

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JUNE 16, 2016

7:00 p.m.

in

Citywide Senior Center
806 Massachusetts Avenue, First Floor
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Thomas Scott, Member

Janet Green, Member

Andrea A. Hickey, Associate Member

Alison Hammer, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chairman will call this meeting of the Zoning Board of Appeals to order. At the outset let me make a statement.

After notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting.

At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made. And I wish to report that a recording is being made. A citizen of the city is recording. There is his mic right there or his little recorder. In addition, our stenographer makes a transcription. She records as well.

She uses that to assist her when typing the transcript out to fill in the blanks where necessary.

So there are two recordings being made. You're all now should be aware of that. Anyone else wants to record, you've got to speak now or forever hold your peace. I guess not. Okay.

* * * * *

(7:00 p.m.)

(Sitting Members BZA-009453-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: Let's turn to our regular agenda and the continued cases, and the first case I'm going to call is case No. 009453, 152-154 Raymond Street.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair will report that

we're not going to hear this case this evening. It's going to be further continued. The reason for that being is that the petitioner failed to maintain the posting sign as required by our Ordinance for the 14 days prior to the hearing that's required. These are requirements that we take very seriously at the Board.

So we've got to pick a new date, and this is a case heard, so we've got to pick a date that works for everybody else. I'm not going to be sitting on the case, but I'm just doing the procedural stuff right now.

What are the dates available, Sean?

SEAN O'GRADY: This is a case not heard?

CONSTANTINE ALEXANDER: No, case heard.

SEAN O'GRADY: Do we know who's --

CONSTANTINE ALEXANDER: Yes, I have it right here.

We have Andrea, George, who is not here unfortunately, Brendan, and Tom.

Well, you're going to have to come back for that

case.

THOMAS SCOTT: Yes, I will.

CONSTANTINE ALEXANDER: We'll have to wing it because we don't know what Laura's schedule is or what George's schedule is.

That gentleman here is --

UNIDENTIFIED MEMBER THE AUDIENCE: I'm representing the applicant. They're out of town. They had the sign up. Obviously it wasn't maintained in their absence.

SEAN O'GRADY: Okay. We could do it June 30th.

CONSTANTINE ALEXANDER: Does that work for you?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I will make it work.

CONSTANTINE ALEXANDER: Okay. That means the sign has to go up tomorrow, because you've got 14 days. Will that be enough time? I think I'm right. It would have to go up tomorrow.

ANDREA HICKEY: If you need me, I'm out of town unfortunately.

SEAN O'GRADY: All right so we can move on. The next available is July 28th.

CONSTANTINE ALEXANDER: Sir?

Well, first of all, is everybody here?

ANDREA HICKEY: I'm checking.

CONSTANTINE ALEXANDER: Okay.

UNIDENTIFIED MEMBER THE AUDIENCE: Yes.

CONSTANTINE ALEXANDER: Okay?

All right. The Chair will make a motion. The Chair moves that this case be continued as a case heard until seven p.m. on July 28th subject to the following conditions:

One, that the petitioner sign a waiver for a time of decision. And the petitioner has already done that in connection with the original hearing. That's taken care of.

Two, that the posting sign that was not

maintained, must be maintained for the 14 days prior to the hearing of July 28th with the requisite time and date. If you have the old sign or if your client has the old sign, they can just take a magic marker and scratch through it. If not, see Maria and she'll get you a new sign. Maria Pacheco.

And lastly, the condition that to the extent that petitioner wishes to modify the plans that they've already submitted or the dimensional form, those revisions, revised plans, revised dimensional form, must be in our files no later than five p.m. on the Monday before July 28th. If that is not done, the case will be continued again. Okay?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

* * * * *

(7:05 p.m.)

(Sitting Members BZA-009301-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009301, 147 Prospect Street.

Is there anyone here wishing to be heard on this matter? For the record.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, Members of the Board. For the record. Attorney Sean Hope, Hope Legal Offices in Cambridge. We're here tonight on behalf of the petitioner. This is a continued case and we thank the Board for allowing us the opportunity to revise and update the plans. I think the record is complete with our arguments, but we would like the opportunity to walk through the specific changes.

CONSTANTINE ALEXANDER: Yes, that's fine. And let me say something at the outset. I want to congratulate you

and your clients for the presentation. This chart shows which shows original proposal and this proposal now and how it's changed, it's very, very useful. At least for me it was, in analyzing what you want to do. It doesn't mean that I'm necessarily going to agree with what you want to do. We'll find out. But I do think it was a good job and I congratulate you on that.

ATTORNEY SEAN HOPE: Thank you. And I have to give the credit to Mr. Mark Boyes-Watson's office and also to the petitioner to make sure we were very clear on the graphics with the changes so that some of the magnitude could be understood. I think now we can turn it over and I think Mr. Firouzbakht himself would like to walk through some of the changes along with the model and we'll get right into it.

MAHMOOD FIROUZBAKHT: Thanks again for the opportunity to come back yet again, and I hope that this time we're -- the changes that we've made -- we certainly,

we heard the concerns of the Board last time around and we went back and spent a lot of time and thought long and hard about how to be responsive to the concerns we heard and yet still maintain a project that's feasible given some of the challenges, inherent challenges with this site. And so, you know, the overriding sort of concern was lot coverage and open space. So we obviously focussed on that aspect of the project.

Am I in the best place here? Okay.

So just to kind of go through some of the changes that we've made. We originally -- let's see, Hannah, this is the original, right?

MS. HANNAH: This is the current.

MAHMOOD FIROUZBAKHT: That's the original? This is the current plan with the changes on it?

MS. HANNAH: Yes, this just shows all the changes in red.

MAHMOOD FIROUZBAKHT: Got it.

MS. HANNAH: And then this is the other.

MAHMOOD FIROUZBAKHT: So originally we had an additional parking space right in the front of the lot which we've eliminated and we've -- now are proposing to do open green space there, which visually aesthetically I think that's a, that's a really great plus because we've got Prospect Street here. We will likely do a better fence than what's currently there. And so now you've got this nice green space that will be at the street and that will improve the streetscape right at the property.

Additionally -- originally we had a turnaround space that we had proposed here which we've eliminated and inserted green space.

CONSTANTINE ALEXANDER: Why don't you as you're doing that, point to the new plans over there that shows -- I mean when you describe it, also point to what has happened. Just makes it clearer.

MAHMOOD FIROUZBAKHT: See that is the --

MS. HANNAH: Yeah, this is the same plan.

MAHMOOD FIROUZBAKHT: Okay.

MS. HANNAH: This just shows all the changes in red. I can get the original.

MAHMOOD FIROUZBAKHT: Yeah, would you mind? So we can see a comparison.

MS. HANNAH: Yeah.

MAHMOOD FIROUZBAKHT: You can sort of see the original plan with the dotted red lines on the plan that we're looking at.

CONSTANTINE ALEXANDER: That's what you submitted?

MAHMOOD FIROUZBAKHT: Right, correct.

MS. HANNAH: This is the original submission site plan, the very first one.

MAHMOOD FIROUZBAKHT: Okay, and that's the parking space --

CONSTANTINE ALEXANDER: That's the parking space.

MAHMOOD FIROUZBAKHT: -- that we're eliminating.

MS. HANNAH: Yep.

MAHMOOD FIROUZBAKHT: And this is the turnaround driveway space that we're eliminating and creating additional green space.

Just to kind of go through the -- so the other -- I guess in terms of the footprint of the building, we did decrease the footprint of the building by about 100 square feet, and so that -- of the new building.

CONSTANTINE ALEXANDER: The new building, roughly how much square footage is there? I just want to put in percentage terms. 100 represents what percentage?

MAHMOOD FIROUZBAKHT: I believe 2.2 percent, Heather, if I'm right?

CONSTANTINE ALEXANDER: I don't have it. I think that's right. Okay. Just for the benefit of the audience, too, the size of the structure, 2.3 percent.

MAHMOOD FIROUZBAKHT: Right.

CONSTANTINE ALEXANDER: 100 feet.

MAHMOOD FIROUZBAKHT: 2.2 or 2.3.

It's interesting, though, that sounds like not very much in terms of the reduction, however, some of the other changes that we made to the footprint and also the location of the building I think greatly improved the presence of the green space, of the open space, such that now we push the building further away from this lot line from the Broadway Street side. We're now -- we actually comply on this side, whereas before we did not. These days they don't have foundations underneath and, therefore, you know, in terms of the calculations of the setback, you know, it improves that calculation. But you can see the dotted line there. And you can see, you know, over there in that building it's much closer to the lot line. Here we've pushed the building back by basically reducing the size of the connection between the two buildings and kind of bringing them closer. When you think of aesthetically and also just from a usefulness perspective, that open space in

the middle here is nice in that it does create some separation between the two buildings, but it's not that useful and then it doesn't provide open space around the perimeter and the setbacks of the building which now we've achieved that.

We pushed the building on this side --

CONSTANTINE ALEXANDER: Excuse me. I'm sorry, I don't mean to interrupt you. I know the Mid-Cambridge Historical, historical society was very much interested in making sure that the old, the historical building is being moved and being visible from the street.

MAHMOOD FIROUZBAKHT: Right.

CONSTANTINE ALEXANDER: What impact will connecting the two buildings have on that?

MAHMOOD FIROUZBAKHT: Well, our original submission -- actually I guess our middle submission included connecting the buildings which was approved by Mid-Cambridge.

CONSTANTINE ALEXANDER: Okay.

MAHMOOD FIROUZBAKHT: So they were fine with that connection. I mean, I think you can see in Charlie Sullivan's second letter, the overriding concern of the Historical Commission as well as Mid-Cambridge is to preserve the single-family home. And so they are very much supportive of, you know, that kind of a configuration.

So, we've pushed the building back this way to create a conforming setback on this side. We've also pushed the building further in from this back, the rear lot line to essentially the same setback which exists now with the current historic single-family home. So we are not further infringing on that rear setback.

CONSTANTINE ALEXANDER: In fact, you're reducing the amount of relief you're seeking from this Board; is that correct?

MAHMOOD FIROUZBAKHT: Correct, by one setback.

CONSTANTINE ALEXANDER: By one setback?

MAHMOOD FIROUZBAKHT: We tried to achieve what Mr. Sullivan, you know, was hoping for. I think we're almost there. We're one setback short. This is a challenging site, and so we've done, you know, a lot to get there and hopefully we are there.

We also pushed the historic single-family home further up towards Prospect Street to create a larger yard space here. This setback, because of the odd shape of the lot, because of this long neck as you know, Mr. Chair, the setback required, the rear setback is 30 feet, otherwise in this zoning district it would be 20 feet. And so now we're at 20 feet here. We still require setback relief, but however we've improved that condition from our original submission.

We -- let's see, am I missing anything?

CONSTANTINE ALEXANDER: What about the total open space where it was before and what you're doing --

MAHMOOD FIROUZBAKHT: Right. So the total open

space originally -- our original submission we were at 39 percent of the lot. Currently I believe we're at 53 percent with these modifications.

CONSTANTINE ALEXANDER: You believe or you are?

MAHMOOD FIROUZBAKHT: No, that's where we're at.

You know, sometimes those numbers, you know --

MS. HANNAH: Yeah, so it went from 39 to 53.

CONSTANTINE ALEXANDER: Okay.

MAHMOOD FIROUZBAKHT: So we're over 50 percent on open space. And we've heard that concern and so we certainly -- we tried to do our best to reduce the project in whatever ways we could, but feasibility is also obviously an overriding concern. And so we made, many, many changes to focus on that element of the project, to improve it. And there are, we appreciate that opportunity, frankly, to go back and look at this, because I think the site that we're looking at probably it's in some respects an improvement over where we started in terms of the functionality of the

open spaces for the end hopefully eventual homeowners, they have better yard space as a result of the changes that we've made which I think that definitely is an improvement.

I think, I don't know if there's any other major one, major changes.

I mean we eliminated a bay over here to create additional -- so in terms of the footprint, you know, I think that has a good visual impact.

We reduced this connection. We -- there was originally there was a separate entrance going down to the lower level of the historic single-family. We eliminated that. And that increased the lot coverage.

And let's see. Anything else here?

MS. HANNAH: I think that sums it up.

MAHMOOD FIROUZBAKHT: Those are the major changes, those are the changes.

As you can see, you know, I like to say we were pulling our hair to get to these changes, but I think I did

the opposite by, you know, growing my hair between now and then. But there was a lot of thought went into this, this revised plan, so hopefully it addresses the Board's concerns from last time around.

CONSTANTINE ALEXANDER: Questions from members of the board at this point?

BRENDAN SULLIVAN: Where are you compliant on setbacks and where are you deficient?

MS. HANNAH: So we're compliant on the Broadway side. We're compliant here, and we're compliant in the front. We're asking for relief for the rear setback and this side setback.

BRENDAN SULLIVAN: And on the two units, on the left side of that, I notice in your drawing you have a dimension here of 11 foot which I don't know what the relevance of that is.

MAHMOOD FIROUZBAKHT: That's the existing setback, Brendan, of the historic single-family home.

BRENDAN SULLIVAN: Okay.

And then in your dimensional form, where is the number for that setback, that left corner of the building to the -- no, down. Like, between there and the back.

MS. HANNAH: And the back? Well, this is a bay.

BRENDAN SULLIVAN: Right there.

MS. HANNAH: This doesn't have a foundation, so this is the foundation here, so that's where the 11 foot -- feet is dimensioned to.

BRENDAN SULLIVAN: So that's a bay. So basically what you've done is you've added bays, but not have any foundation so you -- it still shows this massive a building but it's a mathematical.

MS. HANNAH: Well, that bay was always there.

BRENDAN SULLIVAN: -- wizardry if you will.

MS. HANNAH: That bay was always there. Right here. So, you know, it was six feet to the foundation before and now we're at 11.

BRENDAN SULLIVAN: Okay.

MAHMOOD FIROUZBAKHT: So we pushed the building back five feet from where it originally was proposed.

BRENDAN SULLIVAN: But the wall of the house is still there?

MAHMOOD FIROUZBAKHT: The wall of the house is still there.

CONSTANTINE ALEXANDER: In other words, by not having a foundation, you still have the wall. The wall is where it was before.

MS. HANNAH: Right.

CONSTANTINE ALEXANDER: But just from a calculation point of view, the technical calculation --

MAHMOOD FIROUZBAKHT: Well, no, we have improved that condition, though.

CONSTANTINE ALEXANDER: Well, it looks like you have more space on the --

JANET GREEN: They do.

MAHMOOD FIROUZBAKHT: It's over eight feet.

MS. HANNAH: And it's he a three-foot bay. So we're eight feet, you know, from the bay.

CONSTANTINE ALEXANDER: Visually that appears to be the case.

MAHMOOD FIROUZBAKHT: Yeah.

It's still not compliant, it's in the rear setback.

CONSTANTINE ALEXANDER: It's less -- I mean less non-compliant.

ATTORNEY SEAN HOPE: And, again, that's the 30-foot setback. You weren't going to achieve that whether you had the bay or not.

CONSTANTINE ALEXANDER: Further questions?

Anybody else have questions?

(No Response.)

CONSTANTINE ALEXANDER: I'm going to open the matter up to public testimony. We do have a number of new

letters in our file.

Okay, I will open the matter up to public testimony. Is there anybody here wishes to be heard on this matter? Apparently no one wishes to be -- I'm sorry, sir. You have to come forward and give your name. Finish eating and come forward and give us your name and address.

JEFFREY BURCELL: My name is Jeffrey Burcell. I was here at the last three.

CONSTANTINE ALEXANDER: Yes, you were.

JEFFREY BURCELL: And as I said then, the only reason I'm here is because my son Connor and his mother Karen are playing lacrosse. So Brendan knows my son.

In any case, we -- our whole neighborhood right on Tremont Street had a concern with Taco Bell which came in with a large plan, loss of space, extra units, and so forth and we I think put a pretty good opposition onto that. And the architect came back with, instead of what you guys have done, he did something completely in the Zoning Code and

required no variance at all, and he was very proud of that by the way. He talked to me about it in the plan afterwards. So, I think it's possible to do these things within the Zoning Code. Our concern is again and again there's the loss of space, increased density, and the code is designed to address those concerns particularly with setbacks. I don't see any reason you need exceptions to where it's gonna result in a loss of open space. We don't have enough open space already. So I guess --

CONSTANTINE ALEXANDER: You do appreciate as they pointed out, they've increased the amount of open --

JEFFREY BURCELL: They did.

CONSTANTINE ALEXANDER: -- increased it from 39 percent to 53 percent.

JEFFREY BURCELL: That's a good point. That's about it.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to -- you also wrote a letter, sir. You

also wrote a letter. Sir, I don't have to read your letter?

JEFFREY BURCELL: I wrote a letter, yes.

CONSTANTINE ALEXANDER: But you covered your letter I assume in your oral comments? Do you want me to read your letter?

JEFFREY BURCELL: Yes, I did.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I'm sorry, I believe this gentleman did not give his address and I would like to know his address.

CONSTANTINE ALEXANDER: I can't force him to give his address. Would you mind giving your address?

JEFFREY BURCELL: I live on Tremont Street right on Broadway.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

JANET GREEN: A guy over here.

CONSTANTINE ALEXANDER: Oh, I'm sorry. I didn't see you, sir. My apologies.

STEVE BUCKLEY: Do I just speak?

CONSTANTINE ALEXANDER: Yes, give your name and address, please.

STEVE BUCKLEY: My name is Steve Buckley. I live at 43 Highland Road in Somerville. I'm a native of Cambridge. What's the fancy term you guys use for the historic?

MAHMOOD FIROUZBAKHT: Conservation district?

STEVE BUCKLEY: What's the house being called?

MAHMOOD FIROUZBAKHT: It's in the Mid-Cambridge --

STEVE BUCKLEY: What's it called the house itself? The original houses.

MAHMOOD FIROUZBAKHT: Oh, the historic house.

STEVE BUCKLEY: Historic house. I grew up in the historic house. And my family has always had a proprietary interest in the house since we sold it. My family

raised -- my parents raised six kids in the house. We've driven by it for years. We have a tremendous interest in it being preserved, and we're frankly very excited about what Mahmood is doing. He got in touch with us, he invited us to see the house. He took me on a tour of the house. I showed him all kinds of little nooks and crannies where so many great things happened in our lives. And I'm not here in a position of advocacy for him, though, I believe his cause is noble. I'm not here -- I don't have any financial stake. But my family does have an interest in the house living on. And the plans that we've seen look exciting. It looks like the house will carry on. And I also know that having walked through the house a couple of months ago, I couldn't believe how small it was. Somehow my parents --

CONSTANTINE ALEXANDER: You've grown that's the reason why.

STEVE BUCKLEY: And somehow my parents -- there were eight of us living in that house at one time. As

happened my dad died, we all grew up and went to college and get on with our lives. My mom was there by herself and that's why she sold it. I could answer any questions you may have, but looking at the plans -- and, again, I'm not involved in the preservation aspect, the open space aspect, simply the house by itself, and I think if the house got hip with the 21st century and got cleaned up and spruced up, I think it would look very exciting and I would be very proud to drive down the street and see that house happen the way it looks like it's going to happen. If I can answer any questions -- and by the way, one other thing, I have a huge interest in the history of the city. I once did a documentary on the Fresh Pond traffic circle. I created the old time baseball game that's played in North Cambridge every year. I've done magazine pieces on Barry's Corner, the Payne Playground, the Wilder Playground on Lee Street, the Cooper Playground on Hancock Street. So I do have an interest in the history of the city. I grew up here, my

father grew up here, and his father grew up here, and my great-grandfather came down here from Halifax. So I love the city and I have an interest in the city.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down.

Ma'am.

ALINA BOSH: Alina Bosh (phonetic), 155 Prospect Street in Cambridge. I live right behind it and I see the house every day. And my main concern is that the more this gets pushed out, the later the renovations are gonna start. And if they start too late, then they might be pushed until next spring and I'm very concerned that the house may not survive until then. It just is in such a disheveled state that the more we talk about this, as much as I very much appreciate the changes that have been made, and they wouldn't have been done unless you guys put your foot down, I don't know how much longer this --

CONSTANTINE ALEXANDER: Well, I would assume we're

going to decide the case one way or another tonight.

ALINA BOSH: That would be appreciated.

CONSTANTINE ALEXANDER: That's my assumption.

Sir.

STEVEN COHEN: Hi, Steve Cohen, 26 Fayette Street, mid-Cambridge, just a few blocks away. You know, I do think that this application is all about preserving the old historic house and that's what creates the need for the variances, and there is a perfectly compliant development option here that would require any variances, but that scenario doesn't preserve the historic house. So it's all about the historic house. And, you know, from my way of thinking, I mean these rules that we're all working with, you know, are in some abstraction. They were created by the community to protect the interest of the community, and we've kind of heard a lot from the community on this, on the proposal that saves the house but requires variances. You know, we heard from the City Manager who supports, we heard

from City Councillors that are in support, we heard from Charlie Sullivan who, you know, represents the historic perspective and Historic Commission. And, you know, he goes for the variances in order to protect the house. And I guess most importantly from my perspective is the Mid-Cambridge Neighborhood Conservation District Commission which was, you know, created just for this neighborhood. Its members are residents of this neighborhood. They're calling, their chore, their commitment, and job is to oversee development in the neighborhood to protect the interest of this community, this neighborhood, and the residents of this neighborhood. And they reviewed this and, you know, looked at the options and consequences and included also that they favored the variances in order to protect the historic house. And, you know, Charlie Sullivan in his letter specifically says first of all, that this proposal does not constitute the excess in-fill, and that's the sort of the technical term in the mid-Cambridge

regulation which basically means you're building too much. It's too dense. He's saying, no, it's not excess in-fill. And he says specifically, you know, that he supports this because he wants to preserve the house. If this isn't supported by the ZBA, if the variances aren't granted, then the house probably doesn't get preserved. And I know from a developer's perspective, hey, it's probably more profitable. Actually, I'm pretty sure it's more profitable to do this development without preserving the old house; perfectly simple compliant project and it would be great. But my understanding is the community has spoken, the City has spoken, they want to preserve the house. The developer's come through with a, you know, a pretty good proposal. I think that does respond to the interest of the community and the neighbors and to preserve house. So it seems to me like this is a good proposal. It's supported by the entire community and all the representatives of this specific neighborhood in the Conservation District Commission. And I

as a neighbor, personally fully support the application and I think that the entire neighborhood and community does, too. Everything is give and take and everything requires a judgment call, but, you know, on balance in order to preserve this house and with the changes that they've made to improve open space and setbacks, I think this is a good application.

Thanks.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down. And I want to have a few comments to respond to you or elaborate.

One, I don't think there's unanimous community support. You heard this gentleman right before you. We have another letter in the file that I'm going to read in a second. So although I would certainly grant you very strong support. It's not unanimous. No. 1.

No. 2, I don't think any member of this Board wants to have this house, the historic house torn down.

That's not the issue. The issue is what else is going to go on the site to preserve the property? There are some members of this Board that feel, at least with the original proposal, we haven't discussed this evening's proposal, thought there were other solutions that would preserve the historic house and would be better for the City of Cambridge. The developer has different views and that's life. But it's not a matter of this Board is that people are there with pickaxe ready to tear the building down. We want to preserve it, too. It's the circumstances under which we preserve it that's the issue that's before us tonight.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one else wishes to be heard. As I said, we do have letters.

We have a letter from the gentleman who before you who just spoke.

We have a letter from Alex Loud, L-O-U-D, 18 1/2 Tremont Street. (Reading) I am writing to express my opposition to the proposed variance of 147 Prospect Street. Given the extraordinary growth of development and employment in the Kendall Square/MIT family neighborhoods like Mid-Cambridge and Area 4 are already facing tremendous pressures in the cost of living and more specifically housing costs. Parking availability and the in-filling of the small in between spaces in neighborhoods that are always made the city feel so leafy and open. As proposed, the new development of 147 Prospect Street will only further increase these pressures by reducing parking and increasing density in what was one of those small tree-filled squares -- spaces. As such, I respectfully request that the variance be denied.

I don't know if this person wrote with regard to the original plans or the plans before us tonight. But in any event, there's opposition.

