

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE
GENERAL HEARING
THURSDAY, JANUARY 24, 2013
7:00 p.m.
in
Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Timothy Hughes, Vice Chair
Thomas Scott, Member
Janet Green, Member
Douglas Myers, Member

Maria Pacheco, Zoning Secretary

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander,
Timothy Hughes, Brendan Sullivan, Thomas
Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Board of Zoning Appeals to order. And as is our custom, we're going to with continued cases.

The first case I'm going to call is case No. 10351, 700-704 Huron Avenue.

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

BRYAN WILSON: Chairman, members of the Board, my name is Bryan Wilson representing MetroPCS Communications and request to add five antennas to the existing communication facility at the building whereas I've been notified that my landlord removed my notice signs. I would respectfully request a continuance --

CONSTANTINE ALEXANDER: Please sit down.

BRYAN WILSON: Thank you.

-- until such time I can properly identify the Special Permit request.

CONSTANTINE ALEXANDER: A month from now if we have room on our agenda?

BRYAN WILSON: As quickly as possible, please.

CONSTANTINE ALEXANDER: Maria, can we do it at the next hearing?

MARIA PACHECO: It's a non-heard case.

CONSTANTINE ALEXANDER: It's not heard.

MARIA PACHECO: So we could do the 7th.

CONSTANTINE ALEXANDER: Okay, the 7th of February?

BRYAN WILSON: Thank you very much.

CONSTANTINE ALEXANDER: That gives you a short time to get your sign up and comply.

BRYAN WILSON: I will work with Maria on that and get them up quickly.

MARIA PACHECO: We'll get you a new

one.

BRYAN WILSON: Yes, thank you.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on February 7th on the condition that the Petitioner post, and continue to post in accordance with our Zoning Ordinance, the sign that's required by our Ordinance. That sign should reflect the new date, February 7th, and the new time, seven p.m.

On the condition that the Petitioner sign a waiver of time for decision.

BRYAN WILSON: Which I have already done.

CONSTANTINE ALEXANDER: You've already done that, okay. It's in our files then.

And on the further condition that to the extent that you modify the plans that are already in our file, that the modified plans and any required change to your table of

dimensional requirements be in our files by no later than five p.m. on the Monday before February 7th.

BRYAN WILSON: So agreed.

CONSTANTINE ALEXANDER:
Understood.

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

(Aye.)

CONSTANTINE ALEXANDER: Case continued.

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

* * * * *

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10352, 1 Brattle Square.

Anyone here wishing to be heard on this matter?

BRYAN WILSON: Yes, please.

Bryan Wilson representing MetroPCS Communications requesting Special Permit to add one antenna to an existing wireless communication facility at 1 Brattle Square. MetroPCS has been heard before the Planning Board who had no objection to our proposal. We've also been before the Cambridge Historical Commission and they have issued a Certificate of Appropriateness, and I have filed amended plans with this Board as were presented to the Planning Board and Cambridge Historic Commission in which we have modified our antenna mount for this one antenna so that we are further reducing the visibility and visible impact of the proposed antenna.

CONSTANTINE ALEXANDER: These are

the same plans that are in our file now?

BRYAN WILSON: Yes, they are.

CONSTANTINE ALEXANDER: And you have photo simulations in our file?

BRYAN WILSON: You do have updated photo simulations and plans that were submitted on December 27th.

So we have selected a smaller slimmer mount for the one antenna further reducing the visibility and hope that this will meet the Board's approval and grant our request for the Special Permit.

CONSTANTINE ALEXANDER: Okay.

I'll read into the record later, but I will just advise the board members that the Planning Board has written us a memo and states that they have no objections to the installation of dish antenna which is what you're proposing.

Anything further you want to add at this point?

BRYAN WILSON: No. Thank you very much, but I would be happy to answer any questions.

CONSTANTINE ALEXANDER: Okay. I'll open this matter up to -- well, first of all, let's see if there are any questions from members of the board. Are there any questions?

TIMOTHY HUGHES: Yes, I have two pieces of paper that both say proposed view, but they don't show the same thing. Which one should I be paying attention to?

BRYAN WILSON: The last one shows the modified mount which is smaller. So it's that one that I am requesting approval on.

TIMOTHY HUGHES: Okay.

CONSTANTINE ALEXANDER: These photo sims are still the correct ones?

BRYAN WILSON: Yes, they are.

CONSTANTINE ALEXANDER: And this is -- you gave us more detailed plans in our

files if I can find them.

BRYAN WILSON: Yes, I have --

CONSTANTINE ALEXANDER: Here they are.

BRYAN WILSON: -- plans, the amended plans are dated December 3, 2012, revision No. 2.

CONSTANTINE ALEXANDER: Yes.

BRYAN WILSON: And, again, the only change in the plans from those submitted in July to those submitted in December is that antenna mount detail.

CONSTANTINE ALEXANDER: And the antennas are going to be -- or the mount and the antenna are going to be painted to match the color of the structure?

BRYAN WILSON: That is correct.

CONSTANTINE ALEXANDER: To minimize the visibility?

BRYAN WILSON: Yes.

CONSTANTINE ALEXANDER: Okay.

And this is not in a residentially-zoned district so we don't have to worry about certain requirements of our Ordinance.

Any further questions besides Tim's?

I'll open this matter up to public testimony.

Anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one has identified as wishing to be heard.

As I've already indicated, we are in receipt of a memo from the Planning Board which states very simply: (Reading) The Planning Board reviewed the application for Special Permits -- they're referring not only to this one, but to 700 Huron Avenue which we're not going to hear tonight. (Reading) 1 Brattle Square is an acceptable

application, and the Board has no objections to the installation of the dish antenna.

With that I'll close public comment.

Anything further you want to add, any second thoughts, third thoughts?

BRYAN WILSON: No. Thank you very much.

CONSTANTINE ALEXANDER: Comments from members of the Board?

BRENDAN SULLIVAN: Well, I'm just thinking about the Ordinance Section 440 and footnote 49. I know that you have started to cover some of those criteria, and I didn't know if you wanted to run through all of them for the record, that's all.

CONSTANTINE ALEXANDER: Okay, they're in the file, but I can take them off if I can find the application again.

Why don't you -- I have the old file. Why don't you identify why you meet the requirements starting with the fact that are

you a licensed FCC carrier --

BRYAN WILSON: Certainly.

CONSTANTINE ALEXANDER: -- in good standing?

BRYAN WILSON: Yes.

MetroPCS is licensed by the FCC to provide PCS communications using licensed spectrum. I can go through each of these if you'd like.

The proposed facility is unmanned and won't generate any additional traffic or require any parking.

The proposed use will have no adverse affect on the building or the abutting property due to the minimal visual impact, and the proposed use will have no detrimental impact on health, safety, or welfare of the building, occupants, or other citizens of the City of Cambridge.

The facility's design results in little visual or other impacts on the underlying and

adjacent Zoning Districts and is consistent with the Ordinance intention to allow for less intrusive wireless communications in all districts.

BRENDAN SULLIVAN: Okay.

And then granting the Special Permit the Board shall set forth in its decision under which circumstances, if any, the Permittee shall be allowed to replace or upgrade the equipment which you will probably touch on as one of the conditions.

CONSTANTINE ALEXANDER: I will touch on that.

BRENDAN SULLIVAN: Okay, that's fine.

CONSTANTINE ALEXANDER: Anyone else?

(No Response.)

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

That with respect to the relief being sought, that traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character as indicated by the Petitioner. We're talking about adding one dish on the upper part of the structure.

That nuisance or hazard will not be created to the detriment of the health, safety, and/or welfare of the occupants of the proposed use or the citizens of the city. At least so far no one has determined that these antennas cause any kind of illnesses or cancers or anything like that. I know at one point people were worried about that at one point in time.

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. It's noted that this Board has already made a

finding that is proper with subject to certain conditions are acceptable, I should say, that we can have dishes or other antenna mounted to this building at 1 Brattle Square, and that the visual impact of what is being proposed will be minimized because the antenna will be painted to match the color of the building.

And it is noted that the Planning Board concurs with this determination as to the minimal visual impact.

On the basis of these foregoing findings the Chair moves that a Special Permit be granted to the Petitioner on the grounds -- subject to the conditions that A, the work proceed in accordance with plans submitted by the Petitioner. There are a series of plans, the first of which is marked T-1 and initialed by the Chair. And in accordance with the photo simulations submitted by the Petitioner, the first page

of which is initialed by the Chair as well.

That the antenna be painted to match the color to as nearly as possible of the building to which it is mounted, and that this paint job be maintained. If it deteriorates, you have to repaint it so as to maintain the visual minimal impact.

And on the last condition that to the extent that this antenna is abandoned or not used for a period of six months or more, that it be promptly removed and the building face be restored to its original condition to the maximum extent possible.

I get it all?

On the basis of all the foregoing, take a vote. All those in favor of granting the Special Permit?

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Hughes, Sullivan,

Scott, Green.)

BRYAN WILSON: Thank you very much.

* * * * *

(7:15 p.m.)

(Sitting Members: Brendan Sullivan

(Chair), Constantine Alexander (Vice Chair),

Thomas Scott, Douglas Myers, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10342, 71 Fresh Pond Lane.

Please introduce yourself for the record whoever is going to speak and whenever you're going to speak and please spell your last name and address for the record.

FRANK LoGERFO: Mr. Chairman, Frank LoGerfo L-o-G-e-r-f-o-r and I represent the owner of 71 Fresh Pond Lane, my wife Judy. And we're here to talk about our plans to build a new garage at 71 Fresh Pond Lane that we had presented previously, and there were concerns about the height of the roof and the relationship with the garage and the other buildings. So we've modified those plans. This is our architect David Powers who will discuss that.

BRENDAN SULLIVAN: If you could just sort of run through again, just introduce yourself for the record and what you had

proposed before briefly, the changes to it.

DAVID POWERS: I am David Powers, P-o-w-e-r-s of S&H Construction in Cambridge. And we had presented a garage that had a roof with a 12-pitch that ended up being about 16-foot, 8 in height. There were objections to the height and how it related to the adjacent garage, which is very close to it. It was suggested that we lower that roof, which we did by about three feet. The adjacent garage is about 15 feet tall, and we reduced our plan to about 13, 6. We've matched the pitch of the adjacent garage, tried to make it look as compatible as we could. Otherwise the plan was unchanged. No footprint changes or other plan changes.

BRENDAN SULLIVAN: In the initial plan, to build what you're asking for, to build a one-car garage in a location that partially overlays the footprint of the previous garage and is 2-foot, 3 from the

property line, that appears to have changed; is that correct?

DAVID POWERS: No. It's in exactly the same location as we originally presented it.

BRENDAN SULLIVAN: I'm sorry, I'm reading it -- okay, the property line is along here. This is the existing house which is at 5-foot, 8, right? Okay, I see.

So basically you have scaled down the height somewhat making it more compatible to the adjoining garage structure next-door and addressed some of the concerns that the Board had expressed at the last time. Okay.

Any questions from members of the Board at this point?

THOMAS SCOTT: Can I see the proposed?

BRENDAN SULLIVAN: Gus, have you any questions at this time?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Doug, any questions?

DOUGLAS MYERS: Did you consider pulling the building back from the lot line? Because I recall there was discussion at the Board the last time about that.

DAVID POWERS: Well, we've got difficulties with accessing the house. And the proximity of our proposed garage to the house is awkward at best, and that's -- our plan is sort of unconventional in that it's rather odd shaped. We tried to allow for the ease of access to the rear of the house, rear door, and the rear lot. And as it is now, we've got about 5-foot, 8 of house. We didn't think we could move it much closer and still make it function properly.

DOUGLAS MYERS: And with regard to the loft space, as I read the plans, there is loft space above the parking area?

DAVID POWERS: Yes, there is.

DOUGLAS MYERS: Under the roof so to speak?

DAVID POWERS: Yes.

DOUGLAS MYERS: And you've referred to it as having a maximum height of that loft space of 4-foot, 6 inches?

DAVID POWERS: Yes.

DOUGLAS MYERS: So I take it since that was the maximum height, there are actually some places in that area where the height is less than that.

DAVID POWERS: Everywhere else.

DOUGLAS MYERS: Having to do with the slope of the roof --

DAVID POWERS: Yes.

DOUGLAS MYERS: -- to be used and so on.

Okay, thank you.

BRENDAN SULLIVAN: Janet, any questions?

JANET GREEN: Only just to say that

I think that I remember, remind me, that the reason that you were so close to the lot line was in fact the other garage is also close to the lot line, and even if you moved it over a little bit, it would still be I think really we called it a no man's land in between the two garages where it would be hard to do much of anything with the space.

DAVID POWERS: The other garage is about two feet from the property line as it is now.

JANET GREEN: Right.

DAVID POWERS: What we're hoping to do is perhaps with consent of the neighbor is just remove the fence that's between the two garages so that there is no longer a fence that divides it into two, two-foot wide strips, but makes one, four-foot wide area so that each person can access that face of their garage.

CONSTANTINE ALEXANDER: I actually

do have a question. Are you all through, Janet? I'm sorry.

JANET GREEN: Yes, I am through. Thanks.

CONSTANTINE ALEXANDER: One of your reasons as I recall for the taller garage the last time was loft space above, storage space.

DAVID POWERS: Correct.

CONSTANTINE ALEXANDER: What happens to that storage space in your new plans? Do you still have storage space in the top and --

DAVID POWERS: Yes, it's minimal in that it's right under the ridge it's four-and-a-half feet. So I don't think anybody could actually get up in there. But you'll be able to access it from a pull-down ladder and at least put things up there from the ladder. And with difficulty, crawl up

inside of it.

BRENDAN SULLIVAN: Okay.

Tom, any questions?

THOMAS SCOTT: No. I think the scale of the, you know, roof element is better now. It's not as dominant as it was before, so I think it's an improvement to the plan.

BRENDAN SULLIVAN: Okay. Let me open it to public comment.

Is there anybody here who would like to speak on the matter of 71 Fresh Pond Lane?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance expressing interest.

There are no subsequent letters in the file. I'll close public comment.

I'll ask if there are any parting words of wisdom that you want to leave us with?

FRANK LoGERFO: Thank you.

BRENDAN SULLIVAN: You've said it all, have you? Okay.

Let me close the presentation part, then, ask if there's any questions, concerns by members of the Board?

CONSTANTINE ALEXANDER: No.

THOMAS SCOTT: No.

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Let me make a motion then to grant the relief requested to allow the Petitioner to demolish the current garage and to build a new one-car garage in the location and the size and scope as per the drawings which are dated November 28th, and that's been initialed by the Chair. And that the requirement is that the work comply with the drawings as submitted.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from replacing an existing garage which was built prior to the

enactment of the existing Ordinance, hence has become outdated and unusable due to its size, its awkward location.

The Board also notes that the garage has a tendency to flood because the concrete floor is below grade.

The granting of this Variance will allow the Petitioner to build a more suitable garage, one that is in size and scale and also location that is similar to an adjoining garage, and hence that the aesthetic value will be maintained for the neighborhood. And that the size and location of the garage is more usable to the Petitioner, to the occupant or the residents, and also is more rational siting and use of the land both around the structure and also in front of the structure.

The hardship is owing to the pre-existing non-conforming nature of the lot, the siting of the structure's thereon,

and hence any adjustment of this nature would require some relief from this Board.

The Board finds that the relief being requested is a fair and reasonable request, and that the granting of the Variance will not be a substantial detriment to the public good.

And that the granting of this Variance would not nullify or substantially derogate from the intent and purpose of the Ordinance.

Anything else to add to it?

All those in favor of granting the variance for the work?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

FRANK LoGERFO: Thank you very much.

BRENDAN SULLIVAN: It was worth the effort.

* * * * *

(7:25 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers, Janet

Green.)

TIMOTHY HUGHES: The Vice Chair will call case No. 10375, 8 Mill Street, McKinlock Hall.

ALEXANDRA OFFIONG: Good evening.

TIMOTHY HUGHES: Introduce yourselves and spell your names for the stenographer.

ALEXANDRA OFFIONG: My name is Alexandra Offiong. It's A-l-e-x-a-n-d-r-a. Offiong O-f-f-i-o-n-g.

JOANNE AITKEN: Joanne Aitken, J-o-a-n-n-e A-i-t-k-e-n.

TIMOTHY HUGHES: And tell us what it is you're looking to do.

ALEXANDRA OFFIONG: Sure. So good evening, we -- my name is Alexandra as I said, and I'm here on behalf of Harvard University. We are here seeking a Zoning Variance for a front yard setback, and that's in relation to a renovation project for McKinlock Hall.

We're proposing a small addition to create an accessible path of travel. This is a -- McKinlock Hall is an undergraduate dormitory. It's part of the larger Leverett House. It's one of Harvard's 12 undergraduate houses. And it has a range of spaces, not only living spaces, but also dining spaces, learning spaces, special spaces.

The building itself was built originally in 1925. This U-shaped with a major addition in 1930, this section. And it's a historically significant building. It's individually contributing on the Harvard Houses National Register District.

So the university is planning a comprehensive renovation of this building, and one of the key goals is to make it fully accessible. We are required by state law to make it fully accessible. And the building right now has a lot of accessibility

challenges because it's organized around a series of vertical entryways, it doesn't have corridors, it doesn't have elevators, and we are -- we have designed a project that's making it fully accessible.

The subject of the Variance tonight is related to this portion of the building which is the second -- which is the Master's residence. So the house, all houses have a House Master which is the leader of that community. So, Joanne can go into more detail about why this -- we are proposing to put this very small 120-foot addition to connect the new elevator across to the Master's residence which is independently, it doesn't have any other corridors coming in to the rest of the building. And it's -- the accessibility for the second floor is essential because it's where a lot of the house gatherings and dinners and activities will take place. So we must make it

accessible. And we have review -- we have gotten the project already approved from the Cambridge Historical Commission and also from the Massachusetts Historical Commission. So we've taken historic preservation very seriously in the whole design.

We've also reviewed the project with the Cambridge Commission for Persons with Disabilities and they're supportive. And we have recently submitted an access variance request to the state in order to allow some of our entrances not to be accessible, and a few of the spaces, but on the whole the building will be fully compliant.

Joanne, do you want to walk through some of the other options that we studied and why they are not feasible for creating an accessible path of travel.

JOANNE AITKEN: Sure.

In the material that you've been

presented, probably page 13 is the most relevant right now. This is an elevation of the Dewolfe Street side of what's referred to as the Master's residence. But as Alexandra explained, the Master lives on the second, third, and fourth floor. And the second floor are the main public spaces for the Master's residence. So the portion that enters here on the first floor is really just the door, the vestibule, and the stair that go up to the Master's residence. So the goal is to get accessibility to the second floor.

The first floor, which is the entry vestibule that you see here, has a seven-inch step up to it, and then two more steps on the interior. So it's a total of 1-foot, 9 inches between the Dewolfe Street sidewalk and the first floor. The Dewolfe Street sidewalk is about 6-foot, 9 inches across. So the idea of getting a ramp or a lift in this, that is on the sidewalk right outside

the property line because the building is right up against the property line, there isn't space for that. The opportunity to get a ramp obviously inside the building is not possible. Getting a lift in here and entering in would require either raising on the outside or lowering on the inside, and, you know, really significantly changing the historic interior of this hall to try to get a lift. If you get to the 1-foot, 9-foot floor level of the first floor, you still cannot get to the second floor. There's a major stair. There's a small existing noncompliant elevator here. This building will not be totally renovated or changed in any way. This elevator will not be expanded. If it were, it would be significant destruction and change to both structure and historic rooms in here.

ALEXANDRA OFFIONG: And I might add that that elevator is a private elevator for

the House Master only, and it's not used by students. It's not public.

JOANNE AITKEN: Right.

So, the solution that we came up with is instead of entering from the Dewolfe side to connect to the U-shaped building McKinlock Hall, making use of an elevator that will provide accessibility in that building. And it makes use of an existing window opening at this point. A Mason reopen. This is a masonry bearing wall building on the outside steel structure within. So taking opportunity of that opening that already exists in the bearing wall building, it would enter into the Master's dining hall, taking into consideration the symmetrical really -- this is a slightly different one, it's being pointed out to me to see. But it would take advantage of the -- or pay attention to the historic significance and the symmetry of that room by entering there.

It also takes advantage of complying with the structure that already exists in the building which would form one edge of the bridge in this position. Locating the bridge here, which works functionally with the Master's house and also with the building, and the elevator providing accessibility there. The width of this small 150-square foot addition is set within four feet of the setback from Mill Street that's required. The rest of the building along Mill Street as you've probably read in here is, again, at the sidewalk line, so it is a non-conforming that, you know, an existing condition.

This is a service alley. You can see it here also. A service alley that is the entry to the kitchen which is on the first floor of the Master's house, and so this bridge is set back within an alley with a gate at the front. So it's service alley set far back.

ALEXANDRA OFFIONG: It's not on here. Oh, yeah. So this is -- you can see from this picture, it would be set back 35 feet --

JOANNE AITKEN: 35 feet.

ALEXANDRA OFFIONG: -- from the face of the building, but five foot shy of the 59-foot required front yard setback to Mill Street.

TIMOTHY HUGHES: Any questions from members of the Board?

BRENDAN SULLIVAN: No.

JANET GREEN: I have a question.

THOMAS SCOTT: What are the uses again at that second level that you're connecting to?

JOANNE AITKEN: It's living room, dining room, and kitchen that has the catering aspect of the kitchen. So there are multiple events that the house has, that the Master has, a number of students who would

come up here, have a function, and have a dinner, have a lecture, have a meeting on almost a daily basis I think. There are a number of events in the house that take place in there.

THOMAS SCOTT: And can you just show me the entrance to the U-shaped building?

JOANNE AITKEN: Yes, there are really many of them, but the main one is on Mill Street here. It's in the building as you can see, and there's a fence and a gate here. But there are a variety of traditional entrances historic on the courtyard. Accessibility will get us into this building throughout this entire building with the elevators and the new corridors we're making with this building. There's also an entry this way that leads into the dining hall function is here with the Master's house above it.

THOMAS SCOTT: But there's no

connection from the Master's house to that building today; is that right?

JOANNE AITKEN: There is no accessible connection.

THOMAS SCOTT: No accessible connection. Okay.

JANET GREEN: So this is for all -- the master Leverett House or the Master of McKinlock?

ALEXANDRA OFFIONG: It's -- yes. It's the Master of Leverett House. And Leverett House is comprised both McKinlock Hall and Leverett Towers which is just across the street.

JANET GREEN: So those people will come across the street and go into one of the doors that you mentioned and they go up and they go across?

ALEXANDRA OFFIONG: Yep. So they can come across the street. And this, the entrance from Dewolfe Street will remain an

entrance. That's probably the primary entrance. And then there will be an interior entrance that people can use coming across the bridge.

