

BOARD OF ZONING APPEAL

FOR THE

CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JUNE 27, 2013

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Timothy Hughes, Vice Chair
Thomas Scott, Member
Janet Green, Member
Andrea A. Hickey, Associate Member

Sean O'Grady, Zoning Specialist

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(7:15 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: Good evening. The Chair will call the Zoning Board of Appeals to order. And we'll call our first case, case No. 10452, 1678 Massachusetts Avenue.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, my name is James Rafferty. I'm an attorney with offices at 130 Bishop Allen Drive in Cambridge. I'm appearing on behalf of the applicant Nancy Jitjaruek, J-i-t-j-a-r-u-e-k. Although I believe the application may be in a corporate name. She's the president and principal shareholder of the Tianearn Corporation spelled T-i-a-n-e-a-r-n.

CONSTANTINE ALEXANDER:

Mr. Rafferty, before you begin your presentation one of the members has a disclosure to make.

ANDREA HICKEY: Attorney

Rafferty, I believe that John Bigelow who is in the audience here may be offering some testimony in your case. I have retained him as a real estate broker personally in an ongoing case, so I wanted to disclose that for the record. We have an active case pending together.

ATTORNEY JAMES RAFFERTY: Okay, thank you.

CONSTANTINE ALEXANDER: Do you have any objection?

ATTORNEY JAMES RAFFERTY: No, none whatsoever. Thank you.

CONSTANTINE ALEXANDER: Go

ahead.

MEMBER FROM THE AUDIENCE: Is there a speaker? We can't hear.

TIMOTHY HUGHES: Yes, there is.

ATTORNEY JAMES RAFFERTY: This is a location, the Board may remember --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES

RAFFERTY: -- this is a location on Mass. Avenue on the block between Shepard and Martin Street. It is Ms. Jitjaruek is planning on opening a restaurant in this location. Previously she appeared before the Board and was granted a Special Permit concerning a reduction or a waiver of the parking requirements. Subsequent to that, she obtained a Common Victualer's License and a beer and wine license from the License Commission. As

we narrowed in on the plans with the Building Department, we came to the realization that the building and the lot are -- exceed the 100-foot depth of the business district on Mass. Ave. by just a few feet. It's not unlike the case the Board had a year or two ago that I was involved with on Hampshire Street where a restaurant had a portion of its premises in the residential district. If you've had an opportunity to view the site plan or the floor plan, you can see that the main use of the restaurant is all occurring within the business district. And as we looked at alternatives to having to return here with the Building Commissioner, there were a few. We wouldn't be troubled by the use of the rear door which is in the residential

district because that is restricted and right now it's restricted in two ways:

The Special Permit that this Board granted restricts that door. The license that was approved by the License Commission adopted similar restrictions around the use of that door. But what it really does is it provides a stairway that gives access to the basement where in the restaurant business there's storage --

CONSTANTINE ALEXANDER: The back area of the building that's in the residential area?

ATTORNEY JAMES RAFFERTY: Yes, if you can see in that floor plan right there, you'll see that there's one bathroom and one stairway are in the residential district. And it would require us to having to relocate that

stairway into the business district in order to access that. Mr. Singanayagam says that then we could perhaps create a wall with a door in it, and it seems to -- this case seems to fall within the provisions of the Ordinance that talk about a logical use of property. We understand the concerns by the abutters about the rear place, and we have accepted use restrictions. Employees cannot gather at the rear. So the basement has become a place where employees will be going down to have a break, have a room down there. There probably will be some food prep down there as well. So accessing the basement is critical to the operation of the restaurant obviously to be able to take advantage of the existing layout for the bathrooms as well. I

think the plan depicts that about 80 percent of the ladies room is in the business district. A small portion would be in the residential district. We would then have to relocate the office or the men's room. And then it really then begs the question of what would occur in these few feet? And since it's a residential district, it would be the world's smallest studio apartment or something. I don't know.

CONSTANTINE ALEXANDER: Isn't there an apartment right on the second floor right above the rear entrance?

ATTORNEY JAMES RAFFERTY: There is, yes.

CONSTANTINE ALEXANDER: When I went to the site, I was shocked to see there's a second doorway on the facade.

ATTORNEY JAMES RAFFERTY: That's right, yes.

CONSTANTINE ALEXANDER: And you look up, and there's a picture window with curtains on it.

ATTORNEY JAMES RAFFERTY: Right. So I mean which is a residential use in a residential district.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Nothing wrong with it, right.

ATTORNEY JAMES RAFFERTY: So it's a hardship that's related to the structure. If the structure wasn't this long and because it's a two-story structure, simply removing this space isn't practical, so the request, the Variance is to allow this very small

portion of the building to be used as part of the restaurant use. So thus it becomes a Use Variance. We're very mindful of the limited application of such Variances, but in this case, the use really doesn't change the intensity of the restaurant. It really involves, as I noted, egress into the basement and a bathroom for patrons.

CONSTANTINE ALEXANDER: What would the restaurant do about trash? Where are they going to store the trash and how are they going to get rid of it?

NANCY JITJARUEK: We have going to be (Inaudible).

ATTORNEY JAMES RAFFERTY: There's a trash room I think that's depicted on here.

NANCY JITJARUEK: There is a

trash right here.

ATTORNEY JAMES RAFFERTY: This is a refrigerated trash area. And all trash will go out through the front of the premises.

CONSTANTINE ALEXANDER: So the trash will be stored in the --

NANCY JITJARUEK: Yes.

CONSTANTINE
ALEXANDER: -- business area -- the residential area?

NANCY JITJARUEK: Yes.

CONSTANTINE ALEXANDER: But not taken out the back door.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Okay.

NANCY JITJARUEK: Out the front.

CONSTANTINE ALEXANDER: And the same with food deliveries?

ATTORNEY JAMES RAFFERTY: All deliveries. All in the front.

NANCY JITJARUEK: Everything has to be in the front door.

CONSTANTINE ALEXANDER: Everything has to go through the front door.

ATTORNEY JAMES RAFFERTY: And those are restrictions, as I said exist, that exist. And if the Board saw fit to grant the relief here, I would presume that the same restrictions that exist in the Special Permit case could be easily applied to this case.

CONSTANTINE ALEXANDER: For the benefit of the other Board members, if you haven't seen it, we have a letter from -- I guess it's an abutter, or at least an interested citizen. And in the letter

they quote from the restrictions that were placed on the restaurant with regard to this area by the License Commission, and I will read that into the record later on. You'll hear some of the restrictions that were placed on the use of the rear door by the License Commission which is what Mr. Rafferty is referring to.

ATTORNEY JAMES RAFFERTY: Right.
So that's essentially it.

CONSTANTINE ALEXANDER: Okay.
You've answered my question about trash and food service. And the doorway that's there, the one that's in the rear, it's right on the street level?

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: There's no setback.

ATTORNEY JAMES RAFFERTY:

There's no setback. There is no property. The building goes to the property line.

CONSTANTINE ALEXANDER: The property line.

And it's basically a very small, it's a doorway for a residence. It's not a big, big doorway?

ATTORNEY JAMES RAFFERTY: No. It's a typical, probably 32-inch or three-foot door.

CONSTANTINE ALEXANDER: Okay.

Any questions from members of the Board at this point?

ATTORNEY JAMES RAFFERTY: This is the site plan that shows the entrance.

CONSTANTINE ALEXANDER: And I think you said in your application the

total square footage in this restaurant premises is only 15 percent is in this residential area. 85 percent is in the --

ATTORNEY JAMES RAFFERTY:

Correct. That's correct.

CONSTANTINE ALEXANDER: Round numbers?

ATTORNEY JAMES RAFFERTY: That's correct. And in my dimensional form I actually cited the amount of square footage because the vast majority of the square footage is in the restaurant.

CONSTANTINE ALEXANDER: My recollection is it's somewhere, maybe in the supporting statement, you have the number 85 percent in the business district.

While you're looking for that, I'll

open it to public testimony since there are no questions from the members of the Board.

Anyone wishing to be heard on this matter? Please come forward, give your name and address to the stenographer.

HELEN SOLORZANO: I'm Helen Solorzano, S-o-l-o-r-z-a-n-o. I'm one of the people that submitted the letter. And I just want to reiterate that we're just very concerned about the back door. Previously to this restaurant the property was used as a bookstore, a bake, a campaign office, and the back door was never used at all. And so -- but the operation of a restaurant is very substantially different than the operation of an office or a bookstore. There's a lot more traffic, a lot more

trash, a lot more deliveries, a lot more much later hours. And so -- and we've already had ongoing issues with the other restaurants on the block with their back door usage that still continues now of noise and deliveries, trucks parking all over the street, parking on the sidewalk, which we explained in great length in this letter that we submitted. So, we just want to make sure -- we oppose any Variance that would allow any use of the back door other than emergency egress.

CONSTANTINE ALEXANDER: You're familiar with the conditions that were placed by the License Commission?

HELEN SOLORZANO: Yeah.

CONSTANTINE ALEXANDER: Are those satisfactory to you? Do they go far enough in your opinion?

HELEN SOLORZANO: Well, we're unhappy about some other things about the ventilation system, but as far as the back door, yeah, basically we don't want a use, you know, just used for an emergency exit and have an alarm.

CONSTANTINE ALEXANDER: When I read the License Commission --

HELEN SOLORZANO: Yeah, yeah.

CONSTANTINE ALEXANDER: So you're --

HELEN SOLORZANO: Yeah, yeah.

CONSTANTINE ALEXANDER: Let me ask the question again. You're basically -- you don't -- this goes far enough for you? You don't think it has to go farther? You want us to go farther in terms of conditions? I'm just trying to tell us what you want.

HELEN SOLORZANO: Well, as far as the back door.

CONSTANTINE ALEXANDER: I'm sorry?

HELEN SOLORZANO: As far as the back door.

CONSTANTINE ALEXANDER: Yes, as far as the back door.

HELEN SOLORZANO: And we just want it to, you know, stay that condition on the property, you know, at least in the future.

CONSTANTINE ALEXANDER: Okay.

HELEN SOLORZANO: I think some other people have some additional points.

CONSTANTINE ALEXANDER: Okay, thank you.

Is there a building requirement -- a legal requirement to have a second door?

THOMAS SCOTT: Yes.

ATTORNEY JAMES RAFFERTY: I
would imagine the Building Code --

THOMAS SCOTT: Yes. When you
have the occupancy -- what's the
occupancy here? How many?

NANCY JITJARUEK: 75 seats.

ATTORNEY JAMES RAFFERTY: 75.

THOMAS SCOTT: Once you go over
50 --

CONSTANTINE ALEXANDER: The
solution is not to seal the door or
anything?

THOMAS SCOTT: No.

CONSTANTINE ALEXANDER: Further
comments from the public?

BHUPESH PATEL: Can I just see
the plan?

CONSTANTINE ALEXANDER: Your

name?

BHUPESH PATEL: Sorry. Bhupesh Patel. Three Bowdoin Street.

ATTORNEY JAMES RAFFERTY: You want to see this?

BHUPESH PATEL: I just want to make sure. It's probably different than the one we have.

Just because most of the neighbors haven't seen this, their biggest concern was that the dishwasher was in that back corner prior when the Licensing presentation was given. So I think that's what most people were concerned about.

NANCY JITJARUEK: No, we changed.

BHUPESH PATEL: So it's pretty clear it's no longer in the back area

anymore. So I think their only concern -- because that's basically what we discussed was that would be the biggest issue. The only other issue is that this area be defined as some sort of common area so they don't begin to congregate there and open the back door for ventilation. That's what the other restaurants do. Because there's no clear division between that area and the kitchen area. So, we know that the kitchen area is not where this is anymore. The staircase is there. But we don't see a reason why there can't be some clean distinction between that space and this back space by having a doorway to enforce the fact that it's not part of the kitchen. Because it would be pretty hard for us to enforce it after the fact if the

kitchen starts to bleed into that space. Thereby it's a common area where they could use it for things that we've asked the existing owner for, which is the upstairs is no trash area. So their trash is out on the sidewalk slid between what is their building and this garage in this alleyway, and it constantly falls over. And so the idea is if that's a trash area for that upstairs apartment, they could put their trash there, they could put their bikes there. The owner had tried to accommodate that before he lost the tenant, so we were expecting it to be accommodated in the space. And we understand that the staircase is there, and that's why we knew there would always be a reason for the restaurant owner could go into that back area, use the staircase.

We just want a clear delineation because we basically had the same problems with this vendor here who uses the back area as kind of a common area to go to the basement and the basement to congregate there.

The other thing is that the neighbors wanted to ensure that -- we actually went and sat down with Ranjit relative to this property when they were coming for the December Special Permit, and it was under his reassurance that they wouldn't be able to use that area for kitchen use so this wouldn't be a problem as far as restricting the back door. That became the premise for the License Commission to put that restriction on there. So it was a pretty straight forward process as far as logically why

the door was restricted. But the neighbors knew that there would be one more meeting to discuss what would be used inside of that area. And I think that's the biggest concern is that. Clearly we all know that our properties are worth quite a lot. These row houses are all worth over \$700,000. These six apartments here are all worth over \$600,000. And we know that these two properties alone are worth a lot more than this building's worth. So relative to that we just want to make sure that area is somehow separated from the kitchen by a wall and a door that's not the wall and the door that's not the wall and the door that's in the residential zone up against the back of the building.

CONSTANTINE ALEXANDER: As you

know, typically from a Zoning point of view we don't get involved with the internal use of the structure. It's dimensional.

BHUPESH PATEL: Yeah.

CONSTANTINE ALEXANDER: I'm trying to understand why, we should as a Zoning Board, put restrictions of force on what can be done in the inside of this area that's in before us? I mean, a dishwasher, I suppose the concern is noise.

BHUPESH PATEL: Yeah.

CONSTANTINE ALEXANDER: You know, I don't know why -- I'm having a lot of trouble coming to grips as a Zoning matter what the complaints -- not complaints, for the concerns that you and your fellow abutters, neighbors are

expressing.

BHUPESH PATEL: Well, I mean if you have a house across the street from a door that's abutting the sidewalk, what happens behind that door becomes a very direct value on your property. And if that use behind that door is Zoned for something that is supposed to be protected, you expect it to be protected. So if it was going from Office 1 to Office 2, I know it wouldn't be a problem because we've always had an agreement with the vendors that are in there not to use the back door, and it's been quite easy to do that. But a restaurant's a special case to the point that they actually have a separate license for it, and there's a lot of enforcement issues around a restaurant that can be very detrimental to the

residential property values. And that's why I can't imagine doing anything but restricting that back area to not having any kitchen for commercial use. I could see a bathroom, but I can't imagine having a very non-descriptive restriction of what the space is used for considering they're going to be using it to get up and down the staircase. And as you've seen in most restaurants, if you have a staircase that you use to get up and down, pretty much that staircase gets swallowed into the restaurant use. Everything at the top of the staircase and the bottom of the staircase has got everything to do with the restaurant. So that is basically saying that they're allowed to put a restaurant use in that back area when there's really no reason to do that.

They've been able to fit everything in here besides the bathroom. So what's the hardship? Why can't that area not be restricted to not allow kitchen use?

CONSTANTINE ALEXANDER: I think you've got that question backwards. Why do we have the authority to tell this person how to use the interior of her space in this area? The concern would be back door people going out affects the residential neighborhood. Understood. And that's what the License Commission addressed.

THOMAS SCOTT: And not to mention that it's been planned in such a way where that space is designated for either customers to use the bathroom or for employees to go down stairs and that's it.

ATTORNEY JAMES RAFFERTY: I

didn't want to interrupt the speaker, but if I might, when we laid out the floor plan after meeting with the Inspector, we identified some of the more benign elements of the restaurant operation, mindful of the neighbors' concern about the activities associated with the kitchen and the prep and cleaning of food. So, the area will only serve as a hallway that will allow patrons to get to the bathroom, and also allow employees to access the stairway. So I don't know where you'd put a door because you still need, you still need -- the patrons still need to get to the bathroom. But, there could be bathrooms on the other side of doors in residential districts and I don't know it would affect anyone's value. So all that will be in the -- all

that will be in the residential district would be a half of a bathroom, a full bathroom, and a stairway. That's the extent of the operation. And obviously the Variance is tied to that plan. And in many ways the Variance is more enduring than the License Commission restriction because --

CONSTANTINE ALEXANDER:

Absolutely.

ATTORNEY JAMES

RAFFERTY: -- because licensees can change and restrictions can be modified, but that Variance will run with the land forever.

CONSTANTINE ALEXANDER: I also would point out, maybe you're not aware of this, that is if a restaurant should leave the premises and a different type

of business comes in and wants to use the whole building, they would have to get Zoning relief.

BHUPESH PATEL: Yeah.

CONSTANTINE ALEXANDER: If your concerns or the neighborhood's concern maybe not as great, it's not forever. That part of the Variance is not -- forever so long as a restaurant is operated on this premises. But otherwise, it's not so....