And the last letter, last new letter -- no, I guess there's two letters. A letter from, or e-mail from Mark McGovern. (Reading) Let me begin by thanking you -- this is a letter, an e-mail addressed to this Board. Let me begin by thanking you for your time and commitment to Cambridge. As you know, I rarely get involved in the deliberations of any city's boards and commissions out of respect for your autonomy. There are occasions, however, where an issue is brought to my attention and I feel compelled to share my view. The issue before you tonight regarding 147R Prospect Street is one such occasion. As I'm sure you're aware, the issue of supply and demand in terms of housing is a major point of discussion in our community. As the industry in Cambridge has changed and the workforce has gone from low wage manufacturing jobs to higher paid biotech and pharmaceutical jobs, combined with Cambridge's desirability, there is a great demand on our housing stock. Although there is a great deal of residential construction

going on, housing production continues to be a need and in the best interest of our city. When thinking about 147R Prospect Street, this is an opportunity to add additional housing to the market. The lot size is appropriate for three units, and the location so close to public transportation in Central Square is the exact place where greater density should be allowed. From my understanding, neighbors are in support of the project as is Charlie Sullivan from the Historical Commission, and other city departments. I don't claim to know the nuances as well as you, nor do I have your experience. But what I do know is we need to build more housing in Cambridge of all types. If this project is supported by the community and has all other approvals, I don't understand why it wouldn't go forward. To me this project seems to be in line with city goals. Thank you again for your hard work. I apologize for not being able to attend in person. I hope that you will approve this project.

Let me make -- I'm going to read a letter from Mr. Sullivan in a second. Let me make another comment, maybe it's my night of speechifying. We -- this Board does not set housing policy. The City Council does that. They do it with regard to us, through the Zoning Ordinance. Our job is to deal with individual situations where the Ordinance inadvertently creates an injustice. And if we believe there is an injustice, we can grant relief. But we don't have the right to re-write Zoning Code or how it's going to be used in the city. There are issues in the Zoning Code, I make no bones about it. Those who are concerned about it, speak to your City Councillor. They're the ones who are not doing their job to get us an up-to-date Zoning Code that deals with the issues that have emerged over the last 10, 20 years. Sorry for the tirade. But I hear this all the time and I find it very annoying, frankly, because I think people misconstrue what our Board can or cannot or should not do.

Lastly, we do have a letter as I mentioned from Charlie Sullivan. (Reading) I am writing to reiterate my recent testimony in support of the variance and Special Permit requested for the above-referenced project. The house at 147 Prospect Street was constructed as a single-family residence at 259 Harvard Street in 1819 and was moved to its present location in 1837. The owner, Daniel Stone was a shopkeeper in Central Square and the superintendent of the town cemetery that once occupied Sennott Park. Much of Mid-Cambridge's residential building stock was constructed between the 1840s and 1890s, and very few structures remain from the early suburban period. Additionally, the house is a rare example of a federal style residents with an undercut porch. It has not been occupied for many years and is in perilous condition. The proponent intends to reorient the house on the lot, restore it to single-family occupancy, and construct a separate building for two families. The Mid-Cambridge Neighborhood

Conservation District Commission granted the proponent a Certificate of Appropriateness on the basis that the project was appropriate for the building and its surroundings and that the project did not include excessive in-fill. The Commission also found the project consistent with the existing scale and density of the area. The proponent has recently completed a successful renovation at 24 Clinton Street, and community support for the project was quite strong. The placement of the proposed new building at the rear of the lot minimizes the visual impact while the new location for the existing house allows it to be seen from Prospect Street. The relief requested will preserve the significant but fragile building from almost certain destruction.

And that's it. And the other letters are going back to the original hearing and different plans.

So with that I'm going to close public testimony.

We've had a lot of discussion already. Any

further discussion or should we go into a motion?

JANET GREEN: I'm good.

CONSTANTINE ALEXANDER: Okay. And let's remember, by the way, if we grant, if we grant the variance tonight, we have to take a second vote on the Special Permit. So it's a two-er tonight.

All right, the Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the petitioner would be unable to preserve a historical significant structure without the relief being sought.

That the hardship is owing to the circumstances relating to the shape of the lot. This has been amply demonstrated as a very unusually-shaped lot which creates all sorts of zoning problems in terms of setbacks in particular.

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

In this regard the Chair would note that if the variance is granted, an historically significant building will be preserved for the City, which is very noteworthy.

And that this project has strong but not unanimous support of the neighborhood.

So on the basis of these findings, the Chair moves that we grant the variance sought on the condition that the work proceed in accordance with plans prepared by Boyes-Watson Architects. They were revised with a June 3rd date, the first page of which has been initialled by the Chair.

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

(Aye.)

(Alexander, Scott, Green, Hammer.)

CONSTANTINE ALEXANDER: Four in favor.

Any opposed?

BRENDAN SULLIVAN: Opposed.

CONSTANTINE ALEXANDER: The variance is granted.

Before we move on to the Special Permit, there's something I want to say. The two of you are experienced real estate lawyers.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Why did you bring before us this bogus argument that you could satisfy the financial hardship by the personal circumstances of the current owner? I regard that as an attempt to bring emotional, if not legal pressure on us, and in the course of it you humiliated a very nice woman and a citizen of the city. I would expect better from you and I don't want to see this again if you come back before us.

ATTORNEY SEAN HOPE: I would take personal responsibility for that. It was not intended to humiliate

or blackmail the Board. But you are correct, according to case law in terms of what the Board could grant approval on, I think that it was a misstep. It was not intended to offend the Board whatsoever, but I do take responsibility as counsel. Mahmood is the client, I'm the attorney. And to the extent that it offended the Board, we do apologize for that and I think it was ineffective. But the intent was not to blackmail or to do that.

While I do think in context of the situation that we could have put in a written submission, added that into the file and not had made it such a large part of the presentation. But I do understand the Chair's point about the legal requirements of Chapter 40A and it does not speak to personal hardship, and the case law is very clear that you cannot base granting the hardship on personal circumstances. And for that we do apologize and stand corrected.

CONSTANTINE ALEXANDER: Apology accepted. Thank

you.

Okay, let's move on to the Special Permit. The Special Permit that's being requested is to utilize existing parking spaces that are sited within the five-foot side yard setback buffer. Why don't you just briefly, we never discussed this issue for the Board.

ATTORNEY SEAN HOPE: Yes. So there's existing parking that is sited with --

CONSTANTINE ALEXANDER: Why don't you show the plan where that parking is so everybody can see.

ATTORNEY SEAN HOPE: So there is existing parking that's within this, what we call the neck of the lot. And so these are the spaces here. According to the Ordinance, there's a five-foot setback requirement. So these spaces are existing but they're not grandfathered because essentially by moving the structure, we're creating a new structure so we have to comply with that. So we're asking for Special Permit relief to have parking within this

five-foot setback to allow for the proper dimensions. If we were going to have the proper dimensions in the five-foot setback, then a portion of the parking space would be into this private way and wouldn't be on the property itself.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the board?

(No Response.)

CONSTANTINE ALEXANDER: No questions. I'll open this matter up to public testimony.

Is there anyone here wishes to be heard with regard to the Special Permit for the parking setback requirements?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. We have nothing in our files, no letters or the like on this issue. So --

THOMAS SCOTT: No exceptions from the neighbor that that parking abuts?

ATTORNEY SEAN HOPE: So, I think that that's existing parking, and so that there are currently cars there so we're actually not changing that. And I think actually by removing one parking space, we're actually alleviating it. And the other thing, because the house has been abandoned, it's been open parking and it hasn't been regulated. So having a homeowner who is going to be there, it's going to be a better condition. I assume, too, as part of bringing utilities to the road and different things, that there's been some discussion amongst the neighbors of actually approving the private way, making sure it's created and managed properly. So overall I think the idea is it's going to be an improvement of how that property is being managed.

CONSTANTINE ALEXANDER: Answer your question?

THOMAS SCOTT: Yeah.

CONSTANTINE ALEXANDER: I think we're ready for a vote. Okay.

With regard to the Special Permit, the Chair moves that this Board make the following findings:

That the requirements the Ordinance cannot be met without the Special Permit being sought.

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

That the continued operation or development of adjacent uses will not be adversely affected by what is proposed, with regard to the parking.

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

And for other reasons the proposed, what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate the intent and purpose of the Ordinance.

On the basis of these findings, the Chair moves

that we grant the Special Permit requested with regard to parking subject to the condition that the work proceed in accordance with the plans referred to with regard to the variance we just granted.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Scott, Green, Hammer.)

CONSTANTINE ALEXANDER: One opposed?

BRENDAN SULLIVAN: (Raising hand.)

CONSTANTINE ALEXANDER: One opposed.

MAHMOOD FIROUZBAKHT: Thank you, Mr. Chair. Thank you, board members.

* * * * *

(7:45 p.m.)

(Sitting Members BZA-009826-2016: Constantine Alexander,
Brendan Sullivan, Thomas Scott, Janet Green, Andrea A.
Hickey.)

CONSTANTINE ALEXANDER: If I could ask those of

you not staying for this case to leave or at least talk quietly among yourselves so we can go on.

The Chair will call case No. 009826, 33 Kinnaird Street. And as the advertisement indicates, there are two Kinnaird Streets, same property, two different cases. This is the latter case. This is the one with the corrected plans, and that's the one we're taking tonight. The other one I assume one way or another will disappear.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, Members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. We're here on behalf of the petitioners. We have Mr. Ryan Wittig. And his wife Taylor. They are part owners of the property. The other petitioner is also -- he's not here tonight, but he's also a proposed --

CONSTANTINE ALEXANDER: You're part owner of the property?

RYAN WITTIG: Yes.

CONSTANTINE ALEXANDER: Did you recently acquire your interest?

RYAN WITTIG: About a year ago now.

CONSTANTINE ALEXANDER: You don't live on the property now?

RYAN WITTIG: No. We're renting it out.

CONSTANTINE ALEXANDER: You're renting it out?

RYAN WITTIG: Yes.

CONSTANTINE ALEXANDER: You're renting it out to the two ZipCar parking spaces that are illegal in the backyard?

RYAN WITTIG: Yes.

JANET GREEN: Three.

CONSTANTINE ALEXANDER: They're illegal.

RYAN WITTIG: I'm not aware of that. We can --

CONSTANTINE ALEXANDER: Mr. Hope can advise you on that.

RYAN WITTIG: Sure. Fair enough.

ATTORNEY SEAN HOPE: This is an application requesting variance relief. Part of the variance relief is to build two new dwelling units. The dwelling units would require relief from the front and the ride side setback.

CONSTANTINE ALEXANDER: Excuse me. Sir?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: We can't hear.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can we shut the door?

CONSTANTINE ALEXANDER: By all means, yes. Close the door. If you want to move up even behind us so you can hear better. I apologize, because this is the best we've got. The acoustics -- you're on. Go ahead.

ATTORNEY SEAN HOPE: All right, start again. So this is an application requesting variance relief.

CONSTANTINE ALEXANDER: Can you hear now, sir?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yes.

ATTORNEY SEAN HOPE: The petitioners are looking

to be homeowners in Cambridge and they are proposing a two-unit development which will be occupied by each of the petitioners. And the new dwelling units will be located within a portion of the front yard setback and the right yard setback, that's the variance relief.

And there's also a Special Permit relief to locate two cars as tandem parking, and that would require a Special Permit as opposed to if they were compliant parking.

This is a project that has extensive community outreach. This project had to go to the Cambridge Historical Commission. There's an existing single-family house that's not conforming on the lot. It's located within a right yard setback as well as the front yard setback. And it's greater than 50-years-old. So the Cambridge Historical Commission, as part of the proposal to demolish the building, had to review and issue a Certificate of Appropriateness. As part of that hearing, we actually showed a version of the proposed house as you have in the

file, as well as an alternative house that would require only a curb cut as part of the showing of what the options might be if this house was torn down. The Historical Commission unanimously supported the proposed condition when it was more in keeping with the style of the house even though it would require zoning relief. At that time a portion of the reason why we're in the front yard setback, and I'll let Mr. Wittig go into that in a little more detail as he's had specific conversations with the neighbors and abutters. They actually preferred that counsel not be involved so I will let Mr. Wittig speak to that. But this proposal could have been built not being within the front yard setback. And I bring that up because I understand how the front yard setback is very sacrosanct to the Board. It reduces masses in the street. And any time you're proposing new construction, I always counsel clients and say what can you do as-of-right without zoning relief and work backwards.

So there was an initial proposal that still needed

setback relief for the right-hand side but didn't need front yard setback relief. The proposal was changed after conversations with the neighbors because of the rear yard setback. And so the rear yard setback, and I'm not going to steal all of -- take all of it, but I think it's important. The rear yard setback is 20 feet within the Residence C District. We are proposing almost 40 feet. Now we moved the house within the front yard setback primarily to address the issues of the abutters on the left-hand side at 31 Kinnaird Street. And we did that because there's an existing single-family house that is pretty short and in poor condition, but the lot has a now very generous rear yard setback. To try to mitigate the change, even though, even though to be greater than compliant, we almost actually doubled the rear yard setback.

On the right-hand setback we maintained the four-foot setback because the existing house is four feet from the property line, and that's an existing condition.

The reason why we're actually dealing with setbacks is that this is a 30-foot width lot. It's a very narrow lot. It's not compliant. The minimum lot width is 50 feet so it's not compliant. In order to be able to live, to be able to construct a functional house in terms of width of the actual rooms and functionality, we needed to get some setback relief. Now, this setback relief is the same whether you built a single-family or a two-family. The idea is to be able to have a functional structure. The lot in and of itself as we met all the setbacks, was going to be too narrow. So I kind of summarized but I think Mr. Wittig wanted to walk through a little bit of the existing conditions of the site because I think it's important to look at what it was -- excuse me, what it is now and what we're proposing, because I think there are a lot of improvements in terms of complying with the dimensional requirements of the Ordinance in terms of open space that aren't existing that are going to be there. Also, I think,

part of what we wanted to show the Board is the context of what we built into the neighborhood. A lot of feedback that we received from neighbors was about projects that are out of scale within the context of the neighborhood, and we also wanted to discuss, because there are several examples of context on the neighborhood.

And then thirdly, not this project but this neighborhood, has also been part of the petition to down zone the neighborhood. This is a Residence C-1, and there was a petition that was before the City Council and the Planning Board to down those to a Res C. I think part of the feedback you heard was about in-fill in rear yards and also overdevelopment. I think, again, this project is not one of these projects because we actually are proposing to double the rear yard setback. But if that proposal would have passed, this project would not have been viable whatsoever. So we had already started this process. There was a down zoning filed that wasn't supported by the City

Council.

And just to give the context, he's owned this property for over a year. And I think it's probably been close to seven months out of that year, maybe even more, that we have been talking with neighbors, talking with the City, trying to get the right project before the Board. So we feel that we are there. And my only point about bringing neighborhood context because neighbors can speak for themselves, this is not a case where another go with the neighbors would yield much fruit. We've actually think we hit the wall where there's no more to give on the project and I think both sides have heard each other equally, and now because there was a down zoning petition even the City Council has even weighed in on what the size and scope of this lot should be. We're also asking for relief and we have to make our argument for relief, but in terms of what the Ordinance would allow on this lot, we think that question has been answered in our opinion.

CONSTANTINE ALEXANDER: Before you speak, sir, a couple of things:

One, in your letter that requested the continuance tonight. It's a letter dated April 27th, you say: Additionally, we plan to use this extra time to further discuss our proposal with the neighbors in opposition to improve the project if possible.

Did you -- I take it -- what I've heard you say is you elected not to have those discussions. Am I right?

ATTORNEY SEAN HOPE: Yeah, I mean I would let -- again, I haven't been part of the correspondence --

CONSTANTINE ALEXANDER: Whoever wants to answer it. I don't care.

RYAN WITTIG: We've had communications but no revisions to the plans.

CONSTANTINE ALEXANDER: Were you aware that at the -- when we continued the case, because there were neighbors in opposition of the hearing, there was a request

for shadow studies. And we said we would request that you make the shadow studies. Were you made aware of that?

RYAN WITTIG: I was not made aware of that. It was brought up at the committee, but we did have the shadow study.

CONSTANTINE ALEXANDER: What committee? I'm sorry.

RYAN WITTIG: At the last hearing I was not aware that that was brought up, but we did have a shadow study done.

CONSTANTINE ALEXANDER: Where is it?

RYAN WITTIG: It's in the folder.

CONSTANTINE ALEXANDER: You didn't give it to us before?

RYAN WITTIG: No. My architect got it to me just before the submission date.

CONSTANTINE ALEXANDER: Well, you know, that doesn't work on this Board.

RYAN WITTIG: Sure.

CONSTANTINE ALEXANDER: First of all, there are a lot of neighbors here who are very interested in the shadow study. They haven't had a chance to look at it. We haven't had a chance to look at it. As Mr. Hope well knows, we ordinarily -- we're not going to do that tonight. We ordinarily say come back because you've got to have it in the file by five p.m. on the Monday before. And we made that very clear when we continued the case.

RYAN WITTIG: Sure. I apologize, I was not made aware that that was brought up. The neighbors requested that we have a shadow study done and our -- I'm new to this. I have to -- I'm new to this game, so I'm, I have to -- just have to apologize for not having the filing.

CONSTANTINE ALEXANDER: I just want to get it on the record.

RYAN WITTIG: Sure.

So I'd like to thank the Board for hearing our

case tonight as well. As Sean mentioned, you know, the reason why I bought this property, I bought it with one of my best friends, because buying a house in Cambridge for someone in their 30s is difficult these days, and I'm not in the position to be able to buy a single-family home in Cambridge. I've lived in Cambridge off and on for six or seven years, and would, this is somewhere where I would like to live. I'd like to start my family here if possible. And the project that we're proposing was created almost out of necessity where I needed to bring a friend in to help me to get the down payment for the property that we're looking at. And because this property would allow or permit for two units, it allowed us to both kind of split the cost of buying a house and building a nice new house that would suit our needs.

So with that being said, I guess I'll kind of get into some of the existing conditions. Up here you can see a narrow view of our lot which shows the small existing

single-family home and the large parking lot that's in the rear. Basically all of the open space in our lot right now is currently asphalt, so that was one big concern that a lot of people have brought up talking about development.

The only thing that's here right now is asphalt. So our plans, which you'll see, create a large backyard which will be a lot of green space and soil that will absorb the water that everyone's so concerned about.

This is a front view of our house. Some of the existing conditions, I had numerous general contractors take a look at our house and see if we can preserve it and work within the existing structure. And given it's a 150-year-old house, 140-year-old house, the foundation is in very poor condition on the house.

CONSTANTINE ALEXANDER: With all of that goes to converting this to a two-family house.

RYAN WITTIG: Sure.

CONSTANTINE ALEXANDER: We haven't -- Mr. Hope is

going to address the hardship.

RYAN WITTIG: Sure. This is the hardship is that we need to start from scratch with this house.

CONSTANTINE ALEXANDER: No, you don't.

RYAN WITTIG: Okay.

CONSTANTINE ALEXANDER: You may not be able to afford it.

RYAN WITTIG: That's true.

CONSTANTINE ALEXANDER: Someone can afford --

RYAN WITTIG: Someone may be able to afford, that's true. The Historical Commission has determined that the house is not preferably preserved so --

ATTORNEY SEAN HOPE: Well, so I mean this is where we come back to the context. I think there are two things:

So because of the shape of the lot being 34 feet wide, it's narrow enough. In order to actually build -- I mean, this house I would say is a single-family house but it's not up to modern standards. The other thing about this

house it's in dire condition partially because of the soil conditions. This is an area that has a high water table and so part of the deterioration of this foundation is really because of, not the size of the lot, but the soil conditions.

CONSTANTINE ALEXANDER: Could you not, and I'm going to pursue this, use the exact same footprint that the house has now, make a single fam -- it costs a lot of money, may have to go down to, tear down and rebuild. But you could put a single-family house with the very same dimensions on this lot.

ATTORNEY SEAN HOPE: I think could, I would say that the house is not going to be functional.

CONSTANTINE ALEXANDER: Why?

ATTORNEY SEAN HOPE: Well, because I think whether we're using this house or we're actually tearing it down and building a single-family, so it would be the same. The actual width of the lot, if you met the setbacks, to be able

to build, because this is non-compliant. So to be actually take a house and to build and meet the setbacks, you would not have a functional house. And so this house, we would be limited to doing 25 percent since it became non-conforming. So we would still probably require a variance for relief. So the addition would have to be conforming. So we couldn't just build out along the same footprint. And so it's really the fact that the width of the setbacks on this lot, you really cannot build what I would call a modern functional house. So the only thing you can maybe do is to try to renovate the existing structure and that is feasible. I think that is feasible. I'm not saying that it's not. I would say that it's probably impractical and you probably would have someone come in here looking to get an addition like you see, and so maybe they wouldn't be getting something new, but we would be asking for some relief from the Board to get an addition. You see lots of people with very small houses and they come before the Board after

they're there after two or three years and they think I now have a child in what was a really small house --

CONSTANTINE ALEXANDER: The addition would go to the rear. The problem with the City is you've got a narrow lot. Acknowledged. But you want to really crowd on that lot. You're going to have tandem parking on one side. The setback relief is dramatic. And on the right side you're supposed to have at least seven-and-a-half feet. You're going to go to four-point -- 3.8 feet, 50 percent of what you're going to reduce it.

ATTORNEY SEAN HOPE: So, right. What we did when we looked at the side yard setback, what we said is what is that setback experience existing now? Right? So we're actually not going to make that setback any worse. The idea is if we actually met the setback on both sides, then we've made the point. We wouldn't be able to have a functional house.

So what we said was we can actually keep the

existing setback on the left-hand with the driveway, which is an experience the neighborhood is used to. Keep the non-conforming setback on the right-hand side. But to the point of overcrowding, we're actually doubling what the Ordinance would allow in terms of the rear yard setback. What we're actually saying, we're creating more of a generous setback than we would have to.

I grant you that this existing house is a small house, it's not necessarily a functional house, and it's a house for likely for a family need an addition. And you would likely have a family coming before you. I say when we actually demolish that, we started from scratch. We actually looked at what a compliant single or two-family, and we didn't have enough actual room.

Now we actually did look at a proposal that would only require curb cut relief, that would meet both of the setbacks. It was much more dense. It had to have parking that drove in at grade, and it was less desirable to the

neighbors or to anyone else. So what might have been a project that would only need curb cut relief, and that is controversial, so it's not a given that you would do that. We even showed that option to the Historical Commission themselves and they just said you know what, they thought meeting with zoning sometimes can create terrible development. So they'd much like this one because it was in keeping with the neighborhood.

So I would say it really is the shape of the lot, that if you were going to be able to build a compliant, liveable structure for a family, which he intends to use, he would need some zoning relief. And so when you do need some zoning relief, we said, well, then how do you satisfy the petitioner's needs and try to meet as many dimensional requirements of the Ordinance.

Now specifically to the Special Permit and the tandem parking, so giving the dimension of 34 feet, a parking space has to be 18-and-a-half feet in length plus 22

feet in back of clearance. There is actually no way to be able to meet that dimension. It's greater than 34 feet. So all the parking you see in the rear, those can never exist now because you would not meet the back of the clearance. So we tried every which way to try to angle the parking to be able to park in the back and keep it out of the front, it wasn't possible. So we could have located parking in the rear, which we thought was maybe advantageous, but we would be requiring to get a variance. Because if you don't have the 22-backup clearance, it's a variance. So there was an idea in terms of level of hardship, we said, okay, then we could actually apply for tandem parking because they're planning on being -- two friends bought it. They're using it as their home. This is not a condo where no one wants to do tandem. And they would take the tandem which would only require a Special Permit.

There is an example of parking on the street where people do park tandem and they do park in their driveway

outside of the front yard setback.

So, you know, when you look at the shape of the lot, they really do drive the Special Permit for the tandem parking and it also led to the right-side setback. But I want to say the front yard setback, the relief that we're asking for, which is the second of two-dimensional relief, is driven by trying to acquiesce to the neighbor's desire to try to keep as much of the refer yard as open. And just for analogy, we could build a single or two-family that had a curb cut that went all the way 20 feet back, and it would be 35 feet tall which wouldn't be -- and granted, this wouldn't be something the petitioner would want because it would be very narrow. And it wouldn't be what the abutters would want because it would block a lot of their rear yard.

We've worked our way into this proposal. We've actually added another element of the -- in terms of the front yard setback to be able to create this generous rear yard. And I think the Special Permit for parking is

probably a better result because it actually keeps cars out of the rear yard and it avoids us from asking the Board for a variance when a Special Permit would achieve two cars on the lot in a way that the Ordinance would allow by Special Permit.

RYAN WITTIG: Okay, so I guess I'll carry on real quick.