JANET GREEN: Being accessible?

ALEXANDRA OFFIONG: Yes.

TIMOTHY HUGHES: Any other questions?

DOUGLAS MYERS: Is there an unobstructed view now through the alley that you mentioned from Mill Street to Memorial Drive?

JOANNE AITKEN: No. There is a one -- there is a connection on the ground floor, a one -- a high one-story connection there. I think in this --

ALEXANDRA OFFIONG: I think you can see in the photos. Yeah. You can't -- this is in shadow, but there is a one-story, a wall, and it is -- there are other -- you definitely could not see through to the

river. It's very narrow and --

JOANNE AITKEN: Yes, it's a very narrow alley that goes back. After it goes back a number of feet, you have the entry, the service entry into the kitchen, what appears to be a connector between the two buildings really doesn't connect the buildings, it fills the space, but it's part of the kitchen side of things. But that blocks the view all the way through. So standing here you cannot see through to the river. Standing on this side you cannot see through to Mill Street currently.

DOUGLAS MYERS: Okay, thank you.

TIMOTHY HUGHES: I'm going to open it public testimony.

Is there anyone who wants to speak on this matter?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I'm going to close public testimony.

Do you have anything else to add?

ALEXANDRA OFFIONG: That's it.

TIMOTHY HUGHES: And any further comments or questions from the Board?

THOMAS SCOTT: One more.

TIMOTHY HUGHES: Go ahead.

THOMAS SCOTT: Is there any handicap accessibility to the first floor of the Master's house?

ALEXANDRA OFFIONG: The first floor of the Master's house is really just the entry vestibule.

THOMAS SCOTT: Which is a seven inches and then another --

ALEXANDRA OFFIONG: Yeah, 1.9. So the rest of this first floor space is actually the kitchen, so it's back, it's back of house space.

THOMAS SCOTT: Back of house. Oh, okay. There's no public spaces on the first floor?

ALEXANDRA OFFIONG: No. And then there's the servery over, here but that's entered through --

JOANNE AITKEN: Through the dining hall.

ALEXANDRA OFFIONG: -- the dining hall.

JOANNE AITKEN: Which is accessible.

THOMAS SCOTT: It is accessible?

JOANNE AITKEN: But from the other side. From this side.

ALEXANDRA OFFIONG: Or from the -- you could enter it through other -- we're creating new corridors, and so you'll be able to enter the building here, enter the building here, and get to all of the public spaces that are on the first floor here.

THOMAS SCOTT: So is the bridge going to be a two-story bridge?

ALEXANDRA OFFIONG: No.

THOMAS SCOTT: You can walk under it?

JOANNE AITKEN: No. Actually maybe bridge is a little bit misleading term. The first story that we explained that means you cannot look this way. We're bridging across, but it, it actually is connected so it appears to be a second story, but also allows us to run some piping and a very valuable space underneath what's the bridge. But basically it's one-story existing connecting with the one-story existing connecting goes from here. There's a part that goes further back. Our bridge is basically on top of that going across at this narrow ribbon.

THOMAS SCOTT: Oh, okay.

JOANNE AITKEN: The one-story part is much broader than that narrow ribbon.

ALEXANDRA OFFIONG: We're looking

at the second floor plan, but I wish we had the first floor plan.

JOANNE AITKEN: Yeah.

TIMOTHY HUGHES: For the sake of the record could you speak to the hardship?

ALEXANDRA OFFIONG: Sure.

So literal compliance with the provisions of the Zoning Ordinance would not allow Harvard to meet the state accessibility requirements and would therefore preclude the use of the public spaces within the Master's residence which is an integral program for the undergraduate college. And the other alternatives for creating accessibility would create other hardships; namely, they would require significant and invasive alterations to a well-preserved national register building. That's essentially it.

DOUGLAS MYERS: One more question.

ALEXANDRA OFFIONG: Sure.

DOUGLAS MYERS: If you know, what are closest non-Harvard owned properties to this activity? It occurs to me obviously there is an internal matter well within the precincts of the university, but I wondered if you knew the nearest non-Harvard properties. Particularly the residential properties on Grant Street appear to be somewhat close, and I wondered if those were Harvard-owned or non-Harvard owned.

ALEXANDRA OFFIONG: The state owns -- that is probably our closest non-Harvard abutter. The university owns everything across the streets. There are some private residences around the corner on Grant Street, three, three private residences. Other than that, there's nothing in the vicinity.

DOUGLAS MYERS: They are closest?

ALEXANDRA OFFIONG: Yeah. And they would not have a view of this connector.

TIMOTHY HUGHES: Anything else?
Ready for a motion?

Is this the architectural -- no, it's not.

Do I have an architectural plan that I can tie the motion to in terms of how it's going to be built?

ALEXANDRA OFFIONG: We have floor plans in the appendix and elevations.

JOANNE AITKEN: Page 14 shows the specific snapshot of where the bridge is.

ALEXANDRA OFFIONG: We color coded the floor plans.

TIMOTHY HUGHES: All right, I'll start with that.

The Board would move that a Variance be granted to 8 Mill Street, referring to this by the name of the McKinlock Hall, to build a small accessible connector between the main U-shaped dormitory building and the House Master's residence.

A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the Petitioner for the following reasons:

It would preclude the Petitioner from making the House Master's residence fully accessible, a residence which in its role as a public gathering space is required by the Mass. Architectural Access Board to be fully accessible. This bridge would accomplish that.

The hardship is owing to the fact that the building which predates the Zoning is positioned far forward on the lot and that because some really interesting math in terms of height and the amount of footage on the face of the lot it would require a setback that could not be accomplished in any event. You know, anything that could be built that would be in the space attached to the dormitory to the House Master's residence.

The desirable relief can be granted without substantial detriment to the public good. In fact, if anything, it is in the enhancement of the public good. It is creating fully accessible public -- full accessibility to all the public spaces that are involved in the complex of the dormitory and the House Master's house.

Relief may be granted without nullifying or substantially derogating from the intent and purpose of this Ordinance. And I am sure there's a reason for that. I'll find it in a second. As well as the relief can be granted without nullifying or substantially derogating from the intent or the purpose of this Ordinance for the following reasons:

It is not the purpose of the Ordinance to stand in the way of accessibility for all public spaces, and in that regard a Variance is absolutely necessary so that can happen.

The Variance will be granted as long as the design that was presented to us and is substantially complied with in its execution. And the Chair would initial page 14 of the appendix of the plans that shows where the accessible connector is. And then the following floor plans will be adhered to in the building of this, the next three pages or so.

All those in favor of granting the Variance?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor.

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

DOUGLAS MYERS: One question just to clarify the record. Is that very helpful plan that's lying in front of, Ms. Aitken, is that among the documents that the Chair has initialed?

JOANNE AITKEN: Yes.

ALEXANDRA OFFIONG: Yes.

TIMOTHY HUGHES: Yes, it's one of the pages following the --

ALEXANDRA OFFIONG: It's actually on this -- it's on the summary page and it's also on --

JOANNE AITKEN: It's on page 11.

TIMOTHY HUGHES: Okay, I'll initial page 11 as well.

JOANNE AITKEN: Yes, 2 and 11.

TIMOTHY HUGHES: Oh, I see, it's on the back side.

ALEXANDRA OFFIONG: Thank you very much.

* * * * *

(7:45 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10376, 89 Allston Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight with architect Peter Quinn, Peter Quinn Architects, and the owner of 89 Allston Street, Mr. Sam Dkaidek.

This is a renovation as part of a renovation of the entire property to renovate a three-family located in C-1 District. This is a non-conforming three-family. And

if you actually go down Allston Street, you'll see that there's a series of three families on both sides, many of them have very similar, enclosed and unenclosed porches on the front.

CONSTANTINE ALEXANDER: I would question the many. I saw one.

ATTORNEY SEAN HOPE: Of the enclosed?

CONSTANTINE ALEXANDER: On the front porch? If you go down Allston Street on the same side of the street where your structure is, there are five or six almost identical structures in the row. Only one, two or three doors down have.

ATTORNEY SEAN HOPE: Sure, have the front enclosed. But also if you look at the rear of the property, some of them do have --

CONSTANTINE ALEXANDER: One.

ATTORNEY SEAN HOPE: And we actually have some pictures.

CONSTANTINE ALEXANDER: I saw one. I went in the backyard. I saw one with rear porches.

ATTORNEY SEAN HOPE: So we have pictures here and they show --

CONSTANTINE ALEXANDER: Maybe I missed it. I'm willing to be corrected.

Yes, one.

ATTORNEY SEAN HOPE: Is there a second?

CONSTANTINE ALEXANDER: There's one, two, and then there's yours, and one on the other side. Two.

PETER QUINN: There's four in a row here.

CONSTANTINE ALEXANDER: On this side of the street?

PETER QUINN: This is the backyard, sir, what Sean was just showing you.

CONSTANTINE ALEXANDER: Four in a row? I didn't see that when I went there. I

don't, I'm not sure where the picture is taken or the angle.

PETER QUINN: So, yes, that's oriented looking down towards Brookline, Brookline Ave., Brookline Street in the back yards of abutters.

ATTORNEY SEAN HOPE: That's from the property looking towards Brookline.

CONSTANTINE ALEXANDER: MIT, that direction?

PETER QUINN: Yeah.

ATTORNEY SEAN HOPE: Actually, no it's not MIT. It's actually looking towards Harvard.

CONSTANTINE ALEXANDER: Okay. Look toward MIT. That's where I looked.

ATTORNEY SEAN HOPE: Yes, there's not --

CONSTANTINE ALEXANDER: Nothing.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: One.

ATTORNEY SEAN HOPE: Yes, there is one. If you look towards Brookline Street which is looking toward Harvard, the opposite way, you'll see -- and that's the pictures we have from the year yard.

CONSTANTINE ALEXANDER: It's consistent with my memory.

ATTORNEY SEAN HOPE: Yes, exactly.

But this is a project for a renovation, a gut renovation on the entire property. This is a property that is interior in terms of what it needs, really speaks to a full renovation. Part of the Special Permit request is to move windows on both sides of the property and on the front. Part of the outreach was to make sure that the window placement wasn't going to affect privacy. Mr. Dkaidek reached out to the adjacent -- on the right side of the property there's very close to the property line, and so there's -- some of the windows were actually

facing, and so we moved the windows, one, to make sure we get the layout best we could support the property, but also to make sure we weren't increasing any privacy issues. So there are also on both sides of the property there was a Special Permit relief going to add and actually remove windows, and we show it on the elevations where the existing windows were as well as the new proposed location, and also on the front.

Part of also changing the layout and the orientation of the interior design was also to enclose the front porches. We cited Article 8.2 alteration of non-conforming structures. So this property is non-conforming dimensionally in a few respects.

One, the minimum lot size is 5,000 square feet, and this is approximately 3500 square feet. Also, the existing structure is over what the allowable 0.75. Existing is

a 0.96 and we're asking for a 1.0.

Part of the increase in the gross floor area has to do with the rear proposed decks on the property. As I mentioned previously, there are open decks in the front of the property. We're proposing to enclose those. And so essentially we're taking this minimal open private space that they have for the first, second, and third units and we're actually enclosing those to make those sun rooms, and we're actually taking that private outdoor space and moving it to the rear. This is a very narrow lot, so you're narrow on both sides, but there's plenty of backyard space. We felt it would be most appropriate to take some of that outdoor porch space and take it away from the street where there's loud and there's less privacy and move it to the rear yard.

CONSTANTINE ALEXANDER: But the price we pay or the city pays is it increases

massing on the street. Now, we have a more looming presence. And this Board, as you may know, in the past has not looked in favor on enclosing front porches that already protrude into the front yard setback.

ATTORNEY SEAN HOPE: Yes. I mean, one, as you noted, there is adjacent to the property, there is an enclosed three-family.

CONSTANTINE ALEXANDER: A couple doors down.

ATTORNEY SEAN HOPE: Yes, a couple doors down. Right next-door actually.

TIMOTHY HUGHES: Yes, but I don't think that's a strong selling point.

JANET GREEN: I don't think so either.

TIMOTHY HUGHES: Looking at that one I don't think it's a strong selling point.

ATTORNEY SEAN HOPE: Well, no, in terms of the established neighborhood character. There is an example of that.

And I also think that for the occupants of the building in terms of having some privacy in your outdoor space, you would think that the rear yard lends itself more toward that. I do know for the Board that whenever you have backyard private space there's also always a question about privacy, and especially when you have narrow lots. And so part of what I asked Mr. Dkaidek to do in presenting these proposed rear yard porches is to go speak to the neighbors and to see what, if any, issues they would have because they have a backyard space that's open and now you may have people there. But also to the Board's point I asked the neighbors about enclosing the front yard porches and what would that mean to the structure, and Mr. Dkaidek can speak to that. I think overall generally this was a property that the neighbors felt wanted to be renovated and have a new use and new life. It was in deteriorating condition. So I do

think part of the package was this idea of enclosing those front porches. But I also thought, and we thought if we looked at this that orienting people, you know, using porch and patio spaces was better suited to a large rear yard area. I would say this is different than when you have a very short year yard where you will have somebody looking into another person's yard in the rear. This is a rear yard area. So there is room for a full, a full setback and these porches so that I would say that privacy in terms of the rear yard porches is not an issue that the neighbors have expressed and also because I think the size and shape of the lot.

CONSTANTINE ALEXANDER: Let's break this case -- you want both a Variance and a Special Permit. So I would take each separately because we're mushing the two together.

ATTORNEY SEAN HOPE: Sure.

CONSTANTINE ALEXANDER: Let's start with the Variance. That's the rear yard. You need a Variance to fit the decks in the rear yard.

Are you going to be an owner/occupant? Are you going to occupy the structure?

SAM DKAIDEK: Eventually.

CONSTANTINE ALEXANDER: Eventually when you retire 40 years from now?

SAM DKAIDEK: No, no, no. I have two girls in high school. They are getting ready to go to college in the next year or two. I like to keep them as long as possible, but once they're on their own I will --

CONSTANTINE ALEXANDER: What is the hardship that would justify us you granting you a Variance for the rear deck?

ATTORNEY SEAN HOPE: So I just wanted to be clear. So it's not there's any a setback relief allowing the Variance for the rear porches --

CONSTANTINE ALEXANDER: It's FAR.

ATTORNEY SEAN HOPE: Yes, FAR.

So the Variance has to do with the shape of the lot. It's a non-conforming lot. That any additions to the lot, if you were going to additions would need relief. It's a non-conforming lot. I also think it's narrow, so the shape of the lot. I think it's the fact that dimensionally you can put these decks on, that they meet all the setback requirements. And so that the only piece of relief is for the additional GFA.

CONSTANTINE ALEXANDER: Of which you need a hardship. What's your hardship?

ATTORNEY SEAN HOPE: The hardship is the size and shape of the lot. And the fact, it's based on the size and shape of the lot --

CONSTANTINE ALEXANDER: You know you've got to establish hardship and then you've got to establish special conditions that justify the granting of the relief. The

shape of the lot goes to the second one, special conditions. What is the hardship that requires you to have rear decks on this structure?

ATTORNEY SEAN HOPE: And I think there are many ways to look at the hardship. I think in this particular case when you're on a third floor having accessible outdoor space. You know, there is a rear yard there, but in terms of if you're a third floor occupant and you wanted to be able to have some out --

CONSTANTINE ALEXANDER: Sean, there are many apartments in the city where people that are much higher than three stories and people want outdoor -- they take the stairs down or they take the elevator down. I mean it's not unique or a real hardship if you don't have a rear deck.

ATTORNEY SEAN HOPE: Well, I do -- I would say it is unique. I think it's very

different from a new construction where you may build a five or six-story building and you're creating dwelling units on a fifth or sixth floor. I think this is an existing non-conforming building. I think it's one that is built as a three family. And I do think if you're on the third floor, it's hardship to be able to do things like store recyclables on a rear porch without having to go down. If you have recyclables in your kitchen, let's say, and you want to be able to store them someplace, it is I think an amenity, and maybe, you know, the idea is for you to judge what the hardship is. But I do think that it is extremely inconvenient to have to go down to a first floor from a third floor to be able to have some additional outdoor space outside of the unit.

CONSTANTINE ALEXANDER: No question it's convenient. The question is is it a substantial hardship? If this were a

six-story building and you don't have outdoor space, I think it is more of a hardship. You've got to go down six flights of stairs to get some fresh air. Here there are many, many three-story buildings, three deckers in Cambridge or three-story buildings generally so --

ATTORNEY SEAN HOPE: And I would just, I would just distinguish this from the situations where you're asking to put these decks that are extremely abutting a rear yard where that doesn't speak to the hardship. I think it speaks to the character of the building and how well it fits. But I do think if you're on a third floor, it is a hardship. And depending on the occupants and who is living there and your use of it, it can create a hardship to not have some of this available outdoor space to even do things like have a cup of coffee or to store some recyclables. I do think it is a hardship to be on the third

floor. There is not an elevator in this building. This wasn't something where you created this building where you've added these floors. It's a non-conforming building. It was built at a time when I think the realities of modern day living are very different. I think if you look on the street, you actually see there are some consistencies of what's being proposed, so this is not out of scale in character. But to the Chair's point I think hardships are found in several different ways. And I did think in the application, one of the things that we reached out, knowing the Board would have this question is what do the immediate abutters feel about what you're doing? That doesn't speak to the hardship, I think it speaks to the context and appropriateness --

CONSTANTINE ALEXANDER: It also could be the abutters are anxious in seeing whether they can build their rear porches,

too. If we grant relief here, don't we have to grant it to the next-door the next-door and the next-door. In which case we've increased the FAR and the density for the whole neighborhood.

ATTORNEY SEAN HOPE: Well, one as the Chair knows, that each individual case is looked at on --

CONSTANTINE ALEXANDER: Each lot is identical, each structure is identical.

ATTORNEY SEAN HOPE: But I also think that we've shown in some pictures that there actually are rear porches in that area. So I think, you know, when we looked at this this wasn't something that was unique that saying there's not any rear decks, I want a rear deck. More like there are rear decks in these yards. And to your point these are very long lots that are probably built around the same time. Obviously predating Zoning so they're pre-existing non-conforming.

And I do think that there are -- some of them have adjacent decks, and I think this deck in terms of the size and the scope is one that is very similar, and I would say consistent to what else is there. But I do think that it is a hardship, you know, for this area. And then also as you know, the reason why this gross floor area is counted is really because the area below the deck is included in GFA. So that in some sense, you know, you could have one deck. And I think the first floor deck is probably the one that we could actually have as of right, because it would be -- it doesn't encroach in the side yard setbacks and there's nothing above it. So it really, I think it's a unique situation. It is an opportunity to renovate the building, but I do think that when you're on a second and third floor, depending on the occupants in the building, I think it can be a hardship to be able to -- and this is not a deck that's

going to be allow you to have a grill or a party up there, because you do have plenty of backyard space. So I'm not saying that this is because you don't have a backyard area. I have seen cases with decks where you make that argument because it is very limited outdoor space, you need this outdoor space. We're not saying that here. We also do believe, though, that because you have this vertical living, that having this adjacent outdoor space to do something like some basic storage and without going down to the first floor is what we're presenting as our hardship.

CONSTANTINE ALEXANDER: Other members of the Board, let's stick with the Variance part of the case first, the rear decks, anyone have questions at this point?

BRENDAN SULLIVAN: Is there any evidence that there were rear porches/decks on the building when it was built? Or at some point? From the inside? Can you see where

there may have been a door that was blocked up, replaced with a window that there was a landing?

SAM DKAIDEK: First floor.

BRENDAN SULLIVAN: A landing from a second or third floor apartment that lent itself to an entryway on to a porch.

SAM DKAIDEK: I didn't really investigate that. I feel that -- I know the first floor had some sort of --

BRENDAN SULLIVAN: And there was an interior stairway --

SAM DKAIDEK: Yes.

BRENDAN SULLIVAN: -- outside of the apartment? So you come up a stairway and then there was a typical doorway into the apartment?

SAM DKAIDEK: Yes.

BRENDAN SULLIVAN: Okay. Well, my feeling is that I think houses of this nature being built in 1920?

PETER QUINN: Twenties approximately.

BRENDAN SULLIVAN: 20. Were probably built with porches. They were probably taken down because they fell into disrepair because it was cheaper to take them down rather than rebuild them, and the argument was well nobody uses them. I think that they should have back porches, but I also think they should have front porches. That's --

CONSTANTINE ALEXANDER: That's the second part of the case.

BRENDAN SULLIVAN: That's the second part. So I have no problem with the back porches. I think that it lends itself to that. And I suspect it was probably built.

CONSTANTINE ALEXANDER: I'm just based on my own visual inspection of the property, I doubt very much whether ever any

back porches on this structure.

Particularly if you look at the other structures which are almost identical. And as I said, with one exception several down, there's no indication that there was ever a back porch on this property.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: That's my own non-professional observation.

Tom, any thoughts or questions? We're not going to get to the merits yet.

THOMAS SCOTT: One question would be, you know, would you be willing to sacrifice the two sun rooms in the front to put the decks in the back for a net zero FAR increase? Because I think --

ATTORNEY SEAN HOPE: Yes, so the front is already counted --

CONSTANTINE ALEXANDER: Yes, they wouldn't be --

ATTORNEY SEAN HOPE: -- because

they're covered porches. So there's no increase there. So you're saying to eliminate the rear.

THOMAS SCOTT: Eliminate these two on the front.

ATTORNEY SEAN HOPE: By eliminating them you mean chopping them off?

THOMAS SCOTT: Yes. And you would have a covered entryway at the first floor level. So you'd pick up FAR here and here.

PETER QUINN: In that sense you're right.

THOMAS SCOTT: You know what I'm saying? And you'd have a net zero increase in FAR, and you'd probably have a better looking building because to enclose these, I think is going to be really detrimental to have this massive element like you see in the neighbor's photo here, you know, to have this massive element that doesn't signify anything other than a big wall of a building.

There's no entrance. It's not clear what it is. It just looks like someone enclosed the porches.

SAM DKAIDEK: But that's not what we're -- we're proposing to do something much prettier, much nicer. All windows and no walls. The front porches would be all glass.

CONSTANTINE ALEXANDER: Yes, but the prettier is in the eyes of the beholder. What you're hearing from us so far, I think, and not final conclusions, is that it's not pretty on the front. We're talking about the massing by enclosing these front porches is not going to prettify the building. It's going to have just the opposite effect. And what Tom is suggesting is very imaginative and it solves your Variance problem. Or if you do it right, or almost solves it. Not exactly solve it because you haven't brought in any FAR, you subtract it from the front and you add it to the back. And you don't

need -- for the back porches you don't need any relief other than FAR so you eliminate that.