BHUPESH PATEL: That all makes sense. I think the biggest difference is they're designating it as that area, but it's not being restricted as that area. So in other words, for them to designate it's not going to be used for kitchen purposes, just the back staircase -- that area is only going to be used to access

the back kitchen area --

ATTORNEY JAMES RAFFERTY: Well, with all due respect, the relief would be tied to the floor plan. So what you've just said is inaccurate. It may not be verbalized, but the plan as depicted will, I imagine will be a condition of the Variance.

CONSTANTINE ALEXANDER: It will.

BHUPESH PATEL: Well, that's the whole point. In here there is no designation for what this back area's used for. If it says it's only used for access to the staircase, I would understand that.

CONSTANTINE ALEXANDER: Wait a minute. The plan -- go ahead, Janet.

JANET GREEN: I was going to say how large is that area?

BHUPESH PATEL: It's a pretty large area. It's -- the staircase is three feet wide. That looks about five feet wide.

JANET GREEN: I mean, so it's a regular staircase width?

BHUPESH PATEL: It's five feet wide. They can easily store things on one side and use it as a hallway.

ATTORNEY JAMES RAFFERTY: So if there was a case of noodles next to the stairs, it would affect the value of your home?

CONSTANTINE ALEXANDER: That's the problem. That's exactly my problem. I don't understand how the internal use of this space in any way impacts the residential -- the residents around there. To be sure going in and out of the

building does. Everybody's addressed that. But the fact that they want to put a stack of noodles or they want to put another table back there, take an even more extreme case, they want to extend the seating, the restaurant is a wild success, put a few -- can't do it.

ATTORNEY JAMES RAFFERTY: The License Commission approves a floor plan with seating. You couldn't do that --

CONSTANTINE ALEXANDER: You have to go back to the Licensing.

ATTORNEY JAMES RAFFERTY:
Couldn't do that unilaterally, right.
Yes.

CONSTANTINE ALEXANDER: You couldn't do that unilaterally.

ATTORNEY JAMES RAFFERTY: And I would say given the way it's depicted now

and there's no table there, the Variance wouldn't allow that.

CONSTANTINE ALEXANDER: That's correct, the Variance would not allow that. I'm trying to make a different point. The fact of the matter is that I'm still loathed to get involved with -- and I'm going different than the License Commission. What -- how they use the internal space. Unless it has an external impact on the neighborhood, I can't see the external impact. So I'm, I would think the Licensing Commission's conditions all dealing with egress, those are all wise. We're going to incorporate them or put them as part of our decision, but that's it. I mean and we're going to tie it to the plan that you've seen right here. What more do you want?

BHUPESH PATEL: Well, again, if that plan actually designated what that back area's being used for, that would make sense. To say that you're going to restrict the back door use makes sense as well. But it's pretty clear that they've had the same restriction on this property when it used to be Forest Cafe that they had to have an emergency egress in the back.

ATTORNEY JAMES RAFFERTY: Excuse me, that's in the business district. So it's just factually incorrect, legally incorrect.

BHUPESH PATEL: The point is they had a restriction on the back door and there were a lot of violations on that back door.

CONSTANTINE ALEXANDER: That's

not our case. It's not this person. I don't want to get into --

BHUPESH PATEL: It may not be the case but the point is it still had a detrimental effect to the extent that basically because what was being done behind that back door, for six years when Forest Cafe was there, for two years when the next tenant was there, and the one year that the tenants that's been there now they have still has not stopped violating the use of that back door. And the License Commission's been on top of them through this process.

CONSTANTINE ALEXANDER: Okay.

BHUPESH PATEL: Mainly because they have real estate directly behind that back door that is extremely heavy restaurant use. Now you tell me a single

restaurant that's got a staircase in the kitchen that the use around that staircase doesn't become extensive, intensive restaurant use. Especially when it's not designated for what it's being used for. And it's your responsibility to give us an idea of how you're going to restrict the use of that back space. It's a very large space. It has a staircase which becomes a very important use of that restaurant. It's going to be used. That back area is going to be used. And all we have is the License Commission and you guys coming in there and giving them a violation every six months because they open the back door for ventilation or they have stuff right up against the back door and every now and then they open it to get stuff in and out.

But it will happen. If you use that space right next to that door, they will start to use that door because we have two other vendors that have done exactly that. So we're coming from the fact that we've already shown through the License Commission with heavy documentation that existing properties that abut our property are violating the restriction that's put upon them by the License Commission. Even this is restricted from a use standpoint, and Ranjit said well, from a Zoning standpoint don't use this commercial driveway and they still do. So even with those restrictions that intensive use of restaurant, and that's why there's a separate license for it, in hopes of trying to deter this extensive use or intensive use, and it hasn't

deterred them. I feel by the Zoning Board granting the Variance they're using intensive use in this area which at this point they're not saying they're not doing it. They're just saying it's an open area and it's a staircase and we have to get through that open area. There's no restriction on that open area. It says it will only be a common area used to access the staircase. There will be no storage of kitchen stuff. There will be no use of kitchen stuff in that area. It will simply be access hallway to that staircase. That would be great.

There's no wall that says that area beyond that line we're allowing them to use to access the staircase because of hardship. We don't want to spend the money to flip the staircase which to me also doesn't

make sense. I looked at that restaurant space for a tenant and we flipped the staircase because we knew we couldn't use the back area. It wasn't a big expense. The staircase would cost them \$2,000. So I find that to be of no hardship at all. There's not a single hardship in that floor plan that requires a staircase to be the way it is. They do not need access to the basement that way. All these other vendors have a much smaller space than they do and they have a grill counter, a three-foot walking area, an island, another three-foot area for the dishwasher, and a hallway. All that stuff fits in 22 feet. They do not need that back area. So there's no hardship there. Even a staircase being in that location could easily be flipped.

CONSTANTINE ALEXANDER: The hardship would be if we didn't grant them relief, they would have to wall off that back area so it could not be ever used to are any purpose for the restaurant. It would then have to take away some space in the restaurant to create a men's room. And they'd have to deal with where they, likely, either lose some more seating or lose their ability to get to the basement where they're going to have storage for various things. That's the hardship. It strikes me as a true hardship particularly given the nature of the structure.

BHUPESH PATEL: But we're not asking to rearrange that. We're just asking they be restricted for what they can do in that back area so we don't have

intensive restaurant use in it.

CONSTANTINE ALEXANDER: Thank you.

BHUPESH PATEL: We're not telling them to rearrange the bathroom plan. We're just saying there should be a restriction for what that area can be used for. It's pretty clear that you guys should designate a wall after the both bathrooms doors to separate what is basically the back door from another door. Just like you have two doors that are three feet apart for a mudroom to get in and out of an area where you want to be protected from the wind. You could do that and that floor plan doesn't have to change at all. That wall is of little consequence if it had to be built. It changes nothing in the floor. So

speculate from the standpoint of the representative for the Petitioner's standpoint of moving things around to relieve that hardship is not even necessary. We are just asking for a clear delineation of not being able to use that back space for any kind of intensive restaurant use as merely a common area to get to the staircase so they can have full access to that basement.

TIMOTHY HUGHES: I'm not giving it to him. I'm asking him a question. What would you do with the trash if you flipped the staircase?

BHUPESH PATEL: The staircase would stay exactly where it is. It's exactly the same footprint.

TIMOTHY HUGHES: Actually you would have to access it from the other end

where the trash room is?

BHUPESH PATEL: No. You'd actually access it where the landing is. There's a landing here.

TIMOTHY HUGHES: That's already where you access it.

BHUPESH PATEL: No, I'm saying this landing at the bottom of the stair could be the landing at the top of the stair. This is over five feet long. It could be three feet long. So you could have a landing --

TIMOTHY HUGHES: So you wouldn't --

BHUPESH PATEL: -- you've got a landing on both sides without moving the trash.

TIMOTHY HUGHES: So you think there's enough room without moving the

trash?

BHUPESH PATEL: That's right. There's a landing on both ends without moving the trash. You just flip the staircase, the landings are at the opposite ends. There's no reason why that can't be done and this would be a non- issue at that point.

THOMAS SCOTT: I would argue for the contrary that if you put a wall there and a door, what occurs behind that wall and that door would be detrimental to the safety of the people in that building because what would happen is people would start to store materials there, they'd block that exit, and I think the fact that it's exposed and the public have access to it and they know it's a clear exit, is more important than putting up another

barrier that somebody could start piling stuff behind and possibly block that exit. So I'm opposed to that completely.

CONSTANTINE ALEXANDER:

Anything else?

BHUPESH PATEL: Well, the most important thing I think would be the fact that at a minimum we'd want that area restricted from restaurant use. If you're opposed to two doorways being three feet apart, then flip the staircase and make the wall further apart so you have five feet of space there just like you would have in any other facility, a room between two doors being five or six feet. But we need some delineation of that space not being used for intensive restaurant use and being only an area that's used to get to the staircase to use

the basement area only. And there's no proof that any restaurant would ever do that under their own accord with an open floor plate like that that's not designated with any kind of markings on the floor plan for what it's being used for. We're all speculating for what that area is being used for because it's not designated. So I would want some designation from the Variance Board on that area. So that's pretty clear, if they're asking for that hardship to use the staircase, would it be for that, just to get to the staircase and not for anything else.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I would note that the rear door will serve as the required secondary means of egress. The premises, like all

licensed establishments in the city, are inspected every year by a task force; it's a member from the Building Department, the License Commission, and the Fire Department and they do annual on-site inspections. And the access to that door and that hallway needs to be maintained at a certain width. Even though it's not allowed to be used -- to be opened regularly, access to that door has to be available. To put a door in the premises between that space and the emergency egress, I think is folly. And the notion that this is -- would adversely impact the surrounding property owner, one could envision a residential door there. If this became a residential space, we could have a lot more activity in coming and going associated with it. So I think the

applicant has worked closely with the neighbors, is appreciated and understood their concern, and had to really understand this restriction. But there's nothing casual about this restriction. It would be the subject of ongoing monitoring. And I have advised my client that her neighbors across the street are going to be very vigilant on this issue. And it's something and the door -- we discussed it in the License Commission hearings with the fire chief. The door would be an egress only, but it has to be lit and clearly identified. It is the emergency egress out of the space.

CONSTANTINE ALEXANDER: Thank you.

Anything further?

BHUPESH PATEL: Just the fact

that I think a lot of frustration most of the neighbors have stressed is that we cannot rely on the enforcement to resolve this issue so for the Petitioner to claim we have enforcement for this --

CONSTANTINE ALEXANDER: Time out. Time out. You can't rely on enforcement. If we were to grant you the relief you wanted, you have to rely on enforcement to happen.

BHUPESH PATEL: That's right, but I'm saying enforcement from the standpoint of use is very different than enforcement than just the License Commission.

CONSTANTINE ALEXANDER: Okay.

BHUPESH PATEL: Because the License Commission --

CONSTANTINE ALEXANDER: We've

had enough. We've had enough. Let's move on. Thank you for your comments.

Anyone else wish to comment on this matter?

ANNA PERIA CARDENAS: Anna Peria Cardenas, C-a-r-d-e-n-a-s, Bowdoin Street, 10, apartment No. 2. My question is does the Variance -- if the Variance is granted, does that get tied to the property or --

CONSTANTINE ALEXANDER: Oh, yes.

ANNA PERIA CARDENAS: Okay, to the property. I understand, we all understand that this is a residential zone. This is in the residential zone. I know this is not the case of the other businesses that are your neighbors, but they are restaurants, and their back doors open to the commercial zone. So,

okay, they can open the door and they can do their commercial business because they're in a commercial zone. But the restaurant next-door to me which happens to be Julia's has a set up like I think you were describing, whereby the back hallway is -- gets patrons and employees access to the bathrooms and that's it. Like, if you walk out, you just walk out into my backyard basically and there's nothing there. That door gets continuously propped open to ventilate the restaurant. I think our concern -- we understand that if the door is maintained shut, it is not going to affect us, the neighbors. We feel a little bit differently. But if this Variance is tied to the property, whether it's a restaurant use or whatever else,

how do we enforce that, that door really be maintained closed? Because these like conditions have been asked of the other businesses that have gone in whether their back door and rear space is commercial or residential. So how do we --

CONSTANTINE ALEXANDER: Very good question.

ANNA PERIA CARDENAS: -- enforce this?

CONSTANTINE ALEXANDER: And the answer is one that Mr. O'Grady is not going to want to hear. The way you do it is if you see people using that back door, propping it open, whatever, traffic going in and out that's not emergency, you can call up the License Commission and you call up Mr. O'Grady or the ISD and you say

that the terms of the license, the restaurant license and the terms of the Variance are not being complied with.

ANNA PERIA CARDENAS: Okay. So because the license to the restaurant was granted with the conditions you read, that that door be -- this Variance would have that same wording?

CONSTANTINE ALEXANDER: Well, we haven't gotten there yet.

ANNA PERIA CARDENAS: You would -- you were agreeing to consider that same language?

TIMOTHY HUGHES: Absolutely.

CONSTANTINE ALEXANDER: Oh, yes, yes. We haven't read the motion yet. I think you can assume that.

ANNA PERIA CARDENAS: I can find you my phone logs at the times I have to

call the restaurants, of the times I can go outside and say you guys are smoking, I can smell it. I mean it is -- like, this didn't happen ten years ago when I bought my property. It has been exacerbated over the last couple of years. And I don't think that the system is really set up where I -- I mean, do you want me to call every night? Because it happens every night. So what happens to the restaurant? Does it get fined? Does it have a citation? Does someone come inspect the door? No one ever came to Forest Cafe to put the emergency egress connection to the door, which was what was put in place in theory so that door would not be used. So I think our concerns are fine. The door will be shut. The business can be conducted as commercial

in this residential zone. But if that door is opened and I call the License Board and the complaints start rolling about deliveries, about patrons, about noise, about this, that, and the other, we want to know that there really is a way to enforce this because it is decades worth of neighbors complaining and it just falls on deaf ears. And that is our concern. And that is where we think the property value hurts the residential. Like, all our experience hurts.

Everyone who has kids who have grown up there, like, the sidewalks are broken up. I recognize a lot of your faces, you recognize my face. We have said these thing to you time and time again. So that is our concern. And I hope that you understand, and you have agreed to keep

the door shut, which is great. We don't want the property to be vacant. It's been vacant for quite a while. It would be nice if we had a business there. It hurts our neighborhood just as much to not have a viable business in there than it does the landlord to not have a tenant. But if you leave and the next guy comes in, you know, we could have a great relationship. We had a great relationship with the other guy. Oh, it's not gonna happen. Oh, it's not gonna happen. Oh, it's not gonna happen. Years and years of it. If it's going with the property, and we can, and we can complain and we see that these complaints are not being addressed, we would like to know that there's more of a recourse that we can follow than the things really would

be dealt with.

CONSTANTINE ALEXANDER: I think the recourse, and this is free legal advice that's probably dead wrong, your recourse is you could bring a lawsuit directly if you don't feel that --

ANNA PERIA CARDENAS: I know. I'm not litigious. You know, I like the neighborhood so --

ATTORNEY JAMES RAFFERTY:
Mr. Chairman, I just offer one observation because I do have some experience representing many of the uses in the area. To my understanding, few if any, of those restaurants face the Zoning restriction because they do not extend into. So that remedy is not available to neighbors.

ANNA PERIA CARDENAS: Right.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY:

Similarly I'm unaware of any License Commission restrictions on the use of the back doors because those back doors are in the commercial district. And the reality is that all along the Massachusetts Avenue from Charles River to the Arlington line a commercial district abuts a residential district and many of those businesses have back doors. And there is admittedly some conflict at times between those residential and commercial uses, but what's going to be available as a remedy to the abutters in this case is a condition on the license, and I'm not sure there's any other license there that has such a condition, and a Zoning restriction. And so those are two

powerful enforcement mechanisms that I don't believe exist anywhere else on that block.

ANNA PERIA CARDENAS: So do we clarify then? Because there's a little bit of a different enforcement in this case because the back door is in the residential, but not the same available to the properties next to them because they are in the commercial zone. And if this -- so like in Vivian's, for example, which was the last case, you put these conditions, like, yeah, you can't use the back door, but they're still using the back door for multiple things. But because this is a little bit of a different case, should we understand that these conditions are a bit more concrete in the Zoning and the licensing of this

property because of the nature of its back door in the residential area?

CONSTANTINE ALEXANDER: We will place -- you can be assured when we get to the vote, we're going to place conditions on the granting of the Variance. Those conditions are going to relate to the use of the back door. And basically in a few words, limit the use of the back door for emergency access only and not for otherwise and otherwise the door will be kept shut. That's what we'll do. That's legally binding on the Petitioner. And if anybody feels those conditions are not being satisfied, they have recourse to the appropriate city officials; the License Commission and ISD. What happens then is what happens then. We can't control that. It's out

of our -- these officials will make their own judgment as to whether there's a violation or not, and you will have your recourse, whatever -- you or the neighbors. Whatever it is if you don't like the decision. But as of tonight at least you'll go away with legally enforceable rights. There will be conditions placed. There already are conditions.

