

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JULY 28, 2016  
7:00 p.m.

in

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

Constantine Alexander, Chair  
Brendan Sullivan, Vice Chair  
Janet Green, Member  
Patrick Tedesco, Member  
Douglas Myers, Associate Member  
George S. Best, Associate Member  
Andrea A. Hickey, Associate Member  
Laura Wernick, Associate Member

Sean O'Grady, Zoning Specialist

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(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call the Zoning Board of Appeals to order. I'm calling the meeting to order. At the outset I wanted to make a statement. The statement is as follows:

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 inform the audience that a recording is being made. It's right there. So you should be advised that a recording is being made at this meeting.

With that, I will now turn to the continued agenda. These are cases that we started at some point in the past and have now for one reason or another continued the case.

\* \* \* \* \*

(7:00 p.m.)

(Sitting Members Case BZA-010106-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: And the first one I'm going to call is 18 Whitney Avenue.

Is there anyone here wishing to be heard on this matter? This is case No. 010106. There appears to be no one.

DOUGLAS MYERS: Yes, standing in the rear.

CONSTANTINE ALEXANDER: Standing in the rear.

Sorry. Sir.

GRAHAM McVICKER: Hi.

CONSTANTINE ALEXANDER: Hi. Your name again for the stenographer.

GRAHAM McVICKER: My name is Graham McVicker. I'm an owner at 18 Whitney Avenue.

So actually we just wanted to ask for a continuance because we were informed that there were only four --

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

GRAHAM McVICKER: We were informed --

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

GRAHAM McVICKER: I'm Graham McVicker from the 18 Whitney condo association. I'm an owner in the condo association.

So Sean O'Grady informed us that there were only four of the five board members that would be present today, and for this reason we'd like to ask for a continuance to

the next available night.

CONSTANTINE ALEXANDER: Let me explain to those in the audience what exactly -- why the continuance is being requested.

This is a case that we started at some point in the past and we got into the merits of the case, and for whatever reason, I don't recall exactly right now, we needed more information. The case was continued. That kind of a case is called a "case heard", and to reconvene for the case the five members of the Board who are sitting at that time must be here. Other members of the Board cannot participate. Now it turns out that one of those five cannot be here tonight, so we could still go forward with four if the petitioner wished, but the fact of the matter is that to get any zoning relief, certainly the relief that the petitioner is seeking, he needs four votes. If there are five of us, he could have one dissenter and still if the other four voted to grant relief, relief could be granted.

If there's only four, he needs a unanimous vote of the four of us.

He has chosen, as most people in this situation have chosen in the past, to ask the case be continued until all five of us can be here. And it's a motion that I think this Board is very amenable to granting.

We have to pick a date, though. What date -- do we know?

SEAN O'GRADY: September 15th is what you wanted.

JANET GREEN: It has to be Tom.

CONSTANTINE ALEXANDER: It's got to be Tom. And it's got to be -- hold on. It's got to be Brendan?

BRENDAN SULLIVAN: I am not here the 15th.

CONSTANTINE ALEXANDER: Okay, not here. Okay, what's the next date?

SEAN O'GRADY: I don't know that there's next date that Tom has. But our next date is 9/29.

CONSTANTINE ALEXANDER: 9/29. Well, let me ask

members of the Board who are going to have to sit on the case. Andrea?

ANDREA HICKEY: Yes.

CONSTANTINE ALEXANDER: Okay.

Janet.

JANET GREEN: I'm not on this case.

CONSTANTINE ALEXANDER: You're not?

JANET GREEN: No. Andrea, Gus, Brendan.

SEAN O'GRADY: Tom. I have Janet.

JANET GREEN: Oh, you do?

CONSTANTINE ALEXANDER: You're on the case.

JANET GREEN: Oh, okay. I'm off the second one then.

CONSTANTINE ALEXANDER: You're here on the 29th?

JANET GREEN: So the 29th of October?

CONSTANTINE ALEXANDER: September.

JANET GREEN: September. I'm pretty sure I am, but let me make sure. Yes.

CONSTANTINE ALEXANDER: Keeping our fingers crossed that Tom can make the 29th of September.

The Chair moves that this case be continued, again, it's a case heard, until seven p.m. on the 29th of September subject to the following conditions:

One, that the petitioner sign a waiver of time for decision. And you've already done that, so that's been satisfied.

Two, the posting sign which has been changed, has to be changed one more time to reflect the new date, September 29th, and the new time, make sure the time is changed to seven p.m. And that sign be maintained for the 14 days required under our Ordinance.

And lastly, and I don't think this applies to your situation, any revised plans or dimensional form must be in our files no later than five p.m. on the Monday before September 29th. If that were not the case and they were relevant to the case we're going to decide, we will not hear

the case that night.

On the basis of this motion, all those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, case continued. See you on the 29th.

(Alexander, Sullivan, Green, Hickey.) (7:10 p.m.)

(Sitting Members Case BZA-009453-2016: Brendan Sullivan, Andrea A. Hickey, George S. Best, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009453, 152-154 Raymond Street. This is a case heard as well and I did not sit on this case the first time around so I am going to step aside and Mr. Sullivan --

ANDREA HICKEY: We need George.

CONSTANTINE ALEXANDER: Oh, George is not here either. We're missing one. They want to proceed with only four members. We don't need Tom here.

ANDREA HICKEY: But we need George.

CONSTANTINE ALEXANDER: Andrea, George, Tom -- if we don't have George.

(Case Recessed.)

(7:10 p.m.)

(Sitting Members Case BZA-010464-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Laura Wernick.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010464, 46 Parker Street.

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

MATTHEW SIMITIS: Yes.

CONSTANTINE ALEXANDER: Name and address if you would for the stenographer and the audience.

MATTHEW SIMITIS: Yes, I'm sorry. My name is Matt Simitis. I'm the architect for the client at 46 Parker Street. And this is Melissa Garcia, the client.

JAMES WILLIAMSON: As you go forward on the

agenda, could you give some of us a sense of when you might get to the Water Street case?

CONSTANTINE ALEXANDER: That's a fair question. We're waiting on Raymond Street for Mr. George Best to come. As soon as he shows up, he shows up before this case is over, that will be heard next and then Water Street. If George doesn't show up by that time, I assume -- I'm not sitting on Water Street, but I believe Brendan will then convene that case next. Okay?

JAMES WILLIAMSON: Thank you.

MATTHEW SIMITIS: We are here requesting both a Variance and a Special Permit. The Variance is to allow additional area to a property or a structure that is already exceeding the allowable FAR, and the Special Permit is to allow for new and relocated window openings within the setback. Side setback.

CONSTANTINE ALEXANDER: Why don't you start with the Variance case first.

MATTHEW SIMITIS: The Variance is for -- the property is substandard by the allowable lot size which is in some ways the source of the problem. There is currently existing a renovation to the original property that added a three-sided bay and small section at the rear of the property, and it is currently sitting on wood posts and it's on the two footings, it does not go to grade. And as such, it is a substandard construction and also it does not align with the existing footprint of the rest of the house.

ANDREA HICKEY: You can't hear?

UNIDENTIFIED MEMBERS FROM THE AUDIENCE: I can hear. We can't see. What if he comes over to where the screen is set up so everyone can see. I'm very sensitive to disability issues pardon my word.

CONSTANTINE ALEXANDER: Just for your benefit, we allow people to stand or sit behind us if they want to hear better or see better. People move to the side.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: If we're

behind you, I don't know we can hear you better.

MATTHEW SIMITIS: I'm assuming that -- I'm assuming that not everyone will be able to see from this vantage but hopefully more of you can than before.

So the current condition of the property actually does have an addition that I was just previously describing, that it was added on to the original back L of the house. It does not meet grade and is open to the air below, and the roof itself actually is not aligned with the ceiling or does not allow the ceiling of that area to align with the surrounding ceiling area either. Part of our project is to try and rectify that both in terms of the construction, insulation, and also the visuals of aligning with the existing sides of the home, side, and rear of the home. So there is square footage that is added there as a small amount.

CONSTANTINE ALEXANDER: Do you know the history of why this substandard construction occurred?

MATTHEW SIMITIS: It apparently -- I have looked into the permitting history. If you give me one second, I've looked into the permitting history and it was permitted in the early 70s along with some of the work in the attic which I'll be addressing next actually. The -- but the -- in terms of why it was built the way it was, I do not know that.

I believe honestly it was just a matter of expediency and cost.

CONSTANTINE ALEXANDER: Okay.

MATTHEW SIMITIS: But so at the ground level, first level of the home there is roughly 30 square feet that's being added there. By removing this three-sided bay, we're filling in triangles at either corner to normalize that wall as a straight run and then across the back to align with the existing rear of the home as well.

There is a very, very incrementally small, roughly five square feet that's added at the front entry. Currently

there is currently a glass porch, not standard wall construction there either. And we'd like to essentially add the thickness of a stud to that space to allow for better insulation and more permanent use of that space.

The larger portion I think with regard to the Zoning Variance is at the attic level where we're asking for two new dormers that are within the design guidelines facing the neighbor to my plan south here, which is actually Buckingham, Brown, and Nichols lower school. They are, again, as I said earlier, they are to the design guidelines. They are set back from the eave and wall below. They are set back from the ridge. And their length is less than the criteria 15 feet or half of the length of the wall. I can get an elevation of that if you give me one second. And, sorry, I should have said, there is obviously FAR -- square footage, liveable space added because of those dormers.

CONSTANTINE ALEXANDER: And for the record, the reason why you need the Variance is because right now the

structure is non-conforming in terms of FAR?

MATTHEW SIMITIS: That is correct.

CONSTANTINE ALEXANDER: Right now it is at 0.579 in a 0.5 district. And if we grant you the relief you're seeking, you'll go to 0.613 which is a slight increase in terms of the non-conformance.

MATTHEW SIMITIS: That's right.

So, again, you have the documents in front of you, so I'll motion to the crowd, that these two dormers would be new. They're both set back from the ridge and the eave as well as the length working within symmetry within the lower building and split up and it's the length of those dormers, excuse me, is within the guidelines as well.

That is it for the Variance.

CONSTANTINE ALEXANDER: One thing you should address, it will be a separate motion when we come time to take a vote, is that your original application and the advertisement talks about getting a Variance for an

accessory apartment. You have withdrawn that request.

MATTHEW SIMITIS: Thank you, yes. There are two additional, as I see it, two additional items that we have withdrawn. One being a basement accessory apartment that we did not meet the criteria for the accessory unit per the Bartlet (sic) Ordinance.

And the second being the -- an actual relating to the Variance with the FAR that we were actually originally requesting the original submission requested for an extension of this existing dormer to effectively make it the full length of the wall, which does not meet the guidelines, in order to create headroom for a code compliant stair to the attic. The stair that currently exists actually rises up to the eave of the roof and results in head height as you climb the stair of about three to three and a half feet. Our hope was to create a code compliant stair, but there was no way to do that without either moving and rebuilding the stair or extending the dormer, which is not, not permitted

by the design guidelines.

CONSTANTINE ALEXANDER: Okay.

MATTHEW SIMITIS: So we withdrew. Sorry.

CONSTANTINE ALEXANDER: Why don't you talk to the Special Permit and then we'll take both cases -- both applications.

MATTHEW SIMITIS: This Special Permit actually relates to the elevation that I have showing right now. This elevation, this side elevation, the side opposite of the Buckingham, Brown, and Nichols property is actually at the street edge or the street corner of the building. I should say it's 2.8 feet from the property line, not the required distance for the side setback, and actually gets a little bit closer as you approach the rear corner of that side wall as well, excuse me, where we are 2.0 feet. So we are within the setback. What we have -- and obviously there is a Building Code issue related to this as well in terms of separation, distance. Our hope, and really what we're

trying to do is create new window openings for, that would relate better to the proposed plans both for the first and second floor. And for that matter I should say is the attic as well. Essentially for all three floors on this side of the home there are interior walls that are moving and rooms that are being -- that would be reconfigured, and our hope is to have window placements and sizing that relates better to that. And I brought up earlier the Building Code issue because our hope actually is to address that by -- we're actually reducing the amount of glazing from what currently exists on that side.

CONSTANTINE ALEXANDER: Of course any relief you need, if you need from the Building Code is not our jurisdiction.

MATTHEW SIMITIS: Exactly, that's right. So our hope honestly is to address both. In some ways by addressing the zoning issue -- sorry, by addressing the Building Code issues, we're hoping to address these Zoning

issues as best we can, but we are ideally creating a better -- within the understanding and intent of the Zoning, we are trying to create a better neighbor by doing this and renovating and refinishing the exterior of the home. And if anything, we see that we are reducing a negative situation I suppose.

CONSTANTINE ALEXANDER: Thank you.

MATTHEW SIMITIS: Thank you.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently there are none. I'll open the matter up to public testimony.

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

MARK GRUBS: I provided a letter to Melissa Garcia the owner of the property.

CONSTANTINE ALEXANDER: I'm sorry, your name,

please, sir.

MARK GRUBS: I'm sorry. Hello, I'm Mark Grubs. I live at 47 Parker Street right across from 46. I've been there since 1977. In Cambridge since 1974. And I've watched this street develop over time. Sometimes pretty good and sometimes not so good. But right now it's in a good state in the sense that families are moving back to this neighborhood. I'm hopeful that you will give them the support they need to develop the house, a home for their children such that they will be able to stay and enjoy this wonderful city of ours. My letter I think Melissa has which I'd like to make it part of the record.

CONSTANTINE ALEXANDER: Sure. Thank you.

MARK GRUBS: Thanks for the time.

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

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We are in receipt of a number of letters. A letter that this gentleman just left with us. The other letters, all of which are by the way in support, were based on the original plans that are now have been changed as Mr. Simitis has talked about. So I'm not going to read the letters into the record as we usually do because they're not totally relevant, but I will identify who did write to support the relief being sought or the relief to be granted to the petitioner.

We have a letter from Erin Dullea, D-U-L-L-E-A and Joe Adiletta, A-D-I-L-E-T-T-A who reside at 68 Walker Street.

We have a letter from the Buckingham, Brown, and Nichols School.

And we have a letter or an e-mail from Lee Ann Fisman, F-I-S-M-A-N.

As I said, all of these are in -- wait, one more,

I'm sorry. We also have also a letter from Todd T-O-D-D Zickler, Z-I-C-K-L-E-R and Lee Ann Fisman, again, 40 Grandville Road, also in support.

That's it. I'm going to close the matter to public testimony.

Any final comments you wish to make at this point?

MATTHEW SIMITIS: No, I don't think so.

CONSTANTINE ALEXANDER: Okay. Just giving you one more chance.

MATTHEW SIMITIS: Yeah.

CONSTANTINE ALEXANDER: Discussion, Members of the Board, or are we ready for a vote? We're going to take three votes by the way: The first vote is to accept the requested withdrawal for the Variance of the accessory apartments so that the record is clear on that. That's not been in any way been granted by default. The second will be on the Variance, and the third will be on the Special Permit.

Again, any -- everybody ready for a vote?

JANET GREEN: Gus, can I make one comment just to Mr. Simitis?

MATTHEW SIMITIS: Sure.

JANET GREEN: And that is, it was hard to read the plans. And I would like to say that if you put -- two changes would have helped me a lot, I don't know about others, but the -- if you put the existing and proposed change on the same page, we don't end up with these large pages that we're trying to go from one into the other to figure out what you're talking about.

MATTHEW SIMITIS: Sure, I can appreciate that.

JANET GREEN: And the second thing is, you know, the street plan goes on it, but the street plan isn't necessarily there when you start to do the description of the house. So if you had north/south indicators, it would make it much easier.

MATTHEW SIMITIS: Okay.

JANET GREEN: And that's my only comment.

CONSTANTINE ALEXANDER: Thank you, Janet.

Okay, I'm going to make my first motion. The motion is to accept the petitioner's requested withdrawal of a Variance for an accessory apartment in the basement.

All those in favor accepting the withdrawal, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. That motion is carried.

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

CONSTANTINE ALEXANDER: The second motion relates to the variance.

The Chair moves that with respect to the Variance this Board make the following findings:

That a literal enforcement in the provisions of the Ordinance would involve a substantial hardship.

Such hardship being that the petitioner would be

unable to correct substandard construction of the structure in question.

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

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

In this regard the Chair would note that the project appears to have unanimous neighborhood support.

That the petitioner has diligently complied with our dormer guidelines which we appreciate.

And that the relief seems to be consistent with trying to upgrade the housing stock of the City of Cambridge.

On the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans submitted by

Curl, C-U-R-L Simitis Architects. There are many pages in length, I've initialled the first page.

Sir, before I take the -- actually call the vote, these are the final plans? Because if you modify them afterwards, you're going to have to come back -- you and your client are going to have to come back before us. You're satisfied this is it?

MATTHEW SIMITIS: Yes.

CONSTANTINE ALEXANDER: Okay. I wanted to read you your rights.

MATTHEW SIMITIS: Thank you.

CONSTANTINE ALEXANDER: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

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

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

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

That the continued operation of or development of adjacent uses will not be adversely affected by the nature of what you're proposing.

In this regard I would cite the letter from the Buckingham, Brown, and Nichols School. They are neighbors and they obviously are in support.

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

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

On the basis of these findings, the Chair moves that we grant the Special Permit requested again on the condition that the work proceed in accordance with the plans identified in connection with the Variance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted. Good luck.

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

(7:30 p.m.)

(Sitting Members Case BZA-010111-2016: Brendan Sullivan, Janet Green, Patrick Tedesco, Douglas Myers, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case

No. 010111, 22 Water Street.

The Chair will recuse himself from this case for personal reasons and so Mr. Sullivan will chair this case.

BRENDAN SULLIVAN: Introduce yourself and then I'd like to make a statement before you start your presentation. All right, we're ready to go?

ATTORNEY JAMES WARD: Good evening. My name is Jim Ward. I'm a partner in the land use group at Nutter, McClennen and Fish in Boston. I represent Monogram Residential 22 Water Street Project Owner, LLC, which is the petitioner here. I'm just going to call them Monogram.

CAROL O'HARE: Could you speak more loudly?

BRENDAN SULLIVAN: All right, well, before Mr. Ward begins his presentation, I'd just like to make a statement for the general public:

The usual course of business of the Board is to consider applications for Variances and Special Permits. The case that is before us right now is neither one of

those. We are not considering a Variance. We are not considering a Special Permit. Under Section 10.21 of the Ordinance, the Board shall consider appeals of a decision or a determination made by the Commissioner with regard to Zoning matters only. What is before us is an appeal or a protest if, you will, of a determination of the Commissioner's decision regarding the rooftop lighting at 22 Water Street. There is a vast amount of correspondence in the file, and obviously by your presence here tonight, tremendous amount of interest and concern. This matter, though, in summary the comments expressed in the correspondence are basically about the negative effects and the undesirability of the lights.

Really I want to make it quite clear that the Board is not considering whether the lights are a good thing or a not so good feature. Our focus here on this particular case is very narrow, very limited, and has a very legal standard.

I will open it up to public comment at some point, but implore you to stay on track and not delve into the effects of these lights. The Board cannot consider such testimony. That is not the issue before us. And I would ask that if the speaker starts to raise such issues, I really will ask you to stop because we really need to keep focus as to exactly what is before us.

And I would ask that you please respect the nature of these proceedings.

Thank you.

Mr. Ward.

ATTORNEY JAMES WARD: Thank you. Is this working any better?

JAMES WILLIAMSON: It is sort of working, yeah, it is.

JANET GREEN: Talk louder and keep it closer.

DOUGLAS MYERS: Keep your voice up.