CONSTANTINE ALEXANDER: Take as much time as you want.

RYAN WITTIG: Okay.

CONSTANTINE ALEXANDER: No, no. Seriously.

RYAN WITTIG: Okay. So I think the point is that the existing structure is -- for our budgetary capabilities not usable and it was deemed favorable by the Historical Commission to allow us to try to do what we're talking about. So just wanted to give you a little bit of the context of the neighborhood.

Some of our neighbors -- this is our lot

highlighted in yellow. As you can see, it's very short. Many of our neighbors across the street from us and in the rear have maximized their floor to area ratio. Some are actually over the FAR, and I'm sure they're non-conforming in terms of side yard setbacks and rear setbacks. As you can see, all the other houses on our side of the street, on Kinnaird Street, the right setback is -- our neighbor's house is right on our property line basically. So it's not out of context with the neighborhood. And also the same with the front. The front setback that we're requesting actually keeps our house in line with the other houses on the rest of the street.

So I wanted to provide that for context.

I also wanted to mention that, you know, some of the petitioners for the down zoning were claiming that this neighborhood is not, you know, meant for this level of density that we're proposing which is within code, but we also wanted to point out some of our neighboring houses that

are at or above -- and there's a three-family that's across the street from us, the house sits in the rear of our yard, is a modern beautiful house. This is 30 Jay Street where it's four townhouses on one lot.

These are -- this house is one house -- or these townhouses are one house over from ours and they're very dense and tall, and they're also right on their setbacks as well. So this is, you know, this is just an example of the rendering that we brought when we had our first meeting with the neighbors where we brought the concept of getting a curb cut permission and doing something as-of-right so that we wouldn't need a variance, and the overwhelming feedback that we got from our neighbors was that they were completely against it because it pushed us too far into the rear yard.

CONSTANTINE ALEXANDER: Not exactly a surprising result.

RYAN WITTIG: No, sure. Fair enough.

So the words from our neighbors were we're against

this. If you go for a curb cut, you will have poisoned the well with us. But if you work with us to get to an agreeable state, we will support you in a variance.

CONSTANTINE ALEXANDER: Well, you're going to find out that you don't have a lot of support.

RYAN WITTIG: Yes, being the young naive non-developers that we are, you know -- sorry, sorry. But we've been called developers. I've been called a developer. I have a job. I work at Rico, I sell software for document management to hospitals. I'm sorry, I've been called a developer. I guess I'm building so I'm developing, but, you know, I've been told that -- I was told that if we work with you, we'll help you get a variance. But little did I know that their line in the sand was unfeasible at the end of the day or at the time it's unworkable to where we got.

So we've gone through three major design revisions and multiple revisions within each of those design revisions where we've tried to appease our neighbors, and the ultimate

situation is the rear yard is the crown and -- the jewel and the crown that everyone wants to protect. We want to protect that as well. We like the large backyard to enjoy as well. We started out at 27 feet with our original proposal. The proposal that we brought to the Historical Commission was around 32, 33 feet of rear yard setback. And now we're almost 39 feet in rear yard setbacks. Like Sean said, double the rear yard setback. We have 44 percent open, usable space which is the code is 30 percent. So we're well above the open, usable space. And like I said, right now we have a parking lot in our backyard that we're gonna turn into green space. You know, we'd like to have a garden. Maybe a few trees. So I think -- and I know a lot of the neighbors are opposed based on what some of the other developments have happened in our neighborhood where people have done things as-of-right, you know, trying to not have discussions with neighbors and they ended up putting houses in the year of their yards, going to right to the edge of

the property line. This process that we went through was an attempt to avoid that so that we could, No. 1, have a product that we could live in and love and that our neighbors could hopefully be happy with. And unfortunately the line that's been drawn in the sand is just not feasible for a two-family home for what we need. If we're not able to build a two-family home, we will, you know, at the end of the day is the result is that we have to build a single-family home that will be above our budget. We'd sell it, you know, we'd sell it and we'd move on and we'd be back at our hunt for trying to live in Cambridge, trying to find a house in the Boston area.

CONSTANTINE ALEXANDER: Well, that's the dilemma of this case is you need to build a two-family house and the question is from a zoning point of view whether that justifies granting relief. We'll find out.

ATTORNEY SEAN HOPE: I would also say tat the actual -- the number of units doesn't change the level of

relief. If they were going to build a single-family house, they would still need that right side setback.

CONSTANTINE ALEXANDER: There's a difference in terms of the impact on the neighborhood.

ATTORNEY SEAN HOPE: Fair enough. Just tying it to the level of relief. It's not like if it's a single-family it would be compliant and yet because of two, now we're triggering relief. That right yard setback, that width, that 34 width can meet the seven-and-a-half on each side, we wouldn't need relief. And, again, as much as a front yard setback, if the Board felt that was unappealing, we could actually move it back and satisfy the right yard setback. And I'm sure that would not be as great for the neighbors looking on either side. So this is really a setback, a right side setback issue on a lot that is a little more than a third of what's required. It's 34 feet and it's in a 50-foot zone as the minimum. So I think it's really driven by setback. Although the unit count and other

things have been at play.

CONSTANTINE ALEXANDER: Anything further at this point? You'll have an opportunity to make final comments.

RYAN WITTIG: I don't think -- that's it. That's it for us.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board at this point?

BRENDAN SULLIVAN: Well, what appears to me is that you bought this house and then all of a sudden it's how do we make this work rather than can we buy this house and make it work as is which, you know, some renovations, some remodelling. You know, your cost is what you pay for the house. The value of the house is what you can do with it as of right.

RYAN WITTIG: Sure.

BRENDAN SULLIVAN: And to bring in all the other houses and that they're all maxed out. Those were built a long time before this. And then they decided that was not a

good idea and that's why we have the Ordinance to restrict all of that. Because the continuation of that is a continuation of errors and that's why they put in the parameters.

And in the previous case you mentioned about us not setting housing policy, and the City Council keeps says we need more housing and we need more housing, and yet then they give us this book with all of the constraints and the boundaries. So okay, we need more housing, but it has to be built within this. So, you know, it would appear that you overpaid, but you bought it and saying well, if we do a two-family, so due diligence should have been before.

RYAN WITTIG: If I can speak to that. We did do what we thought was due diligence and had, you know, we saw various angles to be able to do certain things as of right especially when it came to the curb cut discussion. So we saw a few, a few opportunities where we could work within the as-of-right parameters, but through our discussions with

the neighborhood we felt, it seemed like the best option was to go for a variance.

ATTORNEY SEAN HOPE: And the other comment I would like to make, so and I do take the Chair's point and Mr. Sullivan's point that the Board doesn't make housing policies. I'd also say that when they do the setbacks, they don't actually look at individual lots and say that this seven-and-a-half feet would make sense on a 30-foot lot. They take large swaths of land and they set setbacks. Oftentimes those setbacks, when you have a unique lot or a very narrow lot, don't end up being viable or they create, as the Chair says, injustices or unpractical setbacks. And this is the case, which is in some of the cases, there's a unique situation where you take the Ordinance in the way the code is written, you're going to actually result in something that may not be what the City Council intended. So I think it's our case to make a facts and circumstances case before the Board to say that if you actually applied

these dimensional requirements or these certain setbacks, that you would have a result that wouldn't be let's just say just. So I think this is a case not necessarily whether they overpaid or not is not what I'm discussing, because I do think one or two units is not really relevant to the setback. You'll be asking for relief whether you're building one long single-family and the fact that he can sell it and not live in it, that's not really before the Board. What's before the Board is to build a viable structure on that lot, you have two choices, you would need to have some setback relief or you'd have to go to a curb cut.

Now a curb cut, there's criteria in the Ordinance for a curb cut. And if you meet the criteria, then you should be granted a curb cut. There is actually no criteria for the City Council. The reality is is that there's also political process at play. And I already think that's inequitable when you have only one homeowner and you have a

whole neighborhood. So you're right, we wouldn't before the Board if there wasn't a political process in play. And so especially when feel like you've satisfied the needs for the neighborhood by giving them a generous rear yard setback, making that tradeoff that the Board often expects, you know, homeowners to do when you're asking for relief, as well as actually not asking for more than you would get, I think we've actually tried to do that. I think this is a case where the code is going to have an unjust result. It's going to have a very awkward shape house if you met both setbacks. And by asking for a modest setback relief, you can actually have a viable structure. Whether it's two or whether it's one, it's within the FAR, and it's really within the height and it actually gives a very generous setback. That's because of the shape of the lot, granted. Because you could have another awkward shape.

But I do think there are times when the Ordinance does not fit a particular lot, and I think this is where the

Board has granted relief in certain situations.

CONSTANTINE ALEXANDER: Thank you.

Any other comments from members of the board?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony.

Is there anyone who wishes to be heard on this matter? I don't know how the -- before I -- if there's going to be people speaking for or against. I'd like to take them all -- so let me ask, anyone who wants to comment in support of the petition, that means, let me hear from you -- let us hear from you first. Is there anyone here wishing to support this project?

(No Response.)

CONSTANTINE ALEXANDER: Okay, none. Now those opposed, one at a time. Who wants to speak first?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: She should be number one because she's most impacted.

MAGGIE COMPHER: My name is Maggie Compher.

CONSTANTINE ALEXANDER: Could you please come a little closer, please, Ma'am. Thank you.

MAGGIE COMPHER: Yeah. My name is Maggie Compher and I live at 31 Kinnaird Street which is right next to the house. So I just have a lot to say, and I'll just start with -- so this has gone in front of the Planning Board and the City Council. The Planning Board voted -- I'm sorry, the zoning --

CONSTANTINE ALEXANDER: Historical.

MAGGIE COMPHER: -- the zoning petition that we had put forth as a neighborhood to decrease from a C-1 to a C. It had gone in front of the Planning Board and the Planning Board told us that this really wasn't what we were looking for was to down zone, it was really to sort of have a conservation commission that would sit in the neighborhood and whenever anybody wanted to make any changes, they would have to go to the conservation board. And we weren't really

sure what that was or anything. But then the next day we went to the City Council Ordinance meeting, and the City Council actually is supporting this down zoning. And the petition is in -- in front of the City Council, and so it's not dead at all, and it's actually very much alive. So we are right now in the process of looking at down zoning the Riverside Community from a C-1 to a C. So that's No. 1.

No. 2, just to be exact, the three -- the back setback is 38.6 feet, and we do appreciate that Ryan has worked to move that further so there's more backyard, but I just want to point that out. And then when he says that all there is is asphalt and that they're gonna, you know, all that asphalt will be gone, but also what will be gone, it's not just asphalt to all of us, it's actually open space and sun, air, and I'm -- I can speak to this very directly because behind us also there is condominiums that went into place. There used to be a single-family right behind Ryan, myself, and the green house where the neighbors are here

today, and they have put up a three-story, taking up most of the back, you know, they do --you know, and it really has affected the sunlight and it has affected the airflow. So that is significant.

And in terms of the water table, there has been no water in the basement of 33 Kinnaird ever. It's a very, very dry basement.

So, another issue that I want to discuss is the -- there is a question about the size of the lot, whether it is 3300 square feet or 3400 square feet. And according to -- and I have that in the letter. I don't want to go into the details here, but the measurement -- and they didn't do a site survey, they have a plot plan. And a plot plan is not exactly, it's not as accurate as a site survey. And I wanted to point that out and the details are in the letter.

And another issue is that on our side of Kinnaird there are seven homes that are all flush in terms of the

homes, and except Ryan's home is actually a little shorter. They all are flush and they all end at, I don't know, if it's like 45.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: 42. 42.5.

MAGGIE COMPER: 42.5 and they all have backyards.

And that's what the petition is that we have in front of City Council. And not just on our street but on several streets within Riverside is we are very concerned about all of the development that is going on, that is building, in-filling all of our backyards, taking away all of our space. And this has happened -- and there's several prime examples of this that has been happening over the last five years or even more.

So, I do know that Ryan has said in the past that his best friend is actually going to be selling his once it is built, and they did take a commercial loan for this property. I know there's other things I wanted to say, but I'm a little nervous but I'm trying to think if there's

anything else I want to say.

I just, I really, you know, we have a single-family mansard that's just like the single-family next to us. The Historical Society deemed it was significant but not in a good condition, so it made sense that they could tear it down, but they needed to put up something that was similar. And I just want to say that that home, you know, was built in the 1800s right after the Civil War. One family had lived in that home, you know, for about 100 years. So it's, you know -- and just, I just want to say that. So that's it I guess.

Thank you.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down.

Sir.

BE0 LIM: Yes, my name is Beo Lim.

CONSTANTINE ALEXANDER: Come a little closer.

BE0 LIM: B-E-O L-I-M, Beo Lim, 35 Kinnaird. At

this point I'm quite concerned that we have not yet received the shadow report and since I'm the abutter just next to Ryan on the right side, he's building the three-story, one story higher than ours, about 11 to 12 feet further, you know, behind. Twelve feet, you know further, into our backyard passed the line, passed the back of our house, and without this report I think it's very hard for us to assess the negative impact that it may have our on property. And Ryan actually in his e-mail to a lot of abutters on the 29th of April, I believe he said he will make this report available to us. And we just haven't seen it yet.

CONSTANTINE ALEXANDER: No, and let me just clarify that. The request from some neighbor that they'd like to see a shadow study, and I said, we'll make sure that you get a shadow study. And that's why I asked the question earlier did you deliver the shadow study? And apparently something fell between the cracks, Mr. -- I'll call you Ryan. Ryan didn't deliver it. He apparently has it. But

I've got to go back to a comment I made before. You know your neighborhood opposition. Why didn't you show a shadow study?

RYAN WITTIG: You know, to be honest with you, my architect's a little challenging getting stuff back from her, so she was delayed in getting it to me. She, apparently had --

CONSTANTINE ALEXANDER: Maybe you should have continued the case tonight although the neighbors would have strung you up.

RYAN WITTIG: You know, to be honest with you, I didn't think a shadow study would make well --

ATTORNEY SEAN HOPE: And I think, just to be plain, and I think it's our requirement that if the neighbors asked for a shadow study, we should have delivered a shadow study, so I think that's --

ANDREA HICKEY: When was it completed?

RYAN WITTIG: I believe last week.

ATTORNEY SEAN HOPE: But I think with the almost 40-foot rear yard setback.

CONSTANTINE ALEXANDER: No, no. I want to get the comments. You'll have a chance to comment later.

BEO LIM: I appreciate your comment that he has not produced a shadow study, and I just want to make sure that, you know, we have a chance to look at it to assess the impact on us before a decision is made.

CONSTANTINE ALEXANDER: I hate to say this what we could do because this is now a case heard, we could continue this case to allow that shadow study to be distributed to the neighbors and hopefully have a -- you could have a meeting over that and any other issues. Is that -- let me ask that question: Would that -- this is not usual, we don't do this. Would that, those of you who are opposed or -- I'm looking for the words, anyway, suspicious of this, would you have preferred that --

BEO LIM: I would prefer that. But I think the

neighbors have a lot of other issues.

CONSTANTINE ALEXANDER: Okay, they have issues and the shadow study is not going to solve it, you don't need to continue the case.

BEO LIM: Okay.

CONSTANTINE ALEXANDER: For you, I understand that.

BEO LIM: For me, yes.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Do we have the shadow study?

CONSTANTINE ALEXANDER: What?

BRENDAN SULLIVAN: Where is the shadow study?

CONSTANTINE ALEXANDER: I don't have it. It's never been filed.

RYAN WITTIG: We have two renderings. One in January, eight a.m.

BRENDAN SULLIVAN: I'm going to distribute this to

that gentleman.

RYAN WITTIG: And four p.m. in January, and the same for June.

CONSTANTINE ALEXANDER: One second.

Brendan, in view of that which is a good idea, I wonder if we should recess this case and hear another case or two, let the neighbors look at the shadow study.

BRENDAN SULLIVAN: I'd like to sort of flush out all the issues maybe.

CONSTANTINE ALEXANDER: Good thought.

JYTTE KLAUSEN: My name is Jytte Klausen, J-Y-T-T-E last name K-L-A-U-S-E-N. And I live in 30 Jay Street in the condo directly behind, unit 2. Four units. We did meet with Mr. Wittig and his wife sometime back. We did not see any final plans. It was not a hostile meeting, but when Mr. -- I just mentioned this to say that when Mr. Wittig says that he has consulted with the neighbors extensively, we have not heard a word from Mr. Wittig since

that meeting and --

CONSTANTINE ALEXANDER: When was that meeting held roughly?

JYTTE KLAUSEN: That first plan with the garage up front so, that I don't know when it was.

RYAN WITTIG: Last year, 2015.

CONSTANTINE ALEXANDER: I'm sorry.

RYAN WITTIG: December 2015.

CONSTANTINE ALEXANDER: December 2015. Okay.

JYTTE KLAUSEN: We have not had any subsequent discussions. We did ask for a shadow study, and we actually offered to pay for it, but Mr. Wittig said he himself would prefer to pay for it. I have that in e-mails, but that's the last we heard after that.

The -- we're not actually generally speaking opposed to the development of the lot. It's not an attractive situation right now. So I would rather say that our views have been sort of neutral on the issue and been

waiting to see what happened. But I do want to point out that the argument that Mr. Wittig's lawyer made before -- I'm sorry, sir, I don't know your name.

ATTORNEY SEAN HOPE: Mr. Hope.

CONSTANTINE ALEXANDER: Mr. Hope.

JYTTE KLAUSEN: Mr. Hope made before about the one-family home, Mr. Wittig being able to build it and then sell it, and that actually applies to the two-family unit. There is no residential obligation to reside in your house if you make a petition on the basis and need as Mr. Wittig and his wife has done here. As far as I'm concerned, that's irrelevant to the case.

The one issue that I do want to bring up is that we do actually have a survey for our lot, and that survey shows that the fences are all in the wrong places all over the place in this area. So I am concerned that that was not a survey done, that would completely specify where the boundary lines actually are.

CONSTANTINE ALEXANDER: Thank you.

Sir.

DAVID CANE: David Cane, C-A-N-E 32 Kinnaird Street. I just wanted to say I've written twice to the Board on this, and I appreciate the fact that Ryan has modified the plans. And generally what Mr. Hope said has some basis of it. But when you look at the issue of the setbacks, what Mr. Hope says is all the houses have this front yard setback, all the houses have this side yard setback, and we have a 40-foot setback in the rear versus 20 in the requirements. And the way I look at it is if you're trying to be consistent with the neighborhood, yes, all of the houses have the short front and the short right side because there are driveways there, but all of the houses have a bed of 50-foot setback from the rear, and that's the issue of occluding light and airflow from people's backyards. So I'm fully supportive of the idea of the shorter right side and the shorter front. They are

consistent with the neighborhood. What is inconsistent with the neighborhood is pushing back another 10 or 12 feet behind. And so I think a house constructed that has those parameters, yes, it would be somewhat smaller, I don't think it would be profoundly smaller. There's also the question of whether or not it's a 33-foot lot. I want to point out that one of the submissions says it's labelled as the subdivision chart of Cambridge, but if you actually pull that, it's different than what was submitted. If you pull the one that the City has, it says it's 33 feet wide. They have modified it, taken that plot from the City and replaced one of the numbers on it. And so I still think it's up in the air as to exactly what the lot size is. And this goes to the FAR, because they're very close to it. If the lot is 33 feet wide and they're consistent with the FAR, that would cause the rear to be pulled in a bit, and they think they could go to a 19-foot width instead of an 18-foot width, and that would cause the rear to be pulled in. So I guess my

main point is just I'm supportive of them building a house.

A think two families is fine. I think the side setback is fine because it is consistent, and in fact, as Mr. Hope pointed out, if you were to center the house on the lot given the short setbacks and all the other houses, that would be a worse situation. But I think if we're gonna go on the argument of being consistent, then we want the rear to be consistent as well as the front and the side if you're seeking to push against and exceed what's required on one side, then I think the give back -- on the argument that you're consistent with the neighborhood, then I think what you need to give back in return for getting that is to be consistent on the rear.

Thank you.

CONSTANTINE ALEXANDER: Understood your point.

Thank you.

Anyone else wishes to be heard?

BRENDAN SULLIVAN: Do we have a certified plot

plan?

ATTORNEY SEAN HOPE: Can I respond? So we do have a plot plan that is registered land surveyor. Prior to the hearing to take this issue off the table, we actually met with the Building Commissioner and we made sure that we had an instrument survey measured plot plan to verify that the width, the lot width is 34 feet. We've heard these comments from neighbors. We had people reading old deeds and trying to do their old equations, but no one has done a survey of our lot to contrary what we --

BRENDAN SULLIVAN: So your answer is yes, we have a certified plot plan?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Sir.

LEONARD LUCAS: My name is Leonard Lucas, L-U-C-A-S, 36 Kinnaird Street. My house is one of the houses on the photograph, and it's one of the houses that benefitted from a variance granted by this Board, but with a

significant difference or at least two significant differences from what I see here today. Ours was a single-family home and the variance was granted in the face of zero opposition from many of the neighbors. I think that this petition fails for two reasons:

One, it's been a long time since I've actively practiced law, but I don't hear any legal basis for the granting of the variance.

And No. 2, I don't see any agreement. You know, the petitioner has failed to come to an agreement with the abutters as to something that satisfies everybody. And if you're going to in a sense go beyond the limits of the law, it should be with the consent of everybody who would suffer from this.

CONSTANTINE ALEXANDER: Thank you.

LEONARD LUCAS: Thank you.

CONSTANTINE ALEXANDER: I must say, just my own editorial observation, is that this is a train wreck of a

case. I mean, I don't understand why people haven't been able to sit down and get -- and have discussions. I mean the last time you talked was December? And you know you have opposition?

RYAN WITTIG: I have to contradict that because I mean, she said the first rendering, the first communication I had was the rendering with the curb cut, well the rendering that we showed to the Historical Commission which she attended and some of the other neighbors, they've seen that. I've sent -- every time that we've done a revision, I've sent it out to the neighbors. It's been up to -- I've had meetings with the neighbors on Kinnaird Street. I've invited everyone every time we've had a meeting. The last time that I had a meeting to go over the plans that you see here, the only people that were interested in showing up were 31 Kinnaird, Cindy and Maggie. So I have -- and I have documentation I sent Janet Sonnenberg from 30 Jay Street. I know I sent her the plans that are here. So I've -- every

time I've sent -- we've had a major revision in plans from the curb cut to what we did with the Historical Commission to what's in front now, we've sent to the abutters, and I can say that with certainty.

ATTORNEY SEAN HOPE: And I'd just like to add from the outset, I suggested that I host a meeting either at my office or at a place, it was very clear that they felt that if there was a lawyer present, that they didn't want to meet.

CONSTANTINE ALEXANDER: Who is they, the neighbors?

ATTORNEY SEAN HOPE: And I counseled him, I said, look -- and so this is what -- so I have not been a part of any meeting only because I was told that my presence would take away from --

THE STENOGRAPHER: Please, I cannot hear him.

Mr. Hope, you have to --

CONSTANTINE ALEXANDER: You have to stop.

THE STENOGRAPHER: "I have not been part of any meetings"....

ATTORNEY SEAN HOPE: I haven't been part of any neighborhood meetings, and the reason being is that I was told that possibly my presence would intimidate or would somehow stop the free flow of conversation.

So to that point I can also say that I have continually said before we go back, let's see what we could do for one more time.

I do think, though, this project is suffering from a larger issue in the neighborhood. I don't think that this project is that offensive, but it may be otherwise. When you're talking about this much animosity over a project, I think that there is overdevelopment. I think there is a need to possibly from this group of neighbors to down zone this area, but, again, I think when we showed the as-of-right or the curb cut list, forget about as-of-right, the curb cut options that would be able to go forward, the

reason why we're actually coming to the Board for the variance, to that initial point was hey, if we go for a variance, we maybe have to have some kind of neighborhood consensus. We didn't get there, but that's why we started even on this path. We would not have started on this path if we felt the whole neighborhood would show up after eight months of going through this. So, again, I do think there are merits. I do think there is a legal basis for our hardship --

CONSTANTINE ALEXANDER: Another time. I don't mean to cut you off.

ATTORNEY SEAN HOPE: I understand it's not the time.

CONSTANTINE ALEXANDER: Is there anyone else wishing to be heard?

Sir.

DAVID COHEN: David Cohen, 37 Kinnaird Street. First let me start off with the positives on this project.