ANNA PERIA CARDENAS: Right. I understand. It's just that our concern is that it doesn't seem that these conditions are sort of set in stone for the various other businesses that have requested Variances and Zoning exceptions and whatnot.

ATTORNEY JAMES RAFFERTY: I'm not aware of any other Variance requests.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: None of those other restaurants operate pursuant to Use Variances.

ANNA PERIA CARDENAS: Mr. Rafferty was there with Julia's so he knows that case.

ATTORNEY JAMES RAFFERTY: No, I wasn't. I didn't represent her.

ANNA PERIA CARDENAS: I just want to clarify that the difference -- just to --

CONSTANTINE ALEXANDER: The difference here --

ANNA PERIA CARDENAS: -- the Zoning versus the residential. You can really enforce this back door because of the Zoning --

CONSTANTINE ALEXANDER: -- is

this building, this building
alone -- just listen, goes into the
residential Zone.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: That's
the difference.

ANNA PERIA CARDENAS: That is
what we want to clarify. So that when we
go back and talk to the neighbors, we can
say yes, it is a different set of
enforcement that this --

CONSTANTINE ALEXANDER: Right.

ANNA PERIA CARDENAS: -- case has
taken. So it really is -- we are all
agreeing that that door is emergency
egress only.

CONSTANTINE ALEXANDER: I think
that's how we're going to vote when we get
to take a vote.

ANNA PERIA CARDENAS: So that's just sort of the news we want to take back to the neighborhood. It's not like a wishy-washy. It is -- there is a set condition.

CONSTANTINE ALEXANDER: Yes.

ANNA PERIA CARDENAS: Okay.

CONSTANTINE ALEXANDER: And you'll hear the conditions.

ANNA PERIA CARDENAS: We appreciated that.

CONSTANTINE ALEXANDER: Thank you. Thank you very much.

Anyone else wishing to be heard?

NANCY CRAMER: I'm Nancy Cramer. I live at Three Bowdoin Street. Can I see the floor plan, please, so I can refer to it?

CONSTANTINE ALEXANDER: Sure.

NANCY CRAMER: So I don't believe there's any hardship to have a staircase there because I believe it can be flipped in that area. Should be restricted or -- sorry, and that the area should be restricted only to only have hallway access to the bathrooms. And that there should be no restaurant use in this residential area and no storage as well. It should just be a hallway to the door to the egress. And I believe that there's a way to design it that way. That it's not that much area and there's a solution.

Thank you.

CONSTANTINE ALEXANDER: Okay.

Anyone else wishing to be heard?

JOHN BIGELOW: I'm John Bigelow. I live at Five Bowdoin Street. I don't

want to cover ground that everyone else has already covered.

CONSTANTINE ALEXANDER: Please.

JOHN BIGELOW: But I do want to say that there's been persistent restaurant creep from the back doors of the three -- of the two existing restaurants there despite people's complaints, etcetera, etcetera, for a long time. And I think what I'm concerned with is removing this little paper buffer zone of residential space from our neighborhood is going to enable future creep perhaps. And so you don't get what I'm saying?

CONSTANTINE ALEXANDER: No.

Could you just elaborate. What kind of future creep?

JOHN BIGELOW: Well, just an

episodic -- frequency of episodic use of the back door for purposes other than fire escape.

CONSTANTINE ALEXANDER: Okay, understood. At least as I understand it, as to all the other restaurants, there are no conditions and certainly no Zoning conditions that pertain to the use of the rear door. And it's to the extent that it's being used in a way that's disrupting the License Commission --

JOHN BIGELOW: No, I understand exactly what you're saying. However, some of the usage of those back doors involves commercial traffic making deliveries to those restaurants which involve those vehicles, live parking on our street and carrying gear and goods into the restaurants and out of the

restaurants. That is activity that occurs in the Residential Zone to serve the back doors which are in Commercial Zones. And the -- what I would hope is that this little buffer zone remains as a kind of way to delineate the usage of that space above and beyond what is what the License Commission has put as a condition of use of that door. And it -- I couldn't really hear Attorney Rafferty's complete description of the attractable problems with the staircase and so forth, but it didn't sound like anything that couldn't be solved by reorienting some of the access to the stairs to the basement. I didn't really hear anything that said they can't operate a restaurant properly unless those conditions are met.

CONSTANTINE ALEXANDER: Again, all I can say, as I tried to say before, and I'm only one person speaking, it doesn't seem to me that we should be getting into how they lay out that interior space that's in the residential area requiring them to move staircases. It strikes me that goes beyond that what we should be doing as a Zoning Board. I don't see what purpose it serves -- I know what purpose you'd like it to serve. But at the end of the day it doesn't go to the merits of the question. The question is very simply this: They've got a building or they're leasing a building. The building restricts two zones, mostly business and a little bit of residential. If we don't grant them relief tonight, they'd have to wall off in some fashion

not to use it at all for the business purposes.

JOHN BIGELOW: I guess if you'll pardon my interruption.

CONSTANTINE ALEXANDER: Go ahead.

JOHN BIGELOW: I'm not quite sure why it needs to be physically walled off.

CONSTANTINE ALEXANDER: Well, if it's not physically walled off, aren't you going to next say well, how do we know that they're not storing a case of noodles?

JOHN BIGELOW: Are you saying the only way to control what they say they're gonna do is to physically erect a physical structure?

CONSTANTINE ALEXANDER: What I am saying is that our concerns as a Zoning

Board with regard to the external dimensions of the building and the use of those external dimensions to adversely impact the residential neighborhood. And that all relates to the use of the doorway, that back doorway. If it were, if it take deliveries through there and you'd store trash barrels, I could see the impact, certainly can see the impact on the residential district. I don't see the impact of -- if they're not going to use that for storage, if the doors are going to be by Zoning and by Licensing conditions, the door, restricted only to emergency access and cannot be for used for any other purpose, I don't see -- go that far, I don't see why we have to go farther and then try to, try to tie up how the internal space is being used. I

don't see the impact on the residential neighbors. The impact comes again from the doorway, the use of that door. And that's what we're going to -- that's what the License Commission zeroed in on and that's what we're going to zero in on. But to go beyond that, I guess this is an area of redesigning or designing interior space, that's not our job. That's not our responsibility.

JOHN BIGELOW: And yet the reason for granting it is described in the description -- or is outlined in the description of their hardship, isn't it?

CONSTANTINE ALEXANDER: The hardship is that they have a building that they would have to not -- 15 percent roughly of the space they're leasing they can not use it for the purpose of

using -- they want to use the building for. It's a very anomalous situation to have a building that's in two different Zoning districts. It's a very, very unusual situation. Not too many buildings in the City of Cambridge, and because of that, unless we grant them relief, they can't use for business purposes, a portion of the building that they're leasing. And my view is that's okay, you can't use it if it's going to have an impact on the neighborhood. And the impact of the neighborhood would be the use of the rear door. But if we can protect against that, at least on paper, then we've done our job. And the rest of it is not -- we don't get anything beyond that. It's like telling someone in a single-family residence you've got to

realign the bedrooms. We don't like the way you're realigning your bedrooms.

JOHN BIGELOW: Well, I suppose if the bedrooms didn't conform with some Zoning requirements --

CONSTANTINE ALEXANDER: There are no Zoning requirements for bedrooms.

JOHN BIGELOW: Right. But I under -- well, then it's such a specious argument. You're giving an example of things that are regulated that aren't at all regulated.

CONSTANTINE ALEXANDER: I don't want to get -- I'm not going to be disrespectful. I don't want to engage in a debate here. It doesn't serve anybody's purpose.

JOHN BIGELOW: Certainly.

CONSTANTINE ALEXANDER: I hear

your views.

JOHN BIGELOW: Thank you.

CONSTANTINE ALEXANDER: Thank
you very much.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The
Chair notes there is no one else wishing
to be heard. Going once, going twice.
Nobody.

We do have a letter in the file which
I will read into the record. It's
actually an e-mail from H. S-o-l-o --

ATTORNEY JAMES RAFFERTY: She
spoke tonight.

CONSTANTINE ALEXANDER: I know.
I still want to read the letter because
it has the conditions.

HELEN SOLORZANO: It's actually

from all of us.

CONSTANTINE ALEXANDER: I'm
sorry? On behalf of all of you?

HELEN SOLORZANO: From all of us.

CONSTANTINE ALEXANDER: Yes,
thank you. And the last page is the
signatures. Close to 10 signatories.
And the letter is to Ranjit Singanayagam.
(Reading) I just faxed over this letter
and the supporting documentation for the
hearing. And here's the letter.

(Reading) The neighbors surrounding
the property at 1678 Mass. Avenue want to
express our opposition to any Variance
that would allow the business to use the
back door of the property which is in the
Residential Zone of Bowdoin Street for
any purpose other than emergency egress.
These activities include, but are not

limited to, employees entering, exiting, or congregating, propping the door up for ventilation, removing trash and recycling, receiving deliveries, and servicing of mechanical equipment.

Furthermore, the rear door must be locked from the outside and have a panic bar connected to the fire alarm on the inside. On May 2, 2013, the License Commission approved the license application for the restaurant with the following conditions attached regarding the rear door:

The motion passed unanimously. And there's a quote here from Commissioner Michael Gardner, and it says follows: So I will make the motion to approve the CV and the wine and malt license for this application for the number of spaces and hours of operation as provided in the

application with the further conditions:

That the rear door will be used for emergency egress only. That the deliveries properly, appropriately alarmed. That deliveries and trash pick-up will be through that door are expressly prohibited, and that door will not be used by employees to enter, exit, or congregate. The further condition that all trash pick-up and deliveries occur out through the Massachusetts Avenue entrance to the premises.

And then the letter continues. This is no longer Commissioner Gardner. (Reading) Since there are many other businesses in Cambridge that operate under the same restrictions on the back door use and Petitioner has already accepted the conditions for approval for

the license, the conditions clearly would not constitute a hardship for the business. We have explained the reasons for enforcing on this condition on the property in detail in our written communications with the City of Cambridge. Attached in the most recent letter we submitted to the License Commission. Unfortunately it's not attached to the letter I have. (Reading) And in testimony at the License Commission hearing on April 9, 2013. And they refer to some notes of the hearing.

(Reading) We oppose any use of the back door because it will negatively impact the neighborhood by creating problems with safety, noise, and nuisance in the Residential Zone on Bowdoin Street directly behind the property and in the

surrounding neighborhood: Hudson,
Martin, Hurlbut, Wright, Avon.

Commercial use of the rear door and
residential sidewalk will also
negatively affect the values of the six
abutting residential properties. Thank
you. And there are the signatories.

And I would note, even though it's
obvious, the letter speaks entirely to
the use of the rear door. It doesn't
speak in any way to the layout behind the
rear door. And as you will see when I
make my motion, it will be very similar
to what the License Commission did. In
other words, if we grant relief, it will
be conditioned upon how the rear door will
not be used really. Namely, it will be
only for emergency egress with no right
to be propped open for ventilation or

otherwise be used other than for emergencies.

HELEN SOLORZANO: This just has a copy of the attached letter.

CONSTANTINE ALEXANDER: Oh, the attachment. Okay. Is there anything here you want me to read? It's pretty long. Can I put it as part of the record?

HELEN SOLORZANO: It's just for reference.

CONSTANTINE ALEXANDER: Thank you.

Okay, any final comments?

ATTORNEY JAMES RAFFERTY: Just briefly. In conclusion I have taken the liberty of illustrating on the Assessor's map how unique this situation is. I know one of the conditions is not generally affecting the Zoning District. This is

the only building that extends into the commercial district. So I understand the concern of the neighbors, the enforcement. I think there's some misunderstanding that these other uses are similarly restricted and are violating such restrictions. Certainly from a Zoning standpoint, that is not the case and I am not aware of license restrictions, although there may have been some in subsequent transfers, but I think the Zoning map there demonstrates that this is a unique condition affecting this structure alone.

CONSTANTINE ALEXANDER: That's the points I was trying to make as well. When people have talked about the violations resulting from the use of the rear doors of the other restaurants, none

of them are in two districts. And so far as I'm aware of, there are no Zoning restrictions on the use of the back door. There may be licensing restrictions as you pointed out. There may be general ordinances against noises and disturbances, but there are no Zoning issues. This is a unique property in two Zoning districts. And if anybody would like to see what Mr. Rafferty has given to us, although you should be well aware of it. Please feel free to come up and take a look at it.

Is that it?

ATTORNEY JAMES RAFFERTY: Yes, thank you.

CONSTANTINE ALEXANDER: We'll keep this for the record?

ATTORNEY JAMES RAFFERTY: Sure.

CONSTANTINE ALEXANDER: Okay.

Public testimony has been closed. We're open for discussion.

Any members of the Board want to be heard on this matter?

TIMOTHY HUGHES: You know, I wouldn't be opposed to the idea of flipping the staircase if I thought it would accomplish what you expect it will accomplish. But I don't think it will accomplish that for two reasons:

One, you still haven't addressed the fact that the women's room is still going to have to exist in that part of the residential area.

And, two, you make a more direct beeline to the top of the stairs from the kitchen that makes that area over there subject to all kinds of possibilities in

terms of stacking and storage. Whereas if it has to remain open to get to the stairs and to get to the women's room and as an egress for the back door, there's less of a chance that it will be used for anything except for walking through it, passing through it, no matter how big you think it is, because it's not huge. But, you know. So I mean I don't think that flipping the staircase would address, you know, your concerns. So I'm not in favor of an approach like that.

CONSTANTINE ALEXANDER: I take it you're in favor of restrictions, though, about egress for the rear door?

TIMOTHY HUGHES: Absolutely. I think that as long as the License Commission's restrictions on the use of the back door are in the Variance itself,

then I think that should be sufficient.

CONSTANTINE ALEXANDER: Okay.

ANDREA HICKEY: I have a question. Perhaps Attorney Rafferty could answer it. Do I understand that the Licensing Commission decision requires an alarm and an emergency panic bar on that back door?

ATTORNEY JAMES RAFFERTY: I'm not certain of the alarm requirement, but I think the Building Code would control what is required for emergency.

ANDREA HICKEY: What I'm thinking is if that door were to be propped open, it shouldn't be something that's sort of convenient for the Petitioner and her staff to maintain in a propped-open position. It seems to me that if it were alarmed, that that would

be sort of a way to somewhat ensure that that door not be propped open.

CONSTANTINE ALEXANDER: The condition that's put on by the License Commission refers to the door being "appropriately alarmed" whatever that means.

ANDREA HICKEY: Yes, I don't know what that means either.

CONSTANTINE ALEXANDER: I don't know.

ANDREA HICKEY: If it specifically said sort of with the panic bar and an alarm, I'd feel more confident that that back door wouldn't be propped open at any point.

ATTORNEY JAMES RAFFERTY: I would respectfully suggest that it might be a level of detail in the Variance that

is a little restrictive. The space will need to be approved by the Fire Department in the inspection process. And I think I recall some conversation about whether an alarm is required or valued. And I think frankly we would follow whatever direction the Fire Department gave us.

ANDREA HICKEY: I don't disagree with you that that's detail. My question was whether that was part of the Licensing decision?

CONSTANTINE ALEXANDER: And it says appropriately alarmed.

ATTORNEY JAMES RAFFERTY:
There's reference to it.

ANDREA HICKEY: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard on this matter?

JANET GREEN: I would just say

that I didn't see a need for the stairs to be flipped. I didn't -- it seems to make perfect sense since everything is going to be unloaded from the front of the building, not coming through the back of the building or these other concerns that the neighborhood has had. I think that coming back, coming back with dollies, coming back quickly being able to access the stairs and go straight back access the stairs and move the product down to the basement that's going to be stored there, I think having a stairs in the position that they're in enables that. I also agree with the importance of having it only for exit and the language about the exit door.

CONSTANTINE ALEXANDER: What is the view of the Board, my view would be

to condition with regard to the property in question, the rear, that it be used -- I want to say substantially in accordance with the plans submitted by Mr. Rafferty. That maybe things stored here and there, I don't want to tie it in specifically. But I think we can give comfort to the neighbors that it would not be used dramatically different than what was represented tonight.

Do you have a problem with that?

ATTORNEY JAMES RAFFERTY: Not at all.

CONSTANTINE ALEXANDER: Any other members have a problem with that?

Anyone else wishing to be heard or you want to go to a motion?

TIMOTHY HUGHES: I'm ready for a vote.

CONSTANTINE ALEXANDER: Okay,
let me try.

The Chair moves that this Board make
the following findings with regard to the
Variance being sought:

That a literal enforcement of the
provisions of the Ordinance would involve
a substantial hardship to the Petitioner.
Such hardship being that it is leasing a
building that happens to sit in two Zones.
And unless we grant relief, a portion of
the building would not be usable at all
with regard to the primary use of the
building; i.e., the restaurant business
facing Massachusetts Avenue.

The hardship is owing to
circumstances relating to the shape of
the structure. Basically the structure
sits in two Zoning Districts, unlike its

neighboring structures, which creates -- the districts are dramatically different; the residential district and the business district, which is really especially affects this property and not the area generally. It's been pointed out that the neighboring restaurants all sit only in a Commercial Zone.

