

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING  
JULY 28, 2011 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Brendan Sullivan, Chairman

Constantine Alexander, Vice Chair

Tad Heuer, Member

Slater Anderson, Member

Douglas Myers, Member

Thomas Scott, Member

Mahmood Firouzbakht, Member

Sean O'Grady, Zoning Specialist

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## I N D E X

<u>CASE</u>		<u>PAGE</u>
10121	--	20/165
10109	--	3
10108	--	15
10104	--	22
10128	--	26
10129	--	28
10130	--	70
10131	--	79
10132	--	93
10133	--	103
10134	--	120
10135	--	159

P R O C E E D I N G S

(7:00 p.m.)

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

BRENDAN SULLIVAN: The Board of Zoning Appeal for July 28, 2011 is in session. And the first case is case No. 10109, 41 Sacramento Street.

CONSTANTINE ALEXANDER: Good evening again.

BRENDAN SULLIVAN: Reintroduce yourself for the record and spell your last name and give us your address. And just briefly tell us again what you would like to do.

NANCY O'RIOL: I'm Nancy O'Riol  
O-'R-i-o-l.

JACK MORWAY: And I'm Jack Morway  
M-o-r-w-a-y, and we both live at 47 Prentiss  
Street and we're planning on moving in to 41

Sacramento. Hopefully.

BRENDAN SULLIVAN: I understand that you're taking a delapidated building and bringing it back to life.

NANCY O'RIOL: Correct.

BRENDAN SULLIVAN: The last time we met there was some question as to clarity of relocation of some of the windows. Since then we have more than done a very fine job of being very clear, exactly what you're doing. And we thank you and applaud you for that. So on the side I think will be the standard by which we will direct other architects and petitioners to follow.

TAD HEUER: I have never seen so much detail on a window that's no longer there.

BRENDAN SULLIVAN: So, just very briefly, just maybe 50 words or less just to refresh the Board again.

CONSTANTINE ALEXANDER: And also talk about the Variance, too, because you're

also seeking a Variance.

JACK MORWAY: Yeah. I can explain the windows.

Basically this house in the 1920s was converted into a two-family and that's when most of the damage to the house was actually done. And part of that is a -- put an addition on which I have basically removed. It was poorly designed, poorly laid out. And in addition on the back part of the property they had an exterior stairwell in order to get a second means of egress for the second unit on the top and split it in two. And so what we did is we got rid of the addition that they had added in the 1920s and we also took down on the rear wall the exterior staircase. And after that's gone we just rebuilt off that same rear property line. There were roughly six windows there, four -- two of them were in the back on the staircase, exterior staircase. So they weren't on that same wall

plaque. But we would just like to put in six windows on the back wall. It's like a 20-foot long wall evenly spaced. And they're not, they're not even as large.

CONSTANTINE ALEXANDER: That's the Special Permit. And the Variance you're adding a porch in the rear door?

JACK MORWAY: Yes. We'd like to add a porch to basically a ten-foot square area.

In addition, we also took down a two car garage. It was a concrete block structure. So we took that down.

CONSTANTINE ALEXANDER: The rear porch where the addition was?

JACK MORWAY: I beg your pardon?

CONSTANTINE ALEXANDER: The rear porch is where the addition was that you've taken down more or less?

JACK MORWAY: Yes, it does extend probably four or five feet beyond.

CONSTANTINE ALEXANDER: And you

need the Variance because the porch is going to be too close to the lot line?

JACK MORWAY: The rear is, yes.

CONSTANTINE ALEXANDER: All right. Just so the record's clear as to what we're doing.

JACK MORWAY: Yes, it is essentially the rear setback requirement. I think I'm 15 feet. The minimum's 20. And anything done in that --

BRENDAN SULLIVAN: And also the right side is -- it's not changing any, but it is also non-compliant now. And that's eight feet now, and it's going to be eight feet. And the Ordinance is eight foot, four inches or eight foot -- 8.4.

JACK MORWAY: Yeah. There are no changes in that section.

BRENDAN SULLIVAN: It will be an increase of the open space.

CONSTANTINE ALEXANDER: Yes.

JACK MORWAY: Yes, definitely.

TAD HEUER: And the reason the rear setback is becoming more compliant is because you've removed the garage?

JACK MORWAY: No. The addition and the rear staircase have been removed.

TAD HEUER: Right. But then you're putting the porch in?

JACK MORWAY: Yes.

TAD HEUER: I guess my question is the porch replaces the 1920's addition?

NANCY O'RIOL: Yeah.

JACK MORWAY: Well, it's not the same area, no, it's smaller.

TAD HEUER: Okay, all right. That was my question.

BRENDAN SULLIVAN: Any other questions or concerns?

CONSTANTINE ALEXANDER: No.

SLATER ANDERSON: No.

BRENDAN SULLIVAN: Questions from

you at this time?

Let me open it to public comment. Is there anybody here who would like to comment on 41 Sacramento Street?

(No Response.)

BRENDAN SULLIVAN: I see no one in attendance. You did not solicit any --

CONSTANTINE ALEXANDER: There are some letters of support in the file.

JACK MORWAY: I think a couple people signed letters.

CONSTANTINE ALEXANDER: No one opposed this at least the last time I looked at the file.

JACK MORWAY: I think we can say that --

NANCY O'RIOL: Everybody in the neighborhood is dying for us to do it.

CONSTANTINE ALEXANDER: I think that's the case.

BRENDAN SULLIVAN: There is

correspondence in the file from Julia Stearns S-t-e-a-r-n-s from 43 Sacramento Street.

"To Whom It May Concern: I'm writing this letter in support of the changes as outlined in case No. 10109. Petitioner is said to add a porch connecting the rear door to the side entrance, and a Special Permit to replace six windows in a door into the rebuilt rear wall. As an abutting neighbor, I am in support of both these changes and request that the Board approve these submissions."

There is also correspondence from Stephen and Linda Brion-Meisels B-r-i-o-n - M-e-i-s-e-l-s. "We write to express our support for the work being done by John Morway and Nancy O'Riol at 41 Sacramento Street. As neighbors, we are delighted that they have undertaken the big task of restoring 41 Sacramento. Their work thus far has been respectful of neighbors and of the historical treasure the house

represents along with the challenges to restorations."

That's the sum and substance of the correspondence.

Okay, questions, concerns, problems?

CONSTANTINE ALEXANDER: We're ready for a vote.

BRENDAN SULLIVAN: All right. Let me make a motion to grant the relief requested. This would be on the Variance to build the rear porch as per the plans shown and initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner as it would preclude them from having a rear porch. And the flow pattern would be hindered from exiting the building and also from the outside into the building. And that the Board finds that it's quite necessary and

fair and reasonable request.

The Board finds that the hardship is owing to the fact that the existing structure is non-conforming. The proposed work will reduce the non-conformity, which is an added feature, and that the floor area will be reduced from 0.78 to a 0.67 which is below the required Ordinance. And that the footprint of the building predates the existing Ordinance.

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

All in favor of granting the Variance.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Now on the Special Permit, the windows. You want to add six windows; is that correct? Or reposition six windows that are within the rear yard setback?

JACK MORWAY: Yes. I don't know if reposition is the correct word.

BRENDAN SULLIVAN: Any other questions or concerns regarding the Special Permit?

I make a motion to grant the Special Permit for the relocation of windows within the rear yard setback as per the plan, quite nice plan, as submitted.

The Board finds that the requirements of the Ordinance can be met. That traffic generated or patterns of access or egress will not cause any congestion, hazard or substantial change in the established neighborhood character. The continued operation of or development of adjacent uses

as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use. And that there would be no nuisance or hazard created to the detriment of the health, safety or welfare of the occupant of the proposed use or to the citizens of the city.

And the Board notes the letters of support from abutters regarding this change.

All those in favor of granting the Special Permit for the relocation.

(Show of hands.)

BRENDAN SULLIVAN: Motion granted.

(Sullivan, Alexander, Heuer, Anderson, Myers.)

(7:15 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10108, 18 Beech Street. Is there anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

The Board is in receipt of correspondence dated July 25th to the Board of Zoning Appeals. "Dear Sirs: Hope Fellowship Church, the petitioner in case No. 10108 regarding 18 Beech Street respectfully requests a continuance of this hearing to a later date. Respectfully Katie J. Thomason, counsel for the petitioner."

Sean.

SEAN O'GRADY: They came in today and filed a Certificate of Occupancy on the property which presumably will be denied and appealed. I, you know, if that takes several

weeks to do, I wouldn't think that that case would be heard until probably October 13th. So I'm thinking that maybe we should continue this case to that date and do them in one shot.

BRENDAN SULLIVAN: Okay. Nothing in September?

SEAN O'GRADY: Well, there is in September. I'm just wondering if you're going to get it in.

CONSTANTINE ALEXANDER: We're going to have to continue it again.

SEAN O'GRADY: I mean, it's possible. I mean, there's -- you got a September 22nd date that you can certainly do.

BRENDAN SULLIVAN: And this purported appeal could that happen then or maybe not?

SEAN O'GRADY: Well, that's the thing.

BRENDAN SULLIVAN: October's a safe

date. September's a chancy date.

SEAN O'GRADY: If you came in today, you would be heard on the first case in September. So I'm thinking, well, first case in October will, you know, if it takes them a month to get there, and then how, but that's just guessing.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: I think we should be conservative and continue the case toward the end of October. Because I mean, you know, we're not going to hear this case before we hear the other case we're expecting to hear. And we can't control when the other case is going to come.

BRENDAN SULLIVAN: That's fine. To October?

SEAN O'GRADY: 27th.

BRENDAN SULLIVAN: Let me make a motion to continue this matter until October 27, 2011 at seven o'clock as per the

Petitioner's request. They have already signed a waiver I'm sure?

SEAN O'GRADY: Just look at the front cover. Maria would write it down.

TAD HEUER: If it's continued --

CONSTANTINE ALEXANDER: It's continued already.

TAD HEUER: -- they must have signed one.

SEAN O'GRADY: Thank you.

BRENDAN SULLIVAN: On the condition that the Petitioner change the posting sign to reflect the new date of October 27, 2011, and time of seven p.m. And that the posting sign be maintained as per the required of the ordinance.

All those in favor of continuing this matter.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer,

Anderson, Myers.)

(7:20 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Slater Anderson, Douglas Myers.)

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicant. At the moment, however, I do not see the applicant which surprises me greatly because he is in near hourly communication with me, and he knows of --

BRENDAN SULLIVAN: Want to take a little pause?

ATTORNEY JAMES RAFFERTY: I apologize for the disruption to your schedule.

CONSTANTINE ALEXANDER: We can recess the case to later in the evening.

ATTORNEY JAMES RAFFERTY: Yes, there are members of the public here. And I

think we have a, we have close to I think a resolution. We have some proposed conditions as a result of some work, but I think it would --

CONSTANTINE ALEXANDER: It's your call.

ATTORNEY JAMES RAFFERTY: My preference would be, given the nature of this, it's his business and livelihood, I think the applicant really should participate in this.

BRENDAN SULLIVAN: And there may be some issues he may need to address.

ATTORNEY JAMES RAFFERTY: Exactly.

BRENDAN SULLIVAN: So we'll just recess this and continue it when you're ready.

ATTORNEY JAMES RAFFERTY: Thank you.

(Case recessed.)

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10104, 146-148 Magazine Street. There's no letter in the file on this one.

SEAN O'GRADY: There should have been.

CONSTANTINE ALEXANDER: Maybe you put it in the file.

BRENDAN SULLIVAN: There's one for this.

TAD HEUER: That covers both.

CONSTANTINE ALEXANDER: My guess is he wrote one for both.

TAD HEUER: It doesn't reference a case number, so it could be for both.

BRENDAN SULLIVAN: You think so?

CONSTANTINE ALEXANDER: Yes, I think so.

BRENDAN SULLIVAN: The Board is in

receipt of correspondence. "To the members of the Cambridge Zoning Board: We would like to request a continuance regarding our application for a Variance and Special Permit regarding 146-148 Magazine Street. We feel that we need to be better prepared in presenting our case to the Board. Thank you very much."

CONSTANTINE ALEXANDER: I would agree with that.

BRENDAN SULLIVAN: Morris Keane K-e-a-n-e and Emer Grall E-m-e-r G-r-a-l-l. And the matter will be continued until?

SEAN O'GRADY: September 22nd.

BRENDAN SULLIVAN: September 22, 2011 at seven p.m. on the condition that the Petitioners change the posting sign, there should be two, reflecting the new date of the September 22nd and the time of seven p.m.

Now, there is a waiver on 10104 and I don't have a waiver....

SEAN O'GRADY: There should be a waiver in here. It says waiver there.

BRENDAN SULLIVAN: 10104, I have that.

SEAN O'GRADY: Okay. Does it say anything in front of that?

TAD HEUER: Both of those are 10104.

BRENDAN SULLIVAN: 10128.

SEAN O'GRADY: Okay. And it doesn't say letter of waiver on the front?

TAD HEUER: No.

SEAN O'GRADY: Okay, we didn't get that. So we'll need to get that.

BRENDAN SULLIVAN: We should call Mr. Rafferty back in here. Is he counsel?

SEAN O'GRADY: Yes.

TAD HEUER: He is?

SEAN O'GRADY: Yes, he is now.

DOUGLAS MYERS: He's been appointed.

BRENDAN SULLIVAN: On the motion to

continue 10104 until September 22nd, all those in favor of continuing that.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Anderson, Myers.)

CONSTANTINE ALEXANDER:

Mr. Chairman, I would note for the record there's only one sign posted at that property right now, not the two that there should be. So you have to remind the Petitioner that there better be two signs before September 22nd with the right date and time.

SEAN O'GRADY: Okay.

(7:50 p.m.)

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

BRENDAN SULLIVAN: On the motion to continue let me reopen 10128. On the motion to continue case No. 10128, 146-148 Magazine Street, on the condition that the Petitioner change the posting sign to September 22, 2011 at seven p.m. Also please note that there should be two signs, two posting signs on the property. Right now there's currently only one.

CONSTANTINE ALEXANDER: The continued case, they took the sign down. The only sign up there was for the case that was scheduled for tonight. So as, you know, we need to have the sign for the continued case that's being further continued.

BRENDAN SULLIVAN: So both of those cases are going to be continued to September

22, 2011 at seven p.m. And on the further condition of the waiver which we now have in the file.

ATTORNEY JAMES RAFFERTY: And I'm sorry, we need a replacement sign on which number case?

BRENDAN SULLIVAN: Case No. 10104, which is the original Variance request.

ATTORNEY JAMES RAFFERTY: Okay.

BRENDAN SULLIVAN: They must have just taken that one down and substituted without maintaining both.

ATTORNEY JAMES RAFFERTY:  
Understood.

BRENDAN SULLIVAN: On the motion to continue 10128.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer,  
Anderson, Myers.)

(7:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10129, 24 Berkeley Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. James Rafferty on behalf of the applicant. Seated to my left, Lisa and Jeffrey Kerrigan, the owners of the subject property. To my right is John Holland. Mr. Holland is the project architect.

This is an application to construct an addition to the rear of a single-family house at 24 Berkeley Street. If you've had an occasion to go by the location, it's a nice home in a rather unique pie sliced lot. And it has a series of additions in the back that the applicant wishes to modify by removing some of the existing additions which would

have the effect actually in some cases of making the setbacks more conforming. The rear addition, however, the replacement addition, would have a smaller footprint, but it would also have a second story element to allow for the enlargement in the bedroom itself.

The GFA issues essentially remain unchanged by virtue of the fact that the significant portion of the GFA is in the basement. And the condition of the basement warranted repair to begin with. So, I reviewed the matter with the applicant, and the proposal in the basement is to actually allow for a portion of the basement to be less than seven feet to accommodate non-occupiable uses. So the house today has a 0.68 FAR. It would have a 0.66 FAR when they're done. The addition itself represents a, as I mentioned, in some respects a more compliant respect to the side

and rear abutters. There has been extensive outreach to the abutters. It's an area surrounded by single-family homes. Some in relative close proximity. And I know Mr. and Mrs. Kerrigan have had conversation with many of their abutters and found them to be supportive. The matter was before the Historical Commission as well because it's located in the Old Cambridge Historic District. And some of the replacement work on the windows, Mr. Holland has done extensive work in dealing with older and significant properties. So issues around restoring as opposed to replacing those windows were a focus of attention at the Historical Commission. They did receive a Certificate of Appropriateness to do those window changes.

The application also seeks a Special Permit with regard to the relocation of the windows on non-conforming walls. And

that's -- those windows are identified in the elevation. They're largely affecting a portion of the house. You can see here and look at the whole house. This was -- in a previous iteration this was a garage as you might imagine. So, the plan here is to rework this area and put some windows in this wall in the garage in this location. So, the program is really, it's a very nice house. It's a reasonable size for a growing family. The Kerrigans have two young children and are moving here from Boston, eager to just adjust the program slightly to make it a little more comfortable. They are taking away some covered porch and replacing it with patio as well, and that also contributes to essentially the no net increase in GFA as a result of the change.

CONSTANTINE ALEXANDER: Can you talk a little bit more about the basement situation? Is there a portion of the

basement is going to be now less than seven feet high?

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: What portion? I'm not sure what you're talking about. How high is it going to be?

ATTORNEY JAMES RAFFERTY: Well, Mr. Holland has the basement floor plan. Maybe he can walk you through the changes both existing and proposed.

JOHN HOLLAND: I do not. But I can show you the area basically -- we are taking this section underneath the portion of which the existing living room, dining room in the new program and the whole living room and we're reducing that area. Which I think is on the plans that we filed.

TAD HEUER: How much GFA are you gaining by lowering your ceiling and raising the floor?

JOHN HOLLAND: I believe that that

number is -- I believe it's somewhere in the order of 350 square feet is what that loss of space is.

CONSTANTINE ALEXANDER: What's the height now and it's going to go to 6,10 I know.

