

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
AUGUST 11, 2011 7:00 P.M.

in

Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Brendan Sullivan, Chairman
Constantine Alexander, Vice Chair
Timothy Hughes, Member
Tad Heuer, Member
Slater Anderson, Member
Douglas Myers, Member
Thomas Scott, Member
Sean O'Grady, Zoning Specialist

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I N D E X

<u>CASE</u>		<u>PAGE</u>
10121	--	36
10084	--	3
10110	--	81
10051	--	215
10114	--	104
10136	--	216
10137	--	216
10138	--	239
10139	--	248
10140	--	261
10141	--	288
10142	--	299

P R O C E E D I N G S

(7:05 p.m.)

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

BRENDAN SULLIVAN: Case No. 10084. If you would please introduce yourself for the record.

ATTORNEY EDWARD PARE: Certainly. Edward Pare P-a-r-e from Brown Rudnick representing New Cingular Wireless PCS, LLC.

FRANK KELLEY: And Frank Kelley with SAI Communication, K-e-l-l-e-y.

BRENDAN SULLIVAN: Okay. The last time you were here we sort of got into the case and then we sent you back because of the photo sims which we felt were somewhat inadequate or lacking; is that correct? And in the meantime those are things --

CONSTANTINE ALEXANDER: There were some issues, too, about the mounting.

ATTORNEY EDWARD PARE: Right.

CONSTANTINE ALEXANDER: There were basically two issues as I recall, Brendan.

BRENDAN SULLIVAN: What are they?

CONSTANTINE ALEXANDER: How they were going to mount the antennas.

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: That plus the inadequate photo sims.

BRENDAN SULLIVAN: Okay.

So do you want to address those two issues?

ATTORNEY EDWARD PARE: Certainly. I just distributed some new photo simulations which we hope are adequate. Not a cloudy day, as you'll see, it's a bright blue sky. And if you take a flip through, you'll see that we used most of the same the locations of where the photos are coming from. We also inserted a box in the corner. As you know, we're installing one LTD antenna in three of

our sectors.

There was also an issue on painting the existing antennas where there's sort of a coping or a cement cap on top of the brick, and we had all red in our photo simulations. And you'll see, to the extent that we could show it, we do show it that they'll be painted to match the tops and to match the brick.

BRENDAN SULLIVAN: So you're picking up the background as much as possible and wherever possible?

ATTORNEY EDWARD PARE: Exactly.

And I think probably the best depiction is Photo Location 2, proposed conditions, you'll see on the top of the antennas there we do have the different shading where we go to a beige or a tan color, whatever it is versus the red.

BRENDAN SULLIVAN: You're not the only carrier on the building; is that correct?

ATTORNEY EDWARD PARE: That's correct.

FRANK KELLEY: T-Mobile's up there and someone else.

ATTORNEY EDWARD PARE: I'm sorry, are there questions on the photo sims?

TAD HEUER: No.

ATTORNEY EDWARD PARE: With respect to the mounting brackets, what we were able to do is we went back to the engineers and we asked them to bring the brackets as close to the facade as possible. As you know, on two of the sectors were located on screen walls. One of the sectors were located on the facade. So if you -- do you guys -- do you have the plans that were submitted? Because we do -- it's unfair for me to talk to them -- I'm going to be dealing with mostly sheet A-3.

CONSTANTINE ALEXANDER: A-3?

ATTORNEY EDWARD PARE: A-3.

TAD HEUER: Yes.

ATTORNEY EDWARD PARE: On the left depiction there, the dark antennas or the LTE antennas that are going in. On the alpha sector, which is the furthest to the right, we're mounting directly on the building at that location, and we're able to shoot the antenna signal straight down the roadway. So we're able to get very closely mounted to the building. You'll see at the alpha sector, which is the lower center, we're able to get the antennas four inches off the facade of the building. We didn't have a measurement on the last one. We're using a pipe mount there. We've eliminated the pipe and now we're attaching directly to a mount which would be inserted into the side of the building.

So the other two sectors on the top, we were -- previously we needed to do a pipe mount because we need to have down tilt and the ability to swing the antennas. On these,

our sectors, we're pointing the antennas away from the street themselves. So we've asked, we've asked the engineers to come up with the closest mount we could. We got it down to six inches from the building. It was 11 when we originally proposed it. So we've almost cut it into half, but we do need the flexibility to be on a pipe so that we can move of LTE antennas in either direction.

TAD HEUER: Can you explain that to me? And the only reason I ask, I appreciate A, that you've got this proposed low profile antenna wall mount in the alpha sector. I'm kind of surprised because -- pleasantly surprised, but also it seems like this is something that's in the engineer's repertoire. So every time we've asked for it before, it seems like this is just something they're able to pull out the box and actually exists. So I'm kind of confused by that. But that's not my question.

FRANK KELLEY: Okay.

TAD HEUER: My question is on the pipe mounts for beta and gamma sectors --

ATTORNEY EDWARD PARE: Yes.

TAD HEUER: -- and partly it's a question of why can't we use this bracket for alpha sector, the same one? You mentioned down tilt, but if I'm reading this correctly, I'm looking at the alpha sector explanation. It says: Proposed low profile antenna wall mount panel antenna as adjustment kit, and then paren down tilt bracket optional, not shown. Which suggestions that I can get down tilt with --

ATTORNEY EDWARD PARE: They may -- I can only tell you that we went back to them and said get us the closest mount that we can have on each of these sectors. This is what they came back with.

TAD HEUER: What could possibly "down tilt bracket optional not shown" mean

except for the fact that there's a down tilt bracket that's available that could be used on the other one?

ATTORNEY EDWARD PARE: I think that if you look at the down tilt bracket on the top one, that there's a pipe mount there must be a means to do the same in this instance. But it's not just the down tilt, they also are configuring the antennas so that they can move them directionally.

TAD HEUER: They can move that directionally if you're on a pivot. If that's a pivot, you just give it a round center the way you do with a pipe mount. Except the pivot is not a six-foot long bar. It's a two-inch long screw.

ATTORNEY EDWARD PARE: I can only tell you what we went with back to them and what they came up with. That's the closest we can go.

CONSTANTINE ALEXANDER: We've gone

through this I don't know how many times. That's not fair to this Board or fair to the City of Cambridge. You come in and say well we asked our engineers. This is the best they can do. We're not engineers, and your engineers are not here to answer our questions. That's the problem we always have with you folks.

FRANK KELLEY: They have -- I think that the bigger problem from my discussions with the engineers was azimuth, were they not -- if you looked at the sector off the back that we're able to get closer, the antenna's pretty much flush with the building so we can go with the closer one. Once you start tilting them, it becomes an issue.

TAD HEUER: So the real issue which we don't see on this, is not the depth of antenna but the width of the antenna?

FRANK KELLEY: It's the width and getting too close with the edge of the antenna

to the building edge when it's shooting off on an angle.

BRENDAN SULLIVAN: Do these things actually ever, you know, do they ever pivot them that way at all?

ATTORNEY EDWARD PARE: Oh, certainly. That's the down tilt.

BRENDAN SULLIVAN: I know that, but I'm saying do they ever really do that?

ATTORNEY EDWARD PARE: Oh, absolutely.

BRENDAN SULLIVAN: They do?

ATTORNEY EDWARD PARE: Absolutely.

BRENDAN SULLIVAN: And that has to do with signal and --

ATTORNEY EDWARD PARE: And getting it down into the areas that they're trying to provide for coverage.

TAD HEUER: Once they've done that do they go back every two weeks and tweak these things?

FRANK KELLEY: They're electronic kits inside the antennas that get adjusted. They can adjust them from the switch, and it automatically electronically adjusts.

TAD HEUER: Right. But I'm thinking like, for instance, my car mirrors, right? If I'm driving and I haven't driven for a week, I get in, I don't have to change my car mirror again. It's exactly where I put it unless my wife was driving and I have to put it back. As long as I'm driving my car, I never change my side-view mirrors. They are where I need them to be as long as I don't move them anywhere else. Why is it different with an antenna?

FRANK KELLEY: They're constantly trying to optimize the coverage from the site, and they have data from lost calls or from where they've had lost calls in the coverage areas where they're weak. And they do that electronically from the switch to try

and adjust them. So it's, you know, and it's --

ATTORNEY EDWARD PARE: If you were to adjust your driver's seat, you might have to adjust your mirrors.

TAD HEUER: Right.

ATTORNEY EDWARD PARE: If you're going to optimize your driving capability because your back hurts you move up, you adjust your mirrors, then that's what they would be doing. If they found a means to provide better coverage, because they can adjust the signal either through a down tilt or through an adjustment, left or right, that's what they'll do.

CONSTANTINE ALEXANDER: Any sense on how frequently they're adjusted?

FRANK KELLEY: You know, typically they don't get adjusted very much, but in this case we're installing a new technology on it, and none of the other sites exist. There

might be -- there's more probability early on that they want to optimize the coverage based on when they get some real data up there from where the -- where all the different sites are covering. So you would think that initially that they would do more of it. Once they're up for quite a while, they're pretty much optimized and they won't change.

BRENDAN SULLIVAN: Are they adjusting it to -- well, they're adjusting it to reflect certain interferences which come and go at times, whether it be at street level, further up or whatever it may be?

ATTORNEY EDWARD PARE: Foliage makes a difference.

BRENDAN SULLIVAN: Other carriers that are, you know, that are interfering maybe with signals or that they can tilt it one way or the other. I mean, is that in laymen's terms?

ATTORNEY EDWARD PARE: Yeah. For a

multitude of reasons, I don't know about other carriers, but certainly foliage. If they find a gap in a certain street level, they may down tilt it further, move it away.

BRENDAN SULLIVAN: And how many of these --

FRANK KELLEY: If they construct a new building, that's -- that provides some shadowing and they adjust to --

BRENDAN SULLIVAN: Getting back to the beta and gamma sectors, how many are there of them?

ATTORNEY EDWARD PARE: Antennas?
Two.

BRENDAN SULLIVAN: There are two?

ATTORNEY EDWARD PARE: Right.

BRENDAN SULLIVAN: And on the alpha there is --

ATTORNEY EDWARD PARE: Well, there's one antenna in each sector. So, gamma has one, beta has one, alpha has one.

BRENDAN SULLIVAN: Okay.

TAD HEUER: How heavy are the antennas?

ATTORNEY EDWARD PARE: I think they were....

FRANK KELLEY: I think they're --

ATTORNEY EDWARD PARE: I don't know if we -- I'm going to have to give you an estimate.

TAD HEUER: That's fine.

ATTORNEY EDWARD PARE: They're about 40 pounds.

FRANK KELLEY: I think they're heavier than that.

ATTORNEY EDWARD PARE: I would say somewhere around 40, 45 pounds.

TAD HEUER: I mean, I guess the question I'd have is still surely there is a proposed low profile antenna wall mount that could have a bit more distance of four inches and would still allow you to pivot,

presumably you would have a distance of two inches and still would be able to hold this thing up. We're not talking about a massive weight up there. We're talking about something relatively light. I think the overall issue here we're quibbling about is lengths and distances and other things is we're trying to reduce the visual impact when you're putting up another piece of equipment, i.e. a pipe on a building that you're attaching something to, that gives you, yes, you've done the best you can in terms of distance. But it gives you something else up there, something else that creates a shadow, something else you can see. When you're trying to make something clean -- if I went to Ikea, I don't think they would give me the top one, they'd give me the bottom one. Because the top one would be an (inaudible). I'd like to see the Ikea of mobile phone antennas, which in my mind would be something

sleek, minimalistic in design with the overall idea of minimizing its visual impact as opposed to picking one or two factors that minimize either here or where we've said we've got as close to the building as we can, we've still got a pipe. And the fact that I can look at the alpha sector antenna and know that this is engineeringly possible, it means that it can't be a stretch to have that thing done with two more inches of the depth that would hold up something that's this size. Again, you don't have dumb engineers. Or if you do, I'm stunned.

FRANK KELLEY: Well, you know, I think if you look --

BRENDAN SULLIVAN: Could we suggest, could we suggest --

FRANK KELLEY: Yes.

BRENDAN SULLIVAN: -- that the mounting be as per that proposed antenna detail alpha sector?

TAD HEUER: What do you mean?

BRENDAN SULLIVAN: Right now we're looking at two different mountings. What if we just say that that is the one that we want.

TAD HEUER: For all three sectors?

BRENDAN SULLIVAN: Right.

TAD HEUER: I mean, I want -- and I can say that, I want to say that.

CONSTANTINE ALEXANDER: But I don't know if it will work.

TAD HEUER: But I have this, you know, this one percent notion I should be unfair to the petitioner because there may be a reason why they can't. But at this point after about 12 months of going through this, I'm less and less inclined to give them the benefit of the doubt.

CONSTANTINE ALEXANDER: I feel the same way. I mean, the fact of the matter is they could have brought the engineer here to answer that question. They don't have an

engineer here to answer that question. We have to make the best determination that we can.

ATTORNEY EDWARD PARE: One other highlight, you sir, asked us specifically, we did move the RRH back from the roof line a little bit.

TAD HEUER: Right.

ATTORNEY EDWARD PARE: But that concludes my notes and our presentation. What you do with the proposal is certainly within your right.

BRENDAN SULLIVAN: Well, any other questions?

CONSTANTINE ALEXANDER: No questions.

THOMAS SCOTT: The pipe mounts, I think in the past we've asked that it not be no taller than the size of the antenna.

ATTORNEY EDWARD PARE: We expect that.

THOMAS SCOTT: Okay.

BRENDAN SULLIVAN: I'm just not, I guess I'm not getting an answer as to why there has to be two different types of mount. Obviously it's -- you're trying to pick up a different area, I would guess, but I'm not sure. I'm not convinced. I don't have an answer.

FRANK KELLEY: It's the azimuth, the azimuth is perpendicular on the one we're able to get close with the face of the building. The other ones, the azimuths are tilted from the face of the building, not away from perpendicular, so the edge of the antenna gets closer to the building edge if you had the shorter.

ATTORNEY EDWARD PARE: If you look at --

BRENDAN SULLIVAN: And what they're saying is that in the beta and gamma sectors that the antenna detail will not work as per

the alpha sector?

FRANK KELLEY: Right.

BRENDAN SULLIVAN: Will not work.

ATTORNEY EDWARD PARE: If you look at our mounts on the existing antennas, you'll see how far off they're adjusted from the roof. That they're not flush, because they're not shooting directly -- the building is not situated in such a way so that the antennas can be perfectly aligned and shooting the same direction. In the alpha sector we're there. In the gamma and the beta we're not. You'll see that our existing antennas are offset on pipe mounts to a joint.

TAD HEUER: All right. I want it to look like that (indicating).

Sorry to the stenographer.

TIMOTHY HUGHES: The pen looks like a pipe mount.

TAD HEUER: It looks like a pipe mount, but if you didn't have the pen part and

just had the two edges, I can swivel this this way and this way on the building. Certainly I can extend this distance as far as I want and be able to swivel so the azimuth of my corner, the width of my antenna will not hit the building when it goes to the corner, right? Presumably that's exactly one half the width of the antenna is the distance between the building and the edge of the mount. Mathematically that has to be the answer.

TIMOTHY HUGHES: Well, mathematically it's greater than one half the distance now with the alpha antenna.

TAD HEUER: With the alpha antenna. You can do that with the beta antenna.

TIMOTHY HUGHES: You should be able to do it with this. It's a six inch -- it's half of that width is three inches and it's four inches off the building. So you should be able to turn that 90 degrees to the

building without hitting the building.

TAD HEUER: Right. And I'm thrilled with alpha sector. Alpha sector is what I want to see in beta sector.

TIMOTHY HUGHES: That's what I'm saying.

TAD HEUER: And there's no reason, yes.

TIMOTHY HUGHES: There's no reason why they shouldn't be able to use that with a down tilt adaptor instead of a pipe antenna.

TAD HEUER: Yes.

TIMOTHY HUGHES: Even at four inches. But just to be on the safe side, if you built a bracket that booted it out five inches or six inches, you definitely could do it.

BRENDAN SULLIVAN: Well, are we making much adeu about nothing here or --

ATTORNEY EDWARD PARE: Yes, I guess overall I would suggest that on the photo

simulations this is a minimal impact situation. Three antennas on an existing installation. What can I tell you? They're not perfect. They're going to be visible to some extent. We're asking you to approve it, but if you condition it otherwise, we understand.

FRANK KELLEY: And if you look at the sector that we are able to get the flush mount on, that's the sector that faces Broadway, that's the most critical one. That's the one -- that's the most visible.

BRENDAN SULLIVAN: You're talking here or down Broadway here?

FRANK KELLEY: The one that faces directly towards Broadway.

BRENDAN SULLIVAN: So it would be on....

TIMOTHY HUGHES: The one you can't see at all because you're too far away to get a photo sim of it.

FRANK KELLEY: Like from one -- if you look at -- that's the new antenna, that faces Broadway.

BRENDAN SULLIVAN: Which one is that in?

FRANK KELLEY: Photo 1. Yeah, we took it because of some trees in there. But if you look at it, this is Broadway. It's a shoot on the angle. If you look at the....

BRENDAN SULLIVAN: All right.

TIMOTHY HUGHES: It's facing east.

BRENDAN SULLIVAN: Gus, what are your thoughts?

TIMOTHY HUGHES: Is that an alpha or a beta or a gamma?

TAD HEUER: That's an alpha.

CONSTANTINE ALEXANDER: I hope in the future we would start where we ended up today with better photo sims and plans that are responsive and relative to our concerns. Beyond that, I think Tad makes the point, is

that as far as we can tell, they could have mounts that meet our desires without effecting their coverage. On the other hand you made the point or the observation we're making much to do about nothing, I don't know. I would approve it on this basis, but I think -- I would hope in the future they've learned their lesson and will start with the kinds of things we've, as I've said, we've ended up here.

BRENDAN SULLIVAN: Okay.

Tom?

THOMAS SCOTT: I'm pretty much okay. I look at the photo sims and I see other antennas that are above the roof line that are more offensive than what you guys are proposing, so I think --

BRENDAN SULLIVAN: Right, we'll get a crack at them at some point.

TIMOTHY HUGHES: Yes, we haven't had a chance to get to them.

ATTORNEY EDWARD PARE: We'll let them know.

TIMOTHY HUGHES: Maybe you can sell them all the pipe mount antennas and run them through the same game.

BRENDAN SULLIVAN: What do you think?

TIMOTHY HUGHES: I think that they could do it with the alpha antennas everywhere on the building. I think mathematically it works, you know. I don't know whether they're inclined to do it having stockpiled so many pipe mounts, you know. But, I feel like we've already run these guys through the gamut and I'm ready to vote for this.

BRENDAN SULLIVAN: Okay.

Tad?

TAD HEUER: I'd approve three mounts as alpha mounts. If they can't do it, that they come back here with an engineer and tell

us why they couldn't do it and then we deal with it, but I see nothing in this record as to why deal they can do it with alpha sector, they could not gamma sector.

BRENDAN SULLIVAN: Okay.

Let me just do some prerequisite here. That in reviewing a Special Permit application for mobile application the Board of Zoning Appeal shall consider the following in reaching its determination in the scope of or limitations imposed by any licensed secured from any state or federal agency, and there are none. And you're on the record as being duly licensed.

ATTORNEY EDWARD PARE: Right.

BRENDAN SULLIVAN: The extent to which the visual impact of the various elements of the proposed facility is minimized through the use of existing mechanical elements on the building's roof or other features of the building as support and

background.

To the use of materials that in texture and color blend with the materials to which the facilities are attached. And I would say, hopefully the Board concurs, that you have made an attempt to be as stealthy picking up background colors as much as possible. And other effective means to reduce the visual impact of the facility from the site. And you have done that by reducing in one respect the pipe mount and on the respect we do see the projection off the building.

ATTORNEY EDWARD PARE: Correct.

BRENDAN SULLIVAN: Okay. One note that I would make, though, is that the pipe mount -- where are we, eight? That on the pipe mount --

ATTORNEY EDWARD PARE: A-3.

BRENDAN SULLIVAN: -- on the proposed antenna detail beta and gamma sectors that the pipe mount be no taller,

extend no taller than the antenna to which it is supporting. I'm really tempted to concur with your -- but I think I will initial it as proposed, but now we know there is an alternative.

TAD HEUER: And I will not be voting for it if that's the motion, just so you know.

BRENDAN SULLIVAN: Right, okay.

Also that should the equipment become obsolete, not used for more than six months, that it be removed and that the side of the building be restored to its original condition and that the equipment be maintained in a good state as required.

CONSTANTINE ALEXANDER: I'd make it clear by "good state" we mean in terms of maintaining the stealthiness as opposed to operational.

BRENDAN SULLIVAN: Right.

Anything else that needs to be added?

CONSTANTINE ALEXANDER: I think we

might want to cite the fact that the Planning Board is in support of the petition when we get to the reasons why we grant the relief.

BRENDAN SULLIVAN: Yes, and that the Planning Board has written in their support.

So make a motion, then, to grant the Special Permit as submitted, the application as submitted, and initialed by the Chair.

The requirements of the Ordinance can be met.

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

The continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

That there would be no nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of

the proposed use or to the citizens of the city. And the proposed use would not impair the integrity of the district or adjoining districts, otherwise derogate from the intent and purpose of the Ordinance.

And that this facility will not be inconsistent with the urban design guidelines as set forth in Section 19.31.

All those in favor of granting the Special Permit as per the application to install three additional antenna to the existing building at 141 Portland Street.

CONSTANTINE ALEXANDER: Subject to the conditions that you've put forth.

BRENDAN SULLIVAN: As per the conditions, right.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Hughes, Heuer, Scott.)

BRENDAN SULLIVAN: One opposed.

TAD HEUER: Sure.

BRENDAN SULLIVAN: And your
comments were duly noted, okay.

Thank you.

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10121, 260 Lexington Avenue,
247 Fresh Pond Parkway.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board, James Rafferty on behalf of the applicant. Seated next to me is Mr. George Bechwati B-e-c-h-w-a-t-i. And Mr. Bechwati's engineering, Sami Kassis K-a-s-s-i-s.

Mr. Chair, I suspect the Board might recall we were here two weeks ago and was as close to coming to a vote as I've ever had without a vote being taken. The case was continued for the purpose of preparing a landscape plan. You recall that we had a site plan that we were making all kinds of markings over, and it was appropriately noted that it lacked the specificity that would be required for a case of this stature. And also it would not provide an adequate means of enforcement for Mr. O'Grady or his successor to determine in the future whether it was being complied with. So, prior to

five o'clock on Friday, prior to five o'clock on Monday this week, Mr. Bechwati submitted a landscape plan. He met with Cambridge Landscape Company, with architects there, they made recommendations for the planting of I believe nine spruce or hemlock planted trees along the --

CONSTANTINE ALEXANDER: It's on the corner. The kind of trees, right here.

ATTORNEY JAMES RAFFERTY: Oh, yes.

With the understanding that there was a concern expressed by certain abutters and the Board about the need to create an adequate screen of the rear edge of the property from Lexington Avenue. There are also a series of conditions that we had discussed at the prior meeting that I now slightly modified to make a specific reference to this plan.

SLATER ANDERSON: You have bushes we don't have -- we have a box.

ATTORNEY JAMES RAFFERTY: It has a

revised August 6th date.

CONSTANTINE ALEXANDER: Yes, it has the green box.

DOUGLAS MYERS: Mr. Rafferty, is there a complete copy of that condition document in the file?

ATTORNEY JAMES RAFFERTY: I believe it would have been left from the last hearing.

DOUGLAS MYERS: From the last hearing?

ATTORNEY JAMES RAFFERTY: Yes. The only change made I referenced this point.

CONSTANTINE ALEXANDER: Can I see that? I'll give it back to you.

TAD HEUER: On the trees themselves, I think I saw somewhere it was three feet apart; is that right?

ATTORNEY JAMES RAFFERTY: That's what the plan says, yes.

TAD HEUER: And does three feet apart correspond -- I presume that's trunk to

trunk?

SAMI KASSIS: Yes, center to center.

TAD HEUER: Okay, right. So it would look -- the two trees, those trees are --

SAMI KASSIS: Yes, almost like this.

TAD HEUER: -- three feet apart? Okay.

And where you have mulch. There is a patch of mulch indicated?

SAMI KASSIS: Right.

TAD HEUER: Is there a reason that there's no tree there? What's the reason for the mulch instead of a tree since that would seem to be the logical extension of the screen of the trailer?

ATTORNEY JAMES RAFFERTY: I think it has to do with the need to possibly cross over that area to access some tanks in this area.

TAD HEUER: There's something underground?

SAMI KASSIS: Underground wiring, that's where the panels are.

ATTORNEY JAMES RAFFERTY: There are electrical panels there.

TAD HEUER: Oh, that's right.

And the area now described as eloquently and euphemistically is broken bituminous slash grass on which that trailer sits, and that's separated from the pure bituminous which is the rear driveway; is that right? There's some --

GEORGE BECHWATI: Rear driveway right.

TAD HEUER: Is there any delineation there now except the fact that there's some meager attempt at grass on the former and none on the latter?

ATTORNEY JAMES RAFFERTY: None that I'm of aware of.

TAD HEUER: Would it be possible in that area to edge that or in some way

distinguish between the driveway and that area, and perhaps mulch it or do something simple which I think would be a quick fix?

ATTORNEY JAMES RAFFERTY: Around that edge?

TAD HEUER: Yes.

GEORGE BECHWATI: This is the entrance from (inaudible.)

ATTORNEY JAMES RAFFERTY: Yes, that's the driveway here. It curves like this.

BRENDAN SULLIVAN: Yes, what is that curb?