ATTORNEY JAMES WARD: People usually say I have a

pretty big mouth so I should be okay.

With me tonight is Rick Dickason who is the regional manager for this project. And then Laura Prevel (phonetic) who is the on-site person for the project so in case there's a question.

First, hello, it's a legal issue like you said. I'd just like to acknowledge that one of the things that we know is that as soon as this came up, I think it was in the winter, we should have engaged the neighbors a little faster. We have done that subsequently. We met with -- Mr. Dickason met with the ECPT, tried to talk appropriate conditions, and that didn't go very far.

We made another sort of a written proposal. I'm going to be honest with you, I don't know how the ECPT operates. And I now know that it only operates through their meetings. So we had actually sent just a quick couple of proposed written conditions to the Chair and he said well, I can't consider it until September. And we said

okay, understood.

So, we're here tonight to go through our case.

I'm gonna be brief. Everything from the legal perspective I think is already in writing. I have a couple of handouts.

I mean it looks like a lot of handouts, but it's just a bunch of copies that I'll give, and I gave a copy to -- I'm not sure is it Helen? Big blow up for her. So she's got everything that I'm gonna give you, so I'll just quickly --

BRENDAN SULLIVAN: And the handouts are?

ATTORNEY JAMES WARD: They're actually just the permit itself, a couple of -- I mean, I don't know if --

BRENDAN SULLIVAN: Which is already in the file?

ATTORNEY JAMES WARD: Is it?

JANET GREEN: I'll take that.

BRENDAN SULLIVAN: Yes, but anyhow. Yeah.

ATTORNEY JAMES WARD: Okay, sorry. I didn't know how internally you do things. There's really only that one additional thing at the end. So just -- just to sort of

recap how we got here:

In July of 2010 the Planning Board issued the permit that I just handed out to you.

BRENDAN SULLIVAN: And that was issued to?

ATTORNEY JAMES WARD: Catamount Holdings.

BRENDAN SULLIVAN: Catamount, okay.

ATTORNEY JAMES WARD: We've only recently learned actually in maybe the winter when we got the call from --

BRENDAN SULLIVAN: So you're a successor to Catamount?

ATTORNEY JAMES WARD: We bought from Catamount, yes.

We recently learned that in the application, we've confirmed it, that they, among other things, said that they were not gonna have lights. That prohibition or never found its way as a written decision -- a written condition of the --

BRENDAN SULLIVAN: Yeah.

ATTORNEY JAMES WARD: -- of the permit. Monogram, my client, I don't even think was on the scene at that point. I mean, they didn't come and buy the property until 2015. Or 2014, excuse me. October of 2014.

As you'll see in the Special Permit Condition one says: That all use building construction site developments shall be in substantial conformance with the plans submitted by Catamount to the Planning Board.

Condition two says: That before the issuance of any Building Permit, the Community Development Department, CDD, will certify the superintendent of buildings that the final plans are consistent with the Special Permit.

At some point in I want to say the summer of 2004 --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: '14.

ATTORNEY JAMES WARD: '15.

The -- monogram's project manager at the time began speaking with CDD about putting up lights, and they

had conversations about it. And the suggestion was well, you should just confirm that it's not prohibited in the ordinance. So that was the letter that I wrote to the building commissioner. By May of 2015 I received an e-mail from the building commissioner, that is in our appeal, that says I agree, I have confirmed this with CDD. And based on that we went and got a Building Permit and I don't want to be trite, but the rest is history.

We put the lights up at substantial expense, and we were called in the winter of -- let's see, what was it? Winter of 2016 was installed, it went on. I got a call from the building commissioner as well as the head of CDD, and they said -- they told us we've got complaints and Catamount had said in their application that they weren't going to have lights. We immediately turned them off.

The Special Permit itself in the Zoning Ordinance provides for amendments and modifications to Special Permits. I think it's Section 12.37 of the Ordinance. It

distinguishes between Minor and Major Permit Amendments.

Minor Amendments are changes that don't alter the concept of the project in terms of density, floor area, land usage, height, provision of open space, physical relationship of the development, and other small changes; location of building, open space parking. There were two Minor Amendments that the CDD determined needed to go and get a Planning Board change to the Special Permit, those were included in the materials.

Major changes are ones that are substantial deviations from the Special Permit and include large change in floor space use, mixed of uses, density, lot coverage, height, setbacks and things like that.

So in this case the Special Permit was modified twice. The Minor Amendments for both were building design, physical changes, dimensions of the proposed buildings in certain locations and things like that. Those kind of changes are different than the change that we're doing.

And what happened here with the lights actually happened a few other times as well as part of the process at least two other occasions the, it's called the upper terrace was modified pursuant to this interchange with CDD, and they said you can change the plans from what was submitted. That was done through e-mail exchange. That's the package at the back. It's illustrative of this sort of exchange that ended up with the one -- the e-mail that I got saying that the light's broken.

There was a change in a design feature in the front that dealt with the sale. There were changes on the landscaping. So from our perspective, once we got the e-mail and the confirmation at CDD, it said that everything was fine. We put it in the bucket of these are other changes that don't even rise to the level of a minor change and that's where we are.

BRENDAN SULLIVAN: But when your client purchased the property from Catamount, obviously in doing a title

search, as it is for any property owner, and in a title search relief Special Permit, Zoning Variance, whatever it may be, always pops up. And whoever is doing the title search will obviously -- because it's the decision, the actual decision itself is attached to the deed. Ours are attached to it. But there's also a reference in the decision tied to a set of plans. Okay.

So just to take and look at the decision and the language that's in the decision and it doesn't exclude, it doesn't specifically exclude the lights, so consequentially I guess we're okay, because Zoning allows it. All right? But in that decision it also references all the way back to the beginning to their presentation, and the hurdle that I need to get over is why that isn't fatal to your argument that you own that? Because in their written presentation they said that there will be no uplighting. So then that sort of becomes off the table. Okay, they're not going to do any lighting. You know, it's a 450,000 square foot

project, and I guess the lights can be somewhat, you know, and all these other design changes and so on and so forth. But the lights were precluded way in the very beginning because of their presentation having to do with how were you going to address the screening of mechanical equipment. That's when it came up. So I'm just wondering why you don't think that doesn't carry forward all the way?

ATTORNEY JAMES WARD: For two reasons: One is the that you're right in a -- in your due diligence when you're looking at a property --

BRENDAN SULLIVAN: You got to keep digging deeper when something is referenced.

ATTORNEY JAMES WARD: Yes, and no. I mean we looked at the decision. We looked at, you know, to see to whatever the conditions were. You know, you get familiar with all of those and it's a very detailed decision.

Subsequently we went back and got the perspective which we didn't have, and I've been doing this for 30 years

maybe, and I don't think I've ever gone back and looked at an application of a project, because in my experience of doing this, what I come in and ask for is usually vastly different than what I had come out the other side. And that's just, that's just permitting. You know? Usually it's not what you like. You know? So we rely on the decision, and I think the case law supports that. Again, you can -- the City may not agree with it, but that's our position. But I think more importantly is that the permit itself in your by-law provides ways for changing things that have been submitted. Like I said, the upper terrace was submitted in the original application and in the original plans and had a one look, and through this less than minor modification process now was constructed in a -- because the CDD determined that the plans were in substantial conformance to the permit. Same thing with the sale feature I mentioned, same thing with the landscaping features, same thing with windows and things that were put. And our

position is that the lights are no different than those things. So when the Building Permit issued and the CDD told the building commissioner that it's fine with them, it's a determination that the plans are in substantial compliance with the permit.

JOHN HAWKINSON: Mr. Chair, could you use the mic?

JANET GREEN: You need to keep it closer to your mouth.

BRENDAN SULLIVAN: Like you're talking into the phone I guess.

ATTORNEY JAMES WARD: I'm trying.

BRENDAN SULLIVAN: That's all right.

Well, okay, again, I have read through this enormous amount of documents and started from the very beginning. And once I saw that their method of screening, of ameliorating the mechanical equipment on the rooftops, so on and so forth, and that there would not be any uplighting, I said well, hmm, I think they probably have shut the door

on that issue going forward. And reading your position, and you said basically that if it's not in the decision of those court cases, you know, if it's not in there, then it's not in there. Except that, again, I read that all of that was referenced all the way back through all of the documents, whether it went through one iteration or minor change or major change, and so on and so forth. It did go all the way back to that development plan.

ATTORNEY JAMES WARD: I think you've partly correctly stated the way I was saying it. But, yes, we believe that the condition, if it was a major type condition, would have found its way into the actual -- and that the reference in the permit to the original plans is somewhat vague because the course of the development of this project is, as you'll see in the attachment at the back, and consistent with approval we got for the lighting that very minor things that don't even rise to the level of a minor modification, were dealt with through CDD. So I guess I

could for the sake of argument to say, yes, that was in there, but that it was altered appropriately the way that CDD just does it. And the only difference here is that it became a supercharged issue. People are not up in arms over the upper terrace for instance.

BRENDAN SULLIVAN: Well, it doesn't scream.

ATTORNEY JAMES WARD: No, you're right. And I, I, I don't --

BRENDAN SULLIVAN: But, again, it's a fact and, again, all of that is, you know, I just want to focus on your legal argument and the legal analysis of the City basically --

ATTORNEY JAMES WARD: Sure.

BRENDAN SULLIVAN: -- as to whether or not you own that condition.

ATTORNEY JAMES WARD: Yeah, I'm guessing that they say we do and we say we don't.

BRENDAN SULLIVAN: Right. You're an advocate for

your client.

ATTORNEY JAMES WARD: And you're an advocate for the City. I appreciate that.

BRENDAN SULLIVAN: Well, no, we have disagreed in the past. I'm an advocate for doing the best thing and the right thing and let it fall where it may.

ATTORNEY JAMES WARD: Sure. And by saying this I don't mean to diminish the concerns that the neighbors have expressed. I mean, we've -- we're saying okay, that would, we get it, you know. And that's why we've offered dimming and hours of operation and things like that, but....

BRENDAN SULLIVAN: Okay.

Anything else to -- you'll have a chance to come back again if you wish.

ATTORNEY JAMES WARD: I hope not.

BRENDAN SULLIVAN: No, to comment before you leave here.

Any questions? Yes.

DOUGLAS MYERS: Mr. Ward, you said that your client purchased the building in 2014?

ATTORNEY JAMES WARD: Practically, yeah.

DOUGLAS MYERS: Do you know approximately the total sales price paid for the building?

ATTORNEY JAMES WARD: Rick?

RICK DICKASON: It was 2012 when we bought it. I believe 21 million.

DOUGLAS MYERS: \$21 million.

RICK DICKASON: Don't hold me to that.

DOUGLAS MYERS: And was it an arm's length transaction?

ATTORNEY JAMES WARD: Yeah.

DOUGLAS MYERS: Unrelated seller and buyer --

ATTORNEY JAMES WARD: Yes.

DOUGLAS MYERS: -- not a corporate connection?

ATTORNEY JAMES WARD: No, Catamount has no connection whatsoever.

DOUGLAS MYERS: Okay.

And you're saying that in connection with that purchase, that to the best of your knowledge, no review was made of the original PUD application even though that application was in compliance with that application was made a condition of the PUD's original approval?

ATTORNEY JAMES WARD: Correct. We, we looked at the conditions of the approval, of the permits themselves. Like I said, for 30 -- I've done this since '83, so I don't know if that's 30 years. A long time. And the -- I've just, I've never gone back and looked at an application -- if there was a condition that said no lighting is per the original -- I would have gone and looked, but that wasn't the case here. And as I was just saying to the Chair, that even assuming arguendo that that is incorporated, we followed the procedure that has been set up to change certain aspects of projects.

DOUGLAS MYERS: We received -- we here on the

Board received a copy of that application. To the best of my knowledge, my recollection was approximately 77 pages of PDF text.

ATTORNEY JAMES WARD: Yes.

DOUGLAS MYERS: In a \$21 million purchase transaction, wouldn't you think that the responsible lawyer, title examiner, in-house design, sales, construction person at some level would have examined the application since reference was specifically made to it as a condition of the PUD's approval?

ATTORNEY JAMES WARD: No. I mean, every permit that I've ever seen says this is granted and, you know, referenced to sets of plans and things, and those plans, through the process get changed. A lot of times in the exact way that they got changed here.

DOUGLAS MYERS: I ask the question not to be unduly persistent, but it seems to me that it's an important question in order to determine who bears the responsibility?

Who has the burden for ascertaining the true status of the property, the true legal status of the property with respect to the right to construct signs. The City gave its original approval -- this is not a question, so I'll -- I mean the City gave its original approval on the basis of a request that was couched in terms of being as-of-right, and clearly, I guess clearly, it seems no one, city or applicant, your client at that time, went back and really delved into the application and the City granted the approval at that point. But someone had the responsibility to delve into that application. And the question I'm raising is, it would seem to me for the points that the Chair -- the reasons that the Chair has raised, and also just as a matter of sound, ordinary business practice in a major purchase like this, that a corporation would want to know what its buying and what restrictions and what the zoning restrictions or land use restrictions are on the property that its spending quite a bit of money for.

ATTORNEY JAMES WARD: They didn't buy the property thinking that they were gonna put lights up. I mean, that was never -- the analysis that we did was basically is there anything here that's gonna be impactful for what we're doing? And it wasn't, you know, and by the way we want to put up some lights. But the idea of the lights came up is I think they were building the building and they saw other buildings around with, you know, the sort of uplighting which is becoming a very sought after feature, I think, in a lot of buildings. And at that point they began discussions with CDD, and I think with the woman who actually was involved in the original permitting of the project for the City, on behalf of the City. And it was based on those discussions that we approached the building commissioner and asked the hard question. And, again, I -- for the sake of argument, I will say if you're saying that in your opinion that the prospectus or application was included is, you know, word by word, I would say that okay, but we went

through the process identified to us to change minor aspects of it. And I'm not saying minor in the sense of a minor change as per the Zoning By-law, but low minor --

BRENDAN SULLIVAN: Not having to go back before the Board?

ATTORNEY JAMES WARD: Correct, correct. And, again, it happened on a few other occasions.

So when we went through the process, we weren't, we weren't unduly -- I was shocked when I got the -- I mean, I was like huh?

DOUGLAS MYERS: Until you read the application and then it made sense?

ATTORNEY JAMES WARD: It made sense the question, yes. But, again, both the --

DOUGLAS MYERS: That's -- I defer to other Board Members who may have questions.

JANET GREEN: Yeah, I would just say, you know, I am, I'm actually agree with, with --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Louder  
please?

JANET GREEN: I agree with Mr. Myers that it's  
amazing to spend that much money on a building and not read  
all of the documentation coming up to it. Not you yourself,  
but lawyers for your company. I don't understand that.

I think that -- I don't understand your comparison  
with changes in landscaping and changes in signage. To  
me -- to us, perhaps you haven't worked in Cambridge before,  
but that's a very different item for us. Signage is very  
important in Cambridge. We have a city that's dense, that  
is very popular right now with developers, and so we look  
really carefully at that kind of signage. And I'm surprised  
that you didn't go back and realize that it was going to be  
a Zoning Board issue. I understand going to CDD and it  
might have been confusing to you about that, but for signage  
you would need to come before the Zoning Board.

ATTORNEY JAMES WARD: The lighting isn't signage,

though.

JANET GREEN: Well, your signage is lighted.

ATTORNEY JAMES WARD: The signs are down.

JANET GREEN: Right.

ANDREA HICKEY: So what's the purpose of the lighting then if it's not advertising?

ATTORNEY JAMES WARD: Looks. I mean, the Amgen building -- I mean, it's just a, it's just a feature on buildings. I mean, the building -- if you're facing our building, the building to the right which might be Avalon? they have that nice, I think it's nice looking, that lighting up there. And the building closer has uplighting on their little thing there. And I, I think it adds kind of a dramatic effect. It's my opinion, obviously not shared by most people in this room. But to your point, if, if an application is absolute, meaning that every word and every plan, every everything can't be changed unless you go through the -- back to the Planning Board, the process that

CDD has established or the process that the permit says is that you give the final building plans to them and they determine if it complies with the Special Permit. And in each instance we did that, and they said it complied with the Special Permit. So, looking behind that there would be no reason to do that from our perspective.

BRENDAN SULLIVAN: And, again, relating to what we normally do, and we will get an application for a Variance or a Special Permit, our application sheets are three in number? Maybe four or something like that. A quick read. And the crux of our discussion, really, is what do you want to do and why do you want to do it and does it make sense? All right.

A PUD at North Point, which was at the time, the City was pushing to get this all developed. All right, so the PUD comes forward, the City is eager to do something, want to get Catamount, somebody rolling here, but as for that PUD it is how many pages?

DOUGLAS MYERS: 77. I said the application.

BRENDAN SULLIVAN: An exhaustive application form.

And the crux of really what they're doing and the stuff that the Planning Board really looks at aside from the pretty pictures on the drawings as the information contained in the application form. That's really the heart and soul of the project, not necessarily what it's going to look like. Even though -- and I don't mean this as being critical, the architect's on the Planning Board do look at the size and shape and how they align and so on and so forth. But it's really all of the information that they provide that's in that application form so that, again, somebody should have gone all the way back to Page 1 which is the application form to find out is there anything in there that Catamount has promised to do that we are now inheriting? And, you know, you go back to Section 7 on their project review, Special Permit application information, this is their language, not the City's. And it's Section 7.2, the screen

material having to do with the rooftop will be corrugated -- perforated metal panel, so on and so forth going on to describe it. And this is having to do with how they're going to ameliorate the mechanical.

Although there may be visual hint of the equipment behind the equipment will not be visible, there will be no uplighting or other lighting of the screens or roof of the building. And then it goes on to the traffic study, the tree study, and so on and so forth. And to me that's fatal. As they're binding themselves and their successors to not having any uplighting. And as part of the PUD and as part of some of the wiggle room and the leeway that the Planning Board attributes to the PUD and the lengths of this project, they allow for minor changes. You don't have to keep coming back to us. We don't want you to keep coming back to us. We have basically approved the envelope all the other little nuances, fine. But whether they thought it was a big deal or not at the time, to me it's still binding in there. And

I can't get over that hurdle as to why it doesn't carry forward and is still binding aside from the fact that they allowed some minor changes at the administrative level and not at the board level.

ATTORNEY JAMES WARD: Okay.

BRENDAN SULLIVAN: And so that consequentially when the Planning Board then writes their decision, all right, rather than going back 70-some odd pages and saying, you know, they're incorporating all of that with possibly maybe some changes that are highlighted during their hearings and what have you, numerous hearings. I think that once the Catamount proposes that there will be no uplighting, that when they went through East Cambridge Planning Team, when they went through all of the other public hearings, then I think a lot of people probably were relieved and said, okay, that's the big issue with me. I don't want to see it. I don't know what it's going to look like, but I don't want it. So consequentially I don't care

what they do as far as the panels and the penthouse and the landscaping, I'm sure it will be fine. And we will trust CDD to watch out for our best interest in that.

Obviously when the lights went on, the phones lit up and so now it's -- it's not something that's buried in Section 7 of the thing, but, again, I think it's crucial information and it's somewhat binding and it's referenced all the way back, incorporated in their decision all the way back to Page 1.

ATTORNEY JAMES WARD: Well --

BRENDAN SULLIVAN: And it's hard for me to get over that.

ATTORNEY JAMES WARD: No, I understand your position. But our position is that same prospectus and the plans that went with this prospectus had a number of different design elements that were likewise incorporated. And what you're saying is, you're ranking this one above the other ones. I mean, if your point is that is cast in stone

and no, nothing in the original application can be changed, because you said it.

