

PLANNING BOARD FOR THE CITY OF CAMBRIDGE
GENERAL HEARING

Tuesday, September 30, 2014

7:00 p.m.

in

Kennedy Longfellow Auditorium
158 Spring Street
Cambridge, Massachusetts

Hugh Russell, Chair
H. Theodore Cohen, Vice Chair
Steven Winter, Member
Tom Sieniewicz, Member
Steven Cohen, Member
Catherine Preston Connolly, Associate Member

Brian Murphy, Assistant City Manager for
Community Development

Community Development Staff:

Liza Paden
Jeff Roberts
Suzannah Bigolin

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GENERAL BUSINESS

Update, Brian Murphy, Assistant City Manager
for Community Development 3

PUBLIC HEARING (Continued)

PB#288 - 40 Thorndike Street, Special Permits to convert the existing non-conforming Courthouse structure at 40 Thorndike Street to a mixed use office building containing ground floor retail uses, 24 dwelling units, and below grade parking. Special permits are sought pursuant to Section 19.20 Project Review, Section 8.22.2a. Alteration of a Non-conforming Structure, Section 5.28.2 (et seq.), conversion of a Non-Residential Structure to Residential Use, and Section 10.40 General Special Permit Requirements. LMP GP Holdings, c/o Leggat McCall Properties, LLC is the applicant. 5

The purpose of this continued hearing is for the Planning Board to deliberate and discuss materials and information presented at the prior hearing held on July 29, 2014. The Planning Board may possibly entertain new public comment during or after its discussion. Written comment may be submitted to the Planning Board prior to the meeting by e-mail to lpaden@cambridge.ma.gov

Keyword Index

P R O C E E D I N G S

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HUGH RUSSELL: We're going to start. I would ask that people try to consciously speak slowly and distinctly because the tape -- the computer backup that records the sounds that we're making is not functioning. She's skilled, she will take what comes in her ears and put it on to her transcription machine and so we'll have the record, but so you know, spelling your name, you have to spell it slowly. It's just stuff like that.

So the first -- this is a meeting of the Cambridge Planning Board. And the first item of business is an update from Brian Murphy.

BRIAN MURPHY: Thank you, Hugh. Sorry about that.

The next hearing will be 344 Broadway, that's October 7th. We've got a public hearing on 79 J.F.K. Street, Kennedy School of Government at seven p.m. It's a continuation of the 88 CambridgePark Drive hearing. Followed by the General Business

Planning Board procedures.

Just to let people know what we're planning to do for that, the October 7th meeting will be a chance for the Planning Board to talk a little bit about what they may consider for rule modifications, rule changes for Planning Board rules. That will just be a Planning Board discussion.

Then on October 28th at the start of the meeting, at seven p.m. we would have under General Business, again, more Planning Board procedures which will provide an opportunity for the public to comment on Planning Board process and procedures. And by doing it that way we would allow people to do it in a time certain at the beginning of the meeting, and that's October 28th.

In addition, if people would like to submit any written comments or thoughts about constructive ways to improve the Planning Board process between now and then, that would be helpful as well.

So, again, that was the October 7th, two public hearings, and the Planning Board

procedures on October 21st.

We have another public hearing on North Point retail parking revision Zoning Petition, that's at seven. Scheduled for eight is the Discovery Park amendment and design review.

On October 28th, start the evening off with Planning Board procedures, followed by continuation of Planning Board No. 175, 15 East Street Major Amendment to reduce the size of the building.

For the November 18th hearing we've got 88 Ames Street, which is the Boston Properties housing at seven. The Teague, et al Zoning Petition at eight. And under General Business the Ipsen sign at 650 Kendall Street, a BZA sign.

And in addition, December 1st will be a City Council round table with the Planning Board. So that's a little bit of a preview of coming attractions.

HUGH RUSSELL: Thank you.

So, we are going to now discuss Planning Board case 288, 40 Thorndike Street.

As you -- most of you know we have had several meetings on this subject, and the most recent meeting was on the 29th of July. And in that meeting some additional information was furnished to us; some changes to the design. We received a great deal of public testimony. This is my public testimony binder clip and is it has probably 300 pages of paper in it. And -- but that meeting the Board did not have a chance to deliberate. We listened to you, we made some brief comments, but we did not deliberate. That's the purpose of this meeting.

We have not received any new information from the proponents. We received information, which I will confirm with my colleagues, that is sufficient for us to deliberate before we reach a decision. So we're not anticipating soliciting public comment at this meeting.

JOHN HAWKINSON: Speak up.

HUGH RUSSELL: I'm trying to, but it seems maybe I have to hold it differently.

So we will not -- we don't anticipate

opening up the meeting to further public testimony. We may ask questions of the proponent if there are questions of fact that we need to find.

Again, we've got, again, hundreds of pages of information for everybody and so we'll look at that. So that's the plan for the evening.

And do my colleagues agree with that plan?

(All in Agreement.)

HUGH RUSSELL: The staff on the 23rd of July gave us a memo of the project, review memorandum, and we're going to try to follow that memorandum because it's essentially laid out the -- all of the issues before us; the permits, the criteria.

Liza, I think you have extra copies of that for the public?

LIZA PADEN: So there's piles of the materials on the table right by the door.

FROM THE AUDIENCE: Actually, there's just one left.

LIZA PADEN: Oh, sorry.

HUGH RUSSELL: Okay. So if you want to follow along with us, it's the July 23, 2014, memo.

The late breaking news, Ted reminds me the City Solicitor sent us an opinion at two o'clock this afternoon. Were copies of that out there, too?

LIZA PADEN: Yes.

HUGH RUSSELL: Okay.

Which basically reaffirmed her previous opinion on the case that we -- and I think that's -- actually, the first item on this sheet here has to deal with the alteration of the non-conforming structure. The City Solicitor's opinion is that the courthouse is a lawfully non-conforming structure, and so I believe -- are we agreed that that's our baseline?

(All in Agreement.)

HUGH RUSSELL: So then we would be applying the standard for the alteration permit which affects some of the work that's going on at the courthouse. And that standard is that we have to find that the

proposed changes are not more detrimental than the existing building.

The Solicitor clarified one point for me that when talking about the existing building, the one that she feels we should think about is the most recent uses when the building was used, which is a courthouse and a jail. So that's the point of comparison.

So one way of trying to look at that question would be actually to go through the list of Chapter 19, Environmental Urban Design objectives. That's a long list we're going to have to go through anyway.

Does anyone want to help me out here with a suggestion as to how we might address this first question of how we make a finding whether it is or is not more detrimental? I mean, I have my own ideas, but this is a Board.

STEVEN COHEN: Well, Mr. Chair, it seems that first we could make a decision that it's just under Section 8.22 under the alteration rules and end up and the change. And even there it seems to me that the

changes that are being made are changes in the structure, and I'm thinking that the question is whether the changes in the structure are substantially more detrimental to the neighborhood than the existing structure. And if that's right, that doesn't in and of itself seem like a terribly difficult challenge. So I'm -- I'm not sure is it -- my read is that it's the change in the structure that we're looking at and not the change in the use, because the use was legal and is legal and a use that it's being changed to is legal. So I think it's just the change of the non-conforming structure that we look at under 8.22.

Does anybody else --

TOM SIENIEWICZ: Let's see if I can make this one work. That's my understanding as well, Steve. That we need to make a finding that the findings exacerbate than the existing non-conformances that are there. That's the Ordinance as I understand it in this section which is, okay, you're going to change it. You're going to make it worse.

And I think we could, we could discuss that quickly and come to a conclusion.

STEVEN COHEN: I think so. And then, you know, the more interesting and challenging question I think then would be under Article 19 project review as a separate matter after we've addressed the first question.

HUGH RUSSELL: I just wanted to look for a moment at the language.

So 8.22, it says: Permits for the change, extension, alteration of a pre-existing, non-conforming structure or use may be granted as permitted in Section 8.22.2 below.

8.21 does not apply.

So I think that at 8.22 it says: The following changes, extensions, or alterations in a structure or use may be granted by the following, in the following cases after issues of a Special Permit that the permit granting authority finds that such changes and extension or alteration would not be substantially more detrimental to the

neighborhood than the existing non-conforming use.

So I think use has to be part of the --

STEVEN COHEN: I think that -- I think the reference, the operative word is non-conforming. If the original use was non-conforming, then, then the change of use would be subject to that. But if the original use was conforming, it's only the structure that was non-conforming. I, you know, it's a little bit ambiguous in the drafting. But I think that makes sense. That it's, that since it's only the structure which was non-conforming and height and FAR that it's only, you know, that change that we're looking at under that section. The change of use, were it not for the non-conforming structure, you know, the change of use wouldn't be subject to this section. You know, the change of use would not require a permit.

HUGH RUSSELL: Correct.

CATHERINE PRESTON CONNOLLY: Just to be clear, it's just the FAR that was not

conforming previously; is that correct?

ATTORNEY JAMES RAFFERTY: Yes.

HUGH RUSSELL: Because previously there weren't -- there were very few other restrictions.

ATTORNEY JAMES RAFFERTY: Right. No height.

HUGH RUSSELL: In Business B districts.

I mean, in a way it's kind of, it's not to my mind terribly important because the uses aren't very different. Yes, the jail is different, but it was a big building, people sitting in desks working, sometimes they were in conference rooms, they would be called courtrooms. In a courthouse they would be called conference rooms. But many features of the use were basically very similar. So....

TOM SIENIEWICZ: They'll simply allow ingress and egress in the housing development unlike the old one. So there are 24 units. So I guess that's the way the use changes in terms of the housing, but there's

a smaller population I understand because the units will be more commodious I would imagine than the previous tenants enjoyed, so -- but it is 24 units and we can compare that to the actual, the comings and goings of prisoners in the, that were described in previous hearings which were significant both in court proceedings and for the actual operation of the jail. So, I would say if you split the finding, on the dimensional change, obviously the building that's being as proposed is smaller, it's being reduced in height. So I don't think that dimensionally we have an issue here in terms of a greater exacerbation of its current condition. The FAR's coming down.

The relative to use, I would concur with the Chair's comments that the use is analogous except for the housing, and I believe that the housing at 24 units probably will create less traffic and less issues than the prisoners' comings and goings did.

H. THEODORE COHEN: Well, I concur that the use is not really an issue. It was

a court, people came for trials, lawyers came all the time. There was also the DA's office which had its entire Middlesex -- I'm not sure the entire office, but a substantial office use there. There was a library that was used by the public, and then there was the prison on top. I think the residential use we will get to, in a different manner, because we have to determine under the Ordinance that a building not built for residential use can be used for residential use. You know, I've been struggling with this to see if there's any way you can come in through the back door to talk about use, and the only possible way I could think of it, and not very successfully, was to say well, even though office use was allowed and is allowed, we would not have allowed, or the Planning Board would not have allowed such a large building to house so many people making part of that use, but I still think that it is backwards and that we have to deal with the fact that the building is there, that it had a, an allowed use before and will have an

allowed use now and that concluded what we talked about is the dimensional changes.

HUGH RUSSELL: So I'm going to take a small issue. I looked at the 1970 Ordinance which was evidence that -- I mean, the building was not permitted by the city. It did not get any Zoning approval. As far as I know, it did not get a Building Permit. That was the way the county and other -- and the state acted at that point in time and was reviewed by the Department of Public Safety. There wasn't a State Building Code at the time. But when I looked at the Ordinance, I didn't -- there was no category for municipal or state or county uses in the Ordinance Table. They simply weren't there. I assume the reason they weren't there is because we can't regulate them. And I don't think it changes your argument, but it doesn't matter. The fact that you go to that table there you won't find courthouse.

H. THEODORE COHEN: Well, no, I haven't looked at the earlier Ordinance, but I think -- well, if -- I don't necessarily

want to go there, but that even brings it closer to the Durkin argument that you had a use that was not even in the Ordinance and it was there simply because of governmental community and --

FROM THE AUDIENCE: Can't hear you.

