

BOARD OF ZONING APPEAL

FOR THE

CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JULY 11, 2013

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Member

Janet Green, Member

Douglas Myers, Associate Member

Andrea A. Hickey, Associate Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Board of Zoning Appeals to order. As is our custom, we will start with the continued cases. We have several. The first case I'm going to call is 155 Webster Avenue, case No. 10435.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one here wishing to be heard. The Chair would also note that we are in receipt of a letter.

DOUGLAS MYERS: There's someone from the audience.

CONSTANTINE ALEXANDER: I missed

you, I apologize.

Okay, you're the petitioner?

UNIDENTIFIED FEMALE: No.

CONSTANTINE ALEXANDER: You're a neighbor?

UNIDENTIFIED FEMALE: A neighbor, yeah.

CONSTANTINE ALEXANDER: Okay.

Then just so sit tight for a second. We are in receipt of a letter from the attorney for the Petitioner. James Rafferty, James J. Rafferty. (Reading) I am informed that not all of the Board members who heard the above-captioned matter on May 23rd will be available on July 11th, which is tonight. In light of that, the Petitioner requests that the matter be continued to a date at which all of the Board members who participated in the first hearing can attend.

UNIDENTIFIED FEMALE: Okay.

CONSTANTINE ALEXANDER: Let me just explain for your benefit. Because the case started and didn't get finished, the five members who were here that night -- I wasn't one of them, have to sit on the case. One of the persons can't make it. We can still hear the case tonight, but to get the relief the Petitioner is seeking, they need four votes. So with only four tonight, they need a unanimous vote. If there are five, they can have one dissenter. So it's in their interest to continue the case until we can get all five together, and that's why they're requesting the continuance. So, we're not going to hear the case tonight.

What date?

SEAN O'GRADY: July 25th.

CONSTANTINE ALEXANDER: I'm

wondering how many days -- how many continued cases do we have in July?

SEAN O'GRADY: A lot. We have, for sure, we have Webster and Somerville. We have --

CONSTANTINE ALEXANDER: I'm just wondering if it's possible that Bay State Road, 42 may want to continue. I wonder whether we should hold a July 25th slot open for them.

SEAN O'GRADY: If you'd like, sure.

CONSTANTINE ALEXANDER: Yes, I'd like to do that.

SEAN O'GRADY: So it will be August 15th.

CONSTANTINE ALEXANDER: Can you make it on August 15th at seven o'clock on August 15th?

UNIDENTIFIED FEMALE: Yes.

JANET GREEN: Slater?

SEAN O'GRADY: Slater said he would be available.

CONSTANTINE ALEXANDER: What about the other members? There's -- Brendan's here. I assume you're available. Tom and Tim.

BRENDAN SULLIVAN: What was the date, August?

CONSTANTINE ALEXANDER: August 15th.

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: And you're available?

JANET GREEN: I'm available.

CONSTANTINE ALEXANDER: The Chair moves that this case be further continued as a case heard until seven p.m. on August 15th. A waiver for a time of decision being on file.

This motion to continue is on the condition that the Petitioner maintain the posting of the sign that's required by our Ordinance and that the sign that's currently there, or a new sign if they want it put up, reflect a new date, August 15th, and reflect the time of seven p.m.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. The case will be continued on August 15th.

(Alexander, Sullivan, Green, Myers.)

* * * * *

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10438, 822 Somerville Avenue.

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

(No Response.)

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

The Chair further notes that we are in receipt of an e-mail from Ron Tiberi, T-i-b-e-r-i. (Reading) On behalf of the Applicant we are requesting a continuance for our application to the next hearing date in order to acquire certificates from Community Development. Please advise of the next hearing date.

Next hearing date would be?

SEAN O'GRADY: 8/15 again.

CONSTANTINE ALEXANDER: 8/15?

And, again, it's the same crew for this case?

Brendan -- yes. So everybody can make it.

The Chair moves that this case be continued until seven p.m. on August 15th. This case being a case heard. A waiver of time for a decision being on file in our records.

