

BOARD OF ZONING APPEAL FOR THE CITY OF
CAMBRIDGE GENERAL HEARING
MARCH 12, 2009 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Member

Thomas Scott, Member

Tad Heuer, Member

Slater Anderson, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

CONSTANTINE ALEXANDER: I'm going to call the meeting of the Zoning Board of Appeals on this date to order. We start, as always, with our continued cases. I'm going to call the first continued case 149 Sidney Street. Is there anyone here on that?

Slater, you sitting on this case?

SLATER ANDERSON: I'll sit on this one.

(7:00 P.M.)

(Sitting members: Constantine Alexander, Slater Anderson, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: Spell your name for the stenographer because we're making a transcript.

JONATHAN YU: I'm Jonathan Yu, J-o-n-a-t-h-a-n Y-u. I'm from Acceleron Pharma.

So, earlier this week I dropped off

some supporting documents. I don't know if everyone has had a chance to look at them. I brought extra copies.

CONSTANTINE ALEXANDER: When did you drop them off?

JONATHAN YU: Tuesday, I believe.

CONSTANTINE ALEXANDER: Tuesday? I saw them a month myself -- the files. On Tuesday, there were documents. More documents.

JONATHAN YU: But anyway, I have the same copies here.

CONSTANTINE ALEXANDER: Anyone want copies?

JONATHAN YU: Just to provide a little bit of background on this case.

CONSTANTINE ALEXANDER: Please.

JONATHAN YU: We originally -- so, Acceleron Pharma is the current tenant at 149 Sidney Street. We are the only tenant. We currently have a sign that conforms to the existing code, but the

problem is that it's too small. Now, what we are requesting, then, is -- are a couple of things that -- for our sign variance. First of all, we wanted a larger sign. We had requested that it be an illuminated sign and that it would be installed at a height above what is currently allowed by the code.

CONSTANTINE ALEXANDER: So three?

JONATHAN YU: Exactly, yeah.

We went to the Planning Board, and -- we went to the Planning Board twice. Most recently we received an approval of a larger sign at -- a larger sign, but not at a higher elevation and not illuminated. So, I guess my request here tonight is if it would be possible, we would be willing not to have an illuminated sign, but to have a larger sign at a higher --

CONSTANTINE ALEXANDER: How much larger than the Zoning law permits? And how much higher, too? Give us a sense.

JONATHAN YU: Yes. I think the best thing to do is to look at the figures.

So, the last two pages show what the proposed sign would look like. The first one at the elevation -- this is figure F we're looking at.

CONSTANTINE ALEXANDER: Yes.

JONATHAN YU: This figure would be the larger sign at the -- at a location that is allowed by the current Zone -- by the current code.

CONSTANTINE ALEXANDER: All right. And then what is it then the Planning Board would like you to do?

JONATHAN YU: Yes, this is what they would have.

CONSTANTINE ALEXANDER: This is what they would like the sign to be?

JONATHAN YU: Yes.

CONSTANTINE ALEXANDER: Again, how much bigger is the sign than the Zoning?

JONATHAN YU: I think it's twice -- in terms of area, it's twice the size than what is allowed.

CONSTANTINE ALEXANDER: Twice the size of what is allowed?

JONATHAN YU: Yes.

CONSTANTINE ALEXANDER: Okay.

JONATHAN YU: The page afterwards is that same proposed sign but at a higher elevation. That's what it would look like.

CONSTANTINE ALEXANDER: This is what you would like, but the Planning Board did not like?

JONATHAN YU: That's correct. Below you can see what the actual sign looks like.

CONSTANTINE ALEXANDER: Yes.

JONATHAN YU: And I believe the Planning Board sent their recommendations.

CONSTANTINE ALEXANDER: I'll read it into the file at an appropriate point.

JONATHAN YU: Right.

CONSTANTINE ALEXANDER: As you may or may not know, you're seeking a variance. To grant a variance you have to meet certain legal standards, such as a substantial hardship, you have to comply with the Zoning By-Law and the hardship is due to circumstances that especially affect your property, your land.

JONATHAN YU: That's correct.

CONSTANTINE ALEXANDER: And not the district in general, and that granting relief won't derogate from the intent or purpose of the Zoning By-Laws.

JONATHAN YU: Yes.

CONSTANTINE ALEXANDER: Why don't you address those issues, if you would, for us?

JONATHAN YU: Certainly.

So, I have a couple of -- some of the earlier graphics depicted as well. I'll address the issue of hardship first.

So, Acceleron Pharma is growing considerably. This is our headquarters, and so this is where we do a lot of shipping and receiving.

CONSTANTINE ALEXANDER: Weren't you building across the street as well?

JONATHAN YU: And we're expanding into that as well.

CONSTANTINE ALEXANDER: Okay.

JONATHAN YU: All right?

CONSTANTINE ALEXANDER: You're expanding into that? This is the main building?

JONATHAN YU: Yes.

So, this is where all our shipping and receiving goes. And we get a lot of commercial traffic that needs to find this building, but they can't because if you look at Figure A here, the sign is pretty small.

CONSTANTINE ALEXANDER: Is this a one way street by the way?

JONATHAN YU: Sidney Street is one way at that point.

CONSTANTINE ALEXANDER: So, as people drive down the street, this is the first thing they see of this side of the building?

JONATHAN YU: That's correct, that's correct.

CONSTANTINE ALEXANDER: So a commercial delivery truck coming down looking for your headquarters --

JONATHAN YU: Right. This is what they should see.

CONSTANTINE ALEXANDER: -- this is what they should see?

JONATHAN YU: Correct.

The problem is that they don't. And we get a lot of diverted traffic. We don't get -- so it's a -- it gets in the way of our business, but it also diverts a lot of traffic into other one way streets into the residential neighborhoods as

well.

With regard to -- so Figure B and Figure C show that the sign not only is it too small to be seen easily, but it's actually obstructed -- the view is obstructed by surrounding landscaping. Figure C is what it looks like when the trees are in bloom. And this is just a block and a half down. And the building itself is fairly nondescript. It's a pretty old building, so it's difficult for it to stand out on its own so it requires a sign to clearly mark what it is.

CONSTANTINE ALEXANDER: And, again, the illumination is off the table. On the table, the size as to which there is no dispute between you and the Planning Board.

JONATHAN YU: That's correct.

CONSTANTINE ALEXANDER: And location on the building is --

JONATHAN YU: Right. Our

preference is to have it higher up.

TAD HEUER: How much higher than the code allows would you want your sign to be?

JONATHAN YU: So my understanding is it would be about --

CONSTANTINE ALEXANDER: 20 feet.

JONATHAN YU: Right. 20 feet and below a second story window sill. So this would be above the second story window. My estimation is it is -- it looks like it's another 20 feet up.

CONSTANTINE ALEXANDER: And the sign the Planning Board likes is above 20 feet but not -- it's obviously below the windows. It's more than 20 feet above the ground.

JONATHAN YU: Right. Just -- but at that proposed.

CONSTANTINE ALEXANDER: So the difference is basically above or below the second story windows?

JONATHAN YU: That's exactly it.

TAD HEUER: Are these standard second stories with the -- what's the height between grounds and the two-story building, are these standard ten foot stories?

JONATHAN YU: I believe so. I believe so, yeah.

DOUGLAS MYERS: Your major concern in terms of the high placement is simply greater visibility?

JONATHAN YU: I believe that's what the Planning Board's concern is, right.

DOUGLAS MYERS: Your concern?

JONATHAN YU: Our concern is that -- so, yes, our concern is that the lower elevation would hinder visibility. My understanding is their concern may be that -- they have the same concern I suppose.

CONSTANTINE ALEXANDER: Maybe at this point -- I'll go a little bit out of

order -- I'm going to read into the record the letter from the Planning Board, and then we can go on with further questions.

It's a letter from the Planning Board addressed to our Board dated March 11th. It says: The Planning Board met with the applicant and reviewed the sign variance request for Acceleron Pharma as well as illustrations of conforming signage that were presented for comparison. The Planning Board agrees with the case made for the larger sign in the same location as appropriate to identify this business. The size will assist business visitors who may be unfamiliar with the area in finding Acceleron Pharma along Sidney Street which has many trees and tall buildings. It was pointed out that the proposal is modest for a business use if it were located within a business district, and subject to those more permissive regulations. The

Planning Board does not support the internal illumination as that would be used when the business is closed and would be more of a conflict with the residential character of the Special District 10 intended to fall over the neighborhood over time.

So the letter doesn't really address to us anyway why they wanted the lower height. That's what we have from the Planning Board.

JONATHAN YU: As one more bit of information is Figure D here in the packet. So, it gives you have a sense of what the surrounding buildings look like. They're all commercial facilities. The closest residential areas are marked in purple.

CONSTANTINE ALEXANDER: As you know or as the Planning Board says, the Planning Board hopes to have more residential development in this area,

which is why they were opposed to an illuminated sign.

THOMAS SCOTT: Where are your deliveries taken?

JONATHAN YU: So, right past -- so the blue box is 149 Sidney Street. They can enter either onto Emily Street or right past the blue 149 Sidney.

THOMAS SCOTT: So is the signage intended to help direct people who are bringing or coming to the building to find an entrance or a loading dock or something?

JONATHAN YU: Both. So we have vendors and partners who come in on a regular basis who just need to find the door. And then the Acceleron sign on that building is the main identifier, and there are several subsequent signs that direct them to loading docks.

THOMAS SCOTT: But it's not over the main entry?

TAD HEUER: Where's your door?

THOMAS SCOTT: The main door is where the awning is on Photo A?

JONATHAN YU: That's correct. That's correct.

CONSTANTINE ALEXANDER: That's Sidney Street. The sign is going to be on Emily Street.

THOMAS SCOTT: Right.

Why wouldn't you want your sign over your entrance?

JONATHAN YU: Right, because the direction of traffic would be facing -- this would face the direction of oncoming traffic.

SLATER ANDERSON: And the benefit of the illumination, why the illumination?

JONATHAN YU: I think it was purely cosmetic. And if we have people who are visiting the company in the evening, and at times it gets dark early, then that would be helpful. But that is a

point that we are willing to concede.

CONSTANTINE ALEXANDER: Do you have anything in the file as far as you know, Sean, of the exact dimensions of the sign?

JONATHAN YU: Yes. Figure E.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: I'm sorry, yes, thank you.

Any other questions from members of the Board?

THOMAS SCOTT: Yes, I have one. On your Figure G where it's up high on the building --

JONATHAN YU: Yes.

THOMAS SCOTT: -- it kind of looks like it interrupts what appears to be some type of an ornamental conformance on the building.

JONATHAN YU: Yes. So, that's where you -- plumbing the shallows, of my understanding of construction. But I

believe that we would be able to get around that. It would require some reworking.

THOMAS SCOTT: But if you look at photos -- let's see, let me get to the right one here. If you look at Figure C which shows the tree scape down Sidney Street, it looks like you can barely see the building in that photo. And you really don't see the building until you get to your Figure F which looks like you're past the tree line at that point. So my opinion is that if you really can't see the building until you're to that point when you're actually past the tree line, it actually makes more sense, I think, to have the sign a little bit lower because your sight line to the building is going to be lower. So, I'm definitely in favor of the lower elevation, but I think the sign, the size of the sign is appropriate. My opinion.

CONSTANTINE ALEXANDER: Slater, anything to add?

SLATER ANDERSON: I concur with Tom, I think. I'm still not convinced that illumination is necessary.

CONSTANTINE ALEXANDER: We're not having illumination.

SLATER ANDERSON: That's off the table?

CONSTANTINE ALEXANDER: It is.

SLATER ANDERSON: It is off? I'm sorry. Yes, I understand the size. The existing sign is small. The lower location I think is preferred, too.

CONSTANTINE ALEXANDER: Doug?

DOUGLAS MYERS: I agree with the conclusions. I think to have the sign as twice as big as the ordinance permits is a substantial concession And should, for openers, help considerably your concern about visibility. I don't think the additional variance to raise its elevation

is -- I don't think it's really warranted on the grounds of substantial hardship relating to the building itself. If there was some inability constructed to fix it at the lower level because of some feature of the building that you could put it up higher, then you have a case that more relates to hardship, but that's not the case here. So I agree with my colleagues.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: I would agree.

If it's not going to be illuminated, what materials would you be using? Would it be fiberglass, metal.

JONATHAN YU: I think it's an aluminum. Yeah, some kind of composite.

TAD HEUER: Right.

JONATHAN YU: The look is a brushed metal look.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: I have nothing to add. I'll go with the comments

of my colleagues on the Board.

Now open to public comment. Anyone here who wishes to speak on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to speak.

I read the only letter in the file that we have on this from the Planning Board. So, unless there any further questions or comments, are we ready for a vote?

The Chair moves that a variance be granted to the petitioner to construct a sign. Such variance be on the basis that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. Such hardship being that the building, given its location on a one way street, given the foliage and the landscaping around it, given the construction of the building, the design of the building, signage is

important. And it would not be adequate to the petitioner if the signage were in accordance with the Zoning By-Law.

That the hardship is owing basically to the location of the building on this narrow one way street, a nondescript -- if you don't mind my saying so -- a nondescript building among a group of nondescript buildings.

And that desirable relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

Such variance be granted on the condition that the sign be in accordance with the dimensions set forth and plans submitted by the petitioner and initialed by the Chair. And that the location of the sign on the building be in accordance with Figure F, the location that was supported by the Planning Board.

The Chair further notes that there has been no public comment on this matter and that there is support for the location of the sign and this type of sign from the Planning Board.

All those in favor of granting relief --

THOMAS SCOTT: Would you just note about the non-illumination?

CONSTANTINE ALEXANDER: Okay. Yes. It was on the original, you're right, we should mention that.

THOMAS SCOTT: It still shows it as illuminated.

CONSTANTINE ALEXANDER: Okay.

And on the further condition that the sign not be illuminated as represented by the petitioner not to illuminate it. The sign may not be illuminated.

Now ready for the vote?

TAD HEUER: Internally.

DOUGLAS MYERS: Did you address

the question of the height location?

CONSTANTINE ALEXANDER: Well, I said the location in accordance with this figure. We don't have dimensions as to exactly how high off the ground this sign is going to be.

JONATHAN YU: Right. I don't know that.

CONSTANTINE ALEXANDER: I think from my point of view I think this should be sufficient.

Sean, you agree?

SEAN O'GRADY: Below the sill.

CONSTANTINE ALEXANDER: Below the second story sill. Okay.

All those in favor, can say "Aye."

("Aye.")

CONSTANTINE ALEXANDER: Five in favor. The motion carries.

(Alexander, Anderson, Heuer, Myer, Scott.)

SEAN O'GRADY: Given that there's not a withdrawal for the request of the

sign at the higher point, do we need to get a withdrawal or a vote down on that issue?

CONSTANTINE ALEXANDER: I think if we vote at this location, we can vote it again, but doesn't it implicitly mean we voted down the sign at the higher location?

SEAN O'GRADY: If you think so, then I'm comfortable with that.

CONSTANTINE ALEXANDER: For the record, let me make it clear that the intent of the vote is that the sign that the petitioner has sought at a higher location has not been approved or supported by the Board. So the sign must be located as set forth in Figure F. Okay?

Thank you.

JONATHAN YU: Thank you very much. Appreciate your time.

I actually have one question about

the process. Do we wait for an official variance?

SEAN O'GRADY: You'll hear from us in the mail.

JONATHAN YU: Excellent. Thank you very much.

CONSTANTINE ALEXANDER: Thank you.
(Whereupon, a discussion was held off the record.)

(7:20 P.M.)

(Sitting Members: Constantine Alexander, Slater Anderson, Thomas Scott, Douglas Myers, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9725. 243-249 Walden Street. Anyone here wish to be heard on this case?

Please come forward.

RICARDO SOUSA: Good evening, Mr. Chairman. Good evening, Members of the Board.

CONSTANTINE ALEXANDER: Just for the record spell and pronounce your name

and you as well, Ms. Patrick, I think it is.

RICARDO SOUSA: Of course. For the record, Ricardo Sousa S-o-u-s-a on behalf of the applicant Metro PCS and also --

TARYN PATRICK: Taryn Patrick. T-a-r-y-n P-a-t-r-i-c-k with Walden Associates.

CONSTANTINE ALEXANDER: When you were here last and the reason we continued the case, the Board had a number of questions and concerns and you were going to go back to your client and address them. If my memory is correct, there were like four issues we talked about.

One was is it possible to locate the sign nearby an apartment house building which is much higher.

The second was is there a possibility of lowering the size of the faux chimneys on that. I guess that could

be accomplished perhaps by relocating the chimneys on the building subject to structural constraint.

RICARDO SOUSA: Sure.

CONSTANTINE ALEXANDER: A third one was some members of the Board wanted to see the actual cladding, a sample of the cladding that's going to house the chimneys to get a sense of what they would look like.

And the fourth, some members were concerned that the published simulations we had at that time weren't accurate. There seemed to be a chimney on the building that wasn't reflected in the photo simulations to the view of some of the members of the committee.

So, those are the four matters that I think we had left. And you've gone out now you're back.

RICARDO SOUSA: We have. We've done a little more work and a little bit

more research. And just to refresh your memory, and I have some additional copies of these photo sims if you need any additional ones.