JOHN HOLLAND: Seven feet.

CONSTANTINE ALEXANDER: It's just seven feet, and you're lowering it by two inches?

JOHN HOLLAND: Right.

CONSTANTINE ALEXANDER: For purposes of eliminating --

ATTORNEY JAMES RAFFERTY: Well, another way to look at it is they're relocating GFA that's currently in the basement.

CONSTANTINE ALEXANDER: Yes, yes, I know. That's fair enough.

ATTORNEY JAMES RAFFERTY: So I think the basement floor plan, if you look at the existing floor plan, the basement is

dominated by utility storage and the like. When they're done, the proposed basement floor plan would only use a portion of the basement for living space.

DOUGLAS MYERS: Is there also a bedroom and a bathroom in the basement?

ATTORNEY JAMES RAFFERTY: I don't know how those rooms are characterized.

JOHN HOLLAND: There is a bathroom. There's not a bedroom.

ATTORNEY JAMES RAFFERTY: So half the basement --

TAD HEUER: But it's much easier to use the space when there's a bathroom as a bedroom than it is to use that space as a bedroom if there's no bathroom, right?

ATTORNEY JAMES RAFFERTY: Is it nice to have a bathroom abutting a bedroom? I think I'd say yes.

TAD HEUER: Right. I guess the concern is that there's a bathroom down there

which makes any space that is under seven feet potentially attractive as another living space even if not legally permissible. It's the continued question that we always have.

ATTORNEY JAMES RAFFERTY: Right. And I'm not convinced that it isn't legally permissible. Because I think at the moment my understanding is the building code, the current condition of the building code and the Zoning Ordinance may not be on the same page here. This is not unlike many cases where a portion -- the GFA, you look at the number and the FAR and you're counting a full basement against your FAR. And the above grade change in space is probably, it's essentially the size of the bedroom on the second floor. What's that number?

JOHN HOLLAND: About 260.

ATTORNEY JAMES RAFFERTY: Less than 300 square feet.

CONSTANTINE ALEXANDER:

Approximately -- let's assume that you didn't lower the ceiling, that portion of the basement. What would the FAR be in the property?

ATTORNEY JAMES RAFFERTY: Well, the current?

CONSTANTINE ALEXANDER: Currently you're at 0.68 which is non-conforming and you're looking to lower it slightly to 0.66.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: But suppose you didn't change the basement, because there's a suspicion, maybe -- that the basement is going to get to be living area although it's not going to be counted.

ATTORNEY JAMES RAFFERTY: Let's be fair. If I may --

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: I think it's unfair to characterize that as a suspicion. It just so happens that space

doesn't go away. There was a period in time when my understanding of the building code was if it was below seven feet, it was not occupiable. It could only be used for storage purposes. And I know the Board has wrestled with this issue for several years, but all of that space now is being included in the GFA, but for a portion of it that's devoted to mechanical equipment. They would rather, they're looking to transport that space upstairs. So the number -- you're right so the number -- the added -- the difference is about another 300 square feet. So, what that does to the FAR, I think it might have gone from 0.68 to 0.76 if that wasn't the case. But --

CONSTANTINE ALEXANDER: All I'm trying to say is, I guess I'm not -- I'm trying to understand why the need to transfer the FAR since you're going to be non-conforming anyway.

ATTORNEY JAMES RAFFERTY: Well, it's not. I wouldn't characterize it as a need. I think if you represent a client who has an empty lot and he's building a single-family house, you advise him, you know what? Don't make the basement seven feet high because that's going to cost you GFA. You can use that living space upstairs. So it's a variation on that method. And I don't think anyone would point to that applicant or that property owner and say, you know, there's some suspicion that something will happen in the basement. That's the way the Ordinance reads. I will say the Kerrigans relied upon my advice in looking at the optics of what they were doing here to say well, you know, there is this dimensional issue present and how we define GFA and you have a full basement. And if it's not your intention to use that full basement because only a portion of it, it's not particularly well-suited to

living, in terms of its traditional basement, you could, since you're going to -- since they planned on putting new concrete in the basement anyhow, you could raise the level of that basement. And then as a result, not to appear here to be gimmicky, but simply say well, then you are like a property owner who is choosing to build a home and not building a seven foot basement. It probably begs the question all the time, it's okay, so we have this basement thing. And I admit sometimes I think people are viewed with skepticism and oh, here you are, swapping basement and all that. But I don't think it's --

CONSTANTINE ALEXANDER: Well, you're being more contentious tonight than I'm trying to suggest. You're making an argument to solve the problem that I don't see as a problem. In other words, you don't need to swap FAR. You've got a project that makes good sense. You're non-conforming anyway in

FAR. You're going to slightly increase the non-conformance, in my judgment, slightly increase the non-conformance. So I don't have to be persuaded to --

ATTORNEY JAMES RAFFERTY: Well, that's good to know, because I thought if four more people think like that then maybe I'll be giving different advice. I've got to advise clients based on my experience here. And I do think people at the Board legitimately look at FAR numbers and say, whoa, you're going from 0.68 to 0.76. And I agree, I think FAR is a very funny con -- not funny, but I mean it's subject to manipulation. Take the covering off the porch and all of a sudden the same house, same bulk, same mass, but it's different. We all know how that works.

BRENDAN SULLIVAN: I think to answer your question, Zoning says seven and above is counted as floor area.

CONSTANTINE ALEXANDER: Yes, no, I understand that.

BRENDAN SULLIVAN: Building Code says that six foot, eight or above is considered --

ATTORNEY JAMES RAFFERTY: Occupiable.

BRENDAN SULLIVAN: -- habitable --

ATTORNEY JAMES RAFFERTY: Habitable, right.

BRENDAN SULLIVAN: -- space. So if you go to six foot --

CONSTANTINE ALEXANDER: Ten.

BRENDAN SULLIVAN: -- seven and a half inches, you can use it as you are right now and you transfer that number and it makes another number shine a little bit better.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: I think that's --

ATTORNEY JAMES RAFFERTY: But I appreciate the sharing of that view, because

if I had the sense that that represented consensus, I do think it would save applicants the trouble of having to manipulate the --

CONSTANTINE ALEXANDER: Well, if you were conforming now in FAR and your addition was going to make you non-conforming, then the shifting from the basement, I can see the argument.

ATTORNEY JAMES RAFFERTY: Then you don't have to come here. Right? You're saying 50 percent, you can --

CONSTANTINE ALEXANDER: Right, well, yes, yes, you don't have to come here. You can play the game.

ATTORNEY JAMES RAFFERTY: Yes, believe me if I can do -- not that I don't enjoy coming here. If a property owner could do that, yes, I agree with you. But in this case I will admit and acknowledge that until the Kerrigans and Mr. Holland met me, I don't

think this concept was familiar to them.

TAD HEUER: And I think that Mr. Rafferty is correct in making an argument that he apparently is not there for Mr. Alexander, but presumably he knows he's there for other members of the Board in that I do think that going from 0.68 to 0.76 to a 0.5 just because you're over doesn't give you a free ride to go way over.

CONSTANTINE ALEXANDER: No.

TAD HEUER: And I know that different members of the Board have different opinions as to what a large or minor increase is. I think my definition of a large increase is on the smaller side for those who sit on this Board. And I do think that -- and I'm not entirely comfortable with how this works, but I'm kind of resigned to it, but I do think if I saw 0.68 going to 0.76, I look at it much more closely as in terms of this legal defensibility and granting a Variance

and capability than something that goes from 0.68 to 0.76 to manipulate, and that's not pejorative, it ought to be done. Where the GFA is in the infrastructure.

BRENDAN SULLIVAN: I think your point is what is the net effect? And I tend to align closer to that, what is the net? What are you going to see above ground?

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: What happens below ground?

TAD HEUER: Well, that's true. But when you take it out from below ground it gives you much more massing authorized above ground as long as you stay --

BRENDAN SULLIVAN: Well, that's true. But then the next question is what is the yard stick? In other words, how much? Where do you cross that line as to say okay, it's up to that point but then it's, you know, now we look at it with a drawing line.

TAD HEUER: I say no lines. It's fairly easy.

BRENDAN SULLIVAN: Well, anyhow. That's for another day I guess.

ATTORNEY JAMES RAFFERTY: Well, Mr. Holland --

BRENDAN SULLIVAN: I just, to me, I don't have a warm, comfortable feeling about filling things in and then relocating them up. I don't find it necessary to fill in.

CONSTANTINE ALEXANDER: I feel more or less the same way you do. I'm looking at it on the con -- I'm looking at the case on the basis that we're going to go from 0.68 to 0.76, in fact even though not in theory, because of what's been done and I'm not troubled by that.

ATTORNEY JAMES RAFFERTY: Right. I mean I think it's fairly analogous that we've had cases where, you know, there's a big porch that has a covering over it. Okay, if you

take the roof off the front porch, you've just freed up 250 square feet of space and you put it somewhere else. And you think well, who's benefitted by taking the roof off that porch? We had a case on Highland Ave. not too long ago where that's what happened in order to free up GFA. But, you know, at some point we're stuck with the language of the Ordinance and the interpretation. So I do find myself trying to strike a balance between Mr. Heuer's position and the fact that I think this whole basement question is questionable.

One thing that Mr. Holland did which might help the Board was he's demonstrated where the footprint of the existing addition is and where the proposed addition is. So you can actually see the benefits on the open space and the setbacks that are occurring here. And I do think that that also is worthy of the Board's consideration and looking at

it. It's coming out of the basement, and it's also being reoriented in a way that's well below the height and it creates greater separation between the abutting properties.

CONSTANTINE ALEXANDER: I agree.

BRENDAN SULLIVAN: Okay. That's it for the initial sale? Any other questions from the members?

DOUGLAS MYERS: I wanted to ask could you show me the plan of the basement proposed? We have it here, that's okay.

SLATER ANDERSON: It's about halfway three. It's A0.

BRENDAN SULLIVAN: I have a question, Mr. Rafferty. You were down before Historical?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: Do you have correspondence from them? There's nothing in the file.

CONSTANTINE ALEXANDER: I don't

remember seeing something in the file a couple days ago.

ATTORNEY JAMES RAFFERTY: Well, we got the Historical signoff to get on the agenda, but then there was a -- there was an appearance. I didn't attend last month's meeting. Mr. Holland was there to do the window changes. There was a --

BRENDAN SULLIVAN: This is just what they required from the Board.

JOHN HOLLAND: She was going to send a letter of support for this project.

ATTORNEY JAMES RAFFERTY: Now that you mention it, she mentioned that to me as well.

LISA KERRIGAN: They came to the house and came to the house following the meeting.

ATTORNEY JAMES RAFFERTY: There was the architect's subcommittee. There was the original meeting of the Board, and then they

went and had a meeting at the house. And it was really focussed on the issue of replacement versus restoration of the original windows.

BRENDAN SULLIVAN: So you have no correspondence from them?

JOHN HOLLAND: I don't. She said that she was going to write a letter.

BRENDAN SULLIVAN: Sean, you don't recall one coming in?

SEAN O'GRADY: I don't, no.

DOUGLAS MYERS: Question. On the foundation plan, the room, the large room that's shown as next to the bathroom that exists.

ATTORNEY JAMES RAFFERTY: Yes.

DOUGLAS MYERS: Do I read the plan correctly that there are closets in that room?

ATTORNEY JAMES RAFFERTY: Yes, I believe that's -- that's what they are.

DOUGLAS MYERS: And I see things that look clearly like two closets. What about the bottom, what is the bottom left-hand corner on plan A-1 foundation plan? Is that also a closet?

TAD HEUER: Bottom right.

DOUGLAS MYERS: Bottom right.

Thank you.

ATTORNEY JAMES RAFFERTY: Is that egress?

DOUGLAS MYERS: I see a door out to some stairs, but in the very bottom right.

JOHN HOLLAND: There was the intention of putting a coat closet there if somebody came in through the back door.

ATTORNEY JAMES RAFFERTY: Now, that's the portion that is not below. That is being included in the GFA calculation, correct?

JOHN HOLLAND: Yes.

ATTORNEY JAMES RAFFERTY: That is

not being taken out. So that is clearly liveable space included in the GFA calculation. It's the other space. It's everything to the left that is being -- if you look at the wall -- in the area marked utility storage, that's the GFA -- that's where the ceiling change, the floor change will occur in the basement. So that's essentially the GFA that's being relocated from here to the upstairs addition. Everything to the right will remain at the seven plus feet.

DOUGLAS MYERS: And in your view is a validly occupiable space?

ATTORNEY JAMES RAFFERTY: Oh, I think there's no question. It's there today and they're not changing it.

DOUGLAS MYERS: Okay.

TAD HEUER: Is that portion on the north is that also -- is that currently at 6, 10 or is that also --

SLATER ANDERSON: That's a new

foundation.

ATTORNEY JAMES RAFFERTY: That's new. That's brand new. So that will definitely be below the seven. That's the new footing for the two-story addition.

JOHN HOLLAND: There's a place for bike storage on the house so there's the intention of coming through the basement with all items, all play items can be stored down there. It's really the only way to come in is through that door and down. So it will end up as a place of entrance for the house for sports activities through this door.

TAD HEUER: There?

JOHN HOLLAND: Yeah, down the stairs and in through this door.

ATTORNEY JAMES RAFFERTY: That's the backyard, correct? Or the front?

JOHN HOLLAND: That's the front yard.

TAD HEUER: So there's no access

into the rear addition from the --

JOHN HOLLAND: No.

TAD HEUER: -- from the rear?

JOHN HOLLAND: No.

ATTORNEY JAMES RAFFERTY: Oh, no, in this side, right.

TAD HEUER: So you don't have a bulkhead or anything, right?

JOHN HOLLAND: No. There is a bulkhead entrance that comes in here, but that's being closed up as part of the addition. And there's no windows. The only light that you can get anywhere in this basement is through this one door. Everything else, the foundation is at most 18 inches off the ground.

ATTORNEY JAMES RAFFERTY: I suspect it can't meet the building code requirements for bedroom; air, light and egress, right?

JOHN HOLLAND: Egress (inaudible).

TAD HEUER: So you have essentially

a deep basement with very little above grade?

JOHN HOLLAND: That's right.

That's exactly right.

ATTORNEY JAMES RAFFERTY: The windows are very (indicating).

BRENDAN SULLIVAN: Okay. Any other questions?

DOUGLAS MYERS: One more.

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: Why is there a different scale in the elevations? The existing elevations have a scale of a quarter inch equals one foot, and then the proposed is three, six equals one foot? Can you say why that is? At least in the file documents.

JOHN HOLLAND: I wonder if that's mis -- if that's mislabelled. Let me go back and see. I don't know who to CAD. So people have to CAD for me. It's mislabelled. They're both quarter scale. Mine say on these which are here, quarter, quarter. So

I don't know why --

SLATER ANDERSON: These say three-sixteenths at least on the side elevation.

JOHN HOLLAND: Maybe they got to that fit on the page at three-sixteenths.

DOUGLAS MYERS: I just wanted to ask why, that's all.

ATTORNEY JAMES RAFFERTY: That's a level of scrutiny.

JOHN HOLLAND: I think sometimes.

SLATER ANDERSON: It is different on this. You can see the size on the house looks different on these two plans.

ATTORNEY JAMES RAFFERTY: Good question.

SLATER ANDERSON: Trying to make the house look smaller?

JOHN HOLLAND: I think they're just trying to make it fit on 11, 17.

TAD HEUER: It clearly fits on a

quarter scale because you've got other ones that fit on the quarter scale.

ATTORNEY JAMES RAFFERTY: It's hard to find good help sometimes.

TAD HEUER: I'm not thrilled by that quite frankly.

ATTORNEY JAMES RAFFERTY: Is that right?

TAD HEUER: No.

ATTORNEY JAMES RAFFERTY: Well, certainly the construction drawings will need to --

TAD HEUER: Sure. If you're getting a Variance from us based on drawings that are in there we kind of expect the scale to be the same for things that are supposed to be the same, right?

ATTORNEY JAMES RAFFERTY: Yes. So, what is it, the existing and the proposed are in two different scales? It sounds like that Mr. Holland has a scale that are consistent,

maybe we can leave those with the Board.

JOHN HOLLAND: Three-sixteenths on this right here. I'm sure that was just to get it to fit on paper.

TAD HEUER: I'll repeat again, that can't be possible because we have ones at quarter scale and three-sixteenth scale that are on that same size piece of paper.

BRENDAN SULLIVAN: I'm going to open it to public comment. Is there anybody here would who like to speak on the matter, case No. 10129, 24 Berkeley Street?

(No Response.)

BRENDAN SULLIVAN: I see no one in attendance. There is no correspondence in the file. Do you have any letters of support?

ATTORNEY JAMES RAFFERTY: No, not that I'm aware of.

BRENDAN SULLIVAN: You have spoken obviously with your next-door neighbors?

ATTORNEY JAMES RAFFERTY: We've sent out a letter to -- they provided us with a list of all the abutters, and every one of those abutters were sent a letter by Mr. and Mrs. Kerrigan.

CONSTANTINE ALEXANDER: Can I see the abutter list for a second?

ATTORNEY JAMES RAFFERTY: Sure.

And they met with several abutters directly, had telephone conversations with others. And the matter was before the Historical, because I do have their agenda of July 7th. And the matter was approved at that meeting, case 2734, Historical Commission on July 7th.

BRENDAN SULLIVAN: All right, let me close public comment portion of it and open back up to any rebuttal, final words of pleadings.

ATTORNEY JAMES RAFFERTY: No, thank you. I appreciate the opportunity, but I

think we've covered the issue. I think that it is a relatively modest addition that in several ways actually has the affect of making the property more conforming. Not within the intent of being trickery, but simply the way the application of the Ordinance and the dimension regulations apply. I think that the very unique shape of the lot narrows significantly to the point to the fact that the home is pleasant now, but is going to enjoy a marked improvement by the time the Kerrigans and Mr. Holland are through with their restoration.

