

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
Thursday, January 13, 2011 7:00 P.M.
Senior Center, 806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Thomas Scott, Member

Douglas Myers, Member

Ranjit Singanayagam, Commissioner of
Inspectional Services

Maria Pacheco, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting to order. The first item of business on our agenda is the election of officers for the year to come. And just after talking to other members of the Board, the decision's been made to defer that election until our first meeting in February. So there will be no election tonight.

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer.)

CONSTANTINE ALEXANDER: I'll now turn to the cases. As is our custom, we start with continued cases. I'm going to call case No. 9880, 148 Larch Road. Is there anyone here wishing to be heard on that matter?

That case is being continued, Maria?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: Is there a letter in the file?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: We have a letter in the file from the Petitioners addressed to Maria Pacheco.

"Thank you for your quick response and for asking Ranjit due to Steven's travel schedule, we could postpone our hearing for two weeks after our new date." The new date being tonight. "At this time I respectfully

request to move our hearing to 27th January, 2011. This there enable Steven and I to both be present. We are hoping that you might have a space for us at that time. I will hold off on changing the poster until I hear from you."

 Maria, do we have space on the 27th of January?

 MARIA PACHECO: We have nine regular agendas one continued so far.

 CONSTANTINE ALEXANDER: We can take another continued.

 TIMOTHY HUGHES: Is this a case heard?

 CONSTANTINE ALEXANDER: No.

 The Chair will move that this case be continued until seven p.m. on January 27th, this being a case not heard.

 I'm sorry.

 RANJIT SINGANAYAGAM: There's a gentleman.

UNIDENTIFIED MALE: I'm just an interested party. I'll be there on that date.

CONSTANTINE ALEXANDER: That the case be continued until seven p.m. on January 27th. This being a case not heard, a waiver of time for decision being in our files. The continuance would be on the condition that the Petitioner modify the sign and continue to post the sign to reflect the new date of January 27th, and the time of seven p.m.

All those in favor of --

BRENDAN SULLIVAN: Any new drawings or changes be in the file --

CONSTANTINE ALEXANDER: Yes.

In accordance with our usual procedures, to the extent the Petitioner makes any changes to the plans that are already in our files, that those changes must be in our files no later than five p.m. on the Monday before January 27th. If that is not

the case and the plans are brought forth subsequent to that, we'll continue the case further.

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

(Aye.)

CONSTANTINE ALEXANDER: All in favor. Case continued.

(Alexander, Hughes, Sullivan, Heuer.)

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will case No. 9956, 11 Linnaean Street. Is there anyone here wishing to be heard on this matter? This is the continued case.

ATTORNEY SEAN HOPE: Yes. So we actually -- there's another case on.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: We want to hold off on this case because that case will resolve this one.

CONSTANTINE ALEXANDER: I was going to make the same suggestion. We won't do anything other than to not take the case up at this time. We'll wait until immediately following your case on the regular agenda.

ATTORNEY SEAN HOPE: Thank you.

(Case recessed.)

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10024, One Percy Place. This is a continued case. Is there anyone wishing to be heard on this matter?

JOSHUA FLAX: Yes. My attorney hasn't arrived yet.

CONSTANTINE ALEXANDER: I think we're going to do the same thing with this one as we did on 11 Linnean Street. We'll not hear this case now. We'll hear it immediately following the case on our regular agenda, and then whatever you need to do we'll do it then.

JOSHUA FLAX: Perfect. Thank you.

(Case Recessed.)

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10011, 44 Pemberton Street. Is there anyone here wishing to be heard on this matter? Please come forward.

TIMOTHY BURKE: Thank you. Hello, my name is Timothy Burke. I'm the architect for the project. With me is Alexandra Bowers, the owner of the house.

CONSTANTINE ALEXANDER: Burke, B-u-r-k-e?

TIMOTHY BURKE: That's correct, yes.

TAD HEUER: Anyone else with you?

ALEXANDRA BOWERS: And her twin in the other room.

CONSTANTINE ALEXANDER: What about

her?

ALEXANDRA BOWERS: This is Lillian.

CONSTANTINE ALEXANDER: Okay. You were here before us.

TIMOTHY BURKE: Yes.

CONSTANTINE ALEXANDER: You had a dormer that was more ambitious than we would have liked. You didn't comply with our dormer guidelines. You've come back with new plans.

TIMOTHY BURKE: Yes, we have. I can present those.

CONSTANTINE ALEXANDER: But they still don't comply with our dormer guidelines.

TIMOTHY BURKE: We did squeeze it by five feet. And we did also try to -- we're still trying to meet the needs of the client and --

CONSTANTINE ALEXANDER: You can't find six inches on either side of the dormer?

TIMOTHY BURKE: We actually gave up quite a bit of the program to squeeze it into this space that we have now. And the client was hoping that given the size of the house and the proportion of the dormer to the roof, that it wouldn't be too objectionable to be just a little bit larger.

CONSTANTINE ALEXANDER: I'm going to defer to the people on the panel who are more knowledgeable than I. You still can't get all you want with six inches less on either side?

TIMOTHY BURKE: Actually, we took out quite a bit of it.

CONSTANTINE ALEXANDER: I know you took out quite a bit. But the question is can you get down to 15 feet? You're at 16 feet now in length of the dormer.

TIMOTHY BURKE: It would be a matter of squeezing the bathroom down to a -- she has -- there's four people are going to use

this bathroom. And so, the extra is of course, we could, if we had to, squeeze it down.

CONSTANTINE ALEXANDER: Why don't you present the rest of your dormer plans to us.

TIMOTHY BURKE: So, this is the revised scheme is here. It's a shower and a sink here, and a small toilet there. And the laundry is here. This is -- the existing plan has no bathroom on the third floor. And this is where all the bedrooms are located. So, it's a husband and wife and two daughters. And then we still -- so we kept the dormer as architecturally interesting as possible by using a double gable design. And I have a rendering of it here. This is the proposed dormer, and then this was the previous dormer that we had showed the first time around.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY BURKE: We've corresponded

with the owner of the immediately adjacent house.

CONSTANTINE ALEXANDER: Yes. We have a letter in the file which I'll read into the record.

TIMOTHY BURKE: She gave us a letter in support of this.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY BURKE: So we have squeezed it. We've tried to do everything we could with the available space, but because of that stairway there, I don't -- I can't move it into the house any further.

CONSTANTINE ALEXANDER: Well, as I said, the issue for me is the length of the dormer. 16 feet strikes me -- I appreciate you're getting the dormer down closer to the dormer guidelines, but when you're this close, I don't know why you can't get all the way there is my question?

TIMOTHY BURKE: It's more of a

function of a minimum egress size for this -- to keep this at three feet wide. This section here. This I've squeezed as much as I can. So, it would have to come out of the sink area there. As I said, we certainly could do that. We think that in terms of the aesthetics and from the exterior, it wouldn't make a huge difference, but it would make a huge difference on the interior for the functioning of the client's space.

BRENDAN SULLIVAN: What is this here, Tim?

TIMOTHY BURKE: Those are hampers for the clothes. And I tried to keep the plumbing off the outside wall.

TAD HEUER: Is that stacked above the bathroom on the second floor?

TIMOTHY BURKE: Yes, it is. This is the bathroom on the second floor.

BRENDAN SULLIVAN: The bathroom on

the third floor, is that the children's wing somewhat?

TIMOTHY BURKE: Well, the kids sleep here and the parents sleep here.

BRENDAN SULLIVAN: There's a bedroom on the second floor, but that's a guest --

ALEXANDRA BOWERS: That belongs to the other unit.

BRENDAN SULLIVAN: Oh, I'm sorry.

TIMOTHY BURKE: Yeah, you come up the stair from the lower level.

BRENDAN SULLIVAN: All right, I see. So, in other words, this is not --

TIMOTHY BURKE: The bedroom on the second level belongs to the lower level of another unit.

That's the first floor plan here.

CONSTANTINE ALEXANDER: I'm a little confused on the layout. You occupy the first floor? No.

TIMOTHY BURKE: No. That's a separate unit.

CONSTANTINE ALEXANDER: Separate. And the second floor is?

ALEXANDRA BOWERS: Ours.

CONSTANTINE ALEXANDER: Yours?

ALEXANDRA BOWERS: Yeah.

TIMOTHY BURKE: Most of the second and the entire third belongs to --

CONSTANTINE ALEXANDER: Okay, divided between you and your tenant or other unit. Okay.

Questions from members of the Board at this point or should I open it to public testimony?

THOMAS SCOTT: I mean, given the scale of the house, that one extra foot doesn't bother me that much. Architecturally I think whether it's 15 or 16 over the length of the house, which is probably about 40 feet.

TIMOTHY BURKE: It's 42, yes.

THOMAS SCOTT: Yes. So, that -- the scale seems appropriate. So I don't have an issue with it.

CONSTANTINE ALEXANDER: Okay.

TIMOTHY BURKE: And I think the client is willing to spend extra money to use the gable dormer rather than just a shed dormer. We're trying to make it aesthetically pleasing as possible.

BRENDAN SULLIVAN: That's sort of a tipping point for me, that in a 15-foot shed dormer, you can get a very generous bathroom. I mean, we've done it quite a few times, but it's not as aesthetically pleasing. And given this particular house, I think you're right on point that the gable tends to be more in scale, more in character with the house. And I think you may be correct that then that by stretching that balloon a little bit, serves an aesthetic value but also is a

premium to the interior space. So, I concur with you that we really hate to go beyond that. That's sort of a Mendosa line for us. But I think Tom is right on point, too, that the scale of the house may allow for this.

CONSTANTINE ALEXANDER: Comments from other members of the Board.

TIMOTHY HUGHES: I think if the one foot is the only thing that doesn't conform with the guidelines, then I'm good with it.

CONSTANTINE ALEXANDER: I believe that's right.

Are you in compliance with the dormer guidelines in all other aspects?

TIMOTHY BURKE: The other issue was the setback from the side wall. It's supposed to be 18 I believe.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY BURKE: And it's a foot from, one foot from the face of the outside wall.

CONSTANTINE ALEXANDER: So you're not in compliance with two respects?

TIMOTHY BURKE: That's correct. And, again, that was as a result of where the stairway was located and keeping the minimum hallway and still trying to get the space in there.

BRENDAN SULLIVAN: Yes, and that sort of went --

TIMOTHY BURKE: Drives that.

BRENDAN SULLIVAN: That's the tail that wags the dog on that one basically, yes.

CONSTANTINE ALEXANDER: Let me open it to public testimony. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair will note that there is in our possession a letter from Lisa and Mike -- I'm just going to spell the last name, R-a-v-i-c-z who

reside at 38-40 Pemberton Street. The letter's actually addressed to the Petitioners. "The revised dormer at 16 feet long and set in 13 feet from the rear and 16 feet from the front of the house looks acceptable to us. This revised design takes care of our concern that your dormer be aligned so that it falls in the space between our two, third floor windows. Feel free to copy this e-mail and use it as neighbor consent for the Zoning meeting in January."

That's the sum and substance of our correspondence or public testimony. So I'll close public testimony.

Anything further you want to add?

TIMOTHY BURKE: No.

CONSTANTINE ALEXANDER: Further comments from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Ready for a vote.

The Chair moves that this Board -- make sure I have the right plans. 12/23.

TIMOTHY BURKE: 12/23, yes.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance will involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner needs additional living space for a growing family, and the only way to obtain that space is to provide an addition to the structure in the form of a dormer.

The hardship is owing to circumstances relating to the soil conditions, shape or topography. It's really the shape of the structure. It is a non-conforming structure, and so that the ability to modify and to deal with the hardship is constricted.

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.

The relief is relatively modest in nature. In fact, from a point of view of a Variance, you're going to go from 0.8 FAR to 0.84 FAR in a 0.5 district. So the increase in FAR is relatively modest. There are no other zoning issues.

That the neighbor most affected by this relief being sought is in support of the Petition. And that the Petitioner has made a good faith effort to come as close as possible architecturally wise anyway to the dormer guidelines.

So on the basis of these findings, the Chair moves that a Variance be granted to the Petitioner on the condition that work proceed in accordance with plans prepared by Timothy Burke Architecture. They're numbered A1 and A2, both of which have been initialed by the

chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: Opposed.

(Heuer.)

CONSTANTINE ALEXANDER: One opposed.

TIMOTHY BURKE: There's also a Special Permit.

CONSTANTINE ALEXANDER: Right. The second part of this Petition is a Special Permit to relocate certain windows as I recall.

TIMOTHY BURKE: Yes.

CONSTANTINE ALEXANDER: Yes, new windows in the side wall. And those windows

are shown on these very same plans?

TIMOTHY BURKE: Yes, they are.

Yes.

CONSTANTINE ALEXANDER: Why don't you just review those, where those windows are for the Board members.

TIMOTHY BURKE: This is the existing elevation on the northeast side of the house. And this is the proposed elevation. It involves these two windows here. We'd be removing this octagonal window and installing a more traditional double hung with a two over one layout of the crib. And then this window in the stairway was going to be made larger to bring some more natural light into the stairway area.

CONSTANTINE ALEXANDER: Now, the letter you submitted from your neighbor did not address this issue. Are there any issues? Have you talked to the neighbor about it?

ALEXANDRA BOWERS: Which window?
I'm sorry.

TIMOTHY BURKE: We did send these drawings to them. They're out the country at the moment, but they've seen the drawings.

CONSTANTINE ALEXANDER: Those are the ones that out of the country?

TIMOTHY BURKE: Yes, they're in Chile.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Is there anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. There's no correspondence or anything else from the public regarding this matter.

Any further comments? Are we ready for a vote on the Special Permit? I guess we're ready for a vote.

The Chair moves that a Special Permit be granted to the Petitioner to add new windows on a side wall on the basis that these new windows will not impact, will not cause congestion, hazard or substantial change in established neighborhood character. In fact, we're talking about replacing two windows with two new windows. Windows that are really more architecturally consistent with the house generally.

That the continued operation or development of adjacent uses will not be adversely affected by what is proposed. It is an established neighborhood and so the house next-door will not -- or the building to have a house next-door will not be changed by virtue of these windows.

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

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

The Special Permit would be granted on the condition that the work proceed in accordance with the plans identified in connection with the Variance that we granted.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted. You don't need to cry. We gave you a Special Permit.

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

(A short recess was taken.)

(7:30 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: We'll turn to our regular agenda and the Chair will call case No. 10039, One Percy Place.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair. My first case this year. I apologize for my nervous nature.

James Rafferty. Good evening, members of the Board and Mr. Chairman, congratulations on your election.

CONSTANTINE ALEXANDER: What election?

ATTORNEY JAMES RAFFERTY: Did you not have an election?

CONSTANTINE ALEXANDER: We have you off your mark.

ATTORNEY JAMES RAFFERTY: This agenda says that this case was on at 7:30 and you're going to have an election.

CONSTANTINE ALEXANDER: We deferred the election until the first meeting in February. I'm the old chair for better or worse.

ATTORNEY JAMES RAFFERTY: Well, James Rafferty on behalf of the Applicant. Seated to my immediate left is one half of the ownership entity Joshua Flax. He and his wife own this single-family house. And seated to Mr. Flax's left is the project architect. And the spelling of his name is not something I'm familiar with. I'm going

to have you.

JOE ARTLEY: It's Joe Artley,
A-r-t-l-e-y.

ATTORNEY JAMES RAFFERTY: Thank
you, Mr. Artley.

The Board may recall this is a
case -- we're doing the Variance case,
correct?

CONSTANTINE ALEXANDER: Yes, the
Variance.

ATTORNEY JAMES RAFFERTY: Okay.
This is a case which has many similarities to
a case the Board heard a few weeks back which
involved a Special Permit. It's a
single-family home located in the Res B
district, and Percy Place, a small private
way off of Essex Street. And the property is
distinguished by the fact that it's one of the
few conforming lots in the district. It's a
generous lot for nearly any neighborhood in
Cambridge, 5,000 square feet. It has one

non-conformity, however, which brings it before the Board, and that is that the front setback on the property is eight feet. And the required front setback here when you do the averaging is ten feet. So it's ten feet closer. The Flaxes are proposing to put a conforming addition onto this non-conforming property. It will remain a single-family dwelling. It far exceeds the required amount of open space. It meets and exceeds the side and rear setbacks for the property. But the hardship is related to the fact that the property is within the setback.

We looked at -- the last time we left at other options. And frankly we had a conversation with Mr. Sullivan about what would it involve to take two feet off the front of this house and then be able to proceed as of right. It would be disruptive to the fabric, and we were strongly discouraged from pursuing that. So, that is

also a contributing factor as to why this wouldn't happen.

As happens on occasion in Cambridge, properties get lifted, relocated. Sometimes they move a few feet, sometimes they move blocks away. It was an option explored here, but the basement is in a condition that they weren't hoping -- they were looking to avoid to do that type of renovation.

So, the addition itself that Mr. Artley has designed really is in the keeping of an L. Its profile is significantly lower than the main house. It's set back mostly behind the house. There is an area to the left where there's a sun porch, but that's the greatest setback. It's about 20 plus feet, in a district where the required setback is seven and a half feet. There's a letter of support in the file from that neighbor.

So, that's the case. As I said, a

conforming addition, somewhat modest but below the allowed FAR. But we're before the Board seeking relief because of the presence of the less than conforming front setback.

CONSTANTINE ALEXANDER: The plans before us tonight on this Variance case are somewhat different, slightly different than the plans we saw on the continued case. I'm just curious why the change?

JOE ARTLEY: Well, it was kind of a design thing. When we looked at taking two feet off the front, which was then -- I mean, that was something at least worth taking a look at. It necessitated sort of an adjustment in what happened on the first floor between the front room and the back room. And so some of the elements that were in between those two rooms came off to the side, and they have this sort of functional mud room off to the -- I guess this is the Essex Street side of the house. And they

just enlarged that to put some of the -- put a bathroom there and to put some closets there. And just made it a little bigger. And as it goes out, this thing was a design issue.

CONSTANTINE ALEXANDER: Okay.

JOE ARTLEY: The Jack and Jill porch --

CONSTANTINE ALEXANDER: Didn't change?

JOE ARTLEY: I mean, the essence, the mass of the interior part didn't change that much, but we added a roof over a porch because it had the stairs coming up the front and the back. So, I mean, that's the change in FAR or gross floor area is primarily in that porch.

CONSTANTINE ALEXANDER: But you're still a conforming addition?

JOE ARTLEY: Yes, yeah.

CONSTANTINE ALEXANDER: That hasn't

changed?

JOE ARTLEY: Right.

ATTORNEY JAMES RAFFERTY: It's a covered rear entry now in the area under the covering is the difference in the FAR essentially.

CONSTANTINE ALEXANDER: Right.

Questions at this point from members of the Board?

TAD HEUER: Just to clarify, there's no change in your front setback, correct? So there's nothing being built in the front setback to be --

ATTORNEY JAMES RAFFERTY: Right.

As depicted in the plot plan, the hashed area represents where all the work is being done. No change at all in the non-conforming aspect of the structure.

CONSTANTINE ALEXANDER: I'll open it to public testimony.

Is there anyone here wishing to be heard

on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. The Chair is in receipt --

ALLISON CASCIO: Yes, we both want to speak.

CONSTANTINE ALEXANDER: I apologize. I didn't see you sitting there.

ETHAN CASCIO: Actually, I have more of a question for you.

CONSTANTINE ALEXANDER: Sure. Come forward and you have to give your name and address.

ETHAN CASCIO: Oh. My name is Ethan Cascio, C-a-s-c-i-o. And I reside at 36 Essex Street, which is the abutter to the left I guess. I always forget which way you define left. I guess facing the sidewalk. Yes, to the left. It's more of a question for you. In one of my conversations with Josh we

were talking about the issue of whether I should write a letter of support and all that, and about some of the possible ways forward. He raised the possibility that if they did not get this Variance and couldn't build the addition as planned, they might have to sell to a developer.

CONSTANTINE ALEXANDER: Sell to who?

ETHAN CASCIO: To a developer. Who could then raise the building and build any structure they wanted within the Zoning conformity. And my question for you is: Is that really -- if somebody bought the property, could they just do that without going through the development office or any other?

CONSTANTINE ALEXANDER: Well, I don't know if you have to -- you have to get a demolition permit from Historical?

ATTORNEY JAMES RAFFERTY: The

property would be subject to the Demolition Delay Ordinance which affects all structures more than 50 years old. So you would need approval from the Historical Commission.

CONSTANTINE ALEXANDER: But it's just a matter of delay. It's not a matter of --

TAD HEUER: That's 90 days, right?

ATTORNEY JAMES RAFFERTY: That's six months. Demolition, yes.

ETHAN CASCIO: And they could do whatever they want essentially?

CONSTANTINE ALEXANDER: Consistent with the dimensional requirements of our Zoning By-Law. But as Mr. Rafferty has indicated, it's a relatively large lot so they can do a lot.

ETHAN CASCIO: Yeah.

CONSTANTINE ALEXANDER: They can't do anything they want, but they can do a lot though.

ETHAN CASCIO: Right. That basically answers my question.

CONSTANTINE ALEXANDER: I'm sorry I didn't recognize you. I missed you.

ALLISON CASCIO: We were on that side last time.

ETHAN CASCIO: We're confusing you, left, right, left, right.

ALLISON CASCIO: I also want to speak. My name is Allison Cascio. Allison with two L's and Cascio, C-a-s-c-i-o. It never -- it never occurred to me that -- it occurred to me that when someone bought the single-family house, Carla the previous tenant -- this was a beautiful house. We had seen -- we'd been living in our house for over 17 years, and my husband and I plan to stay in the house forever. And we spent -- we're friends with Carla the former owner, and we've been in the house numerously. And we've been on the porch. We've seen so many

people enjoy the house over the years. We saw Carla's grandchildren playing in the playhouse -- the playhouse that's no longer there, because when the big tree was taken down that was smushed in the process and still had been left there the whole time. So many trees were taken down in September.

It never occurred to me -- this is a house to move into. This is a big house with a big yard. It never occurred to me -- I thought this owner would buy the house and do what has become the de rigueur doing the bathroom and kitchen renovations, updating services. It never occurred to me that somebody, a small family who just had their first child, would be adding a 25 percent increase of the property space. Never. Never. This yard was amazing. And you had said last time, the trees that they took down, that -- the pussy willow tree was taken down because of the extension. And even with

that, they could have just cut the tree back. And I don't think the extension is going to go out where the tree was. They could have saved the tree.

