the same conditions that we've imposed with regard to what I'll call the Zoning Special Permit.

All those in favor please say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hickey, Best, Monteverde.)

CONSTANTINE ALEXANDER: Opposed?

(Sullivan.)

CONSTANTINE ALEXANDER: One opposed.

JIM MONTEVERDE: Can I ask these guys one question before you go away?

ATTORNEY ARTHUR KRIEGER: Sure.

JIM MONTEVERDE: So if I really didn't want to see all of this rooftop stuff anymore, I'm assuming that cannister or chimney, what's it made out of? What's the -- there's a skin material special so that whatever frequency you're trying to broadcast through it can get through it. What's the cannister made out of and what's the chimney made out of?

DAN BILEZIKIAN: It's basically fiberglass.

JIM MONTEVERDE: Fiberglass.

DAN BILEZIKIAN: Fiber reinforced plastic.

JIM MONTEVERDE: Someone knew they were going to

lease their entire roof, if they put a fiberglass screen around all of it, you could park your stuff anywhere and we would never see it?

DAN BILEZIKIAN: Good to go.

JIM MONTEVERDE: Thanks.

* * * * *

(8:50 p.m.)

(Sitting Members Case BZA-015542-2018: Constantine

Alexander, Brendan Sullivan, Andrea A. Hickey, George S.

Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 015542, 80 CambridgePark Drive.

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

DAVID HALL: Yes.

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

DAVID HALL: Good evening, Mr. Chair. David Hall, Hanover Company, representing 88 CambridgePark Drive Limited Partnership.

RYAN MADOR: Ryan Mador, M-A-D-O-R, representing Hanover Company.

DAVID HALL: Mr. Chairman and Members of the Board, we're here before you tonight for a request for a signage Variance on CambridgePark Drive. The address of the property is currently 80 CambridgePark Drive. I'll show you an area if I could orient the Board to what we're talking about.

So we're before you again for this very same subject to remind the Board Hanover Company has built three

projects in the sort of -- along the southern side of CambridgePark Drive starting with No. 160 here. This is CambridgePark -- I'm sorry, Alewife Brook Parkway, the T, and CambridgePark Drive just to orient you. And our second project, 130 came before you for a signage variance. I should have looked up the date, but it's at least a year, maybe a year and a half ago, where we argued before the Board that because of this project's location sitting behind another building off CambridgePark Drive that we had a substantial hardship for wayfinding and for people locating the project. That Variance was granted. And that was for a sign too high --

CONSTANTINE ALEXANDER: Yeah, it was too high but not nearly as high as the sign you're proposing. And the sign we approved had a design to it and fit the design of the building. And it also had the address. Your sign doesn't have an address.

DAVID HALL: Yes, and we're going to remedy that,

Mr. Chairman. Let me keep going.

So, we're here before you for the same concept, and based on comments from the neighborhood, Mrs. O'Hare in particular, two things came up:

One particular concern over an illegal sign that we had on this garage while it was under construction. We apologized to the City and the Board and commit that that won't happen again. Our management folks got a little ahead of us and it was an error and it was inappropriate and it was really substantially too big. So we understand the Ordinance. We understand the requirements of temporary signage, banners, and the marketing folks got up there and put something up that was inappropriate. So the City has our commitment that it won't happen again.

This we're talking about a permanent sign of the similar nature of what was approved before. And in that same e-mail Mrs. O'Hare commented that we ought to have the address. So we've done a new -- hand them out.

JIM MONTEVERDE: Sorry, while you have that Board, are we talking about 80 CambridgePark Drive?

DAVID HALL: Sure, it's this -- it's this project.

JIM MONTEVERDE: The one that's labelled 88?

DAVID HALL: Yeah. I'm sorry, when we permitted it, it was called 88.

JIM MONTEVERDE: But it's that block?

DAVID HALL: There's some confusion. There are multiple addresses now at the property and it's under construction. It's not open yet. So this is in preparation for an opening at the end of the year.

CONSTANTINE ALEXANDER: This is what you're proposing?

RYAN MADOR: Correct.

DAVID HALL: So we -- after Mrs. O'Hare's e-mail, we thought through it, and indeed it should have the address on it.

CONSTANTINE ALEXANDER: You know, this was

supposed to have been in our files by five p.m. last Monday. You're not supposed to hand it out.

DAVID HALL: Well, I understand that. Maybe we'll need a continuance over that, but we thought it was a good idea that was raised very last minute this week and we thought we'd discuss it with the Board tonight. But the idea is a very, the very same dimensional requirements are obviously adhered to. All the fonts have been reduced in size, but the ADCPD has been placed in there.

CONSTANTINE ALEXANDER: The sign is the same height as the sign that's --

DAVID HALL: Yes, sir.

CONSTANTINE ALEXANDER: That's not changed?

DAVID HALL: That has not changed.

CONSTANTINE ALEXANDER: Why don't you have a sign on CambridgePark Drive, a small sign right in that -- I don't know what that road is or easement, whatever it is, that says 80 CambridgePark Drive and an arrow up above? Why

don't you have that?

DAVID HALL: Let me explain. This is a private driveway controlled by the other property owners, of which we are involved with them, but they're not all the same ownership.

CONSTANTINE ALEXANDER: Right.

DAVID HALL: And there's a huge MWRA pipe underneath there and an easement that limits and requires, does not allow any structures to be built on top of it. So, all along this road in a place where we could do it, there's really no logical place to do it. Plus we would be requiring on -- relying on the cooperation of other property owners whom we have talked to. Those two property owners are Vecna which we are now permitting. So we are eventually going to be hopefully doing this project, but I can't come before the Board and commit to something that hasn't happened yet that we don't control. And there's still very little room here with that MWRA easement. This property

owner, we've talked to them and they've not agreed to allow a monument sign out here. So I just don't control the property, Mr. Chairman, and so I can't put a monument up. So the dynamic of putting it over here I want to discuss a little bit with the Board because this is obviously a very heavily traveled bridge, and Alewife Brook Parkway. And you're gonna see this massive building, it's very prominent from the bridge. You have it in front of you. And you're not gonna know what it is. Is it an office building? Is it an apartment for rent? Is it a condominium building? And we think it's a good spot to put some identifier to let people know --

CONSTANTINE ALEXANDER: Come on.

JIM MONTEVERDE: I'm sorry, just to complete your thought. Is it on that face that's facing the --

DAVID HALL: It's on this face. It's on this face, because this face -- when we argued before you on this, you can see this facade of the building from

CambridgePark Drive down the alley, down this street. So the Board thought that was reasonable. Ryan has a picture of that sign. It sits -- orients itself vertically. It's the same type of lettering. Same --

CONSTANTINE ALEXANDER: Question. If I'm driving down I guess it's Route 2 from passed Alewife --

DAVID HALL: Yeah, right here.

CONSTANTINE ALEXANDER: Yeah, down here.

DAVID HALL: Yes, sir. Yes, sir.

CONSTANTINE ALEXANDER: I'm Federal Express driver and I've got package for 80 CambridgePark Drive. I see CambridgePark Drive, and I turn in down the street and I'm looking for the 80. Your sign, will that sign help that person find the building?

DAVID HALL: It will not.

CONSTANTINE ALEXANDER: No.

DAVID HALL: No, sir.

CONSTANTINE ALEXANDER: So the sign is not there

to identify the building to people who drive on
CambridgePark -- whatever, I can never get it right,
CambridgePark Drive.

DAVID HALL: It's the people that come from this
way certainly. It's only part of them.