The continuance will be on the condition that the Petitioner continue to comply with the sign posting requirements of our Ordinance with the sign reflecting the new date, August 15th, and the time of seven p.m.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in
favor. The case is continued.

(Alexander, Sullivan, Green,
Myers.)

* * * * *

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10432, 275 Fresh Pond Parkway.

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

Mr. Panico, before we start, give your name and address to the stenographer.

ATTORNEY VINCENT PANICO: Vincent Panico, P-a-n-i-c-o, 2343 Mass. Ave., Cambridge, and I'm the attorney for the Petitioner.

ANDREW BELLIZIA: Andrew Bellizia, B-e-l-l-i-z-i-a, 275 Fresh Pond Parkway, Cambridge, President Cambridge Honda.

CONSTANTINE ALEXANDER: Before we

start, let me just for the record, read your rights, as I explained to the person in the abutter in the Webster Avenue case.

One of the members who has to sit on this case, unless you want to start a new case, re-advertise, Kevin has resigned from the Board. He's moving out of Cambridge. So, you have a choice. You can go forward tonight with the four of us, but knowing that you need four votes to get the relief you're seeking. So you need a unanimous vote.

The alternative is to re-advertise this case, we'll get five new members, and then we'd hear the case whenever the case came up which would be in the next month or two. And in that situation there would be five members of the Board and there could be one dissenter. As long as four in favor, you would get your relief. So the odds are better if you have

five obviously. If you have five than four. So it's your choice. If you want to go forward tonight, you're going to go forward with four and you take your chances or you can -- we'll continue this case until you re-advertise your other case and we get five members.

So what's your pleasure?

ATTORNEY VINCENT PANICO: Well, my client has thought this matter through and he feels the Board has been very gracious in the past with granting us continuances for one reason or another, and he has decided he would go forward with four.

CONSTANTINE ALEXANDER: Fine. That's his right to do. And this time it's our fault if we were to continue the case. But Kevin moved out of town, so what can I tell you.

Anyway, Mr. Panico, go ahead.

ATTORNEY VINCENT PANICO: Just to refresh everybody's memory, what we're here for is to put up a new sign, smaller, more attractive sign. And the Board asked when we came before with some information on the lumens, and I believe that information is in the file. And they also asked -- well, can you bring us something that shows how this sign would look in an overlay? And I bring you these pictures both before and after and an overlay.

CONSTANTINE ALEXANDER: The after is of course what, if we grant you relief tonight as you're seeking, that's what the sign will look like?

ANDREW BELLIZIA: Yes.

ATTORNEY VINCENT PANICO: The middle one is what the sign will look like,

correct.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY VINCENT PANICO: And you also asked for some copies of the materials we're going to use. And I believe those are in the file also now.

CONSTANTINE ALEXANDER: Is this it?

ATTORNEY VINCENT PANICO: Uh-huh.

CONSTANTINE ALEXANDER: Okay, why don't you just, for the Board, walk through this, these three, four.

DOUGLAS MYERS: They're non-breakable.

ANDREW BELLIZIA: Okay, this is the fiberglass column cladding cover that you see at the base of the sign. These two are what the top of the sign itself, the illuminated part will be made of to form the blue with the Honda H in it.

And this is the framing that is used, aluminum, around to hold the sign together and painted in the same blue so it of course looks like it's all one piece. So those are the three materials. And these materials, by the way, are only 37 percent translucent.

ATTORNEY VINCENT PANICO: And they are also LEDs as opposed to fluorescent.

CONSTANTINE ALEXANDER: Can you tell us the impact, or tell me anyway, because I'm hopeless in this area, the impact of the 37 percent being translucent? I assume that reduces the glare and the glare basically.

ATTORNEY VINCENT PANICO: Well, if you look at the LED foot candle dimensions, you'll see that it's very minimal as you get even short distances away from the sign.

CONSTANTINE ALEXANDER: For my benefit, and I'm sure not for the benefit of

other members of the Board, some context in this. I mean, these are nice numbers. I don't know what they mean when you say -- give me by analogy or give me some sense.

ATTORNEY VINCENT PANICO: I am not an expert.

CONSTANTINE ALEXANDER: Neither am I.