Another one of the trees was taken down because apparently there's foundational work, because that's where -- because right now what we see from our yard is their deck. The deck is going to be moved to the other side, the Keating side, and that's why another tree was taken down. So two of the four trees were not sick trees.

I also resented the urban wild description. Carla had a beautiful yard. I always thought of it as Monett's Water lilies. She planted iris bulbs. She planted violets in the yard, and the periwinkles so she didn't need to use fertilizer for the lawn. She thought of that way, about the environment. Her spot it was more like an arboretum. It was amazing.

And I always said to Carla that Ethan and I had the best view for her yard. And I'm the one that has the bird feeder and took care of the squirrels and all the birds. And you don't know how much -- I mean, this was the first snow to not have that pussy willow tree there. And the morning doves, who would know that they just go out in the snow? They like to be there and they've got like these yamikaqs on their heads. And they're just there. Like 23 morning doves be in the tree with very hard snow. This was the first year of not having that, and it was just really hurtful for me. I mean, I loved that tree. And it was a whole ecosystem. It wasn't urban wild. It was a beautiful yard. And, it does just hurt beyond compare.

I mean, I always said to Carla, Ethan and I had a better view of her yard than she did. There was always so much joy and so much life in the house. And this is a very bad way

to start a relationship with your neighbors.

And also Mr. Rafferty said that they were forced -- all the information that I've gotten about the development was from me pursuing it. I mean, the house was bought July 1st. I saw them out on the deck with architect on the third week of August. That was the first I saw anyone at the house. And then finally Labor Day weekend I had Ethan and I go and talk to Josh and Kate to find out what their intent was. And I found out when the tree was going to be taken down. And I was the one who pursued to find out when the trees were, and as it was, the big maple tree we knew from the time that Carla ten years ago had to cut half the maple tree. I mean, it actually needs to be taken down. I mean, it was very huge. It was 70 feet. I knew that Ethan and I's yard would have to be involved with it, and we'd have to move the car. But Josh and Kate, I mean, there was no involvement. We

got in touch with the tree -- we saw the tree people there and we talked to them. And we moved our car, and they used that -- they had to put a cherry picker on our land to take down this huge tree. And all the information that I've gotten is because I've been vigilant and I asked questions and I made sure. And also a piece of the tree that they weren't going to take down, when the tree people were there, they were on the branch. They were going to take down the one maple branch that was in front of our house. And I was like, no, no, no, no, the owner doesn't want that taken down. And I called Josh right away. And so I saved this branch which is something that Josh and Kate didn't want taken down. I mean, knowing that Josh and Kate were not there when the tree people were there, I was there watching the massacre. And it was a massacre. I mean, the whole experience is incredibly upsetting.

And the other thing is I heard you saying with the case before needing to make the house bigger for an extended family. Carla's house is a perfectly good sized house. I think as I started to say miles ago, that I thought they would do just the de rigueur of updating services, maybe taking two small bedrooms and turn it into a master bedroom. I never imagined this. And I just think the way to go -- and they've owned the house since July 1st, is the lack of the blackened space. I mean, I've watched three people use it. And I've protected it at first, and then I was like forget it. And there was one porch light that Carla had on that was outside the kitchen door. And when Kate and Josh came, that went away. And I got in touch with them, and they said oh, yeah, it was a time activated light. They didn't know how to work it. But there was not light anymore. I mean, it's been a black space.

Carla's tenants moved out in the middle of June. There's been nobody living there. Nobody was on-site for the tree stuff. I mean, it's just been dealt with irresponsibly and in bad faith from my perspective.

CONSTANTINE ALEXANDER: Thank you.

Is anyone else wishing to be heard on this matter?

(No Response.)

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

The Chair is in possession of a number of letters with regard to this project. I'm not going to read them into the file. They're all going to be incorporated into the file verbatim. I would just sort of summarize them, and I would say that most of them are in support. There is at least one from a Robert Hilliard who really wants us to delay action on this Petition, to continue it. This person is in opposition and he

cannot be here tonight. So there's a request that we continue this case, and I'll take that up shortly.

We also have a letter in the file from someone, from Sanibel, Florida. A former Mayor of Sanibel, Florida. Who also was a former fellow at Harvard. I suppose that's why this person.... And a letter from a Carla Johnston. And most of her comments are about life in general and in terms of Zoning and not about this Petition itself.

ATTORNEY JAMES RAFFERTY: Mr. Chairman, she is the former owner of the property.

CONSTANTINE ALEXANDER: Oh, is she really?

ATTORNEY JAMES RAFFERTY: Yes.

DOUGLAS MYERS: The same Carla.

CONSTANTINE ALEXANDER: You're right. I missed the name.

ATTORNEY JAMES RAFFERTY: Listed it

for \$800,000 with the brokers as a development opportunity, and now is writing from Florida suggestion I wondered why there wasn't a preservation easement on the property that sold for half that money.

CONSTANTINE ALEXANDER: If anyone wants to read this letter, it was also in the Cambridge Chronicle today. But basically the letter concerns about the environment and removal of large trees, etcetera, addressed by this person. And that's it in terms of the --

BRENDAN SULLIVAN: There's another letter that may be in the file that came in.

CONSTANTINE ALEXANDER: I put it in there. That's the letter of support.

And I'll close public testimony.

Mr. Rafferty, any closing comments?

ATTORNEY JAMES RAFFERTY: No thank you. I mean, there is some information on the trees, the use of an arborist. I'm not

sure it's relevant. If the Board wants to speak to it. I understand the Board's respect of the purview of its role and the role of Zoning in this matter. I will only say, as noted earlier, this represents a far -- this is a significantly less intensive use of the property. It could be a two-family. It's a single. It could be a bigger addition. In nearly every dimensional element of 5.31 this property is beneath -- is below what's required. The notable exception of course being the front setback which is the reason that we're here.

CONSTANTINE ALEXANDER: I just want to take a -- jump off a little bit on the tree issue just for the benefit of the persons that have come down, and as Mr. Rafferty has alluded to. Essentially as citizens of the city we have, I think all of us have a great concern about preserving trees and the like. But that's not really a Zoning issue.

Sometimes we have an ability to preclude trees from coming down as a condition to granting relief, but the trees have come down before the relief -- that's how it is. I mean, at least from a Zoning point of view. Which is not to minimize your concerns --

ALLISON CASCIO: Well, coming down here and putting in on the public record, that it might be something to consider in the future when people are buying houses.

CONSTANTINE ALEXANDER: Well, that was the point of Ms. Johnston's letter, too, about the city of Cambridge should deal with this in a broader way.

ALLISON CASCIO: Yes, exactly.

CONSTANTINE ALEXANDER: Comments from members of the Board?

I'll make an observation at this point. I'm going to abstain on this case because I don't believe this case should have been a Variance to start with. Under Section 6 of

Chapter 40-A, I think it's clear that for a non-conforming one- or two-family residence, and you want to extend it, build an addition, that the test is not a Variance, but it's a two-step test. Does it increase a non-conformance? And if it does, is it much more substantially detrimental to the neighborhood. And I think that's how this case should proceed. To the extent our Zoning By-Law -- I don't think we can read our Zoning By-Law to require a Variance of a case like this. I think it would be inconsistent with Section 6 and therefore not enforceable. I think the requirement on our Zoning By-Law that if the non-conformance is going to increase by more than 25 percent you need a Variance. That can only apply to non one and two-family structures. That's my personal point of view.

I will also say that if it appears to me that my abstention would cause this

Petition to be denied, I will vote in favor of it because I think the project should go forward. But I want to get my views on the record as to why I think we should deal with these cases differently in the future which was the issue when we continued the case.

Anyway, that's my comment. Any further comments or ready for a vote?

TAD HEUER: I have a comment. I think that there is a hardship in this situation. I think the most analogous case is the case we had several months ago in the Larches, where there was almost an identical situation, where there was an intrusion for a pre-existing non-conforming structure into the front yard setback. The addition was a large addition, but it was under FAR. It came directly to FAR once it was approved. It was to the rear. They made other changes that made it somewhat more conforming in that situation. They removed a garage that was in

the setback. But all of the dimensional features were met except for the front setback which was not being added to that situation. And I think when we looked at that, we said that even though Variances are supposed to be granted sparingly, the hardship would be including any addition to the rear of the structure when the non-conformity that was at issue and brought the Petitioner before the Board was actually one that was not being touched whatsoever. And that even given the high standards of the Variances, it would be very difficult not to grant a Variance in these circumstances because the relief was exceptionally minor in relation so the violation of the Ordinance.

I would also commend the Petitioners for having looked at the options of moving the house backwards, of taking off a portion of the house. I know that was a situation that occurred up on Avon Hill where several inches

of the porch was taken off in order to meet the setback. I would, for those reasons, I would be voting in favor of the Variance. I would disagree with the Chairman that Section 6A and the second accept clause would entitle relief here. I would point out that the two tests are, as the Chairman pointed them out, there's the intensity of a non-conforming and then there's a substantially more detrimental test. I would point out the substantially more detrimental test is not restricted to only one or two family houses, but applies to any pre-existing non-conforming use in the municipality. If that were indeed to be coupled with the second accept clause, we would have very little to do in almost any municipality in Massachusetts because the vast majority of the structures pre-exist Zoning. It would essentially render the Zoning (inaudible), and I cannot believe that

that's what the enabling act intended to read. So for those reasons I disagree with the Chairman's decision to abstain, but I would be in favor of a Variance as I believe it is a correct legal remedy here.

CONSTANTINE ALEXANDER: Okay. Anything else or ready for a vote. Yes, Doug.

DOUGLAS MYERS: On the question about the role of the Special Permit versus a Variance, I stated my position at the last meeting, and I will vote in favor of granting the Variance tonight. But I wanted to express the irenic hope that after the vote in the event the Applicant prevails, that a spirit of magnanimity will persist on Percy Place and that the Applicant will literally mend his fences in terms of future relations with neighbors who feel strongly about the application and all withstanding that's being granted.

CONSTANTINE ALEXANDER: Thank you. This side of the table has talked. Anybody else on this side wanted to talk?

The Chair is ready for a vote. The Chair would move that this Board make the following findings:

That a literal enforcement of the provisions would involve a substantial hardship to the at the Petitioner. Such hardship being that because of the non-conformance in the front yard, that any change to the structure, not involving removal of the front yard non-conformance would involve -- would be precluded.

That the hardship is owing to circumstances relating to the fact that this is a non-conforming structure. Non-conforming as to the front yard. But in all other respects it is a conforming structure. And that the addition that's being proposed would be conforming. So

we're talking about a conforming addition to a non-conforming structure.

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 this regard as I said, the reason you're here before us is because of a slight intrusion into the front yard, none of which is going to be changed or affected by what you propose to do. And that in all other respects, the structure when completed, will, except for the front yard setback, will be a conforming structure.

On the basis of these findings the Chair moves that a Variance be granted on the condition that the work proceed in accordance with plans prepared by Joseph S. Artley, A-r-t-l-e-y Architects. They're dated December 18, 2010. They're numbered A01, A02, A03, A04, A05, A06, A07, A08, first page

of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Three.

BRENDAN SULLIVAN: You may want to vote.

CONSTANTINE ALEXANDER: Okay. I vote in favor, Aye.

(Alexander, Heuer, Myers, Scott.)

CONSTANTINE ALEXANDER: And your vote is?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: No.

Anyway, the Variance has been granted.

Maria, when the decision is written up, the decision should capture in some reform my views and Tad's views about the issues of whether we needed a Variance or not. There should be something in the record about that.

(7:55 p.m.)

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

CONSTANTINE ALEXANDER: I think we're ready for the continued case.

The Chair will call case No. 10024. One Percy Place. Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: James Rafferty again on behalf of the Applicant seated at the table. As noted by the Chair, we think the project meets the requirements of Section 6, and the only changes that are made to the property are a conforming and they're significantly conforming, and we

would assert that there's nothing to suggest that there's any adverse impact on other surrounding uses. The Assessor's plot plan tells the story of who's impacting who here. The properties all around this property are far close a proximity than this proposed addition. So to view adverse impacts from the view of a conforming side yard setback as opposed to non-conforming side yard setbacks, would be inappropriate since --

CONSTANTINE ALEXANDER: You're asking us to act on the merits of the continued case to grant the you Special Permit?

ATTORNEY JAMES RAFFERTY: Well, I was persuaded by the logic of the Chairman that --

CONSTANTINE ALEXANDER: No. I'm a little troubled, and maybe I'm just dead wrong. But I don't see how we can grant alternative relief on this case. We granted

you the Variance. I don't think we can now all of a sudden now grant you a Special Permit on a completely different theory.

BRENDAN SULLIVAN: Well, plus this relief is tied to the original plan also.

CONSTANTINE ALEXANDER: Right. I think the more appropriate way --

BRENDAN SULLIVAN: Or to the subsequent plan.

CONSTANTINE ALEXANDER: -- is to continue this case until such time as the appeal periods of the Variance is run. If the Variance is appealed and you wish to pursue this case on the merits as an alternative to fighting the Variance, I'd do it. If not, if the case then -- the Variance is granted, the appeal runs and the Variance is valid or binding then that's it. Then you can withdraw the case.

ALLISON CASCIO: Is this is a procedural thing? I'm very confused. I

thought the Variance trumps the Special Permit, right?

CONSTANTINE ALEXANDER: That's what I'm trying to say in a very complicated and convoluted way.

I don't think we should hear it on the merits.

ATTORNEY JAMES RAFFERTY: I understand. And frankly I didn't suspect there was support for it. But I was so persuaded by the compelling nature of your logic and argument that I thought other members of the Board would feel likewise. I would adopt the very rational suggestion that we continue this case. I understand we -- I share the Chair's view wholeheartedly, but I also understand the practical and jurisdictional questions of two properties and two different forms of relief. And I can assure you that Mr. Flax is eager to get the work started. He is very excited to enjoy

harmonious relations with his neighbors.
And I would hope that in the continued case
we would send you a letter some day and you
would never see --

CONSTANTINE ALEXANDER: I hope so,
too.

ATTORNEY JAMES RAFFERTY: You
wouldn't see Mr. Flax here. You may see me
again. But you wouldn't see Mr. Flax or One
Percy Place for quite sometime.

CONSTANTINE ALEXANDER: How long,
three months, four months? When will this
case be filed, written up, filed and the
appeal period run? Three months from now?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: Okay.
January, March.

BRENDAN SULLIVAN: April?

CONSTANTINE ALEXANDER: What's the
first hearing in April?

MARIA PACHECO: April 14th.

CONSTANTINE ALEXANDER: Okay.

This case will be continued -- the Chair moves that this case be continued until seven p.m. on April 14th.

ALLISON CASCIO: The public has a major question. I'm confused. I mean, they can't start the work until you approve the Variance?

CONSTANTINE ALEXANDER: No. The Variance has been approved. It doesn't become legally effective until a written decision is filed with the City Clerk, and then notices are sent out to the abutters. Then there's an appeal period of at least 20 days, 21 days to the courts. If they --

ETHAN CASCIO: There is a time issue.

CONSTANTINE ALEXANDER: -- if that appeal period -- if no one files an appeal within the 20 or 21 days, then the Variance becomes valid. At that point they can -- let

me just finish. At that point they can do the construction. Until then the case is in limbo if you will.

ALLISON CASCIO: I didn't realize that. So, in other words, (inaudible) the Special Permit.

CONSTANTINE ALEXANDER: That's correct.

ALLISON CASCIO: I had no idea.

ATTORNEY JAMES RAFFERTY: Well, they can't get the permit for work authorized under the Variance.

CONSTANTINE ALEXANDER: Well, the Variance.

ATTORNEY JAMES RAFFERTY: The Variance. But there's other work being done at the property.

CONSTANTINE ALEXANDER: Yes. Well, of course.

ATTORNEY JAMES RAFFERTY: I wouldn't want someone to think if there's

construction activity before April that there was a violation.

CONSTANTINE ALEXANDER: You understand the point?

ALLISON CASCIO: The thing that has to do with while why we're here in the first place.

ETHAN CASCIO: A little confusing but I think we've got it.

CONSTANTINE ALEXANDER: All right. Sorry for the confusion.

BRENDAN SULLIVAN: Just to the point of clarification, that the Special Permit is tied to an original set of drawings. Should this case go forward on the 14th and you wish to change the drawings, albeit the new drawings, then that should be in the file beforehand.

ATTORNEY JAMES RAFFERTY: Thank you for that.

TAD HEUER: If I can just make a

clarification in this case. To the extent that there is any indication to the Petitioner that the Building Commissioner acted inappropriately in suggesting that you had a Section 6 statutory Special Permit, I would say that is not improper action by the Commissioner. He made a determination that this fell within, in his determination, the purview of Section 6 Special Permit. When it came to the Board, the Board disagreed on the facts, but it was not an unreasonable interpretation by the Building Commissioner to make that suggestion to the Petitioner. So even though we ended up here with a second and perhaps more sequitous (phonetic) route, I wouldn't want to leave the Petitioner with the impression that there was an intentional run around from the Building Department that required extending this and having a new Petition brought. It was a reasonable position for him to take because that route

is available in certain circumstances, it's just happens on the backs of the Board didn't concur.

ATTORNEY JAMES RAFFERTY: Some members.

TAD HEUER: Some members.

ATTORNEY JAMES RAFFERTY:
Understood. Thank you.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on April 14th on the condition that this being a case heard, so a waiver of time for decision is in the file. But on the condition that the sign for the continued case be modified and maintained. Just change the date.

JOSHUA FLAX: Yep, I noted the new time. That's the Special Permit side.

CONSTANTINE ALEXANDER: Just the Special Permit side. The other one you have to maintain until the decision is rendered,

but not as long as this one.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Heuer, Scott, Myers)

(8:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10040, 11 Linnaean Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY SEAN HOPE: Good evening, Mr. Chair.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY SEAN HOPE: Members of the Board. Attorney Sean Hope on behalf of the Applicant. To my right is Mr. Eugene Wang. And to my left is Mrs. Jie Lu. These are the

owners of 11 Linnean Street. We're seeking a Variance to the open space requirement to allow a single car parking on the Humboldt Street side. This property is located in Res B and is on a corner lot. What distinguishes this property is it has a large front yard on the Linnean Street side, about 47 feet in the front yard setback. One of the issues and the reason we're here tonight, is because even though there's about 40 percent or over 40 percent of yard on this space, which would allow for parking, close to half of that 40 percent of the yard has a slope of greater than 10 percent. So according to the Zoning Code that's not accountable as usable open space. So, we have 26 percent of the required 40 percent for open space.

This parking plan was also brought before the Avon Hill Commission District for approval and Certificate of Appropriateness. They ruled at that point that the as-of-right

parking would be on the Linnaean Street side. It was their determination, one, because Linnean Street is two way traffic. It's a major thoroughfare. And also because the slope, the most appropriate space for parking was on the Humboldt Street side. At that point my clients had put together a Petition for a curb cut thinking they would have sufficient space to do parking on that side. There's been a series of land surveys and studies done on the lot. It's a particularly unique lot, and we've had actually two different survey companies come up with slightly different numbers. We were pushed by Inspectional Services to get the exact number. We did believe at one point we'd be able to meet the open space requirement as of right. We're short of that now. So, we want to park on the Humboldt Street side, and we believe that's the best and most appropriate place to park. And also given by the Avon

Hill District, we are missing sufficient open space and that's the reason we're not doing the parking as of right. There was a question by one of the neighbors of whether or not we would do the parking -- there were issues of whether we would be expanding the parking space, taking over property. There was also questions if the Petitioners would be doing condos. Because of these questions and because of the neighborhood outreach, we did all the studies and we tried to make all the information available so that it's very clear that we're looking for one car parking on the Humboldt Street side in accordance with the Avon Hill Conservation District recommendation.

CONSTANTINE ALEXANDER: And the plan that I guess been submitted to the Commission?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: And the

question I wanted to ask you. Oh, the curb cut. If we were to grant relief tonight, you're not seeking relief from us for a curb cut. So you would have to go then before what, City Council to get a curb cut?

ATTORNEY SEAN HOPE: We have to go to Public Works, there's a formula and application. And actually, Applicants have already went through that process and got the sign-offs, but we didn't have Zoning dimension. So, we have that support, and that would be the process that we have to go through with the curb cut.

TAD HEUER: How large is the parking space physically? I guess my question is --

JIE LU: Ten feet. Ten feet wide.

ATTORNEY SEAN HOPE: So, in the file there should be -- there was a parking site plan.

TAD HEUER: Yes. Actually I'm looking at that.

ATTORNEY SEAN HOPE: Oh, okay.

CONSTANTINE ALEXANDER: Is that it?

ATTORNEY SEAN HOPE: That shows the parking space on it. That's actually one of the surveys that we had conducted that shows that. And this was in the file as well. This is in the file. It just shows the actual parking space. So that there's an existing patio.

TAD HEUER: Right.

ATTORNEY SEAN HOPE: And then the driveway plus the parking space which he moved it away from the adjacent property. So if you're facing the Humboldt Street side, there's a property to the right. And so we're not having the parking space abut the property line, but actually almost abutting Linnaean Street so that it's not adjacent to the neighbor's property.

TAD HEUER: So I guess my question is you have a proposed driveway and then bricks,

bricks is the parking space?

ATTORNEY SEAN HOPE: No, that's just a patio. And that's existing.

TAD HEUER: Patio, right. Okay. So you're parking in proposed driveway kind of on the word proposed; is that right?

ATTORNEY SEAN HOPE: Yes.

TAD HEUER: I gather part of the concern originally was that essentially what you created, even though you're nominally allowed one parking space here by the Ordinance, you can stick two cars in there if you wanted to. I mean, given that you're going to be putting a car there now, is there any willingness from the Petitioners to, you know, unbrick this patio and could bring it into a non-parkable space which may alleviate some of the concerns about people looking at this and saying I see your permit for one, but there are always two there because it's a nice thing to do, seeing you've got a bricked

easily parkable surface?

CONSTANTINE ALEXANDER: I think in response, isn't your Certificate of Appropriateness from Avon limited to one parking space?

ATTORNEY SEAN HOPE: It does limit it to one parking space.