BRENDAN SULLIVAN: Okay.

Gus, do you have any concerns?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Concerns or problems?

CONSTANTINE ALEXANDER: No. As Tim would say, I'm good.

BRENDAN SULLIVAN: Slater?

SLATER ANDERSON: I'm good.

BRENDAN SULLIVAN: Doug?

DOUGLAS MYERS: I'm satisfied with the non-occupied use. And if I accept Mr. Constantine's statement that the basis of the increase should be considered as 0.76 to the level of 0.76 over an Ordinance permissible for a 5.0, it's a 15 percent increase in the amount of FAR and I'm troubled by that.

ATTORNEY JAMES RAFFERTY: With all due respect, I don't believe that's Mr. Constantine's position. It could have come in as a 0.76 case, but the changes in the basement make it a reduction in FAR as is the case.

DOUGLAS MYERS: I thought I heard him say if you did not consider the changes to the basement.

CONSTANTINE ALEXANDER: But that's hypothetical. That's my hypothetical.

ATTORNEY JAMES RAFFERTY: With all due respect, I don't think you're free to ignore the changes that are being made to the structure. The GFA here comes to a 0.66 as that term is applied under the Ordinance which represents a reduction from the current FAR of 0.68. That's not subject to interpretation. That's the case as presented this evening. The petitioner is making changes to the basement that will result in a lower FAR with this addition than currently exists today.

TAD HEUER: And just to clarify, you're here because it's still over; is that right?

ATTORNEY JAMES RAFFERTY: We're here because -- yes, it's a non-conforming structure in several ways. And the 0.66 is in excess of 0.5, right. It is. It's not that the house is that big. It's frankly that the lot is somewhat smaller for the

district that it's in.

SLATER ANDERSON: It's an unusual shaped lot.

ATTORNEY JAMES RAFFERTY: It's very unusual shape.

BRENDAN SULLIVAN: Tad, any comments?

TAD HEUER: No.

BRENDAN SULLIVAN: I will make a motion on the Variance to grant the Variance for the work as requested and as per the plans. There aren't going to be any changes?

TAD HEUER: Can we get the plans with the correct scaling?

SLATER ANDERSON: I think it's the correct scale.

TAD HEUER: Can we get it? Those are correctly scaled in common and can we use that copy?

ATTORNEY JAMES RAFFERTY: You're saying there's a consistency with this scale

that doesn't exist with these?

JOHN HOLLAND: That's fine.

BRENDAN SULLIVAN: It doesn't change the drawing or the dimensions that are on the drawing?

TAD HEUER: No.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: That's the one you wish to have entered into the record?

TAD HEUER: Yes.

BRENDAN SULLIVAN: Yes.

JOHN HOLLAND: I'll step over and de-board these.

BRENDAN SULLIVAN: Let me make a motion to grant the request for the addition as per the work detailed on those drawings initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner because it would

preclude the petitioner from replacing the existing rear addition which is non-conforming in nature to the side yard setback with the new addition that does conform and its habitable to their needs.

The Board finds that the hardship is owing to the unusual shape of the lot which really constrains the size of the structure, and that an additional hardship is the fact that the existing building is non-conforming, built prior to the implementation of the existing Ordinance.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and would not nullify or substantially derogate from the intent or purpose of the Ordinance.

The Board makes particular note to the fact that the Historical Commission has reviewed this matter on July 7, 2011, case No. 2734. Even though the Board is not in

receipt of correspondence of the final disposition, we do take face value the presentation by the petitioner that the Historical Commission has approved this petition as presented.

Anything else to be added?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: All those in favor of granting the Variance.

(Show of hands.)

BRENDAN SULLIVAN: Five.

(Sullivan, Alexander, Heuer, Anderson, Myers.)

BRENDAN SULLIVAN: Now, on the Special Permit, which, Mr. Rafferty, is for the relocation of?

ATTORNEY JAMES RAFFERTY: The addition, the addition enlargement of windows on a non-conforming wall. I'm looking at trying to find the correct elevation. A-7 elevation. It's A-7 on the

page number and --

SLATER ANDERSON: And on A-4.

ATTORNEY JAMES RAFFERTY: John, can you just identify where the windows are being changed?

The front doesn't. Facing the public way.

JOHN HOLLAND: It's the side.

ATTORNEY JAMES RAFFERTY: I believe it's only the A-7.

JOHN HOLLAND: It's these three windows right here with the side yard setback.

ATTORNEY JAMES RAFFERTY: And you can see that that is currently a blank wall with a triangle kind of a window above it in the existing elevation.

TAD HEUER: And is that just a vent on top of that?

JOHN HOLLAND: It's an existing window. So we're taking out the triangular

shape and we're hanging two double hungs -- and two double hungs up front to make it look like a sun room. Here's the other one.

BRENDAN SULLIVAN: So it's on sheet A-7 that we need that one window?

ATTORNEY JAMES RAFFERTY: Right. And you can see the contrast between A-7 and X-7. X being existing. That's the existing condition. The triangle goes away, which of course can go away as of right. The door goes away, but these windows are -- is it just in the kitchen, the only window changes?

JOHN HOLLAND: Yeah, it used to be that space is --

BRENDAN SULLIVAN: Okay. Just those windows and shown on the sheet.

ATTORNEY JAMES RAFFERTY: Are these the windows, just these three windows are the only changes in the elevation?

JOHN HOLLAND: Yes. And we're

closing up the door.

ATTORNEY JAMES RAFFERTY: Right, that's okay.

BRENDAN SULLIVAN: Let me make a motion to grant the Special Permit to install a window as shown on sheet A-7 and which is E-4 left elevation.

The Board finds that the requirements of the Ordinance can be met. That article 8.22.2 (c) permits the creation of windows on a non-conforming wall, when, as in this case, there are no further violations of the dimensional requirements of Article 5.

That traffic generated or patterns of access or egress would not cause congestion, hazard or substantial change in the established neighborhood character. And continued operation of or development of adjacent uses as permitted by the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

That nuisance or hazard would not be created to the detriment of the health, safety, welfare of the occupants of the proposed use or to the citizens of the city.

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

And I would again note the action of the Historical Commission in approving this plan.

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Anderson, Myers.)

(8:30 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Thomas Scott, Slater Anderson, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10130, 2-10 Brattle Circle.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, James Rafferty on behalf of the applicant Martin Hill Development Group, LLC. Martin Hill is approaching.

BRENDAN SULLIVAN: And?

ATTORNEY JAMES RAFFERTY: And, this is a case that seeks some zoning relief to replace a portion of a complex, a 12-unit complex on Brattle Circle. We were before the Planning Board on Tuesday evening pursuant to the townhouse Special Permit, it was granted, and I believe there's communication to that effect from the Planning Board in the file. I was provided a copy of the letter from Mr. Singanayagam concerning the application of Article 11.200

involving the inclusionary requirements for affordable housing. At the moment there is not agreement. We have a different interpretation of the application of that provision.

The Planning Board was made aware of that, but was prepared, in fact, heard the case, recognizing that that would be an issue that would have to be addressed prior to the issuance of a Building Permit.

I understand that the Board has rightfully questioned the efficiency of that because it was asked at the Planning Board could the project, is it likely that the project would proceed in the manner that was presented if a determination was made that two of the proposed ten units would be subject to inclusionary housing. Mr. Hill's position is highly unlikely that he would be able to do that. So, I know the Chair is -- that may have given the Chair some pause

as to whether it would be a more economical or efficient use of the Board's time to have that issue resolved prior to hearing the underlying BZA case.

BRENDAN SULLIVAN: That would be my position, that the issue be resolved.

CONSTANTINE ALEXANDER: I would support that position, too. We're going to hear zoning cases for all the zoning issues before -- because you may -- if we were to grant relief, and the ultimate determination is you have to do inclusionary housing, you may want to appeal that. You appeal and come back before us. I want to see the whole case before us. It's just makes a big -- we can make a better decision as a Board knowing all the issues.

ATTORNEY JAMES RAFFERTY: I think the petitioner and I both recognize the benefits of having that issue resolved prior to a full hearing on the merits of this case.

And I would also obviously allow for a case not heard status. So in anticipation of that, I know Mr. Hill did alert some of the interested abutters that it was our expectation that the case would probably not be going forward this evening.

BRENDAN SULLIVAN: So how much time?

ATTORNEY JAMES RAFFERTY: We believe the issue is a rather narrow one. We have identified some precedence of other projects where the Building Department's interpretation has been consistent with our current view. So I would think in a matter of weeks we would at least reach resolution for an acknowledge impasse, but I think at the moment we are still in a discussion mode.

BRENDAN SULLIVAN: Sean, first case in?

SEAN O'GRADY: October 13th.

BRENDAN SULLIVAN: Could we do September?

SEAN O'GRADY: You're going to -- well, September 22nd has two Magazines, but I guess that's really only one case.

BRENDAN SULLIVAN: Right.

SEAN O'GRADY: So, yes, I think you can do the 22nd.

BRENDAN SULLIVAN: What is the first hearing in September?

SEAN O'GRADY: The first hearing in September is 9/8. You already have four continued cases that night.

BRENDAN SULLIVAN: What's the preference of the Board?

CONSTANTINE ALEXANDER: I would think we go to September 22nd.

BRENDAN SULLIVAN: September 22nd?

CONSTANTINE ALEXANDER: If you don't resolve the situation with the town and you have to take an appeal from the determination of the Building Inspector, we're going to have to continue this case

again if you do it September 8th. September 22nd might allow us to get the whole case before us under all circumstances. So I think we should be conservative would be my view.

SLATER ANDERSON: Was this heard?

BRENDAN SULLIVAN: No.

MARTIN HILL: (Inaudible).

ATTORNEY JAMES RAFFERTY: I think what Mr. Hill's expressing is a sense that we thought -- our expectation is that we would reach resolution sooner than that, and I also understand you've got the scheduling question. So we would be eager to come sooner, but it sounds like you may not be able to accommodate us.

BRENDAN SULLIVAN: I'm sorry, again, the first meeting in September is full?

SEAN O'GRADY: The first meeting in September is September 8th.

BRENDAN SULLIVAN: Yes.

SEAN O'GRADY: You have four cases that night. Dudley, which could be a big case.

350 Main, which is the hotel on Kendall. 148 Richdale. That I don't remember that.

7 Montgomery, I don't remember that.

BRENDAN SULLIVAN: Well, I would go for September 8th personally.

ATTORNEY JAMES RAFFERTY: The frustrating part is if I were to file a new case today, I could get on September 8th.

CONSTANTINE ALEXANDER: That's fine. If I'm right, then we just continue this case again September 8th. Let's try for September 8th. I don't have a problem with that.

BRENDAN SULLIVAN: Let's try September 8th. I mean obviously there's a clock ticking. There's a meter running

someplace. I'm trying to be sensitive to that.

MARTIN HILL: I appreciate that.

CONSTANTINE ALEXANDER: It may be a long night. Main Street is going to be a case that's going to take a while.

BRENDAN SULLIVAN: We'll talk faster and have attorneys keep their comments brief.

So let me make a motion, then, to continue this matter to September 8, 2011, at seven p.m. on the condition that the Petitioner sign a waiver of the statutory requirement for a hearing in the decision to be rendered thereof, and also that the Petitioner change the posting sign to reflect the new date of September 8th, and the time of seven p.m. And that the posting be on the board, be maintained as per the Ordinance requirements.

And any submissions be in the file by

the Monday prior to the September 8th, five p.m. on the Monday prior to September 8th.

All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of continuing the matter. Great.

(Sullivan, Alexander, Firouzbakht, Anderson, Scott.)

(8:35 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10131, 253-259 Washington Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, James Rafferty. I'm appearing on behalf of the petitioner because the petitioner's counsel is getting married in about 24 hours in Malibu, California, and he asked me to assist and fill in for him. So I'll ask the applicant from Washington Street Realty to identify himself and spell your last name, please.

DUSTIN SMITH: Yes. My name is Dustin Smith S-m-i-t-h is my last name.

ATTORNEY JAMES RAFFERTY: So this is

an application really just for a Special Permit involving enlargement of windows on a non-conforming wall.

TAD HEUER: And these are only the basement windows, right?

ATTORNEY JAMES RAFFERTY: That's correct.

TAD HEUER: And these are really small.

CONSTANTINE ALEXANDER: Is the basement occupied right now?

DUSTIN SMITH: No.

CONSTANTINE ALEXANDER: It's not occupied now. And why do you want to increase the windows? Are you planning to occupy the basement?

DUSTIN SMITH: Yes. And we're gonna put a -- the plan is to put a wall down the middle to separate it because it's a common area at the moment.

CONSTANTINE ALEXANDER: Is it going

to be living area?

ATTORNEY JAMES RAFFERTY: It exceeds the seven feet now. So, this would allow for greater air and light into the basement.

CONSTANTINE ALEXANDER: That's what I thought, okay.

ATTORNEY JAMES RAFFERTY: Right. But because these are foundation windows, but Ordinance speaks to walls, and I think foundations have been interpreted to be walls and we need a Special Permit to enlarge the windows. I suspect that the case wasn't as straight forward and simple as it is, Mr. Hope would have changed his wedding date and not relied upon me. But I think he felt that I could even make the case, that it is de minimus in its impact on abutters. They're low level. And there are no privacy issues. Which is generally, as I understand it, the policy objective of the Special

Permit on enlarging windows and not for the walls is the impact on abutting properties. I think in this case, there's not much that's going to be seen out of basement windows that would affect abutters.

TAD HEUER: How high are they up just in terms of where they are from the interior space?

DUSTIN SMITH: They're pretty much two feet above ground level.

TAD HEUER: But if I were in the basement, would that be like at eye level, above my head?

DUSTIN SMITH: Oh, about eye level, yeah.

BRENDAN SULLIVAN: Well, if they go up to the sill so that the ceiling is at seven feet then yes, it's up here. Top of the window would be above your head.

TAD HEUER: Is there any reason you decided to do -- to not put in wells? Not

that it matters. It would seem to give you a bit more window for your basement.

DUSTIN SMITH: Oh, well there's, you mean to dig out in front of the window?

TAD HEUER: Yes.

DUSTIN SMITH: Well, we --

ATTORNEY JAMES RAFFERTY: There isn't a lot of space.

TAD HEUER: That's my only question. It's more for the record than anything else.

DUSTIN SMITH: I hadn't considered that.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Have you spoken to your neighbors at all regarding this matter? Well, the most affected would be the yellow house on the one side anyhow. And the other house. And have you spoken to the people who live there at all?

DUSTIN SMITH: No, I haven't spoken to them.

BRENDAN SULLIVAN: Do the owners even live there, do you know, either one of those houses?

DUSTIN SMITH: With the yellow house I believe the owners occupied. But the house next-door --

BRENDAN SULLIVAN: The other is rental?

DUSTIN SMITH: Yeah, it's rentable. And they're selling the one on the top. I don't think there's anyone else.

CONSTANTINE ALEXANDER: I'm sorry, I'm just a little bit confused still, it's just me. Right now the basement is more than seven feet high. So it can be used for habitation, right?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: It is not now being used as such? Are there living quarters down there now?

DUSTIN SMITH: No, there aren't.

CONSTANTINE ALEXANDER: Okay. And the idea is to increase the size of the windows, which will make it more amenable to habitability. And then you're going to then have what, the apartments above will have access to an extra bedroom or something on that floor below? I'm trying to understand what the purpose of all this is for the increase in the windows.

ATTORNEY JAMES RAFFERTY: I think it's to enhance the quality of the living space in the basement.

CONSTANTINE ALEXANDER: Okay. But I thought I heard that right now the basement is not being used for living space.

SLATER ANDERSON: Storage area.

ATTORNEY JAMES RAFFERTY: It's not, right. But it's free to be used as living space.

CONSTANTINE ALEXANDER: And the plan is to use it as living space?

ATTORNEY JAMES RAFFERTY: Yes, I believe.

DUSTIN SMITH: Yes.

CONSTANTINE ALEXANDER: That's what I'm trying to get at. Okay.

And is there going to be a whole new unit down there, another dwelling unit, or just an additional space for the apartment above?

DUSTIN SMITH: So, right now it's a shared space between the -- between each unit because the house -- well, there's four different owners, and each basement is shared between the lower unit and the upper unit. The upper unit. And it will be -- right now it's a shared space, but we plan to make it -- to finish it up so we can like put a den down there or something.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: I mean, you can put the den down there now.

CONSTANTINE ALEXANDER: I

understand that.

SLATER ANDERSON: But the den would have to be associated with an existing unit?

CONSTANTINE ALEXANDER: That's what I'm trying to get at.

ATTORNEY JAMES RAFFERTY: Right. No, I looked at the dimensional form. No, no, there couldn't have been, no. You'd need relief. I mean the dwelling unit is already --

SLATER ANDERSON: We're not going from four to six units?

ATTORNEY JAMES RAFFERTY: No, now. You couldn't. You'd need relief, right? We're not. You're not adding a unit.

DUSTIN SMITH: No.

ATTORNEY JAMES RAFFERTY: Say that strongly.

CONSTANTINE ALEXANDER: That's what we're trying to get at.

BRENDAN SULLIVAN: You have to be

aware of building code, that if it's going to be a bedroom down there, that you have to have certain egress windows down there so that these windows would not qualify for that. For any kind of liveable space there has to be, what is it, eight percent fenestration?

SLATER ANDERSON: Not my department.

BRENDAN SULLIVAN: Anyhow, that's a whole other issues. But we can improve the windows. Whether or not that is going to get you to your ultimate whatever will be another issue. That will be Building Department but that's okay.

DUSTIN SMITH: Okay.

BRENDAN SULLIVAN: Anyhow. Any questions?

CONSTANTINE ALEXANDER: No, none beyond what I've already asked. I'm all set with what I've asked.

BRENDAN SULLIVAN: I'll open it to

public comment. Is there anybody here who wishes to comment on case No. 10131, 253-259 Washington Street?