ATTORNEY JAMES RAFFERTY: What does that line represent?

SAMI KASSIS: That's where the edge of the pavement. But you have the dumpster here, George.

GEORGE BECHWATI: Yes, the dumpster here underneath the fence here.

ATTORNEY JAMES RAFFERTY: Well,

could you clean this -- I think the suggestion is can you improve this area somewhat?

TAD HEUER: Yes, I mean, quite frankly, it's six of one, half dozen of the other whether you mulch that other or pull that out --

GEORGE BECHWATI: The driveway behind coming from Lexington station, that's the driveway.

ATTORNEY JAMES RAFFERTY: That's that. So, but this edge here suggests that's that's something different than the drive.

GEORGE BECHWATI: That's on 255 Lexington?

ATTORNEY JAMES RAFFERTY: No, no, no. See the curb cut here?

SAMI KASSIS: This area here, we have access to the dumpster, right? So keep it, keep it there.

ATTORNEY JAMES RAFFERTY: Could you

clean it up, put some mulch or something there?

GEORGE BECHWATI: Sure, sure, of course.

TAD HEUER: I don't care whether you mulch it one way or you pave it --

GEORGE BECHWATI: As long as it looks good to the neighbor.

ATTORNEY JAMES RAFFERTY: I think his concern is that he needs to have access the dumpster in that location.

TAD HEUER: I understand.

SLATER ANDERSON: Because with the bay addition that's, that's the only way to get into that.

BRENDAN SULLIVAN: Well, the dumpster -- you're going to remove the dumpster and load and unload this way here. There's going to be a fence along here of some type. So that this is a definitive line which is going to encompass this dumpster

here. Picking up on the edge of the fence, there should be some type of curbing that goes up to the sidewalk line --

TAD HEUER: Right.

BRENDAN SULLIVAN: -- which separates the driveway area from this back no man's land here, the back of the trailer. And what we're saying is that there is going to be a, fence and that this here should be grass or mulch.

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: That's not a suggestion.

BRENDAN SULLIVAN: You don't have to mow mulch. Okay.

The Alberta spruce or hemlock planted three feet apart are fine. My suggestion would be at planting they be a minimum of six feet in height. Not so dwarfy, because they grow very slowly. So my suggestion would be that they be a minimum six feet in height at

planting.

ATTORNEY JAMES RAFFERTY: At the time you install them they have to be six feet.

BRENDAN SULLIVAN: Because I believe that trailer is probably seven foot, ten.

Over in here, this area which is defined as I guess concrete, concrete, again, I would like to see some type of a berm here to define this loam and grass area. There is a tree here and there's also a bunch of trees here separating this area from --

ATTORNEY JAMES RAFFERTY: So some type of an edge that prevents cars from going up there.

BRENDAN SULLIVAN: Six inches minimum in height.

ATTORNEY JAMES RAFFERTY: Railroad tie?

BRENDAN SULLIVAN: Yes. I'm just

going to say berm or equivalent, six inches high minimum. And that separates basically this area from that. So we don't have cars jumping over that area.

SLATER ANDERSON: So we're proposing a fence in this location. We want a height on that fence? A minimum height?

BRENDAN SULLIVAN: It's probably going to be six feet.

ATTORNEY JAMES RAFFERTY: Six feet.

BRENDAN SULLIVAN: I thought a little bit about this the last couple weeks.

ATTORNEY JAMES RAFFERTY: You might have missed your calling.

BRENDAN SULLIVAN: What else?

CONSTANTINE ALEXANDER: I expressed my view before. I don't think we should get involved in landscaping at all. We're a Zoning Board.

BRENDAN SULLIVAN: Well, I think this is our opportunity to soften the impact

of the station on that --

CONSTANTINE ALEXANDER: What happens when one of the trees dies?

BRENDAN SULLIVAN: They have to be replaced.

CONSTANTINE ALEXANDER: And someone is going to call up Mr. O'Grady and say a tree has died, it hasn't been replaced?

BRENDAN SULLIVAN: No, Mr. Sullivan will make the call.

CONSTANTINE ALEXANDER: My view is very simple, I will support whatever relief the Board wants grant. I think Mr. Bechwati is a man of character and integrity. We've had a lot of testimony to that effect. I also think the neighbors are extremely reasonable. And I think in the real world after this case is over, they will work together and they'll come to a mutually satisfactory resolution, and I think trying to impose that through a landscape plan on a

Zoning map is not useful as part of our efforts. If that's what people want to do, I'm in favor of it, so I'll support it.

BRENDAN SULLIVAN: Doug, did you have any questions?

DOUGLAS MYERS: I wondered what happened to the landscaped area at the southeast corner of the lot adjoining the abutter on Lexington Avenue. There was a landscape area shown on the earlier plan.

SAMI KASSIS: Sounds like somebody didn't need it so I took it out.

DOUGLAS MYERS: Oh, okay.

SAMI KASSIS: Nobody was concerned.

DOUGLAS MYERS: I read the transcript and some of the Board members had referred to the presence of two landscaped areas. And I wonder, I wondered whether that meant or reflected a desire that those two landscaped areas as shown on the first plan were preserved.

SLATER ANDERSON: There is one shown on this for June 28th plan there's a landscape area shown there and a landscape area there.

ATTORNEY JAMES RAFFERTY: This one here?

CONSTANTINE ALEXANDER: That disappeared.

ATTORNEY JAMES RAFFERTY: Did you remove that?

SAMI KASSIS: I took it out since that guy on that side the fence is happy with it. You can't really put too much.

ATTORNEY JAMES RAFFERTY: He has a letter of support in the file and he didn't request it. And I think as they looked at it --

SAMI KASSIS: I thought it was not going to provide what the Board was looking for to be honest with you.

BRENDAN SULLIVAN: You may be right. That's -- I would block that out to get a

better plan in here and stuff like that. So I think -- there was a fence along there.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, you should also note and maybe since you're doing such an effective job with the landscape plan, that there is an agreement to install, condition No. 4, an eight-foot fence along the property identified as the Sands Family Trust. That's by agreement with the neighbor that we would install an eight-foot fence. Have I got that right?

GEORGE BECHWATI: Sure.

TAD HEUER: Just for the length of that lot line?

ATTORNEY JAMES RAFFERTY: Just for that lot line. Because this gentleman does not want that. And we spoke to him and he did not want that.

TAD HEUER: What about those to the right?

ATTORNEY JAMES RAFFERTY: I don't believe -- they were here last time, I don't know if they're here tonight, but they've expressed a desire --

GEORGE BECHWATI: They already have eight-foot fence.

ATTORNEY JAMES RAFFERTY: They have it already.

BRENDAN SULLIVAN: We're talking stockade fence?

ATTORNEY JAMES RAFFERTY: If you look at condition four, it says matching the existing fence at Nine Poplar.

BRENDAN SULLIVAN: Anyhow, that's fine.

CONSTANTINE ALEXANDER: One of the conditions, I think it's No. 2, was hours of operation.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Is that just for the new canopy or for the entire gas

station? We should be clear about that. What are we referring to? It's just a question.

ATTORNEY JAMES RAFFERTY: I think it was intended to mean the operation of the gas station.

CONSTANTINE ALEXANDER: The whole gas station? Okay. I think we should make it clear in our decision.

DOUGLAS MYERS: It would seem to imply any operations on the premises.

CONSTANTINE ALEXANDER: Yes, I'm just saying we should be clear about it.

ATTORNEY JAMES RAFFERTY: Yes, at ten o'clock we have to end all operations.

BRENDAN SULLIVAN: Okay.

Tad, anything else at this point?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it to public comments. Is there anybody here who would like to speak on the matter 260

Lexington Avenue, Fresh Pond Parkway.

JOE ARTHUR: Yes.

BRENDAN SULLIVAN: Yes, all right. Would you please give your full name. Please spell your last name for the record and your address.

JOE ARTHUR: Joe Arthur A-r-t-h-u-r
Nine Poplar Road. Yesterday all the residents of Nine Poplar Road faxed a letter to the Board of Zoning Appeals. And in that letter we asked for preservation plan for the existing trees on the property because they provide stream from the views of the second and third floor Windows 7 and 9 Poplar. The back windows of 254 Lexington to the three abutting properties. So, one of the things that we're concerned about is light pollution from the operation of the station.

BRENDAN SULLIVAN: Now, there are trees along there now.

JOE ARTHUR: There are trees along

here now.

BRENDAN SULLIVAN: This is going to be maintained. And those trees are going to be maintained also.

JOE ARTHUR: What's the guarantee that they're going to be maintained? I thought you hadn't specified that.

BRENDAN SULLIVAN: Well, I think, I think what guarantees -- well, trees to be maintained.

CONSTANTINE ALEXANDER: Yes, we make it a condition of the relief with that.

JOE ARTHUR: One of the things I read about online was that you had the right to specify a tree protection plan. And that's what we're asking for, for the existing trees.

The other thing that we inquired about is the parking on the property.

Mr. Bechwati is expanding his business, and there are naturally perhaps 11, 12 parking

spaces on the property now although perhaps more to be filled by parking in places that don't look like parking areas. With the expansion of the business, and probably will need at least two or three employee parking spots and a certain number of parking spots for customers. And we suggested in the letter that we sent that there should be parking spots that are explicitly set aside, not for the repair cars that are garaged on the property, but to be available for customer and employee parking to avoid spillover into the resident parking. Or seemed to have seen a little have --

BRENDAN SULLIVAN: Yes, I guess I read your letter a couple three times actually, and I guess my thought was in addressing that particular area, I think that we have constrained the amount of real estate by actually quite a bit. And in trying to limit or designate exactly, you know,

employee parking or whatever it may be, I suspect that would be somewhat limited. There was also the real possibility of having a certain flow of traffic around the area, you know, customers coming in and out. I guess I would come down I would find it difficult and probably not support specific designated. As far as enforcement, that's true with any of those places, Ford or Honda, whatever it is, as far as employee parking, if they park on the streets, what have you, if they're not citizens, they obviously are subject to tagging. And if they are citizens, they have a right to park there. So, it's, it's going to be at least somewhat of a small site that we are making smaller by trying to make it a little more pleasing and a little more amenable. So I think in the real world that to construct that, constrain him even more is not going to work I guess is my point.

JOE ARTHUR: Okay.

BRENDAN SULLIVAN: All right, thank you.

Is there anybody else who wishes to speak on the matter? Please come forward and, again, please give your name and please spell your last name for the record.

MATTHEW LONGO: Matthew Longo, Six Worthington Street.

I'd just like to say I'm very pleased and appreciative of the Chair's and the owner's consideration of the side garage as it faces Lexington. I wanted to really ask a couple of questions which I don't know if they've been considered yet, and I might not fully understand the Zoning Ordinance, but the end of last meeting, I was aware that some of the Board members talked about how difficult it was to essentially legislate landscaping. And it seems to me, in reading the Zoning Ordinance, that this is actually

an overlay district.

BRENDAN SULLIVAN: Uh-huh.

MATTHEW LONGO: And if it's an overlay district which I think Fresh Pond Parkway is, there's some fairly specific information about setbacks, landscaping and required tree planting. Is everyone aware of that as it affects the --

BRENDAN SULLIVAN: Well, it is if this were a blank piece of paper in a new development, a new site going in. It is existing. And --

MATTHEW LONGO: Well, it does say here that it affects all new buildings and major alterations. And they're all subject to a development consultation with the Cambridge Community Development Department.

ATTORNEY JAMES RAFFERTY: That requirement exists is for additions in excess of 2,000 square feet.

MATTHEW LONGO: Fair enough. If

that's true, I'm just trying to --

BRENDAN SULLIVAN: Yes, I've sort of gone through that a little bit and realized that it was a dead end for us as far as more than what we're already asking for.

MATTHEW LONGO: Okay. Because they, they're very explicit about the setback which is to be maintained along Fresh Pond Parkway and the trees that are required there.

BRENDAN SULLIVAN: Yes.

MATTHEW LONGO: And what's being proposed.

BRENDAN SULLIVAN: Right.

MATTHEW LONGO: Lit signs and all that sort of stuff. So you're saying that this gas station doesn't apply to that?

BRENDAN SULLIVAN: It does not apply to this particular site. I should have gone through that initially knowing that it is part of the overlay.

MATTHEW LONGO: Okay.

And then another matter, we were talking about lighting of the canopy. And I think several of the neighbors were concerned about the lighting being directed in a downward fashion as opposed to spreading out. And there's this very good study done about how gas station lighting can be done really with just different types of lamps. And so, for example, here's a typical canopy with normal lamp lighting. And then they show two other types of lights. And either flat lens lighting or a drop down lens. And the impact is very significant. So one of the things that would be helpful, I think, would be if there was some language about the type of lights that will be used in the canopy itself.

ATTORNEY JAMES RAFFERTY:

Mr. Chair, I would note Condition 1 says that the canopy light shall be restricted to the island and will be directed so as not to shine

toward the neighbors. It's the No. 1 condition that we're in an agreement to have lighting.

BRENDAN SULLIVAN: I know there was a canopy detail, was there not? Is that it there?

TAD HEUER: Yes.

BRENDAN SULLIVAN: There was -- the requirement for the canopy is because of the self-serve gas, basically it has to have as a suppression system in it. Hence you have to have a canopy.

Where is the lighting? Is there any lighting shown on this at all?

GEORGE BECHWATI: The canopy only here where you see the foundation for the canopy, Chairman.

BRENDAN SULLIVAN: Right.

GEORGE BECHWATI: But the light only inside the canopy. The light only gonna be inside, like -- exactly like this light here.

ATTORNEY JAMES RAFFERTY: Like a recessed light?

GEORGE BECHWATI: Yeah.

BRENDAN SULLIVAN: Or is that fluorescent?

ATTORNEY JAMES RAFFERTY: Are you familiar?

SAMI KASSIS: I'm not familiar.

MATTHEW LONGO: See, that can be a little bit of the issue because the body of the lamp here is quite recessed, but the lens drops down and that causes the light distribution. So you really want to make sure you have the right lens and the right lamp and the right fixture.

BRENDAN SULLIVAN: Was it not similar to the one that was on Concord Avenue, the canopy?

ATTORNEY JAMES RAFFERTY: Your canopy at the Shell on Concord Ave. what type of lighting did you have there?

GEORGE BECHWATI: It has three light and three light inside the canopy. There's nothing outside.

ATTORNEY JAMES RAFFERTY: Will this be similar?

BRENDAN SULLIVAN: Yes, so that basically did shine down on to the vehicles.

GEORGE BECHWATI: Exactly.

BRENDAN SULLIVAN: And did not emit beyond the canopy. Okay, I think that's sort of standard Shell.

MATTHEW LONGO: And if that, if the canopy is being lit from there, there are some additional flood lights which are on-site. Are those to stay?

BRENDAN SULLIVAN: Well, you got me on that one. I'm not sure about the flood lights. Where are they now?

MATTHEW LONGO: If you look at this picture, these are major flood lights which flood the whole area. If the canopy goes in,

does that stay or does that come out?

BRENDAN SULLIVAN: That -- well, I'll ask you. Was that part of the proposal?

ATTORNEY JAMES RAFFERTY: I think they're there. You know, they hadn't been contemplated to be removed. I haven't heard any issue about them.

DOUGLAS MYERS: Are they functional?

ATTORNEY JAMES RAFFERTY: Are those lights operational now, functional? Do you use them?

GEORGE BECHWATI: Only there's one on the left, one on the right. That's the only two lights, Chairman.

BRENDAN SULLIVAN: And they basically are to exit the site.

GEORGE BECHWATI: For the nighttime for the parking lot so people can see walking. There's no other light.

SLATER ANDERSON: So it's safety?

GEORGE BECHWATI: Safety.

ATTORNEY JAMES RAFFERTY: The abutting other recessed significant lighting as well. So I think we're now getting into an area to make adjustments like that --

BRENDAN SULLIVAN: Well, anyhow.

MATTHEW LONGO: I guess the point I'm trying to make is this amount of light was used to light the whole area. And now the canopy is being dropped in to provide additional lighting. So that means the light levels that are at the existing level will be elevated if that is --

CONSTANTINE ALEXANDER: The canopies are only going to shine down. The lighting in the canopy are only going to shine downward. I'm having trouble understanding why the amount of light is going to be increased in terms of the impact of the neighborhood.

MATTHEW LONGO: Because these

lights are being aimed towards that area.

CONSTANTINE ALEXANDER: Yes.

They're there now and they'll continue. The canopy is not going to increase the adverse impact of those two lights as far as I can -- I mean, maybe I'm wrong.

MATTHEW LONGO: It's certainly going to add to the quantity of light.

CONSTANTINE ALEXANDER: I'm sorry?

MATTHEW LONGO: It's certainly going to add to the quantity of light.

CONSTANTINE ALEXANDER: Yes, but that quantity is down -- the new quantity is downward directed, and it's required I think.

BRENDAN SULLIVAN: Will the lumens on the site increase publicly?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And I think those are serving a different function than the lighting on the canopy basically.

ATTORNEY JAMES RAFFERTY: And the

canopy lights will be turned off at ten o'clock.

MATTHEW LONGO: Okay.

BRENDAN SULLIVAN: Yes.

MATTHEW LONGO: Okay. And then the last thing I have is in terms of the size of the planted area. It was mentioned that a landscape company was retained to determine the size of this, and I'm just assuming that's gonna be adequate for the root balls and the life of the trees. So in other words, you can find a lot of places where something like this is planted and you come back in a year or so because it's died and it hasn't had the adequate soil or proper planting and all that.

BRENDAN SULLIVAN: I think the condition will be that they be maintained.

MATTHEW LONGO: Great. Thank you very much.

BRENDAN SULLIVAN: Yes.

Anybody else wish to speak on the matter?

PATRICK BUGBEE: I'm Patrick Bugbee. I live at Nine Poplar Road. I had two quick concerns.

This sign that's existing, the light isn't on now, although my only concern will be when it does go on, it really floods our area with light. And if you're building the canopy, would it be possible to have advertising for gas facing Fresh Pond Parkway? Or if you still use that sign, I don't know if that rotates or not, but that light is abrasive a little bit. And I don't know. I don't know what the plans are for advertising of gas sign now.

BRENDAN SULLIVAN: I think what's in the plan, I think it was answered the last time was that it will be sort of maintained as is. That it's within the sign ordinance, if not grandfathered in, so that it is allowed

as of right, basically. Again, that's one of those other areas that I've explored. I would like to see -- but anyhow, it's allowed as of right.

PATRICK BUGBEE: The other concern would be just or I guess request if there could be some bollards against that fence abutting the property just for both safety. And if you're going to be putting in a fence, I think on one of the properties it probably make sense to make sure if anyone ever backs into it, it doesn't have to be replaced again.

ATTORNEY JAMES RAFFERTY: Well, they're going to have a curb.

BRENDAN SULLIVAN: There's going to be a six-inch height curbing there.

SLATER ANDERSON: That whole grass area will be --

PATRICK BUGBEE: It's my understanding that a couple years prior to moving here someone had crashed into that

fence, and it's just --

SLATER ANDERSON: From Fresh Pond Parkway?

PATRICK BUGBEE: From Fresh Pond Parkway. I don't know if it increased traffic, but it would increase the probability. It just seems bollards are --

BRENDAN SULLIVAN: That can --

PATRICK BUGBEE: It can probably happen anytime.

BRENDAN SULLIVAN: If you go down the end of Sherman Street and there are bollards there, and the car finds their way between them and a car ends up in a person's living room every couple years. But anyhow, I think the curbing itself will deflect or possibly slow down if, you know, somebody hits the fence, it will have to be repaired unfortunately. But, anyhow.

PATRICK BUGBEE: All right.

BRENDAN SULLIVAN: To be honest with

you, I think the bollards would junk the place up a little bit more so than what they want.

PATRICK BUGBEE: I think there's two bollards just outside the door on that fence, so basically right around the corner that's directly where the car went through before.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: Well, there are cars that park in front of it so they would have to be a tough circumstance. You would have to get through the parked cars, over the curb and another 25 feet before you hit the fence.

PATRICK BUGBEE: All right.

BRENDAN SULLIVAN: Thank you.
Anybody else who wishes to speak on the matter.

JOSEPH O'LOUGHLIN: My name is Joseph O'Loughlin, 107 Aberdeen Ave. in Cambridge. I believe George is the type of businessman that we'd like to promote in

Cambridge. At the end of Aberdeen Ave. there are two gas stations, neither of which are looking as good as George's proposal. I'd like to say I'm in support of his gas station and renovations.

Thank you.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: Okay, I see none. I will close public comments at this point. Mr. Rafferty, any words of wisdom?

ATTORNEY JAMES RAFFERTY: No, just thank you for those helpful suggestions. We'll be eager to incorporate them in the plan.

BRENDAN SULLIVAN: Anybody else?

CONSTANTINE ALEXANDER: I'm fine.

DOUGLAS MYERS: One question.

Mr. Rafferty, who owns the fences? Are they located on this property and owned by the applicant?

ATTORNEY JAMES RAFFERTY: I have to consult the survey. They appear to be on Mr. Bechwati's property.

GEORGE BECHWATI: These two fences.

ATTORNEY JAMES RAFFERTY: Oh, that's right. If you look at the photo. There's a chain link and then there's a wooden. I don't know. But we are installing a fence in one particular area.

BRENDAN SULLIVAN: This fence here, knowing that the good side is facing this way it appears that it's probably these people that would own it. I would guess that's the tradition of turning the good side toward -- but who knows. I think if any damage was done, then the owner would -- the rightful owner will --

ATTORNEY JAMES RAFFERTY: The

survey has them located -- to answer your question, the survey does have them located on Mr. Bechwati's property. That's not always dispositive on the question of ownership, but it usually is an indicator. But it has something to do with who installs it and whether it was put there by agreement or not.

TAD HEUER: Put there 21 years ago.

ATTORNEY JAMES RAFFERTY: Yes, unless it's registered land.

TAD HEUER: True.

BRENDAN SULLIVAN: (Inaudible.)

CONSTANTINE ALEXANDER: No, I don't recall.

ATTORNEY JAMES RAFFERTY: Not that I recall.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the Special Permit to construct a canopy at the pumps, and also to add a bay as per plans submitted.

It's a Special Permit. The Board finds that the requirements of the Ordinance can be met.

That the building will conform to all the dimensional standards and the use of premises is existing, conforming.

The Board finds that traffic generated or patterns of access or egress will not cause congestion, hazard or substantial change in the established neighborhood character.

The Board finds that it has been an existing gas station, repair shop for many years. And that will continue to do so without any additional traffic generated or access or egress by any congestion or substantially change in the established neighborhood character.

Continued operations or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

And the Board finds that the property is located, business zoned, that there would not any nuisance, hazard created to the detriment of the health, safety or welfare of the occupants of the proposed use or to the citizens of the city.

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

The Board grants the Special Permit as per the plans submitted, and also the marked up landscaping plan which is dated August 6, 2011, and initialed by the Chair.

On the further condition that there be a set of conditions which have been agreed to by the Petitioner and the neighbors which will become part of, and incorporated into this decision, and shall be a requirement of the Special Permit.

Also, that regarding the landscape

plan, that the landscaping be maintained in a proper condition. Any dead, decaying species of plantings shall be removed and replaced to be similar to the surrounding, and that there not be any storage of debris, tires, battery, car parts around the back of the building.

That non-registered vehicles be stored on the premises.

CONSTANTINE ALEXANDER: Shall not be stored.

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Shall not be stored.

CONSTANTINE ALEXANDER: I think it's a matter of law anyway. They can't.

BRENDAN SULLIVAN: Right.

ATTORNEY JAMES RAFFERTY: He does have a permit, as many gas stations do, to --

BRENDAN SULLIVAN: Repair plates.

ATTORNEY JAMES RAFFERTY: -- repair

plates.

BRENDAN SULLIVAN: That's okay.

ATTORNEY JAMES RAFFERTY: And also sometimes someone will -- a car will be offered for sale. So I'm not sure during the interim if that's a registered car, but it's permitted under the licensing.

BRENDAN SULLIVAN: Abandon vehicles.

ATTORNEY JAMES RAFFERTY: Oh, right.

BRENDAN SULLIVAN: Cars are totally --

ATTORNEY JAMES RAFFERTY: Right. It would have to be there for an active purpose, sale or repair.

BRENDAN SULLIVAN: Right.

Why don't we delete that last part about unregistered vehicles because that is sort of slippery slope in a sense.

Okay, anything else?

CONSTANTINE ALEXANDER: Just to be clear that the hours of operation referred to in those conditions are the hours of operation for the gas station itself and not just for the canopy.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: That's what we heard.

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: For the establishment.

Anything else? All those in favor of granting the Special Permit?

(Show of hands).

BRENDAN SULLIVAN: Five. Good luck.

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

GEORGE BECHWATI: Thank you, Chair. Thank you everybody.

(8:05 p.m.)

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

BRENDAN SULLIVAN: The Board will

hear case No. 10110, 173 Coolidge Hill.

Mr. Gates, if you re-introduce yourself for the record and tell us where we left off.

JOHN GATES: Sure. I'm John Gates, the owner at 173 Coolidge Hill. And we left off with a -- I'm trying to think of a gentle way to describe this. A badly butchered -- and I apologize, as I hope you read in my application.

BRENDAN SULLIVAN: Yes.

JOHN GATES: And you asked us to go back and get the process right and to address some of the concerns that were raised the first time.

BRENDAN SULLIVAN: Okay, so what is different in this plan to the proposed new plan? I'm sorry, what is the difference between the original plan and the one that's before us?

