

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

November 19, 2009

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Tim Hughes, Acting Chair

Brendan Sullivan, Member

Tad Heuer, Member

Mahmood Firouzbakht, Member

Slater Anderson, Member

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P R O C E E D I N G S

(7:00 P.M.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Mahmood Firouzbakht, Tad Heuer, Slater Anderson.)

TIM HUGHES: The first case the Board is going to hear tonight is Nine Ash Street, case No. 9816. Is there anyone here on that?

Step forward. I understand that there have been some developments and so we're going to continue this case. Have you requested a continuance?

ALEXANDRA OFFIONG: I'd like to request a continuance and there's a letter in the file.

TIM HUGHES: And there's a letter in the file. Do we have a date?

SEAN O'GRADY: February 14th is that what we said?

ALEXANDRA OFFIONG: 11th.

SEAN O'GRADY: Thank you very much.

TIM HUGHES: We have a request by the petitioner to continue this case until February 11th.

All those in favor of a continuance?

(Show of hands.)

TIM HUGHES: Five in favor.

ALEXANDRA OFFIONG: We'll change the sign.

TIM HUGHES: Change the sign.

Continuance is contingent on you signing a waiver.

SEAN O'GRADY: We have one.

TIM HUGHES: It should reflect the new date in December.

(A discussion was held off the record.)

(7:00 P.M.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Mahmood Firouzbakht, Tad Heuer, Slater Anderson.)

TIM HUGHES: The Board will hear case No. 9846, 575 Memorial Drive. T-Mobile Northeast, LLC. Before we get into this, I understand there's a problem with the posting. In other words, the site wasn't posted properly. There was no posting of the hearing at the actual address for the case.

ATTORNEY FRANCIS PARISI: That was the last hearing. We reposted since the last hearing.

TIM HUGHES: You reposted at 575 Memorial Drive?

ATTORNEY FRANCIS PARISI: Yes.

TIM HUGHES: That wasn't my understanding. Does anybody have any information to that effect?

SEAN O'GRADY: You were not posted

on 575 Memorial Drive.

ATTORNEY FRANCIS PARISI: Oh. I sent photographs in.

SEAN O'GRADY: Saw the photographs and they supported the position that in fact you weren't posted at 575. There's a spot right at the front of the building that I spoke with Vinny about that would comply with the ordinance, and fully expected it to be there. And myself and a board member both visited the site and it wasn't there. And of course your photographs do show it being --

ATTORNEY FRANCIS PARISI: These photographs aren't from 575?

SEAN O'GRADY: That photograph I believe is actually in a delivery area that's not even accessible to the public. So it doesn't even comply. One of the -- I missed the other one, but the board member said he saw it, too. And the one I saw was actually in compliance with the ordinance, but for a

second -- on the front of Memorial Drive at 575 no sign.

ATTORNEY FRANCIS PARISI: Oh.

TIM HUGHES: This is the second time we've continued this for the same reason?

ATTORNEY FRANCIS PARISI: And we tried to comply. I thought we had spoken to the staff and we've given them photographs several weeks ago.

BRENDAN SULLIVAN: The main issue is it's supposed to be at Memorial Drive. The sign should face Memorial Drive. And the last discussion with Vinny when he said he had posted it, sort of the entrance to the -- I don't know if it's a parking garage or to the hotel, we said that was not really sufficient and that it should be posted facing the street address. The mailing address is 575 Memorial Drive, Memorial Drive, Ames Street, but that the posting should face Memorial Drive. And there's plenty of area right

there, and that brick wall and the Hyatt and right at the corner of Memorial Drive and Ames with the sign facing Memorial Drive would be sufficient. And I think is necessary.

ATTORNEY FRANCIS PARISI: We attempted to comply. I thought we had spoken to the staff after the first time and I thought that they were satisfied with the postings.

SEAN O'GRADY: I'm the staff and I did receive your mailing. I can't make the determination, it's up to the Board tonight to make it. Had I received it more than two weeks prior and I could have called you and said look, I don't think you're going to make it, I certainly would have. But I didn't get that until -- it was within the two week period. And so it was, there was nothing to be done at that point other than to have you come down and talk to the Board.

ATTORNEY FRANK PARISI: So that we

don't make the mistake again, you want a sign on Memorial Drive?

BRENDAN SULLIVAN: Facing Memorial Drive within 20 feet of the public way. And again, right at the corner of Memorial Drive and Ames Street there is that brick wall, that's Hyatt Place across it. And right next to that, right at the corner of the brick wall there should be a posting facing Memorial Drive. Whether you attach it to the brick wall, you may not want to. Or you may just want to put a stake in the ground and attach it to there. But it really should face Memorial Drive.

ATTORNEY FRANCIS PARISI: Were there issues with the other postings as well? We put up three postings.

BRENDAN SULLIVAN: Correct.

ATTORNEY FRANCIS PARISI: Were there issues with the other postings?

BRENDAN SULLIVAN: I saw the one at

the emergency door and the interior stairwell. That's the emergency door there. And I also saw it on the grate going into the garage. I didn't -- did not actually drive -- once I saw it was not on Memorial Drive I didn't go down Ames Street to be honest with you, and I thought it was immaterial to go down Ames Street. Saw it in the folder that it had been posted there, but again, not within that 14 days, so it was like a non-issue at that point whether it was down Ames Street or not. It really had needed to be posted on the street facing the street that the address is assigned to which is Memorial Drive. So that's my position anyway.

TIM HUGHES: That's the information that I'm working with is that the posting was not -- there was no primary posting. It was secondary postings, but nothing that accomplished the primary posting of the address at 575 Memorial Drive. So it would

be my opinion that we should continue this case.

ATTORNEY FRANCIS PARISI: Can I ask whether or not we can go forward knowing we're going to continue anyways to repost, but if there were any other issues that the Board wanted me --

TIM HUGHES: Well, the issue would be that if we hear this case, we have to assemble the same five members again and that would give us less options in terms of dates of when you can continue the case to. If we don't open the case, if we don't hear it, we can continue to the next available date.

MAHMOOD FIROUZBAKHT: The whole point of posting the notice is to notify the public so they can have notice of the hearing and be her in attendance.

BRENDAN SULLIVAN: And to hear your question, and I don't see any other issues other than the posting to be honest with you.

ATTORNEY FRANCIS PARISI: What's the next available date?

SEAN O'GRADY: December 17th.

TIM HUGHES: December 17th. Shall I make a motion to continue this case to December 17th contingent on the signing of the waiver and change in signage to reflect the new time and date.

SEAN O'GRADY: There should be a waiver from the last time. We're all set.

TIM HUGHES: Okay. Scratch the waiver part.

All those in favor?

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Firouzbakht, Heuer, Anderson.)

(A discussion was held off the record.)

TIM HUGHES: The Board will call case No. 9850, 21 High Street. Is there

anyone here to be heard on that?

THEODORE VAN SICKLE: Yes.

TIM HUGHES: Come forward and identify yourself for the stenographer.

THEODORE VAN SICKLE: My name is Ted Van Sickle. I live at 17-19 High Street and this is my friend Peter Lindowski who is helping me with this. And the property that we're talking about is at 21-23 High Street, it's the house right next-door to my principal residence.

TIM HUGHES: Before we get started -- I reviewed the file, as I'm sure several of the other people on the Board did, and it is not substantial compliance with our former guidelines for the City of Cambridge. Before we get started on this, before we open this case, I want to give you a chance to continue this case and try and redesign this and be more in compliance with the former guidelines so that we don't waste any time

tonight on something that may or may not fly.

THEODORE VAN SICKLE: What are the problems? Other than I know 15 feet. But we've --

TIM HUGHES: The problem is you have two dormers ganged up on one side of the house which amounts to 30 feet instead of splitting them 15 and 15.

THEODORE VAN SICKLE: Yeah, we're doing that -- my house the property lines are so close on the other side that it made sense to put it on this one side.

TIM HUGHES: It might have made sense to you, but it doesn't comply with the dormer guidelines. And if you want to pitch that to us tonight, you'd need four votes of this panel. And typically this panel has been pretty strong about the dormer guidelines. So I'm just offering you the opportunity to go and redesign this before we open this case. Because if we open the case,

and you don't prevail, it will be two years before you can bring a similar plan in front of us.

TAD HEUER: And if you open the case and you decide after hearing the conversation we had, you want to continue, we would have to assemble all five of us in the same place for the next time we come forward. Whereas, if we continue it now, you can get any five members to show up, which again means the flexibility for dates is simpler.

TIM HUGHES: That's if in fact we were inclined to continue the case later after you're hearing the option to continue it now.

THEODORE VAN SICKLE: So, are you saying that you prefer to have the dormer on both sides?

TIM HUGHES: That's what I'm saying the guidelines would prefer to see, yes.

THEODORE VAN SICKLE: Even though

the two houses are real jammed in there kind of close on....

TIM HUGHES: I'm not sure that makes a big difference to me how close the houses are.

BRENDAN SULLIVAN: That's not untypical.

TIM HUGHES: Right.

BRENDAN SULLIVAN: That's not a unique situation, and the dormer guidelines address that issue and that's why again they have established 15 foot on one side and a max 15 foot on the other. The issue obviously is to pull the dormer up a bit from the face of the wall of the house. There's a number of items in the dormer guidelines which you know you come up short with on that plan. So I think what the Chair is trying to do is, you know, you really need to -- I think what you're hearing from the Board is that we would probably not be very favorable to the plan

submitted and it really needs to be reworked to the former guidelines. You may very well come back and say, you know, I can't do it by the former guidelines or something like that. But I think what he's doing is give you an opportunity to at least address them.

THEODORE VAN SICKLE: Okay. And the other -- I did go through my neighborhood and showed the plans to the neighbors, and they were okay with it. But does that have any --

BRENDAN SULLIVAN: Well, it's helpful.

THEODORE VAN SICKLE: Do you want those in the package there?

TIM HUGHES: You can leave those with us and we can stick them in the file.

SEAN O'GRADY: You certainly can. The only comment is if the plans change substantially what's the value of those?

THEODORE VAN SICKLE: Well, let's

put these in the file --

BRENDAN SULLIVAN: And also if the plans do change and the dimensions should change a little bit, tweaked one way or the other, that the dimensional form should be changed to reflect the new plan also so that again, it's a legal document, so that what you're submitting here is reflective in the dimensional form. Should you change the plan, you need to go back through all those numbers.