Actually, it's a big improvement actually from what we've seen before. It doesn't mean it's great, but it is an improvement. In addition to the content of my letter to the Board I do have a few points to make:

So the current parking layout I think is pretty good. The setback arrangement is not that bad. But overall the structure is too big in my opinion for matching the existing stuff. The current proposal is at the maximum FAR and it seems to be a three level townhouse structure on its sideways on the lot which brings some issues related to the townhouse development.

Right to the south of the most impacted lot in -- related to this project which is 31 Kinnaird Street, right to the south of 31 Kinnaird is a six-unit townhouse development with a 0.91 FAR. To the north of 31 Kinnaird Street and 33 Kinnaird Street are a set of relatively small two-family structures at 0.53 FAR. That's 35, 37, 39, and 41 Kinnaird Street. So the question is what would my

preference be?

My preference would actually be a single-family on the 33 Kinnaird lot. Below the maximum FAR. I'm not sure why people think the FAR number is a recommended number. It's a maximum value for FAR. Going below it is okay. So that's what I think something at 0.6 FAR would be something much more preferable.

In terms of building a single-family versus a two-family, I think to echo David Cane, it is feasible to build a smaller two-family structure on that lot. There are examples. My house is one of those at 37 Kinnaird. It's a relatively small one, and it -- I think a larger version of it is quite feasible. It could be more of a box-like structure with an upper, a unit on the upper level and a unit on the lower level with a footprint of say, you know, a thousand square feet, something like that.

So the bottom line is a smaller structure is preferred.

Now, I'm not a lawyer and I'm certainly not an expert on zoning, but I did notice that the counsel for the petitioner used the word shape in regard to the size of the lot. And I read the Zoning Ordinance, and size is not one of those hardship factors actually. Strictly the shape of the lot -- a small lot per se is not a hardship. So I just want to bring -- put that out.

Finally with respect to the lot size, I actually made a measurement of it, so I don't think the 33 versus the 34 is a major issue. It seems to be around 34.

And we -- the other point is that the final plans, the ones that we -- the ones that are, quote, real, the ones we have -- we have only seen them for a few days, actually, starting on Monday evening basically. So there has really been no communication between the petitioner and the neighborhood. I would say the abutters, there may be an issue with the immediate abutters, especially the most impacted abutter at 31 Kinnaird Street. But the fact is

that Ryan has not reached out to the greater neighborhood for more input and more creativity on the project. And I personally sent e-mails to Ryan and basically showing my openness to ideas, and -- but they haven't been -- there was no mass e-mailing to the whole neighborhood saying let's meet in some meeting room somewhere, maybe right here, and actually sit down and like hash out some design issues about how long the house would be or how wide the house would be. That's never happened in my opinion. I missed the first early meeting where they basically showed the, quote, the initial design which is the one with the two car garage at the base level.

So I think that's about all I have to say. Okay.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down with everyone else.

Ma'am.

NANCY CARPENTER: Hi, I'm Nancy Carpenter at 27 Kinnaird Street, unit 1. And I just wanted to talk a little

bit about the concept of hardship, because that's one of the problems I'm having in this whole discussion. I'm new to zoning myself. My understanding is that we should be discussing the hardship and the concept of hardship, and I think what we're really discussing here is a business decision and a risk that Mr. Wittig took as part of his decision making around his business investment and now he's asking the Zoning Board to come and mitigate the risks he took in buying a non-conforming piece of property that was overpriced and he's now putting the Board and the community in the position of saying well, now we have to protect him from his decision. And I feel that -- I think that's some of the animosity is around that issue, too. Because they knew full well -- it's in my understanding this is not the first time and the first project that Mr. Wittig's been involved in. So he's not new to the concept of zoning, and so I think that just going ahead and saying I could get -- I can get my project through zoning is what is at the base of

this. A non-conforming piece of property that's very small and proposing something that's way out of scale and thinking I can get it three zoning and that's why we're here.

CONSTANTINE ALEXANDER: Thank you. And by the way, you say you're not familiar with zoning, you did a pretty good job.

Because I the financial hardship is a very significant issue for me. I haven't heard much that justifies the financial hardship. And what we have here, I'm speaking for myself, someone made a business decision, made a decision going forward hoping he could do something later on that would reap the value of what he paid for it, and he's finding opposition and I haven't heard a good case as to why we should, you know, I haven't heard a good case why there isn't a hardship here. I'm only one of five.

Anyone else?

(No Response.)

CONSTANTINE ALEXANDER: There appears to be no one

else. We do have some letters in the file but I think many of the letters are from folks who have already spoken so I'm not going to read them. Let me just confirm that's the case. We have letters from David Cohen and, Mr. Cohen, you've spoken.

We have a letter from Scott Slissle (phonetic), I don't believe we've heard from him.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: No, he's not here.

CONSTANTINE ALEXANDER: Who resides at -- let's see. As an owner -- I'll read his -- it's actually an e-mail. (Reading) As an owner/abutter to 33 Kinnaird Street, I live at 27 Kinnaird, I am writing to express my opposition to the request for a variances and other exceptions and Special Permit for a proposed redevelopment at 33 Kinnaird Street. Unfortunately I am unable to attend the hearing on Thursday which has been rescheduled several times now at the petitioner's request and request that this

e-mail be considered and made a part of the official record.

The project which is demolishing a single-family building with yard/open space consistent with other houses in the neighborhood and replacing it with a two-family house that is more than 50 percent larger than the existing structure thereby reducing open space. The variance request relating to the side setback which requests that the building be less than seven and a half feet from the neighboring lot line should be rejected as the petitioner has shown no hardship to the relating to the property that justifies granting the variance. The petitioner recently purchased the property with full knowledge of the site limitations and is using the variance request in order to build more square footage than allowed by code/statute. Again, there is no hardship shown other than the fact that the petitioner wants to build a larger building to be able to generate additional revenue. Petitioner's plan also calls for single file tandem parking which is not desirable from a safety and traffic standpoint.

Further, petitioner's dimensional form shows usable open space -- usable open area increasing to 44 percent even though the petitioner's proposing to build on 75 percent of the lot. How is that possible? Petitioner's drawings are also deficient as to no elevations and other dimensional information is shown regarding the basement to determine if in fact it is subsurface and has no more than seven feet of height and includable as part of the square footage. There are also no dimensions shown regarding the third floor balcony and the first floor patio.

Lastly, while the ZBA granted an adjournment in order for the petitioner to meet with abutters, to acknowledge no such meeting has occurred. However, in the end there is no hardship known that justifies a generating of a variance as petitioner purchased his property recently with full knowledge of the dimensions of the property.

There is another e-mail from Mr. Cohen. And you've addressed that. This is regarding the shadow studies

that have not been delivered.

And I'll see if there's anything else. A letter from Pamela Paternosta (phonetic).

UNIDENTIFIED MEMBER FROM THE AUDIENCE: She's not here.

CONSTANTINE ALEXANDER: Not here. I should read it then. (Reading) We would like to add our names to the chorus of Kinnaird Street neighbors who are opposed to the granting of a Building Permit as it stands to the new owners of 33 Kinnaird Street. 33 Kinnaird is one of seven consecutive homes on the odd side of the street that all have backyards. Our house is one of the properties. The backs of each of these homes are all flush with each other expressing a consistent design symmetry. This allows open space, light, and air to exist in part of the neighborhood which is valuable and significant. It also offers abutters a sense of privacy. We are very concerned with the impact these two proposed town homes will have on our street. As a

neighbor, we believe this symmetry should not be allowed to disappear. 33 Kinnaird's owner wish to break this symmetry which has been here for over 100 years. We support and welcome the owners of 33 Kinnaird to build a dwelling that is fitting with the scale and character of our neighborhood. The 33 Kinnaird Street lot is small and non-conforming, smaller than the rest of the lots on that side of the street. Allowing the developers to build two dwellings that extend significantly further back (63 feet) and those other homes does not make nor good neighborhood design. Green open space is a very important factor in the well-being of a neighborhood. Speculators build over scale, make their money, and leave our neighborhood more congested. There are several examples of such buildings on nearby streets. We are asking the City to protect our neighborhood to those who are simply financial. They come to make money but not to live here. Granting this permit is not in the best interest of the residents of the neighborhood. Thank you very much

for your time.

And then another letter, and this is a long one. A lot of this is addressed to the earlier plans that were not done accurately. And I'm going to stop the letters here. I think we have the general tenure of the views on this.

MAGGIE COMPHER: I'm sorry, could I just point out in my letter which I had stated about the 33 versus 3400 square foot? And David Cane mentioned this, that on the map 123, lot 189 in the City Assessor map it is stated that this lot is 3300 square feet. And when they put out their plans, they actually changed that number to 3400. They doctored that map. So that's significant, but also what is very significant is on our property he says that 3.8 feet of our lot in the back is his. And when you look at the distance of our home from the street and then you add on -- I don't -- the map is in the letter, there is one foot difference and it is in question. And the design that

he -- the map that he put down there stating that we're 3.8 over on his property is inaccurate. And we do not want that to be, you know, part of a city record, that that is, that that is true, because it isn't true. So I just wanted to state that.

CONSTANTINE ALEXANDER: Thank you. I'm now going to close testimony.

Discussion from members of the Board? You wanted to go to a vote? What's the pleasure?

ATTORNEY SEAN HOPE: Before you --

CONSTANTINE ALEXANDER: I'm sorry, I should have given you an opportunity to make final comments. I apologize.

ATTORNEY SEAN HOPE: There are several points that we could counter.

The one thing I did hear from the neighborhood is that there wasn't an opportunity to possibly flush out some issues. Not -- there were some issues that seemed they were

opposed, but there is a neighbor and an abutter who was asking for shadow study. And there was also comments from people who said that I'm necessarily opposed to a two-unit and gave some suggestions. I know Mr. Wittig is going to have different opinions of why these meetings didn't happen, but they didn't happen. And I think to date we haven't had any public record of saying, hey, I'm willing to meet. And I think part of the challenge there's been an impression that I've got from the client that there's not a willingness, and I'm hearing something different tonight. And I can't say that I've actually made a phone call myself and said well, they don't want to meet. So I think there's enough tension here and to me there's enough opportunity to see if maybe there is an opportunity with some shadow studies, with maybe understanding what the curb cut option might be, and I don't necessarily advise going that way because we're here today, but I would maybe ask for one more continuance only because I think dialogue hasn't fully

happened. And, frankly, I think the Board is in a tough position because we have some serious opposition, we have questions that we could have answered and we didn't. And we also have a shadow study that the neighbors didn't have a chance to look at. I am mindful of the Board's time and I know they don't like to continue cases --

CONSTANTINE ALEXANDER: This will be a case heard. So it makes it more complicated and we've got the five of us --

ATTORNEY SEAN HOPE: I just feel like there's not enough on the record for the Board, and I think that we can do an additional job answering some questions, so at least we can come to the Board saying we agree to disagree on these points.

CONSTANTINE ALEXANDER: Let me start with the board members. Is there a sentiment?

ANDREA HICKEY: Yeah, frankly, I think you've had the opportunity to reach out. I think the burden is on you

to reach out to the community not for them to hear -- to come to you louder and louder and louder. I think you had the opportunity and certainly, certainly you failed with the shadow study. I for one, I'm not sure that there's anything --

CONSTANTINE ALEXANDER: Fine.

ANDREA HICKEY: -- that a continuance would change in my mind. I think you missed your opportunity to work, to work with the neighborhood.

CONSTANTINE ALEXANDER: I'll repeat my comments, the train wreck of a process for this property.

JANET GREEN: You know what I don't understand, Ryan, why you engaged counsel and then didn't use him. I mean --

RYAN WITTIG: Trust me I would have loved to. I have an e-mail that says explicitly we don't want to meet with a lawyer. We don't want to talk to a lawyer. So can I provide that e-mail if it provides validation. And I have

it -- there are multiple constituencies. There's a Jay Street constituency. There's Kinnaird Street so there's -- -

JANET GREEN: Yeah. So I think that's the community that you've bought into.

RYAN WITTIG: Sure. And they are different people and there are different audiences, but I've communicated, like I said, every time we come --

JANET GREEN: I think, though, that really the definition of communication is, it's got to be two parts. One is you say something and two, is they hear it. And they have not indicated that they have heard a willingness on your part.

CONSTANTINE ALEXANDER: Yeah.

RYAN WITTIG: I think the line in the sand is that's been drawn is that our house is no longer than this, that's, that's the line. And that's where we're at. That's where everyone is at. Is that this house not be longer than

this. Right now it's twelve feet, eight inches longer than the house next to us. Their preference is that we take that twelve feet off and that we be flush. So if we take twelve feet off our existing structure, it becomes not functional in a way that it's been designed as of yet.

CONSTANTINE ALEXANDER: Or like Andrea, I don't see a need to continue this case, but again I'll exceed to wishes of the other members.

THOMAS SCOTT: Has your architect studied that option or is that just something that you haven't --

RYAN WITTIG: The option of shortening it down flush? Within -- she's -- let me say within the current design of the, the way we have the structure side by side right now, she has studied it. It just, it swishes it towards like a 20 foot by 20 foot. The staircases don't work so that it becomes a staircase and flow issue. So maybe if we completely shuffled the deck, there's something that could come up, but it would be less square footage and

it would put us in a smaller footprint that comes for us probably a not a long-term solution. It would be a short-term solution, but it's not the long-term living situation that we're looking for.

CONSTANTINE ALEXANDER: I'll also, by the way observe, I haven't heard from you, Brendan, yet, if we were to not continue the case and we turned it down, you could always come up with a new plan and re-apply and there's a section that -- usually it's two years you're out. But if it's a different proposal, you've got to come back and convince us of that. So it's not like it's all over if we, if we were to turn you down. It makes a very laborious process.

I'm really skeptical -- the neighbors are very interested in this case. A lot of them have taken the time to come down and to drag them all down here one more time, doesn't strike me as a very productive exercise particularly since the history, given the history of this case.

Any thoughts, Brendan, or you want to -- I'll make a motion?

BRENDAN SULLIVAN: I don't -- the plan would have to be vastly different for me to support it than this. And I don't see that happening, and it's just delaying I think.

JANET GREEN: It does seem like you bought the wrong house. I mean, for what you want. For what you want.

CONSTANTINE ALEXANDER: Okay. I think the idea which is a good suggestion of continuing the case is off the table. We're going to decide the case tonight.

THOMAS SCOTT: I think we heard from a neighbor who said he had a house that has two units in it that's significantly smaller. I mean, that seems to me proof that it can be done. It's just something that you have to be willing to vet and find out if it works or not.

CONSTANTINE ALEXANDER: Yes.

All right, I think we're ready for a motion?

Okay. The Chair moves that this Board make the

following findings with regard to the variance being sought:

That a literal enforcement of the provisions would involve a substantial hardship. Such hardship being that the petitioner needs to have, to build a structure that he can afford, that he needs to have a second family -- he needs to rebuild a structure and have a -- make it a two-family unit.

That the hardship is owing to the shape of the lot, it's a narrow lot.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogate from the intent and purpose of the Ordinance.

So on the basis of these findings, the Chair moves that we grant the variance requested on the condition that the work proceed in accordance with plot plan and attached plans submitted by the petitioner and initialled by the Chair.

All those in favor of granting the variance on

this basis please say "Aye."

(No Response.)

CONSTANTINE ALEXANDER: Let the record show there were no votes in favor. Therefore, the variance is denied.

We need to take a second motion.

The Chair moves that this Board find that the variance was denied on the following grounds:

That the petitioner has not demonstrated a substantial hardship within the meaning of the Zoning Laws, particularly Chapter 40A.

And that relief cannot be granted without nullifying or substantially -- without substantial detriment to the public good.

The Chair would note there is strong and unanimous neighborhood opposition to the proposal. And in fact that the proposal would alter the character of the neighborhood such that it's not desirable.

All those in favor -- or anything else people want

to add?

(No Response.)

CONSTANTINE ALEXANDER: All those in favor of this motion, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case is over.

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

* * * * *

(8:55 p.m.)

(Sitting Members BZA-009582-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: This case we can't hear anyway because the plans are deficient.

Why don't you withdraw it.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: All those in favor of accepting --

SEAN O'GRADY: You need to deny the Special Permit on 33 Kinnaird, the first case.

CONSTANTINE ALEXANDER: Well, I think denying the variance, makes the Special Permit moot, doesn't it?

RYAN WITTIG: I think it does.

CONSTANTINE ALEXANDER: I think the case is moot. I mean, even if the Special Permit is granted, you can't do anything without the variance.

SEAN O'GRADY: Well that's certainly true. All right.

CONSTANTINE ALEXANDER: Okay.

And all those in favor of accepting the requested withdrawal of the second Kinnaird Street case, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. That case is withdrawn.

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

* * * * *

(9:00 p.m.)

(Sitting Members BZA-010111-2016: Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will case No. 010111, 22 Water Street. And I'm going to recuse myself from this case. So Mr. Sullivan will be the Chair for this case.

BRENDAN SULLIVAN: Just the four of us?

THOMAS SCOTT: I think so.

BRENDAN SULLIVAN: The Board will hear case No. 01011-2016, 22 Water Street.

Mr. Snell.

ATTORNEY MATTHEW SNELL: Good evening, Mr. Chair, members of the Board. Matt Snell, Nutter, McClennen and Fish on behalf of the petitioner Monogram Residential. And we're here tonight we filed a request for a continuance --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can you speak into the mic, please.

ATTORNEY MATTHEW SNELL: Sorry. Is this better?

Again, Matt Snell, Nutter, McClennen and Fish on behalf of Monogram's Residential. I'm here tonight regarding Monogram's request of a continuance in the matter of their appeal of the Commissioner's constructed denial of their zoning petition decision request.

BRENDAN SULLIVAN: Okay. Any questions by the Board at all regarding the request for a continuance?

(No Response.)

BRENDAN SULLIVAN: Let me open it to public comment. And the public comment is to be restricted just to the request for a continuance. I don't want to get into the merits of the case, because we're not going to open up the case. So if anybody would like to speak, please identify yourself for the record.

Heather.

HEATHER HOFFMAN: Hello. Heather Hoffman, 213 Hurley Street. And I believe that the Board has a copy of this communication from Carol O'Hare and myself regarding the continuance and you can read it for yourself. In general, though, what I wanted to request is what's in here that since, and I was so pleased to hear your discussion in the previous case of talking to your neighbors, the petitioner has never once talked to any of the neighbors. We respectfully ask that before you hear the case you require that the petitioner talk to the neighbors.

BRENDAN SULLIVAN: Okay, thank you.

Carol.

CAROL O'HARE: May I have this? Carol O'Hare, 172 Magazine Street. Heather and I wrote this. If you have read this -- have you all read it?

Okay. Then I second what we wrote before.

BRENDAN SULLIVAN: Okay, thank you.

Is there anybody else who would like to speak on

the issue of the continuance?

(No Response.)

BRENDAN SULLIVAN: All right, let me close public comment. We will incorporate the letter referenced in the file.

Mr. Snell, do you have anything further to say, any rebuts or --

ATTORNEY MATTHEW SNELL: No, just on the -- no, I think that I would give out contact information before we leave and ask my client to see what they can do to reach out.

BRENDAN SULLIVAN: Yeah, you may want to review the file, also.

ATTORNEY MATTHEW SNELL: I have not seen the e-mail they were discussing.

BRENDAN SULLIVAN: Or Mr. Ward may want to review the file because there is quite a lot of correspondence in it.

ATTORNEY MATTHEW SNELL: Okay.

BRENDAN SULLIVAN: So....

ATTORNEY MATTHEW SNELL: And I would say that in our request, we'd ask for the next regular scheduled meeting, but looking at schedules and so forth, it looks like the project manager is out of town for a period of time and Mr. Ward is out of town for a period of time.

BRENDAN SULLIVAN: We have July 28th.

SEAN O'GRADY: We have the 28th, yeah.

BRENDAN SULLIVAN: So July 28th.

ANDREA HICKEY: And that's unheard?

JANET GREEN: Unheard.

BRENDAN SULLIVAN: It's not a heard case, right.

Tom, any comments at all?

THOMAS SCOTT: No.

JANET GREEN: I'm all good.

ANDREA HICKEY: I'm good, thank you.

BRENDAN SULLIVAN: Let me make a motion then to

accept a request for a continuance from the petitioner. It would be beneficial for a continuance to allow the petitioner to further investigate the lengthy amount of documentation regarding this matter.

And that also I would grant the request for the continuance with the understanding and the agreement that the lighting in question which is now dark, will remain dark until the full and complete resolution of this matter before the Board. I -- if you can make that representation.

ATTORNEY MATTHEW SNELL: Correct, yes.

BRENDAN SULLIVAN: Okay.

And that additionally that we would encourage, can't force, but we would encourage you to meet with the East Cambridge Planning team. And that if you want to speak to Ms. Hoffman and also to Ms. O'Hare regarding setting up some meeting or other dialogue with them, that would be beneficial.

ATTORNEY MATTHEW SNELL: Excellent. Thank you.

BRENDAN SULLIVAN: So, and also that the petitioner change the posting sign to reflect the new date of July 28th, 2016, at seven p.m. And that that posting sign be displayed continuously for at least 14 days prior to the July 28th hearing.

That any new submissions regarding your case be submitted and in the file by five p.m. on the Monday prior to the July 28th hearing so that the public has a chance to view any correspondence.

Okay?

THOMAS SCOTT: Mr. Chair, did you note the time?

BRENDAN SULLIVAN: Seven.

THOMAS SCOTT: Seven o'clock.

JANET GREEN: And I would just say that the, the outreach to the neighbors, just to be really thoughtful about it. 22 Water Street isn't something that people walk passed all the time so the sign's not as visible. So I think you'll have to really make sure that you find the

people who are affected by this.

ATTORNEY MATTHEW SNELL: Okay.

BRENDAN SULLIVAN: Okay. On the motion to
continue this until the 28th of July?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Scott, Green, Hickey.)

BRENDAN SULLIVAN: See you or somebody then.

ATTORNEY MATTHEW SNELL: Thank you very much.

* * * * *

(9:10 p.m.)

(Sitting Members BZA-009943-2016: Constantine Alexander,

Brendan Sullivan, Thomas Scott, Janet Green, Andrea A.

Hickey.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 009943, 187 Hampshire Street.

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

NADER MICHAEL: Good evening, Mr. Chairman. Good evening, Directors. My name is Nader Michael, N-A-D-E-R M-I-C-H-A-E-L. I'm the owner of Beauty's Pizza. It used to be at 228 Broadway in Cambridge.

CONSTANTINE ALEXANDER: The one that burned?

NADER MICHAEL: Yes. We've been there for about over ten years, and I've been before the Zoning Board twice before. The first time when we applied to enlarge our restaurant and we came after three years and we got granted forever. And now unfortunately what happened to us in December 2014. We finally found a new home for Beauty's Pizza at 187 Hampshire Street. We have a nice landlord

working with us and me and my brother. We own the business, and we like to reopen the new home for Beauty's Pizza.

CONSTANTINE ALEXANDER: I know you know we gave a Special Permit for a pizza joint to the prior owner --

NADER MICHAEL: Yes.

CONSTANTINE ALEXANDER: -- who's no longer here. We really should tick off some of the requirements for --

NADER MICHAEL: I like to show you the new menu.

CONSTANTINE ALEXANDER: Oh. Let me just dig out the requirements. By way of you in the audience, this is considered under our zoning as a fast order food establishment and the Ordinance has various requirements before we can grant the Special Permit that's being requested. Of course I'm not going to find where it is.

SEAN O'GRADY: 11.30.

CONSTANTINE ALEXANDER: 11.30, thank you.

NADER MICHAEL: It's been very hard to find another location for us in Cambridge. We love City of

Cambridge, of course. We've been there for about ten years and we like to be there.

CONSTANTINE ALEXANDER: One of the things we have to find to grant you the relief is that what you're -- the operation of the pizza joint will not create traffic problems, reduce available parking, threaten the public safety in the streets, or encourage or produce double parking on the adjacent public streets. And I want to come back to that for a second. And I'll explain why in a minute.

The physical design, including color, use of materials, shall be compatible with and sensitive to the visual physical characteristics of our buildings, public spaces, and uses in the particular location.

What's your outside going to look like?

NADER MICHAEL: That, we gonna keep everything the same. We don't want to change anything except the sign of course.

CONSTANTINE ALEXANDER: Right, the name.

NADER MICHAEL: And we've been working with the development commission in Cambridge about this. They helping us and we would like to keep everything the same so we won't hurt the customer.

CONSTANTINE ALEXANDER: Okay.