(No Response.)

BRENDAN SULLIVAN: There is nobody in attendance. There are no comments. There are no letters in the file. It appears that nobody really cares.

Let me make a motion, then, to grant the relief which is the enlargement of one, two, three, four, five, I thought we had one, two, three, four, five, six. What's the total number?

ATTORNEY JAMES RAFFERTY: I think it's two on one side and six on the other.

BRENDAN SULLIVAN: So we're doing this window and this window, and how many on the other?

CONSTANTINE ALEXANDER: Six.  
Right there.

ATTORNEY JAMES RAFFERTY: Six and

two.

CONSTANTINE ALEXANDER: Six and

two.

BRENDAN SULLIVAN: An enlargement of installation of six windows as per drawing initialed by the Chair on one side, and the enlargement of two windows on the opposite side of the building as initialed by the Chair.

The Board finds that requirements of the Ordinance can be met.

DUSTIN SMITH: Yes, that's right.

Yes.

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

That continued operation of a development of adjacent uses as permitted in the Zoning Ordinance would not be adversely

affected by the nature of the proposed use. There would not be any nuisance or hazard created to the detriment of the health, safety or welfare of the occupant of the proposed use or to the citizens of the city.

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

All those in favor of granting relief for the change in the windows.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

You might want to bring this back to counsel, and you can actually use it for yourself, this is sort of a standard on a previous case showing placement and replacement and realignment of windows. Very clear. Very much.

ATTORNEY JAMES RAFFERTY: Oh, in terms of the type?

BRENDAN SULLIVAN: And clarity  
and --

SLATER ANDERSON: It's a standard  
handout.

BRENDAN SULLIVAN: You could post  
that on your bulletin board at work.

CONSTANTINE ALEXANDER: This is  
from somebody who comes before us.

ATTORNEY JAMES RAFFERTY: Is this  
not from one of my cases?

CONSTANTINE ALEXANDER: No.

ATTORNEY JAMES RAFFERTY: I'm  
disappointed, but I will appropriate it to my  
advantage. Thank you for sharing it with me.

(Sullivan, Alexander, Heuer,  
Anderson, Myers.)

(8:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10132, 208 Lexington Avenue. Is there anybody here on that matter? Introduce yourself. Please spell your last name for the record and give us your address.

MARK WAGNER: Hi. My name is Mark Wagner W-a-g-n-e-r. I'm the architect for the proponents Mary Lou Jordan and Peter Harris.

BRENDAN SULLIVAN: Are either of the petitioners here tonight?

MARK WAGNER: Yes, Peter is here.

BRENDAN SULLIVAN: Mr. Harris, if I could have you come up to the table.

PETER HARRIS: Yes.

BRENDAN SULLIVAN: Introduce yourself for the record.

PETER HARRIS: Hello. I'm Peter Harris. I'm the owner of the at 208 Lexington Avenue.

BRENDAN SULLIVAN: The issue in reading the petition, there are two letters of opposition to your proposal. And I guess the question that I have, have you had conversation with either of them, the abutter and I think across the street. It's helpful if those conversations have happened.

PETER HARRIS: I have not had the opportunity. The letters were sent quite recently and I think my neighbors have been away on vacation so we haven't had a chance to find out.

BRENDAN SULLIVAN: To me I think that's essential for the project only because there is opposition, especially from the Mahoneys next-door who have presumed

standing to contest an unfavorable decision on their part. I would prefer that that conversation occur, then come back to us rather than having that dialogue here tonight. That's all. And I think it would be more fruitful for all parties to have a consensus. Or you may come back and you'll agree to disagree, but that's what my feeling on it because of the nature of the opposition, that's all.

Does anybody --

CONSTANTINE ALEXANDER: I agree with that. And the reason you want to do it now is if we start to get into the merits of the case and we decide to continue it because of the opposition, it's what we call a case heard. We'd have to convene the same five of us to hear the case again. If we stop now, any five members of the Board can sit on the case, so your chance of getting a quick hearing is better if you stop right now rather

than go forward.

MARK WAGNER: Okay, good.

BRENDAN SULLIVAN: Any other comments by the Board at all?

CONSTANTINE ALEXANDER: I agree with you.

SLATER ANDERSON: I agree.

BRENDAN SULLIVAN: So anyhow, I would make a motion that we continue this matter to a later date, allow you the opportunity to, I don't know, have you read the --

PETER HARRIS: No.

MARK WAGNER: We haven't seen that.

BRENDAN SULLIVAN: Well, anyhow, you can review the file.

MARK WAGNER: We just found out about the opposition. We tried to contact them this weekend. I found out this weekend about the opposition, and I tried to contact them and I couldn't get. So I left.

BRENDAN SULLIVAN: Well, going forward you will have sometime. I will read the -- you can read it before you leave here, the opposition, the letters that are in the file and have conversation that's convenient to all parties.

September 22nd?

SEAN O'GRADY: Yes, you can do September 22nd.

CONSTANTINE ALEXANDER:

Mr. Chairman, before we take the vote on the motion, I would like to also request that I found, frankly, the plans that you submitted are barely sufficient. I would like to see, given the issue, no --

MARK WAGNER: You don't want to see it now?

CONSTANTINE ALEXANDER: No, we're not going to hear the case. But I would like more information, particularly elevations, the issue has been raised, maybe you don't

know, the impact on light and because you're so close to the lot line on your abutters.

MARK WAGNER: Right.

CONSTANTINE ALEXANDER: And the massing. I like to see more information about --

MARK WAGNER: I will certainly address that.

CONSTANTINE ALEXANDER: And if you do that, you should do that. As the Chairman's going to point out, you have to have the new plans or additional plans, any further information, in our files by the Monday, by five p.m. of the Monday before the Thursday that we're going to hear the case. Okay? Just don't bring it down here the night of the hearing.

MARK WAGNER: Last minute. Yes, absolutely.

BRENDAN SULLIVAN: I mean, a shadow study may be necessary, obviously and

helpful.

Tad?

TAD HEUER: I was going to say I think we have some of the people who are in opposition, and I want to make sure that they're able to come. They would want to be here. So are you folks in opposition?

UNIDENTIFIED AUDIENCE MEMBER: Yes.

TAD HEUER: We're planning to continue this case, so not here tonight, but move it to another date, and we're proposing September 22nd. Does that work for you?

UNIDENTIFIED AUDIENCE MEMBER: Yes.

CONSTANTINE ALEXANDER: It will be at seven o'clock. It will be earlier in the evening.

UNIDENTIFIED AUDIENCE MEMBER:

Understand.

BRENDAN SULLIVAN: I'll make a motion, then, to continue this matter to September 22, 2011 at seven p.m. on the

condition that the Petitioner sign a waiver to the statutory requirement for a hearing and a decision to be rendered thereof. And also for the Petitioner to change the sign, the posting sign to reflect the new date and time of September 22nd at seven p.m. And that the posting sign be maintained as per the requirement of the Ordinance.

CONSTANTINE ALEXANDER: And I also like to mention and also the plans, have new information.

BRENDAN SULLIVAN: Any additional submittals, changes of the plans, clarifications, enhancements of the plans be in the file by five p.m. on the Monday prior to the September 22nd hearing. That allows the general public time to review it also.

Okay, all those in favor of continuing the matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

Thank you.

(Sullivan, Alexander, Heuer,  
Anderson, Myers.)

BRENDAN SULLIVAN: And, again, if  
you want to review the letter, plus they're  
all here so you can afford your time, the  
opportunity to do that if you wish.

UNIDENTIFIED AUDIENCE MEMBER: May  
I ask a question?

BRENDAN SULLIVAN: Sure.

UNIDENTIFIED AUDIENCE MEMBER: If  
there are letters in the file now, are those  
letters considered September 22nd?

TAD HEUER: Yes.

UNIDENTIFIED AUDIENCE MEMBER: Or  
do new letters have to be submitted?

TAD HEUER: No.

BRENDAN SULLIVAN: You can leave  
those in, you can change them, you can enhance  
them, whatever, yes.

TAD HEUER: I mean, particularly if

you have conversations with the Petitioner and you want to either express your views as to how those conversations went or say our first letter is exactly what we still think, you can submit supplemental letters that inform us of any conversations that you may have had that help us that night so we don't have to have those conversations necessarily here. We can have that in the record that we review before we get here.

UNIDENTIFIED AUDIENCE MEMBER:

Thank you.

(8:55 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10133, 47-49 Brattle Street. Mr. Panico.

ATTORNEY VINCENT PANICO:  
Mr. Chairman, members of the Board, good evening. My name is Vincent Panico P-a-n-i-c-o. I'm the attorney for the petitioner.

Would you introduce yourself, please?

JOSHUA HUGGARD: Yeah. My name is Joshua Huggard, and I'm one of the partners of The Upper Crust.

BRENDAN SULLIVAN: Okay.

ATTORNEY VINCENT PANICO: Okay, so

this is a request for a Special Permit, and it was before the Board previously. And a couple of Board members were sitting on the case. We have -- the Special Permit was granted with conditions, and we have complied with the conditions. We'll go over each of them if you wish.

Why don't you just briefly?

JOSHUA HUGGARD: Okay. So the last one of the paragraph I'm going to read. That the Chair moves that the Board grant the Special Permit on the following conditions:

No. 1, that there will be no more than three deliveries per week.

No. 2, that the biodegradable materials be --

BRENDAN SULLIVAN: And how many deliveries do you now?

JOSHUA HUGGARD: We average about three. And we're actually reducing that right now because we just opened a new

commissary in Boston so we're bringing stuff over in smaller vans.

BRENDAN SULLIVAN: Okay.

JOSHUA HUGGARD: So we need it.

No. 2, is that the biodegradable recyclable materials be used. And we abide by that. I actually have a letter here from our waste management company that talks about the contract we have set up with them for both waste of food as well as recyclable and biodegradable items. I have a packet for each one of you if you want to see it.

TAD HEUER: Sure.

ATTORNEY VINCENT PANICO: We want to mention that there are separate containers within the store for recyclables of just ordinary trash.

JOSHUA HUGGARD: Part of the Ordinance that we have receptacles in the front of the store right before you're leaving the store, and in the front we have

a recycling bin as well as trash for food, waste of that sort.

BRENDAN SULLIVAN: So we've taken care of the trash.

There would be objectionable and the time was your next-door neighbor potential who is in the dry cleaning raised some objection. Your relationship with them is.

JOSHUA HUGGARD: It's very good. We actually have a letter from them as well in the packet.

ATTORNEY VINCENT PANICO:  
Mr. Chairman.

JOSHUA HUGGARD: Okay, No. 3. Patrons will be encouraged to properly dispose of all packaging materials, utensils and other items provided.

We encourage the people that eat inside the store, the customers, to leave everything on the tables and then we'll come and clear it. However, it is very designated where the

receptacles are if someone wants to have it on. Because we serve only on plates, paper plates that are recyclable, and it's pretty straight forward. So it's a very small store. You can't miss it when you're leaving.

No. 4, I already mentioned that that the trash receptacles be provided at the door.

No. 5, that all trash be removed on a daily basis first thing in the morning. And in the letter from Waste Management, you can see that we're doing that.

No. 6 was the odors that you just brought up. And we haven't had any other problems with that, regarding that.

No. 7, that the hours of operation be limited from 11:30 a.m. to 11:00 p.m.

BRENDAN SULLIVAN: Those are still your hours?

JOSHUA HUGGARD: Yes.

No. 8, that the Special Permit be

limited to 24 months.

And No. 9, that the Special Permit be limited to these operators only.

BRENDAN SULLIVAN: And reading the transcripts, too, there was also some mention there about preventing double parking and the like, and so on and so forth. And I was one of the violators of that. It happens occasionally, but very much necessary, anyhow.

Okay, so we are in receipt of all of the backup information regarding those conditions which appears that you are in full compliance of those.

So you're here before us to renew the Special Permit?

ATTORNEY VINCENT PANICO: Yes.

BRENDAN SULLIVAN: Okay. There's a letter from?

ATTORNEY VINCENT PANICO: These are some neighbors of ours.

BRENDAN SULLIVAN: Okay. From the advisory -- do you have one from Liza Paden?

ATTORNEY VINCENT PANICO: Yes.

BRENDAN SULLIVAN: Did one come in, Sean? Is it here?

SEAN O'GRADY: It should be in there. It should be an e-mail to Maria so you should see her name right on the top.

ATTORNEY VINCENT PANICO: Here you go.

TAD HEUER: There.

BRENDAN SULLIVAN: Okay. I'll do that in the public comment part.

ATTORNEY VINCENT PANICO: If I may just add to that. I did talk with John Digiovanni. He's kind of part of the Harvard Square Advisory Group. He said the thing is really falling apart. Three of the members died. The manager never replaced them. Liza sent out an e-mail to everybody. She got one response as you can see, just from

John Digiovanni as you can see from that.

BRENDAN SULLIVAN: We're tending to find out that it's somewhat inactive. But nonetheless it's still in the Ordinance as a requirement.

CONSTANTINE ALEXANDER: That's our problem. It's in the Ordinance, we have no choice.

BRENDAN SULLIVAN: That may need to be addressed because it does catch people by surprise at times.

Let me open this to public comment anyhow. Is there anybody here who would like to speak on the matter case No. 10133, 47-49 Brattle Street.

Denise.

DENISE CHILSON: Good evening. Good evening, Denise Chilson, executive director for the Harvard Square Business Association. And just to speak in support of The Upper Crust, and as you call it, you know,

they've been members of the association since they arrived in Harvard Square. And, you know, there were some concerns initially about, you know, smells and neighbors and this sort of thing. And I have to tell you it's been absolutely, incredibly seamless. You know, they arrived and opened the doors and started to sell pizza, and there's never been any complaints from anybody that I know of. And we would hear about it.

They have been incredibly active members of the Harvard Square Community. Participating in events whether it's the urban agricultural fair, Oktoberfest, May Fair. Anytime there's an opportunity to donate food or services or their staff, for you know, an event around, you know, Sparkle Fest or raising money for the Harvard Square homeless shelter or donating, they're the first ones that step up to the plate. Just, you know, incredible community partners and

we're happy to have them in Harvard Square.

BRENDAN SULLIVAN: Thank you.

Anybody else who wishes to speak on the matter? Yes, come forward.

CHRISTOPHER YANG: How is everyone this evening? Christopher Yang, general manager of the Tannery. We have been neighbors to The Upper Crust location in Harvard Square as well as the Boylston Street location. They've done nothing but support us, events. While we hosted the Italian Trade Commission as well as other large parties and functions, we've held throughout the communities, Boston and as well as in Cambridge. Nothing but love for them. They've -- my employees eat there on a daily basis. They're back from lunch on time so I know they're getting served good food. They're active and they're selling so can't argue with anything there. But I just wanted to voice my opinion. And I think they're an

asset to the community. We continuously do events together. And I hope to keep doing events together as well.

BRENDAN SULLIVAN: Thank you.

Anybody else who wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: There is none. There are some letters in the file in support. I think the one that would be paramount in my concern would be the management of Hillside Cleaners. What's her first name, Maureen? "To Whom It May Concern: I am writing on behalf of The Upper Crust in Harvard Square. This is a letter of good standing, and I would like to express my gratitude to our neighboring business. Upper Crust is a great company and is always willing and ready to make donations, requests, as well as getting involved within the community. As a neighbor, they are always helping out with

the cleanliness of the block. The staff is always very respectful and attentive when I bring them any type of request."

I think she was very concerned the last hearing, and I think we all were concerned it may be an effect on them and apparently it has not.

So, I will close public comments. Any other comments at all?

TAD HEUER: Are you going to read the correspondence from Liza.

BRENDAN SULLIVAN: Oh, sorry. I missed that.

The Board is in receipt of correspondence from Liza Paden, Community Development, by way of John Digiovanni.

"Liza, thank you for sending this notice to my attention. I am aware of The Upper Crust operation on Brattle Street and have been since its opening. It's a well-run operation, and has been well received by the

community and is an active participant in many Harvard Square events. I completely support the renewal of the fast food permit." From John Digiovanni, Trinity Property Management.

From Liza to John, "The Upper Crust restaurant is required to renew the fast food order Special Permit at the BZA this evening as no changes are proposed to the use, location or the restaurant. If you have any questions of concern, please let me know and I will forward to the Board of Zoning Appeal staff." And apparently there are no concerns.

Okay. That's it?

ATTORNEY VINCENT PANICO: That's it. Except that they really do contribute to everything for the program for healthy food for kids at the high school. They gave to that. They gave to cancer research, community legal services and a ton of other

stuff.

BRENDAN SULLIVAN: Any questions, concerns?

CONSTANTINE ALEXANDER: My only question for you is, and when you make the motion, are you going to continue some or all of the conditions or not?

BRENDAN SULLIVAN: I will continue, the motion will continue on all of the prior conditions. I would waive the time of the condition at that point I would think. That would be amendable to you to waive the time requirement?

ATTORNEY VINCENT PANICO: You're talking about the 24 months?

BRENDAN SULLIVAN: Yes.

ATTORNEY VINCENT PANICO: I would be very happy to hear that.

BRENDAN SULLIVAN: Let me make a motion to grant renewal of the Special Permit.

As per the application, the Board finds that the requirements of the Ordinance can be met.

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

The Board finds that the current use is retail. The existing current petitioner has been operating there for an excess of more than 24 months in good standing as per the letters of support in the file.

A Board finds that the petitioner is in good standing with the number of conditions that were imposed upon the prior granting of the Special Permit.

This motion also includes those conditions as part of this renewal. The continued operation of or development of adjacent uses as the Zoning Ordinance would not be adversely affected by the nature of the

proposed use. And special attention to the next door neighbor, the Hillside Cleaners is recognized.

And there would not be any nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of the proposed use or to the citizens of the city.

And that the granting of this would not derogate from the intent or purpose of the Ordinance.

