

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING FEBRUARY
11, 2010 7:00 P.M.

Senior Center 806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Tad Heuer, Member

Slater Anderson, Member

Douglas Myers, Member

Ranjit Singanayagam,

Commissioner of Inspectional Services

Sean O'Grady, Zoning Specialist

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I N D E X

<u>CASE</u>		<u>PAGE</u>
9871	--	3
9852	--	10
9873	--	39
9815	--	4
9816	--	6
9887	--	46
9888	--	206
9889	--	226
9890	--	241
9891	--	246
9892	--	271
9893	--	202

P R O C E E D I N G S

(7:00 p.m.)

CONSTANTINE ALEXANDER: The Chair will call the February 11th meeting of Board of Zoning Appeals to order. Is there anyone here with regard to a continued case 20-22 Griswold Street?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one is here.

The case was put on the agenda for tonight by administrative error. In fact, the case is going to be continued until March. So no further action will be taken tonight.

(Discussion off the record.)

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will next call case No. 9815, 100 Cambridgeside Place. Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

I understand there's a letter in the file? Yes. The letter addressed to the Board from the Petitioner. "We are currently scheduled to be heard on Thursday evening, February 11, 2010. Due to unexpected circumstances, we are requesting a continuance to be heard at the next available ZBA meeting." And it's signed by someone on behalf of Metro Sign and Awning.

What's the next available date?

SEAN O'GRADY: April 8th.

CONSTANTINE ALEXANDER: This is a case heard.

SEAN O'GRADY: Yes, Brendan, Slater, Gus, Tad, Tim.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued to April 8th at seven p.m. on the condition that the Petitioner further modify the sign notifying the date of the new meeting. The Chair will also note that a waiver to reach a decision is already in our file.

All those in favor of continuing the case to April 8th, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(A discussion off the record.)

(7:05 p.m.)

(Sitting Members: Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

TIM HUGHES: The Board will call case No. 9816. Identify yourself for the record.

ALEXANDRA OFFIONG: Alexandra Offiong with Harvard, the Petitioner. I just -- we submitted a letter to the Board and requested a continuance to another date, and we've requested April 29th if possible.

SEAN O'GRADY: And I won't be able to give you that until May 13th.

ALEXANDRA OFFIONG: That's fine.

TIM HUGHES: This is a case heard. Is everybody that's involved in this case available on May 13th?

(All agree.)

TIM HUGHES: All those in favor of continuing?

DOUGLAS MYERS: Mr. Chairman, may I

Speak to the motion or ask a question?

TIM HUGHES: Sure.

DOUGLAS MYERS: I would appreciate it if the Applicant can further elaborate. I've read the letter in the file, but I'd like to be apprised of the relationship between for the grounds of the continuance which is something having to do with the merger, and the applicant's application.

ALEXANDRA OFFIONG: Well, we're actually requesting a continuance tonight for Harvard University's variance which relates to the use of the property because we -- because there's another variance request out there from the current property owner that relates to the merger. What we're -- this one does not relate to the merger. It relates to the institutional use request. So we are waiting for that process to be complete to continue our case.

DOUGLAS MYERS: And why is that

necessary for you to wait?

ALEXANDRA OFFIONG: Because if that merger is not allowed, then our use will not -- we cannot pursue the push of the property until that matter is settled. So we feel it's better to clear it up.

DOUGLAS MYERS: I simply note that this matter has come on for hearing six times, and two of the postponements have been on account of procedural difficulties with the Board and four have been at the request of Harvard University. My own feeling is while I think -- I understand what you've said and I will support this continuance, at some point I think there's an interest, a public interest in moving this matter on to a hearing and a resolution in the interest of the timeliness of the application and in the interest of the status of this matter with respect to the neighbors and abutters. That's all I'm saying. Thank you.

TIM HUGHES: Any other comments?

The Chair would move that the continuance be granted to May 13th on the condition -- well, they probably signed a waiver, it's been six times already. And that the posting should reflect to show the new time and date.

All those in favor?

(Show of hands.)

TIM HUGHES: Five in favor.

(Hughes, Sullivan, Heuer, Myers, Scott.)

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9852, 288 Norfolk Street.

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

ATTORNEY ADAM BRAILLARD: Thank you. Members of the Board, Mr. Chairman, just for the record, Adam Brailard with Prince, Lobel, Glovsky and Tye, 100 Cambridge Street, Boston, Massachusetts. And with me is Kaleem Khan right over here. He's a representative of the applicant's radio frequency department. The Applicant is Clearwire, LLC, it's an affiliated spectrum, it's Sprint-Nextel. We are here in connection with the Special Permit to install or modify the existing installations by installing two WI-FI dish antennas and ancillary cabling.

We were before the Board in October, and the Board had some concerns with what the Planning Board -- and also had some concerns with what was the existing installations, existing Sprint-Nextel installations with respect to the panel antennas that were on the penthouse not painted and faded antennas that were on the facade of the building. We met with the Planning Board back in December and came up with a plan -- I can share that with this Board so that you know exactly what was sent to the Planning Board. I know that they sent a revised memo. I'm not sure if it captures exactly what was -- what we plan to do. So I figured that this Board might want to know that what we propose to do is actually repaint the existing Sprint -- we call it -- I'm sorry, Nextel ident. antennas. Those are the lower end antennas. I'm going to pass out the photo simulations.

CONSTANTINE ALEXANDER: Are those

what's in our file already?

ATTORNEY ADAM BRAILLARD: They are. But these photo sims show not just the two one-foot dish antennas but also with the affiliate, Sprint-Nextel proposes to do is to clean-up the existing installations or the existing installations that it owns.

So with respect to the -- let's start with the existing installation. We're going to repaint the panel antennas that are facade-mounted on the building. We're going to secure all loose wiring belonging to those Nextel antennas. We're going to paint the Sprint antennas that are currently not painted on the facade of the penthouse, both the antennas and the mounting equipment. And we're going to also paint the cable trays that are not -- repaint the cable trays.

CONSTANTINE ALEXANDER: All of which you're proposing to do reflected in the photo simulations?

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: If we were to condition that -- condition it to comply with the photo simulations with what you just said would be required.

ATTORNEY ADAM BRAILLARD: Yes. Actually work has already begun in the shop to match the coloring. And that's one thing I wanted to tell the Board is what progress we've made so far.

CONSTANTINE ALEXANDER: You're working to do what the Planning Board complained you hadn't done before?

ATTORNEY ADAM BRAILLARD: Yes.

The only thing that doesn't show up on the photo sim, if you look at sheet six of ten, it gives you a -- I guess five and six is the same view. Five is existing, six is proposed. You'll see the antennas to the right are darkened and the antennas on the penthouse that are not colored are now

colored. That cable tray is actually going to be colored as well. That's going to cover the wiring. So that the rest of the coaxial cable that's sticking out.

CONSTANTINE ALEXANDER: Where is that?

ATTORNEY ADAM BRAILLARD: Right here. This is all going to be covered.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ADAM BRAILLARD: So that it will all be completely concealed. It's just not in the photo sims. That's driven by the property owner.

CONSTANTINE ALEXANDER: You're going to paint those or put a cover over them?

ATTORNEY ADAM BRAILLARD: It's going to have a box cover.

And that cable tray itself will be painted to match the single color to match the brick maroon color. And, again, the proposal tonight is the two dish antennas

both being mounted on the penthouse. We went through some of the criteria during the prior hearing.

CONSTANTINE ALEXANDER: One of the things the Planning Board in their letter of comment to us, which I'll read later, made a suggestion the last I saw, they wanted us to impose a condition requiring the installation to be low enough so as not break the edge of the top of the stack and to be mounted as tightly to the wall as possible to minimize shadows.

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: Are you planning to comply with that? Let me put it a different way. If we make that a condition to our relief, would you have any objection?

ATTORNEY ADAM BRAILLARD: No objection.

DOUGLAS MYERS: Are those criteria reflected in the simulations that you've

given us?

ATTORNEY ADAM BRAILLARD: They are. I guess the -- let's try the photo sims that show the new installation. The last photo sim is really the -- it's a zoomed-in shot of the --

CONSTANTINE ALEXANDER: What page?

ATTORNEY ADAM BRAILLARD: I'm sorry. Page 10 of 10. That shows the new -- one of the new one-foot dish antennas. It's actually probably a little bit larger than one phot on this photo sim. But you can see that's well below the height of the roof. And the mounting requirements are such, are for wind load and to make sure that the radio head in the back fit. So you do need to pipe them out.

CONSTANTINE ALEXANDER: The other thing that the Planning Board said in that sentence that I just read is for the mount as tightly to the wall as possible to minimize

shadows.

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: I see there are still cables along the box. Is there anything that can be done about that?

ATTORNEY ADAM BRAILLARD: The existing cables there on the right?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ADAM BRAILLARD: They can try to do -- is part one of the things we talked about is secure all loose cables, what they'll try to do is tighten those up. I don't think they're going to be as loose and run down.

CONSTANTINE ALEXANDER:

Mr. Braillard, we had this before not involving you, but part of the problem always is we all come to agreement here and then the folks back wherever don't ever agree with what we've done and go about their merry way. What assurance can you give us that the folks

back at -- your clients will in fact understand what has to be done and follow through to do it?

ATTORNEY ADAM BRAILLARD: The work is currently being done on the existing installations because of this Board had asked what the Planning Board had instructed, part of that work is to secure the wiring. I'm just trying to rack my brain in terms of assurance for you folks.

CONSTANTINE ALEXANDER: I can be a different form of assurance. The next time your client comes before us, we may ask the Building Department to check whether you have -- your client has complied with these conditions. And if not, we're not going to hear any more cases until it gets done.

ATTORNEY ADAM BRAILLARD: Sure.

CONSTANTINE ALEXANDER: You can convey that back to your client.

ATTORNEY ADAM BRAILLARD: Okay. I

will absolutely.

To be specific with this site, and I'm careful on what kind of conditions you put on with respect to third parties because this installation is owned by essentially as an affiliate of this client or this Applicant, might be able to put the condition that basically states Building Department isn't going to -- Inspectional Services Department could not grant a Special Permit on this particular installation which is the two dishes until the building inspectional folks are satisfied with what we've done with the existing installations. I think that's more than basically what you said.

CONSTANTINE ALEXANDER: Also looking forward to future cases as well. But that's fine. That's fine.

BRENDAN SULLIVAN: And future consideration is in jeopardy. If we're still on page 10 of 10, that mounting pipe,

it looks like it was intended for something and nothing ever got installed on it. And it's existing and proposed it's still -- it has no equipment on it; is that correct?

ATTORNEY ADAM BRAILLARD: That's right.

BRENDAN SULLIVAN: But that was part of that original application for an installation. It's just that it had not been used yet, is that it? I don't want to put words in your mouth, but am I assuming that correctly?

ATTORNEY ADAM BRAILLARD: That's right. There was the original.

CONSTANTINE ALEXANDER: The question is yet. Brendan said yet. Are you ever going to use it? The condition before if you don't use equipment for six months, you've got to remove it.

ATTORNEY ADAM BRAILLARD: Right. I think that -- I'm not sure whether they used

it. The antenna there.

KALEEM KHAN: Which one?

ATTORNEY ADAM BRAILLARD: This is the existing, the Sprint installation existing. They've got this approval I think back sometime....

(Discussion off the record.)

ATTORNEY ADAM BRAILLARD: I think the answer is that it may be used in the future. I don't know for sure.

BRENDAN SULLIVAN: Well, we'll keep an eye on that one. The only other thing, and I guess to the right of that one the cable obviously it's bottom feed for that.

ATTORNEY ADAM BRAILLARD: Right.

BRENDAN SULLIVAN: That antenna cannot be flipped up so that, is that the way that that's going to be handled or not?

ATTORNEY ADAM BRAILLARD: I don't think it can be handled that way. I think the antennas have to be at the -- you know, they

have an up and down typically bottom fed. I think the only way that can be handled is just to tighten up the slack, that's there and maybe run it tighter.

BRENDAN SULLIVAN: Just do it neater.

ATTORNEY ADAM BRAILLARD: Right.

BRENDAN SULLIVAN: Well, going forward we'll keep our eye on it and consider it as a good faith attempt to address the concerns.

ATTORNEY ADAM BRAILLARD: Sure.

BRENDAN SULLIVAN: Or not. One or the other in the alternative.

ATTORNEY ADAM BRAILLARD: Right.

CONSTANTINE ALEXANDER:

Mr. Braillard, at the last hearing we went through all these things. We didn't make the necessary findings we're going to have to make. We should probably take a few minutes to go through those.

ATTORNEY ADAM BRAILLARD: Right.

CONSTANTINE ALEXANDER: Are you a licensed FCC carrier?

ATTORNEY ADAM BRAILLARD: Yes. Clearwire, Clearwireless, LLC has a license to operate in the market. It has an FCC carrier license.

CONSTANTINE ALEXANDER: And you're going to take steps to minimize the visual impact, that's what we've been talking about for the last ten minutes?

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: This is a residential district so we have to make a whole bunch of additional findings. Let's go through them.

Let's see, there must be a demonstrated public need for the facilitated proposed location.

ATTORNEY ADAM BRAILLARD: That's right. Again, we talked about it at the

hearing.

CONSTANTINE ALEXANDER: We have to go through it again.

ATTORNEY ADAM BRAILLARD: Clearwire is a service that provides high speed broadband internet to your handheld set. It's going to compete with Verizons and the land line Comcasts of the world so people have a choice to not only have their computer and their handheld set both run on this system, it's going to provide -- it's going to provide lower prices. It's part of the FCC's plan under the Telecommunications Plan of 1996.

CONSTANTINE ALEXANDER: So your competitors have the ability to offer this service to the general area by this location?

ATTORNEY ADAM BRAILLARD: It's not in this type of technology, but it's in the form of -- right.

CONSTANTINE ALEXANDER: This is necessary. Not necessary. This will

enable you to compete with others and the competition should lead to lower prices for the people who are certified?

ATTORNEY ADAM BRAILLARD: That's correct.

CONSTANTINE ALEXANDER: We have to deal with the existence of alternative functionally suitable sites in non-residential locations.

ATTORNEY ADAM BRAILLARD: That's right. Essentially the reason for this installation is to allow the existing installation to work. So the reason why we've installed on -- in other words, you can't install this anywhere else because it's specific to this particular site. So just by definition there's really no other place for this to go. With respect to the Ordinance, there's existing carriers currently on the operating on the rooftop, considered a colocation site. Other approvals have been

proposed in the past and we felt that above and beyond that it's actually needed, that this is a good location for the provisions for the installation.

CONSTANTINE ALEXANDER: Okay. We have to deal with the character of prevailing uses in the area.

ATTORNEY ADAM BRAILLARD: Sure. The -- the application is de minimus by nature. It's the condition of the two, one-foot dish antennas. They'll both be painted to match the color of their background. They're consistent to what's existing on that roof, so we feel that we comply with that.

CONSTANTINE ALEXANDER: And I think it's also fair to say this is a residential zone district.

ATTORNEY ADAM BRAILLARD: It is.

CONSTANTINE ALEXANDER: There are a lot of non-residential structures in or about

that neighborhood.

ATTORNEY ADAM BRAILLARD: Sure. It's next to the Department of Public Works. It abuts a -- it's on a non-residential building. It abuts one major thoroughfare. And so it is residentially zoned, but in that particular area we find that it's predominantly non-residential.

CONSTANTINE ALEXANDER: And we have to talk about the prevalence of other existing mechanical systems and equipment carried on above the roof or nearby the property. You've dealt with that already.

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: We have to make a finding further that non-residential uses dominate in the vicinity of the proposed location and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

I think again you've sort of touched on a lot of this.

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: There are a significant number of high non-residential uses in the neighborhood. DPW structure you mentioned. I think there are other former industrial buildings in that general area. And that this facility is not inconsistent with the character that prevails in the surrounding neighborhood. In fact, it's not going to change the character, it is what it is. And having these camouflage antenna should not have an impact on the neighborhood. Okay. And we've got to make other findings.

Anybody have questions? Members of the Board?

DOUGLAS MYERS: With regard to the two matters on photo sim 10 of 10, the slot cable and the apparent, the unused pipe --

ATTORNEY ADAM BRAILLARD: Right.

DOUGLAS MYERS: -- what would be the procedural manner in which to follow up, in which the Board would follow up regarding those two matters?

BRENDAN SULLIVAN: When they do an installation, the permits are required of the city; is that correct? Electrical?

ATTORNEY ADAM BRAILLARD: Yes, both building and electrical.

BRENDAN SULLIVAN: Building and electrical?

ATTORNEY ADAM BRAILLARD: Right.

BRENDAN SULLIVAN: So they pull the permits and then they are required to get an inspection from Inspectional inspectors?

ATTORNEY ADAM BRAILLARD: Right. In this case it may not be an electrical because --

BRENDAN SULLIVAN: I think there's a wire involved.

ATTORNEY ADAM BRAILLARD: Yes, there's already -- we've already tied into the meter. But the next step is you can get the approvals here, and if the Board finds the next step is to do the application with the Inspectional Services Department.

BRENDAN SULLIVAN: Again, that the Building Department would be cognizant of our decisions and conditions and incorporate that as part of their inspection to either approve it or to sign off on it or not.

DOUGLAS MYERS: Okay. There seems to me there's a sufficient connection.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: There would be another layer above us and also future consideration.

CONSTANTINE ALEXANDER: It's been enforced many times. He wants to stay in our good graces.

Anyone wishing to be heard on this

matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

The Board is in receipt of a letter from the Planning Board which I will read into the record, dated February 8, 2010.

"The Planning Board reviewed the installation at this location with the proponent's representative Adam Braillard at the December 1, 2009 meeting. Mr. Braillard discussed the applicant's plans to paint a new round dish antenna to match the existing facade and to mount it and the associated hardware in such a way as not to exceed the height of the penthouse. The pipe mounting equipment will be finished to match the facade and will be angled away from the building as little as possible to minimize associated shadows on the building. An existing antenna installation will be

painted to match the facade. The Planning Board suggests that if the Board of Zoning Appeal grants this Special Permit, there be conditions requiring the installation to be low enough so as not to break the edge of the top of the stack, and to be mounted as tightly to the wall as possible to minimize shadows."

And I think you represented to us that the plans that you submitted to us and which we're going to tie to our decision deal with all of this except the installation not being -- well, I guess your plans reflect that as well. The last suggestion by the Planning Board.

ATTORNEY ADAM BRAILLARD: Yes, we worked the plans.

CONSTANTINE ALEXANDER: So if we were to grant relief tied to your photo simulations and plans you submitted, you will satisfy all of the suggestions made by the Planning Board; is that right?

ATTORNEY ADAM BRAILLARD: That's correct.

CONSTANTINE ALEXANDER: Are we ready for a vote?

The Chair moves to grant the Petitioner a Special Permit to add two wireless backhaul dish antennas and radio equipment to the applicant's existing wireless communication facility currently operating on the rooftop of the building. Granting such Special Permit, the Board finds that that the Petitioner satisfies the requirement of the FCC licensure. That upon compliance with the conditions that we're going to impose, if we grant the relief, that the visual impact of the various elements of the proposed facility will be minimized, and that there is a demonstrated public need for the facilitated proposed location. The need being that this will allow competitive offering of services to the residents of

Cambridge, which in turn should lead to a more favorable pricing structure for the Cambridge residents.

That by nature of the work to be done, there are no functional alternatively suitable sites in non-residential locations to support the work that was done before must be done in the same building.

That what is being proposed is consistent with the character prevailing uses in the area, and other existing mechanical systems and equipment on or above the ground and nearby structures.

The Board further finds that non-residential uses dominate in the proposed facility location, and that the telecommunications facility is not inconsistent with the characters it does prevail in the surrounding neighborhood. In making those latter findings the Board will be relying upon material or representations

made to us by the Petitioner. And further, on the basis of our own general knowledge of the area based on visual inspection.

In order to grant the Special Permit the Board must make further additional findings. I move that the Board find that the relief being sought will not cause congestion, hazard or substantial change in established neighborhood character. In fact, what we're talking about are two antennas on the top of a large building additive to other antennas that are on the building.

That granting relief will not adversely affect adjacent uses.

That no nuisance or hazard will be created to the detriment, health, safety or welfare of the occupants or the citizens of the city.

And that the relief being granted would not impair the integrity of the district or adjoining district or otherwise derogate

from the intent or purpose of the source. In fact, it's indicated several times already this will be adequate to work with antennas that are already on the building. We're talking about a building that is an industrial building and it happens to be located in a residential district, but non-residential uses predominate -- or not predominate but at least are significant in the neighborhood.

And that the welfare of the citizens of Cambridge will be enhanced by granting this facility because it will allow for more competition for the services, and presumably greater savings to the citizens of Cambridge.

The Special Permit will be granted subject to the following conditions: That the work proceed in accordance with plans submitted by the Petitioner, prepared by Bay State Design. There are several -- there are numerous sheets. The first sheet of

which is numbered T-1 and it's been initialed by the Chair.

And on the further condition that the work proceed consistent with the photo simulations submitted by the Petitioner. The first page of which has been initialed by the Chair as well.

And on the further condition that -- and by virtue of complying with these conditions, the visual impact will be minimized, and the conditions suggested by the Planning Board will be implemented.

And on the further condition that should the Petitioner cease to use these facilities for a period of six months or longer, that the Petitioner will remove these facilities from the building and restore the building to its original condition to the maximum extent possible.

BRENDAN SULLIVAN: Any facility or part that are not used?

CONSTANTINE ALEXANDER: Thank you. Any facility or part thereof, and that includes prior facilities that we've approved. We have the same condition that applies to those as well.

All those in favor of granting the Special Permit so proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Scott, Anderson, Myers.)