JOHN GATES: The differences are

somewhat minor. We've reduced overall length of the dormers. The main difference is the application this time is not the application I gave you four years ago. And, therefore, I had a chance to address in the application some of the questions that had been raised by the Board which hadn't been addressed before.

CONSTANTINE ALEXANDER: Explain for us -- excuse me, you did change the size of the dormers. But the dormers are still, in terms of length, three feet beyond what's recommended by the dormer guidelines.

JOHN GATES: Yes.

CONSTANTINE ALEXANDER: Why?

JOHN GATES: I think largely it's both aesthetic from the way that it looks. So that when you look at the plan, when you look at the elevation, it was actually the architect, who is not with me tonight, Peter Ray, who convinced me to reduce them six

inches, each of them. I liked his plan from the beginning. And the way that I read the guidelines were -- I read them as recommending.

CONSTANTINE ALEXANDER: They are, they're guidelines.

JOHN GATES: Right. And so I thought because I liked the original plan, I would follow his advice by reducing them some to reflect the respect for the process. But also, if you will, sticking to my guns and coming back with the plan that I thought was attractive in a place and in a neighborhood where I didn't feel the underlying policy addressed by the guidelines was impacted.

CONSTANTINE ALEXANDER: Let me push that a little bit. Are you saying that you could comply with the former guidelines as to the length, and the only reason you're not proposing to do that is for aesthetic reasons?

JOHN GATES: Well, so the second reason -- thank you for getting me back on track. The second reason was that -- the main reason for doing this in the first place is that the rooms on the third floor of this house are greatly impacted by the slope of the roof. The bathroom, in particular, and smaller bedroom, as I think you will see in the application, are both questionably even fitting within the building guidelines for the size of the rooms and for the height of the ceiling. The addition of the dormers will make those two rooms in particular much more liveable. The smaller bedroom's really quite small, and the addition to this dormer in that bedroom therefore kind of dictates the size of the other dormer, if you will. Because there's a symmetry and an attractiveness in having them match. Rather than having smaller room addressed a big a dormer as we can get, in order to impact that

room at most, and then a smaller dormer on the other side, it would look awful.

CONSTANTINE ALEXANDER: And the part of the relief you're seeking involves deck. I didn't see any justifications for the deck. You said it adds nice architectural detail. And you suggest it can be used for a rope ladder for a means of egress. But you can do that from the windows of your dormers. Tell me why we should grant relief with regard to the deck.

JOHN GATES: So that the deck is a part of the application, so I'm asking for relief for the whole application.

CONSTANTINE ALEXANDER: Right.

JOHN GATES: It's my feeling that the deck serves to tie together the architectural elements of the two dormers.

CONSTANTINE ALEXANDER: You need a deck to tie it together?

JOHN GATES: I like the way that it

ties it together. I thought it was attractive. I don't want to overplay my hand about the putting a ladder there, but I do think that that's, you know, an additional benefit.

CONSTANTINE ALEXANDER: Right.

JOHN GATES: And, you know, honestly for me the way that -- the way the house sets up, it's just a great spot. If I could have a deck there, it would be fantastic. And I didn't think of it as something that was, you know, going against the underlying policies behind the zoning law or the --

CONSTANTINE ALEXANDER: And help me. Where does the deck -- where do you face out towards? You're on the deck. Where do you face out?

JOHN GATES: So it looks out over the front or back parking lot of the Shady Hill School and then across the Buckingham Brown and Nichols football field.

CONSTANTINE ALEXANDER: Not to your neighbors?

JOHN GATES: No, not at all. I did actually -- thank you for reminding me. I had a neighbor approach me on the way here tonight, one other neighbor who gave me a letter of support so I can just pass that to you.

So no, it doesn't impact -- it's not in the sight line of any of the neighbors. And all the neighbors have expressed their support. All the abutting neighbors.

TAD HEUER: So when last we spoke we asked your architect whether these met the dormer guidelines and he said yes. And then --

JOHN GATES: Well, he sort of said yes and he floundered actually.

TAD HEUER: Well, he floundered and then said he declared yes, which the answer was undoubtedly no. But the answer was no

for two of the three reasons:

One of them is going to the ridge. And that was the correct answer. It doesn't go to the ridge. The guidelines don't like to see.

The other two were the length, which we just discussed.

And then going into the side wall. Do these still go into the side wall?

JOHN GATES: It does. It goes down into the side wall.

TAD HEUER: But it doesn't break the soffit?

JOHN GATES: But it doesn't break the soffit, right. We preserved the eave underneath it.

I drew attention in the application to the language in the guidelines of saying it's not -- when it sat flush with the main wall, it's not prohibited outright but not recommended which is different than the

removal of the eave which is described as strongly discouraged.

TAD HEUER: Right. So both discouraged but less discouraged than the other one, right?

JOHN GATES: One not recommended and the other one strongly discouraged, right. Just to be specific about the language.

BRENDAN SULLIVAN: Let's see, you only have eight abutters. Shady Hill School being one of them. You only have seven. You're sort of at the end of the earth there. Everything else is happening the back side of you.

JOHN GATES: That's right.

BRENDAN SULLIVAN: And Shady Hill being in front of you and then the football field. Okay, I guess I was trying to get a name on 127 Coolidge Hill. Do you know who that is?

JOHN GATES: Yeah, Jim Wallace.

BRENDAN SULLIVAN: Wallace?

JOHN GATES: Wallace. He's around the corner. Back up on the main loop of Coolidge Hill.

BRENDAN SULLIVAN: Yes.

Tom, any thoughts?

THOMAS SCOTT: I mean, I don't find it offensive. I think it's a modest increase in the FAR. I think the symmetry works with the house because the house is very symmetrical. I don't have any issues with it.

BRENDAN SULLIVAN: Initially I guess I didn't really see the reason for the deck except that I've gone over there twice in the last couple weeks, anyhow, and sort of sat there and tried to imagine that whatever is -- actually I think No. 1, it clearly doesn't face anything.

CONSTANTINE ALEXANDER: That's the point.

BRENDAN SULLIVAN: No. 1. I mean, nobody is really going to see it. There's probably a benefit to the Petitioner. And whatever that -- and yet architecturally I think that you may be correct in that it does sort of -- otherwise you're going to have these two things sort of sitting up there. And, you know, then I go to Highland Street and I see the widow's walks, and there's sort of all those little elements that sort of connect and it's maybe a little bit of a piece of jewelry on a large structure, but yet, you know, sort of I think probably softens it. But anyhow, that's my. What's your thought, Mr. Heuer? Tad?

TAD HEUER: Oh, I'm still not thrilled with it, but -- well, I'm not thrilled with it because I -- the dormer guide -- we've had discussions on the record already. The dormer guidelines are guidelines. Dormer guidelines really what

they do, though they're guidelines, they regulate both. They're not guidelines that are binding on this Board because they're guidelines. They're guidelines that are indicated here because there's increase in FAR. And what the former guidelines are doing when there's FAR issue involved, which we do have jurisdiction, is regulating the bulk of the structure. And the reason that the FAR guidelines are important is because we don't want to bulk up the lot. That's what the FAR guidelines are for. And this is essentially a proxy for that. And I do know the Petitioner says, you know, he has an undersized lot. Even if this lot were not undersized, it's only marginally undersized. Even if it were the minimum lot size, (inaudible), we'd still be looking at addition to FAR. You know, you still would have 81 square feet or so. That would need to be before this Board because 0.5 is an

8,000 square foot district would still put the Petitioner over. Which means, again, we're still talking about an increase in bulk over the requirement of the Ordinance. And in terms of hardship, I'm just not sure that these dormers, and particularly the deck, I see no argument for hardship, legal hardship at all. It's just there isn't one. And I think this Board has found that in previous cases, not that that couldn't be a nice addition, sure. But legally I don't think there's a basis for the Board to find a hardship for a deck on the house, particularly whether this is a big open space or not.

In terms of the length of the dormers. I have no problem with the dormer in the back. The bathroom, it's 15 feet. You know, it's well off. It's not on the Highland Street side or the entry side of the house. So it's really hidden from everything.

The nine foot dormer's, quite frankly, as I was just discussing with Mr. Hughes, you lose three feet on those dormers because you have a deck to get out to -- you have a door to get out to a deck. And if you have nine feet on your dormers and you're using three of it for a swinging door, essentially you're down to 12 feet of usable dormer space, you're within the dormer guidelines.

So, it seems somewhat arguable, at least particularly on a Variance standard where the -- that we have the requirements that we don't grant it unless there's a firm showing of a hardship. That the Petitioner could stay under the desired -- need to be here at all would be under FAR protection. Certainly would be within the dormer guidelines. If the deck were moved and the access to the deck were moved, you'd be able to regain the space that you'll actually have. So I guess I'm not persuaded yet that

there's a hardship here based on the dormers.

BRENDAN SULLIVAN: Okay.

TAD HEUER: As to the front. To the back, I'm fine.

JOHN GATES: Can I answer some of those objections?

BRENDAN SULLIVAN: Let me go through.

TIMOTHY HUGHES: I'd like to hear his answer.

BRENDAN SULLIVAN: Okay. Yes.

JOHN GATES: So, first of all, I think we're also exceeding the FAR. That's why we were here before. So in other words, anything we do with a dormer is going to require me to be in front of you.

TAD HEUER: Sure.

JOHN GATES: So, oh, I thought you had said that six foot dormers wouldn't put me in front of you.

TAD HEUER: Even if you were looking

at the argument where marginally under our lot size, that essentially --

JOHN GATES: But because I'm already excess of the FAR, I have to be here anyway.

TAD HEUER: Yes.

JOHN GATES: So, and then the other thing I wanted to call attention to, which I did in my argument in the application, is that the guidelines, which I know I agree, the argument's been there, they are guidelines, they're principally concerned with the visual impact on public space. And my lot and where it is, there's not a visual impact on public space. So, just as in terms of policy as opposed to the actual guidelines themselves, but the policy that underlies them, I think I'm well within, you know, any argument that offending a policy underlying former guidelines.

TAD HEUER: If that's true and we'll take it as true, what's the argument that the

Ordinance which mandates a 0.5 FAR in this district should be gone beyond? Because, you know, if former guidelines are guidelines, and we can worry about whether or not they apply and what the (inaudible), the Ordinance very clearly says 0.5 and beyond that, it's essentially no. That's not optional. That's what the City Council has declared for this district.

JOHN GATES: Sure. There is a process by which to apply, obviously that's why I'm here, to go beyond that. It's as we've noted, a very small ask. I'm not asking for much beyond the FAR. And, you know, if there's a hardship, again, it's that in part that this lot, compared to the other lots, all around in my neighborhood, and therefore, the size of my house and the mass of the house compared to the other houses in the neighborhood, it's -- I'm not pushing any envelope. So, in other words, in the context

of the neighborhood this house is in, there isn't the again the underlying policy argument that we're trying to prevent, with FAR, big houses on small lots. We, in this context --

TAD HEUER: But that's not a policy. That's just what the City Council has said. You could apply for an A zone -- we're in a B zone? What are we in?

BRENDAN SULLIVAN: We're in an A zone.

TAD HEUER: We're in an A zone. Actually the City Council has said even in the zones where we allow the most space, we still have restrictions on. That's not for us to say well, my lot happens to be a bit smaller in this district and that's why it's a ratio and not a declared number, right?

JOHN GATES: Right. I hear you. The lot is smaller than what it should be by that same law given the neighborhood and the

zoning district it's in. That's what I'm suggesting is a hardship.

TAD HEUER: I wouldn't go that far, because then you would suggest that really that house is pre-existing non-conforming and actually the intent of the Zoning Ordinance asks for that not to be there at all.

JOHN GATES: I understand that you're the lawyer on the committee. I don't mean to lock horns with you. That's not my intention.

BRENDAN SULLIVAN: Okay, Tim?

TIMOTHY HUGHES: I know this maybe isn't drawn to scale. But is it the intention that this dormer is not going to stick out farther than the line that these windows create on the two floors beneath? Because it looks like it sticks out now.

JOHN GATES: Passed the line of the windows?

TIMOTHY HUGHES: Do you see what I'm saying?

JOHN GATES: I do. I saw it the same way that you're suggesting that -- I think I saw it in the way that Peter drew it that it would not.

TIMOTHY HUGHES: I think that's the way it should be.

JOHN GATES: That it would line up with those windows.

TIMOTHY HUGHES: That it should line up or even be inside of that line. Because I think it's awkward outside of that line.

BRENDAN SULLIVAN: It lines up on the left side.

TIMOTHY HUGHES: It seems to on the left but not on the right. I just wonder if it's a hasty drawing.

JOHN GATES: It was a drawing done in the last days here, but when I came before you guys the first time, it was three-foot, six,

which is the guideline to the edge of the roof. And now it's four-foot, six, the way that he's revised this with the nine-foot dormers. He came back end of last week and remeasured the length of the roof line to make sure that we actually had four-foot, six on each side.

CONSTANTINE ALEXANDER: And the condition the relief, assuming we grant relief, that the dormers do not extend beyond the line of the windows. That's -- I think Mr. Hughes makes a good point, and I support that. I don't want to see us approve it subject to those plans and we find out in fact when you go to build, you are going to have the dormers extend beyond that point.

JOHN GATES: I would hate to box myself in. If we have four-foot, six on each side, I would think given that the guidelines are three-foot, six --

BRENDAN SULLIVAN: If the dimension

is not right or the drawing is not correct --

TIMOTHY HUGHES: Considering that we're giving you more than the guidelines ask for, I don't mind boxing you in, you know.

JOHN GATES: Fair enough.

TIMOTHY HUGHES: I would like it to be there, you know, as a contingent.

JOHN GATES: Fair enough.

BRENDAN SULLIVAN: Just inside the deck.

TIMOTHY HUGHES: Yes. Squeeze it out of the deck.

JOHN GATES: Fair enough.

BRENDAN SULLIVAN: Other than that you're --

TIMOTHY HUGHES: Other than that, you know, I think Tad makes a very salient argument about the, you know, the hardship for a deck. But I do think that, you know, it's modest overall and it doesn't have the visual impact on the community overall. So

I'm -- I could vote for it.

BRENDAN SULLIVAN: All right. Let me read into the record -- is there anybody else here who wishes to speak on the matter, Coolidge Hill Road?

(No Response.)

BRENDAN SULLIVAN: There is a correspondence from a Mr. Jim Wallace at 127 Coolidge Hill referencing the Gates. "I enthusiastically support the Gates' request for permission to the proposed home improvement. Jim Wallace."

And previous letters of support have been read into the record.

Okay. Make a motion then?

CONSTANTINE ALEXANDER: I'm fine.

BRENDAN SULLIVAN: Okay. This is for a Variance to build three dormers as per the revised plan submitted which is dated August 3, 2011, sheets one and two.

I make a motion to grant the relief

requested. The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner as it would preclude Petitioner from making use of some much needed space in the attic due to the -- and the hardship is owing to the non-conforming nature of the existing house. The siting of the house on the lot, which predates the existing ordinance, a non-conforming in the front and left side, and also the lot area for a dwelling unit. So there's inherent hardship to expand the residence due to the non-conforming nature.

The Board finds that relief may be granted without substantial detriment to the -- I lost my spot here. The hardship is owing to the non-conforming nature of the existing house.

The Board finds that the relief being requested is somewhat small in nature.

The Board finds that desirable relief may be granted without substantial detriment to the public good. And that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Board notes the substantial letters of support in the file from the immediate abutters.

On the condition that the work be done in accordance with the plans submitted. All those in favor of granting --

CONSTANTINE ALEXANDER: Two things. Brendan, I think, one, we should make it clear that one of the reasons is that the impact this proposed relief is minimal, if any, impact on the residential character of the neighborhood, giving the sighting of the structure. Particularly the deck and the dormers faces the school.

And No. 2, I think you want to pick up

Tim's condition regarding the plans.

BRENDAN SULLIVAN: Oh, yes, sorry.

CONSTANTINE ALEXANDER: And make that part of the motion.

BRENDAN SULLIVAN: Let me back up then. That with relationship to, and I'm just going to A1, that the edge of the dormer on the right side be aligned -- the edge of the dormer be aligned with the edge of the window on the first and second floor of the house as noted.

CONSTANTINE ALEXANDER: It doesn't have to be aligned, just say you can't extend beyond it.

BRENDAN SULLIVAN: Well, align.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Okay.

And that any modification to this would be taken out of the dimensions as proposed for the deck.

Anything else?

TAD HEUER: Take it out the dormers.
I'm serious.

BRENDAN SULLIVAN: Or the dormer,
yes, that's right.

All those in favor of granting the
relief.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.
(Sullivan, Alexander, Hughes,
Scott.)

BRENDAN SULLIVAN: One objecting.
(Heuer.)

BRENDAN SULLIVAN: Any descenting.

TAD HEUER: I do not believe the legal
standard for hardship under Chapter 40-A,
Section 3 as listed in the (inaudible).

BRENDAN SULLIVAN: Anyway, granted.

JOHN GATES: Thank you.

(8:30 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott.)

BRENDAN SULLIVAN: All right. The Board will hear case No. 10114, 175 Huron Avenue. This would be the second case on Huron Avenue.

CONSTANTINE ALEXANDER: This is the residential conversion. No office.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty appearing on behalf of the applicant. Seated to my left is Mr. Ben Svenson S-v-e-n-s-o-n. Mr. Svenson is a principal of the 175 Huron, LLC, the owner of the property. And to my right is Ms. Diane Lim L-i-m. And Ms. Lim is the project architect.

BRENDAN SULLIVAN: Before we begin, just noting the letters in the file and also obviously the people in the neighborhood, has this had in your estimation a full hearing?

And I guess my only thought is that if some discussion, whether it be here, we go through the rest of the agenda and, you know, the ritual and then you come back would be helpful, that's fine. I just did not want to hear an hour and a half, two hours and then feel that that could have been our time better spent.

ATTORNEY JAMES RAFFERTY: I fully understand, Mr. Chairman. And I would have to say in my view there has been an extensive hearing. This case first appeared on the agenda of this Board in January of this year.

BRENDAN SULLIVAN: So you just want to proceed as is?

ATTORNEY JAMES RAFFERTY: I think so.

BRENDAN SULLIVAN: Okay, that's fine.

ATTORNEY JAMES RAFFERTY: I think so. And I thank you. I don't say that

casually, but I do acknowledge that there are -- I'm aware of abutters that have reservations about certain elements of the plan, and I think -- and I hope in our presentation we will be able to demonstrate how we've addressed those to the best of our ability.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: Okay?

BRENDAN SULLIVAN: Yes.

ATTORNEY JAMES RAFFERTY: So, the site itself, I'm sure Board members are familiar with Ms. Lim gave me a full photo portfolio that the Board members might find of interest rather than listen to me go on.

CONSTANTINE ALEXANDER: I've seen it.

ATTORNEY JAMES RAFFERTY: You've seen it.

It's a very interesting, it's an interesting site. As the Board knows, its

location. And I, the Board knows is familiar with the Zoning boundary. But it abuts the boundary between the Business A District and the Residence B District. Across the street, directly across the street, the Business A, the business district extends all the way to Manassas Ave. So across the street, immediately abutting the property is the business district.

And the property has been used as a funeral home since 1938. Discovered one of the earliest variances I could find in 1938. It's one of the few variances that I note the Chairman was not sitting on in 1938. But that's not to suggest that there isn't some connection to the Chair, because the building permit's from 1948 and 1963 have the name of Patrick J. Sullivan. So, it might suggest that there's some legacy connection.

But at any rate, it does address one question is what is the status of this

property? This property was for sale, as I'm sure some members know, for an extensive period of time. The question is what can go on here? There's been some correspondence and inquiry about non-conforming uses and what can go there and what's been grandfathered, and what's been abandoned. As the Board knows, when a use is permitted by variance, as long as that variance doesn't lapse, meaning that it's used within the first year of its issuance, than the variance remains in place.

So for purpose of analysis in talking with abutters and others, I have made it known that this has a commercial variance, a variance that allows for a funeral home. And certainly Mr. Svenson didn't purchase this with the intention of operating a funeral home. He doesn't wish to operate a funeral home. But nonetheless the impact of that permitted use under the variance, I would

suggest are relevant in analyzing the impacts of what's being proposed here.

TAD HEUER: Could you -- was it a variance only for a funeral home or was it for broader commercial uses, were they accepted in any way?

ATTORNEY JAMES RAFFERTY: No. The variance itself says use of existing frame dwelling for conduct of the funeral home. That was a use variance. And then there were subsequent, two subsequent dimensional variances that allowed for an addition in the front and an addition in the rear, one at 48 and one in 62.

CONSTANTINE ALEXANDER: So, is it fair to say that you could if you wish, or your client, as a matter of right, can operate a funeral home there, but could not operate another kind of a business there without getting relief from us?

ATTORNEY JAMES RAFFERTY: That's

exactly correct. That would be my understanding of this.

As I said, though, that is the legal status of the property from a zoning perspective what could go on there. And I say that because I think there's some relevance to the fact that the impacts here are -- should be assessed in some measure against what has historically gone on, and in theory what could take place today.

When Mr. Svenson bought the property, he studied it extensively. And his original conclusion, the front building, the front addition, the masonry addition, did not lend itself easily to a residential use. So his proposal in the first case, the case we are not hearing, had been to have two dwelling units, and to use the front portion, the portion of the ground floor as some type of retail office. And as I'm sure the Board is aware, there is a small commercial cluster at

the corner of Concord and Huron and with a mix of offices, dental offices, bakeries, dry cleaners. And the thinking was that this use would be compatible with those uses and fit easily into that mix.

The reaction to that was poor from some abutters. In fact, the Board has in the other case a letter from counsel from many abutters on Royal Ave. who took very strong exception to the introduction of the commercial use here. And we met repeatedly with those abutters, one on one and with their attorney. And Mr. Svenson was encouraged to explore whether could make the whole project residential. And he was skeptical that he could do that, but some period of time was spent with Ms. Lim coming up with a design. And the floor plans that you see tonight really reflect a creative attempt to achieve three dwelling units in a structure that has a lot of blank walls, has a lot of depth, not

a lot of natural light. But Mr. Svenson did come up with that change. And as a result of those changes, and particularly with the changes to the rear facade of the building, those abutters that were previously represented by counsel and opposing the project now do not oppose the project and there's correspondence to that effect in the file. That's what led to the second case, the case we're hearing now which is -- it was necessitated because the zoning relief associated with the conversion to the three units was sufficiently different than the advertised original case that in consultation with the staff, I made the determination that we should file a new case and have a new advertisement.

So, tonight's application has two components to it. It has a variance component, and it has a Special Permit component. The variance component involves

a few alterations or additions to the existing structure and they occur in three places.

The first two are associated with the third and fourth floor of the property. And what the proposal is, and I'm not going to look at the rear elevation of the property. Just direct us to the rear elevation.

DIANE LIM: Yes.

ATTORNEY JAMES RAFFERTY: The plan introduces a head house on the third floor which represents an additional 138 square feet that allows access to a deck that has existed there before.

CONSTANTINE ALEXANDER: Can I interrupt you? I'm sorry. But the amount of square feet or the FAR analysis didn't change even though the head house was being added. Is that because you're taking some of the property away for parking?

ATTORNEY JAMES RAFFERTY: That's

exactly correct. The net change is there's an add but the add is less than the deduct. And the deduct comes as a result of the parking. So there are changes in the third floor. There's a head house. In an earlier iteration there was a larger head house. In reaction to -- in response to a butter reaction, the head house was significantly reduced to do nothing more than simply provide a stairway. Before it was a stairway in a room.

CONSTANTINE ALEXANDER: There's a sink in it according to your plans.

ATTORNEY JAMES RAFFERTY: Not in this head house.

TAD HEUER: Not in the plan that was in that file I don't think.

CONSTANTINE ALEXANDER: Last time I looked at it I thought there was. Maybe I made a mistake.

ATTORNEY JAMES RAFFERTY: Well,

there's a bathroom off the bedroom. But it's not in the head -- but you're right, it's part of the footprint but I wouldn't say it's in the head house.

CONSTANTINE ALEXANDER: Are you suggesting to me that the head house is going to be used for something more than just access and egress to the deck?

ATTORNEY JAMES RAFFERTY: No, not in its current form. The head house is merely that stairway.

BRENDAN SULLIVAN: Is this plan dated 6/20/11, is this in the file?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: All right. The reason I had the same question, because I've written down in my notes I've reviewed the file on Tuesday morning. I have marked square at 21 by 13 head house.

DIANE LIM: That's what we had in between.

TAD HEUER: Right. Which suggests the plan I was looking at when I wrote those notes down.

ATTORNEY JAMES RAFFERTY: You weren't looking at the correct plan. On June 20th --

TAD HEUER: But that was the only plan that I had. That's my only question.

ATTORNEY JAMES RAFFERTY: Well, I can tell you on June 20th, the time of the last hearing, there were two pages substituted and filed with the Board. And they involved the reduction of the head house and the change of that. They have been in the file since the Monday prior to the June hearing, so -- and they have not changed. But there should be a copy of that letter in the file, and there should be those plans.

BEN SVENSON: There are no changes made.

BRENDAN SULLIVAN: Anyhow.

TAD HEUER: Go ahead.

ATTORNEY JAMES RAFFERTY: Anyhow. So that as noted in that letter, the head house plans were modified and the elevations were modified as well. So, the head house now is only -- is that the letter?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: While they're looking at that, Mr. Rafferty, the head house in response to abutters' concerns, you reduced the size of the house?

ATTORNEY JAMES RAFFERTY: The head house --

CONSTANTINE ALEXANDER: Okay, sorry. Have any concerns been expressed about the use of the deck from which you're going to go from the head house? That could have privacy issues for abutters.