And also that the hardship relates to the depth of the lot and -- well, the same point. The depth of the lot, it's a long lot, and the shape of the building on this. It's a very long, narrow building that stretches into two Zoning Districts.

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

the Ordinance.

With regard to this, I think if appropriate conditions are imposed on the Variance, which I propose to get to in a second, that it will allow the use -- the primary commercial use of this building on Massachusetts Avenue without again giving the conditions, substantial harm or any harm or substantial harm to the abutting residential district.

So on the basis of these findings, the Chair moves that we grant a Variance to the Petitioner to use the rear portion of the building sitting in the Residence B Zoning District for the commercial purposes associated with the front half of the building that's in the business district.

On the condition that the area in

question; namely, the rear of the building that sits in the residential use district be limited in its use substantially as set forth in the plan submitted by the Petitioner and initialled by the Chair.

And on the further condition that with regard to the rear door, that this rear door can be only used for emergency egress only.

That the door may not be used by employees to enter, exit, or congregate.

That the door be have a panic bar or a bar that prohibits -- prevents people from the outside coming in. It's only go from the inside of the building going out.

And that with regard to this rear entrance, this door cannot be used for deliveries, cannot be used for trash

pick-up or removal. All of those activities must occur through the Massachusetts Avenue, the front of the building which is in the business district.

Anything else to add to the motion?

Okay, on the basis -- those are the conditions that would be to the Variance that I propose we grant.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

NANCY JITJARUEK: Thank you so much.

ATTORNEY JAMES RAFFERTY: Thank you.

(Alexander, Hughes, Scott,

Green, Hickey.)

* * * * *

(8:15 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10453, 27 Gurney Street.

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

JULIA SMITH: Yes.

CONSTANTINE ALEXANDER: Please come forward. You're not going to run a restaurant in the backyard?

JULIA SMITH: No, no, nothing like that at all.

TIMOTHY HUGHES: Is there a back door on this garden shed?

JULIA SMITH: No. There's only one door.

JANET GREEN: What about an emergency exit?

JULIA SMITH: It's too small to require two exits. I'm an architect so I know.

Julia Smith. I'm the owner and I also reside at 27 Gurney Street. And I'm petitioning to be able to build a 10-by-12 garden shed in the rear of my property.

JANET GREEN: They can't hear you in the back. Can you turn the mic?

JULIA SMITH: I'm petitioning to build a 10-by-12 garden shed in the rear of my property.

JANET GREEN: They still can't hear. Can you pull it closer?

JULIA SMITH: My name is Julia Smith. I live at 27 Gurney Street. I'm the owner of the property. I would like

to build a 10-by-12 garden shed in the rear of my property.

I understand from talking with Mr. Ranjit that because it's -- the garden shed's considered additional volume on the space so because of that and because like most people who live in houses that are more than 40-years-old, it's a pre-existing non-conforming two-family.

CONSTANTINE ALEXANDER: And just let me get into the record. That is the issue. The FAR, floor area ratio, that's permitted for your lot is 0.44. Right now you're at 0.62. You're non-conforming as you point out.

JULIA SMITH: Right.

CONSTANTINE ALEXANDER: And because of this garden shed being built,

that's considered additional floor area. So you'll go from 0.62 to 0.64. So you're going to be increasing the non-conformance. That's why you're here tonight.

JULIA SMITH: Right.

CONSTANTINE ALEXANDER: But you're not going to locate the shed in any of the setbacks?

JULIA SMITH: No.

CONSTANTINE ALEXANDER: And we'll get to the decision, we're going to have to make that clear. Because I want to make it clear what we're granting the relief for.

JULIA SMITH: I submitted a floor plan of the shed.

CONSTANTINE ALEXANDER: Yes, right here.

JULIA SMITH: And also a copy of my site plan with a depiction of the shed and plan back in the corner that shows the setbacks and the dimensions of the shed. I know the minimum setback is eight feet I believe.

CONSTANTINE ALEXANDER: I think it's higher than that.

JULIA SMITH: Is it?

CONSTANTINE ALEXANDER: It's only five for accessory building.

JANET GREEN: Five.

CONSTANTINE ALEXANDER: You have what's called an accessory building.

JULIA SMITH: Right.

CONSTANTINE ALEXANDER: Or you want to build an accessory building.

JULIA SMITH: Right.

CONSTANTINE ALEXANDER: It's

five feet for accessory building.

JULIA SMITH: Okay. Well, it's going to be at least eight feet and possibly ten --

CONSTANTINE ALEXANDER: When we grant you relief, the relief will be such that it will say that you can't locate it -- to build the shed, you can put it on the lot wherever you want but it can't be in a prescribed setback.

JULIA SMITH: Right.

CONSTANTINE ALEXANDER: I don't feel a need, I don't think, to tie it to what you have right here. If you have a change of heart and you want to put it on a different part of the lot, I don't think we should stop you so long as you don't go into the setbacks.

JULIA SMITH: Okay.

The other issue is height. And I'm planning on keeping it less than 15 feet height from grade.

CONSTANTINE ALEXANDER: Right.

JULIA SMITH: So the intention was that it wouldn't, other than the square footage, it wouldn't violate any of the restrictions placed on the property.

CONSTANTINE ALEXANDER: Have you talked to your neighbors or have your neighbors talked to you about this?

JULIA SMITH: Yes. I've talked to not all of them, but the two immediate abutters.

CONSTANTINE ALEXANDER: Right.

JULIA SMITH: On one side of it is the parking lot that belongs to Fresh Pond Market. And on the other side is my

next-door neighbors at 23 Gurney Street, their yard. So they're the most immediate abutters, and I've discussed it with both of them and they have no objection.

CONSTANTINE ALEXANDER: Okay, thank you.

JULIA SMITH: So any other questions?

CONSTANTINE ALEXANDER: I have no questions.

ANDREA HICKEY: Can we see what you have before you?

JULIA SMITH: Sure.

CONSTANTINE ALEXANDER: You can look at these, too. Either one. I'll pass it to her.

JULIA SMITH: And I also have pictures of the location.

SEAN O'GRADY: Gus? I'm sorry, I just wanted to -- I received a telephone call from one of the, I think an abutter to an abutter. But one of the people that we notified, she had an interest in the shed, but once I explained to her that it was on the far side from her property in the back, she was no longer opposed to it. But to the rear to the left-hand side, she would have been very interested in.

CONSTANTINE ALEXANDER: So, therefore, we're going to suggest for at least for purposes of this neighborhood, we should not allow the shed to be located in a different position than what is being proposed?

SEAN O'GRADY: Well, not too far from where --

JULIA SMITH: In the north

corner. That's fine with me. That's where I want it anyway.

CONSTANTINE ALEXANDER: You already have this in the file. Keep going. Or I think you've said everything.

JULIA SMITH: These are photographs of the location looking back from my back porch into the corner, and you can see the parking lot back on one side and my other neighbor's yard. So it's quite remote. And I think it works out to be less than -- it's at least 50 feet from away from any other structure on any of the adjacent lots where it would be located. It's -- for me, it's -- it blocks my view of the parking lot which I consider to be a good thing. And it doesn't block anybody else's views of

anything.

CONSTANTINE ALEXANDER: Okay.

Let me open it public testimony.
Anybody here wishing to be heard on this
matter? Sir, come forward.

JOSEPH BORDEAU: Hi. I'm your
abutter behind you.

CONSTANTINE ALEXANDER: Your
name, sir?

JOSEPH BORDEAU: Joseph Bordeaux.
I live at 145 Lakeview Ave. And I just
got the letter in the mail. My mother
gave it to me and she wanted to know what
is being built there. We had a neighbor
on the other side of us, said she was going
to build a flower house and wanted to
build a ballet house the size of the room
there and -- in the backyard. And so we
had it closed down eventually. I didn't

know what it was. I didn't know where it was going to be located. And abutters in the backyards I just want to come down here and find out exactly what it is.

CONSTANTINE ALEXANDER: Sure. You heard the testimony. I can show you where it's going to be located on the lot. Right here.

JOSEPH BORDEAU: Just so I can go and tell my mother.

JULIA SMITH: Yes, we're all unhappy with the 20-by-30 garden shed on the neighbor's property.

JOSEPH BORDEAU: Garden shed, yeah.

JULIA SMITH: This was a tool shed.

(Discussion of plan.)

JOSEPH BORDEAU: We don't have

any problem with that. She didn't know what it was, what it was going to be. I'm all set.

Thank you, no problem.

CONSTANTINE ALEXANDER: Thank you very much for coming down.

Anyone else wishing to be heard on this matter.

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one else wishes to be heard.

I don't believe we're in receipt of any letters from anyone regarding this proposed project. And you've represented at least some of the neighbors have orally expressed no opposition to do what you want to do.

So I'll close public -- unless you

have anything further you wanted to add?

JULIA SMITH: No.

CONSTANTINE ALEXANDER: I'll close public testimony and we can be in deliberations.

You want discussion? Do you want to go to a motion?

TIMOTHY HUGHES: I'm good with it.

THOMAS SCOTT: Can I ask a question?

CONSTANTINE ALEXANDER: By all means.

THOMAS SCOTT: If we approve the new FAR, let's say the property is sold and somebody else buys it, could they tear the shed down and buy the square footage to the house as long as it's within the setbacks --

SEAN O'GRADY: No.

THOMAS SCOTT: -- without coming back to the Board?

CONSTANTINE ALEXANDER: No, they have to come back to the Board.

TIMOTHY HUGHES: No.

THOMAS SCOTT: Okay, I was just curious.

CONSTANTINE ALEXANDER: That's a good question.

JULIA SMITH: It is a good question.

CONSTANTINE ALEXANDER: Ready for a motion?

The Chair moves that this Board make the following findings with respect to the proposal for a Variance to construct a garden shed, 10-by-12 not to exceed 15 foot in height and not to be within any

proscribed setbacks.

The Chair moves that the Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that given the nature of the lot, there is a need for and the size of the structure, there's need for additional, an annex of rebuilding to the system in the gardening process for this yard.

That the hardship is owing to the fact that this is a non-conforming structure and, therefore, any additional square footage, including an accessory building requires Zoning relief.

And that relief may be granted without substantial detriment to the

public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

In this regard the Chair would note that the structure being proposed is modest.

It is not an unusual type of structure in Cambridge when you have lots that are heavily landscaped or gardened.

That there is no -- appears to be no neighborhood opposition to what is being proposed. And that's it.

So on the basis of these findings the Chair moves that a Variance be granted to the Petitioner on the condition that the shed be as represented approximately no more than 10 feet by 12 feet and no higher than 15 feet high. And that it not be located in any proscribed setbacks.

And further that it be substantially in the location as shown on the plan we have here that you submitted.

And then I want to make this condition, this is parenthetically because of the neighbor who's called in. So as long as you keep it generally where it is now, you're fine. It doesn't have been to be exactly here but generally. Okay?

All those in favor of granting the plan initialled by the Chair, all those in favor of granting the Variance say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

JULIA SMITH: Thank you very much.

CONSTANTINE ALEXANDER: Good
luck.

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

* * * * *

(8:30 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Thomas Scott,
Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The C
hair will call case No. 10454, 7 Follen
Street.

Why don't you introduce yourselves
for the record.

ATTORNEY JAMES RAFFERTY: Okay.
Good evening, Mr. Chairman, members of
the Board. For the record, James
Rafferty appearing on behalf of the

Applicant, Flory Darwin, D-a-r-w-i-n.

Ms. Darwin is seated to my right.

CONSTANTINE ALEXANDER: While we're waiting for Mr. Hughes, educate me. How in the world does this place get numbered on on that street? There's 9 and then there is 5, the next building.

FLORENCE DARWIN: It's behind No. 5.

CONSTANTINE ALEXANDER: I know behind, but you can't tell. If it weren't for the sign, I wouldn't have seen the structure. It's an unusual numbering system.

ATTORNEY JAMES RAFFERTY: It is. And it points out the fact that it's not something that can be seen easily if at all from the public way, notwithstanding the fact that we're not able to convince

the Historic Commission of that. They still required a Certificate of Appropriateness which was granted. Yes, it, it is, has a unique numbering system.

CONSTANTINE ALEXANDER: Anyway, let's go into the merits now that Mr. Hughes is back.

ATTORNEY JAMES RAFFERTY: Thank you.

So this is an attached single-family home. I don't know if the Board members have had a chance to look at it, which is sited or located in the rear of --

FLORENCE DARWIN: No. 5.

ATTORNEY JAMES

RAFFERTY: -- rear of No. 5. And oftentimes I'm prone to describe relief as modest, and I think that that can be seen as a relative term. But I would say

in this case, this is the epitome of modest relief. In fact, I spent more time of trying to convince Mr. Singanayagam that this ought to be done as of right.

What the case is about essentially is a reconstructing an octagonal breakfast room. And here is the current condition, and I circle the area of work. The relief is needed not for GFA, because the property is significantly below the GFA even though we're only talking about 14 feet or something.

CONSTANTINE ALEXANDER: 16 feet.

ATTORNEY JAMES RAFFERTY: 16 feet. It really has to do with setbacks.

So the new, that -- it's an unusually shaped lot because of the nature of the subdivision. That's a

front yard setback. So that small area where it now cuts in, and Ms. Darwin has actually a photo that's pretty effective. And it tells the story of the original owner of the house constructed it in this way, and it's leaking. And that little gap that you see there --

CONSTANTINE ALEXANDER: You can see the leak.

ATTORNEY JAMES RAFFERTY: -- it affects the roof line and the gutter and all that. And she's had significant issues over the years. So she retained an architect and a contractor to rectify the problem, and we tried repeatedly on the footprint issues to see if we can fit within it, but, you know, it's like being a little bit pregnant. It does enter that little bit into the Special Permit

category. Ms. Darwin is accustomed --

CONSTANTINE ALEXANDER: We'll keep that for the record.

ATTORNEY JAMES RAFFERTY: She's here tonight to recommend that you approve the Variance because she's accustomed to providing with recommendations. She has served previously approximately ten years on the Planning Board, so she's used to making recommendations to the Zoning Board. I didn't tell her how those recommendations are received, but tonight with her present we would hope that the Board would recognize the very de minimis nature of the relief. It's a very practical adjustment to the property. The setback is unusual because of the nature of the lot. And we have letters from two

abutters, the owners of property on Concord Ave. and Chauncy Street and both have sent letters in support.

CONSTANTINE ALEXANDER: Okay.

Any questions from members of the Board at this point? No?

I'll open to public testimony.

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

Yes, Ma'am. Please come forward. You've got to give your name and address to the stenographer.

ELIZABETH BIERER: My name is Elizabeth Bierer, B-i-e-r-e-r and I live at 5 Follen Street. My house is on the plan. I don't think the property line is indicated, but it's very close. The structure is very close to my house, to my lot. I understand the leaking issues

with need to reconstruct it, and I'm not opposed to what they're trying to do. I'm a little curious about how the structure was allowed to be built in the first place, but I guess that's neither here nor there. I do not oppose.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one.

The Chair is in receipt of two letters, one from a Frances Early, 21 Chauncy Street. (Reading) I'm a resident of the first floor of the apartment building at 21 Chauncy Street. My apartment directly abuts and overlooks the property at 7 Follen Street including the portion of the property (the gazebo

or kitchen eating area) that this Petitioner is concerned with. I'm writing to say that I have reviewed the plans for the proposed changes to the gazebo and I fully support their proposal and urge you to grant Ms. Darwin the necessary Zoning relief. I feel that the new gazebo design will be appropriate in appearance as the Cambridge Historical Commission's approval indicates. Since I know the Petitioner and her family, I am aware that the current design has been problematical in terms of water damage and maintenance especially in the winter. I understand that the purpose of the new design is to minimize these problems in the future. I can imagine no aesthetic or practical detriment to myself or any other nearby properties or change in the

design especially since the gazebo will actually be shorter than it currently is. I am pleased to have this opportunity to communicate my support for this proposal.

And the other letter is from a Mary Tavares, T-a-v-a-r-e-s Sutula, S-u-t-u-l-a and Frank Sutula. And they say they reside at 9 Concord Avenue.

(Reading) We own and reside at 9 Concord Avenue in Cambridge. We live directly across Follen Street from No. 7 Follen Street. We looked at the plans for the renovation of the breakfast area and the kitchen of 7 Follen Street. We have learned from Flory Darwin the Petitioner, that the Cambridge Historical Commission has already granted a Certificate of Appropriateness for the proposed renovations. We would like to express

our support for the renovation project that Flory Darwin has proposed. As a neighbor of Flory and her husband for over 20 years, we are -- her husband -- as a neighbor of Flory and her husband for over 20 years, we are very aware that the structure that they would like to alter has been chronically problematic with respect to water leakage. Snow and leaf removal problems have exacerbated the water problems. The new design would allow for regular maintenance because of the flat portion of the roof and the elimination of the existing notch in the wall. We fully support the proposal for the renovation of the breakfast area and hope that you will approve the Variance to allow it to go forward.