(Discussion off the record.)

(7:35 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9873, 125-127-129 Elm Street. Anyone here wishing to be heard on this matter?

Please come forward. For the record, give your name and address to the stenographer.

JEFF MCMATH: Jeff McMath. 13 Tech Circle, Natick, Mass. 01760.

CONSTANTINE ALEXANDER: The issue is we have continued the variance to put front steps.

JEFF MCMATH: Egress stairs.

CONSTANTINE ALEXANDER: Egress stairs, I'm sorry. And the problem we had last time is they weren't sufficient plans. We didn't know exactly what the dimensions

were.

JEFF MCMATH: Correct.

CONSTANTINE ALEXANDER: And you submitted plans?

JEFF MCMATH: New plot plan showing what was there.

TAD HEUER: Is there a revised dimensional form as well?

CONSTANTINE ALEXANDER: Yes, there is.

JEFF MCMATH: You also asked for a letter from the neighbors. So I got 15 signatures from the neighbors. I also have a map that you have in your folder and it shows the location of the houses which the people....

CONSTANTINE ALEXANDER: I'm looking for the dimensional form which you did submit. It must have got buried. Give me a second to find it.

Now your dimensional form shows that

there's a setback issue, specifically the right side setback. You're going to decrease it from 14.43 feet to 9.3 feet?

JEFF MCMATH: Yes. That is the steps. And as you look further down, the landing brings it down to 9.3.

CONSTANTINE ALEXANDER: And that is why you're here before us?

JEFF MCMATH: Correct. Just a brief history back.

We took the house back in lieu of deed. The previous owner took the liberty of doing this, and upon going for the occupancy permit, this issue came up that I had to take the stairs down in order to get the occupancy permit because I'm in violation of the setback code. And that's why I came in front of you for a variance.

CONSTANTINE ALEXANDER: And granting the relief will actually improve the safety of the occupants of the structure?

JEFF MCMATH: The main thing is right now the two egress stairs are on the ground level and they're within three feet of each other, and one of them you have to walk through the garage out the back door. This is on the second level which is the living room, dining room, kitchen and half bath. So if there was a fire in the kitchen or a home invasion, at least they can have a chance of getting out before meeting someone halfway. Or if it's a grease fire in the kitchen, they can get out the back way and get down instead of standing on a balcony and waiting for the fire department to come get them.

CONSTANTINE ALEXANDER: Questions from members of the Board?

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

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

The Chair would also note for the record that the Petitioner has submitted a petition. It doesn't say in favor of the variance yes or no.

JEFF MCMATH: Yes. They wrote yes.

CONSTANTINE ALEXANDER: Sorry.

The Petitioner submitted a petition signed by 15 different individuals.

JEFF MCMATH: 16. Two of them are on one line.

CONSTANTINE ALEXANDER: Okay. 16, thank you. All in support of the relief being sought.

The Chair would note that virtually all, if not all, of the parties who have signed this petition are residents of Elm Street. Ready for a vote?

The Chair moves to grant the Petitioner a variance to erect the egress stairs as proposed on the basis of the following findings:

That a literal enforcement of the provisions of the Zoning Law would involve a substantial hardship to the Petitioner. Such hardship being the inability to build a separate set of egress stairs which better service the occupants of the residences and will better enhance the safety of the occupants of the residences.

That the hardship is owing to basically the shape of the lot and the siding of the structure on the lot which results in any construction of the egress stairs violating certain sections of our Zoning Code.

We can grant relief without substantial detriment to the public good or substantially derogating from the intent or purpose of the Ordinance. In fact, what the Petitioner is seeking will further the purpose of this ordinance by increasing the safety of the occupants of the structures.

The variance will be granted on the

condition that the work proceed in accordance with the plans submitted by the Petitioner. There are three pages in length. The first page is a plot plan with the proposed steps drawn on it, and then there are two pages of plans attached. So three in nature. All three pages of which have been initialed by the Chair.

All those in favor of granting the relief sought, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Relief granted.

JEFF MCMATH: Thank you very much.
(Discussion off the record.)

(7:40 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9887, 220 Putnam Avenue. Is there anyone here wishing to be heard on that matter? Only the Petitioner. Everybody else will probably have a chance to speak. Petitioner can come forward, please.

BLAKE BRASHER: Hello.

CONSTANTINE ALEXANDER: For the record, we have a stenographer, give your name and address. And that will apply to anyone else who wishes to speak, we need you to come forward, give your name and address. We're keeping a stenographic record of this proceeding. We do that for all our cases. You don't have to stand.

BLAKE BRASHER: My name is Blake Brasher. I live at 220 Putnam Avenue. My

co-op and I have prepared a packet for each of you.

CONSTANTINE ALEXANDER: Is it the same pack we have already or is it a new package?

BLAKE BRASHER: No, it's a new package.

CONSTANTINE ALEXANDER: Let me say something at the outset, and this applies to everyone who is sitting in the audience. I know this issue is very emotional for us both pro and con. But the issue before us is a very narrow issue. It's whether we're going to uphold or we're going to pass upon an appeal the Petitioner has taken from a decision made by the Inspectional Services Department, and the question there is very narrow as to what is the definition of accessory use under our Zoning By-Law. The issue of the merits or demerits of having chickens as a general matter or the health

issues one way or another, are not at issue here. So, because we have a lot of people here, and we have a long evening. I'm going to -- time to time if I find the comments or discussion departing from what's before us, I'm going to cut people short. Just try to keep your comments focussed on how should we interpret the definition of accessory use in our Zoning Ordinance. That's what the ISD did and that's what you're appealing.

Okay.

BLAKE BRASHER: Okay. If I may start, I would like to quote the definition of accessory use in the Zoning Ordinance.

CONSTANTINE ALEXANDER: Please.

BLAKE BRASHER: Accessory use is a use subordinate to the principal use and customarily incidental to the principal use. If you're wondering what principal use is, that is defined as the principal purpose for which a lot or the main building thereon is

designed, arranged or intended and for which it is or may be used, occupied or maintained.

The violation that we were cited with of Section 4.3 of the Zoning Ordinance which is the Table of Use regulations, and we're arguing that we should be allowed to keep a small number of chickens and ducks. The number is five birds. Just as anybody who keeps a dog or two or several dogs or a few cats or any other type of pet is also protected by the accessory use clause in the Zoning Ordinance. So I'd like to begin by introducing you to our birds.

CONSTANTINE ALEXANDER: For the record, the birds' names are -- I think we need this. We're talking about -- Francis and Henrietta, Penelope, Potassium and Ferdinand. And the issue before us is whether they can continue to reside at 220 Putnam.

BLAKE BRASHER: Yes, exactly.

So we are arguing that the use is an accessory use. Okay, why our hen keeping constitutes an accessory use? Accessory uses are subordinate to the principal use and customarily credentialed to principal use. Our hen keeping is subordinate to the principal use of our lot because the coop and the run occupy one percent of total property and they don't affect the other uses of the house or yard. Therefore, they are incidental. And so I've put together this little plot --

CONSTANTINE ALEXANDER: You've only taken -- wait, wait. There's two parts if you will to the definition of accessory use. One that it is subordinate to the principal use, and I think you've made the case on that.

BLAKE BRASHER: Okay.

CONSTANTINE ALEXANDER: But the other one you haven't touched on and troubles me, and particularly the very first word,

customarily incidental to the principal use, and this is to the city of Cambridge. So you're suggesting that maintaining fowl in your background is customarily incidental in the city of Cambridge?

BLAKE BRASHER: Yes.

So our other points: Cambridge residents already keep many pets including hens. Therefore it is customary.

CONSTANTINE ALEXANDER: What's the basis for that? And what's many?

BLAKE BRASHER: I don't have exact numbers for how many residents in Cambridge do keep hens. However, we have if you'll turn some pages in passed --

CONSTANTINE ALEXANDER: The green book?

BLAKE BRASHER: Yes. This is a copy of what we've handed out also. I'm sorry the pages aren't numbered.

CONSTANTINE ALEXANDER: So are we.

BLAKE BRASHER: There's a petition that starts after a letter from Councillor Davis who was in support of our endeavor.

CONSTANTINE ALEXANDER: I have that letter right here.

BLAKE BRASHER: Yes, so the page after the page after that. The next page, sorry.

CONSTANTINE ALEXANDER: An e-mail from Allison Fastman (phonetic).

BLAKE BRASHER: Sorry, the page after that. We put that in last minute.

We put a petition online only a few days ago, like four or five days ago, and when we printed this out, the petition had 466 signatures. By the time we left the house, it had over 475 signatures. Many of these people live in Cambridge.

CONSTANTINE ALEXANDER: One lives in Wisconsin.

BLAKE BRASHER: Yes, some don't live

in Cambridge. But I believe most of them live in Cambridge. Almost 90 percent of them live in Cambridge.

CONSTANTINE ALEXANDER: And this signature that's 470 plus now are in support of the relief you're seeking?

BLAKE BRASHER: Yes.

CONSTANTINE ALEXANDER: It doesn't address still the question that I just asked: Why is it customary to maintain fowl in the residential area in Cambridge, not in Weston or in Leominster, but in Cambridge?

BLAKE BRASHER: Many of the people who signed our petition also commented that they do keep hens. We've highlighted some of those comments. One of them is our four chickens are our children's pets and a source of delight to the neighbors, preschoolers who crowd around to watch them through window and fence. Person's initials are WS in Cambridge.

I love chickens and my friend has them. She shouldn't have to give them up. A.G. in Cambridge.

I love my chickens and I don't want to have to give them up. N.G. in Cambridge.

One of my best friends owns chickens and I have seen firsthand how they are an asset not only to her family but to the community as a whole. M.W. in Cambridge.

Additionally, we put up a website earlier this week, Savetheducks.org and we have been flooded with comments on that website as well from a number of people in Cambridge. That website has attracted a lot of people outside of Cambridge who have commented, but also people in Cambridge have commented saying that they own chickens or ducks and that they live in Cambridge and that they want to be able to keep them.

CONSTANTINE ALEXANDER: I think it's fair to say that when you say many

people, many people in Cambridge have chickens. I have yet to hear any substantial evidence to support that. There are anecdotal comments from I don't know how many people, but there are -- I don't know how, whether this number which we cannot quantify, justifies customarily for the city of Cambridge.

BLAKE BRASHER: What number would you require for a customary?

CONSTANTINE ALEXANDER: We're not going to get into what number. I can go back and say what number of chickens and ducks you think make it accessory use and when it becomes a farm or some commercial enterprise. I mean, the fact of the matter is we have to deal with an Ordinance that talks about whether it's customary, customarily incidental -- what were the words? Customarily incidental to the principal use. And we'll have to make a determination as to

whether maintaining chickens and ducks in a residential area is customarily incidental to residential uses in Cambridge.

MALE AUDIENCE MEMBER: Of course it. Is it's historical.

CONSTANTINE ALEXANDER: Sorry, we're conducting a hearing. Everybody will have a chance to speak at the appropriate time. I'm not going to tolerate outbursts or spontaneous comments from the audience.

Go ahead.

BLAKE BRASHER: On the second page of your handout under the second main bullet point: It is customarily incidental for the principal use, points under that ownership of pets, even types of pets that most people cannot imagine wanting to have is universally accepted as customarily incidental to resident use. There are plenty of people who have pets that you might consider odd, but we don't question their ability to keep those

pets. There's an acceptance of customs associated with the keeping of backyard hens. They're given clean shelter, medical checkups, food and water and they're kept out of the street and neighboring properties. These practices are incidental to the use of a house in the same way that they would be incidental to the ownership of a dog. Keeping hens in this way is incidental to the overall use of our house and backyard. Everything else continues the way it did before. We continue to use the yard for picnics, barbecues, relaxing on the hammock, jumping on the trampoline, etcetera. A small number of hens in a large area are allowed for this easily. When the accepted set of responsible and healthy practices of hen keeping are being followed, dozens of other densely populated cities all over America acknowledge backyard hen keeping as an acceptable use of a residential property.

And to elaborate on that, the pamphlet we're handing out does not include the petitions because we wanted to respect the privacy of the Petitioner.

Even Cambridge law -- the last bullet point -- even Cambridge lawmakers support hen keeping. Cambridge municipal law makes mention of domestic owners of fowl and policies they must follow.

CONSTANTINE ALEXANDER: Can I ask you a question along that very point? As a matter of fact, there was an article in Boston Globe in Waltham, the same issue has come up. And in Waltham you're not allowed to keep ducks and fowl in your backyard. The article mentioned that a number of communities, if my memory serves, Newton, Brookline, Arlington, Lexington have laws or regulations dealing with maintaining chickens and fowl in the yards. We don't have any such law in Cambridge which is why we're here for the

suggested use issue. Why isn't the appropriate solution here or legislative solution, in other words, shouldn't the city of Cambridge decide whether -- City Council specifically, whether or not to allow chickens and ducks be kept in yards? And if so, subject to what regulations? For us to grant relief here in the absence of any legislative guidance makes it very difficult for us. Because there are issues pros and cons I think you would appreciate to maintaining ducks and chickens and geese in a yard of a densely populated area. Another thing that concerns me is we need guidance from the City Council and for us to find, to make a decision here, particularly in view of the fact that the Inspectional Services Department has determined that this is not an accessory use is troublesome.

BLAKE BRASHER: So I do have a letter of support from Henrietta Davis of the City

Council. She has also put in an order recently that was unanimously accepted by the City Council to investigate the barriers for the citizens of Cambridge in keeping backyard fowl, backyard hens.

CONSTANTINE ALEXANDER: What that says -- I've read the letter, it's in the file. What that letter says if, if we were to deny relief tonight, saying this is not or uphold the decision of the ISD, this is not an accessory use, the city of Cambridge, the City Council can adopt regulations that say yes, you can do it. In fact they can overrule us. That hasn't come yet. We don't know yet. That's an investigative we don't know whether the City Council is going to take action one way or another on this.

BLAKE BRASHER: I would be surprised regardless of which way this hearing goes if there's not regulations put in place in the next year. And I actually am very much in

favor of the city putting some regulations in place. I do see how this can be done in a matter that is disruptive, but I also think there is a lot to be gained by responsible hen keeping.

TAD HEUER: Is there a reason that you're coming before us not just on an appeal and not also on a variance?

BLAKE BRASHER: Well, this is the first time me or any of my housemates, we live in a co-op, have ever had to deal with any sort of issue like this. And there is a lot of nuance to working with this system that I'm sure you all are very familiar with. We didn't really even understand the difference between an appeal or a variance. However, I do believe after reading through the Zoning Code several times that an appeal is what we are -- what we are seeking. Because I don't understand how you can say that anything that is not explicitly permitted in a table that's

only five pages long, defines everything that you can possibly do with your property. That just makes me feel like I'm living in a police state that can very much dictate everything that I do on my own land.

TAD HEUER: That's what a variance is for. I mean, and the reason I bring this up we had a similar situation last year with wind turbines in the city. And as many of my colleagues on the Board remember, there was not at that time a wind ordinance, but as the case here, people were talking about one and that everyone kind of agreed that we should have one but there wasn't one. And I believe both the Museum of Science and Harvard University, maybe some others, came before us and said we would like to put wind turbines on our structures. And there was not an appeal from a denial of a wind turbine, although if someone had brought that appeal to the Building Inspector tell us if we're

allowed to have wind turbines or not and said no, you could have brought one. Instead they came for a variance and said there's no such regulations in the Table of Uses but we think that a variance is appropriate to vary from that Table of Uses. In this particular instance, you know, for our particular building and that you should grant us a wind turbine. Some members said that's fine. Other members said, I want to wait until we see what the City Council does because we adhere to the Table of Uses very strictly and narrowly. But in the variance context we're able to take it in the context of a specific property. We can say whether the wind turbine is appropriate for this particular site, this particular location, this particular number and we can set a number of conditions. In an appeal posture, we're in a position of either saying up or down as to what this rule means for the entire city of

Cambridge. And that kind of raises the stakes a bit for us. We would prefer, I think, regardless of which way it comes out usually in a variance posture than an appeal posture. That's the only reason I ask. And many people will bring both simultaneously. If they lose the appeal, it doesn't necessarily approve them winning on a variance because the appeal deals with the Ordinance as a whole as it applies to everyone and the variance applies to a specific property. So that was the reason for my question is as to why you're only seeking an appeal tonight and not what is more common in my experience which is both the appeal and the variance.

CONSTANTINE ALEXANDER: Let me make an addition comment before you respond. There are two ways you could attack this issue, one which you've done, take an appeal. The other is to seek a variance. There are

completely different standards and different proceedings. Even if, and as Tad has said, even if sometimes people bring both at the same time, one works and maybe the -- one doesn't work the other one might work. If again, I'm going to underscore the word "if," we were to turn you down tonight, you still have another alternative if you wish to pursue it, to come back before us seeking a variance. I also point out as you would find out as you examine the code, the legal standard for a variance is different than the standard of challenging an appeal. And stringent legal standard, but there is an alternative route which is what Tad is pointing out to you that will be available to you regardless of what happens tonight.

BLAKE BRASHER: Okay.

CONSTANTINE ALEXANDER: Okay?

BLAKE BRASHER: Thank you.

I believe the reason that we didn't seek

the variance was again we're unfamiliar with the system, and our reading of the law made it seem like it was a mistake to issue us the citation in the first place.

CONSTANTINE ALEXANDER: And no way are you prejudicing your case tonight. I want to make sure you understand, we're not going to suggest that we're going to turn you down because you should have sought a variance and it's still available to you even after tonight. That's the point I'm trying to make.

BLAKE BRASHER: Okay.

You were previously mentioning cities in the area. If you turn to the fourth page in, we've actually listed a number. And this is not a fully inclusive list. There are other cities that are on this list, but Massachusetts cities that allow hen keeping and the policies involved there.

CONSTANTINE ALEXANDER: None of

these cases -- neither cases I think, I'm reading quickly, where the city has decided, the community has decided to deal with by whatever regulation they wish, maintaining the maintenance of fowl on premises. None of them deal with whether it's an accessory use. None of those cases I don't think.

BLAKE BRASHER: Well, I'm suggesting that if the cities in question had to go through the process of creating the policy, then there were enough people keeping the chickens that they were required --

CONSTANTINE ALEXANDER: That goes against your case. Because that suggests that the answer is legislative which is the point I was trying to make before. Not quasi judicial or administrative. That's what we do. We have to deal with the Zoning Code given to us by the City Council. And the only thing that deals with your problem or issue is a definition of accessory use.

BLAKE BRASHER: Yes.

CONSTANTINE ALEXANDER: And the town officials who interpret the statute day in and day out have found that this is not an accessory use. And it's very judicially established, long established that we give deference. We don't automatically follow what they say, but we give deference to them because they are the people who are the most expert on how the Zoning Board works and how it works within the city. And so you've got -- I mean, you have, to be very blunt, an uphill battle if you will to reverse that decision.

BLAKE BRASHER: And you're saying that it all hinges upon what the definition of customary.

CONSTANTINE ALEXANDER: For me. I only can speak for myself. That's the key part of the definition that's at stake here. I think it's clearly incidental, to me it is.

It is subordinate to the principal use.
You're not raising chickens on an empty lot.
You have a the principal use is a residence
and you're keeping, as you put it, pets.
Yes. I would have no trouble finding it's
subordinate to the principal use. I think
the tough issue is the second, is it
customarily incidental to the use? I think
it's customary incidental for the city of
Cambridge not for a different community which
is different characteristics.

BLAKE BRASHER: But you don't
have -- you can't put a strict number on how
many people have to be doing it then before
it becomes customary?

CONSTANTINE ALEXANDER: No, I
can't. Maybe other members of the Board are
smarter than I am. I think we make our own
judgment. First of all, we would need very
concrete proof as to how prevalent throughout
the city of Cambridge it is to maintain

chickens in residential neighborhoods. I suspect if I go down Brattle Street, I'm not going to see many chickens running down the street or in the yard. But there's more to Cambridge than Brattle Street. I think the burden's on you or on the Petitioner who is you, to demonstrate that it is customarily incidental to residential uses in Cambridge that people maintain chickens and geese. And you can point out, as you did, that it is customarily incidental to have pets. And may, many people have dogs and cats. Again, only speaking for myself, I'm only one of five members of the Board. I think there is a difference in kind between chickens and geese and fowl and dogs and cats. And in fact I point out that what we do in the city at least regulate dogs. You have their license. You take your dog out for a walk, you're supposed to pick up the dog's waste. There is noise ordinances about barking, loud noises. I

mean we do deal with certain kinds of pets in the city.

BLAKE BRASHER: Yes.

CONSTANTINE ALEXANDER: And we don't deal with chickens, not yet anyway with chickens and ducks.

BLAKE BRASHER: We also don't deal with other exotic birds such as parrots and parakeets. We don't deal with lizards or reptiles or fish or a vast number of exotic pets that people keep.

CONSTANTINE ALEXANDER: You're right. You're right. Go on.

BLAKE BRASHER: Thank you for your advice.

So hen keeping has a long history in urban settings and influenced or parlance, people have been keeping domestic ducks thousands of years all over the world, and a reflection of mankind intimacy with these animals can be seen in our common language.

Every urban child understands what it means to be called chicken. Other fowl influenced expressions include: Cockiness, hen party, chicks, coming home to roost, taking someone under your wing, nest eggs, puddle ducks, fussing like a mother hen, etcetera. We would suggest that these birds are a part of our lives even if we do live in a city.

I believe that's all I really have to say on the matter, but I think there are other people in the room who would like to speak.

CONSTANTINE ALEXANDER: We will recognize them and we will give you an opportunity to add further comments at the conclusion of the public commentary.

BLAKE BRASHER: So are there any questions that you have for me at this time?