THOMAS SCOTT: The plan clearly can function without the sun rooms on the front of the building. Everything internal to that is living space. The sun room is just an added amenity. And if you're telling me that the porch, the rear porch is a better amenity then, you know, you got to like pick and choose I think. Either you want this or you want this and maybe you can't have both.

CONSTANTINE ALEXANDER: Very good point.

ATTORNEY SEAN HOPE: And so I just wanted to add, and I think because -- so the existing house is a 0.96. So the house is non-conforming. So I think even if you wouldn't be adding, you would still be adding an addition to a non-conforming structure. Even though the net difference wouldn't be,

you could make --

CONSTANTINE ALEXANDER: You would be adding a conforming addition so you're not at a Variance, you're a Special Permit under 8.22.2.

ATTORNEY SEAN HOPE: Right. So I'm just wanting to -- it's not just a swap. We would have to come to the Board and --

CONSTANTINE ALEXANDER: Yes, but your chances of getting relief are much greater because the standard is lower, that's what I think Tom is suggesting.

ATTORNEY SEAN HOPE: I agree. And we actually may under 8.22 if that was the way to go, you know, there's -- you could do conforming additions up to 25 percent. There is a provision that allows you with the Building Permit. But I would say that I do think there is a quality difference between what proposed next-door in terms of how they have their windows and the design versus what

we're proposing there. I think if there's a preference against adding mass into the front of structures, and I think it doesn't really matter if you do all glass windows and you do light and air. But I do think there is a difference from what we are proposing. I think that adjacent structure really does stick out. It does seem it's exciting. I think it's a lot of things that actually speak to -- and it really decreases the view of the front entrance. You almost don't even know where the entrance, that's what sticks out. So I do think there are design elements, but I also do think for occupants of the building, there is an idea when you have modern living, you know, the idea if you want to have a glass of wine on an evening, you know, in terms of just I guess the layout, what makes more sense? Do you really want to be looking at a rear yard where there's actually some open space? Or do you want to be looking at cars

that are parked along the front of Allston Street?

So as much as that outdoor space if it was going to be used as front porches, I just don't think the liveability of it is as well. I do think that, you know, rear porches are in the rear yard. And I think that's something that's probably better than it would be in the front. But if you eliminate it as was suggested, front porches, then you would --

BRENDAN SULLIVAN: The whole proposal is to add living space in to the front of the house where there are now porches.

ATTORNEY SEAN HOPE: Yes.

BRENDAN SULLIVAN: And it is interior friendly, it is not street friendly and it's adding mass and bulk where there was never intended which is within the front yard setback.

CONSTANTINE ALEXANDER: Janet, any thoughts?

JANET GREEN: Just speaking to the Variance, I just wanted to ask, which -- where does the sun come up?

PETER QUINN: So, south faces --

SAM DKAIDEK: It would be beautiful sun rooms.

JANET GREEN: So it would be in the front, it wouldn't be in the back? That's my question.

PETER QUINN: The back is east.

SAM DKAIDEK: And they're very small. They're not big at all.

JANET GREEN: The back?

SAM DKAIDEK: The sun room itself is very tiny.

JANET GREEN: No, in the back. I'm still talking about the Variance. So in the back, the decks, how big were they?

ATTORNEY SEAN HOPE: Four by --

PETER QUINN: Six-foot by 10.8.
Six by 11.

JANET GREEN: Six by ten.

CONSTANTINE ALEXANDER: Might you increase the size of the rear decks if you took away the front decks and give you more real living space on the back? I don't know. If you could gain FAR from removing the front and then using that extra FAR to perhaps build slightly bigger porches.

ATTORNEY SEAN HOPE: And I would only say not with these neighbors in particular, but sometimes when you make a deck from a certain size, it goes from this is just for a few people and it's large enough and it does change what could happen.

CONSTANTINE ALEXANDER: Certainly.

ATTORNEY SEAN HOPE: I would only say if we want to go back, and I'm not sure how the neighbors would feel about having a deck so large because then there's no need to

go into the rear yard to do some of the social events that they do here. I think we tried to make the decks just enough in terms of what the Board has approved in various occasions because I know privacy, regardless of how big the yard is, you have noise and life that you didn't once before.

JANET GREEN: (Inaudible).

ATTORNEY SEAN HOPE: Yes.

SAM DKAIDEK: Across the street almost every house, across the street.

CONSTANTINE ALEXANDER: We have this -- just so for your benefit, Sean knows. We have this a lot in Cambridge. There's a lot of non-conforming structures, and there are a lot, at least in the opinions of various Board members, are not attractive structures. And so we've never taken it as a basis for granting someone relief, someone else has gotten it before. We try to take them out, as Sean was pointing it out earlier

when I was trying to make that point, we try to make this case by case. And so I don't think you get credit from most members of the Board for that. It's a fair point, but it's nothing that we would, I think count, that's all.

Tim, any thoughts or questions I should say?

TIMOTHY HUGHES: I don't have any questions, no.

CONSTANTINE ALEXANDER: Save your comments?

Why don't we go -- I'm going to guess there's no one in the audience who wants to comment on this. Let's talk about the front on this, the Special Permit. And you've already obviously heard the sentiments from some people in the form of our questions about the question about massing. So why don't you start by addressing that?

ATTORNEY SEAN HOPE: Yes. I

specifically didn't -- I think I heard some comments about maybe moving some of that element. And I, you know, I do think from the Petitioner's point of view, we would think that the sun rooms are important to the living space, and I think because that structure is already there, we probably would not be adding if those structures weren't already covered. I think because it's already considered gross floor area, we do believe that as proposed, you could do -- enclose those delicately in a way that would not necessarily replicate what's next-door. But I also want to in focusing the Board to the criteria, and I think porch enclosure is a Special Permit as opposed to a Variance. So there's not a hardship and we're not trying to say that.

The criteria looks at traffic generated, patterns of access or egress. I would say that that's the first criteria.

But that's not going to change. It's not going to detrimentally affect the nature of the proposed uses. And as you say the proposed use, there's actually a very similar for better or worse, but a very similar looking three-family structure with enclosed porches. There is not a detriment to the health and safety of the citizens of the city. And I actually think from our point of view and as a developer and as an architect, we really felt that this would actually enhance the living environment for those who are living in there. So I do think we actually meet --

CONSTANTINE ALEXANDER: Stop. You forgot one. Derogate from the intent and purpose of the Zoning By-Law. We have front yard setbacks, and that's one of the intents and purposes is to keep buildings off the street. You're going to increase the intrusion of the front yard setback

by -- that's the massing point.

ATTORNEY SEAN HOPE: Sure. And I wouldn't necessarily characterize it as increasing intrusion. Only such that if we were going to build a structure, it would be a Variance, and it would be a high threshold. I think the porch enclosures even when they are in the front yard setback, still is a Special Permit. And I think it doesn't derogate from the intent or the purpose of the Ordinance. And if the City Council really chose to really want to enforce the front yard setback even for porch enclosures, they could go ahead and decide to make it a Variance. But I think as it stands right now it is a Special Permit, and I don't think the other requirements would be to the extent, especially if it's done -- I think we could do it several different ways. I think if we put a long wall there, if we did different things on the exterior, it could be seen as

an intrusion. But I also think, too, it talks about the character of the neighborhood. And I think all of the houses actually are oriented to the front with very long yard rear yards. So I do think it speaks to that. But I wouldn't say there are certain things that rise to the level of hardship, and there are things that rise to the level of a Special Permit. And I do think that nothing here is inconsistent with the threshold, and as the Board knows that Special Permits would be normally granted unless for those criteria met. I don't think we fall into those in my opinion.

CONSTANTINE ALEXANDER: Just one thing before I forget. If you want to go the swap route, you can -- and if you kept the increase in your FAR by 10 percent or less, you could do it as a matter of right. You don't even need a Special Permit. I wanted to remind you of that. You only get to the

Special Permit if there's more than 10 and 25 percent as you well know. I just don't want to lose that thought.

ATTORNEY SEAN HOPE: Yes, and I know Sean's not here. Though I have seen situations where you've tried to swap out FAR, like, out of the basement and then add it other places. And so I'm not sure how specifically with doing this portion, because we're already over the allowed, even though the decks themselves would be conforming, I don't know if we would be allowed to take a non-conforming square footage and move it to another part of the building and have that same non-conformity without triggering --

CONSTANTINE ALEXANDER: Do you want to continue the case so you could have an opportunity to talk to Mr. O'Grady?

ATTORNEY SEAN HOPE: I'm not even sure how palatable.

CONSTANTINE ALEXANDER: Okay. I'm just laying all the options out for you.

ATTORNEY SEAN HOPE: Yes. But I think we do get a flavor of where the Board may be going specifically, because there is a hardship -- there is a separate piece for this, the rear decks which is a hardship and we went through that. But there is the two pieces about the porch enclosure which is a Special Permit. I do believe that in terms of the criteria and what the thresholds are, I do think the porch enclosures would satisfy those in terms of its impact of adjacent uses, access or egress and substantial change to the neighborhood character which I don't believe that we run afoul of. But if the Board felt that there was an opportunity I would need one minute to talk to Mr. Dkaidek once --

CONSTANTINE ALEXANDER: At the end of the day it's your call, not ours. I guess

I'm nudging you in a certain direction. And I think you get a certain sense from the comments of the Board members where they may be going. Anyway, let me close -- I'll give you a chance to conclude your remarks.

Let me just open the matter to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one.

I don't think we have letters in the file. At least we didn't a couple days ago. I don't see any. No, there are no letters.

You represented to us that you have talked to neighbors and they are generally in support.

ATTORNEY SEAN HOPE: Yes.

And just one, so, I don't think we actually talked about the Special Permit for

the windows themselves separate from the porch enclosures.

CONSTANTINE ALEXANDER: I thought you did.

ATTORNEY SEAN HOPE: No, I think it's there. We don't have to go over it. I would like the Board, if they were going to segment their votes, to segment the votes for the windows on the size which is its own Special Permit adding/removing windows. And it's a separate Special Permit to enclose the front porches so that if there would be three votes. There would be a vote for the windows on the north, south, east, and west elevation which are separate and apart from enclosing the porches, that is a material part.

CONSTANTINE ALEXANDER: These are the plans with the window treatment?

PETER QUINN: Yeah, and I think -- because you have smaller prints,

excuse me. You'll actually be able to see where the existing windows are.

CONSTANTINE ALEXANDER: And so give me that again, Sean.

ATTORNEY SEAN HOPE: Yes. So there is Special Permit to alter the windows on the setback on the east and west elevations. And then there is a Special Permit to enclose the front porches which may or may not be, and then there is a Variance to add the decks. And I would just like to segment those and maybe we could vote on one set tonight and if, you know, as the applicant -- because I don't know if we continue the whole case if there was an opportunity.

CONSTANTINE ALEXANDER: I think we can vote on the Variance and the Special Permit. I don't think we can vote on one part of the Special Permit tonight and then continue the case for the other part of the Special Permit. I think it's all one. But

we can't just vote on one or the other in terms of Variance or Special Permit.

ATTORNEY SEAN HOPE: Well, yes, and I guess procedurally I would leave it to the Chair, I do think, though, the -- because the front porch enclosures are a different section, and we noted Article 8.22 which is the alteration of non-conforming structures, which is a different section than adding or altering windows. They're still in 8.22 but they are a separate section. So I do think you could vote on the windows. And I'm not saying that that may be the way. I just -- in terms of maybe altering what we're proposing for a vote tonight, I would just ask for a minute just to talk to -- I don't really know.

CONSTANTINE ALEXANDER: You can take as much time as you like. You want to do it now? We can continue this case and go to the next case. Whatever you want to do. In other words, you want sometime to go in the

back room and talk?

ATTORNEY SEAN HOPE: I just thought that there was a solution that might have been proposed.

CONSTANTINE ALEXANDER: We had proposed a solution.

BRENDAN SULLIVAN: I don't think we can segment. It may be different sections of the Ordinance, but it's the same case number. And so there has to be some finality to the case number and sort of not pick and choose.

CONSTANTINE ALEXANDER: We'll give you some --

ATTORNEY SEAN HOPE: Could we have a minute?

CONSTANTINE ALEXANDER: Let me suggest --

BRENDAN SULLIVAN: You could have two hours, three hours if you want.

CONSTANTINE ALEXANDER: -- just to help you in your deliberations. Hear some

more commentary. I think you're looking for some guidance. And I think you -- I will not support both the Variance and the Special Permit. I can be persuaded to support the -- you don't need a Variance if you take down the front porch, some of it, and put it in the back as Tom has suggested. That eliminates the need for a Variance. And to the extent that you need a Special Permit. I'm not even sure you need a Special Permit. You may have a solution as of right if you did what Tom is suggesting. But anyway, that's not before us.

I can't support both items of relief you want, that's just me.

Other members?

TIMOTHY HUGHES: My quandary is this: I agree with Brendan that there's a good possibility that there used to be rear porches on this house, and but I don't think you sell that one in terms of hardship.

On the other hand, you sell the Special Permit part but I don't like the looks of it. I don't like the way it masses itself in the front. So it's like, you know, I think, I don't know which way I would go on this. It seems unlikely that I could go for the whole package the way it exists.

THOMAS SCOTT: And I'd support the Variance and a part of the Special Permit which is the side window alteration.

BRENDAN SULLIVAN: We're going to end up with a zebra when we started out with a horse.

JANET GREEN: I feel supportive of the Variance as well, and I -- honestly, if you're looking at the Special Permit, it took me quite a long time to sort of think about massing and to take the color out of my mind because it's, it looks huge because of the color. You know, I mean that is so much of what made it stand out. As soon as you turn

the corner, you see this big pea stuck on the front of the house. And so I felt that was a big problem.

CONSTANTINE ALEXANDER: You can continue the case and give you time to repaint the house.

SAM DKAIDEK: It's going to be resided.

CONSTANTINE ALEXANDER: I'm just kidding.

JANET GREEN: But anyway, so it took a while to get a sense of that. It still felt like it was pretty big in the front for me.

CONSTANTINE ALEXANDER: Okay, Mr. Hope, what's your pleasure?

ATTORNEY SEAN HOPE: If you could take the next case, give us a couple minutes to talk, and then we could come back.

CONSTANTINE ALEXANDER: Whatever you like.

PETER QUINN: That's kind of you.

Thank you.

(Case recessed.)

* * * * *

(8:20 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10377, 580 Massachusetts Avenue.

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

ATTORNEY WALTER SULLIVAN: Walter Sullivan on behalf Artstock. W-a-l-t-e-r S-u-l-l-i-v-a-n. And Tracy Putnman the manager.

CONSTANTINE ALEXANDER: Good evening. Okay, you want a Variance for a sign.

ATTORNEY WALTER SULLIVAN:
Mr. Chairman, before I get started, I'd like to an make an amendment to my application. I had a typographical error. And although when you read the whole paragraph, but when

you put down that it will have a detrimental impact -- so if you don't mind I'd like to amend the application to solve that problem.

CONSTANTINE ALEXANDER: I was going to surprise you with that.

ATTORNEY WALTER SULLIVAN: Oh, you already picked up on that?

CONSTANTINE ALEXANDER: No, no, I'm just kidding you.

ATTORNEY WALTER SULLIVAN: Also, it turns out that we have three more busses that stop at that, that I didn't know about. So there are the schedules for three more MBTA busses.

CONSTANTINE ALEXANDER: The relevance of the bus scheduled to a sign variance is what?

ATTORNEY WALTER SULLIVAN: As a result of how this building is situated, there's a bus shelter right in front of the establishment. The sidewalk is small

between the building and the establishment. The amount of busses stopping there and the size of the sign really has a detrimental impact an undo you hardship upon the business. People can't find it, and Tracy will speak to what people say. Now, I don't know quite what this is, but we have three letters of support. I think we also have a Facebook comment.

CONSTANTINE ALEXANDER: We have a letter from the Central Square Business Association. You have other letters in addition? No, we have more than that. I'm sorry.

ATTORNEY WALTER SULLIVAN: One from Tracy and one from the former manager who outlined, been here from 2003 until 2011.

CONSTANTINE ALEXANDER: Jeff Carignan.

ATTORNEY WALTER SULLIVAN: And there's a Yelp review page. I don't know

what Yelp is. I apologize. People that make comments on their Yelp page about how far it is to find their business.

CONSTANTINE ALEXANDER: I think I have those two pages.

ATTORNEY WALTER SULLIVAN: Oh, you don't have this one. I don't know what Yelp is. I just found out what Facebook is as a result of my kids.

Other than the size of the sign, the proposed sign meets the requirements of the height. It's 15 feet off of the ground. The lighting is interior LED light. The size of the sign is 30 square feet, and the building is 20 linear square feet. We're looking to go from 20 square feet, which is the Variance -- which is a sign requirement. And the reason for that is the undue hardship caused as a result of the bus stop. These signs, I think I already -- you already have photos in there, but showing what the bus stop

causes to the business -- you already have the -- I won't give you more bus stops. And also that this sign is consistent with other signs in Central Square. And the result of increasing the sign it will also reduce the problem of congestion or traffic, people trying to find the business. And I'll let Tracy speak to what customers have said, and even delivery people trying to find the business.

TRACY PUTNAM: Yeah, and get pretty consistent, I would say at least once a week there's a customer who either calls or, you know, and has been walking up and down the street unable to find us. Or customers who come in stumbling in the store and say I've lived or worked or frequented Central Square for X number of years and have never seen this store before. I walk by it every day and can't find it. I've witnessed myself just walking on the street, people sort of

stopping out front and wondering if this is it? I'm not sure. People have a troublesome time finding us. And it's very consistent. And you can see from the comments on our Yelp page and from our Facebook it's, it's a pretty common problem that people have difficulty finding us.

CONSTANTINE ALEXANDER: I can only say that, and this editorial and speaking only for myself, it's rare that we have a sign variance case as easy as this one. I mean, the sign that you're proposing is quite a bit better than what's there before.

TRACY PUTNAM: Absolutely.

CONSTANTINE ALEXANDER: It's consistent with the other signs that are there on either side of you on the storefront. There's a need for it, that's a personal observation.

Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: None?

BRENDAN SULLIVAN: I'm sorry.

CONSTANTINE ALEXANDER: Go ahead.

BRENDAN SULLIVAN: You are allowed 20 square feet because one square foot per lineal feet. So your sign is not going to extend any more than the front of the building. It's basically you're just going a little bit --

ATTORNEY WALTER SULLIVAN: As you can tell from the proposed sign, is that it fits within the -- it's less than the 20 square feet. Excuse me, the 20 linear feet of the building.

BRENDAN SULLIVAN: Right.

ATTORNEY WALTER SULLIVAN: And it's well below the windowsill of the second floor.

BRENDAN SULLIVAN: So it's just the lettering, the size of the letter times the

length which would bring it up to 30 square feet which is more than the 20.

ATTORNEY WALTER SULLIVAN: Yes.

BRENDAN SULLIVAN: So it's really sort of the -- it's more this way, the size of the lettering which bumps it up beyond the 20 feet.

ATTORNEY WALTER SULLIVAN: Yes.

BRENDAN SULLIVAN: If you were to -- 20 feet would be very tiny obviously, and not of any value.

ATTORNEY WALTER SULLIVAN: Correct. And it doesn't deal with the issue with the problem with the bus stops. You wouldn't be able to see it.

Plus you have -- the sidewalk on that side of Mass. Ave. is actually smaller than the sidewalk on the other side.

JANET GREEN: It is.

ATTORNEY WALTER SULLIVAN: And the congestion of the people being there. The

business is actually in the basement.

CONSTANTINE ALEXANDER: Is it really?

ATTORNEY WALTER SULLIVAN: So it takes up the whole building of the basement and the entrance is really to get to the walkway downstairs.

JANET GREEN: And that's why it's B.

TRACY PUTNAM: Yeah. The front of the -- our actual storefront is very unassuming. It's really just a door. And the entirety of the business is, you know, in the basement so it can be tricky for people to find.

JANET GREEN: I wasn't sure this sign was going to help. I think the sign is perfectly fine. I agree with Gus. But I found it really hard to find you when I was going to look at it. I mean, I could have written on the Yelp page. But still the sidewalk is narrow. It's far up. There are

a lot of people on it. It's hard to see.

ATTORNEY WALTER SULLIVAN: And the question is being able to look at it versus rating it in some respects. The ability to have a distinctive sign by letters, it's easier to tell people what to look for versus -- and I didn't know until tonight that I didn't realize that the sign says the name of the store, art supply. That's actually not the name of the store. It's Artist & Craftsman. And that's as a result when they opened in 2003 to try save some money and put a sign up, and say we're not a supply store.

TRACY PUTNAM: Especially since we are not the only arts supply store on that block of Mass. Ave., people, you know, are looking for Artist & Craftsman and they don't see the sign that just says art supply. They're like I've never heard of Artist & Craftsman. Where are you guys located?

JANET GREEN: Right.

CONSTANTINE ALEXANDER: I'll give you a chance to wrap up.

Is there anybody here wishing to be heard on this matter? Sorry.

(No Response.)

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

TIMOTHY HUGHES: No. I thought I had one but I lost it.

CONSTANTINE ALEXANDER: The Chair would note that no one here wishes to be heard.

We are in receipt of a number of letters, and Yelps as well as -- maybe Twitters, too. Anyway, we have a letter from the Chairman of the Board of the Central Square Business Association. (Reading) Please be advised that our association strongly supports the above-noted application -- the one before us -- for a

sign variance in excess of the dimensional limits. We feel the sign design is conservative, in good taste, and very close to existing size limitations. The design should enhance the appearance of the building. We believe it imperative to support retail businesses that offer a substantial addition to both the local business community and our residential neighbors who are also our customers. We trust that you will give a favorable response to this request.

We have a letter from Jeff Carignan, C-a-r-i-g-n-a-n. Address being 71 -- I'm sorry, 751 Broadway in Saugus. (Reading) I am writing today in regards to the petition from Artist & Craftsman Supply for approval of a sign regulation Variance for upgraded storefront signage. I'm currently the manager of our Saugus, Massachusetts, location. Prior to this I managed the store

located at 580 Massachusetts Avenue in Central Square. I worked at the store from its opening in 2003 to the spring of 2011. During this time I received regular feedback from our new customers, existing customers, and delivery companies on the inadequacies of our store signage and the difficulties that they experienced in finding our store. I was visited by a local businessperson here in our Saugus store this week that had patronized the Mass. Ave. location earlier that day. I asked him his impressions of the location, and he stated, "I had a really hard time finding it." The current signage on the facade of the building was installed in the summer of 2003. It was economically made and installed by a local sign company. The building is currently occupied by four businesses, all with varying frontage length. Our space in the basement equals the square footage of the other three businesses

combined, and the entrance is obscured by the bus stop shelter -- bus shelter/stop directly in front. Artist & Craftsman Supply is the largest and longest tenured business at the address. The proposed new sign is more consistent with the signs for the other businesses in the building and in the Central Square District. We respectfully request that consideration for these factors should be given in our appeal for a Variance. I feel that an Artist & Craftsman Supply has become an important outlet for the creative community of Cambridge. Our goal is to continue to serve this creative culture, and we feel a need for improved visibility to aid our customers in finding our location and sustaining our growth. Please consider this request from a business that has embraced and cultivated the creative needs of the Cambridge community.