ATTORNEY JAMES RAFFERTY: Right. There had been, and frankly even before they were raised, I -- based on my experience with

the Board and my advice to Mr. Svenson, my suggestion was to pull the deck as originally proposed, went to the edge of the building. My suggestion was to pull it back within the setback areas. And that was done, and it's that plan that the rear abutters now support, as well -- well, I'll -- the side abutters are here so I'll let them speak to that question.

The dimensional changes that are occurring here, which still result in a net reduction, occur at that head house, that stairway, and a small bathroom that's in a bedroom there. And then there is a dormer addition of 88 square feet. So, what happens is that there's a deduction, though, the area where the parking is proposed to be located represents a reduction of 570 square feet. So the difference is a net reduction of a few hundred square feet.

Now the parking itself is an issue that we've spent a considerable amount of time on.

The original application didn't create any additional parking spaces. There's an existing driveway which they used to load materials and --

CONSTANTINE ALEXANDER: Inventory.

ATTORNEY JAMES RAFFERTY:

Inventory. Well said.

So it had an active history. But the thinking was that -- and on the other side of the property there's no opportunity for parking. So for the longest time the belief was the parking is what it is, it's just that one driveway. I will say Ms. Lim, through working with her engineer, has come up with a parking scheme which actually allows for three parking spaces. Part of the relief, the variance relief, requests some dimensional relief or some relief from the dimensional requirements of those parking spaces. They meet the eight and a half foot width which are required for spaces. The

length of the parking space goes into the driveway.

I recall the Chairman asking for some added dimensions on the driveway, and we provided that on the file because to get an understanding of that.

CONSTANTINE ALEXANDER: Well, scheme is a well chosen word because you do have something on paper that shows you have three parking spaces, but if we grant you the relief, to me it's questionable whether functionally you have three parking spaces.

ATTORNEY JAMES RAFFERTY: I think we acknowledge that only a car of a certain size and only a driver with a certain level of familiarity would be able to do that, but it's the analysis by Ms. Lim that that can be achieved. Having said all that, and anticipating a possible skepticism on that, the application also seeks relief from the parking requirements. And I don't typically

say choose from column A or column B, but in this case, there is the existing driveway, so there's clearly one parking space. And the one parking space has historically supported the residential use and the funeral home use. And in this case if the conclusion was that those parking spaces don't work or we don't want them, then the applicant asks for a request to waive parking.

CONSTANTINE ALEXANDER: How many would you have, only two parking spaces?

ATTORNEY JAMES RAFFERTY: Well, I think we would have only one as defined by the Ordinance. I think an opportunity for tandem might exist given the depth of it, but we haven't explored that.

CONSTANTINE ALEXANDER: So without zoning relief you'd have one, assuming on the alternative B, you'd have parking on premises for one, one unit, one parking space?

ATTORNEY JAMES RAFFERTY: One

parking space.

TAD HEUER: You can also get one parking space if you put one unit on the premises.

ATTORNEY JAMES RAFFERTY: Well, you get one parking space if you get one parking space.

TAD HEUER: Could you put two units on the premise without relief from the Board?

ATTORNEY JAMES RAFFERTY: No. We don't have the lot area per dwelling unit.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: That's why we're here.

TAD HEUER: No, no, no. Well, technically, yes. But you're here for three. You still would have to be here for two.

ATTORNEY JAMES RAFFERTY: I'm here for a bunch of things. I'm not through with my list.

CONSTANTINE ALEXANDER: Yes, you're here for a bunch of things.

TAD HEUER: But on that specific question, that number of units, you have to be here for two units, right? You couldn't do two units as of right?

ATTORNEY JAMES RAFFERTY: That's right.

TAD HEUER: Solely on that question of number of units.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: You could do one unit as of right and you could do one parking space in that driveway area you can just push it back beyond the setback and you're good to go, right?

ATTORNEY JAMES RAFFERTY: Then I wouldn't be here.

TAD HEUER: True.

ATTORNEY JAMES RAFFERTY: All right.

TAD HEUER: But is that an as-of-right solution that your client did not want to pursue?

ATTORNEY JAMES RAFFERTY: I didn't think it was feasible to consider this as a single considering the square footage of the building and the size of the building, no.

CONSTANTINE ALEXANDER: Since we're on this subject I wanted to get to later, but this is a good segue for me. What about a two-family use of this structure? You could do two-family, you don't need zoning -- you need zoning relief from us.

ATTORNEY JAMES RAFFERTY: We proposed a two-family with the commercial use.

CONSTANTINE ALEXANDER: No, no. I'm talking a pure two-family. This is a Res B district. You're supposed to as a matter of right, subject to all the other requirements, you could have one-family or

two-family.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: A multi-family which is three units or more, you need a use variance.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: It's one of the elements of relief your seeking.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: Speaking only certainly for myself, I'm somewhat sympathetic to -- I think it's a good solution to convert this to residential. I think some of the relief you're seeking is technical in nature, and I would be in favor if we could get a good overall solution to the problem. But the three-family is too much. I don't know why -- I don't understand why we have to grant -- what your hardship is for a

three-family use.

ATTORNEY JAMES RAFFERTY: Well, we haven't gotten to that part of the case, but if you would like to --

CONSTANTINE ALEXANDER: I want you to address it when you get to it.

ATTORNEY JAMES RAFFERTY: I appreciate a head's up on that issue.

The there is a provision in the ordinance called Section 5.28 which allows for the conversion of structures not built for residential, not ever intended for residential use to be converted to residential use.

TAD HEUER: Are you referring to the new version of 5.28?

ATTORNEY JAMES RAFFERTY: Either version. The one that was adopted a week ago or its predecessor. In both cases the intent was to allow for conversion. And that conversion is based on a formula of the amount

of square footage.

So, in analyzing the case, I looked at that question as to we have a -- we have a principal structure. I think we have a single structure that was built for residential use with two additions. And in reviewing the matter with Community Development and ISD staff, it wasn't clear that this would qualify because of the nature of the original structure. And the addition -- it's not clear in the language of the ordinance.

So, but the land use policy behind that is the recognition that when you've got structures built not for this purpose, how do you best convert the residential use? As it is now, these, these are spacious three bedroom, all three bedroom apartments.

BEN SVENSON: They're big units, yeah.

ATTORNEY JAMES RAFFERTY: The

average size is?

BEN SVENSON: Over 2,000 square feet.

CONSTANTINE ALEXANDER: For each of the units? The structure itself is 3800 square feet.

BEN SVENSON: No, it's 7500.

CONSTANTINE ALEXANDER: I'm sorry, my memory is incorrect.

BEN SVENSON: (Inaudible) that the shack --

CONSTANTINE ALEXANDER: You could have two well-sized two-family units. You don't have to have -- there's nothing wrong with a two-family with each unit being 3,000 square feet.

ATTORNEY JAMES RAFFERTY: Right. But it raises an interesting question. The square footage is at 7600 square feet. So it then -- but that's a reasonable inquiry. And I would suggest that when you look at the

typical size of a dwelling unit in the surrounding neighborhood, I think you'd find that this exceeds most.

TAD HEUER: So does the size of the building of the lot.

ATTORNEY JAMES RAFFERTY: True. But the point being, then the analysis is, and if you're familiar with size of housing in Cambridge and who tends to occupy it, it's not that linear equation that 7600 square feet for two units has a less impact than 7600 for three units. If you're in the neighborhood of four bedroom apartments, you can easily see shared use, multiple cars, multiple people. So, and then there's the marketability of how do you, how do you sell or effectively convert that. That is not a housing product of that size. And that location, as appealing as the building is, it has many shortcomings. Its relationship to the street is quite close. Its relationship

to the abutting commercial property, the driveway abuts a blank wall of the abutting commercial building. And it really -- the notion of well, you can build two, three-thousand, 3500 square foot units there. I don't think -- the building certainly doesn't lend itself in the product that you create just isn't feasible. And that moves in the direction of the hardship, because the hardship is related to the structure on the lot in trying to come up with a compatible use of the structure.

The issues that have been prominent in our discussion with abutters, as I've indicated, we have successfully addressed the concerns of the rear abutters. The side abutters have a strong concern about window openings that are proposed pursuant to Special Permit relief along a blank wall that abuts their property. And they have a very beautiful garden that abuts that that invited

Mr. Svenson in to see it. And they have a patio area, and I've also seen photographs of it. The one change that we were proposing that is not in the plans, but is an effort by Mr. Svenson, who met as recently as a week ago with those abutters to try to come up with ways to absolutely minimize the impact on them, is a proposal to -- looking for that elevation -- to eliminate the lower floor windows on this elevation. This is the elevation that currently is blank. These are non -- as proposed in the original plan, these are non-operable translucent windows but it is directly on the abutting neighbor's lot.

BRENDAN SULLIVAN: So sheet A6.

ATTORNEY JAMES RAFFERTY: Sheet A6 is proposing to eliminate those four windows. The remaining windows that are here have been strategically located to be -- they would be ten feet -- more than ten feet above grade.

Only the two small end windows would open. And they are located in the room so that they're more than six feet high. So that occupants in the room could not see into the abutting property.

CONSTANTINE ALEXANDER: On the other side of those four windows you're proposing to eliminate what is going to be the interior?

ATTORNEY JAMES RAFFERTY: A bathroom and the two closest to the street and a bedroom here.

CONSTANTINE ALEXANDER: Bedroom with no windows on that side?

ATTORNEY JAMES RAFFERTY: On that side. But there would be a proposed window. So the initial -- and this is about the third iteration of this. If you look at the original filing, there were many more windows, different style windows. So the window scheme has consistently been modified

to try to respond to the very real impact that those windows would have. So this is, this is a recent change.

The point being that that -- I will acknowledge that I think that remains an issue of concern as recently as a few moments ago when I talked to an abutter. I don't know how the difference between three units and two units would change that issue for that abutter differently than what's proposed here, and I'm not suggesting that's the only issue. But in my working this case in my view remains probably the most prominent issue. There are many dwelling units in the area that do not have parking. It is not uncommon. The homes on Manassas Avenue, the three of them there, don't have parking. Many of the homes right along that stretch of Huron Ave. don't have parking as well. I think the valiant effort to try to create parking, and I think a buyer of that home would have to,

would have to make it work. I have taken the practice of parking in the driveway as of late just to see how easy, backing out, candidly backing out of the driveway on Huron Ave., depending on the time of day can be a challenge. I frequent the local establishment there so I take it to parking there. Well, you got to watch where you go and you've got to be careful when you open the door. I'd like -- Ms. Lim has designed the lateral supports here to be quite expansive, and there are no columns. And she did a little syncro-analysis that would suggest that those three spaces can occur.

So in response to the Board's question well, could it be two units? Theoretically one can obviously see a scheme -- you would have huge amounts of space that I think don't lay out quite as well as this does as a three unit. It is a challenging project and a challenging building. And at least the rear

abutters now are supportive of it. And I think the difference in impact, and I recognize that it's a third unit, really is somewhat modest given the other uses that are occurring there. This abuts an active real estate office and commercial area, so --

CONSTANTINE ALEXANDER: One of the problems with the three units, I'm not saying this dispositive, one of the problems is it exacerbates the parking issue. You have two units. You don't need as much parking almost by definition as you would three units. And when parking is at a premium and it's a controversial issue, that goes to maybe it should be a two-family building, not a three-family.

ATTORNEY JAMES RAFFERTY: Well, with the relief being requested, it meets the parking requirements.

CONSTANTINE ALEXANDER: Well, one alternative. The other relief, the

alternative is column B is we give you relief -- we allow you to have three units, but you only -- you don't have to have three parking spaces.

ATTORNEY JAMES RAFFERTY: Frankly I wonder who is benefitted by that approach. I mean, if the parking spaces are there and they will be built at some cost if they can't be used, I don't think Mr. Svenson would spend the money to create them. There is a single driveway. I'm not suggesting that parking isn't a premium, but candidly given the range of off street parking demand that exists throughout the city, I wouldn't put this in the top tier of places where people compete for on-street parking. There are a series of uses that do contribute to the parking demand here. Little, if any, of the commercial uses in the abutting business district provide parking. And that's what led the conclusion to do this. The historic use of the property

was far more intensive in terms of its parking impacts. It was a very popular, if that's an appropriate word, establishment, two to four, seven to nine, two parlors going. It was a block from the neighborhood church, and on any given day there would be flower cars and funeral cars.

BRENDAN SULLIVAN: They have an agreement with the church to use the school parking lot.

ATTORNEY JAMES RAFFERTY: In later years it did.

BRENDAN SULLIVAN: That absorbed a lot of the traffic.

ATTORNEY JAMES RAFFERTY: It didn't when the elementary school was operational. Though, I used to play four square in that parking lot. I can tell you --

CONSTANTINE ALEXANDER: But that was then and now is now.

ATTORNEY JAMES RAFFERTY: Well,

that's true. And I'm suggesting and not to make it sound like well, he could go sell to a funeral home. But I suppose at some point the economics of that would suggest well, there is a variance and there is a funeral home. But I do think it's relevant in analyzing the parking impact.

So I don't think it's a straight line equation. If some people suggest that the Zoning Ordinance is deficient and that it doesn't have any connection between number of bedrooms and parking spaces. If you look in most sections of the city or some sections of the city, four bedroom units become a form of graduate student housing. And there's a strong rental market here, and people rent those, and you can see as much activity in a four bedroom, two unit building as you can here. But that's of course the judgment of the Board. I think the experience in the area of where the property is located is the

second -- an additional dwelling unit, whether it had parking or not, I don't think would create a significant adverse impact. The city has a policy frankly of promoting this, and the reduction of parking is permitted by Special Permit which I would suggest is a reflection of the policy that the standard associated for the reduction of the required amount of parking is lower than the variance. So, one can easily, more easily reduce the parking space than reduce the size of the parking space. There might be an absence of logic associated with that, but the request associated with the reduction of parking is a Special Permit request. And the question for the Board is whether or not that third parking space.

But, those are the issues. The case has been discussed at length with the abutters. And the plan that you have before you is an effort to analyze how to take this

three legged -- three piece ensemble, original house, front addition, rear addition; rear addition built for embalming and storage and things that are not all that transferable to residential living. So --

TAD HEUER: Can I be -- I'm going to be heretical. And you're going to shout at me, but I'm going to ask anyway. This was built as a single-family house I presume?

ATTORNEY JAMES RAFFERTY: I presume as well. I don't know that, but I assume that's the case.

TAD HEUER: It would seem to me in looking at this that the attempt is being made to create three families out of this because that is the economical value of what was paid for when this building was purchased. Might I suggest that the value of the building might not have been what it was purchased for if that's the only way this buildings works, if really there should only be a single-family

house there, you can simply tear off the front or tear off the back. I mean....

ATTORNEY JAMES RAFFERTY: What's the heresy?

TAD HEUER: That frequently we don't like to see in front of the Board petitioners who are reluctant to say I overpaid for a property and did not impound the problem of getting zoning relief into the purchase price that I paid for it.

ATTORNEY JAMES RAFFERTY: Oh, no. I don't think that's heresy. And I think if that's what was going on here, I'd think that -- and I think the Board has well-established practice when people come in and buy one thing and look to put on significant additions, where you're suggesting, are just simply adding value.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: This is a 7500 -- 7600 square foot structure that lots

of people looked at and tried to figure out what they could do with it. I can tell you --

TAD HEUER: Well, at a price, though, right? How much was the building purchased for?

ATTORNEY JAMES RAFFERTY: I don't know.

BEN SVENSON: \$700,000.

TAD HEUER: So if \$700,000 for a purchase price allows you to do, say for instance --

BEN SVENSON: That's not why we chose not to do three units.

TAD HEUER: But I'm saying --

BEN SVENSON: I don't want to be rude, but the layout of the structure --

TAD HEUER: That's true. But you're already at nearly a 2.0 in the 0.5, right? You're well over the FAR, right? There are a number of reasons why this

building on this lot shouldn't exist the way it is now, quite frankly. And this is probably a paradigmatic example and we sit here and opine and say we could give you this relief, Petitioner, but 70 years from now you're going to be gone but the building is still going to be there. You can laugh because very few of us --

ATTORNEY JAMES RAFFERTY: Let me take exception. There's not a single reason why this building should be here. This building is here lawfully as a result of people who sat on this Board before many of you were born. So the suggestion that it's a tainted building, this isn't a non-conforming structure that somehow the Board should be looking to reduce it back to a conforming -- this is two variances that allowed this building to be built. So, it's as lawful as any other building. And to somehow make it a stepchild in a zoning sense,

that it's bigger than it should be and now it needs to be scaled back, I don't think that's accurate. This building has the benefit of its size. It's lawful. It was granted by variance --

TAD HEUER: It was lawful but you're asking us for more relief.

ATTORNEY JAMES RAFFERTY: I am. I admit that.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: But the relevance of the 0.5 against the FAR I think has to be acknowledged based on the variances. The variances were granted.

BRENDAN SULLIVAN: Well, by longstanding I will augment what you just said, that the true value of any property is what you can do with it as of right. But what you paid for it does not equate the value.

TAD HEUER: Absolutely.

ATTORNEY JAMES RAFFERTY: I think

that's a -- I think conceptually I have no problem with that. So --

TAD HEUER: Practically --

ATTORNEY JAMES RAFFERTY: So what he has, what's the as-of-right use? He could have a dwelling unit and a funeral home. So he bought a building that is permitted to operate as a funeral home. And the applicant here is suggesting that he can come up with the scheme that's more compatible with the Residence B uses that it abuts than what it's permitted to do pursuant to a variance.

TAD HEUER: You don't have a funeral home.

CONSTANTINE ALEXANDER: You don't have an as of right solution.

ATTORNEY JAMES RAFFERTY: What's that?

TAD HEUER: You don't have a funeral home. I mean, theoretically you could, but do you have any funeral home operator who

wants to move into this building?

ATTORNEY JAMES RAFFERTY: Well, we haven't marketed it. But that doesn't -- with all due respect, you introduced the economics into the discussion.

TAD HEUER: Sure.

ATTORNEY JAMES RAFFERTY: So my point is the economics is when you buy a funeral home, what's the value of the building? He bought a 7600 square foot funeral home. What are the rights he has? They're limited. It's a single-family house and there's the funeral home.

CONSTANTINE ALEXANDER: And there's a two-family.

ATTORNEY JAMES RAFFERTY: What's that?

CONSTANTINE ALEXANDER: A two-family use, too.

ATTORNEY JAMES RAFFERTY: But he

can't do that without relief.

CONSTANTINE ALEXANDER: To be sure. But the relief that he would need would be much more minor than what you're seeking tonight.

ATTORNEY JAMES RAFFERTY: Not true.

CONSTANTINE ALEXANDER: Oh, I think seeking a use variance, which is what you need to have three units. This is a significant amount of relief. Multi-family dwellings in a Res B district are prohibited. And I don't know why, I still haven't been persuaded, I'm listening, but persuaded why you have a hardship that should entitle you to a multi-family use.

ATTORNEY JAMES RAFFERTY: That is true. But it is also worth noting there is a significant exception to that.

CONSTANTINE ALEXANDER: Which is?

ATTORNEY JAMES RAFFERTY: Which is the townhouse ordinance. So, you can have

lots in the Res B district, and they exist all over the Res B district that have more than two-family --

CONSTANTINE ALEXANDER: But this is not a townhouse.

ATTORNEY JAMES RAFFERTY: Understood. But I think to go too far on the notion that the three --

CONSTANTINE ALEXANDER: Let me rephrase what I said. The Res B district does not permit multi-family units except for townhouses.

ATTORNEY JAMES RAFFERTY: Agreed.

CONSTANTINE ALEXANDER: And this is not a townhouse. This is for a use variance.

ATTORNEY JAMES RAFFERTY: I think the message here, the message is that there doesn't seem to be -- there's some lack of support for the third unit. The eighth third unit with the understanding that a third unit has a different type of impact, a 7600 square

foot building containing two units, has a different impact on its abutters than a 7600 square foot building containing three units.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: And obviously if that's the prevailing sentiment, than this application probably isn't going to receive the necessary votes. We would suggest that to the extent that there is differences, that they are mitigated by the parking plan and they are modest in size and that they reflect the actuality, the reality of the housing market that this building is located in.

BRENDAN SULLIVAN: Well, with the larger issue, but the parking plan is a non-starter for me anyhow. It does not work.

ATTORNEY JAMES RAFFERTY: It doesn't work?

BRENDAN SULLIVAN: It does not work.

ATTORNEY JAMES RAFFERTY: Because

you don't believe a vehicle can make a maneuver into this space.

BRENDAN SULLIVAN: If I had a red wagon, three of them, we would be banging into each other. The parking plan is just a smart car wouldn't be very smart in there. But anyhow, the parking plan's are absolutely none starter. So it's sort of downhill after that. But anyhow, so let's plow forward anyhow.

ATTORNEY JAMES RAFFERTY: Well, in light of that, I wonder if it's a good use of anyone's time to do that.

BRENDAN SULLIVAN: Well, I said that 45 minutes ago.

ATTORNEY JAMES RAFFERTY: But you focussed it in that direction as opposed to that direction.

BRENDAN SULLIVAN: But we're here now. So why don't you hold that thought.

Any other questions by members of the

Board?

CONSTANTINE ALEXANDER: I've spoken enough.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: The parking plan that's developed is based on what, a specific length of car?

DIANE LIM: Yes, a midsize sedan.

THOMAS SCOTT: I midsize sedan. Anyone with a car larger than that is not getting into --

DIANE LIM: But that's where the eight inches by 20 foot dimension that was drawn in the dotted line. I mean, because of the existing driveway condition which is under ten foot wide, we have to deal with that dimensions to begin with. So it's a matter of you going through that and turning into the space that is allotted for it. So we made the opening as large as we can. And the only way you can do it is obviously you have to get used

to point of a turn. I mean, it's not going to be one smooth turn, but you know, we drew the diagrams so that you can demonstrate that actually the cars can actually, you know, get out and in. In and out through that space we have.

THOMAS SCOTT: But to Brendan's point, if you're an tenant in the building and you have a larger car than --

DIANE LIM: You know --

THOMAS SCOTT: You can't be accommodated.

DIANE LIM: Sure, sure. So I mean basically we haven't really gotten into that far whether it's going to be a rental property or, you know, a sale property. But if we, you know, if one person is looking into this unit and sharing the parking spaces such, then I think that, you know, maybe the buyer is not going to end up getting this unit. But, you know, the midsize is pretty common, you know,

dimensional car. I mean obviously a truck is not going to go in there. But the fact that --

THOMAS SCOTT: Could you fit two cars comfortably in there?

DIANE LIM: Sure.

THOMAS SCOTT: Or the third car is the one that's pushing it over the limit?

DIANE LIM: The third car is the section that's obviously making the maneuverability a little bit more challenging than it is. I think that's why we talk about earlier --

CONSTANTINE ALEXANDER: If you had a two-family, could you have two legally complying parking spaces?

ATTORNEY JAMES RAFFERTY: Not legally.

DIANE LIM: I mean, still we have to deal with the driveway, dimensional, hardship, exactly, all those things. And,

you know, if I try to explain why, you know, one of the main reasons that we ended up with the three units versus two units was that if you look at the side elevation of this structure, it's very clear how different the different structures put together as one. And in order to come up with that two units that somehow get divided right in the middle which is below the residential section of the building, and also that's a frame, the way the dormer works and etcetera. The way we end up dividing the units, it's going to be something like this. And we still go through all this hardship. And the reasons that we are here for a variance wise and the window wise, you know, having on that wall, etcetera, they all gonna be apply to it. The only thing that might be different is, you know, requirement of a third car. That's the only difference.

So, when you come up with three to four

thousand square foot that has very limited, like, on half of this, you know, square footage, then you think about what kind of a, you know, better units can you come up with out of this 7600 square feet. Then we come up with a, you know, let's kind of go with what structure that has built for us. So, that's the different with the units. That's how we arrive to it. I mean, there's definitely economical hardship and all those things obviously are considered. I mean we're not gonna lie about that. However, I'm not going to work in order to create this parking spaces under, it's pretty significant. And also the fact that two stories tall space in the back, there's absolutely nothing in there. There's no infrastructure. It's just a CMU block and it's going to use as it is. So that's how we ended up with the three units would be the most suitable for this building.

BEN SVENSON: It's so hard. The

building is 7700 square feet. I live in THE neighborhood, I live in 800 square feet. So the notion of creating two houses that are (inaudible).

CONSTANTINE ALEXANDER: I hear that. But I can't believe that in the Cambridge market there's -- and I suspect you're going to condominiumize this building. And I can't believe that there are not a market for people who want a condominium unit of 3,000 plus square feet.

BEN SVENSON: That may be, but it's very --

CONSTANTINE ALEXANDER: It may be very hard, sir, but that's not the basis for giving you relief. That it's hard it's not sufficient.

ATTORNEY JAMES RAFFERTY: I agree.

CONSTANTINE ALEXANDER: You need a hardship.

ATTORNEY JAMES RAFFERTY: We have a

hardship related to the structure as it presently exists. And I think the issue does come down to an impact. You may -- I mean, I would say that given the layout of this building and the reasons as Ms. Lim noted, a fourth -- there are vast expanses of this building that are against blank walls, to create, to the extent, a market exists for 4,000 square feet of living space. I can assure you that the parking scheme -- people who live in 4,000 square feet tend to have more than one car. And I think you would find -- I don't think you could sit here with any confidence and satisfy yourself that by limiting this to two, 4,000 square foot units you have succeeded in minimizing the parking impact stemming from this building. I think that's illogical. And I think it doesn't reflect the reality of this housing market. This is Huron Avenue, Concord Avenue. It abuts a commercial district. And the

reality here is that the ordinance speaks to a logical use of buildings and property, and this building is what it is. Historically it got here for reasons that other Boards found appropriate. And the gist of the application is that the conversion to a residential use can be achieved here and can be more compatible than the uses permitted by variance.