BRENDAN SULLIVAN: Well, there's --

ATTORNEY JAMES WARD: No, just hear me out.

BRENDAN SULLIVAN: Yeah.

ATTORNEY JAMES WARD: Then all of them have to be treated equally. And that's not how --

DOUGLAS MYERS: I would disagree. The ones that are clear have to be clearly applied. This one is clear, and it's not conflicted or overridden or made ambiguous by any other provision.

ATTORNEY JAMES WARD: Well, plans are clear.

DOUGLAS MYERS: The part that the Chair just read to you that in respect to uplighting is clear, and its application is clear in this case.

PATRICK TEDESCO: Can I also add, Mr. Chairman, and direct me if I'm deviating from our scope of decision here.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can't hear you.

PATRICK TEDESCO: Sorry.

It strikes me that the minor changes you referred to throughout the process were substitutions. So paving material was changed or a landscape detail. They were not additions necessarily. Is that correct? Because to me lighting and no lighting is not a substitution. Maybe a minor revision, but it's not the same as say changing it. And I'm reading some of the correspondence of the landscape architects, and I presume that's why that's included. Lighting and no lighting to me is not a substitution. It is an addition.

ATTORNEY JAMES WARD: Again, the permit says that Building Permit will be issued after CDD determines that the, whatever you're doing, the plans, conform with the Special Permit. That's how we got our Building Permit. We can, I mean I hear what you're saying. You think it's an

addition. From our perspective it's just another design element that can get changed. I mean the terrace was changed quite a bit. I don't know if it was an addition or a subtraction or what, but so it's a debatable point, right? I'm not dismissing it. It's a fair point.

PATRICK TEDESCO: Just wanted to understand the nature of the other minor modifications.

ATTORNEY JAMES WARD: I was -- I mean I was hoping to have the person who is the director of construction who sort of oversaw all of that, but he's on vacation. You know, if you wanted to hear more, we can come back. I don't know if you do.

BRENDAN SULLIVAN: No, I think we can probably flesh out.

ANDREA HICKEY: Yeah, I just have one question. Do I understand your position correctly that because a prohibition against uplighting wasn't a specific stated condition or provision in the permit or the decision, that

that leaves an opening for a change like that to be considered de minimus or --

ATTORNEY JAMES WARD: If there was a specific addition, it would definitely be different, there's no question. If the -- if there was, you know, in the back where it says these are the conditions of the permit, then yeah, I think that would be different.

ANDREA HICKEY: So does the fact that there is no stated prohibition sort of leave this as an opening?

ATTORNEY JAMES WARD: Yeah, I guess that's a way to characterize it.

ANDREA HICKEY: I'm struggling a little bit with whether everything in the initial permit sort of merges into the final decision. Can you speak about that a little bit from your perspective?

ATTORNEY JAMES WARD: That's what I was saying originally is, is that the original application had a number of -- it had lots of 70-something pages of text, and I don't

know how many reams of plans, it all showed various aspects of the project, which by one paragraph says that's all incorporated. And most -- if you track what is in the application, most of the -- what I would say the really significant parts of it all finds a way into the back or the dimensional, all of that. And I mean we've actually done a chart of all of that. And, you know, in an instance where you're modifying the actual building footprint, they went through the minor -- Catamount went through all of that. It was all done by the time my client bought it. So, like I say, the application had a lot of information in it and the truly significant from our perspective found its way into the decision and everything else was I guess part of the process of determining whether the -- any plan you submitted was a substantial compliance with the permit. And that's, again, that's the way we read it and I respectfully understand the City's position and your questions as well.

BRENDAN SULLIVAN: I think probably and, again,

maybe getting off point which I don't want anybody to do and I'm doing it, is that possibly to answer your -- because somebody probably may have dug all the way down, started at Page 1 and all of a sudden saw that narrative in there, that there would be no uplifting. And I think maybe the proper thing to do would have taken that, gone to CDD and said, can we do the lighting? Because whoever made the determination at that point probably looked and said, I don't know, it's permitted in zoning. Checked with the Commissioner. And the Commissioner looked and he said, yeah, it's permitted I guess. And so they're talking to each other, and yet were not aware, okay, of that. They did not do the digging down. And I think it probably would have behooved whoever was representing Monogram -- again, I'm not casting dispersion on anybody.

ATTORNEY JAMES WARD: That was me.

BRENDAN SULLIVAN: Okay.

To have said, oh, by the way, this is in here, is

it applicable?

ATTORNEY JAMES WARD: We, we didn't get the prospectus until the City gave it to us.

BRENDAN SULLIVAN: Because you're citing the case if it's not in there, it's not in there. And also there was a case that you cite where a developer promised a parcel of land that -- and at the end of his development didn't do it, and the Board sued the developer and I'm sure you've read it, and the developer said, well, it's not part of the -- written in the condition so the courts upheld that. This is I think a little bit different personally.

ATTORNEY JAMES WARD: Okay. And I respect that. And we, we think it applies.

BRENDAN SULLIVAN: Because I think the petitioner may have had access to -- should have had access to all of the documents and not relied necessarily on the governmental entity.

ATTORNEY JAMES WARD: I hope you're not suggesting

that --

BRENDAN SULLIVAN: No.

ATTORNEY JAMES WARD: -- we read it and we knew it and we didn't tell anybody. Because we -- I was shocked why I got the call from the building commissioner and the director of CDD.

BRENDAN SULLIVAN: It may have fallen through the cracks.

ATTORNEY JAMES WARD: And they -- she actually PDF'd me the section, and after that we went, we dug, we found the prospectus.

BRENDAN SULLIVAN: Yeah. No, no --

ATTORNEY JAMES WARD: That was the first we had seen it.

BRENDAN SULLIVAN: Right, okay.

ATTORNEY JAMES WARD: So I --

BRENDAN SULLIVAN: Yeah, okay.

ATTORNEY JAMES WARD: If anything, so I would hope

that you --

BRENDAN SULLIVAN: No, no. Okay, anything else?

ATTORNEY JAMES WARD: No.

BRENDAN SULLIVAN: Anything else at this point?

DOUGLAS MYERS: Not at this point, thank you.

BRENDAN SULLIVAN: I will open it to public comment if we can constrict ourselves to the legal issue before us.

ATTORNEY JAMES WARD: You want me to sit down?

BRENDAN SULLIVAN: You can stay there if you wish, whatever you want.

Very briefly. Yeah.

JO SOLET: I'm Jo Solet, 15 Berkeley Street.

THE STENOGRAPHER: Spell your name, please.

JO SOLET: S-O-L-E-T, J-O.

If this lighting had been proposed as part of the original presentation, based on citizen reaction now, can't we surmise that strong objections would have been raised and

therefore, that this change does rise to the level of a substantial deviation and, therefore, would be a Major Amendment that would have had to come back?

BRENDAN SULLIVAN: Okay.

MARIE SACCOCCIO: Hi. I'm Marie Saccoccio. I'm an attorney. I live at 55 Otis Street. I've lived there my whole life.

THE STENOGRAPHER: And your last name is spelled?

MARIE SACCOCCIO: S-A-C-C-O-C-C-I-O.

And I'd like to keep my comments within a scope of the particular issue here. If we were in court and the owner had said and we will never have rooftop lighting, that would have been an expressed waiver. I've never heard anything more clear or unequivocal than that. And I really don't see any need thereafter to memorialize a prohibition in the ultimate Special Permit language. They already forfeited it. So, I'd like to address whether it was substantial conformance and also whether it's a minor

change. Their position is it's not even a minor change. I think it's a major change. Every building must be viewed in the context of its neighborhood. They are part of East Cambridge. East Cambridge actually has the East Cambridge historic district within a clear shot of ZINC. At least five historical landmarks, including East Cambridge historic district which takes in Winter Street, Gore Street, part of Cambridge Street, Otis Street, Thorndike Street. It takes in the Bulfinch building. It takes in the Registry of Deeds probate building which fronts Cambridge Street an entire city block. And I went into the Registry and I took some photos from every floor, and the only thing you see is the ZINC building. The back of my rowhouse is an historic rowhouse. It's on the national register of historic places. And the back of my house fronts the ZINC building. I have other historic buildings in the neighborhood. I just think that within the context we're not Arizona, we're not Texas, we're not Nevada. This is Cambridge. We're a 19th century

neighborhood. Things are usually small scale. There's no escaping ZINC, but once they put their rooftop lighting, I mean that is as major a change as anyone could imagine. If I could just show maybe like eight slides.

BRENDAN SULLIVAN: Eight.

MARIE SACCOCCIO: This is the Third Congregational Church. It's right on Third Street. It's an historic landmark. The front steps clearly have ZINC as its vista and so does its upper level.

This is the Bulfinch building. I'm sure most people are familiar with it. It's an historic landmark. All the surrounding area has the view of ZINC including rooftops.

This is Saint Francis Assisi Church, the second Italian parish, the Second Baptist Church of Cambridge. It's an historic landmark.

325 Cambridge Street the church rectory windows and all adjoining church buildings have a clear view of the

ZINC rooftop.

Recently we were restoring the stain glass windows, we had to take them out and quickly had to put up white paper because all we could see was ZINC.

This is the East Cambridge Savings Bank, another historic landmark, just across the street from Saint Francis Assisi Church. This is the kind of vista we see at night usually. This is the Campanile from the church.

This is the Jesse Hall Rowhouse, 1830. Corner of Otis and Second Street, clear view of ZINC rooftop.

This is the Abiel Goss House, 1838. 67-69 Otis Street. Back of house faces ZINC. National register of historic places.

This is my home, 55 Otis Street. The William and Lewis Hall rowhouse, 1851. National register of historic places. Entire back of rowhouse faces ZINC. 55-61 Otis Street.

Another view.

This is the Bulfinch building, the multi-cultural art center, the Middlesex probate, all pre-ZBA, pre-Planning Board, ZINC visible from surrounding streets and many windows.

This is another vista at night that we have in the neighborhood. It's the Bulfinch clock tower.

And this was the view from my bedroom pre-ZINC. And that's Citizens Bank there. Right there, which is now being considered as a historic landmark.

This is post-ZINC. Same view, sort of. Same window.

CHARLES TEAGUE: Marie, you took off -- we're switching over to Heather on this.

HEATHER HOFFMAN: Heather Hoffman, 213 Hurley Street, luckily shielded by buildings like Marie's house from a view of ZINC from inside. But I want to talk about the equitable nature of this. This is my view walking to work by the way. So this is going up Third Street. Take a

look at that, at the form of the screening. The language that you have that I believe the Chair highlighted says that that screening is supposed to be pulled back from the edge of the building. It isn't. It's also supposed to screen all of the mechanicals. You'll note it doesn't. That thing is huge sticking up. And this is not minor.

Take a look, that is a black roof on the bank building. It's, it's reflecting off of that. That's, that is -- and even the green which is much more subdued, if you can use that word, it changes color. These are not minor. There's a reason the neighborhood cared about this and there is a reason that Catamount provided for this in its original application and in the final development plan which is also specifically referenced.

As you can see, the screens are supposed to screen all of the mechanical equipment. Now they have made this equitable argument and told us that you could -- we could do this. We asked you, told us we could, and so we did and now

you've said no and that's not fair. But equity requires clean hands. They're not complying with their -- with the important parts of their -- of their Special Permit. Move it back to the one before.

This is specifically in the Special Permit from the Planning Board's description of how they meet the criteria for a Special Permit. They made a finding that based on what was presented to them, no nuisance or hazard will be created. And I think that everyone would agree that an awful lot of people don't think that that is true with what they've done.

So as I said, equity requires clean hands and a scofflaw, someone who repeatedly refuses to obey the rules, does not have clean hands.

This is another instance. This was how they announced themselves to the neighborhood. Now, while construction is going on, you're allowed to have a 100 square foot sign. Those are 15 feet tall. So you can see

that that is a whole lot more than 100 square feet. They were made to take that down after people in the neighborhood objected, but they didn't take down the ones on the other side that face Somerville and Charlestown.

Now post-construction you're allowed one sign 20 square feet. That's the view from Inner Belt Road.

BRENDAN SULLIVAN: I'm going to jump in but --

HEATHER HOFFMAN: Okay, but this is an indication of how they do not have clean hands.

Mr. Ward wrote a letter in January saying oh, I had no idea these signs were up here. I will have them taken down posthaste. That's May. That is not posthaste. And I can tell you that I actually went to check today to see if those signs were finally down given that the hearing was today and all of that, and yes, they are and yes, I am grateful.

BRENDAN SULLIVAN: Thank you.

HEATHER HOFFMAN: There are plenty of things that

apply citywide to lights, and signs are something I just, since I understand that this is maybe not technically a sign, but what we allow for signs, and signs are much smaller than those lights, it says no flashing or intermittent light creating flashing, moving, changing, or animated graphics. Again, this is -- we would not allow this for a smaller thing, and the, the Special Permit was based on this representation.

And finally, I went to all of these meetings.

This is how many meetings and Catamount came to the neighborhood at least once for every one of them. And yet once Monogram bought this, silence. They never came to us. They didn't -- Mr. Ward said oh, they should have come and talked to us. Well, they didn't come until this Board requested it when they asked for a continuance. So summing up, I would just say that all of you who have said that the Special Permit clearly is based on this, are correct. That the neighborhood would never have agreed to any of this.

And if this had been proposed, correct, so please uphold the City's determination.

BRENDAN SULLIVAN: Thank you.

Anybody else briefly to speak? Carol, if you would give deference to Councillor Toomey?

Charlie, can you pull that down? Are we done with that table?

CHARLES TEAGUE: Yes.

COUNCILLOR TIMOTHY TOOMEY: Good evening. Thank you. I'm here to offer some testimony here this evening. I'm here in support of the neighborhood and in opposition to the appeal of this Monogram Realty. It's unfortunate that we're even here because as all of you know, we have many volunteer members of the East Cambridge community and part of the East Cambridge Planning Team negotiated good faith with the developer in terms of this project, and there's a reason why in part that this was approved. Members of the community made it clear at the beginning that they voiced

opposition to any rooftop lighting. And so why we're here on a hot July night further discussing this, is very unfortunate, sort of disrespectful to the neighborhood, and to those residents who are all volunteers and who are here again this evening. We've heard from many members of the community who lived nearby there that how this lighting is affecting them, especially at night trying to sleep, and, you know, talk about light pollution now and everything else. But I've seen the lighting and different aspects of it, and it is too severe. And I just, you know, when you go into a good faith negotiations and you assume responsibility for a Special Permit that was granted, it is your responsibility to -- or your lawyer's or somebody to make sure you adhere to what that legal document said. And that to me -- I'm not a lawyer, but it appears to me that didn't take place. So it's not the neighborhood's fault that it's happened. Someone dropped the ball I would say but I think in terms of the neighborhood and the impacts it has on them.

And I've heard from people I usually never hear from on anything. And I get a lot of issues, but a lot of neighbors in that area, long-term residents, and have been really outraged by having this lighting in their, invading their privacy. So I'm hoping the Board grants them.

BRENDAN SULLIVAN: Thank you.

Ms. O'Hare.

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

JANET GREEN: Carol, you have to hold it right up to your mouth.

CAROL O'HARE: Do I have to push anything?

JANET GREEN: It's on.

JAMES WILLIAMSON: Tilt it towards your mouth.

That's it.

CAROL O'HARE: I will not mention except to give you this list of the 90 submissions, one sent this very afternoon to you about the ZINC lighting. Of those 90, that doesn't include the ECPT letters which represent all of

their members. Of those 90, only four were supporting the ZINC lights. The Zoning Variances that you granted, would you have granted them for ten foot more than the maximum of the left most building? These are the buildings. These are the segments of the buildings. This one here is a Variance for ten foot higher. We're not including the mechanicals.

This one here, the next segment is 20 foot higher than the maximum.

This one here is 30 or more feet because this Zoning height limit, according to the submission that Catamount made, the maximum is 65 to 85 feet for Zoning purposes, and this part of the building is 150 feet tall. The rest of it, this whole part is 120 feet maximum. And so we have a building that this Board has granted Variance -- a Height Variance for that ranges from ten feet to much more. That's about -- not counting the mechanicals. That's three stories higher than permitted. The mechanicals add another story and a half. They're not counted for height purposes.

So, would this Board have granted the Height Variances requested if they had disclosed, if they had informed you that they were going to blast Fenway Park quality lighting? We are not talking twinkle, twinkle, little star. We are talking, as you saw, blazing lights. So I -- so the pictures, the photos of the lights are relevant because I don't think this Board would have, I would bet that this Board would not have approved those, those height, those heights had you been aware that they would be turned in to effectively signs saying "If you lived here, you'd be home now basically." So even though this type of lighting is not now prohibited by Zoning, I think this Board would not have approved it. In fact, Deborah Horwitz, Catamount's attorney, when she presented to this Board in 2007 said: We -- when she presented these images said: We plugged the East Cambridge neighborhood. We plugged our building into the neighborhood streets and plugged in Special District One's Zoning Envelope, and what you'll see is there really

isn't substantial detrimental impact on the public. I cannot imagine the BZA would have granted the Variance, not even one foot of height if ZINC's lights were plugged in at that time. I urge you to -- I urge you to confirm and --

BRENDAN SULLIVAN: I'm asking everybody to have mercy on us. We have about seven more cases to go. If you will on this hot July night, and we'll be here till after midnight.

Mr. Williamson, if you can, in 30 words or less.

JAMES WILLIAMSON: So James Williamson, 1000 Jackson Place. And I've been trying to modify some notes that I've been making.

So, I'm tempted to begin with, "Mr. Gorbachev, turn off those lights." And I'm mindful of your -- the framework that you suggested for us. I do want to ask the question: Why are the proponents so desperate to hang on to these lights? Is it because they're having trouble renting apartments as I heard from Mark Roopenian earlier this

evening at the North Point event that was on the front page of today's Cambridge Chronicle? Is this the way to rent apartments in a building that people otherwise apparently don't want to live in? I would think not, but why else would there be such a tenacity about this obviously unwanted lighting on the part of the community?

I, I got an answer because of some thoughtful questioning earlier, a member of the Board, about whether or not they had actually read this part and knew about it when they went into the discussions? And apparently the answer is they did not. The question then is, and we haven't really heard, who was it at the CDD who misinformed them that this was okay? Because that seems to be what has happened here. Somebody was mistaken about the significance about what was allowed, and mistakenly told them that they could go forward if the testimony is correct. And I think we deserve to know who it was who said this and how that mistake was made. And that mistake has in turn been

consequential. It's been consequential for the community, very negatively, and it's been consequential for the proponent in now they're claiming that they've had this expense in putting up this horrible lighting. So, I think the notion that this was okay was clearly wrong, this was a mistake, and I hope that the Board of Zoning Appeal will find it so.

Thank you.

BRENDAN SULLIVAN: Is there anybody else who has to -- okay, sir.

GERRY O'LEARY: I'm Gerry O'Leary at 303 Third Street. I'm a Member of the Board of the East Cambridge Planning Team and would like to enter into the record their position on this.

BRENDAN SULLIVAN: Okay.

GERRY O'LEARY: You've heard in the earlier testimony that the ZINC appeared before the planning commission to argue his case. This is a letter to the Board

which represents the position of the East Cambridge Planning Team.

At the July 18th member meeting of the East Cambridge Planning Team owners of the ZINC building and their consultants met with the ECT members and explained why and under what conditions they believed the light should be allowed on. After question and answer with the ZINC team and an internal member discussion, the members voted unanimously to support the City's legal position that the rooftop lights are not properly licensed and should remain permanently off. The neighborhood residents did not feel that an adequate hardship case can be made to grant the Variance and that contrary to the negative impacts, the lights are significant.