CONSTANTINE ALEXANDER: These supercede the ones we had before?

RICARDO SOUSA: They do slightly supercede in the sense that in response to your first or your second question, we were able to drop the height of the chimneys by one foot. And so that is an improvement and that's reflected in the photo simulations.

CONSTANTINE ALEXANDER: One chimney's going to be 12 foot high and another one is going to be 10. And now they're going to 11 and 9?

RICARDO SOUSA: That's correct. Actually, they're slightly different because as you can see from the roof line, they're actually -- it slopes in the back. And so it actually goes from -- to 11 feet

in the back, and this one goes to 9.6.

TAD HEUER: But the net height is equal?

RICARDO SOUSA: That's correct. The net height from the ground is -- AGL above ground level at the top of the chimney is exactly the same, that's right. And it's a net reduction of one foot from our previous plan. And so that's the answer to the second question.

However, starting with the first question which is: Can we locate on any other apartment buildings in the area? The answer is yes. However, not the apartment buildings that are located at 250 Walden, which are in view of the photo sims that you have here. As Ms. Patrick stated at the first hearing, that landlord has been non-responsive. Essentially there's -- we've approached, them and they just do not appear to be interested in having wireless telecommunications on

their rooftop. And so not every landlord is. However, we did take a view of the area, looked at our database, and there is an apartment building located at 21 Walden Square which is right down the street, that in fact is interested in leasing space to us. However, it's not in a commercial district. And it's one of the reasons that wasn't approached in the first place. That being said, we took the extra step of preparing plans, coming up with a design for that rooftop and photo simulations, and we actually presented it to the Planning Board last week. And I'm not sure if, Sean, if a copy of the recommendation was put into the file relative to --

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Yes, we do have that.

RICARDO SOUSA: You do have a copy of it? I have an extra copy as well.

CONSTANTINE ALEXANDER: I'm sure your copy is clearer than mine.

RICARDO SOUSA: This is the original recommendation.

CONSTANTINE ALEXANDER: I have that here, too.

RICARDO SOUSA: So the secondary recommendation essentially is that if -- the Planning Board was charged with last week essentially looking at both proposals. And making a recommendation as to which one they felt was better. And they essentially came down to -- there's no clear winner as to which one they prefer. And they -- each Board member saw pluses and minuses for both applications. Some members seem to like this application because it actually hides the antennas altogether. Others liked the apartment building because it's a taller building, and we can facade mount on a penthouse. And essentially try to blend those

antennas into the side of the penthouse. I have photos of that proposal that I'd like to share with the Board since I think the crux of our discussion last meeting was trying to come up with an installation on a higher building. That seemed to be the objection of this Board, was that you were concerned with the height of this building, the Masse Hardware building, and the fact that it was lower. The bottom line is Metro PCS does need to fill its gap in coverage in this area. It does prefer the Masse Hardware building, since it's the first one we approached. We have lease rights there. We feel that we came up with a responsible design, but we did take the direction of the Board, and this application could be filed. It has not been filed with Sean yet or with the BZA, but it could be filed if in fact this Board strongly recommends it.

I do have to say, and let me pass

those out now --

CONSTANTINE ALEXANDER: I'd rather you not actually.

RICARDO SOUSA: No? Fair enough.

CONSTANTINE ALEXANDER: It's going to confuse the file and confuse the matter. That case is not before us.

RICARDO SOUSA: It's not.

CONSTANTINE ALEXANDER: So I think we should consider -- what that means is that if we were to turn you down, you may have a backup idea or plan, maybe.

RICARDO SOUSA: We may.

CONSTANTINE ALEXANDER: And we may allow that backup plan if you come back before us.

RICARDO SOUSA: Right.

CONSTANTINE ALEXANDER: But let's stick -- your idea is you want Masse Hardware building, let's just talk about that building.

RICARDO SOUSA: Sure. I would

like to add however, Mr. Chairman, just before I get off of that topic with respect to 21 Walden Square, which is that the past wireless telecommunications carriers have been denied on that site. In fact, T-Mobile and Sprint were both denied for an antenna installation on that building. Which is yet another indicator why we came to a commercial zone again.

CONSTANTINE ALEXANDER: That must be a number of years. I've been on the Board about five years and I don't remember that case coming before us.

TARYN PATRICK: 2004.

RICARDO SOUSA: 2004.

CONSTANTINE ALEXANDER: Okay.

RICARDO SOUSA: Do you have a copy of that?

CONSTANTINE ALEXANDER: That's okay.

RICARDO SOUSA: Those were some of the indicators that we took into

consideration when trying to figure out which building to pursue and that's one of the reasons that we arrived here.

CONSTANTINE ALEXANDER: So you want to go forward with Masse. You've lowered the -- in a sense, lowered the size of the faux chimneys.

RICARDO SOUSA: We have.

CONSTANTINE ALEXANDER: Okay.

RICARDO SOUSA: And so just to once again briefly describe the installation. It will entail two faux chimneys. We did not move -- one of the discussion points was whether or not we should move -- in order to reduce the height, whether or not we should move it closer to the edges of the building. We decided we didn't have to do that. And from a structural perspective, it made more sense to have the ballasts in the same location. And so we kept the chimneys in the same location but we did

reduce, like I said, we have a net reduction of the height of those chimneys by one foot. And the resulting height is once again 11 feet for this one, and that's from the roof line to 9.6 on this one. In addition to that our equipment which sometimes is fairly well visible, our equipment in this case is in the basement. So it's not visible to the general public and that helps minimize the design. So that's the basis of the application and the design of the antennas.

With respect to the mock of the -- I don't have a faux chimney for you unfortunately. We have used them in the past. But I don't have a faux chimney that I could show you. We could make -- we'd be amenable to having a faux chimney installed up on the roof subject to the approval of either the zoning enforcement agent or the Building Commissioner I

should say.

CONSTANTINE ALEXANDER: If we do that, it's up to the pleasure of the Board. But we would have to continue the case again and put that on the chimney and do something and then having the benefit of that, vote on it. We'll have to decide whether we want that if we go forward tonight.

RICARDO SOUSA: Absolutely. That's something that we can do so that you can see -- have a better visualization of what it's going to look like.

THOMAS SCOTT: But the intention is that the material is to simulate brick, right?

RICARDO SOUSA: That's right.

THOMAS SCOTT: Okay.

RICARDO SOUSA: And it would have grout lines and all. You know, it can be done in different ways. I've seen it literally have a simulation of brick

painted on a very flat surface which is not that great result. And we've also seen some texture. We've also seen some texture. And it takes some effort and some costs to actually create some texture, but that's something that we'd be willing to do subject to the Board's approval.

CONSTANTINE ALEXANDER: Let me ask at this point what's the Board's pleasure --

RICARDO SOUSA: Sure.

CONSTANTINE ALEXANDER: -- would the Board want to continue the case further to actually see this faux chimney on the building or are we prepared to go forward tonight on the issues? What's the sentiment of the Board? There was some members of the Board last time who wanted to see that. I wasn't one of them. But I certainly would confer to whoever wants to see that.

DOUGLAS MYERS: I think myself I would say I'd be willing, for myself, I'm fine to consider it tonight. And I would, if the applicant would state for the record as much as he can with words what the faux chimney will consist of, and what it will look like. We'll accept your obvious limits under the circumstances.

RICARDO SOUSA: Sure.

DOUGLAS MYERS: If that were then incorporated as part of the rule, I would be completely comfortable with that.

CONSTANTINE ALEXANDER: Anyone else disagree with Doug?

TAD HEUER: I was the one who wanted to see it. I'd be happy to speak to it.

I'm certainly in agreement with Mr. Myers. If you're able to provide us with a narrative description of the materials. I think I would prefer it to be variegated in texture as opposed to

flat and painted.

RICARDO SOUSA: Sure.

TAD HEUER: Or chimney-like than the Santa's chimney that my parents put next to the Christmas tree made out of wrapping paper. I would be happy to go ahead at this point to the extent that we're willing to go with the chimneys as a device.

CONSTANTINE ALEXANDER: In agreement.

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: Keep going.

RICARDO SOUSA: Mr. Chairman, another piece of information that we added to the plans since the first hearing was the actual dimensions of the chimney. That was something that was clearly, I think, confusing. There was some dimensions as to how much space we were going to be taking up on the rooftop

itself.

CONSTANTINE ALEXANDER: These are the plans?

TARYN PATRICK: Yes.

CONSTANTINE ALEXANDER: The ones you've given us before?

TARYN PATRICK: Yes.

CONSTANTINE ALEXANDER: They're not new.

TARYN PATRICK: No, just the dimension.

RICARDO SOUSA: Just the dimensions. I have extra copies of this. Taryn I think just handed them out.

And so the dimensions themselves are three-by-three. And so the chimney itself is going to be three-by-three feet, and that's located on page Z-3 of the plans. That will allow us to install three antennas inside each of those chimneys.

CONSTANTINE ALEXANDER: Let's turn to the photo simulations which you handed

out today.

RICARDO SOUSA: Sure.

CONSTANTINE ALEXANDER: Again, I think there was some concern last time that photo simulations that you had last time were not accurate. That may not be a correct observation, but I think there were some comments. You represent, as far as you're aware of, these are accurate simulations?

RICARDO SOUSA: Yes.

TAD HEUER: Tom, this was you last time?

THOMAS SCOTT: Yes, I definitely

--

RICARDO SOUSA: The best way I look at it if you look at page C-1 that sort of gives you an overview of the area. And in particular it shows the two apartment buildings located -- I'm sorry, C-1.

DOUGLAS MYERS: Where is that

marked, C-1?

RICARDO SOUSA: It's on the plans.

CONSTANTINE ALEXANDER: I had the same problem.

RICARDO SOUSA: So if you look at C-1, that helps orient you in the area and sort of what the view sheds are going to be. And if you look at -- if you look from this direction, excuse me, this direction (indicating), you're looking at these two buildings in the background. Right? And the two chimneys are in fact right in these two locations. And that actually mirrors what you see in this photo simulation here (indicating). That's essentially that view. So, would I suggest that they are accurate.

THOMAS SCOTT: Yes, it definitely looks a little bit more accurate. I like the fact that you've lowered them a little bit. I love the fact that the equipment is hidden.

RICARDO SOUSA: Yes.

THOMAS SCOTT: I think that's a really nice feature. And the only issue I think is a little bit more descriptive about what that enclosure is and I think --

RICARDO SOUSA: Sure.

THOMAS SCOTT: -- and I'm pretty much okay with this.

RICARDO SOUSA: What I've done in the past and actually Members of the Board mentioned it last time, is try to mimic the existing chimney that's on the roof now. And we can have the stuffing company, when they're actually creating those faux chimneys, mimic the existing chimney that's there now. So that the grout lines are the same color, and so that the brick is also the same color. In addition to that it will not be a flat surface that will be reflective. Instead it will have texture to it. And the grout

lines will actually look like real grout lines. So, I guess that's the best job I can do to describe it. I'm sorry.

CONSTANTINE ALEXANDER: Let me throw the matter up to public comment.

Is there anyone here who wishes to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one appears to be heard on the matter.

Let me read letters from the Planning Board, and there is actually one letter from a neighbor in support I should say. We have two letters from the Planning Board. The first was dated December 4, 2008 addressed to us. And it says: The Planning Board reviewed the Special Permit application for the telecommunication installation at Masse's Hardware at the intersection of Walden and Sherman Street. I should say parenthetically this is the original plan,

not the one that's before us tonight.

RICARDO SOUSA: Correct.

CONSTANTINE ALEXANDER: The Planning Board felt that the applicant met the criteria listed in the Zoning ordinance with creating the stealth chimneys and that their location is symmetrical and in keeping with existing rooftop features in the surrounding neighborhood.

And the second letter from the Planning Board, as the petitioner has indicated, really deals with the comparative advantages of this site versus --

RICARDO SOUSA: Here you are, Mr. Chairman.

CONSTANTINE ALEXANDER: Thank you.

The other site, I'm not sure, since the other site is not before us. I'll read it anyway so we have it complete.

The Planning Board previously

reviewed the propos -- this is a letter dated March 4, 2009 -- the Planning Board previously reviewed the proposal for 243 Walden Street, the Masse Hardware building, and sent a positive recommendation to the BZA. The Board understands that due to reservations of the installation at 243 Walden Street, the BZA is considering an alternate location for the equipment on the building at 21 Walden Square. Planning Board members weighed the pros and cons of the two sites. Some members preferred the 243 Walden Street approach and felt the false chimneys proposed there were very good devices to diminish the visual impact of the equipment. Others did not like the fact that they would be seen from nearby residents. Some members preferred 21 Walden Square location as being on a taller building, less apparent to neighbors, and reasonably well integrated

with the building design. Parenthetical, a different proponent made a proposal sometime ago where an installation at 21 Walden Square, that design was not favored by the Board as it did not effectively integrate the equipment with the architecture. On balance, the Planning Board would advise the BZA that either current proposal is acceptable.

And let me just read that one other letter if I can find it. Yes, it's a letter from Malik M-a-l-i-k A. Latif L-a-t-i-f, who resides at 237 Walden Street, addressed to the Board. The letter is -- it doesn't appear to have a date. Yes, it does. November 6, 2008.

Dear Honorable Members of the Zoning Board: I am Malik Latif and live next-door to Masse's Hardware store on top of which a communication booster antenna is being planned for installation. I believe in today's technology driven

environment it is extremely important to get good signals for satisfactory reception of communiae. I do not know of any evidence where low signal frequencies involved in this petition can harm individuals to the extent that harm outweighs benefits especially considering the distance of impact. I am therefore an enthusiastic and staunch supporter of the petition and request for the sake of the community benefits to allow the construction of the antenna as requested by the petitioner.

In fact, it's signed by both Malik A. Latif and Abida A-b-i-d-a K. Latif. That's the sum and substance of what's in the file.

TAD HEUER: Sign him up.

RICARDO SOUSA: Yeah, absolutely. He might be a customer.

CONSTANTINE ALEXANDER: I think we're ready for discussion.

Slater, you go first.

SLATER ANDERSON: Well, I think the changes you've made are appreciated and I don't have a problem with the proposal. I think that your effort to reach out to the owner or landlord of the adjacent residential building was, you know -- I'm glad to see the attempt to do that again. You know, they're not responsive, they're not responsive. I'm satisfied with the plan.

CONSTANTINE ALEXANDER: Tom?

THOMAS SCOTT: Yes, I think given the modifications that you've made, the fact that this is a flat roof building, it's not unusual to see multiple chimneys on a building like this. I think the plan is reasonable and acceptable.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: I agree.

CONSTANTINE ALEXANDER: Doug?

DOUGLAS MYERS: I agree. And I

also think you've clarified any question about the number of chimneys.

RICARDO SOUSA: Good.

DOUGLAS MYERS: Just so that point is addressed.

RICARDO SOUSA: Thank you.

CONSTANTINE ALEXANDER: You know, for the record, you haven't given us some of the other stuff that we need to make it binding, like you're a licensed carrier. There's nothing in the file.

RICARDO SOUSA: That should have been provided as part of the application.

TARYN PATRICK: Yeah, I think it should have been.

RICARDO SOUSA: I can assure that. Mr. Chairman, Metro PCS is licensed by the FCC to construct and operate a wireless network in various markets throughout the country and including here in the City of Cambridge. Thank you.

CONSTANTINE ALEXANDER: And this

building is located not in a residential district?

RICARDO SOUSA: That's correct. It's located in a BA Business District.

CONSTANTINE ALEXANDER: Therefore, it's always a Special Permit case. But we don't have to get into alternative locations because it's a business zoned.

Ready for a motion?

Chair moves that a Special Permit be granted to the petitioner to construct antenna as proposed in their petition on the grounds that the traffic generated or patterns of access or regress -- that there would be no additional traffic generated or patterns of egress or access to the property would cause congestion, hazard or substantial changes in established neighborhood character. Flowing from the fact that we're talking about antenna on top of a rooftop.

That the continued operation or

development of the adjacent uses would not be adversely affected by the proposal, as we'll get to later in the motion, every effort will be made to disguise the visual impact of these antenna. And there are no health or other hazards caused by the proposed antennas.

There will be no nuisance or hazard to the detriment, health, safety or welfare of the occupant the building or the citizens of the city.

And that the use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the ordinance.

This Special Permit will be granted on the condition that work be made in accordance with the plans submitted by the petitioner and initialed by the Chair. There are plans dated February 12, 2009, and they are numbered T-1, C-1, Z-1, Z-2 and Z-3.

And further, that the work be in accordance with the photo simulations submitted by the petitioner and initialed by the Chair. They are not numbered. But I will initial each page.

On the further condition that every effort be made to disguise the visual impact of these antenna. They be placed in faux chimneys, which will have a variegated texture, not a flat fix. And every effort will be made to follow grout lines and other features of the faux chimneys so that they resemble the existing chimneys to the greatest extent possible.

And on the further condition that you cease to use these antenna for any reason, that they be promptly removed from the building.

Anything else? I think we're ready.

On that basis a motion is made to grant the Special Permit. All those in

favor, please say, "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Motion carries.

RICARDO SOUSA: Thank you very much, Mr. Chairman.