On the further condition that this granting of this Special Permit would have no time limit, but would run with the current operator.

All those in favor of granting the renewal of the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Heuer, Anderson, Myers.)

CONSTANTINE ALEXANDER: One

opposed.

BRENDAN SULLIVAN: One opposed.

Any comment?

CONSTANTINE ALEXANDER: No, just the same reasons I opposed the last time. I don't think you satisfy the requirements for need. In fact, there's even less need now than there was two years ago. It's more fast food enterprises established in Harvard Square in the interim.

BRENDAN SULLIVAN: Granted. Thank you.

(9:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10134, 4 Kimball Lane. Okay, if you would introduce yourself, please, spell your last name for the record. If anybody has a professional card that they could give to the recorder, it would be helpful.

STEPHEN HART: My name is Stephen Hart, Hart Associates Architects, H-a-r-t.

NICHOLAS ROSS: I'm Nicholas Ross R-o-s-s.

HEATHER KELLY: Heather Kelly K-e-l-l-y.

BRENDAN SULLIVAN: Okay. Whoever is going to present.

STEPHEN HART: We are here proposing an addition and renovation to No. 4 Kimball Lane.

So the existing floor plans of Kimball Lane. Elevations of Kimball Lane. The proposed floor plans of our project, and the proposed elevations of our project.

TAD HEUER: Can you put the elevations next to each other?

STEPHEN HART: Sure.

BRENDAN SULLIVAN: So you're taking off the dormer.

STEPHEN HART: This would be easier if I could pan out.

So that is the model of our proposed structure on said plan. We are saving a portion of the basement that's currently fully excavated which is this portion here. We're saving the first floor deck, the walls surrounding the first floor, and about 80 percent of the second floor which is

existing. So we are reconfiguring the roof lines of the house. It is currently -- this portion is currently on Pierce, delapidated. It was once a porch. That's coming off. And it's currently a two-bedroom house, and we are proposing a three-bedroom house.

CONSTANTINE ALEXANDER: You're approximately doubling the size of the house.

STEPHEN HART: 1380-something to 25 something, yes.

TAD HEUER: 2670.

STEPHEN HART: Thank you.

CONSTANTINE ALEXANDER: And yet you're still not being over your FAR. Despite the large increase in the amount of floor space, you're still compliant with FAR point of view. Your problem is setbacks.

STEPHEN HART: Exactly right. It is a smallish house on a largish lot, and we have --

CONSTANTINE ALEXANDER: And sided

to one side of the lot which causes your setback problems.

STEPHEN HART: Correct. Exactly right.

TAD HEUER: It's also sited on a lot where he has a front yard setback problem, too. So it's not just the siting on the right side.

CONSTANTINE ALEXANDER: No, no. He has three setback problems: Rear, side and side. And one of the sides.

STEPHEN HART: So the current house which is the dark black line is non-conforming in the front, the side, and the rear. The red line shows the buildable area of this lot. I kind of lead most of the lots in this neighborhood are in the 40 and 50 foot width, and 120 to 150 foot depth. And they're, they are -- so that setbacks make much more sense for a short street frontage with a deep lot. We are in a situation where

the dead end street, where we have a very long front yard and a fairly shallow lot by comparison, leaving us with that area as a buildable area and this is the existing footprint.

TAD HEUER: That's still a significant buildable area, right?

STEPHEN HART: That's true. That's true. We would like to -- our proposed addition stays virtually within it. We're crossing -- wanting a porch on the front side to connect into the existing foundation, existing chunk of the house. And the width we're proposing is nowhere near as close as the current piece to that rear yard property line, but it does transgress there.

TAD HEUER: And then you're adding in the right setback?

STEPHEN HART: Yes. There is a -- this is where you mean?

TAD HEUER: Yes.

STEPHEN HART: Yes, there is an odd notch there that we would like to square off. That's where existing house and delapidated porch currently are. And we're removing that porch piece. It's an enclosed porch. It's a heated space at this point, but it was a porch and that starts here and we would like to square that corner off.

TAD HEUER: When you say removing, you're not actually -- you're removing that structure but you're really reconstructing on that --

STEPHEN HART: Yes.

CONSTANTINE ALEXANDER: With regard to two of three setback issues that you have, you're not in fact further increasing the non-conformity?

STEPHEN HART: No.

CONSTANTINE ALEXANDER: The front yard is going to stay as close as it is now?

STEPHEN HART: Correct.

CONSTANTINE ALEXANDER: And your left setback is also going to stay the same?

STEPHEN HART: That's correct.

CONSTANTINE ALEXANDER: The Zoning in the rear -- you're going to go from -- you're supposed to have at least 25 feet. And you're now 17 feet, and you're going to 22 feet. You're actually going to decrease the non-conformance?

HEATHER KELLY: No.

STEPHEN HART: The piece is less non-conforming than the existing piece.

CONSTANTINE ALEXANDER: Right. Okay, that's what I got from your dimensional form.

STEPHEN HART: Yes.

TAD HEUER: But you are increasing the massing?

CONSTANTINE ALEXANDER: No question about that. No question about that. Doubling the size.

TAD HEUER: And they're increasing the massing in the front yard setback. I mean, yes, you're not moving closer to the front yard. You're not moving closer to the lot line, but they are increasing the massing especially along the front yard area.

CONSTANTINE ALEXANDER: No question.

TAD HEUER: Now, when you pointed out those other lots that you say are deeper but narrower, those aren't -- they abut you but they're not on your street, right?

STEPHEN HART: No. Just looking at the overall zone.

TAD HEUER: Right. But completely in a separate section of it. I mean, these houses bear very little resemblance to houses that are on Kimball Lane.

STEPHEN HART: That's true, there's no resemblance.

TAD HEUER: Right.

BRENDAN SULLIVAN: I think initially Kimball Lane, especially that house across the street is actually two lots.

TAD HEUER: Right.

BRENDAN SULLIVAN: And then as they built one, and the idea was to build one, and then the idea to probably build another one and then obviously the Ordinance changed, and hence now you're sort of pinned in now by the location of that house on the particular lot.

Across the street they added, well, you can see that. But anyhow, that's another issue. Okay.

TAD HEUER: But this lot is larger than the minimum lot size, right?

STEPHEN HART: I have to double check. I believe it is, yes.

BRENDAN SULLIVAN: It's 346 larger. Minimum is five, and this is 5346.

STEPHEN HART: 5346.

TAD HEUER: So this is not a

situation where we have an undersized lot?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: And although you're doubling the size of the amount of space and the structure, you're only increasing by one bedroom. Did I hear you say from two to three bedrooms? Where's the rest of the space going? What are you using the rest of the space for?

STEPHEN HART: I can walk you through the plan.

CONSTANTINE ALEXANDER: What I'm getting at is whether the building is too big for what you need in terms of satisfying whatever hardship you're going to claim.

STEPHEN HART: Heather and Nick are parents of two children. There are three bedrooms in this house, plus a small den in the back corner. So, the second floor is one, two, three bedrooms, two bathrooms and a laundry. It's garret space so that

dormers -- is only at the dormers where there's full headroom there.

On the first floor there's a covered entry, a mud room. Two kids. Entry hall there. A combination living room/dining room, a kitchen, existing stairs, small study and a bathroom. A family room, no separate dining room.

CONSTANTINE ALEXANDER: You're effectively building a new house.

TAD HEUER: Are you living in the house currently?

HEATHER KELLY: No.

TAD HEUER: Would it be fair to say that you are obliterating the house that's there?

STEPHEN HART: No.

TAD HEUER: Why not? And quite frankly when I looked at your plans, and so no resemblance to the existing house in your current plan.

STEPHEN HART: You could define obliterating. There's a foundation, the first floor deck, and the first floor walls across here. That's --

TAD HEUER: If I were standing outside the house would I see any old -- is there anything I would see standing looking at the envelope that I could see if I stood in front of the house now?

STEPHEN HART: No.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: Building a new house.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: It's clear to me.

TAD HEUER: Given that you're essentially building a new house, is there a reason that you don't build within the footprint that you can build a new house with?

STEPHEN HART: We can talk about the

meaning of new house, but --

TAD HEUER: Legal definition of new house. The definition that we have to deal with.

STEPHEN HART: We're using the existing foundation, first floor deck, stairs, and a portion of the second floor deck.

TAD HEUER: How about walls?

STEPHEN HART: The first floor walls up to the second floor deck will get new windows in places, but that remains around to there. So, they get new open, I mean, we can get into the semantic discussion of --

SLATER ANDERSON: Can you speak up a little, please?

TAD HEUER: It's not necessarily semantic because the Zoning Ordinance doesn't appreciate semantics the way that semioticians do.

STEPHEN HART: I'm simply trying to

make sure you're clear on the facts of what remains here.

TAD HEUER: Yes. So in terms of walls, how many walls remain?

STEPHEN HART: So, in the basement, that all remains, which is all of that.

TAD HEUER: Right.

STEPHEN HART: We're adding new basement under the new addition. We're filling in this corner. And we are creating new foundation to replace what is now a peer foundation here.

TAD HEUER: And where's the street on these?

STEPHEN HART: (Indicating).

On the first floor this wall is this wall. This is currently a porch where we're enclosing that. That's now heated space. And this wall remains. So, window, door, window. And then from here out, that's new construction on this floor because it's also

new foundation back across here.

TAD HEUER: And you take out the left side wall, right?

STEPHEN HART: This is now an interior wall. And this is entirely new volume here.

On the second floor there are very few walls to begin with. It's rafters now. The entire, the second floor surface in the center portion remains. But everything else about the second floor is --

TAD HEUER: Can I see this for a second?

STEPHEN HART: Sure. This is this there. This stair doesn't meet code. We have to straighten it out at the top. But that is the same stair, it goes straight up to a landing and pushes back this way.

TAD HEUER: All right.

BRENDAN SULLIVAN: Any other questions?

CONSTANTINE ALEXANDER: No.

TAD HEUER: Just note, I presume the dimensional form of the staircase there would be the left side of the building; is that right? That's where you have -- you list left side of 47 and a ride side of 524, right?

STEPHEN HART: The sum needs to be 20, we're taking the seven foot, six and --

TAD HEUER: Yes. You listed your left side setback as 747.

BRENDAN SULLIVAN: Do you have a copy of the dimensional form there?

STEPHEN HART: I do.

CONSTANTINE ALEXANDER: It should be in the file.

BRENDAN SULLIVAN: Look at that.

STEPHEN HART: Okay, sorry.

TAD HEUER: That's okay.

STEPHEN HART: Oh. Right, current.

TAD HEUER: Right. Okay.

BRENDAN SULLIVAN: Let me open it to

public comment. Is there anybody here who wishes to speak on the matter of case No. 10134, 4 Kimball Lane. Okay, come forward. Please speak up so she can pick up on it. And if you would give your name and please spell your last name and your address.

CELINE LARKIN: Yes, my name is Celine Larkin L-a-r-k-i-n. I live at 56 Hollis Park. And I am the abutter that is at the rear. So I live in the house that is closest to the really tall walls. And I brought a letter, and I really apologize. I wanted to give this all to you sooner so you'd have a chance to look at it. However, I've been deliberating on it quite a lot. I've been trying to talk with Steve and with Heather and Nick about mitigation for the situation, but as you can see, a ten -- basically a ten foot low addition facing my house, which is completely non-conforming, is going to be a 28-foot to

the top of the peak sheer wall. And so there are really two features to my house. And I have it if you want to take a look at them.

So, what I just like to point out -- the first is what we have now. My house and this is my rear yard here. And this is what we see at the moment.

CONSTANTINE ALEXANDER: This is your house right here?

CELINE LARKIN: This is me, and the front of the perspective. And this is my backyard. And this is the existing house here on the sheet marked existing condition. And this is the view from the front of the 4 Kimball Lane looking back at my house across that open space. So -- and then there's a plan that shows, you know, the shadow. Obviously our concerns are the mass very close to our house. The fact that it does compromise the light on that side with the only windows we have into our kitchen. And

obviously our views that we've enjoyed. But, you know, really it's the presence of these things. And so, what this little package shows is the existing, the proposed, and then what I was hoping would be a compromise solution.

I mean, the first thing I want to say is that it is possible, and I've looked at many ways to do it, to achieve a renovation of the existing house and meet their program and stay -- and even add an addition, but within the setbacks. You can do that and not compromise the program.

I'm not seeking to, you know -- at this point I'm not seeking that solution. And I am supporting the fact that they want to keep the house where it is even though the back wing is very close to my house. So, while it is tall and really shades the backyard, it's the backyard. I am more concerned about the addition because that blocks all of our

morning light. And I just ask that you consider keeping the addition that sticks out, just pulling it back just those three feet to stay within the line. You can see from this that it does make a difference. That the shadows hit the house but not our windows.

BRENDAN SULLIVAN: Have you had a conversation with Nick and Heather and Steve.

CELINE LARKIN: Yes.

CONSTANTINE ALEXANDER: And the results of those conversation have been what, no agreement?

CELINE LARKIN: Yes, nothing yet.

STEPHEN HART: We met yesterday afternoon at four o'clock.

CELINE LARKIN: Right.

STEPHEN HART: And we had a quick side bar moments ago which is why I wasn't in the room. So we haven't had a conversation. I don't feel like we've --

CONSTANTINE ALEXANDER: I know what the Chairman is going to tell you in a second, but go ahead, Mr. Chairman.

SLATER ANDERSON: (Inaudible).

CONSTANTINE ALEXANDER: It strikes me that this case is not right for a decision yet. I think you need to have a lot more than a side bar conversation 24 hours before the hearing. I'm not being critical, I'm just saying -

STEPHEN HART: Can I respond to Celine's concerns?

BRENDAN SULLIVAN: Well, let me -- you've concluded? I mean, I don't mean to cut you off.

CELINE LARKIN: Oh, yes, unless you have any questions.

BRENDAN SULLIVAN: No, that's okay. Anybody else like to speak on the matter?

JOY SNOW: My name is Joy, last name,

Snow. Good evening, everyone. I'm a tenant in Celine Larkin's building at Five Hollis with my partner Samantha van Berig.

I do share my concerns with Celine Larkin in regards to our light. We are the bottom half. And I've lived there for two years. Samantha's lived there for five. The light is a key part of our living and our lifestyle there. Also, we're gonna lose all of our privacy when it comes to that, especially if the building comes even closer if the angle's turned on that regard. The light is literally a key, key reason to living in that area. And I would -- we would not want to leave. We have a great landlord. We've been there forever, you know. This is a lifestyle that we've chosen in an area, and we know our neighbors.

Another factor that I've talked about with Samantha and Celine is the idea -- they haven't talked about it yet, but I do want to

bring it up, is outdoor AC units. That would disturb our peace in that area of noise and, you know, it's noise pollution. Some neighbors down the street have one. We can hear it, it's about a block away. So, that's all I have to say.

BRENDAN SULLIVAN: There is an Ordinance which addresses that.

JOY SNOW: Perfect. I just want to put that out there now so you can have that all on your table.

BRENDAN SULLIVAN: We have a Licensing Board that addresses that Ordinance.

JOY SNOW: So, yeah, it's basic light and living lifestyle.

BRENDAN SULLIVAN: Anything to add to that?

CELINE LARKIN: Can I make one comment?

BRENDAN SULLIVAN: Sure.

CELINE LARKIN: I think that I got so involved in this that I forgot to mention that the point they bring up is very, very important to me, because I am dependent, I and my children are dependent are renting that unit. So of course I am concerned about their quality because it allows me to keep a unit that I'm depending on. It hurts my ability to rent it to put it plainly. They'll also be moving out. We may lose.

BRENDAN SULLIVAN: Anybody else who would like to speak on the matter, 4 Kimball Lane?

(No Response.)

BRENDAN SULLIVAN: I see none. There are no other letters in the file.

STEPHEN HART: I have a letter.

CELINE LARKIN: Oh, did I give you the letter? Sorry.

BRENDAN SULLIVAN: There's correspondence from Fran Cronin C-r-o-n-i-n.

"For the past 11 years I have lived happily at One Kimball Lane across from No. 4. It was of great delight we received news that a lovely young family will be joining our lanes. Starting their renovation plans, Heather and Nick have been consistently thoughtful and courteous in their planning efforts. In fact, they have kept us apprised of their plans, and they've progressed and have now invited the neighbors over to see the plans and the model for the new house design. It is my feeling that the redesign is in keeping with the character of my home, our private way, and respects the lot upon which No. 4 resides. No. 4 is an older home that is in need of updating, and a proposed plan achieves a lovely blend of original architectural intent with the needs of a family with young children in Cambridge. While I'm unable to attend tonight's meeting, I wanted the building commission to be aware

of my support for the redesign of No. 4 Kimball Lane." Okay.

And there is correspondence from Joy Snow and Samantha van Berig and also Celine Larkin who spoke.

Okay, close public comment. And I think what we started to allude to, is it's probably not ready.

STEPHEN HART: Can I address that concern?

BRENDAN SULLIVAN: Yes.

STEPHEN HART: This is our property here and this is Celine's house here. North is up on this. I'll show you this plot line. And north is up this way here. So north is up. So, with getting right into it right in the sense that sun rises in the east. And it sets in the west. Early, the longest day of the year June 21st, it's here. December it's here somewhere. So, the issue of the morning light -- and here is a photograph taken from

this yard looking towards that house. So, I think the light concern is exaggerated. I had to go to six a.m. on June 21st to find the time when there is a shadow cast. That is nearly the break of day on the longest day of the year. At seven o'clock the shadow is down in this corner. And by eight o'clock there is no shadow.

I have done other days and times, but I would be happy to run through all of them, but that is the time, a span of time around the summer solstice when before eight o'clock there is some new shadow.

BRENDAN SULLIVAN: So you would disagree with her study?

STEPHEN HART: I would.

BRENDAN SULLIVAN: Okay.

STEPHEN HART: Well, no, her study shows -- I only glanced at it a moment ago. But it shows that very extreme condition seven o'clock in the morning on June 21st.