CONSTANTINE ALEXANDER: But the sign is not
designed -- where you're placing the sign and the height of
it is there to -- it's not wrong to advertise. You got to,
you got a residential structure here and maybe you want to
come by and take a look -- it doesn't say that, you might to
see if there are any vacancies and the like. But the
purpose of the sign in a residential structure to me is
first and foremost to let people who might want to visit
people in the building or make deliveries know where the
building is, and you're not going to know that from where
you're proposing to locate the sign. A sign that's as where
you have your posted sign now on the face of the building
will certainly tell anybody who drives down the street this

is 80 CambridgePark Drive. The problem is that you don't, it takes a long while to figure out how to get down that street because of the problem of no sign on CambridgePark Drive. That is a real problem. But it's a problem you knew about when you got into this project. It's not exactly -- you know, I think signage became an afterthought, which is understandable. An afterthought to you as you developed this property and now you got a problem. And you want us to -- and you want us to approve a solution that doesn't solve the problem, in my judgment, because the sign is not in the right place.

GEORGE BEST: And I also think that what Gus is trying to say is it's not a wayfinding sign, it's a branding sign. And I think the Board would be least inclined to go with a branding sign.

DAVID HALL: Okay.

BRENDAN SULLIVAN: Access to the building, will it only be further up?

DAVID HALL: Yes, sir. Yeah, you would enter here, come down, and make a left here.

BRENDAN SULLIVAN: What about if you were going to go -- do you have access as if you were going into Summer Shack?

DAVID HALL: No. Now, there's construction access there, right, Ryan?

RYAN MADOR: It's temporary.

DAVID HALL: But it's only temporary. No, you cannot get in from here.

BRENDAN SULLIVAN: So that will be blocked off?

DAVID HALL: That will be blocked off. It will be bicycle and pedestrian from the T. We negotiated an access path there --

BRENDAN SULLIVAN: Summer Shack probably won't be there forever. But anyhow. So you're all, your access is down there.

DAVID HALL: It's an imperfect solution, but it's

a very similar nature hardship to this I would argue.

CONSTANTINE ALEXANDER: But the nature of the sign is different in my judgment for that that we approved than from what you're proposing tonight.

DAVID HALL: Only because this was vertically oriented so it reaches down to a little bit lower --

CONSTANTINE ALEXANDER: And it wasn't nearly as high. You're talking that sign is 57 feet if my memory is correct.

DAVID HALL: I don't remember. Does this start as a similar height?

RYAN MADOR: This is comparable. This is 130.

CONSTANTINE ALEXANDER: I'm sorry?

RYAN MADOR: This is 130.

CONSTANTINE ALEXANDER: Yeah, I'm wrong about that.

DAVID HALL: Yeah, it's up there. It just goes vertically, Mr. Chairman, so it reaches down to a lower

point. But it's a high -- we got a Variance for height and it's the exact same nature of lettering, isn't it?

RYAN MADOR: It is. It's aluminum finish.

DAVID HALL: And then the same lighting. And the Board objected to our lighting before and we changed that for you. But we -- and you approved a branding sign. It's Hanover Alewife. And so we thought it was a similar argument here. Acknowledge it's only capturing a portion of the visitors, but it's better than none. And I will tell the Board that we have had complaints from our management people that people even with this sign at 130 can't find us. It's just a problem. And it's not an afterthought. We always knew about it. It wouldn't be a reason to not do the project.

CONSTANTINE ALEXANDER: It's intriguing. It's an obvious problem you should have anticipated that you're way back from the street. You would think of as part of the project you would have come up with some proposal that's

acceptable to whoever you need to get acceptances from that would allow you to identify where your building is from Cambridgeside Park Drive (sic).

DAVID HALL: We tried. We always try. It wouldn't have been the kind of reason to not do the project being told no by the neighbors.

CONSTANTINE ALEXANDER: And similarly if we denied you the project tonight, the project still will go forward.

DAVID HALL: It will be fine. But we believe we have a hardship. We believe we have a ship very much in the nature of the prior hardship that was granted by this Board, and we are trying to reduce confusion in the general public arriving to a place that's a little congested now, a lot congested, and this is a very prominent building from this bridge, and I think it will be nice for the citizenry arriving to know what it is. Some indication of an address and some indication that it's --

ANDREA HICKEY: But they'll only know it if

they're coming that way.

JIM MONTEVERDE: It doesn't get you -- I was going to ask you where the front door is. Because it doesn't get you there. It just says there's an element in the landscape.

DAVID HALL: That's true.

JIM MONTEVERDE: And you have to find it.

DAVID HALL: That's true.

JIM MONTEVERDE: And the good news is my GPS probably will.

DAVID HALL: That's true. But I think the average person can recognize is that's where I'm going and I have to make two lefts to get there. There's no other way to do it.

BRENDAN SULLIVAN: You know, there's a lot of buildings in that whole area as it gets built out and on the other side of Concord Ave., and I drive up and down there all the time and I wonder what's going on in there.

DAVID HALL: It's confusing.

BRENDAN SULLIVAN: That doesn't give us the opening then, to put signs on every single one of them. And as we did down at Kendall Square, you know, some of them you sort of hold your nose and say, okay, and you hope that's the last one. But unfortunately some of them can be like dandelions that, and that's where I start to get back is, and I think it's probably the citizen advocacy that has drawn our attention that we just can't start sticking these on every single building. Because they all have the same argument, that we need to identify ourselves for wayfinding and yet, today everybody wayfinds it by pulling out their phone, punching in the address, and it takes you right there. And they're really -- the wayfinding is less of a problem now as it is somebody who wants to brand their building for identifying purposes. And your argument could be said by everybody else who owns those buildings in there.

DAVID HALL: If I could --

BRENDAN SULLIVAN: We need our name up there so

that perspective customers, vendors, whatever, whatever is going on in those buildings, can find their way. And it doesn't stop the development. So anyhow, that's my feeling.

DAVID HALL: If I could respond. You're right, anyone could ask for the same thing, but no one other than the two who have asked are located in the back bench. There's the front bench, here's the varsity, and we're the junior varsity, okay, back here. This is the street. These are private driveways. So there's only two applicants that have been before you for this request and they are here because it's a hardship because we're in the back row. Everyone else is a front row seat. Everyone. So you're right, and we could ask but they wouldn't have the same arguments that we hope we have.

CONSTANTINE ALEXANDER: Okay.

DAVID HALL: We'll be fine without it, Mr. Chair and the Board, but it would be consistent with what you've done before and a great help to at least a portion of the

folks coming to this property.

CONSTANTINE ALEXANDER: Okay.

DAVID HALL: Thank you.

CONSTANTINE ALEXANDER: Other questions from members of the board before I open the matter up to public testimony?

JAMES WILLIAMSON: Questions? Questions first?

CONSTANTINE ALEXANDER: Yeah, sure, that's public testimony.

JAMES WILLIAMSON: Yeah, information, first before I have an opinion, I want to understand -- to be sure I understand what's going on.

CONSTANTINE ALEXANDER: James Williamson for the record.

JAMES WILLIAMSON: Yeah, thank you. Could you bring that up again, please?

DAVID HALL: Sure.

JAMES WILLIAMSON: So if I -- the material that

you handed out, one is an example of an earlier --

DAVID HALL: That's correct.

JAMES WILLIAMSON: -- sign that was approved?

DAVID HALL: That's correct.

JAMES WILLIAMSON: That's the 130?

DAVID HALL: Correct. With the red on it, yes.

JAMES WILLIAMSON: And now you're asking for approval for now --

DAVID HALL: That is correct.