(Whereupon, a discussion was held off the record.)

(7:45 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Douglas Myers, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9738, 704 Huron Avenue.

Anyone here interested in that matter?

ATTORNEY MICHAEL GIAIMO: Good evening.

CONSTANTINE ALEXANDER: Good evening. Please pronounce and spell your name.

ATTORNEY MICHAEL GIAIMO: Sure, it's Michael Giaimo, G-i-a-i-m-o with Robertson and Cole representing Verizon

Wireless. George?

GEORGE EVSIOUK: George Evsiouk
E-v-s-i-o-u-k.

ATTORNEY MICHAEL GIAIMO: Good, thank you. Mr. Chairman, we're here with a request to place antennas on existing building at 704 Huron Avenue. The antennas would be placed on the side facades of the building with the cable run up the back of the building in the equipment shelter behind the parking garage of the building. The antennas would be screened using a stealth fiberglass screening that would match the color of the building. And we went to the Planning Board and had some discussion with them about what screening would be appropriate there, and have developed a plan that they liked. If -- you may recall the initial comments from the Planning Board were negative and we continued the hearing at that time to try

to work something out so....

CONSTANTINE ALEXANDER: On that, though, and we have the letter from the Planning Board that now supports it. And it makes reference to the D, capital D approach --

ATTORNEY MICHAEL GIAIMO: Right.

CONSTANTINE ALEXANDER: -- I don't see anything in our file.

ATTORNEY MICHAEL GIAIMO: Right. In the version of photographs that the Planning Board was presented there was a series, Series D and I can show you that.

CONSTANTINE ALEXANDER: Why weren't they presented to us?

ATTORNEY MICHAEL GIAIMO: Because those were not -- these were sort of an intermediate version that we used in our discussions with the Planning Board. Once they picked them, we were provided with a final set. And I can show you what those are. But these are the same things.

CONSTANTINE ALEXANDER: Why don't you hand them to each member. They're multiple copies.

ATTORNEY MICHAEL GIAIMO: That's right. I understood that we would discuss these tonight.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY MICHAEL GIAIMO: These reflect the final version that the Planning Board came up with. We gave them, you know, A, B, C, D in the interest to try to move the discussion along.

CONSTANTINE ALEXANDER: So, these supercede anything we have in our file? This is what we should be looking at?

ATTORNEY MICHAEL GIAIMO: Those are the current version, that's correct. And I can show you the D that they were talking about if you're interested.

CONSTANTINE ALEXANDER: Very much so.

ATTORNEY MICHAEL GIAIMO: Yes,

let's just look at an example of the series that the Planning Board saw. And what we did is we stripped it down so not to be confusing.

We had filed with you -- let's just pick Photo 3 in the set we filed with you. We filed basically an A series which shows only existing conditions.

CONSTANTINE ALEXANDER: Wait a minute. This is not in the package.

ATTORNEY MICHAEL GIAIMO: No, but I'm trying to explain D to you at this point.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY MICHAEL GIAIMO: Okay? Because it sounds like that's gotten confusing.

This is a set similar to the set we prepared initially which shows as a Series A, the existing conditions. And shows Series B, antennas without any screening.

CONSTANTINE ALEXANDER: All right.

ATTORNEY MICHAEL GIAIMO: When -- that's what was filed with you initially. That's what the Planning Board gave negative comments on.

We then went back to the Planning Board and we said we can propose to you a C, which is a stealth screening that's got some beveled edges. Or we can propose to you a D, which is a more rectangular look to the stealth screening. They picked the D. Okay?

And so we did A, B, C, D with several of the views, and that's what the Planning Board looked at. Their argument on the D or the reason for preferring the D was it more resembled the way the building looked -- and here's another set, this is from their set for C and D. It more resembled how the building looked to have the sharp edges as opposed to the beveling which we felt we were doing to --

CONSTANTINE ALEXANDER: Which of

these did you give us now is D?

ATTORNEY MICHAEL GIAIMO: The only one that's in there is D. In other words, we gave you a before and an after in that.

TAD HEUER: And what's that one known in our set?

ATTORNEY MICHAEL GIAIMO: It is known as B. A and B. We gave you before and after.

TAD HEUER: 3A and 3B?

ATTORNEY MICHAEL GIAIMO: 3A, 3B, 2A and 2B.

GEORGE EVSIOUK: Before and after pictures.

ATTORNEY MICHAEL GIAIMO: Before and after pictures.

CONSTANTINE ALEXANDER: And particularly the one you just showed us is 3B is what the Planning Board liked?

ATTORNEY MICHAEL GIAIMO: No, 3D.

CONSTANTINE ALEXANDER: D corresponds to 3B here.

ATTORNEY MICHAEL GIAIMO: Yes.

I was hoping not to have to discuss these at all. I didn't realize the Planning Board had referenced D as to just opposed to --

So just to kind of....

CONSTANTINE ALEXANDER: I'll read -- when we get there, I'll ride into the record the letter from the Planning Board.

ATTORNEY MICHAEL GIAIMO: Okay.

CONSTANTINE ALEXANDER: They prefer though A, 3A is less visible to me.

ATTORNEY MICHAEL GIAIMO: There's nothing there. There's nothing there. It doesn't exist.

GEORGE EVSIOUK: It's not there yet.

BRENDAN SULLIVAN: Why is the antenna not at the top?

ATTORNEY MICHAEL GIAIMO: Okay.

And that's the other question we figured would come up.

This is a site that's intended to fill in a coverage gap. That building is 225 feet tall.

BRENDAN SULLIVAN: Yes.

ATTORNEY MICHAEL GIAIMO: Even if rural areas when Verizon Wireless locates on towers they rarely locate higher than 180 feet. Most of the time it's closer these days to 100 or 150 feet.

CONSTANTINE ALEXANDER: Is there a negative to putting it more than 100 feet?

ATTORNEY MICHAEL GIAIMO: Yes. Because it blasts the signal way out, and because Cambridge particularly is densely populated as Cambridge is, it would blow out the surrounding cell sites. You would have interference and it wouldn't work. It would be technically inferior to having it at the lower height.

CONSTANTINE ALEXANDER: You can

compare to the competitors --

ATTORNEY MICHAEL GIAIMO: Not the competitors, no, it's our own network. You know, remember these cells work in terms of having repeated frequencies. So Verizon Wireless has allocated a certain spectrum band, and within that spectrum band there are a number of frequencies, and each of the sites that they build they use particular frequencies and they design it in a -- in other words, the word self, like from a honeycomb where you don't want to have any of the abutting sites that have the same frequency because they will interfere with each other just like you might sometimes on an a.m. radio here, another station bleeding in. You don't want that on wireless coverage. If this were higher up, you would get that effect. Having it at this height, it's intended to fill the gap in and not overreach the other sights to where it interferes.

BRENDAN SULLIVAN: So there's a range of height where it works ideally?

ATTORNEY MICHAEL GIAIMO: Where it works period. I mean, if it's too low, you're gonna get too small a footprint and you'd need additional sites. If it's too high, you're not going to have a functional site because the signal will override abutting sites and you won't get the benefit of this site. You will have actually ruined your network as opposed to enhanced your network.

I think, if I'm not mistaken -- we did have from Mike the -- we did have an e-mail from him that I don't have printed. But we also did have, I thought, plots that kind of depicted that. Yes, this is it.

And I can distribute these if you want. Let me first try to explain them maybe. Let me just make sure I got the -- I'm looking for the site, George.

(Looking over documents.)

This is the proposal in three colors this time. The green is the signal that this site will send up, okay? At 120 feet. The red is the signal provided by the adjacent cell sites. And so you can see there's always some overlap in coverage, but this doesn't extend beyond the red in any direction. It doesn't even come close to extending beyond the red in any direction. It simply slips into the gap in coverage. And if you look at the tab, Tab 4 in your book, you'll see another depiction of the gap in coverage. We've got just the two color this time. It's white here, and the green is able to the fill in with the proposed sites. So that's all.

CONSTANTINE ALEXANDER: Go back to the first one again.

ATTORNEY MICHAEL GIAIMO: Sure.
So there and the site would be located

right there. And now you've filled in. You've picked up that hole.

BRENDAN SULLIVAN: So is this sort of fan -- in other words, you're going across the golf course across Fresh Pond in that direction and you're going out obviously in this direction (indicating).

ATTORNEY MICHAEL GIAIMO: Right.

BRENDAN SULLIVAN: So Belmont being behind you you're not -- that's another issue.

ATTORNEY MICHAEL GIAIMO: There's three directions. It goes in 360 degrees.

BRENDAN SULLIVAN: It does?

ATTORNEY MICHAEL GIAIMO: Well, we have three. Remember we have three faces of the building, right? We've got the end. We've got the --

BRENDAN SULLIVAN: Back side.

ATTORNEY MICHAEL GIAIMO: -- back side corner and we've got the other side corner. So we've got three directions.

BRENDAN SULLIVAN: You're facing the cemetery, you're facing the other way --

ATTORNEY MICHAEL GIAIMO: Up the street and down the street.

BRENDAN SULLIVAN: Okay.

ATTORNEY MICHAEL GIAIMO: And each of those is designed to go at 120 degrees, 360 coverage. It's lower power, which means the signal dissipates as it gets further out. And it's designed and calibrated to fill the gap that you need. But if you look between 120 feet and 225 feet, at 225 feet this -- whoops. This installation has just overridden this site and it's overridden most of that site. It's overridden the Mount Auburn site. This becomes now a, you know, a big booming site at a location that's not at an efficient location for that kind of site. And it takes away the value of all these other sites for serving the number

of customers that Verizon Wireless would have in Cambridge and all the data applications and everything else. So the proper location on this building for this site is the face of the building halfway up where it's been proposed.

CONSTANTINE ALEXANDER: And there are going to be three arrays of four-panel antennas.

ATTORNEY MICHAEL GIAIMO: Three arrays of four, four on each of three sides of the building. Each of those arrays would be screened similar to this. This is the view -- this view on the front cover is the view that's really the most visible from any, you know, objective standpoint. And the cable tray would come up the back, middle of the building, and the proposal is also to screen that cable tray so that it's not, you know, so it's not visible from anybody who goes back there. Although it's really, you know,

it's a cemetery and a parking garage.
It's not an area that's heavily traveled
by the public anyway.

TAD HEUER: The living public.

ATTORNEY MICHAEL GIAIMO: The
living public, sure.

So that's the, you know, the reason
for the height, and that's how we would
propose to mitigate the view issues which
the Planning Board and obviously your
Board would have been concerned about.
Hopefully we've addressed those to
everybody's satisfaction.

CONSTANTINE ALEXANDER: Before
there was some question or concern on
whether you needed variance relief with
regard to the equipment shelter. And
there was, the Inspectional Services had
not really signed off on that.

ATTORNEY MICHAEL GIAIMO: Right.

CONSTANTINE ALEXANDER: Sean, is
it my understanding now that you're

satisfied that it's --

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: -- there's no zoning issue -- or variance issue. The so the only issue before us is the Special Permit?

SEAN O'GRADY: That's right.

CONSTANTINE ALEXANDER: And for the record, you are a licensed carrier?

ATTORNEY MICHAEL GIAIMO: Yes, and the licenses are at Tab 10 of this book. And I can walk through, if you want, you know, the various issues under the Special Permit standards? Do you want me to address that?

CONSTANTINE ALEXANDER: I think you should.

ATTORNEY MICHAEL GIAIMO: Good. First of all, this is a location -- well, let's start from the beginning.

CONSTANTINE ALEXANDER: What tab are you on?

ATTORNEY MICHAEL GIAIMO: It's my write-up under Tab 2 where we walk through the standards.

Within this district which is a Resident C3 we require a Special Permit issued by your Board. And I've shown starting on page two under the Zoning Ordinance how we've satisfied the standards under the by-law. First being that we have a license from the FCC to provide service within this market area.

Second being the minimization of the visual impact and the use of materials that in texture and color blend with the materials for which we're attaching, which is we've committed to screening this with the stealth screening as shown on the dated 2/26/2009 photo sims that I just distributed, and to have that screening match the color of the building and to be, you know, square, rectangular with sharp edges as the Planning Board had requested

in order to best replicate the architecture of the building or at least interfere with the architecture of the building.

The site, because it's in a residential district, we needed to demonstrate the public need. Which I think we've done through the coverage plots that I showed you with the gap and the Affidavit of Mr. Kramer, the Affidavit being at Tab 5, the coverage plots being at Tab 4.

We also needed to show you that -- we're not going on the roof, so I don't know if the mechanical system's question is in issue. But in terms of the nonresidential uses predominating in the area, we are abutted by a cemetery, we're abutted by a golf course, we're abutted by a believe a VFW function hall that's under construction, and there is a small residential neighborhood that's also

abutting part of it. But overall, this Board has twice before found that this building site satisfies that standard. And the way that we're proposing to install this equipment is not going to be out of character with the surrounding area. In fact, it's going to minimize any kind of impacts.

We've got a description here of the need for the facility that goes beyond this. The coverage plus -- namely, that the effective coverage from the surrounding sites which include 545 Packard Avenue and 330 Mount Auburn Street in Cambridge. 615 Arsenault Street in Watertown. 125 Trapelo Road in Belmont. But despite those sites surrounding there's still substantial a coverage gap in Fresh Pond and Strawberry Hill. Not in the pond but in the areas surrounding the pond, and in Strawberry Hill neighborhood, and so this will fill that coverage gap.

This site was identified based on looking for tall structures that would provide sufficient height and were properly located to fill that coverage gap. This being a building that's already been used for wireless purposes. It was, you know, obviously the first consideration, but we also looked or George looked for other buildings in the area that might be comparable. There are no other comparably high buildings that would be suitable for this kind of installation.

CONSTANTINE ALEXANDER: Must you be as high as you propose to be on the side of this apartment house? We just had a case right before you where they're putting some antenna on a three-story building.

ATTORNEY MICHAEL GIAIMO: Right. And we do have some lower antennas on some buildings in Cambridge, also. But given

the nature of this coverage gap and the, you know, the way we were trying to -- the best way to show it is again in the -- in this plot. You know, you've got a, you've got sort of a long linear, almost crescent-shaped gap here. And we're locating right in the middle of the boomerang here and we're trying to pull the coverage all the way out to here. We need to be high enough to reach the edges of the coverage gaps. You know, it's interesting, one reason this site over here gets as far as it does is because Fresh Pond is obviously is flat. But when you have trees and other structures and interference, you need to be high enough to see. It's a line of site technology, believe it or not, even though it's invisible and it's radio and the radio waves curve a little, it's really line of sight technology.

So, let's see. So we've got

through -- I think we got through the Special Permit standards under the wireless -- the specific wireless provision for 32.G1.

Going through your general Special Permit standards. The requirements of the ordinance are met with respect to the wireless communication components under that particular provision, there's no traffic demand that's generated by this site. There's no affect on existing operations of other, you know, uses or adjacent uses under the Zoning By-Law. It's not going to have any kind of nuisance type interference with anything. It doesn't have light, odor, dust, glare, unusual noises or other adverse impacts.

There is no health, safety or welfare implications to this. Because it's well maintained, it will be maintained, and Verizon Wireless personnel are on call 24 hours a day to respond to

any outages in this facility. And it's a passive use. Essentially there's no employees present. It's maintained by technicians who arrive once every week or two to calibrate equipment and so forth.

And the use itself from the city standpoint is something that's appropriate in this -- at this location and in the district because it provides a service to people in the district who are traveling there or living there. Many people as you know, use their cell phones now in their houses and apartments and, you know, as well as outside. And this is a way to provide that coverage.

BRENDAN SULLIVAN: Do you have any other equipment on the building presently?

ATTORNEY MICHAEL GIAIMO: We do not, no. There is an antenna on the building in the photo sims that's maintained by a carrier.

BRENDAN SULLIVAN: If you have

look at 7-B just below and to the corner of the building there, that's somebody else, right?

ATTORNEY MICHAEL GIAIMO: 7-B. That's -- yes, are you talking about this right here?

BRENDAN SULLIVAN: Yes.

ATTORNEY MICHAEL GIAIMO: Yes. That's a different carrier's antenna up there. Subject to another approval.

BRENDAN SULLIVAN: The three antenna at the three locations, two obviously there and the other one I guess would be --

ATTORNEY MICHAEL GIAIMO: Is the other end of the building.

BRENDAN SULLIVAN: The other end of the building.

ATTORNEY MICHAEL GIAIMO: Yes.

BRENDAN SULLIVAN: If you look at 2-B I guess you see it there. Are they all at the same height?

ATTORNEY MICHAEL GIAIMO: Yes.

BRENDAN SULLIVAN: They are?

ATTORNEY MICHAEL GIAIMO: Yes.

BRENDAN SULLIVAN: So 2-B, 3-B,
4-B, 7-B is --

ATTORNEY MICHAEL GIAIMO: I think
that sounds right, yes.

CONSTANTINE ALEXANDER: And the
plans, by the way, that you're proposing,
these are the plans?

ATTORNEY MICHAEL GIAIMO: The date
on those plans is the 24th of February.
Those are the ones, that should be the
final version. Those are the ones, if you
remember, they were on file but not soon
enough for your last hearing. You should
have this set. And we know those were on
file.