THEODORE VAN SICKLE: Okay.

BRENDAN SULLIVAN: And change the dimensional form so that the dimensional form is in sync with whatever plan. So you may very welcome back the night of the hearing and have two plans. One here tonight and then a new one.

THEODORE VAN SICKLE: Okay.

BRENDAN SULLIVAN: But the dimensional form needs to be -- and if you

change the form, then, again it's incurred that you should probably go back through the neighbors.

THEODORE VAN SICKLE: Right, and show them the plans. And make sure everybody's --

BRENDAN SULLIVAN: They've approved one. And just trying to cross the T's and dot the I's, that's all.

THEODORE VAN SICKLE: Appreciate that. And so....

TIM HUGHES: What's the first available date?

SEAN O'GRADY: We can put them on the 17th also. December.

TIM HUGHES: This case will be continued to December 17th.

THEODORE VAN SICKLE: That sounds good.

TIM HUGHES: Okay.

The Chair would move that we continue

this case to seven p.m. on December 17th contingent on the petitioner signing a waiver.

SEAN O'GRADY: It's in there.

TIM HUGHES: It's in there. And submit any new plans on the Monday prior to the 17th, December 17th hearing.

THEODORE VAN SICKLE: Okay.

TIM HUGHES: And change the sign reflecting the new time and date.

THEODORE VAN SICKLE: Okay.

TIM HUGHES: All those in favor?

(Show of hands.)

TIM HUGHES: Five in favor.

(A discussion was
held off the record.)

(7:15 P.M.)

(Sitting Members: Tim Hughes, Brendan

Sullivan, Mahmood Firouzbakht, Tad Heuer, Slater Anderson.)

TIM HUGHES: The Board will call case No. 9847, 77 Mass. Ave. Please identify yourself for the record.

ATTORNEY ARTHUR KREIGER: Good evening. My name is Art Kreiger from Anderson and Kreiger representing At&T.

JOAN CYR: And I'm Joan Cyr, C-y-r representing At&T.

TIM HUGHES: As far as I know, there's no problems with the posting this time around.

ATTORNEY ARTHUR KREIGER: Thank you so much for acknowledging that. I believe we have posted in accordance with the ordinance. We have pictures. I had someone going out there and checking.

TIM HUGHES: Proceed.

ATTORNEY ARTHUR KREIGER: Thank you. With me is engineer Ben Newberry who

can talk about the details of the equipment or the plans. And I believe Mariano Ajobet, our RF engineer is here who can talk about the coverage issues if we need to go into more detail than I can present.

Let me just review what we've submitted. On August 26th we submitted the full application package with eight numbered exhibits. The forms, a table reviewing all the criteria of the zoning ordinance for telecom as well as a Special Permit criteria and design guidelines and FCC documents. A set of plans that I'll come back to. Equipment specs as No. 5, 6 and 7 are photographs, 6 is photos, 7 is photo sims. Five locations of each, and I'll come back to those. So you have the existing and proposed from various vantage points. And 8 is the RF report by Mariano Ajobet discussing the coverage issues.

We went to the Planning Board on October

7th. You may have a letter from them, you didn't last time, so I won't assume you have it now. October 7, 2009 the Planning Board memo to the BZA. "The Planning Board notes that this installation is largely needed on campus, and is quite unobtrusive. It is a good fit that meets the criterion of the ordinance as long as they're carefully located on the building to minimize visual impact."

Do you need a copy of that for the file or do you have that?

TIM HUGHES: I have that.

ATTORNEY ARTHUR KREIGER: Okay.

I'm happy to go into as much detail as you like, but I think we can -- the easiest way to do it is to look at the photo sims first. This is going to be an equipment enclosure on the roof of the 77 Mass. Ave. which is a flat roof building. It's smack in the middle of the campus. And that location

is confirmed. If you need extra copies of the photo simulations, copies I think for everyone. You've got Exhibit 6 there.

So the first page of that exhibit is the location, the red dot and the five vantage points numbered 1 through 5 around it. And then following that are pairs of photographs from existing and proposed from vantage point 1. Existing and proposed for No. 2, etcetera. From most of the -- from some of the locations is a pair of antennas on one corner of the building or another. And I -- we will look at the plans and see where the antennas are. From some of the locations you can see the equipment cabinet of course. But it's unobtrusive. It pretty much blends in with the other equipment with the surrounding buildings. It's camouflaged as much as practicable. And as I said, the Planning Board was satisfied with it. You're all familiar with photo sims. I'm

trying not to belabor the issue. Would you like to discuss any of those?

TIM HUGHES: Any members of the Board have questions about the photo simulations?

ATTORNEY ARTHUR KREIGER: Let me come back to the plans then. Give me a moment here to find the ones that I want. It might be easier to work off the large plans on the board here. You have T1 which is the cover sheet, and then you have Z1 to 4. And I'm going to go right to Z2 which is the area of photograph of the roof. This is the end of the building closest to Mass. Ave, and the main MIT dome building is off to the left. Ames Street is off to the right. In front of the existing penthouse on the roof you've got the equipment enclosure. And I'll -- I need to come back to that in a moment. The cable runs here. The cable runs to three antenna sections with three sectors. Each antenna,

each set is a pair of antennas mounted on the top corners of the building as you saw in the photo sims. So those -- that's all that's visible from the street are antennas. The cable runs right on the roof, typical stealth design. And then the equipment cabinet as I said, would be visible as you saw in the photo sims. This is actually an updated set of drawings.

TIM HUGHES: I see that.

ATTORNEY ARTHUR KREIGER: And that's why I said I wanted to come back. Nothing has changed externally. At&T has, for technological reasons has gone to a new cabinet design that they want to use here and that they're starting to use. There are more cabinets shown in the same enclosure. Those are eight feet high. And so actually the enclosure wall had to be heightened by six inches or a few inches.

MALE AUDIENCE MEMBER: From the

original plan very minimal, maybe six since.

ATTORNEY ARTHUR KREIGER: Okay.

But the base of it that it's sitting on, because it's up a few steps and there are structural supports under it, that's been lowered. The entire height of the enclosure has been the same. Its bottom is closer, lower to the roof. You've got cabinets. None of it will be visible from anywhere. All enclosed on three sides by those walls, and the fourth side by the existing roof structure. In the what the roof, the existing roof looks like. So it's the cabinet will be tucked right up against that existing wall. So that is a revision, but not one that's visible to anyone. And I want to make the record accurate by submitting these plans that have a revision date of yesterday. But other than that, I'm working off this one because this is actually a clearer drawing than the one you may have in

your packet.

TAD HEUER: It's also a more accurate drawing, too, right, it's a clearer -- it's correct.

ATTORNEY ARTHUR KREIGER: Because of new equipment. I didn't start with the existing and I went right to this plan because it's easier to work off of so it is accurate as well as clear no question.

BRENDAN SULLIVAN: Why don't you ask a question what drove this particular location and this particular equipment and amount of equipment here. Obviously the simple answer is, well, gap in coverage. But does this equipment and this installation, this location have a purpose also, or is it purposeful to the institution also? Or is it just for the general public? In other words, the last couple hearings ago there was Hilles Library which one of the purposes was to serve the quad, and I'm just wondering if this

particular installation, aside from serving the general public also serves MIT's needs in some fashion or not?

ATTORNEY ARTHUR KREIGER: It does. Particularly what this does as you'll see from coverage issues that we'll describe, is that it improves the in-building coverage which is this building and the surrounding MIT buildings.

BRENDAN SULLIVAN: Which is deficient right now.

ATTORNEY ARTHUR KREIGER: Which is, yeah, spotty. There's some coverage. It's the second level down. But MIT can speak for its interest in this, in this facility.

BRENDAN SULLIVAN: That's why I'm asking the question, yes, it does. And that's fine.

ATTORNEY ARTHUR KREIGER: Okay.

So what I will do is turn to the coverage issues. This in here, this part of the MIT

campus. This is Mass. Ave. of course coming across the river. And this is it over here. The building is the in the middle. The blue represents minus 82 decibels which is not good enough coverage in buildings. It's good enough on the street and maybe good enough in vehicles, although Mariano can speak to that more as well. But it doesn't provide the best in building coverage, particularly for the new At&T applications. Here it is in the same shot. There's the facility. All of that blue has been eliminated and brought up to green.

Mariano, is there anything you want to add about that?

MARIANO AJOBET: Yes. I'm Mariano Ajobet, M-a-r-i-a-n-o A-j-o-b-e-t, last name. What's happening here is the coverage here is coming from the sites across the river, and it's that idea because it's too far away to penetrate inside the buildings. So

we'd like to have a site within the building itself to serve the building and serve Memorial Drive and the campus itself. So we'd rather a site right into --

BRENDAN SULLIVAN: The buildings are running interference basically?

MARIANO AJOBET: Yeah.

TAD HEUER: So the buildings are running interference. You say the blue is a fine signal in the street; is that correct?

MARIANO AJOBET: Yes. The blue essentially represents signal in 82 which is good for in-vehicle and on street, if you're walking on the street.

TAD HEUER: And I guess I'm a bit confused. When I look at the map, and compared to the satellite picture, it looks like the blue is on the street and it's covering outdoor spaces. So I'm a bit confused as to the indoor spaces not being covered. So the far west side looks like

it's on Mass. Ave. and then it moves up toward the east toward -- on Landon Boulevard and that looks like it's an outdoor quadrangle and it crosses over on Ames Street, maybe through a building. But up there also seems to be kind of parkish, so....

MARIANO AJOBET: All street meets outside --

TAD HEUER: It's outside.

MARIANO AJOBET: That's on the street.

ATTORNEY ARTHUR KREIGER: The blue is both outside and the areas that you pointed to and some in building.

JOAN CYR: I think what he's saying the blue is covering over buildings so it's not just the street.

MARIANO AJOBET: It's not enough to penetrate the buildings if you have to be here. It's only that strong. It's not strong enough.

TIM HUGHES: I think we understand that. I think what Tad is saying is --

TAD HEUER: The blue patches are -- I mean, there's some, but it looks like mostly that is running along outdoor spaces where the blue is because it kind of makes sense, people wouldn't need a higher coverage, right? You just told me blue is fine for outdoors. And it looks like, I may be wrong that's why I'm looking for a correction. It looks like the blue when I carry it to the overhead, covers outdoor spaces. Therefore, I don't understand why we need more coverage.