H. THEODORE COHEN: I'm sorry.

That you had a use that was there simply because it was governmental immunity, and then that brings it back into the Durkin case talking about the federal post office, that regardless of how it got there, it was a, the legal non-conforming use. And now we have a proposed use that is allowed under the Ordinance, and in fact, courthouse use is now allowed under our existing Ordinance so it at some point in time, that use, courthouse use, which may not have been named, was named and became a legal use and we're talking about another allowed use.

HUGH RUSSELL: So are there more comments on the question of the detriment -- is the structure with the alterations more detrimental than the existing building?

I guess I would comment, and I'm not sure this is the right approach and standard, there are many detrimental things about the existing building that are being fixed. Just being generally the way in which it meets the street and the sidewalk, the scale of the lower parts of the building are being changed significantly. The open space around of which good -- the detriment to the building there is no open space today. There is open space being provided. So the detrimental aspects of the existing building are being reduced in the proposal. And I think we can come up with a longer list of things that we can add to that if we wanted to.

CATHERINE PRESTON CONNOLLY: Just to build on that comment, Hugh, I think it's worth acknowledging that some of the impacts of the structure that have been addressed through these hearings, such as shadow and wind, are not significantly being improved but are also not more detrimental. And in fact, the -- through the course of these hearings, the proponent, in fact, did

extensive studies and made some changes to the cladding of the building. They were proposing to ensure in particular that the wind was not made more detrimental than the existing surface. And it's, again, not to say that it's getting better, it's, you know, there are some efforts being made which may or may not be successful, which we certainly hope they are, but I think we can say that with respect to shadow and wind in particular, which were brought up repeatedly, that the proposed building is not substantially more detrimental.

STEVEN COHEN: The only thing I would add briefly for the benefit of the audience, that is to please understand what we're doing and what our constraints are here. I mean, you know, nobody on this Board is saying that we think this is an ideal building, I mean, in this location. And some feel that it may be changed if we had the power to do so. Perhaps there's some who feel that way. But we're really constrained to apply the law and the Zoning Ordinance as

written. And I think we're all understanding it the same here. And in order to apply this law with some degree of integrity, you know, the critical question are the changes in the structure substantially more detrimental to the neighborhood than the existing structure? And I think some of this discussion, or at least some of the members of the Board right now are saying no, the changes in the structure themselves are not substantially more detrimental to the neighborhood. And in many respects are more advantageous and beneficial for the neighborhood. Which is not to say that this is the way we would have designed it, approved it, on Day 1, but that's not the question. The question today is simply, is it more detrimental than the existing structure. So I just wanted to explain that.

TOM SIENIEWICZ: That sounded pretty close to a motion on a finding on this matter to me. But I'm not the Chair and I won't cut off the conversation, but this is a fairly narrow point of discussion that's going to be

much richer, and I suspect many points of disagreement as we get into the Article 19.

H. THEODORE COHEN: Well, I just wanted to follow up that on this issue that, you know, I've been spending so much time walking and driving around the courthouse that people think I'm some sort of a building stalker. And I mean there's no question that it's a large building that looms over the entire neighborhood and that is certainly different, dramatically different from everything else that is around it, and is not, I'm sure, what any of us on this Board or some prior Board would have wanted to have seen there. But having said that, if you look at the building that's there now, it's really pretty unattractive. That the podium is just fortress-like. It is cutting off all the streets that surround it, all the neighborhood that surrounds it. The building is tall. It's, you know, sheeted in concrete and a brutalist style that, you know, was a style of that era. Some people still like, but is -- has nothing to do with the rest of

the neighborhood. And so, you know, when I look at that and then when I look at what is proposed, I think the exterior changes to the podium, the exterior changes to the building, and the removal of two floors, certainly can't be said to be substantially more detrimental than what's there. And I did want to point out that, you know, Section 8.22.1 lists certain things that can be done without any Special Permit, and that includes construction occurring entirely in the structure, including structural changes providing that there's no increase or -- of existing or creation of a new violation. And similarly, demolition of the structure or portions of the structure that reduces the extent of existing non-conformity. So when I look at those things from when I look at the difference between what is proposed and what's there, just under this section of the Ordinance, I come out that it is not, that I find it hard to say substantially more detrimental than the existing structure.

HUGH RUSSELL: Is there more to say

on this?

(No Response.)

HUGH RUSSELL: So that if we would make that finding then. Okay.

Moving along to the next item, which is in the memo now on page 2, conversion of the non-residential structure residential use, Section 5.28.2.

And so the purpose of this Special Permit is to allow -- to reuse buildings that may be out of compliance with the current dimensional requirements, especially when they are converted to residential use. And the criterion, the Board shall obey the data of the new housing use to be of residential use of the new housing use and any other proposed use as it may affect privacy. And then there's a list of things like windows, screening elements, decks, security, and other lighting, other aspects of the design shall be reviewed in order to ensure that maintenance of reasonable level of privacy for the abutters.

The Board shall consider, among other

factors, potential negative impacts of the new activity on the abutters as a result of the location, orientation, use of the structure and its yards as proposed.

We mostly have seen this in conversion of school buildings and generally historic structures into housing, although there are some other examples of converting factories. In most of those cases, you know, the neighbors are 20 feet away or 30 feet away.

So I think my first thought about this is that because the residential abutters cross Spring Street, are across the street and the height of the residences at four stories is not significantly greater than is permitted, that the privacy is not going to be affected. The -- I think -- I am concerned about what people called the lantern effect, and at some point in this proceeding I would want to propose a condition that would require the design of the lighting in the tower, inside the tower to be such that the lights themselves, the lamps and the primary reflective surfaces

that are in the fixture, thanks to Mr. Teague for that knowledge, would not be visible beyond the street line around the building. And I'm not -- I think -- I think it -- and I'm sensitive to this because I live 30 feet, 40 feet from a public school. And when somebody leaves a classroom light on all night, it's very noticeable. And it's somehow -- I mean, I know there's nobody up there in the classroom, they just left it on. Or if it is, it's just a janitor. And I do have my blinds closed anyway, but in a way it's sort of privacy issue. I think that, again, we got education from Mr. Teague's proposal on light spill and how people feel about that.

So I'm not sure this is a right place to insert that condition because it also is an environmental impact under the Chapter 19 review. And I'm not sure you agree with me either.

TOM SIENIEWICZ: No, no, I agree. I think we should get to that and put some conditions. Should we get through our task

tonight, I was going to comment also on the privacy. Also the two proposals that I saw during the course of our deliberations seemed to go, address that term. It's concerned directly, particularly the revision of the facades of the building. And as you recall, the first proposal is for an all glass building which would only have been an issue with the lantern effect but most certainly also the new cladding systems seem to address light and views and begin to address the issue of privacy very directly.

CATHERINE PRESTON CONNOLLY: I also agree that we should address the lantern effect. I don't think this is the right place for it, because the testimony I've heard speaks primarily to the phenomenon that you were speaking about where lights are left on and either no one's there or it's late at night and inappropriate. It isn't about someone in their home using -- you know, turning on the light in the kitchen at eleven o'clock at night. And not to say that we shouldn't have that same language about the

lamp and the reflective surfaces apply, they shouldn't be visible from beyond the street line, but this particular Special Permit criteria talks about the impact of the new housing on privacy and that lantern effect, even though I agree, it's a real concern and needs to be addressed, I don't think is so much a concern that is created by the creation of new housing in this non-residential use.

TOM SIENIEWICZ: Relative to the issue of privacy, I do remember testimony from a gentleman who came out a couple of nights, I believe he's here tonight as well, to address the issue of acoustics and physical privacy and the effect of the jail on his quality of life and the community. And I believe that the use and the tower and the assertion that the mechanical systems will be in compliance with the noise ordinance will go a long way to improving the sense of privacy and the sense of noise that emanates, that has historically been emanating from this site. And so I think

there's also been a huge amount of improvement over the existing conditions relative to the acoustical privacy that may be there.

HUGH RUSSELL: Yes, there was a -- in the original submission I guess almost a year ago, there was acoustical report that looked at the sound levels that would be obtained adjacent to the building, and there was a reduction of somewhere between two and five decibels. And it was a commentary that said some of this was due to the mechanical systems actually done on grade more than the ones up on the roof, but there would be improvements up on the roof. So I think that is something that we need to credit and give credit for.

CATHERINE PRESTON CONNOLLY: While we're talking about the conversion to housing, I also note that this requires that we consider the efforts of the applicant to solicit input from the effective neighbors and submit a report on that, on that solicitation of input. And while certainly

the applicant has been engaged in many conversations and has received a multitude of comments and input and may have provided us a report with all that has gone on, the requirement here isn't any unanimity be reached with the affected neighbors. It's they solicit the input and tell us about it and we have to make a determination as to whether or not that's reasonable. They make reasonable efforts. And, again, it's only with respect to the conversion of the housing that that finding applies. I -- for my part just to be clear, I think that finding can be made with respect to the conversion of housing.

HUGH RUSSELL: And I would agree. And a way we might be useful for our discussion about Planning Board process actually get some kind of chronology of all the public meetings that have occurred on this project, because I think -- I don't think there have been too many. You know, I think there have been enough to solicit public opinion, but when we think of altering

our rules to require the meetings, we've got to find a way to figure out how much is enough.

So any more comment on 5.28, the conversion question?

STEVEN COHEN: Mr. Chair, I just have a couple of comments simply because we are talking about housing here, and I think my comments may be more appropriate as we get into the Article 19 discussion. I'm -- but I would simply say that if for this project in general, for much of what we do, and certainly under the project review standards, to some extent a balancing act. I mean, no project is absolutely perfect and every project has some detriments. And part of what we look at is to what extent do we mitigate it? And what extent are there benefits which balance or outweigh the detriments, and one of the things that strikes me since we are talking about converting it to residential is that one of the benefits offered to the community here is an affordable housing. And maybe I'm just

setting the table for a discussion as I say under Article 19, but it does strike me that as we evaluate the benefits and the detriments, that something that strikes me is that I wish there were more affordable housing and maybe even moderate income housing here. And what I'm talking about is something that exceeds the requirements of the Ordinance which, you know, I think obviously is the minimal base that's not negotiable. But, again, when we get into the Article 19, we are weighing, evaluating the benefits and detriments, and I like to get into that discussion for what more we can do in the residential portion of this project to grant the benefit to the community and to outweigh some of the detriments of this project. Having said that, I have no problem with the conversion of non-residential to residential.

HUGH RUSSELL: So, on page 3 there are three things we need to evaluate when there are more than 10 dwelling units. And so one is we have to evaluate parking and

that needs to have been a report submitted and a parking analysis. And in this case they're proposing one dedicated parking space for each dwelling unit located in the building in the upper basement level. So I think that we would -- can easily find that they're providing parking, which is in my -- based on what we're learning, probably more than adequate.

Second is the appropriateness of the proposed floor layouts for multi-family residential use. And with the intention of taking over resident units and open space expected for housing in the neighborhood.

And what this I think is getting at is that non-residential buildings converted to residential use may not have ideal dimensions and this is one such building. So if you look at the plan of the residential units, you find that there are -- that the corners of the building, they're relatively conventional two-bedroom residential units. In between them are very deep smaller units, sort of studio lofty units. So they've got a

lot of space, but they don't have a lot of frontage. They have, you know, sort of one set of windows. And so, I think that's what's created the mix of sizes which is probably not typical in the neighborhood, but it's simply -- this is a way you can use this building for housing to maximum amount, the amount of space they have in this building for housing. And I think we need to say that we recognize that this is what's happened and that we think that due to the, you know, the shape of the building, they are somewhat unusual unit sizes make sense for this particular building.

And then there's a third thing if there are, that we can consider a special kind of occupancy for the dwelling units which is an added factor, but I think in this case that's not being proposed. And I also then think that given the small number of residential units involved we're not mitigating the size of the residential use in this building. The residential units themselves are mitigating and using the space in the building sort of

in reverse from the usual thing a developer's trying to put as many units they can into an old school building.

So, have we made the findings that we need to on this?