JAMES WILLIAMSON: And if I understand you correctly, you're proposing to have it -- can you explain where on here?

DAVID HALL: Yes, Ryan has a handout for that but it's -- to your question, it's that building. The building is outlined in red and it's where the star is.

JAMES WILLIAMSON: Where the star is?

DAVID HALL: Yes, sir.

Can everyone see that?

JAMES WILLIAMSON: So that then the sort of nuance question is why given what people have been asking about wayfinding would you not have it on the side that faces the Alewife T station, for example?

RYAN MADOR: That is the sign we have now. Well, I mean the T is.

JIM MONTEVERDE: Around the corner.

JAMES WILLIAMSON: No, I mean around the corner. At the corner. If you see -- if you bring it up.

JIM MONTEVERDE: Facing north.

DAVID HALL: Just point to your - like this corner?

JAMES WILLIAMSON: Yeah, right there. I mean have you considered that at all?

DAVID HALL: No, we're going for the bridge. We're going for the traffic on the bridge.

JAMES WILLIAMSON: Second question is -- fine. What I don't understand from the materials on-line there

seem to be two signs. There's this sign and then there's the leasing, big leasing banner. Are you just asking for approval for one of those?

DAVID HALL: Yes, sir. And the leasing banner I referenced as a legal act. We screwed up. It won't happen again.

JAMES WILLIAMSON: That's great. Okay. So I will hold off on any comments and let others speak first.

Thank you.

CONSTANTINE ALEXANDER: Ms. O'Hare, do you want to speak first? Or do you want to speak at all?

CAROL O'HARE: Oh, I do. Yeah.

CONSTANTINE ALEXANDER: Just your name for the record.

CAROL O'HARE: Carol O'Hare, 172 Magazine Street.

So I just heard from Mr. Hall today and he received a copy of my e-mail, and you know, you're not gonna believe this, but I'm sympathetic to this property just

because there was a property over in Kendall Square and I'm blocking with the name of the biotech, but they were off Third Street and down and --

CONSTANTINE ALEXANDER: Right.

CAROL O'HARE: -- and some day it will come back. But you allowed them to have a sign higher than permitted so that it's visible from the public way. And this petitioner seems to have no option unless the Vecna property is acquired by them to display a sign that is visible from the public way in that vicinity. So you -- I don't know whether you can consider attaching that as a condition or making it a commitment that if they do acquire, if Hanover does acquire ownership or control of what is now the Vecna property they will put the sign there.

CONSTANTINE ALEXANDER: What happens to the sign --

CAROL O'HARE: What happens -- well, before they put -- if they acquire control before the property is

completed, and that they will instead go for a legal sign on the Vecna property that's visible from CambridgePark Drive.

And the second part is that, you know, Mr. Hall said that this whole area calls itself CPD, but CPD, I heard it and I said Cambridge Police Department? Because that's what it is, Cambridge Police Department. And even though this whole area calls itself CPD which is --

DAVID HALL: It's beginning to I said. It's beginning to.

CAROL O'HARE: Yeah, but even though it does, and maybe they all refer to it shorthand, that nobody outside who doesn't know this whole area will know what CPD says, and nor will the map finding guides say anything about CPD, 85 CPD. They will say CambridgePark Drive. So I would suggest that the main sign, if it's going to be approved at the top of the building or wherever it's visible from a public way, would be 85 CambridgePark Drive. And if they want to put the name of the building, let that be smaller.

Hanover, Hanover whatever it is. But the main point of these signs is the street number and name.

CONSTANTINE ALEXANDER: That's right.

CAROL O'HARE: For the fire department, for people punching in CambridgePark Drive, and then so you could request that.

The third thing is that Mr. Hall made a commitment to you, and I don't know if you can include it, but you know, they have properties in seven states. They have two or three or four in Cambridge. This is not a dinky developer. They are asking for a Variance. They had lawyers probably apply for this Variance. They need to understand and commit in a rigorous way that no signs for leasing their properties in the future will violate the zoning law.

CONSTANTINE ALEXANDER: You're referring to the sign that they've --

CAROL O'HARE: I am.

CONSTANTINE ALEXANDER: -- acknowledged that they violated.

CAROL O'HARE: Their leasing signs that all of these big rental property owners have, you know, bathed their buildings in "for rent" banners. And it's, you know, it's tacky.

CONSTANTINE ALEXANDER: It's also violates our zoning laws.

CAROL O'HARE: And it violates the law. So that's it. I don't, I don't oppose the sign except the way I said.

CONSTANTINE ALEXANDER: Well, I hadn't noticed this until you pointed it out, but why doesn't the sign just simply say 80 CambridgePark Drive and delete Hanover CambridgePark?

DAVID HALL: It could.

CONSTANTINE ALEXANDER: Would you do that if we conditioned relief on that?

DAVID HALL: Ryan, I'll leave it up to you.

ANDREA HICKEY: I could tell you I'd be more inclined to vote favorably if Ms. O'Hare's recommendation was adopted.

DAVID HALL: And would we be required --

CONSTANTINE ALEXANDER: Same here.

DAVID HALL: But Mrs. O'Hare also asked you to take that off.

CAROL O'HARE: It's not Mrs.

DAVID HALL: I did that three or four times tonight and I apologized three or four times.

ANDREA HICKEY: And I only did it because you did it so my apologies.

DAVID HALL: Carol also said that if we get a monument at Vecna this would come off, is that what you said?

CAROL O'HARE: Yeah.

DAVID HALL: Off the building?

CAROL O'HARE: Off the building.

DAVID HALL: Might the Board could -- like give a Variance and take it away?

CONSTANTINE ALEXANDER: I'm not as enthusiastic about that.

DAVID HALL: Once we're approved, we'd be disinclined to take it off but we would agree to just the address.

CAROL O'HARE: I meant if you get control over the Vecna property before you put the sign up --

DAVID HALL: Oh.

CAROL O'HARE: -- then you would use the Vecna property instead for your sign because it's closer to where people are gonna want to see it.

DAVID HALL: Okay.

CAROL O'HARE: Before they make their turn and turn.

ANDREA HICKEY: Yeah, I understood that proposal in the first presentation as being in perpetuity, which I

think is what you would object to.

DAVID HALL: Yeah, I really don't want to be in a position of being told to take something off a building that has been granted a legal Variance.

ANDREA HICKEY: I understand that.

DAVID HALL: But I would agree to the address alone.

GEORGE BEST: So I have a totally different take on this altogether. I think house numbers belong near your front door, and I think on the side of the building or the face of the building where the door is that's where your -- the number of your building should go. That's my opinion.

Having it advertised on the CambridgePark Drive is to me branding. If you're wayfinding, it would be closest to where the fire department and every utility could figure out what the building is, what the number of the building is. So that's my suggestion.

RYAN MADOR: We will also have the addresses on the front doors of each building.

DAVID HALL: Absolutely.

GEORGE BEST: But I'm saying take that same sign vertically and put it horizontally down the face of the building.

CONSTANTINE ALEXANDER: I don't think the architecture will support that, though.

DAVID HALL: It does not. It does not. We thought about that. We thought about putting it on the metal panel area. It doesn't work near -- Alewife was designed for this. That fin of the red building was designed for a sign. And we testified as such last time.

CONSTANTINE ALEXANDER: I know you did.

DAVID HALL: So this was -- this was designed to have a sign up here.

CONSTANTINE ALEXANDER: I take it even if we were to grant you relief tonight, you're still going to put the

number on the front door?