CONSTANTINE ALEXANDER: We're going to incorporate in our motion that you comply with these conditions. They'll only get relief to allow for one parking space.

TAD HEUER: I don't deny they'd be granted relief for one parking space. I'm asking what actually happens -- I mean, the last thing we want to do is prevent Inspectional Services to come running out and patrolling parking because they have other things to do with their time. But if there's a non-permeable two spaces, I would prefer to have Inspectional Services not running out and doing that.

CONSTANTINE ALEXANDER: I don't think Inspectional will. I think if the neighbor complains --

TAD HEUER: Exactly.

ATTORNEY SEAN HOPE: I think because this issue has been going on for so long, the neighbors are well aware and I think it's been clear. But I do see your point.

I would say even if it wasn't paved, you know, if the Applicants, although they wouldn't, you could park there. But, also in the Certificate of Appropriateness there's also a wood deck that's there. They want to keep the existing conditions. They talked about -- they were asked specifically just talking about moving potted plants. So actually part of the condition was to have the site remain as is. So we may actually have to go back before Avon Hill if we wanted to actually move that brick patio space to determine what kind of surface they want

there, crushed stone or mulch but as existing.

TAD HEUER: But Avon Hill is non-binding, right?

CONSTANTINE ALEXANDER: My intention is when we make the motion for the Variance, to tie it so they comply with the conditions that are set forth.

TAD HEUER: Oh, sure. But I mean I guess my only point is that when you point out, you know, they're only talking about moving potted plants, who cares quite frankly. It's non-binding.

BRENDAN SULLIVAN: Now, in 2008 Avon Hill gave their approval for the parking space on Linnaean Street, and that was not exercised obviously. And now they've come back and they've approved on Humboldt; is that correct?

ATTORNEY SEAN HOPE: Yes.

BRENDAN SULLIVAN: Okay. And I'm

sorry, Mr. Hope, what were you sayings, it's more appropriate or.

EUGENE WANG: Well, the decision to move from Linnaean Street to Humboldt Street is compelled by a number of obvious reasons. One is the traffic. The Linnaean Street, the two way busy street, that is one of the main artery linking Mass. Ave. and Garden Street. It also has nursing home, a high school --

BRENDAN SULLIVAN: Right, which I can't reconcile is why they would have approved it in 2008.

EUGENE WANG: Well, because there was --

JIE LU: Hardship.

EUGENE WANG: -- objection from one --

JIE LU: No, why they approved because of hardship. We need it.

EUGENE WANG: Because of hardship, yes.

BRENDAN SULLIVAN: But those conditions existed in 2008 as they exist now.

EUGENE WANG: No, no, at that time because there was objection from one neighbor. And so we, therefore, made a compromise. We felt that there was a right to park on Linnaean Street even though we didn't want to do it. We were very reluctant position, and actually also very much against the will of the community because that involves cutting down trees, making the aesthetic effect really compromised.

BRENDAN SULLIVAN: Okay.

EUGENE WANG: And the opposition is on record.

BRENDAN SULLIVAN: Okay.

EUGENE WANG: A number of reasons. So, and we finally can draw common sense. We say well, it's probably better to seek Variance rather than just do the Linnaean Street side, which is a number of ways is not

desirable solution.

BRENDAN SULLIVAN: Okay. All right.

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

I'll open it to public testimony. Is there anyone here wishing to be heard on this matter? One at a time, come forward and give your name and address.

SARAH COOK: Sarah Cook, Four Humboldt Street. Directly across from the patio area that's been described. And my husband and I have no objection to a parking area there. There have been many -- over the years, many questions from other owners there about parking, and there have been many discussions among the community. And I think it is only fair in Cambridge and the 21st century to grant as much as we can, two people to be able to park one car, and they're

limiting themselves to one car. There may be people who are suspicious of this, but to go around Cambridge and look at all the one car parking areas that sometimes have two cars. But these people have promised that they will have one car. I believe them. I don't think they have to take up a beautiful patio area and incur more cost because somebody's suspicious. That maybe at some point two cars might go in there? Well, it wouldn't bother me and I'm directly across the street from the parking area.

TIMOTHY HUGHES: Thank you.

CONSTANTINE ALEXANDER: Thank you.

SARAH COOK: That's my statement.

CONSTANTINE ALEXANDER: Thank you.

You'll have your opportunity. She's next.

SALLY TARTUF: My name is Sally Tartuf (phonetic), and I live at 15 Linnaean Street. And my biggest concern when this is all going on is that we're going to lose some

trees, we're going to lose a streetlight and we're going to lose one or two parking spaces. We can't afford that on the street.

CONSTANTINE ALEXANDER: I don't think you're going to lose a tree. Let me just make that clear.

JIE LU: She was talking about the permit before.

CONSTANTINE ALEXANDER: Oh, on Linnaean Street? I'm sorry, I misunderstood.

SALLY TARTUF: Right. So, we can't afford to lose any more parking spaces. When there's no -- you wouldn't lose a parking space on Humboldt at all. At all. You wouldn't lose a streetlight, you wouldn't lose a tree. You've got parking -- I mean, a place to park without losing a parking space or two. That is my issue.

CONSTANTINE ALEXANDER: Thank you. So you're in support?

SALLY TARTUF: Yes.

CONSTANTINE ALEXANDER: You're next, yes.

BARBARA BAKER: I'm Barbara Baker. I'm at Seven Linnean Street, and I'm directly almost across from -- our building faces Humboldt from Linnean. I'm definitely in favor of allowing the Wangs to have parking there. When we heard that there was going to be a driveway on Linnean, a lot of us were extremely upset. A lot of us do not have parking, so it seems more logical to have the parking on Humboldt Street where a lot of houses on either side of the street have driveways and parking. I don't know what else to say except that, I, you know, I'm happy for them to have one space. I'm happy for them to have two spaces, whatever. And I would also like to say that everybody in my building is definitely in favor of this and that's 13 units. We have one more here that

a lot of people couldn't come today.

CONSTANTINE ALEXANDER: Thank you.

TIMOTHY HUGHES: Thank you.

BARBARA BAKER: Thank you.

CONSTANTINE ALEXANDER: Thank you very much.

HELEN WALKER: My name is Helen Walker. I live at 43 Linnaean Street. I'm a retired architect. I became interested in this question because the previously approved space was so little in keeping with the general characteristics of the neighborhood. I mean, this is not the San Francisco. We don't excavate parking spaces into hillsides or retaining walls especially when there's not a suitable level place on the site. I'm very grateful they didn't go ahead with the previous scheme. I think this is a very appropriate parking space. It's just like the other spaces on the street. I just urge you to approve it because I think it's

the right place for this parking space.

CONSTANTINE ALEXANDER: Thank you.

HELEN WALKER: Thank you.

CONSTANTINE ALEXANDER: Now, Ma'am.

KAREN WELLER: My name is Karen Weller (phonetic), and I live at 12 Humboldt Street just off the street from Jie and Eugene. And originally I was opposed to the parking -- any parking in this present requested area. I have been to speak to Gene and Jie and I am willing to go with one parking space. However, I think that it is important that it be limited by some kind of landscaping. And I spoke to Jie and Eugene about this and they assured me that there would be some landscaping done, and that they would reduce the patio size. Now, I'm hearing something a little different that you're -- is it true that you're wishing to keep this -- first of all, I never believed this was a patio. This was done to be two

parking spaces. And I'm very happy to go along with one parking space as long as there is some kind of limiting landscaping done so that you can't park two parking spaces there. Because while we may be able to trust Eugene and Jie, this house -- we have to think about the future, and some day this house could be sold and maybe, you know, and then you've got, you know, then you're in a situation where that's going to be really difficult to control. And I don't think that, you know, neighbors should be put in the position of having to call if somebody decides that they're going to park two cars there. But, as I said, I'm very happy to go along with one parking space. And as a matter of fact, my neighbor Jeffrey Frankle (phonetic) came to me as an intermediary between my position and the position of Jie and Eugene and said why don't you do a drawing and show them perhaps. At their request, I did do a drawing of what

it would look like, a suggestion. This is a suggestion only, of what it would look like with one space with some kind of landscaping to limit the possibility of having two cars parked there. I don't think the pots are gonna do it frankly.

CONSTANTINE ALEXANDER: If I may make a comment. I'm a little puzzled. People are concerned about we approve one parking space and two cars end up using it. And that the neighbors will have to, if you will, blow the whistle. If we were to turn down relief tonight, and they still continue to park there, you have the same issue. They're violating the Zoning By-Law, and the neighbors would have to blow the whistle. So I don't know why the issue is any different. Why the concern from one to two. Particularly if the Zoning Law -- I mean, for our Variance decision were granted, it makes it clear it's going to be one space. And we

can -- we take the rules of the understandings the conditions, if you will, of the Conservation District Commission which says that the existing pavement and wood platform deck would not be altered and that there will be no street trees removed from the curb cut and only one parking space. So it strikes me we are only talking about one space. If the Zoning By-Law's going to be violated, it's going to be violated. And zero to one or one to two, the neighbors have a means of protecting themselves or any other interested citizens of the city. They'll call Inspectional Services and Ranjit will send Sean over there immediately to look into the matter.

KAREN WELLER: But why when they've already agreed to provide some kind of landscaping, I mean I had a long conversation with Eugene and Jie and they both agreed that they would do some kind of landscaping to the

size so that it truly could be a space for only one car. Why not? I mean, it's going to be --

CONSTANTINE ALEXANDER: It can be.

KAREN WELLER: And the other thing that that does is, I know that my neighbor Virginia Burnes is opposed to this, if you provide a buffer of landscaping, which one space would allow you to do, then perhaps she doesn't need to oppose this.

CONSTANTINE ALEXANDER: I think the only issue about the landscaping is you have an agreement in the neighborhood, and that's where it should stand. If we put a landscaping condition in the Variance, it makes it very difficult for Inspectional Services to enforce. What kind of landscaping? Six-foot bushes? Three-foot bushes? I don't want to get into it.

KAREN WELLER: Just so somebody can't drive on top of it.

CONSTANTINE ALEXANDER: But whether there's landscaping or not, if we grant relief, it's going to be limited to one parking space.

KAREN WELLER: Right.

CONSTANTINE ALEXANDER: So landscaping or not, there can only be one car parked there legally. If it's done legally or illegally with no landscaping. You're seeing shadows on the wall as far as I can see.

TAD HEUER: It can't be done illegally if there is landscaping, though, and I think that's the point.

KAREN WELLER: Yes, that's the point.

CONSTANTINE ALEXANDER: Yes, but they take the landscaping out. They remove it one day and the next day they park two cars on it.

TAD HEUER: I'd say we have this same issue whenever we talk about seven-foot

ceilings and whether people are putting in additional studio apartments or not and whether we can enforce it or not. And the best way to do it is to tell people keep the short ceilings because no one wants to live in a six-foot-six basement apartment. There are practicalities and there are legalities. I think what is being expressed here is that what is legal, and certainly as I think one of the previous people just mentioned, you know, if this house is sold and someone looks at something that for all intents and purposes, it looks like two parking spaces, particularly in the City of Cambridge particularly on Linnaean Street, I can't imagine there's a real estate agent --

KAREN WELLER: Humboldt.

CONSTANTINE ALEXANDER: Humboldt.

TAD HEUER: Well, yes, it's a Linnaean Street house, right?

KAREN WELLER: Yes, it's on the

corner.

TAD HEUER: Yes. So I mean if you're advertising a Linnaean Street house, you know, a large house in Cambridge, I can't imagine a real estate agent in the city who wouldn't like to be able to say two parking spaces and let somebody else figure it out later.

KAREN WELLER: Yeah.

CONSTANTINE ALEXANDER: Until the title check is done and you can see you can only have one parking space.

BRENDAN SULLIVAN: Well, the agent would say there's the parking space.

KAREN WELLER: In addition with a very, very little, you know, green space, the houses on Humboldt Street are huge, they're close together. And so that's, that's an issue, too. That's another reason that to be sure that it's only one. But, you know, I'm in total favor of one space if it -- and I just

think that from a practical point of view as you said, it's -- and the future of the street and the way it's going to look, I think it would be a good idea to have a limiting factor. So that's it.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

I know you raised your hand, but I wanted to give someone else a chance to speak first. Is there anyone who hasn't spoken? Ma'am.

UNIDENTIFIED FEMALE: He's going to talk for me. He knows the law.

ATTORNEY TIMOTHY TWARDOWSKI: Good evening, Mr. Chairman, members of the Board, my name is Tim Twardowski, Robinson and Cole here representing Virginia Burnes who is the abutting property owner at Seven Humboldt Street, and the abutter who is most affected by this particular application. I apologize for referring to notes. I was only retained

by Ms. Burns earlier today so I may refer as necessary if you will.

The first question I have with regards to this application is the Zoning District itself. The applications assert that this is in a Residential B Zoning District. However, in reviewing the Zoning map, it appears that only a portion of this lot is located in the Residence B. I have copies of the Zoning map printed from the city's GIS website as well as from the Board of Appeals' website and I'll submit these for the record. These materials are zoomed in on the property, the subject property 11 Linnaean Street. You'll see that the front portion of the lots, I would say approximately 60 percent or so, maybe a little more, facing -- moving back from Linnaean Street is located in Residence B. However, directly beyond that point, and closest to my client's property the Zoning district changes to

Residence C-2 and again to Residence A-2. Of particular importance this Zoning matter is the front yard setback. The Applicant asserts the applicable front yard setback here is only 10 feet. That assertion is based on an exemption provided under Section 5.31.3(b) which applies only in Residence B Zoning District. Simply by eyeing the Zoning maps here, it's clear that the area which is proposed for this driveway is not in the Residence B Zoning District. Therefore, the front -- the applicable front yard setback -- and, again, it's unclear because the materials submitted in support of the application do not indicate the Zoning district boundaries, but just by eyeing the application it looks at least a portion of this proposed driveway would be located in the A-2 Zoning District which requires a 20-foot side yard setback. That becomes particularly important under Section

6.441(c) of the Zoning Ordinance which prohibits parking in a front yard. To the extent that the front yard is 20 feet, it seems it's virtually impossible given that the distance between the property line and the existing structure, according to the plans submitted with the application is 31.17 feet. That leaves only a little more than 11 feet for this parking space.

Moreover Section 6.441(a) requires that parking on the -- in cases where an existing structure has -- is residential and has windows on the first floor, has to be set back five feet from that structure. So that removes another five feet. So we're down from 21 -- from 20 feet plus five, we've got a six-foot area in here for parking theoretically. They haven't requested relief from either of these Zoning provisions. All they're requesting relief from in this particular instance is open

space.

TIMOTHY HUGHES: What are the numbers for C Residence area? Why didn't you do that math?

ATTORNEY TIMOTHY TWARDOWSKI: Well, the C applies to formula, H plus L divided by 4. I don't have sufficient information and materials that were provided --

TIMOTHY HUGHES: Because as I look at this overlay, the parking space is going to be in the C Residence area.

JIE LU: And it's ten feet. Actually, it's --

TIMOTHY HUGHES: And that's the numbers that we should be dealing with here. I don't think the A stuff is relevant.

ATTORNEY TIMOTHY TWARDOWSKI: I don't think we can make that determination conclusively. I don't know if Mr. -- if Ranjit has looked at that in particular to determine whether that is

located -- especially if it has to be set back five feet from both sides of this structure because there are windows on both sides of that particular corner where this driveway is shown as being -- abutting this structure. I can't say definitively where exactly this proposed parking driveway lies with regards to Zoning boundaries. Because they're not shown on any plans submitted.

TIMOTHY HUGHES: What was your reason for not doing the math on the C Residence area?

ATTORNEY TIMOTHY TWARDOWSKI: I don't know what the height of the structure is. The formula requires information with regards to height as well as length. Materials that were provided to me, I just don't have those figures.

TAD HEUER: But in the file that they submit, and I understand that you're retained today, and I appreciate that. You know, you

can go and -- I mean, I have a sense that you can't even give us a guess as to what -- I mean, if I'm just looking at this map.

ATTORNEY TIMOTHY TWARDOWSKI:

Uh-huh.

TAD HEUER: Proposed driveway is here. It's tucked into the corner of building. I eyeball that map, it looks the parking space is tucked into that corner of the building. That's predominantly in the C-2 Zone.

ATTORNEY TIMOTHY TWARDOWSKI:

That's correct, but that ignores the five-foot setback requirement under 6.441(a).

TIMOTHY HUGHES: I don't think it's accurate in this particular situation.

ATTORNEY TIMOTHY TWARDOWSKI: I would assert that it is. And I would ask the Board --

CONSTANTINE ALEXANDER: Actually,

my reaction to all of this, I'm probably dead wrong, is that -- and you touched on it, sir. Is that the Petition here is only for a Variance for open space. If there are legal issues with regard to putting parking on that open space, then that's another case frankly. If you are right, then they may need a Variance, a further Variance beyond what they're seeking tonight. But that's not the issue before us tonight. The issue before us is whether they have made a case to reduce the open space on the lot from the required 40 percent to 29 percent. And the reason they're reducing it is to put a parking lot -- a parking space. Not a parking lot. A parking space on the property. But whether that parking space they propose to put is legal, otherwise under our Zoning By-Law is not before us tonight.

ATTORNEY TIMOTHY TWARDOWSKI:

Understood. Understood. I'm really

pointing out to the Board that what they're proposing to do, i.e. insert one parking space into this particular location, they can't do based on the relief that they've requested. They certainly require more, and they're here requesting a Variance this evening which signals to me that they don't think they need anything more. Otherwise why would they apply for one Variance tonight and then come back some other day.

CONSTANTINE ALEXANDER: They may think they don't need one tonight, and you may have educated them to realize they do need it. That's another night and another Petition. I'm not sure, speaking for myself, I don't think that we should turn them down if that's what the Board wants to do because of the argument you're making. I think the argument you're making is besides the point in terms of whether we should grant a Variance for open space. Their case essentially is

that this is an odd lot with a slope and the large front yard and the need for parking and, therefore, they need to reduce the open space requirement, get a Variance for the open space requirement to allow some sort of parking on the lot. And they've shown us where they want to put the parking. And Avon Hill Conservation Commission said yes, that's a good place to put the parking. Now, whether that parking space otherwise complies to our Zoning By-Law again is not before us tonight.

ATTORNEY TIMOTHY TWARDOWSKI: I agree. In that regard I would like to also address the specific Variance requirements, the criteria. Under the application submitted, they've essentially asserted that the topography of the lot --

CONSTANTINE ALEXANDER: Yes, I'm sorry, go ahead. I misunderstood.

ATTORNEY TIMOTHY TWARDOWSKI: The

topography of the yard space saying a slope greater than ten feet prevents them from using the Linnean Street side for parking and that somehow forms the hardship. However, the fact that the Humboldt Street parking space may be more convenient or it may be cheaper for them to provide is not in and of itself --

CONSTANTINE ALEXANDER: I don't think it's a fair characterization frankly. The problem with parking on Linnaean Street is as you've heard, it's a busy, two way street. There's no parking on Linnaean Street. The notion of backing down or driving up a steep hill, relatively steep hill to park is not a very desirable alternative for purposes of off-street parking. And there is a need for off-street parking because you can't park on Linnaean Street. And Humboldt Street is the location they have chosen. So I've got to tell you I

don't buy your argument your argument with regard to there's no substantial hardship. This is an unusually -- the topography of this lot is unusual.

ATTORNEY TIMOTHY TWARDOWSKI: Well, I -- and I accept what you're saying to the extent that it -- however, it's required under the Variance requirements to be a circumstance not affecting generally the Zoning District, the Avon Hill area, the entire neighborhood suffers from the same grade. It's hill all around. This is not a unique shape to this property.

TAD HEUER: Which Zoning District are we discussing?

ATTORNEY TIMOTHY TWARDOWSKI: Well, exactly. In this particular case, we've got three to choose from.

TIMOTHY HUGHES: Are we back to Res B on this one?

ATTORNEY TIMOTHY TWARDOWSKI: So to

state that hills are not unique to any of the Zoning Districts. I don't know that that's a fair characterization.

Also, as the Chair has pointed out, in 2008 they did receive approval to install parking on the Linnaean Street property. Again, you know, maybe it's not from some respects that are not Zoning Relief similar to the comment the Chair made with regard to the trees. I don't know if that's a Zoning issue, whether or not backing in or out of this parking area is a Zoning issue either. If it's analogous to the issue with regard to the removal of the trees. To the extent that they can install parking on Linnaean Street, that does not require the Variance or other Zoning relief, that again points to the conclusion that they do not actually have a hardship in this particular case.

CONSTANTINE ALEXANDER: For the record, the former Chair of the Board made

that point about 2008. Not this Chair.
That man.

ATTORNEY TIMOTHY TWARDOWSKI: I
stand corrected.

Going back to, you know, the point on
the hardship, this application is
substantially similar to an application that
was before this Board in 1995. The
application was 7067. Proposed to install
parking on this precise location. And I
think in that particular instance it did
request more than one parking space.
However, in that particular instance, many of
the neighbors were opposed, including my
client who spoke and who will speak again this
evening with regard to the negative impacts
that parking in this area would have on her
property. At the conclusion of that case, a
polling of the Board, all members unanimously
agreed that there was no hardship in this
case. I don't see what's changed since 1995

that what did not constitute a hardship back then constitutes a hardship now. In that respect, you know, we respectfully request that this Board deny the application for a Variance for the Applicant's failure to satisfy the necessary criteria. That being said, to the extent that the Board is inclined to approve this application, we would agree with the previous speaker who is requesting that a condition be placed on the approval that we limit parking to one space. And also would include the installation of some type of a screening or some kind of vegetative or a fence barrier to protect Seven Humboldt Street property which has two bedroom windows that face in the direction of this parking lot. Humboldt Street being a one way street coming from Linnaean Street along this property towards my client's property. Any car parking in this space at night necessarily would have headlights on, and

those headlights would shine right in the bedroom windows in the evening. So to the extent that there were to be any type of an approval here, we would request that type of condition to mitigate the neighborhood property.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

VIRGINIA MAE BURNES: I'm Virginia Mae Burnes and I'm the abutter.

CONSTANTINE ALEXANDER: Can you speak up a little, please?