H. THEODORE COHEN: Mr. Chair, if I could, I had a couple of points.

I personally would prefer a different mix of units. We've been getting some three-bedroom units in a lot of the new projects we've been seeing, which we've been advocating for for a long time. It's obviously a juggling act between how many units you end up with total and the size of the units that may come up again in Section 19, but I did want to point out that having the residential component of this building is in keeping with the East Cambridge design guidelines which sees a mix of retail, residential, and office use. And the fact that we get this all in one building, I think the residential use will help to enliven the streetscape and will take away certainly from the fortress aspect of the current building.

Those units in the podium are much more in keeping with the size of the residences around the building. And so I think having residential use in this building is a positive aspect of the redesign.

HUGH RUSSELL: So are there more comments? Do people feel we covered the findings that we need to make?

(All nodding in agreement.)

HUGH RUSSELL: Okay. Isn't this fun?

So the next section would be the urban design review. And the first part of that review is the in the Ordinance is a traffic review. The pages 4 and 5 are kind of general comments by the staff, and then in page 7 you're getting into the criteria. So we're going to probably have to come back to look at pages 4 and 5 as we go through the list.

TOM SIENIEWICZ: We can start with that page.

HUGH RUSSELL: Let's start with transportation.

The Planning Board shall grant the Special Permit only if it finds the project will have no substantial adverse impact on city traffic within the study area as analyzed in the traffic study.

And we have a report from the Traffic and Parking Department and an update to that report that was based on the reduction of the floor area by taking off two floors in July. The -- to my mind there are two important things in this report:

The first is where most of the cars coming to this building are going to be parking. And the answer is if they are -- they'll probably be parking in the First Street garage. If the city doesn't get that, then there will be parking in the Galleria garage. Both of those garages are entered on First Street, and the First Street -- particularly once we get the North Point process done and First Street connects more felicitously to O'Brien Highway, that's the -- a lot of the connection to the regional system. That way if they're going westbound

and then go under the Memorial Drive or something, again, First Street is the better route. And so there's not much incentive for traffic to try to wander through the numbered streets in the neighborhood, and it's -- you couldn't ask for a better place to put parking. So that's an overall thing.

The other thing is there are a number of criteria that was studied in the traffic study and the -- none of the automobile-oriented criteria were -- exceeded the criteria that are being applied to the study. And there were a few exceedances in the pedestrian level of service and there's some conditions in the -- suggested by the Parking and Traffic Department to try to mitigate those or fix those. Some of them can't be fixed. One of the intersections that was studied is the O'Brien Highway Memorial Bridge intersection which has -- you have to wait a while there for a while because of all the phases and the distances involved, and that's not something that this project is going to be asked to fix and I'm

not sure that there is a fix.

So, to me that's the background. We have a report. It's been certified as being a proper report. We have recommendations from the Traffic and Parking Department that show that they agree with the way in which the report was done and the amount of parking that's being divided or should be required to be provided which is sort of in the middle range between the minimum and maximum of these uses. So that's the way I approach this.

TOM SIENIEWICZ: On this issue I concur with your summary of the background, Hugh. What interested me was the ways in which future transportation models were being anticipated by the project. We're seeing -- at the Planning Board, we're seeing in our own personal experience, all of us, that preferred modes of transportation in the city of Cambridge, in fact, many parts of our country are changing really quickly. Bicycles are becoming way more prevalent, trains, and public transportation are also

used. And public transportation are being used much, much more dramatically. And we should articulate for, I think for the record, in which this proposal anticipates for instance bicycle use, that's supporting Hubway and etcetera. And so it may be worth just going through that narrative as we understand it.

HUGH RUSSELL: So you added Hubway. And Hubway's a condition of the Department that we want to add to any decision should we decide that we're going to grant the permits. And we should note that they have bicycle -- provision for bicycles is in conformance with the Ordinance. There's a large bicycle room at the upper basement level which I think is more or less at that corner of the building. So it's pretty easy for the bicycles to get into the building. I believe there are showers and changing rooms adjacent to that facility.

ATTORNEY JAMES RAFFERTY: Correct.

HUGH RUSSELL: Are there things you want to add to the list of transportation?

CATHERINE PRESTON CONNOLLY: Hugh, I think it's worth noting that the transportation study does not give any credit per se for the use which is vacated the building. That is to say that it's not a measure of how much better or worse than the building when fully occupied by courthouse and jail. It is an evaluation of the traffic created from this building as though it was starting from scratch. And so when we say there are no exceedances for vehicular traffic and everything, that's not some discounted number they get because they're used to be use there. It -- with the all of the conditions that Traffic and Parking outlined, and that includes the full PTM plan, the TM plan for the residences, the silver Hubway membership, the Hubway station, the EZ Ride stop, the various pavement markings, and infrastructure that they've detailed and traffic studies, as well as the bicycle repair station and electrical vehicle charging station, I think those are all good and important things to make the finding that

it will have no substantial adverse impact on transportation. But it should be noted that just on its own, without doing any of these things, the vehicular traffic already meets that. And it's not because there was some discount for the existing traffic.

TOM SIENIEWICZ: Well, the conditions that I think we should consider amending to should we grant the Special Permit because I believe them to be full 10K and fully ameliorate any traffic that may be coming and going no matter what comes from this building. So I think we're all in agreement that the recommendations should perhaps be made a condition. I'm putting words in fellow board members' mouths here, but I think that's my sense of the way of the flow of the discussion is going here.

HUGH RUSSELL: All right, and I was keeping track of Catherine and she hit all the numbered items in summary but not in the full detail that the Department has recommended to us. And that's the whole detail that we're interested in.

CATHERINE PRESTON CONNOLLY: Right.

H. THEODORE COHEN: I guess my only concern is given the fact that the T station is going to be moved and that we've got the various parking lots in the area, whether we need to make sure on the conditions that Traffic and Parking will have some flexibility. I mean if they were to ultimately decide that having a Hubway station at this particular location is not the best place to have it, that perhaps it should be a block or two away or in some different location that the condition would be that the developer who's to do, you know, what the Traffic and Parking recently requires with regard to the Hubway station or the remarks of some of the other elements of the TDM.

HUGH RUSSELL: So, I'm asking Sue Clippinger if you already done that determination?

SUSAN CLIPPINGER: Yes.

HUGH RUSSELL: So Sue is saying yes, she thinks she wants a Hubway station there.

What happens, you know, when bicycle sharing services for some reason are superseded and we have these conditions? Are they written in such a way that everybody's not going to come back? I mean, it's pretty common condition. I don't know, that's just something for the lawyers to think about. There are lawyers on both sides of this table.

SUSAN CLIPPINGER: You might want to call it bike share.

HUGH RUSSELL: Right.

Because that concept is much more likely to be available in various different forms.

ROB DICKEY: I believe that's how it's written into the PTDM plan.

FROM THE AUDIENCE: Please repeat the comments. We can't hear them.

HUGH RUSSELL: The comment was that a PTDM plan as the Hubway station identified as bike share.

Okay, are we done with transportation?
Now we get to do the building review.

So the -- I looked at the -- there's a list of objectives, and the language of the ordinance it says, we should consider all of these things as long as they're relevant. And if they are relevant, we should see that the petitioner has taken the steps necessary to minimize the -- what's the exact word? Did you have that? Is it still open?

In other words, it's a -- the criterion is not that you've got to do everything on the list. It's -- the criterion is that you got to do the best you can in addressing the issues that are identified on the list.

STEVEN WINTER: Mr. Chair, I can read that if you like.

HUGH RUSSELL: Sure.

STEVEN WINTER: Tell me if I'm on the wrong page.

The project need not meet all of the objectives of this Section 9.30 where this section serves as the basis of iterations of a Special Permit. Rather, the permit granting authority shall find on the balance the objectives of the city being served.

Is that it?

HUGH RUSSELL: Perfect.

So I'm now looking at page 9 of the city handout because it's got a chart, the urban design criteria. And maybe -- so that the first criteria is the new project shall be responsive to the existing or anticipating pattern of development, and seems to be things that those that are applicable, it's by the redesign of the podium and is much more consistent with the established streetscape, has some retail on the ground, it has some residential above on the Third Street side and wrapping around the corners on Spring -- on to Thorndike Street. And that the uses are compatible with the adjacent uses. I'm not, on the consideration of nearby historic buildings, sure, and I'll remind you the (inaudible) came and said he didn't like the building.

STEVEN WINTER: Indeed. And what we're looking at is what is being proposed what do they want to do now. And what we're doing now is we're, I think, softening the

edge of that building that faces the historic buildings. And I think it's compatible with consideration of nearby historic buildings.

TOM SIENIEWICZ: Well, certainly the emphasis on terra-cotta. So there's earth-based material that the building will be cladded in rather than the reinforced concrete which I think is more consistent with the former courthouse building where I happened to be married. I'm fond of that building. So it's, but I don't have the same relationship that Craig (inaudible) did to it, obviously. So this is one where if you just take the comments flatly, it doesn't seem to make sense that we're making this finding. But again I think I go back to Steve's condition, Steve's speech at the beginning of this saying, none of us would propose this scale of tower behind that historic courthouse today. However, it's there, so what has the proponent done to realize and recognize its condition next to this historic fabric? And I think the careful choice of materials which are

compatible with that landscape and the landscape and the streetscape are beginning to acknowledge the importance of its historic neighbors. And notwithstanding the height and bulk of the building which is existent.

HUGH RUSSELL: Are there comments on this?

(No Response.)

HUGH RUSSELL: Next is the building will be pedestrian and bicycle-friendly with a positive relationship to its surroundings. And in this case I think it -- all of the considerations are met in this proposal that has inhabited ground floor spaces, does not have ground floor parking, has windows on the ground floor, has, you know, entries are on the streets, and has a safe, convenient bicycle and pedestrian access. Some of the conditions of the Transportation Department are intended to improve the pedestrian access and the safety issues. The -- so, again, it's -- a lot of this is all accomplished by the podium. Essentially all of these things are accomplished by the way in which they

transform the podium -- proposing to transform the podium.

STEVEN WINTER: Mr. Chair, I'd like to add that the -- one of the conditions is the ground floor area should generally be 25 to 50 percent transparent with the greatest amounts of glass would be expected for retail uses with lesser amounts for residential use. And I believe that we're there on that.

HUGH RUSSELL: Yes. It's probably over 50 percent because of the retail use and the generous kind of windows in the storefront.

Next we consider the building and site design should mitigate adverse environmental impacts of the development upon its neighbors. And so I think that in order to locate and screen mechanical equipment, that the loading facility is on Second Street facing the public garage and it's also got doors. It's interior. That's the best place I think on this block to have that. I think that's something that in the final development of the architecture there is

something that we want that to be continually reviewed to see that there is detailed treatment. And Suzannah is writing that down. That's something we would hope you would keep in mind as we look at the final plans.

Storm water management. They are -- it's essential that they're required by Public Works to do this. And what they are doing is installing a tank that will collect storm water and presuming they'll allow it to be in the system at a later time. They have more permeable area than the previous building which had none.

And next are shadow impacts. There's only the slightest change because they're removing two stories.

Retaining walls. I think in this case, there are -- because of the change in grades that go around the building, there are places where walls exist but they, they're being looked at very carefully in the landscape. Right now retaining walls are right kind of out on the sidewalk, and the proposed design,

particularly on Spring Street, they're back, buffered by the landscape. There aren't retaining walls. I think there are no retaining walls on Thorndike and Second Street, and they're starting to, they're adjusting the grades of the shops and the floor grades in the building so as to bring the retail uses so that they're more closely about the grade so that you don't need walls.

Building scale and wall treatment, that's probably something Tom wants to weigh in or already has.

TOM SIENIEWICZ: Well, in this case, meeting the urban design objectives, the walls are long but there's been an attempt to break down the scale on these walls to deal with the inherent architectural condition of those walls, and also the celebration of the entrances beginning to break down the scale of that wall to beginning to make it more consistent with the pattern, shape, and scale of the adjoining neighborhoods. Again, we're focussed almost entirely on the podium here, Hugh, and so, the discussion needs to be seen

within that context. We're stuck with the tower and the tower itself in terms of dealing with its building scale. Again, the comparison, the easiest way to understand what the architect I think is trying to do here is to compare to the first proposal, which was the lantern issue and the glass box that we initially saw. The revised elevations go a long way to breaking up the scale of that wall and offer visually to the extent you can on the building, not to mention the smaller components.