CONSTANTINE ALEXANDER: Is that an
extra set?

ATTORNEY MICHAEL GIAIMO: I do.
It's not a perfect copy just because it's

-- I'd be happy to distribute these if people want to see them.

CONSTANTINE ALEXANDER: October.

BRENDAN SULLIVAN: On 8-B, is this what's proposed there or just this?

ATTORNEY MICHAEL GIAIMO: It's the -- no, it's the equipment shelter which is being tucked right up against the parking garage.

BRENDAN SULLIVAN: So it's this entire building?

ATTORNEY MICHAEL GIAIMO: That's the shelter, that's right. There's condensers on the end, and that's a backup power supply in there so that's a separate room.

BRENDAN SULLIVAN: This is a modular.

ATTORNEY MICHAEL GIAIMO: It's a modular, it comes off a truck basically. Yes.

Did you find the right version?

CONSTANTINE ALEXANDER: Yes, we did.

Let me open it up to public comment. Are you through?

ATTORNEY MICHAEL GIAIMO: I am.

CONSTANTINE ALEXANDER: Is there anyone here who wishes to be heard on this petition?

(No response).

CONSTANTINE ALEXANDER: No one wishes to be heard.

We do have a letter from the Planning Board. I'll read it into the public record. It's dated February 18th.

The Planning Board had its regular meeting of February 17, 2009 voted to recommend to the Board of Zoning Appeal approval of the cellular antenna installation at 700 Huron Avenue -- 704. Anyway, 700 Huron Avenue. With the screening approach in the D, D as in dog, series of photo simulations. You

represented to us and what you've given to us tonight is the B?

ATTORNEY MICHAEL GIAIMO: That's right.

CONSTANTINE ALEXANDER: That corresponds.

This design effectively addresses the concern that the Planning Board had expressed at an earlier meeting that the installation had looked cluttered. The Board appreciates the attention paid by the applicant to the earlier concerns. The D approach utilizes a rectangular box to cover the antennas and fits better with the simple modern architectural design at 700 Huron, than the C approach. You don't have before us. Which employs a beveled box that would be out of keeping with the rectangular building design. One detail refinement requested by the Planning Board is that the screened antennas be moved away from the edge of the building perhaps

by about five feet to allow the building edge to read clearly.

ATTORNEY MICHAEL GIAIMO: And that was done as well. That's reflected in B.

CONSTANTINE ALEXANDER: In B?

ATTORNEY MICHAEL GIAIMO: Yes.

And in the plans.

CONSTANTINE ALEXANDER: And in the plans?

ATTORNEY MICHAEL GIAIMO: Yes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY MICHAEL GIAIMO: Their idea was if it was right at the corner, it was more visible than if moved in unfortunately, so.

CONSTANTINE ALEXANDER:
Mr. Sullivan, any comments?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Tom?

THOMAS SCOTT: The fiberglass enclosure, what is that exactly? It's just this smooth fiberglass material that

will be the same color as the brick that's on the building?

ATTORNEY MICHAEL GIAIMO: Yes. It would be a -- you or Jeff might be better on this. Jeff, you wanted to describe how you do fiberglass?

CONSTANTINE ALEXANDER: If you're going to speak, come forward, please. Give your name and address.

JEFF BARBADORA: Jeff, last name Barbadora B-a-r-b-a-d-o-r-a.

The enclosure, it's a stealth enclosure, fiberglass. And we painted it to match the existing building as constructed.

ATTORNEY MICHAEL GIAIMO: These are fabricated for this project and then they would be installed after the antennas are installed and mounted, affixed to the face of the building.

BRENDAN SULLIVAN: So it's just a housing basically?

JEFF BARBADORA: Correct, just a housing.

BRENDAN SULLIVAN: You put your base plate on the building and then you put your antenna on and then this thing basically just snaps over it or whatever?

JEFF BARBADORA: Yep, exactly.

BRENDAN SULLIVAN: To cover the equipment?

JEFF BARBADORA: Exactly.

ATTORNEY MICHAEL GIAIMO: Yes.

And fiberglass is permeable to the radio waves of course, so you couldn't do metal or something like that.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Doug?

DOUGLAS MYERS: No.

CONSTANTINE ALEXANDER: We're ready for a motion?

The Chair moves that a Special Permit be granted the petitioner to

construct antennas that proposed.

The Chairman moves that the Board find that there was a demonstrated need for this facility, for these antenna, to fill in gaps in coverage as represented by the petitioner and included in an Affidavit from a frequency engineer, that with regard to there being alternative functional sites, this is by far the preferable site in given its location. There are no equally functionable suitable sites in nonresidential locations.

That what's proposed will not adversely impact the character prevailing uses of the area. Being such that nonresidential use is actually predominated in the area. There being adjoining to or nearby to the building, a cemetery, a golf course and a facility, a VFW, and now a community center facility in the immediate vicinity.

That granting relief would not

create any addition -- no traffic demands. There would only be infrequent service visits to the property.

That there would be no impact on the adjoining uses.

The proposed facility would not emit any light, dust, odor, glare, unusual noise or other adverse impacts.

That as a result, there would be no nuisance or hazard to the city. And that the proposed use would not impair the integrity of the district.

This Special Permit be granted on the condition that the work proceed accordance with plans submitted by the petitioner dated February 24, 2009 and numbered under the T-1, C-1, A-1, A-2.

And also that in accordance with the photo simulations submitted by the petitioner and initialed by the chair.

And on the further condition that should these antennas no longer be used in

the business, that they be promptly removed from the building.

All those in favor of granting the Special Permit as indicated by saying "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carried.

ATTORNEY MICHAEL GIAIMO: Thanks very much.

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

(Whereupon, a discussion was held off the record.)

(8:15 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Douglas

Myers, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9757, 21 Orchard Street. Please come forward if you're involved with the petition. And you have heard, we keep a transcript so please give your name, spell it and your address, please.

JUDITH WEISS: Judith J-u-d-i-t-h Weiss W-e-i-s-s, 21 Orchard Street, Cambridge.

MALE AUDIENCE MEMBER: I'm not here to speak. It's David.

CONSTANTINE ALEXANDER: If you're not going to speak, then you don't need to.

JUDITH WEISS: He's here for moral support.

I'm here to request a variance to be able to expand an existing rear deck on my house.

TAD HEUER: I have one question

about the depth of the deck. You said that you just acquired some rear property from abutters?

JUDITH WEISS: Yes.

TAD HEUER: Is that reflected on the --

JUDITH WEISS: Yes.

TAD HEUER: -- the dimensional form?

JUDITH WEISS: Yes.

TAD HEUER: You currently are conforming to your rear setback, your 25-foot rear setback.

JUDITH WEISS: Yes.

TAD HEUER: And the deck you're proposing would be two inches in from the rear setback at 24.10?

JUDITH WEISS: No. The current deck is actually only five-foot something deep. So it's -- I'm not -- if what you are asking am I just proposing to expand it by two inches? No.

CONSTANTINE ALEXANDER: His question is that even with the land you've acquired --

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: -- you're still not going to comply with the rear yard setback, you're two inches short. Because you're going to go within 24 feet, 10 inches of the rear lot line --

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: And our Zoning requires 25 feet.

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: That's correct.

TAD HEUER: Is there a reason why you don't just shave two inches off and stay within conformity of the rear yard setback?

JUDITH WEISS: The -- is there a really good reason for that? The reason is that I think the -- what I tried to do

was actually be reasonable about the depth of the deck and to -- I think that from what I've heard, this is hearsay, that many people like to have a deck that's at least 10 or 12 feet deep to have enough space if they want to have a table and be able to sit comfortably.

TAD HEUER: How deep would this be from the house?

JUDITH WEISS: Nine foot, six.

So, if you want me to shave two inches off, I can. It's just -- a friend of mine has a deck that's eight foot, six and it's really, really tight.

TAD HEUER: So you're looking to try to get as close to the ten foot as reasonable?

JUDITH WEISS: As reasonable without, you know, impinging on the rear setback unreasonably.

CONSTANTINE ALEXANDER: The point that you're getting at is that the two

inches, which I don't think the impact the nature of your deck. You could have avoided at least one zoning issue. You have two zoning issues before us as I see the file. One being the rear yard setback.

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: Could be avoided if you shave two inches off. But whether or not you shave the two inches off, you have what's called an FAR issue.

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: You're going from .97 to 1.01 in a district that has a maximum of .5. So, you're already non-conforming.

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: And you want to increase the nonconformance or the FAR. And you want to intrude into the rear yard setback by two inches?

JUDITH WEISS: Yes. And I believe

to be that there are side setback.

CONSTANTINE ALEXANDER: I don't think I saw anything in the file as far as side yard setback issues.

TAD HEUER: No.

CONSTANTINE ALEXANDER: No, I think you're okay in the side setback.

JUDITH WEISS: Okay.

CONSTANTINE ALEXANDER: Questions? Doug, any questions at this point?

DOUGLAS MYERS: Yes, was the acquired land shown on any of the plans --

JUDITH WEISS: Yes.

DOUGLAS MYERS: -- with respect to your original lot and parcel?

JUDITH WEISS: No. Do you want to know what the original parcel was? is that --

DOUGLAS MYERS: Well, you mentioned it in your application so I just thought it might have some significance. I mean, when did you acquire the land?

JUDITH WEISS: In September 2007.

DOUGLAS MYERS: And it's simply been incorporated into the size of this lot?

JUDITH WEISS: It's reflected in the size of the lot, yes.

DOUGLAS MYERS: As shown on the plan?

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: How much line did you acquire?

JUDITH WEISS: I -- it moved my backyard back ten feet.

CONSTANTINE ALEXANDER: Ten feet?

JUDITH WEISS: Yes. So, it's 400 square feet. It's 40 feet wide. So it basically squared off my backyard. Although it's -- I haven't actually up -- I haven't done anything to my backyard because I've been waiting to deal with the deck first.

DOUGLAS MYERS: Nothing additional

now?

CONSTANTINE ALEXANDER: You want me to ask something else, Tad, while you ponder?

TAD HEUER: Your right side neighbor, so if I understand the before and after photographs, your deck right now, if I'm looking at it from the backyard, extends to the right-hand side, but not to the left and you're looking to extend along the whole building?

JUDITH WEISS: Yes.

TAD HEUER: So your neighbors, now switching to the front of the house, on your right side --

JUDITH WEISS: Yes.

TAD HEUER: -- so, have you spoken with them?

JUDITH WEISS: I have spoken with them, Frank McGrail. I've actually lived at the property since 1992. And so I'm quite friendly with the McGrails. And

Frank had absolutely no objections. He actually said he would write a letter in support, but I think it probably slipped his mind. But I did speak with him. When we were shoveling snow together during the last snowstorm. And I actually did bring a letter from Pastor Cook from the church.

CONSTANTINE ALEXANDER: Can I see that as part of the file?

JUDITH WEISS: Yes. He sent it by e-mail so I attached the e-mail and the letter since the letter is unsigned. It was sent electronically.

CONSTANTINE ALEXANDER: When I looked in the file a couple days ago, there were no other letters in the file.

JUDITH WEISS: Yeah. And also the Molallies are in Florida right at the moment, but they were -- had no objections either. The Molallies sold the land.

CONSTANTINE ALEXANDER: Tad, any other questions?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Brendan, any questions?

BRENDAN SULLIVAN: I think that it's going to make the back of the house look better actually. The answer to which is probably more noticeable on the deck without it then it will encroaching on the rear setback. I can't believe there isn't a side yard setback problem. But there's no dimension along here so it's hard to tell.

Anyhow, I think it's fine. I think the improvement is tastefully done.

(Reading documents.)

JUDITH WEISS: Thank you.

CONSTANTINE ALEXANDER: Tom, any questions?

THOMAS SCOTT: No. I tend to agree with Brendan, that I think it helps unify a lot of the crazy elements that are going on in the back of the house. And

architecturally it will probably look better.

CONSTANTINE ALEXANDER: This is the only plan, this one page?

JUDITH WEISS: Yes.

CONSTANTINE ALEXANDER: A-2? A-1 is that the site plan?

JUDITH WEISS: That was the plot plan.

CONSTANTINE ALEXANDER: Plot plan?

Is there anyone here in the audience who wishes to be heard in the matter?

(No response.)

CONSTANTINE ALEXANDER: No one indicates they wish to be heard.

I'll read into the record from the Hope Fellowship Church, on the letterhead of Hope Fellowship Church signed -- almost signed by Curtis Cook, Pastor. And it says: I am the pastor of Hope Fellowship Church which is located at 16 Beach Street and is next to Judy Weiss's home. I am

supportive of her plan to expand her back deck and have no concerns. I hope you will look favorably on her proposal.

Any further comments or are we ready for a motion? We're ready for a motion.

The Chair moves that a variance be granted to the petitioner to expand her rear deck on the grounds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. Such hardship being that she is unable to use a deck that she has on her premises functionally, not usable, and the need for a rear deck in the backyard to improve the living conditions is noted.

That the hardship is owing to circumstances relating to the fact that this is a non-conforming structure at this point. That the relief being sought is modest in nature of slight intrusion to the rear yard setback and a slight

increase in FAR. And the insubstantial nature of the relief being sought requires a finding that there is no substantive detriment to the public good or a nullification or derogation from the intent or purpose of our ordinance.

The Chair notes that neighbors have been contacted and no one has come forth to express any objections. In fact, the only letters or any contact we've had is in support of the petitioner.

Such variance be granted on the condition that the work proceed in accordance with the plans dated A-1 and A-2, prepared by Boehm, B-o-e-h-m Architecture, and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carried. Good luck.

(Alexander, Sullivan, Scott,

Heuer, Myers.)

JUDITH WEISS: Thank you very much.

(Whereupon, a discussion was held off the record.)

(8:25 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9758, 393 Norfolk Street.

Anyone here wishes to be heard on this matter? Please come forward.

(Whereupon, a discussion was held off the record.)

CONSTANTINE ALEXANDER: On the

record.

Please state why you're here and the reasons for the relief you seek. First of all, give your name, pronounce it, spell it for the record and give your address, too, please.

CHRISTOPHER DEWART: Christopher Dewart D-e-w-a-r-t, 336 Norfolk Street.

SARAH DEWART: And I'm Sarah Dewart of 336 Norfolk Street.

CHRISTOPHER DEWART: And we purchased the house 393 Norfolk Street and found that the -- after buying it that the roof was deficient, there's a leak in the -- which we knew about, a leak on a flat part of the roof on the back. And the third floor is uninhabitable. We have photographs. But the roof interior is less than six feet at the peak.

CONSTANTINE ALEXANDER: So you want to raise the roof to make the top floor habitable?

CHRISTOPHER DEWART: Yes.

SARAH DEWART: It's been over time always used as bedrooms, and it's taxed that way, but it's also structurally under built and the shingles are blowing off. So we have to deal with that anyway. And so, and put a lot of money into it. So we just as soon be able to raise it and extend it back, because the flat roof slants towards the house and it has a draining that's not really working.

CONSTANTINE ALEXANDER: You also want to add a dormer as well?

SARAH DEWART: Yeah.

CHRISTOPHER DEWART: And a shed dormer, 15 foot long.

TAD HEUER: And that's on the opposite -- is there a dormer on the house now?

SARAH DEWART: There is to accommodate the stairs obviously.

CHRISTOPHER DEWART: There's just

a small --

TAD HEUER: Okay. So when you raise the roof, that dormer can go, and you're building a dormer on the other side; is that right?

CHRISTOPHER DEWART: No, the same side. Because of the stairway. It's to encompass the stairway --

CONSTANTINE ALEXANDER: And living space.

CHRISTOPHER DEWART: And living space.

CONSTANTINE ALEXANDER: A larger dormer. You're going to replace one dormer with a larger dormer?

CHRISTOPHER DEWART: Well, it was -- I don't know what you call it. The dormer that's there is a --

TAD HEUER: Gable.

CHRISTOPHER DEWART: Gable dormer.

CONSTANTINE ALEXANDER: You call it gable.

CHRISTOPHER DEWART: The dormer we're putting on would be a shed dormer.

TAD HEUER: I just have one question about your dimensional form, and maybe I'm misreading it.

CHRISTOPHER DEWART: Okay.

TAD HEUER: On the length, are you really cutting 16 feet off the length of the building? Or is that --

CHRISTOPHER DEWART: Adding.

SARAH DEWART: Off the length?

TAD HEUER: It says existing length of 58 feet, three inches. Requesting conditions 42 feet, five inches.

CHRISTOPHER DEWART: No.

TAD HEUER: That's not right, right?

CHRISTOPHER DEWART: No, that's not right.

SARAH DEWART: Did we write that?

CHRISTOPHER DEWART: Yeah, I did.

TAD HEUER: What should we change that to?

CHRISTOPHER DEWART: The length never changed. It's 42.

TAD HEUER: 42.5?

CHRISTOPHER DEWART: Five. It's 42.5.

TAD HEUER: Okay.

CHRISTOPHER DEWART: I think that because there's a deck -- there is a --

SARAH DEWART: Oh, maybe because of the deck -- we're making the deck smaller.

TAD HEUER: There is a deck coming in? Okay.

CHRISTOPHER DEWART: There's a deck that's being rebuilt.