DAVID HALL: Yes, sir, absolutely.

RYAN MADOR: Absolutely. Have to.

DAVID HALL: And to clarify for the Board, there would be multiple addresses.

CONSTANTINE ALEXANDER: And all that would be in compliance obviously?

DAVID HALL: Yes. There are two buildings on the project on either side of the garage. There will be a retailer in this corner. So how many addresses did we apply for and get?

RYAN MADOR: It would be four. This will be 80 CambridgePark Drive, the larger building. The parking garage is 82. The smaller building's 84, and then the small retail component on the first floor will be 88.

DAVID HALL: We'll mark it and have the leasing office here in 80 and the world will know it as 80. So if the Board wants it just to be the address, we wouldn't say

80 through 88 or whatever. We'll just say 80. But there'll be a Starbucks that could be 86 and the garage 84 as he just said. So I just didn't want there to be confusion over the numerals, and everyone will have a legal number at their door.

CONSTANTINE ALEXANDER: Anything further?

CAROL O'HARE: No, thank you.

CONSTANTINE ALEXANDER: James, did you want to speak?

JAMES WILLIAMSON: Yeah, thanks. So James Williamson 1000 Jackson Place. Thank you, and appreciate it. So I live right across Alewife Brook Parkway. So, I -- my impression is that -- and you sort of confirmed this when I asked one of my questions, that it's more about advertising to people going over the bridge than it is about the wayfinding dimension of this, not that -- I mean, that isn't also something that people are interested in. But so first of all, I do support the idea of it -- if there's

gonna be an approval for a sign that it should say 80. It's better if it says 80 CambridgePark Drive then if it says something else. The fire department, and they come out to where I live more than some of us would like, they -- the nearest fire station if I'm not mistaken is on the -- down Sherman. And typically they'll come out Sherman and take a left on Rindge Ave. And they're coming, they're coming this way. And so, you know, I can see an argument for a sign on this side of the building. In addition to that, I mean there are, there is -- there are people coming down who find CambridgePark Drive here, not over here near the railroad tracks or at Alewife Brook Parkway. And it seems to me that it's a little -- maybe a little confusing to have it here oriented more towards the traffic on the bridge than toward people who would be turning, looking to turn, looking for where CambridgePark Drive is, looking to turn on to CambridgePark Drive and then find their way from CambridgePark Drive. So I'm sort of thinking, which is part

of why I asked what I asked earlier, that something more at this end would seem possibly to make more sense in terms of that aspect? I'll also say that people have been killed, pedestrians, on Alewife Brook Parkway. It's a mess. It's already a dangerous very -- this is extremely dangerous crossing here. This thing is -- this little park has been totally neglected for years, leaving that aside. But the idea that people are going to be coming along Alewife Brook Parkway in their harried state, and it's going to be a good place for them to be advertised to, may not be the greatest idea here. I'm not saying, you know, how big of a deal anybody wants to interpret that, but it just seems like maybe not the best place to be looking for that sort of message in advertising.

So those are my thoughts I guess. Thanks.

DAVID HALL: We studied the view corridor from this and the sign is visible from that. Yes, you're right, we want this. This is the main goal, okay, the bridge. But

this is also visible. Didn't they say the signage company studied that.

RYAN MADOR: Yeah.

DAVID HALL: And we didn't design this cant in the building for that reason because this is curved. The property line is curved. We thought through this, and you can see it from here. I don't think it causes confusion.

JAMES WILLIAMSON: I'm thinking maybe a better word would be distraction for drivers who are already, you know, pissed off because they're stuck in traffic.

RYAN MADOR: And the fire department has been out multiple times, they've done dry runs. They know exactly where we are.

DAVID HALL: They're gonna know what's going on and where to go.

RYAN MADOR: We're very familiar with them.

JAMES WILLIAMSON: Well, that's why I say and coming from them -- you know that's, anyway, thank you.

CONSTANTINE ALEXANDER: Okay. Anyone else wishing to be heard? Mr. Brandon.

MICHAEL BRANDON: Hi, I'm Michael Brandon. I'm the clerk for the neighborhood 11 -- neighborhood organization. The North Cambridge Stabilization Committee. And I may have a few questions as James did before I get into substance. They're kind of procedural. I should let you know that I did invite David Hall to appear at our next neighborhood forum. We have monthly forums, to explain the -- what's being proposed and hear concerns that we've heard. Some of them were in Carol's communication. He declined to do that. You know, he wanted to go ahead tonight. So I guess our position would be very similar to what the members of the Board who expressed leanings would be the same, those would be the concerns that this is actually a branding sign attempting to put in identification at rooftop. And the Ordinance is pretty clear that the only place that's allowed is in hotels, which kind of makes

sense, where you have people coming from other cities and towns and trying to find their way to the Sheraton Commander for instance.

The -- it was mentioned about the other building that has the vertical sign. And actually when they originally proposed that building and submitted plans to the Planning Board it showed the address. Is it 130?

CONSTANTINE ALEXANDER: Yeah. And then the plans that were -- we made that comment earlier. We dealt with that already. That sign had the address. This sign didn't. And they've corrected it with the sign they're proposing tonight.

MICHAEL BRANDON: Well, except they're still having Hanover --

CONSTANTINE ALEXANDER: Well, that's different. But they acknowledged --

DAVID HALL: I've agreed to take that off.

MICHAEL BRANDON: They'll take that off. So the

sign could be, if we approved it, 80 CambridgePark Drive.

That's all that would be on the sign.

MICHAEL BRANDON: Okay, that answers a major concern. Although it would be an extreme Variance to go to the top of the building. It's not clear from the file where the photographs are coming from and what the perspectives are from various points as to what a lower sign on the building be visible from CambridgePark Drive. Will this sign be visible from CambridgePark Drive for pedestrians leaving the T?

CONSTANTINE ALEXANDER: Okay.

MICHAEL BRANDON: Procedural question we had was given the lack of visibility that they're arguing. Where was the on-site notice for this posting? For this meeting.

CONSTANTINE ALEXANDER: It was in the -- I can tell you where I saw it. It's in the building on ground level behind the plate glass window.

RYAN MADOR: I have three different locations. I

was given three signs. We have one on the fence closest to Summer Shack. One on the fence closest to 130. And then there's a third.

CONSTANTINE ALEXANDER: In the window right?

RYAN MADOR: There's one in the window as well. We were given three signs so we tried to put them as close to the property perimeter as possible.

MICHAEL BRANDON: Is there any on CambridgePark Drive?

RYAN MADOR: No, we don't have that --

CONSTANTINE ALEXANDER: They don't control that property. They don't control that property right when you come off CambridgePark Drive. That's the obvious solution. It would eliminate the need for this sign.

RYAN MADOR: Correct.

CONSTANTINE ALEXANDER: They don't control it and they can't do T. And we've been through it with 130 before and it is what it is.

MICHAEL BRANDON: And also the easement, can you see the easement that MWRA has. Can you show exactly where that goes. Is it under the driveway?

CONSTANTINE ALEXANDER: Mr. Brandon, we're not going to get into that. They've represented to us that the drive -- the easement the MWRA easement precludes the construction of a sign along this area, I'm going to call it an easement. Plus they don't control that property so they can't put a sign there.

MICHAEL BRANDON: But they will and I think in negotiating driveway easements, aren't you?

DAVID HALL: We are.

MICHAEL BRANDON: From what you represented when -- they presented the Vecna project to us, you know, so I find it surprising that you couldn't negotiate with Vecna to have a temporary sign there.

CONSTANTINE ALEXANDER: There's a third party involved, too?