HUGH RUSSELL: Right. And some of the ways it does, the tower sort of establishing a two-story landing so that as you say consciously count the floors. It's, you know, there are seven bands of windows which I think encompass 15 floors, but it's a way of breaking -- of giving some scale to something that in the previous scheme was featureless and in the existing building is very monotonous except for the warts. And I think also the treatment of the warts, these are the slight projections beyond the

building that are presently almost windowless and have something to do with the courtrooms I believe. I think they're aware that the courtrooms occurred and the new treatment somehow is able to pull those in and connect them to the rest of the building through these materials.

Outdoor lighting. I couldn't find anything on outdoor lighting in the proposal. And that I don't believe that they've gotten to that level of detail.

CATHERINE PRESTON CONNOLLY: Hugh.

HUGH RUSSELL: Yes.

CATHERINE PRESTON CONNOLLY: Might I suggest that this is where we address the lantern effect because that will qualify as an adverse environmental impact of the development upon its neighbors? While at this particular bullet probably was envisioning outdoor lighting as the kind of lighting installed outdoors, I would use this opportunity to speak to how the indoor light being -- illuminates the outdoors and the properties, and this is where we would

include any condition on that.

HUGH RUSSELL: So I think we all seem to be in agreement with that.

I don't want to lose the outdoor lighting plan because I think, you know, the -- that's something that needs to be reviewed and it's not really to be reviewed now. Then it has to be reviewed, put in a condition that it be reviewed at a later date.

CATHERINE PRESTON CONNOLLY: That's fine.

HUGH RUSSELL: It's perfectly possible that we could do a good job. It just may not be done currently.

TOM SIENIEWICZ: I think the Planning Board, for outdoor lighting just to give direction for future, the special need is light spillage off the site and there's an environmental concern to the light sky and the luminance have to be focussed downward. And then there's the overall brightness and reflectance off of those surfaces which needs to be considered in that design.

HUGH RUSSELL: Also the -- I assume the Spring Street open space should be lit probably 24 hours a day, but maybe at different intensities at different times at night. But still I don't think it doesn't want to be a forbidding place, you know, it has to be designed appropriately.

STEVEN COHEN: Hugh, I am --

HUGH RUSSELL: I'm sort of footnoting. I don't want to --

STEVEN COHEN: I'm sorry, go ahead.

HUGH RUSSELL: Yes.

STEVEN COHEN: I think this is the first time that we wanted to -- where we've said subject to review later. And I'm wondering if each time we run into such an item that we should think about whether it needs to be reviewed and approved by this Board or by staff.

HUGH RUSSELL: Staff.

STEVEN COHEN: By staff?

HUGH RUSSELL: That's what staff normally does with lighting.

STEVEN COHEN: Just wanted to

clarify and confirm. I would certainly support that. And we're talking here about both the outdoor lighting and the internal lighting, the lantern effect?

HUGH RUSSELL: Right. I think the lantern -- how they choose to address the minimizing of the lantern effect I think is something that probably needs the kind of lighting consultant, a report, a report reviewed by the staff, and a dialogue set up around that. It's all technically possible. If we didn't think something was technically possible, then I think we would have a problem. If we think it can be done and it's just how it's done is the issue, then I think we can leave it for the staff review.

TOM SIENIEWICZ: Yes, it's worth pausing on this, because I think fellow Board Members are right to raise this, that we're looking for something extraordinary here. I mean, this is not business as usual. And they've had a lighting consultant come in here and try to explain the geometry of how these lights are going to work and there was

a lot of questions, as I recall not satisfactorily answered given the geometry, and there were really good questions and concerns raised by citizens about that lighting work. And so I just want to emphasize how important this is for review at the staff level to be very sure that we're looking for an extraordinary, perhaps unprecedented solution to this issue because of the height and bulk of this building and its site within the residential community.

HUGH RUSSELL: Yes, I noted in that report, the consultant had placed the lighting as a ceiling troffers which in a way is, I mean, in one way it's good because they're giving the worst condition. You know what I mean? If you're in your house on Spring Street, can you look up and see hundreds of light fixtures directly just because you can see the ceiling of many floors? And many see the first row at least. That's what we want to avoid.

TOM SIENIEWICZ: Yes.

H. THEODORE COHEN: Hugh, do you

know, while we're talking about lighting, given the somewhat reduced height of the building, will it still require the blinking red lights on the roof?

HUGH RUSSELL: I'm seeing an affirmative nod from the owner's representatives. So I would say that as I understand it, they would still be required.

I think there's a -- the other bullet here is pre-protection. My understanding is that there are few trees on-site in planters that are really awful. The trees are fine, but you can't get to them. And so, all these trees are going to be taken down. A number of new trees are going to be planted. So I don't think there's a tree protection plan, but there's a tree replacement plan. And the trees are part of the wind mitigation. They're going to select the trees so that they are species that don't drop their leaves in the fall and so that the leaves help reduce the wind at the street level.

Now this actually leads into the --

STEVEN WINTER: Mr. Chair, I did

want to make a comment before we moved on. The -- and this comment really could have been made with the built form environmental guidelines as well, but I do want to say that there are environmental mitigations and conditions that in this building that are very, very important and very critical. And that is the asbestos is going to be removed, mitigated, taken out, that the building will be built with modern day energy efficient everything, and that I think using less power and using less energy. The water efficiency and the sewer efficiency measures are also important in terms of water conservation and the transportation demand management measures which are important to this project, will help with atmospheric pollution.

HUGH RUSSELL: I think the, I think there are a couple of impacts that aren't on the bullets that we need to discuss.

One is the wind impacts. And they studied those. There's a report. I find it very difficult to see that report and say that everything that could be done has been

done. I think that's the standard we want. Or everything -- every reasonable thing could be done. I think there are, you know, the unreasonable thing is to take, you know, 15 stories off the building. That would make a big difference with the wind. I don't think we're going to be requiring that the way we're heading.

So, I don't -- I'm wondering should, should there be more discussion about this with the staff? Does the staff need actually consulting help to help answer that?

TOM SIENIEWICZ: Yes, I agree, Hugh, but as I was listening to this, the comment, the criteria being everything done that's reasonable, the different, you know, reasonable people can disagree what's reasonable as a solution.

What I do recall about the wind analysis and the wind tunnel modelling that we saw was that the consultant came here and there were some failing grades revealed to us at this hearing, and from the public that this was a very windy place. And even with

the mitigation there were still some points that were not great. There's anecdotal evidence by a couple of neighbors that were blown over during the wintertime during the existing conditions. So this is a very serious issue in light of what we're considering here tonight. I think staff should get some professional advice so that there can be a good engineering rebuttal to the study which apparently on its face had some holes in it as I recall. So I would agree, I think we've got to raise the bar on this environmental issue very directly and very deliberately.

HUGH RUSSELL: So, I would say -- I guess if there is a question about what's reasonable and what's not, and the staff and the proponent cannot agree, then they can come back before us and it would be our task to weigh in on that. And I'm sure there will be some discussion, because I think we're saying this ought to be a condition as to how to frame such a condition in a way that accomplishes what we're trying to accomplish

without blowing the project out of the water from some investor's point of view.

Again, I'm assuming that we're probably going to -- we seem to be in the mode of thinking about what has to be done if we approve this. And I think that's where we -- in a way that's what we have to do here. We may at the end of it decide by our vote that not enough can be done and it doesn't meet the standards, but I'm not going to presume that at this point what the outcome is, but I think we have to proceed on the notion that there will be a motion to grant the permit that the vote will be taken on. And if there is such a motion, there are going to be all these conditions on it. Or what recommendations we come up with.

Another thing that I think would be valuable, and I don't know where to put it, which is to have a construction phase committee of abutters and neighbors that works during the construction period to -- and the model for this I take to the Cambridge Hospital expansion project in which

there was a committee that met for years until the project was complete and was able to, I guess, address not only the construction phase impacts but other things that became known during that period of time. We have to accept that they're going to be impacts during construction. There's heavy equipment, there's lots of things that are going on. And also the people are very worried about some of the impact, the potential impacts of, you know, abatement of the asbestos and the PCBs to make sure that that is being done properly and in accordance so there's no danger to the public. And such a committee is sometimes helpful to dig into that question and help people in that forum. And so --

STEVEN COHEN: Hugh?

HUGH RUSSELL: Yes.

STEVEN COHEN: We did the same thing with the library project. I'm glad you brought that up. I chaired the Cambridge -- Mid-Cambridge Conservation District Commission -- Neighborhood Conservation

Commission. But it's, this isn't just a footnote, it's a real important structure. It worked really well in Mid-Cambridge. And this construction project is going to be even tougher, because the magnitude of the project and the proximity to the residential abutters, so yeah, it's essential.

CATHERINE PRESTON CONNOLLY: Hugh, who appoints the members of such committee?

HUGH RUSSELL: Probably a person who knows the answer to that is our City Manager because he was at the -- as Deputy City Manager he was the one who was in charge of implementing these projects. And I think it -- I think you need an appointing committee, but I think committees need to be opened so they have public meetings and would be noticed in some way, so anybody who had a question would have a place to come.

STEVEN COHEN: One other thing I mention also, Hugh, is both of those projects we created, we, but the city and the developers created a website with the ongoing status and information and frequently asked

questions and who to contact and so forth. And, again, one of the most important things in this whole process is to just make sure that the neighbors know what's going on, knows what to expect and when -- knows who to call if they have questions or complaints and the website was really helpful for that.

HUGH RUSSELL: So I guess our condition has to be in the nature that the proponent will cooperate and participate in such a committee, and I think we would leave it probably to the city staff to figure out how to handle that. Is it, you know, a function of the East Cambridge Planning Team or by the neighborhood association of East Cambridge? Exactly how that works out, the goal is to get, you know, interested people who want to sit on this committee, be there.

And in a way I tie it to the environmental impacts, because it's trying to mitigate the unknown environmental impacts. There will be a construction management plan that the city reviews at the Building Department, so it's not like it's going to be

ignored but....

Next item. Project shall not overburden city infrastructure services, including neighborhood roads, city water supply system, and sewer system.

And the -- we have a traffic report that addresses and says that the project will not overburden neighborhood roads. I have the, again, the city's Water Department, Department of Public Works will independently review the project. There are substantial public infrastructure in the area and the water conserving and storm water management features of the building should reduce the impact on the city services from the required use.

TOM SIENIEWICZ: Can we pause just quickly on the overburdening of the neighborhood roads. I think on two occasions we were shown videos really powerful visually in the context of the hearing like this of traffic stopped on local roads. And the question was made I think rhetorically but we, I want to address it, you know, how could

even one more car not be overburdening the traffic situation like this where we were told we were observing cars backed up over blocks? And we saw that video as a Board.

We looked at and examined very closely the traffic study that was done by the city which was summarized I think very well by you earlier in the hearing, Hugh, in terms of where the traffic would be flowing as it related to where the cars would be parking for this development. And I would also say that it's not insignificant that the conditions for the traffic study anticipate future modes of transportation which will in fact lessen the burden on the adjacent streets. So we're not immune to the video. We saw the video. Appreciate the perspective of the community, but there's ways in which we're weighing this in a fact based rather than an editorial way.

HUGH RUSSELL: I think the video was Third Street.

TOM SIENIEWICZ: Yes.

HUGH RUSSELL: Because that's where

the long queues -- am I correct I'm going to ask Sue Clippinger, that part of the goal of the reconstruction of the intersection between First Street and reconstruction of O'Brien Highway as part of the North Point project is to get more traffic off of Third Street and onto First Street?

SUSAN CLIPPINGER: Well --

HUGH RUSSELL: You might want to come up here and take the mic.

SUSAN CLIPPINGER: I'll go to the closest one.