MARIANO AJOBET: So, this essentially came up from -- power and antenna gates on it. But it doesn't really see the buildings, so it kind of computes everything else except for the buildings, but this is actually a little bigger, but not exactly like that. Just a little off.

ATTORNEY ARTHUR KREIGER: I have a map that -- on to an actual campus map. Your point is all the blue is outside and it's already good enough?

TAD HEUER: I'm not saying all, but looking at the photo sim and eyeballing it against the major streets which is Landon Boulevard and Ames Street and Mass. Ave. It covers Mass. Ave. from Vassar to Land Boulevard which is clearly outdoors. And then it runs up along Land Boulevard on the interior of Land Boulevard to what appears to me to be a quadrangle on the south side of the MIT dome. And like I said, I'm just looking it over, there may be buildings in the way and hundreds of people in the building who actually need that service, but --

MARIANO AJOBET: The MIT the dome, I'm not sure the name of the building.

TIM HUGHES: They don't have names,

they have numbers.

ATTORNEY ARTHUR KREIGER: Maybe this map is easier to work off of. You've got buildings down here in this blue area on the other side of Ames furthest to the east. Those are buildings.

TAD HEUER: Yes, I'm looking-- basically this is Mass. Ave. You've got blue on Mass. Ave. And then you move up along Land Boulevard here which is through a courtyard and maybe that building, right?

ATTORNEY ARTHUR KREIGER: Yeah. It's through this, through this building into the courtyard. It's this building here and into the courtyard and into these buildings, right?

TAD HEUER: Well, no. That's Mass. Ave. right there.

MARIANO AJOBET: That is Mass. Ave.

TAD HEUER: And that's a sidewalk.

ATTORNEY ARTHUR KREIGER: The blue is over here. It's going through a building. I understand.

TAD HEUER: So it's going through the side of what the Pierce Laboratory. So we're going Pierce Laboratory and then the Hayden Memorial Library, right?

MARIANO AJOBET: Yeah. But still again those signals are coming from across the river so we need something inside.

TAD HEUER: I don't really care where they're coming from. Green means it's good and blue is pretty good. I don't care where they're coming from. You're representing to me that that's coverage that you got. And I don't care where it's coming from. That's what you're saying it is.

ATTORNEY ARTHUR KREIGER: So can I take a crack at this? I understand the question. Maybe if I hold these up side by side unless it's too far away we can do it that

way. You got on the west side of Mass. Ave. here, you've got some buildings there. And I can give numbers, but you can see it I think. And crossing over Mass. Ave. I think you got the Pierce Laboratory. Some spotty coverage up in what looks to be like north of the quadrangle here, that little piece. And of course these are just on a grid, this isn't the actual shape of the coverage levels. Then moving to the east close to Mass. Ave. here you've got these other buildings. These are the quadrangle. And then you say as it crosses Ames. And so you've got buildings up here in this big blue area up here. Those are all buildings. And then you've got the buildings over here to the east. Just eyeballing it off the, well, maybe -- we've got buildings over there and that must be the major intersection of the blue area with the buildings. But that's -- I mean, just picked off a fair

number of buildings there. I didn't list them. So you're right, some of it is outdoor area where the coverage may be sufficient for an outdoor area, but a fair amount of it going from one end of the blue to the other is building.

TAD HEUER: Okay.

SLATER ANDERSON: Can I make an observation, and it may be germane or not, it seems to be between a radio frequency engineer and telecommunication company and Massachusetts Institute of Technology we could get a coverage map that doesn't look like a screen from an Atari computer game from 1985. I think part of the problem is that these coverage -- and I understand it's a grid, but I -- you said that your coverage generation software doesn't account for buildings. It seems like one of the issues here is buildings. It seems to me that following the coverage mapping and input are

somewhat deficient. I mean, I get the general gist of the coverage issue, but it seems like buildings are an important factor in coverage. I mean, that's sort of why we're here.

JOAN CYR: Yeah, I can speak to the actual experience. The map is a general representation from At&T I can tell you from real world experience that the buildings are causing a major issue on campus, not just on in the buildings but also on the outside.

SLATER ANDERSON: I think this is more for -- I think.

JOAN CYR: I understand.

TAD HEUER: We're not in the business of wanting to approve hundreds of mobile applications because someone comes in and says we've got a gap in coverage. We've got Nextel, we've got T-Mobile, we've got Metro PCS and they're all saying they've got gaps. I have no idea how we've got cell

coverage in the city given all the gaps that are apparent wherever I go. But apparently I rarely have difficulties. Everyone comes in with a problem with gaps in coverage. They all show us a map. I see you have a gap but what that means is a lot of buildings have antennas on them. We see them one at a time so we can end up with the same building covered in antennas. And then the last person comes in and says, you know, you granted them three times before, it's difficult for us to see both your concerns for coverage but also what we're charged with looking at in the zoning ordinance is not to paper the city with antennas. So whether there's something like this, which is we've got pretty good coverage already, we've got adequate coverage for outdoors and we're covering a building here and a building there. We're weighing that against someone who comes in and says I can't get cell

coverage for this six block area. We need an antenna. This starts moving toward the luxury side and unless you can really demonstrate that the building doesn't have it and show us that. You know, it starts to become more of a close call for us because what it's going to mean in the end of the day is more antennas on more buildings. And we're trying not to do that as much. We want them to be, where necessary, but be just where they are much better without demonstrating why.

ATTORNEY ARTHUR KREIGER: Well, part of the answer to that is standards, everyone's standards. The provider's, the consumer's, the municipality's, everyone's standards, ratchet it up what was acceptable coverage ten years ago and what worked for those applications aren't acceptable coverage today and don't work for these applications. We talked last time also

about the security issue for in-building coverage. And I'm not sure I'd agree that you can characterize a building here and building there. It's a fair swat of the campus that we just went over. And we talked about the security issues last time from the wake of Virginia Tech, and we talked about the Harvard at least. And MIT has the same issues. So, I disagree that this is the luxury-ish end of the spectrum. I understand that it's not as pressing in need as where there's no coverage for a six block area, but I think this is a gap in the coverage that people want, that MIT wants for its students and professors and community, and that the contraries are trying to provide. I understand your point, but I don't think -- I don't think this application crosses that line or gets close enough to the luxury where it should be an issue.

MAHMOOD FIROUZBAKHT: Other than

cell phone coverage are there any other applications that these antenna serve?

JOAN CYR: Voice and data. I mean, it's both voice and data. So if we needed to send an emergency text message there's a shooter on campus, we need to have that.

ATTORNEY ARTHUR KREIGER: Is that what you're asking or are you asking completely different kinds of issues?

MAHMOOD FIROUZBAKHT: If there are different applications.

MARIANO AJOBET: The phone right now are utilizing voice and data and, you know, average phone user actually does that and so....

TIM HUGHES: Any other questions from the Board?

I have a question. You realize that this installation is in a residential area?

ATTORNEY ARTHUR KREIGER: Yes.

TIM HUGHES: One of the specifics of

the ordinance is when it's in a residential area, you have to address the question of whether the non-residential use predominates in this area.

ATTORNEY ARTHUR KREIGER: Yes.

TIM HUGHES: Can you address that, please?

ATTORNEY ARTHUR KREIGER: Yes. I'm looking at Tab 2 which is the zoning compliance. As you know from the campus, and if you're familiar with it, and from the maps this institutional use predominates in this area, this is all MIT.

TIM HUGHES: The record doesn't -- you can't see the maps that's why I want you to verbalize this so it's a matter on record.

ATTORNEY ARTHUR KREIGER: I appreciate that. On page four of Exhibit 2 we said the Board should find that institutional use predominates in the area

surrounding the facility location, and the central location within the Mass. Ave. campus. And the facility design minimize impacts on residences. Those I think are responsive to that paragraph. Zoning ordinance.

TIM HUGHES: Would it be fair to say you'd have to go pretty far to even find a residence in this area?

ATTORNEY ARTHUR KREIGER: I don't know where all the dorms are.

TIM HUGHES: Dorms don't count as residence. They count as institution.

JOAN CYR: Way up on the grey.

ATTORNEY ARTHUR KREIGER: Yes. So I think any -- I haven't attempted to cover the waterfront in terms of the criteria. I think they are all addressed in the material that we submitted, but I appreciate the chance to generate the support.

TIM HUGHES: Is there anybody in the

public who wants to provide testimony on this particular case?

(No response.)

TIM HUGHES: I don't see anybody.

Any further comments or questions from the Board?

ATTORNEY ARTHUR KREIGER: If I may, I just want to submit that new plan for the record since you don't have that in the record yet. Here are 11 by 17s.

TIM HUGHES: Of the same thing? I'll take that one instead. Are we ready for a vote? Okay.

ATTORNEY ARTHUR KREIGER: In Tab 2 is where we have it. You have to scan down and figure out the findings I guess. But if I can help with that.

TIM HUGHES: The Chair would move that the petitioner has met the following criteria for the permit for the telecommunications facilities in Building 16

on the MIT campus. I think it's Building 16.

ATTORNEY ARTHUR KREIGER: Correct.

TIM HUGHES: The Board would find that the petitioner has the required FCC licensing.

That the petitioner has various elements to visualize the impact, including light colored antenna that mix in with the facade of the building and not raising the mechanicals on top of the building any higher than are absolutely necessary.

The cable trays are not even visible from the street.

The Board finds that petitioner has made the case that although this is a residential zone, that non-residential uses predominate and that it is primarily the campus of MIT.

The Board would add to the following stipulation: That any of this equipment should become obsolete or unused, it would be

removed and that the building would be restored, or every effort would be made to restore the building to its original condition. Am I leaving anything out?

SEAN O'GRADY: That will carry I think.

TIM HUGHES: All those in favor of granting the Special Permit?

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Firouzbakht, Heuer, Anderson.)

ATTORNEY ARTHUR KREIGER: The applicant requested the Board permitted to replace an upgrade without the need for a new Special Permit provided such equipment shall be in the same location and not substantially that language of course comes from one of the --

TIM HUGHES: I think I saw that someplace. I must have missed it.

ATTORNEY ARTHUR KREIGER: It says in granting, the Board shall set forth the circumstances of procedures if any were upgraded, permitted without any Special Permit. Questions for the Board are?