CONSTANTINE ALEXANDER: Have you shared, by the way, your shadow studies you're showing us now with your neighbors?

STEPHEN HART: I did them today and we just met tonight.

HEATHER KELLY: Can I say something? We weren't able to schedule it. I mean, we did try. And so --

BRENDAN SULLIVAN: I think it's going to be important that you have that and then --

STEPHEN HART: We have --

BRENDAN SULLIVAN: -- that you have a meeting with the concerned people here, especially the abutter, because she has presumed standing to contest any unfavorable decision that she would deem unfavorable. And also to iron out any of the issues and not bring it to a vote tonight. I'm not sure if I'm ready to vote on it until those issues --

CONSTANTINE ALEXANDER: I agree

with it.

TAD HEUER: I'm going to go  
beyond --

CONSTANTINE ALEXANDER: So would I.  
Go ahead, Tad.

TAD HEUER: I go beyond -- we have  
dueling shadow studies, and I've just seen  
them both. So I'm not prepared tonight to  
rule on dueling shadow studies. I have no  
idea which one is right or what they mean.

STEPHEN HART: But they match.

TAD HEUER: Right.

My concerns are more about the  
structure itself and the fact that, you know,  
you're entitled to -- I think they're -- well,  
I think there are potential concerns with the  
demolition ordinance in terms of percentage  
of the building being demolished in terms of  
walls. I think personally I'm concerned  
about the amount of massing both in the front,  
but also your massing on the right sides.

You're building up into the right side setback. And both of those concern me, particularly given the shape of the lot. And it's not --

STEPHEN HART: Is this what you're talking about?

TAD HEUER: No. I mean the right side. Yes. So from the street, right side setback is here, and left side setback is here. Front side setback is toward the street. Rear is back.

So, you're increasing the massing on your right side setback. You're increasing the massing on the front yard setback. The house goes nominally to the FAR. So, you know, I understand that you're looking to maximize the amount of usable space you can get on a strangely shaped lot. I think my concern is that even though you're entitled under the Ordinance to 0.5 in a zoning district, I'm not sure that this lot even

though it appears large, I think necessarily is a lot that would support 0.5 in reality. I think when you start to try to get 0.5 out of this lot, you end up with some significant massing problems that are giving me pause. But in terms of bulk and in terms of envelope. And I understand that the allure of trying to get to it, I'm not sure I'd be willing to support something that invades those setbacks in the amount it does and creates the amount of massing on this lot.

I understand it's, you know, a wide lot not as deep as the zoning district. Sometimes that's a rationale for us to say yes, it's different and, therefore, variance is granted. Sometimes we say that's the size of the lot you got, you can't get everything that the Ordinance will allow you to do if you actually had a regularly sized lot. Here I would say you do have an oversized lot. It's not a situation where we have a lot that is

under 5,000 square feet and looking at what you could have done if you had 5,000. Here you've got 5,000. You may have a strangely shaped building envelope the way your lot lines are set up. But you've got a good amount of space to work with on the lot that you've got. And given that it's, I guess part of my final concern is that given this house that you propose, looking essentially nothing at all, I mean, as the house that you've got now, you have essentially one and a half story Cape. You're turning it into a two and a half story gable dormer house.

STEPHEN HART: It's one and a half stories.

NICHOLAS ROSS: It's one and a half stories.

TAD HEUER: I'm looking at two sets of windows plus a peak, that's two and a half.

STEPHEN HART: That's a full story. That's a strong half story. It's got a five

foot knee wall, but it's not a full two story.

TAD HEUER: I mean, right, you're getting knee walls where you don't really have them now in your Cape.

A big concern that this is actually replacing a house on a footprint where quite frankly if the Zoning is designed to reduce non-conformities, you can build something on that lot, I'd love to see the Cape stay. It's your house, I don't have anything to say about that. But by the same token you're essentially asking the benefit of building on top of something that's non-conforming and getting rid of it, and gaining the benefit of that non-conformity rather than moving it to the middle of the lot which is what zoning is designed to do. If I think here essentially what is happening here, the house is being cleared for the lot. For zoning purposes.

NICHOLAS ROSS: Would it matter to the committee if all the abutters would

prefer that this space stay open or it doesn't matter?

TAD HEUER: It might, but it wouldn't be dispositive.

SLATER ANDERSON: Well, I think your point's a good one, which is something I was going to mention, which is that there's a risk in what you're asking for that the house go further to the east and I think more negatively affect your sense of light and air, but being technically compliant. So my advice is in the conversations. We don't want to see -- my personal, I don't want to speak for anybody else. I think there's too much bulking of the existing non-conforming areas. You know, we have footprint, agreed, that's outside of the envelope you've drawn in red. But you've gone up, in my opinion, too much in that space. I think if you can figure out -- I'm not saying you have to stay totally within the red line, but try to

achieve what you want, try to meet your needs but you also work with them. I just feel like as Brendan said, that it's not quite -- it needs a little more dialogue and consideration between the parties. And hopefully you can reach some agreement on it. But I agree with it. I think the bulking and the non-conforming areas is too much.

CONSTANTINE ALEXANDER: I also would endorse what both what Slater and Tad have said as well. I mean, you really would be building -- you're building a new house, and then if this were an empty lot and you came to us with plans, I'm not sure we would say to you we'd give you a Variance for setbacks on three sides. We'd say try to figure out a house that fits the zoning requirements. As a matter of right or as a less, requires less relief than you're seeking tonight. So I'm troubled by this. I think you have a number of issues you have to think about.

STEPHEN HART: I'm not sure it's in anybody's interest. This is the house that sits within the setback. Meets the FAR and open space and so on. It's 35 feet tall. It's -- I don't think that's better for anybody.

HEATHER KELLY: May I say something, too?

TAD HEUER: I don't think you want to build that either.

HEATHER KELLY: We really did honestly had many talks and we really did want to create a house that would respect the style as our neighbor would say. And really try to preserve the feel and currently the sense of space and yard that's there. And so, it's, you know, it's a little -- it's hard to listen to this discussion because we really have tried to do that. And, you know, instead of, you know, instead of doing that basically. Because we would, in trying to preserve more

of the yard, we would take it up to -- if we had to build it from scratch, we would have to use up that space which would really, then we would really be talking about real issues of sunlight. And we don't want to do that. And I don't think anyone else wants us to do that either. So, I just wanted to say that.

STEPHEN HART: I just want to say --

BRENDAN SULLIVAN: I think what we need to do is let you go back and just have the conversation and come back with -- you may come back with the same plan and say this is, you know, or come back with an alternative plan or a combination of whatever. But anyhow, I think it needs to be reworked one more time anyhow.

Sean, what would be the September?

SEAN O'GRADY: You're into October now.

BRENDAN SULLIVAN: All right.

SEAN O'GRADY: October 13th.

BRENDAN SULLIVAN: October 13? I'm not here on October 13th.

SEAN O'GRADY: Okay, the 27th.

BRENDAN SULLIVAN: October 27th. So the next available date is October 27th.

CONSTANTINE ALEXANDER: It's a case heard. Make sure that everybody can be here on the 27th?

BRENDAN SULLIVAN: Well, I can be here.

CONSTANTINE ALEXANDER: I can.

SLATER ANDERSON: Yes.

BRENDAN SULLIVAN: You're back in town?

DOUGLAS MYERS: Yes.

BRENDAN SULLIVAN: Let me make a motion, then, to continue this matter until October 27, 2011, at seven p.m. on the condition that the petitioner sign a waiver to the statutory requirement for a hearing, and a decision to be rendered thereof. And

that the Petitioners change the posting sign to reflect the new date of October 27, 2011 at seven p.m. And also that any submittals, changes to the existing proposal be in the file by the Monday -- five o'clock Monday prior to the October 27th hearing.

And obviously if there's a change in the plan, that the dimensional form, the new dimensional form should reflect whatever the new proposal is.

All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

Thank you.

(Sullivan, Alexander, Heuer, Anderson, Myers.)

(9:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10135, 18 Middlesex Street. Okay. Introduce yourself for the record. Please spell your last name.

COLIN McGOVERN: McGovern  
M-c-G-o-v-e-r-n. My first name is Colin  
C-o-l-i-n. I'm here in lieu of Edrick Van  
Beuzekom from EvB Design. And we're  
representing our client at 18 Middlesex David  
Clemens.

BRENDAN SULLIVAN: You received some relief. You moved some windows, but then which windows do you have to change again?

COLIN McGOVERN: This elevation right there.

BRENDAN SULLIVAN: So this was existing. This was in the original proposal.

COLIN McGOVERN: We were approved for this, which is different than that as you

can see. These were the original windows. We were approved for patching those and installing these new.

BRENDAN SULLIVAN: Okay.

COLIN McGOVERN: Now, we had to move those to this for a couple of different reasons. One being first floor window, which is the exact same window. We did a kitchen redesign and because the fridge didn't work very well basically.

BRENDAN SULLIVAN: All right. So it's basically the realignment of the interior which necessitated moving some of the appliances?

COLIN McGOVERN: Exactly.

BRENDAN SULLIVAN: Okay.

COLIN McGOVERN: And the second floor only because that just physically didn't work with the proposed stair that was to be built, so.... it was just a coordination issue of the stair, how the

stair would work.

BRENDAN SULLIVAN: The building would be facing on the left side; is that correct?

COLIN McGOVERN: The right side.

BRENDAN SULLIVAN: The right side with the neighbor.

DAVID CLEMENS: Yes.

BRENDAN SULLIVAN: And no problem with the neighbor.

THE REPORTER: You need to identify yourself, please.

DAVID CLEMENS: David Clemens C-l-e-m-e-n-s. I'm the owner. And that's right, the neighbor Lizzy had offered a letter of support previously, and it was not conditional on the exact location of the windows and she's fully supportive.

BRENDAN SULLIVAN: Okay. That's location.

COLIN McGOVERN: That's location,

too.

BRENDAN SULLIVAN: Let me open it to public comment. Is there anybody here wishing to speak on the matter of 18 Middlesex Street?

(No Response.)

BRENDAN SULLIVAN: I see none. Any questions, problems? Location thereof?

Nothing to refute, rebut, add, change?

Okay, let me make a motion to grant the relief requested which would be to change the location, previously approved windows. Initialed -- and this is on sheet A2-1, correct?

COLIN McGOVERN: Yes.

BRENDAN SULLIVAN: Initialed by the Chair.

The Board finds that the requirements of the Ordinance can be met.

That traffic generated or access or patterns of access or egress would not cause

congestion, hazard or substantial change in the established neighborhood character.

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

That there would not be any nuisance or hazard created to the detriment of the health, safety or welfare of the occupant of the proposed use or to the citizens of the city.

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

The Board notes that previous application the Board approved locations of windows received approval from the letter of support from the next-door neighbor, and this is a slight modification.

And that the Board finds that it is fair

and reasonable request.

All those in favor of granting the  
Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer,  
Anderson, Myers.)

(9:50 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Slater Anderson, Douglas Myers.)

BRENDAN SULLIVAN: Lexington Avenue.

ATTORNEY JAMES RAFFERTY: Thank you, good evening, again, Mr. Chairman, James Rafferty on behalf of the applicant. The applicant is seated to my left, George Bechwati B-e-c-h-w-a-t-i. And to Mr. Bechwati's left is the engineer in the project, Sami S-a-m-i Kassis K-a-s-s-i-s. And it's Mr. Kassis's plan that we have before us.

This is an application for a Special Permit to allow for the construction of an additional service bay at an existing gas station at the corner of Fresh Pond Parkway and Lexington Avenue. There's also a request to install a canopy over the gas station, the location where the gas pumps are.

Mr. Bechwati has owned the property for a number of years. He also operated an automotive service station for years on Concord Avenue just beyond the Fresh Pond rotary, former Shell station, and that lease has concluded and he is no longer able to operate there. So he is moving that operation back to this location.

The use of an automotive service station is permitted in this district by Special Permit provided that all of the automotive repair occurs within the building. So the additional bay is an expansion of that use. So the Special Permit is related to that. And the canopy is -- I think we've concluded through the Building Department, the canopy is a Special Permit feature as well since it constitutes a structure, but the area beneath the -- we have plenty of GFA. But I think the area beneath the canopy, under a certain interpretation,

could be included as GFA and therefore we're seeking a Special Permit for what that GFA represents.

The rationale for both of these things is to allow for the business to meet changing trends in automotive repair requirements. The canopy is going to be covering a whole new gas pump operation which will be new modern pumps subject and governed by electronics now that need to be protected from the weather. So the canopy is very essential to these new pumps. These new pumps are connected to new tanks, and there's going to be an overall improvement from an environmental perspective and from a safety perspective. So, these are upgrades that will be put into the station.

Similarly, there are two automotive bays now, they're rather small. And with the nature of diagnostic testing and the type of work that happens, it's necessary to create

a new bay that can accommodate that. So, Mr. Bechwati is going to add the additional bay.

There have been some conversations with abutters frankly, generally about the site. Some of them are related to the bay. When we proposed as a result of some communication, we proposed a five conditions that we were offering to the Board for their consideration. In addition, there are a few other items that we've been discussing that we would also ask the Board to consider, but for the five conditions that are involved here, I just wanted to alert the Board that we made changes at the suggestion of the Chair. We've tried to identify locations on the site plan where each of those conditions are applying.

So the first condition, you recall, involves lighting over the canopy. We haven't marked that, but I think that's

fairly obvious where that's located.

The second condition is the limitation on the hours of operation, not a plan-related condition either.

The third condition involves a landscape buffer area. The area directly behind the gas station bordering the property at 7 Poplar shall be --

CONSTANTINE ALEXANDER: Right here, I think? Condition No. 3?

ATTORNEY JAMES RAFFERTY: That's correct. And we've identified as condition No. 3. Thank you.

Condition 4 refers to a six-foot fence. And in conversations with the abutter, they actually prefer an eight-foot fence. It's my understanding that an eight-foot fence could be installed with the agreement with the abutter. It does require a Building Permit because I believe it's regarded as structure. So, there should be a change in

that condition, though, because in condition 4 where that fence is referred to, it talks about bringing this fence to the edge of the sidewalk.

Mr. Bechwati has spoken to this abutter, and he actually doesn't want that fence extended that distance. So I made a change to that to read "to the abutting property line" as opposed to the edge of the sidewalk on No. 4. An eight-foot high wooden fence matching the fence at Nine Poplar shall be installed from the edge of the existing fence to the edge of the abutting property line. And we've identified that here, condition 4. And that's the area where the fence is.

There's also been some additional -- condition 5 talks about a landscape buffer along the Lexington Ave. edge. We've had a considerable amount of discussion about the adequacy of that. I

think it's fair to say that some abutters felt that that could be, that could be enhanced somewhat. So Mr. Bechwati has agreed to expand that area of the plan to include this area here. So I don't know if that's clear on the plan. So condition 5 would include the landscape here and this area. This is, this is an asphalted area here, which people wrote on, I apologize. But that would not change. There are some underground oil tanks and other things here. But Mr. Bechwati would agree with regard to the area in the rear here, these two areas, that there would be no parking of vehicles, no repair of vehicles, or no storage of materials to be occurring in these areas. But as for landscaping, the landscaping area is this area depicted here.

The final thing we said is that Mr. Bechwati would petition the City and work with abutters to seek the installation of a

street tree this length of sidewalk from here out to the parkway. It doesn't have any street trees. And the thinking was that a strategically planted tree on the sidewalk could reproduce a nice buffer along that edge.

CONSTANTINE ALEXANDER: But that's not a condition of the -- being proposed, right?

ATTORNEY JAMES RAFFERTY: The condition is that we would make that request, and I'm not sure how that process goes, but I'm told you can request and get on a list and ultimately if they determine that it's warranted.

TAD HEUER: So the landscape area is this kind of flag shaped area ultimately?

CONSTANTINE ALEXANDER: The pie shape.

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: The pie shape.

ATTORNEY JAMES RAFFERTY: It's depicted in its original form, that narrow area, and it's enhanced to be that triangle.

TAD HEUER: Right.

And then the prohibition on parking or storage will be to this area that's listed as broken bituminous and grass?

ATTORNEY JAMES RAFFERTY: Yes -- no, this area here.

TAD HEUER: To the Lexington Avenue side of the trailer?

ATTORNEY JAMES RAFFERTY: Correct.

GEORGE BECHWATI: Here there is a heated oil tank in the ground.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: We want to identify here.

There's a dumpster and other activity, so there is some movement over here. But this is the area. The question had been well, why can't this be landscaped? Why not

simply extend the landscape area into here?

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: And as Mr. Bechwati just noted, he's got things going on under the ground there. That's the area, and perhaps I should call that condition 6. Where there would be no parking of vehicles, no storage of vehicles or equipment, and no repair up here.

CONSTANTINE ALEXANDER: This area here, there's no conditions in this --

ATTORNEY JAMES RAFFERTY: That's correct. That's not affected by any of those conditions, that's right.

DOUGLAS MYERS: Do you need a new plan to clarifies all this, or is this present plan adequate?

CONSTANTINE ALEXANDER: I think it's okay.

ATTORNEY JAMES RAFFERTY: I'm not certain that we couldn't -- we probably

could -- the plan could probably benefit from removing some of this extraneous language and adding, but we'd be happy to supplement that. I hope for tonight's purposes it's understood so the -- it's an enhanced landscape area, and this area, a restricted use area here, in terms of no vehicles, no storage, no repairs. And then the other areas I think are pretty obvious.

BRENDAN SULLIVAN: There is going to be a dumpster?

ATTORNEY JAMES RAFFERTY: Yes, there is a dumpster. You can see it in the photo here. It's in this area here.

BRENDAN SULLIVAN: Okay. So the dumpster will stay.

A trailer?

ATTORNEY JAMES RAFFERTY: Trailer's used for storage I think as needed. It's been there a while. It's accessed --

BRENDAN SULLIVAN: How long has the

trailer been there?