As a reminder in a previous meeting held on June 8th, ECPT members also voted unanimously to one, support the decision of the City of Cambridge to force the owners of ZINC apartment complex at 22 Water Street to turn off their

outdoor accent roof lights; and, two, oppose any appeal to the Board of Zoning Appeals to turn them back on. The lights are not necessary for the operation of the building and are excessively large and bright and shining into the apartments of many of the nearby residents of East Cambridge invading privacy and disturbing sleep patterns. The negative impact of such lights on residents in terms of health and quality of life far exceeds any utility provided by the lights and creates very unwelcome precedent for the neighborhood.

BRENDAN SULLIVAN: Okay, thank you.

Any -- yes, Ma'am.

Just for the record, and again I thought I was clear in the beginning, is that we are not here to grant Variance regarding these lights or any relief for these lights.

BETTY SACCOCCIO: Okay, my name is Betty Saccoccio, S-A-C-C-O-C-C-I-O. I live at 55 Otis Street in

Cambridge. And what I have before me are two notes actually that were sent to Ms. Pacheco today that I would like to read. They're not from me, but they are from people of East Cambridge.

BRENDAN SULLIVAN: Are they brief?

BETTY SACCOCCIO: They're brief. One is very brief.

BRENDAN SULLIVAN: Read the brief one and just give us the overview of it really.

BETTY SACCOCCIO: Okay. The brief one is from Marilyn Wellons, okay. She says: Please deny this Variance. The request asks you to ignore the ZINC's light adverse effects on public health, the city process for Special Permits and residents past time and effort in that process. Granting the Variance would be a travesty. Sincerely, Marilyn Wellons, 651 Green Street, Cambridge.

BRENDAN SULLIVAN: Okay, and the other one is basically the same?

BETTY SACCOCCIO: No. The other one is a little bit different. The other one tells the story of a person who lived at 59 Otis Street in Cambridge for 15 years. She decided at this point this year that after seeing and dealing with the ZINC lights that she and her family would sell their unit and move to a different city because she believed that the city was not respectful and that she could not deal with the lights any longer because she had migraines. And what was happening was that the ZINC's were actually -- the lights were coming into her bedroom windows and reflecting through her front windows. This is how severe they were at night.

BRENDAN SULLIVAN: Okay.

BETTY SACCOCCIO: Okay? So I will leave you these two?

BRENDAN SULLIVAN: Please, yeah, thank you.

Is there anybody else who -- and again if we can touch on the legal aspect. We are not here to discuss

whether the lights are a good feature or not a good feature.  
Please. It's not helpful to us.

BERNICE BURESH: Understand. My name is Bernice Buresh, B-U-R-E-S-H. I live at 140 Upland Road, Cambridge. I have a great interest in outdoor lighting. And as I read through these documents, a couple of things caught my attention that I thought were pertinent, and one was Mr. Ward's assertion that this disruptive color change in LED lighting was allowed under the Special Permit. And that in his letter March 17, 2016, to the Commissioner of Inspectional Services Department he argues that this intense lighting is merely a design feature similar to paint color. I will not try your patience by going through a lengthy comparison between paint color and these LED lights.

Also in the documents the Monogram questions the good faith of the city in challenging this lighting. And I think you can just as easily question the good faith of Monogram in trying to sneak in this disruptive and dangerous

lighting as a design feature.

BRENDAN SULLIVAN: Okay, thank you.

BERNICE BURESH: Thank you.

BRENDAN SULLIVAN: Sir, if we can sum it up here.

RICHARD MORSE: I'll be quick.

Hi. My name is Richard Morse, M-O-R-S-E. I live at 11 Sciarappa Street. I don't know how you pronounce it actually.

My only question is having experienced the lights briefly, because they were on briefly, why this would be classified as a minor change? If -- this is not something like, oh, we're going to put in -- we're going to, you know, change the way the trees are laid out. This is -- affects everyone in the near area and it seems to me that would turn into a major change and my understanding of -- I forgotten your name unfortunately. You're -- Jim's earlier argument is correct or his summation was correct, that would have had to go through a different process to be allowed. And I

think that's all I wanted to say.

BRENDAN SULLIVAN: Thank you.

Can we close public comment? Thank you.

We have in receipt -- Mr. Ward, if you want to come back to the table if you will.

CAROL O'HARE: I want to add that to the file.

BRENDAN SULLIVAN: Great, thank you.

ATTORNEY JAMES WARD: Pardon me?

BRENDAN SULLIVAN: The Board is in receipt, let me enter this into the public record. The Board is in receipt of a letter from the Commissioner to the Board dated June 29, 2016. It's some five pages long. It is going back to the history of the project, and also there is some zoning analysis which is really what I want to focus on at the end. There is some, and let me pull out a couple of phrases that I think are somewhat pertinent to the discussion I hoped would have ensued.

(Reading) Although the Commissioner initially

agreed with the owner that the lighting did not violate the Zoning Ordinance, the owner in its December 22nd letter, had not disclosed the relevant facts to the Commissioner and based his argument to the Commissioner solely on what the owner argued was allowed under the Zoning Ordinance without mentioning the Special Permit decision or representations made by the applicant, Catamount, obviously, that were binding on the owner. Once all of the facts were made known to the Commissioner, he informed the owner that the lighting was not permitted. Under these circumstances the owner is not entitled to rely on the Commissioner's initial statement that the lighting was allowed. See Furante (phonetic) versus the Board of Appeals of Northampton, 345 Mass. The governmental and the decision in that court said: The governmental zoning authority may not be forfeited by the action of the local officer in disregard of the statute in the Ordinance. The public has an interest in zoning that can not thus be set at not. The plaintiff landowner is

presumed to have known of the invalidity and to have acted at peril. Stadium Manor versus the Division of Administrative Law Appeals, 23 Mass. 1987. Those who deal with the government are expected to know the law and may not rely on the conduct of government agents contrary to law.

The Commissioner also cites a couple of other cases in regard to his finding. In Mendoza versus Licensing Board of Fall River, 444 Mass. 2005, the Court held that the purchasers of property or their attorneys are not required to look behind the facts of recorded variance decisions to ascertain their effective scope unless of course those decisions expressly incorporate other plans or records by reference. The Mendoza court also held that where there is ambiguity, it should be resolved against the holder of the variances. Mendoza at 206.

The DiGiovanni at Board of Appeals of Rockport, variances require strict compliance with plans. Although the instant matter involves a Special Permit and not a

Variance, the court holding in Mendoza requires purchasers of property to look beyond the face of the zoning decision when plans or records are incorporated by reference in such decisions. Is -- are incorporated by reference in such decisions is applicable to the owner. Here in particular where substantial compliance with the applications' final development plan is a condition of a Special Permit decision, the owner as a subsequent purchaser of the project, was required to look beyond the face of the Special Permit decision in order to ascertain the scope of the commitments and the requirements that were made part of the Special Permit decision and as such are binding upon the owner.

So, that's sort of where I am anyhow on this. And that's the hurdle that I -- and, again, I saw your case law that you're citing and what have you.

ATTORNEY JAMES WARD: And I'm familiar with all of those cases. The first line of cases are municipal estoppel

cases. We're not arguing municipal estoppel.

BRENDAN SULLIVAN: I think that was more for public consumption.

ATTORNEY JAMES WARD: Okay, that's fine.

There are -- the cases do say there are instances when the municipality could be estopped, but that's not really what our point is. But the cases you cite with respect to Variances, Variances are different animals than Special Permits strictly construed always against the owner. Special Permits not so much. So, but that's, that's a legal question that may be decided by somebody else, not you or I.

And what was the other? I think that's pretty much it. But we'll get a copy of that.

BRENDAN SULLIVAN: Yeah.

ATTORNEY JAMES WARD: No, I mean, I completely expect at this point the City to take that position, and as I said earlier, we disagree. And I think that we, our position is that A, without beating the issue of the

conditions incorporated or not, we believe that we got the proper approvals. And not -- it's not an estoppel argument we're making. We're just saying we got the proper approvals: And the only point just, again, going back to a comment I made earlier, that I hope you don't think that I knew any of this and hid it. I certainly didn't.

BRENDAN SULLIVAN: No, we don't. No, I did not --

ATTORNEY JAMES WARD: And I think Heather said I wrote a letter in January about the signs?

BRENDAN SULLIVAN: That --

ATTORNEY JAMES WARD: I did? If you show it to me, I'd be happy to see it.

BRENDAN SULLIVAN: I don't know. That's not pertinent.

ATTORNEY JAMES WARD: No, I know.

BRENDAN SULLIVAN: Okay, you can discuss that.

ATTORNEY JAMES WARD: I'm losing my mind, but I just don't remember that.

BRENDAN SULLIVAN: Okay? That's it?

ATTORNEY JAMES WARD: Okay, thank you.

BRENDAN SULLIVAN: Any questions from the Members of the Board?

DOUGLAS MYERS: I have no questions. If we're ready to sum up, I could make a few comments but that's all.

BRENDAN SULLIVAN: Okay. Any questions?

JANET GREEN: No questions.

BRENDAN SULLIVAN: The Board will close the comment part, the testimony, and we'll discuss it among ourselves.

Doug.

DOUGLAS MYERS: Thank you.

At times like this I'm very glad there's a record being made of these proceedings. I felt that the members of the public have added a great many points of considerable value anticipating some of my own points. If this matter does go further and is the subject of further judicial

proceedings, I'm very glad there will be a record and that another body, a court, if it comes to that, will be able to review the entire record in this case. As for myself, I'm going to rather doggedly stick to the points that were made earlier and just summarize and maybe add one or two things, and I will be brief.

We've discussed the length of the application originally filed by Catamount and it was the subject of PUD approval.

I've mentioned the length being 77 pages, that can sound like a healthy document, but in the context of this case, where a number of the pages were plans and pictures, I don't think where professional examination of that document is concerned in the context of a very significant real estate transaction seems, it to me that it is not burdensome, it's not -- au contraire. It should be standard procedure for professionals acting with respect to real estate purchase to be willing to scrutinize a document such

as that.

Especially, this is point 2, especially where that document is incorporated by the municipal land use body in its approval as a condition that makes specific reference to the application. And the language of the application has been read, and the first condition requires, the first condition of the Special Permit requires that all use building construction and site plan development shall be in substantial conformance with the final development plan.

I -- you can go on and on as Mr. Ward said about what is incorporation of the documents, but I think in the context in which the PUD as done business in which any reasonable person would do business, there is a sufficient reference to a 77-page document as being the blueprint for subsequent approvals, for the reading and interpretation of the conditions that it is sufficiently incorporated, I believe, and the applicant, and in this case Monogram should be held responsible for that.

The third thing has to do with the approvals, ostensible approvals, granted by the city departments and by the Commissioner before the, the decisive, dispositive nature of the original application came to light. Those have been mentioned at length and the Chair has read cases having to do with them. My comment on those is that the matter was originally presented to city officials basically in a light that was not accurate, no one is impugning Monogram or its counsel of bad faith or withholding of the true state of affairs. But the -- it was presented as a matter of right and it was on that basis erroneously approved as a matter of right. But at the risk of making myself very unpopular, I will refer to an equitable argument that lawyers use, the applicant clear it was clearly in *pari delicto*. They were clearly in equal fault in bringing about the situation, and I don't think they can really complain about it. Where it's clear that it was -- that they were bound by the conditions of that original application and

where it was their responsibility to delve into it and be familiar with it.

So for those reasons I would vote to deny the appeal and to uphold the ruling of the Commissioner.

JANET GREEN: I'm in complete agreement with my colleague, Mr. Myers.

ANDREA HICKEY: I have nothing to add. Thank you.

PATRICK TEDESCO: Nothing to add.

BRENDAN SULLIVAN: Nothing? I'll make a motion?

All right, let me make a motion, then, that the Board finds that the Commissioner correctly determined that the Planning Board issued a Special Permit to the applicant, or its predecessor, based on presentations made by the applicant in Section 7.2 of the final development plan, among other things, and that the Special Permit decision incorporates the final development plan by reference.

The Chair moves that the Board find that in Section 7.2 of the final development plan, the applicant

described how the applicant's project satisfied the Ordinance requirements, including with respect to the standards set forth in Article 19.24, Subsection 1 and 4, of the Ordinance regarding architectural screening equipment for mechanical equipment. The statement that there will be no uplighting or other lighting of the screens or roof of the building.

The Chair moves that the Board find that the first condition set forth in the Special Permit decision stated, all use, building construction, and site plan development shall be in substantial conformance with the final development plan along with any other supplemental documents submitted to the Planning Board.

Based upon these findings and the letter provided by the Commissioner dated June 29, 2016, which included the legal analysis provided by the Law Department which is incorporated therein, the Chair moves, No. 1, that the Board uphold and affirm the determination of the Commissioner.

That the subject lighting at the property violates the Special Permit, and that it must be removed.

And that, two, that the petitioner's appeal is hereby denied.

All those in favor of supporting that motion?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Okay. Appeal is denied.

ATTORNEY JAMES WARD: Do you file that with the City Clerk tomorrow?

BRENDAN SULLIVAN: It may take a few weeks to get typed up and filed, but you'll be notified of it anyhow.

ATTORNEY JAMES WARD: Will we?

ANDREA HICKEY: Sean might know.

BRENDAN SULLIVAN: Check with Sean if you will, yeah. It doesn't happen that quick.

\* \* \* \* \*

(9:00 p.m.)

(Sitting Members Case BZA-009453-2016: Brendan Sullivan,  
George S. Best, Andrea A. Hickey, Laura Wernick.)

BRENDAN SULLIVAN: The Board will hear case No.  
09453-2016, 152-154 Raymond Street. We normally impanel a

five member Board. One of the members obviously is not here. I guess I've been apprised of this.

BRYAN WILSON: Yes, sir.

BRENDAN SULLIVAN: And you must receive a unanimous vote in order to receive relief.

BRYAN WILSON: I've been duly informed.

BRENDAN SULLIVAN: And so you wish to waive the hearing by five members and proceed with four.

BRYAN WILSON: Yes, sir.

BRENDAN SULLIVAN: Okay. Because if you are not successful, then you are precluded for two years from coming back.

BRYAN WILSON: I'm fully aware of the regulations, sir. Thank you, Mr. Sullivan.

BRENDAN SULLIVAN: All right. Proceed if you identify yourself.

BRYAN WILSON: My name is Bryan Wilson with a Y in Brian. I'm the owner of 152-154 Raymond Street in

Cambridge.

CHRIS BROOKS: And I'm Chris Brooks, B-R-O-O-K-S. I'm an architectural designer and I work for Colin Smith Architecture.

BRENDAN SULLIVAN: All right, this is a second redo. And if you could tell us what the changes are I guess?

BRYAN WILSON: Well, I wanted to at least set the stage a bit if you would permit me.

BRENDAN SULLIVAN: Okay.

BRYAN WILSON: To give you the history on the ownership of this property. I was assigned here in 1977 by the Navy to go to school, and I knew I was going to be here for at least three years. I ended up almost six years in Cambridge. My wife-to-be, we got married across the street, suggested I buy a house in Cambridge. It was the best decision I've ever made.

This house that I am now asking for a Variance is

where I raised my two kids. So it's very important to me. The neighborhood has changed a lot in the time I've owned it. This street had a lot of rundown houses. When I bought it, it needed a lot of work and I did a lot of work to bring it up to what it is today.

The hearing that we had last March, the Board asked me or asked us to change the plans, to reduce the additional square footage of the upper floor. I want to point out that this change is about a third of what we had asked for. So we've dropped the square footage of the upper floor by approximately 30 percent.

So just to give you some specifics. We had intended initially to add 348 square feet. Again, I point out the walls of this building do not change. The mere fact that we raised the roof adds effective floor space, the proper height, the walls again, do not change. The only thing that we would change is the roof line. So we're now instead of 348 square feet, we've dropped it to 233 square

feet, and this is the minimum that we can have to allow us to put in a proper, safe, conforming stair and also put proper headroom for a bathroom.

We had a little meeting with Inspectional Services and they pointed the obvious out to me and our architect; the size of this lot and actually there are four houses that were built in the late twenties, identical lots, identical houses, they're very narrow lots, the size, shape of the lot makes it essentially impossible to make any substantial improvements. The hardship is there.

I've seen on this street in my ownership houses being torn down and replaced with new structures, and I could also point out that if you go down Sheridan Street which is on Raymond Street, the zoning changes from C-1, which is where we are, to C-. 2 and I'll share with you some photographs of Raymond Street where it's C-1 and also further down. Most of these houses are multi-family houses. Most have dormers as I'm proposing to put in to give us the

ceiling height that we need. And I think that our additional square footage is very minimal. We're going from a FAR based on what we've heard now that the basement's no longer count, effect square footage.

So we're going from a 0.79. As FAR's 0.75 to 0.85. But this is a minor change to the square footage. My intent is to keep it as a two-family. I couldn't afforded this house when I first bought it because I didn't have the salary. Having a two-family rental has made a big difference to me. And I'd like to keep it that way. And I think it's important for the city to have rental property as I have here.

So that is effectively what I needed to tell you, and my architect can give you some of the details and numbers. He tells me that the dormers will meet the Cambridge guidelines, and I would like to share with you some photographs. I made two copies that you can take a look at. And I think it's worth the effort to just peruse

them.

In photograph 1 it shows you Raymond Street. If you look at the house, the yellow house, that's the house in question, 152 Raymond Street. As I said before, there are four houses built to identical plans.

Photograph 2 shows the corner house at Walden Street. This is the entrance to this part of Raymond Street, 143 Walden. Note the dormers on that house.

And 157 Raymond Street, across the street from my house, they're also dormers.

Photograph 4 shows the same thing.

Now photograph 5, I want to point out, shows 146 Raymond Street. 146 Raymond Street already has incorporated a dormer. If you look at photograph 6 and 7, you will see the built-up part of that building. So it's a clear dormer. It's already been installed. Identical house, identical lot. And this is effectively what we want to do, add some dormers to give us the proper headroom.

Just for interest, if you look further down, you'll see passed Sheridan Street where the Zoning goes to C-2. The new construction, most of these houses have been raised, and large condominiums have been installed; six units, eight units. And I just want to point out that the last house on the block, 196 Raymond Street is that.

In conclusion I want to just ask the Board that if you think this is -- my addition is within the keeping of the character of the neighborhood, that you will grant me the Variance and that's all I can tell you.

BRENDAN SULLIVAN: You mentioned about the rental aspect. Are you going to rent the second floor?

BRYAN WILSON: I intend to rent the house as long as possible. I may eventually want to move back there. But at the moment that would be a rental property.

BRENDAN SULLIVAN: And in the original presentation it was that you were going to move into it.

BRYAN WILSON: That is my intention one day. I

can't tell you when and I don't, you know, intend to predict the future, but at some point, yes, I probably will move into that house.

CHRIS BROOKS: I believe we discussed it wasn't going to be immediate moving into the property.

BRENDAN SULLIVAN: Yeah, I see it here in the transcripts that they wanted to make it their permanent residence and add a master suite on the third floor.

Okay. All right. If you could just briefly, very briefly just say what you've done. You've trimmed back.

CHRIS BROOKS: So briefly I'll touch on the FAR and then the design changes?

BRENDAN SULLIVAN: Yeah.

CHRIS BROOKS: So since the last time we spoke, I spoke with the Inspectional Services Department and informed that basement zone doesn't count towards gross square footage for single and two-family residences in Cambridge. That fact pulled our FAR down, but we were still existing

non-conforming.