CONSTANTINE ALEXANDER: Being rebuilt?

SARAH DEWART: It's being rebuilt now. Because it literally was unsafe for anyone to step on it. And it's the rear

access for both apartments.

CHRISTOPHER DEWART: But that was, that was a separate issue. That was okayed by the city.

CONSTANTINE ALEXANDER: Now the dormer that you're proposing, it's my understanding that it will substantially comply with the dormer guidelines? It's not exactly in compliance. But in terms of length it complies?

CHRISTOPHER DEWART: Yes.

CONSTANTINE ALEXANDER: 15 feet in length?

CHRISTOPHER DEWART: Yep.

CONSTANTINE ALEXANDER: And it's set back from the edges of the roof?

CHRISTOPHER DEWART: The front and rear is setback. But not from the -- I can't, I can't set it back in from the north side of the house. So the siding that there would be -- so the siding would come up, break for the eaves and then it

would continue at the same, the same edge as the rest of the house.

CONSTANTINE ALEXANDER: The reason you're seeking a variance, why you're here is because you're a non-conforming structure now and any raising of the roof is essentially you're intruding in setbacks?

CHRISTOPHER DEWART: Yes. There's three feet between the north side of the house and the foundation -- the neighbor, the neighbors.

TAD HEUER: You have no problem --

SARAH DEWART: The neighbor's driveway.

TAD HEUER: -- you have no problem with the height because you're within the height. And you're under the absolute FAR?

CHRISTOPHER DEWART: Right.

CONSTANTINE ALEXANDER: So it's technical zoning issues in terms of what

you want to do?

CHRISTOPHER DEWART: Right.

CONSTANTINE ALEXANDER:

Substantial compliance with former guidelines.

SARAH DEWART: Yeah. I mean someone told us we needed a variance. I can't remember who.

CONSTANTINE ALEXANDER: I just want to make sure we all understand the question why, the nature of the variance.

CHRISTOPHER DEWART: Right.

TAD HEUER: Sean, is the variance only side yard or is it also percentage FAR?

SEAN O'GRADY: There's probably an Article 8 issue in there also, but for intents and purposes think about it as a setback case, yes.

CONSTANTINE ALEXANDER: And you've contacted neighbors?

CHRISTOPHER DEWART: Yes.

CONSTANTINE ALEXANDER: I know there's one letter in the file. Any opposition that you've heard of?

SARAH DEWART: Not that we know of. And we -- yeah, we turned in a petition who signed.

CONSTANTINE ALEXANDER: You have a petition that you turned it in?

CHRISTOPHER DEWART: We turned in a petition.

CONSTANTINE ALEXANDER: I don't see it in the file. Those are the plans. It wasn't here the other day.

At this point, Brendan, questions? None? Tom? Or should I go to someone else?

THOMAS SCOTT: So I see. This is going to be in the same plain as this portion of the house?

CHRISTOPHER DEWART: Yes.

THOMAS SCOTT: But you're going to continue the --

CHRISTOPHER DEWART: The eaves.

THOMAS SCOTT: -- the eave line.

CHRISTOPHER DEWART: Yeah, I didn't see how I can do it without....

THOMAS SCOTT: What's the new height to the peak?

CHRISTOPHER DEWART: The new height is 32 -- the present height is 28 something. And we're bringing it up to 32.4.

THOMAS SCOTT: Right.

SARAH DEWART: Which is probably about the same as the house next-door.

CHRISTOPHER DEWART: It's less.

SARAH DEWART: Oh, less.

CHRISTOPHER DEWART: The house next-door is thirty....

DOUGLAS MYERS: Will there be any degree of setback of the dormer from the main wall of the house? Not speaking of the ends of the dormer, on the main wall of the house?

SARAH DEWART: We couldn't structurally --

CHRISTOPHER DEWART: You're saying from the -- okay. I have --

TAD HEUER: It would be the same plane as the wall, correct?

SARAH DEWART: It's because the way the house is built.

CHRISTOPHER DEWART: The side elevation, it will be on the same plane as the outside wall.

DOUGLAS MYERS: So that I understand it, that means that in fact there would be no setback whatsoever which is the main wall would just extend.

CHRISTOPHER DEWART: Right. Except for the break -- right.

TAD HEUER: Except for the break.

CHRISTOPHER DEWART: The eaves, yeah.

DOUGLAS MYERS: That would still remain noticeable?

CHRISTOPHER DEWART: Yeah. The reason is because the stairwell comes up. And so to clear your head through the stairs, if I, if I put a setback, then I would be --

BRENDAN SULLIVAN: You would be picking up half the stairwell basically. If you come up the stairs, if you were to pull that wall in, then you come up and it creates a jog in a sense. It's either that or -- well, it's a stairwell. It's the obstruction basically.

CHRISTOPHER DEWART: Which is why there's a dormer there now in order to get your head up without hitting it.

TAD HEUER: So you get into an area where you hit your head on the eaves.

CONSTANTINE ALEXANDER: Any other questions at this point from members of the Board before I turn it to the public?

Is there anyone here who wishes to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one indicates that they wish to be heard.

The Chair is in receipt of a petition. It reads: I have reviewed the drawings of the changes proposed by the Dewarts of 393 Norfolk Street and approve of this project. And there appear to be 11 signatories. Residing at Two Norfolk Street, two persons there. 373 Norfolk Street, 432 Norfolk Street, 1B. 401 Norfolk Street, 2B. 400 Norfolk Street, apartment 1. 385 Norfolk, apartment 2. 375 Norfolk, apartment 1. 154 Tremont Street, and 39-something Norfolk Street.

SARAH DEWART: Tremont is behind the house.

CONSTANTINE ALEXANDER: There's also a letter in the file from -- on the letterhead of the Cambridge City Council signed by Timothy J. Toomey. Dear Members of the Board -- the letter is dated March

12, 2009. I'm writing in favor of the case 9758 by Christopher and Sarah Dewart and their request to raise their roof and add dormers to conform with other homes on the street. I feel the Dewarts have the best intentions in mind in completing this project. The changes will help to improve their own property as well as reflect the character of the neighborhood. As of this point I have heard no objections to the work proposed and do hope the Board will look favorably upon this request. Again, I am in strong support of the application and appreciate your consideration of this request.

BRENDAN SULLIVAN: Well, that does it then.

DOUGLAS MYERS: If there were any doubts.

CONSTANTINE ALEXANDER: Tom?

THOMAS SCOTT: No, I think, you know, raising the roof and adding a dormer

seem to enhance the character of the house. And make it more in keeping with the balance of the neighborhood. So I'm in favor of it.

CONSTANTINE ALEXANDER: Mr. Heuer?

TAD HEUER: I'm in favor of the house becoming more weatherproof.

DOUGLAS MYERS: I concur with my colleague on all points.

CONSTANTINE ALEXANDER: And I will as well. I just want to point out that we're going to give you permission to raise the roof from the Zoning point of view, not from a behavioral point of view, okay?

The Chair moves that a variance be granted to the petitioners to allow them to proceed with the project they propose on the grounds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship. Such hardship being that they have a building

that is under constructed at this point that's not completely functional third floor and structural problems in terms of drainage.

That the hardship is owing to circumstances, special circumstances relating again to the fact that this is a non-conforming structure, that has as indicated, some structural problems. And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance.

In fact, the nature of the relief being sought is technical in nature and certainly has no impact on the area.

And further, the Board notes that there is a substantial support within the neighborhood for this project as well as from a member of the City Council.

The motion be granted on the

condition that the work proceed in accordance with the plans initialed by the Chair. There are several pages and I'll initial each page.

All those in favor of granting relief as proposed, as moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion carries.

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

SARAH DEWART: Thank you so much.

CONSTANTINE ALEXANDER: Good luck.

(Whereupon, a discussion was held off the record.)

(8:40 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9759, 39-41 Prince Street.

Anyone here interested in that matter, please come forward.

Please state your name and spell it for the stenographer and give your address.

KELLY SPEAKMAN: My name is Kelly Speakman S-p-e-a-k-m-a-n. And my address is 30 Bowe Street in Somerville.

CONSTANTINE ALEXANDER: You're the

architect for the project?

KELLY SPEAKMAN: I am the architect, yes. And I bring with me all of the unit owners here. Do you want them all to state their names as well?

CONSTANTINE ALEXANDER: Only if they speak. Not to give it now, but just to come forward and spell your name and give your name.

KELLY SPEAKMAN: So, the property at 31 -- 39-41 Prince Street suffered a catastrophic fire in December which started in the house next-door and carried over to our property. The fire damage was so bad that the roof, you can see here in the photo, that the roof caved in. And since this photo was taken, actually the building has been completely gutted on the inside because of the fire and water damage. The roof has been completely removed, and all the third floor walls have been --

CONSTANTINE ALEXANDER: Maybe you can hold it up so we can see it. Maybe one of you can come forward and hold it. Or just put it there. That's fine.

KELLY SPEAKMAN: So these pictures on the left are sort of right after the fire with the third floor still intact. Well, because the damage was so bad and the building was unsafe, they've since taken the whole third floor off.

So, we're looking to seek a variance to put back what was there both in square footage and volume so no added floor area, no added volume. But because more than 50 percent of the building was damaged, we're required to come and get a variance.

CONSTANTINE ALEXANDER: And because the building was non-conforming before?

KELLY SPEAKMAN: Exactly. It was non-conforming for setbacks and FAR before.

TAD HEUER: And height.

KELLY SPEAKMAN: And height.

CONSTANTINE ALEXANDER: Are you looking to restore the height of the building as before?

KELLY SPEAKMAN: Yes, we're looking to put it back --

CONSTANTINE ALEXANDER: Exactly, externally.

KELLY SPEAKMAN: Externally exactly the way it was except -- well, in -- because there's insurance money involved to put the building back the way it was, in the context of a complete gut rehab which is what we have now existing, some of the units are looking into making some interior changes, sort of moving walls.

CONSTANTINE ALEXANDER: That doesn't concern us.

KELLY SPEAKMAN: That sort of thing. But it does affect some of the

windows.

CONSTANTINE ALEXANDER: Oh, that's true.

KELLY SPEAKMAN: So, what we would like permission to do is sort of two-fold.

One, have permission to put it back exactly the way it was if that's all the insurance money allows. So no changes at all. And if you look at the drawings, this top section is what was here, and to put back the windows exactly in their same spots. And along the bottom are sort of a few external elevation changes. So....

CONSTANTINE ALEXANDER: I'm sorry, I'm a little lost. Are you looking for relief in the alternative? That if you have enough money to relocate windows?

KELLY SPEAKMAN: Yes.

CONSTANTINE ALEXANDER: If you don't have enough money --

KELLY SPEAKMAN: To not -- to put it back exactly the way it was.

CONSTANTINE ALEXANDER: Okay, thank you.

KELLY SPEAKMAN: And in both schemes none of the exterior walls are moving. There's no added volume, no added FAR from what was there originally.

TAD HEUER: You have front window changes?

KELLY SPEAKMAN: The only front window change, and, again, we're not even sure we're really going to be able to do it, is to change where the building is split in half, three units on each side. There was one window in this front room to change to two windows. Everything else is exactly the same. And if we did it on one side, we would do it on the other to maintain the symmetry.

CONSTANTINE ALEXANDER: So, actually you're seeking relief for those window changes. If we grant you relief and you don't have the money to do the

window changes, you don't need to come before our Board anyway.

KELLY SPEAKMAN: Well, we would because more than 50 percent --

CONSTANTINE ALEXANDER: In other words, grant you a variance to rebuild the building otherwise.

KELLY SPEAKMAN: Yes.

CONSTANTINE ALEXANDER: We cover the old window treatment. And then if we approve these plans, it's on the basis of the new window treatment as well. Okay.

KELLY SPEAKMAN: Yes.

CONSTANTINE ALEXANDER: Just making sure I understand.

KELLY SPEAKMAN: Uh-huh.

CONSTANTINE ALEXANDER: Any comments from neighbors or the like? Have you --

BEN RINEHART: I would like to be clear on what's happening on the back of the building?

CONSTANTINE ALEXANDER: You're going to have give your name for the record.

BEN RINEHART: Hi. My name is Ben Rinehart, R-i-n-e-h-a-r-t. I live at 16 Fairmont which is the backyard neighbor, right.

KELLY SPEAKMAN: So this is the back elevation. And this is what it looked like before.

BEN RINEHART: Right.

KELLY SPEAKMAN: Because that's the third floor. And the changes in the revi -- the modified elevation, are to put doors out facing back where some of the units had doors and some had windows. It was a mix.

BEN RINEHART: Right, okay.

KELLY SPEAKMAN: In the middle, which this is actually the staircase, these exactly the same. And one added window on this side in the back on the

third floor. And there used to be one and then there would be two.

BEN RINEHART: Only on the right side?

KELLY SPEAKMAN: Uh-huh. Yeah, only this is the 41 side.

BEN RINEHART: Right, okay. We know them and like them so....

KELLY SPEAKMAN: But otherwise there's not much more glazing to have a pair of doors than it was to have a pair of windows before.

BEN RINEHART: So the footprint's the same, the height's the same, and these are the only changes in the back?

KELLY SPEAKMAN: Yes.

CONSTANTINE ALEXANDER: May be changes, too.

KELLY SPEAKMAN: Maybe. And it could be that we end up putting back exactly what was there.

BEN RINEHART: Right. Right. I

don't have any issues with that.

CONSTANTINE ALEXANDER: Thank you.

We'll start with the public comment.

Anyone else wish to comment at this point?

(No response.)

CONSTANTINE ALEXANDER: No one indicates an interest in speaking.

Questions from members of the Board?
Brendan?

BRENDAN SULLIVAN: No, I'm fine.

CONSTANTINE ALEXANDER: Tom?

THOMAS SCOTT: Just a question about the window configuration in the proposed scheme. The windows on the, I guess the third and the first floor appear to be as they were, and then on the second floor they're kind of jumbled around a little bit more. Different sizes.

KELLY SPEAKMAN: Well, each -- yeah, each unit has a different owner. It's a condo association. So as we've gone through to just try to see what the

unit owners would put back in the context that there's no walls left, there's sort of everything is gone, what would they want? And actually, it's -- there's a few more changes on the 41 which is the left-hand side than the right side. But you can see there's a few changes, you know, in each one. It loses some of the symmetry, but actually it's very hard to see down that elevation anyway. It looks sort of flat and a little bit of asymmetric in that very flat elevation. But in real life as you're looking down the --

TAD HEUER: What's the distance to your side neighbors on either side?

CONSTANTINE ALEXANDER: It's tight.

KELLY SPEAKMAN: It is tight. I was actually there today with my tape measure. And on the left side of the building it's about two foot, six to the

fence that's there now. And on the right side it's more like four or five feet.

TAD HEUER: That's to your property, line, correct?

KELLY SPEAKMAN: Well, that's to the fence. We didn't have a survey done since they're sort of putting it back exactly the way it was.

CONSTANTINE ALEXANDER: The fence is on the property line.

KELLY SPEAKMAN: Exactly.

TAD HEUER: And then how far approximately to your neighbors? On the other side of the fence.

KELLY SPEAKMAN: Yeah, this is a driveway.

TAD HEUER: Right.

KELLY SPEAKMAN: It's actually closer on the right side than the left. So they presumably have a ten foot driveway. So it's maybe 15 feet.

TAD HEUER: So there would be more

visibility at the new window design on left side of the building than it would be on the right side?

KELLY SPEAKMAN: Well, this is what it looks like from the street if you're standing there. And it's pretty hard to see.

TAD HEUER: Right.

KELLY SPEAKMAN: Actually. And the street's a one way in this direction.

TAD HEUER: How tall is the building on your right? Is that also 36 and a half? Were they identical buildings? I presume they were built --

KELLY SPEAKMAN: This building is actually smaller. But they're almost the same height. You can sort of see from this photo.

TAD HEUER: So procedurally, I just have the same question to the previous petitioner, do you need the additional foot and a half that's another

Zoning violation on the height -- if we had to go 35 feet would that be a hardship for the top floor owner? Or is that foot and a half being made up where you went the 35 feet, you'd be fine?

KELLY SPEAKMAN: Well, right now, there was a parapet wall and it drains back to the back of the house and there were gutters back here.

TAD HEUER: Okay.

KELLY SPEAKMAN: So to push the front down below the 35 feet would make the unit on the third floor make them both shorter than they used to be on the inside.

TAD HEUER: Okay.

KELLY SPEAKMAN: So we changed the proportions that they used to have of windows to rooms.

CONSTANTINE ALEXANDER: My assumption is that you actually rebuilt this building in conformance with the

Zoning By-Law, no variance, you would not necessarily be able to create six units in that building or certainly if there were six units smaller than what they were?

KELLY SPEAKMAN: Yes.

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

THOMAS SCOTT: No. I'm glad that this symmetry in the front of the house has been maintained. And I'm less concerned, I guess, about the symmetry of the windows on the right and left side and the rear.

CONSTANTINE ALEXANDER: I noticed, by the way, in the files there are the two sheets that you have there 401 -- A-401 and A-402, there are also these plans numbered one I think through five, these are the offic -- because if we do grant relief, it would be in accordance with the plans. Are these the ones?