BRENDAN SULLIVAN: One of the main reasons why this building is there is because Professor Mahoney was objecting to Dickey opening the funeral home at the corner. And because that's where he wanted to operate the funeral home. And Mahoney lived on the corner of Sparks Street. And he was a state rep, too.

ATTORNEY JAMES RAFFERTY: He was?

BRENDAN SULLIVAN: Yes. And at any rate he objected it to being across from his front door and so then Bill Hickey then

decided to put up this building. And that's really what it was. Because originally it was never supposed to be a funeral home. The one on the corner was.

ATTORNEY JAMES RAFFERTY: Well, I think the history is slightly different than that. The original home approved by the grants of '38 occurred long before Mahoney's involvement. It was in '56 when this --

BRENDAN SULLIVAN: It was always a funeral home.

ATTORNEY JAMES RAFFERTY: Exactly.

BRENDAN SULLIVAN: Right, but then he built the house down around the corner. And he was going to move it down there.

ATTORNEY JAMES RAFFERTY: Right. Close to a house on Royal and Huron Ave.

BRENDAN SULLIVAN: Right.

ATTORNEY JAMES RAFFERTY: No, I always heard that story. Tom H.D. Mahoney. H.D. referred to as hot dog. But then it was

like some of his less than enthusiastic political --

BRENDAN SULLIVAN: But anyhow.

ATTORNEY JAMES RAFFERTY: But --

BRENDAN SULLIVAN: Anyhow. All right. And also, just going back. On the fourth floor you're extending the existing dormer by how many feet?

ATTORNEY JAMES RAFFERTY: I knew you'd comment on that.

DIANE LIM: It's 15 foot, I think, eight inches extension.

BRENDAN SULLIVAN: How much? Well, I'm looking at sheet --

ATTORNEY JAMES RAFFERTY: Yes, there are two extensions.

BRENDAN SULLIVAN: So the total is E6 and E7.

DIANE LIM: That's right.

ATTORNEY JAMES RAFFERTY: What's the length of the dormer?

DIANE LIM: Existing is ten-foot, six inches.

TAD HEUER: Does that comply with the dormer guidelines?

ATTORNEY JAMES RAFFERTY: It does not.

DIANE LIM: It does not.

TAD HEUER: In what ways? All ways?

ATTORNEY JAMES RAFFERTY: Its length.

TAD HEUER: Does it go to the peak?

ATTORNEY JAMES RAFFERTY: It goes to the peak.

TAD HEUER: Does it go to the side wall?

ATTORNEY JAMES RAFFERTY: It doesn't.

TIMOTHY HUGHES: It's got to be on top.

ATTORNEY JAMES RAFFERTY: The design inspiration with the existing dormer,

and Ms. Lim explained to me that she stuck with that form and put extensions on either side of it. But she was mindful that the current dormer doesn't meet the dormer guidelines. And she, she, but nonetheless she was working with that as a starting point.

TAD HEUER: It's gone from ten, eight to?

DIANE LIM: To 29.

TAD HEUER: That's more than 15, right?

DIANE LIM: Yes, it is more than 15.

ATTORNEY JAMES RAFFERTY: I don't have a calculator.

DIANE LIM: It is more than 15.

BRENDAN SULLIVAN: Any other questions?

Tom, Tim, any questions at this point?

TIMOTHY HUGHES: No, not really. The parking thing is not one that necessarily bothers me. I think there's a salient point

to be made that the units, whether they're two or three, whether the parking -- I think parking is one of those things like water, it seeks its own level. People come looking for a place to rent or a place to buy. If the parking -- if it doesn't work for them, they're not going to buy it or they're not going to rent it. So, you know, that's not, that's not an issue for me. There are issues with this piece of property, but that's not one of them.

BRENDAN SULLIVAN: Okay.

Any other -- let me open it to public comment. Is there anybody here who would like to speak on the matter 175 Huron Avenue? If you do, please introduce yourself clearly with your name, spell your last name and give us your address.

Ms. Nolan or whoever.

ANGELA CACCIOLA: My name is Angela Cacciola C-a-c-c-i-o-l-a.

BRENDAN SULLIVAN: And you need to raise your voice only because the reporter needs to pick up on it.

ANGELA CACCIOLA: My name is Angela Cacciola, 181 Huron Avenue. Directly next-door to 175.

BRENDAN SULLIVAN: And you're on the second floor?

ANGELA CACCIOLA: I'm on the second floor, yes. I feel like I'm at the principal's office so I'm a little nervous.

TIMOTHY HUGHES: Just relax.

ATTORNEY JAMES RAFFERTY: Welcome to the club.

ANGELA CACCIOLA: I want to start by saying that we met with Ben and we're very happy that there's something being done with the building. I think it's going to be a great improvement to the neighborhood. The only issues we have, my downstairs neighbors and myself, the west facing wall, the

non-conforming wall. And I took some pictures because it's really hard to kind of visualize, but I thought if you wanted to just see, this is our backyard. And then this is a side-view. You can see that our patio is about three feet from the wall. And we're feeling very strongly that it would be detrimental to our property value to have instead of a wall. I mean, we've gotten used to the wall and now to have a house in our backyard seems like a little bit of a stretch, you know. We, we feel like it will be detrimental to our privacy, to the enjoyment of our yard, and just to -- I'm sorry. You know, I think the thing is that we have -- our issue is very different from other abutters I think. And even our rear abutters have agreed that we're facing a greater challenge with this. And I wrote notes, but I'm not even reading them.

In any case that's basically that's

what I'd like to say. I think that -- I don't know much about the legality. I know that there's -- there is a legal setback that's supposed to be between the buildings and, you know, property lines, I think. So I'm just want to make it clear that we're feeling like it would be jus too invasive for our back --

TAD HEUER: Invasive meaning the windows.

ANGELA CACCIOLA: Yeah.

Having -- just having the windows there. And I mean, and I don't know about -- anything about construction, but just having the windows there and knowing that -- I mean I know Ben has offered to make them non-opening windows, but one of our concerns is when someone buys the property, who's to say that they don't say oh, I really want this window to open. I want some fresh air, you know, and then knock it out.

TAD HEUER: Well, we could limit

them to being non-opening if we want to.

ANGELA CACCIOLA: Okay, well. But in any case --

THOMAS SCOTT: Bit I thought he said he eliminated them?

ATTORNEY JAMES RAFFERTY: Well, but only this evening. So I want to make that clear. That elevation, we're proposing in response because we have heard this --

BEN SVENSON: We eliminated the lower.

TAD HEUER: But not the upper ones.

ATTORNEY JAMES RAFFERTY: The only openings in the wall.

DIANE LIM: These are gone now. And the windows on the second floor is going to be above eye level so nobody is gonna be --

ANGELA CACCIOLA: Yeah. Well, I know Ben did explain that. But I think we feel strongly about having it be a house in our yard rather than just a wall in our yard.

But, anyway, thank you very much.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Is there anybody else who wishes to speak on the matter?

RICHARD AICAELMANN: Good evening, Chairman, members of the Board. My name is Richard Aicaelmann A-i-c-a-e-l-m-a-n-n. I live at 179 Huron Avenue. I want to say that we support renovation of the property in a matter that's consistent with the character of the neighborhood. But this existing structure is significantly overbuilt. It's got a far FAR that's about two times more -- almost two times more than what's allowed for that neighborhood. The existing structure is non-conforming to every dimensional requirement of the Zoning Ordinance. We feel that adding windows to the non-conforming west facing wall to the rear addition of the building would negatively impact our property, use of our

yard, infringe upon our privacy diminishing our investment in our property.

The Petitioner bought this as a single-family home. That's the current allowed use from what we understand. I know there was discussion about that a little bit earlier, but our discussions with the Commissioner of the Inspectional Services Department said that the Variance was granted in 1938 to allow a business use for operating a funeral home was lost after that business ceased to operate more than three years ago. So that, I guess is a legal issue that needs to be resolved. I'm not a lawyer. I don't know the issues of the Zoning Code, but that's what we were told by the Commissioner.

Anyway, the Petitioner bought it as a single-family home. And as I said, there are other remedies. You know, like a two-family might be a possibility. We feel that there is no hardship. And the only basis for his

request for relief here is his desire for greater profits. And a reasonable profit can still be made by making a scaled back project that is more fitting with the character of the neighborhood.

And we're not alone in this. There are many neighbors that have concerns about this property. Many neighbors support us in our desire to maintain our privacy. You probably have seen the list of other neighbors that have had concerns about this property, and the range of issues that were brought up here this evening from parking, invasion of privacy, scale of the building, from the density from the population that will be added, all create a major concern for all of the neighbors in the neighborhood.

Thank you for allowing me to speak tonight.

BRENDAN SULLIVAN: Anybody else wish to speak?

RICHARD AICAELMANN: Oh, you know, I'm sorry, one other thing I wanted to show. I brought in an aerial photograph. And this kind of shows pretty clearly the proximity of that non-conforming wall and I wanted to add one of those into the record to my house. I would ask the Board to consider how you might feel if that was your patio that close to that wall and there were windows in that wall overlooking your yard when you were trying to use it to entertain or have a barbecue or what have you.

Thank you.

BRENDAN SULLIVAN: Yes.

PATTY NOLAN: Hi, Patty Nolan N-o-l-a-n I, along with my husband, David Rabkin (phonetic) are owners 184-186 Huron Ave. which is pretty much across the street from the property. Hopefully you've read -- there's letters from us in the file, so this is really just an addendum from the

letters that we wrote before. Hopefully only covering new areas because I'm sure you've done your homework. And I'd like to say your comments tonight have restored my faith when people tell me the BZA listens to what I have heard about this property and I appreciate that you all are doing this on behalf of neighborhoods.

We did meet with Mr. Svenson, and he was responsive. But I would have to say just up to a point because when it was clear that we continued to have questions, he really seemed to say well, then we'll never satisfy you. Which is not the case. I would love to see the property developed. I believe a single-family would be terrific. I believe a two-family would be terrific. I just don't see where a three-family would be terrific unless magically frankly six more, you know -- three more parking spaces were developed, in which case then we might be able

to support it except for theirs, because we recognize we live in an overly dense area. It would be your job whether you should say a use variance in a residential neighborhood.

So our request is pretty simple. Respect all the neighbors, and recognize that any developer of the building wanting more than a single-family needs a special favor granted by the City. And your job is to protect us and our residence and our Zoning Code.

Now, to be honest I'm also not a lawyer, but I am confused about this whole use thing. In a way it's moot because they said themselves they didn't buy it to operate a funeral home. And yet when we raise the question of parking being an issue to raise the idea that this is a lot less than a funeral home, I have two responses. You can't do a funeral home or commercial or retail without a use variance or a Special Permit. So that,

it should be moot, but maybe I'm wrong about that. I don't know. It did seem that the only possible exception would be a funeral home, and the Hickeys tried for years to sell it as a funeral home and it didn't work. So, presumably economically that is not a viable use.

I will say, though, the listing which I copied out on MLS said it was a single-family. The property was originally listed for 1.3 million, and it was sold for less than half that because most people knew well, maybe I'm only going to be able to do a single-family because that's the only permitted use which I think is relative to this. You know, buying a property which we've all done, this case was discounted by hundreds of thousands of dollars because of the uncertainty. And I know having talked to them, the Hickeys were very frustrated not getting a price that they wanted thinking it

could be developed.

Let's see, you can't, as you already know, have a two-family without a Variance because the lot size doesn't even match up.

So let's see, the parking study, I'm glad -- I -- apparently one was done which would be good to know.

A two- or three-family, either of those would be a detriment in terms of parking. And I want to say I think Mr. Rafferty is right, that the Zoning Code permits a reduction in parking, but it also foresees that there might be a need for some more parking at least the way I read it. Again, I'm not a lawyer, but I did read a couple parts of the Zoning Code in preparation for this. Where it says that sometimes a condition on permit may include "requirement of off street parking or other special features beyond the minimum required by this or other applicable codes or regulations." That's 10.44 of

paragraph f.

What that says to me is well, maybe only two or three are required of two-family or three-family. But you all could say well, given the neighborhood and given the difficulty in parking, if you get this relief, you need to have four or five parking spaces. It's within the code for seeing that that is something that could be done. That is, again, something relevant to keep in mind.

I've written down why not a two-family you're already asking. Why not work with all neighbors?

I want to say that our neighbors Dick and Paula and Angel who left because I think she has some -- she's still around, are very reasonable, very nice people. Ben is very nice, too. But those neighbors are not being unnecessarily obstructionist about it in our view having lived there for just 15 years.

And so are the people, there's many other people, not just the four of us who are here who signed this statement saying that they're really concerned about.

So on the privacy issue, I agree. They're only talking about one-sixth of the building not having windows, the back corner. So if it's this, just this part, don't have any windows. Have them all around the rest. That's okay according to their neighbors. And we support them just because they've been neighbors for a long time. And then on the upper why not have skylights coming down? That gives you the natural light. So that's another idea to be creative on that second floor you could have skylights coming in, which we did in our house when we put an addition on the top floor and the skylights work very well even though we have a lot of shade.

Let's see, I'm also interested in the

decks. I don't know if they represent an increased use particularly. But the idea of having too big of a rental property and three or four bedrooms, I don't know what the Board does about that. But that's a new use. The Hickeys were there. Yes, it was a funeral home. It was episodic. It might have been sometimes, but it was -- the cars there, it was, I don't know, a couple times a week. It seemed to me I would come and there would be a line of cars and that's it. Not a possibility of what, three units of three or four bedrooms, six or seven cars all the time. So, again, that's our concern.

The property, I will note is not blighted. Right now I fully expect it to be developed somehow.

I want to just say a couple other things. I'm personally also confused about the square footage of this, because the city property on it, you know, your listing says

the living area is 5195 square feet. And the listing from the -- when it was for sale said that it was a 6,027 square foot building. So I don't know where 7075 square feet comes from. I don't know, but it seems relevant again because for a two-family to be developed, if you have a 6,000 square foot building, I personally would love to see that front addition. I bet all of our neighborhood would be thrilled, because I would take down that really ugly front addition, make it into a little yard, some green space. Make it into a two-family, you still have a huge 2500 square feet possibly two-family units that would again meet the neighbors' needs.

We, let's see, I also -- on the -- whether the non-conforming use for it, I just point you to, you know the Zoning Code better than I do, but the way I read 8.24, it says: A non-conforming use of a building or

land which has been abandoned or not used for a period of two years, shall not thereafter be returned to such non-conforming use. A non-conforming use shall be considered abandoned when the intent of the owner to discontinue use is apparent, or when the use has been discontinued for a period of 30 days."

Clearly the funeral home is moot, it's not --

CONSTANTINE ALEXANDER: Miss, I don't mean to interrupt you. If what I've heard is correct, a Variance is granted to allow a funeral home. That means that funeral home is not a non-conforming use.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: There's no abandonment of a Variance.

TIMOTHY HUGHES: They go with the property forever.

(Cross-talking at the same time.)

ATTORNEY JAMES RAFFERTY: Thank
you.

Mr. Chairman, it's a relevant point.
It is not a non-conforming use.

THE REPORTER: One at a time,
please.

ATTORNEY JAMES RAFFERTY: There is
no abandonment with Variances. I repeatedly
told that to people.

PATTY NOLAN: No. I e-mailed you
and said -- never answered the question. So
I just said our understanding is this. You
read it. And thanks for clarifying that. I
thought that the Variance --

BEN SVENSON: (Inaudible).

PATTY NOLAN: No, you said you
didn't know why.

BRENDAN SULLIVAN: Anyhow.

PATTY NOLAN: So -- let me just -- so
I do want to say we are really lucky in our

neighborhood. We do have a driveway and a garage. So this is not about us and our parking, but it is about all of our neighbors. It is -- when I went around to a couple of the neighbors and said, what do you think? They all said it is terrible. It is awful parking in our neighborhood. It is a big concern. We really do think that this is going to create real problems in our neighborhood. So, again, that for me is -- I want to stand up for our neighbors.

I also I agree with what else has been said. They could do a lot and not have the structure be bigger. They could develop this really well and make back a lot of money, but just not have this big a place. But the issues of working with all neighbors, and the parking is very big. I will say which we have a letter granted by you all in 1998 to raise our attic along the third floor. We did not request any change in number of living units,

use of property, parking wasn't an issue. And even so, even though we didn't need any of that, we dramatically cut our plans in half just because some neighbors said well, I'm not so sure. So I really hope that Mr. Svenson -- I hope that what you do is say -- go back and work on this. Because as it is, it's not something that meets the -- that will not result in substantial detriment to the city. That will not derogate from the intent because I think it will do both of those. And I'm really looking forward to having it move forward on a much better way for the neighborhood.

BRENDAN SULLIVAN: Thank you.

Anybody else wishes to speak on the matter?

DENISE NOLAN: Hi. I'm not related to Patty, Denise Nolan. I live at 185 Huron Avenue which is two houses down from the former funeral home now, whatever it's going to be when it grows up.

So, I don't -- first of all, I'm here to support Paula and Angel who have been my neighbors. And I agree with their concern and about the character of the house and keeping with the neighborhood.

The particular concern I have is around the parking. My house does not have a driveway. I can tell you that parking in the area is very competitive, especially in the wintertime. And no offense to anybody who may work for the City of Cambridge, they didn't plow all last winter as far as I could tell. So it was a fight to try to get a space on the street, and everyday you're competing with trucks and cars and everybody else to try to get a space. So, I'm very concerned about that. I don't think I agree with what Brendan said about -- I don't think the way that the -- my understanding of the way the parking spaces would work would work because of Huron Ave. is a very busy street. We have

busses that go up and down the street. People would be backing out. I can just see that, you know -- and we also have an elementary school nearby where you have kids, a few elementary schools actually, walking up and down the streets at all times of day. And I just see that it could possibly, you know, create issues there, too. So, anyway I just wanted to give my two cents.

BRENDAN SULLIVAN: Thank you.

Anybody else wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

There is correspondence from Inez and Terrence Smith, 21 Manassas Avenue. "I'm writing to support the application for a Variance at 175 Huron Avenue to allow for the reuse of the former Hickey Funeral Home for three residential units. And thank you for consideration. We strongly urge you to approve the requested Variances."

There is a letter in the file from Howland Shaw Warren, Jr. (phonetic), 40 Royal Avenue. "Due to the changes made in the project by the applicant, we now support the grant of the Variances and Special Permits case No. 10114."

Correspondence from Antonio van Gottbers G-o-t-t-b-e-r-s and Fredric van Gottbers of 36 Royal Avenue. "Due to changes made on the project by the applicant, we now support the grant of the Variance and the Special Permit."

There is a correspondence I. Wendy Warnham (phonetic). "I'm in support of the application in case No. 10114." From 40 royal Avenue.

There is correspondence, a petition with the undersigned neighbors of 175 Huron Avenue. "Request that the 175 Huron Ave., LLC developer work with the neighbors, respect all abutters, and that communication

be open and complete." This letter is dated June 22nd. It is signed by 181, 179, 25 Manassas Avenue. 186 Huron Avenue, 184. Denise at 185. The Dwyers at 123 Manassas Avenue. And there is correspondence from a Marty Cruise, I think, at 182 Huron Avenue, No. 2, who hopes that the Board rejects the current petition and assists upon the development of this property that is appropriate and reasonable.

And that is the sum and substance of the correspondence.

Okay, Mr. Rafferty, final words.

ATTORNEY JAMES RAFFERTY: Well, as we stated, I think the building is a challenging building. The structure, because of its current form, the petitioner is not here simply because they're looking to maximize economic value. I think what the petitioner has done in this case is thoroughly examined how the building could be

converted to residential use. I think the proposal for the three units is, on a density scale, would have a modest impact on the surrounding uses. A fair portion of the surrounding uses are commercial. The abutting uses are commercial. The residential uses that it abuts, would -- I would say experience modest impact. If the parking relief -- if the parking dimensions were granted, perhaps little, if any, impact. I tend to think that Mr. Hughes is quite correct, that there are peculiar parking situations and people would be attracted to the location. There are some givens about this location that simply you can't change. I mean, the notion -- the difference between two or three units, you heard from Ms. Cacciola and Mr. Aicaelmann that frankly has not been a priority in our conversations with them. They have a legitimate concern about privacy. I think what Mr. Svenson has

tried to do is address that as best as he can given those conditions.

If this was a conforming wall seven feet away, you could have a whole series of picture windows and other privacy impacts. That's not to suggest that it's not a legitimate concern, but the reality is that this proposal, as far as that elevation goes, I think is the most modest impact one can anticipate on an abutter. But we were mindful that it didn't have a complete blank wall.

I have suggested to Mr. Svenson, could you live with an entire blank wall in that location? His answer is if he had to, he could. And if that is a legitimate concern -- I mean, it is a legitimate concern. We know it's the concern. If the proposal for that short strip of windows doesn't work, Mr. Svenson indicates, again, tonight -- I asked him, I said what would -- he

said well, if he had to he could. But I didn't -- I really think that the focus here, the effort with the rear abutter, the rear abutter had a very strong concern that the facade changes to the building in the rear, the landscaping project, really is, again, a substantial effort to be responsive to abutter's concern. There was little in that conversation about the number of units. As I told you, the focus was on the introduction of the commercial use into the building so the scheme was modified at considerable expense to be responsive to that.

So, having said that, I get the sense that there's a lack of support, and it's been suggested that Mr. Svenson should go back and rethink this by at least a few speakers. If the Board concurs with that assessment, I suppose that's what he needs to do. I appreciate the correction on the history. We have tried to explain that this is not an

Article 8 or Section 8 building. It's not a non-conforming structure. I do think there's some relevance to the rights that are contained within the Variance. It's not accurate to say that the Hickeys couldn't find a funeral home to buy. The Hickeys couldn't sell the funeral home under the condition of their business transaction with the firm of a business that they joined in Belmont. One of the restrictions was they could not sell to a funeral home. So, for some --

TAD HEUER: That's self-imposed, though.

ATTORNEY JAMES RAFFERTY: No. My point is that it's been suggested here that there's no interest in a funeral home because the Hickeys couldn't sell it as a funeral home.

TAD HEUER: But it's relevant if it's self-imposed.

ATTORNEY JAMES RAFFERTY: Well, I haven't finished my thought.

TAD HEUER: Go ahead.

ATTORNEY JAMES RAFFERTY: The point is Mr. Svenson is no longer constrained by that. That was a requirement imposed upon the Hickeys as it were as a result of a business relationship.

The suggestion being made here was this would never be a funeral home because there's no interest in funeral home. It was marketed as a funeral home, and funeral homes weren't interested. That's not accurate. So the extent that there might be an interest of a funeral home, and I don't say this by way of a threat, I say it as a way, there is legal relevance associated with that Variance. And it just isn't correct to say that funeral homes weren't interested. It was that the seller was prohibited from selling to a funeral home. That prohibition no longer

exists.

The point being that that Variance and that use has some relevance, I would suggest, for this Board in analyzing the impact of what's being sought in this application. I'll leave it at that.

BRENDAN SULLIVAN: Okay. Your thoughts?

CONSTANTINE ALEXANDER: My thoughts? Well --

BRENDAN SULLIVAN: On the proposal that is before us.

CONSTANTINE ALEXANDER: On the proposal that's before us. Well, frankly, this case is not an easy a case as I thought it would be when I came into the hearing. I think you make -- I really do think you make some really good persuasive arguments. At the end of the day I still return to the notion among the things you're looking for is a use variance. Use variances are not as a matter

of law and practice. They should, they are rarely granted. They're very difficult to obtain. And the use you're looking for here is a multi-family use in a district where multi-family is not permitted per our City, our Zoning Ordinance.

We've spent a lot of time as to whether this could be used as a two-family or two dwelling units. And I'm the one, I guess, responsible for pushing us down that road. But that's not really the issue. I was trying to raise that in the context that if we deny your relief, it's just not a matter you can only have a single-family home and it's too big and it's hard to use. You have another alternative. You pointed out, and I'm not persuaded, but you pointed out that maybe that's not true. But I have to go back again. Have you established the legal standard for a use variance here? And I don't think you have. I just think you don't

have a sufficient hardship. You've brought --

ATTORNEY JAMES RAFFERTY: Is there any relevance to the fact that there's an existing use variance in the property? Does that have relevance in analyzing this --

CONSTANTINE ALEXANDER: But that's a completely different use variance. And that was granted in 1938 or '48. Many, many years ago.

ATTORNEY JAMES RAFFERTY: Agreed. But the point being -- and I agree within use variances are -- some jurisdictions frankly don't allow them.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: The nature of the use variance here, I would suggest, not all use variances are equal. If you were coming in here to put in a barroom, I would say that's not allowed either.

CONSTANTINE ALEXANDER: Or for retail, you know, your original proposal.

ATTORNEY JAMES RAFFERTY: Exactly. And I would suggest, there's a question as to the compatibility of an additional dwelling unit versus a use that is totally incompatible.

CONSTANTINE ALEXANDER: Yes, but the fact is that there may be worse use variances than the one you're seeking, is not a justification for giving you use variance you want.

ATTORNEY JAMES RAFFERTY: In and of itself I agree.