CONSTANTINE ALEXANDER: No questions at the moment. Don't go too far.

We're going to open this up to public -- yes.

BRENDAN SULLIVAN: I'd like to hear the Commissioner explain the reason for his ruling if the other members would like to.

CONSTANTINE ALEXANDER: There is no written record of the decision that was reached. That's a good idea. Who wishes to speak on behalf of the Inspectional Services Department as to why you reached the decision you reached?

SEAN O'GRADY: We initially reached the decision based upon it not being in the Table of Uses. I think that that issue has been accepted by both sides. It's not part of the appeal. The appeal then shifted to accessory use. That's not something that we have yet addressed. Our position on it is that it's not an accessory use.

CONSTANTINE ALEXANDER: Because?

SEAN O'GRADY: It's not an accessory use because it's not customarily incidental, and that is -- there's a very sort of simple

explanation to that. I think we all recognize that there are groups of animals that are customarily kept incidental in this urban setting in Cambridge; dogs, cats, fish. You can go down the list. And chickens just aren't on that list. The petitioners themselves -- I'm sorry, the appellants themselves have put a case in the file, but that I think instructive, it's a case out of Newburyport where the court found, and in fact I think the appellate court found on review that horses were incidental to the primary -- were customarily incidental to the primary uses in Newburyport. And that seems; like a fairly on point case. As I was reading deeper in the case, you'll see that they come right out and say well, we think it's customarily incidental because this is a rural area and in this rural area there are a plethora of examples of horses and cows and chickens and ducks, etcetera, etcetera, and

they found for the horse owners.

This is not Newburyport. This is not a rural area. We don't have goats and sheep and chickens and ducks and cattle kept on our lawns. I'm sure that there are some chickens and ducks being kept in the city. We're certainly aware of this case. We're aware of another case where the chickens and ducks had been, or at least chickens had been kept continuously since before the Ordinance and they were grandfathered. I'm hearing allegations that there are more chickens and ducks in the city. We're unaware of that. But we certainly wouldn't consider it getting anywhere near customary.

As you said, generally the boards and courts defer to Inspectional Services Departments on that determination. And in fact that's stated boldly in the case that the Court is following, following that.

I guess I'd just like to say a couple

other things. Yes, we're seeing that there's lots of municipalities that have ordinances around that. And I think that that speaks more to the value of having an Ordinance around this issue than it does to customarily incidental. And it's, it's an important point because were the Board to find that -- grant this appeal and find that chickens and ducks are customary, what the Board is in effect doing is saying there is -- it's cutting off any attempts at an Ordinance right at the knees because it's saying these are exempt animals, and then the Ordinance would have to turn around and sort of criminalize them in some fashion or another. So, this is something that is being looked at by the City Council. It's something that's properly looked at by the City Council. It's something that the Building Department is not pro or anti-chicken. We're just applying the rule

as we've always applied it. In fact, this has come up before with chickens and ducks, and we feel that -- we've asked that the appeal not be granted and it be allowed to take its natural course through the City Council.

CONSTANTINE ALEXANDER: Question for you, Sean. Go ahead, go first.

TIM HUGHES: Are there any, any members of the bird family that the Inspectional Services Department considers to be customarily incidental that they wouldn't take umbrage with?

SEAN O'GRADY: Let me say this, first of all, we go on a case by case basis and I haven't thought through all the various pets. If somebody came to me and said they had a caged bird in the house that's customarily kept in a cage like a parrot or a chickadee, I'm not real familiar with birds, I think we would -- and, again, this

is just one inspector, I think I would follow that.

TIM HUGHES: What about pigeons? Is anybody keeping pigeons in Cambridge to your knowledge?

RANJIT SINGANAYAGAM: I spoke to the city solicitor about this case and they consider this not as customarily.

CONSTANTINE ALEXANDER: Who did you speak with?

RANJIT SINGANAYAGAM: I spoke with the city solicitor. And we discussed this case and we decided that it's not a customarily incidental accessory use, because in the past -- I've been here about 27 years and we've never had a chicken coop. We had one complaint and we had to take them to court and we proved that he has a grandfathered case in that particular case. So we have never had chickens as accessory use or pets. So we have never allowed that.

And there was a case of pigeons and that was, they had a coop and we had to take them to court to remove that pigeons from the site.

CONSTANTINE ALEXANDER: Let me ask you, each of you or maybe Sean a question. I mean, if we were to grant relief tonight, we're talking about five, five ducks and chickens, and if we were to grant relief we would find that this is an accessory use. Suppose someone has 10 ducks and chickens or they have 25? Where do we draw the line? I mean City Council enacting regulations can draw the line very well, we can't tonight draw the line.

SEAN O'GRADY: I think that not only would that cause a problem with how many chickens and how many ducks, but how many sheep, how many whatever it is, how many pot belly pigs.

MALE AUDIENCE MEMBER: Dogs and cats. Same thing.

CONSTANTINE ALEXANDER: Okay.

Thank you.

BRENDAN SULLIVAN: Sean, they were cited for 4.30 which is the Table of Use regulations. Now, historically some Petitioner, some applicant for a permit that's down before the department for a particular use, and obviously you go to the district, you go to 4.30 see whether or not under that use it's either permitted, yes, permitted, no, permitted by way of a Special Permit, permitted by way of a variance.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: And that is the normal procedure. And historically if the use is not listed, then it is the -- well, is it the department's position that then it is not -- if it's not listed, then it is not permitted?

SEAN O'GRADY: That's correct.

RANJIT SINGANAYAGAM: In fact there

was a hearing in front of the.

FEMALE AUDIENCE MEMBER: We can't hear you.

FEMALE AUDIENCE MEMBER: Can you use the mic?

RANJIT SINGANAYAGAM: There was a hearing on the two animals and the city solicitor and Sean was there. I think Sean advised them they had a variance to have this use.

SEAN O'GRADY: That's correct.

TAD HEUER: Am I correct the Table of Use is the table of primary uses, principal uses?

RANJIT SINGANAYAGAM: Yes.

SEAN O'GRADY: Yes, yes.

TAD HEUER: So it's not a table of accessory uses?

SEAN O'GRADY: It is not.

TAD HEUER: Could you provide any guidance to the question that we were unable

to answer a moment ago when the line between customarily and non-customarily gets drawn? And the reason I ask is that the only case law that I know of on this is from the Lawrence case in Connecticut which is cited with an approval on the Simmons case that's provided by the appellant which defines as for the actual incidence of similar use on other properties: The issue being more than unique or rare even though it is not necessarily found on similarly situated properties.

SEAN O'GRADY: I would agree with that.

TAD HEUER: So, if we're looking at beyond unique or rare but not necessarily prevalent, are there any factors that Inspectional Services takes into account in determining where that line is drawn? Because I understand you're doing it on a case by case basis, but the case would be

representative clearly of whether other people have the same thing.

SEAN O'GRADY: I think the term that the Court used doesn't have to be a majority. And we wouldn't expect a showing of greater than 50 percent. And it is case by case. We've not had a lot of this so, you know, I'd hate to try to sit down and go how many of this animal would you need to have in a certain area? So, I can only address really this case and this number and simply say that it's not in our experience -- and our experience is not perfect, but we have a pretty good pulse on at least the public uses that are happening. And I don't mean that municipal uses, but the things that are happening in people's yards. You know, it's a tight city. We have a population that is not afraid to call us and let us know what's going on and what's bothering them. And we -- this is the second time we've had chicken complaints in

my ten years. And like I said, I'm only aware of two. I would still say we're well within the rare nowhere, you know, nowhere near the majority or nowhere near even a sizable enough portion for me to have a problem with the determination that this is not customary.

TAD HEUER: So let me pose somewhat of a hypothetical. I get a daily newspaper, I'm sure you don't get many complaints about people reading daily newspapers in their homes, but that's because people read daily newspapers without much concern. So, when you say you've gotten two chicken complaints, is there anything that we should be troubled by by measuring this based on complaints versus based on -- by analogizing prevalence to compliant?

SEAN O'GRADY: Let me say this also, I mean, we, we enter properties regularly. We chase rats around the city. We do trash complaints regularly. We have several

gentlemen at our department in the sanitation department that do nothing but this. They are -- and one of those gentlemen was the first responder, if I could, to this case. And he's unaware of other chickens and ducks. So it's not only complaints, it's our man in the street and they're reporting that there's not chickens and ducks out there that they're aware of in any numbers.

CONSTANTINE ALEXANDER: Tim has another question.

TIM HUGHES: Well, part of it Tad already asked.

MALE AUDIENCE MEMBER: I have a question.

TIM HUGHES: We haven't opened it up to public testimony.

MALE AUDIENCE MEMBER: I thought it was open to the public.

CONSTANTINE ALEXANDER: It's among the five of us. You'll have your

opportunity, please.

TIM HUGHES: The point of complaints versus prevalence, and Sean addressed that. I do have a question about the one case that got grandfathered because it was prior to an ordinance?

SEAN O'GRADY: Yes.

TIM HUGHES: Procedurally how does that happen? Was that procedurally, was that considered accessory use or was there something other?

MALE AUDIENCE MEMBER: Customary.

SEAN O'GRADY: My understanding in that case, and I wasn't directly involved with that. We got a complaint about chickens and ducks. We came down and started an enforcement on that. And that when it got to court, the owners of the chickens and ducks were able to prove that they had -- I'm sorry, I think it was just chickens at that point, that they had kept chickens on that property

continuously since the early part of last century, well before the Ordinance came into effect. And, therefore, it was just grandfathered.

CONSTANTINE ALEXANDER:

Non-conforming use.

SEAN O'GRADY: It's a preexisting non-conforming use. It's kist an outright win for the homeowner, the chicken owner.

TIM HUGHES: So we're using the term customarily strictly as numbers not tradition or historical. It doesn't have a historical component to it or a traditional component to it because you're talking strictly defining it as numbers?

SEAN O'GRADY: Yes. I mean there's a temporal thing here. I'm not going to stand here and say that at some point in our history it wasn't customary to have chickens and ducks. I think it was. I think it was customary to have cattle and the sheep and the

full nine. At some point the city became industrialized and that dwindled away. By the time the Ordinance came around, clearly the concept of livestock is well known and it is -- it's not addressed. And it's not addressed because it's an oversight because it occurred to them that somebody might keep chickens and ducks. But they, they said abattoirs and stockyards not allowed anywhere in the city. So, they looked at animals and they basically said no, no more animals. They didn't go to the rather I think now inventive way of saying okay, well, we'll side step that and go to the accessory use and try to come in the side door, not to disparage it, I think that's a very good approach, but I think that ultimately you fail on the customary.

TIM HUGHES: Thanks.

CONSTANTINE ALEXANDER: Tom had a question.

THOMAS SCOTT: I was just curious the types of complaints and how many have there been? Was it just one complaint? Have there been 100 complaints? And it seems this coop is a pretty established coop. It's been there for a while, at least it appears in the photographs. I'm just curious, you know, how much --

SEAN O'GRADY: We've had this -- we're talking about a complaint on this property?

THOMAS SCOTT: Yes.

SEAN O'GRADY: We've had a complaint on this property now for a good long time, somewhere close to a year. We have a definite complaint from one neighbor. And you have to appreciate, this is a -- it's a rather unique property. It's a block. It's a square block that's carved out with eight or ten houses that ring it. And this property owns the backyard of which all the

other properties abut. It's like the courtyard of the block. And it really -- that's the open space that rules these houses. I've had allegations both ways. I think there might have been some swaying back and forth of some of the neighbors, but my current understanding is that the majority of the abutters are opposed to this.

THOMAS SCOTT: Thank you.

TAD HEUER: There's no zoning for agricultural use in the city of Cambridge; is that correct? There's no zoning district?

SEAN O'GRADY: No, there is none.

CONSTANTINE ALEXANDER: It is correct that there is none?

SEAN O'GRADY: Yes. There is no agricultural, that's correct.

CONSTANTINE ALEXANDER: Other questions from members of the Board at this point?

I'm going to throw this out to public testimony. Okay, you'll have your chance. We're going to start. We're going to set some ground rules that's all. We're going to start with people who are in support of the petition. And after they're finished, people who are opposed to the petition. We would ask -- obviously many people want to speak. I would ask that you try to keep your comments concise, and please try not to repeat comments that other people have made. You can say I support so and so, but leave it there. Just to say it all over again, just prolongs the evening for everybody here and it doesn't do any good. So, with that, and again, if you are going to speak you're going to have to come forward and give your name and address to the stenographer.

Those in favor who want to speak in support of the petition. Are you in support, sir? Because you've been dying to speak.

CHARLES ECCLES: My name is Charles Eccles. You may have heard of my name, they call me the chicken man.

THE STENOGRAPHER: Okay, you're going to have to spell your name for me, please.

CHARLES ECCLES: E-c-c-l-e-s.

CONSTANTINE ALEXANDER: And your address?

CHARLES ECCLES: 62 Allston Street in Cambridge. Our families live -- our whole family has lived there for three generations. In 2014 we would have been in that house for a hundred years. Our family comes from Barbados, West Indies. Chickens fly out. Roosters crow all day and night. Beautiful. The most sweetest sound you'll ever hear. Now these people have no roosters. You say it's not customary and not incidental. You folks probably don't come from Cambridge, none of you.

CONSTANTINE ALEXANDER: We all live in Cambridge.

CHARLES ECCLES: You live in Cambridge but you probably don't come from Cambridge because when I was growing up, I could walk down every other house, there would be chickens, rabbits, goat in the backyard, everything. I don't know how you consider customary, but that was customary for West Indian families to have chickens. It's not a big deal.

Another thing is that that's their property in Cambridge, they pay taxes. They should be able to have any kind of pet that they want in there their if it's not some kind of exotic animal, a tiger or anything like that. You know what I mean? Why should, why should they be singled out? And I'll tell you the reason why I'm here is because I went to court 26 times with every city agency that they could get to come after me. And the only

thing that stopped them was not the fact that I forgot that in 1971 that I had an animal control officer come after me for my chickens because she came after me for my dogs, and my dogs, they couldn't get me for the dogs and so I decided to breed them. And I bred them and I proliferated them all throughout New England, all throughout all over the place. I have more pit bulls out there than anybody can mention. And so now, I fought, I fought with the city. I fought with them for two years because they were doing that reconstruction on Sidney Street and MIT had a big hand in it. They wanted to de-genderfy (sic) the area. They didn't like my chickens. And this is how it went about. And since I've been living in Cambridge all my life, three generations, I know a little bit about what's going on.

CONSTANTINE ALEXANDER: Okay, thank you.

CHARLES ECCLES: So I found out, and the reason why they stopped harassing me about the chickens is they found out that these 26 times in court ended up costing, costing our city tax payers almost a quarter of a million dollars.

CONSTANTINE ALEXANDER: Please stick to the issue.

CHARLES ECCLES: The issue is the chickens. They're not customary? Certainly they are customary. And if you had any of the elderly residents in here, in Cambridge you know that they were. As far as I'm concerned, I'm the chicken man, I'm an expert. They keep good chickens, they're healthy. They keep good ducks, they're good and healthy. I say they keep them.

CONSTANTINE ALEXANDER: Thank you. Thank you, sir.

CHARLES ECCLES: And another thing is I don't want to see them go through all the

court hassle that I -- I wouldn't want anyone to go through what I went through.

CONSTANTINE ALEXANDER: Thank you.

FEMALE AUDIENCE MEMBER: Is there a time frame on what's considered customary?

CONSTANTINE ALEXANDER: We'll deal with that at some point. You can give us your views of what you think the time frame should be. We will deal with that in reaching our decision.

JULIE WORMSER: Thank you. My name is Julie Wormser. I live at Four Ontario Court in North Cambridge and I want to take a crack at customary and incidental use.

CONSTANTINE ALEXANDER: You're not an --

JULIE WORMSER: I'm not an abutter. I'm just a resident. But I would love to have chickens.

So taking a crack at customary and incidental use in Cambridge and sort of

thinking about what is the framing that makes sense whether it is yes or no is appropriate. So one question is, is it customary in Cambridge to raise food for personal use, not commercial use, but personal use in Cambridge? And I would certainly argue that is true in terms of the community gardens that we have and backyard gardens. Certainly customary. Certainly appropriate.

Second question is, is it customary to have pets that sometimes are visible to the neighbors? As an analogy, we have dogs and cats that go in our backyards. We have outside bird feeders that can control rats and you can control that better with bird feeders with chickens. We have outside birds and inside fish and those are customary. Is it customary to deal with agricultural waste? Which would be another analogy. And yes, the city of Cambridge supplies and supports compost bins and

appropriate control of compost. So I would argue that, I don't think any of us are arguing that lots and lots of people have chickens in Cambridge, but in terms of an appropriate use that is analogous to other things that people really support and value here, and as part of having the community glue that makes Cambridge really vibrant, I would, say, yes that chickens do fall into that overall sense of community and what's appropriate to do in the city.

For our family we moved back into Cambridge because our family's multiracial and our daughter was experiencing racism in Central Mass. where large agricultural animals are customary. We had a huge vegetable garden. We wanted to have chickens out there. We moved back for our family and for the vibrant culture that we all value here. We live on a twentieth of an acre in an 800-square foot house in Cambridge.

And we already have most of our backyard dedicated to vegetable gardening. We eat from our own backyard in Cambridge all summer and we would like to have a few chickens. Our neighbors are very supportive. We asked them all before we made any move.

CHARLES ECCLES: I'll sell you some.

JULIE WORMSER: All right.

So my sense is that, you know, at the same time our neighborhood is experiencing a lot of shootings and stabbings. And so my experience with small scale personal use agriculture, it's part of community glue that brings people together and we need more of that, not less. And as long as, you know, so my sense -- this is not about -- this is best dealt with inspections and potentially limits on the number of chickens. Not having roosters in crowded parts of Cambridge, those kinds of things where you're eliminating the nuisance factor but not limiting the activity

if the nuisance can be controlled as it is in these analogies.

And I guess one last thing is that I would not think that this is appropriate for a variance because there's certainly other folks who would like to have chickens. I think this really should be part of a city-wide Ordinance.

CONSTANTINE ALEXANDER: Just to pick up that last point. You're quite eloquent in my judgment. But I think the eloquence would best be directed to the City Council rather than to this Board. You're making a great case for why we should allow animals such as chickens and ducks in the city, but with appropriate safe guard. I think you would suggest that there's appropriate safe guard just can't have a thousand chickens running in someone's yard.

JULIE WORMSER: I think it's fantastic that Cambridge is silent on

chickens. That's a cool thing about Cambridge. That this is one of the many various ways that it's great to be alive in Cambridge. I don't think we need a proactive ordinance. I think we have it in the fact that it's not a banned use and it shouldn't be a banned use.

CONSTANTINE ALEXANDER: I should have made this point perhaps at the outset given the controversial nature of the case.

The point I wanted to make is under our Zoning By-Law, to grant the relief the Petitioner is seeking i.e. to reverse the decision of ISD requires a vote of the four out of the five of us, it's not a majority vote. It's a supermajority, four out of five so people understand that when the time comes for a vote to be taken.

Okay. Who wants to speak? I'm just going to pick in random order. Again, please, this is not directed to the prior

speaker but please keep your comments brief and not be repetitive, that's all.

BARBARA BRYANT: My name is Barbara Bryant and I live on Henry Street in Cambridge. I would like to yield the first 30 seconds of my time to my neighbor Brad Harkavy of Henry street.

BRAD HARKAVY: So, I'm Brad Harkavy. I live at 122 Henry Street and I happen to live next to some delightful chickens. You know, if I look at the customary nature of it, I have a dog that barks all night which is bugging the hell out of me, and I have these chickens which are bringing joy to my family and to the neighbors. And while I believe it's newer, I think if we really look at what's customary, I think from a historical perspective or even a more recent perspective, it's customary in my mind, and if you look at the trends throughout the country, it's becoming much of what's more prevalent. You know, I'm a

supporter clearly. It's not a nuisance and I think that it's odd that it's coming down to the Zoning Board to make a decision on this.

CONSTANTINE ALEXANDER: I believe that -- please.

BARBARA BRYANT: I submitted a letter in advance of this meeting and I want to, I don't want to read it out and take that time, but I want to make sure that you have it.

CONSTANTINE ALEXANDER: Yes, I do. Again, for the benefit of the audience, we do have lots of correspondence and some of it voluminous, and we will put all of that into the public record. I'm not planning to read each and every word that's been submitted to us, we'll be here until three in the morning. But what you have submitted, I'll confirm that it's in there. And it will be part of the public record.

BARBARA BRYANT: That's okay, thank you. I was asked to bring five other letters from other residents. One from my daughter Isabelle who is arguing that pets are chickens. One is from David Gibbs.

CONSTANTINE ALEXANDER: Chickens are pets.

BARBARA BRYANT: Chickens are pets. I'm sorry, I'm a little nervous.

One is from David Gibbs (phonetic), he's the Executive Director of the Cambridge Community Center. And another is from Jeffrey Pingree, a resident. Another is from Gilberte Hubbard (phonetic), a resident. And finally from Stephanie B. also a resident of Cambridge.

CONSTANTINE ALEXANDER: Thank you very much.

BARBARA BRYANT: I own three chickens. They live in our backyard, our side yard. Their names are Raspberry, Apple

Blossom and Henny Penny. I will not tell you everything I have in my letter but I do want to talk about customary and about regulation.

Pets are certainly customary in Cambridge. I am having trouble under what it is about chickens that makes them so different from the other pets in Cambridge? This has been touched on already, but we know there are birds, there are snakes, there are animals that live outside. There are animals that make noise. There are animals that poop. We train our chickens. We love our chickens. We name our chickens. I don't understand how chickens can be singled out and discriminated against as being different than the other pets. Are we banning all pets? Why is it just chickens?