If we were to have a conforming lot size, our lot is currently 3,870 square feet. If you were to have a conforming lot size of 5,000 square feet, it would be 0.66 and it would be our proposal. Our proposal would be under the 0.75 allowed.

If we were, if we were to build up to our allowable building height, because of the narrow shape of our lot, our side yard setback should be 50.3 on both sides. And to not build within the side yard setbacks, our building would need to be less than 14 and a half feet wide.

So to speak to the design changes that were made, the Board requested that we investigate taking out some of the square footage, some of the scope. We did pull out one third of the proposed square footage.

BRENDAN SULLIVAN: And it came out of?

CHRIS BROOKS: So we lowered the proposed -- it's still going to be a new roof, a new gable roof and new

dormers on there, but we lowered the ridge to the 20.1 foot height increase from where the existing ridge is. The added square footage comes from the dormers.

BRENDAN SULLIVAN: Okay, so by -- well, all right. How much square footage is up on the third floor there now? And I guess what I'm trying to do is how much is there now, not necessarily -- is it finished up there?

BRYAN WILSON: It is a finished attic.

BRENDAN SULLIVAN: It's finished but the staircase going up to it is quite substandard and the point of this is if you're going to make it usable space, adequate space, sufficient space, and spend the money in it, then the staircase has to sort of come along with that whole functionality of the third floor?

BRYAN WILSON: Yes, sir. That was the recommendation of the architect when he first saw it. He said this is a non-conforming stair. The headroom is too low. So that was the first thing that --

BRENDAN SULLIVAN: And what's up there now for rooms?

BRYAN WILSON: It's just one room the full length of the house with, you know, it conforms to the roof line inside. It's paneled. That's really how I bought it.

CHRIS BROOKS: It has a non-conforming plumbing fixture there already.

BRENDAN SULLIVAN: And are there two bedrooms down on the second floor?

BRYAN WILSON: And two bedrooms on the second floor.

BRENDAN SULLIVAN: And a bathroom, kitchen, living room?

CHRIS BROOKS: Yes, sir, that's exactly right.

BRENDAN SULLIVAN: Okay.

CHRIS BROOKS: I found the existing figure for that. I think it's 470 square feet.

BRENDAN SULLIVAN: Which is what's there now or

what is proposed?

CHRIS BROOKS: Proposed is 640.

BRENDAN SULLIVAN: So, I'm sorry, you're going from four?

CHRIS BROOKS: 407 to 640.

BRENDAN SULLIVAN: 407 to 640. And most of that is obviously in the dormers?

CHRIS BROOKS: Correct.

BRENDAN SULLIVAN: Okay.

Anything else?

CHRIS BROOKS: I think, I think we touched on everything we wanted to touch on.

BRYAN WILSON: We should have -- I'm ready for the verdict.

BRENDAN SULLIVAN: Okay, George, any questions at this time?

GEORGE BEST: No.

BRENDAN SULLIVAN: Andrea?

ANDREA HICKEY: All set.

BRENDAN SULLIVAN: Laura?

LAURA WERNICK: No.

BRENDAN SULLIVAN: I don't know if I read it the last time or not, or how we got into it, but there are two letters in the file.

(Reading) Dear Members of the Board of Zoning Appeal; I'm writing to you on behalf of the -- on behalf of and upon the request of Mr. Brian Wilson and Ms. Sylvia Wilson. As I understand, Mr. and Mrs. Wilson are proposing to renovate their property and their plan was rejected on the grounds of violating zoning laws and relating to effective law area. We understand the intent of the zoning laws and protecting the neighborhood. What I want to let you know how wonderful it has been living on our -- how wonderful it has been living on our block having the Wilsons as property owners. It is a quiet and lovely block with hard working residents who are friendly and courteous and

who maintain their lovely properties and care about the community. I hope the Board of Zoning Appeal committee and the Wilson family can reach an agreement so that our neighborhood can enjoy them for many years to come. Bior G-I-N, MD. B-I-O-R G-I-N, MD.

There is also a letter from Erik, E-R-I-K S-P-E-K 150 Raymond Street. (Reading) To Whom It May Concern: I wholeheartedly support the Variance application for Brian and Sylvia Wilson to have dormers installed in their property at 152-154 Raymond Street.

And that is the extent of the correspondence. And you have no other correspondence?

BRYAN WILSON: No, sir.

BRENDAN SULLIVAN: Okay.

All right, is there anybody else who would like to speak on the matter 152-154 Raymond?

(No Response.)

BRENDAN SULLIVAN: I see none. Let me close

public comment.

Anything else to add?

BRYAN WILSON: No.

BRENDAN SULLIVAN: No?

George, what are your thoughts?

GEORGE BEST: My thoughts are I know the spaces are tight in those houses, and to get from the second floor to the third floor is a little bit tricky. So I'm just inclined to say that you've tried to do the best you could and so we could work with that.

BRENDAN SULLIVAN: Okay.

ANDREA HICKEY: Yeah, I've seen the house from outside. I agree, it's a nice neighborhood, and I appreciate what you've done in terms of the design to kind of rein it in a little bit. I strongly believe that the initial proposal was a bit much so I appreciate what you've brought to the table. To me it's a lot more reasonable than where we started.

LAURA WERNICK: I agree.

BRENDAN SULLIVAN: All right. Let me make a motion, then. Let me make a motion to grant the relief requested incorporating the plans as submitted for 152-154 Raymond Street.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner because it would preclude the petitioner from creating a code compliant staircase which is much needed in order to get up to the existing liveable space on the third floor.

The Board finds that the hardship is the size and shape of the lot and the size and shape of the house that sits thereon which predates existing zoning.

That any modifications to the building would require some zoning relief because of those onerous limitations which are inherent with the property.

The Board finds that the requested dormer and

additional living space on the third floor would allow a family to live there, which because of the limited amount of space on the second floor unit and the limited accessibility to the third floor precludes families from living there, and that is the desire of the owner to possibly live there at some point in the future, and this will allow the petitioner to enjoy the property as consistent with what else is going on in the neighborhood and the amount of development, redevelopment, and the upgrading of the housing stock prevalent in that area.

The Board finds that there is substantial -- that the relief may be granted without substantial detriment -- there would be no substantial detriment to the public good, and there are a couple of letters in support of it.

Also the Board is well aware of the changes that are going on in the neighborhood and the constant upgrading that is going on, and this will allow this property to also

enjoy such upgrading.

Relief may be granted with nullifying or substantially derogating from the intent and purpose of the Ordinance to allow property owners to upgrade their property and also to allow for housing for families which this proposal will allow.

The Board grants the Variance on the condition that the work be done in compliance and conformity with the plans submitted.

And anything else? No?

Okay, all those in favor of granting the Variance?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor. Okay.

(Sullivan, Hickey, Best, Wernick.)

\* \* \* \* \*

(9:20 p.m.)

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

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

Is there anyone here wishing to be heard on this

matter? And I think Mr. Rafferty is about to appear on a white horse.

Okay, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: We're calling this case now because we want Mr. Best to get out of here. Anyway.

ATTORNEY JAMES RAFFERTY: Here I thought it was an indication of high regard held by the Board.

Thank you, Mr. Chairman. For the record, James Rafferty, 675 Massachusetts Avenue appearing on behalf of the applicant Matthew Haymer, H-A-Y-M-E-R. Mr. Haymer is seated to my right.

This is a location -- shall I just go right ahead?

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: This is a location that is known to many. It's the former home of Verna's Doughnuts located at the corner of Norris Street and Mass. Ave. in North Cambridge. The building is owned by the family that

operates the Frank's Restaurant on the next block. And Verna's is one of -- had been one of a couple of tenants in the building. There's a frame store on the other side of the building. But at any rate, Mr. Haymer operates a cafe in Central Square known as Cafe Luna. It's a family business which he's operated for about ten?

MATTHEW HAYMER: Ten years.

ATTORNEY JAMES RAFFERTY: Ten years with his wife and son. And Cafe Luna has a strong following and enjoys a good reputation, but in addition to the service provided in the restaurant, Mr. Haymer also does catering, and most of that catering he will share with you, involves what he calls drop-off catering. If you were to be having a party at your home or your business, he would arrive and -- someone would arrive and they would drop off sandwiches, desserts, a range of items, but it's not a full service caterer, if you will, in the sense that they don't come and they don't do your wedding, they don't have servers, they don't set up and, you

know, your china and all those things. But it is an important part of the business. It serves largely the business community, but many residential people as well.

So the catering portion of the business is occurring now in the Central Square location and also in a kitchen of the nearby bakery.

So this opportunity became known to Mr. Haymer and it had great appeal to him for two reasons:

One is it has an established good-sized kitchen. And the size of the kitchen would appear to reflect when Verna's was a more active restaurant-style operation. It used to be a full diner where you could sit down and have hot meals and all that. I remember those days. And Mr. Haymer said he's been impressed with inspecting the kitchen, all the equipment which you wouldn't typically associate with the food product that Verna's had been offering in the recent past. But nevertheless what's required here is a Special Permit.

But the second component of Mr. Haymer's business in this location is retail. He intends to sell retail food products that he will be otherwise preparing for catering. But it is not a cafe. It's not going to have any sit-down seating. And what will be offered for sale will vary on what he's preparing that day. That it will be an opportunity for him to showcase his product. So he could go through in great detail. He has menus. We have a summary. We met with the neighborhood association last, but salads, lasagnas, prepared sandwiches would be on display in a counter where people could come in --

CONSTANTINE ALEXANDER: People would come in, takeout basically?

ATTORNEY JAMES RAFFERTY: Well, it's -- takeout suggests you order it and it's made. But it's retail food.

CONSTANTINE ALEXANDER: No, no. You walk in off the street. To me takeout is you walk off the street, look at the case, and see anything that interests you.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: You buy it and you take it home --

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: -- whatever you want to call it.

ATTORNEY JAMES RAFFERTY: Right.

So things such as bread from Iggy's which he uses in the preparation of food. He will have a display of Iggy's bread. So he'll order -- so the fresh bread will be for sale. The dessert items, the brownies. So it will have components that feel like a bakery. You can come in, you can look in the case, you can buy a container of brownies, cupcakes, whatever, cookies. And then there will be 25, 50 sandwiches and when they're sold out, they're sold out. It's not unlike what you see at Whole Foods when you go out -- in learning about his business model, if you go into Whole Foods and you go to the section where the sandwich is

all prepared, you pick a sandwich, and you leave.

The hours of operation are related to the operation of the catering business. So Mr. Haymer tells me that the catering business is usually -- it's most active in the early portion of the day. So by about two or three o'clock they're wrapping up. They make their deliveries. If someone has an evening order, they usually get it to the customer at three or four o'clock window and they are done. So --

DOUGLAS MYERS: What time are they opening?

ATTORNEY JAMES RAFFERTY: They begin at six a.m.

CONSTANTINE ALEXANDER: Sorry?

ATTORNEY JAMES RAFFERTY: I'm sorry, which I believe is consistent with Verna's opening, but I'm not a hundred percent sure. There was a time when Verna's opened that early? I don't know.

MATTHEW HAYMER: I don't know.

CONSTANTINE ALEXANDER: Will you discontinue your

catering operation at the Cafe Luna site?

MATTHEW HAYMER: Correct.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Right now the people who, as far as you know, who purchase, who use your catering services at Luna, are they in the neighborhood or people who come from all over the city?

MATTHEW HAYMER: They're primarily, and when I say primarily, in the 90 percentile of MIT and Kendall, and then small businesses in the area and individuals, too. But Verna's of course is the other side of Cambridge, gives us a great opportunity to reach to those people who honestly, many of, if not most, are not gonna know Cafe Luna.

ATTORNEY JAMES RAFFERTY: I think it's fair to say the principal meal you cater is breakfast and lunch?

MATTHEW HAYMER: Hands down. Primarily breakfast. We are -- for those who may know, who know Cafe Luna, we're known for our breakfast. And we -- one of the things that

we want to do -- at Cafe Luna we don't have a lot of breakfast sandwiches, quite frankly, and we have many on tap that we're planning.

CONSTANTINE ALEXANDER: Do you expect many or a portion of your customers now at Cafe Luna follow you to Mass. Ave.?

MATTHEW HAYMER: I don't know.

CONSTANTINE ALEXANDER: I know you don't know for a fact.

MATTHEW HAYMER: I tend to think, it's my experience is that it's a different neighborhood, and so I don't think that they will, but I will be thrilled.

CONSTANTINE ALEXANDER: I'm sure you would. I'm trying to get at the traffic.

ATTORNEY JAMES RAFFERTY: Right, but I think the catering business -- I know this because I asked -- relies heavily on on-line and telephone. So if you're ordering a catering order and you're at MIT, you're still going to call

the same number, you're still going to place the order, it's just going to be prepared in a different location. So the catering business is --

CONSTANTINE ALEXANDER: Does the catering business deliver?

ATTORNEY JAMES RAFFERTY: Oh, yes, yes. They have two vans. They deliver.

MATTHEW HAYMER: Exactly. As attorney Rafferty has said, as to the catering business, that people don't come into the cafe. It's on-line, e-mail.

CONSTANTINE ALEXANDER: Right now the, whatever you want to call them, delivery vans that you use to deliver your catering, how many do you have?

MATTHEW HAYMER: I have a total of four. Two of them say Cafe Luna on the side and then two are just, they're on the elements.

CONSTANTINE ALEXANDER: Where do they park right now?

MATTHEW HAYMER: I have parking that I've obtained --

ATTORNEY JAMES RAFFERTY: When you say "right now," do you mean in the proposed location?

CONSTANTINE ALEXANDER: No, no, Cafe Luna. I'm trying to get a sense --

ATTORNEY JAMES RAFFERTY: And you're trying to understand where are they parking today?

CONSTANTINE ALEXANDER: Yeah.

MATTHEW HAYMER: Today. Two locations:

One is through the Central Square Business Association, I have three spots that I pay for at the -- I don't know, it's the Shaw's Market, in that area there.

And then I have one spot that at least for the moment we continue to use behind -- I call it Lot 64, but it's behind 505 Mass. Avenue.

ATTORNEY JAMES RAFFERTY: So do you mean the garage at University Park?

CONSTANTINE ALEXANDER: That's a long way away.

ATTORNEY JAMES RAFFERTY: What's that?

CONSTANTINE ALEXANDER: It's a long way away --

ATTORNEY JAMES RAFFERTY: From Cafe Luna?

MATTHEW HAYMER: It's across the street.

ATTORNEY JAMES RAFFERTY: This is in Lafayette  
Square.

CONSTANTINE ALEXANDER: Oh, I'm thinking of the  
one that's --

ATTORNEY JAMES RAFFERTY: It's across from the  
firehouse.

CONSTANTINE ALEXANDER: Yeah, yeah.

MATTHEW HAYMER: It's literally across the street.

CONSTANTINE ALEXANDER: Are you familiar with the  
letter from North Cambridge?

ATTORNEY JAMES RAFFERTY: I am.

CONSTANTINE ALEXANDER: You want to address it?  
Because they're recommending -- I haven't read it carefully,

because it just was handed to me. But it looks like they're recommending to certain -- if we grant relief, that we impose certain conditions and I wanted your reaction to these.

ATTORNEY JAMES RAFFERTY: Well, I think the conditions are --

JAMES WILLIAMSON: Could the public hear what the conditions are?

CONSTANTINE ALEXANDER: I will. I'm doing it a little bit out of order, James, but I'll make sure you will hear.

ATTORNEY JAMES RAFFERTY: I would say for each of the conditions they represent what is Mr. Haymer's intention, but I think they may not, they would be somewhat restrictive and I would question their appropriateness or the need for them. The reason I say that is this use does require a Special Permit, but I think the Board should be mindful of what some of the allowed uses are in this

district.

So a cafe or a restaurant like Verna's could go in there as-of-right. So conditions about cooking and baking methods and ventilation, well, is there anything about this use that's different than an as-of-right use that would warrant or require or suggest the conditions are needed?

And I would say no.

So similarly no more than two delivery vans.

That's certainly is operation. We know these decisions run with the land and literally last for generations. If he picked up a third delivery van, would he need to come to the Board to amend a condition in a Special Permit? So I think they're really not needed.

The dumpster requirements? There's a dumpster there today. The City has the Health Department to regulate the dumpster. It was suggested could some effort be made to create an enclosure on the dumpster? And Mr. Haymer is already -- after the suggestion came up last night, talked

to the landlord about that. His landlord actually leases the parking lot and has arrangements from the bank next-door. So he informs me that his landlord has had frequent communications in the past week with the president of the bank around a variety of issues in explaining this. So that No. 4 which talked about an appropriate shed or other enclosure to screen the receptacles from public view.

And then No. 5, wherever possible, it's a good aspiration, employees should use public transportation. Well, there are all types of retail uses that are allowed along the avenue that have various parking demands and employee staffing issues. And, you know, these are good things and he should encourage them. But, again, it's not that there's any one of them that's objectionable or that Mr. Haymer isn't prepared to work to have them be achieved -- be achieved, but it just doesn't, in my estimation it creates a constraint that is not consistent with the relief that's being sought.

CONSTANTINE ALEXANDER: Let me read the letter with the conditions to bring the audience up to speed with us as well.

What I'm referring to is a letter with -- we have received this evening.

JANET GREEN: Can you hear?

JAMES WILLIAMSON: Yeah, if anybody else needs to hear it. I just read it so I'm okay.

CONSTANTINE ALEXANDER: Well, actually I should read it into the public record. And can everybody -- should I use the mic or am I talking loud enough for people? Looks like I'm okay.

JAMES WILLIAMSON: Thank you.

CONSTANTINE ALEXANDER: Okay? For the record, as I said, this is a letter we received this evening from the North Cambridge Stabilization Committee, and it reads as follows:

Matt and Terry Haymer of Cafe Luna and attorney

Jim Rafferty appeared at last night's neighborhood association forum in North Cambridge to present plans for operating a commercial kitchen and catering business that will also sell prepared foods out of the storefront previously occupied by Verna's Doughnuts at 2344 Massachusetts Avenue. While the local community was sorry to lose a long time institution, our group was pleased to learn it will be replaced by a small business that will continue Verna's tradition of serving the local neighborhood. Provided that no nearby property owners, businesses, or residents raise objections that could not be satisfactory addressed by the proponent, the North Cambridge Stabilization Committee urges the Board to grant the request of the Special Permit subject to the following conditions which we believe are acceptable to the applicant:

One, the catering operation will use no more than two delivery vans which will park, load, and unload in their lot behind the building rather than on -- than on

an -- rather than an on-street loading zone.

Two, the cooking and baking methods and ventilation systems will not produce excessive noise, smoke, fumes, unpleasant odors, or other undesirable environmental impacts.

Three, the premises will be regularly inspected and treated by professional exterminators to prevent violations of the sanitary code. And the dumpster and recycling bins will be serviced frequently to prevent overflow or other violations of the local ordinance.

Four, in consultation with the owners of the building and the parking lot, the business operator will arrange for erection of an appropriate shed or other enclosure to screen these disposal receptacles from public view.

Five, whenever possible, owners and employees of the business will commute to and from work by public transportation, bicycle, or by foot. And if arriving by

motor vehicle, will seek to use off-street parking spaces.

We thank you very much for considering our input when you deliberate and look forward to your decision.

And I think you've said, Mr. Rafferty, that although you don't have any objection to these in principle or -- you or your client, that you don't think they're necessary to become a formal condition of our decision because of the problems, as you say, as a building, as the business evolves would force Mr. Haymer to come back and see us time after time?