VIRGINIA MAE BURNES: I'm Virginia Mae Burnes and I'm the abutter, the direct abutter who would most adversely be affected at Seven Humboldt Street. I have pictures to show what we're actually looking at. And I would like to -- before that vanishes forever, to show that tree which is most closer -- I paid \$125 for that tree and I --

CONSTANTINE ALEXANDER: This is the

tree over here on the foreground?

VIRGINIA MAE BURNES: Yeah. And it's only three feet from the walkway, and it's seven feet from the -- that paved area. And they got a lot of feeling up, because at 8.2 feet on Linnaean Street they said the tree would have to be cut down. Now, I am even more opposed to having my much closer street tree cut down.

CONSTANTINE ALEXANDER: Well, again this is Avon Hill Conservation District decision precluded the removal of any trees.

VIRGINIA MAE BURNES: Okay. But I mean this was just to me a typical example where they -- the Linnaean Street tree was gonna be cut down and the Humboldt Street -- but anyway.

I am totally and completely opposed to a curb cut for a car parking under my bedroom window. In late 2008 I spent a thousand dollars in legal fees as well as time, stress

and energy before the Avon Hill, where the 11 street owners were given a curb cut on the Linnaean Street frontage. My lawyer told me my problems were over and I would never have to worry about my sleep and quiet and enjoyment of my property being eliminated. However, I received a Cambridge Zoning Board hearing for the same large parking lot less than 18 months later. I find it hard to understand why they would want a -- given the vandalism of cars in the area, I mean, there have been cars vandalized on Linnean. On Humboldt Street and Linnaean Street right -- as I understood the Linnaean Street plan because there is a grade at 10 feet -- about 20 feet in, it would be 10 feet down and they wouldn't even -- no one would be able to see the cars. Why would they want to put cars where come and vandalize? I mean they -- it takes five minutes to take all four tires off and put them on blocks and that's

what's happening in the neighborhood.

The hearing is the fifth one I've attended with a lawyer and I've now spent over \$10,000. And I haven't been able to put in my good security system I was thinking of. There have been break-ins in and around Humboldt Street and this -- and in addition to the vandalized cars. And there was a horrible rape there some years back. As a widow on my own I do not feel safe staying there at night with a car parked right next-door. The car parked, in my opinion, greatly increases my risk of break-ins as it gives direct access to my back door which is invisible to the street.

The previous owners -- we experience -- my late husband and I experienced noise and gas fumes and headlights from vans and cars parking in this very location illegally. Cars pulled in over the curb and vans pulled in over the curb

at all hours of the day and night. My husband was dying of cancer and he could not sleep because of this noise.

When the Petitioner's bought the house, they knew there was no parking on the property. They must have been aware of the parking not always being available within a short distance. The Linnaean Street is while it may be busy, their side is where the parking is allowed. They're on the parking side of Linnean. And in 2008, just a few months before that, I don't know his name, I think his first name is Rusty, but he died and there was a driveway installed on Linnean. And that was on the bad side, the side where you had to pull out directly. And at ten feet their curb cut, that's -- they talk about too many cars being removed, but it seems like it's the reverse. That with ten feet -- and they, I think were presenting three or four cars to be parked which would be invisible on

Linnaean Street. It's a plus of two or three. So I -- I'm not getting the logic here. And not getting the logic for such a huge parking area is what we're calling a patio. It's 18 by 30 feet. The size and open design makes me wonder why they are determined to spend so much money to insist on it. The only value I can see for such a big parking area is to facilitate a gut rehab or to make condos or a multi-family out of a single-family home. The Avon Hill NCD recommended a single car parked for the area, but both the present owners and the previous owners have illegally parked four cars at the same time, and several trucks at the same time. And I cannot imagine that if they were suddenly obeying the law and only parked one vehicle why would they only park one car -- since they've been doing it illegally they've been, both they and the previous owner were parking cars and trucks why would

they suddenly start obeying the law when they got a curb cut.

CONSTANTINE ALEXANDER: Thank you. Anyone who hasn't spoken first should be heard. Sir.

HOLBROOK ROBINSON: My name is Holbrook Robinson. I live at 11 Humboldt Street and I believe I've lived there longer than anyone else, but I won't tell you exactly how long that was. I believe it was 40 years. I go up and down Humboldt Street every day of my life. There have never been, to my knowledge, four cars let alone trucks parked in that spot. The idea of parking on Linnaean Street I think is patently absurd for the obvious reasons that you would have to A, lose parking spaces on the Linnaean Street side because Linnaean Street is very, very busy because school buses go up and down, small children, so forth. Nobody who looks at that topography would ever suggest parking

on Linnaean Street. I believe that the Wang-Lus decided to apply to park on Linnaean Street because of the opposition that you have just heard, and they felt that maybe it would be more neighborly to go with a situation that might have been legally more easy for them to obtain, which of course they did, but then they realized how absurd it would be to park there when it would be so much more convenient to park on Humboldt Street. Humboldt Street parking is very safe. I myself park on my street on Humboldt Street a little far up the way. I have never had any problems with -- in the sense of impeding traffic, the visibility. If the Wangs were to park in this area, would be very good. And I think, therefore, it's -- if they're going to park, it makes much more sense to park on the Humboldt Street side.

One other thing, I'm not a lawyer, I don't understand all the niceties. The lot

that the Wangs have is a very, very beautiful lot. It's very unusual. It has, as you point out, a steep incline. However, I was the one in looking at the lot who realized that many points of that lot are way under ten percent. I built a little jag out of plywood and I got my level and I found that large parts of the front yard are in fact under ten, ten degrees. The front lot is actually terrace. There are moments when it goes up above ten and there are flat areas and then there are stairs. The essential part of the front lawn is actually flat. So, it's a little difficult for me to understand what the open space requirement is all about. When you look at the property, it is clear that there is open space around there. And I would also suggest that if -- that I suspect that the Wangs pay their full property tax on every square foot whether it's ten, ten, ten, you know, ten degrees up or not. Plus when

you're calculating FAR, I believe, and again I'm not a lawyer so if I'm making a mistake, if you were to calculate FAR, all those questions of is there a 15-foot-by-15-foot piece of land that's under ten, ten degrees would certainly not apply. It just seems to me as a, as an observer a rather strange double standard. Although I do not know all the niceties of the law, and I don't understand why the open space has been so, so described. It just seems a little odd to me. Because if any of you have ever seen that property, it's quite clear that there is open space around there. So, for all these reasons I would like to reiterate the support of the neighborhood. I should also say that I know of no one who is opposed to this. There's only one person who is opposed to this.

One last thing. Mrs. Burnes' bedroom window is closer to Humboldt Street than it

is to the proposed parking space. So as far as the inconvenience of having cars go passed her bedroom window, every car that goes up Humboldt Street is closer to the bedroom window than where the Wangs wish to park.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else wishing to be heard? Sir.

PETER COOK: Peter Cook, Four Humboldt Street right across Humboldt Street from this property. I just want to say three very brief things.

First of all, the fairness to my mind says that these people should have parking. The practical, the practicality says it should be on Humboldt Street.

The second -- the third thing is if I can, one, two, and maybe three, I would like to concur heartily with what the Chairman said because I would very much be against

making these people jump through hoops to provide some physical restraint from the -- to demonstrate their good will or their willingness to abide by the rule of one car. They have made a very attractive place. They've created something that is an asset to the neighborhood compared to what was there before, and to make them do something to that, to spend more money and to revise it in order to force some notion of compliance that would probably be unenforceable, I think is not, not what should be done.

And thank you very much.

CONSTANTINE ALEXANDER: Thank you. Is there anyone else wishing to be heard? You've spoken once before. Are you going to add something different than what you said before?

SALLY TARTUF: Sally Tartuf, 15 Linnaean Street. We're talking about landscaping and what not. Listen, they do a

great job with landscaping. Everything is beautiful. But Virginia's house, you can't even walk by there because the bushes are sticking so far out --

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

SALLY TARTUF: Okay.

CONSTANTINE ALEXANDER: Okay.

SALLY TARTUF: Well, that's what I want to say. You talk about landscaping and all that. Let's cover the whole thing.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. The Chair would note that there are letters in our files, most of -- I think almost all of them are from persons who have already spoken tonight. Some of the letters go back to

plans, I think, before -- some of the letters are basically, are superceded by the events that have occurred since the letters were written. But they are part of the public record and they are in the file. I will close public testimony at this point.

Discussion among members of the Board.
Oh, I'm sorry. I should give you an opportunity.

ATTORNEY SEAN HOPE: Just a couple comments. I understand Mrs. Burnes just retained counsel today so I fully understand. When the Wangs and Mrs. Lu came into our office, the first thing we did was we looked at the Zoning map and we noticed that the property contained three different Zoning districts. We actually looked at that. And the area that we wanted to put parking was C-2. And we actually looked at the dimensional table, and part of this the front yard setback requirement is the equation, but

it actually starts from the center line of the street. So we actually first looked at it, we thought, okay, we have sufficient parking under C-2. So, we went to Inspectional Services. They asked us to verify exactly where -- because the line's actually hard to see where they were. Community Development said that they were actually a typographical error. When they did a city-wide rezoning and they moved -- and certain zoning district sort of overlaid. I asked them for some kind of written something to prove that that was the typographical error. All I got from them was contact the Law Department. But they affirmed to me that that's Res B, and all of it's Res B. So that there's no C-2 or A-2 on that lot.

CONSTANTINE ALEXANDER: On that point I want to reiterate my point of view. You're seeking tonight a Variance from the open space requirements to put a parking spot

on the lot. And you've identified where.

ATTORNEY SEAN HOPE: Sure.

CONSTANTINE ALEXANDER: If there are Zoning issues within that location, that's another case, another night.

ATTORNEY SEAN HOPE: Definitely.

CONSTANTINE ALEXANDER:

Understood. What I'm trying to say is that issue is not really before us tonight.

ATTORNEY SEAN HOPE: You're right. I want to make sure you were aware of it. And I'm sure if there was more time, counsel would have gone over it with Inspectional Services and Community Development and came to some of the same conclusions.

I do take some exception to the fact about maybe putting a landscape buffer. If there's something that's wanted along the property line for screening purposes, I think that's appropriately and reasonable because her windows are there. But I think this idea

that you're going to set some barrier so that, you know, my clients aren't going to illegally park. I think you can actually go around Cambridge and there are several lots where people have open spaces next to a driveway and they could choose to, you know, do illegal parking. At this point, Inspectional Services -- my client -- this has been going on since May. There's been several community involvements. We had neighbors who were against it and now they're for it. I think there's a willingness to do any kind of appropriate screening. But I do think that having any kind of barrier or tree stump to prevent parking, I frankly think is unnecessary. You know, my clients, they did park there. There was -- the Board brought it to our attention. Sean O'Grady called. They had stopped parking there. They haven't since then. There is no intention to. There's a lot of focus on this lot.

They spent a lot of money on the property. We are willing to do screening. They talked to the neighbors about screening, but any kind of condition that would have them just create a barrier on that lot doesn't seem to make sense, and it would be hard to enforce for the next buyers. And they may want to clear the area off and they have a right to clear that area off if there wasn't a use for parking. So I think the conditions speaks for itself.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: The relief being requested is from the open space requirement which becomes not a concept, it becomes really of numbers. So what are the numbers that you're at and that you're reducing?

ATTORNEY SEAN HOPE: So requirement is 40 percent in Res B. And we currently have 29 percent.

CONSTANTINE ALEXANDER: You will if we grant you the relief allow you to park

where you're going to park.

ATTORNEY SEAN HOPE: So we have 29 percent now.

CONSTANTINE ALEXANDER: You have 29 percent now. I'm sorry, I misunderstood.

BRENDAN SULLIVAN: So, you're reducing from the 29 percent down to --

CONSTANTINE ALEXANDER: Yes, you're reducing down --

ATTORNEY SEAN HOPE: No. With the current parking we have 29 percent. So we have a paved area that's not for parking. So because it's permeable, it could be counted. So we have 29 percent if you grant relief.

CONSTANTINE ALEXANDER: And you have 29 percent now? I'm a little confused.

BRENDAN SULLIVAN: What was it before the patio went in?

ATTORNEY SEAN HOPE: It was 31 percent. It was still short of 40 percent.

BRENDAN SULLIVAN: And again this is

sort of after the fact application?

ATTORNEY SEAN HOPE: We never were compliant.

TIMOTHY HUGHES: And it's largely because the front yard, the real front yard -- I know it's a corner lot, it has two front yards. The real front yard has shifts in the grade that won't allow it to be counted. Now, if you were to calculate that as a flat space, how much open space would you have on this property, do you have any idea?

ATTORNEY SEAN HOPE: 42 percent.

JIE LU: More than 42.

ATTORNEY SEAN HOPE: I mean it's 15-by-15 requirement.

JIE LU: Yeah.

TIMOTHY HUGHES: That's, you have that.

JIE LU: It's actually 58. It's a lot.

TIMOTHY HUGHES: It's a big front

yard.

JIE LU: It's a huge front yard.

CONSTANTINE ALEXANDER: Okay. I'm going to end -- you're through Mr. Hope? I'm going to end public testimony.

Comments from members of the Board?

Let me throw out a question to the members of the Board. I'm going to make a motion at some point, it's going to be passed or not, about granting the Variance. What are the thoughts of the Board with regard to putting a condition regarding landscaping? We seem to have --

BRENDAN SULLIVAN: I would oppose the plan that is presented.

CONSTANTINE ALEXANDER: This one? So you're going to oppose the Variance?

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: You don't have to worry about landscaping.

BRENDAN SULLIVAN: I'm not

necessarily opposed to a parking space. A parking space. But I really don't get that comfortable feeling that it will become a parking space.

CONSTANTINE ALEXANDER: Other members of the Board regarding a landscaping condition?

TIMOTHY HUGHES: If it takes a landscaping provision to get this passed, then I'm in favor of it. If it doesn't, then I don't care one way or the other because I'm good with the plan as it is.

CONSTANTINE ALEXANDER: I feel exactly the same way.

TIMOTHY HUGHES: But if we need to get four votes on board with the landscaping provision, then let's do it, right?

CONSTANTINE ALEXANDER: That's how I feel.

THOMAS SCOTT: I'm in favor of the landscaping provision, but only along the

property line. Not restricting the parking in any way. You know, restricting the location of the parking.

CONSTANTINE ALEXANDER: Right. Tad, do you want to express a view or go to a vote?

TAD HEUER: It's always me, isn't it?

CONSTANTINE ALEXANDER: That's because you wait to the end.

As you're reading, I will propose when I make the motion, is that the conditions that are in the Avon Hill Conservation District decision will be incorporated into the Variance, which means that the planter cannot be changed. As I recall. And that there can only be one parking space and no tree removal. And those are the conditions. I'll be more specific when I make the motion.

TAD HEUER: Tell me about the your potted plants that you're expecting to put

in.

JIE LU: We actually have plants and trees and we'll plant some bamboo with the pot. So we have --

TAD HEUER: How big is the pot?

JIE LU: But we haven't finalized it. It would be like this size (indicating).

ATTORNEY SEAN HOPE: If it would -- this is an idea about landscaping a buffer? That we would be willing to, if you wanted it to be the full length of the parking space --

JIE LU: Yeah, we're willing to take any type of requirement from the Board.

BRENDAN SULLIVAN: I would be comfortable with a very defined one parking space.

TAD HEUER: I'm moving there as well.

BRENDAN SULLIVAN: Whether it be a concrete curb.

JIE LU: We have no problem with that.

TAD HEUER: We don't with all respect the Chair. We have a two, double wide paved space that anyone can park in. We are legally stating that it's one space. As I've said before, and we go through on a weekly basis, situations where what we require is not what is done because it's very easy not to cast dispersions on these particular Petitioners. That as we also say every week, this is for all time, particularly in a Variance. And the issue of things getting lost in the translation, particularly on something as valuable in a neighborhood like this, and it's parking, it means that there will always be an incentive to see whether it's three years, five years or 15 years from now, a second parking availability which looks like it's there, is going to be very tempting. And I think that

anything that reduces the likelihood that that happens is something that would be valuable in this instance. I don't think it takes anything away from the ability to use the spot that they're being granted. It just clearly defines that there is a single spot there.

CONSTANTINE ALEXANDER: So, do you want to tie it to a plan --

BRENDAN SULLIVAN: It would allow for a more orderly use of the space as being presented to us tonight. That is for a car, and the other area is a patio. And I would like to see a buffer along their landscaping for the next-door neighbor at least to shield from headlights and what have you. But a very defined one car space, and whether it be a raised curb. We've got hopping over. And you've still got your parking space and you've got your patio.

CONSTANTINE ALEXANDER: The only

question we have, we have this plan and we have that plan. And you want a defined space, we should identify the plan and the dimensions right on there.

BRENDAN SULLIVAN: They're going to have to come back.

CONSTANTINE ALEXANDER: You want them to come back?

BRENDAN SULLIVAN: Yes. With some landscaping and also with a defined parking space.

THOMAS SCOTT: Can the space be that close to the house? Isn't there a buffer that's required?

TIMOTHY HUGHES: I don't think in a single-family house there is a buffer required.

THOMAS SCOTT: There's no buffer?

CONSTANTINE ALEXANDER: I don't think so.

Ranjit, is there a buffer for a

single-family house with a parking lot, it's got to be so many feet away from the house?

RANJIT SINGANAYAGAM: Existing one to three you don't need a setback.

CONSTANTINE ALEXANDER: We know how Brendan feels and I think three members of the Board feel. Should we continue this case as a case heard and have them come back with a specific plan, is that what you desire, and landscaping as well?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Okay. You're going to want to continue the case because you're not going to get relief otherwise if you're going to get relief at all.

ATTORNEY SEAN HOPE: I guess I just want to make the point that obviously we want to put one parking space there. We made that clear. We are seeking a Variance just for open space to allow that. I'm just wondering

is there any way that the Chair -- because a parking space has a defined width and dimension, that you could write in as a condition a landscaping buffer that would preclude any other legal space eight and a half feet wide, 18 feet long, adjacent from the parking space as we have it designated there? So, and then I don't know if you're so concerned about the type of trees that's there, as the fact of the width and dimension. So, we have the exact dimensions on the parking space, on the plans. I'm just trying to think of a way to be efficient with the Board's time and the neighbor's time to come out tonight. This is their fifth hearing. I think we'd like to resolve this and we're willing to do -- to meet any condition that the Board would like. I understand the culpability and the previous owners. So I thought that may be a solution that you can put in the condition now that would be the

width of a parking space. As you look on the plans, there's -- if you did have 18 feet long, it would go to the length of the house, a full parking space would actually a sufficient more than sufficient buffer.

CONSTANTINE ALEXANDER: We could do that. What you're hearing so far at least is that's not good enough.

ATTORNEY SEAN HOPE: I just proposed --

CONSTANTINE ALEXANDER: Two members of the Board feel that way, and we have to continue the case. Am I right?

BRENDAN SULLIVAN: I'm not sure if we should generate it. I think they should come back.

CONSTANTINE ALEXANDER: All right. I think we're going to have to continue this case as a case heard.

What dates are available? I don't think you'll need a lot of time.

TAD HEUER: No.

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: What's the first one we can hear it?

MARIA PACHECO: January 27th.

CONSTANTINE ALEXANDER: Brendan won't be here.

MARIA PACHECO: February 10th.

CONSTANTINE ALEXANDER: Can all the Board members make it February 10th?

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on February 10th on the condition that this being a case heard, and on the condition that the Petitioner sign a waiver of time for decision.

On the further condition that the sign on the premises be modified to change the date and time to February 10th at seven p.m.

Understand that when you come before us, we're going to have see more specific plans as to exactly where the parking space is going to be and specific landscaping plans. Those plans must be in our files by no later than five p.m. on the Monday before February 10th. If that's not done, then this case will get continued further.

And for those of you in the audience, if you want to see those plans when they are filed, they will be in the file starting at least by five p.m. on the Monday before February 10th.

THOMAS SCOTT: Do they have to dictate the size and species of the landscaping?

TAD HEUER: I don't think landscaping necessarily has to be planned. I think it can be a permeable or impermeable as well as what Brendan's discussing --

THOMAS SCOTT: A defined zone?

TAD HEUER: -- a bump or a curb that prevents I think where precludes the ability to use that space is just as good to me as a tree line or a set of bushes.

BRENDAN SULLIVAN: Right. A raised curb of sorts. And that along the property line that there be -- whether it be a row arborvitae or something of sufficient size to preclude lights going into the neighbor's house.

CONSTANTINE ALEXANDER: Sir, you wanted to speak? But only on the question whether we continue the case and why we're continuing not on the merits.

EUGENE WANG: Yeah, yeah. Since there's no really disagreement here, we are perfectly willing to comply what is required with this. So why don't -- is it possible to just tell us what we do?

CONSTANTINE ALEXANDER: The point is at least two members of the Board wants

more specificity. They may be in support of the concept of what you're seeking, but before they're going to say yes, they want to see exactly where that parking space is going to be, and they want to see something further about landscaping. They want more and the Board therefore wants more specificity. And that's what you'll do.

JIE LU: Can I just continue my husband's question? We really don't want to bother our neighbors to come over again. You know, I mean, it's a big trouble, you know, we asking a big favor.

CONSTANTINE ALEXANDER: Yes, I know, but we can't help that. Neighbors don't have to come. They could write letters of support.

BRENDAN SULLIVAN: It's going to have to come back.

JIE LU: The neighbors would have to come back?

CONSTANTINE ALEXANDER: It's their call.

EUGENE WANG: The issue, we are perfectly willing to take whatever you tell us to do.

CONSTANTINE ALEXANDER: I understand that. Our job is not to draw the plans up for you. You're going to bring plans up to us. You heard what we're being looking for in those plans. And it's your decision not ours.

ATTORNEY SEAN HOPE: And can you just make the point that it's a case heard?

CONSTANTINE ALEXANDER: It is a case heard.

ATTORNEY SEAN HOPE: That all the testimony --

JIE LU: All the testimony is done.

ATTORNEY SEAN HOPE: They do not have to --

CONSTANTINE ALEXANDER: People do

not have to -- well, there could be new testimony on the plans that you're going to present. There's nothing that requires neighbors to appear. They can write letters. They can appear if they wish.

JIE LU: I know. They're doing this for good will. We don't want to bother them.