We have to find that the establishment fulfills a need for such a service in the neighborhood. And we always have a need for pizza.

NADER MICHAEL: Thank you.

CONSTANTINE ALEXANDER: The establishment will attract patrons primarily from walk-in trade as opposed to drive-in or automobile related trade. Provide -- however, should the Board specifically find that the area doesn't have significant pedestrian traffic, this requirement need not be met.

Where do you draw your -- what do you expect to draw your patrons from?

NADER MICHAEL: There is dense around the restaurant, around the place, and any business like that, we used to have a lot of customer from MIT.

CONSTANTINE ALEXANDER: That's because you're closer to MIT.

NADER MICHAEL: Before we usually do deliveries, but like the store, the way it is set back a little bit, like, we not expecting a lot of people to dine in but we probably like take them delivery would probably be a little bit more.

CONSTANTINE ALEXANDER: You're not expecting people to create parking problems?

NADER MICHAEL: No.

CONSTANTINE ALEXANDER: We're going to get back to that in a second. I keep saying we're going to do that.

That you're going to use to the greatest extent feasible, biodegradable materials in the packaging of the food.

You can use biodegradable items?

NADER MICHAEL: Yes.

CONSTANTINE ALEXANDER: Okay.

You have to provide convenient, suitable, and well marked waste receptacles to encourage people to dispose of their trash.

You have that --

NADER MICHAEL: We have, I have spoke with the public services and they used to service us before and we used to get them everyday in Beauty's to come to pick up.

CONSTANTINE ALEXANDER: Everyday so you'll have trash --

NADER MICHAEL: We used to have it except on the weekends. And we used to have it five days a week.

CONSTANTINE ALEXANDER: And you're going to continue that --

NADER MICHAEL: And I spoke with them. And they said they will get back to me about everyday, but I'm

planning to do that because there's a house, residential, like in front of the store, and it is really hard, they have to keep the place well clean.

CONSTANTINE ALEXANDER: What are the hours of operation?

NADER MICHAEL: We're going to keep the same hours I used to have for Beauty's, but I'm trying to see if it will need to open a little bit in the morning, maybe for the --

CONSTANTINE ALEXANDER: Give me some numbers.

NADER MICHAEL: From like seven o'clock. If I decide to open for coffee because there's a gas station right next-door, and no coffee joint in the whole Hampshire Street. So if I can open for coffee in the morning, I will do it. And if I can't, I find that it's not necessary and no need, I will give my hour for like lunch.

CONSTANTINE ALEXANDER: And when you close?

NADER MICHAEL: Twelve o'clock.

CONSTANTINE ALEXANDER: Midnight?

NADER MICHAEL: This is a new space for me.

Before in Beauty's we used to have until ten o'clock. And this location is near there are a lot of bars and restaurants that are open late. We'll see if it need one o'clock. Okay. But I'm not like looking for it really to do that, but I'll ask if I have a permit from seven o'clock until like one o'clock in the morning would be great.

UNIDENTIFIED INDIVIDUAL: At Beauty, but we close.

NADER MICHAEL: We close ten o'clock. Nine o'clock and we close everything relate -- because everything close around, because the business around us they usually after four or five o'clock they're done.

CONSTANTINE ALEXANDER: Do you have to get a license from the License Commission?

NADER MICHAEL: I still have my Beauty's license open and they hold it for us and we waiting, they've been waiting to hear from the Board.

CONSTANTINE ALEXANDER: From this Board?

NADER MICHAEL: Yes.

CONSTANTINE ALEXANDER: Does the Licensing Commission regulate your hours or they require you to specify what hours you're going to be open?

NADER MICHAEL: I work with them until one o'clock.

CONSTANTINE ALEXANDER: And your current one with Beauty is one o'clock?

NADER MICHAEL: Beauty's we have it twelve o'clock. Only ten o'clock. Even on the weekend, Friday.

BRENDAN SULLIVAN: The Common Victualer can restrict their hours.

CONSTANTINE ALEXANDER: I would think so.

BRENDAN SULLIVAN: There can be a condition to restrict the hours and they usually do.

CONSTANTINE ALEXANDER: And that you, will your facilities -- we have to find that your establishment will

comply with all state and federal, state and local requirements applicable to disabilities -- disabled persons.

NADER MICHAEL: Yes. We have a bathroom, handicap bathroom for men and women, two of them, two separate, and there's no steps at all whatsoever.

CONSTANTINE ALEXANDER: I want to return to parking. When we heard this case the last time for the prior owner, there was objections from neighbors about parking, concerns about parking. And when we granted the relief, we posed two conditions, which one that at the entry to the property at Hampshire Street, a sign limiting parking to employees or resident parking only to be installed.

So you're not having customer parking.

And the other one was that the petitioner or in this case you, provide an additional bike rack containing five spaces. I guess there was a view that a lot of people might come by bike.

Based on my observation of the property, this

person who had the Special Permit didn't comply with these things. Certainly there's, there's nothing that prohibits people who -- customers from driving in and parking. And I think the concern was given it's an odd lot with the long driveway, there might be safety issues as well as -- safety issues. If we were to impose these same conditions on you, would that be a problem in your mind?

NADER MICHAEL: Never be a problem to comply with the law.

CONSTANTINE ALEXANDER: Well, the law would be what we make it to be.

NADER MICHAEL: Yes.

CONSTANTINE ALEXANDER: Okay. I'm going to suggest to the Board that we impose these two conditions since we felt it necessary to do it last time. Why should you get a break?

NADER MICHAEL: Thank you.

CONSTANTINE ALEXANDER: Any other questions? Or

any questions?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard, and I don't believe we have anything in the files from anybody else. Let me just confirm. No.

Okay, I will close public testimony. I think we're ready for a vote.

Let's see, the Chair moves that we make the following findings with regard to the Special Permit being sought:

That the requirements of the Ordinance can only be met with the Special Permit that you're requesting. You have no choice.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. And in this regard if we impose the conditions that I just mentioned a few moments ago, I think you would satisfy that requirement.

That the continued operation or development of adjacent uses will not be adversely affected by what you're proposing to do. In fact, there's been a pizza joint here before. So it's not new and novel to the neighborhood.

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

That assumes your pizzas are going to be healthy and good.

NADER MICHAEL: We have 100 percent whole wheat and homemade pita bread and everything's fresh.

CONSTANTINE ALEXANDER: And then what you're proposing will not impair the integrity of the district or

adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

Of course this property is located in the Inman Square area which has a number of commercial, including eating establishments so this will be consistent.

So on the basis of these findings, the Chair moves that we grant the Special Permit to the petitioner to operate the fast order food establishment subject to the following conditions:

One, that at the entry to the property at Hampshire Street, a sign limiting parking to employees or resident parking only can be installed. Okay?

And two, that the you provide an additional bike rack containing five spaces for whatever that's worth.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

NADER MICHAEL: Thank you. I would like to thank
the Board for taking the time to hear us.

CONSTANTINE ALEXANDER: We have no choice, it's
our job.

* * * * *

(9:20 p.m.)

(Sitting Members BZA-010110-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010110, 6 Donnell Street.

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

Before you start presenting plans and the like I'm going to have to advise you that we're not going to hear this case tonight because you did not comply with the sign posting requirements of our Ordinance. And the City is very, the Ordinance is very clear, it's very important that the sign be maintained for the 14 days prior to the hearing. And I inspected the property a week ago and there was no sign. And when I reported this to Mr. O'Grady, he inspected it several days later, no sign.

JANET GREEN: I was there on Wednesday, no sign.

CONSTANTINE ALEXANDER: So we're going to have to continue the case. You were advised when you filed your application that you have a posting requirement and you just didn't do it.

TERESA NORRIS: This is Teresa Norris. I am 25 Avon Street. Did you see the letter that we put inside here?

CONSTANTINE ALEXANDER: There was no letter in the file on Wednesday.

JOHN KENNEDY: John Kennedy. I live at 25 Avon Street. I have been a resident in Cambridge since 1972. I'm really shocked at this information. I'm quite familiar with the rules and regulations. But I'd like to put this into the file.

CONSTANTINE ALEXANDER: I'm going to read the letter right now.

TERESA NORRIS: That would be great. He'll read

it.

CONSTANTINE ALEXANDER: It's a letter from John Kennedy and Teresa Norris. (Reading) We received a voicemail from Mr. O'Grady requesting that we come into the office and sign a waiver to seek a continuance regarding our request for relief at 6 Donnell Street. Teresa went down to ISD and spoke with Mr. Singanayagam who suggested that we go to the meeting as planned. We believe we have complied with the intent and letter of the Ordinance regarding notice and want to move forward. The notice sign was picked up and posted in front of the house the day we were notified by ISD. Last week we discovered that the sign had fallen off, probably due to the heavy winds. It was immediately re-nailed to the house. Ms. Arlene Kulin, K-U-L-I-N, a neighbor directly across the street, says she can be quoted, "the sign has been up the whole time. I go passed it with monotonous regularity and I've never seen it down." Mr. Lewis Hyde at 8 Donnell can also verify. In addition,

the attached letter was sent to U.S. mail and hand delivered to over 30 abutters and neighbors. The letter describes our plans and encourages them to contact us with any questions and we included our address and phone numbers.

To that last point, that's required by our Ordinance. There are two requirements:

There's a notice that's required to be given in writing by mail to abutters and abutters of abutters within 300 feet, and you've complied with that. But the second one is for the community at large, and that's why you have to post a sign. So that any citizen of the city who is not entitled to receive the mail notice, would be put on notice that this case is going to be heard. And, I'm sorry, we have three different persons at different times from the two week period, all of whom testified there was no sign.

TERESA NORRIS: It's just inconsist -- I mean, the day we got it we put it up. And when we discovered it was down, it had, it had the really windy day, we figured that's

why it went down on Sunday and we nailed it back up.

CONSTANTINE ALEXANDER: I was there on Thursday and it was not there.

JOHN KENNEDY: That letter that has an attachment. Could you read that as well?

CONSTANTINE ALEXANDER: Sure, sorry, I should have read it. Well, the attachment is a letter from these two folks, Mr. Kennedy and Ms. Norris, asking for support of your petition. I'm not going to read it into the record because it's not relevant right now. The only relevant issue right now is whether you complied with the sign posting requirements of our Ordinance, and I have to say you haven't done it.

JOHN KENNEDY: Well, we believe we did.

CONSTANTINE ALEXANDER: I understand that. But we --

TERESA NORRIS: So can I ask a question? So I understand that we've talked a lot about -- today about

neighborhood engagement and being pro-active and which we've done with letters and phone calls and we've talked to people in the, in the area. And you, you just mentioned that beyond that it's for the community at large to be able to see that it's up there. So, the day we got it, we did put it up there. And if someone went by and saw that it wasn't up and the purpose is to, is to help the community, why wouldn't you call the owner?

CONSTANTINE ALEXANDER: Do you live in the house right now?

TERESA NORRIS: No, no. We're not far from it, but we're not --

CONSTANTINE ALEXANDER: Who lives there?

TERESA NORRIS: -- we're not on the property.

CONSTANTINE ALEXANDER: I mean if you're not far from there, you must go by the house. You can see oh, my God, the sign is gone. I better contact ISD.

TERESA NORRIS: As soon as we did, we did. As

soon as we did, we put it back on. You know --

CONSTANTINE ALEXANDER: Well, I don't want to debate this further.

JANET GREEN: You know, when I go to a property and I see the sign isn't there, the first thing I do is kind of look around in the bushes or to see where it might be. I couldn't find it on Wednesday.

JOHN KENNEDY: Just for the record, it was in the bushes. And we've put the sign up. And I've been over there. I've spent quite a few hours with the neighboring abutters who are here tonight who expected to testify at this session. And I talked to this other woman, Mrs. Kulin, who has quoted in the record here that the sign has been up. And there have been heavy winds over these last several days. I know as a trying to ride my bicycle around the city, I got knocked over a couple of times. So, we've complied with the law as far as we're concerned.

CONSTANTINE ALEXANDER: Okay. That's been duly

noted in the record.

When is the next available time? This is a case not heard.

SEAN O'GRADY: We can do it next time, 6/30.

CONSTANTINE ALEXANDER: Which means a new sign has to go up tomorrow and maintained for the 14 days.

BRENDAN SULLIVAN: The sign is there today.

CONSTANTINE ALEXANDER: Sorry?

BRENDAN SULLIVAN: The sign is there today except the date has to be changed.

CONSTANTINE ALEXANDER: The date and time has to be changed. The point being -- I'll make a motion.

The Chair moves that this case be continued as a case not heard subject to the following conditions:

That the petitioner sign a waiver for time of a decision. Which is required.

And the sign -- what?

TERESA NORRIS: Go ahead.

JOHN KENNEDY: Why do I have to sign the waiver?

CONSTANTINE ALEXANDER: If you don't sign the waiver, we'll deny you on the merits tonight for failure to comply with our Ordinance. Would you like us to do that?

JOHN KENNEDY: No, I wouldn't actually. Thank you.

CONSTANTINE ALEXANDER: Okay. I think you should sign.

That's the first condition. The second condition is that the posting sign the that you have up right now apparently be modified to reflect the new date. Do it with a magic marker. New time, seven p.m. And that sign, pay attention, stays up there for the 14 days required under our Ordinance.

And lastly to the extent that you want to change the plans or the dimensional form that's already filed, I don't know if anything is going to come up, you must have those new revised plans in our files no later than five p.m.

on the Monday before the June 30th. If you don't do that, we won't hear the case then.

JOHN KENNEDY: I have a question for the Board if I could. We have Lewis Hyde and his wife here right now who have gone out of their way to be here tonight, and will not be available for this next hearing date. Would it be possible for them to speak?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: We can come in two weeks. Next week we can't.

CONSTANTINE ALEXANDER: You would not -- and I'll explain. It's a legitimate question.

If we get into the merits of the case, we have what's called a case heard, and then when we reconvene, the same five people you see here would have to be in that case. And so, for example, on June 30th I'm not going to be here so you couldn't continue the case to June 30th. You have to find another date that all five of us can make it. So I will just suggest if unfortunately they can't be here, just

write a letter or an e-mail. They don't have to testify in person.

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

(Aye.)

CONSTANTINE ALEXANDER: See you in June.

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

* * * * *

(9:30 p.m.)

(Sitting Members BZA-010165-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010165, 40 Aberdeen Avenue.

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

ADAM GLASSMAN: I'm Adam Glassman, Two Worthington Street, Cambridge.

MATTHEW LAKE: I'm Matthew Lake, 40 Aberdeen Ave., Cambridge.

AMELIA STEWART: I'm Amelia Stewart, 40 Aberdeen Ave.

CONSTANTINE ALEXANDER: Welcome to our Board.

ADAM GLASSMAN: Good evening. We've got an existing two-family house. The owners occupy the second floor.

JANET GREEN: I can't hear you. Use the microphone.

ADAM GLASSMAN: So we've got a two-family house and the owners live on the second floor. They are a growing family. We're proposing a modest third floor expansion and renovation with two, 15-foot dormers which comply with the zoning guidelines. We're seeking relief.

CONSTANTINE ALEXANDER: Dormer guidelines you mean?

ADAM GLASSMAN: Dormer guidelines. We're seeking relief for a pre-existing FAR --

CONSTANTINE ALEXANDER: Your FAR right now is 0.67 in a 0.5 district.

ADAM GLASSMAN: That's --

CONSTANTINE ALEXANDER: And you want to go to 0.7.

ADAM GLASSMAN: We do.

CONSTANTINE ALEXANDER: Slight increase.

ADAM GLASSMAN: Slight increase. Less than 200 square feet of additional living space.

Before I walk you through the plans and the elevations, I'll let the owners just briefly introduce themselves.

AMELIA STEWART: Sure. As I said, my name's Amelia. I've lived at 40 Aberdeen Ave. since 1993. My mom and I moved in there then.

CONSTANTINE ALEXANDER: You're the one who lived there -- you grew up in this house?

AMELIA STEWART: I did, yes. I was 13 when we moved in. Sadly my mom passed away when I was very young, when I was 18, so I inherited the house then. But I was able to hold onto it through many jobs. And I love living there. Love the neighborhood. Matt and I were married last

year. Matt's lived there for about five or six years now, and we're expecting our first child in December.

CONSTANTINE ALEXANDER: Congratulations.

MATTHEW LAKE: Thanks.

AMELIA STEWART: We think these dormers will allow us to expand a bit and let us stay in the neighborhood.

ADAM GLASSMAN: Okay, they're essentially going from existing two-bedroom unit to a three-bedroom unit. Third bedroom being a master bedroom on the third floor with some open play space, a small office space. We would be converting the existing non-code compliant stairs into a legal and safe stair from the second to the third floor, and couldn't have a sweeter couple in Cambridge than these people.

CONSTANTINE ALEXANDER: Thank you.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: No questions.

Is there anyone here wishing to be heard on this matter? Okay, one at a time.

Ma'am.

CAROL PARONIS: Hi. My name is Carol Paronis P-A-R-O-N-I-S. I live at 34 Aberdeen Avenue and I support their desire to have dormers.

CONSTANTINE ALEXANDER: Thank you for taking the time to come here at the late hour. Sir.

JOSEPH O'LAUGHLIN: Hello, my name is Joseph O'Laughlin, resident of 107 Aberdeen Ave., Cambridge, Mass. Born at Mount Auburn Hospital, been associated with Aberdeen Ave. for 52 years either living there or caring for property there. I have a few questions and a few comments.

January 24, 1994, Three Hollis Park, BZA case 6896, my clients were going for a shed dormer variance, that's the day the Cambridge or the Boston Globe came out with aesthetic police of Cambridge don't like shed dormers. We had to do a few things to make it work. They got their

variance approved. Later in doing research to find out whether I want to oppose or, you know, okay this, you know, not that it's mine to okay --

CONSTANTINE ALEXANDER: Right.

JOSEPH O'LAUGHLIN: -- but whether I wanted to oppose this. I went to BZA case 7322 regarding 79 and 81 Aberdeen Ave. At that time it was stated that it was not to become a three-family. Recent events on the street have shown basically, afraid to say I pooped where I eat, I do a lot of work in Cambridge. I'm a general contractor. I don't find this very much fun. While doing research for this, I inquired about electrical work being performed there. They are either trying to convert a two-family into condos which I have no problem with, being two, you know -- excuse me, two meters and a common meter. That issue hasn't been resolved. I believe they're trying to convert it into a three-family illegally, that's my opinion.

And, you know, this Board in that case number specifically stated it was not to be done.

BZA case 9324, 2006, 6/2/2006, 93 Aberdeen Ave.

This is a case that I opposed due to density, parking, and a few other things. There are 26 of these houses that I fought. I actually had the pleasure I'm afraid to say of suing the BZA at that time. Some of you guys look familiar. I do appreciate --

CONSTANTINE ALEXANDER: I remember you.

JOSEPH O'LAUGHLIN: -- the work that you do.

Yeah, I'm afraid so. Once again I'm pooing where I work.

Traffic, parking, and density is a problem in Cambridge. I've grown up on that street. I know it's a problem. Basically you can turn a two-family into a -- a two-bedroom, two-family and this is why I opposed it, they got two variances for dormers. So the second floor is now four bedrooms. They can by-right because of FAR and headroom things do the basement so that would turn a

two-family into a basically eight-family. And this is where I have the big question: With Zoning Ordinance No. 1379, and I'm trying to get an interpretation on this, I believe that these petitioners qualify in terms of FAR, they're only going for 183 square feet increase which is under the 250 limit on the variance -- not the variance, on the Bourne Amendment as you want to call it. It would be City Ordinance 3391 I believe it's enforced now.

RANJIT SINGANAYAGAM: The Barrett petition.

JOSEPH O'LAUGHLIN: Yes, the Bartlett (sic) proposal. So which means they could do an in-law apartment in the basement without parking on street. So I'm wondering if this house qualifies for it.

CONSTANTINE ALEXANDER: I'm not going to get into that. I can't answer the question.

JOSEPH O'LAUGHLIN: Well, that's the problem I have now. I've gone to zoning and there's no precedent set. I believe this is now enforced --

CONSTANTINE ALEXANDER: What's the relevance of that to allowing these folks to build dormers?

JOSEPH O'LAUGHLIN: Well, I'm just wondering if this is in force, than it's going to be by-right they can go for a basement unit.

CONSTANTINE ALEXANDER: Right.

JOSEPH O'LAUGHLIN: By-right there will be no on property parking. It increases the parking and density. So I'm trying to figure out if this is in force, whether I oppose or approve -- or not approve because it's not up to me, their dormer.

CONSTANTINE ALEXANDER: But now, I think we have a little bit of apples and oranges here.

JOSEPH O'LAUGHLIN: Okay.

CONSTANTINE ALEXANDER: This Barrett proposal --

JOSEPH O'LAUGHLIN: Yes.

CONSTANTINE ALEXANDER: -- we can all talk about the wisdom of it or not --

JOSEPH O'LAUGHLIN: Right.

CONSTANTINE ALEXANDER: -- but that's a separate issue.

JOSEPH O'LAUGHLIN: Okay.

CONSTANTINE ALEXANDER: -- meaning, whether it applies or doesn't apply doesn't really affect the dormers. I mean if they --

JOSEPH O'LAUGHLIN: That's fine.

CONSTANTINE ALEXANDER: -- if we give them relief, and maybe they could put an apartment in the basement.

JOSEPH O'LAUGHLIN: That's fine. All I'm just saying is that, you know, density is an issue in my neighborhood --

CONSTANTINE ALEXANDER: Understood.

JOSEPH O'LAUGHLIN: -- as it is everywhere in Cambridge.

CONSTANTINE ALEXANDER: But why are these two dormers going to increase the density if we grant it?

JOSEPH O'LAUGHLIN: It's the whole package for me.

CONSTANTINE ALEXANDER: Well, the whole package --

JOSEPH O'LAUGHLIN: It doesn't -- that's fine.

I'll drop that side of it.

CONSTANTINE ALEXANDER: Okay.

JOSEPH O'LAUGHLIN: What I've come to the conclusion of, and this might not have relevance to their former proposal, but it speaks to something that you said earlier in one of the earlier cases heard, I find that there is no political accountability for anything -- you know, there is no enforcement, no political accountability for the Board. You guys are -- and believe me, I respect you and I appreciate what you're doing for the city. I have a varied history with this both opposing and supporting different variances. I find that you're all appointed by the City Manager, he is not an elected official. The City Council makes different ordinances in respect to this thing in case of, you know, the aesthetic police. I believe they did the

15-foot dormer rule in terms of, you know -- I just have a problem with lack of political accountability for this and that's all I'm gonna say. I wish to support their variance hearing or their variance proposal. I'm just worried about which way we're going in Cambridge.

So thank you very much for your time.

CONSTANTINE ALEXANDER: Well noted. Thank you.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I don't think there are any letters in the files. There are no letters in the files. So I'm going to close public testimony.

Discussion or ready for a vote?

JANET GREEN: I'm ready.

ANDREA HICKEY: I'm okay.

CONSTANTINE ALEXANDER: Everybody ready.

The Chair moves that we make the following

findings with regard to the variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that the petitioner and anyone else who would occupy the premises needs additional living space.

The structure doesn't, is not well suited two families growing families.

That the hardship is owing to the fact that this is a non-conforming structure as it is, and that for any modification requires zoning relief.

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

In this regard the Chair would note that the proposed dormers will comply with the dormer guidelines which is very desirable.

That there appears to be no neighborhood opposition to what is being proposed, and the net result,

should the relief be granted is that it would allow a young couple to remain in the city and to raise their children in the city.

So on the basis of all of these findings, the Chair moves that we grant the variance requested on the condition that the work proceed in accordance with plans prepared by Adam Glassman. I don't have a date -- yeah, May 8, 2016, the first page of which has been initialled by the Chair.

You know the drill, these are the final plans, right?

ADAM GLASSMAN: Yes.

CONSTANTINE ALEXANDER: All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(9:40 p.m.)

(Sitting Members BZA-010106-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010106, 18 Whitney Avenue.

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

Name and address to the stenographer.

GRAHAM McVIKER: I'm Graham McViker and I'm a resident owner at 18 Whitney Avenue, unit 6, and I'm speaking on behalf of the 18 Whitney Condo Association.

Okay. So on behalf of the 18 Whitney Condo Association I'm petitioning for a Special Permit to allow a reduction in the required number of parking spaces for our building as described in Zoning Ordinance Article 6, Section 35.1.