And that's it. As the letters have

indicated, there is a Certificate of Appropriateness from the Cambridge Historic Commission which we are in receipt of and is part of our file. It's dated, just for the record -- it was extended, but it was originally dated.

FLORENCE DARWIN: July.

CONSTANTINE ALEXANDER: You're right. July 24, 2012.

Further comments?

ATTORNEY JAMES RAFFERTY:
Nothing.

CONSTANTINE ALEXANDER: Any discussion or ready for a vote?

JANET GREEN: Ready for a vote.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this Board make the following findings with respect to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the building as currently designed or this portion of the building is defective in terms of its design and is causing water damage and damage to the structure in the area of the poor design and the area that the Petitioner wishes to correct.

That the hardship is owing to circumstances involving the soil conditions, shape or topography of the structure. This is a non-conforming structure, and any relief of this sort requires setback relief which is why the Petitioner is seeking relief.

And the relief may be granted without substantial detriment to the

public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

As the Petitioner points out, the relief being sought is very modest in nature. It's an addition 16 feet, square feet.

That it is to correct a structural design fault of the existing structure.

It has apparent support of neighbors most directly affected to the extent that anybody's directly affected, and that this project has been -- or this proposal has been vetted by the Cambridge Historical Commission and has received their Certificate of Appropriateness.

So on the basis of all these findings the Chair moves that we grant the Variance to the Petitioner on the condition that

the work proceed in accordance with a plan submitted by the Petitioner. It's dated November 7, 2012. It's numbered A1.D1 and has been initialled by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

* * * * *

(8:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10455, 131 Harvard Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, and members of the

Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I'm here with my co-applicant Jason Korb, from Capstone Communities. Jason Korb, Korb, Capstone Communities. And the project architect David Chilinski of PCA.

We're here tonight requesting a Special Permit to reduce the parking by four spaces. The required parking is 20, and we're proposing 16 spaces.

CONSTANTINE ALEXANDER: 16 or 15?

ATTORNEY SEAN HOPE: 16 spaces.

CONSTANTINE ALEXANDER: Oh, okay, because the applications says 15.

ATTORNEY SEAN HOPE: I'll address that.

So before we get into the merits of

the application, we applied for 15. And we actually conducted a parking analysis and in speaking with Community Development, and we realized that we could actually meet 16 spaces with all the other requirements we had. We did check with Inspectional Services that we actually reducing our requested relief so that we would be able to proceed and there would be no notice issues.

So as I begin, I just want to talk a little bit about the context of the property. So the property is located at 131 Harvard Street, and it's in the Res C2-B District. Adjacent from the property immediately to the west is 1.78 city-owned park, Rose Heritage Park. To the north of the property is 210 Broadway. That's the building owned by BioMed

Realty. That area is zoned Industry A-2. And adjacent to that the building formerly -- or known as the garment district, that's also in the Business A. So along Broadway and heading towards Kendall Square is mostly the commercial and industrial zoning district. So coming south from Broadway is really where the residence begins. So it goes from Residence C2-B and down zones into Residence C-1. To the immediate east of the property is a 24-unit condominium building called the Print Shop Condominiums, this received a comprehensive permit from this Board in 2007. That also included as part of their permit, parking reduction. They have 24 units and 20 parking spaces. Ours is a rental building which I would

distinguish from the two. And so I know that not all the same board members were here at the first case.

CONSTANTINE ALEXANDER: I was here.

ATTORNEY SEAN HOPE: Okay, you were here. So just briefly we received a series of dimensional Variances to build a building. As you can see in some of the elevations, our building is built directly on the property line so that we have a zero setback. One of the things about Res. C2-B Zoning District is that the setbacks apply above and below grade, so we needed relief, one, for the building above grade but also for the parking below grade.

I think that's insignificant as we start talking about the water table

issues, which is one of the reasons why we are actually requesting Zoning relief. Actually I'll have David speak more to that.

So, in the past --

CONSTANTINE ALEXANDER: And on that point.

ATTORNEY SEAN HOPE: Sure.

CONSTANTINE ALEXANDER: I take it the water table issues were not known to you at the time you filed the original application?

ATTORNEY SEAN HOPE: Right. And so part of it for affordable housing you have to get your permitting in place before you can apply to the state for the subsidies that would allows us to do the soil testing and the geo technical work. So we did apply for those, and when we had

those, those funds, as well as our own funds, we were able to go and really find out where the water table was. There was an assumption based on the available data that the water table was about 10 feet. And as we found out, it was at six feet. So it really significantly impacted the price to build this underground parking garage.

One of the reasons why we actually built the underground parking garage, the Print Shop has parking recessed but not below grade so they don't have underground parking. Part of the urban design objectives references having parking shielding from the public view as well as underground parking where possible. So this is one of the goals that we tried to achieve and did achieve

by doing that. But it did pose some significant challenges which the reduction in parking helps us to overcome.

So before we get into the Special Permit criteria there is three reasons why we are applying for relief.

One is, as I said, the water table and the impact on the garage.

Two is the bicycle parking. And this bicycle parking was adopted by the City Council in the last two months. And so this increased the parking -- the bike parking requirement by five spaces. So in our original application we proposed 20 underground parking spaces and we actually had sufficient bike parking. There was 15. And so when they increased the bike parking, we actually weren't

able to meet that requirement. So part of this application, if we reduce the parking, we would be able to fully satisfy the bike parking as well as solve some of our other design issues.

So I'd like to turn it over to the architect and he can walk you through a little bit of the design challenge and how the solution solves some of those issues.

CONSTANTINE ALEXANDER: The one point you did make, this is affordable housing?

ATTORNEY SEAN HOPE: It's 100 percent affordable, yes.

CONSTANTINE ALEXANDER:
Typically the need for people owning cars is not nearly as great as if it were a luxury condominium.

ATTORNEY SEAN HOPE: That's

right.

CONSTANTINE ALEXANDER: That's another reason that strikes me that why -- that supports the view that we should grant relief here for this type of construction.

ATTORNEY SEAN HOPE: I agree.

CONSTANTINE ALEXANDER: Okay.

DAVID CHILINSKI: So, I will -- my name is David Chilinski with Prellwitz Chilinski Associates, PCA. I'm going to try to frame the issue simply as I can by starting with these two diagrams here.

This is the diagram that we came with the last time which shows the garage completely below grade where the first floor of the building is at the same grade as the street, and the adjacent grade

approximately 10 feet to the lowest level of the garage. Essentially and diagrammatically indicated here with this blue line is where the design water table is that was provided by our geotechnical team McArdle and Gannon.

Essentially what that means is that some of the building foundation will be in the water. We can't completely avoid it.

What that means is that we have to design some very elaborate foundation

conditions; a mat slab, and essentially build a bathtub, you know, waterproofing to be able to actually sit in the water.

But we are minimizing as best we can

within the framework of Zoning, the

amount that we are in the water. What the

ramifications of that are illustrated

right here in this diagram. As you can

see, when the first floor was at the level of grade essentially, even though the extent of the garage went beyond the wall of the building, you know, you couldn't see it. It wasn't apparent. With the new configuration, because the ground, the lowest level of the residential is actually four feet above grade, if we had left the configuration as we had originally had it, which is the red shown here, you would have essentially had further setback implications because the superstructure would then be in the setback. So what we've essentially done is kept the volume of the building that was approved the last time, the wall, the superstructure, the walls that as they were previously approved, and essentially diminished the size of the

garage to fit within that envelope.

What that means -- I can illustrate here with these floor plans. I'll put them side by side. This was the previous lowest level garage, and this is an illustration of what happens to that lower level when you raise that first floor up the four feet. This cross-hatched area here which is above this area here in the previous drawing, we essentially lose that volume at the lowest level.

We also, because we have access into the building to the elevators and to trash and service in these two locations, they stay at level at grade. When you keep them at grade and then raise the level of the garage, essentially we lose headroom in these areas so they become unusable.

So the combination of losing the headroom in these areas and reducing the size of the footprint, essentially we lose four parking spaces, not the least of which is accommodating the new requirements for bicycle parking in this area. Those three elements, at the end of the day, we don't have room for four parking spaces that we previously had accommodated.

CONSTANTINE ALEXANDER: Two comments if I may.

One is best -- given what you're learning about the water table or you have learned, should we be concerned that you're going to have to modify your plans further and you're going to come back before us further substantial relief? As far as you can tell this is it?

DAVID CHILINSKI: No, this is it.

And, you know, in some ways, just by happenstance when we had the building approved in height, we essentially had left a little bit of wiggle room on the floor to floor between them. We were actually able to take a little space out of the floor to floor of the residential --

THOMAS SCOTT: That was going to be my question.

DAVID CHILINSKI: -- to accommodate the raised floor.

JASON KORB: We actually changed the HVAC system so it's a non-ducted system. It's still central air, central heat. It's a mini heat system which is very efficient. A lot of people are using them now. So we have no duct work anymore so it reduced the head height.

DAVID CHILINSKI: So the combination of having had a little bit more room, 11 feet floor to floor previously, and changing the system we were actually able to take the space out of the three residential floor to floor.

CONSTANTINE ALEXANDER: And my other question is really directed to Mr. Hope more than to you. Your presentation goes to the fact that you're seeking a Variance. You made the case for a Variance, but you're not seeking a Variance, it's a Special Permit under the 6.35 and we need to have evidence about this -- no need for all this parking, there's plenty of alternative public parking. Will you address that?

ATTORNEY SEAN HOPE: Sure.

CONSTANTINE ALEXANDER: Thank

you, though, sir.

ATTORNEY SEAN HOPE: So as the Chair noted, there's two aspects for the Special Permit relief. There's the general Special Permit criteria which is applicable to every, to every Special Permit application. And I can walk through that, but I think generally the answer, and it's flushed out more in the actual application, is that the site is well serviced by public transportation. Within a half mile, and we have a graphic here that was part of our parking analysis, within a half mile walk you can reach the Kendall train station, Kendall Square train station. And then a little bit further you can also reach the Central Square train station. Two blocks away from the site at the corner of Broadway

and Portland Streets you have a bus route that has several busses that run to Inman Square and also run to Central Square. You also have within 0.2 miles, actually closer to 0.4 miles you have several Zipcars that are available as well as a new hub bike station that is actually at the corner of Broadway and Portland Street. That's a new bike share system by the city that they've invested in and it's immediately in proximity. So I think in terms of traffic congestion -- and so if I go through the criteria. So under the general Special Permit criteria, traffic generated and patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character. This is a residential use in

a residential area. I think there are examples, one of which is actually two blocks from the property. 34-36

Hampshire Street. This was a project approved by the Planning Board that had 20 units and had 10 on-site parking spaces at a ratio of 0.5. They have five additional parking spaces off site. I think that was partially because they have a small retail space. I also note for the Board there is a rental building permitted in 2011 called Putnam Green at 625 Putnam Ave. This was permitted by the Planning Board with 40 dwelling units which were fully occupied and 20 parking spaces which is at a 0.7.

JASON KORB: 28.

ATTORNEY SEAN HOPE: 28, excuse me, parking spaces, and only 20 of the 28

are being used. So they're actually parking utilization for similar sized rental affordable housing buildings, that's actually further away from public transportation, and the Planning Board sought a 0.7 ratio. But I think also we speak to as your point earlier about rental units is the parking demand. And we think that the parking demand will be lower because it's a rental building.

Also when we looked at the four parking spaces, in our unit mix we have 16 of the 20 units are two- and three-bedroom, family size. So we have four, one-bed units and we are also reducing about four parking spaces. And based on our data we believe that the one bedrooms are less likely, one, because they're rental. Two, because of the

income mix. We are 30 to 60 percent of the AMI which is the area to median income. And so based on our data of similar properties in Cambridge, the one bedrooms are often the ones that don't require parking simply because they're rental. So we think the reduction also correlates with our unit mix and as well as the number of one-bedroom units.

Also in terms of the general Special Permit criteria, the continued operation or development of adjacent uses permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use. We feel like this use is, again, is consistent with the residential character of the neighborhood. The adjacent building at 2007 was a condo building was permitted for 24 units with

20 parking spaces. So we feel and even the trend now that is shifting towards a less auto-centric city and also with the City Council has now changing the Zoning to promote alternative modes of transportation. So we feel like, again, this is not going to be adverse to the uses in the neighborhood and is consistent with the goals of the City Council.

CONSTANTINE ALEXANDER: In your materials, you haven't mentioned yet, but you should get on the record, is that you have -- plan to have various initiatives to encourage people to use bicycles, again, which will eliminate the need for a car.

JASON KORB: Yeah, that's a great point. So we're actually going to do an in-building bike share. So also we'll be

providing four bikes and four helmets and we'll come up with a way to monitor that. So if someone takes a bike, they're responsible for it. That is something that we're willing to commit to.

We'll also give monthly awards for people who use cars infrequently. And there will be a self-certification on that. It will be a \$25 gift certificate to a local restaurant, so we're supporting local businesses, too.

Vanpool and carpool matching, too. We'll set up an on-line system as well as something in the lobby.

One thing we mentioned is that we would have priority hybrid parking which would be close to the elevator. We just like to slightly amend that to make it more feasible for lower income people.

We'd like to change that to low emitting or fuel efficient vehicles. And there's a definition for that which is there's a green score of 40 or higher. So a Corolla would qualify, you know, things like that. So the high efficient cars that aren't necessarily hybrids.

And lastly, we have welcome packages for all the tenants and we plan to put information such as, you know, where availability of alternative transportation is. And we're putting that on-line as part of our website, too.

One of the things Sean had mentioned the difference between home ownership and rental. We actually do have hard data on that. If you look at the census data from 2011, 12 percent of homeowners do not have a car in Cambridge. 45 percent of

renters do not have a car. And that's hard data from the census. So there is a huge disparity from home ownership, vehicle ownership as well as rental, and that's data we would be happy to provide.

CONSTANTINE ALEXANDER: Thank you. I didn't mean to interrupt you.

ATTORNEY SEAN HOPE: No, no. I think Jason covered it. I would like to address specifically the parking Special Permit criteria, and it permits the Board to find -- to reduce the parking if the Board determines and cites in its evidence that the lesser amount of parking would not cause excessive congestion, endanger public safety, or substantially reduce parking availability for other uses or adversely impact the neighborhood. But it also

says, or that such the lesser amount of parking will provide positive environmental or other benefits to the users or to the neighborhood specifically among the benefits assisting in the provision of affordable housing. And I think this is -- directly speaks to our application; that this reduction in parking will assist our 100 percent affordable housing.

The Board, in making its determination, has certain criteria whether or not the less of off-street parking is reasonable in light of, and it gives some criteria. The first is the availability of off-street parking in the vicinity and/or proximity to the MBTA train stations. And I think we've highlighted to the Board within a half

mile we have actual -- the Central and the Kendall Square and Red Line train stations. So I think we meet that criteria.

The availability of public or commercial facilities in the vicinity. Four blocks from the property at One Kendall Square at the cinema there is a parking garage that we checked and they have available monthly passes. So for guests and visitors, they would be able to use to utilize those.

Age or occupancy restrictions which are likely to result in a lower level of auto usage. I think we've spoken to that already. That there is data that says renters will have a lower demand than market rate units. And so this is 100 percent affordable. So I think we

satisfy that category.

And the impact of parking requirement on the physical environment. By reducing the parking we're not going to provide more open space because there really is very limited because the building covers that, but it does further the urban design objectives of 19.30. So I think we satisfy that requirement.

And the last provision talks about parking developments containing affordable housing. Oftentimes when you go for more density, you have a parking requirement and it's not being able to contain on the lot. In this case we have a 400 in affordable housing. We did take advantage of the increased density bonus, but in our particular case we just need now to reduce the parking to be able to

have a feasible project.

CONSTANTINE ALEXANDER: Thank
you.

Questions from members of the Board
at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll
open it to public testimony.

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

Please come forward and give your
name.

DENISE SIMMONS: I can barely
hear you.

CONSTANTINE ALEXANDER: I'm
sorry? Oh. You have to give to the
stenographer your name and address.

DENISE SIMMONS: Okay. Denise
Simmons, Vice Mayor of Cambridge.

Resident 188 Harvard Street, apartment 4B. I live in Area 4. I'd like to just read my letter in support of this project and then I can leave it for the record.

CONSTANTINE ALEXANDER: We have a copy.

DENISE SIMMONS: Oh.

CONSTANTINE ALEXANDER: You can read it, that's fine.

DENISE SIMMONS: Oh, all right. Thank you.

CONSTANTINE ALEXANDER: I would read it if you don't.