So, in terms of the connection --

ATTORNEY JAMES RAFFERTY: It's not on.

SUSAN CLIPPINGER: It's on?

So in the goal of the punch through, as we call it, on First Street directly to O'Brien is specifically to provide that as a preferred access mode, you know, between Kendall and these movements, we may not get a lot of traffic off of Third Street, but the goal would be not to have it continue to grow as projects such as this one come on board.

So I think it will improve travel times for people who choose to use First Street, and so we should be able to move some people, but I want to be realistic that it's probably not going to be a nice, quiet street with no traffic on it.

HUGH RUSSELL: But we can then say that we do not believe this project will overburden the neighborhood roads based on the facts that we've heard and recited.

Another criterion in the same general thing is that you should know that the project is -- has a very lengthy LEED analysis. Are you looking for certification on LEED?

ROB DICKEY: Our goal is gold.

HUGH RUSSELL: Right, and gold is a level that is one step higher than the -- what we require at the moment, but probably is again forward thinking.

So, okay, in the next box is new construction should reinforce and enhance the urban aspects of Cambridge as it is developed historically. And that's quite a mouthful.

And so one could say, well, this is new construction so we can forget about it. But it's doing several things that are in the bullets which I think we should recognize. That it is a mixed use development including retail.

And it is providing space for startup companies in the podium area.

So, let's bring up one question for a minute, which is how are the retail tenants going to be selected? Because I think there's a strong preference for certain types of retail uses that would be serving the neighborhood as somebody said to me a few days ago, you know, a place where you can take the kids, maybe, you know, meet some neighbors, maybe sit outside at a table. You know, that it's a community building aspect of retail that is becoming more and more important. And it seems to me that this might be some -- a subject that an advisory committee might look at and, you know, comment on. Because I think, again, you don't rent retail space in general until

near -- until it's ready. People, people rent retail space don't believe, you know, that's something that could be done at a particular time, particularly the smaller tenants. They're more conservative than non-chain people. I mean the city has a -- has a number of efforts to support this kind of retail. I just got an e-mail today about a whole series of things that the economic development section of the CD Department does to support people who want to start businesses. But I think there needs to be continuing dialogue about this on an advisory basis because it's pretty important. And I think -- I'm willing to have it be advisory because I think the proponents are good listeners, they listen to comments, and respond where they can. And so, and I think until you actually have a specific tenant with a specific place that you can't really have a discussion. And that's going to be long after we send this off.

STEVEN WINTER: Mr. Chair, we also saw that Kendall Square and the development

there had terrific results using consultants whose job it was to provide -- to assess the kind of retail that would be workable. And then to go seek it and bring it in, we can't always do what people want to do in a retail outlet because it's commercial, it's a business, and it runs by different rules. But I think that in Kendall Square we did get a lot of good retail by using somebody who -- that was their profession, that's what they do. And maybe we can do this with the advisory committee as well.

HUGH RUSSELL: Right. Or we can require a plan be prepared that would list the steps that we take. So that, you know, I don't know how to proceed, but I think it's important that I'd like to find some way to try to get the best outcome. And I'm not sure we can do it sitting here writing conditions.

TOM SIENIEWICZ: So, you're describing the kind of Jake Jacobs retail environment to the extent that we can, neighborhood-based that belongs in the

community and I think that's pretty clear what it is that we're looking for. I appreciate the mechanisms that our fellow board member might suggest that we use which is perhaps a committee. So also not losing sight of the fact that the retail is at the heart of this proposal, right? That this proponent is proposing to try to get a grocery store here. So these guys seem to really be focussed on that. And so that gives me some hope that they can achieve I think the really nuance and important goals that you're articulating, Hugh.

HUGH RUSSELL: Any more comments on the complex urban aspects of Cambridge?

(No Response.)

HUGH RUSSELL: Next criterion is expansion of inventory of housing in the city's --

STEVEN COHEN: Hugh, can I pick up on that approach as we broached that subject earlier?

Steve pointed out earlier that our review of all of these factors having

directly applied with these urban design criteria on the balance, and I think that there are some detriments that would be impacted on this project and there are benefits to lead us to believe unbalanced and that it's advantageous from contributions of housing stock and the diverse housing is one of those factors at least for me would, you know, persuade me to forgive other, you know, lesser detriments. I think you also said that on some of these factors the way to look at it is to say that everything that can be done will be done.

So far we're looking at 24 units, and I think four are slated to be affordable unless I'm way off. I think this is, you know, probably a project in the neighborhood of \$200 million. I don't think that what so far what we're proposing, what we're hearing for affordable housing is all that can be done. And I guess with your permission, Mr. Chair, and forgive me, folks, if I can direct the question directly to you today, can you do better on the housing? And then just to

throw out an idea of, you know, for discussion and for reaction, I would suggest, you know, one third affordable units. One third moderate income units, one third market rate units. Honestly if I understand the economics of the building correctly, the residential economically is almost a tail of the dog here. Forgive me if I overstate that, but I think that that's probably not far from the truth. And so why would proposing to you folks that provide that sort of commitment to the diverse and affordable housing stock of the city and help us digest some of the other potential impacts on the city and the neighborhood.

Mr. Chair, is it okay if the proponents respond?

ROB DICKEY: And there would be. One of the things that people talked about in the moderate --

ATTORNEY JAMES RAFFERTY:
Microphone. And give your name. If.

ROB DICKEY: Rob Dickey with Leggat McCall Properties.

So to answer your question, Steve, is that we would definitely consider that. I think on the moderate side, you know, doing -- giving neighborhood preference I think would also be, which I think is a starting point, and then to the extent that the unit was to be taken by somebody in the neighborhood and then it goes outside the neighborhood. And that's another way to get it a similar goal of yours that has been something that has been asked of us in public meetings.

I'm interested, though, on other people's thoughts in terms of the mix and whether it's the right mix because, you know, I think on balance, it's important to have the right mix and I think we're open to -- we're open to a mix of market affordable and moderate and is there a third, a third rate, I'm not sure.

STEVEN COHEN: Well, while everybody else is thinking how to answer that, I certainly don't know what the right mix is. The symmetry, I found it appealing. That's

as sophisticated as my analysis went.

HUGH RUSSELL: Twenty-four is easily divisible by three.

H. THEODORE COHEN: Well, I certainly don't know what the right mix is, but when you're considering the mix, I would really prefer different mix of size of units. I think there's an overwhelming number of these one-bedroom sort of study loft units which certainly would not be conducive to families. I envision those were intended for office workers who might work in this building or who might work in nearby buildings and in Kendall Square or North Point, but I would really prefer to see more two and three-bedroom units in this because then I think we're going to be promoting the family nature of the neighborhood.

HUGH RUSSELL: On the mix question, I've been involved in 30 housing projects in the last 40 years as an architect often in projects with several architects, and the advice I get from my clients is they like a kind of an equal mix, equally moderate and

market. And one of the problems with the city's formula is that when someone goes out of one category and, you know, they get a raise and suddenly they don't qualify for low, they have to move, which is not a good thing, where it is. There's a middle ground it can work. You know, there are 24 units in the city with 40 or 50 thousand housing units. We're not going to change the tide of the city here. So I would support the notion of, you know, the third, a third, and a third. As an architect, I look at the building and I think it's going to be very hard to get -- to do what Ted wants without losing used open space or doing things that you may not wish.

I'm working on a mill building now for the last 25 years in bid for the fourth time this week, and a lot of the problem with the building is that it's 92 feet thick and it's got way too much middle for the outsides and that's the problem of this space in this building. It's way too thick. We've taken different approaches to different schemes

over the years, and currently it has a lot of interior bedrooms, which you know, if you've got a 15-foot ceiling, which we have in the mill building, you can kind of say well, okay the light -- and huge windows, the light will get there, but it's not, it's not ideal. And so I think, you know, what the architects have done here is try to use this space. And now, could they sneak one more bedroom into the innovation space and convert some of the two bedrooms to three bedrooms? That's something they might be able to do. You know, I would not -- I wouldn't like to lose units. I wouldn't like -- and the other thing is that, you know, there are a lot of -- we have another client who provides housing for people who have -- don't have very good jobs. And they're the people you see facing you when you go into a retail store, particularly a chain store, and people are on the other side of the counter. And there's a need for housing for people that are in the service trades, and some of them might qualify for the lowest and some might

qualify for moderate. I mean, if I keep imagining --

JOHN HAWKINSON: Mr. Chair, you're fading.

HUGH RUSSELL: I'm fading? Thanks, John.

I paid \$65 a month rent when I got out of school in Cambridge for an apartment that I imagine still exists, renting for more than a thousand dollars a month today. And it was very clean. It was a micro-apartment before it was named. But I think there are a lot of people who would like to live in the city, a lot of children of people who have grown up in the city would like to stay, and I think that it's important, and they aren't necessarily, you know, the families with three kids. A lot of individuals who are just getting started out. And I don't -- John said I'm wandering.

Other comments on this subject?

STEVEN COHEN: My only comment is what I'm taking is the applicant's acquiescence of this concept and to this mix.

It's got an impact on me as a Board Member, and in terms of the commitment to bestowing some benefits on the community, and I think it's a good direction for this project. And, you know, for our approach in general on projects such as this.

HUGH RUSSELL: Well, let me try to return to the criteria.

One of the items is affordable units exceeding targeting units for low income families. There's a comment there. So I think it's two separate ideas.

So I would very much like to proceed that way.

Are you agreeable to that?

ROB DICKEY: We are.

HUGH RUSSELL: They are.

So we can make that a condition or a finding that we base that on.

Last item in the design objectives list is enhancement expansion of open space amenities. And we're looking for publicly beneficial open space and large commercial development. And I think they're proposing

to do that on Spring Street, and it's coming along. It's probably more design review that's needed. So I think we've allocated a chunk of space that could go along with that.

And one of the reports is providing a wider range of activities, and I think that's one of the focuses of their design of that particular space. It's not just a place to look at and maybe let your dog walk on but it's focussed on activities.

Are there other -- I mean, that's one of the problems with this building is there aren't very many opportunities of open space. And some of the rooftops of the, on the podium that are pretty impacted by wind and -- aren't very desirable places for a lot of activity. Also the residential --

STEVEN WINTER: Mr. Chair, complementing -- excuse me -- existing pedestrian bicycle networks can also be a matter of the proponent being asked to put way finding signs up that could connect people to trails or point their way to trails. I think that's advice that we can

give them as well and they'd be meeting that criteria as well.

HUGH RUSSELL: Yes.

Now the question is how do we wish to deal with the ECaPs guidelines? And I would propose that we might just look through them and see if there's anything we've missed. The staff comments that the guidelines on ECaPs and the project review things are -- overlap a lot because -- and the reason for that is that we have a comprehensive policy plan for the city that both documents basically consistent and taken from.

Oh, okay, so we're going to take a five minute break and come back and look at those and then do that after the break. We'll come back -- at --

JOHN HAWKINSON: That clock is stopped.

HUGH RUSSELL: Right. It's absolutely correct twice a day.

(A short recess was taken.)

HUGH RUSSELL: If we can return to our seats, we have some more business to do

here.

There are a few more things we have to do.

We have to look through the East Cambridge guidelines and see if there are things that are what we want to comment on or, you know, I don't have many red marks on my own draft.

We've got to discuss the request for a Special Permit for parking greater than 300 feet from the building. And then Jeff has been keeping track of what we've been doing and we'll have some reminders about things that we may have to also address before we can take a vote.

So, on the ECaPs design guidelines, there's some language in the design guidelines about the kinds of active retail uses that's on page 10 of 13. And to the extent that we -- the decisions address the desired retail uses, that's the list that would be treated services for the public; day care centers, community spaces, some of which are already in the plan. The existing

building meets one of the ECaPs guidelines. It just shows the danger of reading the guidelines out of context. That is to say that there is a cornice line at less than 65 feet and the rest of the building is taller, is set back from that. And it does do that. And I mean, we're glad that it does that because it will be effective for the pedestrians on the street level.

There's a thing about expressing bay windows and in particular the retail elevations are expressed in the column grid of the building which is in bays that are about that size.