So 18 Whitney Avenue is a seven-unit building which is located in the Cambridgeport neighborhood, and we

have two parking areas which are associated with the building. One is a larger parking area on the north side of the building, and it's a single tandem spot on the south side of the building. And the purpose of the Special Permit that we're requesting is to reduce the minimum number of required off-street parking spaces from seven to six. And the reason we're applying for this Special Permit is it's actually not sufficient to park six cars on the north side --

CONSTANTINE ALEXANDER: Can you go back to the history of this? This is a crazy history.

As I understand it, that the deed provisions are inconsistent with the land. Not by you, but by the predecessor, plans filed with the Traffic Department?

GRAHAM McVIKER: Yes, we believe that to be true. I'll get to that.

CONSTANTINE ALEXANDER: All right, go ahead.

GRAHAM McVIKER: So -- yeah, so, there's not

sufficient room currently to physically park six cars on the north side of the building, and a certified plot plan that was actually approved by the City shows a parking plan for six cars on the north side of the building. But unfortunately the plot plan that was approved is inconsistent with the deed restrictions that run with the property. These deed restrictions were requested by abutters at the of the development for the property. And they -- for one, they prevent parking in the lane, the aisle way behind the parking spaces, and they also require that there are garden planters on either side of the parking area; one at the front at the street and one at the back away from the street. So given these deed restrictions, there's in fact only sufficient room to park five, not six cars on the north side of the building. And what this means is that currently one unit in our building does not have an assigned off-street parking spot and as such it cannot be occupied.

CONSTANTINE ALEXANDER: Why can't it be occupied?

I mean someone who doesn't have a car could occupy it.

GRAHAM McVIKER: I was not aware of that. So my understanding is that it can't be occupied without an assigned off-street parking spot.

CONSTANTINE ALEXANDER: Mr. Singanayagam, am I wrong?

RANJIT SINGANAYAGAM: It was from a four to a seven. So with the conversion was done they are required to have seven spaces.

CONSTANTINE ALEXANDER: Okay.

RANJIT SINGANAYAGAM: So there could be one space there in violation of the Ordinance.

CONSTANTINE ALEXANDER: Okay.

GRAHAM McVIKER: So we're requesting this reduction in space so that the my unit can give up their parking spot and we can clean-up the whole situation with the association and have one unit that does not have an

assigned parking spot and the building could still be fully occupied.

And so we believe that by doing it this way, we'll be able to maintain and honor the deed restrictions, keep the green space in the front and the back of the parking lot but allow the building to be fully occupied.

CONSTANTINE ALEXANDER: When was the plan approved by the Traffic Department?

GRAHAM McVIKER: I believe in either 2007 or 2008.

CONSTANTINE ALEXANDER: Okay. So since then there have only been parking for six units on the property, just the deed says otherwise?

GRAHAM McVIKER: Yes.

CONSTANTINE ALEXANDER: Okay.

Have there been any, to your knowledge, any complaints from neighbors about there's too much -- because it's a very dense area, and not much on-street parking, complaints that, you know, the use of this on-street parking

is really causing problems for me in my home?

GRAHAM McVIKER: To my knowledge, no. I can speak to that a little more. So we consulted with Traffic, Parking and Transportation and they gave us a letter of support.

CONSTANTINE ALEXANDER: Yes, I'll read it into the file.

GRAHAM McVIKER: That it wouldn't be an issue. And furthermore, many occupants of this building, including myself, do not actually own a car and we commute by bike or by walking or the T or bus. And so our property's very close to the Central Square T stop. It's only one block for bus stops for the 64 and 47 bus routes. It's less than half a mile for bus stops for the 70 and 70A routes. And within a quarter mile of the property there's six ZipCars. And within half mile there's another, at least 12. So there's a lot of options for not having a car in our neighborhood.

CONSTANTINE ALEXANDER: And there are no parking

lots in the general area?

GRAHAM McVIKER: There is a parking lot that's -- I think it's next to the Courtyard Marriott Hotel, and I haven't investigated whether you can use it for public parking. I suspect you can lease a spot from them.

CONSTANTINE ALEXANDER: I mentioned that because that's one of the requirements, not one of the requirements one of the things they tick off.

GRAHAM McVIKER: So I think that's a summary of what I wanted to say, and I think we believe that a reduction of the required parking will not have a negative impact on the neighborhood and it will allow our building to be fully occupied. This is -- having an unoccupied unit in our building is a bit of a hardship for our association. It's not really good for the neighborhood to have a unit that can't be occupied. With that I would like to thank the Board to hear the case tonight and I hope you can help us put the issue behind us.

BRENDAN SULLIVAN: I'm having a hard time connecting the dots here.

CONSTANTINE ALEXANDER: I know. I'm glad you are.

BRENDAN SULLIVAN: Somebody came down to the Building Department, showed a plan for seven units, showed sufficient parking to support seven units, and received a Building Permit.

Yes, so far?

GRAHAM McVIKER: I believe that is what happened. I would like to say that none of us were involved in that.

BRENDAN SULLIVAN: Right, okay.

And then at some point after the near completion or completion, he then threw up condo docs which disregarded and ignored the zoning, I'm sorry, the plan that was submitted which was permitted to allow them to convert.

GRAHAM McVIKER: Yeah, so I would say that the plan that was submitted to Traffic and Parking and Transportation is not consistent with the deed restrictions.

BRENDAN SULLIVAN: Well, but the deed restrictions came later.

GRAHAM McVIKER: Yes.

BRENDAN SULLIVAN: The deed restrictions should have been cognizant of the plan that was approved and permitted.

ANDREA HICKEY: Can I just ask a question? So we're talking about deed restrictions. Are these within the condominium master deed or is this a separate instrument that maybe the neighbors were a party to?

GRAHAM McVIKER: They're in the master --

CONSTANTINE ALEXANDER: Ma'am, you'll have an opportunity. Please.

ANDREA HICKEY: In the master deed.

So is there a site plan also recorded with the master deed?

GRAHAM McVIKER: There is.

ANDREA HICKEY: And that site plan shows six

spaces?

GRAHAM McVIKER: It shows six spaces parked at 90 degrees at the north side of the building. And I can tell you that it's physically not possible to park six cars there. And in fact, you know, if the aisle was wider, it might be possible, but it is quite frankly not possible at all.

CONSTANTINE ALEXANDER: And none of the current occupants of the structure, including yourself, were involved in the documents way back when?

GRAHAM McVIKER: I believe that to be true.

CONSTANTINE ALEXANDER: Okay.

ANDREA HICKEY: But they are public record.

CONSTANTINE ALEXANDER: They are.

ANDREA HICKEY: They're available for review by the purchaser.

BRENDAN SULLIVAN: I would have thought a title search would have -- well, no, not a title search, but

somebody should have gone back to the permitting because there was no relief granted because none was needed so that allowed for seven units. But it never really should have contained seven units because they didn't have sufficient parking to support. So they basically shoehorned in seven parking spaces that may have looked good on paper, but were not good -- and somebody was deceitful.

CONSTANTINE ALEXANDER: I have no question about that, but we should not lose sight of what's before us. And the question is what's the impact today. If we were to grant the relief being requested and there is a requirement -- there is a provision in the Ordinance that allows us to reduce required parking, what's the impact? And we're going to get into that in a little bit of detail. I don't think, you know, it's fascinating and discouraging to hear the history of this. I don't know if that's entirely relevant to whether we should grant relief tonight. I -- it would be relevant if one of you folks was involved

way back then and you got -- you come to us as lawyers saying without clean hands, but I'm told that's not the case.

GRAHAM McVIKER: I would say unit 1, the current owner of unit 1 was the original owner of the building who sold it to the developer. So in that sense he was involved, but....

CONSTANTINE ALEXANDER: Did he, was he involved in the document preparation or the developer took it?

GRAHAM McVIKER: Not to my knowledge.

CONSTANTINE ALEXANDER: Okay.

Any further comments?

Let me open the matter up to public testimony because someone here is dying to talk.

MARGARET CARVER: My name is Margaret Carver. I am at 411 Putnam Avenue. My garden and my fence abuts this parking lot that is at issue here. And there were, there was a letter dropped off probably today by Edrick van

Beuzekom.

CONSTANTINE ALEXANDER: I have it. I'm going to read it into the record.

MARGARET CARVER: Because I'm not sure the petitioner really understands everything that happened. So if you can read that into the record, that would be good and then I have some other points myself that I would like to bring up.

CONSTANTINE ALEXANDER: Okay, let me read that letter into the -- but also let me start by reading the letter of support from what the petitioner wants to do from the Traffic Department, and that should also be part of the public record. Let me see if I can dig it out.

There are also other letters of support.

The Chair would note there is a letter or a memo to the Board from a Joseph E. Barr B-A-R-R Director of the Traffic, Parking and Transportation Commission. (Reading)
The Traffic, Parking and Transportation Department has

reviewed the Board of Zoning Appeal Special Permit request from Graham McViker on behalf of the 18 Whitney Condo Association to reduce the minimum number of required off-street parking spaces from seven to six spaces. 18 Whitney Avenue has seven dwelling units, six are occupied. The parcel is registered with Traffic Department for six parking spaces on the north side of the building and a tandem parking space on the south side of the building. In 2015 Traffic issued a total of five residential parking stickers to 18 Whitney Avenue. Two units had two vehicles, one unit had one vehicle, and three units had no vehicle. Traffic believes a reduction from seven parking spaces to six will not cause an adverse impact to streets in the neighborhood for the following reasons:

One, the building has at least one available parking space because not all units have a vehicle.

Two, the property is one block from stops for bus routes 64 and 47 and within a 15-minute walk to the Central

Square MBTA station.

Three, there are six car sharing vehicles located within a quarter mile of the property and 12 within a half a mile.

Four, the property is well located for bicycle access, including close proximity to the Paul Dudley White Path along the Charles River.

Based on these factors we support the granting of the Special Permit.

And then, you'll have opportunity.

MARGARET CARVER: That's all right.

CONSTANTINE ALEXANDER: There's letters of support. I think they're all identical. I just want to be sure. Yeah. The letter says -- well, not all of them are identical.

The letter (Reading) I am writing to you as a neighbor of 18 Whitney Ave. in Cambridge, Mass. The trustees of the 18 Whitney Condo Association have informed

me that the intent to petition for a Special Permit from the Cambridge Board of Zoning Appeals. The purpose of this Special Permit is to allow one of the seven units in the condo association to be occupied without an assigned off-street parking space. I have no objections to this Special Permit being issued. And the letter is signed by a person who resides at -- I can't read the handwriting, 30 Whitney Avenue.

There's another one signed by -- the same letter, identical letter, signed by Kevin Wilson who resides at 415 Putnam Avenue.

We also have a letter -- well, it's a letter from you to the neighborhood requesting support.

And another letter identical to the ones I read before from Christine Doherty who resides at 30 Whitney Avenue.

From Leyla L-E-Y-L-A Derbali D-E-R-B-A-L-I who resides at 22 Whitney Avenue.

From Allen, looks like Dobson who resides at 19 Whitney Avenue.

And then there are letters from unit owners disclosing how many people live in the building have cars and not. So these are the letters of support.

Now there's a letter you mentioned which is from, which was just delivered to us from Edrick van Beuzekom V-A-N B-E-U-Z-E-K-O-M who resides at 427 Putnam Avenue and Thomas Fisher who resides at 425 Putnam Avenue. (Reading) We are writing in regards to the petition by the 18 Whitney -- 8 Whitney Avenue Condominium Trust to reduce the number of parking spaces. We are objecting to the granting of a Special Permit because this was specifically prohibited by an agreement negotiated by the abutters and developers of the property over the course of nearly three years. In November 2007 a group of abutters sent a letter to the Building Commissioner, Ranjit Singanayagam, objecting to the issuance of a Building Permit to renovate 18 Whitney Avenue

and construct seven dwelling units. The applicants have stated that the building already consisted of seven units with six parking spaces one side and two tandem spaces and a driveway on the other side. We provided attestations from abutters and historical photos to prove to Ranjit that there had never been more than four cars parked on the side where the developers claim six. The proposed six spaces were non-conforming to the dimensional requirements of Article 6 of the Cambridge Zoning Ordinance. Additionally, in conversations we had with Ranjit, we pointed out that while the house was originally constructed as a four-family residence, there have only been three dwelling units in the days of rent control. Two of the units were combined illegally at that time.

The lot size is 10,665 square feet. Residence C Zone requires a minimum of 1800 square feet per unit which comes to 5.92 units allowed. If we round up, the maximum that should have been permitted should have been six units.

However, the Building Permit had already been issued for seven units. Because the permit had already been issued, Ranjit required that developers to negotiate an agreement with the abutters which had to be signed and submitted before he would issue an occupancy permit. Over the next year and a half we had a number of meetings and communications with the developers. They refused to reduce the number of units and threatened to put all the parking in the year regard which would have impacted a number of us with contiguous yards. Eventually we agreed to not dispute the number of units in return for an agreement to permanently deed one parking space per unit and to provide a number of landscaping amenities primarily for the protection and the screening of abutters to the main parking area.

We negotiated a memorandum of understanding which was included and referenced in deed restrictions filed with the Middlesex County, Middlesex South County Registry of Deeds, and included was irrevocable language the condominium

master deed. A side plan showing the parking was also included. These documents were also submitted to Inspectional Services as a condition of the occupancy permit which was filed in 2010. While we are sympathetic to the owners of 18 Whitney Avenue as they struggle to fit into the required parking in that area, we feel that the problem is a creation of deceit on the part of the developers and that the agreements with the neighbors should be honored.

Now, Ma'am, you said you wanted to add more?

MARGARET CARVER: Yes. I concur with all of that that went on. It was a mess I have to say. But it's really not a question of the parking per se. Every person who lives in that building has the right to have one, two, three, five registered cars and park them on the street. And because there are folks living in the building now that don't have cars, that does not mean that they will have cars in the future. So I think that's not a particularly good argument for approval.

The real issue -- and actually the density, I'm okay with the density. Seven units is fine. But the real issue is the integrity of the process. And I also that -- the individual who owns the first floor, the unit 1 which is the unit that apparently, and I don't know why, has been denied occupancy. And I -- we did not hear anything about that. We don't know why they've been denied occupancy. What the legal process was. But he actually was instrumental in submitting the original as -- what do you call it? The current, the current state of the property when it was converted. So he, if he indeed gets a -- is allowed to put somebody in there or sell it, in that unit, he gains incredibly when he should not have gained.

He -- if you deny the ability to have an on-street parking for that unit, my thought is that he, and by the way, unit 7 also belongs to the lawyers who are involved in this whole thing. It went into the bankruptcy, and as part of the settlement, these characters got those units. So I

think what -- seven units is fine. I would not object to that. Maybe that unit should be affordable. And all of the regulations that abide, that are necessary for affordable units, one of which is -- does not need a parking space, but it has to be a certain amount of cost and it has to have people in there with a certain amount of income. I think the neighborhood would be very happy to support that sort of resolution for that situation, which I agree, it's pretty rotten because there isn't enough room for six cars there. Never was.

So, that's our situation. And I think that's all. I do have the memorandum of understanding. I have the original plot plans. I'm not sure if you have that in your file.

CONSTANTINE ALEXANDER: I don't think we do. I didn't see it the last time I looked.

JANET GREEN: I looked for it. It said there was one.

GRAHAM McVIKER: I think it's in the back in the master deed.

MARGARET CARVER: And that's my letter.

CONSTANTINE ALEXANDER: Okay.

MARGARET CARVER: Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down.

GRAHAM McVIKER: And the master deed.

CONSTANTINE ALEXANDER: Okay, that's right. I did see that.

GRAHAM McVIKER: And there's a plot plan in here.

JANET GREEN: I didn't see that.

ANDREA HICKEY: Could I see that for a second?

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

Sir.

TIM FOFONOFF: I live in the building --

CONSTANTINE ALEXANDER: Name.

TIF FOFONOFF: My name is Tim Fofonoff,
F-O-F-O-N-O-F-F. I'm the owner/occupant in unit 4 in the
building. I moved in there just before we had our first
child. We have two small daughters, one turned one today
and we don't like that the unit's unoccupied. I don't like
that someone could gain out of it that might have been a
party to the beginning, but I think -- that this is required
in order to fix this issue, I think this will go on and hurt
our association for a long time if we don't get this permit
or this variance. I know that we do all park in this lot.
We have a good community where we let people who have more
than one car park there. We don't, we probably use the
street less than any other building on the whole street. So
I don't see that changing with this. I hope that we get a
tenant in there. I don't like that it's empty for the
community and for the City. So, I really like to have it go
through.

CONSTANTINE ALEXANDER: Thank you.

Anyone else? Sir.

ROY DHONDY: Yeah, my name is --

CONSTANTINE ALEXANDER: Can you come forward so we can hear you better, please.

ROY DHONDY: My name is Roy Dhondy, D-H-O-N-D-Y and I -- we live at 11 Whitney Avenue across from this building, and we've been there I guess ever since this development has been going on. And while we sympathize with the current situation, I kind of voice my support with what Margaret just said. So I just wanted to voice my support.

CONSTANTINE ALEXANDER: So you're opposed to the relief?

ROY DHONDY: I think the problem is it shouldn't have been seven units in the first place I think. Because it was a four-unit place but what about the history has been and the city has approved that. So on the other hand what she suggested that I don't know that as a model you grant that I have no objection to that.

CONSTANTINE ALEXANDER: Okay.

ROY DHONDY: But, again, there's not enough cars, but I do see it right now, we do see sometimes cars that belong to 18 Whitney that do park on the street if they have visitors.

CONSTANTINE ALEXANDER: Have you ever had any problems with parking on the street?

ROY DHONDY: I've had problems with parking on the street. Parking in the neighborhood, yeah. But so anyway, so that's all I have to say.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else wishing to be heard? You've already spoken.

No one else apparently wishes to be heard. I will -- do you have any final comments you want to make before I close public testimony?

GRAHAM McVIKER: I would just like to say that, you know, I think what happened with the developer does

sound wrong to me, and I can appreciate where the community and the neighbors are coming from, but I feel like if this is denied, it's hurting the wrong people.

CONSTANTINE ALEXANDER: Okay, thank you.

BRENDAN SULLIVAN: The developer owns the vacant unit?

GRAHAM McVIKER: No. Peter Norris owns the vacant unit. He was the original person who sold the property to the developer. That's my understanding.

BRENDAN SULLIVAN: So the developers have no interest in the --

GRAHAM McVIKER: Unit 7 was transferred from the developer in 2008 to another LLC. To my knowledge, the current owner of the LLC was not a developer.

CONSTANTINE ALEXANDER: Is not the developer? The LLC as a straw or another device for the --

GRAHAM McVIKER: I mean, I think originally one of the developers was part of the LLC, is no longer listed on

the LLC. I don't know what arrangement they have.

BRENDAN SULLIVAN: Who owns the vacant unit?

GRAHAM McVIKER: Peter Norris.

ANDREA HICKEY: And would he be giving up a parking space or sort of who will bear the burden of this missing space?

GRAHAM McVIKER: My unit volunteered to give up a parking space.

ANDREA HICKEY: Help me understand why you would do that. You paid for a unit that had a parking space.

GRAHAM McVIKER: That's correct.

ANDREA HICKEY: And conceivably the value of that unit without a parking space --

GRAHAM McVIKER: The association has agreed that if we give up our space, they will pay the assessed value of the parking space which is \$10,000.

JANET GREEN: I'm just thinking that there are certainly times when units have come before us requesting a

decrease in parking, and one of the reasons seems to be expressed by who lives in this building, you know, people ride by because they know the bus and the T schedule and things like that and we have decreased parking requirements in those cases, not all of them.

CONSTANTINE ALEXANDER: Well, I look at this sort of simplistically which is not usual. The fact of the matter is is that, the part -- the miscreants that caused problems when we're not around, we're talking about innocent parties here. The impact, if we grant relief is what, we just have one more car parking potentially parking on the street. That's not the end of the world. We know right now that all of the six spaces are not being used by occupants. Can't be assured that's going to be true in the future. But I look at if we don't grant relief, you're going to be stuck with one unit that can't be occupied. That doesn't do the City any good. It doesn't do the condominium association any good. Everybody paying their fair share. That's how I

come out. It's a practical approach that in the sense no harm, no foul. And the foul people are the people who have gone, the developer.

You've had your opportunity to speak, Ma'am.

MARGARET CARVER: I know. But the miscreants are still there.

CONSTANTINE ALEXANDER: Anyway, that's my view.

Is there anyone else wishing to be heard or we can go to a vote?

ANDREA HICKEY: Yeah. I'm a bit troubled by the fact that we really don't know whether anybody who owns a unit here was related or complicit in what I understand to be something dishonest at the very least.

CONSTANTINE ALEXANDER: We don't know.

ANDREA HICKEY: I might be interested in seeing the case continued so that we can ask the petitioner to determine, help us determine that. Because I would not want to reward anyone with an interest in sort of pulling a fast

one on us.

GRAHAM McVIKER: So I told you exactly who the owners are.

CONSTANTINE ALEXANDER: I think what Andrea is suggesting, and it might be a good idea, is getting an Affidavit from the current owners as to who, you know, what their interest was -- under the pains and penalty of perjury we know exactly who did the bad stuff before --

GRAHAM McVIKER: I told you Peter Norris unit 1 was the original owner who --

CONSTANTINE ALEXANDER: He just sold the problem to the developer.

GRAHAM McVIKER: They did.

CONSTANTINE ALEXANDER: Was he part of the development team?

GRAHAM McVIKER: I don't know.

ANDREA HICKEY: Yeah, see, I would be interested in knowing if he got a deed for a dollar as part of this

deal.

CONSTANTINE ALEXANDER: Yes.

ANDREA HICKEY: If he did. It's troubling. I'm not prepared to vote on this tonight.

GRAHAM McVIKER: So I will say, though, I mean, everyone else who has bought into the condo legitimately are the people who suffer in the long term.

ANDREA HICKEY: Right, but maybe --

GRAHAM McVIKER: And this is the only resolution.

ANDREA HICKEY: But maybe Mr. Norris should give up his space for zero if he were A part of this. There are other solutions.

GRAHAM McVIKER: We would like that as an association, but he hasn't agreed to that.

CONSTANTINE ALEXANDER: And if he wouldn't agree to that and we said we're not going to grant relief because we don't get what we want from him, then where are we at? He still sits in the building, right?

ANDREA HICKEY: Well, you may have other remedies. This Board might not be your remedy unfortunately.

GRAHAM McVIKER: Right. I'm not sure what other remedy.

CONSTANTINE ALEXANDER: Well, you have to talk to a lawyer.

ANDREA HICKEY: Yeah.

CONSTANTINE ALEXANDER: If it's the Board's pleasure, we can continue the case as a case heard with the direction that you're to provide Affidavits from each of the other unit owners regarding their interest in the property with any involvement -- I'm not going to try to draft it for you, but you know where we're going. Any involvement with the development, with the development of the property back in 2008, 2007.

GRAHAM McVIKER: And so I guess I just want to understand if I bring back Affidavits that say, yes, they were involved or, no, they weren't, how does that change the

outcome?

CONSTANTINE ALEXANDER: If some of the people were involved is --

GRAHAM McVIKER: And so if they were involved, does that change it for the rest of us?

CONSTANTINE ALEXANDER: We don't know the extent to what they were involved. We don't know facts.

GRAHAM McVIKER: And actually for the original developer, the LLC, I mean they're bankrupt. The actual entity doesn't exist as an entity. So in the event that Special Permit is not granted, we don't have any way to go after the developer. They don't exist. They're not an entity.

ANDREA HICKEY: Well....

BRENDAN SULLIVAN: I would like to clear up Mr. Norris's involvement.

ANDREA HICKEY: Thank you.

BRENDAN SULLIVAN: Ultimately lawyers will get

involved otherwise, but -- and I have great respect for lawyers, but I always feel that good hard working men that work with their hands should get paid and we should keep it away from the lawyers. But at any rate, I think I would be interested -- I'm unclear as to Mr. Norris's involvement from the beginning up to today. And I would like to clarify that on an Affidavit if that's what it takes.

GRAHAM McVIKER: And if he says he was involved, then what?

CONSTANTINE ALEXANDER: I think if he's involved, we will know the details of his involvement exactly. To what extent was he involved. It's really the Affidavit from Mr. Norris it sounds like that's important. The other Affidavits I think -- it sounds cookie cutter. No we're not involved. No interest, blah, blah, blah.

ANDREA HICKEY: Or if he comes with you on behalf of the condo association and answers our questions, that would be best. That's even better than an Affidavit I

think.