There is a letter in the file from Tracy

Putnam, the manager of the store. I think you've made your points in your letter. I don't need to read your letter.

TRACY PUTNAM: Yeah.

CONSTANTINE ALEXANDER: Unless you want me to.

TRACY PUTNAM: It's okay.

CONSTANTINE ALEXANDER: We have Facebook commentary. One of them I'm not sure I'm going to read. At least we have to censor it. I will just say these will be part of the record, incorporated by reference, but I will just advise the Board that each of these -- there's one, two, three, four, five, there are six commentaries all of which are in support, strong support of the relief being sought.

And then there is the Yelp reviews. One of them says that this place is awesome, all capital letters, which I think is a tribute to you. But, again, I'm going to say

that unless you want otherwise, these are all going to be part of the record and incorporated in their entirety. There are four commentary, all of which are in support of the relief being sought. And I could see no letters in opposition.

I will close public testimony at this point.

Anything further you want to add?

ATTORNEY WALTER SULLIVAN: No, Mr. Chairman. Just to reiterate that the sign, a bigger sign would allow the business to be identified and reduce traffic congestion. And it would be consistent with the other signs in Central Square and a lot better looking than the current sign.

CONSTANTINE ALEXANDER: Thank you.

Comments from the members of the Board?
Are we ready for a vote?

TIMOTHY HUGHES: I'm ready.

JANET GREEN: Ready.

THOMAS SCOTT: I'm good.

CONSTANTINE ALEXANDER: I didn't want to ask him that yet.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being they're inadequately identified as to their current location. And such inadequacy jeopardizes the business of the Petitioner. It's a business that has been in operation for a good number of years and is a valuable addition to our community.

That the hardship is owing to circumstances relating to the -- it's really the topography of the structure. It faces a very narrow street with a bus stop directly in front. As a result, there is even a greater need for a larger sign than our Zoning By-Law permits. And that we can grant relief

without substantial detriment to the public good or nullifying or substantially derogate from the intent or purpose of this Ordinance.

In this regard the Chair would note that the relief being sought is modest. It is 10 feet more than is permitted in terms of the size of the sign. Ten feet more than our Zoning By-Law permits, but there is substantial community support for the project. That it is something that will facilitate a business, a vibrant business in the Central Square area; one that makes a contribution to our community.

And so on the basis of these findings, the Chair would move that a Variance be granted on the condition that the work proceed in accordance with the sign -- proposed sign submitted by Acme sign?

ATTORNEY WALTER SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Initialed by the Chair. So this will be the sign that

you're going to put up.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Variance granted.

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

ATTORNEY WALTER SULLIVAN:
Thank you.

* * * * *

(8:35 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: We're going to reconvene case No. 10376.

Mr. Hope, what's your pleasure?

ATTORNEY SEAN HOPE: Yes, so after consultation and we do believe, based on the feedback from the Board, in terms of urban design principles, we agree that enclosing the front porches is probably not the most appropriate use of that front door space in terms of how it affects the streetscape.

So what we would like to do is proceed forward, but modify what we would do to allow the existing conditions along the front to remain as is. I do believe that the idea of swapping out gross floor area would trigger a Variance relief. Because of the timing of the hearing, there's a strong desire by

Mr. Dkaidek to move forward with the process. There are contractors and others that have been waiting in the wings to have a decision made this evening. So we would actually want to withdraw this.

CONSTANTINE ALEXANDER: That's my question. You're going to withdraw the Special Permit application?

ATTORNEY SEAN HOPE: The portion that would change -- we do need to do the changes to the windows. The Special Permit had two pieces, one was changes to the east and west elevation. We want to keep those.

CONSTANTINE ALEXANDER: You're right.

What I think what we'll do is -- can you withdraw? It comes out the same way. Okay, I'm fine.

ATTORNEY SEAN HOPE: So we would like to vote on the Variance for the rear porches. We feel like that's the most

appropriate idea to have the outdoor space, and we would like to vote on the Special Permit to allow the windows on the east and west elevations. And if the Board wanted to condition that Special Permit on having the front of the building remain as is unchanged with the porch enclosures, that's what we would like to present for the Board.

CONSTANTINE ALEXANDER: I think we need to make that, because you can't do it without relief from us. So if you're withdrawing it, you can't do anything to the front. I don't want to -- if we put that condition in it, it lasts forevermore.

ATTORNEY SEAN HOPE: Yes, so I think withdraw is not the proper term, because we want to vote on the Special Permit. But if we've got the flavor from the Board that the idea of enclosing the front porch was not something that would be appropriate. So we no longer -- we would want to keep those

existing conditions of the front porches as is. And then the elements of the size of the buildings that require the Special Permit relief we would want to continue with those parts of the Special Permit. I would just say that the owner would want to, because the front porches are in bad condition, would want to rebuild those as is. So it would not be putting any enclosures, but the actual structures themselves --

CONSTANTINE ALEXANDER: So you would be able to do that as a matter of right?

ATTORNEY SEAN HOPE: As a matter of right.

CONSTANTINE ALEXANDER: That doesn't involve us at all.

ATTORNEY SEAN HOPE: But procedurally I'll leave it to the Chair.

CONSTANTINE ALEXANDER: We'll vote obviously separately on the Variance, and then we'll vote on the Special Permit only to

the extent of the east and west elevations?

ATTORNEY SEAN HOPE: And the rear. So it's east, west, and north. Because the north is the rear elevation. There are --

CONSTANTINE ALEXANDER: Are you moving windows in the rear?

PETER QUINN: We're adding a door and a couple other small things. You need to do it if we get the Variance for the deck.

CONSTANTINE ALEXANDER: Got it. I understand.

PETER QUINN: Yeah.

CONSTANTINE ALEXANDER: Okay.

Are we ready for a vote or do you want more conversation?

TIMOTHY HUGHES: I'm ready.

JANET GREEN: Ready.

THOMAS SCOTT: Ready.

CONSTANTINE ALEXANDER: Ready? Okay. We're going to deal with the Variance request first.

The Chair moves that this Board make the following findings with regard to the requested Variance to add rear decks on the first, second, and third floor.

The findings be that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship would be the fact that the occupants of these three units of each of these three floors would not have ready access to the outdoors. And it makes the living conditions not as desirable as they would be if they had some access to the outdoors through the proposed rear decks.

That the hardship is owing to the -- the fact that this is a non-conforming -- the shape of the lot is a narrow lot, and further that this is a non-conforming structure. So that any additions to the structure, including what is proposed, requires 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 this Ordinance.

What the Petitioner is proposing is to add decks that are typical, rear yard decks that are quite typical in Cambridge for three decker homes. It is possible, though we can't be sure, that there may have been decks here at least initially or at some point in the history of this house.

That there appears to be no neighborhood opposition to what is being proposed. And the relief being sought would improve, to some extent, the nature of the housing stock in the city by creating units that are more desirable to the occupants than is the case now.

The relief would be granted, and so on the basis of these findings, the Chair

proposes that we grant a Variance on the condition that the work proceed in accordance with plans submitted by the Petitioner.

There are four pages: A1, A2, A3, and A4, the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: The Chair would now move to the Special Permit request. The request being that the Petitioner be allowed to add, alter, or change windows within the setback on the north, east, and west elevations and porch enclosures for the -- no, no, not for the three front porches. Just the north, south, and east

elevations as shown on these plans, but don't -- the north elevation is the front.

JANET GREEN: North, east, and west.

CONSTANTINE ALEXANDER: North, east, and west. Did I say it differently? I'm sorry. North, east, and west.

On the basis of the following findings:

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

That the continued operation of adjacent uses will not be adversely affected.

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

And that what would be proposed would 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 conditions that the work proceed in accordance with the plans identified with regard to the Variance, a vote we just took. They are four pages in length, and the first page of which has been initialed by the Chair.

And on the further condition that with regard to the existing front porch that they not be changed other than to be -- they said they could be rebuilt for repair purposes as a matter of right, but they are not to be enclosed or otherwise altered.

JANET GREEN: Except for maybe repainting.

CONSTANTINE ALEXANDER: Repainting would be part of the alteration, yes. I'm tempted to put the repainting as a condition to force you to do at that.

SAM DKAIDEK: Please do.

CONSTANTINE ALEXANDER: No, I'm not going to.

On the basis of these two conditions, the Chair moves that we grant the Special Permit.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

SAM DKAIDEK: Thank you.

THOMAS SCOTT: Good luck.

* * * * *

(8:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: You have a continued case. Do you wish to withdraw it?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Let me just find the case reference.

We're going to call continued case, case No. 10365, 89 Allston Street.

Mr. Hope, identify yourself for the record.

ATTORNEY SEAN HOPE: For the record. Attorney Sean Hope, Hope Legal Offices in Cambridge on behalf of the Petitioner. We would like to withdraw the case as the number the Chair has called.

CONSTANTINE ALEXANDER: All those in favor of accepting the proposal to

withdraw say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Withdrawal
accepted.

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

* * * * *

(8:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10378, 85 Hamilton Street.

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

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty attorney with offices at 130 Bishop Allen Drive appearing this evening on behalf of the applicant, Miltenyi Biotic, M-i-l-t-e-n-y-i B-i-o-t-i-c. And they are the owner of the subject property located at 85 Hamilton Street.

Appearing with me this evening from the ownership interest is Harald Fritzenkotter. And Mr. Fritzenkotter is at my far right.

The project architect Mr. Chan is to my immediate right. And his colleague Michael DiMaggio like the ball player.

CONSTANTINE ALEXANDER: Which ball player?

ATTORNEY JAMES RAFFERTY: Joe DiMaggio?

CONSTANTINE ALEXANDER: DiMaggio? I didn't hear you. I know Joe DiMaggio. You should have said Dominic DiMaggio.

JANET GREEN: Dom DiMaggio.

CONSTANTINE ALEXANDER: You're familiar with his restaurant, aren't you?

ATTORNEY JAMES RAFFERTY: I keep forgetting how young you are. He played many years ago.

So 85 Hamilton Street is perhaps an address not unfamiliar with the Board. It is a property located in Special District 10 and we were here --

CONSTANTINE ALEXANDER: April.

ATTORNEY JAMES RAFFERTY: -- in April. Thank you.

And at that time we sought a Variance to construct an addition on the third floor of the building containing two residential dwelling units. We're back this evening because Mr. Chan has been able to redesign this addition such that it meets the definition of a conforming addition. Before the addition did not -- it exceeded the height limitation of 35 feet, and it also did not conform to the setback requirements.

The third issue that was before the Board related to that case, you may recall, also involved GFA and a Variance relief for GFA. But Special District 10 contains a somewhat unique and special provision that we have spent a fair bit of time reviewing with the Building Commissioner, with people involved in the drafting of the Ordinance, and with the staff at Community Development.

And the provision in particular is located, I suspect most Board members have familiarized it, the provision is located at 17 --

CONSTANTINE ALEXANDER: 105.D.

ATTORNEY JAMES RAFFERTY: And 17.105.D says that for structures that meet the requirements of B, which is two paragraphs above which refers to a mixed use containing a residential building, that the GFA of that building can be increased by 25 percent.

Now that's an unusual, somewhat unique provision. Although if you look at Special District 9, there's a similar provision, but it allows the FAR to -- for buildings such as this to go to 0.9 as opposed to the 0.6 that is in the Residence C District.

So as we, as we analyzed this, Mr. Chan and I looked at it, we went to see the Building Commissioner, and one of the things that was

very prominent was the January 1991 date. And what's the relevance of that? And we looked carefully at the language, and I spoke with Ms. Paden and a few others, and the question arose well, if we create a residential unit in the building, we would meet the test of B and then qualify for the provision under D.

So we reviewed that concept with the Building Commissioner. I was struck by two things about D. It doesn't limit the 25 percent to residential GFA. It's quite broad. And it doesn't require that the Board issue a Special Permit for that 25 percent. It just says if you have that use. Which again, is somewhat unusual. In discussing this with an abutter, Mr. Grossman, who is an active participant in the rezoning, and also in reviewing documents with Ms. Paden, she reminded me that this whole area was called the South of Pacific Zoning Package, and it

was one of the more aggressive down zonings the city has seen. Prior to the adoption of this language, this area in large parts of Cambridge for the special districts were zoned Industrial B with an FAR of 4 and at that time no height limits. So the property owners effected by this had filed objections to the petition, and the legal significance of the objections if more than 20 percent of the property owners affected by a potential rezoning file an objection, it triggers the requirement of a supermajority. So Ordinances really ordinarily can be enacted upon the vote of six members of the City Council, but if a protest is filed that exceeds or meets -- or meets or exceeds the 20 percent land area requirement, the legislative requirement is two-thirds, seven votes.

So those objections were filed.

Mr. Grossman was one of the leaders in that

effort, he informed us. And they had not established, in his view, effective commitments from three Councilors that thought that this was too aggressive and was too -- would remove too much value from people who had longstanding property interest there. So as often happen in the legislative process an accommodation was made. Frankly, he's the one who directed us to this after the last hearing and said, you know, if you can introduce some residential into the building, you can then qualify for 25 percent. So the idea of B was get some residential, we'll get -- so it's another method or approach to get residential and hopefully increase residential.

So understanding that, we met on several occasions with the Building Commissioner. And we ultimately submitted an application for a Building Permit to construct a dwelling unit on the ground floor

of the existing structure. And that unit has been created.

CONSTANTINE ALEXANDER: Why, given the fact that you now have a dwelling unit in the structure, why do you need one on the roof?

ATTORNEY JAMES RAFFERTY: Well, the dwelling unit in the structure is -- represents a single dwelling and it's only a studio. It doesn't have the same --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES

RAFFERTY: -- intimate -- but, you know, the question of need. We're looking at a conforming addition to a non-conforming structure under Article 8.22. We have looked at the fact that we can increase this by 25 percent. The original proposal involved two dwelling units. It had always been an objective to achieve two dwelling units. It has always been the

objective -- it's at the ground floor. It's not as appealing. It doesn't have as much sun, air, and light as this unit. So the proposal to create the second dwelling unit, that unit would be on the second floor -- on the third floor.

Both units will remain. They're there now and they would remain. The unit in the building would remain. And this would be the second unit on the second floor.

CONSTANTINE ALEXANDER: Third floor.

ATTORNEY JAMES RAFFERTY: The third floor. I apologize. That's twice now.

So the provisions of the Ordinance allow for this increase. Frankly we looked at this and then said well, I suppose we could do a 10 percent addition on top of the roof, but we're also mindful of the practice or the precedence around these conforming additions to non-conforming structures. Recognizing

that what we were adding here was a dwelling unit, which is consistent with the stated intent to Special District 10. And it would allow for a more generous unit. So rather than as the as-of-right 10 percent, which would yield a smaller unit and not as efficient, it's taken a lot of effort to make the building -- the addition conforming.

And Mr. Chan can go through that.

Particularly the structural work to allow for the reduction in the height to sink this further into the building. The relocation of an existing stairwell to make the setback conform. So it does require a considerable amount of effort to get there. And it conforms and it also -- so the provision as the Board is well familiar with 8.22, but 8.22 says that an alteration of a non-conforming structure, as long as it's not in further violation of Article 5 or the off street parking requirements of Article 6 for the

district, that it will not be increasing area volume by more than 25 percent has been noted by the Board on several --

BRENDAN SULLIVAN: Is it not in further violation of Article 5?

ATTORNEY JAMES RAFFERTY: Oh, it's absolutely not in further violation of Article 5.

BRENDAN SULLIVAN: Why?

ATTORNEY JAMES RAFFERTY: Because it complies with all the Article 5 requirements associated with it. It's a conforming addition. It meets the setback. It meets the height. It meets the FAR.

BRENDAN SULLIVAN: But you're increasing, you're increasing the FAR of the building over what is allowed in the district.

ATTORNEY JAMES RAFFERTY: No, we're not. The district allows the provision. Because we now qualify under B, we're

building pursuant to the 25 percent increase of D.

CONSTANTINE ALEXANDER: The creation of the studio apartment in the building gives you the ability to not have to have an FAR requirement. I mean, you satisfy your FAR.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: That's exactly what you did. I mean, there's no question about that.

ATTORNEY JAMES RAFFERTY: We are able to -- right. We are able to rely upon the 25 percent provision of D by meeting the requirement of B to have a unit in the building.

CONSTANTINE ALEXANDER: The question I think Mr. Sullivan is getting to or the one I have as well, not my primary question I'm going to raise with you later, is okay, to put that apartment unit, the

studio apartment in the structure, don't you have to meet all of the requirements for a Section 5 for a dwelling unit? And you didn't. You do meet the FAR requirement.

ATTORNEY JAMES RAFFERTY: The short answer is no, you do not.

CONSTANTINE ALEXANDER: Why?

ATTORNEY JAMES RAFFERTY: Article 8.221.C is the provision.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: The Building Commissioner, what we are doing here, what we did here is -- Article 8 deals with non-conforming structures. We are -- under 8.22.1, we are altering an existing structure to accommodate a new conforming use. This is what we did. And then you go to the next page to C --

CONSTANTINE ALEXANDER: I'm familiar with C.

ATTORNEY JAMES RAFFERTY: So the

structure occurring and housing in the building.

So the dimensional requirements that were relevant, it's not that you can't do this in a non-conforming structure. 8 is all what you can do in a non-conforming structure. What's present in housing use that is not present in the commercial use that pre-exists is obviously the open space requirement. That creates the one requirement that doesn't exist. So we had to provide an open space calculation to the Commissioner showing him that we met the open space requirements for the site. The parking requirements, we were able to demonstrate that the existing parking meets the office use requirements plus had additional space for that. But that's not a new requirement. And then the building, the addition itself is occurring under C, entirely within the building. So we were issued a Building Permit, the unit was

constructed, and we've been issued a Certificate of Occupancy.

CONSTANTINE ALEXANDER: Let me get to my question right now so you can address it. You are seeking, as you say, for the reasons you've cited so far, you get to the point where you only need a Special Permit under 8.22.2.C because you make it a conforming addition to a non-conforming structure.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Special Permit has various requirements in Article 10.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: One of them is said will the relief being sought derogate from the intent and purpose of our Ordinance? We don't usually pay too much attention to that because the intent and purpose of the Ordinance is really diffuse and generally is

satisfied by most projects that come before us. This is different. In fact, this is my concern. I'm just going to -- we're talking about a special district. This special district has stated purpose. We know what the -- it's got a different purpose than the rest of our Ordinance.

ATTORNEY JAMES RAFFERTY: I agree.

CONSTANTINE ALEXANDER: Okay. And here's what it says, Section 17.102. This Section 17.100 which creates the special district is intended to:

A, promote in this portion of Cambridgeport significant housing development that becomes integrated with the existing neighborhood physically, architecturally, and socially.

B, it addresses current housing needs in Cambridge, especially the need for units affordable for households with children.

And, C, provide significant incentives

for developing housing affordable by persons of low and moderate income, etcetera.

I don't see how this project satisfies the purposes of Section 17. And, therefore, it seems to me it derogates from the intent and purpose.

You're talking about building a single unit --

ATTORNEY JAMES RAFFERTY: Well, can I respond to that?

CONSTANTINE ALEXANDER: Let me finish and then you can, certainly you can.

You're talking about building a single unit on top of a commercial structure. A unit that's only going to be used by the owner of the business and his guests, presumably, on sporadic basis. It doesn't to me, I know you will respond to it, it doesn't satisfy what Section 17 is supposed to do.

ATTORNEY JAMES RAFFERTY: Well, I think that would be a very compelling

argument if the applicant were seeking to take advantage of paragraph D and put an additional office space in that building.

CONSTANTINE ALEXANDER: Maybe, but it doesn't -- it may be more persuasive but deal with this one. Why do you need this housing --

ATTORNEY JAMES RAFFERTY: Because we are to the criteria in 17.10, in Special District 10, we are creating a unit on the top of that building that is identical in size to the comparable condominium project that abuts it. So the first test here is whether or not, whether or not it is -- to those non-residential -- most compatible with residential uses. When they talk -- I'm sorry, I'm in the wrong section. When they talk about the intent of the housing, promote significant housing development that becomes integrated with the existing neighborhood physically, architecturally, and socially.

So we all see language like this. I'm not sure how one meets the socially test, but it's an aspirational word one would suggest. But physically, architecturally, there's a building across the street that contains 10 or 12 units with very similar characteristic, an industrial building. There's a building that abuts us at a zero lot line that has condominiums and similar elements with roof decks and all that. This is highly compatible --

CONSTANTINE ALEXANDER:

Mr. Rafferty, let me quarrel with that. Those projects you identify, one of which you've brought before our Board some years ago, they satisfy the purpose of --

ATTORNEY JAMES RAFFERTY: No, they don't. They didn't get a Special Permit.

CONSTANTINE ALEXANDER: They didn't get a Special Permit. But they satisfied the purposes of Section 17. They were -- Section

17 was designed to encourage the transition from an industrial manufacturing district to a residential area. Create more residential. But the idea of a special district, as you know, is not to make the old manufacturing structures non-conforming. City Council could have just rezoned this Res C.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: They didn't do that.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: And very cleverly, and I think properly, protecting the existing land owners. But the goal was to create the kind of housing that those properties you cite are. You're taking structures and you're --

ATTORNEY JAMES RAFFERTY: But let me

suggest this. I don't think it's appropriate to overemphasize the intent here when you recognize the fact that you have to read the intent of the language consistent with the language D because that same --

CONSTANTINE ALEXANDER: No, you're wrong. You're definitely wrong.

ATTORNEY JAMES RAFFERTY:
Mr. Chairman.

CONSTANTINE ALEXANDER: It's right here.

ATTORNEY JAMES RAFFERTY: I understand that, but Mr. Chairman, in the same section, in the same special district, you can increase the building by 25 percent and it's not limited to residential use. So you can't ignore the fact that while the intent may say some laudatory things, it is also need to be read in the context of what the district allows. In this district, notwithstanding those statements, you could add

25 percent to a building that meets the criteria of B and it need not be residential.

CONSTANTINE ALEXANDER: I understand.

ATTORNEY JAMES RAFFERTY: Those are perhaps inherently contradictory.

CONSTANTINE ALEXANDER: No, no, I don't agree with that. What Section 17.104.D does, it gives you more latitude with regard to residential development -- any development you want, it's something that benefits the existing land owners. But it doesn't, it's side by side with the purpose. After giving you a little bit more leeway, by giving you more floor area, you still got to come back to the purpose. That's what it's all about. The purpose of Section 17.