Great attention has been given to cornices, other details, and the new design of the tower as articulated to avoid the previous monolithic appearance. We talked about that already.

I'm trying to rule out the repetitive things. I think we mentioned the screening of rooftop mechanicals.

They've located the vehicular parking access on the leased commercial side of the

building.

And I'm assuming that bike racks proposed along the street, although I can't remember seeing them on the plan, but that should -- I'm sure that will be part of the plan.

H. THEODORE COHEN: Hubway is shown on the plan.

HUGH RUSSELL: Hubway is shown but the -- there are bike racks in the public domain along the sidewalks and they're springing up for us bicycle riders to find these racks showing up all over the city.

Are there any other comments on the ECaPs design guidelines?

STEVEN WINTER: Only one, Mr. Chair, and that is for the public realm transportation. There's a bullet that says preserve rights of way for future urban ring project. That's the only thing I saw here that we haven't talked about.

HUGH RUSSELL: Right. And urban ring may not fit. I mean, there are various phases of the urban ring. There are less

phases there, but I don't think any of them propose to be adjacent to this parcel.

TOM SIENIEWICZ: I just want to make one comment environmentally. I mean in irony we've been dancing around the question of preservation because that's what in fact is going to happen here. The super structure of this building will be preserved and reused and reused, and as difficult as that is to imagine, it actually saves an enormous amount of embodied energy. It's the correct thing to do in a world that now increasingly understanding that we have finite resources for use of this structural frame and that is the responsible thing to do environmentally. There is a East Cambridge guidelines asking for conservation and efficiency and construction and resources and ironically this actually is a very significant strategy in terms of conservation of those resources.

CATHERINE PRESTON CONNOLLY: The one comment I'd make is with regard to open space in my listing of the summary of traffic and transportation mitigation earlier, I

neglected to mention the new park that the proponent has agreed to create on Second Street. Not just the space on their own block on Spring Street, but also they agreed in their traffic mitigation to do a park on Second.

HUGH RUSSELL: And the setback between the garage and the street.

CATHERINE PRESTON CONNOLLY: Right, exactly. And that's an important contribution to the open space that both should go into that list of transportation mitigation measures.

HUGH RUSSELL: Then there's a request that came in on the revised submittal in July for a Special Permit to allow a commercial parking to be more than 300 feet, but not more than a thousand feet away from the site. And the reason this is requested is that although they want to park in the city parking garage and they started to try to make that happen, they -- it's a discretionary action by the City Council and you can't know whether it's going to happen

until it happens, yet they need -- under the Planning Board permit, they need to have the 512 parking spaces. So in the event that the parcel finds that city garage cannot be used for this purpose or maybe it's not used for this purpose any longer since one of the reasons the garage is there is to serve this building and others, or if they find that there aren't sufficient spaces in the First Street garage that they're willing to lease, the fallback is to seek other parking spaces in other locations within the 300 to 1,000 foot distance. And so they're requesting this permit in the hopes they won't have to use it.

TOM SIENIEWICZ: I think we need to be clear, too, about what the Planning Board's desire -- desirable outcome might be. This Planning Board member feels that closer parking garage and the solution for the city garage is the preferable one. Both. It just makes much more planning sense to have the cars closer to me. And the extent to which that might be supporting the retail ambitions

of the project, you know, I want to go on record and try to communicate that pretty directly to the City Council as something that we'd like to see, but understand that the real politic of the situation and we want, you know, every intent for this to get done and completed. But the proponent, I think, needs the flexibility. And for real reasons to get the project moving and to do this have other Special Permits in its back pocket.

STEVEN COHEN: Mr. Chair, at the risk of getting a little bit into this subject, I certainly echo what Tom said, but I would echo it perhaps on steroids. I think that if from a planning perspective it's very important that the parking be in the city garage. And I know the applicant feels the same way. But, again, in terms of benefits and deficits, detriments to the neighborhood, I think that the commitment to not only creating the park that Catherine just mentioned, but more importantly the grocery store in the first floor of that garage is a

really important benefit for the neighborhood. And, again, that is for me anyway as I balance the pros and cons here. The opportunity to deliver that grocery store to the neighborhood is an important consideration. So, my inclination actually is to not grant that Special Permit and put a special pressure on the City Council and the developer to reach an agreement on leasing that city garage. And I mean it holds both of their feet to the fire, but -- and it puts pressure on -- I'm not sure how that will play out and whose interest that ends up serving, but our interest is to assure that lease agreement is reached. And I don't -- I'm not inclined to offer an easy out, an easy escape to the Galleria. So --

TOM SIENIEWICZ: I'm sorry, if I might have mischaracterized the way I thought the back pocket Special Permit is not what I meant. I, I'm aware of, and I think we all are the effect that this might have on the actual project moving forward, right, if they can't secure the project, legal parking,

they're not going to secure financing, this thing will remain the huck that it is at least this Board Member is trying to avoid in that neighborhood. And that's a big risk.

STEVEN COHEN: I'm with you, Tom. And I didn't finish my thought.

I neglected to finish my thought which was a corollary to all of that. And that after a period of time, and maybe it's one which we define or maybe the applicant defines, that come back and say they were unable to reach an agreement with the City Council and we reconsider their request at that time.

ATTORNEY JAMES RAFFERTY: Can't come back for two years once something's been denied.

STEVEN WINTER: Can't hear you, Mr. Rafferty.

STEVEN COHEN: Unless the applicant waives.

ATTORNEY JAMES RAFFERTY: No. The repetitive petition requirements of the article so prohibit a petition being filed

within two years of an adverse finding.

STEVEN COHEN: That messes up my idea, doesn't it?

STEVEN WINTER: Mr. Chair, Steve, are you finished? Because I don't want to run over your comments.

STEVEN COHEN: You know, if that's right, and it sounds like that's a serious consideration, then I -- picking up on Tom's original point, I would really somehow want to read into our decision a very strong preference and exaltation to the City Council and the applicant to somehow do what it takes to reach an agreement. And I really emphasize, again, the benefits of the grocery store, and -- in particular and the park and the proximity as strong arguments and justification for going that route.

STEVEN WINTER: Mr. Chair, and fellow Board Members, I believe that we should not prevent the proponent from doing the kinds of activities that the proponent needs to do in order to push the project forward. However, I believe we need to make

it very clear that if the City Council does not vote to allow this proponent to use the garage next-door, that we will not see the astounding amenity of a fully developed grocery space that a grocery store is able to move into. So I believe that it's in the Council's purview to make that happen or to not make that happen. And I think that we need to be real clear about that as well. But I don't want to hold this proponent back by not allowing this, the Galleria to be a use if in fact this proponent is not going to find a cooperative Council.

TOM SIENIEWICZ: And so how do we cement a bona fide negotiation with the City Council? Can we condition the Special Permit to exceed the distance from the site by saying that the City Council has to deny the -- deny the request at the city garage and then and only then would the Special Permit to go to -- exceed the 300 feet kick in? So to try to put some teeth into the fact that we want a bona fide negotiation with, you know, some urgency and some energy

with City Council.

STEVEN COHEN: That makes sense granting with a condition.

CATHERINE PRESTON CONNOLLY: To -- I support the idea that that's a really important part of this discussion, however, I also want to be careful that the grocery store is not a part of what's before us right now. It's not a part of this proposal. And so we shouldn't be considering some future grocery store that may or may not occur in determining the impacts of this project. And so we should be clear that that's not one of the criteria for this -- or it is not because of that grocery store that we think that this project meets its criteria. I'm a little hesitant to create a condition that the applicant has to fulfill that they have no -- well, that they don't have the ability to solely determine whether or not they can achieve. And, for instance, in the past we have required applicants to work with Mass. Highway to obtain approval for curb cuts and the like and work is the most we can

condition that on because at the end of the day, Mass. Highway in that case determines whether or not that curb cut is issued. Similarly, I think it is appropriate here to say that we want them to work with the Council to reach an agreement. But the Council has a complicated disposition process, and frankly some discretion as to whether or not they go through that. So I don't even want to personally -- I don't want to condition this on a denial, because the Council could, you know, think about it for the next three years whether or not they're going to even start a disposition process. At some point I think we have to make an assessment of whether or not the proponent has exhausted their options, and in order to move forward, needs that escape valve, if you will, to be able to use this space. And I think that the Galleria is a reasonable place to do that. I think that the marketability of the project is better if they can get the parking closer, and so the proponent has every incentive to make that happen if they

can. But if they can't, they still want to use the building, and I'd rather that they use the building for something than have people park at the Galleria. And, again, that's the people in the office tower who would be parking at the Galleria. The residents, their parking is under the building regardless and that's an important distinction.

People walk as far from the Galleria as to the courthouse all the time to get from the T to their office building. That's not an unreasonable distance to walk. And I do think it's not feasible to say we have to wait for the Council to deny a request for disposition here in order for them to move forward with that option. I think we have to say that they have that option or they don't. I would like to give them that option knowing full well that they prefer to be in the First Street garage.

HUGH RUSSELL: That's what happens when you're on a board with three lawyers.

H. THEODORE COHEN: Well, I agree

with what you said. I mean, I think the city garage is the logical place for the parking. And I agree that the Galleria garage is not an unreasonable place to have the parking. And I also agree that the grocery store and the city garage is not what is before us. However, I was very impressed by the number of comments that we received from the public of the importance of the grocery store to them and how that weighed heavily on a lot of people's minds in deciding whether they wanted to support or not support this project. I am concerned about making -- giving some other Board and the City Council the power to effectuate and not effectuate the Special Permit. On the other hand, I don't think there's anything wrong with making it clear to them what our preference is and to put a little teeth into it. You know, I think the proponent, if required to use their best efforts to obtain the lease for the parking garage, which as I understand it, is tied up with the lease of the grocery store space, but that if they cannot obtain

it within a certain period of time or some other, you know, key to what would make it that, then the Special Permit for the Galleria garage would go into effect automatically.

But I would like City Council to know this is what we think is the best use but also that there be a requirement for -- on the proponent to negotiate in good faith and for the City Council to negotiate in good faith. I don't want either side to feel that, you know, somehow they've got the upper hand, but that, you know, this is what we see is the better of the two proposals.

STEVEN COHEN: Just adding a footnote, again, I think as long as confirming what has been said, but I don't think in the end of the day that we really need to incentivize the proponent to execute a lease in the city garage. I think it's clearly in their interest to do so. It's really the City Council that we have to urge to do that. And I think the City Council's calculus on this one is actually more

complicated.

Let me also say, though, that I mean Catherine raised a good point. I don't actually -- I don't recall hearing in our public hearings all that much talk about the grocery store, and I don't know if commitments have been made with regard to the grocery store. And, you know, I'd love to see a commitment that if you are successful in obtaining a lease for the city garage, that there will in fact be a grocery store, and the garage, because as you alluded to, a lot of folks would be kind of disappointed and feel misled if there weren't a grocery store.

ATTORNEY JAMES RAFFERTY: Mr. Chair, if I could address at that factually?

HUGH RUSSELL: Yes.

ATTORNEY JAMES RAFFERTY: Contained in the record of this file is the request that was submitted to the city by the proponent forwarded by the City Manager to the City Council to lease ground floor space for a grocery store as well as the parking

spaces. And that the initial disposition process was approved nine to nothing in the fall of last year. Since that time little has happened on the City Council side, and I think the message has been until this process is concluded, it doesn't seem to be much appetite on the part of the Council to engage on this. So depending on where things conclude and when they conclude here, it's certainly the applicant's position to continue on. But the request that's already been filed and in the record is for both spaces, ground floor as well as the parking spaces.

STEVEN COHEN: So given the opportunity, if you are able to lease space at the garage in that scenario, it would be your intention, desire, commitment, to include a grocery store?

ATTORNEY JAMES RAFFERTY: No question. The only reason we filed under 6.22.2 was to provide the alternative. And our hope would be that the Planning Board would be guided by the criteria of .22 which

frankly suggests that if the location is within 1,000 feet, safe and convenient pedestrian access, the permit shall be granted. It seems to me that the proposed location at the Galleria Mall meets that criteria and the Special Permit is worthy of being issued.