CONSTANTINE ALEXANDER: You're not bothering them. The five of us are bothering them.

TIMOTHY HUGHES: Now, wait a minute. There are two of us that are bothering them.

CONSTANTINE ALEXANDER: I think I made the motion.

BRENDAN SULLIVAN: Yes.

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

(Aye.)

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

(9:05 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call the continued case No. 9956, 11 Linnaean Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY SEAN HOPE: We'd like to similarly continue that to the same date because we plan to resolve both of those issues in one case tonight, but we have now extended the previous case.

CONSTANTINE ALEXANDER: I would point out, Mr. Hope, that the last time I walked by the property the sign for the

continued case, the one you want to further continue is not posted any longer.

ATTORNEY SEAN HOPE: We actually went to -- in the snowstorm it had blown down. Not this previous blizzard.

CONSTANTINE ALEXANDER: Before the snowstorm?

ATTORNEY SEAN HOPE: Yes, not this previous blizzard on Monday. I got a revised sign and it's up now and today.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on February 10th on the condition that the sign be modified as being a case not heard. We have a waiver of notice. That the sign be modified to reflect the new date and time.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(9:05 p.m.)

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

CONSTANTINE ALEXANDER: The Chair
is going to call case No. 10042, 24 Highland
Street. Is there anyone here wishing to be
heard on this matter?

MAGGIE BOOZ: I am Maggie Booz,
B-o-o-z. I'm the architect for 24 Highland
Street, and I'm here with my client Chuck
Pieper.

CONSTANTINE ALEXANDER: And you're
here seeking --

MAGGIE BOOZ: We actually would like
to request not to open the case but to

continue it.

CONSTANTINE ALEXANDER: Well, in fact there's no sign posted.

MAGGIE BOOZ: Yeah, we know that.

CONSTANTINE ALEXANDER: Okay. So, we weren't going to open it anyway.

MAGGIE BOOZ: Okay, fine.

CONSTANTINE ALEXANDER: No matter what. You're requesting January 27th?

MAGGIE BOOZ: That's correct.

CONSTANTINE ALEXANDER: Yes, sir. I'm sorry, Mr. Panico. Go ahead.

ATTORNEY VINCENT PANICO: My name is Vincent Panico, P-a-n-i-c-o and I represent the abutter at 22. And I'm just helping counsel Fred Paulson from Burns and Levinson who was ready to go forward this evening, but the only date he cannot make -- he'll be in Paris -- is the 27th of January. And we request continuance to any other date except the 27th.

CONSTANTINE ALEXANDER: Okay. I think it's only fair that if you have an abutter and his counsel is not available, we're talking two weeks. Next one is February 10th.

Do we have availability on February 10th? So we're going to continue the case to February 10th if that's right all right.

The Chair will move that this case be continued until seven p.m. on February 10th on the condition that the Petitioner sign a waiver of time for decision.

That a sign be posted in accordance with our Zoning By-Law which has the right time and date, date and time. Seven p.m. on the 10th.

And on the further condition that to the extent that the results of your discussions with the neighbors, if you modify the plans that you've in the file right now, those modified plans must be in the file, our files, by five p.m. on the Monday prior. Otherwise

we'll not hear the case in February 10th.
And the purpose of that is to allow citizens
of the city to come down and inspect the files
and to see the plans and to form whatever
conclusions they want to form.

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

(Aye.)

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

(9:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10041, 71 Hurley Street. Is there anyone here wishing to be heard on the matter?

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, members the Board, James Rafferty on behalf of the Applicant Doctor Ahed Khalil, K-h-a-l-i-l seated to my immediate right. And Mark Boyes-Watson the project architect.

Some Board members might recall this case. Doctor Khalil, I believe it was the three of us, Mr. Boyes-Watson and myself were

here in December of -- in January of 2008.

This is a --

CONSTANTINE ALEXANDER: 2008?

ATTORNEY JAMES RAFFERTY: January 10, 2008. That's what the decision says.

CONSTANTINE ALEXANDER: Wow, okay.

TIMOTHY HUGHES: No, I have no recollection whatsoever, but you do look familiar.

ATTORNEY JAMES RAFFERTY: I'm trying to see whose name I checked off. Oh, Mr. Hughes' name I checked. At any rate, at that time the Board granted a Variance to allow for the conversion of a non-conforming light industrial welding company into a ground floor professional office, a dental office for Doctor Khalil and a single-family dwelling above. And Mr. Boyes-Watson had very skillfully come up with a plan to convert this non-residential building to office and residential use. And things have been

progressing, but there have been a few changes, a few design changes as you might expect as you get into the nitty-gritty of a conversion of this scale.

And the decision itself contained a phrase, it doesn't appear too often in decisions, and perhaps for good reason. On page three of the decision, in approving the plan -- it has the standard language about approving the plans. And then it has this last thing "without any deviation." Which is really a narrow standard.

BRENDAN SULLIVAN: And who said that?

ATTORNEY JAMES RAFFERTY:
Mr. Boyes-Watson -- and our view without any deviation was in reference to the landscaping plan because there was a lot of talk about landscaping. As a practical matter, it seems there's always a proximate conformity to conform. But at any rate, we have been

meeting with the Building Department. And the conclusion was that the matter should return to the Board. And I took the liberty of identifying the proposed changes. And by my count they're ten in number. By my count I think many of them are as of right. They are changes in openings on walls that front on to public ways, which you can do as of right. But I could briefly walk you through -- there are a couple that I do think would be subject to relief. They seem consistent with what we had before. But we could have Mr. Boyes-Watson kind of walk you through the changes. But I took the liberty in my package of numbering them. So, on the first page if you just wanted to quickly identify them.

MARK BOYES-WATSON: Do you want to call them out and I'll just point them out?

CONSTANTINE ALEXANDER: I just want to make sure that -- do we have the numbered

ones? Yes, we do.

MARK BOYES-WATSON: I numbered them.

CONSTANTINE ALEXANDER: They're numbered. Each page is numbered. One, two, three.

ATTORNEY JAMES RAFFERTY: All right. I only have two on the first page. I have a relocated door to the dental office that used to go right to the street, it's now going into the parking lot.

MARK BOYES-WATSON: Well, you know what it was, when we went for the Building Permit, actually, you know, there was some worry about that phrase. And, you know, there's always the interior of the building, the exterior of the building. So I'm seeing on some of the things listed here are just internal. But I think that since we're here we just want to make sure there isn't anything in any way that would upset the relief.

CONSTANTINE ALEXANDER: Just before you get into the specifics, why?

MARK BOYES-WATSON: Since 2008 the -- you know, what it's like when we come here, we haven't got every last detail and actually --

BRENDAN SULLIVAN: That's why the language is in the decision.

MARK BOYES-WATSON: Right. But it's -- for the proponent it's kind of a little bit of a chicken and egg situation because we don't know what we're going to find relief in sort of sensible. So for instance, for Doctor Khalil to have a dental consultant to really do count out every chair, if we don't know we're going to be coming is difficult. So when we did that actually changed some things relative to how to enter the apartment upstairs, so that the dentist office is laid out a little bit better. And once you do that, it twists the plan and so

we do some sort of internal planning. So basically -- and so there are two things happening. And then also some of these things are actually simplifications. There was a monitor part of the plan, it was simply too expensive.

CONSTANTINE ALEXANDER: What's a monitor?

MARK BOYES-WATSON: A monitor is just on the second floor there was a little bit on a roof that stuck up a little further than the second roof which allows light into the middle of the plan.

ATTORNEY JAMES RAFFERTY: Sort of a clear story.

MARK BOYES-WATSON: Yeah, it's sort of a clear story.

CONSTANTINE ALEXANDER: That's called a monitor?

ATTORNEY JAMES RAFFERTY: By him. I think it's a British term.

MARK BOYES-WATSON: So for instance, there are caliber of things that came from the input of the dental office and the change that that caused to the residential plan. And then for instance, we didn't show the vestibule as stock for the dental waiting room. So that we changed actually where the dental entrance is to better accommodate that and the dental office. So really it's dental office related. They're actually -- what they are is a lot of small changes. And then there are some things where Doctor Khalil and his wife really got into the plans. They wanted a door here and a window there, because they're really understanding the plan. So they're not really big ideas but they are a series of small ideas that refine their understanding.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, not to interrupt, there's no dimensional change represented.

CONSTANTINE ALEXANDER: You pointed that out earlier. Thank you.

MARK BOYES-WATSON: So really that's the source of it. It's really, you know, two years of further thought rather than any big idea change.

CONSTANTINE ALEXANDER: Okay.

MARK BOYES-WATSON: So --

TAD HEUER: And just, if this language about no deviation weren't in the actual decision, would you even have to be here?

CONSTANTINE ALEXANDER: I think you would personally. I don't think that without deviation added anything from our practices. Let me make it very clear, particularly to architects that are here for the first time, that the plans that we're going to tie -- the relief being sought are the plans and you can't change them afterwards. So to me anyway.

ATTORNEY JAMES RAFFERTY: Well, right. And I think that's been an issue for many years, and I know the Department -- there have been some instances where people took great liberties and the pendulum frankly has come back.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: But standard phrase used to be approximate conformity. And frankly, if the changes were related to the relief, then those were certainly there. But when they're not related to relief, but when they involve things that you could otherwise do as of right, I must confess, now granted you approved this particular plan and a window was there. But if I came in after I built the place and wanted to relocate the window, I could do it as of right. But I learned long ago it's probably not in my economic interest to push the notion that you could do things

as of right. I don't push too hard. In this case some openings are being created for windows. Now those windows aren't going to be there. So, it's a change in the plan, but it's a case of building less. This monitor is a perfect example, they were going to add this change. Is it a deviation? Thus here we are. Happy to be here by the way.

BRENDAN SULLIVAN: Could I have the original one?

MARIA PACHECO: You had that.

CONSTANTINE ALEXANDER: It's here. I'm sorry.

MARK BOYES-WATSON: So to just run through. I'm hoping what you have in front of you is what I have.

So, basically on the left-hand side, your thing is formatted so the left-hand side is where we were two years ago.

ATTORNEY JAMES RAFFERTY: Want to work off mine?

MARK BOYES-WATSON: That's fine.

So, on the -- so, what you're seeing on the first floor was as approved. So the things that have changes that we want to change the way the dental entrance works and we want to -- there's a single door here on the Lopez. This is Lopez Street. We want to change it to a double door. That's -- that's become the main entrance for the residence. It was the side entrance before. So, that's that.

We are just alerting to the red hatch in here, is that there was in the building permit plan some mechanicals hung on that ceiling. We built a floor to allow for servicing of those mechanical equipment.

CONSTANTINE ALEXANDER: I don't see the red hatching on my plans. These are the ones I have in front of me. It's on yours.

MARK BOYES-WATSON: Take these.

CONSTANTINE ALEXANDER: It's all

right. We have one.

MARK BOYES-WATSON: Excellent. Because we actually updated them prior to -- so....

On the second floor -- we've already talked about some things. But we -- on Lopez Street we actually altered, actually two of these three windows. We altered where the doors are in the facade. We -- there was a window shown right here. I'm just showing it in the plan. I can show you an elevation. We changed it to a door. There were windows in this wall here, which we eliminated. Those are the windows that are closest to the property line. We added some windows in this playroom. We added this window here. This window was actually on the elevations. It's a very high window.

CONSTANTINE ALEXANDER: You're changing one of the windows to a door, too?

MARK BOYES-WATSON: Yes. That's in

the library. And then the pergola, what we had shown these pergolas, and that's the comment that Jim referenced. Actually, we'd like to extend that pergola so that there's a larger area of shade on this patio here.

On the -- going up to the roof plan, this is -- over here is -- as was approved. This is that what I call the monitor which allows for a clear story lighting. And that's the bit that's now suppressed and just becomes part of the roof. We had always shown this skylight here, which is over a hallway. But because the clear story is gone, we introduce into a laundry here, a skylight into a bathroom here. A skylight. These are skylights in a flat roof.

CONSTANTINE ALEXANDER: You're also increasing what you identify as a patio. But what I identify as a roof deck.

MARK BOYES-WATSON: Deck, right.

CONSTANTINE ALEXANDER: To the edge

of the building.

MARK BOYES-WATSON: In two ways actually. Eliminating it from this area here.

CONSTANTINE ALEXANDER: Oh, okay.

MARK BOYES-WATSON: And that actually, in compensating, so it's about the same area as it was before but moving it all into one area.

CONSTANTINE ALEXANDER: What's on the other side of the street from that patio?

MARK BOYES-WATSON: There are a series of --

CONSTANTINE ALEXANDER: Is that Lopez Street.

MARK BOYES-WATSON: Yes. You had a case on the other side of the street I think on Lopez, right opposite.

CONSTANTINE ALEXANDER: Okay.

MARK BOYES-WATSON: And then, so everything that I just reviewed then is just

illustrated also in elevation which I could go forward.

Here you see the monitor that used to exist. It doesn't exist here. And you see -- there's that dental office door. There's that -- this is the window that's checked. That's the window that's changed to the door. Did I get that right? Yes. That's the -- there was a window shown there, is now a door. These, they're yellow and they actually look like windows, but those are no longer windows there. They're closed up. All of that was closed up. It's closed up. There's the monitor that's gone. So basically we're closing up windows here and here. We're removing the monitor. Those are those added windows.

And then lastly, again, you see the monitor. It appears on each elevation. So that's gone. And then here these doors that were swapped for doors, they actually

graphically don't really show much difference on the elevations, but those two doors. There's that double -- having the residence entrance to be two doors and not one. That's an elimination of a window here. We've altered the way that these -- this is the residential garage, residential garage, commercial garage. And then we just altered the way that that worked above there.

TAD HEUER: Are those vents above; is that right?

MARK BOYES-WATSON: These ones are vents. These are vents.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point on Mr. Boyes-Watson's presentation?

BRENDAN SULLIVAN: All set.

CONSTANTINE ALEXANDER: Okay. Any other questions before I open it to public testimony?

Is there anyone wishing to be heard on

this matter? One at a time. Please come forward.

ROBERTA GOTO: My name is Roberta Goto. I live at 13 Lopez Avenue, not street. G-o-t-o. I directly abut this building. We have a common wall. And I haven't seen these plans yet, but I do think you need a little bit of history of why it said without deviation. This building is very close to all of the abutters. There's not very much space between this. And it's surrounded by residential properties. So the reason it said without deviation, was the abutters had supported the plan provided that there was no deviation. And that because this is a very large scale project, and I have a single-family home, and most of the houses there are single or two-family homes. So that was the reason why it said without deviation.

Since the project started three years

ago, construction has been on and off, on and off. And of course with construction, you have issues. One of my biggest issues from the very beginning was the fact that I was afraid that this building, when it created its second story where there wasn't one before, and a third story, that we'd have shadows. And when you talk about having the prevailing or whatever extended and the patio extended, my bedroom window is only a foot away from what I believe I heard the extension is. My son's bedroom window is only a foot away on the other side. When you installed a parapet, which you never told us about, that covers half of our bedroom window so we get absolutely no sun in half of our bedroom window. And that wasn't on your plans before. I asked you for a shadow study, and you kept delaying it and delaying it until finally the building was built. And you said the building's built, and you can determine

by actuality as opposed to a study. Which I think I've been good. I haven't been complaining to you all the time. We do have some issues as a result of the construction. But when you come before us and say ah-huh, it's just minor deviations. Well, it's not minor deviations for people that have to live next to this project. And when you call me two days before the hearing saying, can I please meet with you to show you plans? I work like everybody else. I have other things to do with my life. I can't schedule my life around you. So to -- knowing that you had this for what, one, two months? And then to come to me two days ago and say, do you want to look at some plans? I really don't think it's fair. And I don't really think it's fair to say these are minor deviations. Here even you have parking requirements. I didn't hear anything about any deviation from parking requirements mentioned. What's

going on with the parking?

CONSTANTINE ALEXANDER: So I take it what you would like us to do is not decide the case tonight and give you time to see the plans, study them, discuss them with the architect and the owner of the property? Since you said you haven't seen them or are you just opposed?

ROBERTA GOTO: Well, I'm not here to oppose him. I just wish that they would be more respectful, give us more notice, let us look at the plans and be honest about what you're doing. If you knew, because you must have known that parapet went up, and it's not a small parapet, and you completely blocked my bedroom windows and my son's bedroom windows. And I expressed that concern three years ago, and that was one of my biggest concerns was being enclosed in shadows the whole time, and you completely ignored me. What do you want me to do?

BRENDAN SULLIVAN: Does it make sense to suspend this, go into the other room and then come back on the chance that they may continue anyhow, but it might be a more open airing of use.

CONSTANTINE ALEXANDER: There's someone else who wants to speak.

I'm sorry, I didn't mean to cut you off.

ROBERTA GOTO: No, no, no, no. I'm just....

CONSTANTINE ALEXANDER: We hear you. We're sympathetic to you. We're going to try to deal with that.

ROBERTA GOTO: Thank you.

CONSTANTINE ALEXANDER: Ma'am.

BARBARA BROUSSARD: If you think she's angry, I'm worse. I'm the abutter in the back. I'm Barbara Broussard 148 Third Street. I know how they operate. You lied to me. My back porch is in shadow. You've caused a sinkhole in my basement and you've

done nothing. I've told you, and I've told Bob the builder. It's like talking to myself. I clean-up after the workmen. I don't really care if he has a nice house and I don't care about the minor changes. It's the way it was done. I want remediation. I know I have no right. I'd like to you to tell him to tear it down, because he didn't come here beforehand, he didn't do the shadow studies they promised. I have a right to live, too. I don't care how he lives. I was there first. And it is unfair.

CONSTANTINE ALEXANDER: Thank you.

MELISSA FAMIGLIETTI: I'm Melissa Famiglietti, F-a-m-i-g-l-i-e-t-t-i. I'm at 156 Third Street. I'm around the corner of Hurley and Third. So I'm an abutter on the side and pretty much the back.

My concerns, you know, some are the same. Some of the things I hear is that the door to the dental office is now moving to the

parking lot area? Which is literally two feet from my driveway as well. We granted easement on our property. You do have part of your structure is on our building. We've granted that. And now I feel like we've lost privacy. And people are going to be constantly going right by our property to enter your building. Privacy for my -- one of the bedrooms and our kitchen is completely wide open windows and doors on I believe it's the second tier. I don't know. I don't remember all those windows being a part of the plan. I haven't been able to see the plans. I wanted to come yesterday, but because of the storm I couldn't see them. But it's just a lack of privacy I'm feeling. We've had water in the basement. Lack of disrespect. The water -- temporary drainage onto our property, onto our driveway. I've had to ask them to move it to the street. Just a lack of respect I think.

CONSTANTINE ALEXANDER: Okay.

Thank you.

CHARLES MARQUARDT: I'll be real brief. Charlie Marquardt, 10 Rogers Street. I'm a board member of the East Cambridge Planning Team. There are a whole lot of other neighbors on Lopez Ave, not Lopez Street as she mentioned, that don't know the extent of these plans and the changes. These folks here are not happy.

CONSTANTINE ALEXANDER: That's true.

CHARLES MARQUARDT: I know we've had Planning Board and other meetings where the developers and builders have come before us and made a presentation and say here's what's going to happen and work through it. I know Jim's brought many of his other clients. Heck, we even had the other dentist in for their little signs in the windows. And they've been back a couple of times since

then. It works really well to work with the neighbors rather than wait two years beforehand. I would recommend that we suspend or do whatever it is you guys legally do until they have a time to meet with the neighborhood and the neighbors to work out some sort of agreement that they seem to have reached before, but lost track of it along the way.

CONSTANTINE ALEXANDER: Thank you.

I have a question for you and maybe my memory is faulty. Did the East Cambridge Planning Team support the original petition, relief being sought?

BARBARA BROUSSARD: I believe we did.

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: You did?

BARBARA BROUSSARD: Yes.

ATTORNEY JAMES RAFFERTY: And I had better communication with Ms. Broussard.

CONSTANTINE ALEXANDER: But answer my question.

ATTORNEY JAMES RAFFERTY: And we offered to bring this here, and frankly I'm -- I got the sense that it wasn't necessary. I have had been in regular communication with Ms. Broussard. And my understanding has been that her -- and I've communicated to the builder, and I know he has met with Ms. Broussard this week, that the issue, is as often the case, is less -- and I don't mean to speak for her, but less focussed on the changes and more on the construction impacts and the adequacy of how responsive the builder has been to issues that have arisen. So, I did facilitate a meeting. And I know that Ms. Broussard toured the building this week with the builder to kind of address some of these issues. There were some landscape. There's been some damage. It's a close site.

And there's a commitment by Doctor Khalil to mediate and do whatever is necessary. But I certainly understand. We would be happy to either suspend tonight or come back at a later time. In the end of the day I think the changes in some ways create more privacy. And if people understood that, they might have a neutral view. And but it is a close site and we've tried to communicate that.

CONSTANTINE ALEXANDER: Yes. From what I'm hearing I think suspending tonight is not the way to go. We need to continue this case. I think you do need to set-up a time to meet with whoever, the neighborhood or the East Cambridge Planning Team wish to attend and have a more formal discussion. There are only a few people here tonight. I'm going to recommend to the Board that we continue this case.

TAD HEUER: I do have one question and it's more procedural than anything else.

We've heard it several times from the members of the audience that they'd only seen these plans two days ahead of time. Presumably if we're sitting here tonight, notice went out properly two weeks ago. And I know that I was in the planning -- I was in Inspectional Services on Tuesday morning and saw the same plans that are in front of me. So, while I agree entirely with the neighbors that it sounds like more communication must occur, I still am having a bit of difficulty squaring that with the fact that even though these things are things that they should have brought to you, that these plans were certainly filed appropriately and on time for anyone who needs to or wishes to look at them. I'm just a bit confused there. So I don't know if anyone can clarify that for me, we're going to continue it so it doesn't matter.

ATTORNEY JAMES RAFFERTY: Well, I think the plans for time to file, I think what

we're hearing at least in one abutter she would prefer that we sent her a set of the plans. And I'll take some responsibility of that frankly because of the communication I had, I thought the thing was, and I spoke to Mr. Purdy (phonetic), and he said I will -- there have been -- it has been a longer than ideal project. And there was an interim period where I think it's fair to say there was some lack of construction activity. So that always tends to fray good neighborly relations. I think there's an element of that here. The good news is the significant impact, nature of the construction is over. This is approaching the final weeks. Doctor thinks he'll have the office in shape within a month or two.