DENISE SIMMONS: Okay. It says (Reading) Chairman Alexander, members of the Board: I am writing in support of the applicant's modest but important request to reduce the required parking by four spaces in order to construct Port

Landing. This three-story residential building will be located at on Harvard Street in Area 4, a neighborhood that I care for deeply. I have lived in Cambridge all my life, and mostly in Area 4. Approval of the requested Special Permit would allow Port Landing to fully comply with the new bicycle parking regulations while not having to seek a Zoning relief to reduce the required bicycle parking. This application is consistent with the City's green initiatives and environmental sustainability and alternative modes of transportation. Port Landing will contribute to a family-friendly Cambridge by providing high quality housing that includes two- and three-bedroom homes that have affordable

rent. That's really important to me. And I know the City Council has been working a lot to increase the number of the -- increase the number of larger units, particularly around affordability. Many families in the area of Cambridge are faced with rents that exceed one-third of their income which classifies them as distressed renters. An increase in the supply of housing as within their budget is necessary and desirable. This project will implement measures to promote alternative transportation, including providing bikes and helmets for building residents to utilize free of charge. Monthly prizes to encourage non- vehicular traffic. Carpool matching. Priority hybrid parking.

And readily available alternative transportation information. I also believe that this project's close proximity to public transportation coupled with the project's permissible 70 percent preference for Cambridge residents, employees, and families satisfies the requirements for the proposed reduction. And I hope that you'll look favorably upon this request. And I thank you for your consideration.

I just wanted to add, I guess, I really am excited about this project. I'm excited about the affordability. We need rental income -- rental --

CONSTANTINE ALEXANDER:

Property, right.

DENISE SIMMONS: Rental property in Cambridge particularly in Area 4.

It's going to be right close to such a beautiful park, Green Rose Park. And it's keeping with the flavor. It's very congruent with the neighborhood, and it will really -- it's important because I'm sure you knew that this property in particular was a bone of contention in the area for a number of years. So it will be a real improvement. So I, again, will ask that you have favorable approval of the petition.

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

DENISE SIMMONS: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: We are

in receipt of a number of letters all in support with one exception. I don't propose to read all of them in the record. But these letters are going to be incorporated into the minutes as if they have been. I just don't want to prolong the evening.

We have a letter of support from the Cambridge Affordable Housing Trust. It's signed by the housing director Christopher Cotter, C-o-t-t-e-r.

There's a letter of support from a Patrick W. Barrett, III, who resides at 234 Broadway, suite 3. He is an abutter and a principal of J.B. Realty Associates, LLC.

We have a letter from Councillor David Maher. All in support.

We have a letter from Vice Mayor

Denise Simmons who has read her letter into the record. So we already have it in the record.

There's also a record of support from a Minka -- another City Councillor Minka van Beuzekom.

And lastly, this letter I am going to read a little bit because I think it's as important as any. It's from the Traffic Parking and Transportation Department of the City of Cambridge.

It reads as follows: (Reading) The Cambridge Parking Transportation Department has reviewed the application for the reduction of required parking -- etcetera, etcetera, etcetera. (Reading) We believe that a reduction of four parking spaces will not have an adverse impact on the project or

surrounding area, and the 16 parking spaces will be sufficient to meet the parking needs of the 20-unit affordable housing project. The proponent conducted a parking study of market rate in affordable residential facilities and found a parking demand of 0.66 space per unit. This finding is consistent with the other parking demands studies done in Cambridge for affordable housing projects and market rate projects that are located near transit. The site is located within a 15-minute walk to Central and Kendall Square's MBTA stations. According to the application, there are 25 bus stops, 10 Zipcar locations, five Hubway stations and five relay rides within a 0.7 mile radius of the site. There is a public parking

garage located at One Kendall Square approximately four blocks from the site. And then they go on to cite that the proponent proposes to implement several vehicle demand reduction strategies all of which you've already identified in your testimony. And that's it.

So there's only letters of support from many city officials and one very important city department.

Anything further, Sean?

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: I'll close public testimony.

Any comments or are we ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote.

ATTORNEY SEAN HOPE: One thing.

So we actually have a letter from a direct abutter who would just like to -- you don't have to read the whole letter, but just recognize it in the file.

CONSTANTINE ALEXANDER: Sure.

And this letter is from BMR Broadway, LLC signed by William Cane, Vice President Leasing and Development of the BioMed Realty Trust. And they are an abutter as you've identified. And they are in support. It appears to be that they're in support -- yes, they're in support of the project.

Before I get to the motion, one thing I neglected to put in the public record before we started and that is in regard to the posting of signs. The sign, you've complied with the posting requirements. But the sign was

vandalized at one point. I know when I went by the site, it was down. It was in the bushes. I could see it had been posted. And you reposted -- you discovered on your own and reposted on your own. And I'm entirely satisfied that there's no issue with regard to the sign posting, but for the record, we should have that on the record. Okay?

All right. Let's go to a motion.

The Chair moves that we make the following findings: First pursuant to Section 6.35.1 of our Ordinance which allows the Board to grant a Special Permit to reduce the amount of required parking on the site. And the Chair moves that we make the following determination:

That the lesser amount of parking will not cause excessive congestion,

endanger public safety, substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood. I'll stop right here.

The Petitioner has cited, and it's been supported by others, that the nature of the use of the property, rental, affordable rental uses, particularly one bedrooms, do not require the same amount of parking that other uses of the property might require.

That there is ample public -- there's plenty of parking availability in the area, and that the -- and there is substantial availability of public or commercial parking facilities and public transportation.

And that further as the Petitioner

has cited, such lesser amount of parking will provide positive environmental or other benefits to the uses the lot and the neighborhood. Especially -- including specifically among other benefits assisting in the provisions of affordable housing units.

As I've already identified and you certainly have in your testimony, their reduction or use of parking spaces, particularly affiliated with or associated with encouraging bicycle use, does have a positive environmental impact, and so is consistent with the evolving traffic policies and philosophy of the City of Cambridge.

And we make these findings on the basis, I said one more time, there is available -- there is surplus off-street

parking. There is the garage a few blocks away in the Kendall Square area. There are certainly approximately to MBTA transit stations. And that age or other occupancy restrictions are likely to result in a lower level of order of usage, again, because of the nature of one-bedroom rental apartment for affordable housing use. There is not likely to be, and in fact, you've submitted evidence that there will not be -- there will be a lower level of usage, auto usage than might be the case for other kinds of development on the property.

So further with regard to the Special Permit, there's further general conditions that have to be satisfied which I will enumerate.

The Chair moves that the Board finds that what is being proposed will not cause congestion, hazard or substantial change in established neighborhood character. The reasons are, as I've -- for the reasons I've previously cited in my motion and in my proposed findings.

That the continued operation or development of adjacent uses will not be adversely affected by what is proposed.

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

And that the proposed use will not impair the integrity of the district or otherwise derogate from the intent and purpose of this Ordinance. In fact, it will promote the policies that are not

prevalent in the City of Cambridge with regard to the amount of parking and the encouragement of use of automobiles as -- or I should say the encouragement of alternative means of transportation to automobiles.

So, on the basis of all these findings the Chair moves that the Petitioner be granted a Special Permit to reduce the required parking on this site, off-street parking from required 20 units to 16 units.

And further, I want to also get into the record, that with regard to not derogating from the intent and purpose of the Ordinance, that the Chair would note for the record that the Petitioner has represented to us that they will take or will continue to take steps to encourage

bicycle use, and therefore again, the results of that would be to minimize or reduce a need for automobile use.

JASON KORB: That's correct.

CONSTANTINE ALEXANDER: On the basis of that, I made the motion, reduce the Special Permit to reduce the required parking, off-street parking from 20 units, 20 spaces to 16.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Done.

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

* * * * *

(9:10 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10456, 45-47 Putnam Avenue.

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

DERICK SNARE: I'm Derick Snare 158 Central Street, Somerville. I'm the architect for the project.

KAREN CHANCE: And I'm Karen Chance the owner of 45-47 Putnam. I live on the third floor. My daughter Mika Chance lives on the second floor. I have a tenant on the first floor. And I bought the unit a year ago, a year and a half ago,

and the front door and the frames around it were very rotted and there were carpenter ants that destroyed the threshold. So I put in new doors and frames and I put improvements to the building. And it's recommended to me that -- by the architect and the builder that I put an overhang over these two doors so that it will protect the doors. And with the corner of Surrey and Putnam. And Franklin Street faces right into my house which is a northwest. A lot of weather affects the doors. So --

CONSTANTINE ALEXANDER: This would also help, once you open the door today, you would walk right into the premises. The canopy will prevent, to some extent, the elements coming into the house as the door is open, right?

KAREN CHANCE: Yes.

DERICK SNARE: Gives them shelter as they're standing there.

CONSTANTINE ALEXANDER: Not only does it protect the door's structural aspect, it improves the inhabitability of the unit itself.

KAREN CHANCE: It does. It also protects the mailboxes. Right now water gets into our mail.

I'm just requesting a three-foot overhang. And I'm surprised that I had to waste, I mean use up your time on this.

CONSTANTINE ALEXANDER: Well, for the record, I mean the reason you have to use up our time is we have floor area ratio requirements that are maximums in our Zoning Ordinance. Right now you are over -- you're a non-conforming

structure. You can't be more than 0.75. And today you're at 1.57. So almost twice it. And because of this overhang, the way we compute floor area, you're adding another 34 feet. And, therefore, you're going to go to 1.59. So you're slightly increasing the floor area ratio that's not in conformance with our Ordinance. And you're also intruding into the front yard setback. That's why you're here tonight and I just need to mention that for the record.

KAREN CHANCE: Although I do have a porch that reaches out beyond that.

CONSTANTINE ALEXANDER: That doesn't count.

KAREN CHANCE: Yes.

CONSTANTINE ALEXANDER: This counts, that doesn't count.

KAREN CHANCE: So, Derick will
show you --

CONSTANTINE ALEXANDER: We have
the plans right here.

KAREN CHANCE: Oh, you have them?

DERICK SNARE: Well, I'll just
point out that, you know, the adjacent
houses all have some entry, you know,
covers of some sort.

We actually have, we have an
additional letter from the house just to
the right on the other side.

CONSTANTINE ALEXANDER: Do you
mind if I open the envelope?

DERICK SNARE: Yeah, sure. And
I -- well, I know you have one letter
that's sort of --

CONSTANTINE ALEXANDER: We'll
get to that in a second. We have one

letter that's in opposition. And I'll get to that.

Anything else?

DERICK SNARE: Well, the --

CONSTANTINE ALEXANDER: You don't have to say anything.

DERICK SNARE: The three-foot deck it's just, it's in line with the bay. It's on the side of the entry. And so that's what dictated that. So we're not coming out any further than the existing building. And we're just, we're covering the two doors and the mailboxes.

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

THOMAS SCOTT: I was just noticing on the plan that the width is not defined. The depth is defined but not

the width.

DERICK SNARE: I noticed it's not on the drawing. It's on the application, 11 feet, 6.

THOMAS SCOTT: Okay. I wanted to make sure it was defined somewhere.

MIKA CHANCE: And we do have an image, the picture image of the front of the house if you'd like to see it.

TIMOTHY HUGHES: I'm good.

CONSTANTINE ALEXANDER:
Anything else?

Anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. We're in receipt of two letters I'll read into the record. The one that the

Petitioner has handed to us this evening. It is from Lisa J. Drapkin, D-r-a-p-k-i-n at 37 Putnam Avenue. (Reading) My neighbor Karen Chance is seeking a Variance to build an overhang over the two doors in front of her house at 45-47 Putnam Avenue. I am writing to let you know that as her across-the-street neighbor at 37 Putnam Avenue, I am in full support of this project. I was also the relator who sold her this house, so I'm keenly aware of the rotted condition of the front doorways at the time she purchased this house last year. Being at the northwest corner of the intersection of Putnam Avenue, Surrey Street, and Franklin Street, the doors had become weather beaten and the frames were rotted and severely deteriorated. An overhang

would protect the new doors and door frames and keep rain from getting into the mailboxes beside them. The house next-door, 49-51 is the same size and shape as her house and it has a roof over the front porch larger than the overhang Karen is requesting to build. In fact, there used to be a porch roof/protective overhang over 45-47 Putnam Avenue until a major remodel in the 80's when it was removed. I hope that you will grant Karen her request to build an overhang to protect the condition of her home which she has improved significantly, including installing new doors and door frames since she purchased it last year.

And we're also in receipt of a letter from Ramon Pepi, P-e-p-i who apparently resides at 49-51-53 Putnam Avenue.

(Reading) Regarding case No. 10456 for the Petition for a Variance to construct a canopy over the entry, I am definitely opposed to this. I live in a residential area and a canopy will look cheap and give the appearance of a commercial building. Please do not approve of this Variance.

And that's it.

Anything further you want to add at this point?

KAREN CHANCE: Well, the -- I hired a fine architect to make a plan so that it would be a sturdy looking and not cheap looking.

CONSTANTINE ALEXANDER: Well, cheap looking is in the eyes of the beholder.

TIMOTHY HUGHES: I'm guessing he has kind of a Jersey Shore image of

canopy.

MIKA CHANCE: Well, it draws up the idea of a fabric canopy, which there are several fabric canopies on Putnam close to us.

DERICK SNARE: But I should also point out that I -- actually, I wish we had a picture of the previous structural canopy that was there. But they mention the renovation in the 80's, and this house was -- it is sort of modernized. And there are real no real decorative elements. The front porch as you see in the plan is sort of contemporary, and that was the nature of sort of the challenge to put something over the doors that was sort of in keeping with that. So it wasn't going to be Victorian. And so --

CONSTANTINE ALEXANDER: Well,

the think I would observe that cheap or not, that's not our issue. If you want to do a cheap design, do a cheap design.

DERICK SNARE: We actually originally wanted to do some stainless steel cables supporting it, and dropped that idea and ended up putting in some mahogany brackets to tie into sort of the other mahogany accents in the building. So this seemed to be the simplest most straight forward.

CONSTANTINE ALEXANDER: Thank you.

Comments from members of the Board?
Ready for a vote?

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this Board make the following findings with regard to the

Variance being sought:

That a literal enforcement of the provisions the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the building is as sited on the structure is exposed to the elements and demonstratively cause damage to the front door and frame of the building as well as to the mailbox and it affects the ability to receive mail in readable condition.

That the hardship is owing to the circumstances relating to the -- basically the shape of the structure. It's a non-conforming structure at the street.

Relief may be granted without substantial detriment to the public good or nullifying or substantially

derogating from the intent and purpose of this Ordinance.

The relief being sought is to improve the inhabitability of the structure by shielding to some extent the inside of the house from the elements.

It also improves the ability of the building to continue to not to deteriorate by again blocking the elements from raining on the front of the structure.

And that the idea of canopies over front doors is not unusual to this Board. We've had many cases like this. And typically we are in support of them because they do improve the inhabitability of the structure without any negative impact of the community at large.

So on the basis of these findings, the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with a plans submitted by the Petitioner, prepared by Snare and Snare Design, dated September 17, 2012, which have been initialled by the Chair.

Before we take the vote, understand that you can't -- this is it. All right? If you modify these plans, you're going to have to come back before us. Understand that?

DERICK SNARE: Understood.

CONSTANTINE ALEXANDER: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Variance granted.

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

* * * * *

(9:20 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10457, 59 Market Street.

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

As you heard, we need name and address for the stenographer.

JAMES WILDASH: Good evening, Chairman. Good evening, Members of the Board. My name is James Wildash. I'm the owner of 59 Market Street. To my right is Sonia Kowal my wife, co-owner of 59 Market Street. And to my left is Adam Grassi who is the architect.

CONSTANTINE ALEXANDER: As you

know, we're not going to get into the merits of this case. We have a problem because the dimensional form was not prepared. It was incomplete, and the supporting documentation was very inconsistent. I appreciate you giving us to that tonight. But our rules are you have to have this in the file by last Monday at five o'clock.

JAMES WILDASH: Okay.

CONSTANTINE ALEXANDER: So we're not going to hear the case tonight I'm sorry to say. This didn't comply with our rules. So if this a -- is this is the one you're going to submit? This is the one you believe to be --

JAMES WILDASH: Yeah, I believe so. We have our builder here as well.

CONSTANTINE ALEXANDER: Okay.

JAMES WILDASH: He was actually technically responsible for filing this at the -- it was actually the hearing before last. So this is the third time that we've tried to get this done. And unfortunately we are constrained in terms of funds and timing so we desperately need to get this done.

CONSTANTINE ALEXANDER: Well, we can, I mean we can continue this case only for two weeks. It's not like you're being pushed back for six months.

JAMES WILDASH: Okay, that's great.

CONSTANTINE ALEXANDER: I don't want to get into the merits of the case. There are technical legal reasons you don't want to get into the merits and we don't want to get into the merits.

JAMES WILDASH: Should we leave these then, Adam?

ADAM GRASSI: There's no chance we're not hearing the case tonight? So we're not going to submit documents?

CONSTANTINE ALEXANDER: No.

JANET GREEN: Do you understand why we can't hear the case tonight? When you post the sign, that means the people who are concerned with it can come down and look in the file. And if they came down and looked in the file, they wouldn't have the complete documents so that we wouldn't have done our obligation to the public to make that information available.

ADAM GRASSI: We apologize for that oversight. We were misled by the information on the City of Cambridge

website which was incorrect and that's what caused the discrepancy.

CONSTANTINE ALEXANDER: We don't ascribe any bad faith on your part. I want to be very clear about that. You're not the first person who has had this problem.