ATTORNEY JAMES RAFFERTY: I would also suggest in the Board's practice of granting Use Variances, with all due respect, the suggestion that this business owner could not avail himself of a loading zone on the street, why should he be handicapped from any other business on Mass. Avenue that could be entitled to use it?

Now, he did state it's his intention to use the rear and park in the back and all that, but a restriction

and Special Permit when this could be retail bakery as-of-right, this could be a retail food store as-of-right, this could be a restaurant or a cafe as-of-right, all of which would have similar loading servicing requirements which would not be subject to anything close to these restrictions. So I think the City is well regulated in this area, and as I said, Mr. Haymer really is -- I don't want to leave the impression that he's -- this isn't his intention nor is he unwilling to meet. He did do outreach. I notified some neighbors on Norris Street about this. Mr. Haymer did talk to many people about this. So he's hands on. He runs his business with his wife and son. And as I said, he's very eager to become a part of the North Cambridge community. So I wouldn't want my legally, legal reservation about the appropriateness of the conditions to be a reflection or to lead anyone to conclude that it's a lack of cooperation on the part of Mr. Haymer.

CONSTANTINE ALEXANDER: Okay, thank you.

Doug, I didn't let you speak before.

DOUGLAS MYERS: I just wanted to ask about the parking behind the storefront. Who owns it? What -- how are the spaces allocated? What will Mr. Haymer's rights be, if any, with regard to the parking area, both the spaces that are further away behind the building and the zone immediately behind the -- the storefront which seems to be marked no access now.

ATTORNEY JAMES RAFFERTY: Okay. So Mr. Haymer, through his lease contract with the landlord, has access to four spaces behind the building.

DOUGLAS MYERS: Four parking spaces?

ATTORNEY JAMES RAFFERTY: Four of those parking spaces. As I noted, the landlord also owns the nearby restaurant which doesn't open for business until four o'clock. So he also has been provided, under his lease, two spaces in the restaurant parking lot prior to four p.m. And as I said, his business activities are in -- 90 percent of

the time concluded then. He has limited Saturday operation and he has no Sunday operation. So we noted in the application that he will have six parking spaces.

The zoning requirement for this use in that location is two parking spaces. So he exceeds it significantly. As for the balance of the lot, I have a limited understanding beyond my review of his lease which I did not represent him in, but that the lot is owned by the adjoining bank. And I've talked to Mr. Ivannis (phonetic), and it's my understanding there's a long-term cooperation. I don't know if it's memorialized where movement through the lot and the spaces -- I don't know if they're leased by this landlord from his abutter, but it's certainly been the practice and he is being provided under the terms of his lease, included in his rent, is access to four spaces in the back of the lot. In the back of the -- behind the building.

DOUGLAS MYERS: And where would you, where would you expect that the loading and unloading, to the extent it

occurs, would take place? Also to the rear of the building?

ATTORNEY JAMES RAFFERTY: Right. I mean, yes, I would say certainly as Mr. Haymer explained to me as the product gets loaded into the van, it would come from the back door into the van in the parking lot. There may be an occasional delivery, like many businesses, where a supplier may arrive and he would probably park -- the supplier would likely avail himself of the loading zone like the businesses -- the reasonable --

DOUGLAS MYERS: As you would expect?

ATTORNEY JAMES RAFFERTY: As the loading zones are intended for, right.

CONSTANTINE ALEXANDER: Okay.

Any other comments or I mean questions from Members of the Board before I open the matter up to public testimony?

(No Response.)

CONSTANTINE ALEXANDER: I guess not. Okay, we'll

open the matter up to public testimony.

Is there anyone wishing to be heard?

JAMES WILLIAMSON: Yes. James Williamson, 1000 Jackson Place in North Cambridge. I showed up I guess about midway through the presentation to the North Cambridge Stabilization Committee last night. I'm quite sympathetic to the application. One question -- well, two questions I guess.

The first is it might be useful to understand what plans there are for the existing parking arrangements if the entire catering operation is gonna move to North Cambridge. And there are some concerns about loading and parking for the delivery vehicles. What's the plan for the existing arrangements at the Star Market and the additional -- in other words --

CONSTANTINE ALEXANDER: Star Market?

JANET GREEN: Those are Cafe Luna, right?

MATTHEW HAYMER: Yes.

JANET GREEN: Yeah, those are at Cafe Luna in Central Square.

JAMES WILLIAMSON: Right, but are they not for the vehicles that are involved or that's a separate arrangement?

CONSTANTINE ALEXANDER: Yeah, the catering business, which the vehicles are used for, is going to cease at the Cafe Luna. It's all going to North Cambridge.

JAMES WILLIAMSON: Oh, that it's all going --

ATTORNEY JAMES RAFFERTY: Yes.

JAMES WILLIAMSON: That's what I wasn't quite clear about.

And the other thing is, I'm not sure if I remember correctly, but it might be nice, and I don't know if this would be consistent with the longer term plans, might be nice to have an opportunity for a table or two in the space and maybe some people might like to sit down and have a sandwich there if it's compatible with the longer term idea about this place. Why -- I mean should that necessarily be

excluded in terms of what is granted tonight? It might be nice to allow for something like that going forward. I think Verna's -- didn't Verna's have a couple of tables?

CONSTANTINE ALEXANDER: That's not within our purview from the zoning point of view. If we grant relief, he can put tables in if he wishes or not.

JAMES WILLIAMSON: So it's not excluded -- inasmuch as it's not part of the proposal.

CONSTANTINE ALEXANDER: Right.

JAMES WILLIAMSON: Okay. And the last thing is I'm not clear what the name is gonna be. Is it going to be Cafe Luna II? Or -- I mean, just to be nice to know what the name --

CONSTANTINE ALEXANDER: Have you decided?

MATTHEW HAYMER: I would say not anything set in stone. But right now we're known as Cafe Luna Catering. I mean it might be a combination of -- we're trying to come up with a name that's catchy that combines both parts of it,

and I defer to my wife on that.

CONSTANTINE ALEXANDER: Smart man.

JAMES WILLIAMSON: Thank you. Appreciate it.

CONSTANTINE ALEXANDER: Thank you. Is there anyone else wishing to be heard before Mr. Brandon speaks?

(No Response.)

CONSTANTINE ALEXANDER: Mr. Brandon, the floor is yours.

MICHAEL BRANDON: Thank you very much, Mr. Chairman. I'm Michael Brandon who sent you the letter on behalf of our neighborhood association, North Cambridge Stabilization Committee. And I think the letter pretty much speaks for itself. We had a really great conversation last night. Matt was kind enough to bring us a couple of trays of, of his excellent food.

JANET GREEN: But not tonight, Matt?

MICHAEL BRANDON: You were right about the brownies. And that could become as famous as Verna's honey

dip at some point.

I think I would ask that the Board attach the conditions. We discussed I think all of them and those were representations that were made by Matt. Some of them he brought up, parking the two vans, delivery vans. I'm a little confused based on the issues that James Williamson raised about -- I thought I heard there were four vans associated with the catering company. And then I thought I heard that all of those -- the catering is moving from Central Square to North Cambridge. So my question is, you know, if there are two vans that are operating at the Cambridge location, what happens to those other two vans? Did I miss something?

CONSTANTINE ALEXANDER: I think you misunderstood.

Do you want to respond?

MATTHEW HAYMER: I mean, it's all going.

CONSTANTINE ALEXANDER: Yeah, it's all going. He has four vans now in Central Square and now those four vans

are going to be operating out of North Cambridge. They'll no longer be any vans -- there will be no longer any catering at Cafe Luna in Central Square.

MATTHEW HAYMER: I think maybe it's almost a matter of semantics. Honestly because a van to me is a catering van that goes either -- you wouldn't even, because the other vehicles, I might drive one. You're not -- no one would know what it is. It's just real -- but the other ones you would see them.

JANET GREEN: So two of them have signs on them that say that they're catering vans. The other two might be used for other, like even personal use or whatever.

PATRICK TEDESCO: So the other two might be in Central Square or back and forth between the businesses?

MATTHEW HAYMER: I really want to use them all. And as attorney Rafferty's talked about my son, but I have another son also in the business, and he's 26 and able to drive. So it's all there.

MICHAEL BRANDON: Well, I guess I'm confused. The issue for the neighborhood is, you know, a lot of deliveries back and forth and where would the trucks be stored? Will there be parking, for instance, you know, at meters or -- I don't think there's a loading area near there right now, but you know.

CONSTANTINE ALEXANDER: You have four parking spaces.

JAMES WILLIAMSON: Is his intention to use the four spaces for the four vehicles?

CONSTANTINE ALEXANDER: That's the function. I don't think people are going to be driving from other parts of Cambridge to go to pick up your prepared foods.

MATTHEW HAYMER: No, I hope not. That's why we're doing this.

MICHAEL BRANDON: So there would be four --

CONSTANTINE ALEXANDER: They have four parking spaces and they have four vans.

MICHAEL CULHANE: They may not have four spaces.

MICHAEL BRANDON: You should probably identify yourself.

MICHAEL CULHANE: Michael Culhane. I'm President of the Cambridge Cooperative Bank. We do have an arrangement with Mr. Ivannis, the owner of the building. And I talked to Mr. Ivannis and he represented a couple of things going on here.

First, he said this was going to be a secondary business, not his primary business. There was also going to be two vans and there was going to be no other parking allotted. My concern was the information was given to Mr. Haymer may not have been the same as I discussed with Mr. Ivannis. I asked Mr. Ivannis if I could meet with Mr. Haymer prior to this meeting, and he didn't make those arrangements.

CONSTANTINE ALEXANDER: And who is Mr. Ivannis.

ATTORNEY JAMES RAFFERTY: The landlord.

MICHAEL CULHANE: The owner of the building.

And I want to bring up a couple of pieces of the -- this is the representation of the lot. The blue area shaded in there is the amount of the lot that is owned by Mr. Ivannis. The yellow is the amount of the lot that is owned by the bank.

PATRICK TEDESCO: Excuse me, I'm sorry, I didn't get who do you represent or your affiliation?

MICHAEL CULHANE: I represent the bank.

PATRICK TEDESCO: Okay.

MICHAEL CULHANE: So --

ATTORNEY JAMES RAFFERTY: Just, it might assist the Board if we noted -- so the building in which the business would be located is this white rectangle next to the blue.

CONSTANTINE ALEXANDER: Yeah, the one story?

MICHAEL CULHANE: Yeah. It's a one-story building. Both of them are one story.

ATTORNEY JAMES RAFFERTY: No, that's the bank.

MICHAEL CULHANE: The bank is here --

ATTORNEY JAMES RAFFERTY: -- but the business we're going into.... (Drawing). That's the business along Mass. Avenue.

CONSTANTINE ALEXANDER: Okay. Yeah, I see it now.

ATTORNEY JAMES RAFFERTY: Just to orient the Board. I didn't mean to interrupt.

MICHAEL CULHANE: By all means, it's all good.

ATTORNEY JAMES RAFFERTY: Yeah, I just wanted to identify the Ivannis's building isn't on that plot plan. I just wanted the Board -- so I apologize.

MICHAEL CULHANE: No, that's quite all right.

The concern of the bank is there's very limited parking and it's always contentious and throw some snow in there and it's ridiculous. The other part of the building I marked is two additional buildings. I will go with the very limited where we have one employee and one customer in the

building so that would be three buildings. And the bare minimum of parking would be six spaces; one customer, one employee. It's not realistic, but I'll go with that. Bill doesn't have six spaces in that blue spot. And you have to be backing in and out of Massachusetts Avenue. I've made arrangements with Verna's. I've made arrangements with Ryan's Florist. I've made arrangements with people over 30 years going out of the building. I haven't got to speak to Matt.

CONSTANTINE ALEXANDER: You haven't got to what?

MICHAEL CULHANE: I haven't got to speak to Matt. Matt's intention and the use of cars was misrepresented to me by Mr. Ivannis. He said this was gonna be a satellite business where he was gonna have the other one. He wasn't moving the whole business here. I'm not sure I can make that type of an arrangement. I would have to talk to Matt and figure out just what's going on. I -- he's -- he's parking on my lot. I'm okay with the arrangement because

Bill's giving me an arrangement, a better access from Mass. Ave. So I'm okay with the arrangement -- with making an arrangement, but I got to talk out the details with him. And if we're going to be doing this, I would like a restriction on the length of time any Variance is given so that we can make sure that arrangement's gonna work.

CONSTANTINE ALEXANDER: You're reading my mind by the way but I'll get to it.

MICHAEL CULHANE: A, I want to make sure we understand each other before we get into each other.

And B, I would like some sort of restriction. I'm willing to give it a try and let's see how it works. That's all. I mean, I'm willing to work with anybody but I haven't had the opportunity to speak with Matt. And I believe that I might have been mis -- Matt's intentions might have been misrepresented by Mr. Ivannis, so I can't. Okay? And I haven't had an opportunity to talk to Matt. And I'm not saying we can't work something out, but we have to make some

sort of arrangement.

ATTORNEY JAMES RAFFERTY: Can I clarify one thing, but I think perhaps because I spoke to Mr. Ivannis and I understood he was speaking with you.

MICHAEL CULHANE: He was.

ATTORNEY JAMES RAFFERTY: So Cafe Luna is a cafe in Central Square and that's what Matt is principally known for. So when we talk about the satellite business, this is not going to be the cafe.

MICHAEL CULHANE: No, no, no. He told me he was gonna keep the cafe.

ATTORNEY JAMES RAFFERTY: Yes, he is.

MICHAEL CULHANE: You're going to keep the cafe in Central Square?

ATTORNEY JAMES RAFFERTY: Yeah, right. So the cafe --

MICHAEL CULHANE: Then maybe I misunderstood.

ATTORNEY JAMES RAFFERTY: Right. And the

confusion about satellite is now it's a cafe with a catering operation. Only the catering operation is coming to Verna's. The cafe is going to remain. At Verna's it will not be a cafe. So when he said satellite, the catering business is an element of the Cafe Luna business, but the cafe is going to continue to operate and be here in Central Square. He is not moving his cafe to North Cambridge. He is only moving the catering --

MICHAEL CULHANE: Oh, no, I thought he was closing the cafe.

ATTORNEY JAMES RAFFERTY: No.

MICHAEL CULHANE: That's part of the deal.

The other thing is Bill doesn't have the spaces to lease. I mean, he's represented that he's leasing you two spaces. They're not there. You know, so -- and that's fine. I'm not saying that I'm not willing to work something out, but I would like an opportunity to do so before the Variance is granted.

CONSTANTINE ALEXANDER: Okay, giving my reaction and board members may shoot me on this one. I'm very much influenced by the argument that's said this was a pure cafe, he could do everything he wants to do as a matter of right in terms of loading or people or it's -- just because he has a catering, not just because, he has the catering operation that draws, that gets to the Special Permit and some of the issues we have here. We may have a big impact on the neighborhood if the catering business takes off. For example, you may have loads of trucks going in and out. Maybe not. I think we need to have a little bit of time to see the impact on the neighborhood. I'm of the mind to grant a Special Permit but for a period of three years or two years or pick, board members, and let's see what happens. Let's see if it really adversely impacts the neighborhood. At the end of the period of time you could come back. You'll have to -- you'll have to come back and reapply for relief again and you can have -- other

neighbors, Mr. Brandon and the North Cambridge Stabilization can come in and say this is not working out. We have too much traffic and this and that. I would rather go that route than try to make a determination now.

George?

GEORGE BEST: So we're --

ATTORNEY JAMES RAFFERTY: Could I maybe save the Board time? I'm, I'm very concerned. We were relying on Mr. Ivannis's relationship with the landlord. There's a parking requirement, there's been historical parking, but out of deference to the landlord and in understanding here, as disappointed as we would be, we would continue this for this limited issue. I would like an opportunity -- I certainly --

CONSTANTINE ALEXANDER: That's fine, too.

ATTORNEY JAMES RAFFERTY: I think Mr. Haymer, and as I said, I didn't do his lease, but I asked him, well, his lease is providing him rights in a parking lot and I'm

hearing that the person giving him those rights may not have the rights to give them. So that is sounding a little bit of a concern in my mind.

DOUGLAS MYERS: It would be very natural to clarify something as important as parking.

ATTORNEY JAMES RAFFERTY: Yeah, it's rather fundamental to the business model that's going on here. So I wouldn't want the relationship, and I wouldn't want -- I'm forgetting your name.

MICHAEL CULHANE: Michael Culhane.

ATTORNEY JAMES RAFFERTY: Mr. Culhane. I wouldn't want him to feel that this was thrust upon him even with a two-year limitation, because there's been a big cooperation here, and I think if it's okay with the Board and okay with Matt --

CONSTANTINE ALEXANDER: It's okay for us, but I would just point out that some of the issues that the North Cambridge Stabilization raised is not relevant to your

discussion with the landlord.

ATTORNEY JAMES RAFFERTY: No, I agree with that.

CONSTANTINE ALEXANDER: So I still think at the end of the day this Board should reconsider, if we grant relief, for limited a period of time so that we can see how it all works out in terms of the general neighborhood impact. Whether we have to worry about cooking fumes --

JANET GREEN: I want to speak. I'd like to speak to that though, Gus. Just saying that I think before we do that, we should understand the financial implications. Because if he's starting something up from scratch and that in three years he might have to shut it down, that would not --

ATTORNEY JAMES RAFFERTY: And I have spoken directly with attorney Crane who lives on the street, with other Norris Street -- and, you know, the uses that can go here as of right -- the florist, for instance, Ryan's Florist, they had a van, they had deliveries. There are so

many uses, and I'm not appearing insensitive to these issues, but it is a burden for an entrepreneur to put the type of money he's going to put into this space, get a line of credit to do this, and then have this uncertainty hanging over him. Now we can do a better job, I'll explain, there are two vans. The vans will remain on the lot. They'll stay there. There are two other vehicles that are used to commute to the business and sometimes used for delivery. So that's where the four vehicles are coming from. But those other two vehicles, and I don't want to take any more time, because I think fundamentally, of course, it's within the Board's purview to decide, but I think the relief being sought here in comparison to the range of as-of-right uses, a bakery could be going in here which would have as-of-right, which would have all of the same impact. So to constrain this use in this way, it feels a bit burdensome. The retail aspects of what's allowed in the avenue and what's happening here, this is, this is in my view quite

identical to those type of uses.

GEORGE BEST: So I just, I want to say that when I'm looking at this whole thing, we don't have everybody on the same page, No. 1. That's No. 1.

So in order for you to go forward I think you should meet.

ATTORNEY JAMES RAFFERTY: Agree.

GEORGE BEST: Okay?

And then on the second part of it, it's not speaking in the spirit of economic development for the bakery to move up there and say okay, now I have to cramp style in order to do my business. If his business takes off up there, he's going to need all four vans coming and going, then what?

CONSTANTINE ALEXANDER: That's why, that's exactly what I'm worried about.

GEORGE BEST: So that's why I think people might want to sit, have a conversation, look over the

possibilities, and be realistic about it and then move forward. That's my suggestion.

CONSTANTINE ALEXANDER: I would also point out as your point all these kind of retail uses can be put in here as a matter of right. That's true.

GEORGE BEST: Obviously.

CONSTANTINE ALEXANDER: But the fact of a matter is the City Council has decided for this kind of a business you need a Special Permit.

ATTORNEY JAMES RAFFERTY: I agree.

CONSTANTINE ALEXANDER: That means there's a different level of concern, and I just want to know --

ATTORNEY JAMES RAFFERTY: Understood.

CONSTANTINE ALEXANDER: -- given the neighborhood opposition -- or not opposition, qualifications. I think I want to, I'm going to reserve my judgment. You definitely do need to -- you need to figure that out.