CONSTANTINE ALEXANDER: So that's my point. I don't see a basis for us allowing a multi-family housing situation in a particularly very challenged neighborhood in terms of traffic and in terms of confluence of commercial and residential. And in a neighborhood, I don't think, multi-family,

three-family use or more to any significant degree. Most of the houses there are like -- what appear to me as an observer, are one-family and two-family. And I just don't think the case is there, the legal case is there for a use variance for a multi-family. So on that basis I'm going to vote against.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I have a couple of problems. One, is to argue that it's kind of too big to use as a two-family and draw an oversized dormer on the top floor, it doesn't seem to make any sense to me.

I know it doesn't add FAR because I know you've carved it out someplace else. I don't think the petitioner necessarily has investigated every option for residential use here if the conclusion was a three-family.

BRENDAN SULLIVAN: Tad?

TAD HEUER: Use variances are

intended to be the most sparingly granted of all types of variances when variances themselves are sparingly granted. I think I have stated numerous problems with this on pretty much every level I've seen. Maybe none of them would be dispositive in and of themselves, but we have questions about the use. We have questions about the parking. We have questions which we rarely see, but I think legitimate about Special Permits for windows in a setback. All of these things in my mind aggregate to say that I don't see the necessary hardship standard could overcome given the various, and in my mind substantial requests for relief that are being made. I understand that, you know, we're presented with the fact that you can a townhouse in districts where there's 5.28. I think it's important to note that townhouses aren't -- this is not a townhouse. This was (inaudible). And this is not 5.28. There

are situations if you want to convert a school, say Norris Street, or a church or a funeral home, if it were a building that were purposed for those types of things that you could actually. But Inspectional Services has said that this building is essentially a one-family with two large concrete add-ons, one in the front, one in the back --

ATTORNEY JAMES RAFFERTY: Excuse me, that's not true. Inspectional Services never said that.

TAD HEUER: I would say that.

ATTORNEY JAMES RAFFERTY: Well, then let's be clear.

TAD HEUER: I would say this was built legally as a one family with a concrete addition on the front and a concrete addition on the back. And if 5.28 is not available, I believe it is, there's a reason it's not available here and it's built elsewhere. It's for those kinds of conversions where we

say the building can't be used for anything other than what it was designed for unless there's a substantial change. That's why if we have a church, we say yes, you can't expect to go look for another church. If we have something that looks like a single-family, can be used as a single-family and there are other elements on it that can be used for residential uses, there's a reason that you don't have 5.28 here and you do have in other situations.

And I just I'm troubled by the fact that it seems the tail is wagging the dog here in my mind, solely in my mind. And that the impounded value by right, as the Chairman said, of the property is perhaps less than what was paid for it, if it's not, I think there's either a by-right and certainly a less substantial request for relief that could be made to this Board that I would be in favor of entertaining. I don't want to

see this property sit vacant and fallow. I think it does need to be redeveloped. And I think there are options. I'm not sure that those options will entail using all 7600 square feet with a 1.98 FAR in a 0.5 district, but I don't believe that the petitioner is entitled to the types of relief that he is seeking simply because it's pre-existing building.

BRENDAN SULLIVAN: I think in simple terms you have bought a cube and you're trying to, okay, what can we do with this cube? But I'm not sure if that cube works. You may have to change the cube.

Tom?

THOMAS SCOTT: I think, I mean, you're trying to make a residential use on this, and to be at least respectful of the neighbors and the adjacent buildings and architecture. I think the shape of the building depicts almost like a retail use or

a business use, not conforming with the rest of the neighborhood. I think, you know, somehow modifying the front of the building so that it's more residential in its appearance, I think would be -- would go a long way to help in this project become a residential project of its neighbor.

BRENDAN SULLIVAN: Okay. Shall I make a motion then?

ATTORNEY JAMES RAFFERTY: Mr. Chairman, prior to the motion would the Board entertain a request for a continuance to see an alternative scheme?

CONSTANTINE ALEXANDER:
Mr. Chairman, I'm going to oppose that. We gave you the opportunity at the outset, Mr. Rafferty, and you chose not to accept it. I think now after sitting here an hour and a half, giving you a continuance -- if you have new plans, come back re-advertise, see if you can avoid a repetitive petition. I would not

support a motion for continuance.

ATTORNEY JAMES RAFFERTY: Can I speak to that?

BRENDAN SULLIVAN: Sure.

ATTORNEY JAMES RAFFERTY: I understood the request was whether additional time to discuss this with neighbors might be appropriate. We could go into the other room. And I think we had reached a point with neighbors where particularly as it concerned that wall that we think is the best we can do. The focus of the Board's inquiry was in a different area than we had looked at frankly, than the number of units. And frankly not that I wasn't prepared, but that became the focus of the Board's conversation. And all the conversations we have had to date with the neighbors, I don't know if I could -- if this project became a two-unit project whether, the abutter who has concerns about that wall

is going to feel differently about this project. So it was on that basis -- I would not lightheartedly or easily put the Board through this type of discussion. I thought the Board was going to have to make a decision here, and I thought the focus of that decision was going to have to be on the Special Permits as it related to the parking, and to the windows. The unit count issue is the not a prominent issue with the units and had limited priority or prominence in our conversation to date. So it's clear that this application is going to succeed. The effect of the continuance might be that we file yet a third application. I'm not sure we could get to two units. But I'm very mindful of the Board's policy of not encouraging two bites of the apple. And the decision here to proceed was frankly a reflection of the fact of six months of effort have gone into the planning. So I would ask

for some consideration on that because these repetitive petitions -- the suggestion has been we don't want to see the property sit idle for two years. There's a conclusion that could be derived at that a negative determination tonight would have that affect. I don't think the neighbors would benefit from that. I certainly know the petitioner wouldn't benefit from that. So I would ask the Board's indulgence in considering a request for a continuance to see if an alternative scheme, which may result in an entirely new application, could be filed in this matter.

BRENDAN SULLIVAN: I sympathize with your feelings. I guess my feeling would be, and it's up to the other members of the Board, that I suspect that this is where we were going to wind up. But trying to telegraph it was probably not as explicit as I should have been, but that probably it was

helpful and fruitful as a full hearing and hearing of everybody's thoughts that you may be able to go back, adjust this and come back with something different. And at least even if it is on life support, that it does still have a beating heart somewhere. So I would entertain. I don't know what your thought is.

THOMAS SCOTT: I'd entertain a continuance.

BRENDAN SULLIVAN: Tad?

TAD HEUER: I would entertain a continuance. As Mr. Rafferty said, I think I do have an opinion that this property should be developed since it was on the market particularly and do any work, and I'm not sure that extending, cutting it off at this point would have much purpose. I suppose I do have some reservation that an amendment to this particular petition could be made that would satisfy the concerns of this Board that would

allow this petition under modification to go forward, but I wouldn't want to preclude the petitioner.

ATTORNEY JAMES RAFFERTY: And the continuance would also allow the opportunity for yet another petition, but would also avoid the very real potential of the impact of a repetitive petition.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I agree with the continuance. I would hate to see this proposal come back and leap over the hurdle of a repetitive petition. I don't want to see the property sit for that long. I think a continuance --

BRENDAN SULLIVAN: So the continuance is out there.

Sean, a date?

SEAN O'GRADY: October 13th.

BRENDAN SULLIVAN: I am not here.

SEAN O'GRADY: October -- no, that's

closed. November 10th.

BRENDAN SULLIVAN: November 10th.
November 10th.

I make a motion, then, to continue this matter until November 10, 2011 on the condition that the petitioner change the posting sign to reflect the new date of November 10th, and the time of seven p.m. And that the sign be maintained as per the Ordinance.

CONSTANTINE ALEXANDER: I'm sorry, did you ask for a waiver?

BRENDAN SULLIVAN: Yes, that's --

ATTORNEY JAMES RAFFERTY: Can I get a sense of the Board on a possible scenario? If the applicant was able to come up with a new petition that didn't seek a use variance, for example, and was able to file that and get a hearing at a date sooner than November 10th, would the Board take that as a front if we did that? At least because if one were to file

today with a new petition, I think you'd find a hearing date in late September or early October.

TAD HEUER: Do you think you can do something without a use variance? I'll hear it whenever you want personally.

ATTORNEY JAMES RAFFERTY: You're right.

CONSTANTINE ALEXANDER: He could avoid a use variance.

ATTORNEY JAMES RAFFERTY: The use variance would be if you reduced the number of units.

CONSTANTINE ALEXANDER: Yes. Go down to two units or one unit --

BRENDAN SULLIVAN: To answer your question, no, I would not take it as a front.

CONSTANTINE ALEXANDER: I wouldn't take it as a front either.

ATTORNEY JAMES RAFFERTY: Okay.
It may then -- if it got heard before

November 10th, we would obviously simply withdraw the November 10th, and then there's the other case. No more than three pending applications.

CONSTANTINE ALEXANDER:

(Inaudible).

ATTORNEY JAMES RAFFERTY: Because I face the same issue, the withdrawal under repetitive petition --

BRENDAN SULLIVAN: Anyhow, on the motion to continue this.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor of continuing the matter, and one dissenting.

(Sullivan, Hughes, Heuer, Scott.)

CONSTANTINE ALEXANDER: Opposed.

BRENDAN SULLIVAN: The matter is continued.

ATTORNEY JAMES RAFFERTY: There's another case.

(9:55 p.m.)

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

BRENDAN SULLIVAN: Now you the Board will hear case No. 10051, 175 Huron Avenue.

ATTORNEY JAMES RAFFERTY: We'd request a continuance to November 10th on that case.

BRENDAN SULLIVAN: On the motion to continue this until November 10th on the condition that the petitioners change the posting sign to reflect the new date of November 10th and the time of seven p.m.

All those in favor of continuing this matter.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

(9:55 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10136 and also 10137. If those
applicants will come forward.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: Now, we will --

CONSTANTINE ALEXANDER: We should
make sure for the record that the applicants
have no objection to hearing the cases --

BRENDAN SULLIVAN: That's where I
was going.

Please sit down anyhow. You're
Margaret? 173 Sherman and 175.

Now, anybody here for 173 Sherman
Street?

MARGARET LOURIE: My neighbor Chadd Mars was not able to be here. He left a letter.

CONSTANTINE ALEXANDER: A letter in the file.

MARGARET LOURIE: Yes.

CONSTANTINE ALEXANDER: Margaret Lourie.

BRENDAN SULLIVAN: Let the record note that you do have a letter from Chadd Mars who was the applicant on case No. 10136, 173 Sherman Street to represent his interest in this particular matter.

Okay, Ms. Lourie, you may present.

MARGARET LOURIE: Okay. So we have on Sherman Street 173, 175, 177, and 179 are four attached townhouse units, and I gave you some photographs in the file of the way they were built in the mid-eighties and the way the property was carved up. They were built with shared carports. So 173 and 175 -- a covered

structure to park your cars under.

Anyway, so the way they were built was with a shared carport that crosses the property line. So as time goes by and there's damage and rot and whatever to this structure, it needs to be replaced. The shared carport at 177 and 179 has already been replaced a few years ago. What we propose to do is to replace our carport to look exactly the same as the carport at 177, 179. The same contractor is going to build it with the same plans that you were given. So the only difference from the existing carport that we have now would be a sloped roof instead of a flat roof that was the original design. And as you know, if we have another winter like last winter, sloped roofs are much more appropriate for the kind of climate that we have here in New England.

So, what we are hoping to do is to have a replacement carport that would be exactly

the same size in exactly the same place that would look exactly like the carport in front of the two other attached units.

BRENDAN SULLIVAN: Sean, the reason for the need of a Variance is that the existing carport, two carports, were probably built before a Zoning change; is that correct?

SEAN O'GRADY: No.

BRENDAN SULLIVAN: This is now, this is now B?

SEAN O'GRADY: They were probably built under the townhouse ordinance.

BRENDAN SULLIVAN: Yes.

SEAN O'GRADY: Which allows you to sort of build to the rules, and then subdivide against the rules so that's how it got -- I shouldn't say that's how it got. My best estimate is that that's what happened at this property and that's in fact why there's the split right down the middle of the accessory

building so it's violating accessory setbacks.

BRENDAN SULLIVAN: Okay.

So, to replace what is there, requires -- in other words, there's no grandfathering in obviously.

SEAN O'GRADY: There's no grandfathering because the whole structure would have to come down.

BRENDAN SULLIVAN: Which then is abandonment.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Not quite abandonment.

SEAN O'GRADY: Not quite abandonment, but yes.

BRENDAN SULLIVAN: You're abandoning your protection.

SEAN O'GRADY: You're abandoning your protection, that's right.

BRENDAN SULLIVAN: Right. So that

she could put back by way of repairing obviously what was there?

SEAN O'GRADY: Yes, I mean, I think that theoretically she could. I'm not sure that practically she could. We've just had sort of horror show with rebuilding garages and carports under the theory that they could be repaired. Often defy that.

BRENDAN SULLIVAN: Because they were not done adequately to begin with.

SEAN O'GRADY: Exactly.

BRENDAN SULLIVAN: Okay.

I'm not necessarily enamored by that at all, and I think Finnegan put them up?

SEAN O'GRADY: I don't know.

BRENDAN SULLIVAN: Anyhow, I think they would look kind of odd to begin with. But, I'm not sure if I want to see a whole row of these either. Because what it does is when you come down Sherman Street, then that's, you know, you see these --

CONSTANTINE ALEXANDER: Carports.

BRENDAN SULLIVAN: -- carports.

Which are sort of blocking out the residents in the back. I mean it's just not street friendly. I mean, this isn't very attractive, but I'm not sure if a row of these is any better.

Now, you're going to say well that's fine, but what do we do with snow load and I think that structurally it can be designed to carry snow load. But that's my own thought on that.

CONSTANTINE ALEXANDER: Brendan, can I ask you a question? I'm sorry, I didn't mean to interrupt you.

BRENDAN SULLIVAN: Go ahead.

CONSTANTINE ALEXANDER: I mean, my point is I certainly agree with you on aesthetics, but if we don't grant relief, we're still going to have four cars parked in the front yard there. So I'm not sure we're

going to improve the streetscape by not allowing a carport, and we're creating more havoc I guess for the people who live there who have to now shovel the spaces that they didn't have to shovel before. I wish there were a way of improving it, but I don't see it. And I think we're stuck with a bad situation. Anyway that's my reaction.

BRENDAN SULLIVAN: No, there's no easy answer to it.

CONSTANTINE ALEXANDER: There isn't. You're going to have four front yard car parking one next to the other as you drive down Sherman Street. Same visual, frankly, that you have now.

MARGARET LOURIE: That's the way the property was designed and that's the way we purchased them.

CONSTANTINE ALEXANDER: I know.

MARGARET LOURIE: And as you know, off street parking is at premium and it really

adds to the property value.

BRENDAN SULLIVAN: Well, you still have your off street parking. The question is how to recover it. That's all.

Tom?

THOMAS SCOTT: I agree. I think this solution is much more aesthetically appealing than this. This is like, almost like building a garage out on the face of the street. This is a lot less intrusive in terms of the visual impact on the neighborhood. And I think you're right, the structure can be designed in such a way that could withstand the snow load. That's not an issue. You just have to find the right engineer. But I think, I think this is a lot more aesthetically pleasing than this. I would definitely opt for building something or repairing or rebuilding something in this manner rather than this.

MARGARET LOURIE: So you would allow

us to replace the existing structure with a structure of the same size with a flat roof?

THOMAS SCOTT: It's not flat. It actually is pitched. It has a very slight slope to it.

MARGARET LOURIE:
With -- essentially flat.

BRENDAN SULLIVAN: I mean structurally it could be designed to do that.

THOMAS SCOTT: I think what it does is it allows you kind of a visual to see what's beyond. I mean this is just so imposing on the streetscape, that it really is a -- it's a structure that blocks out whatever is behind it. And I think what's more important are the buildings behind it, and the ability to see those behind it. And this structure does a better job of maintaining that visual continuity.

BRENDAN SULLIVAN: Sort of minimize.

MARGARET LOURIE: We have no problem with that. I just thought that a sloped roof would be, you know, a better structure. But our main objective is to have a good structure there that will, you know, withstand our winters and protect our cars.

THOMAS SCOTT: And I think that can be done from an engineering standpoint.

MARGARET LOURIE: Yeah, I'm sure it can. One of the reasons that we had asked for the, you know, sloped roof and the structure that looked just like the other one, was we thought that that would kind of, you know, enhance the neighborhood by having kind of, a you know, a balance, balance structure. And also the builder had already built that one and, you know, knew how to do it.

BRENDAN SULLIVAN: Yes, I'm not sure how he got permission to do it.

MARGARET LOURIE: Well, whatever. It's there.

THOMAS SCOTT: Maybe you take it down.

BRENDAN SULLIVAN: Yes. It's just -- it doesn't -- functionally it works. Aesthetically it does not and it's not quite friendly. Then you're going to have a whole row of those. But anyhow, there's no drawing in the file.

MARGARET LOURIE: Yes, there is.

CONSTANTINE ALEXANDER: There are a set of plans of some sort.

MARGARET LOURIE: There are plans.

CONSTANTINE ALEXANDER: I saw them.

MARGARET LOURIE: They're big.

CONSTANTINE ALEXANDER: Yes, they are big.

BRENDAN SULLIVAN: Oh, I'm sorry.

Tim, what is your thought?

TIMOTHY HUGHES: Well, obviously this flat roof is more aesthetically pleasing than the other one. But my real thought is

that we can't -- we have to allow them to do something with it.

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: Can we alter the plans on the table right now so that we don't have to continue this case?

MARGARET LOURIE: Yeah, can you just.

THOMAS SCOTT: We're not structural engineers.

MARGARET LOURIE: Well, can you stipulate --

THOMAS SCOTT: It has to be designed flat. No slope.

MARGARET LOURIE: -- that the design is acceptable. It should have a particular kind of roof.

BRENDAN SULLIVAN: Sean, what is acceptable with the Department?

SEAN O'GRADY: I mean, given the simplicity of the structure, I think I would

be take just even language that said, not to exceed the current volume, you know, and to meet the Building Code.

BRENDAN SULLIVAN: Not to exceed the existing footprint, and also cannot exceed the existing height.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: Let me open it to public comment. Please introduce yourself.

ANDREW BATES: Yes, my name is Andrew Bates. I live at 177 Sherman Street and also own 179 Sherman Street, the mirror image of this property. And I want to call out that the photographs that are taken, because they're taken at angles overemphasize the physical presence of those structures. There are only two. There will not be a row of them, but the distance between the two existing carports, there is a yard that separates that approximately, I'd say what, Margaret, probably 60 feet? 60 feet is

in between those two carports. And adjacent to the carport where -- that Margaret is asking to be replaced is a house that comes right up to the curb, to the street.

MARGARET LOURIE: Sidewalk.

ANDREW BATES: So the physical presence of that up against that wall, it doesn't -- it isn't as obtrusive as it's being envisioned by Mr. Sullivan. And in fact, this pitched roof actually complements the Garrison style building versus looking like kind of like a California carport that's plopped down that you buy from Sears out of a catalog and actually does. And it also mirrors the roof lines of the properties across the street that are two homes there. And as you know from the letters that came from in support of this petition, it actually unifies the streetscape and it doesn't actually, doesn't chop it up or, again, present the image of a series of carports all

in a row. They really are just one 60 feet of lawn, 60 feet wide, and probably 40 or 50 feet deep all landscaped then a second carport that is similar in place. So I think the pictures are a little bit deceiving.

TIMOTHY HUGHES: I would say they're a lot deceiving. I'm glad you spoke up.

TAD HEUER: But not having seen them in person --

TIMOTHY HUGHES: No, I haven't seen them.

ANDREW BATES: I would encourage you, if anything, to take a drive down Sherman Street and you'll see.

BRENDAN SULLIVAN: Oh, I do every day.

MARGARET LOURIE: You and everybody else.

ANDREW BATES: I know you're familiar with the bollards at the end of the street because we all went through that.

BRENDAN SULLIVAN: Anybody else wishing to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: Okay, there is correspondence in the file dated August 2nd, to whom -- no.

MARGARET LOURIE: There are three letters from abutters.

BRENDAN SULLIVAN: "To Whom It May Concern: As a neighbor 173 and 175, I fully support the rebuilding of the carport, the new carport matches the carport of 177 and 179 will be an improvement to the neighborhood and will have a positive affect." Signed by Louis Schiavoni S-c-h-i-a-v-o-n-i at 176 Sherman Street.

There is a correspondence from Andrew J. Bates, 177, 179 Sherman in favor. And there is Tamara Gedon G-e-d-o-n, 171 Sherman Street who is in favor of rebuilding the carport. And that's the correspondence.

Well, I still would not want to see another one of those there.

THOMAS SCOTT: I support this -- will build to the limitations of the way it appears today and not if it were built in conformance with the adjacent property. I mean, even the sign that's put on there, I don't know what that sign is. I find that kind of offensive on the streetscape as well. Again, I would support only the replacement of the existing.

BRENDAN SULLIVAN: Okay. Now you had another thought.

TIMOTHY HUGHES: No, no.

BRENDAN SULLIVAN: Tad, what are your thoughts on it?

TAD HEUER: None really.

BRENDAN SULLIVAN: Let me make a motion to replace the existing structure with a structure of the same footprint; the same length, width and height as the existing

carport at 173 Sherman Street.

MARGARET LOURIE: It's 173 and 179.

BRENDAN SULLIVAN: Yes, should we -- 173 and 175. Because they have to be two different cases.

SEAN O'GRADY: At the end you can say ditto and that will do it.

BRENDAN SULLIVAN: I'm doing 173 Sherman Street right now. At 173 Sherman Street the Board finds a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner as it would preclude petitioner from having a covered off street parking space which is inherent with the building when it was developed, and for the change in the zone.

The Board finds that the hardship is inherent with the siting of the particular structure on the lot.

The Board finds that desirable relief

may be granted without substantial detriment to the public good, and that it would not nullify, derogate from the intent and purpose of the Ordinance.

Any other language, Sean, that has to be in there?

SEAN O'GRADY: I would say to identify the structure as a flat roof. A slightly sloped, flattish roof carport.

BRENDAN SULLIVAN: Okay.

Cathy, you can get that in there somehow. All those in favor of granting that proposal.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

* * * * *

BRENDAN SULLIVAN: On case No. 10137, 175 Sherman Street I would make the same findings, to allow them to rebuild the

existing structure; the same footprint, the length and width and the same height as the existing on an identical roof line. And that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner as would preclude the petitioner from having a covered off street parking space which is inherent with the building.

The hardship is owing to the siting of the existing carport on the site.

That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of making those findings.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,

Heuer, Scott.)

BRENDAN SULLIVAN: You get your carport.

MARGARET LOURIE: Thank you very much.

Sean, does that wording give you enough to work -- for the Inspector to work with the contractor?

SEAN O'GRADY: We're going to get some new plans for the flat roof and we'll make sure that it all adds up.

MARGARET LOURIE: I'll let him know.

SEAN O'GRADY: Okay.

MARGARET LOURIE: And he should just contact you guys when he has new plans?

SEAN O'GRADY: There's going to be a little bit of a lag here. Watch your mail. It's going to be another month and a half.

MARGARET LOURIE: Oh, okay so he can't do anything for a month and a half.

SEAN O'GRADY: He should probably

get his ducks in a row. He can come see me and we can get it down.

MARGARET LOURIE: It won't be official for another month and a half.

SEAN O'GRADY: Yes.

MARGARET LOURIE: Okay. Thank you very much, gentlemen.

(10:20 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10138, 17 Day Street.

Roberta, okay, if you would introduce yourself for the record. Please spell your last name, your address for the record.

ROBERTA RUBIN: My name is Roberta Rubin. Last name is R-u-b-i-n. I'm here with my husband Don Abrams A-b-r-a-m-s and we are owners of 17 Day Street. It's a single-family house. It's our primary residence. And what we are hoping to do is to add a small vestibule area within the footprint of the existing front porch. Right now we have a front porch that runs the

length of the entire width of the house. The reason for doing this is comfort and energy efficiency. We have an old house. It's a leaky house. The temperature of our front entryway tends to be about 15 degrees -- as much as 15 degrees less than the living area of the house.

DON ABRAMS: In the winter.

ROBERTA RUBIN: In the winter. And with a big radiator there, it just leaks like crazy. We've done window replacement. We put storm windows, storm glass outside of stain glass windows in the area and it's just really, really uncomfortable. At this point we are expecting to have to do major repair work on the front porch so we're having to deal with this now, living with an uncomfortable situation for a long time. The reason we need zoning relief is our house is non-conforming. The history of the house, I think, it was originally lived in by

the daughter of the man who built the house. We're the third owners of the house. And the way that the houses were built all up and down Day Street is that they hugged one lot line. So you have a consistent spacing between the houses, but the houses are all extremely close to the lot line that is on the east side of the houses. So our house is actually within three feet of the property line.

TAD HEUER: I don't think that could be the reason why they need relief; is that right? Because they're just getting a Special Permit.

BRENDAN SULLIVAN: It's a Special Permit. It's a, it's structure within a --

CONSTANTINE ALEXANDER: Setback.

BRENDAN SULLIVAN: -- setback.

TAD HEUER: And it's the side yard.

ROBERTA RUBIN: It's a side setback, and it's because it's on the side of the house that is right up against the lot line. We're

no closer to the dwelling next to us on that side than we are on the dwelling on the other side. It's just all of the houses up and down Day Street are shifted over to be within three feet of the lot line on the easterly side.

BRENDAN SULLIVAN: The right side is only three-foot, ten. Minimum of six-foot sum of 20. So it's really the right side.

ROBERTA RUBIN: That's right.

DON ABRAMS: That's right.

BRENDAN SULLIVAN: I'm sorry?