The other point that I wanted to make was is in response to the idea that you've brought up several times now, that if Cambridge wants chickens to be around, that

they should be part of the explicit ordinance. Well, it's true that there's not an explicit ordinance allowing chickens right now, but there's also not an explicit ordinance allowing iguanas, boa constrictors and parakeets and all those other pets that we loved in Cambridge. While I'm certainly in favor of helping Cambridge develop guidelines and helping chicken owners to learn how -- potential chicken owners to learn about how to care correctly for chickens, I believe that at the moment according to my reading of our laws. That chickens are allowed as any other pets.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you. You're closest, sir.

KEVIN HILL: My name is Kevin Hill. I think the issue is --

CONSTANTINE ALEXANDER: Where do you reside?

KEVIN HILL: I live at 23 Hubbard Ave, North Cambridge. And I spent my formative active years growing up in the Riverside community.

I believe the issue that we're talking about or not talking about is an issue of safety, and problems are common sense. The question is with the city growing population and the density, the question is, is it a manageable issue? Does it raise serious safety and health issues?

CONSTANTINE ALEXANDER: Are you speaking in favor?

KEVIN HILL: I'm asking a question for reflection and thinking.

CONSTANTINE ALEXANDER: Okay.

KEVIN HILL: Because the question here is whether or not we're opening up Pandora's Box. No one can discriminate people against having pets. But the issue is can the city fully manage this new or growing

use of the land with the population with this type of pet maintenance. So there's some serious issues on the table that really need to be thought out thoroughly. And that's where I think the issue really needs to be looked at in terms of the Ordinance and the community. No one's trying to stop them from having pets, but what are the safety and long term issues and what are the financial constraints of this? That is also -- I want them to look at it from a common sense point of view.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you.

RACHEL RITTER: Hi there. My name is Rachel Ritter and I live at Seven Locke Street in North Cambridge. I'm a registered nurse and I work in the cardiac medical intensive care unit at Lahey Clinic, and I'd like to say two things about this.

The first one sort of reflects what the

prior gentleman just said. And just my concern that the word customary, on two levels first of all, how can something be customary if it's prohibited? Because if it's prohibited, not enough people will be able to do it to make it customary in order to get around the Ordinance. First of all.

And second of all, my concern is that the word customary does not become synonymous with the word arbitrary. I think as we move forward in so many disciplines in science as in medicine, things have become more and more evidenced based over time. I think that, you know, each individual animal may need to be examined from that standpoint. Are they dangerous? Are they a health hazard? You know, are there limits or things we need to do with them? I think I feel as a resident of Cambridge that prohibiting them just, it's contrary to everything I love about it here. It just goes against the heart and soul of

what we're all about, I think many of us residents.

And secondarily as a nurse and as somebody who's looking out of making a career of public health, I noticed that there is a big disparity in our the nutrition of our people based on their socioeconomic status. And I think many people in here may be aware that there's quite the revolution going on right now, and we're -- a lot of people are calling themselves urban homesteaders if you will. And I think that, you know, in agreement with what the eloquent lady said before me, I think that encouraging people to be self-sufficient and feed themselves and not be so dependent on our commercialized food system would be a good thing. So thereby allowing chickens or any other agricultural food sources, such as vegetables grown in the backyard and such things, you can only improve the health of the

city particularly for those for our most needy and deserving residents.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

LINNA BARD: Hi. My name is Linna Bard, B-a-r-d. And I live on Pine Street in Cambridge.

I just want to say that I think that part of the issue that was brought up was that chickens in this case are sort of being seen as livestock rather than pets. And I like to say my family has had chickens for the last several years, not in Cambridge, but I've seen how when they're hand raised and well cared for, they are in fact pets. They are entertaining. They are friendly. They definitely have personalities. And when they are well cared for, they are actually less of a nuisance, less objectionable than dogs and cats can be. They don't bark as long as you don't have a rooster. They're quieter

than dogs. They don't escape the yard and go poop in the neighbor's yard as cats so often do. I'd like to say that they are pets in the sense that we think of pets in filling a need and as a sort of entertainment, and they really are not a problem for the neighbors.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to speak in favor?

BAYARD WENZEL: Bayard, B-a-y-a-r-d Wenzel, W-e-n-z-e-l. 220 Putnam Ave.

CONSTANTINE ALEXANDER: Okay.

BAYARD WENZEL: My experience, my day-to-day existence in the city is as customary to see birds of this nature. I'm a -- we're two blocks from the Charles River. And there are a number of swans. There are a number of --

CONSTANTINE ALEXANDER: Geese.

BAYARD WENZEL: -- ducks, geese. And I think from that perspective it's by no means is it odd to see these kinds of

creatures. That's it.

CONSTANTINE ALEXANDER: Thank you.

Did I see someone else over here? Yes, Ma'am.

IRENE HARTFORD: Good evening. My name is Irene Hartford. I live at 207 Putnam Ave. in Cambridge. I have live diagonal across the street from the chickens. I have been in my neighbor's yard to see the chickens. They're beautiful birds. We do not hear any noise. There is no smell. There is a lovely coop that has been built for them. They are -- they are these people's pets.

And I also wanted to clarify that not all of the abutters are opposed to the chickens. There are abutters that are in favor of the chickens. And I also want to clarify the description of the backyard of my neighbors. It really is not a courtyard that everything backs up on. Everybody that

abuts has their own yard space, so it's not that these are somehow, you know, infringing on anybody else's yard space.

And then finally on the issue of customary, earlier this evening you mentioned that you don't see sort of, you don't see chickens on Brattle Street. But Brattle Street doesn't set the customs for the city.

CONSTANTINE ALEXANDER: That's true.

IRENE HARTFORD: There is a lot of other neighborhoods in the city that do not follow the customs of Brattle Street.

CONSTANTINE ALEXANDER: I'm sorry. That's a fair comment. I was just being a little bit snide. I didn't mean to suggest that Brattle Street covers the way the city is going to be run.

IRENE HARTFORD: Thank you. I appreciate that. So I wholeheartedly

support my neighbor's chickens.

Thank you.

CONSTANTINE ALEXANDER: Anyone else wish to speak in favor and saying something that hasn't been said before?

PHYLLIS McCOLLIN SKELTON: My name is Phyllis McCollin Skelton and I live at 214 Putnam Avenue just next-door to my neighbors with the chickens. I am from Barbados and we have chickens and guinea pigs and rabbits, so you know, having chickens next-door helps me to relive my childhood days. And also I just have a grandson and I was hoping I could take my grandson over to at least look at these chickens. Plus I have a 13-year-old son, you know, who would be interested with, you know, with the chickens. And it kind of brings out that something within you that you can not like -- you know, it just brings up that part that is understood. And I'm very happy that they have the chickens and the ducks and, you

know, they have all of these feelings coming out. I mean, you know, so it's nice to have that going around as opposed to having, you know, we have the war going on in Afghanistan and over in Iraq and, you know, and any -- it helps to kind of help us to be a bit more healthy, a bit more healthy. So, I appreciate that that they have the ducks. And, you know, I think as neighbor that we should pitch in. And if we think we know better how we should handle a chicken or a duck, you know, with some good PR and everyone wants to be healthy and safe and, you know, have a good community going on, and it will be nice to just talk to the neighbors, friendly neighbors. We all have our life to live, and it's great having the animals. The ducks and the chickens and pets.

KATHERINE NICHOLS: Katherine Nichols, 12 Mount Auburn Street. I have a couple of things, I'll try to go fast.

One was, I didn't realize so much had to do with the wording of customarily and incidental. So I just wanted to point out that the think the word customarily describes the word incidental. It doesn't describe the word use, and I don't see anywhere here that is says it has to be a customary use. To me the opposite of customarily incidental would be a primary use. But that's sort of a minor. That's what I came to say.

So, one thing you said was it's hard to make a decision in absence of a guidance, but I think one thing that does provide guidance is the mission statement of the city of Cambridge. There are seven points but there are two points that I think are relevant here.

One is that we value and support racial socioeconomic cultural and religious diversity of our city. And I think that definitely applies. And even though something isn't the most normal thing, it's

appreciated in Cambridge.

FEMALE AUDIENCE MEMBER: Say it again in the microphone.

KATHERINE NICHOLS: One of the points is that the mission statement of the city of Cambridge is to value and support racial socioeconomic cultural and religious diversity of our city.

The other point I think is relevant out of the seven is to promote a healthy environment by adopting healthy and environmentally sound and energy efficiency throughout the community. And I think this obviously applies as somebody already explained in more detail, it's great to be able to make your own healthy food.

And another point I'd like to make is that a couple of people have brought up dogs. And for someone like me who I am terrified of dogs, but they're everywhere and they're on the sidewalks and -- but I don't tell other

people they can't have them. And the chickens are and ducks are much more harmless than dogs. And so I wanted to point that out.

And finally there's a well loved children's story that's set in Boston, Make Way For Ducklings and it would be really embarrassing if we did not permit ducks in Cambridge.

CONSTANTINE ALEXANDER: Thank you.

LAUREL PARDUE: Hello. I'm Laurel Pardue. I live at 222 Putnam. And it's P-a-r-d-u-e. The point I have is I understand that you as Zoning Board mentioned that you don't feel like it should necessarily -- that it should be something decided by City Council.

CONSTANTINE ALEXANDER: Let me be clear, that was one person speaking. It's not the view of the Board, not yet anyway.

LAUREL PARDUE: There's concern that the Zoning Board should not be the one

to make an Ordinance. It's been expressed by Inspectional Services when does it become too many ducks or chickens? Which I would agree also should be probably addressed by City Council. But, right now there's the interpretation, at least from our house and I think other people, I know at least three, four places that have chickens in Cambridge myself, that we would have assumed that it was -- that it does fall into accessory use. And so my question would be if you say yes, you're not necessarily opening the door on a whole lot of ducks and chickens coming in, because the Cambridge City Council if it becomes a problem, can do something about it. That's entirely within their ability and I believe they are planning on looking at it at our request as well later on. So to me it's not opening a door to lots of trouble because there are means for addressing that. And right now, by -- but if we aren't allowed to

have our ducks and chickens, that means there are other people who suddenly thought they were in the clear who can't also have their ducks and chickens. To me it's more reversal for what's the present norm for not let us have the chickens and ducks than if we're allowed to keep them.

Thank you.

CONSTANTINE ALEXANDER: Anyone else who wishes to speak? Are you going to make a point not made before, please?

ADAM FASTMAN: Yeah, yeah, I will. Hi. Adam Fastman also 220 Putnam.

Let's see, I heard Inspector O'Grady said that if he came into a house where a parrot was which was customarily kept in a cage was there, he wouldn't have a problem. So, chickens are customarily kept in coops.

CONSTANTINE ALEXANDER: Keep going. If that's your only point, let's move on.

ADAM FASTMAN: No, that's not my

only point.

The other piece of it is the Zoning Ordinance -- is the intent of the Zoning Ordinance and the definition of customary use to outlaw things that very few people do. So just as a question. And I think that maybe everything else was said.

CONSTANTINE ALEXANDER: Thank you. The fellow in the back first and then you're next.

JOSEPH SOKOL-MARGOLIS: Hi. My name is Joseph Sokol-Margolis. I live in Cambridge on Madison Avenue in Cambridge and I wanted to speak briefly against customary use.

I think the customary use is something you can change over time. I think customary use can change over time. I grew up in Cambridge, and while I was growing up friends in neighboring cities had chickens. Today friends of mine have chickens in Somerville,

neighboring, but at least as dense as Cambridge. Doing a quick search on Amazon for chicken coops, you'll find several designed for dense urban use and a For Dummies book about it. And there's a very large growing movement about urban chicken growing which to me says it's fairly customary. I think there's an issue around at what point does small scale chicken farming become large scale agriculture? And I don't think that needs to be addressed by regulation. I think that's something that can be done on a case by case basis by someone who's person I don't remember.

CONSTANTINE ALEXANDER: O'Grady.

DANIEL BERGEY: My name is Daniel Bergey, B-e-r-g-e-y. I live at 53 Sherman Street.

I was surprised by the Board's suggestion that customary is only in regards to use in Cambridge. I think customs don't

change that much with one large American city to another. And cities like New York and Seattle are denser than Cambridge have found that chicken keeping in an appropriate activity within the city and residential areas. My understanding is that cities that have laws regulating how many chickens you have been quite recently in response to the high popularity of keeping chickens, which seems to me the city takes action not to be strictly forbidden but regulations on one thing before it gets out of hand. And the same, same pattern would apply here.

CONSTANTINE ALEXANDER: Thank you. I'll take. How many more want to speak in favor? I know you want to speak. Anyone else who would like to speak? We have to move on. I'm going to record this person but I'm going to take one other person. After this in favor and I'm going to move on. I haven't heard too many new comments being made

frankly and we just, limits of time we just can't keep going. So, please. You and one more after that.

FEMALE AUDIENCE MEMBER: What if we all keep it under a minute?

CONSTANTINE ALEXANDER: No.

MELINDA CROSS: My name is Melinda Cross. I live at 220 Putnam. Last name is spelled C-r-o-s-s.

I would just like to bring up the point that throughout time backyard agriculture has become more and less in fashion. You can have argued 15 or 20 years ago that maybe it wasn't customary for everyone. I would say the same thing about backyard chickens.

My other point is as far as the complaints by neighbors, that there -- I know there are more than two families keeping chickens in Cambridge. There are many, many more, you know. We only have two complaints on the books I believe.

And my other point is that the rat inspectors are running through yards and haven't come across any of these, perhaps it is because I have heard rumors that they can even keep them away more because they're -- stuff. Anyway. Those are my points. Thank you very much.

CONSTANTINE ALEXANDER: One further. I'm sorry to do this, but I don't know any other way of doing it. Sir, you've been waiting.

RALPH CLOVER: My name is Ralph Clover. I live at Adams Terrace in Cambridge.

CONSTANTINE ALEXANDER: Where is Adams Terrace? Are you abutters or general neighborhood?

RALPH CLOVER: No, it's not. It's near the high school actually. I'll be very brief. I just wanted to say our family is another family that keeps chickens. And we

have four hens that we've had for two going on three years. They've been great. They are my daughter's pets and she loves them. And I also have a letter, two letters actually from our neighbors, the Cambridge Ellis School that they are very happy to have our chickens as neighbors and wanted to say so. And basically that's all I have to say.

CONSTANTINE ALEXANDER: Thank you.

Okay, thank you. We're now going to turn to the comments from those who are opposed to the relief being granted. We're going to try to apply the same guidelines. Please be brief. Please don't repeat things that have been said before. And I don't know how many people plan to speak against, but if there are a significant number, at some point I'm going to cut off commentary just as I did for those in support. We're not trying to tilt the procedure one way or another. So, okay. Those opposed to want to speak, please

raise your hand. Your hand first. I'll see you, sir, come first.

LAWRENCE ATKINS: My name is Lawrence Atkins. I live at 45 Hanes Street. I'm the President of the Riverside Neighborhood Association but I am speaking as a member of Cambridge tonight.

Too bad you don't have anything other than for or against and this is the time. But, as the current law is written, there is a need to respect that. I got involved, I was dragged into this by several phone calls, and I'm strong person who tries to maintain civility in my neighborhood. We have good neighbors across the whole entire Riverside of which I am present. Right now there is a controversy on this matter. Some say that early on respectfully, I don't know, it's not in writing, that Inspectional Services had made an earlier visit, had made a friendly visit of the possibility of something being

put in this 220 backyard and recommended that it shouldn't be because it's not within the realm. And as any city goes, business goes on, we are of course in an economic crunch, we're not going to start having backyard policemen. The mention of the number of this does not have any reflection on this I hope. And those who have it, with neighbors who are abiding by it, fine. But this process needs to be open. You have Cantabrigians who have been in their houses for 40 years. This has not gone on in their neighborhood for 40 years. I am fifth generation and I have been explained when the horses, chickens, ducks, animals, you name it, were in this area and they have long time since been gone and we are now an urban city living on top of one another. One point in Cambridge in Riverside you couldn't put a fence up because you didn't know clearly where the property lines lay. And now we have fences and

sometimes they're not the best of fences. Sometimes that creates another problem which you did hear. And you go by the writing of the law.

Customary is what it is. I have not seen chickens other than when I go to the store and purchase them. Mr. Eccles has been a member of luckiness, but his family saw to it that the area was grandfathered. It was pre-existing. We now have a situation where a neighbor made the phone call, it was visiting and recommended not have the coop. Time went by and the coop exists. Not the length of time that you think, but it exists. The problem has been for that neighbor who is upset about it. The others slowly found out. And as I'm saying this, I'm sure you are hearing how piece by piece, but if it had been the other way; hi, I'm your neighbor at 220 Putnam Ave, I'm going to put a chicken coop up in my backyard. You would have had

whoever needed here then and by the time the first nail, fence post, whatever, you could intervene. Even as we're sitting here now, I understand because I've talked with the animal control department that even with you saying that, it's customary is and these chickens -- they are preparing to have a place in Pembroke for this family to maintain their animals until whenever they properly go through the procedure and have the law properly changed with all residents involved to say yea or nay with the elected parties that are here in this city. Not, and with all due respect, I don't mean this in a harsh fashion, but to do a hoodwink of letting it happen and then say by some majority that none of us know, that it should be. The last thing we want to do in Cambridge is deprive anybody of their rights. And rights are existed as they're written. If you want to change them, you come in the front door. Any other way,

is not the right way to keep a neighborhood happy.

So I know you gentlemen know the law. It's tough to do your job. I wouldn't trade places with you. I have a job now of trying to maintain my neighborhood in a civil manner. I'm committed to it, but with that, I want my neighbors, all of them, to come in the front door, change things so everyone knows how it is. And whatever conversation need to be an outcome be known then but not by an accident.

Thank you.

CONSTANTINE ALEXANDER: Thank you very much. Who would now wish to speak? Yes, Ma'am. Way in the back.

MARSHA HAMILTON: I have a lot of stuff. And I hope --

CONSTANTINE ALEXANDER: I didn't catch your name.

MARSHA HAMILTON: I'm Marsha

Hamilton. I live at 23 Montague Street. I owned my house 35 years. I don't know if you read my package, but I'm glad to be here at the senior center.

CONSTANTINE ALEXANDER: I have your package. You can assume that we've read it, too. I'm not being sarcastic, but you don't have to go every point of your package.

MARSHA HAMILTON: I just want to say the senior center would not be here if it weren't for my mom.

First I want to give you letters of opposition of some people who couldn't be here because they have family in Haiti and they're dealing with that. Then I want to give you some pictures of a view of what we're talking about so you can see some of the yards and stuff like that. All right.

I am opposed to the members of 220 having chickens and ducks. Since they brought the chickens and ducks in, they have

turned my life and the life of my family upside down, and there was no need of it. I want to talk about the laws first.

This area that we're talking about is called C-1 Residential. That means we have anything from a single-family house up to high rises with a hundred or more units. This is not an urban setting.

Second I want to talk about the definition in Article 2.000 accessory use. And I keep hearing customary and incidental. It is not customary for me to walk around the neighborhoods and see people with chickens and ducks in their backyard. I have not seen it. I've only seen it since they brought them here. This Article 4.0 for the use regulation, it's talking about the building and the coop. They put the coop right next to another abutters's fence and not that far from my house. Did you see the pictures of my house?

CONSTANTINE ALEXANDER: The pictures with your permission I've seen. Is this a blown up version of the pictures in here.

MARSHA HAMILTON: I don't know if you got it or not. My nephew came over and took it for me. It shows it even better.

CONSTANTINE ALEXANDER: Can you see, Tad?

MARSHA HAMILTON: Are the things that they brought in, they brought in the chickens and the ducks, and they don't keep in the coop. They run loose in the yard. Here is the coop. Here is the bedding or straw or whatever. Here is a shed they have. Here is a duck pool, okay? Behind the shed they were keeping contaminated yard waste. I have pictures that I submitted to you. If you look in some of those pictures, you saw straw as well as, you know, the leaves and the trees or whatever they were raking up in their

yard. The chickens come back there and they poop, okay? And they stink. The coop stinks, and the yard way stinks. And the pool is disgusting. This is the pool on most days. They don't change the water. The water has been there for months at a time as well as days at a time as well as weeks at a time. You see my house. I gave some measurements on those things there. I think from my stairs to right here, 13 feet. That's all it is. I open this window, I open a door, the kitchen, the bedroom, I smell the funk from their yard. When it's hot and the wind is blowing, you can't get away from it. You can't open the window. I have asked them several times to move the pool. I submitted to you additional -- from the City Council. You can hear Adam from the City Council say the pool stinks. At the time by their back steps and he moved it in June now, here because he didn't want to smell it. And also

because the chickens were jumping over the fence and going down the yard, down the driveway. There's no place, look at it, no place in my yard I can put a chair, a table, my grill, no place without smelling it. If I put the grill on and I cook a hot dog, it smells like one. There's their grill there. The furthest place from the smell that they can get. All of this stuff is to my side. To my -- this is my fence right here. It's to mine. And it's not fair and it's not right. Showing you there. Showing you there.

I went to the cemetery, I went last week, I went to the cemetery. When I go in the cemetery, I see this sign. Coyote sightings in the cemetery. If you allow this to go through, it's not just me that we're talking about, you're talking about all of the city of Cambridge. If people don't want to raise ducks and chickens as pets, if they want to raise them for food, and they start

butchering them in their yard, you are going to attract that kind of animal, you know, because you're talking all around Cambridge. Why are they in the cemetery? Why do you think? It's very likely they could come into our backyard because you're going to upset the balance. There's a balance in place. Now you're gonna add fowl? You're gonna get those kind of things.