DAVID HALL: It's 100 CambridgePark Drive, the office building.

MICHAEL BRANDON: Do they own both sides, because there's like a --

DAVID HALL: No. Vecna owns Vecna, and we're buying it from them.

MICHAEL BRANDON: On the driveway.

DAVID HALL: The driveway is owned by 100 CambridgePark Drive.

RYAN MADOR: There's a sign for 100 right now.

MICHAEL BRANDON: On the Vecna side?

RYAN MADOR: Correct.

MICHAEL BRANDON: Is that on their property then, too?

DAVID HALL: And the road is, too. The MWRA won't allow it and we don't own the property, and the other owner so far has not allowed it. If they allow it before we put it up as Carol asked, if we can get on a monument that would

be fine.

CONSTANTINE ALEXANDER: It would be even cheaper than putting this big sign up on the top of the building. You can put a much smaller sign on CambridgePark Drive.

MICHAEL BRANDON: I think there might even be cheaper way to do it than that which would be to design something small and tasteful pointing to 80 -- at that driveway so people know that's where you go to get to that building and the other building too for that matter.

DAVID HALL: But it's not visible?

RYAN MADOR: Yeah, correct.

DAVID HALL: It's small on Facebook but it's not visible I should say.

MICHAEL BRANDON: At the corner? I mean just like --

DAVID HALL: Michael, on property that I don't control.

MICHAEL BRANDON: You didn't let me finish. My

proposal would be that you design a sign and apply for the City Council just as they grant A-frames on public ways constantly, explain the problem, have a sign, talk to DPW.

DAVID HALL: On the street or the sidewalk on the public way?

MICHAEL BRANDON: Yeah.

DAVID HALL: And a temporary A-frame sign.

MICHAEL BRANDON: Well, I would prefer not the A-frame, but a permanent sign so you don't, you know, have this big branding sign advertising to -- to the other. You know, you already have one. And I don't think, you know, instead of CPD maybe you should call it Hanover bill or something. But it just seems completely over the top to me. And also to the Board, I don't see probably four votes in favor of this but, you know, he said that it's -- if they can get by with it. So I would suggest that and let them explore other ways either through -- on the Vecna site when they obtain it or through the City Council granting them

permission to put up a well-designed sign at the driveway, and that will be more like what a lot of the other owners do, such as 100 right now has a sign saying, you know, visitor parking for that building back here. It will be more useful to people like coming out of the T who, you know, won't be inclined to look up in the air I don't think. So I hope you'll deny this or continue it to get more information to see if that might work.

CONSTANTINE ALEXANDER: Thank you, Mr. Brandon.

MICHAEL BRANDON: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: We don't have -- we had a number of letters in our file but they mostly addressed to the idea of -- or in opposition to the sign as proposed. Not what you have before us tonight and what you agreed to do tonight. And it's the same point that's been made before

orally tonight about why don't you make a deal with Hanover, and the letter is from Doug Brown who is the President of the Fresh Pond Residents Alliance. And the summary, the key is: It seems like an easy fix for Hanover to make arrangements to use a small portion of street fronting property for a zoning compliant sign that doesn't require drivers to look at the sky to locate the property. And you've spoken to why that's a problem. Although Mr. Brandon has a suggestion. If you have to go before City Council to get approval for that, I'm not sure whether an A-frame sign is for this purpose, but anyway. My point is we're not ignoring the comment that's been made, just acknowledging it, and that's about it.

So I'm going to close public testimony and I think it's time for us to deliberate what we're going to do.

I personally, going first, I would approve this sign where it's located except that the signage will say 80 CambridgePark Drive period. Because I can see the other

issues involved. I'm disappointed that you weren't -- somewhat didn't focus on this earlier in your negotiations in developing this property. At some point you had to realize it. But I suspect no one frankly on the real estate side would have appreciated the technical zoning issues that you're facing tonight. To me it's understandable. I don't think of you as deliberately ignoring our zoning law.

Anyway, that's my view. I would vote in favor on the basis of the plan being modified as I've said.

Anyone else want to comment on offer thoughts?

ANDREA HICKEY: I'm sorry. I would agree with you and vote favorably on the sign without the Hanover language and without the CPD.

CONSTANTINE ALEXANDER: Jim.

JIM MONTEVERDE: I at the moment much to my distress, wouldn't favor the proposal or the modification of it. Just, I don't see the -- I understand the difficulty --

CAROL O'HARE: I can't hear you.

JIM MONTEVERDE: I understand the difficulty, but I can't support the proposal the way that it stands now to have that sign, that size that location. I see the benefit to the other sign that you presented that the other vote approved, the other vertical sign that's more inboard on the property, and it's unfortunate that something like that wouldn't help you here. So I just -- I don't support this one given everything you've said.

CONSTANTINE ALEXANDER: All right. Anybody else want to comment or go to a vote?

GEORGE BEST: Sure, I'm just -- I have a question. You sure you want to go forward with it or you want to go back and discuss it? And that's probably not my place to discuss this place, but relocating the sign because I wouldn't be in favor of doing it that way.

CONSTANTINE ALEXANDER: I'd only point out, George, if we were to turn it down, they can come back with

a new sign proposal and go through the repetitive petition drill but it wouldn't be precluded for two years if they came back with something different just so appreciate that.

GEORGE BEST: Okay.

CONSTANTINE ALEXANDER: Brendan.

BRENDAN SULLIVAN: I would concur with Jim and George on their reasoning, so I would be opposed to the application.

CONSTANTINE ALEXANDER: So do you want us to take a vote tonight or do you want to continue the case and to come back with an alternative proposal, different location?

DAVID HALL: So we can come back with a different sign, just a new application process.

CONSTANTINE ALEXANDER: No, no, no. It wouldn't be a new application process. We would continue the case --

DAVID HALL: No, if you voted and then we came back with a wholly different sign, new application.

CONSTANTINE ALEXANDER: New application.

DAVID HALL: There's no time frame or delay. Two years you said it wouldn't be that.

CONSTANTINE ALEXANDER: What you got to do, you should understand this, the way our Zoning Ordinance works, if we turn something down here --

DAVID HALL: Yeah.

CONSTANTINE ALEXANDER: You've got to come back with a sign, I forget the word, substantially different. You have to do a public hearing and we vote on just on whether it's substantially different. Let's say we say it is. Then you got to go to the Planning Board, they got to make the same determination. And assuming both have decided, then you file an application on the merits with your new substantially different sign. So it's a little bit of a drawn out process. I want to you appreciate that.

DAVID HALL: Okay, that's helpful. We will ask for a continuance and come back with an alternative.

CONSTANTINE ALEXANDER: Okay. How much time will

you need? We've got to get all five of us present. April 29th seems to be the earliest.

SISIA DAGLIAN: April 26th.

CONSTANTINE ALEXANDER: I'm sorry, 26th. Can't do anything earlier than that. Would that be enough time for you?

DAVID HALL: Mr. Chairman, that's fine.

CONSTANTINE ALEXANDER: Okay. We have room on the calendar on April 26th.

SISIA DAGLIAN: Yes, that would be the third one.

CONSTANTINE ALEXANDER: Okay. We'll table this to April 26th.

The Chair moves that we continue this case until seven p.m. on April 26th subject to the following conditions:

One, that you sign a waiver of time for a decision. You've done that before at the other property.

DAVID HALL: Yes.

CONSTANTINE ALEXANDER: Two, that the posting sign that you have now, or signs, be modified to reflect the new date, April 26th, the new time, seven p.m. And that she is signs be maintained for the 14 days required under our Ordinance.