KELLY SPEAKMAN: Some of the interior walls have changed, but the outside walls are all exactly in the same place. Which is why I didn't update the plans as well.

TAD HEUER: Do we need to approve the one through five, and are those only the interior plans? In other words, if we approve just the two big sheets, is that sufficient are do we need to approve this one as well?

KELLY SPEAKMAN: I don't know the answer to that.

CONSTANTINE ALEXANDER: Well, I'm curious. Sean, what do you say? You're the one that has -- do you need to approve these as well?

SEAN O'GRADY: I'm not sure I understand. Is there a difference?

TAD HEUER: Yes --

KELLY SPEAKMAN: These plans coordinate with putting the building back

exactly the way it was. So I guess the only difference would be if some of the exterior windows change because the unit interiors change, the windows on the floor plans would change as well.

TAD HEUER: I would say --

KELLY SPEAKMAN: And they coordinate.

SEAN O'GRADY: And this has both, right?

CONSTANTINE ALEXANDER: This has both.

SEAN O'GRADY: For this building I'm going to be looking really only at the elevations. Thanks.

CONSTANTINE ALEXANDER: Let me open it for public comment.

Is there anyone here who wishes to be heard on this petition?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

I don't believe there are any letters in the file. You didn't bring any letters or correspondence with you?

KELLY SPEAKMAN: No.

CONSTANTINE ALEXANDER: I think I may have asked you this before. Have you contacted neighbors and the like about what's being proposed? Not that you have to? Has there been any outreach to the neighborhood?

KELLY SPEAKMAN: Not that I'm aware of. I'm not sure if any of you guys -- the unit owners.

ANNA MEYER: The only thing that I've heard from any neighbors --

CONSTANTINE ALEXANDER: I'm sorry, please come forward.

ANNA MEYER: I'm Anna Meyer. Hi. And the only thing I've heard from neighbors is they want us to rebuild and come back.

CONSTANTINE ALEXANDER: I'm sure

that's true.

ANNA MEYER: That's all I've heard. I haven't heard no negative -- they're sort of desperate for that to happen.

TAD HEUER: And the right side neighbors aren't all there at the moment?

ANNA MEYER: Right.

CONSTANTINE ALEXANDER: Further comments from members of the Board?

Okay, ready for a motion.

The Chair moves that a variance be granted to the petitioners to proceed with the restoration of the building at 39-41 Prince Street. Such motion is made that the variance be granted on the basis that a literal enforcement of the provisions of the ordinance would involve a substantial hardship. Such hardship would be that the structure could not be rebuilt on the same dimensions as the existing structure. And the existing structure was damaged by

fire. And it is a condominium unit of -- condominium structure with six units. So these persons who live in them would not have a place to live.

That the hardship is owing to the fact that this building is a non-conforming structure. And it's in a small lot. So that any rebuilding requires some relief from our Zoning requirements.

That there would not be a substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose from the ordinance.

What the petitioner proposes is to rebuild in the exact same footprint as before and with possible relocation of windows, but such relocation does not appear impede upon the privacy of neighbors.

And the Chair further notes that no

neighbor has come forward to object to what is being proposed.

The motion is being made that the variance be granted on the condition that the work proceed in accordance with plans numbered A-401 and A-402 prepared by Boyce Watson Architects and bearing the date of 3/09/09.

All those in favor of granting the variance on the basis, say "Aye."

(Aye).

CONSTANTINE ALEXANDER: Motion carries. Good luck.

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

KELLY SPEAKMAN: Thank you.

(Whereupon, a discussion was held off the record.)

(8:55 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9760, 29 Warren Street.

MARC TRUANT: My name is Marc Truant. M-a-r-c T-r-u-a-n-t. My address is 32 Warren Street, Cambridge, Massachusetts, and I'm the architect for the project and I'm representing the owner.

And I just met with a letter of support signed by the abutters and the

abutters to the abutters. Attached to the original signatures is the page that gives all their names and addresses, and I kind of tried to key it in with the numbers.

I'd also like to present photographs of the existing egress.

CONSTANTINE ALEXANDER: These are not in the file right now?

MARC TRUANT: No. But this was really the primary impetus for the request.

As you see, we'd like to do -- we'd like to have a -- we'd like to have a better egress.

Initially -- sometime way in the past this was one lot. And it was the same shape as the other lots on this block. And the lot was split at some point in time. And the subject property is here (indicating). And so this -- the egress that's depicted in those photographs, is back in this corner of the

site and of the building. And so when it gets from -- it has this securitas path, and then when it gets to the second floor roof, it comes out onto the roof and then down behind this property here, and this path is sort of in a very narrow alleyway and then out to the street. So, the idea is to -- right now there's an entrance on Jefferson to another stairway. Not quite as securitas as that one, but a winding stairway. So the idea is to have another entrance over here on Warren Street with a stair that comes up from the street and then into a code compliant stairwell and entry into the units on the second, third and fourth floor. In order to do that we need to add about 30 square feet per floor on these two levels. And that's -- it's in your -- in the packet, in the drawings, but I believe it's shaded. And this zone on the third floor, and this zone on the fourth floor. So this -- the wall that's

back in this slot, I'll call it slot for a better word, this area that's between the two buildings, the wall that's back would come forward a few feet. And so the relief sought is that additional FAR because it's a non-conforming building is over these allowed FAR.

CONSTANTINE ALEXANDER: Is the additional FAR that you're adding is for the stair in a sense?

MARC TRUANT: Yes.

CONSTANTINE ALEXANDER: What about the roof deck?

MARC TRUANT: Well, there's another condition here that exists where snow drifts. This is a north this way (indicating). And you get a lot of snow drifting. And this masonry party wall between these two buildings is being compromised by the resultant water and moisture penetration because of this condition. So while working in that area

to increase the space for the stairwell, we want to change the shape of the building at this point basically taking out that triangle piece there and creating a deck at the third floor level. There would be access from the stairwell, will allow roof access, access to the upper roof that doesn't exist right now. And also be able to maintain that area and keep the -- drain that area easier, and also to maintain it and get rid of the snow when it piles up there.

CONSTANTINE ALEXANDER: The deck will accomplish that?

MARC TRUANT: There will be an internal drain. Right now -- I mean, that's the other part -- another part of the variance is that right now everything drains onto the street everywhere.

CONSTANTINE ALEXANDER: Right.

MARC TRUANT: And we would -- the idea is to have all internal storm drains.

And so the other -- one of the other relief -- part of the relief that we're requesting since the building is right now a bit over 35 feet. It's about 35 feet, ten inches is this back flat roof here (indicating), we want to change the pitch of it. I think the high point would not be higher than the high point it is now. It's just that we want it flipped so that we can drain this roof down and get it to an internal drain. Right now it adds to the problem, that back alleyway because all the -- it drains down onto the neighbor's property there.

CONSTANTINE ALEXANDER: So the roof deck you have is a functional purpose not the usual living space?

MARC TRUANT: Yes.

CONSTANTINE ALEXANDER: It has a use of living space, but it also has a functional space.

MARC TRUANT: There's obviously no

outdoor area space for any of the tenants, dwellers here. So it would allow at least a breath of fresh air, and again, that entry would be off of the stairwell so it would be used by all the floors. But it's really -- its orientation is not so much that I think people will, you know, go out there and be using it a lot to party. Because it is on the north side of the building, but I think it works. It helps the street scape because it actually reduces the volume at the street. Right now it's sort of a hole in the building. But it also would eliminate this whole -- this issue here which has really compromised this wall.

BRENDAN SULLIVAN: It seems to have a function in that it also adds to the form. In other words, aesthetically it's much more pleasing. A much nicer transition.

CONSTANTINE ALEXANDER: It's not

the usual platform fix-me-up sticking out from the front of a building.

MARC TRUANT: I think sometime back, the photographs at the Historical Commission that we'll get to this part down here, they show this as a store which it was for many years. But I think at some point this was -- this area was probably maybe open decks or something like that.

And then when these buildings got built, it just got closed in in this very sort of awkward fashion --

THE REPORTER: I need you to keep your voice up. I can't hear what you're saying.

MARC TRUANT: Well, just to point that -- I think it will -- aesthetically the idea of changing the shape of the roof at this point will not only be functionally to improve the drainage of the building and protect the structure, it

is better in terms of the urban street scape to have it in that form.

DOUGLAS MYERS: What would be the distance between the deck and the nearest windows and the side line from that deck to the windows of the nearest building? The nearest other building.

MARC TRUANT: The other building would be -- the building that I live in across the street, so the street I think is about 30 feet wide, so it's probably 40 feet or so from the edge of that deck across the street.

BRENDAN SULLIVAN: But are there any windows along this wall here?

DOUGLAS MYERS: Any neighboring building?

MARC TRUANT: That is a party wall. A blank party wall. There's no way for anyone standing on that deck to look in any of the windows of any of the buildings on this side of the street or

across Jefferson Street.

TAD HEUER: Just so I have a sense of where the stairwell addition is going. So I'm looking at 29 Warren Street site photo. It's going to be, this sloped roof is going to go down and then it's going to be tucked in --

MARC TRUANT: This actually is gonna be -- this leads up to the other stairwell.

TAD HEUER: Okay.

MARC TRUANT: The new stairwell will be in the back of this L. Way in the back corner.

TAD HEUER: Okay.

MARC TRUANT: Yeah.

DOUGLAS MYERS: What are the dimensions of the deck space itself?

MARC TRUANT: It's about 7-by-15 or so.

DOUGLAS MYERS: 7-feet-by-15-feet?

MARC TRUANT: Yes. Maximum of

seven. I think it's a little bit under seven.

CONSTANTINE ALEXANDER: The internal drain, where would it ultimately drain out into?

MARC TRUANT: We're going to bring a new storm drain out to the street. The Warren Street had a sewer separation -- it was part of the sewer separation project between five and ten years ago, so there's a separate storm drain in the road which is where -- it's been great for all the basements on the street. And we would tie that storm drain, into the storm drain. Because as I said, it's been -- with all the water -- I mean, it's a pretty big roof. And from that height you get a lot of water on the sidewalks that's iced up.

So the other relief that's sought at this corner there's an overhang that exists. And we want to enclose this corner. The FAR already exists, but we're

required to seek relief.

CONSTANTINE ALEXANDER: Setback issues?

MARC TRUANT: I think there's some sort of Special Permit.

SEAN O'GRADY: Yes, setbacks. Enclosure of a porch in the setback.

MARC TRUANT: And with that -- by moving the entrance down Warren Street here because of the grade change along the sidewalk, we actually can make the first floor access accessible to the handicapped and also creates an air walk. So in terms of energy, it's a much better situation to have the entrance at this end where we create a vestibule before you get to the stair and then enter the first floor. It's better energy wise.

BRENDAN SULLIVAN: What's the first floor being used for now?

MARC TRUANT: The first floor previous owner had a real estate business

in there. I think we'll probably have an architectural, small office.

BRENDAN SULLIVAN: So the idea is to open it up?

MARC TRUANT: Exactly. And the neighbors and the abutters and the abutters to the abutters seem very happy with the notion that that facade would become more open. It's been in this state for many years. At least since I've been there, over 20 years.

BRENDAN SULLIVAN: Well, it brings it back to life.

MARC TRUANT: Yeah. I guess the -- I wanted to present the photograph from the Historic Commission. I guess they just didn't get it printed in time. But it showed the old store there had an open, a much more open storefront facade.

THOMAS SCOTT: Is that the historic photo?

MARC TRUANT: No. You know,

unfortunately, they were going to make a print and I thought they -- it was only supposed to take a week, but I guess it didn't get printed in time. I'm sorry. I can submit it when we get it.

CONSTANTINE ALEXANDER: Now, the technical zoning issue here besides technical zoning issues here besides the setback because you are enclosing the porch right in the front there. You're adding to the FAR?

MARC TRUANT: Adding to the FAR.

CONSTANTINE ALEXANDER: Very small amount of FAR and a small addition for safety purposes is the stairs?

MARC TRUANT: That's correct. And then there's the work to the roof and any skylights. None of the skylights will be seen from the street, but because the roof is -- parts of the roof are slightly above 35 feet, we're required to obtain relief for that work. And, again, that work is

primarily related to getting a proper drainage so we can internal drainage. And I believe there's one from the third floor apartment, there's one opening onto -- one window opening onto the deck that's within the setback and that's -- that would also come under the -- require relief.

BRENDAN SULLIVAN: Do they need relief, Sean, for adding windows at that ground floor?

SEAN O'GRADY: Not for windows facing the street.

BRENDAN SULLIVAN: So a storefront -- okay. Facing the street.

SEAN O'GRADY: Yes, for those two faces they can basically change it at will.

CONSTANTINE ALEXANDER: And for the record, the structure right now is substantially non-conforming with regard to FAR?

MARC TRUANT: Yes.

CONSTANTINE ALEXANDER: 2.49 in a district that has a max of .75. So that's a substantial overbuild in terms of our Zoning By-laws. But additional FAR that you're adding is very small. It doesn't even change the number. It's still 2.49.

MARC TRUANT: It's really just to allow us to -- we really try to, you know, squeeze it in. It's very, it just meets code now, all dimensions of the stairwell and the entries. But we needed that little bit of relief to get the stair in.

BRENDAN SULLIVAN: What's the age of the building? Turn of the century or so?

MARC TRUANT: Turn of the last century.

BRENDAN SULLIVAN: We've turned, that's right.

MARC TRUANT: 1910 or something like that.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Any other questions? Let me ask, first of all, is there anybody wishes to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one indicates a wish.

The petitioner has submitted a petition. It states: I have reviewed the drawings for the proposed changes to 29 Warren Street, as presented to me by Marc Truant, architect. I would like to express my support for the variances that will be required to allow these changes to happen. And there are three pages -- two pages, some signatures and --

MARC TRUANT: Actually, that's a Xerox. There's one page of signatures. But what I did was I keyed that second page to the list that I received from the Zoning.

CONSTANTINE ALEXANDER: And I

think it's fair to represent that most of the abutters or abutters to abutters have signed this petition.

MARC TRUANT: Actually, all of them.

CONSTANTINE ALEXANDER: All of them. Thank you.

And I don't believe there's anything else in the file on this matter. And these are the plans that we have here that you want us to vote on?

MARC TRUANT: Yes. After listening to Councillor Toomey's letter on a previous application, I'm very sorry I did not contact him.

THOMAS SCOTT: That had no influence whatsoever.

CONSTANTINE ALEXANDER: We've gotten many of those letters from Mr. Toomey.

Are we ready for a vote or any further discussion? I think we're ready

for a vote.

The Chair moves that a variance be granted to the petitioner on the basis requested. And the Board finds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. A hardship being that the -- without this relief the building has a safety problem and has drainage problems.

That the there are special circumstances involving this structure that are not involved in the district generally. This being an older, non-conforming building, and that granting relief will not substantially derogate from the intent or purpose from the Zoning By-Law. In fact, it will be more consistent with the Zoning By-Law because it will improve the safety, improve the drainage, improve the aesthetics of the structure with no detriment to the

neighborhood as evidenced by the fact that the abutters and all parties entitled to notice regarding this petition have in fact signed a petition supporting the variance being sought.

The variances will be granted on the condition that the work proceed in accordance with plans submitted by the architect, numbered 0 to 1.8 and also with elevations 1.1 through 1.7. And is initialed, the first page initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Motion carried. Five in favor.

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

MARC TRUANT: Thank you very much.

(Whereupon, a discussion was held off the record.)

(9:20 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Douglas Myers, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9761, 120 Rindge Avenue and 45-47 Yerxa Road.

As always, name and address, please for the record.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicant. Seated to my far left Mr. Joseph Peroncello P-e-r-o-n-c-e-l-l-o. Mr. Peroncello is the principle of 120 Rindge Ave. Realty

Trust, the petitioner in the case. And to my immediate left is Mr. Ted Touloukian T-o-u-l-o-u-k-i-a-n. He's the project architect.

Mr. Chairman, the -- at this time the petitioner has been having some conversation with the abutters. There are three components to the variance. And I think it's fair to say there are strong concerns on at least two of them. And rather than take the Board's time tonight we would request, since it's the first night the matter is before the Board, a continuance to allow us to see if there's an opportunity to engage in some dialogue around the issues contained in the variance.

CONSTANTINE ALEXANDER: I certainly have no problem with that.

Any members of the Board? I think -- Sean.

JOSEPH RUGGIEO: May I speak?

CONSTANTINE ALEXANDER: Okay. But only on the continuance, not on the merits of the case. Please come forward and give your name and address for the record.

JOSEPH RUGGIEO: Sure. My name is Joe Ruggieo R-u-g-g-i-e-o. And I live at 37 Yerxa Road which abuts the convent. And I guess there's a -- just a feeling that we have a lot of people have taken time out to prepare testimony and prepare things to go into the record, and I think there's a -- someone has hired a lawyer and brought a lawyer with them. And we just wonder if we could have our say before --

CONSTANTINE ALEXANDER: Okay. The problem is if you had your say now and we started into the merits and we continue the case as requested by the petitioner, before we get to the first off -- we would have what's called a case heard. And so to continue the case you have to find the

same five people here to hear the case and that could sometimes be difficult because of people's different schedules. If we continue it right now before we even start into the case, on the day that's continued any five members of the Board can be here. So it's easier for the Board to hear the case, No. 1.