I want to talk about how we got to this point that we're here in front of this Board in an appeal. The day they were doing banging over there and I just said oh, something's going on and asked them what they're doing. They said building a chicken coop. That day I called Inspectional Services. They came to my house. They observed them building the coop. There were no chickens and no ducks. Seven months, it took seven months from that day to October the 21st or the 29th to give them a citation.

Why? I wanted to know why. The neighbors and I, we got together and we did a petition. We gave it to the City Council and all the appropriate departments. Didn't hear from nobody. We called back, what's going on? Let's call some people. What's going on? Your Petitioner isn't considered worthy. Why? We're the direct abutters. We have a problem. Do another petition. We find out that through their political connections and --

CONSTANTINE ALEXANDER: You know.

MARSHA HAMILTON: -- don't go there?

CONSTANTINE ALEXANDER: The path you're going down now is not relevant to the decision.

MARSHA HAMILTON: They showed you a letter Henrietta Davis and everybody was in support. That's not true. So you know about that?

CONSTANTINE ALEXANDER: No. If you

want to make the point that the letter of support from one City Councillor is not indicative of the views of the City Council, that's fine, you can make the statement you just made it. Let's not get into whose got political connections.

MARSHA HAMILTON: I'm saying they gave you a letter.

CONSTANTINE ALEXANDER: Yes, they did.

MARSHA HAMILTON: It says it was adopted by everybody and it wasn't.

CONSTANTINE ALEXANDER: It says they're going to -- she represents, as I recall, I'll read it anyway. She represents -- Henrietta Davis represents that the council investigate the matter of allowing chicken and fowl.

MARSHA HAMILTON: No, there's something mixed up.

CONSTANTINE ALEXANDER: Let's not

go there. It is what it is.

MARSHA HAMILTON: That's not worth its face value that letter that they have. Okay?

So, I want to say that they need to get rid of the chickens in the coop and maybe even another investigation should be called for. Because nothing that they did from the time that they brought those chickens and ducks here was monitored by the city. Nothing. I showed you the pictures. I want to say they never notified the city in writing of their plans. They never notified any of the butters prior to bringing that fowl in. We were just stuck with them once they got them. I say that there are health issues that are associated with the fowl that have not been addressed. And lastly, I say they're in violation of City Ordinance as well as state laws. I went with them to the court yesterday when they had the hearing. It's in

criminal court. It's a criminal matter.

CONSTANTINE ALEXANDER: I'm sorry?

TAD HEUER: What's a criminal matter?

MARSHA HAMILTON: The city of Cambridge to Blake Brasher and Bayard Wenzel to court, because when they exhausted all their appeals to get rid of the fowl, they wouldn't do it.

CONSTANTINE ALEXANDER: Wait a minute. Is that correct? Why are we having this case if it's in the courts?

SEAN O'GRADY: Independent of the appellant's right to challenge us, we have an outstanding complaint that we have to enforce. We started that enforcement action and we are currently in the very early stages of a court case.

CONSTANTINE ALEXANDER: If we were to grant the relief being sought and saying it's legal, not illegal, legal to have these

chickens, then I presume the criminal complaint proceeding could not go forward.

SEAN O'GRADY: That would be my understanding.

CONSTANTINE ALEXANDER: And if we decide it is illegal unless the petitioners get rid of the chickens and ducks, the city will pursue it's criminal complaint.

SEAN O'GRADY: That's correct.

TAD HEUER: Is there a reason that's not stayed pending a hearing dispositive?

SEAN O'GRADY: I'm sorry.

TAD HEUER: Is there a reason that action isn't stayed a hearing like this one that is dispositive?

SEAN O'GRADY: It pretty much is. Yesterday was the most preliminary hearing. Excuse me for not knowing exactly the name of it. It was simply essentially show cause. He just said there's enough for a trial to be set, and upon understanding that tonight was

going to happen let's wait and see.

CONSTANTINE ALEXANDER: The judge will not take this case on until we reach our decision because we can move depending on what we decide we can moot the case.

SEAN O'GRADY: There was lengthy discussion about when to schedule the next hearing. The next hearing is March 16th, but yes, I think you're correct. I don't want to speak for the court.

CONSTANTINE ALEXANDER: Thank you. I'm sorry to interrupt you, go ahead.

MARSHA HAMILTON: Okay. So the person that is petitioning the city, the person is Blake Brasher, Allison Fastman and Adam Fastman. So the Court is saying that they don't recognize them as co-owners. They're saying they don't recognize them as property owners.

CONSTANTINE ALEXANDER: I don't want to get into the litigation. It's not

relevant to what we're talking about.

MARSHA HAMILTON: The point I'm trying to make is how are these people allowed to bring it before you -- okay. I understand.

CONSTANTINE ALEXANDER: I'm going to answer your question. To try to answer your question. The city made a determination, or Inspectional Services, that this was not permissive. It was not accessory, use therefore, it was in violation of our Zoning By-Law and they made that decision. And when the city department makes the decision, they go the course to enforce it. If the person affected by it doesn't comply with the decision, Mr. Brasher has remedies short of contesting this in court. The remedy is to do what he's done to file a case before us, appealing the decision of the Inspectional Services Department saying in effect they got it

wrong. It isn't a valued accessory use.

MARSHA HAMILTON: You know two parts are going on. The coop is one part, the fowl is the other part.

CONSTANTINE ALEXANDER: Coop is one part and what was the other part?

MARSHA HAMILTON: The fowl, fowl.

CONSTANTINE ALEXANDER: The coop is not the issue here tonight. It's an interesting issue, I was wondering about this.

MARSHA HAMILTON: That's what I was told.

CONSTANTINE ALEXANDER: The question is is it permissible to maintain ducks, and in this case ducks and chickens on these premises on the basis it is a permissible accessory use.

MARSHA HAMILTON: Okay. So I guess I'm done. I told you that we live in the Resident C Zone and it's highly -- I mean,

it's densely populated. This is the city, okay? It's a city. That's why I bought my house because it's in the city.

I wanted to give you this Table of Use regulations because it didn't seem like you didn't have it on hand.

CONSTANTINE ALEXANDER: We have it.

MARSHA HAMILTON: And that's it. I thank you for your time.

CONSTANTINE ALEXANDER: Thank you.

MARSHA HAMILTON: I hope you deny their appeal.

CONSTANTINE ALEXANDER: I got that. I figured that out. Anyone else wish to speak in opposition?

MALE: I'm an direct abutters.

CONSTANTINE ALEXANDER: Are you in opposition?

MALE: Yes.

CONSTANTINE ALEXANDER: Okay.
You're next.

RICHARD CONNELLY: Good evening.
Hello, my name is Richard Connelly. I live
at -- I own the house at 330 Western Ave. I've
had it since 1985.

CONSTANTINE ALEXANDER: And you say
you are a direct abutter?

RICHARD CONNELLY: My back fence is
the chicken coop.

CONSTANTINE ALEXANDER: Okay.

RICHARD CONNELLY: You can see it
right in the picture. My back fence is 27
feet from the fence. My second floor has a
nice deck on it, not good on hot summer days
with a little wind. It smells. My biggest
thing is that if you look into some of the
Marsh papers and so forth, you'll see that an
accessory building can only be built within
ten feet of their own property and
neighbor's. The coop --

CONSTANTINE ALEXANDER: Sorry. I
have to interrupt you. Whether the coop, the

coop itself is in compliance with the Zoning By-Laws is not an issue before us. It may not be, I'm not suggesting one way or another. That's not what we're going to decide tonight because that's not been advertised. If the Inspectional Services Department determines that that coop violates the Zoning By-Laws as an accessory structure too close to the lot line, that will be a separate case, another hearing down here. That's not before us tonight. Before us tonight is the ability to maintain chickens, five chickens and ducks as a proper accessory use.

RICHARD CONNELLY: No, they cannot.

CONSTANTINE ALEXANDER: Thank you, sir.

RICHARD CONNELLY: Now, let's take a look at that pool. Let's take a look at the ducks. Conversation's been about chickens all night. Well, I'm not any chicken to talk about ducks. I was raised at a summer lake.

Neighbors had ducks. Nobody walked in near or around the beach front. You see, when ducks get in water, they poo. That swimming pool is a toilet. The same thing. Where do you empty your toilet? In your backyard? That creates a lot of smell. The water and the refuse that goes with it. And where it's at right now near Marsha's fence when they empty it, Marsha gets everything, all the water remnants. Cambridge is no place for ducks. There's no pools around that can be made safe for ducks. Take them to the river. I guess I've said enough. I am totally against it.

CONSTANTINE ALEXANDER: Thank you very much.

TAD HEUER: Mr. Chairman.

MARSHA HAMILTON: I forgot to say I was a direct abutter.

CONSTANTINE ALEXANDER: I didn't recognize you. You've spoken already.

MARSHA HAMILTON: Okay. I just forgot to say I was a direct abutter. Okay.

RICHARD CONNELLY: Her fence that the pool is around, and when they empty the pool, when it gets emptied, I've been in Marsha's backyard, I know what she's talking about. And when the pool did get empty, her yard's a bit lower, it's a good step, a good foot between her yard and their yard. Her yard gets all the water. The refuse.

CONSTANTINE ALEXANDER: Thank you. Thank you, sir.

Anyone else wishing to -- oh, Tad.

TAD HEUER: So I'm looking at the citation, is the appeal of the citation or the appeal what's being approved from the citation? And I ask this because the citation is for violations of illegal to have a duck/chicken coop per Zoning Ordinance of listed uses and growing livestock/fowl not permitted in Cambridge.

CONSTANTINE ALEXANDER: I think to answer that. I think if I understand it correctly, I maybe got it wrong, the citation was issued, the petitioners challenged the correctness of the citation. Inspectional Services Department and took it to the Inspectional Services Department, they made a determination that the citation was properly issued because it is -- because what is the ducks and chickens are not a valid accessory use. And now the Petitioner has taken an appeal from that petition. That's how I understand procedurally how the case is before us.

TAD HEUER: If that's true why isn't the coop before us? They've been cited for an illegal coop.

CONSTANTINE ALEXANDER: No one has challenged --

TAD HEUER: That's my question.

CONSTANTINE ALEXANDER: I have the

advertisement and the petition. There is no challenge. The coop issue is an issue of dimensional regulations as well. And that issue is not before us tonight. Whether it is an accessory building or whether too close to the lot line, I think is a very salient question, but it is not determinative of what we do tonight. It may be in the future.

TAD HEUER: This is a partial appeal of the citation?

CONSTANTINE ALEXANDER: I guess that would be right.

BRENDAN SULLIVAN: I would think the citation triggered the interpretation, and the interpretation then triggered the appeal.

CONSTANTINE ALEXANDER: I don't think we're determining whether -- if we were to grant the relief that's being sought, i.e. we allow the chickens and ducks, it does not preclude someone from subsequently

questioning whether the coop is too close to the lot line and, therefore, it's got to be moved from where it is. That issue is not before us tonight. It's open for another day.

TAD HEUER: And that would be a separate appeal since they've been cited?

CONSTANTINE ALEXANDER: Appeal or they can seek a variance going back to your earlier point.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: I'm sorry, Ma'am, go ahead.

AURA EDWARDS: My name is Aura Edwards and I oppose the chicken and the ducks. I am from the neighborhood. I live at 5 Ballard Place and I'm a resident of this town and I question about the poop and the ducks and the chicken and everything because I had the experience in the summer and I saw when they was building everything. I saw all

the steps of everything. But when I question it, it was that the city of Cambridge is taking care of it, the Inspectional Service. And this should never reached this far, but I guess this is the way things go that you have to go all the way to this. That most of the people that talk tonight, most of them do not live in our neighborhood. They are living in Cambridge, but not in the neighborhood. So my experience of this, the people that supposed to be for this, they should be living right there to smell and to go through everything. Everybody have a right to their opinion, but they are not living in our neighborhood. Most of them that talk here tonight that they're for it. I'm against it because I -- if I want to live in the country, if I want to be around chicken and ducks, then I go and live where it's permitted and go to the country if that's what I love. So everyone that talk about how much they love

the chicken and how much they love the ducks and they're living in Cambridge and they're trying to make Cambridge change the Ordinance just only to suit them, I think it should be treated equally. We should be treated equally. Because if we want to live with the chicken and the duck, then we would choose to live where we are living right now.

CONSTANTINE ALEXANDER: Thank you.

Okay, you're the last person.

MARSHA SCHNEIDER: My name is Marsha Schneider, 276 Pearl Street.

S-c-h-n-e-i-d-e-r. I just wanted to say with respect to the issue of customary, I've lived in Cambridge, and at that location for 25 years and I walk around the city a lot. I bike around the city a lot. And in my whole time in Cambridge I have never, except for the chicken man's chickens on Sidney Street, seen chickens in Cambridge. I used to, just as an aside, I used to live in Stowe and I had

chickens, I had geese, I had many animals. I had five acres and it was lovely. And I respect all the things that all these people said about chickens, etcetera, except for the fact that this is Cambridge. This is not Stowe. And Cambridge -- and that's basically what I want to say. Cambridge is not Stowe. We have these regulations in place. It's not customary. Perhaps some day it will be, but I think that your -- as many people have said, and you yourself have said, your responsibility tonight is to make a judgment as to whether or not this is a customary use, nothing else. And basically that's all I wanted to say.

CONSTANTINE ALEXANDER: Thank you.

SEAN O'GRADY: Mr. Chairman, can you take one more? We have a senior citizen that came out tonight.

CONSTANTINE ALEXANDER: Sure, be happy to.

MARIE MITCHELL: My name is Marie Mitchell, 232 Putnam Avenue. My family has lived in Cambridge since 1910; aunts and uncles, everyone lived there, died there. And in the last few weeks I called up friends of mine who are living in different areas and told them that there's a family two doors up from me who have chickens and ducks. And they said what are you talking about? You living in Cambridge. There has never been any -- these family lived in this particular house, 218 was the number at the time. I don't know where they got these numbers now. But anyway, they said there was never any animals like that there. They can't understand it. The property has been in my family, as I said, since 1910 and there's never been any animals like that around. The people that came, have come in and talked from North Cambridge and around different places. A lot of them came from out of area. Maybe

in western part of the state this is normal. In cities like Cambridge it's not normal. If people want this kind of animal to take care of, be a pet, whatever, make a law that they can be in their own houses but not outside where other animals can come or rodents can come and affect the whole neighborhood. And this woman said before me, people that spoke don't live around and are not living with this.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

FEMALE AUDIENCE MEMBER: Can we find out when the laws changed?

CONSTANTINE ALEXANDER: When the law changed?

FEMALE AUDIENCE MEMBER: Yeah. My grandmother had chickens and so they said you couldn't have chickens no more. So I want to know what year that was. What was the law that said --

CONSTANTINE ALEXANDER: I don't know.

RANJIT SINGANAYAGAM: Zoning Law came in 1943.

CONSTANTINE ALEXANDER: 1943 our Zoning Law.

FEMALE AUDIENCE MEMBER: Because I'm 50 years old and my grandmother didn't have chickens, but she said she did have them. So it had to be a long time ago. Does anybody have -- is it brief, the law, does it says why?

CONSTANTINE ALEXANDER: The point -- I don't want to go down this road. The point is that if you were maintaining chickens and geese or oxen and tigers before 1943, and you are continuing to do that ever since 19 -- 1943 forward, you would be, you would be allowed to continue to have your tigers and oxen and chickens and ducks because you would be considered a legal non-conforming use. You're grandfathered

in the non-legal sense. But you would have had to do that prior to the adoption of the Zoning By-Law and kept it continuously ever since. And I guess there was one situation where it was demonstrated that that was the case and, therefore, they were allowed to keep them as a legal non-conforming use as a chicken.

FEMALE AUDIENCE MEMBER: What's the verbiage that said why it was changed?

CONSTANTINE ALEXANDER: I don't know and I can't get into that tonight. We have the laws that's given to us. We don't know the answer to that.

I'm going to cut off at this point mercifully public commentary. I will give the Petitioner, as we do, a chance to if he wants to, to offer any rebuttal to offer any additional comments, brief, please. And then we will start to deliberate.

BLAKE BRASHER: I would first like

to clarify historically there were a couple people that came up here and said we were visited by an inspector and told we couldn't build a coop when we very first started building it. It is true that Inspector McIssac came and visited us and he told us we could not build according to The Cambridge Zoning Law. We asked him if he could tell us exactly what part of the Zoning Law we would be in violation of and he said that he wasn't sure and that he would go and look into it. And that if we didn't hear back from him -- that would be fine.

CONSTANTINE ALEXANDER: The issue of the coop is not the issue before us. That's a colloquy that Mr. Heuer and I have had. The issue of the coop is not before us tonight. The issue, that might be an issue at another time. That was a colloquy Mr. Heuer and I have been having.

The issue tonight is whether you have

a coop or not, whether you can keep chicken or -- five chickens and ducks on your property as a legal accessory use or not, and the Inspectional Services Department has determined that you cannot and you're taking an appeal of that decision. So the coop is off the table.

BLAKE BRASHER: I understand. I meant to sort of intermingle the two. Inspector McIssac came had we already had the birds at that point. And I had -- he knew that we were going to put the birds out. He told us that if we didn't hear back from him, we could assume that everything was okay.

CONSTANTINE ALEXANDER: But you did hear back from him.

BLAKE BRASHER: Several months later.

CONSTANTINE ALEXANDER: I don't care if it was several months or several days. You heard back from him, didn't you?

BLAKE BRASHER: Yes.

CONSTANTINE ALEXANDER: I don't understand your point. He came, he inspected, he issued a citation whether it was seven months, seven days or seven minutes he issued a citation.

BLAKE BRASHER: I simply wanted to respond to the allegation that we were not willfully acting in disobedience to a citation.

CONSTANTINE ALEXANDER: The comment he was making is whether he and his people who live on his property were willfully disobeying the Zoning By-Law. The issue before us is not willfulness whether it was willful or not is not determined of the decision you're making tonight. We'll assume you did willfully. It's not relevant to what's before us tonight.

BLAKE BRASHER: Okay. The next point that was brought up was that we didn't

go around knocking on doors for permission from our neighbors, and I was not aware that it was a required to go and ask your neighbors for permission to do something in your own yard. I, again, this is something that could be remedied by some regulation in this particular matter. But due to the fact that there are no regulations in place for this type of activity, we were not required to go and ask our neighbors for explicit permission to do this.

Let's see. Also in response to following the law and coming in the front door. It is easy to interpret the law as it's written to say that what we're doing is a fine thing to do. It comes down to this very hazy definition of customary use. Customarily incidental use.

Some of our neighbors have complained that we have a duck pool and that it drains into Marsha's yard. I really -- I drain that

duck pool. We did try to drain it pretty regularly. And I admit that it would get kind of muddy and it did smell bad on occasion. When I drained, it we always drained it into our own yard and we actually thought that was a good way to water our yard with lakes and fertilizer. I don't think it ever really went into Marsha's yard. I'm sorry if it did. Tonight is the first time I ever heard that complaint.

And in response to complaints about the duck pool, we have actually taken it down. And actually, I have a prepared thing here.

CONSTANTINE ALEXANDER: Rather than getting into that, whether you have or don't have a duck pool is not going to be relevant to our decision as to whether keeping duck and geese, ducks and chickens on this property is a valid accessory use. I mean, we heard testimony of that, we allowed people to talk about it. It does have a general impact on

us because of the allegations at least of odor and unhealthiness, but beyond that it's just not relevant to how we're going to decide the case.

BLAKE BRASHER: Okay. I just wanted to -- this one chance to tell our neighbors who are gathered here, we're willing to work with them if we do get this -- if we do -- if we are successful tonight, we are willing to work with our neighbors to minimize the impact. And we don't see that there should be anything that should impact them in any way.

CONSTANTINE ALEXANDER: Thank you. That's very nice gesture on your part.

BLAKE BRASHER: One other thing that the people have been saying, that they've gone around Cambridge and they've never seen a chicken or they don't know anybody who has a chicken or that there never have been any complaints about chickens and ducks, and this

could simply be because they're such good pets, that generally they stay in the yard and they're not seen and they don't make a fuss and therefore they exist in backyards without anybody ever knowing about them. And if I could maybe take the risk of asking all the people in this room who -- I don't want to incriminate anybody, but if you know a person that has chickens or ducks or you are one yourself, could you please raise your hand just as a show?

CONSTANTINE ALEXANDER: If you're a chicken or a duck, please raise your hand.

BLAKE BRASHER: If you're a chicken or duck owner or you know somebody in Cambridge who is a chicken or duck owner, please raise your hand.

(Show of hands.)

CONSTANTINE ALEXANDER: The record should show that a significant number of people have raised their hands in response to

the question. Okay. It's in the record.

Thank you.

BLAKE BRASHER: And I believe that's really all I have to respond to in terms of --

BRENDAN SULLIVAN: Just one question. Do you consider the chickens and the ducks pets or food source?

BLAKE BRASHER: Oh, very much pets.

BRENDAN SULLIVAN: And what happens when they no longer become a pet or when their pet days are over?

BLAKE BRASHER: You mean like when we decide that we don't like them or when they die of natural causes?

BRENDAN SULLIVAN: Everything has a fine life. And what happens when their pet days are over?

BLAKE BRASHER: Well --

BRENDAN SULLIVAN: You haven't come to that point yet?

BLAKE BRASHER: If they die of

natural causes, I imagine we'll bury a shallow grave and mark it with a stone.

BRENDAN SULLIVAN: They're pretty much pets and not a food source?

BLAKE BRASHER: We're not going to eat our pets if that's what you're asking. I understand that is something people like to do.

CONSTANTINE ALEXANDER: Thank you. That's the last of your comment?

BLAKE BRASHER: Yes, I'm done. Thank you.