And three, to the extent you come back, presumably you will, with a new sign, that new sign unlike tonight must be in our files no later than five p.m. on the Monday before April 26th.

DAVID HALL: Yes, understood.

CONSTANTINE ALEXANDER: Got it?

DAVID HALL: Understood.

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

(Aye.)

CONSTANTINE ALEXANDER: Case continued.

DAVID HALL: Thank you.

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

* * * * *

(9:35 p.m.)

(Sitting Members Case BZA-015560-2018: Constantine

Alexander, Brendan Sullivan, Andrea A. Hickey, George S.

Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 015560, 221-225 and 227 Concord Avenue.

Is there anyone wishing to be heard on this matter? Good evening.

MARK BOYES-WATSON: I'm Mark Boyes-Watson.

BRENDAN SULLIVAN: Mark, you want to pull the microphone to you. Speak into it if you will.

MARK BOYES-WATSON: Mark Boyes-Watson from Boyes-Watson Architects.

LAUREN HARDER: And Lauren Harder.

MARK BOYES-WATSON: And Lauren Harder representing the owner. We are here tonight with request for two different Special Permits:

One relating to the proximity of some windows to parking spaces. And the other to the exclusion of gross floor area in the basements of the buildings. This is a building that's under construction and I'll just take you through where those areas of Special Permit occur. So I'm

gonna do this by turning this board up a little bit.

What I have here on this site is a site plan, basement plan, and this is just a perspective to give you a sense of what's going on on the site. I'll just take you very quickly through that so we understand what's going on. Right now there's a -- there was a structure here and a structure here when we first got to the site. We are basically introducing residential and that's under construction now. So this is a single-family house. It's an old historic house. This is a retail block. This is four townhouses, and this is a single-family that actually attaches into the retail block.

So, and the design of it is such that you, you can sort of see here. That here's the historic house. Here's the existing retail frontage preserved, and there's that little townhouse block in the back.

The Special Permits relate to the following:

So we, we have -- you come in existing driveway

and there's parking here for six cars for the six units.

And these parking spaces, there's a --

CONSTANTINE ALEXANDER: Excuse me, Mark.

If people are here interested, you can come here and stand behind us, you can see what Mark is pointing to.

MARK BOYES-WATSON: So there's a piece of the Ordinance that although with a one, two, three-family house, you can actually have parking close to the houses, but actually in this configuration of four townhouses, we would need a Special Permit to have these kitchen windows in that proximity. It's a sort of -- I think the idea of the Ordinance was that, you know, if somebody's running their car with an exhaust close to somebody's apartment or something. So here we have these three kitchen windows that are close. So we'd like a Special Permit to be allowed those windows that wouldn't otherwise be allowed. And clearly the plan can survive with or without them. It's nicer to have a window over your sink.

Relative to the basement with -- I'm sure you're very familiar now with the Barrett petition. It says in a one and two-family house you're automatically allowed to use the basement at whatever height. But it's not really -- so this is actually a single-family house that's really not in question. So this is that single that's the basement for it. This is actually a single-family house, but it's attached to the commercial. So it's really -- and the roles are still, even after Barrett it's still muddy in this regard. So we're here to get clarity on this. And we're asking for permission to use this basement above seven feet with it being exempt from GFA and the basement of these four townhouses.

CONSTANTINE ALEXANDER: Oh, I thought from looking at the plans that you were looking at the retail space.

MARK BOYES-WATSON: We are, in addition we're look to go do the retail space.

CONSTANTINE ALEXANDER: Why?

MARK BOYES-WATSON: The retail, we went through -- the viability of the retail is just increased if you can use the basement if you can put an office down there or whatever. It's just better.

CONSTANTINE ALEXANDER: The basement does not -- there's no windows?

MARK BOYES-WATSON: There's nothing. It's completely below grade. But it just increases retail viability. We can't really use it for much except for --

CONSTANTINE ALEXANDER: The only use for it would be storage, and you don't need to get --

MARK BOYES-WATSON: Well, you can have -- you know, you can have a piece of kitchen equipment down there. Retailers like to have that extra space. So for us, you know, right now we would be filling that space in if we don't get this Special Permit, so we're just asking to be able to use that for retail.

We went through a process, we were actually at the

Historic several times. We've been trying to get this design shaped up and, you know, the neighbors are very interested in having viable retail. It just helps the retail to have the extra space. I don't think it's also -- it's got no negative impact. Because it's completely below ground there's no negative impact, but it actually helps the retail.

CONSTANTINE ALEXANDER: And the only way to that basement is from the stores, the retail stores?

MARK BOYES-WATSON: No.

CONSTANTINE ALEXANDER: You won't be able to get there from the, is that a single-family house? That house there?

MARK BOYES-WATSON: There's -- no. Exactly unconnected. So actually and in fact the basement of this, this, and this are all unconnected.

CONSTANTINE ALEXANDER: How do you get to the basement -- I don't know why zoning.

MARK BOYES-WATSON: There's a stair right here.

CONSTANTINE ALEXANDER: That goes down to the basements?

MARK BOYES-WATSON: Yeah. And you can see a stair.

CONSTANTINE ALEXANDER: And that stair would be maintained if we approve the project?

MARK BOYES-WATSON: We will go down there regardless. The only difference will be either six-foot, eleven or will be seven-foot, seven. So if you grant the Special Permit, that basement will be seven-foot, seven high. If you don't, it will be six-foot, eleven high. So it, I don't know what it is now. Six-foot, nine.

LAUREN HARDER: It's around 7.7.

JIM MONTEVERDE: You want to exempt it from the --

MARK BOYES-WATSON: We just want to exempt it from GFA.

CONSTANTINE ALEXANDER: I just wasn't

understanding why.

MARK BOYES-WATSON: Yeah. It really helps actually. I mean, when you talk to the retailers, they would love to have that extra space. So that's --

BRENDAN SULLIVAN: What I'm troubled by on the townhouses, and we had this down on Webster Street where fellows built townhouses and then they came in afterwards, after they had -- at the same state these are in and asked for us to exempt the area in the basement or the first floor, or whatever it was. And, you know, why didn't they ask for that in the permitting stage? Well, because they would have been over the GFA. So before you build it, before you get your building permit, okay, you're going to need zoning relief for that in order for it to be liveable space. Well, then you come before us and get the whole thing in toto. I have a problem coming in after the fact, after the things are built. It's one thing if it's an existing building because the structure is there. What's

subterranean is subterranean, but I -- excuse me if I get the -- leave with the impression that it's sort of a back door way of getting some extra gross floor area as opposed to coming in beforehand. And I have a problem with that.

MARK BOYES-WATSON: Yeah, yeah, I understand that. I mean, from a proponent's point of view.

BRENDAN SULLIVAN: They knew they were going to do this.

MARK BOYES-WATSON: Yeah, yeah. No, I mean I think that when you look at the criteria for it, you know, the criteria for the granting of the Special Permit is that it be consistent --

BRENDAN SULLIVAN: Consistent with existing buildings. That's for existing buildings so then they said, well, okay, let's put up a building which is existing and now ask for it. That's what the whole Barrett thing was all about.