No. 2, if we go forward tonight, I know you have objections, but the petitioner obviously has the case as well. The risk is that we could find in favor of the petitioner and grant the relief despite your objections. While if we continue the case and you have further dialogue, you may come up with a solution -- may, underscore the word may, a solution that meets the neighbor's objections and so you might be better off in short continuing the case.

We generally as a Board, unless we feel it's bad faith, concede to request

for continuances because it does allow for further dialogue and hopefully accommodations between neighbors and the petitioners. So for those reasons -- I think we might favorably act upon a motions for a continuance. I just want you to understand why we might continue the case. It really would serve no purpose frankly to hear -- if we're not going to go through the merits, to hear your objections now. Let's save it for a time when we know the case is coming before us, and if you still have objections to make the objections. And I do apologize -- let me just finish. I know all of you folks have come out here hoping to have a disposition of the case. But, again, the disposition could be unfavorable to you while a continuance and further dialogue could lead to a disposition that is more favorable. Let me just finish my point.

DEBBIE HARRIS: Yes.

CONSTANTINE ALEXANDER: Are you finished?

Ma'am, come forward.

DEBBIE HARRIS: My name is Debbie Harris and I live at One Van Orden Street that abuts the convent.

We sent notification asking them to come to our meeting last night so we could present all of these issues last night so this wouldn't happen tonight, and they did not come. We have concerns that we want to address. We all discussed it amongst ourselves last night. And to come here now and find out things that weren't in the original plans to come up now is what we're not happy about. That's what it is.

CONSTANTINE ALEXANDER: If we were to continue the case, Sean, what's the date to be continued?

SEAN O'GRADY: It would be -- sorry, April 16th.

CONSTANTINE ALEXANDER: April 16th. Would that be enough time from your perspective, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: It would. The good and bad news I think there are some finite issues here and we can reach agreement and frankly, the case may not return if there isn't an opportunity. So yes, I do think that enough time, very sympathetic. I understand the neighbor's position and have great respect for Mr. Crane and his time. And whatever we do, we will give advance and early copies and have some meetings if we can reach an accommodation. We could do it in a month I know we can.

TED TOULOUKIAN: Yes.

CONSTANTINE ALEXANDER: Again, we're not going to get into the merits. If we're talking about having this case heard again on April 16th? Does anyone here have a problem with that date? We

can pick a different date if it will work better for the neighbors. I realize it's --

JOSEPH RUGGIEO: I think I can make that.

CONSTANTINE ALEXANDER: Come forward again, please.

JOSEPH RUGGIEO: Well, I think this is just personal. It's close to Easter. Easter is the 12th. I'll be out of town I think that whole week.

CONSTANTINE ALEXANDER: You can always express your views in writing.

JOSEPH RUGGIEO: I just wanted to say that.

CONSTANTINE ALEXANDER: We're not looking to inconvenience neighbors.

JOSEPH RUGGIEO: You did ask.

DEBBIE HARRIS: What if we suggest that they withdraw the petition?

CONSTANTINE ALEXANDER: You can suggest it, but I'm not sure they're going

to do that.

DEBBIE HARRIS: Why?

CONSTANTINE ALEXANDER: If they withdraw the petition, then it has the same effect that we denied the relief they want, and that means they could not come before us and seek a variance for two years. That's why withdrawals is the same as getting turned down. So, I mean if they want to withdraw, that's their decision. But, first of all, it's got to be their decision. And I don't think it's a decision they want to make because they want to see if they can reach accommodation with you. If they can't, then we'll have a hearing and we'll hear their side of the story, we'll hear your side, the neighbor's side of the story and we'll make a decision.

DEBBIE HARRIS: Okay.

But it's only fair, if we request you attend a meeting that we're trying to

resolve these issues, you show up.

ATTORNEY JAMES RAFFERTY: I agree.

DEBBIE HARRIS: You guys got to be there for us. We'll work with you. And you're not working with us, Jim, and you know it.

ATTORNEY JAMES RAFFERTY: I agree. I don't agree with the last part. I agree with everything before that.

CONSTANTINE ALEXANDER: For the record, I think the Board would urge the petitioner to work with the neighbors to try to meet with them on a timely basis. And I mean a timely basis.

ATTORNEY JAMES RAFFERTY:
Understood.

CONSTANTINE ALEXANDER: Whether you're going to reach an agreement or not. Or at least the issue is going to be narrowed. Make our job easier and make your life in the neighborhood easier, too.

BRENDAN SULLIVAN: Just a comment.

We review these cases starting probably the Tuesday before the hearing, sometimes Monday afternoon, sometimes Tuesday, Wednesday and sometimes this morning depending on our schedules. I would encourage anybody to submit some letters, if you wish, to the Board that we can put into the file that we can review prior to tonight's or to the next night's hearing. Now you can read it that night, but I would also encourage that you submit them so that we can read them beforehand.

CONSTANTINE ALEXANDER: And particularly true in your case where you're not going to be here on the 16th, sir.

DEBBIE HARRIS: We did hear some. We had letters last night.

CONSTANTINE ALEXANDER: You have files in the letter. If there are any more --

DEBBIE HARRIS: But we've had our

dissatisfaction with the way things have been handled, damage to our property that have not been addressed.

BRENDAN SULLIVAN: You need to say --

DEBBIE HARRIS: Had they come last like we asked, we could have addressed all of that. Now they want to go forward but they're not working with us.

CONSTANTINE ALEXANDER: I understand that. And I think they've gotten the message if not from you, from us, that they have a need to work with you. Whether you can reach agreement or not, is something else.

DEBBIE HARRIS: Thank you. That's all we ask.

MICHAEL BRANDON: Mr. Chair. I'm Michael Brandon, B-r-a-n-d-o-n, 277 Pines Avenue. And I'm the clerk for the North Cambridge Stabilization Committee. And we have been trying to initiate meetings

between the abutters, which there are very many, and the developer and specifically suggested when that because there have not been interaction, I suggest to Mr. Rafferty that, you know, they voluntarily seek a continuance. He indicated to me that Mr. Peroncello had indicated to him that they were talking to the abutters. It turns out that was not the case despite repeated requests. We haven't seen copies of the plan. So just so that the Board understands, you know, this is exactly the kind of situation we didn't want and hate to have neighbors who have been greatly inconvenienced by construction issues, all sorts of the things, be called back.

CONSTANTINE ALEXANDER:

Understood. We understand the, the inconvenience of the neighborhood.

MICHAEL BRANDON: Right. And we continue to offer our help in arranging

venues and, you know, providing support when we can.

CONSTANTINE ALEXANDER: I hope you'll have better cooperation going forward.

MICHAEL BRANDON: Right. In terms of there's a very clear sense that certain of the three parts of the petition that were mentioned --

CONSTANTINE ALEXANDER: I don't want to get into the --

MICHAEL BRANDON: Okay. But some of those won't be resolved.

BRENDAN SULLIVAN: More reason for the continuance.

CONSTANTINE ALEXANDER:
Mr. Rafferty knows and I'll remind you, but for the benefit of the audience, to the extent that as a result of your discussions or otherwise, you modify the plans that are in here, the revised plans, and the benefits of the neighbors, must be

in our files by the close of business on the Monday before April 16th. So that if you want -- any neighbor wants to see those plans, that will be in the files no later than the close of business on Monday, the Monday before April 16th.

TED TOULOUKIAN: To the Planning Board?

ATTORNEY JAMES RAFFERTY: No, no.

CONSTANTINE ALEXANDER: Just us.

DOUGLAS MYERS: Mr. Chair, I just wanted to say that in view of the large number of people who have attended and have been -- are very interested in the issue and have taken the time to come and will now come again, I just want to say that if I'm on the panel at the next scheduled hearing, I would be very unsympathetic to additional continuances.

CONSTANTINE ALEXANDER: Well point, well taken.

The other point I'm making,

Mr. Rafferty, if you do come back, and this is a request, and if you're still seeking relief on 120 Rindge Avenue, what I couldn't find in the file this time, and maybe it's just me, but I would like to specifically address is to the extent that you're seeking a change in the variance granted before to really be specific, how what you now want to do, if you wanted to do it April 16th, is different from what we approved from the variance before. Be very clear to us.

ATTORNEY JAMES RAFFERTY: I will do that.

CONSTANTINE ALEXANDER: Anything else? Any other comments?

TAD HEUER: Just a technical -- the Monday Inspectional Services is open until 8:30 on Mondays. Could we have the request be formal, not Inspectional's close of business by five p.m. on that Monday.

CONSTANTINE ALEXANDER: Five p.m..
Anybody else?

ATTORNEY JAMES RAFFERTY: Not at
all.

CONSTANTINE ALEXANDER: I don't
think it's a problem for you. You don't
need the extra three hours.

ATTORNEY JAMES RAFFERTY: I'll
make it noon. I understand it's a good
point.

CONSTANTINE ALEXANDER: Very good
point.

ATTORNEY JAMES RAFFERTY: I do
apologize to the neighbors and to the
Board. It is a case -- whatever anyone
else thinks about this project, and there
are a wide range of views, and I believe
we have over 30 abutters, direct abutters,
is a sheer desire to see it be completed.
At the moment there is not an ability to
construct there until these issues are
sorted out. I appreciate the short

continuance. The objective here is whatever the outcome here is to see this completed so that the people who have been living with it, those who own it, live near it and have working on it really would like to see it done.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard until seven p.m. on April 16th.

The motion to be heard on the condition that the applicants sign a waiver of notice. That's been done. And also that the sign that's posted on the property be changed.

What you do is take that sign with a magic marker, change the date -- Mr. Rafferty knows -- to April 16th. That must be done so the neighborhood is put on notice of the fact that the matter's been continued.

All those in favor of granting a

continuance, so moved.

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Case is continued.

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

MICHAEL BRANDON: Several neighbors sent letters or had letters for the file. Thank you.

(Whereupon, a discussion was held off the record.)

(9:35 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call the very last case of the evening on our schedule. Is case No. 9762, 22 Water Street.

Please come forward and give your name, address, tell us why you're here, why we should grant you relief.

CHRIS KANEB: My name is Chris Kaneb, K-a-n-e-b. I'm with Catamount Holdings.

ATTORNEY DEBBIE HOROWITZ: I'm

Debbie Horowitz H-o-r-o-w-i-t-z with Goulston and Stores, representing the applicant.

BRIAN LAWLOR: And I'm Brian Lawlor L-a-w-l-o-r, civil engineer with the Symmes S-y-m-m-e-s, Maini M-a-i-n-i and McKee M-c-K-e-e.

CHRIS KANEB: I want to thank the Board for having us tonight. I just want to spend a minute and a half here giving you a refresher course of the history of the property, and then Brian Lawlor and Debbie Horowitz will describe the conditions of the site and the legal arguments.

The property that we own here is 22 Water Street. It's also known as the Old Macrae Building, which is still standing today. It's about 60,000 square foot warehouse and office building. It's part of the North Point PUD which is outlined in this dotted area here (indicating).

Which is approximately 50 acres in size. The vast majority of it being located in Cambridge. And our site was covered by the North Point Zoning. The total build out for North Point, when it's ultimately constructed, is around 5.3 million square feet between office, retail, lab and residential uses, and hotel, along with an MBTA station. Our site is for residential use only. And we worked with the Planning Board to permit a redevelopment of the site into residential unoccupied building. Working with Brian's firm SMA Architects and Engineering, the design architect.

We got a Special Permit approved in 2007 from the Planning Board for a residential building for 392 units, 50 stories in height. This is Water Street here (indicating). This is looking down along Central Park, which we can see is -- Central Park is the ultimate build out. And we're at the very tip of Central Park

heading towards Somerville.

CONSTANTINE ALEXANDER: It's fair to say nothing's been built. That's where it's going to look like. But right now it's all entry land.

CHRIS KANEB: Most of it is not built. The Art Stone Smith property is finished and occupied. That's an apartment complex at the corner of the Gilmore Bridge and O'Brien Highway. And also buildings S&T's here on Tango were finished by the Spaulding and Spye.

DOUGLAS MYERS: What was the last thing you said?

CHRIS KANEB: S&T and Tango was completed by JLL, formerly Spaulding and Spye who was the group that had permitted -- originally permitted this build out several years ago involving North Point.

So we finished our permitting. Got our Special Permit in the summer of 2007.

A condition -- one of the conditions of our Special Permit included -- obligated our accessing our property off -- not off Water Street, which is what we prefer and where we could provide access without involving any of the parties, but they obligated us to access through the JLL property which required us to enter into a, you know, an agreement, a partnership agreement of some sort in terms of access and also for construction and some of the utilities and infrastructure. Very shortly after our getting those permits in hand, including the variances that were originally granted by this Board in September of 2007, the two partners of JLL, JLL Gilford, otherwise known as North Point Land Company, entered into -- they were in a lawsuit, they -- against one another. They were forced by a court to sell the property effectively bringing any progress that they had made to a grinding

halt. And unfortunately it's been stuck in that limbo since that time. So because of that initially we have -- we're unable to make any progress in working with them as a partner or certainly, you know, partnering with any lender or the potential development partner of our own because of the uncertainty about this larger development. They continue to be in that limbo. Plus now the larger economic downturn has kind of slowed that down even more if possible.

So, I wish we weren't in this position to be asking for these variances again. We're very proud of the project. We want it to be built ultimately and as soon as possible, but at this stage of the game the forces are beyond our control.

BRENDAN SULLIVAN: The relief you're requesting is it any different than what was requested in 9530?

ATTORNEY DEBBIE HOROWITZ: No.

BRENDAN SULLIVAN: It's expired.

ATTORNEY DEBBIE HOROWITZ: It will
this month.

BRENDAN SULLIVAN: Reboot it.

ATTORNEY DEBBIE HOROWITZ: We want
to reboot what you gave us before. And I
know that a couple of members, I know you
were here and you were here then.

BRENDAN SULLIVAN: It was a
process.

ATTORNEY DEBBIE HOROWITZ: Yes.

CONSTANTINE ALEXANDER: The only
question I had, you puzzle me, the plans
that you submitted with this application,
it's the old plans and then you have a
note revised February 11, 2009.

ATTORNEY DEBBIE HOROWITZ: There
were no revisions. We wanted -- we should
have just said, you know, put the date.

CONSTANTINE ALEXANDER: For the
record, no changes.

ATTORNEY DEBBIE HOROWITZ: No

changes.

BRENDAN SULLIVAN: The Planning Board chimed in on some design features or something like that it really different effect the issue before us but it's just that they had --

CONSTANTINE ALEXANDER: They want to know if it was an open space requirement and because of that you thought we needed zoning relief for parking is my memory.

ATTORNEY DEBBIE HOROWITZ: There were a couple of things. There were two different variances that we asked for. One was a height variance. And the other the other one is the quirky provisions of 1379 that talks about not counting underground parking -- or above ground parking toward FAR if you meet certain tests. And the Planning Board decided that we met those tests and we were entitled to going into that section. But

there were a couple of those sections that were not crystal clear. And so we came to you and said look, the Planning Board interpreted the zoning this way, great. But we've got lenders to satisfy the future investors and we need to make sure that we're covered one way or another.

BRENDAN SULLIVAN: Parking garage was sort of the tail wagging the dog on a lot of this. It was very problematical, I know the garage was.

ATTORNEY DEBBIE HOROWITZ: It's a very expensive parking garage to build underground. We were proposing to build one level underground, but one level above ground but screen to make it look active.

BRENDAN SULLIVAN: Anyhow.

ATTORNEY DEBBIE HOROWITZ: Which ended up additional benefits, you know, to the neighborhood because it provided further screening both from a current, the current rail yards to the current East

Cambridge neighborhood. And from the new T line to the new neighborhood behind us the North Point.

CONSTANTINE ALEXANDER: You indicated the litigation is ongoing between the partners. And given the economic situation, isn't there a problem -- a possibility that you're going to -- if we grant you a variance, it's going to expire anyway. Are you ready to go into the ground if we give you relief?

CHRIS KANEB: No, we're not ready to go into the ground.

CONSTANTINE ALEXANDER: Why are you seeking a variance now?

CHRIS KANEB: We didn't want it to expire.

ATTORNEY DEBBIE HOROWITZ: We actually suggested that it would be -- letting a variance lapse is -- we understand the impact, the importance of having gotten a variance and we didn't

want to let it lapse as if....

CONSTANTINE ALEXANDER: You're not seeking an extension, you're seeking a variance as I understand it.

ATTORNEY DEBBIE HOROWITZ: We came before you for an extension, and got six month extension. It was our understanding that it's this Board's policy no not just grant further extensions so we needed to file a new application.

CONSTANTINE ALEXANDER: You are seeking a new variance.

ATTORNEY DEBBIE HOROWITZ: We are seeking a new variance, absolutely. But we wanted to do it at a time when the old one was still in force. It's not that we're not paying attention. We're still committed to the project.

BRENDAN SULLIVAN: I think it's --

CONSTANTINE ALEXANDER: It's your Constitutional right to do that.