TIM HUGHES: Do I have to open this again?

SEAN O'GRADY: You have the power to do that. The Board has not -- if you want to do that, you would need to reopen and make that finding.

TIM HUGHES: Any thoughts?

MAHMOOD FIROUZBAKHT: I think that kind of language leaves a lot up to discretion and I'm not necessarily comfortable with not having sometimes upgrade can be expanded to mean more than it should.

TIM HUGHES: Should we provide that the upgrade has to stay within the footprint and the sizes of the original equipment?

BRENDAN SULLIVAN: I would be

comfortable with that. It's that word substantial. What is substantial to one person is --

TIM HUGHES: Creates an inch is what I would call substantial.

ATTORNEY ARTHUR KREIGER: What I request is we can upgrade or expand the equipment by any amount within the existing enclosure. That's the key, the enclosure that surrounds the equipment.

TAD HEUER: It's not just enclosure. You're talking about antennas that are side mounted.

TIM HUGHES: The antennas are all in an enclosure.

ATTORNEY ARTHUR KREIGER: I was thinking the equipment. I don't know whether antennas yet expanded. I understand your concerns about the expansion of antenna, but did you -- at least if you would like the building to expand within the enclosure.

SEAN O'GRADY: You're not talking about the antennas, you're just talking about the stuff that goes into the box?

JOAN CYR: If you upgraded the equipment, would that change?

MARIANO AJOBET: That depends on what kind of if we get --

(A discussion was
held off the record.)

ATTORNEY ARTHUR KREIGER: I'm asking for At&T to be allowed to expand in the enclosure the Special Permit. If it needs to expand the antennas, that's a different story.

MAHMOOD FIROUZBAKHT: Limited to only interior equipment and accepting all exterior equipment.

ATTORNEY ARTHUR KREIGER: Right.

SEAN O'GRADY: I think that's fine. I think we would probably let you do that anyway.

BRENDAN SULLIVAN: The dimensions will remain the same.

MAHMOOD FIROUZBAKHT: But the dimensions of the box remain the same as well.

ATTORNEY ARTHUR KREIGER: Within the existing enclosure.

SEAN O'GRADY: Whatever is inside is your business.

TIM HUGHES: Can I just make a motion, an addendum to the motion?

The Chair would move an addendum to the original motion that At&T can upgrade or expand their usage of this equipment as long as everything is done within the original enclosure.

And the Chair would also add that this work should be done in conformity with the plans submitted and dated 11/18/09 and initialed by the Chair.

Anything else?

All those in favor?

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Firouzbakht,
Heuer, Anderson.)

(A discussion was
held off the record.)

(7:50 P.M.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Mahmood Firouzbakht, Tad Heuer, Slater Anderson.)

TIM HUGHES: The Board will hear case No. 9862, 63 Orchard Street. Is there anyone here on that case?

Would you please identify yourself for the stenographer and spell your name.

ATTORNEY ANDREW BRAM: My name is Andrew Bram, B-r-a-m. I'm an attorney with offices here in Cambridge. To my left momentarily is Jerry Callen, C-a-l-l-e-n who is one of the owners of the property, and the petitioner. To his left is his wife Catherine Petersen who is the other co-owner and the other petitioner in this matter.

The case before the Board is typically to change -- to add a small amount of square footage in the basement. There are plans in the file before and after plans that were

drawn by Peter Quinn Architect. The basement as it currently exists is a finished basement. It is already living space and is already in the existing grandfathered square footage. But it's been used essentially as a family playroom, rec room, that sort of thing over the years. Now Mr. Callen's mother who lives in Pennsylvania is in her eighties and is in failing health and would like to come to live in Cambridge with her son to be able to have them assist her in her aging and declining years. And so in order to change the space into a more usable space for Mr. Callen's mother, they want to add a bathroom under the existing front porch. There is no expansion of the house as such to take away as it is now not countable floor area and change into floor area by adding a basement and bathroom in that space. The only exterior change that would be visible to the neighbors is windows on either side of

that porch which would be opaque windows both for the neighbor's privacy and for Mrs. Callen's privacy. That's the bulk of the square footage. It is also, on the outside of the house, there is rear porch that was rebuilt some years ago in the last say three or four years as I understand it. It was rebuilt pursuant to a permit. But the roof on that porch was never extended out over the lower level that was built out, and the petitioner also includes or requests to be able to finish that roof line which would effectively add about 25 additional feet of countable floor area outside. And so that's what we're here for tonight.

TIM HUGHES: Could you explain to me exactly what the non-conformity is or what -- how much relief you're seeking with the increase in FAR? Is it setbacks all around?

ATTORNEY ANDREW BRAM: There's no

change in the setback because the porch currently exists as it's built out. This is all going to be work for the bathroom. This is all going to be work that's internal to the house and it adds a little over 200 square feet of living area that's present and not countable living area, because it's under an exterior porch which would now be accessed from the inside of the house. The other square footage I mentioned a minute ago would be to put a roof over a now existing rear exterior porch that would, because of changing the roof line, would add 25 feet of countable floor area. In the table dimensional requirements it changes -- the FAR for the zone is 0.05. The house is already at 0.71. This increase in square footage would increase the non-conformity to 0.74.

TIM HUGHES: Any questions from the Board?

BRENDAN SULLIVAN: The windows that are being added to serve the bedroom?

ATTORNEY ANDREW BRAM: Bathroom.

JERRY CALLEN: Just to provide light.

BRENDAN SULLIVAN: I guess my question is: Have you run it by the Building Department to make sure that using it as a bedroom -- it's not presently a bedroom. It's a family room. If that complies with building code for fenestration and fenestration and whether or not something else may be needed?

ATTORNEY ANDREW BRAM: I have not explored that, but Peter Quinn --

BRENDAN SULLIVAN: Or is that wall even within the setback I guess? In other words, changing of a window in the setback would trigger relief. So -- well.

ATTORNEY ANDREW BRAM: We've asked for that also.

BRENDAN SULLIVAN: Maybe I'm getting ahead of myself. This is the only relief you need.

ATTORNEY ANDREW BRAM: We've asked in the petition for alteration without a default as well. And I'm -- my belief is that Mr. Quinn who is an experienced architect would have.

BRENDAN SULLIVAN: Covered his base on that.

ATTORNEY ANDREW BRAM: Covered that as far as adding the windows and decided, you know, the base of this porch.

BRENDAN SULLIVAN: Okay.

TAD HEUER: I have two questions. First, on the roof, I don't see the roof issue advertised in the notice. Is it advertised in the notice?

ATTORNEY ANDREW BRAM: It's -- I guess because it's under the table dimensional requirements, the question is

what is required in the notes? The --

TAD HEUER: The addition of a roof when you're talking about a basement?

ATTORNEY ANDREW BRAM: No, no. The question is what the notice says the petitioner's requesting relief from Article 5.31, the table of dimensional requirements. In this case floor area ratio. The question of what is required is a notice, and I know that Mr. O'Grady had raised this as whether this was a technical issue or not, a technical question. But in the procedures of board of appeals, it talks about filing a petition and it says after it's filed with the Planning Board, it says the Secretary of Zoning Appeal, it says no on a scheduled hearing to the abutters within 300 feet, etcetera. It says a similar notice in the scheduled hearing has published for two consecutive weeks in the paper. There's nothing in here that needs to be textural description of what

the relief is. So it's a notice of the hearing that goes out and, you know, my view is that by seeking a relief, I'm advertising for the relief from the table of dimensional requirements, even those words added, you know, a roof over the porch or altering the front porch are included is not a sufficient deficiency that to hear and go forward. And I do have one other thing about that.

BRENDAN SULLIVAN: You're getting close to the third rail with me on that one.

ATTORNEY ANDREW BRAM: I wanted to explain one more thing. With formal substance we contacted all of the abutters and in -- we sent a notice, a letter around to the abutters, and I guess I'll start with you, Mr. Sullivan, to look at it. In the letter we sent out, we talked about fixing the roof which ironically is something the neighbors and Mrs. Petersen can comment on this. The neighbors had more questioning

when they were going to finish the roof that they started a couple of years ago than any change to the basement that they're not gonna see. And in the letter, all these people that got notice from the city of this hearing were told in that letter that yes, we're also going to finish -- we're going to finally fix the roof. So the neighbors did have notice and you'll see in a minute when the hearing is open that there's no one here who would object to the petitioner's proposal.

TAD HEUER: But that sign, this goes back to an issue we had two weeks ago. I understand that the people around may know, but the provisions of the ordinance aren't make sure the people around may know. The provisions of the ordinance require notice. And it strikes me as odd that we would require only the bare minimum, i.e. the site of a zoning code, that I'm certain no one besides the people sitting at this table, and maybe

not even all of us would be able to identify that's what the issue is. And that would somehow be sufficient notice, particularly when we're talking about something as I'd like to make an addition to the back of my house and therefore that's FAR and windows and other things. We're talking about things that are essentially distinct and unrelated. We're talking about the basement space and then a roof over a porch. No one would look at that and say I presume those are connected, would they?

ATTORNEY ANDREW BRAM: I don't think so. But, again, if someone was sufficiently interested in what the petitioner was doing, they don't get enough of a notice even if you say changing the roof line to know what the petitioner's going to do. They need to come to the city, to come to the Building Department, look at the file, look at the plans. I mean, these plans aren't published

with the notice.

TAD HEUER: So are you suggesting really it would be fine if we didn't even add living space, the bath area for a family member we just write down Article 5?

ATTORNEY ANDREW BRAM: If you're asking me whether or not technically again the bare legal requirements which say a notice in the hearing has to be published, then, yes, I would say that you do need nothing more than to say there's going to be a hearing on changes to the particular dwelling.

TAD HEUER: What about the sign?

ATTORNEY ANDREW BRAM: Well the sign is something that's peculiar to Cambridge. And it says in the notice of the sign it says the note, the information that goes in the published notice is being put on the sign and put on the house. But, again, while I understand the rationale behind the sign,

only the people who are the abutters and the abutters to the abutters have legal standing, okay? To basically object to this. If somebody who lived two streets away decide they didn't like this and whatever the Board decided, if the Board allowed the variance and people several streets away came and said we don't like this and we want to go to court and challenge this, those people are likely not to be heard by the Court. They are likely to be knocked out on a standing issue. They're not in close proximity to be warranted relief.