CONSTANTINE ALEXANDER: These are things you'll bring up at the meeting with the neighbors, not right now.

ATTORNEY JAMES RAFFERTY: You're

right, and I'll stop talking. Thank you.

CONSTANTINE ALEXANDER: Do the Board members concur, we should continue this case as a case heard?

TIMOTHY HUGHES: Yes. I mean, I think that Mr. Rafferty's analysis of the situation is that the changes really aren't substantial and that's not really what's going on here. But it's public forum and give people a chance to speak their minds so I do think you need to speak their minds.

THOMAS SCOTT: I think people need, you know, not everybody can look at these plans and understand what's going on. I think the architect needs to be more descriptive about the impacts, and whether that requires a three-dimensional drawing or a model or something that will show them how they're being impacted, I think that's important.

MARK BOYES-WATSON: It's actually,

actually, I mean just to speak to that, is that of course the building's there and actually the shadow study there was construction where there was some worry that things weren't where they were supposed to be and where would they really be? And, you know, we just had to steal them because the best way come up on the roof, see where it is, see the relationship to your house, because it's there actually. So it's actually unlike so many times where we have a lot of imagination, actually you don't need much imagination.

THOMAS SCOTT: But it blocks her windows. How did that happen?

MARK BOYES-WATSON: That's the first I'm hearing of that particular -- it has to do with the old parapet walls. I think, I think -- the pergolas on the opposite side of her house. I'm not sure. We can get to the bottom of that and you don't have to --

CONSTANTINE ALEXANDER: I don't think we're going to get any further tonight on this matter. I think it's time for you folks and the neighbors to sit down and talk. And you have to educate them and they're going to educate you, and then the result of that all being when we come back again.

I think we need a little bit of time for you to meet with the neighbors. What's the second one in February?

MARIA PACHECO: We only have one.

CONSTANTINE ALEXANDER: Only one continued case?

TAD HEUER: One meeting.

MARIA PACHECO: Only one meeting.

CONSTANTINE ALEXANDER: Oh, yes, that's right. March is the first one?

MARIA PACHECO: March 3rd.

CONSTANTINE ALEXANDER: I think it's unfair to wait -- what's the sense of the Board members? How much time do you want to

give them?

BRENDAN SULLIVAN: If it's going to push this out three months, get to the finish line better for all. So I would say the first meeting in February. Saying how it's the only one that month.

CONSTANTINE ALEXANDER: That would give us roughly a month to have your meeting with the neighbors.

TIMOTHY HUGHES: Where are we in terms of --

MARIA PACHECO: We don't have that many cases on the regular agenda. I think we only have four. So we can add a little --

CONSTANTINE ALEXANDER: That's a good suggestion. February 10th would be the time.

You understand we're going to continue this case?

BARBARA BROUSSARD: Two points: Do you think you could have shadow studies by the

time he meets with us like he was promising? And B, I think most of the people did go see the changes. It's not the question of the changes, it is the question of the delivery and not living up to what they're doing. I was never told that my back porch would be in shadow. I sit out there six months of the year.

CONSTANTINE ALEXANDER: I personally don't think we should require shadow studies. It seems to me that you would be well-served to provide shadow studies. Because if we hear back February 10th and they said -- and I hear you haven't provided shadow studies, and they're still concerned about shadows, that might affect my vote. I'm only speaking for myself.

ATTORNEY JAMES RAFFERTY:
Mr. Chairman, with all due respect there's nothing going on here that has a shadow implication.

CONSTANTINE ALEXANDER: Persuade me of that when we come back here on February 10th. I don't want to get into that right now and debate.

ATTORNEY JAMES RAFFERTY: All right. I mean, you heard the presentation. We're changing doors and windows on the ground floor on the street.

CONSTANTINE ALEXANDER: I understand that.

ATTORNEY JAMES RAFFERTY: And we're going to do a shadow study to persuade you that that doesn't --

CONSTANTINE ALEXANDER: No. I think what the people are seeing here is that the project that we approved originally has created problems for the neighborhood that wasn't anticipated at the time. If you want further relief from us, we may want to have some shadow studies done. If you don't do it, and we turn you down. You have to go back

to your original plan which you can do at a matter of right. That's your call.

ATTORNEY JAMES RAFFERTY: No. I just didn't want to create an expectation, if and we don't like the shadow studies, we're going to change the building. Sometimes you leave here and people have expectations that are unrealistic. But, sure we can do a shadow -- we can do better. We can do an actual shadow study because as Mr. Boyes-Watson-- the form is up. We know the shadow. We don't have to do a computer rendering. We can do it.

CONSTANTINE ALEXANDER: All I'm trying to suggest to you is you need some dialogue.

ATTORNEY JAMES RAFFERTY: I'm all for that.

CONSTANTINE ALEXANDER: I don't want to foreclose the dialogue. I don't want to dictate the terms of the dialogue. It's

for you and the neighborhood to work that out.

THOMAS SCOTT: And it seems a shame that maybe the shadow study wasn't done originally. Because it, you know, these people may have raised their hand at that point and said I am impacted, what can you do to help me?

BARBARA BROUSSARD: We did. We did. And we were promised shadow studies. We met my dining room with the architect.

ATTORNEY JAMES RAFFERTY: I'm being told this arose during construction.

CONSTANTINE ALEXANDER: I don't recall -- I sat on the original case. I don't recall any shadow study.

ATTORNEY JAMES RAFFERTY: Now, I understand. Okay. We'll take a look at that. I understand. I apologize.

CONSTANTINE ALEXANDER: I'm going to say one more time, you have a political issue here and you have to try to resolve it

because otherwise you're going to have problems.

BRENDAN SULLIVAN: Promises made should be promises kept.

CONSTANTINE ALEXANDER: Exactly.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: You had your hand up.

ROBERTA GOTO: What is the parking Variance that we're asking for here?

CONSTANTINE ALEXANDER: I don't recall. In the original case they might have gotten a Variance for parking. I don't recall. They're changing the doors to the parking garage. So they're not making --

TAD HEUER: Isn't your parking, if I'm looking at this, isn't the parking that you're changing from space three a compact space going to a full space?

MARK BOYES-WATSON: Right. The change that changed in the parking has

nothing to do with the amount of parking; where it is or how you get there or anything like that. During the process, when we had come for the Variance, we had not indicated any bicycle parking spaces on the plans. So in order to accommodate the bicycle parking spaces, we just altered the configuration inside the garage. You can't see it from the outside. Same number of spaces. But it, but in order to accommodate, I think it's seven bicycle spaces.

CONSTANTINE ALEXANDER: Do you recall, did we give you a Variance for parking on the original case?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: That's not changing. Whatever we gave them before --

ROBERTA GOTO: That's all I wanted to know.

TAD HEUER: Well, Then I still have a question. If I'm look the at 6R in its

comparison, I'm looking at two compact spaces on the new plan and three compact spaces on the other plan. So it looks like there's a landscape planter pointed out here, and it extends further, that space extends further to the non -- off Hurley Street than it does on the original plan. Am I looking at that wrong? Maybe I am.

MARK BOYES-WATSON: Good question.

You know --

TIMOTHY HUGHES: It's not marked as a compact space anymore.

TAD HEUER: Yes.

MARK BOYES-WATSON: Yeah, interesting.

TIMOTHY HUGHES: But it doesn't look any bigger. It's just missing a line.

TAD HEUER: It does look bigger. That one's compact and that one's not.

TIMOTHY HUGHES: If you have a tree there, it's still a compact space. If they

pulled out the landscaping, it could be a full space.

ATTORNEY JAMES RAFFERTY: These are all inside.

MARK BOYES-WATSON: The ones outside here. See that?

ATTORNEY JAMES RAFFERTY: Oh, oh.

TAD HEUER: When you come back next, tell us what's going on.

CONSTANTINE ALEXANDER: Exactly.

MARK BOYES-WATSON: Right.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: Wait. We haven't made a motion yet.

The Chair moves that this case be continued as a case heard until seven p.m. on February 10th on the condition that the Petitioner sign a waiver for time of decision.

On the condition that the sign be

modified to reflect both the new date and time, seven p.m.

And lastly, just to remind the Petitioner that to the extent that you propose to change the plans from what you've submitted to us tonight, they have to be in the public file by five p.m. on the Monday before. But I would, just not as part of the motion, urge you again to meet and try to resolve things with the neighbors.

ATTORNEY JAMES RAFFERTY: Yes.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(9:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair calls case No. 10047, 64 Dudley Street. Is there anyone here wishing to be heard on this matter?

JAMES RACHT: Yes.

CONSTANTINE ALEXANDER: Well, the Petitioner. Is the Petitioner here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one is here wishing to be heard. The Chair would further note there is a letter

in our files addressed to Mr. Sean O'Grady dated January 7th but received by Inspectional Services on January 11th. A letter says: I am requesting a postponement of my scheduled meeting on January 13, 2011 at 9:30 p.m. until further notice. Thank you.

Well, it's our practice that we will continue this case, but not to a specific date and time. Not until further notice. The question is, this is a case not heard but I don't think there's any great rush to hear this case.

MARIA PACHECO: March 17th.

JAMES RACHT: Is it possible to find out if the letter we sent has been received?

CONSTANTINE ALEXANDER: Yes. We have the file right here.

JAMES RACHT: From James Racht,
R-a-c-h-t.

CONSTANTINE ALEXANDER: Are you the

James Racht?

JAMES RACHT: Yes.

CONSTANTINE ALEXANDER: We have it in the file.

JAMES RACHT: Okay. All right.

CONSTANTINE ALEXANDER: We're going to continue the case until when?

MARIA PACHECO: March 17th.

CONSTANTINE ALEXANDER: March 17th. Is that a convenient date for you? It will be at seven p.m. this time.

JAMES RACHT: What day of the week?

TIMOTHY HUGHES: Always on a Thursday. If that figures into your plans at all.

JAMES RACHT: We go -- we'll see you on the 17th. Thank you.

CONSTANTINE ALEXANDER: The Chair moves that pursuant to the request of the Petitioner that this case be continued until seven p.m. on March 17th on the condition that

the Petitioner sign a waiver for time of decision.

And on the further condition that the sign on the property be modified to reflect a new date and new time.

And that the Petitioner is to be reminded through our motion that to the extent that it, I guess it is, it wishes to modify the plans, and those already submitted and that those modified plans be in our files no later than five p.m. than the Monday before March 17th.

All those in favor of granting the continuance on that basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(9:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10043, 514 Franklin Street. Is there anyone here wishing to be heard on this matter?

JORGE COLON: Good evening. My name is Jorge Colon, J-o-r-g-e C-o-l-o-n. I'm the architect. And this is Ted, he's the property owner.

So the existing structure is an 18-by-18 square foot metal shed that's delapidated and we'd like to replace it with a new storage structure. The new structure

is within the building footprint and overall massing. We were told historically it's been listed as a garage, and since now it would be used as a storage, that it was officially a change of use. So, we were asked to submit for a Variance.

CONSTANTINE ALEXANDER: Now, where do you park right now? Do you park on the driveway in front of the garage/building?

THEODORE COHEN: Yes, there's a designated parking space there.

CONSTANTINE ALEXANDER: Would that be affected by the relief you're seeking tonight? Will you still have the same parking, off street parking?

THEODORE COHEN: That's right.

BRENDAN SULLIVAN: Are you living in the house now?

THEODORE COHEN: No, we're just moving in. We're in the process of moving in.

BRENDAN SULLIVAN: When did you purchase it?

THEODORE COHEN: We purchased it -- closing was at the end of August.

BRENDAN SULLIVAN: Okay.

JORGE COLON: We're doing some interior renovation that's under separate permit, so there is work being done on the site.

TAD HEUER: So you're applying for parking relief. What parking relief do you need?

JORGE COLON: There were three sort of issues that we were asked to clarify. One was the formal, the change of use. And second there's an existing curb cut. Right now it's not used. There's a gated fence. So we would designate a portion of the site for parking and we would provide a parkable surface. And then --

CONSTANTINE ALEXANDER: Any

difference than what's being used for parking now?

JORGE COLON: No, sir. We have some existing aerial photographs. So, you can see it's an L-shaped site. And just this little metal shed.

CONSTANTINE ALEXANDER: Is that plan there, is that one of these plans?

JORGE COLON: Yes, sir. It should be the next page. They are photographs that we just brought in today to clarify the existing conditions.

TAD HEUER: So if you want to you could put down crushed glass and nails and park on it.

JORGE COLON: Absolutely.

TAD HEUER: You probably wouldn't want to do it. You know, I guess I'm starting from the least controversial point forward, but was the request for parking something that Inspectional Services said because

you're -- is this possible because you're replacing the garage and turning it into something else and they thought the parking was in the garage?

JORGE COLON: Exactly. So we're formally changing the use from a garage to not a garage.

CONSTANTINE ALEXANDER: But you were never using the garage to park vehicles?

JORGE COLON: No, sir. The structure is falling apart. It's sloping. It's been ready to fall over actually.

TAD HEUER: And you need only one space?

JORGE COLON: That's correct. It's a single-family detached. And they only own a single car.

TAD HEUER: On the structure itself, so the structure is how far from your lot lines right now?

JORGE COLON: It's pretty close

to -- the existing footprint is two to three feet. It's cantered, but it's two to three feet from the property line. So it would encroach within the current setbacks.

TAD HEUER: And the replacement would also encroach on your front rear and --

JORGE COLON: Correct.

TAD HEUER: -- side setback?

JORGE COLON: So our initial strategy was to build within the existing footprint, to build smaller. But because of the change of use, you know, suddenly that triggered a more formal review.

TAD HEUER: So I mean, I guess my general thought is that I'm not quite convinced that replacing this structure which is a pre-existing non-conforming structure --

JORGE COLON: That's correct.

TAD HEUER: -- with a new structure of essentially the same size that invades

three of the setbacks, in an admittedly strange kind of flag-shaped lot. I mean, the whole purpose of Zoning, it will be a broken record for the rest of the Board, is to eliminate non-conformities.

Non-conformities being things that aren't where they're supposed to be according to the Zoning Code. Here we have something that's possibly the prototypical amount of non-conformity. A huge structure that is wedged into three violating setbacks around the corner of a lot. And even though we don't look at it legally, you've got these -- you know, this other metal shed stuck in the neighbor's yard in between everything. And, you know, I mean if that were yours, you would have building distance problems as well.

JORGE COLON: Sure.

TAD HEUER: It seems difficult for me to get to the point of hardship when the whole point of the Ordinance is to eliminate

non-conformities. And if this should is really in this condition that it appears to be from looking at it, you know, from the street, why is the Ordinance to say that should go away? It's supposed to, you know, die kind of a natural death and we get more back to conforming with the Ordinance which is what we're supposed to be?

JORGE COLON: Well, I -- you know, I think part of the challenges are that it is -- it's an odd shaped site. I think from when the owner purchased the property and saw a structure there, we thought we were improving an existing condition. The structure is about ready to fall over. We could certainly consider, you know, repositioning it, but we felt like we were doing, you know, a service. Right now it's an eyesore.

CONSTANTINE ALEXANDER: Could you, if we tore this structure down, could you

build a conforming structure in terms of setbacks and meet the parking requirements of one parking space? Or is this lot so small that anything that's going to be done is going to have a Zoning problem?

JORGE COLON: Well, you can see from the lot, the existing structure takes up about half the lot. And it's a small, 3,000 square foot lot. It's pretty small. So we could consider repositioning.

TAD HEUER: You're still going to be in setbacks.

CONSTANTINE ALEXANDER: Whatever you do, I think you're going to have a setback problem. If they reduce the size and relocate it, it may not be as severe as what you're seeking tonight. I don't think we can eliminate the Zoning, the non-conformity you can just minimize it.

TAD HEUER: You can eliminate it by not having a structure there.

CONSTANTINE ALEXANDER: That's true. But we can't order them to tear the structure down.

TAD HEUER: No.

TIMOTHY HUGHES: Sort of a little tact than Tad, I think it's the Ordinance's job to reduce non-conformance. I don't think that's our job. Our job is to decide when to vary away from the Ordinance and allow a non-conformity to still exist. That's our job as a Board of Zoning Appeals. We're not here just to, you know, to enforce the Ordinance a hundred percent.

TAD HEUER: No. But you need to demonstrate a hardship and a pretty good reason, right?

TIMOTHY HUGHES: I'm saying a rundown building in the back of your lot is a pretty good hardship.

TAD HEUER: We're not supposed to be perpetuating non-conformity.

TIMOTHY HUGHES: And it wouldn't be if you let them build a new one.

BRENDAN SULLIVAN: This is almost a poster child for why they enacted Zoning, is to eliminate these type of structures placed where they are on the lot which predate Zoning. And that the intent is to not allow it. And if it happens to fall down and die a natural death, then I think the guys in the charge is to be very, very careful to allow another one to go back up there and to do it only under the rarest of rarest of circumstances because it's not the intent of the Zoning Ordinance.

CONSTANTINE ALEXANDER: I think you're absolutely right. I think if the building were to fall down, we should not be allowing a new one to come along with the same footprint for those reasons. I guess what we have to keep in mind is that this building may not fall down for a very long time, and if we

don't grant relief, what's going to be left?
It's going to be this eyesore of a building.
That's what I think is the practical issue --

BRENDAN SULLIVAN: Well, it's ready
to fall down.

CONSTANTINE ALEXANDER: Pardon?

BRENDAN SULLIVAN: It's on life
support.

CONSTANTINE ALEXANDER: Probably.
Go ahead.

THOMAS SCOTT: Couldn't you rehab
the building in its place without --

JORGE COLON: That was our original
intent. Because we're not technically
parking a car in it, it's formally changing
its use. Our intent was to do same shape,
same size. Just rebuild what's there. That
was our original intent when we approached
the city, and the staff advised us to pursue
a Variance.

THOMAS SCOTT: I guess I'm asking --

TAD HEUER: Foster Street.

THOMAS SCOTT: What's that?

TAD HEUER: Foster Street. I mean are you tearing down and replacing, you know, in most Ordinances, particularly and this is an accessory use, which is slightly different, but you're talking about a situation in which you're eliminating one use and creating another one. I mean, if you try to do the piece by piece, wall by wall approach like Foster Street, and it's arguably available. And I think that's open for debate. But I think when you're looking at a situation of replacing wholesale, the Ordinance isn't -- it's designed to assist when you're creating a bit of a new, you're creating an addition to something. You're putting on a new roof. They don't want you to allow otherwise useful buildings that are placed where they are on the lot to prevent those kinds of extensive modifications.

Here we're essentially talking about not just replacing a building but changing its use to something else entirely. We're not even talking about just rebuilding a garage. We're talking about converting it to an accessory home office. I don't think the Ordinance intends to allow accessory home offices to essentially be created in violation of setbacks and everything else. They said don't but home office there.

CONSTANTINE ALEXANDER: What would your view be if they came -- I'm just curious, if you came before us and said we'd want to keep the garage, need a garage but we need to rebuild a whole new garage because this thing is falling down? So there's no use issue. Would you be in favor of granting relief under those circumstances?

TAD HEUER: It's not the case before us.

CONSTANTINE ALEXANDER: To be sure.

TAD HEUER: It would be an easier case for me to deal with. Or a case closer to possibly being a vote yes.

CONSTANTINE ALEXANDER: What I'm trying to pars out is -- the use is a big issue, the change of accessory use from no accessory use to the structure is the one that gives you great problem.

TAD HEUER: Yes. Because essentially it's perpetuating in a space where no structure in the Ordinance is supposed to be built. A structure that, you know, this one is supposed to go away when it goes away, and it essentially in perpetuity puts a new structure there that presumably will be maintained and that's (inaudible) to the purpose of the Ordinance. And particularly given in many situations people say yes, it's, you know, I'm 15 feet and I should be 14 feet. We had that situation over on Vassar Lane, I think. Which I think

I also voted against. But that was a garage that was being reconstructed, and the house was being constructed. And we said, well, you know, what are you going to lose and what are you going to gain, what are your setbacks? Here it's essentially it's wedged in right on all the setbacks. There isn't a lot of room --

CONSTANTINE ALEXANDER: No question about that.

TAD HEUER: You know, there's a difficulty with the shape of the lot, and it's an unusual lot, unfortunate as it is, but I don't think we should be packing structures into lots. As Brendan said, that's why Zoning is enacted to stop you from doing that.

TIMOTHY HUGHES: Yes, it was enacted to stop people with small lots from doing it. There's a basic inequity in a Zoning Ordinance like ours because of part of the city has these huge lots where people could

rebuild their garage, even in a setback. You know, we have allowed people to rebuild stuff close to property lines in a setback as long as it -- there was enough space on the lot. We've done it in the past. Just because it's an undersized lot, it's a small lot. It seems it's a basic inequity that we should let the Zoning rules prevail on this one when we've granted, you know, relief for other people.

CONSTANTINE ALEXANDER: Other members of the Board wishing to be speak?

TIMOTHY HUGHES: It's an existing non-conforming use. It's not like they built this after Zoning and now they're trying to change it, you know. I mean, they had the building. The property gets marketed with a building as in disrepair as it is. I think there's an equity issue here.

CONSTANTINE ALEXANDER: I'm going to open it up to public testimony because I

know this person would like to speak. So, please come forward.

MICKEY BURBRIDGE: Yes, hi. I'm Mickey Burbridge. I live next-door, and I'm not against it but I don't know what you're doing. But what you're saying what you're doing is not what you told us. So....

CONSTANTINE ALEXANDER: Are you on the Bay Street side?

MICKEY BURBRIDGE: I am directly next-door.

CONSTANTINE ALEXANDER: Next-door where?

MICKEY BURBRIDGE: Right here. See that pink house right there? So this is their house. That's my house.

CONSTANTINE ALEXANDER: So you're on the Bay Street.

MICKEY BURBRIDGE: Uh-huh.

CONSTANTINE ALEXANDER: Next to the garage.

MICKEY BURBRIDGE: Right. If they're talking about a driveway. That's not a driveway. That's a beautiful garden full of organic plants that Phoebe's been planting for the last 30 years. There's no parking there. You could park there. You could make a driveway there, you could do that, that's your property. That's not a garage. That's been a shed. And in fact it's a 1930 Sears Roebuck catalog shed. It's falling apart, yes. But it's not falling down. It's not delapidated. It's a bit of a rusty mess, I agree, because it's six inches from my fence. Six.