The last time when we did -- we did

the old decision, I noticed that we did not grant the variances, to proceed as we always do, in accordance with certain plans. If we grant a variance this time, I would propose that it would be on the condition that the project proceed in accordance with these plans that have been submitted. Is there a problem with that at this point?

ATTORNEY DEBBIE HOROWITZ: The only issues that I think there could be changes, you know, for instance, we're showing a blue color for those panels on the building. At one point they were red. If those, if things like those colors changed, I assume that wouldn't be relevant to whether this Board granted the variance. So can we say the plans showing the height of the building and the parking garage?

CONSTANTINE ALEXANDER: You're not going to get my vote on that, no. I want

to know the plans. If you're not ready to sign off on the plans, come back before us another night.

ATTORNEY DEBBIE HOROWITZ: I don't have any reason to think the plans are going to change.

CONSTANTINE ALEXANDER: But if they do and we do grant you relief tonight and they do change, you're going to be back before us, understood?

ATTORNEY DEBBIE HOROWITZ: That's, you know, if that's the way you're going to grant the variance?

CONSTANTINE ALEXANDER: That's the way we're going to grant the variance.

ATTORNEY DEBBIE HOROWITZ: Then that's what we're going to do.

CONSTANTINE ALEXANDER: Glad you're so cooperative.

ATTORNEY DEBBIE HOROWITZ: That's what happens when we get here late at night.

CONSTANTINE ALEXANDER: Questions?
I'm sorry.

ATTORNEY DEBBIE HOROWITZ: Do you
want us to go through the --

CONSTANTINE ALEXANDER: Brendan
and I have been through it before. Three
other members have not. So I'll leave it
to you.

DOUGLAS MYERS: Just a small
question. Since this is in effect a new
variance, has there been full compliance
with the public notice procedures?

CONSTANTINE ALEXANDER: Oh, yes.

DOUGLAS MYERS: There have been no
bootstrapping on the existing variance?

ATTORNEY DEBBIE HOROWITZ: No.
No. Absolutely not.

CHRIS KANEB: We've also spoken to
East Cambridge Planning Team. They've,
you know, second their --

CONSTANTINE ALEXANDER: There's a
letter in the file. I'll read it later.

ATTORNEY DEBBIE HOROWITZ: You got a letter from the East Cambridge Planning Team. We've got a letter from Councilor Kelly. So we didn't, we didn't rely on any of that.

BRENDAN SULLIVAN: What this does is gives you another couple years and another possible extension to this particular one until all the pieces of the puzzle come to light.

ATTORNEY DEBBIE HOROWITZ: Exactly. Because these guys are committed really to building it as soon as we get that to happen.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: Anyway.

THOMAS SCOTT: Is there a way to give us a quick summary of the relief requested?

ATTORNEY DEBBIE HOROWITZ: Yes. So two things. Let's do this, Brian, can you do a quick run through, especially for

the members who weren't here last time of the site constraints?

BRIAN LAWLOR: Yes. Very quickly.

ATTORNEY DEBBIE HOROWITZ: One of the things that's so striking about this, as a lawyer, one of the few times that I can actually say, this site was actually made for the variance arguments. So let Brian set that up and then we'll run through the thumbnail.

TAD HEUER: Do you have any field tie backs?

ATTORNEY DEBBIE HOROWITZ: Do we have any field tie backs? We actually do I think on a piece of it. So when we --

TAD HEUER: I don't think it got that far.

ATTORNEY DEBBIE HOROWITZ: Well, it depends on who you ask. We all know the wrong people to ask, but we looked at this. You know, I have to admit I'm not remembering. We looked at this for Chris

a couple years ago, and I'm not remembering what our ultimate answer was. But we're certainly very well aware of the status of the law today.

CHRIS KANEB: And we'll seek appropriate relief as necessary.

ATTORNEY DEBBIE HOROWITZ: We're okay.

BRIAN LAWLOR: Brian Lawlor from Symmes, Maini and McKee Associates. Very briefly we'll run through some of the constraints on the site related to the shape topography and soil conditions.

One of the important things from the overall North Point PUD approval, and from our Special Permit, was the Planning Board required that we pay special attention to the view corridor along Central Park. Essentially the fact that there's an east/west corridor that's a central part of the overall North Point development. That was a very important piece in what

the Planning Board approved for our project. What that means for our site is that we, we start off with a fairly unusual triangular piece, and it's constrained, the west end's only 30 feet in width. But on top of that we have a few other limitations. The first is the fact that the site is divided into two height plans; 120 feet to the north and a 65, 285 foot ban to the south, southeast. So that essentially means that the essentially most developable area, valuable area not to the side, but that's constrained. It's constrained by this east/west view part or what's shown in this hatched area. That's what the Board really wants to see as much as possible of this site open. But if you look at North Point and get a view to the west, it's also further constrained by -- as Debbie mentioned, the MBTA Green Line extension. And this is the MBTA property like so.

And that's a proposed embankment, proposed 24 feet or so in height as it crosses Water Street and remains elevated at that length of the site. And essentially what that means in order to develop a property that's essentially marketable, we have to have a setback for certain residential units for both noise and vibrations. What it's essentially doing on all sides is going to constrain a developable area and take away much of the site area for actual development for the residential space.

Now, beyond the shape constraints, we have constraints related to topography. And they're really run two ways. Firstly, we have the embankment itself, which as I mentioned, is approximately 24 feet in height here and so come down. But still nine feet at this end of the site. So it's essentially, the topography is creating really an area in the heart of the site that is really little use in

terms of open space or for residential use. The topography of the adjacent site is also an issue because it's all insignificant fill. This whole end of North Point essentially has to be raised in order to get -- essentially to get drainage all the way back here to all of this is insignificant fill. This corner of the site adjacent to Dawes Street is approximately ten feet in fill above existing conditions which is fairly extraordinary across as you can imagine for this development. And finally, the soil constraints, very significant soil issues here because of the organic fills that we find here and throughout other parts of the North Point. This would be an entirely pile supported structural slab. But further beyond that, there is a requirement for significant surcharge, significant recharge of soils here because of settlement that will occur over time in

these deep organic fills. It actually extends onto our site. So fills that are required for the roadway will also require significant preload. Significant surcharge. Up to 25 feet of fill as opposed in the right of way here. That fill has to be extended in our site and will remain for up to six months. So fairly extraordinary conditions related to soils and time and expense relating to those issues also.

CONSTANTINE ALEXANDER: And the specific variance you're seeking, there are two.

ATTORNEY DEBBIE HOROWITZ: There are two. One is from the height limitations under the Zoning, we're seeking a variance to enable us to go up to, as Brian showed you, on the height bands. We've got bands ranging from 65 to 120. We're seeking for relief allowing us to go up to 150. As you can see in the

building -- Brian, can you show the building for a minute? The building steps up in three phases. Up to 150 at the tallest end, with maintaining 65 foot band right at Water Street consistent with Eastern Cambridge Planning ordinance. That's the one variance.

The second variance is a variance from that section of 1379 which allows a parking garage built above ground not to count as FAR if you meet certain conditions. A couple of those conditions were that you be adjacent to the Somerville line. The Planning Board decided we counted as adjacent, as meaning near, not next to. And let me just go through the other ones.

There was one other that was at least questionable, which was -- so adjacent to the Somerville line and not more than 150 feet from the lot line between the property and the active rail

use. And because we're going to be next to the new MBTA station and their de-active rail use behind us today, and the new MBTA line is going to run in front of us, the Planning Board decided that that qualified, that it wasn't without question. The other standards for not counting that as gross floor area were it's not more than 25 feet high. It's going to be screened so it looks like comparable quality building. It provides that acoustical barrier that we talked about before. So those are the variances.

CONSTANTINE ALEXANDER: Any questions at this point from members of the Board? No questions.

Why don't you go through the litany.

ATTORNEY DEBBIE HOROWITZ: Let's go through the litany.

So three tests, the literal enforcement would involve a substantial hardship. And those hardships have to be

related to shape or topography. We started with Brian doing the shape and topography. I'll start with the hardships.

The hardships are we can't really use the ground floor area for residential units. And in order to get enough residential units to make this project financially feasible, we need to be able to build taller than the permitted height, otherwise we can't build the building.

The North Point view corridor further squeezes that. The requirement -- there's a requirement in the ordinance for 20 percent open space. But we had a plan that showed that open space actually being not quite -- interesting, but it was above ground. It was on top of the 65 foot area kind of along Water Street, and the Planning Board wanted it to be ground level to be more consistent with what was happening at North Point. That further

creates a hardship of having much more limited area to build in.

In addition, as we pointed out, you know, really not being able to put a building in a very narrow corner of the site. Very narrow end of the site left us with a very small developable area.

Brian talked about the hardship and the cost of the fill that has to be put on the site both to raise up the level and then the level of the site, and then the preloading in order to sustain the building.

Some of the other hardships that were created were created by the Planning Board. I don't know if anybody is here from the East Cambridge Planning Team, but really pushing us not to use Water Street as the entrance, and work with our abutters to get the Dawes Street entrance. That it creates additional cost in terms of having to pay for it and time and

expense of having to negotiate. Now we're going to have to do with probably new owners starting from scratch. So that's additional hardship.

So, those costs just make it not feasible to build within the footprint that's left. Any sort of residential building.

The third problem is that you can grant the relief without substantial detriment to the public good or derogating from the ordinance. So two really critical pieces of evidence and we're not, we're not adversely impacting the public. We've got letters of support from Councillor Kelly and updated letters from the East Cambridge Planning Team.

CONSTANTINE ALEXANDER: Do you have it with you? I didn't see it, the updated letter from the East Cambridge Planning Team.

ATTORNEY DEBBIE HOROWITZ: That

didn't make it into the file? You guys didn't get that?

CONSTANTINE ALEXANDER: No.

ATTORNEY DEBBIE HOROWITZ: No, I don't have it with me. I apologize.

CONSTANTINE ALEXANDER: I'm sure there is a letter of support, that's your representation.

ATTORNEY DEBBIE HOROWITZ: We had a meeting with them.

CONSTANTINE ALEXANDER: Perhaps there's somebody in the audience that can confirm that.

ATTORNEY DEBBIE HOROWITZ: Okay.

And then there are slides in each of the packages that you received that show views of the neighborhood that show the pretty minimal impact. Not that there's no impact, but minimal impact of the building even at 150 feet. Especially, we provided you with images both with and without the Special District 1 envelope in

front of it. Special District 1 runs along Monsignor O'Brien Highway with heights ranging up to 120 feet. When you factor in that envelope, with most of the views in the neighborhood and coming up and down Monsignor O'Brien Highway, you won't see the building at all. You also won't cause a problem for the neighbors at North Point because the buildings that are planned for the property just behind us in the North Point Company land range up to those heights as well.

In other respects we are complying with the requirements of the ordinance and the stated purposes for the North Point PUD district. We're creating a new residential neighborhood. We're maintaining the 65 foot pedestrian way right along Water Street. We've moved our entrance in order to maintain what the Planning Board wanted and the guidelines call for a pedestrian way. And we're

creating the public open spaces which ties back to the rest of North Point.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY DEBBIE HOROWITZ: So, questions on height? That's the basic litany on height.

On the FAR hardships, again, you've seen the site constraints, the shape and the topography. The soil conditions there really drive the hardship because, you know, the water table and the de-watering that's required really increase the cost for doing underground parking substantially. So in order to make the project financially feasible, especially given the fact that we've got to go up to avoid the embankment and the noise and vibration from the T really increases the cost there.

The Traffic Department also, as just another hardship that was created with the Traffic Department, the Planning Board

determined that we couldn't figure out other ways to do this. We couldn't put in tandem parking spaces for instance which was required would have cut down on the size of the parking garage we wanted to create and we were not be allowed to do that.

And similarly, the hardship of having to construct Dawes Street, work with the neighbors in and around creating the entrance to our site in the multiuse path for everybody to use the North Point would create a hardship there. Again, I point to the fact that relief can be granted without derogating from the public good or the intent of the by-law. The intent of the ordinance from the East Cambridge Planning Team, and the letter from Councillor Kelly. And also I just want to point to the acoustical study which is in your packages that point out that this really does serve as an

acoustical buffer in both directions, existing neighborhoods and North Point neighborhood, from current rail lines and future rail lines.

And then the provisions of 13792 which we're asking relief, again, I'll just walk through and show that we comply. Must be accessory to a principal residential use. We've got that. Must serve as an acoustical and visual barrier between occupied space, particularly housing within the district and in the East Cambridge neighborhood. We talked about how we do that in both directions.

We talked about the fact that under 13792 we must be located adjacent to the municipal Somerville boundary line. This is where we're kind of interpretive. There's at least one interpretive question about adjacent to the Somerville line where the North Point district is right next to the Somerville line. We're nearby

and that's how the Planning Board interpreted it.

The parking garage that is being, that counts here must extend no more than 150 feet from the lot line used for active rail use. And, again, because the T, the rail lines right behind us today, we think that counts for today. And because the rail lines going to be right in front of us tomorrow, we think that will count for tomorrow. Must be no more than 25 feet high. We're no more than 25 feet high.

Designs of quality comparable to the non-parking structure. So as you can see, you would never know there was a parking garage on the first floor there. And must be screened with active uses especially where likely to be viewed from pedestrian pathways. So as you can see, from that view corridor down from the North Point Park there's a little -- there's a little cafe there on the first floor primarily

for residents and people using that park. We've created that active use. So we don't derogate from the intent of the by-law or the ordinance. I'll get my words straight tonight.

CONSTANTINE ALEXANDER: Is that it? I'm sorry, finish.

ATTORNEY DEBBIE HOROWITZ: I was just going to ask if you had questions. I'm done.

CONSTANTINE ALEXANDER: I have no questions. Anyone else?

I would ask is there any public comment. Any people in the audience would wish to comment?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to comment.

We have one letter in the file. Actually an e-mail from Commissioner Kelly -- Councillor Kelly, I'm sorry.

Dear Board members -- it's dated

March 9, 2009. I write in support of application 9762 for 22 Water Street. This is a variance request that I have supported in the past as has the neighborhood. Unfortunately the project is reliant upon other actions taking place on adjacent and nearby lands. Actions that through no fault of 22 Water's proponent have not come to fruition. The delay of these actions has led to the expiration of the original variance for 22 Water Street, and it is my hope that this fact will not reflect poorly on the proponent's desire to obtain a new variance for the same project. Once constructed, 22 Water Street will add much to the neighborhood as evidenced by past local support for the project, and I hope that the BZA will support this application. I'm also attaching my letter of support for August 2007 in case you might find that note useful. Please feel

free to contact me should you have any questions or concerns about this communication. Many thanks. Signed -- and printed Craig Kelly.

Comments at this point? I think we're ready for a vote.

The Chair moves that a variance be granted to the petitioner as requested. The Chair notes that it is an identical project and variance request was approved by this Board. A variance was granted on a decision filed with the Office of the City Clerk on September 25, 2007. The decision in that case contains extensive findings which support the variance that was granted then.

The Chair moves that all of these findings be incorporated verbatim into our decision tonight so that these findings will apply to our case as well.

The Chair would note however and emphasize the fact that there is

substantial hardship to the petitioner, substantial hardship being the financial ones that flow from the fact of the unusual aspects of the project; namely, the soil conditions and other shape of the lot. And further from the need to comply with various requirements of the Planning Board and Transportation Department. And that relief may be granted without substantial detriment to the public good.

This project has been extremely well vented in the community. It has the support of both the City and the neighborhood groups, and that it is consistent with the desired project, the North Point development.

The variance will be granted on the condition that the work received in accordance with the two volumes of plans submitted by the petitioner. They are dated July 13, 2007, and marked as revised February 11, 2009. These plans were

submitted by Catamount Holdings, LLC.

And on the further condition -- that they be that you proceed in accordance with these plans.

All those in favor of a motion?

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. The variance is granted.

Good luck this time again.

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

ATTORNEY DEBBIE HOROWITZ: Thank you.

BRIAN LAWLOR: Thank you, again.

(Whereupon, a discussion was held off the record.)

CONSTANTINE ALEXANDER: On the further condition, that whatever conditions were imposed in the earlier decision are imposed in this one as well. So it's two conditions, the same conditions as before, plus in accordance

with these plans.

ATTORNEY DEBBIE HOROWITZ: Thank you.

(Whereupon, a discussion was held off the record.)

(10:10 P.M.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls Case No. 9605, 40-2 Trowbridge Street. Petitioner is Daniel T. Gilbert and Maryland Oliphant.

We previously granted these petitioners a variance on April 23, 2008, and they are now seeking an extension of time before it expires. And there is a letter in the file signed by Maryland Oliphant. No date. That was received by the Board -- by the Office of the Special Services on March 9th.

To whom it may concern: I am writing to request an extension to the building variance case No. 9605 granted on April 23, 2008. The extension is necessary due to financial hardship, i.e. job layoff. Thank you, Maryland Oliphant, O-l-i-p-h-a-n-t.

(Whereupon, a discussion was held off the record.)

CONSTANTINE ALEXANDER:

Discussion? Ready for a motion?

I move that the extension of this variance be granted. All those in favor?

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

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

(Whereupon, at 10:15 p.m., the meeting was concluded.)

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 19th day of March 2009.

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

My Commission Expires:
April 23, 2015

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