JAMES WILDASH: And I bet we wouldn't be the last either.

CONSTANTINE ALEXANDER: Hopefully you'll be the last. Probably not.

But anyway, can we continue this case for the next hearing?

SEAN O'GRADY: Not for another month.

CONSTANTINE ALEXANDER: Oh. Well, can we squeeze them in? It's up to us.

SEAN O'GRADY: It's up to you.

CONSTANTINE ALEXANDER: How many cases?

SEAN O'GRADY: You have eight regular and three continued. You've got 155 Webster Ave. I think that might be the little house.

CONSTANTINE ALEXANDER: Doesn't ring a bell with me.

SEAN O'GRADY: That might be the one I think where there was a little store that's next to the ball field. I think that's --

TIMOTHY HUGHES: That's that little building, that odd-shaped building they wanted to put a residence in it.

CONSTANTINE ALEXANDER: Oh, yes. I don't think I was here for that one.

TIMOTHY HUGHES: Were you here then?

CONSTANTINE ALEXANDER: I don't think I was here then.

TIMOTHY HUGHES: I was Chair.

CONSTANTINE ALEXANDER: Oh, no, I didn't sit on that.

SEAN O'GRADY: You were not.

And then you have 822 Somerville Ave., which I'm going to guess is a sign case.

TIMOTHY HUGHES: Sign, yes.

SEAN O'GRADY: And then you have 275 Fresh Pond Parkway, which I think is the --

CONSTANTINE ALEXANDER: We're going to hear that one.

JANET GREEN: That's the Honda.

CONSTANTINE ALEXANDER: That's

the car dealership with Mr. Panico.

SEAN O'GRADY: It's up to you.

CONSTANTINE ALEXANDER: I don't know who is going to be here in two weeks, but I would suggest that we continue this case to the next hearing.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: And whoever comes that night has to sit maybe a little longer than usual, but I think we should get this case moving.

ADAM GRASSI: We'll talk very quickly.

CONSTANTINE ALEXANDER: Does anybody have any objections to continuing to the next one? What is the next one, July 11th?

SEAN O'GRADY: July 11th, that's correct.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued as a case not heard. That's a significance for us, not for you.

On the condition -- to seven p.m. on July 11th on the conditions that you sign a waiver of time for decision. Sean will have that if you haven't sign it already. That's just legally required.

JAMES WILDASH: Okay.

CONSTANTINE ALEXANDER: That the posting sign that you have out there right now, you have to go -- you don't have to -- you've got to take a magic marker, change the date on the sign to July 11th.

JAMES WILDASH: Yep.

CONSTANTINE ALEXANDER: Change the time to seven p.m.

JAMES WILDASH: Yep.

CONSTANTINE ALEXANDER: If you don't do that, we'll have to hear it at a later hour. And then maintain it as you've maintained it so far according to the Zoning Ordinance.

JAMES WILDASH: Okay.

CONSTANTINE ALEXANDER: And on the last condition you've given us a new dimensional form. If you want to submit any other changes in the form or in the plans, they have to be in our files by five p.m. -- no latter than five p.m. on the Monday before that Thursday.

JAMES WILDASH: Right, sir.

CONSTANTINE ALEXANDER: If no other changes, you don't have to worry about that.

SONIA KOWAL: We have a supporting statement.

CONSTANTINE ALEXANDER: Okay,
sure. We'll keep them in the file.
Those you can deliver at the hearing if
you get more.

SONIA KOWAL: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. We'll see you on July 11th.

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

* * * * *

(9:30 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Thomas Scott,

Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10458, 5
Cambridge Center.

Is there anyone here wishing to be
heard on this matter? Clover Fast Food,
Inc. You've been before us before.

AYR MUIR: Yes.

CONSTANTINE ALEXANDER: You know
the drill.

AYR MUIR: Ayr, A-y-r first name.
Last name, M-u-i-r.

And these are just collected from
customers at a truck we currently operate
on Carlton Street nearby the proposed
restaurant.

CONSTANTINE ALEXANDER: Okay.
This is a Special Permit for a fast order
food establishment. And as you know

from -- you've been here before us for the same kind of Special Permit, we have to make certain findings. So why don't we just get to the chase.

If you know what they are, you can start. I'm looking for the statutory reference. Tell us a little bit about the project.

AYR MUIR: Sure, I run Clover Fast Food, Inc. We operate restaurants and food trucks. One truck in Cambridge and few more in Boston. And four restaurants as of today. We just opened our fourth, two of which are in Cambridge; one at Harvard Square and one in East Cambridge at 1075 Cambridge Street.

TIMOTHY HUGHES: Not officially East Cambridge because it's not on that side of the tracks. It's called the

Wellington-Harrington district
actually.

AYR MUIR: I've been told.

We serve breakfast, lunch, and dinner. It's all affordable food served quickly. Our sandwiches are \$6. Most other items are quite a bit less. And we focus on making food daily, which allows us to use ingredients that are appropriate seasonally to what's being grown in the New England area. So we're able to source from a lot of regional farmers and keep a lot of our customer's food dollars in the region. And I think the food tastes better that way. And I think a lot of our customers do, too. A lot of it organic, too. We serve a higher portion of locally-sourced food than any restaurant in the Boston area, and a

larger portion of organically sourced food than any restaurant in the Boston area both by fairly large markets.

And so we're looking to open a restaurant that would be Kendall Square on Main Street. And this is a space between where Legal Sea Foods is and the new Google entrance.

CONSTANTINE ALEXANDER: Would you be on street level?

AYR MUIR: That's right. Yes. There's a glass front that extends across the street there.

CONSTANTINE ALEXANDER: Okay. We've got to make findings that the operation which you're proposing to do will not create traffic problems, reduce available parking, threaten the public safety in the streets and sidewalks or

encourage or produce double parking on the adjacent public streets. Can you talk a little bit about that.

AYR MUIR: Sure. We experience with our existing locations, and we expect the same here, that the traffic is entirely virtually foot traffic. We're close to the Kendall T stop. And we expect that folks will come to us by foot. So we don't expect any measurable changes to traffic or congestion, although we hope we're busy and successful, but I think most of it will be on foot.

Trash, we use 100 percent compostable packaging. So there's no recycling bins. There's no trash bins in our restaurant. It's all compost.

We've also done some clever things with the packaging so we reduce the amount

of total material. So we tend to have one-fifth to one-tenth material left over at the end of a meal versus most fast food places. So you might finish a sandwich with me and have a little strip of deli paper that we use to wrap it in, and that would be the entire packaging versus if you might have gone to Cosi down the street or Au Bon Pain, you'd have a bag and salt in there and a napkin in there and a fork and a knife and some packaging for every one of those things and a couple layers of packaging for the sandwich. We work really hard to try to keep that to a minimum.

CONSTANTINE ALEXANDER: Can you talk a little bit about the physical design, what it's going to look like from the streetscape?

AYR MUIR: Yeah. The facade is in place right now. Boston Property the landlord has built it out. It's -- as I understand it, the -- they've extended -- there used to be an overhang for that building. And they've extended the front of the building. So now it's flat instead of the overhang. And it's, I think, it's real attractive. Glass facade. And one of the things we like, it's got high ceilings. There's a lot of, a lot of glass exposure to the street. And we like people to be able to see into our restaurants. We tend not to have much loud or gaudy signage. In the case of our Cambridge restaurants, we don't have any signage at all. And instead we like for people to see what's going on inside. We focus so much on making the

food. So that's one thing we really like a lot about it. So from the outside if you were walking along the street, what you should see is a brightly lit, friendly, warm, welcoming space. And as you come in, you should smell some great food and hear the noises of cooking and people and see all that being done.

CONSTANTINE ALEXANDER: And you've already addressed the fact that you expect to attract patrons primarily from walk-in trade as opposed to drive-in or automobile related trade. And I think that flows from the general nature of the neighborhood. I mean, we've got lots of offices and the like. And so that's -- people are not going to drive from North Cambridge to at least this Clover, maybe another one but not this

one.

AYR MUIR: Yeah, I think that's right.

CONSTANTINE ALEXANDER: I'm just checking off the things we have to make a finding on.

Talk about your waste receptacles to encourage patrons to properly dispose of all packaging materials, blah, blah, blah.

AYR MUIR: Yeah, as I mentioned, all of our packaging is compostable so we have a clearly marked compost container. In this restaurant there might even be two of them. But the primary one would be near the condiment station where people generate most of the trash. It's also accessible on the way out.

And we've been working -- we care a

lot about trash. That may sound funny. But we spend a lot of time thinking about it. We've been working -- we just started using these trash cans that are -- they're very interesting. They're a wire frame and the bag hangs from it. But they're extremely visible, and we think nice because we can keep an eye on them. They don't get overfilled. And I think customers can see what they're doing, you know, just a little more attentive and careful to it. So it's not trash that sits around or gets very dirty. And we have a signs of the compostable nature, and there will be signage explaining that. And we have -- we do have that stuff currently in most of our locations for our compost. They have a pretty substantial and reliable

composting program. We will use them again here most likely.

And then of course there are some other recycling and trash that's generated. The landlord has a space designated for us in a loading dock to maintain the trash which we'll do with proper road approved barrels.

CONSTANTINE ALEXANDER: Okay. And lastly, will you comply with all state and local requirements applicable to ingress, egress, and use of all facilities on the premises for handicapped and disabled persons?

AYR MUIR: We plan to. We'll have handicap accessible bathrooms. And we've been working very hard with our restaurants since the first one to make all of the setting accessible.

Harvard Square we ended up having a Mezzanine in there which is not, but we tried to create the similar experience in the rest of the floor that is accessible. In this case it will all be a single level, single floor. Anybody with mobility concerns should be able to access just about everything. And every type of seating will have a pretty exact equivalent.

CONSTANTINE ALEXANDER: You understand that it won't be good enough to try to do it, you'll have to do it.

AYR MUIR: That's right.

CONSTANTINE ALEXANDER: You'll just have make sure you comply with the laws otherwise the Special Permit will be invalid.

AYR MUIR: Absolutely.

CONSTANTINE ALEXANDER:

Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll open it to public testimony.

Is there anyone wishing to be heard on this matter?

We have a letter from the East Cambridge Planning Team. So if you're just going to repeat what's in the letter --

CHARLES MARQUARDT: No, I'll be succinct and different. How's that?

CONSTANTINE ALEXANDER: That's always a good idea.

CHARLES MARQUARDT: Charlie Marquardt, 10 Rogers Street. I'll just add one brief note. Personally I walk up

and down Cambridge Street a lot, and I believe the Wellington-Harrington location, once they added that it made that entire street corner more safe. They're open, they're bright, they're accessible. You feel comfortable going there at all times. I think that's an important factor considering also in your purview, but considering in the back of your mind that at night in Kendall Square it can get a little bit lonely. I know there's more and more people starting to show up there, but it's nice to have a warm, welcoming place where you can go grab a coffee instead of a \$50 burger and have it. No, it's -- for six bucks you get a really good meal. And I don't like vegetarian, but I like his food. So I'm sort of somewhat betwixt and between. So

please do grant him his permit. They've done a great job in a couple years and I appreciate it.

Thanks.

CONSTANTINE ALEXANDER: You triggered something in my mind we didn't ask. Hours of operation.

AYR MUIR: We will be operating, I don't think we have, I mean we won't know for sure until we go in front of the hearing with the Licensing Board, but we're looking at long hours of operation. We would be open at six a.m. until eleven p.m. or midnight.

CONSTANTINE ALEXANDER: Okay.

Anyone else wishing to be heard?

BARBARA BROUSSARD: Of course.

CONSTANTINE ALEXANDER: Well, I mean --

NANCY STEINING: I don't know if you need to, but I will reinforce the letter. You need my name. Nancy Steining, S-t-e-i-n-i-n-g, 75 Cambridge Parkway.

It's -- this is exactly the kind of establishment that we were hoping would be moving into Kendall Square to make it a really special location for people to go to. He's local, he's appealing to everybody who is local, and he's very supportive of community activities, and I think that's really important. So I hope he gets this approval.

CONSTANTINE ALEXANDER: Thank you for coming down and giving us that point.

Ms. Broussard.

BARBARA BROUSSARD: I brought

you a signed copy just in case you'd like one.

CONSTANTINE ALEXANDER: No need. You can keep it.

BARBARA BROUSSARD: Barbara Broussard President of the East Cambridge Planning Team. I must say, Nancy didn't put it in the letter, but the vote was unanimous. And we also had the representative of the Wellington-Harrington group. They're very enthusiastic. They like it. I will tell you I've met with Brian Coopers the regional manager for Boston Properties. He's investigated their cleanliness, so he told me, and it passed muster. We're just really glad that we have this small neighborhood type, you know, businesses. I work the market on

Wednesdays right beside or in front of Legal Sea Foods, so I watch all the food traffic. It's another thing for people to go to. And I also realize after working in the Kendall Square Group that many of the graduate students and the researchers are always looking for food late at night in Kendall Square and they don't have anything that's substantial. So this would really add to it if he could stay open late enough for them, you know, they get the munchies maybe about ten, eleven o'clock.

CONSTANTINE ALEXANDER: But there are other fast food establishments in Kendall Square that are open to late hours. I mean it may not be as good a food as you provide, but you're not going to be the only person in that area. Am I

right?

AYR MUIR: I mean I don't know all of the hours offhand. I know Chipotle falls under the fast food.

CONSTANTINE ALEXANDER: Yes.

AYR MUIR: I think they close at nine.

BARBARA BROUSSARD: They close early.

CONSTANTINE ALEXANDER: Oh, yeah?

AYR MUIR: I don't know if Cosi falls under that. They close even earlier I believe.

CONSTANTINE ALEXANDER: Okay. And you plan to stay open as late as eleven?

AYR MUIR: Yeah.

BARBARA BROUSSARD: There were a

lot of graduate students in the Kendall Square Advisory Committee when I was serving. Really one of the things they wanted was food service to be open later at night so that when they needed a break from the lab, they had a place to go to.

CONSTANTINE ALEXANDER: And now you're going to be open to two in the morning. Eleven o'clock is middle of the day for them.

BARBARA BROUSSARD: We do hope you will approve this. Everyone was enthusiastic last night, and you know we have a group of various ages.

Thank you.

CONSTANTINE ALEXANDER: Thank you very much for coming down.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The
Chair notes no one else wishes to be
heard.

Anything further to add?

AYR MUIR: I think that's it.

CONSTANTINE ALEXANDER:
Questions or comments from members?

TIMOTHY HUGHES: Is this
establishment going to replace the food
truck over on --

AYR MUIR: Our plan is to operate
both, and I hope that works really well.
I'm optimistic it will.

TIMOTHY HUGHES: I hope so, too,
as long as the traffic will sustain it.

CONSTANTINE ALEXANDER: I should
read into the record there is substantial
correspondence. And, again, I'm going
to incorporate these letters as if read

in their entirety, but I'm just going to summarize them because they're all to the same effect.

We do have a petition submitted by the Petitioner that says: I'm signing this because you think that a Clover Food Lab Restaurant at One Cambridge Center -- that's wrong obviously -- near the entrance to Google on Main Street between Legal Sea Foods and the Coop would be a valuable addition to the neighborhood. And it would appear that more than 100 people have signed this petition.

We have a letter of support from the Cambridge Redevelopment Authority signed by the Executive Redevelopment Officer, Tom Evans.

A letter of support from Leland

Cheung, a City Councillor.

A letter of support from the East Cambridge Planning Team.

A letter of support from the Kendall Square Association.

All those are in support. There certainly is no opposition that I can see in the file to what you're proposing.

So I think we're ready for a motion.

The Chair moves that we grant the Petitioner a Special Permit to operate a fast order food establishment at 5 Cambridge Center on the basis of the following findings:

That the Petitioner meets all of the requirements set forth in Section 11.30 of our Ordinance with regard to such an establishment.

That further, patterns of access or

egress with regard to the facility will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by the nature of the proposed use.

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

And that the proposed use will not impair the integrity of the district or otherwise derogate from the intent and purpose of this Ordinance.

In this regard the Chair will note that there's unanimous community support from both city officials and private

citizens. For what is being proposed, that the nature of this enterprise is very consistent with the city's policies in terms of the further development of Kendall Square.

And that we also note that the Petitioner operates other FOFE's in Cambridge and they've been operated without any complaints or, in other words, they've been operated consistent with the requirements of our Ordinance.

So on the basis of all this the Chair moves that we grant the Special Permit to the Petitioner to operate fast order food establishment at 5 Cambridge Center. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Good luck again.

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

* * * * *

(9:45 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Thomas Scott,
Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10459, 320 Bent Street/301 Binney Street and 157 Sixth Street.

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

We're going to have two cases. The first one we're going to do will be for the Variance for the additional space, the conversion of the mechanicals usable. And then we'll do the second separate case will be the Special Permit to reduce the parking.

So with regard to the Variance. Give your name and address to the stenographer, please.

DAN WINNY: I'm Dan Winny, W-i-n-n-y, architect. And I'm here with Etchell Cordero of Ironwood

Pharmaceuticals and the tenant. And Sal Zinno is who with the landlord BioMed and counsel Ryan Pace.