TAD HEUER: Six.

MICKEY BURBRIDGE: And that corner, right there, where that shed is. Right? Where's my house? Where's the shed?

CONSTANTINE ALEXANDER: Here's your house.

MICKEY BURBRIDGE: See, right

there? Corner right there? That's my daughter's bedroom window. She's seven-years-old. We have been in construction fatigue since August. This room and that room is my daughter's bedroom on the first floor. Not the second, not the third. So all those trucks that isn't the driveway, but they are parking here.

They've had four vans, it's -- come on, it's -- we're logger jammed there. But I work in construction myself. I can put up with a lot. But I work at home. And what I heard was you wanted to make an office and some extra storage space. That's not a garage. You want a garage? I understand a garage. Parking.

CONSTANTINE ALEXANDER: No, he's made it very clear. They're not looking to build a garage.

MICKEY BURBRIDGE: Right. So my question is, is this going to be an office and

you're going to work at home as I work at home? What are you doing? Not that it's any of my business. Is it going to be noisy? Is it going to be the construction every single morning at seven o'clock waking up my kids? And even on Christmas Eve, construction. I'm -- good for you. If it was getting done quicker, we'd be fine with it, right? But it's not. And it's the house across the street from you, the frat dorm, right? And then it was the -- well, the utilities rebuilding and the sewers and the sidewalks. We have not been able to park in our neighborhood, any of us, for two years, three years? It's just insane.

UNIDENTIFIED MALE: More than that.

MICKEY BURBRIDGE: It's nuts. It's nuts. And even your guys park in my driveway. And I let them. But I'd appreciate it if they stopped shoveling all the snow from your driveway onto my car.

CONSTANTINE ALEXANDER: Okay.

MICKEY BURBRIDGE: My point is, that structure, I'm not against. I want to have more information. Its specific size. Its specific use.

CONSTANTINE ALEXANDER: We've got plans.

MICKEY BURBRIDGE: Uh-huh. I didn't get it. I live right next-door. I'm out there every day. All you had to do is knock on my door. But I am opposed, given the locality of where my children are situated in my house, if this is a business, an office, that's gonna have, say, people visiting it and using that driveway, right up abutting my house -- because if you look at the other side of my house, there's another driveway. I'm logged, logged in there. I don't think I deserve to be living in a parking lot. I don't. I don't have a driveway myself. I do have a garage. I use it.

CONSTANTINE ALEXANDER: Your issue basically is the same issue as Mr. Heuer's issue. Namely, it's the accessory use portion of the relief.

MICKEY BURBRIDGE: Exactly. It is a non-conforming space. I'm not necessarily opposing it. However, I do need to really express that this isn't just a matter of like six feet or -- I mean, we're talking it is literally six inches from that fence. And that fence, I put in with Phoebe. That fence that you got a surveyor between myself and your house, that fence came from my old house on River Street. I bought that fence. Phoebe put it in. We're that kind of neighborhood. We work together. We talk to each other. All you have to do is knock on my door ever.

CONSTANTINE ALEXANDER: Okay.
Thank you.

MICKEY BURBRIDGE: Yeah.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard?

UNIDENTIFIED MALE: Yeah, I also have a letter from Victor Cromby who lives --

CONSTANTINE ALEXANDER: You'll have to come forward. Find your letter first. You can give your name and address to the stenographer, please. Give me the letter.

HARVEY BAUMAN: Harvey Bauman, 19 Bay Street. I've been living at 19 Bay Street for 38 years, and I've watched our neighborhood change, for the most part for the better, but we have really been putting up with a great deal. The Traffic Department has been eliminating parking spaces on all the corners. Our streets are constantly dug up, whether it's for the sewers, the water. I just had -- the gas main was just changed on our street. It's just been impossible. And we all live in that neighborhood with tiny lots. My lot's 1900 square feet. His lot's

huge compared to mine. And it's really tough putting another -- even though it's a better structure, another structure that close to her house. And anything that's going to eliminate parking, a single parking space in our neighborhood is hellish. We have all the damn Harvard students parking their cars because they can't park over where they live, so they come into our neighborhood. There are a whole bunch of triple deckers in the neighborhood. There are three cars and no parking spaces. I don't know -- I think there's only like 11 parking spaces on all of Bay Street.

CONSTANTINE ALEXANDER: Well, I guess I'm a little confused which is not unusual. It seems to me, what I've heard, is that they're not planning to reduce the off street parking from what is there now.

HARVEY BAUMAN: Right.

CONSTANTINE ALEXANDER: I think the

real issue, though, is that they're going to increase the need for off street parking by virtue of the accessory use.

HARVEY BAUMAN: Exactly. Exactly.

CONSTANTINE ALEXANDER: Okay. But that's what the issue is.

HARVEY BAUMAN: That's one the biggest parts of the issue. And the fact that you're putting up another now more solid structure that close to other structures than --

CONSTANTINE ALEXANDER: You would rather a structure that's there now to fall down over time. You'll live with the consequences of the --

HARVEY BAUMAN: Yeah, I've been living with that shed for 38 years, okay?

CONSTANTINE ALEXANDER: Thank you.

JORGE COLON: If I can just clarify.

CONSTANTINE ALEXANDER: Let me make sure -- you'll have an opportunity.

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

(No Response.)

CONSTANTINE ALEXANDER: There's no one else. Now you have a chance to rebut.

JORGE COLON: The actual scenario is really the homeowner who has two small kids running over with his laptop, sitting in a quiet space and working looking out into the yard watching his kids play. We're not bringing a business or any of that sort of thing. We're not adding any windows that would create any privacy issues. Honestly, our -- we thought that we were improving an eyesore. We've had structural engineers working on the interior of the house. We've looked at the house, the structure, and it really does need to come down. And if the Board were not to approve this, for the safety of the three-year-old and the newborn, that structure goes down and the homeowner loses,

you know, part of his --

CONSTANTINE ALEXANDER: Now, you're right where Mr. Sullivan's point. It's all for the better from a Zoning point of view. You're not advancing your case one bit by make being that argument is what I'm trying to say to you.

One second.

Are you going to say something new and different from what we've heard, because it's getting late?

MICKEY BURBRIDGE: I also have children, little children. I've met his children.

CONSTANTINE ALEXANDER: All right.

MICKEY BURBRIDGE: Wait, wait. They're adorable. I agree with you there. What I'm saying too, is it really concerns the neighborhood, the impact of the construction. It concerns me. I have children, too. And that's my point. You

need to communicate with your neighbors. We would never be here --

CONSTANTINE ALEXANDER: Okay.

Thank you. Enough.

There is a letter in the file that was presented to us by this gentleman expressing opposition to the project, and I don't propose to read it but it is part of the record, incorporated in our deliberations. I'm going to close public testimony unless you have anything else you want to add.

THEODORE COHEN: I mean, I would -- I mean, I guess I'm kind of surprised. I'm hearing what's happening. I just would like to say from sort of a buyer's perspective that my experience with this, and maybe I was naive going into this, is when we came to see the property before we bought the property, we thought we had done our due diligence by going to City Hall and saying okay, here's this structure here, is it possible for us to do

something to fix this up, to make this a space where we could do some work, look out into the yard? Right now it's this rusty, metal structure. I don't think it's coming down by itself any time soon. But it's not, you know, it's been used as a storage structure. Listed as a garage. You know, what's our option here? We were told, I mean, clearly, you know, obviously there's more to the story which is why we're here now with this Variance. We were told, well, as long as you build within the structure, you know, don't increase the mass, don't change the footprint of this thing, you can, you know, you can do this. You know, this would be a, you know, considered a, you know, a benefit to the neighborhood. And clearly I am hearing that our communication somehow broke down with the neighbors and I apologize for that. But, you know, I'd certainly -- you know, this is from my perspective, you know, is something that

we were hoping would be a benefit to the neighborhood. We're moving from two blocks away to this. We're looking forward to being part of this neighborhood. So, I mean that's just where I'm coming from.

CONSTANTINE ALEXANDER: Thank you. Public testimony is closed.

Does anyone wish to say anything further or do you want to go to a vote? Vote.

TIMOTHY HUGHES: For what it's worth.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that he will not be able to build a new structure on this lot, which would allow him to have an accessory use.

That the hardship is owing to the fact

that this is a non-conforming lot. A very tightly -- so any structure to create an accessory use would require Zoning relief.

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.

With regard to that, the relief being sought would actually improve the physical aspects of the property by eliminating a delapidated building and substituting a new building in its place.

On the basis of these findings the Chair moves that the Board grant a Variance to the Petitioner to proceed with the project proposed on the condition that the work be consistent with plans submitted by Lon, L-o-n Design, cover page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: One in favor.

(Hughes.)

CONSTANTINE ALEXANDER: All those opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Four opposed. The Variance is not granted.

(Alexander, Sullivan, Heuer, Scott.)

CONSTANTINE ALEXANDER: The Chair proposes we make the following findings:

That a literal enforcement of the provision of the Ordinance would not involve a substantial hardship to the Petitioner.

In fact, that the Petitioner has a structure there. He bought the building with the structure on it, and that it's a structure that is non-compliant with our Zoning By-Laws in multiple respects because

of setback violations.

And that there are no special circumstances relating to the lot that would necessitate relief.

And further, that there would be substantial detriment to the public good in that we would be perpetuating a grossly non-conforming structure by allowing a new structure to be built in its footprint.

All those in favor of making those findings say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. Those findings have been made.

Thank you.

(Alexander, Sullivan, Heuer, Scott.)

(10:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10046, 186 Walden Street. Is there anyone here wishing to be heard on this matter?

ANDREW ULLMANN: So I would like to build a deck.

CONSTANTINE ALEXANDER: Give your name and address.

ANDREW ULLMANN: Sorry. Andrew Ullmann at 186 Walden Street.

My wife and I would like to put a deck outside the back of our primary residence

connecting to accessory out building that is in our backyard.

CONSTANTINE ALEXANDER: Why, Ranjit, I'm still confused as to why they need Zoning relief. What's the basis for the need for the Variance?

ANDREW ULLMANN: I was told --

TAD HEUER: He'll do it for you.

RANJIT SINGANAYAGAM: I believe it's connecting two buildings, ten feet between two buildings.

CONSTANTINE ALEXANDER: When you have two buildings that are less than ten feet, you connect them that requires a Variance?

RANJIT SINGANAYAGAM: Also, it's a non-conforming building. And I'm not sure they putting a roof or not on that, maybe.

CONSTANTINE ALEXANDER: No, no roof. No.

RANJIT SINGANAYAGAM: That's

non-conforming. That's the case.

BRENDAN SULLIVAN: The deck now comes off the back of your house. So there's going to be some steps down.

ANDREW ULLMAN: Currently there's a small deck. Small deck doesn't even go across the whole sliding doors because it would have been within ten feet. So then it just has stairs going straight to the grass. And we'd like to have steps and then a level.

BRENDAN SULLIVAN: Now, are you going to extend that deck to the corner of your house and then go down to the accessory building?

ANDREW ULLMAN: It would be as wide as the footprint of the house.

BRENDAN SULLIVAN: Of the house. Okay. So that's what triggers, because it's also going to be more than four feet above the ground.

TIMOTHY HUGHES: No, it's not.

TAD HEUER: No.

ANDREW ULLMAN: No. Only at the point where you step out for the first two steps. The rest is going to be only two inches.

CONSTANTINE ALEXANDER: 20 inches. That's why I'm puzzled.

RANJIT SINGANAYAGAM: More than ten feet out from the foundation.

BRENDAN SULLIVAN: That's right. If it's less than ten feet and less than four feet in height -- it's less than ten feet, less than four feet, you could do it. If it's more than ten feet from the foundation, that triggers relief.

CONSTANTINE ALEXANDER: I'll accept it. It just doesn't make any logical sense to me why the Zoning Law would require the need for a Variance in this situation.

RANJIT SINGANAYAGAM: I think the intent of the purpose of having ten feet

between buildings for fire access, too.

CONSTANTINE ALEXANDER: But he's not changing that. It's still going to be ten feet.

RANJIT SINGANAYAGAM: No, but it would be a deck into the access of the building.

ANDREW ULLMAN: Something about fire codes and having access.

BRENDAN SULLIVAN: Anything beyond ten feet I think they're considering it almost like it's part of the house is basically what it is. So hence, whatever that distance from this new deck to the accessory building is now less than ten feet.

CONSTANTINE ALEXANDER: Okay. I'll accept it on the face. It's not persuasive to me but let's move on.

Other questions or observations from members of the Board? None.

Is there anyone here wishing to be heard

on this matter?

BRENDAN SULLIVAN: Except that there's a huge -- I mean, I think you have a real problem because you've got the playground way up here.

ANDREW ULLMAN: It's the gardening area. So, it's like a four foot wall.

BRENDAN SULLIVAN: Right. And the runoff from that and everything like that is creating a bad situation for you to go from your house to the accessory building.

CONSTANTINE ALEXANDER: What Mr. Sullivan's -- for the benefit of the members of the Board, you about what I call the Raymond Street Park, and the park is a much higher grade above of your property with a cement wall that separates.

ANDREW ULLMAN: We've had to put two sump pumps in just to take care of the water.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. There's nothing in the files. Ready for a motion?

BRENDAN SULLIVAN: For once we can go soil, shape and topography.

CONSTANTINE ALEXANDER: Yes, right.

TAD HEUER: Make sure that gets in there, because we don't use it often.

THOMAS SCOTT: Something's wrong with the diagram.

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: It states the ground is zero, zero and then it has the deck at 22.5.

CONSTANTINE ALEXANDER: Inches.

THOMAS SCOTT: Is that inches?

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: Oh, okay. Got it. I thought it was relevant to elevation.

CONSTANTINE ALEXANDER: No.

The Chair moves that this Board make the

following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. The hardship being that the Petitioner uses the rear structure as an office use and it needs a better means of access from his residential structure to the office.

That the hardship is owing to the topography of the land. The adjoining property is much higher in height causing runoff problems and, therefore, the need for a deck.

The 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, what is being done really has no impact on the neighboring properties, and it is a minor relief in nature, the deck, 22 inches or so from grade.

On the basis of these findings the Chair moves that a Variance be granted the Petitioner on the grounds that the deck be consistent with the plans submitted by the Petitioner. They're prepared by Sigo, S-i-g-o Design and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(10:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10044, 377-379 Putnam Avenue. Is there anyone here wishing to be heard on this matter?

ATTORNEY NEVEN RABADJIJA: Hi, good evening. My name is Neven Rabadjija. I'm an attorney with NStar Electric Company. And with me here today is Bill Zamparelli who's our community relations representative.

BILL ZAMPARELLI: How are you?

CONSTANTINE ALEXANDER: Why don't you give those to --

BILL ZAMPARELLI: I did.

ATTORNEY NEVEN RABADJIJA: So, again, Bill Zamparelli and John Zicko, manager of the station design engineering. In view of the lateness of the hour, I'm going to dispense with any formal remarks and get right into the substance of the matter.

NStar is looking to install two pieces of equipment at two substations in Cambridge, existing substations; Alewife on Putnam Street. Two pieces of equipment at heat exchangers. They're both identical pieces of equipment. In fact, they're related in functioning and the John will explain that in a minute. Both stations are prior non-conforming uses. And so this addition of this equipment will cause the expansion in non-conforming use in the Special Permit request.

John, do you want to go right in to describing the equipment?

TAD HEUER: Can you first just give a sense of -- I mean, why the Special Permit is required, because you're in a Residence C Zone and you're in a Business A Zone.

ATTORNEY NEVEN RABADJIJA: The use itself is non-conforming as a substation use. We're expanding and by adding the equipment.

CONSTANTINE ALEXANDER: Yes, but in the district you need a Special Permit under the Table of Uses.

TAD HEUER: Yes. Okay.

ATTORNEY NEVEN RABADJIJA: Section 8.22 I think it is.

TAD HEUER: Right. So, these would only be conforming if you were in an industrial zone?

ATTORNEY NEVEN RABADJIJA: Right.

TAD HEUER: Is that right, is that it essentially?

BILL ZAMPARELLI: I think it's required in all zones. It's a Special Permit

in all zones to expand.

TAD HEUER: I'm just kind of amused by the fact that somehow you find yourself in a residence zone.

ATTORNEY NEVEN RABADJIJA: We have substations in all types of zones. So essentially to identical pieces of equipment. We're not adding buildings. It's just equipment. So John will describe the equipment, its function and need for it.

JOHN ZICKO: The equipment is known as a heat exchanger, and its purpose -- oh, for the record, the spelling of my last name is Z-i-c-k-o. John, J-o-h-n.

It's a heat exchanger, and the electric supply to the center and eastern part of Cambridge is provided with two fluid filled underground transmission lines.

Underground transmission lines, like any piece of electrical cable, will heat up. These will help release the heat into the

atmosphere and increase the capability of the existing lines to meet the anticipated loads in the area.

TAD HEUER: And is this based on your estimation or your numbers for where power usage is required and demanded? So you're saying that you're immanently putting on your cap for your existing equipment; is that right?

JOHN ZICKO: It's based off of the load forecasts that the company prepares.

TAD HEUER: Okay. And you're representing that you're about to exceed them?

JOHN ZICKO: Yes.

BRENDAN SULLIVAN: Are you changing the transmission lines?

JOHN ZICKO: No.

BRENDAN SULLIVAN: So those don't change, but they're being ripped up more; is that correct? I mean, then that's why

there's cooling?

JOHN ZICKO: We are providing a path for the heat that gets generated in those cables to come out.

BILL ZAMPARELLI: I think this is adding additional cooling capacity which will avoid having to install an additional 150-KB line. That's the purpose of it. And it's effectively providing that additional cooling capacity for the existing line so that this will have more capacity, ability.

TAD HEUER: Right. So the line itself can carry excess load. If it did so, it could be too hot and couldn't be used at that capacity.

BRENDAN SULLIVAN: Just has to cool it down.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Or absorbs the heat. Is that what it is, an absorption?

BILL ZAMPARELLI: It dissipates.

BRENDAN SULLIVAN: It dissipates it, okay.

JOHN ZICKO: Functionally it's a radiator. In the simplest form it's a radiator with a fan.

BRENDAN SULLIVAN: Okay.

JOHN ZICKO: The fluid is pumped through the radiator, the fan blows the air over the radiator and it goes into the air.

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Do you get any kind of state permits as well to do this project?

ATTORNEY NEVEN RABADJIJA: No. We visited with the DPU and the Sighting Board and they gave us letters indicating they're not interested in the jurisdiction.

CONSTANTINE ALEXANDER: The only relief you need for any kind governmental permission is from our Board.

ATTORNEY NEVEN RABADJIJA: Well,

that's for the location of the substation heat exchanges which we're talking about here tonight.

CONSTANTINE ALEXANDER: Right.

ATTORNEY NEVEN RABADJIJA: There actually will be a discussion with the Pole and Conduit Commission with the pipe and cable being in the streets.

BILL ZAMPARELLI: Grants for location.

CONSTANTINE ALEXANDER: But tonight's matter, we're the only Board passing on this.

ATTORNEY NEVEN RABADJIJA: That's correct.

TAD HEUER: Can you talk a little bit about the visual impact? Just give us a sense for the record of the size of this for the stenographer so that we have that in the record. We have pictures in the file.

ATTORNEY NEVEN RABADJIJA: We have

pictures.

JOHN ZICKO: Yeah, the -- there are pictures in the record as far as the physical footprint on the plan that was submitted.

ATTORNEY NEVEN RABADJIJA:

Generally we are meeting all the dimensional requirements.

TAD HEUER: Okay.

JOHN ZICKO: Yes. Just so I get a reference on the physical size. The heat exchanger is 55 feet long by 12 feet wide and it's approximately 10 to 12 feet high.

THOMAS SCOTT: What about noise? Does it generate noise?

JOHN ZICKO: It does as any piece of equipment that has a fan, and it will, this is no different. We are in the process of preparing the specifications for the heat exchanges now. We will be having acoustical sound measurements taken so that we can baffle the noise. We will buy the heat

exchanges with the appropriate noise baffling imprint.

CONSTANTINE ALEXANDER: You didn't have that done before you came before us so we wouldn't have that for purposes of the record. And we can pass on whether you've taken necessary steps to deal with the noise issue. Because I look at it, this heat exchange is only going to be ten feet from the lot line. And if it's going to make noise as you say it will, what's our comfort that you're not going to disturb whoever abuts this property?

ATTORNEY NEVEN RABADJIJA: We're prepared to make a commitment that our design will meet whatever the Zoning requirement is.

CONSTANTINE ALEXANDER: Well, we don't have a Zoning requirement.

ATTORNEY NEVEN RABADJIJA: There's a noise ordinance.

BILL ZAMPARELLI: We will comply

with the noise ordinance.

CONSTANTINE ALEXANDER: You have to do that whether we do or not. The protection is you're going to comply with the noise ordinance?

BILL ZAMPARELLI: Yes.

THOMAS SCOTT: My question is is that enough?

CONSTANTINE ALEXANDER: That's my question, too.

THOMAS SCOTT: I mean, if you're in a residence zone --

CONSTANTINE ALEXANDER: Yes, I would like to know more about this, the noise issue, then just we'll take care of it after you give us relief.

THOMAS SCOTT: If my house was here or here or wherever, and all of a sudden somebody introduced this fan powered heat exchangers, I would be real concerned about the noise.

BRENDAN SULLIVAN: Yes, but I think that that's all the -- I mean, that's the bar they have to meet is to comply with the noise ordinance as it is anybody, in any residential structure putting in condensers on the outside, you know, there is that regulation.

And, Ranjit, when the permit is issued, they obviously have to comply with the noise ordinance?

RANJIT SINGANAYAGAM: Yes, there is certain decibels required. There are certain amount decibels allowed during the daytime and nighttime.

CONSTANTINE ALEXANDER: But the question really, though, is it enough that they're going to comply with the noise ordinance given the location of this exchanger on the property? If they put it somewhere else on the property on Putnam Avenue, I think we have a different

consideration.