TAD HEUER: Even uncapriciously?

ATTORNEY ANDREW BRAM: We're talking now about notice. And if somebody wants to argue that you're acting out capriciously then perhaps the Court might, might but maybe not.

TAD HEUER: How would they know if we're acting arbitrarily and capriciously

about unless there's a sign that.

ATTORNEY ANDREW BRAM: Again, there's the legal notice that goes in the paper and that's sufficient for -- as far as I'm aware, the other 350 cities and towns in the Massachusetts. Cambridge has its requirement that there be this display notice.

TAD HEUER: We're in Cambridge.

ATTORNEY ANDREW BRAM: We're in Cambridge. I understand that. You asked me what a Superior Court that deals with the other 54 cities and towns in Middlesex County say that somehow Cambridge's requirement creates more standing or less standing for a petitioner, I don't think they would. I think that --

CATHERINE PETERSEN: Can I make a comment, please? There is a porch roof. It is propped up by a two-by-six and has been for the last three years. It is 1970's porch

roof. It doesn't match the house nor does it match the porch. And so we're not putting on a roof where there isn't one. We're trying to make it match the house so that it integrates and looks like it belongs to an 1875 house.

JERRY CALLEN: And I'd like to say I'm very sympathetic to what you're saying, and as a resident of Cambridge and someone who has been involved with Zoning and Planning Board issues at various times, we have a lot happening in our lives, and we did not write the notice that -- the way I perhaps would have liked to have written it.

SEAN O'GRADY: Let me ask a quick question for a minute.

JERRY CALLEN: But we have, and you have no way of knowing this first of all. We have discussed this at great length with all of our neighbors, and they are all eager to have this happen. So....

TAD HEUER: Fine.

JERRY CALLEN: Like I said, I'm sympathetic to your point.

TIM HUGHES: I have two questions. You want to say something, Sean?

SEAN O'GRADY: You say there's a porch up there now?

JERRY CALLEN: It's not a porch.

SEAN O'GRADY: I'm sorry. The roof. There's a roof right now?

JERRY CALLEN: Yes.

SEAN O'GRADY: Is the new roof larger in volume?

TAD HEUER: It is.

CATHERINE PETERSEN: It's 20, it would -- in order for it to match the porch underneath it, it has to be 25 square feet bigger than what currently exists. That's what the problem is with it.

JERRY CALLEN: And the design of that roof will now match the rest of the house

which the current one doesn't.

TIM HUGHES: 25 feet of additional FAR that would be covered by the new roof as figured in your dimensional form?

CATHERINE PETERSEN: Yes.

ATTORNEY ANDREW BRAM: I don't know. It may not have been.

JERRY CALLEN: Yes.

TIM HUGHES: And my second question is when you were applying for a variance, was the roof discussed before the notice was filled out -- I mean, before the sign was filled out and handed back to you for posting?

ATTORNEY ANDREW BRAM: No. It was not discussed with whom?

TIM HUGHES: With the Building Department.

ATTORNEY ANDREW BRAM: No.

TIM HUGHES: You have something else you want to add?

TAD HEUER: My separate question

when we're talking about the new windows, are those windows in a setback?

ATTORNEY ANDREW BRAM: I don't think so.

JERRY CALLEN: What does that mean?

TAD HEUER: If the side of the building is, for example, from the side yard, if the building's too close to the lot line, you install a window there, you would be installing the window inside the same.

CATHERINE PETERSEN: No, none of them are within the setback because this --

ATTORNEY ANDREW BRAM: I can show him.

CATHERINE PETERSEN: The side porch hits the setback.

ATTORNEY ANDREW BRAM: The existing front yard setback is 17 feet, including the porch and the required is 15 feet.

TIM HUGHES: And both of those windows are in that front wall?

ATTORNEY ANDREW BRAM: Yes.

JERRY CALLEN: They're in the side wall.

ATTORNEY ANDREW BRAM: Side wall of the front porch.

SLATER ANDERSON: But you have two front yards because you're on a corner, right?

CATHERINE PETERSEN: We're on a corner.

TIM HUGHES: So it would be the side yard setback would be the opposite numbers. Here it's the wall where the numbers are.

SLATER ANDERSON: There's a window on the side yard.

MAHMOOD FIROUZBAKHT: You're proposed plans indicate you're looking at square footage total of 4,336, 4,336 on the dimensional information form you're indicating a requested condition of 4,301 square feet. So there's a 35 square foot

difference.

CATHERINE PETERSEN: Discrepancy.

ATTORNEY ANDREW BRAM: To answer the question about the side yard setbacks, though that's not an issue because the side yards are 16 foot on average on the left side and 13 on the other side and the requirement is seven and a half the sum of 20.

SLATER ANDERSON: But you have two front yards because you're on a corner. So one of those windows is -- and I think one of them is in the front yard.

SEAN O'GRADY: I would say that those are compliant. Any window.

SLATER ANDERSON: Okay, that's fine.

SEAN O'GRADY: Any window that faces the street complies regardless of setback, and so they only have to test one window on the side. They could call that the seven, six side. And so if they indeed have 16, then

both windows would be complying windows.

TAD HEUER: So there's no window in a setback issue?

SEAN O'GRADY: No window in a setback issue, assuming they have 16 feet as stated. I have no reason to think that they don't.

TAD HEUER: Right.

TIM HUGHES: Any questions from the Board?

MAHMOOD FIROUZBAKHT: I guess I want to figure out why there's a discrepancy.

TIM HUGHES: Poor math skills?

ATTORNEY ANDREW BRAM: I was going to say I believe it's poor math skills with respect to the 10 feet. I wouldn't have been surprised to see it off by 25 feet because that wasn't picked up.

MAHMOOD FIROUZBAKHT: 35.

ATTORNEY ANDREW BRAM: You're saying it's 35. I'm saying I'm going to

guess 10 feet of that is poor math skills. 25 is the fact that the porch wasn't called out.

MAHMOOD FIROUZBAKHT: So you're looking for a slightly more relief than what's indicated on the form?

ATTORNEY ANDREW BRAM: Yes.

MAHMOOD FIROUZBAKHT: I'm not sure if that bars us from proceeding. It just means that the relief you're seeking is different. And we don't quite know -- I guess we would have to recalculate what that relief is or amend the form to make sure it's accurate and consistent with the plans.

ATTORNEY ANDREW BRAM: Yeah. We'll change it from 0.74 to 0.75, exactly one percent.

TIM HUGHES: Does anybody want to make -- do we want to amend the dimensional form?

SLATER ANDERSON: I mean, the plans are correct. It's the form.

TIM HUGHES: We're working with the plans.

MAHMOOD FIROUZBAKHT: If we're granting relief, it would be on the plans as opposed to the dimensional form. I would say that -- yes, the minimum of square footage that's requested, I think we should amend it on the form so it's consistent with the plans.

BRENDAN SULLIVAN: So you're going to need 15 minutes to update that. We can hold this in abeyance and get the next case and have you come back.

ATTORNEY ANDREW BRAM: That's fine, but when you say update this, you ask me to just change it in two places, the square footage and the percentage?

BRENDAN SULLIVAN: We want the dimensional form to be the same as what you're requesting. So if you can do it in three seconds --

TIM HUGHES: I can do it in three

seconds.

ATTORNEY ANDREW BRAM: It's 4,346 and it's 0.75.

BRENDAN SULLIVAN: But it still doesn't grant relief under the dimensional 5.32 give you cart blanche to do any dimensional relief. I think that a reasonable person should be able to, and an ordinary person should be able to come in, pick up the public file and read that the requested relief is as per written there, which is if you, Tim, if you could read that where it says the --

TIM HUGHES: Just this first two lines? Existing basement to accommodate new sleeping area for the family.

BRENDAN SULLIVAN: That's all it says. And that's all that's being granted. Now, again it might be an oversight. It might be just one sentence short and, you know, and again it's quite minimal, but I

disagree with you sternly and we've been friends all these years that by --

ATTORNEY ANDREW BRAM: Still friends.

BRENDAN SULLIVAN: Right. Gives you cart blanche to, you know, it does not cover everything.

ATTORNEY ANDREW BRAM: I agree with that. But as I said --

BRENDAN SULLIVAN: Okay. That's all I need to know. Thank you very much.

TIM HUGHES: Is there anyone who wants to be heard on this case?

(No response.)

TIM HUGHES: Seeing no one, I'll close public testimony. There are two communications here. One that you handed to us from the neighbor abutters. I don't know what this actually says. Nobody signed on here. Oh, this was just your notes to your abutters and the abutters of abutters.

MAHMOOD FIROUZBAKHT: And I'm sorry, is there any correspondence from the abutters in the file?

TIM HUGHES: I don't see any.

MAHMOOD FIROUZBAKHT: That would have been helpful that therefore you know as far as constructive notes, we can confirm that they had gotten and we would feel more comfortable with the notice issue.

TIM HUGHES: And there is a communication from the Planning Board, that the Planning Board has reviewed both cases and the determination for the Board Zoning Appeals, we have no comments or recommendations.

BRENDAN SULLIVAN: It is what it is?

TIM HUGHES: Any further questions or comments from the Board? Are we ready for a vote? Do you have any questions or comments?

TAD HEUER: No.

TIM HUGHES: I'm going to take that silence to mean I can proceed.

The Chair would move that the petitioner be granted relief to add approximately 232 square feet to their living area to accommodate an elderly parent.

The Chair would find that the literal enforcement of the provision of this ordinance would involve a substantial hardship, and the petitioner's elderly mother is in need of health care and declining health.

The hardship is owing to the circumstances of the shape and size of the lot. And the situation of the house on the lot would make it impossible to expand any of the floor area in any other way but using the basement.

The Chair makes the motion that relief can be granted without substantial detriment to the public good, and relief would not

nullify or substantially derogate from the intent or purpose of the ordinance with the following:

The petitioner seeks only minimal of existing floor area ratio. Anything else?

SEAN O'GRADY: Are you putting the porch in or not?

TIM HUGHES: Well, I'm putting the porch in.

BRENDAN SULLIVAN: It's showing.

SEAN O'GRADY: You have to be careful.

BRENDAN SULLIVAN: It's in the plans.

TIM HUGHES: It's in the plan.

BRENDAN SULLIVAN: Approve the plan.