GEORGE BECHWATI: The trailer been there about 24 years.

BRENDAN SULLIVAN: Okay. And it's accessible from inside the store?

GEORGE BECHWATI: Yes, yes.

BRENDAN SULLIVAN: There may be other issues, but anyhow.

Now, as far as the landscaped areas, we're talking the deciduous bushes? How is that to be bounded, by railroad ties or some other -- you haven't got that far in the proceedings?

ATTORNEY JAMES RAFFERTY: I don't know. No, no, I'm always stumped with that deciduous stuff.

You can see in the photo there's a tree stump there. There was a tree there. And the idea is to put the tree in that location. There's --

TAD HEUER: You prefer coniferous?

ATTORNEY JAMES RAFFERTY: I'm thinking. This is not my forte, coniferous would be more like an evergreen?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: And a deciduous would be more like a flowering tree?

TAD HEUER: Yes. Pine tree, oak tree.

ATTORNEY JAMES RAFFERTY: I would defer to --

BRENDAN SULLIVAN: I would just like that whatever goes in there is going to be maintained as well.

ATTORNEY JAMES RAFFERTY: Yes, right.

BRENDAN SULLIVAN: Because it will be monitored and it would not be helpful for it to fall into disrepair. Just sort of plant it and forget about it.

ATTORNEY JAMES RAFFERTY: I

explained to some of the neighbors the benefits of having these items as conditions, and I'm also mindful, of course, of Mr. O'Grady always not wanting to have conditions that are not enforceable. But I think the nature of these conditions, site plan and restricted areas, I think are easily monitored and reportable and, therefore, if one were to find that --

BRENDAN SULLIVAN: It's going to be operated under one banner?

GEORGE BECHWATI: Shell station.

BRENDAN SULLIVAN: Shell. Shell obviously has input into the upkeep.

GEORGE BECHWATI: As the other one.

BRENDAN SULLIVAN: I mean, they have sort of minimal, whatever their minimal standards are anyhow; is that correct?

GEORGE BECHWATI: Yes.

CONSTANTINE ALEXANDER: One more time with regard to the area of where

underground tanks are. What's on surface, just storage?

ATTORNEY JAMES RAFFERTY: Asphalt. You can kind of see it in this photo. It's the area to this side of the trailer.

CONSTANTINE ALEXANDER: Yes. What are you going to use it for, continued to store --

ATTORNEY JAMES RAFFERTY: No, store nothing. This area here?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: No storage. Nothing.

CONSTANTINE ALEXANDER: But no landscaping either?

ATTORNEY JAMES RAFFERTY: No landscaping because there are tanks and electric lines.

CONSTANTINE ALEXANDER: That's what I'm trying to get at.

BRENDAN SULLIVAN: Is that where the

fill is for the tankers?

GEORGE BECHWATI: The fill is right in front of it.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: What I'm trying to get at is if you have to at some point dig up this space to repair or replace the tanks, there's no landscaping is going to get damaged by that. But it's not going to be any landscaping. So whatever you had on the surface, you'd move away and then when you finished with the tanks, you move it back.

ATTORNEY JAMES RAFFERTY: I don't think there should be anything on the surface.

CONSTANTINE ALEXANDER: That's all I'm trying to get at. Exactly right.

ATTORNEY JAMES RAFFERTY: Right? And that was the agreement. While it isn't landscaped for the reason you cited, it will not be used to store materials, vehicles,

repair vehicles or the like.

DOUGLAS MYERS: Do the plans show of what materials of the canopy would canopy exist?

SAMI KASSIS: I didn't design the canopy. Somebody else designed it and submitted it to the City at some point in the past of some sort.

BRENDAN SULLIVAN: Would it be similar to the one on Concord Avenue?

GEORGE BECHWATI: Similar, yes.

BRENDAN SULLIVAN: It's painted steel. Similar to the one on Concord Avenue?

GEORGE BECHWATI: Exactly. And the only thing gonna be different --

BRENDAN SULLIVAN: I mean, that's their monogram. That's their --

GEORGE BECHWATI: -- what the neighbor asking we're going to put on that like just put the light inside the canopy, no light to go outside the canopy.

BRENDAN SULLIVAN: Yes.

And that would be the only signage? You're not going to put a pole with a Shell sign revolving, flashing lights or anything?

ATTORNEY JAMES RAFFERTY: Well, we're not asking for sign relief. But I don't know what the signage -- whatever the signage is permitted I presume he would propose to take advantage of.

TAD HEUER: Are you grandfathered into whatever signage you've got there now because you're just --

ATTORNEY JAMES RAFFERTY: Might be. I didn't do a sign analysis. I don't know what's there. I don't know what the frontage is.

CONSTANTINE ALEXANDER: It is what it is. Whatever you can do, you continue to do. And what you can't, you'll have to seek relief.

ATTORNEY JAMES RAFFERTY: I

couldn't have said it better myself. Yes, so  
I --

CONSTANTINE ALEXANDER: Well, after  
tonight.

ATTORNEY JAMES RAFFERTY: Right.  
You know, we do have a clean version of this,  
so I could, I could -- it wouldn't take me that  
long.

DOUGLAS MYERS: It just occurred to  
me, it might be hard to really decipher that  
in the future.

CONSTANTINE ALEXANDER: We had  
different colors. You don't have a red pen  
and a green pen? That might help actually.  
If you put your mark some areas of red.

TAD HEUER: I would suggest that  
before the decision is finally signed, a plan  
reflecting this but done professionally be  
presented to the Chair. And as long as he  
compares them and says they are indeed  
identical, then that new plan would suffice.

ATTORNEY JAMES RAFFERTY: Okay.

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

Is there anybody here who would like to speak on the matter of 260 Lexington Avenue? You're all concerned. You've all been part of the discussion? Would you like anything else to add? Please spell your last name for the record.

MATTHEW LONGO: My name is Matthew Longo L-o-n-g-o. I live at Six Worthington Street which is two doors up from George's station. And I'm not really sure what my rights are here. I may have already reached a decision, but I was wondering if I could just back up and give the Board a bit of background on what I think some of the issues are here.

This is a really bad satellite photo of the area, but just to give context for discussion. This is where George's station

is. This is Lexington that comes down. And this is Lakeview. And I'm sure the Board knows all about the one from improvements at Fresh Pond. This light here is now the main path for all the neighborhood to get through to this area. Lexington Avenue, which basically is the main path for this whole portion of the neighborhood is the main path down to this light as well. And everyone travels down Worthington Street and makes the turn here. So this corner where George is located is very important to the neighborhood. And everyone who uses it, kids, families, all of us who have been there, are looking for some type of a way of improving this edge. There's some photos of what this actually -- what the station actually looks like. And really my main concern is -- item No. 5 on Jim's list, which is how this edge is treated. And what we really would be looking for is some kind of

buffer for a use, which I think if you went to the Cambridge Board of Planning, they would tell you this probably isn't the ideal use for what's happening between this neighborhood and one the best neighborhoods in Cambridge, and this resource, which is one the greatest recreational resources in Cambridge. But that's the situation we're in. And so what we really need is some kind of a transition between the neighborhood and George's station. So a buffer of some kind would be ideal.

I was very taken by the Chair's comment a minute ago about minimal standards, and I think the Board should really consider that as they look at the station. I mean, the trailer, you know, the trailer and the back of the station has been in this state for ten years and it's really, it's below minimum standards frankly. And we would like to see whatever could be done to the back of the

station to bring it up to the level of what we have in the neighborhood.

Initially when we started this discussion, George talked about possibly removing the trailer. I'd certainly support an expanded bay or addition on the plans to incorporate space that he needs than the trailer. The main concern I have is that the landscaping, which is done along here, is robust enough to create a kind of buffer. That it's maintained to a level that is gonna hold up, to resist the type of activity that's at the station, and that it extends far enough to really continue the continuity of the main planting which you're seeing on the streets now.

DOUGLAS MYERS: Question. All of these pictures that you've shown us concerning the station are from the side of the station. Is this what looks like a driveway entrance here, is this directly

across from where Worthington Street comes out?

MATTHEW LONGO: That's what's fascinating but you've really hit on something here. That's what's fascinating about the site, if you look at this satellite photo which is a little bit better, the area that you're talking about is right there. And so, the back of the facade of the station is really a front facade as it relates to Worthington and Lexington. And so, what's essentially happening here is improvements are being made to the front of the building while the back of the building remains derelict. And that seems really kind of a hit to the neighborhood frankly.

BRENDAN SULLIVAN: Sort of a back end of the a horse.

MATTHEW LONGO: Yeah. I mean, we love this neighborhood. We're very engaged in tree planting and I sweep the sidewalks in

front of my house as do many of the other neighbors here. We've had a great relationship with the car dealership where they've done all kinds of things to improve their property. And they brought facade improvements around the back of their building. So I'm just throwing it out there to the Board to consider.

BRENDAN SULLIVAN: Well, that's why I sort of keyed in on the trailer. And, you know, if it's going to stay there, then either we paint it with invisible paint or in the absence of that, how do we hide that? And one of the things would be that you plant some evergreens in front of it as tall as the trailer basically to hide it. Which is incorporated, I think, in part of this landscaping plan. But I think that the back end of this building really needs to be softened. Yes, our attention is on the front end of it, but I'm not really willing to go

on what happens to the front until we address the rear. Because I think that's what basically, you know, the general public sees -- everybody who lives outside the city sees the front. Everybody who lives in the city in that neighborhood sees the back.

MATTHEW LONGO: Perfectly stated.

CONSTANTINE ALEXANDER: But isn't the problem, though, I understand your concerns, the area that has the underground tanks and so it's hard to put plantings there?

SLATER ANDERSON: Well, they're talking about putting a strip, though, here. So this is like a --

BRENDAN SULLIVAN: You can see where some grass is growing.

SLATER ANDERSON: Asphalt is not covered.

ATTORNEY JAMES RAFFERTY: I mean, admittedly there's been a tenant in there with low use. So Mr. Bechwati will be

returning as an owner. And he said he would be painting the back of the building, and he'll be improving the rear condition. I mean, there's no disagreement with Mr. Longo's assessment. It is in very poor condition, but I think there's a commitment to improve that entire rear facade between plantings and treatment. He had talked about painting the building, and there are other conditions that are intended to address that. The other landscaped areas, the fencing and the like, I think that the proposed conditions go a long way to addressing that. I know Mr. Longo who I have great respect for, has expressed concern that more could be done in the area of the proposed landscaping.

BRENDAN SULLIVAN: The conditions address the issue, but it's quite vague to me. I mean, I think I would not be comfortable if I had to look at that every single day and say

what do you mean by landscaping? And what do you mean by this? And then after everybody leaves here tonight, the experience is that people have two different opinions as to what was agreed to.

SLATER ANDERSON: So you want to see a landscape plan?

BRENDAN SULLIVAN: I would like to see something more definitive. I mean, I think this is a start but it's not the finish line to me.

TAD HEUER: For the area that's now marked as broken -- it's essentially marked --

SLATER ANDERSON: The grass?

TAD HEUER: Marked with grass which is a lovely --

BRENDAN SULLIVAN: I would like to see a proposal as to exactly what is going to happen to the building.

CONSTANTINE ALEXANDER: The dilemma

is going to be from a Zoning point of view and a condition point of view, how do we deal with landscaping? Is Sean going to have to go out there every week to make sure the landscaping is properly maintained? The right kind of bushes. We've wrestled with this in other cases.

BRENDAN SULLIVAN: Well, I think it's a start. We have to have a starting point.

CONSTANTINE ALEXANDER: Is there a fencing? Is there a solution to have a fence to be maintained that blocks the view of the trailer or the like?

BRENDAN SULLIVAN: I would not want to see a fence along there. I think fences are other than along maybe a long property line, are quite unfriendly.

MATTHEW LONGO: We've also had graffiti problems along the back. I know George is going to be dealing with that

because the building has been somewhat abandoned. But a big fence could be a target for graffiti unfortunately. Unless it was planted, it could be -- they make some fantastic vine fences that you can train the vine to grow I suppose.

BRENDAN SULLIVAN: I would like to see some evergreens.

DOUGLAS MYERS: Trees are feasible. You can start with eight-foot evergreens. I think they can be maintained. And in terms of inspection and enforcement, I say this completely seriously, if they're alive, it's in place it's okay. And if they're dead, then there's a problem. I mean, they're evergreens, you know. And so they're either alive or dead.

TAD HEUER: If they're not green --

SLATER ANDERSON: Well, you know, I would put some sort of irrigation might be important element to going along with the

evergreens.

ATTORNEY JAMES RAFFERTY: Well, I think to Mr. Myers' point of view --

BRENDAN SULLIVAN: My viewpoint in order for me to give any kind of affirmative consideration to this, I would want to see something more definitive plan so the landscaped area, landscaped area. I would want to see what's going to happen along the back of the building for improvements to make it more friendly and also to hide that trailer and that's where I am on that.

TAD HEUER: And --

BRENDAN SULLIVAN: If I lived and looked at this thing every single day, I would want somebody in some responsible position to try to improve it.

CONSTANTINE ALEXANDER: I agree with the concept. I'm just skeptical as to our ability from a zoning point of view to do what we want to do, that's all. Let's try.

TAD HEUER: I'm not that -- I think that planting trees we've asked for in the past and we can certainly ask for planting trees. And I don't think it's -- I think they're either ever green or they're ever brown. And if they're ever brown, they're not ever green.

And I think to the area that's on either side of the flag shape, so there's the area with tank below ground, and then there's the area on this photograph where the red Chevrolet is parked.

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: What was -- for that area where the red Chevrolet is parked that runs around the back of the trailer to the back of the building on the left, what was the proposal for that area that's also included as landscape?

ATTORNEY JAMES RAFFERTY: No, that's not -- I mean I think you're referring

to this area here?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: Yes, no. That acts as an oil tank and a dumpster. So I think a truck backs in here and all that.

TAD HEUER: All right. So that's the -- if I'm looking at this photograph, that's the fence that's referred to there?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: And the dumpster is behind the fence; is that right?

ATTORNEY JAMES RAFFERTY: I think in the photo it's next to it.

TAD HEUER: Okay.

And I guess part of my question is one easy way to make it better -- so right now it's essentially an overgrown lot, right? The rear is, you know, grass is growing up through bituminous broken concrete?

GEORGE BECHWATI: Yes.

TAD HEUER: I mean my question is if

none of this is actually necessary for access, the access is coming through on the left anyway, and this is just kind of an empty area, you know, one easy way to landscape is simply maintain grass there and perhaps marked off with railway ties to give you some kind of delineation between your driveway and your back space. Because it's already not going to be used for any anything. I think that at minimum you say, you know, have grass growing, grass maintained and that's basically not concrete through which grass is growing and it kind of contributes to the overgrown lot behind the gas station stereotype that I think we'd want to get away from. And on the place where the oil tank is, I mean, I understand you don't want to do anything there, there's already grass growing on top of the concrete.

MATTHEW LONGO: None of it is really grass. And grass doesn't really do anything

in the way of giving you any kind of buffer.

TAD HEUER: It does, but I think --

MATTHEW LONGO: It collects trash and it's just difficult -- people throw things there. It's not really gonna do much.

BRENDAN SULLIVAN: It's best day is its first day.

TAD HEUER: It is, but right now what you have is a concrete area that is receiving the grass that has the strength to grow through it which I think is worse because you can't mow it. It's essentially a -- that's how you get an overgrown trash strewn lot. It's a lot that has grass growing, you can't get to it, you can't get anything out of it. It just kind of sits there.

CONSTANTINE ALEXANDER: I agree the grass is better than what is there now, but I don't think it's going to solve the problem. Particularly given the area, people are going to throw trash on it. That's what's going to

happen. I think we either go with trees or a fence. And evergreen trees, if you plant them next to each other --

BRENDAN SULLIVAN: I say evergreens will hide that trailer, screen the back of the building, it will become more residential in character and give it some --

ATTORNEY JAMES RAFFERTY: Well, that's the objective. As you see the plan was as proposed to create a landscape buffer at that sidewalk edge. And it was expanded as a result of tonight's conversation. So, I think we understand that issue, I admit the details are not --

SLATER ANDERSON: I'm curious why the triangle you've drawn goes to the inside corner of the architecturally insignificant trailer instead of to the other corner of the trailer.

MATTHEW LONGO: Significant.

SLATER ANDERSON: Yes.

And was the tree cut down to put the trailer in? I'm wondering.

GEORGE BECHWATI: The tree died.

SLATER ANDERSON: When it saw the trailer?

BRENDAN SULLIVAN: The contents of the trailer killed it.

GEORGE BECHWATI: It died ten years ago.

ATTORNEY JAMES RAFFERTY: It was falling apart Quonset hut on Cottage Park.

BRENDAN SULLIVAN: Anyhow, I would like to see you fill in some of those blanks and some of those details. And I think we could probably do it the next meeting which is in August, not the 25th but the next one is?

SEAN O'GRADY: 11th.

BRENDAN SULLIVAN: August 11th.

ATTORNEY JAMES RAFFERTY: Just for the enhanced landscape plan?

BRENDAN SULLIVAN: Correct or October. You have a choice.

CONSTANTINE ALEXANDER: Doug, are you available on August 11th?

DOUGLAS MYERS: I'm available.

SLATER ANDERSON: Do I have to be here August 11th?

SEAN O'GRADY: Everybody would have to be here August 11th.

SLATER ANDERSON: I'll be here August 11th.

GEORGE BECHWATI: The Shell station on Concord Avenue closes tomorrow. Tomorrow is the last day. And we have to move the Registry inspection station from one station to another station, and that's not allowed. And that's if we have some kind of agreement or some note from you possibly, we might be able to get that bay. Because the new inspection today longer than the older station bay, you know. The station we have

27 feet, which is the regular bay's 30 feet. So that's the reason we asking for another bay. Otherwise we wouldn't ask for a bay.