MARK BOYES-WATSON: Well, no, the Barrett thing

had two in it, right? It had accessory apartment rules and then it has the basement provision which is -- flies independently with that, whether it's new or old or whatever. And the Special Permit criteria for that is, you know, recognizing that there are useful spaces in the basement. I mean what's interesting with the town houses I hear what you're saying. I mean, obviously I can acknowledge that, but the -- is that actually, they've now -- the Building Code for townhouses is identical to the one and two family houses. They're trying to decide what a townhouse is, is it a single or is it not a single. So actually from a Building Code point of view, everything that pertains to a single-family house is identical to a townhouse. So the Barrett petition differentiation is kind of almost weird, but because with the two you can -- you can have a side-by-side two and that would be an as-of-right basement but you put the third one on and now you're here for a Special Permit. It's not -- it's just how it is, but

yeah.

BRENDAN SULLIVAN: What is the additional space to be used for?

MARK BOYES-WATSON: So in -- we're showing -- what the Building Department -- we are showing a bathroom and we're showing it as a bedroom because actually what the Building Department will do is as soon as that's usable, they will assume somebody might sleep down there so it's treated as a bedroom and you need an egress window and that's how standard.

BRENDAN SULLIVAN: Yeah, or it can be short term rentals.

MARK BOYES-WATSON: Well, that's true of anything can become short term rental.

BRENDAN SULLIVAN: I just have a problem with coming in after the fact.

JIM MONTEVERDE: And by permit what are you allowed now? What are you permitting for?

MARK BOYES-WATSON: So typically -- so this right now is permitted at six foot eleven and a half in the basement, which is just under seven feet and it can just be storage down there and you're allowed to have a bathroom down there. The bathroom is permitted in the six-foot, eleven. The way the Building Code reads that's habitable space because once the single -- once the townhouse is followed a single-family Building Code, six-foot eight is the minimum. There's some wrinkles in that with the Building Department otherwise I wouldn't be here at all so, you know, because, you know, it's just the interlacing of the history of all the codes that pertain. You could still argue could use those. So --

BRENDAN SULLIVAN: We just built four townhouses, and in the zoning analysis we had a basement height of -- it was just about six-foot, eleven and the question was is it liveable space to be used as liveable space; playroom, media room, family room, yadda, yadda, yadda because that would

have skewed the numbers higher. We would have then had to come down for zoning relief. No, we're going to do it as of right, so it is storage space and designated as storage space.

Now, it could very well be that we come down and ask for a Special Permit, but we built it with that assumption and got the permit as of right.

MARK BOYES-WATSON: I think -- I mean.....

BRENDAN SULLIVAN: If we had said, no, we're going to use it, then before we built it, we would have had to get the Special Permit. So I just have a problem this after the fact stuff.

CONSTANTINE ALEXANDER: Well the -- I'm just trying to frame -- I hear you and I think it's a very good point. I'm just trying to think how it works under our Zoning Ordinance.

BRENDAN SULLIVAN: Well, it's a Special Permit.

CONSTANTINE ALEXANDER: Yeah, a Special Permit but

the standard is here. We have to make a -- we have to find that the uses occurring -- the uses occupying such affected GFA support the character of the neighborhood or district in which the applicable lot is located. If they meet that standard, then they are exempt from the GFA for the basement. It's a pretty. It's unfortunately there's not much -- it's almost an automatic. It's a given. As the way it's drafted in the Ordinance. Though I think your point is very well taken. I'm just trying to figure out how to get there legally.

BRENDAN SULLIVAN: Well, I'm just one of five.

CONSTANTINE ALEXANDER: No, I know, I'm persuaded but what I'm hearing.

ANDREA HICKEY: So is there an explanation why it wasn't included originally?

MARK BOYES-WATSON: Well, typically, typically the -- you're in a longer loop if you come through the Board. So somebody who is trying to build something is

going to try to get going with their project, get it in the ground, and have the looping process like we are today. And I think that's just, you know, the -- you know, that's the logic if you are in that situation, that's the logical way of doing it. Because, because this process where it's noticed, etcetera, etcetera, etcetera, it doesn't happen --

BRENDAN SULLIVAN: But this project is three years in the making anyhow.

MARK BOYES-WATSON: Well, you know, until you know what to come from -- exactly and we've finally come up with a plan.

BRENDAN SULLIVAN: We started with Historical.

MARK BOYES-WATSON: And we've been through many public hearing.

LAUREN HARDER: Many of the iterations had been -- we originally had a garage in this project. We spent a lot of time designing that out. The unit that's in back behind the retail was originally above the retail, so

we brought that down. So there's been a number of iterative loops. I think we went to the Historical Commission three times on the project. There's been a lot of parts and pieces to come together just to get here.

BRENDAN SULLIVAN: It wasn't fast tracked.

LAUREN HARDER: Yeah.

MARK BOYES-WATSON: But it also means you can't come here until you know what you're doing. So, you know, there's a logic also to not -- because you don't know enough. And I've done many processes and you've seen me here many times, where, you know, we come here, we go back to mid-Cambridge Historic or to Historic. We come back here again. We go through the process--

LAUREN HARDER: I mean, I think it's true is it not, had we come in before --

BRENDAN SULLIVAN: Enough to know that you don't want to go there on Thursday nights.

MARK BOYES-WATSON: Well, no, what's interesting

is that look -- generally, I think all of these processes are great, but there is a logic to the way you're seeing this tonight is all I'm saying. It's not a scheme.

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

JIM MONTEVERDE: I would be, as much as I don't like to say this, I would be -- I have difficulty supporting it just given the fact that you're inches, you could have applied for it before, gone through all of this. By the description, it almost sounded like it would be a cakewalk to get what you're talking about now unless I misunderstood it.

LAUREN HARDER: Well, the original design had the basements different because there was a garage there. So had we come in --

JIM MONTEVERDE: Oh, I'm sorry, okay.

LAUREN HARDER: Had we come in then, then we would have had to come back anyway because the design changed two

or three times in the basement specifically.

JIM MONTEVERDE: Yeah, but I just have a difficult time supporting it on kind of an after the fact basis afterward that's all.

CONSTANTINE ALEXANDER: I mean you weren't here before, we had a completely different kind of case on Harvard Street. Same issues, I mean, after the fact people do something and then come and see us, and oh, sweep it under the rug. Give us a Variance to legitimize what we couldn't have done before and I think this Board doesn't react very well to that. And that's what you're hearing tonight.

MARK BOYES-WATSON: I mean on the other hand the criteria is fairly clear.

CONSTANTINE ALEXANDER: Yeah.

LAUREN HARDER: So you're saying to come in before and say before the permitting.

CONSTANTINE ALEXANDER: Show as the whole project.

LAUREN HARDER: Come here first.

CONSTANTINE ALEXANDER: Yeah.

JIM MONTEVERDE: Yeah. Get it together.

LAUREN HARDER: And I think to Mark's point, that delays the permitting process by about three months just to go through the process.

JIM MONTEVERDE: Sorry.

LAUREN HARDER: Yeah, no, I hear you.

CONSTANTINE ALEXANDER: Other comments from members of the Board or open the matter up to public testimony?

(No Response.)

CONSTANTINE ALEXANDER: Anyone here wishing to be heard? I assume these folks -- maybe you don't want to speak but it's up to you.

CAROL WEINHAUS: Sure, sure.

CONSTANTINE ALEXANDER: Why don't you go over there. And give your name and address to the stenographer

please.

CAROL WEINHAUS: My name is Carol Weinhaus. I live at 271 Concord Ave. And the reason why some of us are here is we're part of an informal group of 25 residents and business people but also collected a huge number of signatures to try and not down zone but just zone to preserve the local businesses in our neighborhood. And it was, it was a process.