TIM HUGHES: The Chair would move that all the work would be done in accordance with the plans submitted by Peter Quinn Architects and dated -- I don't see a date.

Dated June 8, 2009. Consisting of drawings A0, A1, A2, A3, A4, A5, E1, E2 and initialed by the Chair.

All those in favor?

(Show of hands.)

TIM HUGHES: Four in favor.

(Hughes, Sullivan, Firouzbakht, Anderson).

TIM HUGHES: Opposed?

TAD HEUER: Opposed.

TIM HUGHES: Motion carries.

(A discussion was
held off the record.)

(8:20 P.M.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Mahmood Firouzbakht, Tad Heuer, Slater Anderson.)

TIM HUGHES: The Board will call case No. 9863, 190 Harvard Street. Is there anyone here to be heard on this matter?

Please state your name and spell it for the record, please.

MICHAEL DAVIS: Good evening, Michael Davis.

NERISSA CLARKE: And Nerissa Clarke.

TIM HUGHES: Tell us what you want to do.

MICHAEL DAVIS: We're basically requesting shared parking privileges to the Cambridge school specifically.

MALE AUDIENCE MEMBER: May I ask that he speak louder?

SEAN O'GRADY: You can pull up a

chair right here.

TIM HUGHES: So in the parking lot that's owned by you or under your control and you're opening this up to use during daytime hours to teachers and staff at the Fletcher Maynard School; is that correct?

MICHAEL DAVIS: Yes. Correct.

TIM HUGHES: Any questions?

This is a Special Permit by the way. Do you know how many teachers and staff expect to be using the lot?

MICHAEL DAVIS: It's -- the lot really accommodate about 16, 17 vehicles.

TAD HEUER: But you would expect it would be full during -- you would be taking 16 or 17 cars that would be otherwise parking --

MICHAEL DAVIS: On the street.

TAD HEUER: -- on the street into the lot?

MICHAEL DAVIS: Yes.

TAD HEUER: And no one uses the lot now and it's primarily used on the weekends.

MICHAEL DAVIS: On the weekends, yes.

TIM HUGHES: Any questions from that end of the table?

I'm going to open it up to public testimony. Does anyone want to be heard on this matter? Do you understand -- step forward and identify yourself for the record, please, if you're speaking.

ROBIN HARRIS: Hi, good evening. My name is Robin Harris and I'm the principal of the Fletcher Maynard Academy, one of the Cambridge public schools, and I'm here to speak to this permit.

Our teachers in our building -- teachers, paraprofessionals, nursing staff, myself, assistant principal, specialists, and the list goes on and on, we have for the last nine years met with probably

four mayors, one city manager, at least three superintendents, a number of school committee members and City Councillors because we're certainly distressed that we're the only school in Cambridge that has no place to put our cars. The teachers, you know, we're here teaching and educating sort of the children of the city, and we struggle on a daily basis because we have nowhere to park and we have solicited neighbors and friends and family members. We have -- you know, teachers currently are parking in Central Square in the Green Street lot and walking to school. You know, we're doing all types of things. Probably some of them illegal, but I'm sure you don't want to hear about those. And we have finally been able to find the school committee and the city and school department have been able to finally put some funds in to provide some parking. And a bid went out and the church graciously

offered the use of their lot during the school days, probably from 6:30 in the morning when teachers begin to come, and our day ends at 3:45. Except that we have an after school program that goes until 5:30. Probably two thirds of our teachers don't live in the City of Cambridge. They reside outside. And so we have for years talked about well, if we finally find a place, we would sort of do our own in-house lottery to accommodate the various staff members that would like to park. We sort of did some canvassing of the neighborhood and met one of our neighbors that's here to speak this evening, and certainly understand his concern, and hoping we can sort of help fix it because we definitely understand it. And other neighbors that we spoke to said that they were very much in favor of it, and understood sort of the plight that we are in. I'm just here speaking on behalf of the church that

hopefully we'll be able to grant the ability to park in the lot. And certainly address, you know, one of the neighbor's concerns about a possibility, barrier or something able to go up in front of his house.

Thanks.

TIM HUGHES: Anyone else?

FLOYD LOZANO: My name is Floyd Lozano, F-l-o-y-d L-o-z-a-n-o. I reside at 143 Pine Street which abuts the property in question, 190 Harvard. We have a number of concerns. We've lived there for 10 -- 11 years now. And in that time have had a number of bad experiences with respect to the parking lot and the neighboring property in question. Some of which we have been able to address with the owners of 190 Harvard Street and some of which we have gotten no response on. So our concern is that going forward, if we have this kind of experience with being unable to have our concerns addressed, that

would not be good for us. Let me describe some of those things.

Unfortunately I didn't come prepared with pictures of the property in question, but I can describe it for you. I actually have a cell phone picture. It's probably not admissible as evidence or anything, but I can e-mail it to you or all of you if you like.

The parking lot which is next to our property has no physical barrier between the parking lot and our house. I'm not very familiar with housing or parking, zoning ordinance and what not. I do believe one time reading something that there needed to be a five-foot setback from the edge of parking to a residential area. You would be the experts of that. I do not know. There is no such setback if one is required. And the only thing that separates cars from that parking lot and our house is a berm made of asphalt put in when the parking lot was

repaved within the past year and a half. It displays evidence that tires have actually driven onto it. This concerns me because in 2004 a car from this parking lot, actually drove into the side of our house leaving a hole about three feet wide, two feet high, knocked out our water and forced us into some cost of repair work. Which we later got reimbursed for through their insurance company, but which was a bit of a hardship at the time. So with that said, I'd like to say that we are definitely for the cause of education in Cambridge. There's a strong likelihood that our four and a half year old daughter will probably attend the Fletcher Maynard School, which is a three-minute walk from our house when she comes of age. We're not against having other people park in that parking lots. Our concerns are noise, sufficient barrier to protect our house and property and that the parking structure

comply within the ordinances set forth to protect neighboring lots and such.

Do you have any questions for me? I'm not sure if I explained that well enough.

TIM HUGHES: No.

BRENDAN SULLIVAN: Just a question I would have under the contract. I don't know who -- well, under the contract who would maintain the parking lot?

MICHAEL DAVIS: We would maintain the parking lot.

BRENDAN SULLIVAN: That's part of your contract with the City that you would have responsibility for the maintenance?

MICHAEL DAVIS: Yes.

BRENDAN SULLIVAN: For trash and also snow removal?

MICHAEL DAVIS: Yes.

TIM HUGHES: I have a question. Is our approval of this Special Permit all that's necessary to make this go forward or

if this becomes kind of a rented parking space, does it require a license from the License Commission? I know some parking lots do.

SEAN O'GRADY: I don't want to say definitively. I'm unaware that anyone else would need to okay this.

TIM HUGHES: Is there any other public testimony?

(No response.)

TIM HUGHES: I'll close public testimony. I will read into the record a letter on the letterhead of the Cambridge City Council, Timothy Toomey, Junior.

"Dear Board members: I'm writing to voice my support for BZA case 9863. The Fletcher Maynard School has had significant concerns over parking for a number of years. By allowing shared use of the Cambridge Community Outreach Tabernacle parking lot, the school will be able to provide

desperately needed parking to school staff. This will help to alleviate parking congestion on neighborhood streets as well as solving a longstanding problem at the Fletcher Maynard School. Thank you for taking this into consideration. I hope you find in favor of this application. Sincerely, Timothy Toomey."

Any further comments or questions from the Board?

BRENDAN SULLIVAN: The question that the gentleman asked about the five foot setback and does that pertain to this particular location, I'm trying to find the language in the ordinance. Your question was not really answered.

SEAN O'GRADY: It's in the 640. I'd like to take a glance at it, but it really only applies to the creation of new parking for new construction to my memory.

SLATER ANDERSON: It's

pre-existing.

FLOYD LOZANO: May I ask a question about that? If parking was created, pre-existing by created, not conforming to code, does that mean it doesn't need to be brought up to code?

TIM HUGHES: Sometimes.

TAD HEUER: It depends how long ago it was created.

SLATER ANDERSON: It depends if they're proposing change in use, which they're not doing here. I mean, they're proposing to use it -- continue to use it for parking at a greater intensity. I mean, that is a use issue I guess.

TIM HUGHES: If there was a change of use in the structure accompanying the parking lot that would require more parking, then the ordinance would kick in, it wouldn't be grandfathered necessarily.

BRENDAN SULLIVAN: How long has the

parking lot been there?

MICHAEL DAVIS: To my knowledge prior to 1980 definitely.

BRENDAN SULLIVAN: Okay.

MAHMOOD FIROUZBAKHT: So you indicated it was 16 spaces or there are 16 spaces of course.

MICHAEL DAVIS: We would accommodate 17, yes.

MAHMOOD FIROUZBAKHT: One question here: Why are there no parking -- why is there not a parking plan in the file indicating where the spaces are and how they're striped? What the dimensions are and stuff? Wouldn't you typically want to see I guess --

MICHAEL DAVIS: It's not striped.

MAHMOOD FIROUZBAKHT: That's what I'm saying. I would think that in order to particularly -- I mean, if you're going to have an agreement with a third party coming

in there, I would -- and to address some of the concerns from the neighbors, it would be helpful to have striped spaces so that you have designated number of 16 or 17, is it? And we can confirm that those spaces conform with the requirements of the code, and that you can actually fit 16 or 17 spaces in there. And so that would be helpful to have that. So that 20 cars don't end up parking there if only 16 or 17 can.

MICHAEL DAVIS: We have discussed that and we're willing to have it striped.

BRENDAN SULLIVAN: And that again is creation for new -- there's language that addresses exactly what you said that's required. It's always again the creation of new parking area.

TAD HEUER: But there's no reason that we can't commit to the Special Permit being striped, correct?

BRENDAN SULLIVAN: That's correct.

MAHMOOD FIROUZBAKHT: But even with existing spaces, aren't there dimensional -- wouldn't some sort of dimensional compliance apply?