So this case concerns the Variance to change about four percent of the floor area of 301 Binney Street from the mechanical space to gross floor area. The building's part of a complex of 320 Bent Street, 301 Binney Street, and 157 Sixth Street. And also a Special Permit to reduce the parking. In other words, enough to --

CONSTANTINE ALEXANDER: Yes, but we'll talk about that later. I'll open a separate case for that.

DAN WINNY: Okay. Very good. Sal is going to be an easel. Just to orient you to the three buildings. This is 320 Bent Street, 301 Binney Street, and

157 Sixth Street. On Binney Street as it runs down towards the river.

So the history of this project is that the Planning Board granted a Special Permit in the 90s as a telecom building. So the buildings were built for telecommunications equipment primarily which involved a lot of mechanical equipment. Most of the mechanical equipment was placed inside the building to minimize the amount that would be on the roof both to protect it from visual and acoustic issues.

In 2002 the Planning Board granted a Special Permit to change the use of the building since the telecom industry was not in good health, to a combination of a lab with retail and housing, and that's the way the project continues right now.

This case has received letters of support I think that are in the file from the Planning Board which granted the Special Permit and the East Cambridge Planning Team and the Traffic and Parking Department.

And so to explain the location of the mechanical space, which is considerably in excess of what a lab building needs. This is the first floor of the building, the light shaded areas represent the capital space. And the dark shaded areas represent the areas which it is proposed to use for other purposes, which not office and lab space, but collaborative space. Because as you can see from some of the other floor plans, the mechanical space sort of divides the building right down the middle and makes collaborative

lab activities difficult. So the proposal is to change some small portions, which vary in amount from floor to floor, to meeting spaces, internal connecting staircases, a cafeteria, and some meeting rooms.

CONSTANTINE ALEXANDER: So you're not -- the results of the work you want to do, if we grant you the relief, is not to increase the number of employees in the building?

DAN WINNY: That's exactly correct. These are collaborative spaces.

CONSTANTINE ALEXANDER: This is also to increase the efficiency use of the building for the kind of business that's being outfitted here?

DAN WINNY: To make it a better

collaborative building besides.

CONSTANTINE ALEXANDER: A collaborative nature.

DAN WINNY: Yes. So --

CONSTANTINE ALEXANDER: What's the change in the front door?

DAN WINNY: The only change -- I just want to point out three quick things about the building.

CONSTANTINE ALEXANDER: Sorry.

DAN WINNY: There are no changes to the exterior of the building. All of the space that's proposed to be used for new purposes will be mechanical space that's currently unused, so there will be no mechanical equipment displaced to the roof for instance. No exterior changes, except as you mentioned, a new front door on the Binney Street side.

CONSTANTINE ALEXANDER: The reason I mention that is that unfortunately the representative of the East Cambridge Planning Team who just left, their letter of support which I'll get to later, suggests that you need a Variance for that. I couldn't find in the -- no one could find --

SEAN O'GRADY: Yes, I spoke with them. That was a mistake.

CONSTANTINE ALEXANDER: Mistake in the letter?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay, thank you.

DAN WINNY: This is a before and after view of the Binney Street sidewalk and here wit the new entrance which gives access to a meeting room.

And so, no exterior change except for the entrance. Only vacant mechanical space will be used, and there will be no increase in the population or change in the PTDM goals which have been achieved consistently so far under the (Inaudible).

So I Ironwood has made a decision to stay in Cambridge, grow in Cambridge rather than to Boston or the suburbs. There are letters in the file from Etchell. And Etchell will if it's the pleasure of the Board can tell you something more about Ironwood's plans in Cambridge.

ETCHELL CORDERO: Yeah, so we are a pharmaceutical company started about 15 years ago at this point, born and bred in Cambridge and started out with four

post-docs from the Whitehead Institute here at MIT. And basically we're trying to bring medicines to the patients. And I think the most basic thing is just in December we did. We were able to bring a drug to the market for patients for IBS, irritable bowel syndrome, and it took us about 10 years which is pretty short actually from discovering the drug, working on it in the research labs to bringing it to commercial, to the commercial market. So we're really excited. What's key about that is that we do need to interact well with each other. We need to bump into each other in the hallways and have those ah-hah moments. And so what we're hoping to do, like Dan said, is take away that big dead space in the middle which basically

creates a donut. It's -- I don't know if you've seen the space, 301 Binney is this really long, block-long building from Sixth Street to Met Pipe at Fulkerson and it's a really long building and it's hard to interact with each other. So by widening up the hallways and creating these conference rooms and collaboration spaces, we hope to interact with each other and hopefully bring more drugs to the market. And that's pretty much what we're trying to do here and do with this space.

DAN WINNY: I have a few more boards here showing a little more detail of the space if the Board's interested or wants to ask questions.

CONSTANTINE ALEXANDER: Up to the Board members. I'm happy, but if you

want to show it -- go ahead, please,
because I think Tom in particular --

THOMAS SCOTT: What happens to
the other grey space, it just stays as
unused mechanical space within the
building?

DAN WINNY: Much of it used as
mechanical space for the lab.

THOMAS SCOTT: Oh, it is?

DAN WINNY: But labs don't need
as much mechanical space as telecom
buildings do.

THOMAS SCOTT: Not as much.

DAN WINNY: There was a bunch of
it that's been vacant since the building
was occupied.

THOMAS SCOTT: I gotcha. So
you're trying to repurpose that space --

DAN WINNY: Exactly.

THOMAS SCOTT: -- to create better circulation in more collaborative areas? Okay.

DAN WINNY: Exactly.

TIMOTHY HUGHES: There's no changes to 320 Bent Street, it's just factors in because of the parking thing?

DAN WINNY: The project was permitted as a whole, and you're correct, the parking for 320 Bent Street is in the garage that's below grade under 301 Binney Street. It's all on a single legal lot.

These are some general views of the buildings.

These are some of the architectural studies of some of the activities that are proposed in what was the mechanical space showing communicating and collaborative

spaces. Big open stairways, light wells, meeting rooms, and so forth. These are a couple of meeting rooms on the first floor associated with the new entrance.

CONSTANTINE ALEXANDER: Thank you.

DAN WINNY: You're welcome.

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

TIMOTHY HUGHES: I'm good.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this matter? Sir, come forward.

We have a letter from the East Cambridge Planning Team, so you don't have to repeat --

CHARLES MARQUARDT: I'm not

going repeat the letter one iota. We're happy to support them. We believe that it's important one, despite the fact it doesn't need a Variance to fix the blank wall that is that along that stretch of Binney Street, particularly with all that open space, the changes coming there.

And second, really also important, is that these changes will enable the reduction of the mechanicals in the building which reduces the amount of noise in the neighborhood. And reducing noise is something we look to do with all the other stuff that's coming on behind it.

CONSTANTINE ALEXANDER: Yes, I'm just curious, is that true? In other words, the mechanicals in the building now being used and they create noise

outside of the building?

CHARLES MARQUARDT: Well, no, we view it as -- sorry.

DAN WINNY: Well, they create less noise inside the building than they would up on the roof.

CONSTANTINE ALEXANDER: To be sure.

DAN WINNY: And, therefore, when the building was originally designed with all this mechanical stuff with the telecom inside the building, which is now all of it is no longer necessary.

CONSTANTINE ALEXANDER: Right.

DAN WINNY: Then there's some excess space in there.

CONSTANTINE ALEXANDER: Not excess space, but I don't see any reduction in noise.

TIMOTHY HUGHES: All those collaborators don't have to talk as loud. So it doesn't spill to the outside as much.

CHARLES MARQUARDT: It's a loud building.

JANE GREEN: And then just ah-hah.

TIMOTHY HUGHES: They can actually say ah.

DAN WINNY: And a noise of conversations --

CHARLES MARQUARDT: And then we also view a nice reuse of space rather than having to build additional buildings, and that's critical, but we're trying to get people not to keep -- I like tall buildings but we don't have to keep going up all the time.

That's all I have to say, Mr. Chair.

CONSTANTINE ALEXANDER: Thank
you.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The
Chair notes no one else wishes to be
heard.

We are in receipt of some written
communications. We have a memo from the
Planning Board which I will read.

(Reading) The Planning Board supports the
dimensional variance and the Special
Permit request to reduce required parking
in order to convert existing mechanical
space to office research and development
in the existing building. All of the
changes are contained within the
structure and are very small adjustments

to improve the building operations for the existing tenant. This building was reviewed by the Planning Board and granted a Planning Board Special Permit and these changes are found to be in keeping with that decision. The Planning Board supports the new and improved facade along Binney Street. Which no relief is being sought but you're committed to doing that I take it.

DAN WINNY: Yes.

CONSTANTINE ALEXANDER: There's a letter of support from the East Cambridge Planning Team and I don't -- again I don't propose to read it, but I do incorporate it into the minutes of meeting.

And there is a letter from the Traffic Department, Traffic, Parking and

Transportation, but it all relates to the parking Special Permit which is the next case so I'm not going to read it now. Same letter. We've got several letters of the same letter apparently. And that's it. I thought we had something from a City Councillor but I guess not. I don't see it. But in any event, those are the letters and communications in support.

Anything further you want to add at this point or you're done?

DAN WINNY: I think we're done unless you have any questions, yes.

CONSTANTINE ALEXANDER: Okay. I would just observe, by the way, that this case it to me in a lot of ways is no different than someone in a residential, owns a residence and wants to increase

living space in the basement and they lower the ceilings, and we generally let it go because what's the impact on the neighborhood? People want to more intensely use their structure, they do it. And this is what you're doing here. This is technically increasing the usage of the internal structure by changing from mechanical to a collaborative space, but it has no impact that I can see on the city or the neighborhood in general. Particularly since it's not going to result in an increase number of employees which could create some problems but that's not your goal. Anyway, obviously I'm in support of the project. I think it makes good sense and you're good citizens of the city so we'd like to keep you here.

Any other comments? Ready for a vote?

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this Board make the following findings with respect to the requested Variance to convert mechanical space to research -- technical office for research and development. In this regard the Chair would note that the reason that you're here is because of FAR. Doing this is going to increase the FAR in the building beyond what is permitted by our Ordinance. But not inordinately. 3.0 to 3.7. So it's not a dramatic increase. And as I've noted, the Planning Board is in support of what you want to do. And, again, in my belief at

least there's no impact on the neighborhood at all. It's all internal to the building.

Anyway, the Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that their forced to have space that is not usable in their business and which is counterproductive to an effective biopharmaceutical company by creating, as someone has mentioned, a donut floor plan within the building.

The hardship is owing to circumstances relating to the nature of the building. The building was constructed for a vastly different use,

telecommunications equipment or services which require a different type of internal construction than the current use. And the current use is the kind of use that the city is encouraging particularly in this area of the city.

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

This in that regard the Chair would note the letters of support from the Planning Board. The fact that its result -- the FAR will increase the intensity of use but employees will not. And that this building will be better suited to the kinds of industry that the City of Cambridge is encouraging to

happen; namely, research space which requires in turn a collaborative environment which you will accomplish by the work you're seeking to do.

So on the basis of this the Chair moves that a Variance be granted to the Petitioner, on the basis of these findings. I don't think we need to tie it to plans since the space is all going to be internal. How you lay it out to me is not meaningful, although I'm sure you're going to do it in accordance with the plans you've given us, but I don't propose to tie it to those plans. So you've got so flexibility should you incur problems as you go forward and do the construction.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted for additional space.

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

* * * * *

(10:00 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Thomas Scott, Janet Green, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10460, 320 Bent Street, 301 Binney Street, and 157 Sixth Street.

Is there anyone wishing to be heard in this matter? Same procedure.

DAN WINNY: Yes, Dan Winny, W-i-n-n-y, architect. So the Special Permit is for reduction in parking. In other words, not to provide any more additional parking to accompany the additional FAR granted for the building. This project was subject to a project review Special Permit when the change of use to lab, housing, and retail was

granted, there was an extensive traffic study and there was significant traffic mitigation conditions put on the building which have been implemented since. And of course as always with the PTDM plan, there's been monitoring which has shown that the building has consistently met its PTDM goals. And so we propose to not increase the parking and also to meet, continue to meet the same PTDM goals. There's not expected to be any significant change in the population of the building or the traffic generation. I think that sums it up.

CONSTANTINE ALEXANDER: Thank you.

Anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Okay, the Chair will note that we have some written communications in the file. We have the letter or memo from the Planning Board that I read into the record from the prior case which is incorporated into this one. It's the same words and the same ideas.

But I do want to read, we do have a letter from the Traffic, Parking and Transportation Department that I think should be a part of our record. I'll read the relevant portions. (Reading) The property 320 Bent Street, 301 Binney Street, and 157 Sixth Street has 506,900 square feet and 503 parking spaces. Parking has not been a problem. For the 503 spaces approximately 332 spaces are utilized and 171 spaces are unused.

There are 275 spaces leased to employees, 37 spaces dedicated to residential units, and 20 spaces dedicated to carpool parking. In 2012 the site had 614 employees and 46 percent of them drove alone to work which is better than their PTDM goal. Ironwood has been very active in implementing transportation demand management measures with their employees. BioMed, I guess is the landlord, will continue to implement PDM with their tenants which they are required to do as part of their PTDM plan. TDM measures encourage employee to walk, bicycle, and take transit to work and reduce their parking demand. And then it goes on to say that the Traffic Department recommends and Ironwood Pharmaceuticals agree that if a Hubway station is located

close to the building by another party, Ironwood would become a gold Hubway corporate member which means they would subsidize annual Hubway membership for their employees that wish to sign up to be Hubway members. The program will help achieve a lower employee drive alone rate and will be a great way for Ironwood to provide a benefit to employees that travel by means other than automobiles. Ironwood employs the largest number of people at the site, 320 employees and growing. We salute Ironwood for the many steps they've already taken to encourage non-auto modes of transportation and we look forward to working with Ironwood and BioMed in the future as they continue to implement and explore other ways to decrease single occupancy vehicle

travels and manage their parking demands.

So you've got a strong endorsement from Traffic and Parking.

I'll close public testimony.

Any questions or comments from members of the Board? Move on to a vote?

We have to make, as you may have heard from the earlier case on parking, we've got to sort of a two-step Special Permit to reduce parking. There is Section 6,35 which is specific to a Special Permit to reduce parking. And then there are general findings that we have to make for all Special Permits.

So starting with 6.35.1, we have to make a finding that the lesser amount of parking that you're proposing will not cause excessive congestion, endanger public safety, substantially reduce

parking availability for other uses, or otherwise adversely impact the neighborhood. And I can stop right there. I think that you've demonstrated -- and the Traffic Department confirms, that you've sought plenty of excess parking as it is now. You're not, with regard to the Variance we just granted, you're not going to increase the number of employees. And so there's certainly a surplus of parking spaces. In any event, you're encouraging non-parking which further will satisfy the goals of the city and minimize a need for lots and lots of unused parking spaces.

And that being in Five Cambridge Center, you've got plenty of commercial MBTA and public transportation

facilities.

You do have bicycle parking in the garage right now I take it?

DAN WINNY: Yes.

CONSTANTINE ALEXANDER: And that there are -- and in that area there are other public or commercial public facilities for use by persons who come.

So those are the requirements of 6.35.1.

And then with regard to the general requirements, I'll just have to read the litany. That what you're proposing to do, reducing your parking, will not cause congestion, hazard, or substantial change in established neighborhood character. As demonstrated over and over, you're not going to cause congestion because you have still more

than enough parking with the reduced parking that we would granted by the Special Permit.

That the continued operation or development of adjacent uses will not be adversely affected by the nature of the proposed use. In fact, the neighborhood group, the East Cambridge Planning Team is enthusiastically in support of what you want to do and has no objection, and they would if anybody, would have objections to reducing on-site parking because otherwise it would impact their residential use of the area.

No nuisance or hazard would be created to the detriment of the health, safety, and welfare of the occupant on the citizens of the city.

And that the proposed reduction of

parking will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

In fact, it's consistent with promoting the goals of the city because we're not looking to create more and more parking which creates more and more auto usage which creates more and more damage to the environment and is not what Cambridge wants to do.

And further, that doing this will allow a very valuable member, a citizen of the community Ironwood Pharmaceuticals to continue to stay and grow in this facility.

So on the basis of all of this the Chair moves that we grant the Special Permit to reduce parking.

How many, I don't have it handy, how many spaces do you want to go to, how many?

DAN WINNY: Well, right now there are 503.

CONSTANTINE ALEXANDER: And you what do you want to go to?

DAN WINNY: We don't want to increase any.

CONSTANTINE ALEXANDER: Okay. You want to reduce them, though?

ANDREA HICKEY: No, it's the change in the FAR.

CONSTANTINE ALEXANDER: You're right, you're right. I'm sorry. Got it, okay.

Anyway to grant the Special Permit, all those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor.

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

* * * * *

(Whereupon, at 10:10 p.m., the
Zoning Board of Appeals
was Adjourned.)

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