And the only comment that I really wanted to make about this is one is to make sure that something didn't radically change. This is very different from what we've seen. There were two hearings not only the basement hearing but there was a second hearing where the basement was taken out, that's my understanding. So they had two things where none of us came in, we left it alone, none of us contested it. Then we put in our zoning and then they applied for a different plan, and we went to the Historical Commission and supported that, but we were really surprised to find that

now there's now a fourth time, and it's a huge amount of work because none of us are be paid to let people know and everything. The only comment that we as a group kind of have to make is that if he does the additional basement store thing that we get some of the stuff that we had wanted in the zoning which is no fast food, no banks or financial institutions, and no like chain stores, like the big chains, you know, Petco is doing small boutiques or Sophora, you know, they're getting around the zoning in New York. So if the commercial space is to go down and essentially give them a whole other commercial use, this is -- should you decide to do it, would I say the whole process has been kind of very difficult and it's like we shouldn't as residents and business owners have to keep coming back and coming back and coming back on the same project. And we did not contest the first two times. And it was only when we were trying to do the zoning they put in another button. I would just say that if you decide to give them the space in the basement,

that there is something that goes in. And so then you would also say why would you do it given there's no fast food in the zoning right now. But when it's another hearing and two is we know CDD told us during the four years that we all worked on this that the city is looking to change the zoning, and we just really don't want to have to come back.

So that's, you know, the only consideration that we're asking.

Thank you.

CONSTANTINE ALEXANDER: Okay, thank you. Thank you for taking the time to stick around this late.

Ma'am, do you want to speak?

CAROL WEINHAUS: Thank you so much.

CONSTANTINE ALEXANDER: Anyone else wishing to speak?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I don't think we're in possession of any written correspondence.

Let me just double check. No, I don't see anything here.

So I'll close public testimony. We have two Special Permits to be considered tonight; one is the parking issue about being too close that Mark has addressed, and the second is what we've been talking about at more length, which is the exemption of the basement from GFA.

Anybody want to express any further comments or we ready for a vote, two votes?

ANDREA HICKEY: I think with respect to the parking the people that buy these townhouses are going to know what they're getting.

CONSTANTINE ALEXANDER: I think that's right.

ANDREA HICKEY: So, I personally don't have a huge issue with that request.

JIM MONTEVERDE: I do because it's a straight planning issue. You knew it.

CONSTANTINE ALEXANDER: Parking?

JIM MONTEVERDE: No, I get it. The fact that

they're closer to the units or it's nicer to have a window there. I'm sorry, don't put the window in. You knew it. It's kind of cut and dry, isn't it?

MARK BOYES-WATSON: No.

JIM MONTEVERDE: Parking is too close.

MARK BOYES-WATSON: I think, though, the reason you have a Special Permit process is not cut and dry that you can come here and say, well, you know what, would it harm anybody? Would it harm the city? Would it harm the occupants of the units? I think that's the purview of the Board.

CONSTANTINE ALEXANDER: Yeah.

MARK BOYES-WATSON: And if it's not going to, the Board will grant the Special Permit.

ANDREA HICKEY: Yeah, I'd feel differently if those townhouses existed and there were people living in them, you know. But I would feel very differently in that case. But that's my opinion.

CONSTANTINE ALEXANDER: Anybody else want to comment or should we go to the votes?

(No Response.)

CONSTANTINE ALEXANDER: Okay, I'll start with the parking notes here, parking issue.

The Chair moves that we make the following findings with regard to the proposal seeking relief for four windows within ten feet of on-grade parking on the first floor of 227 Concord Avenue, and those requirements are:

That the requirements of the Ordinance cannot be met without the relief you're seeking.

That traffic generated or patterns of access or egress will not cause -- as proposed, will not cause congestion, hazard, or substantial change in established neighborhood character.

That this proposal with regard to the parking will not adversely affect the continued operation or development of adjacent uses as permitted in the Ordinance.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city. And that generally what is being proposed will not impair of the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

So on the basis of these findings the Chair moves that we grant the Special Permit regarding parking again as proposed on the condition that the work proceed in accordance with plans prepared by Boyes-Watson Architects dated February 7, 2018, and the first page of which has been initialed by the Chair.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Two in favor.

(Hickey, Best.)

CONSTANTINE ALEXANDER: Opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Three opposed.

(Alexander, Sullivan, Monteverde.)

CONSTANTINE ALEXANDER: The Special Permit has been denied. We need to take a vote to decide why we turned it down. And the reason I would suggest is that basically what is being proposed could cause -- could be detrimental to the health, safety, and welfare of these units.

There is a reason why there is the requirement that you're seeking relief from, and that in connection -- what is being proposed will impair the integrity of the district or derogate from the intent and purpose of this Ordinance. In this regard, again, that the petitioner knew this is not an old structure where you can't change the structure. You designed the structure knowing where your windows are going to be relative to the parking, and you went forward on that basis. And we can't find

support for that in our Ordinance.

So all those in favor of -- anything else you want to add?

JIM MONTEVERDE: That's good.

CONSTANTINE ALEXANDER: Brendan, anything you want to add?

BRENDAN SULLIVAN: That's fine.

CONSTANTINE ALEXANDER: All those in favor?

(Show of hands.)

CONSTANTINE ALEXANDER: Three in favor as to why we turned down the Special Permit for the parking.

(Alexander, Sullivan, Monteverde.)

CONSTANTINE ALEXANDER: With regard to the second permit with regard to the basement height. First, we have to take a vote that what is being pro -- that what you're proposing, changing the basement height will support the character -- I'm sorry, I have to find the place where it is here. Here it is.

That we find that what is being proposed, that the use is occupying such exempted GFA, and we're talking about on the property. Support the character of neighborhood or district in which the lot is located.

And further, going by the usual requirements for all Special Permits, further finding or proposal that the requirements of the Ordinance cannot be met without the relief being sought.

That traffic generated or patterns of access or egress resulting from what is proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses as submitted by the Ordinance will not be adversely affected by what you're proposing with regard to the basements.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the

occupant of the proposed use or the citizens of the city.

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

So on the basis of all these findings, the Chair moves that we grant the Special Permit with regard to the basement exemption from GFA on the condition that the work proceed in accordance with the plans previously identified with regard to the prior Special Permit vote we took.

All those in favor please say "Aye."

(No Response.)

CONSTANTINE ALEXANDER: None in favor. Therefore, obviously the motion does not carry. We need to state for the record the reasons why.

And I think changing the basement height particularly with regard to the retail space will do, will create -- could create substantial change in established

neighborhood character. You're talking about effectively increasing the size of the business area in one of the properties, this is 227.

That nuisance or hazard could 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. Or the result will be the creation of additional living space which could, is not supported by the project as proposed, and it has been brought to the attention of this Board late in the permitting process.

And that generally what is being proposed will impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

In this regard we note that the building you first sought approvals based upon a ceiling in the residential areas and in the business areas less than seven feet, and now that you got your other approvals, now you're coming

back for a second chance to increase the size of the property and that is not the way we like to see projects proceed. We want, we don't want to see what I've called in the past the salami approach, we get a little bit now and a little bit later, and for those reasons and the reason I've cited we would not grant the Special Permit.

Everybody happy with that or not. All those in favor of that please say "Aye."

(Aye.)

ANDREA HICKEY: Unanimous.

CONSTANTINE ALEXANDER: Case is over.

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

(Whereupon, at 10:05 p.m., the

Board of Zoning Appeals Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

INSTRUCTIONS

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

I, Catherine Lawson Zelinski, a Certified Shorthand Reporter, the undersigned Notary Public, certify:

That the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of March, 2018.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 29, 2022

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