SEAN O'GRADY: I should reply in here. I actually assisted in those numbers. Those numbers were based on I want to say significant compliance with the ordinance, but are actually -- it's a grandfathered parking lot. It's always been under structured parking. We talked about what number to put into that block. There was estimates of numbers in that neighborhood, and my analysis of the size of the parking lot was that within literally inches that that was going to be a compliant parking lot in the sense that there was 22 foot backups in the sense that there were eight and a half by 18 parking spaces and seven and a half by 16 compact spaces in the prescribed 50 to 50 manner. So it's, it's -- I can say that those

numbers are very close to being exact but no, it's not structured parking. There's no -- a requirement can certainly be made to meet whatever condition, but the ordinance doesn't require that they have the five foot setbacks. The ordinance doesn't require even that they have the dimensions. But they, they actually do have the dimensions to the --

MAHMOOD FIROUZBAKHT: I'm asking these questions because I'm supportive or understand, you know, very much wanting to accommodate the school. I live in that neighborhood. I saw the plight of the teachers every morning trying to find parking spaces. It's more of an -- I guess trying to do, to pursue this in a way to prevent issues down the road with -- between the two parties and also neighbors who -- so that it's sort of very clear from the beginning number of parking spaces where they're located. So

that's really why I made that comment. But if you're comfortable in terms of the dimensional --

SEAN O'GRADY: I just wanted to say for the record that I was involved in that and I didn't want the gentleman to be caught flat footed on answering that question.

MAHMOOD FIROUZBAKHT: Appreciate that.

TIM HUGHES: How much authority do we have to require some sort of physical separation between the parking lot and the neighboring house?

SEAN O'GRADY: I'd say absolute.

TIM HUGHES: Because I think that would be necessary. I live and I have a small backyard that abuts up against a, basically it's a commercial parking lot. It's licensed for 11 spaces. And then until they put in a physical barrier between that parking lot and my fence, I'd have my fence

ran into a couple times. And we're talking about adding five times again as many -- as much use to this space as it is right now. Right now it's weekends and Sunday?

FLOYD LOZANO: Wednesday nights and Sundays.

TIM HUGHES: So I think we would have to make it a matter of the permit that's some kind of physical barrier be erected to the edge of the parking lot and Mr. Lozano's property. I mean, I would have to see that before I would vote for it.

BRENDAN SULLIVAN: How long does the agreement, the contract with the city run? What's the length of years?

MICHAEL DAVIS: Currently it's three years.

BRENDAN SULLIVAN: Three years?

JAMES MALONEY: It's actually a one year with options to renew for two more.

MAHMOOD FIROUZBAKHT: By granting

this Special Permit would we then -- I guess the question is would we -- can we limit the Special Permit to this particular use as opposed to how anyone can come in and lease this space?

SEAN O'GRADY: You would in fact be doing that.

MAHMOOD FIROUZBAKHT: What's that?

SEAN O'GRADY: You would in fact be doing that.

FLOYD LOZANO: I'm sorry, may I ask a question? I know I'm public.

TIM HUGHES: Yes. In fact I want to ask you a question. Ask your question first.

FLOYD LOZANO: I just want to clarify the answer that you gave there. Is the permit then specific to this use for the school?

SEAN O'GRADY: Yes.

FLOYD LOZANO: Okay.

TIM HUGHES: And what kind of a

physical barrier would be sufficient in your estimation to keep the cars from running into your house again?

FLOYD LOZANO: A metal guardrail. Something that you would see on the edge of the highway. Something of that nature setback off of our property line so we still have access to the side of the house to perform repairs. But, and enough to just keep cars from smacking up against the house which they have done and not put holes in it, and also to keep it from --

TAD HEUER: What's the distance between the edge of your house and the edge of the property line?

FLOYD LOZANO: I don't have a lot diagram.

TAD HEUER: Estimate.

FLOYD LOZANO: My estimate would be 18 inches to 24 inches. It's very, very tight. I can show you a cell phone picture

of cars that are existing that are currently parked in this parking lot as of -- this was 11/10. You'll see that as how close the cars are to my house --

TAD HEUER: Right.

FLOYD LOZANO: -- when parked. I have another picture that shows cars that are parked there right now. In fact, in case they've moved a Comcast truck and another vehicle.

TAD HEUER: There's hard top on your lot?

FLOYD LOZANO: Yes. When they paved the second time, they paved all the way up to my house and put in a berm as a stop gap measure to keep vehicles, at least to remind them that they should stop at this point.

TAD HEUER: On the property line that's where the berm is now.

FLOYD LOZANO: On their side.

TAD HEUER: A bit of paving, a berm

and the rest of the lot?

FLOYD LOZANO: Exactly.

TAD HEUER: Okay. So you're looking for a bumper almost?

FLOYD LOZANO: Yes.

TAD HEUER: You're not looking for height?

FLOYD LOZANO: At this point it's fine. We're used to the level of activity that we get on Sundays on Wednesday nights. We're -- we're okay. We expect -- we're Christians ourselves. We expect there will be church gatherings on Sunday and halibalu that goes with the comings and goings with that. What we would hate to see is that level of activity on an ongoing basis particularly when I work at home two days a week because of transportation requirements with my job, and again, you know, just protection of our property from being struck. No, we're not looking for height. I think there's another

provision that says something about five foot high barriers or what not. That would be bushes that would grow to a thickness. Don't care about that, just something to keep yada-yada.

TAD HEUER: Is that something the church would be willing to -- if that were a condition of our Special Permit, is that something the church would be willing to live with, to put in some kind of guardrail bumper type there that would provide a physical separation more than a three inch berm that is there now?

MICHAEL DAVIS: Yes, we'd be willing to do that. At least something more functional and aesthetically pleasing to both Floyd and ourselves.

TAD HEUER: Sure.

BRENDAN SULLIVAN: The concrete curb can set in with --

TIM HUGHES: Do we want to be

specific about what we mandate here or do you want to mandate some physical barrier that is acceptable to both parties?

BRENDAN SULLIVAN: What would do the job for the least amount of money? And those would probably do it.

FLOYD LOZANO: I don't want to stipulate any sort of great financial hardship on the church or on the school. My guess is they would come together to try to resolve this financially. But again, you know, I don't see a concrete -- if we're talking about a four foot high or concrete curbs that are, you know, rebarred into -- I don't think that as sufficient to protect my property. I'm not sure how tall they are. I've seen people drive over them. My wife has driven over them.

TIM HUGHES: All right. I'm ready to make a motion, but I'm at a loss as to how to word it.

BRENDAN SULLIVAN: If you do the precast concrete set into the ground with rebar, the width of a car, those sort of march all along your property line in front of that berm. So you've got the berm and then you've got these in front of that, so it's almost like a double, it's probably the least expensive, hopefully that does it. The only other way to do it is if you put in lolly columns and mark those and that might do it, but it's going to look horrendous. So you know there's the cost of what works and also what is less obtrusive, so there's three things in trying to find that perfect solution.

FLOYD LOZANO: So would these concrete barriers --

BRENDAN SULLIVAN: Like what you see in a regular commercial parking lot pulling up to CVS or something like that. They have those again, precast concrete bumpers.

MAHMOOD FIROUZBAKHT: I don't know. I can't conceptualize the site without the plans. So if it's at the lot line, if there's a -- close to the lot line, I can see a car parking over them.

FLOYD LOZANO: Exactly.

MAHMOOD FIROUZAKHT: And on to his property.

FLOYD LOZANO: I ask those be situated the back end of a car or front end of a car, not hang over into my property line.

MAHMOOD FIROUZBAKHT: And if it's a long enough of a car -- I don't know how that -- it sounds like it's pretty close. So --

TAD HEUER: Show him a picture. It may help if you showed him a picture.

SEAN O'GRADY: There should be photographs in the file.

FLOYD LOZANO: This is a photograph of a couple cars that are parked there on the

morning of the 10th.

MAHMOOD FIROUZBAKHT: And where's the berm?

FLOYD LOZANO: Underneath those cars.

BRENDAN SULLIVAN: From the berm to your house, that's say from the berm to the church is there sufficient -- we've got the plans?

SLATER ANDERSON: Plot plan.

TIM HUGHES: In mapping out these spaces was it taken into consideration that they would park solely on the property line to the church?

SEAN O'GRADY: My calculations were based just on the prints of the plan. I don't remember how much play it is. I think there's some though.

BRENDAN SULLIVAN: If those precast bumpers were to be placed so that when the wheel hit those, that the front or rear of the

car would not extend into the parking lot, would be minimally acceptable.

MAHMOOD FIROUZBAKHT: So you have to set provide for some distance I guess?

BRENDAN SULLIVAN: Correct.

MAHMOOD FIROUZBAKHT: From the property line which would mean I would think a minimum of two feet, two to three feet?

FLOYD LOZANO: I guess that also depends on the orientation of the parking spots. I mean, if they're aligned parallel with my house going backwards, then, you know, its bumper is hanging into a property is not an issue. If it's with cars pointing into the property as these are situated in the picture, then it does become an issue. I guess it depends on how you lay out the parking plan.

SEAN O'GRADY: My analysis was driving to the center and playing out like that. So you would be the maximum angle of

attack.

FLOYD LOZANO: I see.

BRENDAN SULLIVAN: So it's at a right angle to the house.

SEAN O'GRADY: At a right angle. Yes, I would think you would need three feet.

SLATER ANDERSON: Were you thinking three cars on each side? Something straight ahead?

SEAN O'GRADY: Yes, I was trying to figure out how many, you know, we talked about how many were on there and how many could fit reasonably given the plan, and so that's the way that it was wide enough so there was 22 foot backup. So I just laid them out, you know, stacked them.

TAD HEUER: The only thing a bumper does is essentially lines your lot people to park in front of a bumper that is a spot. Right? So then we delineate where the parking is going to be.

MAHMOOD FIROUZBAKHT: You would think.

SLATER ANDERSON: I'm kind of thinking the --

BRENDAN SULLIVAN: Well, they would have to be spaced so that you got this whole line of something like the Berlin wall.

SLATER ANDERSON: If they're eight feet apart, eight of them.

BRENDAN SULLIVAN: The car could slide right between.

TIM HUGHES: Just comment on if you don't line the parking lot people will park between.

BRENDAN SULLIVAN: That's correct. And eventually what happens, they're going this way and that way and people just whack into them, and it's crazy.

TIM HUGHES: You had a comment?

BRENDAN SULLIVAN: Again, getting into a preform solution what works here which

is economically feasible, it does the job as far as keeping people away from his house and then aesthetically looks unobtrusive. So there's that perfect world.

TIM HUGHES: We're working on a perfect world.