ROBERTA RUBIN: And the reason why we're building a vestibule on that side is simply because that's where the existing entryway is to the house. So, it wouldn't serve any purpose if we put it on the other side.

DON ABRAMS: And it's mostly glass. It's intended essentially to be as inconspicuous as possible. There's tall bushes immediately to the side of it, so that

the visual impact on the street is essentially negligible, but we think it's going to make a big difference on the inside.

BRENDAN SULLIVAN: Okay. Any questions from the Board at all?

Is there anybody here would like to speak on the matter, case No. 10138, 17 Day Street?

(No Response.)

BRENDAN SULLIVAN: I see none.

Have you spoken to your neighbors on the right side?

ROBERTA RUBIN: They have no objection.

BRENDAN SULLIVAN: They have no problem. Planning Board has no comments. Has reviewed it, but leaves it up to the Board.

Gus?

CONSTANTINE ALEXANDER: I'm good.

THOMAS SCOTT: I'm good.

BRENDAN SULLIVAN: It's a nice house actually.

ROBERTA RUBIN: We designed it to have as much glass as possible to minimize any increased sense of massing to maximize any potential impact on our neighbors. Not that it's going to impact our light at all. It's mostly -- the only structural part is very, very low down. Where it wouldn't affect the lighting.

TAD HEUER: Are you in line with your left side neighbors's front setback?

ROBERTA RUBIN: No. Our front porch is somewhat -- well, the neighbors on that side don't have a porch. Oh, over there?

TAD HEUER: Yes.

ROBERTA RUBIN: On that side I think we are aligned, yeah, on that side. On the other side, on the side where we're building the vestibule, they don't have a porch.

BRENDAN SULLIVAN: This house here has a bay.

DON ABRAMS: They have a bay on the left side of their house, the side closer to Mass. Avenue. I think the front porch itself essentially lines up with that.

TIMOTHY HUGHES: Yes.

DON ABRAMS: But they look the length of our porch. In other words, the many feet before they get to our window and no light impact.

TAD HEUER: Right.

BRENDAN SULLIVAN: Let me make a motion to grant the relief as per the plan. Nothing is being changed to this plan. The plan submitted initialed by the Chair.

The Board finds that the findings of the Ordinance can be met.

The Board finds that the construction of the small vestibule within the existing porch will not violate dimensional

requirements of the non-conforming structure will not be increased by more than 25 percent of that traffic generated or patterns of access or egress would not cause congestion, hazard or substantial change in the established neighborhood character.

That the continued operation of or development of the adjacent uses as permitted to the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

That there would not be any nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of the proposed use.

And as a matter of fact, the Board finds that it is a much needed improvement, energy conservation, and also to enclose the front entryway.

The Board finds that the proposed use would not impair the integrity of the

district or adjoining districts otherwise derogate from the intent or purpose of the Ordinance.

All those in favor of granting the relief requested.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

TAD HEUER: For the record, usually I'm not in favor of granting enclosed front porches. This one, because of the amount of glass and the positioning of the existing building and porch vis-a-vis the neighboring building and the porches, I believe the effect is appropriately minimized by this. And I think it's an unusual situation.

BRENDAN SULLIVAN: Yes, good point.

(10:25 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10139, 9 Russell Street. Good evening. Introduce yourself whoever is going to speak, and whenever you're going to speak, please spell your name for the record.

GUVEN GUZELDERE: My name is Guven Guzeldere G-u-z-e-l-d-e-r-e. To my left is my spouse Tomiko Yoda. To my right is Mr. William Betsch of Quality Carpentry and Construction of Cambridge.

BRENDAN SULLIVAN: Okay. Tell us what you're going to do.

GUVEN GUZELDERE: We recently relocated since we bought this house less than a year ago. We really love the house.

We have plans of expanding our family. And once we have allocated all the rooms, bedrooms and family rooms, the two rooms that we're left with that we hope to use as our studies are both pretty dismal in terms of the light that gets -- and ventilation. We both teach at the college level, so we often spend 10, 12 hours a day in front of the desk. And it's of tremendous value to us for those desks to be in rooms where there is natural light coming in, and good ventilation. So our primary concern or need is naturally expanding space, but expanding window space and natural light. The structural geometry of the rooms are very different and, therefore, the two projects have different shapes.

The one in the second floor, which is Tomiko's study we're hoping to add a bay extension area, which is actually identical to a bay extension that's right underneath

that room that we use as our kitchen, breakfast. So, the proposal is to duplicate that structure and put it on the second floor on top of the extension that's on the first floor.

In the third floor, the room that I hope to use as a study is a fairly cramped space with slanted ceilings. And our proposal is to open a door on one side which will open to a small deck, three feet by four feet and with a dormer. Both of these will be looking into our backyard, which is the north side of the house. The second floor and the third floor.

I actually did something that I haven't done since I was in elementary school, you know, this kind of a thing. Just to give you a sense of what the current plan is like and what we're hoping to do. Basically adding the structure on top, so it would be like that. This is the extension of the second floor room. And then adding a dormer and a

deck here, which is the third floor.

I'll just also mention that the total space of these projects are adding is under 40 square feet. And as such, according to our architect's calculation, it doesn't change the FAR to the second decimal place. The FAR was 0.53. It stays 0.53. It doesn't change anything in terms of the setbacks either.

Our closest neighbors overlooking that side are more than 30 feet away. There are three townhouses and we were able to talk to two of them. And also a corner unit of a series of townhouses on the northwest side we were able to talk to the owner of that, too. And they both said they don't have any problems with it. I'm sorry I didn't get letters. I thought it would be imposing them to go through too much trouble, but maybe I should have.

The neighbors asked us a few questions.

One of them asked if there would be any foundation work and any digging. There won't be. The other neighbor was concerned about whether the construction company's car or dumpster would block her way. And it won't be because we have a parking space, and we'll use that for the dumpster and we'll park our car in the street. I guess that's all I have to say about the case.

BRENDAN SULLIVAN: In reading your application, and it sort of mentions the same thing about the very dark, dismal, light lacking room, and I guess my initial thought is why not just put three windows along that wall?

GUVEN GUZELDERE: We thought about that. One reason is that looking on the outside having three windows out there on the extension looks kind of odd. And duplicating that structure seems to go with the architectural features of the house much

better and much more naturally. Also, on the symmetric side of the house, there is such an extension that abuts Bay that is both on the first floor and on the second floor. For whatever reason it's only on the first floor and on the north side. So we would be duplicating what's on the other side of the house, basically two level structure.

BRENDAN SULLIVAN: And then the other one is why the need for -- and, again, I appreciate the lack of headroom up on the third level, why the door and the railing? You know, as opposed to a dormer just to give you some headroom there?

GUVEN GUZELDERE: That is again possible. I'm not a very tall person and we measured it. When I sit on the desk, they just put a dormer up there, I don't really see anything on the outside. And the -- both of the windows we have on the third and the second floor overlook a rather uninspiring

parking structure of our neighbor's.

Whereas in this case, on the third floor, it would just make it possible to open the door and also have a view of our garden. That's it.

BRENDAN SULLIVAN: The duct is going to be three-foot, six by four feet. That's what it is.

GUVEN GUZELDERE: I think it's three-foot, six, four feet. I don't remember the exact dimensions.

TAD HEUER: Is there a reason a you have a gable roof on the extension rather than a hip roof? I mean, you have a hip roof pitch on top of it now. Is there a reason that you decided to add that significant amount that you need to do a paired peak?

WILLIAM BETSCH: The plan as I understand it, is for a hip roof. And the structure. Are you referring to the area where the bay is extended?

TAD HEUER: Yes.

WILLIAM BETSCH: So if you look at the side elevation, it is hipped.

TAD HEUER: Okay.

TOMIKO YODA: Our architect Terry is out of town, so....

GUVEN GUZELDERE: If I could just add one point with perhaps architectural justification for the box bay as opposed to the a simple double hung window or a molded double hung window, it is the northwest facing facade, and the available light is limited because of the orientation of the building. And I only assume the logic there was to make it as much as possible.

TOMIKO YODA: I initially proposed to a relator I was looking at the house with of installing a bay window. And he said he wasn't sure if that was historically resonant with the look of the house and that's how this new, this extension idea came about.

BRENDAN SULLIVAN: Tom, what's your thought?

THOMAS SCOTT: I like it. I think it works well with the existing house. The fact that it's a little bit smaller and it just -- it's just an extension of this bay that's down below. I think it just fits in well. As far as the little dormer up top, if I were working in that attic, I'd want to have an opportunity to step outside once in a while, too. I think that little balcony is kind of a neat feature if you're going to have a working office up there. So I like that, too. So I'm in favor of it.

BRENDAN SULLIVAN: Gus, any comments?

CONSTANTINE ALEXANDER: No, I'm good.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: Tad?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it to -- do you have any letters at all of support from your neighbors?

GUVEN GUZELDERE: No, I'm sorry we just have verbal.

CONSTANTINE ALEXANDER: You don't have to have any letters.

BRENDAN SULLIVAN: I didn't see any in the file.

GUVEN GUZELDERE: We sent and gave it to our --

BRENDAN SULLIVAN: Let me open it to public comment. Is there anybody here who wishes to comment No. 9 Russell Street?

(No Response.)

BRENDAN SULLIVAN: There's nobody here from the audience.

We have correspondence from the petitioner to the neighbors who are detailing their proposal with detailed contact

information to the architect, the engineer and the builder. Quite a detailed description. And also plans so that the neighbors and concerned citizens have been duly informed.

All right. We have no -- it's a variance. In going through the numbers just for the Board and for the record, the numbers came out on the existing structure at 0.52 --

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: -- something or other. Rounded off it came to 0.53. With the 40 square feet it came to 0.533 or something like that. Rounded that down to 0.53, hence that appears that there's no change in the number.

CONSTANTINE ALEXANDER: And the district's a 0.5 district. So right now it's slightly over anyway.

BRENDAN SULLIVAN: Right.

I make a motion, then, to grant the

Variance request for the bay addition at the second level as per the plan, and also for the addition of the dormer and the balcony at the third level as per the plan submitted dated July 1, 2011 and initialed by the Chair.

Pages A1, A2 and A3. There's not going to be any changes to this now, right?

GUVEN GUZELDERE: No.

BRENDAN SULLIVAN: They're tied to this plan.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner.

The Board finds that the alteration is to bring a sun to a naturally -- and natural light to an otherwise dark room. That there's very little ventilation and light into the room, and this proposal will allow this to occur.

The hardship is owing to the fact that

the existing structure is non-conforming, and that any alteration of this nature would require some relief from this Board.

The Board finds that the proposed relief is somewhat minimal in nature, and it's a fair and reasonable request.

Desirable relief may be granted without substantial detriment to the public good. And relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(A short recess was taken.)

(10:40 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10140, 2 Hutchinson Street.

EDRICK van BEUZEKOM: My name is Edrick van Beuzekom. I'm the architect for the owner, Jonathan Schindelheim. He couldn't be here tonight. The name is spelled E-d-r-i-c-k. Last name van Beuzekom and his name is on the drawings. Jody Schindelheim S-c-h-i-n-d-e-l-h-e-i-m.

BRENDAN SULLIVAN: Now, that is no longer relevant; is that correct?

EDRICK van BEUZEKOM: I would like to submit some photos. There may be some that are the same. There are a few that show the context in the backyard. There's a series of three that show sort of looking at

the back of the house and the properties to both sides.

And then I also have some 3-D views of the proposal, including on the back 3-D views of the existing through computer-generated model sketch model. I do have a computer model that we can rotate and see some shadow studies if you're interested. That's one option.

So let me explain the case here. Jody just lived in the house since?

JODY SCHINDELHEIM; 20 years.

EDRICK van BEUZEKOM: About 20 years. Basically he's lived there by himself and has been using the entire house by himself. Currently if you look at the drawings of the existing house, you'll see there's -- on the second floor, there's a library study which he uses as his Home Office essentially. Jody is head of the Tufts Medical School of Psychiatry is it?

JODY SCHINDELHEIM: Department of Psychiatry.

EDRICK van BEUZEKOM: So he has a substantial home library. And basically really uses the office. He's got his walk-in closet there. And then on the third floor he has his bedroom. On the first floor there's a dining, living space, kitchen, and an addition on the back which is been his art studio for many years. His life circumstances are changing. He's gotten engaged to a woman who has a young child, adopted child, and so she's moving in with him for reconfiguring the house in order to accommodate a growing family by still trying accommodate their needs. We're scaling back and he's making some accommodations for the family. He's not going to be able to do everything he did before in the house. We're trying to do something that's reasonable and fit with the neighborhood.

Before I go much further I would like to submit a petition from the neighbors. And we have Jody and Andrea, his fiancée, went around and spoke to all the neighbors. This is an assessor's map which basically shows -- I put a red star on each of the neighbors that they spoke to. And each of them have signed the petition here, and there's also a letter from one of the abutters who they sent information to but who is....

So, the plan is basically to do a couple things. One is to expand the second floor in order to accommodate a new master bedroom and a master bathroom and a child's bedroom in order to have them all on the same floor. So, with the addition, the existing addition that's on the back of the house is a one-story space with a flat roof. So the proposal is basically to extend over that using the same footprint creating basically a large enough space that for the interior space to make a

master bedroom and use part of what was the office space to create a bathroom as well.

The third floor, what we're proposing is suggesting changes to gain usable headroom space up there. There's an existing dormer which you can see in which I show you the third floor plan here. There's an existing dormer on this side of the house which currently is about 13 feet long, and we're proposing on the outside -- we're proposing to expand it two feet, basically expanding it forward by 13 feet. Raising the roof on that. We're still keeping the upper side of it below the ridge line, but we're reducing the pitch on the dormer basically on the outside wall to get headroom so you can actually stand at the outside wall there.

BRENDAN SULLIVAN: So what's the difference between this and that?

EDRICK van BEUZEKOM: That's the other side. I haven't talked about that side

yet.

BRENDAN SULLIVAN: Oh, I'm sorry.

THOMAS SCOTT: Which is --

BRENDAN SULLIVAN: I'm sorry.

Where are we? Okay. And the reason for that?

EDRICK van BEUZEKOM: The existing dormer there, it actually comes down quite low. There's enough room to tuck a bed in underneath there, but there's no room to really stand inside. The idea is to make that usable floor space.

On the other side there's an existing gable, and that's the piece that you mentioned where basically what we're proposing is to take that and raise it up from here.

BRENDAN SULLIVAN: You're basically taking this wall up?

EDRICK van BEUZEKOM: That dormer currently comes down to the third floor. It

literally, you know, sits on the floor, so again, the usable space in that is about three feet wide. So it's not, you know -- currently it's really not usable space. I mean, you can walk out to the end of it, but you can't really stand in the space. You can put chairs in there and sit and tucked in under a roof, but it's really quite a small space.

BRENDAN SULLIVAN: And what is the third floor, a family room?

EDRICK van BEUZEKOM: The floor would be a combination family room and Jody's study, try to cram all of his different uses into there.

Our initial proposal was to extend the third floor as well over the back section there. And we realized that that was really pushing it a bit far. I will say that the petition, the drawings that were shown to the neighbors were -- included that third floor

addition, and so that was something that -- we gave it some more thought and thought that's probably pushing it a bit. Jody was willing to compromise on what he really wanted in terms of total space, and so he scaled that back.

And so we're just trying to just do some minimal things on the third floor that I think from the street are not very visible. There's big trees on the lot. It's, you know, you really can't see much of those dormers. And I don't think it has much impact on the neighbors. The gable that we're raising is actually -- we're asking for FAR relief there. It's not in the setback. So it doesn't go in the side yard setback. The dormer that we're raising is inside of the setback, but that side of the house is basically two and a half feet over the setback.

So the second floor addition is

extending that non-conformance 14, 14 and a half feet roughly. And so add to the dormer there. And so, you know, the dormer -- so the extra two feet on the dormer, I guess, you could also be considered an extension of the non-conformance.

The house is on a pretty small lot. It's a 3600 square foot lot in a zone that requires 5,000 square feet lots. So we're increasing the FAR. It was already well over the FAR at 0.57. We're now going up to 0.6 --

CONSTANTINE ALEXANDER: 0.65.

EDRICK van BEUZEKOM: 0.65.

The total square footage of the house comes out at 2,243 which is, again, if it were 5,000 square foot lot, it would be okay. But it's not.

CONSTANTINE ALEXANDER: You're increasing the size of the lot by about 15 percent.

EDRICK van BEUZEKOM: Right.

CONSTANTINE ALEXANDER: You're non-conforming structure on a small lot, but it fills it up quite a bit. And you want to go about 15 percent more.

EDRICK van BEUZEKOM: That's right.

CONSTANTINE ALEXANDER: What's your hardship? Why should we grant you this relief?

EDRICK van BEUZEKOM: Well, the hardship is that, you know, we feel that the house is still within scale with the neighborhood. It's a pre-existing non-conforming structure. Narrow lot. And, you know, what we're suggesting is that this is in scale with houses in the neighborhood. It's in scale with, you know, the size requirements of the zoning on a conforming lot. And so on that scale --

BRENDAN SULLIVAN: I'm not sure -- I'm not convinced that this neighborhood, these lots were meant for a

house of this magnitude.

CONSTANTINE ALEXANDER: Well said.

BRENDAN SULLIVAN: And the second floor is really a master suite. That's a lot. That's a lot. It's a wish, but I'm not sure if it's doing the neighborhood, the house, the lot really justice.

EDRICK van BEUZEKOM: Well, let me just turn it over to Jody for a moment and let him just state his case and then I'll come back to issue.

JODY SCHINDELHEIM: Yeah, I know it's asking for a lot. But I've lived there for about 20 years as a bachelor, so I've grown into the -- all the space. And I met a woman, got engaged. She happened to be applying for adoption of a girl from China. So we didn't want to move anything until that was completed less the Chinese government get rattled. Her little girl is here. I've fallen in love with her. So we want to get

married and start a family and raise the child in the neighborhood. You know, I have very good relationships with all my neighbors. They signed off on it. The only questions they had is whether they could baby-sit for Anna, so they're supportive. And our thought is to start a family and --

CONSTANTINE ALEXANDER: We're not trying to sound too cold hearted, but you're undergoing a life change and I congratulate you for that. But sometimes that has to be accompanied by a real estate change.

JODY SCHINDELHEIM: I understand.

CONSTANTINE ALEXANDER: The real estate change could be readjust the house that you're in. Or if you can't do it to your satisfaction, you move to another house. But to overburden a parcel far from our Zoning By-Laws to do what you want to do, you have to show us a hardship. And there's no hardship here. Other than the hardship is

you can't do what you want to do. That's not a hardship. I'm sorry, I just can't support the relief you're seeking. The house doesn't warrant it.

EDRICK van BEUZEKOM: If I could make a case we're not expanding the footprint of the house. We're staying in the same footprint, so in that sense I don't feel like it's substantially impacting the fencing.

CONSTANTINE ALEXANDER: You are. You're increasing the FAR. You are increasing the density.

EDRICK van BEUZEKOM: Yeah, but it's still within the scale of things around there. And I think, you know, there is a hardship in there that it's a tight space there.

TAD HEUER: But isn't that partly the argument? I mean, Gus would say the fact that it's a tight space is the reason why this kind of a request is potentially even more

burdensome constructed than it might otherwise be in a lot where you had appropriate, you know, width and things like that. If you were looking to add, go up on a lot that wasn't two feet from its side neighbor because it's only four feet to the other side neighbor or what have you, you're able to say there's some space. But here --

EDRICK van BEUZEKOM: Yeah. He has a fairly big backyard. To it's -- there's a lot of space behind it and there's a large yard behind that. So the open space in the center of that block is actually quite large. In that says it's not intruding in that space substantially, you know, there's a fair amount of space on each side to each of the neighboring houses. And even though he's non-conforming, there's a driveway on the other side of the house. The driveway on the non-conforming side, and there's a driveway on the other side of the house. So, again,

it's -- we feel like there's space around it to where it's not violating the spirit of the Zoning By-Law.

BRENDAN SULLIVAN: It's an awful lot. And I know you've reduced it from the original proposal which to me was a non-starter to begin with. But this is even still quite grand for the lot, for the area. And as Mr. Alexander said, I guess the word will be overburdened. But anyhow.

EDRICK van BEUZEKOM: Can I ask for an opinion? Is there any second floor addition considered overburdening if we scaled that back?

BRENDAN SULLIVAN: I'm not sure of the word any.

EDRICK van BEUZEKOM: Considerably smaller.

BRENDAN SULLIVAN: It's --

TAD HEUER: How many bedrooms do you have now?

EDRICK van BEUZEKOM: It's just one which is the third floor.

CONSTANTINE ALEXANDER: But you have other rooms that could be used as a bedroom?

EDRICK van BEUZEKOM: Yes, his office on the second floor could be used as a bedroom, right. And the art studio space he has on the first floor has always served as a guest room basically as well.

CONSTANTINE ALEXANDER: So you have effectively three bedrooms if you took away the art space and the --

EDRICK van BEUZEKOM: Well, that's not really worked as a bedroom, because that's basically a room --

CONSTANTINE ALEXANDER: Okay, two and a half.

EDRICK van BEUZEKOM: It's off of the kitchen and living space. Yeah, so you can say there's two. There's certainly two

usable bedrooms if you ripped out the walk-in closet. Maybe that's what we're essentially doing is the bedroom on the second floor there. And the walk-in closet and opening that up. Again, does it matter in terms of what I put in the house in terms of improving the garden? The -- I put a lot of stained glass into the house.

BRENDAN SULLIVAN: It's lovely.

It's just that because it does not satisfy your future needs or wishes. I don't think that gives us justification to set aside the Zoning Ordinance to somewhat disregard it and say well, this is on our wish list. This will satisfy our, you know -- I don't want to -- I guess my -- the word that comes to mind is comfort level. I don't mean to minimize it by just saying comfort level. All of this is, you know, three people that need your space and what have you. It's just that it's a lot. And I think it does set aside the

Ordinance. And if we were to sit here and to grant, you know, petitions that come down before us because it's a grand space, we're not doing our task here and I think it does violate the Ordinance. And I'm not convinced.

Tim, what's your thought?

TIMOTHY HUGHES: I think you both make a point that it's burdensome on the property and on the house itself.

BRENDAN SULLIVAN: Tad, your initial --

TAD HEUER: I mean, I don't feel great about saying it seems to be a bit more than -- and part of my, when I look at this, and we say would any second floor addition be possible? And I look at it and say well, is there a way to cut down, you know, to 0.57, to get something closer to where you are. And where your lot lines are. And maybe it's because of having the addition's been built

out the back, you have this bay type addition. It doesn't really lend itself being built like the last case we're going out three feet and then eight feet across. And we're just doing that up one level. You don't kind of have that need, ability of going up just that one level there. And maybe you do. And looking at it and part of I'm thinking is I'm not sure you can get something usual in the second story addition much more than what proposed.

EDRICK van BEUZEKOM: It was hard to get, you know, without coming out that far it was hard to get a real --

BRENDAN SULLIVAN: You're right. What is troublesome is, you know, you're starting off with this. And you're saying, okay we already have the shape so let's, you know, yet this shape is troublesome to begin with. You know that volume is somewhat troublesome.

TAD HEUER: It's not troublesome for what it is in the first place, but it's certainly troublesome --

BRENDAN SULLIVAN: Just to bring it up, yes.

EDRICK van BEUZEKOM: You know, it's possible we could make it work by not coming out over that extensive area there. So just kind of bring it back to the rectangle, you know, from the shorter corner there and bring it back.

BRENDAN SULLIVAN: The second floor there is really quite grand, and it really -- it's over the line with me anyhow. You set for this moment?

TAD HEUER: Yes.

THOMAS SCOTT: I don't have a problem with the third floor modifications. I could live with the dormer modifications. I think they're modest enough, and although they do add a little bit of FAR, I think

they're kind of in keeping with the scale of the house. It's the second floor addition that really, and I think when you look at this photograph back there, it would just become really imposing on the backyard to have that second story addition just become this mass, you know, above that that I think may have an affect on the neighbors, and just natural light in the yard. So I'm okay with what's happening on the third floor. But it's the second floor that just seems a little bit overburdensome for the house.

EDRICK van BEUZEKOM: We did do some shadow studies to show the neighbors what the impact would be of this addition. And there's, you know, in midwinter there's a little bit more shadow coming back there, and not much up here, but actually the distance is not as much where it's substantial impact.

BRENDAN SULLIVAN: I think on a cloudy day if I were next-door and I was in

my backyard and I look up, it would be this -- it would be twelve midnight especially with lights on and what have you.

Gus, what do you think?

CONSTANTINE ALEXANDER: I would not vote in favor of it.

EDRICK van BEUZEKOM: I guess I just want to get a sense of -- I would like to ask for a continuance, but I don't want to burden you with coming back with you feel something is overly large.

BRENDAN SULLIVAN: Well, you know, get a sense of what you've heard and then just go back to the drawing board. And let me just -- is there anybody here who would like to speak of the matter 2 Hutchinson Street.

(No Response.)

BRENDAN SULLIVAN: There is nobody in attendance. There is correspondence, but we'll save that for another time. But now you get our sense of our feeling on it and

maybe you go back to the drawing board and rethink it.

EDRICK van BEUZEKOM: Okay.

TAD HEUER: One thing, and again the tail's wagging dog sense, but I think Brendan's point about first story structure being -- you know, you're trying -- I mean, I can see you're trying to do by minimizing from the footprint is the right conceptual approach. It may be looking at what that clearly be the addition to the house is this rear portion, it's not original. You know, looking at how that space is designed, built, structured and whether part of your design to want to go up maybe looking and that rear maybe tells me much more than just adding an addition, might find a way to conceptualize what first story looks like. Whether that's written in or something. Which would more compact, say, FAR wanting to go up and reclaim space. I'm not sure whether that would

likely do very much for you or whether you'd want to get the mass anyway. Your situation with that kind of space sounds like you would need, where you believe you need if you want to be able to keep the other elements of the house like the library.