ATTORNEY JAMES RAFFERTY:
Mr. Chairman, what I'm suggesting here and I seem to be doing an ineffective job, is that the emphasis on the intent is relevant vanity

but it's not exclusive. The intent needs to be read consistently with the other provisions. So the provisions in D have nothing to do with the creation of housing. D let's you do 25 percent. So how can it be stated that the intent is the overarching criteria that the Board should apply here when in fact there are other mechanisms in place that allow for increases in GFA.

BRENDAN SULLIVAN: I do not buy the argument that it was the intent of the Ordinance that if somebody puts in a minimal residential unit, that they can then increase the building by 25 percent.

ATTORNEY JAMES RAFFERTY: Well, that's an issue we spent a fair bit of time with the Commissioner on.

BRENDAN SULLIVAN: I asked the Commissioner when I first reviewed this over 10 days ago, and knowing 17 and the permitted -- and the uses permitted, and then

we went back to B, any structure containing a residential unit. Where is the residential unit? Look at the plan. The plan's on the first floor. Okay.

Does that residential unit comply with all of the requirements for the C-1 District?

ATTORNEY JAMES RAFFERTY: C.

BRENDAN SULLIVAN: Sorry?

ATTORNEY JAMES RAFFERTY: C.

BRENDAN SULLIVAN: Right. Not C-1, C.

CONSTANTINE ALEXANDER: C.

BRENDAN SULLIVAN: Yes, I guess so. I said -- so we started going through. And then it was oh, let me review it. And then he came back. And he said to me there was a permit issued that was a Certificate of Occupancy. So I guess it does. And I said well, it does or it doesn't. I'm just trying to walk my way through this thing. I got an inconclusive answer back as to whether it

complied with all the requirements of the 5. I said wait a minute, a permit was issued, a Certificate of Occupancy. And who does -- I mean, I just want someone to -- yes, it does. And anyhow, the answer came back, it was inconclusive.

I then asked Mr. O'Grady --

CONSTANTINE ALEXANDER: Because he wasn't involved.

BRENDAN SULLIVAN: -- if, and he basically said I cannot be of any help in this.

CONSTANTINE ALEXANDER: Not because he --

BRENDAN SULLIVAN: He said I don't know. He says all I can just reiterate is what the Commissioner said in my presence is that a permit was issued and what have you, but. And then I asked the Commissioner again and he said I need to review it.

CONSTANTINE ALEXANDER: And the

Building Permit --

BRENDAN SULLIVAN: So that put me into a very uncomfortable spot as to -- because we're coming in under the tent of we have a residential unit and now all this other stuff sort of falls into place.

ATTORNEY JAMES RAFFERTY: That's correct.

BRENDAN SULLIVAN: And so now I'm back to that residential unit. And even though a permit was issued, Certificate of Occupancy, that says to me well, okay, and say well, we have a permit, we have a CO. Well, do we then believe that the Department is infallible and capable of error and omissions? I'm not saying that they are -- I'm just saying that --

ATTORNEY JAMES RAFFERTY: But, Mr. Sullivan, the reason I provided the Board --

BRENDAN SULLIVAN: I'm just saying

that I am not in the comfort zone that that first floor unit is there proper, and hence all this other stuff.

ATTORNEY JAMES RAFFERTY: Well, Mr. Sullivan, that unit was permitted under 8.22.C which says that a -- and that's why I -- because I had a lengthy conversation with Mr. O'Grady today, and I did not understand the dilemma that was expressed to me that some Board members in reviewing the case then questioned the interpretation of the Ordinance of -- and I was told well, it's a non-conforming structure. Of course it's a non-conforming structure, but look at -- you start at 8.221. And I highlighted both sections in the previous paragraph. When you are doing an alteration which is undertaken to accommodate a new conforming use, and then you go to C, you get a Building Permit provided the construction occurs entirely within the structure, and there is

no increase in an existing or creation of a new violation.

BRENDAN SULLIVAN: But what is highlighted here is the following alteration, reconstructing extensions and/or enlargement of non-conforming structures which do not result in a use for a substantially different purpose.

ATTORNEY JAMES RAFFERTY: Well, that's correct, because if you see what's highlighted, Mr. Sullivan, the word or. Or. So you read the first paragraph to the comma, and then it says or, which are undertaken to accommodate. It doesn't say and. It says or. So or has plain meaning. The Commissioner issued the permit under 8.221.C. If he wasn't articulate in rationalizing that, I didn't participate in this conversation. We didn't do this furtively. We didn't do this casually. We had significant amounts of meetings.

Mr. Chan is a former member of the Board. We examined it with the Commissioner. He said he was going to check with CDD. He called me when he first I believe received the inquiry from you, and he asked me a question about open space. I said, Ranjit, you have to remember look at 5.22.2, the open space calculation in a mixed use building is a different type of calculation. We qualify the open space. Look at the dimensional form we submitted with the Building Permit application. We satisfied the parking. C is a very simple, straightforward thing.

If you have questions about this unit, the question is what is it about the unit that creates a new violation or exaggerates an existing violation under 5 --

BRENDAN SULLIVAN: I never got a conclusive answer back.

ATTORNEY JAMES RAFFERTY: -- there is nothing.

Well, you know, I understood we were here to talk about Article 8. I respect the notion about the provisions of 10.3. To be here now and turn this hearing into an appeal hearing that hasn't been filed about the issuance of the Building Permit. We've been through this repeatedly. I told Mr. O'Grady. I don't know why the plain language of 8.22.C doesn't apply. If this was not a conforming use, it would be non-qualified. We altered the building to create a new conforming use. That's an or in that first preamble. You get a Building Permit under certain scenarios. And it's restrictive as you know. We met the definition of C. We did this all within the building. One can argue about well, gee, you only did one unit and one unit gets you all this. That feels a little unusual. That's a legitimate commentary, but I honestly do not understand what the difficulty is with

the already issued Building Permit when the language of 8.22.C clearly says if you you're building -- if you're altering within the existing structure to accommodate a conforming use you get a Building Permit.

BRENDAN SULLIVAN: Because that's where my inquiry started so that I could walk down this road and I never got a conclusive answer back. Hence, I'm in this uncomfortable zone.

CONSTANTINE ALEXANDER: And as I've expressed, even if your arguments are accepted, are right, and Ranjit says absolutely everything is fine, I still think you've got a problem satisfying the requirements for the Special Permit. That's the debate --

ATTORNEY JAMES RAFFERTY: With all due respect, that's a different thing.

CONSTANTINE ALEXANDER: I agree with you.

ATTORNEY JAMES RAFFERTY: It's not my practice to find myself before the Board in a case, and no one's suggesting that they're infallible. I'm pleased to hear that, because often times I struggle with filing appeals here because there is appropriately great deference shown to the Commissioner in the interpretation of the Ordinance. And I understand why you look at this -- I mean, I did frankly, and you scratch your head and you think, hmm, I wonder about this. But the part that I honestly have been mystified for sometime now is why the language of C? We didn't have to add a window. We didn't have to add a door. We didn't have to do a thing to accommo -- we had an existing door. We had existing windows. We worked entirely within the building. We met the lot area per dwelling unit requirements since we've only got one unit in Residence C. We meet the open space. There

are no new violations of 5. There are no existing violations that are aggravated by that. So it feels a bit like we're before the Board with unclean hands in the view of some Board members. That somehow -- and that prejudices the case, frankly, and I think that's unfortunate for the applicant, because the case should be heard on its merits. And if there is underlying question about the appropriateness of the interpretation by the Commissioner, perhaps that should be explored more fully. But I don't know what it is about the language of --

BRENDAN SULLIVAN: No, I think that's --

ATTORNEY JAMES RAFFERTY: I don't know what it is about the language of C that would call into question the existence of the existing building permit. I recognize it's a different question when we get to the 10.40 criterion under the Special Permit, and I

think in that case frankly we do meet the intent because we are, we are creating housing. We're not creating -- we're only adding an additional unit. So we're not creating an affordable unit.

CONSTANTINE ALEXANDER: You're not creating -- let's not --

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: We'll both repeat ourselves.

ATTORNEY JAMES RAFFERTY: That's the prerogative of the Board, and I understand that. And that's the test of 10. It's one of the elements of the Special Permit. But I don't -- I keep going back to the fact that Mr. O'Grady in our conversation to me said well, I wonder why you're here then at all because if you have -- I mean, if you have this, why do you have to do the Article 8 stuff because you're in a special district. Special districts have special provisions.

We've come to understand that this -- I analogize this it to Obama Care. You had to make a few changes to get the votes, and I think Michigan or some state is different than another state and things happen in the legislative process. There's a -- it's an unusual provision. There's a 25 percent GFA increase in this district if you introduce housing. So if one thinks of the interests of the district, the housing got introduced, a small unit. It doesn't specify what the unit size has to be. And what's being added is a unit here -- I think the test that's most definable is the first test under the intent. Is this compatible with surrounding uses and --

CONSTANTINE ALEXANDER: And in other words the word substantial. Let's not badger each other.

I want to just go back to the point why you're here at all is I think, I assume, you

didn't file this just willy-nilly. There is a determination by the Building Commissioner that Section 8 trumps Section 17. And that because you have a non-conforming structure obviously, therefore, 8 applies even though what you're going to do is a, quote, conforming addition because it's conforming in part because of that special provision in --

ATTORNEY JAMES RAFFERTY: Oh, absolutely.

CONSTANTINE ALEXANDER: That's why we're here.

ATTORNEY JAMES RAFFERTY: No, no, no, but I want to say besides the point because there's been such back and forth at the staff level on this, that when Mr. O'Grady expressed the view as recently as today to me that he wondered whether we needed relief under 8, but the Commissioner concluded we did.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: We frankly, we had not seen that nor anticipated that and we went there with the expectation, and it was at our second meeting that he said I thought about this with a great amount of time, because you look at that January 1991 date, and you think, well did the unit need to be in place in January 1991? And we reviewed the language, we went over the language, and he talked to Ms. Paden about it, and that determination was -- that was resolved. But then he said but you do need -- so we said so we could do -- and I guess this is what I think ultimately the (inaudible) the Board should look at this. If the applicant has a right to do this up to the 10 percent level, and all they're looking to do is to increase the size consistent with that, why then, why then the differently added square feet for a unit --

CONSTANTINE ALEXANDER: Because it doesn't require a Special Permit.

ATTORNEY JAMES RAFFERTY: Well, that's my point. But --

CONSTANTINE ALEXANDER: Yes, but that's a matter of right. If you have a matter of right solution, you have a matter of right solution, you never have to deal with the goals that you're dealing with tonight. But if you want to do more than 10 percent, you got to get a Special Permit. And in order to get a Special Permit, you have to satisfy the requirements of the Special Permit.

ATTORNEY JAMES RAFFERTY: Well, I'm not contesting that. But I'm suggesting that when you're talking about the difference between a 10 -- this Special Permit criteria applies generically to all Special Permits in the Ordinance.

CONSTANTINE ALEXANDER: That's correct.

ATTORNEY JAMES RAFFERTY: This Article 8 is a different, is a subset of the Special Permit world. It talks about the fact that on a non-conforming structure we're going to look at these conforming additions and understand the extent to which -- it's a governor, it's a restriction on your as of right ability. So I think that what we're looking at doing here is a question of there's the 10 percent and then there's the 25 percent. And that's the Ordinance that the -- that's what the -- it's Article 8 that I would suggest that when you apply the intent requirement of Article 10.4, it's the intent of Article 8 as much it is --

CONSTANTINE ALEXANDER: No, no, I'm sorry. I disagree with you.

ATTORNEY JAMES RAFFERTY: Well, let me ask you this question then --

CONSTANTINE ALEXANDER: I'm the Chairman, I thought --

ATTORNEY JAMES RAFFERTY: You're right, I apologize.

CONSTANTINE ALEXANDER: If you are a Residential C District, you're right. This is a special district. We have a specific purpose that's stated in Article 17. There are no special purposes in Res C or industrial districts. And that purpose is in there for a reason. And --

ATTORNEY JAMES RAFFERTY: I agree.

CONSTANTINE ALEXANDER: And we can't -- we have to find that what you want to do doesn't derogate from the intent and purpose of the Ordinance. And we have the purpose of the Ordinance as it applies to this district. And one of the purposes -- and I'm still questioning as to whether you derogate from the purpose, because the purpose of this is not to permit the creation of a single unit on top of a commercial structure.

ATTORNEY JAMES RAFFERTY: Well, I

would say the definition of derogate is relevant here, because in some cases an application or a project can be more consistent than others. But the question is does the introduction of a -- does it derogate? Does it work in contradiction to the objectives here? I don't think it derogates. I think that's the difference --

CONSTANTINE ALEXANDER: That's a good question, and I've thought about that. And that's the -- reasonable men can differ on that. I think anything -- to my mind anything that doesn't further the purposes of this district, as stated in Section 17 is a derogation. That's how I look at it.

ATTORNEY JAMES RAFFERTY: So you would take the view that in that case so that a project that sought relief, that didn't contain affordable units, could never get a Special Permit --

CONSTANTINE ALEXANDER: No, no.

ATTORNEY JAMES RAFFERTY: Well, I don't get where we're derogating.

CONSTANTINE ALEXANDER: Okay, let me read you. Let's go back.

Are you promoting significant housing development that becomes integrated with the existing neighborhood? I'm going to skip physically, architecturally, and socially.

I don't see that what you're proposing is significant housing development that becomes integrated. You're talking about a single apartment that's going to be used from time to time, but probably not very much full time --

ATTORNEY JAMES RAFFERTY: But you have to reconcile with the dimensional limitations we face. We can only add 25 percent more.

CONSTANTINE ALEXANDER: But you're assuming that gives you a right to do it.

ATTORNEY JAMES RAFFERTY: It does.

TIMOTHY HUGHES: If all they can do is 25 percent and they're doing it all as residential, is that not significant?

ATTORNEY JAMES RAFFERTY: Or is it a minimum, not derogating.

TIMOTHY HUGHES: And another point I'd like to make in the second one, it says does it address current housing needs in Cambridge? And I would suggest that short-term housing for professionals in Cambridge is indeed a current housing need.

CHRISTOPHER CHAN: Also, I think we addressed this last time, as is with design, it's completely separate. It's a mixed use idea. They wanted to sell this and someone else could use it, it would be just like the units on 98-100 Erie Street. Rooftop, decks, similar to those. Similar size. Two bedroom. I mean there are people there who live other places and own those units that live in London. He happens to live in

Germany. He may be here more than some of the people in those other units. So I don't think it's significant would have to be two units, three units, four units. You know, I guess --

BRENDAN SULLIVAN: Is this available on the open market?

ATTORNEY JAMES RAFFERTY: I don't understand.

CONSTANTINE ALEXANDER: Will this unit be available if someone wanted to buy this apartment?

ATTORNEY JAMES RAFFERTY: No, this is private property.

CONSTANTINE ALEXANDER: That's what I thought.

ATTORNEY JAMES RAFFERTY: I mean, it's not being built for sale, no.

BRENDAN SULLIVAN: Not for sale, but for rent on the open market?

ATTORNEY JAMES RAFFERTY: No. It's

being built by the owner to be used by him. Like countless other applications. No, it's not....

CONSTANTINE ALEXANDER: Chris, you want to go over the project itself? Are these the plans?

CHRISTOPHER CHAN: I'm happy to. You know, would that be useful?

CONSTANTINE ALEXANDER: We may have exhausted this issue. Or I've exhausted this issue. But I'm not foreclosing further questions, but it may make some sense to go through the actual project.

CHRISTOPHER CHAN: Sure.

BRENDAN SULLIVAN: So going back to 822.C, in a residential district, the Board may grant a Special Permit for the alteration or enlargement of a non-conforming structure, but not the alteration of non-conforming use. We have agreed that is a conforming use. Provided any enlargement

or alteration of such non-conforming structure is not further in violation of the dimensional requirements of Article 5.

And you're saying it is not in further violation of Article 5.

ATTORNEY JAMES RAFFERTY:

Absolutely. And I have yet anyone to identify which -- what --

BRENDAN SULLIVAN: Wait a minute.

The existing building is 0.85. The requested conditions is 1.06 in a 0.60. Is that not in further violation of the dimensional requirements?

ATTORNEY JAMES RAFFERTY: No.

Because under provision B the building can now be 25 percent bigger than it -- under D the building can now -- given the presence of the unit on the ground floor --

BRENDAN SULLIVAN: I don't buy that.

I don't buy that because you have a residential structure, and that's where I

started way back about the residential structure. That you can pop in a residential structure and all those buildings all around there can be increased by 25 percent.

ATTORNEY JAMES RAFFERTY: Well, that's exactly -- you know, Mr. Chairman -- oh, Mr. Chairman.

CONSTANTINE ALEXANDER: Mr. Former Chairman.

ATTORNEY JAMES RAFFERTY: But the reality is the language stands for something. And we've heard about how it came about. So there is a 25 percent increase. And it sounds like Board members are quibbling with the fact that in B, which says that a use that is less than 50 percent should have a minimum requirement as to how much housing should be there. And B doesn't contain such a requirement. It says less than 50 percent. Now, we take the Ordinance as we find it. I've been here plenty of time and I've been

told well, go see the City Council, they wrote it and we can't change it. So we didn't write this. This was written a long time ago, and B says anything that's less than 50 percent you then -- if you qualify B, you then go to D. And D says you can make the building 25 percent. And the point that I think is so relevant here, the 25 percent of D isn't limited to -- the 25 percent of D is not limited to a residential use. You can increase the building with non-residential use. And one would say well then how does D reconcile itself?

CONSTANTINE ALEXANDER: What D does for you is it allows you to get -- to avoid a Variance and to go for a Special Permit.

ATTORNEY JAMES RAFFERTY: That's correct -- no, no.

CONSTANTINE ALEXANDER: That's all it does.

ATTORNEY JAMES RAFFERTY: No, no.

It does only one thing.

CONSTANTINE ALEXANDER: It's important.

ATTORNEY JAMES RAFFERTY: No, no. What D does is it changes the FAR requirement --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: -- from Res C. And this is Res -- and if you look at the language --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- this is Res C or as otherwise modified. So to say that it's a 0.6 district simply isn't accurate. It is a -- because of the presence of the residential unit, which is what B says, the FAR -- the allowed FAR here now, you take the existing GFA of the building and you can add 25 percent to it. That's what the allowed FAR. So, you know, it's one thing to find one self in disagreement as to whether

something derogates from the Ordinance, but to suggest that there is a violation of Article 5 because of a feeling that B -- B was never intended to be just one studio apartment, that there's a -- there's some unspoken higher requirement around dwelling units here that we're going to impose. That doesn't exist in the language. I don't know how you get there.

CONSTANTINE ALEXANDER: Ready?

CHRISTOPHER CHAN: So it's an existing two-floor masonry building. There is no basement and no third floor. What we've done is add -- excavated some area in the basement for, we hope to do geothermal here.

CONSTANTINE ALEXANDER: That's yet to come. That's the other relief -- the case that's continued, right? The basement, the work you want to do in the basement?

CHRISTOPHER CHAN: Well, no, this is

all part of one Special Permit.

ATTORNEY JAMES RAFFERTY: No, no. The case that was continued, is the case for the roof.

CONSTANTINE ALEXANDER: No, no. Wasn't there an issue with regard to the basement? You wanted more --

ATTORNEY JAMES RAFFERTY: Yes, but we filed a separate case on that.

CONSTANTINE ALEXANDER: And that was continued?

ATTORNEY JAMES RAFFERTY: No, no, that was approved. That's long over and done with.

CONSTANTINE ALEXANDER: Was it?

ATTORNEY JAMES RAFFERTY: Yes. Oh, yes. So this is the third case on this property.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: But the reason we continued the case was because it's

a third floor thing and it's a different form of relief, but it was a case of well, we've got this repetitive petition. But the case is continued dealt with the third floor.

CONSTANTINE ALEXANDER: Okay.

CHRISTOPHER CHAN: So there is some additional square footage in the basement as part of this 25 percent that we're talking about. And it's mostly mechanical space where we hope to do geothermal here which is one of the ways that we get mechanical equipment on the roof, right? Some condensers adjacent to the property. And we also have some storage space down here which is low headroom. So there's a certain amount of space down there. But the other two floors are generally the same. They're going to be renovated. Stairs moved as Jim said. The major changes here we have, I think it's about 1400 square feet or 1500 square feet of new space. About 1100 or 1200

is the actual unit. So it's a two-bedroom unit. A decent size with a couple of decks. This is all green roof. And then as you can see on the elevations here, the idea is to let the -- the building is kind of ivy covered now. You can see it on some of the photographs. You can put up some of the existing photographs up. The idea is to put that back and also to green it up with the green roof, and also some shading for the neighbors so that they don't -- you know, eases the connection between the two of them. This is mostly glass up here. Although the two sides that are closer setbacks are mostly opaque, so that's -- you can't see there through it. And the original owner or the new owner of the building really loved this building, so we are trying to basically bring it back. It's in a little bit in disrepair now.

CONSTANTINE ALEXANDER: Am I right

that with regard to this addition on the roof you've lowered the height obviously?

CHRISTOPHER CHAN: Yeah.

CONSTANTINE ALEXANDER: But you've increased the overall square footage of the structure on the top. If I read your application --

CHRISTOPHER CHAN: Slightly from what was before. It's a little bit bigger than what it was before. We had to move the stair in so it just kind of reshaped, but I think it might be --

CONSTANTINE ALEXANDER: How big -- what's the square footage of the unit?

CHRISTOPHER CHAN: It's about 1152.

MICHAEL DiMAGGIO: 1125.

CHRISTOPHER CHAN: But there's a stair and an elevator. So the whole floor is bigger. The gross floor square foot of the third floor is 15.

MICHAEL DiMAGGIO: 1590.

CHRISTOPHER CHAN: 1509, so a little bit more on that.

CONSTANTINE ALEXANDER: Okay.

CHRISTOPHER CHAN: And so, you know, we actually went to the Commissioner. I believe there's a letter in the file about trying to preserve this. We've talked about actually taking these windows out, rehabbing, and then putting insulated glass in them. And put the nice narrow side lines and the way it looks now.

There is one other thing we're doing there is -- you can keep that up here. There is an annex on the side, that one story and --

CONSTANTINE ALEXANDER: He's commenting on your presentation.

CHRISTOPHER CHAN: It was added on at one point. It's actually over the property line. MIT who owns the Good News Garage and the neighboring property. So that we're actually going to take down. And

there are also a couple of condensers there that are on that property. Those are also going to be removed if we do the geothermal. Again, we're trying to make this as green a building as possible. We're talking about doing radiant heat in the floors.

Geothermals I mentioned. Doing the green roof, which, you know, it's nice to look at the neighbors and also it helps with heat island effect and storm water runoff. So, it's a very European concept as we mentioned before. Stefan who will own that apartment, you know, would like to live together and work together in one area.