CONSTANTINE ALEXANDER: That's good.

ANDREA HICKEY: You know.

CONSTANTINE ALEXANDER: What's the relationship or relations with Mr. Norris?

GRAHAM McVIKER: We don't like him.

CONSTANTINE ALEXANDER: I can understand why. Does he like you? Would he come down do you think?

GRAHAM McVIKER: I don't think he likes us because we won't give him the parking spot because one doesn't exist.

CONSTANTINE ALEXANDER: He's not going to sign an Affidavit. We're not going to get anywhere with this.

GRAHAM McVIKER: Probably not.

CONSTANTINE ALEXANDER: If he's not going to come down why would he sign an Affidavit. What a mess. I expressed my views anyway. You know, I think we got to cut the cord or not. Although I'm not happy with it, but

nevertheless.

SEAN O'GRADY: He can't occupy his unit. He cannot occupy his unit.

ANDREA HICKEY: He doesn't have a Certificate of Occupancy.

SEAN O'GRADY: We're saying he has every reason to come down here.

JANET GREEN: Does he want to occupy his unit?

RANJIT SINGANAYAGAM: That unit cannot be occupied. Yeah. And I sent it to all the condo owners. That is the reason that they come here.

CONSTANTINE ALEXANDER: Well, it's a letter from Mr. Singanayagam, a series of letters.

RANJIT SINGANAYAGAM: To all the condo people.

CONSTANTINE ALEXANDER: Oh, you're right. Next one is from, there's one October 17, 2014, to Peter Norris. One on November 5th.

RANJIT SINGANAYAGAM: Yeah, because first I didn't

get the right address. It was condo units.

CONSTANTINE ALEXANDER: Well, it's a letter that says -- I'll read it. It says: The above -- it's from Mr. Singanayagam to Peter Norris. (Reading) The above-referenced property was converted from a four-family dwelling into a seven-family dwelling in 2011. Building permits and occupancy permits were issued based on plans submitted indicating compliance with the Cambridge Zoning Ordinance and the Building Code. The Zoning Ordinance requires one off-street parking for each individual unit. And this was shown on the plan and was approved by this department. However, it has come to my attention that there are only six parking spaces, and one does not have a parking space. Therefore, the unit that does not have a parking space is considered not legal and cannot be occupied.

And this was addressed to Mr. Norris and other occupants of the structure.

ANDREA HICKEY: Right. And apparently the plan

that was presented to the Building Department is a completely different plan than the condo site plan.

BRENDAN SULLIVAN: There's a complicity in a scheme.

CONSTANTINE ALEXANDER: Well, what's the pleasure of the Board? We can continue this case as a case heard. We need to give directions to Mr. McViker as to what he's going to try to do. And if it doesn't succeed and we vote it down, then Mr. Norris has got a problem because ISD will now come after him which hopefully will incentivize him to try to solve the problem. That's where I come from. But I defer to other members of the Board.

Okay. The Chair -- ready for a motion to continue the case as a case heard? What date -- first of all, what date? How much time do you think you're going to need with Mr. Norris?

GRAHAM McVIKER: I'm not clear exactly what you want.

CONSTANTINE ALEXANDER: Well, I'm going to get to that in a second. What we want is Mr. Norris down here to speak to us or something, an Affidavit, disclosing what his interest was in -- the involvement interest was at the time these plans were not properly filed and what his interest in the property is today, in the building is today. So we know -- because we don't want -- the Board doesn't want to reward someone who has flatly misrepresented the projects of the city.

ANDREA HICKEY: If that's what happened. We don't know that's what happened because he's not here.

CONSTANTINE ALEXANDER: We need to get to the bottom of that.

GRAHAM McVIKER: And so if he did, they -- the rest of the association is sort of on the hook.

CONSTANTINE ALEXANDER: Say that again? I'm sorry.

GRAHAM McVIKER: The rest of the association has

to live forever then as an unoccupied unit?

ANDREA HICKEY: Or pursue whatever other remedies you might have. This Board may not be your remedy.

GRAHAM McVIKER: I don't think there's another remedy.

CONSTANTINE ALEXANDER: Anyway, that's what we would expect. Now, how much time do you think you might need for this?

GRAHAM McVIKER: I'm not sure.

CONSTANTINE ALEXANDER: We have to set a date and it's got to be a date that the five of us can make it. First of all, what's the --

SEAN O'GRADY: 7/28 would be your first chance.

CONSTANTINE ALEXANDER: July 28th. So that's your first chance six weeks from now.

ANDREA HICKEY: Yeah, I'm here anyway on another case so that works for me.

CONSTANTINE ALEXANDER: Does that work for

everybody else? I can be here on the 28th. And if you don't succeed, we'll have to decide what we'll do on the 28th.

GRAHAM McVIKER: So you want Mr. Norris to come here?

CONSTANTINE ALEXANDER: Preferably, yes, to explain to us what it is -- his involvement in all of this.

GRAHAM McVIKER: I mean would you be happy granting the Special Permit if he was the unit owner that didn't get a parking spot?

CONSTANTINE ALEXANDER: No, I think the problem we've got is that the plans -- well, others express who want to see Mr. Norris, as I said, I'm not in that camp at this point. What would you like to have him say when he comes down? What do we want him to talk about?

BRENDAN SULLIVAN: Well, I think, and you may not have a good relationship with Mr. Norris, somehow its going to have to be communicated to him we would like to know his

involvement from the time that this -- the plans were drawn up, that it was permitted all the way through until today, and what his involvement is, what his ownership stake is in this building.

He may be adversarial to you, at which point you probably should talk to either the Commissioner or to Sean and have a conversation. And then I think you can probably explain to him maybe better and in less adversarial way exactly what we're looking for.

Is that correct? Yes?

RANJIT SINGANAYAGAM: Yes.

BRENDAN SULLIVAN: Yes. Okay.

I guess you're probably going to go back and say it didn't go well and this is the problem we have. And you can, and then have your conversation. And then probably then direct him to the Commissioner.

GRAHAM McVIKER: Okay.

BRENDAN SULLIVAN: Is that correct in a sense?

ANDREA HICKEY: I agree with that.

GRAHAM McVIKER: I mean I think in the end, you know, you may end up punishing the association for the actions of somebody.

ANDREA HICKEY: Well, I'm not saying where I'd come out after hearing from him.

JANET GREEN: We just don't have enough information.

GRAHAM McVIKER: I don't -- I mean I don't have a positive view of Mr. Norris and you may not have a positive --

BRENDAN SULLIVAN: And right, now so don't we.

ANDREA HICKEY: It's the content that I'm interested in. And he may have nothing to add.

GRAHAM McVIKER: Okay.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we continue this case until seven p.m. on July 28th as a case heard subject to the following conditions:

That you have to sign a waiver on behalf of the association, a waiver of time for a decision. If you don't, you're going to get turned down tonight.

GRAHAM McVIKER: What does that mean?

CONSTANTINE ALEXANDER: It just means by law we're supposed to decide a case within a certain period of time, and if we don't, the relief is automatically granted. And since we're not ready to do that, we'll either take action today and turn you down or give us more time to learn more facts. So that's the first condition.

Second condition is that the posting sign that's up there now be modified, Mr. McViker, to reflect the new date, July 28th, and the new time, seven p.m. And that sign as modified, you can do it yourself or get a new sign from ISD, that sign must be maintained for the 14 days prior to the July 28th hearing.

And the last I don't think is really relevant, if you're going to change your dimensional form or

your -- well, your dimensional form or any plans which you don't have, that they have to be in our file no later than five p.m. on the Monday before July 28th. That's not relevant.

So basically it's just make sure that you get a sign up, a modified sign or a new sign for the 14 days so otherwise we can't hear the case on the 28th.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: See you on the 28th hopefully with Mr. Norris in tow.

* * * * *

(10:25 p.m.)

(Sitting Members BZA-010180-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010180, 110 Hancock Street.

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

You know why we -- I mean want to consider tonight. We don't believe we can hear the case -- I don't believe we can hear the case tonight for the failure to meet the posting requirements.

ATTORNEY JAMES RAFFERTY: Oh, I'm happy to address

that.

CONSTANTINE ALEXANDER: The fact of the matter -- I thought that's what you were advising. Let me just say context, again, I thought you knew.

ATTORNEY JAMES RAFFERTY: Well, I'll start. My name is -- should I start?

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: James Rafferty R-A-F-F-E-R-T-Y appearing on behalf of the applicant, the 110 Hancock Realty Trust. This is an application for a variance. To the point raised by the Chair, I did learn from the Inspectional Service Department that the Chair visited the property over the weekend and --

CONSTANTINE ALEXANDER: Not on the weekend, before the weekend.

ATTORNEY JAMES RAFFERTY: I learned the sign was down. That's the first knowledge I had of it. The property is not owner-occupied. There's a tenant in it. As soon as

I became aware of that, I had checked the property periodically on behalf of the client. We send clients letters informing them that they need to maintain the sign. I personally affixed the sign to the property. I affixed it on the 15th day before the hearing. I stapled it on to the front of the house.

I called, I have a vivid recollection. I called my office because at the time I was struck by the fact that the print on the sign, you know, is so small, but there was only the fence and the wall of the house, and my concern having done this for years, is if you put it on the fence right at the street edge, there's a greater opportunity it gets taken down. So I said what's the setback on this property? And it was 17 feet. I said, okay, we meet the 20 feet. So I put the placard up and informed the client, I informed Mr. Shirley, the architect, as well that we need to keep an eye on it because the owner doesn't live there.

So I went by. I adjusted my route of travel two

or three times it was present. The first I learned of it was Tuesday. I obtained a new sign.

CONSTANTINE ALEXANDER: Tuesday two days ago?

ATTORNEY JAMES RAFFERTY: Tuesday. Inspectional Services, I obtained a new sign and I put the sign up. I went to the house and I knocked on the door, because I was concerned that perhaps the tenant had some understanding -- because my understanding is that the tenant whose lease is due to expire, is not enthusiastic about the fact that the lease wasn't going to be renewed and the house was going to be renovated. So the tenant was very pleasant and she acknowledged that, yes, it did come down and she made an attempt to put it back up, but it fell down the second time. And then she kind of said sheepishly, she said, my son was playing in the yard, he's five-years-old and he came in and told me. And sure enough when I was there, she pointed to me there was the sign sitting on the hedge.

So the requirement is to post the sign and signs come down for a variety of reasons. And I think the obligation is when the sign comes down, one has to maintain a reasonable effort to ensure that the sign is up in a non-occupied residential building. I'm not sure -- I think one uses their best efforts. I would suggest this was best efforts. The sign had been posted. The sign came down. The sign went back up when the applicant learned of it.

It would strike me that it would be a very effective device to someone who wanted to prevent a hearing from ever taking place for signs to come down. So I can attest personally that I affixed the sign. I signed for the sign and I affixed the sign on the fifteenth day, it was a Wednesday morning, and it was there at least through that weekend and the following week. And certainly when I arrived there on Tuesday, it wasn't there and I put a new sign up and took the second sign.

I would suggest that we have met the spirit, we

have posted, and we did our best to maintain the sign. And as soon as we learned that it wasn't there, it was up within a few hours of learning that.

CONSTANTINE ALEXANDER: Okay. My observation is that I went there on I think it was the Thursday, a week ago today, and there was no sign. And I didn't see any signs in the bushes or anything and the like and I looked around. I advise --

ATTORNEY JAMES RAFFERTY: Excuse me, did you enter on to the property?

CONSTANTINE ALEXANDER: No.

ATTORNEY JAMES RAFFERTY: You couldn't have -- my point is you couldn't have seen it then. The bushes are right in the front of the house and it was resting right in the bushes. You couldn't have seen it from the sidewalk I agree.

CONSTANTINE ALEXANDER: It wasn't properly posted if it was in the bushes.

ATTORNEY JAMES RAFFERTY: It fallen down.

CONSTANTINE ALEXANDER: Fallen down.

ATTORNEY JAMES RAFFERTY: It was properly posted.

CONSTANTINE ALEXANDER: But the fact of the matter is that from Thursday until almost half the period that's required in the two-week period, there was no sign up. And I think, you know, particularly in a structure where you have a tenant, you've got -- your client has some obligation to make sure that, you know, every couple of days go by and see if the sign is still up there. That wasn't done.

ATTORNEY JAMES RAFFERTY: Well, it was done, it was done by me.

CONSTANTINE ALEXANDER: No, you found out --

ATTORNEY JAMES RAFFERTY: I went by.

CONSTANTINE ALEXANDER: What?

ATTORNEY JAMES RAFFERTY: I went by repeatedly.

CONSTANTINE ALEXANDER: And you saw a sign up there?

ATTORNEY JAMES RAFFERTY: I did. I'm not suggesting that your facts are inaccurate. But the suggestion that the sign was put up and then the obligations regarding the maintenance of the sign were ignored. I went by three times. I adjusted -- I specifically adjusted my route of travel to turn left on Hancock Street as I came down Mass. Ave. and I saw the sign. I, I would say that the last time I did it was the middle of latter part of that week. But if you were there Thursday and it wasn't there, maybe I -- I would go by in the mornings so maybe it was there Thursday morning. I don't know when it came down. Had I been aware of it, and I agree and I'm not saying -- so I think in the life of these signs, I think we all know that the sign is a requirement that is intended to alert people who don't know this. But, I'll leave it to the Board, but I think I would tell you that we, I think in this case the applicant made reasonable efforts to ensure that the sign was up. And when we learned it wasn't up, we replaced it

immediately. So I think if you were there Thursday, I would say I was, I wouldn't dispute any of that. I didn't come in the office Friday, so I didn't see it Friday. And I was at the counter on Tuesday morning was the first I learned of it and I requested a new sign.

CONSTANTINE ALEXANDER: Okay.

I'll defer to members of the Board. My feeling is that we should continue this case. I think it's just a little bit too much time has gone by with no sign. If the board members want to hear the case, it will be a case not heard. If you want to hear the case tonight, we can hear the case tonight.

JANET GREEN: I think we didn't hear the one before because it didn't have a sign.

CONSTANTINE ALEXANDER: That's true. What she's referring to, Mr. Rafferty, is the fact that we had another case earlier with the same issue, no sign, and we continued that case for failure to maintain the sign for the two

weeks. So there is a -- that's a good point. A question of whether we didn't do it for them why should we do it for you?

ATTORNEY JAMES RAFFERTY: I don't know the details of that case.

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: I don't know if the applicant testified that they timely put up the sign --

CONSTANTINE ALEXANDER: Oh, yes, they did.

JANET GREEN: And wind blew it down and they put it back up.

THOMAS SCOTT: It sounds like the sign could have been down for five days. That's significant I think.

CONSTANTINE ALEXANDER: That's how I feel. That's exactly how I feel. I say, I take it you're a sentiment to continue the case.

It's a case not heard. When can we hear it?

SEAN O'GRADY: We can do it next time.

CONSTANTINE ALEXANDER: June 30th which means you get the sign back up tomorrow morning.

ATTORNEY JAMES RAFFERTY: The sign is up now. We'll change the date on the sign.

CONSTANTINE ALEXANDER: Wrong date and time.

ATTORNEY JAMES RAFFERTY: They're not as easy to change now, frankly, because --

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: -- they're covered in plastic which is probably helpful. We'll address that.

CONSTANTINE ALEXANDER: Get a new sign from Maria. You can't use a magic marker any longer. You'll have to pick up a new one. You want to say something?

SEAN O'GRADY: Yeah, those signs are -- they're illegible. You can take -- you can get them --

CONSTANTINE ALEXANDER: Whose idea was it to create these new signs?

SEAN O'GRADY: Where all good ideas come from, the

City Council.

ATTORNEY JAMES RAFFERTY: The new text on the sign. The text now --

SEAN O'GRADY: The printing.

ATTORNEY JAMES RAFFERTY: The printing, yeah.

SEAN O'GRADY: City Council.

ATTORNEY JAMES RAFFERTY: I just hung one today on Hawthorn Street. It can't be seen. But maybe the new -- you're going to have to --

CONSTANTINE ALEXANDER: Bring magnifying glass.

ATTORNEY JAMES RAFFERTY: Or to have a 20-foot rule and font like that, it feels very frustrating. I'm looking at the Ordinance, and it says it shall be maintained in legible condition.

I'd point out that the requirements of the Ordinance say that the sign stay in place until the decision is recorded. With all due respect, that can take sometimes six or eight weeks from tonight. Those signs don't last six

or eight weeks after the hearing. They're never up during that period of time.

CONSTANTINE ALEXANDER: You would counsel your client, if the sign is deteriorated because of a sense of time, you'll go back to Maria and get a new sign.

ATTORNEY JAMES RAFFERTY: I issue that letter all the time. I did in this case.

And I recognize the significance of the sign and the obligation. I just feel, because I was personally involved with the sign that there was a reasonable effort made here. But I can't -- there's no factual dispute. The sign was not down and if it was down since Thursday, I agree, it's a --

CONSTANTINE ALEXANDER: Long time.

ATTORNEY JAMES RAFFERTY: -- it's an unfortunate thing. It's a long night, you've been here a long time, and if that's your conclusion, I'll certainly abide.

CONSTANTINE ALEXANDER: The Chair moves that this

case be continued as a case not heard until seven p.m. on June 30th subject to the following conditions:

The petitioner will sign a waiver of time for decision. And a new sign be posted. It's got to be up tomorrow. And well, with the correct date and time at seven p.m. June 28th, and maintained for the 14 days required by our Ordinance.

And lastly, that to the extent that new plans or revised plans or dimensional form is going to be filed, as you know, Mr. Rafferty, it has to be in our files no later than five p.m. on the Monday before June 30th.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(10:35 p.m.)

(Sitting Members BZA-010198-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010198, 305 Webster Avenue.

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

ATTORNEY SEAN HOPE: Good evening Mr. Chairman.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY SEAN HOPE: Members of the Board. For the record, attorney Sean Hope, Hope Legal Office in Cambridge. I'm here on behalf of the petitioner. We have one of the managers of M&H Realty Trust, the owners of the property, and also project architect Jai Singh Khalsa. This is a slightly unusual application where this was a project that was approved by the Planning Board as a --

CONSTANTINE ALEXANDER: I'm going to stop with that. Well, not really. Well, I'm going to get to this later on.

ATTORNEY SEAN HOPE: Okay.

CONSTANTINE ALEXANDER: But the Planning Board's memo to us says basically they didn't really have approved it. The Planning Board would like to consider improvements to building a site design elements such as blah, blah, blah.

JAI SINGH KHALSA: They previously approved it.

CONSTANTINE ALEXANDER: What?

JAI SINGH KHALSA: They previously approved it.

ATTORNEY SEAN HOPE: So factually --

CONSTANTINE ALEXANDER: Sorry, I shouldn't have interrupted you.

ATTORNEY SEAN HOPE: Sure. To get to your point, they approved this project as an adapted reused project.

CONSTANTINE ALEXANDER: Gotcha.

ATTORNEY SEAN HOPE: Which means we were going to take the existing building --

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: We were going to add a conforming addition. And so we proposed that did eight months of community outreach, they approved it, and so we had an unappealed Special Permit. When we went to go pull the Building Permit to build it, there's a series of structural engineers who looked at the site and told us that the -- and the architect can speak to the details, but the building was not in good enough shape to be able to support the building we had approved. And so the only way to do

this was to be able to demolish the existing walls and build them back. And so I think this is what the Planning Board is referencing. So by operation of the Ordinance, we need demolish a wall and rebuild it back you no longer get the benefit of the setback, which is part of the reason, one that we were able to utilize the building, but also was the relationship from the wall to the street that created the streetscape that the Historical Commission thought valuable.

And so we did go to Charlie Sullivan in advance of this, because at one point he said the building is worth saving and now reusing and now we're proposing to demolish it because of the structural issues. We went to him. He understood. We showed him the letter from the structural engineers, and so he said he had no issue unless tearing the building down.

We went to the Planning Board for an advisory opinion before we came to the Zoning Board and this is where they said, well, if you're not going to use the existing

building, then there are certain things about the existing building we didn't like. And so if you're going to tearing it down, we may not want you to build it exactly the same.

JAI SINGH KHALSA: The facade exactly the same mostly.

ATTORNEY SEAN HOPE: But in terms of the unit count, the density, all the things that make the massing of the building, they said that they would --

CONSTANTINE ALEXANDER: My only concern with this, and it's not your fault by the way, is that we usually see projects, the final version if you will. The Planning Board is signed off completely. The Planning Board is now asking us well, get the Zoning Board approval and then come back to us.

ATTORNEY SEAN HOPE: And I brought this up to them. I said the Chair signs plans and he says build them in conformance, and I told them that's an issue. And they said oh, well, we can write a letter and what they can do is

that they can approve the massing, the dimensions. And I said, well, there are architects and design people and the Board usually sees a finished product. And so I said there was a tension in that. Jeff Roberts and the Planning Board staff thought they came up with a letter that would modify that.

CONSTANTINE ALEXANDER: Is this -- you have here, is this the -- subject to facade stuff that you have to go back to the Planning Board on.

JAI SINGH KHALSA: Correct.

CONSTANTINE ALEXANDER: Is there anything else that the Planning Board -- has the Planning Board otherwise signed off on this?

JAI SINGH KHALSA: Yes.

CONSTANTINE ALEXANDER: So it's just the facade?

JAI SINGH KHALSA: Well, can I spend a minute just to run through it a little bit?

CONSTANTINE ALEXANDER: By all means.

JAI SINGH KHALSA: Okay.

The lighter color here, the buff color here is the existing building. The red color here is the proposed building. The proposed building is all conforming. And with a conforming addition to the one and two-story building. And we were saving the facade on the one and two-story building to better address the streetscape.

Now literally I had proposed -- I sent three structural engineers out for proposals. And they all three consistently came back to me and they said, we will not give you a proposal if you save the building. They said it's, it's housing the condition of the lintels. It's shot. The brick quality and the CMU quality was never that good to begin with, and they said it wouldn't even be worthwhile reinforcing it. And I talked to Ranjit about okay, if we replace the wall, inside the wall and do everything, and peel the outside of the building off, but apparently you can't do that for more than 50 percent of the structure now

in terms of how things work now. It was very cumbersome to do it that way anyway. So here we are at this point in this juncture of the thing.

I want to show you a composite rendering of the area so you can get a better sense of what we're looking to accomplish. And the area highlighted in red is the site. And you can see you've got a one and two-story building in the site here. Kind of an unusual shaped lot.

CONSTANTINE ALEXANDER: Right, it certainly is.

JAI SINGH KHALSA: At least. At the least okay?

So it's a challenging project architecturally, and then what we then proposed to do was to save the existing -- whoops, yeah, save the existing structure and put the additional four stories in it utilizing the outside walls. Literally the intent was to save the outside walls, save the slabs, go down through the slab with a new structure and build our building on top. And nobody was going to -- and we had talked earlier on with the engineers

about doing without them going on the site and done a review of the current condition. And we've been working on this job for quite a while. Since 2013 we've been working on this.

ATTORNEY SEAN HOPE: The finish?

JAI SINGH KHALSA: This is the finished version here.

ATTORNEY SEAN HOPE: Oh, from a street level?

JAI SINGH KHALSA: Yeah, I have a series of perspectives I can show you as well.

ATTORNEY SEAN HOPE: So one of the challenges that I brought up to the Planning Board was that we went out neighborhood and did a lot of work and sold them on design --

JAI SINGH KHALSA: So here's your existing --

THE STENOGRAPHER: One at a time please.

JAI SINGH KHALSA: Let me finish this. Here's your existing viewpoint and here's the proposed from the

same viewpoint. Okay.

And so the intent is to keep that mass of the building there. What would change on it, the fenestration would change, your window patterning. And then some of these areas up here on the second floor and the height of this curb, for lack of a better word, is a little bit awkward and high for the residences behind that have a roof terrace there. So that would probably lower and then there would be some railings to open up that face of it.

CONSTANTINE ALEXANDER: Is that -- I don't think I've seen that plan that you're showing me right now. Is that in our files?

JAI SINGH KHALSA: Yeah, yeah, I submitted all of this to you.

CONSTANTINE ALEXANDER: It is? All right.

ATTORNEY SEAN HOPE: It may not be in color.

JAI SINGH KHALSA: I don't know if it's in color or not.

BRENDAN SULLIVAN: It's in there.

CONSTANTINE ALEXANDER: Is it?

JAI SINGH KHALSA: This is, you know, your view from the corner. And then there's a couple of other views of it as well.