EDRICK van BEUZEKOM: It was a bit of a compromise already. And we have to go back and discuss whether scaling it back is something that's feasible for them. You know, that first floor addition is -- it looks tall, but it is tall because it's down in grade, basically down in the back because its main house is up three feet from there. So that sort of gives it that sense of largeness when you're standing in your backyard. You know, once you add a second floor to it, I'm not sure, then, it should read as a two-story structure. But I can see your point as to how the lines of that make it feel big.

TAD HEUER: I think you can say the

sketch you have, the person to scale, just looking at the scale against something that's glass to grade, does kind of give you a sense of what's right, it looks taller than it is. And I certainly appreciate that. I wouldn't hold that against the view of the house. But I do think that looking at all that space may be physically is laid out space, you go up without looking like it's imposing. That might be something you could do. But you may end up just in a numbers problem. If that number is the number you think you may be at, where you're able to find that on this structure, may not come.

EDRICK van BEUZEKOM: I can see the bedroom can be scaled down somewhat where we can get that down.

BRENDAN SULLIVAN: Okay. So hearing a request for a continuance, Sean, what would be the next available date?

SEAN O'GRADY: 11/10. November

10th.

BRENDAN SULLIVAN: November 10th.

I make a motion to continue this matter to November 10, 2011 until seven p.m. on the condition that the petitioner sign a waiver to accept the requirement for a decision to be rendered thereof. And also that the petitioner change the posting sign to reflect the new date of November 10, 2011 and the time of seven p.m.

All those in favor.

CONSTANTINE ALEXANDER: You may want to add any revised plans.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Also this is a case heard so everybody has to be able to attend.

BRENDAN SULLIVAN: Yes. Everybody here November 10th?

That any changes to the drawings be in the file by the five p.m. on the Monday prior

to the meeting. And also any changes have a changed dimensional form to reflect those changes.

All those in favor of continuing the matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(11:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10141, 192 Brattle Street.

CHARLES MYER: Hi, I'm Charles Myer M-y-e-r, architect. And with me is the project architect Pete Lackey L-a-c-k-e-y. We're at 875 Main Street in Cambridge. And also with me is Carolyn and Phil Loughlin, the owners of the house. The house is a unique property, and we're here to ask to enlarge the garage as a dimensional variance. We're right on the property line. It's a little driveway on Brattle --

TAD HEUER: Does anyone know this house is there? Just out of curiosity.

CHARLES MYER: This one goes off to Elmwood over here. And this is the President of Harvard's house here. This is the French Consulate house here. And this was the house

of Felix Frankfurter before he went to Zuriport (phonetic). And the owner -- the builder in 1907 -- the house was built in 1907 and the house used to go all the way to Elmwood and you entered from that side. And this was a little walk path.

We went last week to the Historic Commission and I spent time with Charlie Sullivan and he has given us a certificate and we're okay with them.

But anyways, these guys built this house in 1907 and the whole staircase going up the house with little violins into it and musical instruments. And he was an advocate for the early music movement, anyway. So, it's an interesting house.

And what we have is a garage that is already 13 feet wide, and we want to add basically 8.9 or nine feet to the width of it and keep the same height, same look. It's a stucco -- this is a stucco building. This

would be a stucco garage. But you can see here is our neighbor's garage there, and then we can see the little shed. We'll show you pictures of all this. The Loughlins have talked to everyone around them. Everyone's fine. There's one letter I think in the file which has to do with these guys being very concerned about their brand new roof on their garage. And we've assured them that any damage will be taken care of. So, this gives you an idea of the doubling of the garage. It actually sounds more dramatic than it is. It's really just nine feet. You'll see in the pictures coming up, that's the shed. That's the garage here. That's the road out to the gravel.

So, what's interesting here is that you can't -- this is the house -- this growth of this garage can't really be seen by this neighbor, can't be seen by this neighbor, or this neighbor. It's sort of an ideal

expansion from this point of view.

TAD HEUER: What's your distance between buildings?

CHARLES MYER: 1.10 in back from the line over. Yeah, we're well trained by Sean.

And this is the new expanded garage. We're showing a side door entrance here so that they can walk across here and three windows facing back into our own property.

That's the side-view of the garage. That's the front. And these are pictures. That's looking down the walkway. So there was a lot of discussion at the Historic was whether we have any control over this at all. And they finally decided that once we expand, we might see the corner of it so they're giving us a certificate for that future possibility. So no one can really tell.

That's the garage. It's nine-foot, six from here to the grade. There's the little shed in the back, barely.

CONSTANTINE ALEXANDER: That shed is going to be removed.

CHARLES MYER: This shed is being removed. We don't know where that came from.

CONSTANTINE ALEXANDER: You know where it's going?

CHARLES MYER: Yeah. More garage. But the point of this photograph is the look up to the neighbor's yard that way.

TAD HEUER: That's your lot line demarked by the fence?

CHARLES MYER: This fits. It's one of two feet and that's looking up the side of the house. There's the shed. There's the garage.

PETER LACKEY: This is the wall of the abutters.

CHARLES MYER: The neighbor's garage.

TIMOTHY HUGHES: They're concerned about damage to the roof was just during the

building process?

CHARLES MYER: Right. And that's looking back, coming up against that shed and looking back up to the street.

So the garage was built we think in 1940. It's going to be new roof. It's going to be rebuilt one way or the other.

BRENDAN SULLIVAN: So, and the reason for it now, the question is why now?

CHARLES MYER: These two have just bought this house several years ago, and they need a garage.

PETER LACKEY: And there's currently only room for one covered parking place.

BRENDAN SULLIVAN: So a tie. I mean, in the winter it's better to put it in two cars, shovel the driveway, plow it whatever it might be. You can either take one car out or you can just okay, so now is you should have done this years ago.

CHARLES MYER: Should have been done years ago, yeah.

BRENDAN SULLIVAN: Okay. Any questions from members of the Board?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter of 192 Brattle Street?

(No Response.)

BRENDAN SULLIVAN: There's nobody.

There is correspondence from the Cambridge Historical Commission. "The property is located in the old Cambridge Historic District where exterior alterations are subject to review and approval at a public hearing. On August 4th, the Commission approved a Certificate of Appropriateness for the extension of the garage. A copy of the certificate will be forwarded to Inspectional Services for the BZA file as

soon as it is available."

Just didn't get to it. Did they impose any conditions at all, Charles?

CHARLES MYER: No.

BRENDAN SULLIVAN: None. So they accepted it as per the plan?

CHARLES MYER: That's right.

BRENDAN SULLIVAN: And the violation is?

CONSTANTINE ALEXANDER: Setback.

BRENDAN SULLIVAN: Setback.

CHARLES MYER: Five foot setback.

BRENDAN SULLIVAN: Because it was built well before the existing zoning. And nothing else to add, refute?

Gus, anything?

CONSTANTINE ALEXANDER: No, no, I'm fine.

TAD HEUER: Do we know if Felix Frankfurter a car?

CHARLES MYER: No, we don't know

that.

TAD HEUER: So, we don't know where he parked?

CHARLES MYER: We don't know. We have a picture of him on the sidewalk in front -- on top of the sidewalk, that's it.

BRENDAN SULLIVAN: I would think he was on bicycle back and forth. Maybe the shed, it's a bicycle.

Tim?

TIMOTHY HUGHES: I have no thoughts on Felix Frankfurter or bicycles or the project. I'm good with it.

BRENDAN SULLIVAN: Tad, anything?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me make a motion to grant the request and the proposal to add to the existing garage as per the plans submitted. The Board notes actually, that there is correspondence in the file from an abutter but it is not rel -- it does not relate

to this particular relief being requested. It has more to do with the construction of the project anticipated.

Let me make a motion to grant the relief requested as per the plans submitted and initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner as it would preclude petitioner to add to the garage and provide for a covering for a second car which is much needed in this particular location.

That the hardship is owing to the fact that the existing structure is built, a non-conformity with the existing Ordinance, and that it predates the existing Ordinance. And that the property is unique in its size, topography and location. And that desirable relief may be granted without substantial detriment to the public good and relief may

be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Board will make special note by the Cambridge Historical Commission and their approval.

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(11:20 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10142, 288-B Green Street. Mr. Panico.

ATTORNEY VINCENT PANICO:
Mr. Chair.

BRENDAN SULLIVAN: Tell us what you would like to do.

ATTORNEY VINCENT PANICO: My name is Vincent Panico P-a-n-i-c-o. And my client, owner on my right is Penny Hamourgass H-a-m-o-u-r-g-a-s.

It is before you on a petition for a use variance. The use exists on the site already which raises an interesting question, if a variance travels with the land, do you really need a variance -- use variance for another floor?

CONSTANTINE ALEXANDER: And the answer is yes, because the terms of the earlier variance were limited to a certain portion of the land. It didn't say anywhere, like a second floor. So the answer to the question is answered by the terms of the variance.

ATTORNEY VINCENT PANICO: I agree with you, Mr. Alexander. You had raised the issue at an earlier hearing.

So the hardship is because the zone was changed from Business B to a C3.

CONSTANTINE ALEXANDER: That's not a hardship. That's a fact. The hour is late. But it's a fact that the City has made a determination that it wants this property to move from commercial to residential. That's why it's zoned in residential. And you got to demonstrate to us why we should not go along with what the City Council's wishes are.

ATTORNEY VINCENT PANICO: Well, because the use already exists in the building. It's limited from one section of the building to another, and I think -- and the present owners also have a financial hardship being to rent it and might be able to.

Just briefly there are four variances, so let me clarify what happened. On the basement there was one variance. It was granted in July of 2007 after the VFW Post, which was located in the basement, which for all intents and purposes, was using it perhaps without a variance. You granted an entertainment license for the basement, and you didn't put any term limit on it. Now, there were three other variances in which June of 2004 there was an entertainment variance for the second floor. So we had basement, first floor, second floor. And you put a two-year term limit. That expired,

and in August of 2007 they came back and you gave them an entertainment license for a second floor and didn't put any term limits on it. They came back the third time for the second floor and they asked for an all alcohol license for the second floor and you granted that. So that was -- those are the four variances.

Now, we have contacted some of the neighbors, one of whom is here tonight, and we have concerns for noise, employees smoking on Franklin Street, which is in a residential area, and the dumpster. And the times when they the dumpster would come, which the gentleman here tonight, Pete, told me that on occasion they have shown up at six o'clock which is totally illegal. So, we are suggesting if in the Board's wisdom you grant the use variance, put some conditions saying No. 1, there will be no exiting by patrons on Franklin Street, the residential area.

No. 2, the employees cannot go out back and smoke and Franklin Street.

No. 3, we agree there will be no dumpster pick up before eight o'clock.

And No. 4, the owner, my client, Penny Hamourgas will give the neighbor's representative here tonight her own personal cellphone number. So instead --

CONSTANTINE ALEXANDER: I am sorry, give them what?

ATTORNEY VINCENT PANICO: Cellphone number. So instead of calling the manager, they call the owner.

CONSTANTINE ALEXANDER: That's not a condition in the variance.

ATTORNEY VINCENT PANICO: I'm sorry?

CONSTANTINE ALEXANDER: That's not an appropriate condition for a variance.

ATTORNEY VINCENT PANICO: Okay, this is what we agreed to do. But whatever

the Board thinks is right.

The capacity for that basement square footage is over 300 patrons. We're asking for 150.

Now, my client had a history of taking over a very bad restaurant in Lowell and she shaped it up. She brought it up so much so that the Superintendent of Police in Lowell has written a letter saying what a good experience they have had with her.

Penny, would you just talk briefly, because it's very, very late, what happened when you took over that restaurant.

PENNY HAMOURGAS: Okay. We bought -- it was built in 1834 and that's why we bought the place ten years ago. It's an Irish restaurant bar, it's a tavern. And basically the first three years it was a lot of cleaning up to get it back into shape. It was a lot of regular clientele. We have a lot of tourists that come there. And no

problems.

ATTORNEY VINCENT PANICO:

Mr. Chairman, I believe you have it, I have a letter from the chief of police in Lowell saying they never --

BRENDAN SULLIVAN: I saw it.

ATTORNEY VINCENT PANICO: Okay.

And there are going to be substantial renovations in the basement which will -- well, something we're all interested in is going to provide jobs for the trades and the local people when the place opens. And she is independent from the club. She has no connection with the club. She does not live down in this area. And the contractor is here tonight. If you have any questions, he will describe the soundproofing that he is going to be installing in the basement.

BRENDAN SULLIVAN: Just back up a little bit. The Greek-American Club owns the building.

ATTORNEY VINCENT PANICO: Yes sir.

BRENDAN SULLIVAN: And the basement was used as a VFW.

ATTORNEY VINCENT PANICO: The Hoyt post.

BRENDAN SULLIVAN: For many years.

ATTORNEY VINCENT PANICO: They began to lose their members. And I'm told by the president of the club that there was a fraud committed on the finances of the club.

BRENDAN SULLIVAN: Right.

So then they ceased to exist, and then it became a vacant space, and the Greek-American Club found a need to use the space in conjunction with their social activities, whether it be youth oriented. I don't know, dances or gatherings or whatever it may be; is that correct?

ATTORNEY VINCENT PANICO: They tried, yes.

BRENDAN SULLIVAN: And then also to

use a basement for receptions. In conjunction with weddings or something like that. Does that --

ATTORNEY VINCENT PANICO: That's what they tried to do.

BRENDAN SULLIVAN: But on the first floor of the building was the Greek-American Club --

ATTORNEY VINCENT PANICO: Yes.

BRENDAN SULLIVAN: -- per se. Then it's a club as any other club, I guess, it's for their functions and what have you.

On the second floor they wanted to provide some entertainment; is that correct?

ATTORNEY VINCENT PANICO: Two nights a week they had a salsa dance.

BRENDAN SULLIVAN: That's what it was, yes. Okay. So that then sort of occupied the building under the egests of the Greek-American Society or whatever you want to call it.

ATTORNEY VINCENT PANICO: Right.

BRENDAN SULLIVAN: The legal name and so forth.

The proposal before us is to augment and enhance that by providing a restaurant which will be open now to the general public.

ATTORNEY VINCENT PANICO: Yes.

BRENDAN SULLIVAN: Also being used somewhat in conjunction with the Greek-American Club.

ATTORNEY VINCENT PANICO: Totally separate.

BRENDAN SULLIVAN: Totally separate entity, but one that they can avail themselves of.

ATTORNEY VINCENT PANICO: If they want to come in and eat.

BRENDAN SULLIVAN: Yes. In other words, if the club is closed, the restaurant can operate on its own.

ATTORNEY VINCENT PANICO: On its

own.

BRENDAN SULLIVAN: So on and so forth. Okay. Like any other separate entity.

And so the need is to bring in some revenue, have an occupied space, and to provide a need for the neighbors.

ATTORNEY VINCENT PANICO: Yes. And to provide a place --

BRENDAN SULLIVAN: And the fare would be Greek oriented?

ATTORNEY VINCENT PANICO: Greek culture. To the best of my knowledge, we do not have a Greek restaurant. We have one on the Arlington line, Greek restaurant. But in this general area from Porter Square on down we do not have a Greek restaurant. And they'd like to enhance the Greek culture.

BRENDAN SULLIVAN: Yes. Is there one over on Fourth Street? Is it considered --

TIMOTHY HUGHES: Third and Charles.

BRENDAN SULLIVAN: Charles and
Hurley?

ATTORNEY VINCENT PANICO: I have
never been there.

CONSTANTINE ALEXANDER: They're
East Cambridge.

TIMOTHY HUGHES: Third and Charles.

BRENDAN SULLIVAN: Third and
Charles.

Anyhow, is that it in a nutshell?

ATTORNEY VINCENT PANICO: That's
it.

TAD HEUER: I have a question about
that Franklin Street condition. If I'm
looking at this correctly, do you have enough
means of egress to impose that condition?

ATTORNEY VINCENT PANICO: There are
going to be three means of egress.

TAD HEUER: Two of them are right
next to each other?

ATTORNEY VINCENT PANICO: There are two on Green and one on Franklin. But they're going to be used in an emergency. They won't use them routinely for patrons to come in and out.

TAD HEUER: Oh, I see. Okay. I guess I'm thinking of just --

CONSTANTINE ALEXANDER: The one on Mass. Ave.

TAD HEUER: Yes. Which they have its own problems, but the stipulation we gave to them there be an emergency bar to your alarm company or whomever it is. So anyone who wants to go out that door, you may say, don't use that door, don't go out and smoke, we all know that people will say if no one looking, I'll kind of just push the door. If there's some kind of an emergency bar that would actually impose a condition that people will know they've gone out that door.

ATTORNEY VINCENT PANICO: Well I --

TAD HEUER: It's easier for
Inspectional Services to --

ATTORNEY VINCENT PANICO: It has to
be an exit.

TAD HEUER: It's certainly the fact
that an emergency bar, you push it out --

BRENDAN SULLIVAN: And the alarm
goes out.

TIMOTHY HUGHES: It makes a lot of
noise.

BRENDAN SULLIVAN: There's no way to
prop it open or disarm the alarm, okay.

Anything else you want to add?

TAD HEUER: No.

BRENDAN SULLIVAN: Anything?

THOMAS SCOTT: No.

CONSTANTINE ALEXANDER: I have an
observation. I think we should probably
done this the last time. I think we should
put a time limit on the variance. We're
talking about a use variance, a restaurant

use. You want to put a Greek restaurant in, and it's sort of consistent with the rest of the use of the building. But, you know, that building, the Greek community's ability to use that building has been dwindling year after year. And I am not convinced this restaurant frankly is going to be able to make it. And if it doesn't make it, we'll have granted a permanent variance for a restaurant use in that building for a building that's residentially zoned. So I would like to take a second look at it in two years or three years aside the other conditions. I would suggest we put a time limit condition on it as well and revisit it.

BRENDAN SULLIVAN: Is your lease, is there a time limit on the lease?

ATTORNEY VINCENT PANICO:
Conditional is five years.

BRENDAN SULLIVAN: Anyhow.

CONSTANTINE ALEXANDER: Five years?

Who's the tenant, the corporation? You're not personally on the lease, are you?

PENNY HAMOURGAS: No.

CONSTANTINE ALEXANDER: No. So you've got a five-year lease. If your restaurant doesn't make it, the corporation goes bankrupt, it's not really a five-year lease is what I'm trying to say.

ATTORNEY VINCENT PANICO: Okay, but I don't disagree with you. There's a substantial financial -- they're modernizing that whole basement.

CONSTANTINE ALEXANDER: I understand they're making a financial investment. What I'm trying to say and I hope I'm wrong. It may not work out, and if it doesn't work out, I hate to see a permanent restaurant variance granted that space. The next restaurant that goes in there may not be the most desirable restaurant in the world. That's my point.

ATTORNEY VINCENT PANICO: I don't disagree with you. My only point, would you give us the five years so at least try to --

BRENDAN SULLIVAN: Yes, I think what Mr. Panico is alluding to is the fact that if we were to put a much shorter --

CONSTANTINE ALEXANDER: I understand.

BRENDAN SULLIVAN: -- clock on it, that may be a problem financing the entity. A bank would look at it and say well, you know, I think obviously the payback over five years, it's one thing. To pay back over, say, two or three could be problematical because there's no guarantee that after that that you, you know --

CONSTANTINE ALEXANDER: I can accept that.

BRENDAN SULLIVAN: But anyhow. Let me open it public comment.

Is there anybody here who would like to

speak on the matter of 288 Green Street.

PETE BASSNEY: Yes.

BRENDAN SULLIVAN: If you please come forward.

PETE BASSNEY: My name is Pete Bassney B-a-s-s-n-e-y. I live at 240 Franklin Street which is right out the back door of the club. So I'll start by saying I appreciate Mr. Panico reaching out ahead of time to both myself and our other neighbors who have been before various Cambridge boards before for the Greek-American Club. And the main issue that we've encountered is one of noise. Noise from a variety of fronts. We've talked about, you know, the dumpster being emptied at 6:30 in the morning, which I'll say is a regular occurrence. But that's just a nuisance. The main issue really in the past was one of -- as was cited by one of you -- a decline in enrollment in the club, a need for finances. I'll say desperate

times, desperate measures. They had some unsavory tenants that they brought in to host a night, you know, just really loud DJ speakers, booming base in the middle of the night, kids waking up. That was all addressed. That was ceased. Very much appreciated. So there's, you know, a good working relationship here. I think this is an interesting venture. I think it's a great use of the space. It's in the basement. Through conversations before tonight and this evening, lots of assurances that the noise will be kept down. Proposal to limit the dumpster, use of the back door. And I hope also sound from bands and such like that, we talked about that. It's going to be very low level music. It's just restaurant music at a very low level. And I think it's a wonderful aspiration, and I wish you all the success in the world. I also share your concerns about the future use of the space

with the declining enrollment. And if this gets opened up, what's going to happen in the future? It's a very old building. It's one of the issues we talked about previously is sound insulation being installed. And I think it was mostly we were talking about the second floor because that's where these events were being hosted. There was a financial concern when we were at the Licensing Board a couple years ago, there wasn't finances in order to do the construction to soundproof the building, so you know, so it was just this negative spiral that couldn't be addressed. So, but I understood tonight that sound installation has been installed.

PENNY HAMOURGAS: Yes.

PETE BASSNEY: That's a positive thing. I didn't know about it, and the neighbors didn't know about it. We want it to be a good neighborly relationship here. I

love the thought about a restaurant going in that has very low music, that no one's using the back door. So it's not going to be an impediment on the neighborhood. Those are all very positive things. But I must say there's a sense of skepticism in the back of my mind around the success of a restaurant in a basement in that particular location. I wish you all the success in the world, but I have my concerns about the future use of the space. So, noise is the issue.

BRENDAN SULLIVAN: Okay. Don't mind it being there, just be there quietly.

PETE BASSNEY: Absolutely. They've been there a long time, you know, I get it. I get all that. But just do it quietly.

BRENDAN SULLIVAN: All right.
Anybody else who wishes to speak?

(No Response.)

BRENDAN SULLIVAN: There is a

correspondence in the file dated July 28th. "I am writing this letter on behalf of Penny Hamourgias who has been a proprietor of the Old Worthing House Cafe located at 141 Worthing Street, Lowell, Mass. during my tenure as superintendent of police. To the best of my knowledge, the Old Worthing House cafe has had very few, if any, law enforcement issues. It appears that the establishment is well run, and I would support this application for their license in the City of Cambridge. Signed Kenneth Lavallee L-a-v-a-l-l-e-e, Superintendent of Police."

That is the only correspondence.

Mr. Panico, anything else to add at all?

ATTORNEY VINCENT PANICO: No. I would just hope that the financial position, you would give us a five-year term.

BRENDAN SULLIVAN: Sure, okay. Anything else? Any concerns, questions?

TIMOTHY HUGHES: Just for the record, we don't grant licenses here. We grant a variance for use and the Licensing Board grants licenses. I heard people more than once say a license. That's not what we do.

BRENDAN SULLIVAN: Let me make a motion to grant the variance for the use of the basement space to be used as a restaurant as per, generally the plans submitted, not necessarily going to hold you to the plan except that the plan does denote a capacity not to exceed 150 people, and showing the approximate layout of the basement as a restaurant.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner.

The Board notes that the building was rezoned sometime ago, which does not allow

the existence or the establishment of a restaurant at this particular location.

The Board notes that it is desirable to have the space used, rented, not vacant. And that this proposal is a fair and reasonable one, and would be a benefit to the community.

The hardship is owing to the fact that the zone had changed, and this particular use is no longer allowed. The present use allowed is residential, and it is deemed that this building is not easily -- is not easily convertible to for residential use.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Board grants the variance for the restaurant use for a period of five years from the date of enactment of this variance.

The Board notes that as far as the dumpster pick up, that it not occur before eight a.m., and that there be no dumpster pick ups after eight p.m. That should not be a problem.

PENNY HAMOURGAS: They don't work that late anyway.

BRENDAN SULLIVAN: Just putting some parameters in there.

That as far as delivery of food would be front door; is that correct?

PENNY HAMOURGAS: No, through Franklin Street.

BRENDAN SULLIVAN: Through Franklin Street entry, and again that those deliveries not be before --

PENNY HAMOURGAS: Eight a.m.

CONSTANTINE ALEXANDER: Or after eight p.m.

BRENDAN SULLIVAN: Nor after eight p.m.

That the exit onto Franklin Street be noted as an emergency exit only, and also that it be consistently alarmed so as to prevent any employees of casually exiting, opening up that door to congregate outside that building at that entryway.

Anything else?

CONSTANTINE ALEXANDER: I'd just make it clear that you enumerated the conditions, you just said notes, all these things in addition to the five years are conditions of the variance.

BRENDAN SULLIVAN: Oh, I'm sorry. These are the conditions.

ATTORNEY VINCENT PANICO:
Mr. Chairman, when you use the word restaurant, did you say alcohol and entertainment?

BRENDAN SULLIVAN: That would be encompassed under -- when I say restaurant, that would be encompassed under 4.35 --

ATTORNEY VINCENT PANICO: F and G.

BRENDAN SULLIVAN: -- F and G.

That's right. To allow use under Section
4.35 f and g.

All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(The Board of Zoning Appeals
Adjourned at 11:45 p.m.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of August 2011.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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