CONSTANTINE ALEXANDER: I should briefly, before we talk about this, I have to in some fashion -- thank you -- read into the record the voluminous correspondence we've received. As I mentioned, usually we would read each piece of correspondence verbatim. That would take way too long. So I'm going to briefly identify who wrote and what they are saying and maybe just bottom line

conclusions. And I'm taking them in this order of pile here, so I'm not trying to stack it one way or another.

We have a letter from Richard Connelly. And you've spoken already, sir. Obviously you're opposed.

It's an identical letter there in opposition from John Valcourt (phonetic). I'm not sure that person spoke. I'm sorry, Mr. Valcourt resides at 11 Montague Street.

There's a similar letter from Florian Santile (phonetic). Pardon me if I butcher the names. And Gerdes, G-e-r-d-e-s Fluerant, F-l-u-e-r-a-n-t who lives in Lauder Hill, Florida? I guess so. Lauder Hill, Florida. And they long distance are opposed to the relief being sought.

There's a letter identical again in opposition. Someone who claims to be a direct abutters to the property. And I don't have an address on here. So I -- and I can't

read the handwriting. But someone who claims to be a direct abutters is opposed.

I think the same letter from Mr. Connelly and Patricia Caldwell. We already had that one.

There's a letter from the director of the Cambridge Ellis School expressing opposition to the petition. I don't know where -- oh, the Cambridge Ellis School is located at 80 Trowbridge Street.

FEMALE AUDIENCE MEMBER: I don't think it's opposition.

MALE AUDIENCE MEMBER: It's in support.

CONSTANTINE ALEXANDER: Please? In opposition to the petition to deny Cambridge citizens -- it's a double negative. Okay. Sorry, I read it too quickly. It's a letter in support. I stand corrected.

And a letter in support. It seems to be identical letter from Kathy Wheeler who's

the head teacher at the Cambridge Ellis School located on 80 Trowbridge Street.

We have a letter from Stephanie B. B as in Bob. No, I don't know what the B stands for. I don't know where Ms. B resides. It would appear -- well, the letter I would say is generally in favor, although it really raises a number of issues regarding the quality of chicken care and that is it.

We have a letter from Gilberte, G-i-l-b-e-r-t-e Hubbard at 51 Chilton Street, No. 3. A letter in support analogizing to cats and dogs and saying why are we discriminating against chickens?

There's a letter from Jeffrey Pingree, P-i-n-g-r-e-e. It's on his letterhead. He's an architect. It doesn't have an address other than his -- assuming his office address which is 25 Lee Street, No. 3. The letter is in support of the petition.

We have a letter from Mr. J. David

Gibbs. And Mr. Gibbs has spoken tonight and he writes in his capacity as Executive Director of the Cambridge Community Center in the Riverside Neighborhood. And he is opposed to the relief being sought.

MALE AUDIENCE MEMBER: He's in favor. He didn't speak. He's not here. That's the director of the community center he's in favor of it.

CONSTANTINE ALEXANDER: Thank you for correcting that.

We have a letter from Isabelle Bryant, a letter in support. Chickens as pets.

We have a voluminous document, I think it's from Marsha Hamilton. And I presume the views she's expressed in this document were expressed by her orally and obviously they were in opposition to the relief being sought.

We have extensive materials from Mr. Brasher the Petitioner

supporting -- giving reasons for supporting relief being sought. We'll assume he's covered them in his comments, public remarks.

There is a letter addressed to Councillor Simmons. It's not really relevant. It's really a case -- an appeal to the City Council and not to us.

We have an e-mail from Rhett, R-h-e-t-t Nichols. It's actually signed by Katherine Nichols and I think that person spoke. 12 Mount Vernon Street, No. 6. She's in support of the relief being sought.

We have an e-mail from Matthew Ponzio, P-o-n-z-i-o who resides at 68 Allston Street, Unit 3. And this person registers his objection and opposition to the relief being -- to the keeping and raising of fowl in the city of Cambridge.

We have a letter from Doctor Antje, A-n-t-j-e Danielson. Who resides at 55 Washburn Avenue in Cambridge. And the

letter is in strongly support of the right to keep a reasonable number of chickens, two per household. Two per person in a household as pets and a source of eggs in Cambridge if conditions allow for humane keeping.

We have a letter from -- well, it's addressed to Barb, whoever Barb is. And it's signed by Claudia -- I'm going to spell the last name. M-a-j-e-t-i-c-h. She resides at 329 Concord Avenue, and it concludes by saying: I urge the Board of Zoning Appeal to take whatever action is required to permit you to continue to raise chickens in your yard.

We have duplicates in the file. Another letter from Marsha Hamilton. Her views have been expressed.

We have an e-mail from Jenny Popper, P-o-p-p-e-r hyphen Keizer, K-e-i-z-e-r residing at 74 Alston Street. And she says: I wish to add my voice to the opposition of

chickens, ducks and other farm yard animals in residential neighborhoods in Cambridge.

There's a letter from David Bryant in support of the relief being sought.

There is a letter, I think this person spoke before us tonight from Barbara Bryant at 116 Henry Street who writes in support because she has three hens, Raspberry, Apple Blossom and Henny Penny. And for the record, Raspberry is the smartest, Henny Penny is the biggest eater and Apple Blossom is the most independent.

We have a letter from Vanessa Williamson and Brad Johnson who reside at 114 Henry Street and is in support of the relief being sought.

This is a duplicate. And last but not least we have a letter from Henrietta Davis a City Councillor. It's short. I think I'll read this. It's been described and referred to a number of times. I'll read the

letter in its entirety. The letter states: I support Bayard Wenzel, Allison Fastman and the other residents at 218-20 Putnam Ave. who have adopted and are keeping chickens in a responsible manner. I support Cambridge residents' participation in backyard hen keeping, ducks and chickens. I recently introduced an order to the City Council which was adopted requesting a report on what barriers would prevent residents from raising chickens and what can be done to remove these barriers. Under the proper conditions responsible hen keeping can be incorporated into an urban environment and can also offer residents an opportunity to raise some of their food.

I think I've identified all of the documents in our file. At long last maybe we should start to talk about the merits of this case. And I'm going to offer my views first. And I think all five of us at one point or

another offer their views.

I'm going to vote to deny the appeal and uphold the decision of the Inspectional Services Department. As we said at length, the issue is what is being done keeping five chickens and ducks is an accessory use. If it is, it would be permitted under a Zoning By-Law. And as we've gone to at great length the definition of accessory use in our Zoning By-Law is in two parts:

The first part is it's a use subordinate to the use of the principal use. Principal use is obviously a residence. And I for one, that part of the definition satisfies it. The second part is customarily incidental to the principal use. I am of the view that Cambridge in 2010 keeping chickens and ducks is not customarily incidental to the principal use of a residents.

First of all, customarily I think has gotten interpreted. It's not a static

definition. It's fluent definition.

What's customary varies depending upon on what era we're in and demographics of the city. At one point in time clearly it would have been incidental. I mean, back in colonial times I have no doubt, although I can't prove it, I have no doubt there were plenty of chickens and ducks, but Cambridge has evolved. It is now an urban environment. In most part the city is a dense, urban environment and I have not been persuaded and I'm sure there are chickens and ducks being kept at various places in the city, but I can't be convinced that it's customary. It's customarily incidental to people having homes in the city. So I don't think the definition is satisfied. I do think it -- I get to my views not because I personally have any views one way or another about chickens and ducks or geese in the city of Cambridge. There are very valid reasons, and I believe

that people who spoke in favor were very eloquent. I really mean that about the reasons that we should perhaps allow this in Cambridge. But we're not the body to do that. I think we all would recognize that there are other issues with respect to chickens and fowl. They do raise some health issues, odor issues. There's a difference in a parakeet in a cage sitting in someone's living room and chickens and ducks running around in a yard where the yard is a relatively small yard and there are neighbors nearby. There are health issues. There are odor issues. That doesn't mean that we shouldn't allow them in the city. Let the City Council -- but they're the people to decide whether we should or not. And we should, what the restrictions are. Can you have five? Can you have ten? 25? If we were to grant relief tonight and say this is an accessory use, I don't know where we draw

the line. Where the Inspectional Services Department draws the line. They're here with 20 chickens and eggs, 15.

And I think the issue of whether these chickens and ducks are pets is a red herring. It's not an issue whether they're pets or not. It's an issue is keeping chickens and ducks customarily incidental to owning a residence or occupying a residence in Cambridge. If the issue comes up as an oxen or a boa constrictor, that would be a separate case. It's not a question -- and dogs, if someone wants to claim it. That dogs are not customarily incidental. That's the issue, not whether it's the chickens are a pet or whether they're used for food. That's my view anyway. For all of those reasons, including the plea again that this is an issue not for us, but for the City Council. Because even if we, the other members of the committee of our Board agree with me or enough

to agree with me to turn this petition down, this issue could be reversed or our decision can be reversed simply by the City Council making a determination that you can have chickens and ducks in residential areas and imposes whatever restrictions they wish to impose. So, I talked enough. That's how I'm going to vote. I'm going to vote against the relief and uphold the decision of the Inspectional Services Department.

Anyone else wish to speak?

BRENDAN SULLIVAN: I concur with not necessarily all of your reasons, but I concur with --

FEMALE AUDIENCE MEMBER: Can you speak up?

BRENDAN SULLIVAN: I was saying that I concur not necessarily with all of his reasoning but with the conclusion.

CONSTANTINE ALEXANDER: No one's obligated to speak, but if anyone wishes to

speak.

TAD HEUER: So I think when I was looking at this issue, and I'd like to thank everyone for coming out and sitting with us seeing what we do every week. We don't usually go this late on one issue, but I appreciate everyone coming out and sitting here. You've all been very respectful of each other which is important. It's one of the reasons that I like living in Cambridge; see people come out and disagree respectfully over issues and have it all hashed out in one place.

I agree that the issue here is about keeping of chickens and ducks as an accessory use, and that the issue is going to turn primarily on the issue of customarily. I'd also point out that Section 413 of the Ordinance adds some additional language because it talks about no building structure of land in any district may be used, erected

or designed to be used in whole or any part for any use not listed in 430. So there's a separate section of our Ordinance that does deal with use particularly and prohibits uses unless they're in the Table of Uses.

One of the reasons I asked earlier to clarify the Table of Uses, the table of principal uses. It's not a table of accessory uses. So to the extent that that language is in our Ordinance, I don't think it, I think it's persuasive but not necessarily dispositive that's a table of accessory uses. Whether in the wisdom or not of the City Council, they left us to determine. So I think even though we prefer not to be in this issue, and I agree that it's probably something that should be dealt with by the City Council and not by us, we're certainly in a position to be able to opine on these issues and I think it's right that we do so.

I agree that the -- there's no question here in my mind that it's both subordinate to and incidental to the primary use in the residential zone. I think I would disagree with the Chairman to the extent that I don't think that the question is about keeping chickens or ducks. I think the question is properly framed as keeping chickens or ducks as pets. I do think the pets element is important and I'll elaborate on that. I think it's very clear starting on the, if we take it as not pets, that Cambridge doesn't permit the keeping of chicken or duck as livestock. We don't permit stockyards. We don't permit abattoirs. We don't have any land zoned for agricultural use. And I also think that it's not customary that that use is done in Cambridge. I don't think that we keep chicken or other fowl for that purpose. And as an aside, I don't think that this is necessarily a situation in which we have a new

use. There have been cases, for instance, where a helipad for a helicopter is not considered -- considered a customary accessory use because it didn't have time not to be customary. Here we have a situation whereas Mr. Chairman has mentioned, and other people have made this evening, you have gone through a period where it was fairly customary to have chickens. We've had a period of time where it is not customary to have chickens. And I don't think the notion of traditional played to customary is quite right. Nor do I think that as a result where it's also raised pure number is the question, I think the court decisions that state that you're looking for something that is not necessarily unique or rare and does not necessarily have to be in every zoned parcel in that neighborhood to be customary is the right balance to strike. That being said, I also don't think that it is arbitrary for us

to define uses of or uses of particular parcels differently for the same animal depending on what they're being cast as. For instance, we have a prohibition on kennels in residential zones. They're not allowed unless by Ordinance. I think it would be absurd that we don't allow dogs in residential zones except by Ordinance. So clearly we can have uses same animal, dog, in the same zone residential, and in some places the code says no, no place. It is so obvious that it's allowed that no one (inaudible). So I do think the issue of pet is important. And the Simmons case which I think is not entirely dispositive for the appellant but has some useful language. They do say the keeping of pets is of course reasonably related to the primary residential use of the property. And in a footnote they go on to say in determining whether certain animals may be considered pets, we look not only to species

but also to the manner and purpose for which the animals are kept and maintained. And I think here we've had sufficient evidence in my mind that these animals are being kept and maintained as pets and that they would meet the definition that the appeals court has set out in this case actually what a pet is.

I think there's also -- and people said we have an issue about numbers and where we draw the line. I think ISD, Inspectional Services has that ability right now. They can do it everyday with cats. You can come in and say you've got cats and you've got 30 cats in the house, that's not pets anymore, you're running a breeding facility. So, it's not as though ISD and doesn't have the ability to come in and say that's too many chickens period. I know that you're labelling them pets, but there's a balance we draw between how you label an item and what we say is the way the Zoning Ordinance is

designed to support the rest of the city on a broad scale.

I would prefer that this came to us in a Special Permit situation which it can't. Alternatively I would more prefer that it came to us in a variance situation which I articulated earlier. I think an appeal situation is we're setting a standard for the city a variance situation is we're setting a standard for a specific property. I don't necessarily enjoy sitting here twice a month hearing chicken variances for, you know, two hours, but that's the way it is. That's the way it would be. I think the problem that I -- the way I would like to vote is to find some way to draw a bright line rule that allows the keeping of pets, but also doesn't set a standard for the rest of the city. The best I can come up with, as I try to balance these two things, is to look at the nature of pets and how they're kept. And I think in

Cambridge it is a customary and incidental use to primary use not to have a house pet. I think anything you keep inside your primary structure is -- and I'm happy to hear views by other members, is a customary use that's incidental. It's a parakeet, it's a dog, it's a St. Bernard in a very small apartment. If chickens and ducks are in an area where you can keep them in your basement and they're thrilled to be there, I don't necessarily think Cambridge is in the business of saying no to that because our Zoning Ordinance is intended to deal with what neighbors are dealing with on a day-to-day basis. I think that's one of the reasons that if you look at primarily indoors versus primarily outdoors, you start to see distinctions and that's where the Simmons case goes, it cuts against the appellants because they're dealing with horses and the court looked at primarily the broad nature of the surrounding

neighborhood. They looked at whether other people had similar types of outdoor pets that others would consider livestock, and they said in that situation yes, they did. It was a rural area where outdoors the entire neighborhood understood that livestock/pets were acceptable. They were a customary use. I think I would say that I would vote to uphold the Building Inspector's determination to the extent that it forbids chickens and ducks as outside livestock type animals. I do not think I would go as far as to say that they're banned entirely because I think they can qualify as pets if kept indoors. Whether or not you can actually keep chickens and ducks indoors, whether it's feasible, whether it's humane, is an issue that I don't think I need to pass on that I want to pass on. That's the best bright line rule I can come up with I think that addresses the needs of everyone here before the City Council comes down with

an Ordinance one way or the other.

CONSTANTINE ALEXANDER: I'm going to try address your comments, and then when I make a motion but I don't want to do that now. I want to give Tom and Tim a chance to comment if they wish to.

TIM HUGHES: I'm sensitive to the pets argument much like Tad is. And I think that we're probably going to see more rather than less personal fowl considered pets in the city. I think also the argument that there's only been two complaints in the last ten years is an indication of acceptance rather than scarcity of fowl as pets.

I do agree with the Chairperson that I don't think this is the venue for deciding this. And I'm in -- we pushed the City Council in the past maybe specifically on wind turbines, but I really think that the City Council needs to be out front on this thing in terms of deciding how this is going

to go. Much like Henrietta's move towards dropping barriers. And there's a City Councillor present, you might speak to him on your way out. And I don't think that considering the definition of customarily incidental, that the Inspectional Services Department acted incorrectly. So I would have to vote to uphold their decision.

CONSTANTINE ALEXANDER: Thank you, Tim. Tom?

THOMAS SCOTT: My issue is I have a hard time getting passed the direct abutters and the effect it has on them. You know, I don't like it when somebody moves into the neighborhood, they have no choice relative to how they're going to choose to live their life. And when you move into a city, I think you can kind of move into a situation where the housing so close together, they're within a stone's throw of each other, I think you have to respect other people's properties.

And if you're going to impose a situation that causes a problem or is offensive in some way, then I think it's a real problem. I'm not saying that I disagree with, you know, the ability to have a chicken or a duck. I think that's okay if you have the facility to manage it properly so that it's not offensive to your neighbors and the people who are around you. I mean, there are a lot of people who are in favor of this thing that don't live within a mile of this house, and they don't have to live with it every day. But the people who live close by that are affected every day, I think is really at the core of the problem with this. And I think because of that, I'd have a problem voting for it.

CONSTANTINE ALEXANDER: Thank you.

There's no public comment, Ma'am. Unless you have a question about something that was said. Please don't speak either for or against. Do you have a question?

FEMALE AUDIENCE MEMBER: Well, I have a question because -- let's see, if I can say it. You said that it wasn't relevant where the chicken coop was or where the pool was, but it seems like that's the only issue to the opposers.

CONSTANTINE ALEXANDER: No, no. I don't think that's right. I don't want to continue this. I don't think that's correct. The issues you heard from the opposers were odor.

FEMALE AUDIENCE MEMBER: Yeah, that's the point. The odor and --

CONSTANTINE ALEXANDER: The pool is not part of the coop. The coop is not before us tonight. It's accepted part of the bigger issue of keeping chickens and ducks on these premises at 220 Putnam Avenue.

FEMALE AUDIENCE MEMBER: Just the odor.

CONSTANTINE ALEXANDER: Okay.

Let me try to frame a motion. To try to respond to your comment, Tad, I think it is important that we try and make a narrow decision as possible. But I don't know how we can draw the line -- at the end of the day we're just deciding what is the definition of an accessory use. And I don't think, for example, we can say accessory use of chickens or ducks in the basement as opposed to in the backyard. I do think we have to take a position as to whether maintaining chickens and ducks in a residential district is customarily incidental to the residential use of the property. I think we've got to draw the line there. It doesn't draw the line as to other types of pets/animals but I don't know frankly legally we can otherwise draw the line. I'm open to suggestions or disagreement with it, but I think we have to draw the line there.

Anyone feel otherwise?

TAD HEUER: I disagree.

CONSTANTINE ALEXANDER: Okay.

Well, I'm going to frame a motion and I think we have to give supporting reasons. So I guess you can concur, perhaps, if you agree with the motion but don't agree with the reasons, then you can give a concurring vote.

TAD HEUER: That's true. But I presume the motion is going to be broader than what I'm willing to vote for so it's going to be a vote against.

CONSTANTINE ALEXANDER: Okay. Let me make the motion and obviously, please, all the members of the Board can amend it or suggest how we should change it before we actually put it to a vote.

The Chair moves that we deny the petition of the Petitioner and uphold the decision of the Inspectional Services Department on the basis that maintaining chickens and ducks, at least five chickens

and ducks, on the premises at 225 Putnam Avenue does not satisfy the definition of an accessory use because it is not customarily incidental to the residential use. It's not customarily incidental because we have not been offered persuasive evidence that is customarily incidental to people occupying residences in the city of Cambridge that they may have chickens and ducks. Which is not to say people don't do it, but it is not customarily incidental and that would be our decision. That would be the motion basically.

TAD HEUER: Are you keeping the number in there?

CONSTANTINE ALEXANDER: We don't need a number. I mentioned that, but no, it would really be maintaining chickens and ducks. Whether doing that in a residential area is an accessory use because it is customarily incidental to the residential

use. And our decision tonight it is not customarily incidental and that is why we're denying the petition and upholding the decision of the Inspectional Services Department. Okay? We put it to a vote.

All those in favor of approving the motion I just made say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: And opposed?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Relief is denied.

(A discussion off the record.)

(10:15 p.m.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,
Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair
is going to call at the request of Mr. O'Grady

and a request of certain people in the audience, case No. 9893, 23 Sciarappa Street.

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that the Board is in receipt of a letter from Randal Sherman it looks like, but I can't read the last name, saying I would like to continue this case so I can resolve the merger status.

What day to we continue it to?

SEAN O'GRADY: May 13th.

CONSTANTINE ALEXANDER: It's a case not heard. Since the neighbor took the time to stay, can you be here on May 13th?

FEMALE AUDIENCE MEMBER: I believe so.

CONSTANTINE ALEXANDER: We're going to hear the case May 13th at seven o'clock. Do we have a waiver of notice?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair

moves that this case be moved to May 13th at seven p.m. on the condition that the Petitioner modify the sign posted on the premises reflecting the new hearing date. The Chair noting that a waiver of the time to reach a decision has been submitted by the Petitioner and that the continuance is at the request of the Petitioner.

All those in favor say "Aye."

(Alexander, Hughes, Sullivan, Scott, Heuer.)

BRENDAN SULLIVAN: The Petitioner is to submit any new information.

CONSTANTINE ALEXANDER: Thank you. Thank you.

And to the extent that the Petitioner wishes to modify plans, I think really modify plans or drawings?

BRENDAN SULLIVAN: On the application.

CONSTANTINE ALEXANDER: On the

application, that the materials must be in the public record, in the public file by five p.m., no later than five p.m. than the Monday before May 13th.

SEAN O'GRADY: Can you give that an eight o'clock we're actually open late on Mondays.

BRENDAN SULLIVAN: I'm thinking five because then people can review it from five to eight o'clock.