ATTORNEY JAMES RAFFERTY: And I'll reserve comment

further. But I think we have had outreach and maybe -- I was happy to go to North Cambridge. It was not a particularly well attended meeting. I've had more direct conversation with people on Norris Street about this, and perhaps I could get letters of support. But I, it's a Special Permit which means it cannot open as of right, it has to go through the type of review that we're doing tonight. But the criteria associated with the granting a Special Permits, as we know, has everything to do with the compatibility of such a use with the allowed uses, and I would say under that test this is an appropriate candidate for the Special Permit, because this use and its impact is very consistent to all of the allowed uses in this district and in that building. So I feel confident that it will meet and satisfy the criteria, and the Board will be in a position to grant it. I get the conditions, as I said, I think they might be unnecessary.

The concept of limiting Special Permits to two or

three years does place a bit of an uncertainty over the ability to commit long term to the business. So we'll need to -- if the Board is moving in that direction, maybe we'll need to -- Mr. Haymer will need to understand that and think more about what type of a window would be made to work here. But I certainly hear that. But most critically I -- I'm feeling badly that we've taken the Board's time and the bank's time when we were relying upon an understanding provided us to by the landlord that access to the lot and these spaces were well established. So we need to get those spaces --

CONSTANTINE ALEXANDER: How much time do you think you need?

ATTORNEY JAMES RAFFERTY: I think we can do it shortly.

MICHAEL CULHANE: I think shortly.

CONSTANTINE ALEXANDER: You may want to think about the financial implications if we put a time limit.

ATTORNEY JAMES RAFFERTY: No. I'm assuming -- is there anything in the two to four week range? Is that late August meeting?

SEAN O'GRADY: You have either of the August meetings, the 11th or the --

CONSTANTINE ALEXANDER: You have to make sure all five of us are here, too.

GEORGE BEST: I'm not here on the 11th.

JANET GREEN: I'm not here on the 11th.

ATTORNEY JAMES RAFFERTY: I'm not here on the 11th.

CONSTANTINE ALEXANDER: Next meeting.

SEAN O'GRADY: 25th.

CONSTANTINE ALEXANDER: Is that okay for all of you?

ATTORNEY JAMES RAFFERTY: 25th.

DOUGLAS MYERS: 25th is fine.

MICHAEL BRANDON: Mr. Chair, I was sort of cut off

in the middle. And I think it was productive. I just wanted to say I'm glad you're continuing to work these issues out, but I hope that -- because as I understand it, the dumpster location is owned by the bank.

MICHAEL CULHANE: Yeah.

MICHAEL BRANDON: So that's going to involve some additional issues, you know, in terms of screening, maintenance. Just so the Board understands, we support this and, you know, we're looking forward, we're not opposed to it. But we do want reasonable conditions based on the representations that were made. And part of the reason is these as a result of even what Mr. Ivannis has said, problems in terms of parking. Norris Street since the Catholic high school was converted to residences because the owner is charging hundreds of dollars for a space, Norris Street's residential parking is pretty much maxed out. So just all of those questions so they can be -- and sanitation --

CONSTANTINE ALEXANDER: That's what's going to happen between now and August 25th. You'll have opportunity --

MICHAEL BRANDON: Okay. I would ask that we be kept in the loop in terms of whatever, we would be happy to attend, you know, or follow up with Jim.

CONSTANTINE ALEXANDER: That's for you guys to work out.

MICHAEL BRANDON: And as far as the argument that other uses are maybe as of right, some are -- and, for instance, the Valvoline --

THE STENOGRAPHER: The what?

CONSTANTINE ALEXANDER: Valvoline. Just repeating what we've said.

ATTORNEY JAMES RAFFERTY: I've requested to continue this. Could you act upon that?

CONSTANTINE ALEXANDER: I know.

MICHAEL BRANDON: Okay, fine.

CONSTANTINE ALEXANDER: Mr. Brandon.

MICHAEL BRANDON: I will save it for next time, but last point, some of those uses that are as of right are licensed by the --

CONSTANTINE ALEXANDER: I don't want to get into that other uses are a matter of right. Please, Mr. Brandon.

MICHAEL BRANDON: Okay, thank you.

CONSTANTINE ALEXANDER: Okay, the Chair moves that this case be continued as a case heard until seven p.m. on August 25th subject to the following conditions:

That the petitioner sign a waiver of time for a decision.

ATTORNEY JAMES RAFFERTY: We signed it.

CONSTANTINE ALEXANDER: That's No. 1.

No. 2, that the posting sign be modified to reflect the new date, August 25th, and the new time, seven p.m., and that the sign be maintained for the 14 days required under our Ordinance.

And lastly, I don't think this will be relevant, but if there are any plans that come out of your discussions or the like, they have to be in our files no later than five p.m. on the Monday before August 25th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Green, Tedesco, Myers, Best)

\* \* \* \* \*

(10:10 p.m.)

(Sitting Members Case BZA-010499-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010499, 63 Upland Road.

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

STEVEN HISERODT: Steve Hiserodt from Boyes-Watson Architects.

THE STENOGRAPHER: Steve what?

STEVEN HISERODT: Hiserodt, H-I-S-E-R-O-D-T.

DIANE CRAIGER PARKER: I am Diane Craiger Parker.

STEVE HISERDOT: I have additional sets of

drawings if anybody would like to look at them as we go.

Let me know if you do.

So we have a few letters of support submitted by neighbors.

DIANE CRAIGER PARKER: The originals, sorry. Let me give you the originals.

STEVEN HISERDOT: That have not been turned into the file yet. In short, Diane is in the process of conducting a substantial renovation of her existing three-family house. Most of the renovation's confined to the interior, and we have a small request for some relocation in addition of windows on one right side elevation.

CONSTANTINE ALEXANDER: Are there windows there now?

STEVEN HISERODT: One window there now.

CONSTANTINE ALEXANDER: Now.

STEVEN HISERODT: And we are requesting to put

four windows.

CONSTANTINE ALEXANDER: Okay.

Have you talked to the neighbor most affected?

DIANE CRAIGER PARKER: Yes. The first neighbor on that side, the big neighbor on the garage side where you see, that's Judy.

CONSTANTINE ALEXANDER: Okay, so you have a letter of support from --

DIANE CRAIGER PARKER: We have a letter from the neighbor on the left side, the two neighbors on the right side, and the neighbor across the street.

CONSTANTINE ALEXANDER: Those neighbors are not affected by what you want to do.

STEVEN HISERODT: The one adjacent.

The extent of what we're requesting relief for can be seen on sheets 201 and 202. That's the easiest way. So you can see in this location we have one square window on a single-story extension, and then on the next page we have

four larger windows to match the window facing the street in that location. So it's just going to be converted into a very small sunporch.

DIANE CRAIGER PARKER: And I'll be living there.

STEVEN HISERODT: Diane will --

DIANE CRAIGER PARKER: I was born there. I was born in that room. I'm going back to that room.

STEVEN HISERODT: And that's it.

DIANE CRAIGER PARKER: And that's it.

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

(No Response.)

CONSTANTINE ALEXANDER: We'll have a further opportunity. 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. The Board

is in receipt of letters in support. I'm not going to read them into the record because some of them are on the lengthy side. But the letters are from Judith Pickerill, P-I-C-K-E-R-I-L-L who reside -- and James Penchik, P-E-N-C-H-I-K, they reside at 55 Upland Road.

There's a letter from the resident at 67 Upland Road, Cynthia A. McNulty.

And a letter from the resident at 62 Upland Road Philippe Bohorquez, B-O-H-O-R-Q-U-E-Z.

One more from a resident at 69 Upland Road, Theresa Marshal -- Meskill, I'm sorry. M-E-S-K-I-L-L.

Anything further you want to add?

STEVEN HISERODT: No.

CONSTANTINE ALEXANDER: Questions from Members of the Board. I'll close public testimony. Ready for a vote?

BRENDAN SULLIVAN: Yes.

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: The Chair moves that we

make the following findings with regard to the Special Permit being sought:

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

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

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

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

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

In connection with these findings. The Chair

would note that the relief being sought is very modest. It is not creating any new window openings in a wall where there are not windows now, although there will be more window openings.

And that the neighbor most affected by what is being proposed particularly in terms of privacy or invasion of privacy is in support of the relief being sought.

So on the basis of these findings the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with plans numbered 201 -- I'm sorry, 101, 201. Where is the other one? 201 and 202 prepared by Boyes-Watson Architects and they are dated 6/01/16.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

\* \* \* \* \*

(10:15 p.m.)

(Sitting Members Case BZA-010544-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010544, 63 Fresh Pond Parkway.

Is there anyone here wishing to be heard on this matter? As you know by now, give your name and address to the stenographer.

REBECCA McWILLIAMS: Good evening, Mr. Chair and the Board, my name is Rebecca McWilliams. I am the architect with Independent Design, LLC. I'm here with Minnie and Nick Mildwoff, M-I-L-D-W-O-F-F. They're the owners of 63 Fresh Pond Parkway.

This is an application requesting Variance relief to enlarge an existing vestibule. The vestibule needs to be

converted to a mudroom, and that will enclose a portion of an existing deck triggering side yard setback relief. And we're also asking for a Special Permit for the new openings in the mudroom. The property is located in the Residence A-2 District.

So the Mildwoffs have three children between the ages of 4 and 14, and due to the age and layout of the existing house, it was built in 1948, they do not have a space for storing coats and boots and equipment like strollers for their children due to the lot size.

They would like to enlarge the vestibule from 19 square feet to 61 square feet for a mudroom. And I believe you've all seen the application. There is a large existing non-conforming deck on the right side of the house. So what we're proposing to do is to rebuild the mudroom to the edge of the deck footprint. And the new mudroom addition will be the style and character of the existing vestibule; the same openings, the same windows, just a larger footprint. So

here are the plans of existing, new.

CONSTANTINE ALEXANDER: These are the same plans you have?

REBECCA McWILLIAMS: This is the exact same thing. We're just showing the mudroom extending to the sides. Where the deck stretches a little further than the existing vestibule, the further to the side.

CONSTANTINE ALEXANDER: I see no letters in the file. Have you spoken to the neighbor who is most affected by the vestibule you're adding?

MINNIE MILDWOFF: No, we haven't. We haven't seen them this summer. So... unfortunately.

CONSTANTINE ALEXANDER: They haven't contacted you --

MINNIE MILDWOFF: No. No.

CONSTANTINE ALEXANDER: -- and expressed -- certainly they were notified both by advertisement and by letter from the City.

MINNIE MILDWOFF: Yes.

CONSTANTINE ALEXANDER: Okay. Anything else you want to add at this point?

REBECCA McWILLIAMS: No, I don't have anything to add.

CONSTANTINE ALEXANDER: Any questions 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 anybody here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

The Chair would report we have -- there are no letters in our files pro or con with regard to the relief being sought. So I will close public testimony.

Are we ready for a vote on the relief being sought

is rather modest in nature? It's appropriate.

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: All right.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being the petitioner needs a mudroom or some sort of space to sort of transition from the outdoors to the indoors.

That the -- and this is not an uncommon kind of relief being sought from our Board in the past.

That the relief being sought is a result of the fact that the lot is already non-conforming in terms of the side yard setback. So any relief would require zoning approval.

And that relief can be granted without derogating from the intent and purpose of the Ordinance.

Again, the relief sought is modest. It's not unusual in the City of Cambridge.

And, therefore, the Chair moves that we grant the relief being sought on the condition that the work proceed in accordance with plans submitted by or prepared by Independent Design, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

REBECCA McWILLIAMS: And the Special Permit.

CONSTANTINE ALEXANDER: There's no Special Permit here.

REBECCA McWILLIAMS: So there are openings in the mudroom. I know we're approving the Variance for the mudroom. I just want to be clear that --

SEAN O'GRADY: You're all set.

REBECCA McWILLIAMS: We're all set. Thank you  
very much.

\* \* \* \* \*

(10:20 p.m.)

(Sitting Members Case BZA-010667-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010667. I'm sorry, 80 Erie Street.

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

ATTORNEY DANIEL GLISSMAN: Good evening, Members of the Board. My name is Dan Glissman. I'm an attorney with Prince, Lobel, Tye in Boston. I'm here on behalf of T-Mobile, the applicant. The proposal before the Board this evening is part of T-Mobile's effort to modernize and upgrade their existing wireless network in the City of Cambridge. The existing site at locate at 80 Erie Street consists of three antennas, and T-Mobile is proposing to add

an additional three antennas, two of which will be facade mounted and one of which will be mounted in a stealth cannister.

CONSTANTINE ALEXANDER: Excuse me, are these the same photo sims that are in our files right now? These are not new ones?

ATTORNEY DANIEL GLISSMAN: Correct, those are the same sims.

Additionally with -- we've taken this opportunity to relocate one of the existing antennas on the rooftop and clean-up some wiring which I know is a priority of this Board. This, as you can see by the photo sims that I've just handed out, this work will be done consistent with previous zoning decisions granted by this Board and consistent with other facilities that T-Mobile is upgrading in the City of Cambridge similar to many of the more recent applications.

We're seeking relief under Section 6409 of the

Middle Class Tax Relief Act and we've also filed a Special Permit application.

CONSTANTINE ALEXANDER: Have you seen the memo from the Planning Board?

ATTORNEY DANIEL GLISSMAN: I have, yes. And we just had our Planning Board hearing on Tuesday night so the reason for the last minute --

CONSTANTINE ALEXANDER: Is there anything in there that you object to or do your photo simulations incorporate everything that's in this letter, in this memo?

ATTORNEY DANIEL GLISSMAN: The photo simulations are the same as the simulations that I showed to the Planning Board and --

CONSTANTINE ALEXANDER: The Planning Board made a number of comments. I can't tell from their memo whether they didn't like what they saw in the photo simulations or whether they're just repeating what the simulations actually show.

ATTORNEY DANIEL GLISSMAN: They, they were, they were commenting on what the photo simulations actually show and they were looking for any additional changes that might be able to be made, but we haven't made any changes to the plan from --

CONSTANTINE ALEXANDER: Let me walk through it.

ATTORNEY DANIEL GLISSMAN: Sure.

CONSTANTINE ALEXANDER: Their memo says: The antennas should be mounted as close to the surface of the structure as possible and below the parapet line so that they do not appear to break the roof line. Do your --

ATTORNEY DANIEL GLISSMAN: They do, yep.

CONSTANTINE ALEXANDER: They do.

The cabling should be secured in the smallest most compact way either in a cable tray or a conduit to prevent loose cabling from creating additional shadows.

ATTORNEY DANIEL GLISSMAN: We're proposing a cable tray as shown in the sims.

CONSTANTINE ALEXANDER: The installation should be finished in a color and texture to match the adjacent building surface. And these sims show that.

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: Okay.

DOUGLAS MYERS: I'm about to ask undoubtedly the most stupid question of the evening: How is the new chimney that is being in this photo simulation that I'm showing you photo No. 1 simulation, even though that's a replacement, and I understand your position that it's justified under Section 6409, how does that fail to break the roof line?

ATTORNEY DANIEL GLISSMAN: Well, the -- it's not a facade-mounted antenna. And so they were -- with respect to the Planning Board's comments --

DOUGLAS MYERS: That is correct.

ATTORNEY DANIEL GLISSMAN: -- she was referring only to the facade-mounted antennas not to break the parapet line which they don't. It's -- they were referring to the

two antennas that are now being mounted on the stair head house.

CONSTANTINE ALEXANDER: The chimney for the new antennas is that the same height as the existing ones?

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: It's not higher?

ATTORNEY DANIEL GLISSMAN: No, it's the same height.

PATRICK TEDESCO: One of the facade-mounted ones is on this sort of zinc coated stair bulkhead, right?

ATTORNEY DANIEL GLISSMAN: Correct.

PATRICK TEDESCO: Facing the inside. It's not visible from this view but you see it bulk up, right? It's facing the other --

JANET GREEN: Which page are you on?

PATRICK TEDESCO: I'm on the last page.

DOUGLAS MYERS: Four.

PATRICK TEDESCO: Page 4.

The arrow's pointing to what appears to be a small bump but you actually -- the antenna's mounted on the face, the other face.

ATTORNEY DANIEL GLISSMAN: Yeah, the small bump at the top is the cable tray.

PATRICK TEDESCO: Oh, okay.

ATTORNEY DANIEL GLISSMAN: So if you flip to the page right before that, page 9, you'll see the existing antenna which is mounted on the corner of the penthouse, and we're moving that antenna to the roof head house or -- excuse me, the stair head house. We believe it looks better. They have vertical seams in the stair head house, so it blends in much nicer and we're also adding one additional antenna there.

DOUGLAS MYERS: Do I understand you right that you're eliminating one of the existing faux chimneys on the roof?

ATTORNEY DANIEL GLISSMAN: No, we are not. We're

adding one faux chimney on the roof. There is one existing faux chimney that houses two T-Mobile antennas, and then the other existing antenna is side mounted to the penthouse. We're moving that over.

JANET GREEN: Is there anybody else up besides you all?

ATTORNEY DANIEL GLISSMAN: Yes, Verizon is the two antennas -- if you look to the tenth page of the sims, the two antennas mounted to the front of that facade. And then there are some other chimneys up there that I believe are also Verizon. I haven't personally been on the roof of this building, but I believe they're Verizon.

CONSTANTINE ALEXANDER: Anything else?

ATTORNEY DANIEL GLISSMAN: No, I'm happy to answer any questions.

CONSTANTINE ALEXANDER: Why don't you just quickly tick off why you, why you satisfy the Spectrum Act. There are six conditions that you have to satisfy.

ATTORNEY DANIEL GLISSMAN: Absolutely. The first test under Section 6409 is that the proposed equipment doesn't exceed the existing installation by more than ten feet in height or more than ten percent. These antennas are -- the max height of these antennas is 46 feet and eight inches, and they'll be -- the proposed antennas will also be at that height.

The second part of the 6409 test is that the equipment won't protrude from the edge of the facility by more than six feet, including the mounting equipment. These antennas will be about a foot out, so we meet that test.

The third part of the test is that we're not going to be installing or adding more than the standard number of equipment cabinets. We're not adding any equipment cabinets in this installation.

The fourth part of the test is that the, that there will be no excavation or deployment outside of the base station. This is a rooftop installation. There will

be no excavation. We're merely adding three additional antennas.

And then finally the fifth part of the test is that the modifications don't defeat any existing stealth or concealed designs. Again, we believe that this design is consistent with the Board's previous decisions and meets all of the stealth requirements.

And the final part of the test is that we comply with all the prior conditions of the approval. Again, we believe this installation is under Section 6409, it fully conforms to 6409 and as such meets all the requirements.

CONSTANTINE ALEXANDER: Okay.

Comments from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: I will -- I guess there are none. The Chair will open the matter up to public testimony.

Is there anyone here wishing to be heard? Sir.

DONALD GROSSMAN: My name is Donald Grossman. I represent First CG Limited Partnership which is the owner of the property. We're substantially in support of the changes. I had suggested a couple of what we might call otherwise friendly amendments, specifically that the cable tray going up on the elevator penthouse not be mounted on the side that's shown in the photo sims, but on the back side so that it's less visible.

And then second, I don't know if this -- your sims show a guardrail?

ATTORNEY DANIEL GLISSMAN: Correct, they do.

DONALD GROSSMAN: Just simply that the guardrail not be ballast-mounted but mounted rigidly. A type rails system consistent with the design of the building between the elevator penthouse and the stairwell penthouse.