That being a close-up view of the -- looking back towards the street. And then we figured you could get a restaurant or some coffee shop use in the retail is on the ground floor. Have a little, have like a little park on the corner, and then you've got your residential building above. And quite frankly the Planning Board did put us through our paces in terms of the design and really finessing the design on the balance of the building. We had, you know, go through a couple times.

And then this is the view from --

CONSTANTINE ALEXANDER: Back right?

JAI SINGH KHALSA: -- Columbia. The other direction. Just off this way is where the ramp would go

down to the parking below. Okay? So you've got the general gist of it?

CONSTANTINE ALEXANDER: I do.

JAI SINGH KHALSA: Okay, all right.

CONSTANTINE ALEXANDER: I'm still troubled and I think there's a solution so it's not the end of the world. I'm still troubled by the notion that we're not seeing plans that we normally see and the Planning Board wants to play around with this after we've signed off. And so my suggestion to the Board is going to be -- we have -- I'm jumping way ahead. My suggestion to the Board is that if we grant relief tonight, it would be on the condition that's tied -- condition that to the extent when you finish up with the Planning Board, if what comes out of your final discussion with the Planning Board changes any of the dimensional stuff in our dimensional form or if it makes any material change from the design that you've shown to us tonight that's in here that's in here, that you've got to

come back to us. Yes?

ATTORNEY SEAN HOPE: The dimension is pretty clear. It's not subjective, but material change --

CONSTANTINE ALEXANDER: Well, it's a question, air on the side of coming back.

ATTORNEY SEAN HOPE: Who is going to make that determination?

CONSTANTINE ALEXANDER: In the first instance it will be Inspectional Services, I think.

ATTORNEY SEAN HOPE: Because I think we could --

CONSTANTINE ALEXANDER: But they're probably going to comment by -- not comment or show it to me off record or show it to me and say you can use this material and I'll give an answer.

ATTORNEY SEAN HOPE: Yeah, and part of it is I'm trying to protect my client from tension between two boards. You know what I mean?

CONSTANTINE ALEXANDER: I don't think there's any

tension. I just think that we need to know what it is we're approving. And we only -- don't really know if the Planning Board is reserving its right to change things around after we've approved it. I just want --

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: It's not a tension. I just want to protect the jurisdiction of this Board.

ATTORNEY SEAN HOPE: No, I understand. I think the Planning Board was pretty clear they didn't want to change any of the dimensional requirements, because they --

CONSTANTINE ALEXANDER: That's fine.

ATTORNEY SEAN HOPE: But I think in terms of design. And if so, if it doesn't change the leaf, but change the skin or the brick or as Jai was talking about, the height of the walls.

CONSTANTINE ALEXANDER: Let's worry about that when the time comes.

BRENDAN SULLIVAN: What does it buy you for us to

give a conditional approval tonight and then you have to go back to the Planning Board time wise? What does it buy you?

ATTORNEY SEAN HOPE: A conditional approval?

CONSTANTINE ALEXANDER: If we say we approve tonight --

BRENDAN SULLIVAN: We approve it tonight, do you still have to file all of that. And then in the interim, so there's going to be a, you know, typed up and the appeal period yadda, yadda, and so on. In the interim you're going back to the drawing board or are you going to have a conference with the Planning Board or Community Development or somebody and to tweak the plan; is that correct?

CONSTANTINE ALEXANDER: The only thing I would modify to that, Brendan, is I would assume that if we were to grant the relief tonight as you're suggesting, tomorrow morning you can call the Planning Board up and tell them you've got the approval, set things up right now, let's have a meeting. I don't you have to wait the whole --

BRENDAN SULLIVAN: No, that's right. That's what I'm saying, at the outset, before they can even get into the ground, all right, it's going to be some many weeks down. Now in that interim, will the Planning Board then consider your revisions are you going to have -- so that you're trying to shorten up this process before you get into the ground?

JAI SINGH KHALSA: Yeah, basically, yeah. There's a couple of things:

One is if we have your approval tonight, conditional or not, we're then able to go ahead and push this into construction drawings. So that the owner has some chance of getting into the ground this year. All right?

And, you know, so you're talking an October construction start date if we're able to do that. If it gets pushed back, he's not going to be able to get into the ground this year. All right? So there's a real pressure for him to be able to do it this year.

BRENDAN SULLIVAN: All right, so before the snow flies. And I guess you said I've been wrestling with this since 2013. So for three years have you not been meeting with Planning?

JAI SINGH KHALSA: Well, we have -- it wasn't approved in 2013, we've just been working on it for that period of time.

BRENDAN SULLIVAN: Right, a work in progress.

JAI SINGH KHALSA: We met with planning staff. They approved this plan. The Planning Board approved this plan. The only thing that's going to change is the brick area here in terms of potentially the height of some of these walls and the pattern of the fenestration. And it's these areas here and that brick area there that will potentially change. It's not anything else.

CONSTANTINE ALEXANDER: If that's the case, I think it's a very good likelihood that we would not consider that a material change, and you wouldn't have to come back

before us. But I don't know where you're going to end up with the Planning Board.

JAI SINGH KHALSA: I appreciate that. If you are able to grant that approval tonight, it will help us tremendously in terms of schedule in trying to get this thing in the ground this year which is important to the client.

CONSTANTINE ALEXANDER: Certainly what you want to do is better than what's there right now. I mean....

JAI SINGH KHALSA: Yeah. I don't dislike what's there terms of the fenestration pattern and the brick on the bottom anyway --

CONSTANTINE ALEXANDER: No, no.

JAI SINGH KHALSA: -- because the way it's incorporated in the design, but they want to have another go at it, and that's their right. And I think we can probably achieve what we need to with staff, planning staff, and then present hopefully the finished thing to the Board at that

point.

BRENDAN SULLIVAN: The only thing with the Planning Board thing can run concurrently.

JAI SINGH KHALSA: Exactly.

BRENDAN SULLIVAN: I don't like the size of the building because I think, again, you go down -- I go down Webster Avenue -- Western Avenue and Webster and all we're doing is building out to the sidewalks and we're creating canyons every time you go up and down these streets. I would like to see a little bit, but it's a difficult site, I understand that. It's Broadway all over again. I guess the Carl's Gas Station, but at any rate.

JAI SINGH KHALSA: Well, it's certainly shaped like that one. They seem to get a lot of those shaped lots.

BRENDAN SULLIVAN: I would like to see it lower and so on and so forth. But I'll hold my nose I guess.

CONSTANTINE ALEXANDER: I think you specialize in buildings that are triangular shaped.

JAI SINGH KHALSA: Well, you know, the other end of Webster Ave. is a building going up Webster and Prospect just over the line in Somerville.

CONSTANTINE ALEXANDER: Oh, yes, I saw that.

JAI SINGH KHALSA: We're doing that building.

BRENDAN SULLIVAN: And that's what --

JAI SINGH KHALSA: That one is to the lot line and doesn't have the kind of articulation that this has. It's a very different mass. This will read very differently.

BRENDAN SULLIVAN: Again, now we're just creating canyons, but anyhow.

CONSTANTINE ALEXANDER: Anyway, I'm a derelict here. I'm sort of jumping ahead on things. Go through the requirements for a variance. You're seeking a variance.

ATTORNEY SEAN HOPE: Yes, we're seeking a variance. So this is an application seeking a variance for setbacks on all three sides. If you did the calculations for -- and this is a corner lot, so you only have a front

and side yard setback.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: But we would be in a building with all -- and this actually would have technically four sides of the property. It's for setback relief.

In terms of height, density, all of the requirements -- we do meet the requirements of the Res C-2B or BA zoning district and also with compliant parking, underground parking. So it's setback variances and all sides of the property.

And the hardship is owing to the one, not the size, but the shape of the lot as well as the deteriorating condition of the existing walls such that the conforming addition could not be built, and also that the existing walls are in unsafe condition as is. And sort of that's in each of the hardship.

The relief would be substantial because if we weren't able to utilize the existing walls, then we would

have a far smaller project. And also the interest of the City in terms of what the Planning Board had approved and the neighbors had supported in terms of the ground floor retail element, would not be possible if we had to adhere to the setbacks.

CONSTANTINE ALEXANDER: Thank you.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I think I should just quickly read into the record the Planning Board memo because that is crucial to what we're talking about.

(Reading) 305 Webster Avenue was a case reviewed by the Planning Board. It required a project review Special

Permit for development of over 20,000 square feet in the Business A District as well as a Special Permit to grant relief from dimensional requirements, including minimum yard requirements and minimum private open space requirements for the conversion of a non-residential structure to residential use. The Planning Board granted both Special Permits on June 17, 2015. The Planning Board has reviewed the variance request for dimensional relief and understands that this relief is needed because the project no longer includes the retention of the existing building. The current proposal attempts to construct an entirely new structure as a recreation -- as a recreation of the project that was previously approved by the Planning Board. The Planning Board continues to support the necessary relief to enable the development of a residential building that is of the same overall height, density, and character as was previously approved. However, if the project is no longer constrained by the exact dimensions of the existing

structure, the Planning Board would like to consider improvements to building and site design elements such as -- not limited, such as the facade articulation and outdoor landscape -- hardscape treatments as would normally be considered for a project review Special Permit.

Therefore, if the Board of Zoning appeal grants the dimensional variance, the Planning Board requests that the approval allow for further design review by the Planning Board to consider and potentially modify these design elements.

And we've talked about this. Just that it's in the record.

ATTORNEY SEAN HOPE: I just would like to -- I realize that setback relief, but also there would be an open space requirement which although we have some open space, that would be two pieces. So I misspoke. I said it was only setback.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SEAN HOPE: It is setback and open space.

CONSTANTINE ALEXANDER: Ready for discussion or we sort of kicked it around piecemeal or ready for a vote? Vote?

Okay, the Chair moves that we make the following findings with regard to the variances being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. The hardship being that the structure is not in good condition and any modification to them requires zoning relief.

That the hardship is owing to the soil conditions. There are soil problems.

JAI SINGH KHALSA: There is, yes.

CONSTANTINE ALEXANDER: And also, well, soil conditions.

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

In this regard the Chair would note that what is being proposed is a far great improvement for what is there right now. That it has preliminary, that's the only way to describe it, preliminary approval from the Planning Board.

So then on the basis of these findings, the Chair moves that we grant the variances requested on the condition -- subject to the following conditions:

One, that the work proceed -- well, I guess I can't say that.

Subject to the following conditions:

That the petitioner is going to have to go back to the Planning Board for further review and comment. And that if as a result of that, and the Planning Board approval, the dimensional form that was filed for this petition is modified in any respect, or if any of the features of the building as set forth in these plans is modified in any material respect, that you will have to return to this Board for a further review and relief.

All those in favor please say "Aye."

I wanted to ask you, you had your hand up before.

Did you want to say something?

SEAN O'GRADY: I think it was on the other case.

CONSTANTINE ALEXANDER: Too late.

All those in favor please say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Hopefully
we won't see you.

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

* * * * *

(10:55 p.m.)

(Sitting Members BZA-010241-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 010241, 457 Franklin Street.

Is there anyone here wishing to be heard on this matter? As you probably have heard many times, name and address to the stenographer, please.

RUTH KIRCHWEY: Ruth and Christopher Kirchwey, 455-457 Franklin Street. Christopher with the hat.

THOMAS ROSE: Thomas Rose, the architect for the project.

ALEX KIRCHWEY: Alex Kirchwey, son.

JAMES KOGER: James Koger K-O-G-E-R, 444 Franklin, neighbor. Not a butter.

CONSTANTINE ALEXANDER: Mr. Rose.

THOMAS ROSE: Okay. We would -- we're proposing to add, this existing house about 1840s, this is the main building here.

CONSTANTINE ALEXANDER: And the addition is in the back?

THOMAS ROSE: And the addition's in the back here. So we're almost doubling the square footage. And the idea is to, is Ruth and Ken have both lived in this house for 45 years or so now. Their son and their family want to all move in together and so they can continue to live in the house.

CONSTANTINE ALEXANDER: Just out of curiosity, how many people live in the house now? And how many bedrooms and baths are there?

RUTH KIRCHWEY: One bath.

CONSTANTINE ALEXANDER: One bath.

RUTH KIRCHWEY: Two bedrooms.

CONSTANTINE ALEXANDER: Two bedrooms.

RUTH KIRCHWEY: And a spare room for storage.

CONSTANTINE ALEXANDER: And the two of you occupy
the storage?

RUTH KIRCHWEY: Yes, and our children are grown
and moved on.

CONSTANTINE ALEXANDER: Right. Now the relief
you're seeking -- if we grant the relief you're seeking, how
many people do you think will be occupying the structure and
how many bedrooms and bathrooms will there be?

RUTH KIRCHWEY: Six people.

CONSTANTINE ALEXANDER: Right.

RUTH KIRCHWEY: Three bathrooms.

ALEX KIRCHWEY: Three bathrooms.

RUTH KIRCHWEY: And five bedrooms.

CONSTANTINE ALEXANDER: My question is not to pursue a curious interest, just to be clear. My first concern in just reading the file was I smelled a rat here, generally speaking, that they're looking to expand the size and structure so you can put it on the market and sell as opposed to you -- your greater family being able to live together. I trust, you know, I trust that's not what you're plan is.

RUTH KIRCHWEY: That's not our plan. We would like to stay there. And my husband is going to have his 81st birthday next week.

CONSTANTINE ALEXANDER: Congratulations.

RUTH KIRCHWEY: And feels that it's just hard to, you know, to live there by ourselves. And our son lives in the suburbs and he -- it's a big change for him. He'd sell his house and come in. Our children went to the Cambridge schools and just thrived in our neighborhood. And they spend a lot of time at our house now. And, you know, it's,

it's very small. We could never accommodate them that way. Alex's wife Corrine works as a graphic artist, so she works from home. So she needs space for her -- whatever she has. And Alex works sometimes -- he's an IT person, and he can work from home. And so he needs a place for all of his stuff. And -- but we, we spent a lot of time together. The children stay overnight, weekends, and we know that we can get along. But we also know that we need some space to be separate sometimes. We don't want a two-family house. We want to cook together and --

CONSTANTINE ALEXANDER: What struck me, surprised me is you're going to more than double the size of the house as you point out, yet you don't have any FAR issues. You've got a yard. The relief you're looking for is actually rather modest in nature to side yard setbacks.

THOMAS ROSE: I mean, we've maximized it to almost.

CONSTANTINE ALEXANDER: You went to the limit.

That's legitimate. You're entitled to do that. But it's not like a case where you're going to double the FAR over the permitted FAR. You're going to be within the FAR requirements so I was pleased to see.

RUTH KIRCHWEY: And I've been very surprised. I've shared the plans with all of our abutters without exception, every one is supportive. Most of them were here earlier but they had to leave.

I have two letters from two of them.

CONSTANTINE ALEXANDER: You have them with you?

RUTH KIRCHWEY: Yes.

CONSTANTINE ALEXANDER: We'll put it in the file.

RUTH KIRCHWEY: I didn't make copies.

CONSTANTINE ALEXANDER: They won't go anywhere. They'll stay in the file. If you need copies, you can go to Inspectional Services.

RUTH KIRCHWEY: And so that was really felt good to me to feel that support from everybody.

CONSTANTINE ALEXANDER: You should, you should
feel good.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to
public testimony. You must be here for this case?

RUTH KIRCHWEY: Oh, I didn't see you, Judy.

CONSTANTINE ALEXANDER: Would you like to speak or
not.

CHRISTOPHER KIRCHWEY: I think -- I'm probably not
going to do very well on the speech because my hearing aids
are telling me that they're done for the night. But we were
just --

CONSTANTINE ALEXANDER: You're ably represented by
the rest of your family.

CHRISTOPHER KIRCHWEY: I certainly am.

CONSTANTINE ALEXANDER: Do you want to speak or
not?

CHRISTOPHER KIRCHWEY: Just to say that we've been delighted to be joined by the rest of our family --

CONSTANTINE ALEXANDER: I can understand that.

CHRISTOPHER KIRCHWEY: -- in one place.

JUDY SARIAN: I'm Judy Sarian (phonetic) and I live at 30 Hancock Street. So we are abutters on the back of the house on Franklin Street because they're near the corner and we're near the corner. And so I think that this is, you know, I really am encouraging about the fact that the family wants to live together and, you know, I can see that this is a neighborhood that does encourage families. And I've lived in this neighborhood now for a little over 20 years. I wanted to just ask a couple of questions because I, I know that we've spent -- we did come over several times to talk with my husband, but only yesterday did I get a chance to speak with Ruth about the plans. And so the things that I wanted to ask about were the effect of the sun. It is for us -- their house is facing the south, and

the house will go up a full level from -- in the back. From the current footprint, there is a porch in the back, and I think the porch will be taken down, and another level will be put up. So the house will actually be higher than the current structure.

CONSTANTINE ALEXANDER: Yes, it will.

JUDY SARIAN: And so that will cast probably a greater shadow on our house. So I am -- I think the sun study would be a really good idea because that is, you know, the bulk of the sun that we do get is from that, from that point of view.

You know, I -- also we've been living there, as I said, for over 20 years and we've benefitted from their beautiful garden which is lovely and we've always enjoyed it. And so the garden will probably be reduced in size. So that, you know, it's hard to envision. I think, you know, it is a change and sometimes that's necessary given, you know, the needs of families. But I do think it is important

to consider those factors, particularly the sun factor in looking at the proposed.

CONSTANTINE ALEXANDER: We have one level with the sun factor, which I grant you is a legitimate concern. We have to take action. We don't have to -- but we would be planning to take action tonight. So if we wanted to have the benefit of the sun studies and wanted you to have the benefit of the sun studies, we'd have to continue this case to another date and it would have to be a case heard so we would need the five of us. So that's the problem. We don't have a sun study, and either we wait until we get one or we proceed without one. Your views? Is it important enough to you that you would ask us to continue this case so you could actually see the sun studies?

SHELLBURNE THURBER: I think it would be actually. I'm behind --

CONSTANTINE ALEXANDER: I'm sorry, you've got to give your name.

SHELLBURNE THURBER: S-H-E-L-L-B-U-R-N-E

T-H-U-R-B-E-R.

And I know that even though I'm not directly -- well, I don't know how much I would be impacted, but it gets pretty dark back there. And I think it's -- once it's built, it's too late.

CONSTANTINE ALEXANDER: That's for sure.

SHELLBURNE THURBER: And so I don't think there's any harm in getting that put in place. Because I, I originally thought it was just going to go back, which doesn't cause a problem, but when you're talking about going up another level, I think it does. To say nothing of right now and this is a subjective thing, it's, you know, there's a feeling of openness. But then when you have that three-story wall, that gives you a very, you know, that's like I said, subjective. And, you know, I don't know that there's anything, that there's any legitimate, legitimacy to that complaint.

CONSTANTINE ALEXANDER: Well, I think my view is that we should exceed to the neighbor's request and continue this case so that they can prepare or have sun studies, shade studies prepared, distributed to the neighbors, filed in our files as well.

RUTH KIRCHWEY: May I say something, too?

CONSTANTINE ALEXANDER: By all means.

RUTH KIRCHWEY: We live surrounded by five-story houses. We are one small house. Every, everywhere we look, we see a neighbor's third-story. So, I mean, this is the city and I'm certainly surprised --

CONSTANTINE ALEXANDER: Well, do other members of the Board agree with me or not about the need to continue the case so sun studies can be prepared?

BRENDAN SULLIVAN: No, I would concur.

JANET GREEN: We've done that.

THOMAS SCOTT: I think that there's a concern, we should do it.

CONSTANTINE ALEXANDER: That's how I look at it.

Okay.

When's -- we have other continued cases.

SEAN O'GRADY: You're out to 8/11 now. I would just say tonight with all the continuances we had, we overloaded tonight. We could have been here to two in the morning. I just hesitate to do that again. We have really heavy schedules coming up.

CONSTANTINE ALEXANDER: 8/11. Okay. Can everybody make it?

JANET GREEN: No.

ANDREA HICKEY: Not sure.

SEAN O'GRADY: 8/25.

ANDREA HICKEY: I need a minute.

CONSTANTINE ALEXANDER: How booked are we for earlier?

SEAN O'GRADY: Booked every night, eight cases and three continuands.

CONSTANTINE ALEXANDER: What are the continued cases in July, do you know? I mean sometimes we have what I call phantom continued cases.

SEAN O'GRADY: You've got 11 Tremont, 56 Amory, and 11 Grey Gardens East on the 14th.

CONSTANTINE ALEXANDER: That's not going to be complicated cases.

I don't know, members of the Board, would you like to have it on that date or not? We run the risk of a little bit of a later night.

ANDREA HICKEY: Are you talking about July 14th?

JANET GREEN: Yes.

ANDREA HICKEY: I can do that.

JANET GREEN: I can do that.

CONSTANTINE ALEXANDER: Okay. All right, we'll continue the case -- we'll make the motion in a second. Before I do that, I just want to make sure we don't get into another problem. When we, I'm not sure you've appeared

before us before. When we do approve, if we approve, we tie it to the plans.

THOMAS ROSE: Right.

CONSTANTINE ALEXANDER: These I assume are the final plans. If you've got to make any modifications after we approve it, you're going to have to come back before us. So I want you to be sure. And we have time now between now and July 16th to do it? Make sure you have not preliminary thoughts, your final plans. Not construction plans, but your final design plans so we can tie it in.

THOMAS ROSE: No, the shape hasn't -- the form hasn't changed. The plans have developed, but I mean it's the same -- the exterior hasn't changed that much.

CONSTANTINE ALEXANDER: I'm talking about also the addition. I just want to be sure that what we've approved and what the neighbors see is exactly what's going to be built.

THOMAS ROSE: Right, yeah. I just kept it simple

here.

CONSTANTINE ALEXANDER: Okay. I just want to be sure.

All right, the Chair moves that we continue this case as a case heard until seven p.m. on July 16th subject to the following conditions:

You sign a waiver for a time for decision. And Mr. O'Grady has that.

BRENDAN SULLIVAN: It's going to have to be July 14th; is that right, Sean?

CONSTANTINE ALEXANDER: Did I get the wrong date. You're right, it is the 14th. Thank you.

This is -- you need to do this because if you don't, we'd have to turn you down tonight and you don't want that.

So, sign a waiver of time for decision. That's been done.

Second, that you have to maintain the posting

sign. Take the sign, you get a new one, or modify if you can the one that's there now to reflect the new date, July 14th, and the new time, seven p.m. And unless -- that sign has got to be up for the 14 days before that date. As you've heard tonight, people don't do that and we don't hear the case. Check every couple of days. You live in the house anyway.

RUTH KIRCHWEY: Just leave it there and change it?

CONSTANTINE ALEXANDER: Well, you can change it. If you can do it legibly with a magic marker, that's fine.

RUTH KIRCHWEY: Okay.

CONSTANTINE ALEXANDER: If not, go see Maria Pacheco. You've got plenty of time. You don't have to put the sign up for 14 days before July 14th.

RUTH KIRCHWEY: Okay.

CONSTANTINE ALEXANDER: And lastly, this is important, too, as I mentioned. To the extent that you're going to modify any of the plans that you've submitted or

the dimensional form, those modifications must be in our files no later than five p.m. on the Monday before July 14th. The purpose of that is to allow us to study the plans in advance of the hearing and to allow neighbors to come in and view it as well. If you don't do that, we're not going to hear the case on July 14th. I don't think you're planning on making any changes. And then the shadow study must be in our files by that date, too.

THOMAS ROSE: So that I'm really just showing extremes of the shadow.

ANDREA HICKEY: Here's sort of a sample of one that was in another case. I don't know if that --

JANET GREEN: That wasn't the best one. I have to say --

CONSTANTINE ALEXANDER: Check with Mr. O'Grady you have time.

SEAN O'GRADY: No. You've done shadow studies before. You're an architect. Don't be asking me.

CONSTANTINE ALEXANDER: Whatever convention --

RUTH KIRCHWEY: What do you do?

BRENDAN SULLIVAN: And I would have a conversation with the two ladies who spoke well in advance of the hearing, too. You know, you don't want to give it to them the day of or the shadow study that night so they can have time to review it.

RUTH KIRCHWEY: Yeah, I've been sharing everything with them.

CONSTANTINE ALEXANDER: Sounds like you have good relations with them. Just make sure. Don't -- do it sooner rather than later.

RUTH KIRCHWEY: Right.

CONSTANTINE ALEXANDER: All those in favor of that motion, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Motion carried. See you in July.

I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

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 the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June, 2016.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 29, 2022

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