Are there any questions I can answer? We did quite a few shadow studies. It's really fairly minimal. We do get some shadowing onto the west late in the day, but that's over the Good News Garage. And we did meet with MIT and they're very happy. They're not able to write up a supportive

letter because it's a rather large institution, but they said, the people at the real estate office who are --

CONSTANTINE ALEXANDER: We do have a letter, not from MIT, a letter of support and a letter of opposition which I'll read into the record at some point, and a non-committal letter from the Cambridge Historical.

CHRISTOPHER CHAN: Right. That was -- yeah. He's commenting on the (inaudible) of the building.

THOMAS SCOTT: Is it a glass structure?

CHRISTOPHER CHAN: It is a glass structure.

THOMAS SCOTT: And what's the element that sticks up out of the roof?

CHRISTOPHER CHAN: That's the elevator.

HARALD FRITZENKOTTER: I'm very sorry about that.

CHRISTOPHER CHAN: He's very sorry about that. In Germany they do not require elevator override. He's been trying to get us to get rid of that, and we would say that we cannot. The elevator code in Massachusetts they feel it's a safety issue. They can't eliminate them. But, yes, that is the elevator.

JANET GREEN: Can I see on the first floor where the apartment is, the existing currently?

CHRISTOPHER CHAN: Sure.

So it's this area here filled in the first floor. And, you know, it worked out well because we were able to leave the two stairs and this is still a continuous --

CONSTANTINE ALEXANDER: Out of curiosity, how big is that unit?

CHRISTOPHER CHAN: 500 square feet.

MICHAEL DiMAGGIO: 450.

JANET GREEN: (Inaudible).

CHRISTOPHER CHAN: It's a studio. I mean, these windows are quite large industrial windows. So it's actually quite nice. The one issue, it is fairly close to Good News Garage.

CONSTANTINE ALEXANDER: Why don't you make this your unit? Be that as it may. The relevance of that is that allows you to get to the benefits of the 17 whatever, 104.D which in turn allows you to build a conforming addition to a non-conforming structure. That's what it is. I'm not criticizing that.

ATTORNEY JAMES RAFFERTY: No, that's factually accurate. And like I said, and like we said, we didn't make that move unilaterally. We relied upon the language of the Ordinance. But, you know, could we talk just briefly about the criteria under Article 10 for a Special Permit?

CONSTANTINE ALEXANDER: It's your presentation.

ATTORNEY JAMES RAFFERTY: Okay.

Because I respect and understand the importance of this section, but we are applying for a Special Permit under 8.22.2.C and the Special Permit says: They will normally be granted --

CONSTANTINE ALEXANDER: Yes, you are right.

ATTORNEY JAMES RAFFERTY: -- with specific provisions of the Ordinance are met.

So what are the provisions 8.22.C that are before the Board in this application? Is the alteration not in further violation of the requirements of 5? Does it not violate the off street parking and loading requirements of 6? And does it result in an increase in area not more than 25 percent? Those are the three criterion of the Ordinance. That is the intent of Article 8. And you're being asked to review a Special Permit application under Article 8.22.3.

CONSTANTINE ALEXANDER: Right.

With respect to a property that's located in a special district as to which there is a stated purpose for the creation of that district and as to which I am questioning whether you satisfy that purpose.

ATTORNEY JAMES RAFFERTY: But that is not what the Ordinance says with regard to stated purpose. The finding you would need to make, would be that introducing this housing on the third floor of this building derogates --

TIMOTHY HUGHES: Or is detrimental to the public interest.

ATTORNEY JAMES RAFFERTY: Or is detrimental would impair the integrity of the district or otherwise derogate from the intent and purpose of this Ordinance.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: So adding

housing into a district where one of the stated intentions is to create housing would be found to be a derogation from the intent.

CONSTANTINE ALEXANDER: That's what it's all about. You're right. You're right. I don't quarrel with that calculation.

ATTORNEY JAMES RAFFERTY: And I would suggest that that conclusion is inconsistent with --

CONSTANTINE ALEXANDER: And I would suggest, the purpose of Article 17 was to promote development. And when we allow developments like this to occur in Section 17 which does not substantially increase the housing stock, whatever the words are, that we are in fact derogating. That it doesn't hurt the district. We're not furthering the purposes for which the district was created as told to us in the Ordinance by the City Council. Anyway, both of us are repeating

ourselves at nauseam. So that's where we don't agree. I don't want to cut you off.

ATTORNEY JAMES RAFFERTY: No, no. I mean, I think we covered it. Because I think the record could prove relevant. The intention of the Ordinance then as cited by the Chair in Special District 10, which is to encourage a gradual evolution to housing, the conclusion would be perhaps that the introduction of housing in the building in the manner in which it is here derogates from the intent. And if the three criteria, and you can stop me, the three criteria is it A, B, and C that it derogates from, or is it suggested that it derogates from B and C or --

CONSTANTINE ALEXANDER: I think it derogates from all three. Assuming you don't meet B or C, you're not increasing the housing stock of the city especially with families with children. You're not creating for housing for low or moderate income

people. You're not even close on B and C.

TIMOTHY HUGHES: I would disagree on B. I would think he's not close on C.

CONSTANTINE ALEXANDER: Okay, anyway.

ATTORNEY JAMES RAFFERTY: So it would be, it would be the view, then, that an applicant in Special District 10 that sought to increase their building for a non-residential use pursuant to the provisions of D could never achieve the Special Permit in Article 8.

CONSTANTINE ALEXANDER: No, because special district was created not to penalize existing land owners or penalize the uses that were there historically. It's designed to encourage the gradual evolution from -- the City Council could have made this a Res C District and made everything non-conforming.

ATTORNEY JAMES RAFFERTY: No, I

couldn't agree more. And this is where I apologize, I just don't follow the logic.

So, but the shortcoming in this proposal, it doesn't meet the stated intent the three criteria, A, B, and C. And what I proffered was an application that sought to take advantage of D because there was housing in the building, but the proposed use of that 25 percent was not housing. That applicant could never get a Special Permit under Article 8 because obviously it didn't meet those -- a non-housing addition. So, so the -- it strikes me that what has -- what happens with that type of interpretation is inconsistent, because what it means then is that D is limited to residential use. And clearly the language -- D has to be limited to residential use if this petition fails or doesn't meet the criteria. If the reason that we don't meet the criteria, but we don't qualify for the Article 8 Special Permit

within 25 percent is because we don't meet the intent of the Ordinance around the housing goals stated in the preamble. Then it follows logically that no applicant in Special District 10 who sought to prevail himself of D which allows for 25 percent increase without a restriction on what that use must be, under the logic being espoused here, no applicant could ever take advantage of D for non-residential increase in the building.

CONSTANTINE ALEXANDER: No, I don't agree with that. I mean, there may be a special, there may be a structure or a use, industrial use that is significant to the city, and you just want to expand it. Again, Special District 10 doesn't outlaw, doesn't make non-conforming non-residential uses.

ATTORNEY JAMES RAFFERTY: I couldn't agree more.

CONSTANTINE ALEXANDER: But there

can be a situation. I'm not going to talk about hypothetical cases that are not before us. I can conceive the situation -- let me finish my point. That non-industrial expansion, I should say non-residential expansion would be permitted by our Board given the benefits of Subsection D, I just don't think -- you're making it a black and white. I don't think that's there.

ATTORNEY JAMES RAFFERTY: With all due respect, what you have identified as the hurdle that this applicant cannot meet is the stated criteria in 102. And what I'm suggesting is by focusing exclusively on that provision of an Ordinance that is -- and this is multilayered. There's various sections of this Ordinance that apply to this property. But by focusing exclusively on the provisions of Article 17, and the failure to meet A, B, and C, how could one ever rationally meet that criteria with a

non-residential expansion?

CONSTANTINE ALEXANDER: What I'm saying is that the case before us tonight is residential expansion. That residential expansion does not satisfy 17.102.

ATTORNEY JAMES RAFFERTY: But the effect of that, Mr. Chairman, is you've now changed D and said it must be residential --

CONSTANTINE ALEXANDER: No, I don't. I just don't agree with that.

ATTORNEY JAMES RAFFERTY: -- that's the effect of it.

CONSTANTINE ALEXANDER: No, I don't. I just don't agree with it. There can be a case for it. I'll wait for that case to come. There can be a case before us where a non-residential use could seek the benefit of D and it could also satisfy whatever requirements and the Special Permit requirement. There's difference --

ATTORNEY JAMES RAFFERTY: Well you

cited the intent. You said these are the criterion.

CONSTANTINE ALEXANDER: Because we're talking about a residential case. We're not talking about a non-residential -- I'm not going to speculate about how a non-residential case would happen. That's not the case before us. We've got a residential case before us --

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: -- and I'm questioning whether you meet the requirements, the intent -- we have to find there's no derogation of intent. The intent of Section -- of Article 17 as it applies to residential development. I think we've bored everybody.

ATTORNEY JAMES RAFFERTY: I agree.

CONSTANTINE ALEXANDER: I will open it to public comments. Unless people want to ask other questions before I get there.

JANET GREEN: I have a couple of questions.

CONSTANTINE ALEXANDER: Go ahead.

JANET GREEN: One is, with the 25 percent limitation, how much housing could actually be built?

ATTORNEY JAMES RAFFERTY: Well, I believe that the footprint of this addition basically -- so this 1500 square feet is it will get you to the 25 percent. And the 25 percent --

CHRISTOPHER CHAN: There's a little in the basement.

ATTORNEY JAMES RAFFERTY: And the 25 percent appears twice as you know. It appears under the Article 8 requirement, and it also coincidentally appears in the 17. So it's --

JANET GREEN: So given the way this is written, the amount that you could build into a residential space you are building as

a residential space?

ATTORNEY JAMES RAFFERTY: Yes, that's correct.

JANET GREEN: There isn't something else that you could be doing that would make it --

ATTORNEY JAMES RAFFERTY: That's correct.

JANET GREEN: And then my second question is, you know, in that, what was referred to as vague, contributes to the social menu of the neighborhood. I just wondered how much time do you anticipate it will be occupied and who is going to occupy the smaller unit that's in there already? What is going to happen with that?

HARALD FRITZENKOTTER: I will speak to that. Miltenyi Biotic is a privately owned company, and it's owned by Mr. Miltenyi. Mr. Miltenyi tries, he studied physics, he's not an architect as

many of us at the table. He's very much into architecture and he likes to produce spaces to work and to live connected to each other. And he's kind of man, who, I mean I know that he spends some days here last year and made some kind of friendships with the neighbors by improving the building, the brickwork outside by -- with his own hands. So what I want to tell you is that he's trying to improve this building by all kinds of tracks. By -- for the company and for private usage mostly by him.

CONSTANTINE ALEXANDER: But the question -- I'm sorry, I didn't mean to interrupt you. I apologize. But I think the question that Janet was getting at, you're getting to where you are with the Special Permit because you've created an apartment in the building. Fine. Is this a phantom apartment? Once you get -- if we grant you relief and the building addition on

the roof, how do we know -- who is going to use that unit if you've got the nice unit on the roof? What's the purpose of this studio apartment in the structure? Or is it going to go away? And in which case --

HARALD FRITZENKOTTER: No, it won't go away. I mean, lots of times he doesn't travel alone. He comes over with friends or with his friend or -- his mother is still alive. She could come over. So we have a small studio and we have something which more feeds the architecture attitude to add some kind of crown and jewel to that historical, in our view very nice and good well done building. So those are opportunities to use it.

BRENDAN SULLIVAN: So it could be a condition that that unit be maintained?

ATTORNEY JAMES RAFFERTY: Yes. And in fact, the plans to that point, Mr. Sullivan, the plans -- the proposed plans

show that unit there and it would be a requirement obviously that the building be conformance with the plans. We reviewed that also with the Building Department. That what does it mean then about the future use of that building? And it was understood that the intent would be that that unit would remain there. And that's been understood. In fact, and I say this at the risk of someone suggesting then why do you need the other one? If you look at the elevations, there are large windows. I've been in the unit. It has a kitchen, it has a sitting area, and it has a bedroom. It's a --

HARALD FRITZENKOTTER: It's very welcoming.

ATTORNEY JAMES RAFFERTY: And he stays there now.

CONSTANTINE ALEXANDER: I only have two comments. Surely we can put that condition in.

One, there's no way it can be ever enforced. It would require Mr. O'Grady or someone to go into the building.

And, two, just because you keep that as a memorial apartment and may never be used. And the idea, I think, the concept behind the idea of creating the apartment is going to be used.

ATTORNEY JAMES RAFFERTY: It would be used. But like the apartment on the third floor, and this I think this has significance, it has independent access to the street. You don't have to -- so it could, one could envision it, if it wasn't being used, it's a highly desirable location. There's no reason to think that at some future point you might not lease out the apartment. It has direct access to the street. It has a second means of egress. There would be no reason -- if you had to come through the building to get to the apartment, I think one

might suggest well, then it's always going to be linked to the operation of the building. If you'll note the floor plans, that is not the case with either of the two apartments.

THOMAS SCOTT: The third floor apartment has independent access as well.

ATTORNEY JAMES RAFFERTY: Yes. It's intentionally designed that way.

THOMAS SCOTT: That could add to the housing stock to the city.

ATTORNEY JAMES RAFFERTY: At some point. The current intentions is for Mr. Miltenyi to live there. But over the life of a building, could it be sold as a condo? Could it be rented?

HARALD FRITZENKOTTER:
Mr. Chairman, one point to add maybe, excuse my words because I'm not that used to talking English too much. But our intent to this location is just to upgrade it, to make something out of it. We are not a

shareholder's company. So for me, I cannot follow all those legal Zoning Ordinance things you guys are here discussing. But it's a little bit discouraging (sic) that we come -- Mr. Miltenyi says we have to go to Cambridge. This is a place where the very good scientists are running around. This is the place to be. This is the place to work and to live, and to meet somebody else. And we are got stuck here and discussions about somebody -- it's very hard to follow. I just spend some days in San Diego because we have something to do there, and it's hard for me to explain why we are not moving forward because --

ATTORNEY JAMES RAFFERTY: In an attempt to conclude --

HARALD FRITZENKOTTER: Something good in my attitude.

ATTORNEY JAMES RAFFERTY: Right, and I apologize to interrupt. In my attempt

to conclude, and we're very appreciative of the time. And I know we spent a lot of time. I can certainly understand the position of a Board member if there is -- and Mr. Singanayagam has been out for several days. It is a very unusual district where there have not been many applications made, either Building Permit wise or Special Permit that I'm aware of involving this. And obviously if a Board member is not convinced that the requirements of 22.C are being met; namely, the Article 5 requirements, and there hasn't been an ample opportunity to get a definitive response from the Commissioner, I wonder if just on that limited issue it would make sense to allow time for that.

CONSTANTINE ALEXANDER: You mean continue the case?

ATTORNEY JAMES RAFFERTY: Yes. Only for that question. We wouldn't be changing the design. But I understand the

point that I did attempt this week to further engage with the Commissioner. He's been out I believe since -- he was in Monday and I don't think he's been in since. And obviously, you know, the compliance with the dimensional requirements of Article 5 is a threshold of 8.22 element, and I can't see how a Board member could vote for this, if they in good faith, which it sounds like, has a question as to whether the Article 5 requirement is being met here. We've attempted through the introduction of the language here to suggest that it is being met, but if that --

CONSTANTINE ALEXANDER: Given the issue. I have no objection to continuing the case as a case heard.

ATTORNEY JAMES RAFFERTY: I'm just wondering if that benefits.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: Well, I am not at any comfort level of voting in the

affirmative --

CONSTANTINE ALEXANDER: Then we should continue the case I think.

BRENDAN SULLIVAN: -- until the question that I asked has been answered of the Commissioner. And I just --

ATTORNEY JAMES RAFFERTY: Well, we would request --

BRENDAN SULLIVAN: So, so that would be -- you can proceed and if you get the four votes, then the affirmative. It's just that I -- at this point do not have that comfort level. I would suggest, though, that if people have come down here to speak on the matter, that they be afforded the opportunity to speak.

CONSTANTINE ALEXANDER: That's a fair point.

Before we take -- I take it you're going to make a motion to continue the case?

ATTORNEY JAMES RAFFERTY: Well, I

think we'd make a request in light of the unavailability of the Commissioner this week and the questions involving Article 5, that we be permitted an opportunity to continue to allow for that issue to be addressed by the Commissioner.

CONSTANTINE ALEXANDER: Then we could return to all the issues we've been talking about tonight.

ATTORNEY JAMES RAFFERTY: I understand. But I think the Commissioner has been unavailable for a few days now. And it sounds like the Board would be guided by some type of response from the Commissioner as to whether or not the Article 5 requirements of 8.22 are being met. We're asserting that they are based on paragraph C, but I understand that the unique aspects of this case.

CONSTANTINE ALEXANDER: Okay.

Is there anyone here wishing to be heard

on this matter before we take a vote on whether to continue it?

(No Response.)

CONSTANTINE ALEXANDER: There's no one here wishing to be heard.

As I mentioned there are letters in the file which I will read -- I'll read when the case is reconvened.

Before I take the vote I want to make one comment. You referred to your conversation with Mr. O'Grady. It's my understanding what Mr. O'Grady was saying is that basically he has not consulted with respect to the decision to grant the Certificate of Occupancy.

ATTORNEY JAMES RAFFERTY: Agreed.

CONSTANTINE ALEXANDER: And I don't think he -- the comments he gave you about I don't understand why you put it why you need any relief at all, I think they were in the matter of not a studied consideration of the

case, they were just extemporaneously remarks. I don't want to attribute any more --

ATTORNEY JAMES RAFFERTY: That's fair, and I appreciate the opportunity to correct that, yes. I offered it as a -- to provide some context and background about the types of exchanges that have occurred around this and some of the complexity associated with it. Because we frankly had not -- Mr. Chan and I in our approach had not looked at the Article 8 question. And it was, it was the Commissioner who was doing his job in interpreting the Ordinance and said well, okay, but yes, but no Article 8. But, yes, you are correct and I wouldn't want that comment to mean anything other than the nature -- it is not intended to be a dispositive conclusion by Mr. O'Grady that Article 8 is necessary on any basis.

CONSTANTINE ALEXANDER: Okay. So I

think we are going to continue this case as a case heard. I am not available for the next hearing. You need all five of us. So....

ATTORNEY JAMES RAFFERTY: Well, if you couldn't make it, we'd go with four.

CONSTANTINE ALEXANDER: It's your call.

BRENDAN SULLIVAN: We're into March.

CONSTANTINE ALEXANDER: We're into March.

MARIA PACHECO: You're not here the 28th.

BRENDAN SULLIVAN: Correct.

ATTORNEY JAMES RAFFERTY: Do you know, is it the first hearing in March?

MARIA PACHECO: Yes, actually, the other 85 Hanover Street is scheduled for that.

ATTORNEY JAMES RAFFERTY: Oh, that's right. I read that transcript. The

other --

CONSTANTINE ALEXANDER: What case is it? I'm sorry.

ATTORNEY JAMES RAFFERTY: The continued case is continued, was continued until -- yes, until --

CONSTANTINE ALEXANDER: March 14th going once.

JANET GREEN: I can't.

CONSTANTINE ALEXANDER: You can't? Okay.

MARIA PACHECO: The 28th.

CONSTANTINE ALEXANDER: March 28th going once.

ATTORNEY JAMES RAFFERTY: Is that holy Thursday? I believe it is.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued as a case heard until seven p.m. on March 28th.

On the condition that the Petitioner

sign a waiver of time for a decision.

On the further condition that the sign on the property be maintained in accordance with our Ordinance except that it should be changed to reflect the new date and the new time of seven p.m.

And finally to the extent that you want to modify the plans that have been submitted or the dimensional form, that they have to be in our file by five p.m. on the Monday before.

ATTORNEY JAMES RAFFERTY: Could we note --

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: And to the extent -- one of the things we'll be doing is, I guess we'll be asking the Commissioner if he would be good enough to issue some advisory, either orally or otherwise to the Board with regard to the case's applicability under 8.22.

CONSTANTINE ALEXANDER: Yes. I

thought it was understood, but certainly we could put it in the record that the purpose of the continuance is to get a further determination or a clarification or an elaboration, whatever word you want to use, from the Commissioner about the grant of the Building Permit and the Certificate of Occupancy for the --

ATTORNEY JAMES RAFFERTY: Well, we're not asking about the Building Permit. We're --

CONSTANTINE ALEXANDER: That's true.

ATTORNEY JAMES RAFFERTY: -- the question is to whether or not Article -- whether the case satisfies the requirements of 8.22 with regard to the dimensional requirements of Article 5 or 8.22 period, right? Which says --

CONSTANTINE ALEXANDER: I think that's our determination, but not the

Building Commissioner's. I don't want to quibble. We know what we want to get to. We want to hear from Ranjit for more information, and once we have that, we can make our decision.

ATTORNEY JAMES RAFFERTY: Thank you.

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

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(9:55 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10379, 238 Main Street.

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

Mr. Sousa, you lied to us. You told us last time you wouldn't be back before us.

ATTORNEY RICARDO SOUSA: I know. Well, I said until the next year I believe is what I said. There are a few additional upgrades, but not very many I have to say.

CONSTANTINE ALEXANDER: These are

not new. These are the ones that are in our files already?

ATTORNEY RICARDO SOUSA: These are not new. These are just additional copies.

CONSTANTINE ALEXANDER: Okay, for the record.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, members of the Board, for the record, Ricardo Sousa from Prince, Lobel, Tye on behalf of the applicant Sprint. Sprint, as you know, is licensed by the FCC to operate a wireless network here in the City of Cambridge. And it's in the process of upgrading all of its sites. This is one of the last sites that needs to be updated in Cambridge. There's one additional in MIT, 400 Main Street, which has not been filed before this Board yet. However, this site at 238 Main Street, the nature of the proposal is to simply replace three of the existing CDMA antennas that are facade-mounted on the

rooftop with three new multi-mode antennas in the same locations. In the same general locations I should say.

I've submitted some photo simulations that show the impact. The nature of the design itself, and I have some additional copies of the plans if you'd like to see them.

CONSTANTINE ALEXANDER: Just to make it easier later on.

ATTORNEY RICARDO SOUSA:
Absolutely.

CONSTANTINE ALEXANDER: Is it not true that these new additions are not going to be visible from the public way? They're on three sides of the building. They're just not visible to the public?

ATTORNEY RICARDO SOUSA: They're not very visible. I can't say they're not entirely visible.

CONSTANTINE ALEXANDER: That's what your photo sims say. Don't they? That's my

memory.

ATTORNEY RICARDO SOUSA: For example, that view, Mr. Chairman, is from the back parking lot.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY RICARDO SOUSA: The first view. And you can see the antennas from that back parking lot.