And then the last thing, and I spoke with the representative of T-Mobile's consultant who was fine with those, the last thing that I suggested, which is a little

more difficult, is that the stealth chimney be aligned with the other two chimneys that were up there with Verizon. I just think it would present, you know, a more consistent appearance and better result. The only problem with that is that it places that sled very close to a cable tray that Verizon has. I think it would probably be feasible but require a little bit of fussing in order to move it over from the center of the roof to in line with the other -- co-linear with the other stealth units.

CONSTANTINE ALEXANDER: Did I hear you say, then, that you've raise this with Verizon and they are amenable to doing what you want?

DONALD GROSSMAN: Wait, say that again?

CONSTANTINE ALEXANDER: I want to make sure -- you've raised these points. First time I've heard them. Do I make them a condition of this decision? I'm not sure I'm able to do that on the fly. But I'm -- you also -- I've heard that you're not in opposition to what is

being proposed?

ATTORNEY DANIEL GLISSMAN: This is the first that I've heard of these requests. You know, I know that our project managers and our RF engineers have designed this to be near the optimal locations. I -- I'm not aware of what it would take to move the stealth canisters. Certainly reach out to our client about that and especially with respect to having to move some of Verizon's equipment. I'm not sure.

DONALD GROSSMAN: Yeah, it wouldn't be moving Verizon's equipment at all. It would be just moving your design over a few feet.

CONSTANTINE ALEXANDER: I'm very reluctant to continue this case.

DONALD GROSSMAN: Yeah, no, I don't want it continued.

CONSTANTINE ALEXANDER: Then you have to rely on your ability to work with Verizon to get this --

DONALD GROSSMAN: With T-Mobile.

JANET GREEN: T-Mobile.

CONSTANTINE ALEXANDER: I'm sorry. T-Mobile to get what you want.

DONALD GROSSMAN: No, yeah, that's fine.

CONSTANTINE ALEXANDER: Okay? But if you don't, you're out of luck.

DONALD GROSSMAN: No problem.

CONSTANTINE ALEXANDER: Okay? All right. As long as you understand.

Thank you, sir.

ATTORNEY DANIEL GLISSMAN: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Guess not. I'll close public testimony.

Any comments or questions from members of the

Board or ready for a vote? I think we're ready for a vote.

It's a long night.

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

That the requirements of the Ordinance cannot be met without 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.

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

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

And that what is being proposed will not impair the integrity of the district or adjoining district or

otherwise derogate from the intent and purpose of this Ordinance.

Further, the Board also finds that the modification of the 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 the facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 also known as the Spectrum Act.

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 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 an 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 respect to previous Special Permits granted to the petitioner with regard to the site in question.

And furthermore, inasmuch as the health effects of a transmission of electromagnetic energy waves as a matter

of ongoing societal concern and scientific study, a 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 regulations, whether with regard to the emissions of electromagnetic 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 a reasonable detail that such failure has occurred and the basis for such claimed failure. The Special Permit granted tonight shall ipso facto terminate if any of the petitioner's federal licenses is/are suspended, revoked, or terminated.

C, that to the extent that the Special Permit has terminated pursuant to foregoing paragraphs A and B, 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 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 will the installation of the equipment subject to the 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 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.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special

Permit --

DOUGLAS MYERS: The record should reflect that I abstain from voting.

CONSTANTINE ALEXANDER: Thank you. Four in favor, one abstention.

(Vote in favor: Alexander, Sullivan, Green, Tedesco.)

CONSTANTINE ALEXANDER: Relief granted.

ATTORNEY DANIEL GLISSMAN: Thank you.

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(10:40 p.m.)

(Sitting Members Case BZA-010548-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case

No. 010548, 52 Foster Street.

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

ANN BONNEY: Yes, we do. We are the owners. I think our contractor was the name on the permit.

CONSTANTINE ALEXANDER: Why don't give your name to the stenographer.

ANN BONNEY: Oh. Ann and Charles Bonney,  
B-O-N-N-E-Y.

And we are renovating our basement which we have received a permit for, but with that, we would like to lower our basement windows because currently the way that the windows sit in the foundation, they're right up against the bottom sill of the house, and so when you put a ceiling in the basement, the ceiling is below the top of the window. So for a number of reasons, that is undesirable.

We have gotten permission from the Half Crown Marsh District Historic Commission to make that change.

They approved that back in May.

This is sort of a mockup what we're going to do. Just sort of a drawing over the windows. Just bring it down a little bit. A couple of bricks down.

We are non-conforming and our neighbors are very close on both sides. So within the 20-foot setback. And that's about it.

CONSTANTINE ALEXANDER: That's about it. And we're talking --

ANN BONNEY: And we have letters or e-mails from our neighbors on both sides and from across the street and two doors down.

CONSTANTINE ALEXANDER: They are in the file now, aren't they?

ANN BONNEY: No, I don't think they are.

CONSTANTINE ALEXANDER: Oh, okay.

ANN BONNEY: Because they're all quite recent.

And I have one more on my phone if it's worth it, but they

all say the same thing that they support it.

CONSTANTINE ALEXANDER: Okay.

Straightforward. Any questions or comments from Members of the Board at this point?

DOUGLAS MYERS: How many windows?

ANN BONNEY: We have -- so this is the, one side. This side will be dropping -- all of them and this is -- sorry. Nope, I've got -- on the other side it's three windows because we're blocking up the rear window on the other side. So it would be -- and then on the front of the house there are two, one on each side. It's a side-by-side two-family house.

DOUGLAS MYERS: So how many windows total?

ANN BONNEY: Yeah, nine windows.

CONSTANTINE ALEXANDER: All basement windows?

ANN BONNEY: All basement windows, yeah. And we're -- and the windows will remain the same size, the same look that they are, just moving them down and updating them

to, you know, high efficiency windows.

CONSTANTINE ALEXANDER: Okay.

Any other comments?

(No Response.)

CONSTANTINE ALEXANDER: The Chair will open this matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt of letters or e-mails given to us by the petitioner all of which are in support of -- neighbors all of which are in support of the relief being sought.

So with that I'll close public testimony. Ready for a vote?

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

That requirements of the Ordinance cannot be met unless we grant 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.

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

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

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

In this regard the Chair would note that the relief being sought is rather modest in nature. It affects basement windows. It has neighborhood -- apparently has

neighborhood support based upon the letters that were submitted to this Board.

So, therefore, on the basis of this all this, the Chair moves that we grant the Special Permit on the condition that the work proceed in accordance with the plans prepared by Amy Semmes, S-E-M-M-E-S dated May 1, 2016, the first page of which has been initialled by the Chair.

You can't change these -- if you change the plans --

ANN BONNEY: We have no plans to change --

CONSTANTINE ALEXANDER: -- you have to come back.

ANN BONNEY: -- the windows. They're proposed on that.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

\* \* \* \* \*

(10:45 p.m.)

(Sitting Members Case BZA-010679-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco,

Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case  
No. 010679, 84 Raymond Street.

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

ATTORNEY JAMES RAFFERTY: Commendable pace you've moved in since your first case. Good evening, Mr. Chairman. For the record, James Rafferty appearing on behalf of the applicants, Dan Hermann, H-E-R-M-A-N-N. And seated to Mr. Hermann's right is Mary Clancy, C-L-A-N-C-Y. She's soon to be Mrs. Dan Hermann. And to my left is Charles Kraus, K-R-A-U-S, and Mr. Kraus is the project architect.

Mr. Hermann and Ms. Clancy have recently purchased a home that they're going to be renovating and moving into. It's on the corner of Huron Avenue and Raymond Street. It's had a series of deceptions over the years I'd say. It's had its most significant additions when Cambridge architect of Sumner now lived there Arthur Brooks. A very sixties style addition. But it is in the Avon Hill Conservation District, so we did appear before them a few months ago to review the changes, and Mr. Kraus can go through them with

you.

But to summarize I would say the most -- perhaps the most relevant aspect of the matter before the Board is what's being proposed on the left side of the house, on the Huron Avenue side of the house, and that is it's a conforming wall, but in the design here the proposal is to have a first floor deck come off that wall, and that deck would move within a few feet of the setback restriction. And beneath the deck, because the topography and everything else, would be a garage. And the garage -- so the request involves a little GFA, about 30 square feet of GFA, because the best of our estimation, when you figure out the dimensions of the garage based upon the deck, the garage is slightly larger than the one car space typically allotted when ISD looks at the dimensions for one car garage. They benefit or have the advantage of the GFA exemption for a single car garage.

There are a series of other alterations to the

house, but all of the walls here are conforming. So the window changes, the openings, and the inner walls are not part of a Special Permit. But the other notable change is on the roof in the front, on the Raymond Street side of the corner and Mr. Kraus could perhaps just walk you through that change. That doesn't have a GFA implication, but it's taking what's a flat roof now and make it more domed or a cathedral ceiling. So it has the effect of looking turreted if you will. It was a feature that was actually favorably commented upon when the design review took place. But the Variance relief is related to both setback and GFA, a modest amount of GFA, and some impact on the side yard setback of the, of that deck and garage.

CONSTANTINE ALEXANDER: I have one question on these plans. This is where the deck and garage you're proposing, understood. I don't understand this. I looked at the property and this just was an open area, the driveway. Where does this, what is this?

ATTORNEY JAMES RAFFERTY: There's a fence.

CONSTANTINE ALEXANDER: What am I missing?

CHARLES KRAUSE: No, it's a shed.

ATTORNEY JAMES RAFFERTY: There's a shed like a garage behind the fence.

CONSTANTINE ALEXANDER: Maybe I didn't see it behind there.

ATTORNEY JAMES RAFFERTY: It's at the end of the driveway.

DOUGLAS MYERS: It's three-dimensional. That's at the end of the driveway.

CONSTANTINE ALEXANDER: Oh, I gotcha.

CHARLES KRAUS: I think it's been removed.

ATTORNEY JAMES RAFFERTY: Oh, maybe it's no longer there.

DOUGLAS MYERS: Oh.

CONSTANTINE ALEXANDER: I don't think it's there.

CHARLES KRAUS: No, it was just removed.

CONSTANTINE ALEXANDER: Oh, okay.

CHARLES KRAUS: Construction. They're renovating right now. Yeah, you're not crazy.

CONSTANTINE ALEXANDER: Okay. So the deck you're proposing is going to be higher than that shed or whatever that was there before, right? It looks like at least on --

CHARLES KRAUS: No, what you see is the recessed driveway to go down into the garage which the deck will be.

JANET GREEN: You walk right out on to the first floor on to the deck.

CHARLES KRAUS: Stepping down four inches. So we're trying to keep that approximately four feet above grade all the way around except for where the garage door is.

ATTORNEY JAMES RAFFERTY: So the Ordinance is, as the Board knows, would allow for a deck to encroach in the setback provided it's not more than four feet in height, which this is not, but it can't extend more than ten feet

from the foundation wall. So this does extend more than the ten feet. So that's why the setback issue comes into play. So it's not, it's not the height, but it's beyond the ten-foot permitted. But Mr. Hermann has been in close communication with the immediate abutters who would be closest to this, and they are, they are comfortable with it.

CONSTANTINE ALEXANDER: They haven't wrote a letter or anything?

DANIEL HERMANN: No, they haven't wrote a letter. We met with them and spoke --

CONSTANTINE ALEXANDER: So you did meet with them and they are in support?

DANIEL HERMANN: Right.

ATTORNEY JAMES RAFFERTY: And so as I said, the matter is in, I hope a copy was provided by Historical by the Certificate of Appropriateness from Avon Hill.

CONSTANTINE ALEXANDER: I'm not sure I saw it.

ATTORNEY JAMES RAFFERTY: I have a copy if you

need it.

CONSTANTINE ALEXANDER: I'll take your representation that there were no conditions -- we do have it.

ATTORNEY JAMES RAFFERTY: Certificate of Appropriateness.

CONSTANTINE ALEXANDER: We do. Let me take a quick look at that.

DOUGLAS MYERS: What is the actual -- what was the actual justification for extending the deck beyond the ten-foot limit that would be compliant with the Ordinance?

ATTORNEY JAMES RAFFERTY: The width of the garage.

DOUGLAS MYERS: So that it would be congruent as it were to the size of the garage?

ATTORNEY JAMES RAFFERTY: Yes.

DOUGLAS MYERS: And the roof of the garage?

ATTORNEY JAMES RAFFERTY: Well, it's really the width of the garage. So -- right, as you come off, and I

should let Mr. Kraus -- but as you come off of the building at ten feet, the garage wouldn't be wide enough. So it's -- right?

CHARLES KRAUS: Yes. So we went 14 feet, and we wouldn't want to do the deck and leave membrane roof exposed. We'd like to go right to the edge of the garage with the deck.

ATTORNEY JAMES RAFFERTY: So if you were limited to -- and the garage is at -- the width of the garage is 14 feet. So the deck could go to ten feet and then we'd have four feet of exposed.

DOUGLAS MYERS: And how many feet is, as proposed, is the garage and deck from the actual boundary line?

ATTORNEY JAMES RAFFERTY: From the side yard setback with the new setback?

DOUGLAS MYERS: Was it two or three feet?

ATTORNEY JAMES RAFFERTY: Yep.

CHARLES KRAUS: Yeah, so we're 19.8 minus the 14.

So 5.8 from the property.

ATTORNEY JAMES RAFFERTY: Yeah, 5.8 is the answer to your question.

CHARLES KRAUS: 5.7 from the closest point.

ATTORNEY JAMES RAFFERTY: The minimum setback in the district is 7.5 and this would be 5.8.

PATRICK TEDESCO: That's the abutter of which you spoke?

ATTORNEY JAMES RAFFERTY: Yes, that's the only impact. And that's Mr. McGinn? Is that his name? Your abutter.

DANIEL HERMANN: Right here.

ATTORNEY JAMES RAFFERTY: Oh, Primo Vinicelli (phonetic) is the abutter. He's the abutter. You met with him at least once?

DANIEL HERMANN: Once.

ATTORNEY JAMES RAFFERTY: Once.

And you shared the plan with him?

DANIEL HERMANN: We did. We shared the plans and then we walked the property and we told him what we were thinking, and you know, he said that they didn't want to support, then we probably wouldn't go forward. They said they were very happy and they didn't have any problem with it and they didn't care.

ATTORNEY JAMES RAFFERTY: And we did this in advance of the Conservation District Commission meeting as well and then they received a letter from us and the abutters' notice of this hearing.

CONSTANTINE ALEXANDER: And as you referred to the conservation -- you do have a certificate of approval from the Conservation Commission -- Historical Commission. It says: Garage approved with construction details delegated to CHC staff, other house alterations approved as per certificate.

And then there are Certificate of Appropriateness attached. Okay?

ATTORNEY JAMES RAFFERTY: Mr. Hermann operates a business and he needs the garage -- he operates a business known as paint night. You may be familiar with it. They're in over 200 bars around the country where you can go in, and while you're enjoying a cocktail, you can set up your easel and paint. And so he's creating artistic opportunities for people rather than, you know, you don't want people just drinking without doing art. So he keeps a lot of his --

CONSTANTINE ALEXANDER: They're in Union Square?

ATTORNEY JAMES RAFFERTY: He keeps a lot of his brushes in the garage.

DANIEL HERMANN: That's my headquarters.

ATTORNEY JAMES RAFFERTY: And Ms. Clancy is the director of marketing of the company.

CONSTANTINE ALEXANDER: There's no one in the audience. I don't have to open the matter up to public testimony.

We have no letters of support or of opposition.

We have your representation about the most affected abutter, and we have a certificate from the Historical Commission previously referred to.

So, discussion by Members of the Board or ready for a vote?

DOUGLAS MYERS: I would just make the comment. I will vote in favor of this based on the representation that there have been extensive discussions with the abutter and that the abutter especially approves the construction of the deck and the location proposed given its proximity to the side line. Without that representation I would have concerns about the introduction of an area of active outdoor use so close to the side line. I'm not saying to be decisive, but I'd certainly want to discuss it more. But based on the representation, I'm completely willing to vote in favor of this proposal.

ATTORNEY JAMES RAFFERTY: Just before the vote, I noticed in discussing with Mr. Kraus there was a revision to

the plan that only affects the front door after the Historical Commission didn't like the proposed side lights. It has nothing to do with the relief being sought, but I know you always reference a set of plans.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: I wonder if you might be prepared to reference this plan? As I said, the difference -- or you can mark the plan.

CONSTANTINE ALEXANDER: The only difference is something that doesn't require zoning relief, I don't think we need to worry about that.

CHARLES KRAUS: They were going to reconstruct it, but we're going to leave it as is.

CONSTANTINE ALEXANDER: I don't think it's necessary.

SEAN O'GRADY: I would just ask that if -- just for my sake that the plans that I'm going to --

CONSTANTINE ALEXANDER: Okay, give us that.

ATTORNEY JAMES RAFFERTY: We're going to seek a Building Permit on this set. But we'll be happy to -- we can represent that the change there is depicted only on the front porch facing onto Raymond and none of the relief before the Board is related to anything to do with the front porch.

CONSTANTINE ALEXANDER: Okay. Okay with you?

SEAN O'GRADY: Thank you. Just to avoid some confusion in a couple of months.

CONSTANTINE ALEXANDER: These are not stapled, are they?

CHARLES KRAUS: No, I left them loose.

CONSTANTINE ALEXANDER: I'm sorry?

CHARLES KRAUS: I left them lose.

CONSTANTINE ALEXANDER: Let me initial each one so there's no question later on.

Okay, ready for a vote.

The Chair moves that we make the following

findings with regard to the following Variance being sought.

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship.

Such hardship being the petitioner needs some garage space, and that it only can be done to grant the relief with regard to the deck in the back and the underground -- partial underground construction of the garage.

That relief is required because of the nature of the lot. It is a -- well, I mean, there is right now the lot is not conforming, right?

ATTORNEY JAMES RAFFERTY: Size wise? Yes. The lot's conforming, the structure is --

CONSTANTINE ALEXANDER: Not --

ATTORNEY JAMES RAFFERTY: -- slightly over in GFA, but in terms of setbacks or otherwise it does conform.

CONSTANTINE ALEXANDER: I'm trying to figure out how I -- I don't have the statute in front of me, how do I

figure to get it into what the statute says. It's not soil conditions.

ATTORNEY JAMES RAFFERTY: No, it's related to the size -- whoever wrote this did a nice job, size and shape of the lot and the location of the structure on that lot.

CONSTANTINE ALEXANDER: Okay.

Due to the size and structure of the lot and the location of the structure.

And that relief may be granted without derogating from the intent of the Ordinance.

Relief generally is modest in nature, has no neighborhood opposition, and that's all she wrote.

Therefore, the Chair moves we grant the Variance being sought on the condition that the work proceed in accordance with the plans prepared by Kraus Associates Architects initialled by the Chair, each page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted. Good luck.

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

\* \* \* \* \*

(11:05 p.m.)

(Sitting Members Case BZA-007632: Constantine Alexander, Brendan Sullivan, Janet Green, Patrick Tedesco, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 007632, 1699 Massachusetts Avenue.

The Chair would report that the petitioner was

granted a Variance on September 30, 2015, with regard to locating a portion of below grade accessory parking garage in an area of lot zoned Residence B. And that the petitioner has now filed a letter with the City Clerk requesting an extension of the expiration of that Variance from the Board of Zoning Appeal.

And that the Chair moves that we grant the extension for a period of six months starting on October 1, 2016, and ending on March 30, 2017.

In other words, that the petitioner now has until March 30, 2017, to act on the relief that we granted back in September of 2015.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(Whereupon, 11:10 at 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.

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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 10th day of August, 2016.

---

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

My Commission Expires:  
April 29, 2022

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