STEVEN COHEN: Well, on reflection I think it's probably right to grant the Special Permit for sure. I'm not sure that we need to craft a complicated condition. I think it's important that the record reflect this discussion and reflect the Board's strong preference that the City Council really work in good faith and as effectively as possible with the applicant to finalize a lease not only for parking but also for the grocery store.

HUGH RUSSELL: Okay. So then I just want to find the specific findings that we need to make for that permit and it's right here in front of me somewhere.

STEVEN WINTER: What article, Mr. Chair?

ATTORNEY JAMES RAFFERTY: 6.22.2.

H. THEODORE COHEN: All right.

6.22.2 states the Board of Zoning Appeal, in this case it would be us, may grant a Special Permit for off site accessory parking, not allowed in Section 6.22.1. That the convenient and safe access from the -- sorry -- from the parking facility to the use being served is provided in accordance with the following conditions:

A, no off-site accessory parking facility may be located on the lot. Which is a more restrictive Zoning classification.

And, B, all site accessory parking facilities shall be located within 400 feet from being served for residential uses and within 1,000 feet of the lot for other uses.

So the residential uses are served in the building and so we're talking about within 1,000 feet for the rest of the use of the building.

HUGH RUSSELL: So we are comfortable making those specific findings then?

STEVEN WINTER: I am, yes.

STEVEN COHEN: Yes.

CATHERINE PRESTON CONNOLLY: Yes.

HUGH RUSSELL: So, Jeff, what have we for forgotten to do?

JEFF ROBERTS: I'm not sure. Oh, it is going to work. It's got a red light so I'm not sure how long this is going to last. There's one point on this last question about the parking. It's because the parking is provided off site and it's on whether it's at the municipal garage or the Galleria, on a site that is not within the control of the proponent. There is a piece of the Zoning which says that it will be allowed if binding commitments shall exist to guarantee to the reasonable satisfaction of the superintendent of buildings or to the Special Permit granting authority that the off-site parking will continue to be available for the period during which the use or uses that the parking served may be expected to be in existence. Such commitment shall be evidenced by the lease agreement recorded comparable or lease instrument.

And that's because in this case that has not been produced, it would have to be a condition of the Special Permit that such documentation is produced either in the case of the agreement for the municipal garage or another site as permitted under -- by granting that, by granting that Special Permit in order to meet the Zoning. So that's more of a technical point, but something that the Board should have on the record that a lease agreement to use those parking spaces, a long-term lease agreement would be satisfactory to meet the, in the Board's opinion to meet the Zoning requirements.

HUGH RUSSELL: So that would have to be furnished before an occupancy permit was granted.

JEFF ROBERTS: I would want to check with the superintendent of buildings. It may be that they would want that before a Building Permit so that progress doesn't proceed, and then they find that the parking actually doesn't exist after the construction

has commenced.

HUGH RUSSELL: I imagine you're going to borrow some money to do this, and this is a kind of thing that lenders focus on.

We haven't gone through the 10.43 criteria. And (inaudible) appears the requirements of the Ordinance. This is all written in the negative. It's very annoying.

Special Permits will be granted where special provisions of the Ordinance are met except for a particular location or use and generally chaired the district or the use is permitted in cause such granting of such a permit detriment to the public interest because:

A, it appears that the requirements of the Ordinance cannot or will not be met.

We believe that the requirements of the Ordinance can be met.

CATHERINE PRESTON CONNOLLY: And will be.

HUGH RUSSELL: And will be.

Traffic generated or patterns of access

or egress will not cause, congestion, hazard or substantial change in established neighborhood character.

So this is a traffic condition and it's about changing established neighborhood character.

CATHERINE PRESTON CONNOLLY: And we're making a finding that this will not change the existing patterns of access or the existing congestion in established neighborhood character.

HUGH RUSSELL: Right. In part because the traffic is accessing substantial portion of traffic is accessing First Street.

CATHERINE PRESTON CONNOLLY:
Correct.

HUGH RUSSELL: Which is outside of the residential portion of East Cambridge.

Increasingly people are -- the continued operation of the development or adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or that nuisance or hazard would be created to the detriment

of the health, safety, and welfare of the proposed use and citizens of the city. Or for other reasons that the proposed use will impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of this Ordinance.

CATHERINE PRESTON CONNOLLY: So, here we're finding that the continued operation and development of adjacent uses are not being adversely affected by the nature of the proposed use in large part because the proposed use essentially already exists. That it's not creating a nuisance or hazard to the detriment of the health, safety, or welfare, again, because it already exists.

HUGH RUSSELL: And because of the oversight applied by the state through the mediation process.

CATHERINE PRESTON CONNOLLY: Correct. And I think for the multitude of reasons we talked about, it ameliorates the health, safety, and welfare of the occupant

around that even though it's not getting a lot better, it is getting better. And for other reasons, it does not impair the integrity of the district because it's already in the district.

H. THEODORE COHEN: And then the final point is, it's not inconsistent with the urban design guidelines.

HUGH RUSSELL: It's not inconsistent with the urban design guidelines which we have at some length gone through.

Jeff, is there anything else?

JEFF ROBERTS: Mr. Chair, there's nothing else I have on findings, but if you wanted to proceed, I've made a few notes to circle back on some of the items that were pointed out as potential conditions for the Board to consider. I can kind of run through a list of those and you can talk about it in more detail. And then there are some pieces that may require a bit more discussion and clarification.

So one is the condition on -- in the Traffic, Parking, and Transportation memo

which I think the Board said were laid out in detail. Continuing design review on the loading area on Second Street which is something that can be handled by due course and continued course review by staff.

The lighting plan, review of both interior and exterior lighting would be a component that would be subject to continuing staff review with the, and the -- you could clarify the language, but really with the intent of minimizing to the greatest extent possible, impacts on adjacent properties.

There was a comment about wind impacts, and that it would require more discussion with staff and possibly professional consultants to ensure that every reasonable thing has been done and that measures have been employed to mitigate that to the greatest extent possible feasible.

The -- that as part of the construction management of the project, that there be possibly a committee similar to some committees that have been employed for city projects to provide ongoing oversight and

monitoring and advice. I think in terms of structuring that, just as a general point when we do these decisions, it's often helpful to frame those as requirements that the proponent would need to undertake rather than making it the city's responsibility to form a committee generally when a -- for us on staff as agents of the Planning Board, where we have power is really in the ability to review what the proponent is doing and to hold up their progress if, if they're not doing exactly what they, what they should and what they're required to do. So putting a condition that says, for instance, that the proponent is required to do --conduct public outreach and setting up a website or setting up some kind of advisory committee and engaging with community residents and then providing evidence of that's been done at different step -- appropriate steps throughout the process is one way to that kind of a condition could be handled.

HUGH RUSSELL: All right.

I would think step one would be coming

up with a specific plan that would be reviewed with the staff and approved and that could address some of the questions that we have about how it's going to work.

JEFF ROBERTS: And there's a -- and a similar point on the question about retail and retail marketing. It's been the case in the past that there have been conditions of Special Permits similar to continuing design review that call for continuing staff review of retail marketing and tenanting plans that that is something because it tends to happen later in the process that could be, that could be done, and similarly there could be requirements to engage in some neighborhood or community outreach prior to the process of marketing those spaces to tenants if -- I thought that was what I heard as being of concern to the Planning Board.

HUGH RUSSELL: Yes, we agree.

JEFF ROBERTS: So on the next page I think is the point about housing and the proposal that the Board Members put forward as a condition as pursuant to the urban

design finding -- looking for affordable housing above and beyond the requirements of the inclusionary housing is to require one-third affordable units, one-third -- and just to clarify, I think that the Board intended to say middle income units.

Sometimes the term, the term moderate could be middle income sometimes get interchanged, but they actually have different meanings. Moderate income is covered within affordable -- the definition of affordable units, because it's up to 80 percent of area wide income. The term middle income is what's referred to units priced between 80 percent and 120 percent of area median income. And that's the definition that's included in, for instance, the Alexandria Zoning which has a requirement for middle income and also in some of the Kendall Square recommendations. So, again, that's a clarification, but in terms of the overall ratio --

HUGH RUSSELL: We agree that it should be middle.

JEFF ROBERTS: Okay.

And there was a question about -- oh, and there was a point about continuing design, the further design review of the open space on Spring Street.

And I mentioned the point about the condition requiring that the evidence be provided of the lease of the parking.

And I guess to clarify the conclusion of the Board on the -- on granting the Special Permit for parking more than 300 feet but within 1,000 feet, would there have been any condition attached to that, that there be either a -- some ways that it could be approached would be to put a time period say only after some time period has elapsed or to say that the proponent would come back to the Planning Board within the, within the scope of the Special Permit, would come back to the Planning Board for just a written determination that best, you know, that best efforts have been made and exhausted to secure the parking within the 300-foot radius in the city garage prior to approval. So

it's not entirely clear from -- I know we just had this discussion, it's not clear in my notes what the conclusion was.

H. THEODORE COHEN: I think your second point makes sense because --

JOHN HAWKINSON: Could you use the microphone, please?

H. THEODORE COHEN: I thought the second point makes sense that the proponent would come back to demonstrate their best efforts because if, you know, it becomes clear, say, in the very short period of time that the City Council was not going to lease them the parking spaces, I don't see any reason for them to have to wait, you know, until the designated time period had expired. But I'm not sure feelings --

STEVEN WINTER: I will defer to my colleague because I think we're going to say the same thing.

CATHERINE PRESTON CONNOLLY: I don't think we should be putting any condition on this.

STEVEN WINTER: Correct.

CATHERINE PRESTON CONNOLLY: I think we need to admonish to the City Council that we think it is a preferable solution, but ultimately that's their call and this is, they meet the criteria for the Special Permit and we should granted it.

STEVEN WINTER: They meet the criteria because it's within 1,000 feet, both --

CATHERINE PRESTON CONNOLLY: Correct. And there is safe pedestrian access.

STEVEN WINTER: Right.

CATHERINE PRESTON CONNOLLY: And they meet the criteria as it is.

STEVEN WINTER: So the proponent proceeds to the -- whatever outcome is for them?

CATHERINE PRESTON CONNOLLY: And again we think that --

STEVEN WINTER: Yes.

CATHERINE PRESTON CONNOLLY: -- that the preferred outcome is the First Street garage, and we have every reason to believe

that they will seek that earnestly but I don't think we're putting a condition on it.

HUGH RUSSELL: Okay, next?

JEFF ROBERTS: And that was what I had on my list. So I guess the question that is is there anything additional that should be, that's just a recap of what the Planning Board has discussed so far.

Is there anything additional that should be considered in writing, drafting a decision?

H. THEODORE COHEN: I just have one small point, Jeff, and maybe it's covered by your overview, continuing overview, but there was a comment in the July memo that you had not yet received detailed drawings about the penthouse mechanicals, and that was going to require further information and oversight. So I don't know whether you need that as a condition or whether that just falls within your general, you know, finalization of the plans.

JEFF ROBERTS: It does fall within continuing design review, but it's helpful

for the Board to put that on the record and to have that written in the decision so that we have a very clear basis if we need to tell them, you know, that they need to do more work on something and that it's clearly articulated in the decision.

HUGH RUSSELL: Okay. And I see the CD Development members of the Board are agreeing.

STEVEN COHEN: Mr. Chair.

Jeff, is it a matter of course that there would be some degree of ongoing design review?

HUGH RUSSELL: Yes.

STEVEN COHEN: You know review of materials and other details and, you know, maybe a wall section --

HUGH RUSSELL: Yes.

STEVEN COHEN: -- construct and so forth?

HUGH RUSSELL: Yes. It's a condition that's attached to all permits so that the department, the department has to sign off on before a Building Permit can be

issued, and they need to go through that process to be able to make sure that the conditions and the representations have been made, have been made as is the details worked out.