CONSTANTINE ALEXANDER: Yes, that's the one you can see.

ATTORNEY RICARDO SOUSA: That's where you can see it. But if you're on Main Street, within Kendall Square you cannot see the antennas themselves.

CONSTANTINE ALEXANDER: Yes. Slight, not visible than all the others.

ATTORNEY RICARDO SOUSA: That's right. All the other ones are not visible.

JANET GREEN: The ugly wires.

ATTORNEY RICARDO SOUSA: That's right.

But from the rear of the building there's a fairly large parking lot, and you can see a few of the antennas. There are very large screen walls, black screen walls on most of the rooftop. And two of our panel antennas are on those screen walls painted black to match. And they actually blend in fairly well. And we're simply taking out the old ones and putting in the new ones. And there's a back brick penthouse as well on the rear of the building located right here as you can see. And one of our antennas is facade-mounted on that penthouse. So we're simply taking out the old one and putting in the new one and painting them to match.

CONSTANTINE ALEXANDER: In one respect here your application is incorrect. I do want you to therefore correct it and address it tonight. If you're proposing to erect a facility in a residentially zoned district we have to make certain findings.

And in your application -- and you do -- you are in a residential -- Res 3-CB.

ATTORNEY RICARDO SOUSA: 3-C --

CONSTANTINE ALEXANDER: B. But your application says that this provision of the Ordinance does not apply to the applicant's proposed modification. It does.

ATTORNEY RICARDO SOUSA: It does. And I can address that, Mr. Chairman.

CONSTANTINE ALEXANDER: Do it tonight. You didn't address it in the written materials.

ATTORNEY RICARDO SOUSA: If I could, that's a very good point. I would respectfully request that I amend that application.

CONSTANTINE ALEXANDER: You can do it orally.

ATTORNEY RICARDO SOUSA: Despite the fact that it is in a residential C-3B.

And pursuant to footnote 49 of the Zoning Code which suggests that in the event that a wireless installation is located in a residential district, as long as the uses are not predominantly residential, then antenna installations such as this one are permitted. And in fact, the nature of Kendall Square and the nature of this area is that in fact it's predominantly non-residential. The building itself is a commercial building. I would say most of the buildings in that area are commercial in nature as well. And so I would say that this is a suitable location for a wireless installation. And that currently there exists a wireless installation that services both the residents and the businesses that are in this location.

CONSTANTINE ALEXANDER: And the visual impact, how are you going to minimize the visual impact?

ATTORNEY RICARDO SOUSA: The visual

impact has been minimized by essentially facade mounting on the penthouses, these black penthouses. The antennas do not extend beyond the height of the penthouses, and they're painted to match. And that's how we've, that's how we've minimized the visibility.

CONSTANTINE ALEXANDER: Thank you.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: I'll open it public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: I note no one wishes to be heard.

We have a memo from the Planning Board. (Reading) The Planning Board reviewed the Special Permit application to replace the existing panel antennas with three updated

panels and to add three new antennas. The Planning Board supports this application. The proponent has made the installation blend the facade by mounting them below the roof line, locating them where they will not be visible from the public way, and/or by blending with existing roof features.

ATTORNEY RICARDO SOUSA: And just to put a point on it, Mr. Chairman, we're not increasing the number of antennas in any way. So the recommendation from the Planning Board, and I was very clear at the Planning Board, that we are not increasing the number. We're simply taking out some old ones and putting in some new ones. I wanted to make sure that first sentence is read to suggest that we're looking to increase the total number of antennas.

CONSTANTINE ALEXANDER: And your advertisement it talks about replacing three and adding three new ones. That would

suggest to me there are six when the day's done.

ATTORNEY RICARDO SOUSA: When in fact that's not the case. We're taking three and putting in three. And I think that's perhaps a --

CONSTANTINE ALEXANDER: Ambiguous wording.

ATTORNEY RICARDO SOUSA: The word replace should have been remove three.

BRENDAN SULLIVAN: It's addition by subtraction.

ATTORNEY RICARDO SOUSA: It is. I just didn't want to overreach.

CONSTANTINE ALEXANDER: Those are your final comments?

ATTORNEY RICARDO SOUSA: Yes. And with that I would respectfully request that the Board approve the applications before you.

CONSTANTINE ALEXANDER: Comments

from members of the Board or are we ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote.

JANET GREEN: I'm ready.

BRENDAN SULLIVAN: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that the Petitioner be granted the Special Permit to, not replace, to remove three existing panel antennas with three updated panel antennas, etcetera, all as specified in the application.

ATTORNEY RICARDO SOUSA: That's right.

CONSTANTINE ALEXANDER: And on the basis of the following findings:

That the Petitioner is fully licensed and in good standing, I take it with regard to your licensure with the FCC?

ATTORNEY RICARDO SOUSA: That's correct, Mr. Chairman.

CONSTANTINE ALEXANDER: That the visual impact of the elements will be minimized. They will be below the roof. As identified by the Planning Board, they will be below the roof line. They will be painted to match the penthouse to which they will be affixed.

And that the site in question is in a residentially zoned district, but the Board can find and does find that non-residential uses predominate in the vicinity of the proposed facility's location, and that the telecommunications facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

On the basis of these findings I move that the Board grant a Special Permit subject to the following conditions:

That the work proceed in accordance with plans submitted by the Petitioner, the first page of which is numbered T-1 and

initialed by the Chair.

And in accordance with photo simulations submitted by the Petitioner, the first page has been initialed by the Chair as well.

That with respect to the appearance of these panels, that you will continue to maintain them in a way as they will be initially in terms of minimizing the visual impact, i.e., if the paint starts to chip, you'll repaint them so that they continue to be a black antenna against a black background.

ATTORNEY RICARDO SOUSA: Correct.

CONSTANTINE ALEXANDER: And if you abandon the use of these antennas for a period of six months or more that they be removed, and the premises will be restored to the condition as they are today, to the maximum extent possible.

On that basis I move that we adopt the

Special Permit with these conditions.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

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

BRENDAN SULLIVAN: Point of information.

ATTORNEY RICARDO SOUSA: Of course.

BRENDAN SULLIVAN: All the carriers are upgrading equipment. I know you have different equipment, I know you have different bandwidths and all this stuff. Is the equipment different for each carrier?

ATTORNEY RICARDO SOUSA: It is different. It all has proprietary technology. For example, the T-Mobile antennas are very different than the Sprint antennas and those are very different.

BRENDAN SULLIVAN: I guess what I'm

reading is we could not get a consistent antenna that will look all the same around the buildings that will do different things but it all looks the same, that's not possible.

ATTORNEY RICARDO SOUSA: I have to say that's in our future. I think that is more of the European model where there are fewer carriers and many of them share technology and share hardware.

BRENDAN SULLIVAN: I'm just looking for somewhat of a consistent look that it's not this hodgepodge of different antenna and different --

ATTORNEY RICARDO SOUSA: Because they operate with different technologies. Some operate CDMA, some operate GSM. Some operate --

BRENDAN SULLIVAN: The equipment has to be different.

ATTORNEY RICARDO SOUSA: Has to be different, exactly.

BRENDAN SULLIVAN: Different size and shape.

ATTORNEY RICARDO SOUSA: Exactly, yes.

I didn't realize we could get Facebook a Yelp recommendations. Mr. Sullivan, you give me a thumb's up perhaps, or a like.

CONSTANTINE ALEXANDER: If you do, get the language to be censored. I couldn't read into the public record some of the comments.

ATTORNEY RICARDO SOUSA: Have a good night.

* * * * *

(10:05 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10380, 85 Washington Avenue.

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

You've seen enough and heard enough tonight to know how we go about this. Please give your name and address whoever is going to speak to the stenographer.

ATTORNEY JULIA POWELL: Hi, my name is Julia Powell. My address is 18 Scott

Street, Cambridge, Mass. I'm filling in for Shippen Page and I'm the attorney for the petitioner Matt and Leah.

We're seeking a Variance on their house. It's in an A-2 Res District. And the reason that we're seeking a Variance is it's non-conforming in lots of ways. The lot is too small. The side setbacks aren't enough. And the major problem is the FAR is over 0.5.

What we're seeking to do is increase the FAR from 0.53 to 0.69, which in this initially seems like a pretty hardy increase.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JULIA POWELL: But if you actually look at the structure of the building, we're not increasing the footprint, we're just changing the slope of the roof and we're increasing the attic ceiling height by about three and a half feet. The total height is still well below the allowable 35 feet.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JULIA POWELL: This house was originally created in 1941, and it was -- a larger property was split into three, and this is the smallest of those. So it's the most compromised. And if you look at the entire neighborhood, this house and the lot itself is much smaller than most of the other houses in the Avon Hill District.

The petitioners went to the Cambridge Historical Commission and got their approval. And they also did a shadow study. Do you want to see the approval?

CONSTANTINE ALEXANDER: Was there written approval? I don't remember seeing it.

ATTORNEY JULIA POWELL: Yes.

CONSTANTINE ALEXANDER: Okay. I didn't see it. Sorry, keep going.

ATTORNEY JULIA POWELL: Okay. And they also commissioned a shadow study.

Because of the height of the building, they want to make sure that their neighbors weren't affected. They aren't. And those particular neighbors are at 89 Washington and I think they have submitted a letter of support.

CONSTANTINE ALEXANDER: Can we have that?

ATTORNEY JULIA POWELL: Yes.

MATTHEW FISHER: And I have an extra shadow study.

CONSTANTINE ALEXANDER: This is file in the file already?

MATTHEW FISHER: It is.

ATTORNEY JULIA POWELL: One thing to point out about the FAR is the basement is included because it's just above seven feet, but the Petitioners don't have use of that space because it's just a basement. One reason that they're trying to increase the attic size, so they can get a real third

bedroom. They're a young couple. They plan to stay in Cambridge indefinitely and they'd like to start a family and this extra bedroom will really help with the flexibility.

CONSTANTINE ALEXANDER: Can we pursue that a little bit?

ATTORNEY JULIA POWELL: Sure.

CONSTANTINE ALEXANDER: You are, as you point out, and correctly so, you're looking at substantial departure from our FAR. It's 0.5 district. You're going to almost 6.9. That's 35 percent over what's allowed. And you haven't addressed the hardship. And the hardship is obviously a young family, you want more space. But I looked at the plans, and right now it's a three-bedroom house all on the second floor.

ATTORNEY JULIA POWELL: Right.

CONSTANTINE ALEXANDER: What you're going to do, if we grant you relief, is still have three bedrooms. You want to create a

very large master bedroom on the second floor so you only have two bedrooms on the second floor. So you're not adding another bedroom. You are, you're keeping the same number of bedrooms, you just want to --

ATTORNEY JULIA POWELL: That's technically true, although the third bedroom is sort of the size of a jail cell. I mean, with windows. So it's very small. And so if you were planning on having two children and having them have -- not incredibly large bedrooms, but bedrooms that, you know, felt like bedrooms, a second bedroom is important.

CONSTANTINE ALEXANDER: What are the dimensions of this jail cell?

ATTORNEY JULIA POWELL: It's eight and a half by --

MATTHEW FISHER: That's in --

JANET GREEN: You'll put your guests there; is that right?

MATTHEW FISHER: Yeah. It's this

bedroom 201 right here.

CONSTANTINE ALEXANDER: We have the plans here 8, 6 by -- I can't tell what -- that's as to width.

MATTHEW FISHER: It's about 8, 6 and it's 10 long including right before you get to the open width of the closet.

CONSTANTINE ALEXANDER: Eight and a half by 10 roughly. We have it already.

You can continue.

ATTORNEY JULIA POWELL: Another point I want to make is that they're only adding 411 square feet to the liveable space. They're adding about 450 roughly to the FAR, but we're dealing with a really compromised lot. I mean, if you look to the house to the right, to the left they can add substantially to their buildings because the lot size is so much larger. They're not going to be going over the FAR.

I think it is a hardship for the

Petitioners because of the peculiarities of this lot. And I think that if you increase the ceiling and you increase the roof size, you're actually making the character of the house more in line with the rest of the houses on their street and in the neighborhood.

CONSTANTINE ALEXANDER: You're going to change the exterior appearance?

ATTORNEY JULIA POWELL: Right.

CONSTANTINE ALEXANDER: One of the things is this house is a bookend to another house that's down a bit.

ATTORNEY JULIA POWELL: Right.

CONSTANTINE ALEXANDER: Both of which are this way to the street, perpendicular to the street, and this will now look a bit different. Right now the houses look the same. And now they'll look different. So there's -- I'm not sure it's bad or good, but it does change the appearance of the exterior structure.

ATTORNEY JULIA POWELL: That's true.

CONSTANTINE ALEXANDER: Makes it inconsistent with the other building on the --

ATTORNEY JULIA POWELL: Well, with that one other building, right, that's true. But it makes it more consistent if you look at the whole picture of the neighborhood I would argue.

CONSTANTINE ALEXANDER: It's not consistent with the neighborhood at all, because the neighborhood is mostly big, old Victorians.

ATTORNEY JULIA POWELL: Well, not architecturally but in terms of living space.

CONSTANTINE ALEXANDER: Fair.

ATTORNEY JULIA POWELL: Paul could maybe address some of that.

PAUL HAJIAN: My name is Paul Hajian, H-a-j-i-a-n. And we're responsible

for the plans and also the full shadow studies. One of the things that I do want to point out to the Board is that the actual square footage exists in the attic space in the existing plans. I think if you look at E1.4, there's a very narrow -- the way the Zoning is written, because it only happens from 5.7. There's a very narrow slot in the existing gable where you have 88 square feet of usable space according to the by-law. And so if you look down at the actual footprint of the floor is there, it's just not usable according to the Zoning. And we went back and forth both with our own, with our clients and also the design, and thought about how best to make some of that space usable. And the idea was that we would modify the roof form slightly to create a different style as you say. And the actual footprint still exists. The floor we haven't changed. We've merely modified the roof structure.

We think in a tasteful and a mansard style that is in keeping with other mansards in the neighborhood. And then now when you apply the Zoning Ordinance to its interpretation, that's how you generate the dominant amount and increasable space. It is more usable, and we thought if you look at the elevations, that it was still in keeping with the existing buildings that are there. And it does make a distinction between the pair, which are unique. But if you really look at the pair in footprint, the -- one of the houses has had a substantial change with the addition of a balcony in the back, and another extension which is the neighbor. And so in some ways if you look at them side by side in elevation, they are pairs. But if you actually look at the geometry of the building and the physical reality of the site, they're different. And if you look at the sun studies in the very back, you can begin to see what a more

traditional addition is. And we tried very hard because of the nature of the site to keep the footprint the same. And actually with the solar studies, cast no additional shadows. And then by the modification, it's a very slight change in roof form which then enables the family to utilize that third floor space not just for storage which it is now.

ATTORNEY JULIA POWELL: The property hasn't been updated in 70 years, too. So any modification requires a Variance.

CONSTANTINE ALEXANDER: Any exterior modification.

ATTORNEY JULIA POWELL: Correct, yeah.

MATTHEW FISHER: Which we hope to do to make the house a little more environmentally friendly. We'd like to change some of the opening doors to windows

to keep the -- right now there are three doors, like, offset in the front and entrance door and a kind of a little bailout door in the right. We'd like to change doors to a window. Change the insulating to the house to make it a little tighter, environmentally friendly.

JANET GREEN: Did I understand that you don't use the basement but that it because of the height of it, it's still included in the FAR?

MATTHEW FISHER: That is correct. In the plans as drawn, we're hoping to move washer and dryer space up out of the basement so we have very little reason to go down there at all. It's a typical basement. It's pretty dark.

CONSTANTINE ALEXANDER: Sometimes people solve their problems by lowering the floor of the basement.

JANET GREEN: Raising the floor?

CONSTANTINE ALEXANDER: No, if you want to -- you're right, I'm sorry, raising the floor and reduce it.

TIMOTHY HUGHES: How much square foot is in the basement? How much does it account for?

PAUL HAJIAN: 252 square feet.

CONSTANTINE ALEXANDER: Out of 1500 square feet. House.

ATTORNEY JULIA POWELL: It includes the garage.

PAUL HAJIAN: 252 does not include the garage. And we looked at all kinds of things with the smaller building because of the narrowness of the footprint, if you lower the basement, you need to go down there and the stairs are a huge issue in a house like this. Once you include actually moving from one floor to another, there's almost nothing left of the footprint. A traditional approach would be to build an addition,

except here at least the clients maintain that they like the quality of the open space that's there. It's a wonderful neighborhood.

ATTORNEY JULIA POWELL: You would need a Variance anyway because it's already affecting side and rear setbacks.

PAUL HAJIAN: And you're into your setbacks as well. So it seemed like the gentlest and most appropriate way of addressing their use issues were to take the gable and go like this. And temperate it with a different style. And that was something that we brought up and had discussions with Historic about because it does change the look of the building. And they felt the approach that was taken at design of it was very much in support of the kind of quality of architecture that's there in that neighborhood and in that particular part of Cambridge.

BRENDAN SULLIVAN: Something that I have a hard time reconciling is when a Petitioner comes down and says we need more bedroom space, the existing house doesn't work. And you look at the plan and they're actually taking one of the bedrooms and making an office out of it. And so they say that's why we need more bedroom space. What is the office? How many offices?

MATTHEW FISHER: So our hope would be to retain the option of having a Home Office. My job is such that it could be very easily done from home, and I think that over time we'd like to keep that option open. I think --

BRENDAN SULLIVAN: When did you buy the house?

MATTHEW FISHER: We bought the house in August. And our thought was we would think we would see if we could change the way we wanted to, if it's at all possible, and if

not, it would be a different tenure of our hope to stay in the particular house. So we hope to change it such so that we could stay here indefinitely. That's the goal -- I've been in Cambridge since seven years now, and my hope is to stay here for as long as possible. And so if we can change the house, that would be the goal. Otherwise it would have to be a shorter time period.

CONSTANTINE ALEXANDER: To Brendan's point to which I subscribe to, you right now have a downstairs dining room. You're going to do -- you're going to as part of this project, you're going to do away with that dining room to expand the size of the kitchen. Of course if you did expand the size of the kitchen you could convert the dining room, which you obviously think you don't need into an office. So you have a potential for an office there already. And you go back to the fact that you're not

increasing the number of bedrooms. You're increasing the size of your master bedroom.

MATTHEW FISHER: The kitchen is quite small as it is. I believe it's even smaller than the room you just described. It's in serious need of changes. In fact, the appliances are not full size house appliances. They're galley kitchen appliances, and cooking is unfortunately my only hobby. It's the only one thing I indulge in in the house that is my own. I agree with your point. I think we were, we hoped to change the floor plan on the first floor to open, more open, to allowing us to treat that whole room as a dining room on the other side which we -- so kind of keep the essence of that really big dining room. Well, have a more modern kitchen. Because right now the house is lacking.

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

JANET GREEN: I want to go back to your suggestion or your comment about the FAR that was in the basement, and I didn't understand how that would affect the numbers that we were looking at.

ATTORNEY JULIA POWELL: So because part of the basement is above seven feet and it's not a garage, it's technically included in the FAR.

JANET GREEN: No, I understand that.

ATTORNEY JULIA POWELL: Okay.

JANET GREEN: So say you lowered the ceiling in that part of the basement, what would it do to your FAR?

ATTORNEY JULIA POWELL: Well, we would take away approximately 200-something square feet from 400 --

TIMOTHY HUGHES: Addition of 400. It would be a smaller increase.

ATTORNEY JULIA POWELL: Maybe half. Smaller increase.

MATTHEW FISHER: It would make the mechanics of getting down the stairs very difficult. And we were -- right now it's very tight. It's actually they're not as it is right now. And I think coming down, it would make the planning of it and situating of it almost impossible. We worked through it because we were thinking the house would ameliorate the impact of FAR. On a percentage basis it sounds very large and that was --

JANET GREEN: Well, it is very large.

CONSTANTINE ALEXANDER: It is, yes.

MATTHEW FISHER: Yeah, right, on the percentage basis it's huge and that's not our intention.

CONSTANTINE ALEXANDER: And this basement area really is not what I would consider a classic basement that's really all below grade. A lot of it is above grade.

MATTHEW FISHER: Some of it is -- I'd say it's probably 21, 22 inches above grade. So just enough for a very slight window.

BRENDAN SULLIVAN: People do that, and they do it to diminish the ominousness of the number. When that happens, though, I wonder what is the really social redeeming value of it as absolutely no benefit to the house. And yes, it makes the numbers smaller, but the impact of what you see is still there. And what's below grade I think you've impacted the house adversely, and you still wind up with this structure up above. So the number to me, actually say, yeah, it's a lot over, what's allowed. But no matter how you juggle that it's still the impact is the same, you know. And the structure is -- the massing, the volume is really what I look for, not necessarily what's in the basement. So even though it makes the number shine a little bit better, it's --

ATTORNEY JULIA POWELL: Or worse.

MATTHEW FISHER: Our goal is truly to, you know, change the house such that we don't have to change it again. To bring it up to a modern standard living there are 45 amps of service in the fuse box. A bunch of services just need to be changed. And also to make it such that this is a place where we can be for the next 10, 15 years. We love Cambridge. We don't want to have to move again. And I think this plan really strikes us as a really workable way of doing that. But we're adding 4550 feet of FAR and 40 feet of living space. It was the smallest impact and still getting that goal of being able to take whatever may come.

So thank you, I don't know if there are further questions.

CONSTANTINE ALEXANDER: Further questions from members of the Board?

TIMOTHY HUGHES: No other

questions, no.

CONSTANTINE ALEXANDER: Is there any one here -- I'll open it to public testimony.

Is there anyone here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair would note there is no one wishing to be heard.

We are in receipt, as a Board, of a letter of Mary Price and Thomas Parker who live at 89 Washington Avenue. Is this the twin house?

ATTORNEY JULIA POWELL: Yes.

CONSTANTINE ALEXANDER: (Reading)
As abutters we are writing to express our complete support of the changes that Matthew Fisher has proposed to his new home at 85 Washington Avenue. We particularly support the addition of the new mansard roof. Please don't hesitate to call on us if you have

questions.

And we also have a -- I guess you would call it a certificate from the Cambridge Historical Commission. It's just -- the only comment is they approved by the Avon Hill -- NCD what does that stand for?

ATTORNEY JULIA POWELL:

Neighborhood Conservation District.

CONSTANTINE ALEXANDER: Thank you. Approved by the Avon Hill Conservation District. So there's no commentary, just an indication of approval. And that's the sum and substance of what we have in our files.

ATTORNEY JULIA POWELL: I would like to point out there's no neighborhood opposition whatsoever. So the other neighbors that Matt and Leah spoke to but didn't get around to writing a letter, the entire neighborhood, including abutters on the other side are in support of the project.