JAMES MALONEY: I'm Jim Maloney, Chief Operating Officer of the school system. Perhaps if we could offer to provide some expertise to the property owners as well as, you know, meet with the abutters, I think we're very close. And this is the end of mostly decade long search for parking. Of course we can't put it in as the tenant. But I think we have a facilities director who would be more than willing to meet with the church and the abutters as well so that we can erect that appropriate barricade that protects the property line. I think the abutter has been fairly reasonable in his request and we're willing to work with that

at a cost, as Mr. Sullivan -- in a cost effective manner that both protects his property and protects the economics for the church. I don't know if that would mean if we meet every week or every two weeks, but perhaps in that time. We're obviously interested in getting this as soon as possible before the snow starts to fly. So -- and this has been -- we've been sort of the bid process and so forth began last summer. These things take sometime. As far as you know, we're more than willing to provide our time to the abutters.

TIM HUGHES: If we wait for the snow, we can pile snow up for the winter.

BRENDAN SULLIVAN: Well, does that mean then just continuing this until the first week in December?

SEAN O'GRADY: It's going to be the first meeting that you all can be here. The first meeting would be December 17th.

TAD HEUER: First available meeting.

SEAN O'GRADY: We have a meeting December 3rd if you felt it was going to be a quick piece of business. We have eight continued cases that night.

BRENDAN SULLIVAN: I'm sure --

SEAN O'GRADY: As long as the Board wants to do did, it's fine with me.

TIM HUGHES: Do you want to see it done before we get the permit? Or you want to know the wording of what it's going to be?

BRENDAN SULLIVAN: I'm offering that out.

TAD HEUER: How many regular cases do we have on the 3rd?

SEAN O'GRADY: We have three.

TAD HEUER: Like a regular agenda but switched?

SEAN O'GRADY: Well, one of them is 45, but it's not.

TIM HUGHES: Ash Street on that one?

BRENDAN SULLIVAN: We can take them out of order and put a piece of paper and everybody nods their head yes and call it a day. That would be my thought.

TIM HUGHES: I'm still working on wording that would get us out of here tonight instead of continuing this.

MAHMOOD FIROUZBAKHT: We're not typically comfortable with leaving final approval of a design of a barricade of some nature to the discretion of the Chair post-meeting?

TAD HEUER: It's Tim's discretion to sign off on it tonight.

MAHMOOD FIROUZBAKHT: The wording can certainly be great, and I'm sure it would be, but then what that then translates to and if that's not a sufficient, I guess we'll -- for purposes I think that in additional check I guess. But that's just an

idea.

JAMES MALONEY: If there's a way to satisfy that it sets requirements that you just said and sign offs on three parties in question and show it to you.

TIM HUGHES: Whatever the physical manifestation what this barrier is, we need to accomplish that it keeps any parked vehicle encroaching on the abutter's property that we can put into wording but how that's going to take shape. And I don't know, does that -- would that be sufficient?

BRENDAN SULLIVAN: They're going to have to come back with a proposal, this gentleman is going to view it, that if we were to grant this tonight and by the time the discussions start, they can continue there until this is drafted, until it's filed then there's that 20-day appeal period at which time he still has a legal right to then contest it. So I think that behooves

everybody to put their collective heads together but not stop the clock, let the clock keep running. And I'm sure collectively they will come up with a solution that is satisfactory and we will reach that perfect world. Because at the end of it he still has a right of appeal if they haven't got to that point. That's their worst case scenario. The right of appeal. But other than that between now and December 3rd that they put their collective heads together, come back with a piece of paper and give us the bottom line and everybody nods their head and says yes and then they're on their way. So there's two options.

SLATER ANDERSON: The 3rd or the 17th?

SEAN O'GRADY: Well, up to the discretion of the Board. And I mean --

SLATER ANDERSON: I'm here on the 3rd anyway.

TIM HUGHES: I know I am.

TAD HEUER: I certainly am.

MAHMOOD FIROUZBAKHT: I should be here on the 3rd as well.

SEAN O'GRADY: Let me offer this. While I normally am a stickler for language that's absolute given the closeness of the -- how close we are, I would be willing to, in this case go with language that were sufficient to stop a car. If that turns out -- if there's agreement among the parties that they've reached that, I'll sign off on it. If it blows up, then I'll simply not sign off on it and direct them back to you if that makes the Board comfortable. Like I said, normally you don't hear me speaking like that. I think maybe in this case I'd be willing to.

SLATER ANDERSON: You're suggesting that we be vague so you can say turn it back to us if there were a problem.

SEAN O'GRADY: Thanks for clarifying that on the record.

MAHMOOD FIROUZBAKHT: Why can't we say subject to design approval by the Building Department?

TIM HUGHES: Can we?

MAHMOOD FIROUZBAKHT: That's kind of what you're saying, right?

SEAN O'GRADY: You can't give away your power off the Board.

MAHMOOD FIROUZBAKHT: That's the design of a non-dimensional or zoning related characteristic of what's being proposed.

BRENDAN SULLIVAN: I think we are surrendering.

SEAN O'GRADY: Is there anything in the building code about barriers or anything like that, is there?

MAHMOOD FIROUZBAKHT: That's done in the city of Boston.

SEAN O'GRADY: If there were some

objective document that we could point to that would certainly cover everything. But I'm just not aware of anything.

SLATER ANDERSON: Fence, that's about it.

SEAN O'GRADY: And however we can do this.

BRENDAN SULLIVAN: You can either be vague and then he can approve, say that we have satisfied that they have satisfied our vagueness. Or in the next two weeks have them put something on a piece of paper come back and look at it and they can be in and out of here in six and a half minutes I would think. And in the meantime with a date certain and a clock ticking for December 3rd, it tends to make them come to an agreement I think a little bit more expeditiously.

SLATER ANDERSON: I like the two weeks. I think we're putting too much on the tri-parties to -- if we decide it tonight to

come to a solution and it may not be agreeable to all parties but it's already been approved, so....

MAHMOOD FIROUZBAKHT: How realistic is it for the parties to come up with a plan for the parking spaces by then? If that's been contemplated already, then been contemplated.

JAMES MALONEY: For the barrier, since we're not the property owners, we've had some discussions. I think -- I suspect that unless I'm misinterpreting the discussion, that we can come up with some kind of a barrier to -- would be both cost efficient for the land owner and also protect the property rather quickly. I've had some preliminary discussion with our facilities director with that. Maybe it would be up to the property owner to effect that.

BRENDAN SULLIVAN: Between the public works, there's enough people that you

can draw on.

SEAN O'GRADY: And we're only talking about having a plan for December 3rd, not to actually have it installed.

BRENDAN SULLIVAN: Just a plan. Lines on a piece of paper.

MAHMOOD FIROUZBAKHT: Right. And what I, I guess include in my mind is a plan striping as well in addition to the barricade.

TIM HUGHES: At least a piece of paper with the striping on it. A plan for striping and the plan for barricade should be agreed upon by the three parties, and in front of us the Monday before December 3rd so that we can just rubber stamp this thing.

ROBIN HARRIS: Our fifth graders can give you a plan for striping.

BRENDAN SULLIVAN: Make it a class project.

TIM HUGHES: It could be a third

grader, that would be fine with me.

TAD HEUER: Why don't we have a whole group of them here to see Democracy in action.

TIM HUGHES: The Chair will make a motion that we continue this to seven p.m. on December 3rd with the hope that the parties involved will bring us concrete evidence that a barrier decision has been made.

TAD HEUER: No pun intended, concrete evidence.

TIM HUGHES: All those in favor of continuing this case?

(Show of hands.)

TIM HUGHES: That's five in favor.

(Hughes, Sullivan, Firouzbakht, Heuer, Anderson.)

SEAN O'GRADY: I have to get a waiver from you.

TIM HUGHES: Right.

SEAN O'GRADY: We'll get them to do it.

(A discussion was
held off the record.)

(8:55 P.M.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht, Slater Anderson.)

TIM HUGHES: The Chair calls case No. 9864, 25 Mount Pleasant Street.

Would you identify yourself and spell your name for the record, please?

STEPHEN CHRISTENSON: Stephen Christenson, C-h-r-i-s-t-e-n-s-o-n.

TIM HUGHES: Tell us what you want to do.

STEPHEN CHRISTENSON: As a result of a construction project that I finished about a year ago, a new entrance was created on the side of this house for the owners. We are seeking permission for -- existing stair and porch is in place. We're seeking permission

to put this small roof over the top of it to protect from the weather obviously.

It -- the house is non-conforming in that it's over on the FAR. This is an addition of an approximately 12 square feet.

TAD HEUER: Which leads to no increase even if you extend it out to three digits with your present FAR from 0.6 to 0.767, right?

STEPHEN CHRISTENSON: Yes.
Agreed.

TAD HEUER: So if anything, it can be described a minimal, this would be it?

STEPHEN CHRISTENSON: Indeed.

TIM HUGHES: Questions from the Board?

For the record, I will note that there's nobody in the room so I don't think there's going to be any public testimony. I'm ready for a vote. Anybody else?

The Chair would move that the

petitioner be granted a variance to build a porch over a recently constructed new entranceway and a total of approximately 12 square feet to the FAR and not changing the percentage of FAR. Three decimal points. A literal enforcement of the provisions of the ordinance would provide a substantial hardship. The roof will provide protection from the weather for the residence of the house, the hardship is owing to the fact that the addition provides an improvement from architectural and visual perspectives, but didn't take into consideration the lay of the house on the land. The addition will not be a detriment to the public good and relief requested is minimal.

All those in favor?

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Heuer, Anderson, Firouzbakht.)

STEPHEN CHRISTENSON: Thank you.

(A discussion was
held off the record.)

(9:00 P.M.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson, Mahmood Firouzbakht.)

TIM HUGHES: The Chair would make a motion for an extension on case No. 9721, 15 Raymond Street. Petitioner John and Julia Bagalay, B-a-g-a-l-a-y the petitioner for a variance to construct a wood frame garage, install a bay window and a wood frame double hung windows on the east side elevation.

All those in favor of granting the extension?

(Show of hands.)

TIM HUGHES: That's five in favor.

(Hughes, Sullivan, Heuer,
Firouzbakht, Anderson.)

(Whereupon, at 9:00 p.m., the
meeting adjourned.)

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:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 27th day of November 2009.

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

My Commission Expires:
April 23, 2015

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