JEFF ROBERTS: And just to add a little bit of clarity to that that goes to the points, there are two types of continuing design review. The type of review that we do, one level is to make sure that what is being proposed in the construction drawings for Building Permit are consistent with what the Planning Board has seen and approved, just to do that sort of occasion. And then another level is where the Planning Board has made specific note of issues where the proponent should try to make improvements through the detail design, then we would, the staff would use the -- you know, the judgment to see that those conditions have been met and those improvements have been achieved.

STEVEN COHEN: But, again, just to confirm my understanding, just for the example, you know, the masonry --

JOHN HAWKINSON: Steve, the microphone, please.

STEVEN COHEN: I'm sorry.

Just an example for materials. I mean the masonry, you know, we approved, you know, a look and a concept and we haven't approved a specific specification for the masonry or any other detail. Is that something that staff actually does review and approve?

Yes?

JEFF ROBERTS: Yes.

STEVEN COHEN: Thank you.

HUGH RUSSELL: Occasionally from time to time the staff brings things back to us where they feel they want advice about such matters.

So, I guess --

H. THEODORE COHEN: I have a question. I'm unclear on the concept of what the condition is going to be with regard to the wind.

STEVEN WINTER: With regard to?

H. THEODORE COHEN: The wind. And especially I -- if you know, some -- there is

a consultant, and some changes are discussed which are going to change the design or the facade, is that going to come back to us? I just don't know where that -- where that would be going.

JEFF ROBERTS: I think that's probably a question for the Board maybe to explore a little bit of what is the range of the parameters of the improvements that the Board might expect to see.

STEVEN WINTER: Mr. Chair, I think that we have that content on the staff and I would prefer that the staff make those reviews and that we have confidence in their skills and abilities.

STEVEN COHEN: Agreed.

HUGH RUSSELL: Or if we don't have the concept depth, we have the ability to hire that.

STEVEN WINTER: To purchase it, yes.

TOM SIENIEWICZ: So, I have some considerable experience in dealing with wind mitigation. It's incredibly complicated. You fix one point where you've got a problem

and it creates another problem somewhere else. And that's the nature of that. And it does take some expertise to rebut. Actually the consultant that was here I happen to know is considered one of North America's premier consultants. You would need somebody to go head to head with him to double check it and, you know, with all due respect to the amazing staff here, you may need somebody from, I don't know, MIT to figure it out. So I think we should anticipate that we get expertise and I encourage that we get expertise to rebut that. I don't know how to define the standards exactly for what we're expecting. I would leave that up to the experts to haggle that, figure that out.

H. THEODORE COHEN: Well, I guess my question goes to let's say we get this expert and ultimately they conclude that the wind breeze, and the roof and the cornice line should be removed, does something like that come back to us or does that just, you know, staff going to say okay, this is the best way to handle it?

STUART DASH: And, Stuart Dash, and as described, staff reviewed these kinds of things that if there's any question that something above and beyond a clear staff level decision, then we bring it back to the Planning Board.

BRIAN MURPHY: I'd simply add to that as well is, I think Tom indicated this is something we probably -- we would require additional outside expertise to do this and, you know, it would seem to me it would not be inappropriate for the Planning Board to suggest the cost of that outside consultant be paid by the petitioner, but that it would be someone who would be reporting to the CDD.

HUGH RUSSELL: That's the way it's usually done. At least in my experience as an architect on the other side of the table, if it's something that's so complicated, it requires experts to conceptualize and experts to review, the burden of paying both experts falls on the petitioner.

I mean, I -- the reason I think this is important is simply because I don't know

enough about this and Tom knows more than I do, says it's really complicated and it's, you know, it's science but it's also art. And so we know it got a building mass that's got problems. We know that the petitioner has used good faith efforts to study it, but this is a piece where we should go one more step. And but what's going to happen in that discussion, whenever I've been involved in the dueling expert process the experts behave professionally. They discuss the substance of the problem and they work out what they believe at the time proper solution together so that they can each tell their clients that this is the right solution. So the selection of that is just as important, and that they get somebody who can talk on the same level as the primary consultant.

As an example, in the Toomey process, the question came up about the cost of remediation and the expert was found to engage that topic and reassure people that the, you know, that the numbers that were being sent on that were reasonable numbers.

And I think that's, that's sort of what we want when somebody says, yeah, that's, that's reasonable, you can do that or have some effect and there isn't some missing piece that these very talented people have missed in this project.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Mr. Chair, just for an understanding on the applicant's part, is it fair to say this would be a form of peer review?

HUGH RUSSELL: Yes.

ATTORNEY JAMES RAFFERTY: Rather than -- they may not be dueling or conflicting experts, they may actually work collaboratively. I would hate to set it up as an adversarial process.

HUGH RUSSELL: Right. When this process works best it's a peer review.

ATTORNEY JAMES RAFFERTY: Right.

HUGH RUSSELL: And I think that's a good way to characterize the definition.

I feel moved to make some remarks before we move to a vote.

We basically had two points of view that we've heard from the public, and one point of view is that they would like to see something done about this horrible building and they would like us to make sure that we get the best possible deal for the city before they make it better and making that happen.

The other point of view is that this is outrageous and unconscionable that the state is behaving this way using this building and not, not recognizing that there's -- should have been a better process.

STEVEN WINTER: Indeed.

HUGH RUSSELL: And those are kind of the two -- I'm not trying to characterize a very complicated subject. But those are the two approaches. And so I started out in the first camp when we first started talking about this, looking and saying, you know, they made a bunch of significant improvements. And then I started moving over to the second camp saying, you know, but why, you know, do we really --

FROM THE AUDIENCE: Can you speak louder?

HUGH RUSSELL: Do we really have to accept this? In an ideal world not governed by, you know, state disposition agreements and legislation that tells the state how they have to deal with their assets when they dispose of them, and you know, it should have happened better. You know, in my view the state should have said okay, we're going to step up to the plate and fix this problem before we send it out to bid. But it's not what the disposition law in the state says. And so -- and then it started, and we've listened to a lot of testimony and a lot of people that felt that it was more important, it was critically important to move forward and get the best possible outcome given that the building seems to have the legal right to continue to exist. That may be challenged by people who think that's not the correct interpretation. We've not addressed it in our discussions because we are -- our approach has been to ask the City Solicitor

to give us guidance and we're following that guidance.

I would be surprised if this doesn't get discussed, this question gets discussed in court no matter what decision we make. I think I'm comfortable now moving forward and I'm pleased to think that tonight we've identified a lot of little pieces and little additional pieces that will make this building and this project a better neighbor.

So that's sort of my jury through this discussion. I don't know if anyone else wants to make remarks or you want to make a motion.

TOM SIENIEWICZ: Well, you know, I'm prepared with 40 minutes of remarks, but I wanted to reflect on this, you know, oddly as attractable as this may seem to people, I think this was a very good planning process. We got good input both pro and con from the community. We got a proponent here who reacted, changed the submission, changed the design significantly as a result of those conversations. We've had tonight, and I'm

really proud of the deliberations, I'm a planning geek, too, Hugh. I thought it was fun. And so that's really all I wanted to say.

I don't know, maybe others want to make some comments before we frame the final motion here, but planning's, you know, we're dealing with an imperfect world and we're trying to do the very best that we can, and that's all I can reassure people here who perhaps might hold the opposite view about how I'm going to vote right now -- in a moment or two. That we're just doing absolutely the best we can for the city that we love profoundly. So -- and we share that with people who have been the pro and the con view.

STEVEN COHEN: I would only add one thing. Certainly we wish the process had been different. Certainly if we were reviewing the building from scratch, we would not have approved such a tall building. But having said all of that, I did want to say I think we've ended up with a very handsome

building and in particular where the building meets the ground, meets the street, meets the neighborhood. I think it is a dramatic a radical improvement over what we have right now. And four-story residential portion actually as you walk-in the neighborhood, that's primarily what you're going to see. And I think it is actually going to feel in scale. I know that after a lot of people that are highly skeptical of this building, and I hope and believe that if the building is built as drawn and as presented to us, I hope and I believe that a lot of folks will come to find and believe that it's actually a more than tolerable, but a very handsome addition to the neighborhood which will stimulate business in the neighborhood, you know, restaurants, and we'll be in that place for the neighborhood and for the city in general. So I did want to acknowledge that -- the quality of the design as well as what I believe is a good quality process.

CATHERINE PRESTON CONNOLLY: I just want to take a minute to appreciate the tone

everyone has taken through this whole process, both pro and con, the proponents, all the experts, this Board. This has been a really big deal for the whole city, and in a lot of other situations could have become very heated and very decisive, and one of the things I've really been struck by in hearing comments from neighbors and hearing discussions between neighbors who had opposing points of view, and certainly hearing the discussion among the Board and with the proponents is the thoughtfulness and the respectful tone that everyone has taken. And I hope people feel like they've been heard. I certainly feel like the Board has really taken its time to hear all the points of view and to go through all of the impacts that this building will continue to have on the neighborhood and figure out the best way to package this so that it addresses as many of the concerns that the neighbors expressed as we can given the status that the City Solicitor has advised us that the building has. And I just, I really appreciate that

everyone has been so respectful in their tone that it's really made the process a lot smoother and more enjoyable to be a part of and made our job a little easier to walk through.

H. THEODORE COHEN: Well, I definitely echo everybody's comments and especially Catherine's because, it has been an exciting process. I mean I think when I first saw it, I didn't know what I thought or where I'd come out and it's been many months of going through plans and through hearings and lots and lots of public input and it's really just been terrific.

And we received the comment today that I thought was really the most important, it was a reference to us that whatever we decide, there may be litigation one way or the other, and that all we could do was to, you know, vote for something that we were really -- each of us individually were really comfortable with and felt that we could justify to ourselves and be proud of ourselves and be proud of the process. And I

thought that was a great comment. You know, it acknowledges that there are two sides to pretty much every issue, and that there's not necessarily a right or a wrong, but that we just have to decide what we want to do when we move forward with it.

HUGH RUSSELL: So I believe it's time for a motion.

H. THEODORE COHEN: I would move that we grant a series of Special Permits to convert the existing non-conforming courthouse structure, 40 Thorndike Street, to a mixed use office building containing ground floor retail use, 24 dwelling units, and below grade parking.

That they would include a Special Permit under Section 19.20 project review, Section 8.22.2A, alteration of the non-conforming structure.

Section 5.28.2, converse of the non-residential structure to residential use.

The Section 6.22.2 allowing for off street accessory parking within a thousand feet.

And pursuant to the general Special Permit requirements of 10.40 subject to the conditions that have been identified this evening and reiterated from staff and subject to all the findings that this Board has made this evening as we've gone through the various requirements with Special Permit.

HUGH RUSSELL: Is there a second?

STEVEN COHEN: Second.

CATHERINE PRESTON CONNOLLY: Did I just miss it or -- I did not hear Article 19 mentioned in your list of Special Permits.

ATTORNEY JAMES RAFFERTY: It was the first one.

CATHERINE PRESTON CONNOLLY: Thank you.

HUGH RUSSELL: You can tell that Mr. Rafferty is still in his chair that the motion was in the right form.

Is there discussion on the motion?

(No Response.)

HUGH RUSSELL: All those voting in favor of the motion?

(Raising hands.)

HUGH RUSSELL: Six members voting in favor and permits granted.

ATTORNEY JAMES RAFFERTY: Thanks very much.

LIZA PADEN: Excuse me. Given the complexity of the decision that has to be written and time constraints, we the staff would ask the Planning Board if they would ask the applicant for an extension to the end of the month of October. Right now it's at October 15th and it would allow for adequate review.

ATTORNEY JAMES RAFFERTY: Now that we know it's a favorable decision the answer is yes.

That's Mr. Robert Dickey on behalf of answering that. Don't write Rob.

ROB DICKEY: Yes.

HUGH RUSSELL: So on the motion to extend the deadline, all those in favor?

(Raising hands.)

HUGH RUSSELL: All members voting in favor.

Thank you, all.

The meeting is adjourned.

(Whereupon, at 11:05 p.m., the
Planning Board Adjourned.)

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IN WITNESS WHEREOF, I have hereunto set
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