RANJIT SINGANAYAGAM: I think the noise ordinance, they talk about residential zones and the rest are commercial zones so they have different -- and it's monitored by the License Commission.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY NEVEN RABADJIJA: If I can add, we do have these in other locations, I was checking with John, and they are close to residential area in those cases as well and there are no issues.

BRENDAN SULLIVAN: I mean those are monitored, too.

CONSTANTINE ALEXANDER: Oh, I'm sure they are. And if not, the neighbors would be monitoring it.

BRENDAN SULLIVAN: Yes. There is actually an inspector that will go out and with a monitoring device.

TAD HEUER: The nearest abutting

building is the one right behind the old Polaroid building?

CONSTANTINE ALEXANDER: No, no, I don't think so.

BILL ZAMPARELLI: The one behind the river is the old Polaroid building.

CONSTANTINE ALEXANDER: You're right.

TAD HEUER: Who's right behind the Polaroid building?

BILL ZAMPARELLI: Right behind is actually Harvard I believe owns the condominium project that's there.

CONSTANTINE ALEXANDER:
Residential?

BILL ZAMPARELLI: It's condominiums.

TAD HEUER: I'm sorry, so that's Polaroid.

BILL ZAMPARELLI: This is Polaroid.

TAD HEUER: That's where you're

putting it, right?

BILL ZAMPARELLI: This is the -- this is the Harvard University's residential development. I think they're -- I don't know if they're condominiums or just apartments.

TAD HEUER: Right. And what's that building?

BILL ZAMPARELLI: That's an office building I believe. I'm not quite sure to tell you the truth.

TAD HEUER: Okay.

BILL ZAMPARELLI: But this is office zone that section in here.

TAD HEUER: Do you know what right behind Polaroid is?

RANJIT SINGANAYAGAM: Office building. Two office buildings there. Two office buildings on this side and house on there.

TAD HEUER: Yes, that's Harvard

housing. That's already housing. So where you're planning to put it in, your nearest abutter is actually an office building and not a residence; is that right?

BILL ZAMPARELLI: Yes, that's correct.

TAD HEUER: Okay. So even though you're in a residential zone, I guess the point I'm making is your nearest abutter is not a residential property.

BILL ZAMPARELLI: Right.

I think what's important to note is that the unit itself doesn't make noise. It's the fans, the cooling system.

THOMAS SCOTT: And on a hot summer night when everyone has their windows open and they're trying to sleep and the fan kicks or whatever on the one time when the thing is used it's run on peak.

TAD HEUER: Be thankful they have air conditioning.

TIMOTHY HUGHES: But on a hot summer night when everyone has their windows closed and their air conditioning is running, you want this electricity to work.

THOMAS SCOTT: Right. Not everybody has air conditioning.

TIMOTHY HUGHES: I agree.

THOMAS SCOTT: I guess my point is, you know, it would have been nice to know if there was -- if it was approaching a problem, maybe not -- maybe you're not able to meet the guidelines, you know, is there a baffling system of some type that could be, that could surround this thing so that it prevents the sound from travelling to the residential areas.

JOHN ZICKO: The heat exchanger that air circulates around it, that's how we get rid of the heat. The baffling that would be installed in the heat exchanger and fan area would prevent the noise from escaping at all.

So it would be -- fundamentally it would be a built in sound (inaudible) system.

ATTORNEY NEVEN RABADJIJA:

(Inaudible) we're building in the design of the equipment as opposed to having a noisy piece of equipment to try and build, you know, the fences against the noise around it.

TIMOTHY HUGHES: Think of a muffler on a car.

BRENDAN SULLIVAN: You're capturing the source rather than letting it escape and then trying to capture it.

TIMOTHY HUGHES: That's more than just a heat exchange but it does heat exchange, too.

JOHN ZICKO: That's exactly what a muffler on the car does. It contains the noise before it gets out into the atmosphere.

ATTORNEY NEVEN RABADJIJA: Keep in mind that our specification for the design will require them to meet the noise

ordinance.

TAD HEUER: And in terms of screening, what kinds of visual screening do these generally have? Is it just, you know, would it be something like this? Do you, you know, put up shrubs?

BILL ZAMPARELLI: It's pretty much an industrial site. That's what we have.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: You're not proposing to do any landscaping?

BILL ZAMPARELLI: We weren't. But, you know, we'll listen to anything --

TAD HEUER: I'm only asking because in the other case, the Alewife Brook case, there is a condition in that previous grant for elimination of visual impact, and there's a screening and landscaping requirement condition if granted the Variance itself. So I don't know if that one is -- not to go out of turn, but I'd be interested in knowing

what that was in a worse, so to speak, zone. In a commercial zone up in Alewife Brook, where here it's a residential zone around residential type properties, whether similar type screening is viable.

ATTORNEY NEVEN RABADJIJA: If I may, I think in the Alewife case, that was perimeter screen for the substation. It had nothing to do with the installation.

TAD HEUER: All right.

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

Is there anyone here wishing to be heard? Yes, sir. Wishing to be heard come forward, please.

ELIE YARDEN: My name is Elie E-l-i-e Yarden Y-a-r-d-e-n. I live at 143 Pleasant Street. I've lived there for 15 years. I can speak to you as an abutter or I can speak to you as a citizen. If I speak

to you as a citizen, then I also have to reveal, I suppose, that I'm an active member of the Green Party, and I'm also involved with the Climate Action Committee in Cambridge. And so I have other concerns.

My concerns as an abutter have to do with the non-conforming presence in a residential neighborhood, and something which might properly belong in an industrial zone. I have seen very little regard on the part of the proprietors, the corporation, for the fact that it is not only in a residential neighborhood, but it has a fairly long street frontage which my unit overlooks. The maintenance of the frontage is not like that of a business or a residential frontage. It's a neglected slum site. For many years there has been some improvement as a result of extensive complaint. Unfortunately I happen to be in Whole Foods at about 8:15 in morning and there's another aspect. It says

here that this is unattended site. Not only is it unattended, but the gate can be wide open. When I passed by, I barely was able to make my way on the other side of the street because of the snow removal, and the kind of snow removal that had been done made it hazardous. This is a frequent occurrence. And it is related to other aspects of this as well. So, between the failure to clean this site and leaving the gates wide open with no one there to make sure that no one is coming in at eight o'clock this morning, there were two cars parked there, the gate thrown wide open, any kid could have walked in.

I went to Whole Foods, did the shopping that I had to do and went home. Then there was only one car there, but the gates were still thrown wide open. I thought well, maybe they're shovelling snow inside, etcetera, etcetera. Because the lot inside was walkable, whereas the sidewalk fronting

it was not. Mr. Zamparelli is aware of the fact that I've complained about this situation many times, and somehow or another it doesn't get done. And I would say that an important part of the reason, having been an industrial worker myself, is that industrial workers frequently look down upon people who -- there's something macho about it. And people who are not into it are somehow or another civilians, call it that or anything else you want. These complaints are not understood by the people who work at that site. Nor are they at all considerate of the fact that they are in a residential zone. So speaking to them directly is a bad idea, but I knew that ahead of time no matter how polite. But if I were very polite, I would get even further. So this is one of the problems that I've experienced as an abutter. Of course in the summer it becomes a dumping ground for trash.

Now, I am looking at think and I studied this carefully and I must admit I do not understand it. If the corporation proposes to install a four mile long pipe, I am sure that this will be in a city, a very, very costly operation, and I don't see that an investment of this kind would be made without a return. I have nothing about the figures on this and what makes this worthwhile other than to increase the load beyond what might be desirable from a technological point of view as well as any other. This is all based upon old technologies, has nothing to do -- relies completely on the notion of the grid. Everything has to be done through the grid. It does not involve the technological demands five, eight years down the line. It does not involve the new technologies which will supplant many of the existing ones in terms of providing power. I see no vision or recognition of where we are at in this

project. The whole purpose of it -- if you read this, the second paragraph of the thing that I received says very simply: Carrying away locally heated fluid that may arise from external heat sources such as steam lines. In other words, how much heat loss is involved in this project? How much energy waste is involved in this project? I don't know about any of these things.

My recommendation to you would be get some good engineering invites from an outside source. I know that governments usually make the mistake of relying on the engineering know how of the corporations and prefer their word to their own agency's supervision or external agencies. That is unfortunate. I would not like to see it happen locally.

And do you have any questions?

CONSTANTINE ALEXANDER: Just an observation is your suggestion about getting

independent engineering advice is a very good one. We don't have any resources to do that. We don't have the where with all. We have a zero budget.

ELIE YARDEN: That's what I'm saying. Therefore, your approval of this is -- earlier I heard words that I like to hear, hardship. What is the hardship?

CONSTANTINE ALEXANDER: Those cases involved a Variance. And that's the legal standards, part of the legal standard that has to be satisfied. This is not a Variance case. Under the Zoning Laws of Cambridge, the City Council has made a lesser standard for what they want to do. It's a Special Permit, which is almost granted unless we find some -- automatically entitled to be granted unless there are things like hazard or creating safety issues and the like.

ELIE YARDEN: Okay.

CONSTANTINE ALEXANDER: That's the

way the Zoning Law as it's written.

ELIE YARDEN: Okay.

A question was brought up earlier about noise ordinance. A transformer hum is something that we've learned to live with. It is a constant irritant. There are 120 units of housing right on that block of One Pleasant Street. I'm on the other side of the street. There are a large number of units of housing that are already subjected to transformer hum day in, day out. I don't know how to measure the effect of that. Fortunately our unit is very well insulated, and it needs a manhole cover lifted in the middle of the intersection by a blowout for us to notice the noise outside. I see very, very little reason for putting a heat exchange unit in this area, increasing energy waste and so forth. What the public benefit is is beyond me. I don't get it. I don't even understand the thinking, the corporate

thinking that leads to overloading lines and then trying to deal with the overload by getting rid of more heat. There's energy waste galore throughout the entire place. That's about it.

CONSTANTINE ALEXANDER: Well, to your point, I think you raised valid points that needs response to. You're raising perhaps a very valid business issue as to why they're doing this, but that's not for us to decide.

ELIE YARDEN: I didn't think it was. All I'm saying is if it's a non-conforming use, where is the behavior that should accompany a non-conforming use?

CONSTANTINE ALEXANDER: The dilemma is we're dealing with a utility substation in a residential neighborhood which it really shouldn't be, but that's how it is.

ELIE YARDEN: That doesn't mean it shouldn't be maintained with regard to the

neighborhood.

CONSTANTINE ALEXANDER: That's true.

ELIE YARDEN: And I hope you can make that a condition.

BRENDAN SULLIVAN: How long has the substation been there?

ATTORNEY NEVEN RABADJIJA: 1985 I believe.

CONSTANTINE ALEXANDER: How long?

ATTORNEY NEVEN RABADJIJA: 1985.

BILL ZAMPARELLI: We have relocated the substation.

ELIE YARDEN: It was -- excuse me, there was only perhaps one fourth of the amount of housing there.

BRENDAN SULLIVAN: So in other words, in very simple terms there was a tremendous increase for the need of electricity. You can provide that electricity, but the byproduct of providing

that is a greater heat in the lines, and you need to deal with that heat. Is that basically it in its simplest form?

JOHN ZICKO: That's correct. Those are the laws of physics.

BRENDAN SULLIVAN: Thank you.

TAD HEUER: Now, that being said, I'm looking at 10043, and usually we look at these and don't really pay much attention because they don't really have much impact. If someone wants to put a skylight in, it's very hard to find that that would cause a nuisance or hazard or traffic generated or anything like that. Here what we've heard, and I'm looking more particularly at nuisance or hazard would be created for the detriment of the health, safety or welfare of the occupant of the proposed use to the citizens of the city, certainly your counsel is aware of attractive nuisance. In that doctrine I can't imagine you'd want to encourage

attractive nuisances through open gates particularly onto utility substations. I mean --

BILL ZAMPARELLI: I would like to address that only because --

TAD HEUER: Right, and you will. I want to give you a chance to talk to us about those kinds of things because it seems that at least based on the kind of things we've heard, a condition that applies to the nuisance provision, you know, your thoughts on whether that's reasonable, what you've been doing in this regard. Particularly because as mentioned, you know, the case is coming up after this one is in I believe you're in a business zone. Here you've got somewhat similar innacuristically (phonetic) perhaps, however you want to describe it. Or opportunistically, you're in a residential zone which carries with it the fact that you're -- you know, even though

you're on the Memorial Drive side and you're abutting commercial industrial properties, you're other side and your Putnam Street side is a residential street.

BILL ZAMPARELLI: Right.

TAD HEUER: Can you talk about some of those issues?

BILL ZAMPARELLI: Let me first address the issue around the frontage on -- we do have I chain link fence that was a requirement for security around the site. There is a setback on that fence so that you're able to actually pull into, with a vehicle, so that we're not blocking the street. And then there's a gate to enter. There's another gate inside of that gate to get further into the substation, and there is parking within that first gate.

There's two structures. There's a -- and I'm not quite sure what the first building was. But the second building was

actually the transformers, and that's within the second gate if you will.

In this lot has actually separated with the substation on one lot, and then we have kind of a storage facility to the, I guess if you were facing it, would be to your left. There's a gate, a separate gate for that. And that gate may well be left open, but that's a secure area with no access to the substation. If that's left open, it's probably because somebody had pulled the vehicle out or had pulled back in. But there's no, no access within this safety issues.

We do have contracts. Mr. Yarden had made some issues around cleaning up and addressing the, I guess the --

ELIE YARDEN: Snow removal.

BILL ZAMPARELLI: -- the snow removal. We have contracts with a contractor who comes down. It's automatic.

As soon as we get so many inches of snow, an inch of snow, they come down and clean the sidewalks. They clean, they plow the area. This has been, you know, in place for at least four or five years that I'm aware of. I don't know if that's not happening, if there is an issue, I haven't heard of it. You know, we respond to problems, if you will. If somebody raises an issue, we will address it. And I've certainly heard about, you know, when there's trash streaming in front of the building, it's often times not from us. It's often times from Whole Foods or somebody who had been shopping. We tend to -- there's a slight corner there, and when the wind comes down the street, it tends to settle right at the gate, the front gate of where our station is. So that's, that has been an issue and we have had a separate contractor come in and clean and pick up there. And we have on occasion actually had them clean on the

inside of the fence line. Most of this stuff is on the outside of the fence line, but, you know, we've periodically will have them actually go through and clean anything along the front -- inside of the fence line. Most of which, you know, I don't know how it would get in there because there's nobody inside the gate basically. But generally, you know, this is not an occupied station. We don't have people, you know, who work there daily. You know, they do visit the facilities. They maintain it. They, you know, we're monitoring it. This is on our scaler system, so it's all remotely operated. Our system is designed to be, you know, to be self-sufficient if you will. And so what we try to do is try to be a good neighbor. We try to work with the abutters and the neighbors to try to, you know, attenuate any problems that are raised. You know, I'm a little concerned that, you know, the concerns

that you raised now, I hadn't heard most recently. You know, I know we've taken steps to try to address these. I wasn't aware that this was a continuing, ongoing problems.

CONSTANTINE ALEXANDER: I assume now that you've heard that you will take --

BILL ZAMPARELLI: Absolutely. I'll check on this tomorrow morning.

ELIE YARDEN: If it were a business, it would be like a household. You clean your sidewalk every day.

BILL ZAMPARELLI: Right, I guess the -- the difference is that we're not typically there.

ELIE YARDEN: Exactly.

BILL ZAMPARELLI: There's nobody at that facility.

TAD HEUER: But that's actually part of his concern. If this were Whole Foods, you wouldn't say well, you know, I send my guy around twice a week to sweep up, but when he

gets there he gets there. You know, you have him out there every 20 minutes sweeping up because you want to do good and do well. And I think here kind of what we're hearing that precisely because it's an unmanned substation that runs itself, nature and other things don't really care that it's unmanned, they will deposit and other trash there.

BILL ZAMPARELLI: I guess what I'm saying is that the source of the trash is coming from other locations. And it's not from us. We don't see it. We don't know about it, but I understand your concern. And we will definitely address this, you know, to try to, again, you know, try to ensure that this is not an ongoing problem here.

BRENDAN SULLIVAN: The technicians who go to those stations, it's not their job. It's not my job, man, to pick up the trash or to clean. I'm there to do something and to monitor and then get out of the. But Elie Has

your business card, right?

BILL ZAMPARELLI: Well, I'm sure you have one from before. But I'll give him another one.

ELIE YARDEN: Yes, but you know something, it used to be a lot easier to reach you.

BILL ZAMPARELLI: I'm still available.

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

TIMOTHY HUGHES: Are there other substations in Cambridge that you're going to do this to in the future?

CONSTANTINE ALEXANDER: Yes. Next case.

ATTORNEY NEVEN RABADJIJA: There are two.

TIMOTHY HUGHES: No, I mean after the two tonight.

ELIE YARDEN: Like North Point, are you planning a substation there?

BILL ZAMPARELLI: If and when that arrives, we will have a substation there. We don't build in anticipation. We build to meet the need. If there's a requirement for a substation, we will build it. So I think what we wait to see is what gets developed there and we'll meet the requirements.

TAD HEUER: Just roughly how many substations this size does Cambridge have?

ATTORNEY NEVEN RABADJIJA: These are the two largest.

TAD HEUER: Tens, hundreds?

BILL ZAMPARELLI: These are the largest ones that we have. I think we have one in East Cambridge also down on Second Street.

JOHN ZICKO: Yes.

BILL ZAMPARELLI: Then we have some smaller substations; Amory Street, Prospect

Street, Aberdeen Ave. There's a number of them throughout the city. And depending on what the load requirements are, they're designed to meet the loads in those areas.

TAD HEUER: And is it only because this is one of the larger ones that, I don't know if this would be equivalent of a trunk line, but this is why this one needs the heat exchanger and the outlying ones don't necessarily because they're running it as --

BILL ZAMPARELLI: This ties to our East Cambridge facilities also, and it's also to the power plant. So that is now on the grid as a result of all of this.

CONSTANTINE ALEXANDER: Done?

BRENDAN SULLIVAN: We're done.

CONSTANTINE ALEXANDER: Not quite.

The Chair moves that a Special Permit be granted the Petitioner to install one heat exchanger at the premises of 377-379 Putnam Avenue on the basis of the following:

That the heat exchanger will not cause congestion, hazard or substantial change in established neighborhood character.

That in fact this facility is a utility substation in a residential neighborhood and will continue to be such.

That the continued operation or development of adjacent uses as permitted in the Zoning Ordinance will not be adversely affected by the nature of the proposed use. The one effect that it could have would be sound, noise I should say, but there is a noise ordinance that the Petitioner will have to separately comply with in any event.

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

We've vetted that issue about a nuisance or hazard and we've concluded that -- we'll find out if we did. We

concluded that it would not be a nuisance or hazard from this heat exchanger.

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

The fact that we need to have a functioning electricity grid system, and this will allow that to happen.

On the basis of the foregoing the Chair moves that a Special Permit be granted the Petitioner on the grounds that the heat exchanger be located as shown on plans submitted by the Petitioner and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan,

Heuer, Scott.)

(11:00 p.m.)

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

CONSTANTINE ALEXANDER: We'll move on to Alewife. The Chair will call case No. 10045, 191 Alewife Brook Parkway. Is there anyone here wishing to be heard on this matter?

ATTORNEY NEVEN RABADJIJA: Yes. Again Neven Rabadjija for NStar Electric,

Bill Zamparelli and John Zicko for this case.

CONSTANTINE ALEXANDER: Now, this is in a completely different district I mean in terms of the neighboring property.

ATTORNEY NEVEN RABADJIJA: It is. It's a much larger station. It's a C-2 District.

CONSTANTINE ALEXANDER: And it does have less impact on the residents obviously.

ATTORNEY NEVEN RABADJIJA: Yes. But from a technical standpoint, it's exactly the same use of equipment.

CONSTANTINE ALEXANDER: Right.

ATTORNEY NEVEN RABADJIJA: If I can say that.

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

TIMOTHY HUGHES: Where on the property is this going to be located?

ATTORNEY NEVEN RABADJIJA: To the --

CONSTANTINE ALEXANDER: Where?

BILL ZAMPARELLI: It's near the railroad tracks I think.

JOHN ZICKO: It is, yeah. It is northeast corner.

TAD HEUER: Do you have anyone out there who would ever hear anything like this?

BILL ZAMPARELLI: In this location?

TAD HEUER: Any abutters who are not just like NStar?

JOHN ZICKO: In this location, probably not.

CONSTANTINE ALEXANDER: That's land where this --

BILL ZAMPARELLI: There's a railroad right of way.

CONSTANTINE ALEXANDER: That's the railroad?

BILL ZAMPARELLI: Yes. It goes right underneath the Alewife Brook Parkway.

CONSTANTINE ALEXANDER: I remember the old days when there used to be a drive-in

movie theatre there.

JOHN ZICKO: When I was here for the last Special Permit, somebody on the Board quizzed me on what was there before the substation.

CONSTANTINE ALEXANDER: Yes, drive-in movie theatre.

Questions from members of the Board?

TIMOTHY HUGHES: Can you make this big enough to use it as a drive-in movie screen?

BILL ZAMPARELLI: A big screening facility, yeah.

ATTORNEY NEVEN RABADJIJA: A lightening show for you.

TIMOTHY HUGHES: I'd rather you didn't.

CONSTANTINE ALEXANDER: Special Permit be granted the Petitioner to allow the installation of one heat exchanger on the premises at 191 Alewife Brook Parkway on the

basis that there will be no impact on traffic or patterns of access or egress which would cause congestion, hazard or substantial change in established neighborhood character.

In fact, this site is located in an area that's far from almost anything that would be disturbed by the kinds of proposed use.

That the continued operation of development of adjacent uses will not be adversely affected by the nature of the proposed use. Again, given the nature of the surrounding properties.

And that no nuisance or hazard would be created to the detriment of the health, safety and welfare of the occupant or citizens of the city.

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

Again, this will allow the Petitioner to more efficiently provide energy for the citizens of Cambridge and perhaps other occupants -- other residents of Massachusetts.

On the basis of the foregoing, the Special Permit would be granted on the condition that the heat exchanger be located as shown on the plan submitted by the Petitioner and initialed by the Chair.

All knows in favor of granting the Special Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

(Whereupon, at 11:05 p.m., the meeting adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

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

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 21st day of January 2011.

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

My Commission Expires:
April 23, 2015

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