SEAN O'GRADY: Very good.

CONSTANTINE ALEXANDER: You understand if there's any new materials from the Petitioner, it will be in the public file by no later than five p.m. on the Monday before May 13th.

FEMALE AUDIENCE MEMBER: Okay. So I can review the file?

CONSTANTINE ALEXANDER: Oh, absolutely. It's a public file. That's the purpose of requiring it. It gives the public

a chance to go down and review the file and prepare for the hearing.

FEMALE AUDIENCE MEMBER: Thank you.

(A discussion off the record.)

(10:20 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9888, 259 Harvard Street.

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

The floor is yours. Please identify yourself for the record.

TERRY DUMAS: Terry Dumas and Kyle Sullivan from the Cambridge Housing Authority.

CONSTANTINE ALEXANDER: This is an application for a comprehensive permit. Different kinds of procedure that we usually hear. And for the benefit of anyone who is in the audience here on this petition, a comprehensive permit is a procedure where the only regulatory approval that's required is from this Board. We act on behalf of the City and all the other boards, and the process open to petition for affordable housing that meet the jurisdictional requirements of the statute.

TERRY DUMAS: We're here this evening with our architectural team Steve

Baker and Benny Bear from Baker Wohl Architects and we're taking about Jackson Gardens which is on the corner of Harvard Street and Prospect Street in Mid-Cambridge.

CONSTANTINE ALEXANDER: Are these the plans? If we grant relief, we're going to tie it to these plans. And if you deviate, you're going to be back before us. These are the final plans?

STEVEN BAKER: Subject to making some -- we will continue to develop. They are substantially --

CONSTANTINE ALEXANDER: Substantially. This is not horseshoes. Substantially doesn't count. If you do make changes to these plans, you're going to be back before us. So, if they're not finalized, take a continuance now and come back before us with the final plans.

TAD HEUER: Are those plans these plans, too?

CONSTANTINE ALEXANDER: These are more --

BRENDAN SULLIVAN: You run the risk of not being permitted.

TAD HEUER: One of the problems I had with those plans they can't be read.

CONSTANTINE ALEXANDER: I had the same issue you have.

TAD HEUER: Right. I guess my question if these are the same as -- to the extent that these are also represented in there, are these the same?

STEVE BAKER: We submitted 24-by-36 plans as well as 11-by-17 at the direction of the Board. We submitted what was requested. I'm not sure what plans you have. They should be identical, but I'm not sure what documents you --

CONSTANTINE ALEXANDER: My recollection is there's more in here than there is in there. I may be wrong.

TAD HEUER: Let me explain why we care. Because if we grant relief, it has to be on this plan so the inspectors can go out and approve it.

STEVEN BAKER: I can't speak to what happened to the set after it was submitted. We submitted the complete sets that were required.

CONSTANTINE ALEXANDER: Is that a complete set?

STEVEN BAKER: It is not a complete set.

CONSTANTINE ALEXANDER: This is a complete set. We have duplicated copies. The unreadable one is the one we're going to read from. To use your words, Tad, you have a question on these, you have a problem going forward.

TAD HEUER: No.

All I want to know, is that to the extent that, for example, in this stage, existing

conditions is the same as existing conditions --

STEVEN BAKER: Yes.

TAD HEUER: That this can be an approved plan that one can work off of because I don't think they're going to be able to read that one.

STEVEN BAKER: These were reduced at the Board's request. And those are plans and the information -- just to clarify my earlier comment, the information that was submitted here is final.

CONSTANTINE ALEXANDER: Okay.

STEVEN BAKER: Okay?

CONSTANTINE ALEXANDER: We're just reading you your rights. We don't want to find out you've got a problem two months from now and you could have corrected it. If you're comfortable, we're comfortable. Just so you understand that.

TERRY DUMAS: Okay. So Jackson

gardens is an existing state public housing development. It came online for the Cambridge Housing Authority in the early fifties and since that time it's been 45 units of family housing. We have been working with residents at Jackson Gardens over the course of the past year to come up with plans to revitalize the site. And what we have here tonight to present to you is a combination of that design process with the residents as well as some neighborhood meetings that we've held as well. So I think with that said, I will just turn it over to the architects and let them walk you through the plans and then if you have questions about site control or the need for affordable housing in the city or those kinds of things, I can answer those questions.

CONSTANTINE ALEXANDER: As you know, we have to make certain findings. So, if you don't touch upon them, I'm going to

read them out to you and make sure you testify about them. Because you have certain jurisdictional findings that have to be identified. Let's get them on the record.

TERRY DUMAS: So, site control. We've included the citation for the housing authority --

CONSTANTINE ALEXANDER: Start from the facts that you have to. Are you a public agency? A non-profit organization or (inaudible). Which are you?

TERRY DUMAS: We are a public agency.

CONSTANTINE ALEXANDER: Public agency.

Second requirement is that the project is fundable by a subsidizing agency under a low and moderate income housing subsidy program.

TERRY DUMAS: Yes, it is. It's currently subsidized under the state public

housing program, and after the construction work it will be subsidized under the federal public housing program.

CONSTANTINE ALEXANDER: Do you have letters?

TERRY DUMAS: Yes. They're in the application.

CONSTANTINE ALEXANDER: They're in the application, that's fine. You have letters.

TERRY DUMAS: Tab 5.

CONSTANTINE ALEXANDER: Thank you. And the last of the three jurisdictional requirements is that you control the site. And I assume you do control the site since you've been housing it for 45 years or whatever.

TERRY DUMAS: Yes, we do.

CONSTANTINE ALEXANDER: Okay, thank you. Now, you've met the jurisdictional requirements. Now address the need for

affordable housing in Cambridge in and of itself does meet the requirements. We have more than ten percent, but we have found in the past that there is a regional need for affordable housing and that regional need is sufficient to justify us hearing a comprehensive permit hearing. Just briefly touch on the need for affordable housing.

TERRY DUMAS: Currently the Cambridge Housing Authority's waiting list for family public housing totals 6,982 households. And then for our leased housing Section 8 program, 6,699 households. For a total with the two programs of over 15,000 households looking for affordable housing here in Cambridge.

CONSTANTINE ALEXANDER: What's going to happen to the residents, are they moving out?

TERRY DUMAS: We are in the process of moving all the residents off site as we

speak.

CONSTANTINE ALEXANDER: Where are you going to move them to?

TERRY DUMAS: We're moving them into Section 8 leased housing as well as other public housing in the city. We had originally proposed to do it at two phases. Move half the families off site and then move them around during construction. The residents here decided they wanted to move at once and get the construction over with much faster. We're in the process now -- we've renegotiated a relocation plan that was approved by both the residents and the housing authority board that spells out their guarantee to return once construction is complete and we're now moving people around the city to different public housing developments as well as to private housing during the construction phase.

CONSTANTINE ALEXANDER: How long

will they be absent from the site?

TERRY DUMAS: Depending on when they move, probably from start to finish, I would say roughly 16 to 18 months.

CONSTANTINE ALEXANDER: Okay.

TERRY DUMAS: Some families have already moved, so depending on where they are, we're hoping to start construction late May, early June.

CONSTANTINE ALEXANDER: The Zoning issue, the relief you're seeking is actually quite modest because you are a legal non-conforming structure as it is. And you're going to increase the FAR by a small percentage as I recall, from 0.97 and 1.03 and it's in a district that's 0.75. The other relief I saw from your paper is that you're going to intrude a little bit further into the front yard setback.

STEVEN BAKER: Yes, sir, that's correct.

CONSTANTINE ALEXANDER: And you're going to 4.8 feet to 2.8 feet to the 10 feet setback in the front. And there's maybe an issue regarding issue of open space to lot area. There's a 30 percent minimum required in the Zoning By-Law. In all other respects this project is going to continue to comply as a non-conforming use with the current use. But the impact on the city is far less than would be the case of a comprehensive permit before us usually, when people are looking for major dimensional relief. So, it's pretty cut and dry as I see it, the relief you're seeking. I should also state for the record that none of the other boards in the city who would have to comment to us since we act on their behalf, no one has sent any letters that I'm aware of commenting on your project which I take to be in support for what you want to do.

Is there anything else you want to say

or can I open it up to public comment?

STEVEN BAKER: In the interest of keeping it short, I think we will forego explanation of the project unless if the Board has questions, we're happy to answer it.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TAD HEUER: In terms of the unit mix that you're switching to, the existing tenants have a first right when they come back, correct?

TERRY DUMAS: That's right.

TAD HEUER: What do you expect to be given your unit mix versus the tenants you have now, how well that will mesh once you're done?

TERRY DUMAS: Right. Well, right now we do have a number of families that are either over housed or under housed. So the fact they're not in the right size unit. But

we're -- if everybody who is on-site right now wants to come back, we're short roughly three or four, two-bedroom apartments. But through our experience going through this process a number of times, there will be some attrition. So some people will decide not to come back, and stay in their temporary apartment long term. So we're assuming and we're -- that we'll be able to accommodate everybody. Should we not be able to do that, the plan says that the units will be assigned by a lottery. And then if anybody else is left, then they'll become next on the waiting list for the next three-bedroom apartment that comes available at the development.

TAD HEUER: So the units that you need to fill up now is essentially an ex-post attempt to house people correctly as better now in other apartments that are too big or too small to house --

TERRY DUMAS: To house people

correctly but also to introduce a small number of one-bedroom apartments. We've never had one bedrooms on this site, and we'd like to have a few, because what happens there as families age, children move away, you end up with folks who have a really long term commitment to that site and have been there for 20 or 30 years but because we don't have any one-bedroom apartments their option is to go to elderly housing and they'd

like to stay on-site. So we are doing a few one-bedroom apartments here in recognition of that need.

TAD HEUER: I do have one question I guess, on the intrusions in the setback is that because the bay windows?

STEVEN BAKER: Yes, these -- and maybe I can bring it closer. I think we have added small projecting bays on the front as there is actually a setback issue here. This is also an addition, and that because of the

length of the building using the Zoning formula, that actually becomes a violation. But I think as you see it's a pretty insignificant.

THOMAS SCOTT: Is that what that enlarged elevation is? That's the bay?

STEVEN BAKER: That's the bay, yes.

THOMAS SCOTT: Is it the living room?

STEVEN BAKER: That's right, the living room.

TAD HEUER: And is that just flush to the wall now, same set of windows -- is it a three window across to the wall?

STEVEN BAKER: Yes. Can you repeat your question?

TAD HEUER: It's just that it's got flush written out where the bay is now it's three windows flush to the wall where it's going to be pushed out, so you're giving a bit more space, a bit more length because you have

more angles.

STEVEN BAKER: That's correct.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

Is there anyone here wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: Let the record note that no one wishes to be heard.

Comments or are we ready for a motion?

The Chair moves that a comprehensive permit be granted to the Petitioner on the basis of the following findings:

That the Applicant has met all of the jurisdictional requirements of 760 code of Massachusetts Regulations 31.01.

That the Applicant has submitted evidence in showing the continued need for affordable housing for the City of Cambridge and the surrounding region.

That the project consists of 45 units.

The current number that is there now, and all of which will be affordable according to go to the requirements of Chapter 40 (b), and any eligible subsidy program.

That we have identified no significant health, safety, environmental design, open space and no adverse impact on storm drainage, traffic or other engineering and planning matters that will support denial of the project.

That we have determined that the relief on the specific requirements of the Zoning Code is necessary to circumstances to allow the renovation of these affordable housing.

The Chair would further note with respect to these findings that no Board in the city, although invited to do so, has commented on or expressed any opposition to the project. Nor has there been any opposition from citizens of the City of Cambridge.

That the special comprehensive permit would be granted on the condition, however, that the work proceed in substantial conformance with plans submitted by the Petitioner. There are numerous pages. The first page of which has been initialed by the Chair. And they would have been prepared -- they are dated January 12, 2010, and the architect who prepared them is Baker/Wohl, W-o-h-l Architects.

All those in favor of granting this comprehensive permit so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Scott, Heuer.)

(A discussion off the record.)

(10:35 p.m.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,
Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 9889, 1430 Mass. Ave. Is

anyone here wishing to be heard on that matter?

ATTORNEY ADAM BRAILLARD: Thank you, Mr. Chairman, members of the Board, just for the record, Adam Braillard with Prince, Lobel for the Applicant Clearwireless. With me is Kaleem Kahn. He's a representative of the applicant's radio frequency department to answer any technical questions that the Board may have.

We're here in connection with a Special Permit to install and operate or modify an existing --

CONSTANTINE ALEXANDER: Not in a residential district?

ATTORNEY ADAM BRAILLARD: That's right. Special Permit is to modify an existing facility located at 1430 Massachusetts Ave. just outside of or in Harvard Square in the Business B or BB Zoning District. The proposal actually was before

this Board and approved, but just with respect to the antennas, which were to replace two antennas and add the third antenna. There's three sectors, two of the sectors have four antennas each. One sector has two antennas. The prior approval was to replace one antenna per sector that had the four antennas and then add a third antenna to the set that had three antennas. That was granted to us a year ago.

CONSTANTINE ALEXANDER: And you were granted relief?

ATTORNEY ADAM BRAILLARD: A year ago, right.

CONSTANTINE ALEXANDER: Now in addition to that, you want what?

ATTORNEY ADAM BRAILLARD: This application is just for the two backhaul one-foot dish antennas.

CONSTANTINE ALEXANDER: I don't see a letter in here from the Planning Board.

Did you -- I assume you went before the Planning Board?

ATTORNEY ADAM BRAILLARD: We did. I knew you were going to ask that. I figured I should put notes on it. Here it is here. With my notes.

CONSTANTINE ALEXANDER: I'll read it into the public record and give it back to you.

ATTORNEY ADAM BRAILLARD: Those are my notes from about what I was going to say.

If the Board would like to go for photo sims just to see what the application is going to look like.

CONSTANTINE ALEXANDER: What's puzzling me about the sims is it's not typical. It's prominently located in Harvard Square.

ATTORNEY ADAM BRAILLARD: Right.

CONSTANTINE ALEXANDER: It is an older building, not that it's tall as the one

on Norfolk Street I don't believe, and yet the photo sims are very close in terms of the impact. What I don't get from these sims is the visual impact of Harvard Square. If I'm standing in Harvard Yard across the street, and I want to see the impact of these antenna, I can't get these from these photo sims.

ATTORNEY ADAM BRAILLARD: You're not going to -- the reason the photo sims are so close is because in the past the Board has suggested that the views that we've taken have been from too far away. I think what our -- what our photo sim folks did was I think maybe -- they zoomed in. I think the last page seven and eight are a good depiction.

CONSTANTINE ALEXANDER: Yes, they are.

ATTORNEY ADAM BRAILLARD: You're right. All the others, the first two views are zoomed in views. The first view, that's actually smoke from a ventilation unit

nearby. It's not clouds or anything. It's something to do with the photography. And then, you know, the problem is it's not that visible and generally from some of the public ways. And in order to really get a good view of what this proposal is going to look like, we needed to zoom in on some of these.

CONSTANTINE ALEXANDER: The Planning Board, I'm looking at the Planning Board letter. They had some comments. Do the photo sims that we have and the letters we have reflect these comments?

ATTORNEY ADAM BRAILLARD: Yes, these do.

CONSTANTINE ALEXANDER: And while we're on this subject, we have a letter of approval from the Cambridge Historical Commission and they imposed conditions.

ATTORNEY ADAM BRAILLARD: That's right.

CONSTANTINE ALEXANDER: Are they

reflected in the plans, in the photo sims?

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: What we're seeing tonight and what we'll vote on are plans and photo simulations that correspond to and satisfy what the Cambridge Historical Commission wanted and what the Planning Board wanted satisfied?

ATTORNEY ADAM BRAILLARD: That's correct.

CONSTANTINE ALEXANDER: Okay.
Thank you.

TAD HEUER: Do you have Historical?

ATTORNEY ADAM BRAILLARD: Here's a copy of Historical.

CONSTANTINE ALEXANDER: We don't have a copy in the file of Planning Board. Adam kindly let us have a copy to read into the record.

SEAN O'GRADY: I don't know.

BRENDAN SULLIVAN: Was there

something about the wiring again?

CONSTANTINE ALEXANDER: Let me read the letter. You don't mind me interrupting your presentation.

The Planning Board has a letter dated February 8th from the Planning Board addressed to us. "The Planning Board reviewed this installation." We're talking about 1430 Mass. Ave. "We viewed this installation and had no comments other than the request that any Special Permit granted would require the antennas to be lower than the penthouse, mounted as close to the facade as possible, and finish to match and blend with the side." That's the sum and substance.

TAD HEUER: And these backhauls are as close to the facade as they can be?

ATTORNEY ADAM BRAILLARD: Yes. The reason for the mounting, it just can't be -- you can't take the backhaul and mount

it to the facade. It needs to be pipe mounted. And so the pipe can be -- the penetration points can be separated by about three feet just so we get the wind load criteria that we need to meet. And the thirdly, so that these are radio units that fits in the back of the dish antenna that needs to -- needs its own space.

TIM HUGHES: Did you say there were two of them?

ATTORNEY ADAM BRAILLARD: There is two. The third one --

TIM HUGHES: I don't see two.

ATTORNEY ADAM BRAILLARD: I'm sorry, the second one is not simulated because we couldn't get a visual from it unless we went up on some other roof.

CONSTANTINE ALEXANDER: Therefore, they're not visible to the public?

ATTORNEY ADAM BRAILLARD: The second one, there's only two are not visible

because of where it's positioned in the back of the building.

CONSTANTINE ALEXANDER: Just for the record, you have the necessary FCC approvals?

ATTORNEY ADAM BRAILLARD: That's correct.

CONSTANTINE ALEXANDER: And you're proposing to minimize the visual impact by correspondence to the comments of the Historical Commission and the Planning Board?

ATTORNEY ADAM BRAILLARD: That's right.

CONSTANTINE ALEXANDER: Do you have an extra set of plans so I can initial it for purposes of the motion?

ATTORNEY ADAM BRAILLARD: Sure.

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

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

Any comments or questions from members of the Board? No questions or comments. Ready for a motion?

The Chair moves to grant the Petitioner a Special Permit to add two wireless backhaul dish antennas to the applicant's existing wireless communication facility currently operating on the rooftop of the building in question. In connection with the issuance of the Special Permit the Board makes the following findings:

That the relief being sought will not impact traffic or patterns of access and egress or cause congestion or hazard or substantial change in established neighborhood character. We're talking about rooftop antenna.

That the continued operation of adjacent uses would not be adversely affected

by the nature of the proposed use. In fact, there are antennas on the building already, and there is ample history that adjacent uses have not been impacted by the proposed relief. And the Chair would further note that the fact that no one has come here, no abutter has come to oppose the relief being sought is further evidence that there's no adverse effect.

That these television antenna by definition would not create nuisance or hazard to the detriment of the health, safety and/or welfare of the occupants and citizens of the city, that's based on current medical knowledge. Who knows what someone will find in the future.

And that allowing these antenna would not impair the integrity of the district or otherwise derogate from the intent and purpose of this ordinance. In fact, the impact of these antenna are modest. And,

again, as witnessed by the fact that the Petitioner has the support of the Historical Commission and of the Planning Board with conditions.

Those conditions will be reflected in the conditions of the Special Permit that we're granting; namely, that the work proceed in accordance with the plans submitted by the Petitioner of the several pages of which -- the first page is T-1, dated 11/30? 11/13/09?

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: Initialed by the Chair. And further in compliance with the photo simulations, first page of which has been initialed by the Chair.

And on the further condition that should you abandon or not use these antenna for a period of six consecutive months, that they be removed from the premises and that the premises be restored as closely to possible

to its previous condition.

All those in favor of granting --

BRENDAN SULLIVAN: Did they address the issue of the abutters?

CONSTANTINE ALEXANDER: There was no comments on that. The Planning Board doesn't seem to have a comments on that. And if we approve the motion, I just made -- they're allowed to have these cables. You want to modify that further?

BRENDAN SULLIVAN: I would go back to that, that's okay. But I can go back to the case. I guess my editorializing would be either it get cleaned up or that we go back to look at that case to see if exposed wires were proposed on the photo sims.

CONSTANTINE ALEXANDER: I suspect the difference is the wires are more noticeable on Norfolk Street than --

BRENDAN SULLIVAN: Just a comment on the side.

CONSTANTINE ALEXANDER: It's a good thought. In the future the cables on sides of buildings or whatever penthouse.

BRENDAN SULLIVAN: They should not be exposed wires.

CONSTANTINE ALEXANDER: Greater measures are being taken here to minimize the visual impact. It's not very attractive.

BRENDAN SULLIVAN: Do you have that case number when this was granted?

ATTORNEY ADAM BRAILLARD: Case No. 9644. And it was filed in the clerk's office on January 8, '09.

BRENDAN SULLIVAN: Can I see that?

ATTORNEY ADAM BRAILLARD: I don't know if that's going to do it because that was just a request to replace antennas.

BRENDAN SULLIVAN: Continue.

CONSTANTINE ALEXANDER: I made the motion. Unless there's a change, we're ready for a vote.

All those in favor of supporting the motion I made, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The motion's carried.

(Alexander, Hughes, Sullivan, Heuer, Scott.)

(10:50 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The chair will call case No. 9890, 76 Kinnaird Street.

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

This is a Special Permit to remove windows in a setback?

MAGGIE BOOZ: I'm Maggie Booz, B-o-o-z. I'm the architect.

SPENCER SMITH: Spencer Smith, 76 Kinnaird Street. I'm an owner along with my wife Dawn Baxter.

MAGGIE BOOZ: By right we construct a dormer and -- but not by right we put in a window in that dormer and we're here seeking relief.

CONSTANTINE ALEXANDER: And because you're in a setback?