BRENDAN SULLIVAN: I think their

approval should not be taken too lightly, because they can be a tough bunch.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: Oh, yes.

ATTORNEY JULIA POWELL: In that particular district, too.

CONSTANTINE ALEXANDER: That particular street.

BRENDAN SULLIVAN: I think if it has gotten by them, you know, I think you're almost there. They find more scrutiny in a lot of stuff up there.

CONSTANTINE ALEXANDER: The folks who own the big Victorian that's set back from the street, they had quite an issue before us.

MATTHEW FISHER: The conservation was actually wonderfully helpful in thinking about the plan, and helping us with what the best form, shape, and color. The neighborhood has been tremendously welcoming.

BRENDAN SULLIVAN: Tom, what is your thought on all of this?

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: I mean I think the architectural solution is a good one, you know. I think, I'm struggling with the FAR increase.

CONSTANTINE ALEXANDER: That's a problem.

THOMAS SCOTT: You know, there have been a lot of projects that I've sat on the cases that have had less FAR increase than this, and that we've disapproved. So it's -- I'm just struggling with that. I mean, I understand what you're trying to do. I think, you know, the argument could be that the office could be another bedroom some day. It really could become a four-bedroom house if you turn around and tried to sell it. You know, you're just trying to increase value. I'm just struggling with the FAR. I just

think, you know, you've added a lot of square footage to the building. And just by the mere fact that the building is relatively small to begin with, so anything you do is going to from a percentage standpoint seem big.

CONSTANTINE ALEXANDER: I struggle as well. I'm not there yet in terms of opposing it, but I struggle particularly because I don't think the hardship is as compelling as often as we get hardships before us. If you really needed another bedroom, a fourth bedroom, and you wanted to put on a dormer or some other addition, we have it all the time. You've got a number of kids, the family size has increased and there's a compelling -- or there's other special health issues, there's a compelling case for a hardship and you tie that into the situation, we tend to be a little bit more charitable about substantial departures from

FAR. But right now, I hear the hardship but I don't find it overwhelmingly compelling.

ATTORNEY JULIA POWELL: The house itself, though, I just want to emphasize is the most compromised of all of its neighbors in terms of being on a very small lot and being a very large property for that, for the lot size in terms of what the Zoning Code, the Zoning Code regulations that came in after it was built. So many of their neighbors can in fact with no trouble not coming in here before you, increase the bulk of their houses much more than Matt and Leah are proposing.

CONSTANTINE ALEXANDER: I'm not sure that's -- I hear you and you're absolutely right. I think there's a little bit of disconnect in the logic, though. I don't think that necessarily creates a hardship. You bought the property as it is.

MATTHEW FISHER: I think we would phrase it as the house is about 20 feet wide

by 25 feet long. And so the three bedrooms as they are, are very small. If you think of going to have more than one, especially in that smallest bedroom, more than one person in that bedroom. And so the ability to have a third child, a little compromised if you think that, depending on how genders divide, and I think we would really like to do it correctly the first time. We would like to make it such that we can be a place no matter what we decide to do. The way it's set up, we may not have that ability. And we would -- and I think you're correct in saying that we are changing the shape of the two bedrooms on that back end to make it one. However, the square footage of that one bedroom is not the unreasonable. It's a fairly moderately sized bedroom, especially when you consider how big, you know, a queen bed is, it eats into the percentage of that bedroom. And so we would think that right

now the hardship would be the person living in that third bedroom. And in changing it, adding a dormer is not something aesthetically pleasing solution. And so we're changing the whole roof adds two rooms, adds, you know, 120 by 20 easier to think about a bedroom. They're not two especially large rooms.

THOMAS SCOTT: What's the rear setback requirement?

ATTORNEY JULIA POWELL: I'm pretty sure it's in violation of it.

MATTHEW FISHER: I think in the rear we're all right.

ATTORNEY JULIA POWELL: On the side it's in violation.

CONSTANTINE ALEXANDER: No. According to your dimensional form you're non-conforming to the front and left side.

ATTORNEY JULIA POWELL: And left side, but not the rear.

CONSTANTINE ALEXANDER: And not the rear, right.

MATTHEW FISHER: The Cambridge Historical Commission has a particular dictate to try to preserve the open nature of the neighborhood, and so to that end we really wanted to make sure we didn't build into the backyard. That was something they had mentioned as something they feel very strongly about. That's what the house next-door did.

THOMAS SCOTT: You're making a two-story structure and making it a three-story structure and disguising it with a mansard roof.

MATTHEW FISHER: I would like to think that we're changing the existing three-story structure, that existing third story into the --

THOMAS SCOTT: It's not a three-story structure.

PAUL HAJIAN: It doesn't qualify as a three-story.

THOMAS SCOTT: It just isn't. All I'm saying is there probably is another solution and you probably could expand the existing house maybe into the rear yard without exceeding the setback and maybe get some of the things you want without going up another whole story.

ATTORNEY JULIA POWELL: Another three and a half feet -- I mean, I understand it's not a -- I understand it is a full story technically, but it's not it's not like they're adding eight feet.

MATTHEW FISHER: The Historic Commission preferred this particular solution, but I don't disagree that there are other, there are other practical solutions. That's in fact the house next-door to it did. They -- I can't remember exactly what the construction was done, but it's built into

their back, into the backyard so the house is basically the footprint of the lot.

ATTORNEY JULIA POWELL: And just a general point, if we're -- the purpose of the Zoning Code in Cambridge is to make a habitable liveable city and we want to encourage, I would think as a lifelong Cambridge resident, young couples to move into some of the neighborhoods that are incredibly expensive. And this is a great neighborhood in Cambridge. And these kinds of houses, you know, this house because of its size was somewhat affordable for a young couple, but in order to make it the kind of home --

CONSTANTINE ALEXANDER:

That's -- your point is well taken. I'm sorry to interrupt you. But there's a counter veiling point of view that used to be expressed by a member of our Board who is no longer on our Board. And that is we've got

a diminishing number of starter homes in Cambridge, and every time we allow them to be expanded, we increase the value of the home and it's one less starter home for the next young couple who wants to move into Cambridge. So there is a pro and a con to what you want to do in terms of the impact on Cambridge. I'm not going to suggest which it is. But it's not simply gee, we're going to allow a young couple to expand the house. We are going to take away a moderate, more moderately priced house from future potential residents of the City of Cambridge.

ATTORNEY JULIA POWELL: I understand that argument, although I think maybe starter home is still an expensive property, and it's in a district where it would become more, not less, consistent with its neighbors.

CONSTANTINE ALEXANDER: Okay.

Further comments?

TIMOTHY HUGHES: I for one am just grateful that they didn't come before us with a dormer proposal.

CONSTANTINE ALEXANDER: You're right. I use the -- I didn't mean to suggest there should be a dormer here. That's the usual case we get when people want more space, they want a dormer.

TIMOTHY HUGHES: I know. I hate dormers.

ATTORNEY JULIA POWELL: Do you have any other questions or what are your -- how are you feeling?

TIMOTHY HUGHES: No. I feel like this is a great way to make use of what is an attic space, and it does turn it into a third floor. I don't have a problem with that.

CONSTANTINE ALEXANDER: Brendan, I'll give you more time to shuffle through the papers.

BRENDAN SULLIVAN: Yeah, no.

TIMOTHY HUGHES: And I think it does speak to the legal standard of hardship. It's an undersized lot and it's not -- and it's -- the circumstances don't typically affect the other properties in the area which is one of the other parts of the standard of hardship.

ATTORNEY JULIA POWELL: If the number sounds better I calculated in my head, that the FAR would probably be something more like 0.59, 0.6 if the basement was not included, but that's a rough calculation.

TIMOTHY HUGHES: If you filled in the garage with concrete, it would probably be okay, too.

ATTORNEY JULIA POWELL: That's right. And then we would just need a Variance for a parking spot and then, you know, we'd be back here. Less congestion this way.

CONSTANTINE ALEXANDER: How usable

is -- while Brendan's looking at that, we have a little bit of time. How usable is the garage?

MATTHEW FISHER: There's no door between the garage and the basement.

CONSTANTINE ALEXANDER: Oh, really?

TIMOTHY HUGHES: No.

MATTHEW FISHER: No. However, it's just usable if you hang a tennis ball right in the front so you can get right up.

CONSTANTINE ALEXANDER: I don't live that far from Washington Avenue. So I walk by the property. I'm not a neighbor. And it doesn't look like a very functional garage as I walk by it.

MATTHEW FISHER: So we need to -- it needs to be regraded. It sunk over time and the drain is now above the ground which is not where it's supposed to be I assume.

TIMOTHY HUGHES: No, that's probably not good.

MATTHEW FISHER: It has the clearance necessary to do it, especially if we change the way the door opens.

TIMOTHY HUGHES: I always thought the only useful part of that other part of the basement was to get to the garage, but you can't even use it for that.

PAUL HAJIAN: There's no door. You put your car in and walk up and around.

CONSTANTINE ALEXANDER: Have you thought about abandoning the garage? I mean, it's to have an indoor garage, but, you know, as a solution, not an alternative solution and changing the -- and getting a lot more space in the basement but you have to park on the street which is perfectly legal in Cambridge.

MATTHEW FISHER: And it is. And actually street parking in this particular neighborhood is not insanely bad. We like the idea of having a garage. It was

appealing to us --

CONSTANTINE ALEXANDER: I understand. I like it, too.

MATTHEW FISHER: Not, you know, brushing off your car and heating it up every day appeals to us. If we thought if we could keep it, it was a selling point of the house to us.

CONSTANTINE ALEXANDER: I've been stalling long enough, Brendan.

BRENDAN SULLIVAN: It's almost like the existing house doesn't fit the neighborhood.

ATTORNEY JULIA POWELL: That's right.

CONSTANTINE ALEXANDER: It doesn't.

BRENDAN SULLIVAN: It doesn't.

CONSTANTINE ALEXANDER: No. Nor does the other sister house. They are odd, odd houses in that neighborhood.

ATTORNEY JULIA POWELL: Yes.

CONSTANTINE ALEXANDER: No question about it.

BRENDAN SULLIVAN: And I'm almost, I mean, again, I go back to the Avon Hill, if they thought it was okay, that you know, it's sort of maybe throws me over that. It might be a little bit more in keeping architecturally with the neighborhood as opposed to something that looks --

CONSTANTINE ALEXANDER: The mansard roof does make it more.

BRENDAN SULLIVAN: -- out of place. And I think that the inherent byproduct of the mansard roof is that it gives you obviously a certain shape and form, but it gives you a little bit more floor area because, you know, rather than the roof, so there's -- again, it bumps that number up, but --

CONSTANTINE ALEXANDER: Well, I think we dissembled long enough. I think we should take a vote.

BRENDAN SULLIVAN: I would support it.

CONSTANTINE ALEXANDER: Okay.

Do you want to express views now or we can go around the table or we can take a vote.

TIMOTHY HUGHES: I already said I'm good with it.

JANET GREEN: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we grant a Variance to the Petitioner to proceed with the work covered by the petition on the basis of the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that they need additional living space to deal with a growing family, and they do not have that without granting getting relief from our Board.

That the hardship is owing to the shape

of the lot. It is too small. I should say it's undersized. Meaning that almost any relief -- any addition to the structure would require a relief on the FAR. And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance. In this regard the Chair would note what is being proposed is to make the house more amenable to a younger family, people who occupy it, and in that sense furthers the housing stock of the City of Cambridge.

Further, I would note that there is no neighborhood opposition, and there is a support from the Avon Hill Conservation District.

The Variance that we would be granting would be on the condition that the work proceed in accordance with the plans submitted by the Petitioner. I'm just going

to reference the cover page which I'm going to initial. And, sir, because you don't come before us that often, just to make it clear, that these are the final plans. If you make any changes, you're going to have to come back before us.

PAUL HAJIAN: I understand.

CONSTANTINE ALEXANDER: You do understand that?

PAUL HAJIAN: I do.

CONSTANTINE ALEXANDER: On the condition that the work proceed in accordance with the plans, the first page of which has been initialed by the Chair.

All those in favor of granting the Variance on the basis of the motion I have just made say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan,

Green.)

CONSTANTINE ALEXANDER: One
opposed. Four is all you need.

(Scott.)

CONSTANTINE ALEXANDER: You want to
say why you oppose in terms of the record?

THOMAS SCOTT: No, I've said it.

MATTHEW FISHER: Thank you very
much. I realize it's 10:30 on a weeknight.

CONSTANTINE ALEXANDER: It's early
for us.

* * * * *

(10:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will at last call case No. 10381, 27 Prince Street, Unit 1L.

Sir, as you know by now, I hope, name and address to the stenographer, please.

JAMIE JONKER: Jamie Jonker. It's J-o-n-k-e-r. 27 Prince Street, condo No. 1L, Cambridge, Massachusetts.

CONSTANTINE ALEXANDER: Yes, and the reason what you want to do is what?

JAMIE JONKER: Yes, my partner and I own and reside at 27 Prince Street in unit 1L,

and we have exclusive use of an adjacent side yard. And this is as filed with the Middlesex Registry of Deeds on the amended condo plat that was filed in April 12, 2010. We actually purchased the unit a few months later that year and moved in in August of 2010. At the time of construction of the building, which was about 1918, the structure had a left side yard of eight feet, four inches exceeding the minimum requirement of seven-foot, six inches. However, under today's Zoning regulations it's now non-conforming. The requirements now are nine feet, six inches.

The Zoning Ordinance specifically mentions light and air among the protected resources, and without the proposed door and steps, we cannot access the side yard without passing through common areas that are secured for the use and protection of all the unit owners. The proposed doors and uncovered

steps also enhance the health and fire safety by providing additional egress in the event of an emergency.

Going with the Variance which is to essentially put the steps in, we also need a Special Permit to enlarge a window to a door to coincide with that. And obviously the Variance is required before addressing the Special Permit as there's no need for a door if there's no steps to go with it.

CONSTANTINE ALEXANDER: That's true.

JAMIE JONKER: I'm not as agile as I once was.

CONSTANTINE ALEXANDER: You haven't mentioned is actually what you're proposing to do will decrease your non-conforming as to FAR. You're right now at 0.532 in a 0.5 district, and as a result, at least according to your dimensional form, you're going to go to 5.22. So we pay a lot of attention to FAR,

and you're going to improve the FAR situation to the positive. You're not going to make it in conformance with our Zoning By-Law.

JAMIE JONKER: Yes.

CONSTANTINE ALEXANDER: Which is a positive in the eyes of our Board.

JAMIE JONKER: Thank you.

CONSTANTINE ALEXANDER: Tell me, you're going to be modifying the structure itself obviously.

JAMIE JONKER: Yes.

CONSTANTINE ALEXANDER: Have you gotten approval from the condominium association?

JAMIE JONKER: Yes, and I do have letters of support. I don't have one specific from the condo association.

CONSTANTINE ALEXANDER: But your representation to us is that -- because I don't want to waste our time in the condo association is going to tell you you can't do

this. You say you have gotten approval?

JAMIE JONKER: Yes, yes. My partner who serves on the board has brought this up to the board at a previous meeting and they have given verbal approval.

CONSTANTINE ALEXANDER: I would behoove you I would advise you to get it in writing.

JAMIE JONKER: I would be happy to request that and if that's something that the is needed for the record.

CONSTANTINE ALEXANDER: It also may be even for your Registry of Deeds recordable perhaps anyway.

JAMIE JONKER: Okay.

I did mention I did have, from two individual owners, e-mails supporting.

CONSTANTINE ALEXANDER: Could you give those to us for the record?

JAMIE JONKER: Yes, absolutely. I want to make sure these are the ones. There

is one from Emma Stockley who is in unit 2L directly above us, and one from Wilbur Hyatt who is in 2R.

CONSTANTINE ALEXANDER: What about the abutting structure? The entrance, I know there's a big fence as I see from your plans. But what about that person who -- or persons who own that structure on the other side?

JAMIE JONKER: So we sent letters to all of the units in the neighboring condo building which is 39 and 41 Prince Street. They are the double, triple decker. And here's copies of the letters that we sent. We did receive back -- and I did also e-mail one of the unit owners because we have their e-mail address. And from them they were interested in knowing when the hearing was. And so I sent that information to them, and there is their thanks for that information. And I did have correspondence with another

neighbor who is in unit 2 at 39 Prince Street. So that is the side facing the patio, and she did express concerns about noise, and she did mention she has some noise issues with probably the condensers in our building. This is the first time that I had heard of that. And as far as I know a noise issue about our condensers were not raised with our building.

CONSTANTINE ALEXANDER: But those conditions have got nothing to do with what you want to build.

JAMIE JONKER: That's correct.

CONSTANTINE ALEXANDER: That's a problem.

JAMIE JONKER: That's correct.

And, you know, I'm happy to have her meet with our building to address that. But I agree, that's a separate and a side issue. She did express concern about potential noise from people on the patio.

CONSTANTINE ALEXANDER: Right.

JAMIE JONKER: And I think that's understandable. You know, what the Variance we're asking for is really about the manner of access to the patio and egress from -- directly from the unit versus the intended use of the patio itself. And so the intended use is already there. It's a matter of how you access that for the health and pleasure of the unit occupant, myself, and my partner. And so I think that while, you know, I certainly can understand and appreciate that being in a dense neighborhood like we are in Cambridge Quarry, that you have to be very conscious of neighbors. And she has my cellphone and, you know, I'm happy to have her contact me whenever we were using the patio if she deems that --

CONSTANTINE ALEXANDER: How big is the patio? Because obviously granting you the relief you're seeking will increase the

likelihood of people using the patio. A party or whatever or friends. Is it a large patio?

JAMIE JONKER: The patio is approximately eight feet, six inches by I believe it is 32 feet. It's on the --

CONSTANTINE ALEXANDER: Good size.

JAMIE JONKER: -- on the condo docs, and it is 34 feet, 5 inches. So it's about, call that what, about 250 square feet doing the numbers in my head.

BRENDAN SULLIVAN: If it were a patio or a green space, you could still congregate there.

JAMIE JONKER: Yeah. And there is a -- when we moved in, the patio area was only partially finished by the developer. As you may recall, this building went through a fire in 2008.

CONSTANTINE ALEXANDER: Oh, this is the one that had the fire?

JAMIE JONKER: Yes, one of the two buildings. This was the one that was an apartment building. It was sold, redeveloped, and the patio was only partially complete. Partial fencing. The -- there was a brick, the bricked area was bricked but it was not level. So we saved up for a couple of years and this past year had it re-leveled, the fence complete. So it would serve more appropriately as its intended purpose.

CONSTANTINE ALEXANDER: Questions at this point?

I'll open to public testimony.

Is anyone here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair would note there is no one here wishing to be heard. No one here period.

We have received letters submitted by the Petitioner. One is from Emma Stockley who is at 2L, apartment 2L. (Reading) We

will be out of town that day, getting married, but would be happy to submit something in writing to say we support the patio and door additions. Let me know if this is something you would like us to do.

The other one from --

JAMIE JONKER: There's a second -- on that one there's a second page that is the other unit owner.

CONSTANTINE ALEXANDER: Oh, that's what I'm looking for. Okay.

And the letter is from Wilbur Hyatt who is at 2R. And he says (Reading) Sounds good to me guys. No concerns here. Thanks for the head's up.

And the Petitioner has represented to us that they've contacted other neighbors and except for one neighbor who has expressed some concerns about noise, most of the concerns of which are unrelated to what you want to do, but are a general problem for the

area.

That's the sum and substance of it. And that you've represented to us one more time that this has been approved by condo association.

JAMIE JONKER: And I do take appropriate to your suggestion to have them approve that officially in the minutes rather than in oral approval.

CONSTANTINE ALEXANDER: Yes, I think you should.

Any questions? Ready for a vote?

Okay. The Chair moves that we make the following findings with regard to the petition submitted by the Petitioner:

The petition being to add an uncovered landing and steps adjacent to a brick side yard.

On the basis of the following findings: That a literal enforcement of the provisions of the Ordinance would involve a substantial

hardship to the Petitioner. Such hardship being that the means of egress to the public way from the unit is compromised at this point and this would allow a more efficient and potentially safer means of egress.

That the hardship is owing to basically the shape of the lot. It's a very narrow lot or a small lot in terms of relationship to the structure. And so any kind of modification would require Zoning relief.

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

The Chair would note that the proposal is modest in its requirements. It's a shelter over a front door. That the issues are just simply slight reductions in setback, and that in fact that the FAR is non-conformance would be improved upon, though still non-conforming, by virtue of the

work being proposed.

This Variance would be granted on the condition that the work proceed in accordance with the three pages of plans that we have, the first page of which has been initialed by the Chair. And that's it I guess.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: We have a Special Permit to do next.

The Chair moves that we make the following findings with respect to a Special Permit requested by the Petitioner to replace a window with a door to access the brick side yard. I propose we make the following findings:

That what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

It will not adversely affect the development of adjacent uses.

It will not create nuisance or hazard to the detriment of the health, safety, and welfare of the occupant of the proposed use, that's you and your partner, or the citizens of the city, and would not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

As I've indicated, what's being done in totality is just to provide a separate entrance to a side yard to improve the quality of living for the occupant of this unit.

On the basis of these findings I move that we grant a Special Permit on the condition that the work again proceed in

accordance with the plans that I've
identified with respect to the Variance.

All those in favor say "Aye."

(Aye.)

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

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

JAMIE JONKER: Thank you very much
and have a good night.

* * * * *

(10:55 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10382, 42 Chilton Street.

The Chair would note we're in receipt of a letter from the Petitioner or actually the Petitioner who is the architect for the project. It says: We will be filing a new case which will be heard on February 28, 2013. We wish to continue this case until that time.

This will be a case not heard so we can definitely continue this to February 28th.

So, therefore, the Chair moves that the case be continued to that date. This being

a case not heard. That we are in receipt of a waiver of time for a decision. And so the continuance would be on the conditions that the Petitioner modify the sign that's currently posted to reflect the new date, February 28th, and the new time, seven p.m.

And that the sign be maintained as required by our Zoning Ordinance.

And on the further condition that to the extent the Petitioner is going to submit revised plans, and if necessary, a revised dimensional form, that these documents be in our files no later than five p.m. on the Monday prior to February 28th.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Case continued.

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

(Whereupon, at 10:55 p.m., the

Zoning Board of Appeals

Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Inspectional Services.

When the Errata Sheet has been completed and signed, a copy thereof should be delivered to each party of record and the **ORIGINAL** delivered to Inspectional Services, to whom the original transcript was delivered.

INSTRUCTIONS

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ATTACH TO BOARD OF ZONING APPEALS
DATE: 1/24/13

REP: CAZ

ERRATA SHEET

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I have read the foregoing transcript of the Board of Zoning Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made.

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 1st day of February 2013.

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

My Commission Expires:
April 23, 2015

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