BRENDAN SULLIVAN: Right, but even if we were to give approval tonight, you're not going to get approval for --

ATTORNEY JAMES RAFFERTY: There's an appeal period and all that.

BRENDAN SULLIVAN: Yes.

TAD HEUER: (Inaudible.)

BRENDAN SULLIVAN: There's two months.

GEORGE BECHWATI: They commission that if you would like give us okay, they be able to get it, that would help us.

BRENDAN SULLIVAN: Well, again, the official okay --

ATTORNEY JAMES RAFFERTY: But I would say --

BRENDAN SULLIVAN: -- many weeks away.

ATTORNEY JAMES RAFFERTY: The -- it sounds like there's support for the bay in that the issue is screaming existing elements of the building.

BRENDAN SULLIVAN: If we do a good job on the back end of that building.

CONSTANTINE ALEXANDER: It's a quid pro quo situation. There's support for the bay but you've got to do something for the station generally and improve the impact to the neighborhood.

BRENDAN SULLIVAN: Because I look at some of the requirements for the Special Permit, and some of the could be or could not be met.

ATTORNEY JAMES RAFFERTY: Well --

BRENDAN SULLIVAN: So, anyhow I would strongly advise that we continue this to August 11th.

GEORGE BECHWATI: We already agreed.

ATTORNEY JAMES RAFFERTY: Right. I suppose it's a landscape plan one can say details to follow, but I think what the Board is saying --

TAD HEUER: We can grant the Special Permit for 60 days and you can come back with a new case.

GEORGE BECHWATI: There you go.

TAD HEUER: It's weird but you can do it. I suppose if you really want something --

CONSTANTINE ALEXANDER: Why would that help you with the Shell for 60 days? You have to tell the Shell people that there's going to be a lapse in 60 days to solve your problem. It's an imaginative solution.

ATTORNEY JAMES RAFFERTY: I appreciate that.

SLATER ANDERSON: You haven't been denied. It's an open case.

BRENDAN SULLIVAN: I mean, if this

thing's been sitting here for so long, you knew there was an end date for Concord Avenue, I would have thought you would have backed up four months ago. The thing's been sitting there. I mean, you knew Concord Avenue was shutting down.

GEORGE BECHWATI: No, we don't know that. They just shut it down. The people who own it, Fawcett Oil people decide to sell it just like that June, June 30th. Nobody knows that the place in the market. Nobody heard in the market. Nobody knows.

ATTORNEY JAMES RAFFERTY: I think there was an expectation that the lease would be renewed, but the landlord declined to renew the lease. But there was a hope right up through the month of June that the landlord could be persuaded to at least extend for a few more months. But at any rate, I think what you're hearing from Mr. Bechwati is the time is very critical.

I understand that offer. I have to say, though, that by the time the two weeks which seems like a long way today if we could get this landscape plan sorted out in two weeks, and then generally -- there are some other people prepared to say lovely things.

LORI RODDENBERRY: Mr. Chairman, can we speak?

BRENDAN SULLIVAN: Go ahead and identify yourself.

LORI RODDENBERRY: Hi. I'm Lori Roddenberry, Lori R-o-d-d-e-n-b-e-r-r-y and I live at Seven Poplar Road. And actually my bedroom is right outside George's gas station. I've known George for over 25 years. And it's a gas station. We live in the city. It's -- it was there before he even brought it. My father used to work over there when it was a Mobil years ago. So, I get it when it's like noisy and all that stuff. That doesn't really bother me. I'm

actually immune to it. I'd rather the highway go somewhere else personally with all the traffic between four and seven every night, but we can't change that.

In regards to the beautifying it, we wrote all the -- most of the neighbors wrote up -- the ones that were on Board with this, basically that were affected by it, the ones that are closest, usually like my house is right there. There's another -- 9 Poplar is right there. And then there is Lexington Ave. I think it's 252 or 254 Lexington Ave. But that owner didn't show up to -- they just said no fence there.

ATTORNEY JAMES RAFFERTY: They sent a letter of support.

LORI RODDENBERRY: Yeah. We did also write that all up and George has complied with everything. And I'm very happy with what he -- because we have a very good relationship. And he understands that

people have to live too, but he also has to make a living and I get it. So I'm not going to -- I have no problem with the station opening again or anything.

My main thing is like the beautifying on Lexington Avenue, you know, he said that he was gonna put some trees and he was gonna beautify it and put flowers and a little bit of bushes and whatever to make it look nice, and I believe that. And he'll do what he can. He'll do the best he can. And -- but we are in the city. I mean, you have to keep that in mind. You know, you're not going to be the suburbs when you're in the city. So, with that I'm just saying, you know, everything seems fine with me with the agreement as long as, like, he said with the buffer zone, you can't go where that grass area is, put the cars up there. He's agreed to that. And it's fine with -- everything -- as long as it's kept clean and he's agreed with that, you

know, and everything else seems fine. I think it will work perfectly. And with the lights. So it's not shining in my bedroom. We were under construction with the waterworks for quite a few years, and we had a lot of problems with the trucks and all this, all through the night, but it was part of the job. And I had been with the city with all that. But you live with it. There's certain things you have to live with in life, and it is a gas station. But he did say he would fix it up nice and make it clean and I believe him. And I just wanted to say that on his behalf because I've known him for over 25 years and he's been a great guy. So....

CONSTANTINE ALEXANDER: Thank you very much.

LORI RODDENBERRY: Thank you.

BRENDAN SULLIVAN: Anybody else who wants to speak? Identify yourself, please.

JAMES McDAVITT: My name is James

McDavitt M-c-D-a-v-i-t-t. With me is Barbara Yeoman Y-e-o-m-a-n. We live at 11 Brewer Street at Harvard Square. We're not neighbors, but we are here to testify to George's integrity and truthfulness and his reputation for such in the Cambridge community. If he says he will make it, you know, look nice, you know, he can be trusted to make it look nice. He's a man of his word.

We're also here as motorists. He's our mechanic quite frankly. And this city needs, you know, places with responsible mechanics and gas stations so that we can go to a place that we can trust. Therefore, there is a public need and a public good in granting this application.

Do you want to add anything?

BARBARA YEOMAN: Yes. And you can absolutely trust George. I've known him for 25 years, and he is so trustworthy. I think the only way that you could beautify that is

to get a painting, and that you're sure it's going to be beautiful all the time. You can't be sure when you put in shrubberies and trees that they're going to grow the way you want them to. So, you don't have to be there everyday to find out if the shrubbery is going to be pleasing to the neighbors. And it is pleasing to the back neighbors, we've already found that out. So, it's nice to glorify Cambridge, on the other hand we can't expect businessmen to support all the glorification of Cambridge scenery.

JAMES McDAVITT: We think George's word is worth more than painting of the shrubbery. If he says he'll make it look nice, he will do that. And we need his business to stay here in Cambridge for the good of the city.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you.

JOE ARTHUR: Joe Arthur

A-r-t-h-u-r, 9 Poplar Road. I'm one of the abutters of the property. I've been in the property for 13 years and it was a functioning gas station when we first moved in, so we didn't have any expectation we'd have anything else in our backyard. The things that I want to add, I agree very much with all the things that Matt said. That we would like to see more extensive beautification in that area where the trailer is and the attempt to hide it. There was some talk about removing it originally when we first started negotiating with what that space would look like, but apparently the trailer is going to stay.

The other thing that I wanted to mention that hasn't come up is that there is a sign today. It's a Gulf sign, isn't it? That sign is on the south edge of the property and it's dark now. It's not operational anymore. It's not turned on anymore. But I

think that might be something that you have to replace with a Shell sign or else take down.

GEORGE BECHWATI: Sure.

JOE ARTHUR: I think that hasn't been brought out yet.

The other thing that I'm slightly worried about is by opening another bay, the -- this abuts the parkway and the kind of the drive space from the parkway to the bay is fairly narrow. So there's not a lot of room for cars to line up to get in. And there's not a great deal of parking available on the sides of the building. So we are interested in making sure, as was laid out in the conditions, the condition about where a parking lot should take place with that respect. It is the possibility that all the parking is there that they need because of the limited space that occupies that.

Thank you.

BRENDAN SULLIVAN: Thank you.

Anybody else who wishes to speak?

JOSEPH O'LOUGHLIN: My name Joseph O'Loughlin O-'-L-o-u-g-h-l-i-n. I've known George for probably 25 years or thereabouts. I'm a small business owner in Cambridge. It's extremely hard to run a business in Cambridge with regulations, other things. He's trying to make improvements and stay in the neighborhood. I would appreciate it. He's been my mechanic for many, many, many years. I like what he's proposing and I think it would be beneficial. He is a good mechanic. I like the 60 day idea if that helps George out with the Registry. I'm in favor of the proposal.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: I see nobody else. Let me close public comment.

Well, back to my --

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, just I believe there's a letter from this abutter in support and a letter from the Mayor.

BRENDAN SULLIVAN: There's a letter from the Mayor dated July 27th. "This is a follow up to my July 14th letter. Met with Mr. Bechwati in my office. We had discussions. He informed me that he has met with the neighbors and abutters to discuss their concerns and issues. They have come to an agreement. I want to commend Mr. Bechwati for taking swift action for coming to a good faith agreement with the neighbors. Mr. Bechwati is generally interested in being a good neighbor within this community. I hope that you will grant approval of this case once the letter of agreement from Mr. Bechwati has been submitted."

There is correspondence signed by David

Maher, Mayor.

There is correspondence from William A. Jessiman, J-e-s-s-i-m-a-n. He owns the house next-door to the gas station. Closest property to the gas station at 254. He's owned it since 1981. Mr. Bechwati and/or his brother Tony have owned the gas station for as long as he can remember. They've been wonderful neighbors. And they're work is impressionable. And anyhow, he would -- he's in favor.

Okay, those are the correspondence which they ask not to be read allowed. So we will skip that. Anyhow.

ATTORNEY JAMES RAFFERTY: Thank you. Okay.

BRENDAN SULLIVAN: That's the end of public comment I guess. Now I'm back to my desire, wish for a more defined plan.

I open it up to --

SLATER ANDERSON: What is the

Board -- who's your concern with transferring the license? Who wants the answer?

ATTORNEY JAMES RAFFERTY: Is it the Registry of Motor Vehicles that you have to let them know? Or is it Shell?

GEORGE BECHWATI: Registry of Motor Vehicle.

ATTORNEY JAMES RAFFERTY: He's been approved for his --

GEORGE BECHWATI: Mr. Mike Devini from the Registry of Motor Vehicle.

SLATER ANDERSON: What's the risk that your --

GEORGE BECHWATI: If we --

ATTORNEY JAMES RAFFERTY: Let the inspection --

SLATER ANDERSON: This is to do inspections, car inspections?

ATTORNEY JAMES RAFFERTY: Right. My understanding is if there's a gap, they

could relocate the license to another.

GEORGE BECHWATI: And that the machine from 603 to Concord Ave. to 260 Lexington Ave.

ATTORNEY JAMES RAFFERTY: Someone else can get the machine.

BRENDAN SULLIVAN: You're not equipped to do those inspections anyhow?

GEORGE BECHWATI: Yes, we are, Mr. Chairman.

ATTORNEY JAMES RAFFERTY: You're not going to build this overnight. Why don't you just move your machine now?

BRENDAN SULLIVAN: What's the purpose of the bay?

GEORGE BECHWATI: The condition to move it in, the city will be or going to give us the new bay.

ATTORNEY JAMES RAFFERTY: Well, the city is saying -- the Board is saying if you come back in two weeks with an acceptable

landscape plan.

GEORGE BECHWATI: As far as I see it, and the Chairman see it and everybody at the Board, that most of the neighbor happy and only this area here we did not agree on yet.

BRENDAN SULLIVAN: George, the question I'm asking is what is the purpose of the new bay?

GEORGE BECHWATI: To get the machine in the station, Mr. Chairman.

BRENDAN SULLIVAN: All right. That's the purpose of the new bay.

GEORGE BECHWATI: Right.

BRENDAN SULLIVAN: You cannot do inspections in the existing bay?

GEORGE BECHWATI: As is? No.

BRENDAN SULLIVAN: So, you're not going to be up and operational with this new bay for a number of weeks if not a few months anyhow.

GEORGE BECHWATI: Exactly. But the

Registry they will grant us a use what we have until we get the right thing.

BRENDAN SULLIVAN: And I can't see how they would pull the plug on just two weeks.

GEORGE BECHWATI: And I could give you -- I mean, I could give you the Registry people telephone number.

DOUGLAS MYERS: Personally I don't want to put Mr. Rafferty on the spot, but as a practical matter, could you advise preemptively the Registry of Motor Vehicles about this via letter about the status of this application before this Board including the high likelihood of our approval once the conditions we asked for tonight are met, such as to prevent the Registry of Motor Vehicles from acting adversely to your client within the next two weeks?

ATTORNEY JAMES RAFFERTY: Yes, I think I could.

CONSTANTINE ALEXANDER: I had the same reaction. I would think that a letter, you know, as counsel to the -- I'm not sure we'd say you're highly confident, I wouldn't say that, but otherwise a letter saying that the Board is looking favorably upon this, but they want further information.

ATTORNEY JAMES RAFFERTY: I think I could characterize this in a favorable light and say that I believe that the remaining issue involves landscaping and an acceptable plan would be my expectation that supported this. And even Mr. Longo has expressed support to the petitioner.

So, yes. I mean, I'm not aware of the details of this Registry business. I know that it's -- we had a continuance two weeks ago and now this one. But I appreciate the offer on the 60 days, but I have to honestly say by the 60 days, by the time the decision gets written and you get a building permit,

I just don't know --

TAD HEUER: The question is whether the Registry sees a vote and a vote is good enough for them and the case is open and it's not good enough for them, I don't know.

SLATER ANDERSON: I've never known the Registry to move very quickly. Especially --

BRENDAN SULLIVAN: Especially July and August. There's nobody there. You'll handle that.

Let me make a motion to continue this matter until August 11, 2011 at seven p.m. on the condition that the petitioner change the posting sign to reflect the new date of August 11th and time of seven p.m. We have a waiver of --

DOUGLAS MYERS: Before we vote may I express one thought? Again, without adding unduly to the applicant's burdens here, the more specificity in the landscaping plan in

view of the concerns that have been expressed, and what the Board has recognized there is, would be helpful, including not the height perhaps of every tree, but the height of trees that are going to be planted in the areas that appear to be most important I think would be very helpful to the Board when they review the plan.

CONSTANTINE ALEXANDER: Before we take a vote on the motion to continue, would it be helpful if you wrote in your letter if we put as part of the record that we, that subject to reviewing the landscaping plan to our satisfaction that we look favorably upon your application?

ATTORNEY JAMES RAFFERTY: That would be very helpful for the sense of the Board.

CONSTANTINE ALEXANDER: I think that makes sense. At least it's my sense.

SLATER ANDERSON: I'll speak for

myself, subject to an acceptable landscape plan, which is consistent with the hand sketch we've seen here, I have no opposition to the application.

ATTORNEY JAMES RAFFERTY: That's helpful.

TAD HEUER: Yes, I would say subject to a landscaping plan that deals with the areas surrounding the trailer, I'd say at least considering on all three sides of the trailer, although it may not be possible, but some acknowledgement that there is landscaping on all three sides of that trailer, particularly that there is land that could be scaped, particularly as to the tree notion.

ATTORNEY JAMES RAFFERTY: When you say three sides, you anticipate landscaping on this side of the trailer?

TAD HEUER: Just whatever is going to be done, if there's anything that could be

done to beautify those areas to be considered. But certainly this area here and the area --

ATTORNEY JAMES RAFFERTY: Right. I think -- right. It's the view coming, because there is -- I mean, there is a dumpster and an oil tank. I don't think we have room for landscaping there.

BRENDAN SULLIVAN: You need to go out there and walk it and you can see what's possible.

TAD HEUER: But as to the relief that's being requested and to the bay and the canopy, I would be in support as long as the landscaping which is relevant to this project but not relevant to the specifically to the two items that I think are concerns to the Registry.

DOUGLAS MYERS: Believe it or not I have no further comment.

ATTORNEY JAMES RAFFERTY: I think

your comment's been very helpful. I wouldn't want to chill any further.

BRENDAN SULLIVAN: We're still talking two areas. Landscaped areas.

ATTORNEY JAMES RAFFERTY: You want to see beyond here?

BRENDAN SULLIVAN: Yes.

ATTORNEY JAMES RAFFERTY: Further enhancement?

BRENDAN SULLIVAN: So detail there. And, again, what's going in there and what's going in there.

ATTORNEY JAMES RAFFERTY: She trusts him. She doesn't need anything.

BRENDAN SULLIVAN: She may, I don't. It's not a question of trust.

LORI RODDENBERRY: Can I bring up a word about landscaping?

BRENDAN SULLIVAN: It's a question of verifying.

ATTORNEY JAMES RAFFERTY: I think it

was Regan who said that, wasn't it?

All right. This has been helpful. I think this as close to approval as one can get without getting an actual vote. I think we would -- unless the Board members would correct me, I would characterize this as saying that the Board expressed consensus that if an adequate landscape plan was provided, it was sufficient support to grant the relief. Would that be accurate?

DOUGLAS MYERS: Yes.

CONSTANTINE ALEXANDER: That's fine.

BRENDAN SULLIVAN: Okay on the motion to continue.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Anderson, Myers.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

(Whereupon, At 10:45 p.m., the  
Zoning Board of Appeal  
adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the  
undersigned Notary Public, certify that:

I am not related to any of the parties  
in this matter by blood or marriage and that  
I am in no way interested in the outcome of  
this matter.

I further certify that the testimony  
hereinbefore set forth is a true and accurate  
transcription of my stenographic notes to the  
best of my knowledge, skill and ability.

**IN WITNESS WHEREOF**, I have hereunto set  
my hand this 10th day of August 2011.

---

Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
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