MAGGIE BOOZ: That's right, that's right. There's actually two parts of this Special Permit. There's that as well as relocating an existing window.

CONSTANTINE ALEXANDER: And that relocation is again into a non-conforming --

MAGGIE BOOZ: It is.

CONSTANTINE ALEXANDER: Any issues? Any communication with the neighbors most affected by the windows and those who would be impacted?

SPENCER SMITH: Yes, I have and they're supportive.

CONSTANTINE ALEXANDER: Anyone wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

Comments? Ready for a motion.

The Chair moves that a Special Permit be granted to the petitioners to construct a window in an as of right dormer on the third floor and to move one existing window on the first floor to a non-conforming face of the building. The Special Permit would be based on the following findings:

That the traffic generated -- there

would be no impact on traffic or patterns of access or egress or congestion, hazard or substantial change in established neighborhood character. Obviously this falls on the fact that we're talking about two windows and nothing else.

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

The extent there would be an adverse affect would be an invasion of privacy. The Petitioner represented to us that the persons most affected by this potential loss of privacy have no objections to the relief being sought.

That there would be no nuisance or hazard created to the detriment of the health, safety and welfare of the occupant or the citizens of the city. And make it self-evident as to why there would be no nuisance or hazard.

And that a proposed relocation and location of windows would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purposes of this ordinance. In fact, the relief being sought is modest. It's not unusual for people to seek relief of this sort. And, again, there's been no neighborhood opposition or any other opposition for the relief being sought.

The Special Permit would be granted on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They are numbered A-3.0, A-3.1, A-7.2, three pages, all of which have been initialed by the Chair. Of course you know the drill. These are the final plans, right?

MAGGIE BOOZ: Yes.

CONSTANTINE ALEXANDER: All those in favor of granting the Special Permit on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Hughes, Sullivan, Heuer, Scott.)

(Discussion off the record.)

(10:55 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9891, 1498-1500 Cambridge

Street.

And who are you?

KEEFE CLEMONS: Good evening.

Thank, you all. I know you've had a long night. I'm Keefe Clemons and I'm representing the petitioners in this case. We're seeking a variance, a use variance at 1498 Cambridge Street to allow certain additional uses of that location. Currently there's a commercial structure on the site that's been in that condition since at least 1945. It's been consistently used for commercial purposes. Unfortunately there was a fire on the premises a couple of years ago. The owners restored the property. One of the two tenants returned, the restaurant, but the other tenant did not. It was an acupuncture office that was a non-conforming medical office use that was at that location, and once it came back online in the fall of '98, we've consistently marketed the

property to various interested parties at that location but we were unable to find a tenant. Because of the working of Section 8.24 of the Ordinance, because we were unable to find a tenant, the non-conforming use disappeared. So at this point we have a hardship issue here on what is an irregular building with a unique set of circumstances that exist in the property which is that they have a valid non-conforming commercial use in the other unit, the restaurant; they have a vacant unit which they would need a variance to do anything with at this point. And given the commercial nature of the building, it really would be a substantial hardship for the landlord to make the use that's intended in the Ordinance itself at this point. Essentially they would have to kick out the restaurant, raise the building because it's a commercial structure that could be readily converted to residential use and build

residence to comply were the current zoning which is a Residence C-1. So what we're asking for in terms of uses is several office and retail uses that will provide for the Ordinance. I want to make it clear some of the uses we're not asking for. We're not asking for a liquor store. A convenience store is not within the scope of what we're asking for. It's the other retail uses.

CONSTANTINE ALEXANDER: I want to identify them.

KEEFE CLEMONS: Sure.

CONSTANTINE ALEXANDER: Tell me how do I do that?

KEEFE CLEMONS: Sure. The uses that we're asking for are --

SEAN O'GRADY: They'll be right on the advertisement.

CONSTANTINE ALEXANDER: The advertisement talks about professional -- retail office and retail.

But liquor store would be a retail use.

SEAN O'GRADY: A through E.

KEEFE CLEMONS: I can get you there easily. If you go to the Table of Uses, it's the Categories 4.34, A through E.

CONSTANTINE ALEXANDER: 4.34, A through E?

KEEFE CLEMONS: Yes. That would exclude the office and laboratory uses. That would exclude the technical use for development laboratory which you know, we concluded we didn't think was appropriate for the site. And with respect to the retail uses, it's 4.35 (a) which is other retail establishments. So I think there -- what's important is that we're not asking for uses in 4.35, A1 which is for the establishment providing convenience goods such as drugstores, food stores, tobacco, newspaper and --

CONSTANTINE ALEXANDER: Don't you

want to reserve the right to have a 7-11 type convenience store there?

KEEFE CLEMONS: We wouldn't mind that, but we recognize the residents might not be thrilled about that. I mean, for my perspective I think having that news is a good thing because that serves the neighborhood. And I don't know if my client --

CONSTANTINE ALEXANDER: Well, the more uses you have, the better you are. I would suggest, maybe I'm presumptuous but I would suggest that we allow to you do any retail use permitted by A other than.

KEEFE CLEMONS: A liquor store.

CONSTANTINE ALEXANDER: I know with regard to the restaurant next-door some years ago they wanted to get a liquor license or alcoholic beverages and there was neighborhood opposition that's before the fire.

KEEFE CLEMONS: There was the

request at the restaurant that I just heard about. And, you know, we're perfectly happy to have that excluded.

The other, I guess, the final C through D which are barber shop, beauty shop, dry cleaning service and the others, hand laundry and dry cleaner and tailor shop, of the people that came and expressed interest, one of them was a barber shop. But unfortunately because the use that we could use before it lapsed was so restricted to medical office, when they found out that they were going to need a variance, they essentially lost interest. So we've been actively marketing the property with Coldwell Banker a Heinemann commercial broker throughout the time. We think that granting these uses would be consistent with the types of uses that have existed at the premises since 1945 so that the relief could be granted without really derogating from the intent of the Ordinance.

And that --

CONSTANTINE ALEXANDER: I'm sorry, you're asking that we also allow the uses identified in 4.35 C and D, right?

KEEFE CLEMONS: That's correct.

And really, I think at this point, you know, based on those arguments and what was set forth in the petition, we would request that you grant the variance, and I'm happy to answer any questions you have about the property.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TAD HEUER: I'm going to ask the question that I hate having to ask because no one's here, but I'm going to do it. Can we grant a 4351 if it hasn't been advertised?

CONSTANTINE ALEXANDER: The advertisement is retail, office and retail.

KEEFE CLEMONS: Right. It actually advertised the whole category and not the

subcategory.

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: What's the difference between the advertisement and the one I have in front of me? On the sheet that I have from the City of Cambridge, Massachusetts, Board of Zoning Appeal I have: Variance use, (reading) Article 4000, Section 4.34 (a) office or laboratory use in Section 4.35 (a) 2 (c) and (d).

KEEFE CLEMONS: That's true.

CONSTANTINE ALEXANDER: I would think the operative thing for the purpose of the public notice is that it's not necessarily the citation to the various sections but the preamble.

KEEFE CLEMONS: The variance itself.

CONSTANTINE ALEXANDER: Office and/or retail use. The use of the specific section sometimes is used to justify

something beyond what's in the general description before. This is just a reverse.

TAD HEUER: No way.

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: No way. Because otherwise they can come in and say I'd like a mortuary or a funeral establishment or a fast food establishment.

CONSTANTINE ALEXANDER: We're going to render a condition, we're going to limit the uses they're going to do. We're not going to say any business and/or retail. We're going to say sections that Mr. Clemons has cited.

BRENDAN SULLIVAN: I think they limited it to then what was advertised for.

CONSTANTINE ALEXANDER: My motion is going to be uses permitted under 4.34 (a) through (e) and 4.35 (a), (c) and (d).

TAD HEUER: I think you advertised for A1, we might not be sitting here with no

one in the audience.

KEEFE CLEMONS: Oh, with the exception the liquor, that was the exclusion. But I take your point.

TAD HEUER: Right. I think it's a good idea to have them as what we've just want them to be. I'm not sure that that's -- it's almost make argument for why we can grant A1 liquor store without it being advertised. If you can convince me, I would love to be convinced, but I don't know if that argument sticks.

KEEFE CLEMONS: You know, in good conscience, I'm looking at this and I'm thinking if --

TAD HEUER: I want to go there.

KEEFE CLEMONS: I appreciate that. I would like to get you there. What I would say is that, you know, what was advertised was the variance for the use.

CONSTANTINE ALEXANDER: Office

and/or retail use.

KEEFE CLEMONS: Retail business and consumer service establishments. I think I would have to concede that it is possible that someone who decided to actually go and review the file and actually looked at the sections would see that Section (a) 1 is not included, but I do think that the vast majority of people who would have reviewed this would have looked at office and laboratory uses and retail business and consumer service establishments.

CONSTANTINE ALEXANDER: That's my view.

KEEFE CLEMONS: I don't think that they -- I think if that didn't hit them and get them here, I don't think that most people would have drilled down or really cared about this issue to find that oh, he's not including these other uses. Although, if we look at the specific uses that we were talking about

at 4.35 (a) 1, really the nox issues is the liquor and that's really part of the reason why we were excluding it. That was the most significant part. We knew that no one would want a liquor store. We knew the history at this location. Truthfully the other uses that are identified there are completely consistent with the character of not just this commercial block but ones in close proximity like where Skidarian (phonetic) is and going down towards Inman Square. And, again, I think they would actually support the community rather than be harmful to it since there's no other comparable facilities in close proximity to this neighborhood.

CONSTANTINE ALEXANDER: Once again, I would think that the general motion of the advertisement is sufficient. It is sufficient for my purposes. I think the risk to the Petitioner, if we were to grant the relief as I would propose it, would allow them

to do all day, rather than a liquor store and someone wants to challenge, and you put in a convenience store, something that's covered in (a) 1, perhaps somebody who challenged the variance and cause the convenience store not to be appropriate. But until and unless that challenge is made, I'm comfortable that we can rely on the general advertisement.

KEEFE CLEMONS: And it would be our risk to bear.

CONSTANTINE ALEXANDER: It's your risk to bear. I can make the motion on that basis and we can vote it down or make a second motion which would be the more restrictive one.

TAD HEUER: Would you have to do it the other way around? Otherwise we deny them, they can't come back in two years.

CONSTANTINE ALEXANDER: That's why I would take the broader vote. I think it's certainly appropriate in my judgment. And

if there is a risk to the Board vote, Mr. Clemons, your -- that risk only comes to bear if one of those (a)1 items is in fact becomes a lessee. And if someone with standing can challenge it.

KEEFE CLEMONS: I would request then that we start with the least restrictive. If there's at least some risk that it probably is prudent that we proceed in that way and we would certainly request.

CONSTANTINE ALEXANDER: Least restrictive being all of (a) 1 other than a liquor store?

KEEFE CLEMONS: The other way around.

CONSTANTINE ALEXANDER: The other way around? The least restrictive. Okay. We can't take a second vote, assume that vote passes, that's what you would be living with.

KEEFE CLEMONS: That's it.

TIM HUGHES: I'm comfortable with

what Gus is thinking.

THOMAS SCOTT: As I am.

BRENDAN SULLIVAN: Can we restrict 4.35 (a) 1?

CONSTANTINE ALEXANDER: If I am right, then we can go into the 435 (a). We can do it any way we want.

KEEFE CLEMONS: You can condition it.

CONSTANTINE ALEXANDER: We can prohibit convenience stores.

KEEFE CLEMONS: You can definitely condition a use variance under Section 10.44.

BRENDAN SULLIVAN: And 4.35 (a) which is -- you're saying that you really don't want to do a convenience store, a drugstore -- I mean, a food store, tobacco, newspaper, magazine, liquor store, you didn't want to do those anyhow?

KEEFE CLEMONS: What we were trying to do is be responsive to what we perceived

would be likely issues. The big one there, I would tell you is probably liquor store.

CONSTANTINE ALEXANDER: That we're not going to allow that.

KEEFE CLEMONS: If you wanted to add tobacco, I think that would be fine, too. But those were really the two that we were trying to get at. The others are really innocuous.

BRENDAN SULLIVAN: It should have been Section 4.2.

CONSTANTINE ALEXANDER: He has asked for that.

KEEFE CLEMONS: We have asked for that.

BRENDAN SULLIVAN: Right. CD, but not 4.35 (A) 1.

CONSTANTINE ALEXANDER: They have asked for (a) 2. They haven't asked for (a) 1 that's the issue.

KEEFE CLEMONS: It's just that we

hadn't asked for (a) 1.

BRENDAN SULLIVAN: I'm reading this wrong. So other retail establishments. So that 4.35 (a) 1 is not included.

CONSTANTINE ALEXANDER: That's the issue. I am suggesting at the petitioner's request that we do include (a) 1 and we have the right to do it. And we do include it and we have a right to take that action because the notice is sufficient to accomplish that relief. The Petitioner recognizing that someone can challenge that, but he would challenge it. Assuming someone would challenge it. Again, we need someone with standing to, and they need to rent it to someone who is covered in (a) 1. Those would be the circumstances. They have to rent to a convenience store, and some abutter who's got standing objects to a convenience store on that site and challenges our decision on the ground that we could not grant that relief

because the case was not properly advertised.

TAD HEUER: Somebody can appeal within 20 days regardless. If you hold it open for six months and someone came in with a convenience store --

CONSTANTINE ALEXANDER: Actually, that's not true. There's a lack of notice, of proper notice.

KEEFE CLEMONS: It would be as of right. It wouldn't be right until we had a tenant.

BRENDAN SULLIVAN: It's after the fact but it just creates a mess.

CONSTANTINE ALEXANDER: It's a mess if, if someone -- let me see how I come out -- I'll be blunt. We have a vacant storefront. It's in everyone's interest it's not going to be a use for residential purposes, that's quite clear. It's in everybody's interest to have that rent unless it's something egregious such as a liquor

store. Why should we limit, if we don't have to, the ability to find the tenant for the property? Just because there may be a theoretical issue that someone with standing and can challenge it. I don't see it.

TAD HEUER: We weren't asked to do that.

CONSTANTINE ALEXANDER: We are. We are. That's not fair. It says that to use a portion of an existing one-story building as office and/or retail use and they cite certain sections, it doesn't mean it's limited to those sections. And our decision will limit the office and/or retail use. It will be limited to 4.35 (a), (c), (d) and 4.34 (a) through (e).

TAD HEUER: So that argument is that anytime I see the article that's being cited in the advertisement, that's advisory not exclusive? Suggesting we take a look at those things and stuff around it in case that

comes up?

CONSTANTINE ALEXANDER: Yes. To me that's how I think you should read it. The purpose of notice is to put people on notice of what's generally going to be considered by our Board. And that we have done that by -- or the Petitioner has done that by the first sentence. Then it is advisory to an interested party, these are the sections that could be -- that are or could be involved in making a decision.

Well, we need four votes. I think I know how Tad is going to vote. I'll make the motion whichever way you folks want to makes it. I expressed my views that I think is in the city's interest and the petitioner's interest to make it as broad as we can. As long as you don't violate the law in terms of notice, and in my view I don't think you will.

THOMAS SCOTT: I agree. I live in this neighborhood. And this storefront has

been vacant for a very long time.

BRENDAN SULLIVAN: Go ahead and make a motion. Did you make it?

CONSTANTINE ALEXANDER: I didn't make it.

BRENDAN SULLIVAN: That's okay, go ahead.

CONSTANTINE ALEXANDER: The Chair moves to grant the Petitioner a variance to use a portion of the existing one-story building as office and/or retail use.

The variance would be granted on the basis that a literal enforcement of the Zoning Ordinance By-Law would involve a substantial hardship to the Petitioner. Such hardship being that this is a building that has long been used for non-residential purposes. The building being located in a residentially zoned district. That except for a technical -- not technical -- that they had a non-conforming commercial use on this

property, but it lapsed through no fault of the Petitioner. And that the building cannot really be used for residential purposes given its nature, and it must be used or should be used for commercial purposes.

The hardship is owing to the shape of the structure. It's a one-story structure, not very large, a portion of which is already subject to non-conforming use, and in this case as a restaurant. But unless that non-conforming use lapses, there will always be a commercial presence next-door which in turn limits the ability to use this building for residential purposes.

The Petitioner has pointed out the only way you can have residential purposes for use of this lot is to tear the building down and build, presumably, I don't know what kind of relief you would need, but perhaps build a single-family residence on this lot.

And that desirable relief may be

granted without substantial detriment to the public good or nullifying or substantially derogating to the extent or purpose of this ordinance. I think I already covered the fact that it's in the city's interest to have this vacant property to be used and used in a fashion that has been consistent with its use for most of the last 45 years, and that there would be no detriment to the public good or substantial derogation to the intent or purpose of this by-law if the conditions that we're about to impose are imposed.

Those conditions being that the use -- the business, the office and/or retail use of the premises will be limited to those uses identified in Sections 4.34 (a) through (e) of our Zoning By-Law. And Section 4.35 (a), (c) and (d) of our Zoning By-Law other than or provided further that they will not be able to use these premises as a liquor store or other establishment for dispensing

of alcoholic beverages.

All those in favor of granting the variance on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott).

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: No.

CONSTANTINE ALEXANDER: One opposed. The variance is granted.

(Discussion off the record.)

KEEFE CLEMONS: Just for the record, I just wanted to make sure that Mr. Panjian transferred the property to an LLC. And just for purposes of the decision, Ms. Pacheco suggested I provide you with a copy of this. Thank you very much.

(11:20 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9892, 408-410 Putnam Avenue. Is there anyone here wishing to be heard on that matter? Moving around FAR your

specialty.

MARK BOYS-WATSON: Mark
Boys-Watson, Boys-Watson Architects, 30 Bows
Street, Somerville.

CHARLES MAHONEY: Charles Mahoney,
partner and owner of the project.

MARK BOYS-WATSON: So, yes, this is
actually Putnam Avenue. Here's Pleasant,
Magazine Street. We're here opposite
Whitney. It's a steeply slope lot. The
building's already permitted and under
construction, but the basement has a really
weird configuration. Before going to the
basement I just wanted to point out one other
aspect of the lot. This is just a site plan
that shows the building's up towards the
street. There's a driveway all existing,
and it's permitted and not a part of the
variance. But actually the land slopes
quite steeply down. And you can see here,
here's Putnam Ave. And here's the back lot

(indicating).

So actually, the variance concerns a relocation of FAR within the basement, and you can see that the opportunities for daylight and use at the back of this building much better than at the front. And there's this strange condition where the existing basement -- this is the found condition of the basement -- the house is reasonably here for the relocation is we're over the allowed FAR. It has its various non-conformities, it's 0.81. We're leaving it at 0.81. All of this is FAR right now as it is in this piece here, but by vaguely of how it's constructed this piece isn't floor area. So again going back to the site plan, this is where all the windows were and where the garden is up here and up here (indicating). So, the relief requested is to take the area of the basement that's zoned six-foot, eleven. Instead of having it here, put it here (indicating), so we can make

use of the light amenities. To make it legal habitable and hopefully delightful basement instead of the situation you get where that six-foot, eleven bid is.

CONSTANTINE ALEXANDER: Are you changing the footprints of the bidding?

MARK BOYS-WATSON: No.

BRENDAN SULLIVAN: So basically?

MARK BOYS-WATSON: So basically what that means is precisely it's entirely within the envelope. So we are basically removing about a foot here to make this all work (indicating). What we do is bring -- it's actually a complicated interpretive thing for the Building Department because various things were different heights and we were -- it wasn't obvious how to interpret what was a this FAR which was I think much higher up. But basically having worked through all these issues, this one remains an issue and we felt

that the ISD felt that they couldn't, you know, there was no way of interpreting where these levels were going that wouldn't require us to come here and talk about getting relief for this piece, and that's why we're here.

So basically what we've done is left the FAR 0.81, but excavated this. And this is mechanical and six-foot, 11 underneath this piece that sticks out -- an enclosed porch that sticks out on the side of the building. That's the relief to be allowed to move this so that we get access using the section that's specific to the site, of the site to make that basement apartment work well and meet the building code and not isolate this. Right now you can't get to this bit through this piece of non FAR. So that's it.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

Comments? Ready for a vote.

The Chair moves to grant to the Petitioner a variance for the relief being sought. The variance to relocate 221.7 square feet of basement level gross floor area within the limits of the existing basement floor plan on the basis of the following findings:

That a literal enforcement of the provisions of this ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the inhabitability of the basement area would be restricted unless we grant the relief and would otherwise affect the rehabilitation of the structure.

That the hardship is owing to basically the soil conditions of the structure. The

building lot is sloping in nature and the results that's caused the usable space in the basement to be broken up and rather than be contiguous and the purpose of the petition is to make it contiguous.

And there would be no substantial detriment to the public good or derogation of intent or purposes of our Ordinance. In fact, this will make a more rationale use of the building. It will increase the light availability of the basement apartment.

It will not impact the neighborhood because there's no change in the footprint of the building. It is all within the building and it will have no impact on the Zoning and not increasing the amount, the non-conforming nature of the building as well.

And further that the Chair would note that no neighborhood or other public opposition to the proposed relief.

The variance would be granted on the condition that the work proceed in accordance with plans submitted by the Petitioner, prepared by Boys-Watson Architects. There are numerous pages. I don't see a date.

MARK BOYS-WATSON: Should be on there, 1/4/10.

CONSTANTINE ALEXANDER: Oh, yes. 1/4/10. And the first page is A-001 which has been initialed by the Chair.

All those in favor of granting the variance on the basis proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Hughes, Sullivan, Scott, Heuer.)

(Whereupon, at 11:30 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 25th day of February 2010.

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

My Commission Expires:
April 23, 2015

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