ATTORNEY VINCENT PANICO: When you use your cellphone and use it as a flashlight, that the glow coming off that sign would be less than that.

ANDREW BELLIZIA: It's into the, as you can see, ten hundreds and tens of hundreds. And so -- and they gave the, they gave the distances of 10 feet to 50 feet.

BRENDAN SULLIVAN: This is very typical Honda sign that you would see on -- not to use your competitor's name, but

like a Herb Chambers or something like that. Identical to those signs.

ANDREW BELLIZIA: Identical. By the same manufacturer, Paterson Sign Company.

ATTORNEY VINCENT PANICO: And Honda wants everything standardized.

BRENDAN SULLIVAN: That's their Monaco basically going forward.

ANDREW BELLIZIA: They call it their image program.

JANET GREEN: Yes.

ATTORNEY VINCENT PANICO: Now, one other issue that was brought up was the light getting into the kitchen of Jack's house. And what we have done, and we could probably demonstrate it with the new sign, we've brought it down to such a level that it cannot get into his kitchen window.

CONSTANTINE ALEXANDER: By the way, he -- obviously he was here the first time we had the hearing.

ATTORNEY VINCENT PANICO: Yes.

CONSTANTINE ALEXANDER: Second time he was out the country and he wrote us a letter. I don't see him in the audience tonight. And last I knew we didn't have a letter from him. But have you had further communications with him? What is the story?

ANDREW BELLIZIA: No. The only communication that he had was that he had no objection if he could not see the sign from his kitchen window, and you have it here. And this is the sign, this is the picture from his kitchen window, and you can see the top of my building, the aluminum fascia cuts across the hash, I'll call it, of the H. And if you look at the proposed sign, you'll find

that the top of that falls well below the leg of the H itself.

CONSTANTINE ALEXANDER: Your sign is going to be 19 feet, 10 inches high.

ANDREW BELLIZIA: Yes.

CONSTANTINE ALEXANDER: Okay. And the existing sign is 30 feet?

ANDREW BELLIZIA: Yes.

CONSTANTINE ALEXANDER: It's going to be, obviously, 10 feet or so lower. Okay.

And that 10 feet would reduce it below --

ANDREW BELLIZIA: Yes.

CONSTANTINE ALEXANDER: -- you're saying below this?

ANDREW BELLIZIA: Yes. And that's demonstrated -- they tried as best they can to produce the angle on the computer without being at Jack's house to show where the roof

line is and where the overlay of the new sign is.

JANET GREEN: May I see those pictures, please?

ANDREW BELLIZIA: Sure.

JANET GREEN: Thanks.

ATTORNEY VINCENT PANICO: Now --

CONSTANTINE ALEXANDER: We also talked a bit last time about conditioning the hours that the lights can be on. I think there was -- I know Mr. McKernan wanted them off at nine. And that was his recommendation to us.

ANDREW BELLIZIA: If he was going to be able to see it from his kitchen window.

CONSTANTINE ALEXANDER: Right.

ANDREW BELLIZIA: If he did not see it from his kitchen window, then he didn't mind. And that is one of the reasons why we

drastically reduced the height of the sign in order to accommodate him so we -- you might find in favor of keeping what little illumination comes from the sign on a longer basis.

CONSTANTINE ALEXANDER: What longer basis do you have in mind?

ANDREW BELLIZIA: Well, obviously I'd like to keep the sign on from dusk till dawn for two reasons:

There's a workforce that works around the clock that uses Routes 2, 3, and 16 to get to and from work. And somebody who's in bed at eight o'clock, there's another person just getting up getting ready to drive to work. So that gives an opportunity for me to advertise and have subliminally them know that a Honda dealership exists there.

The other reason, and I mean it

sincerely, it's not just to sell, is that up at that end of the road there's very little light. Of course down by the shopping center and around the first rotary there's more signs, more businesses that stay open longer. Up at my end there's basically only me, and I've come in more than one time and found damaged vehicles who had unfortunately gotten into an accident and ended up pulling into my lot for some safe refuge until daylight came and they could take care of the vehicle. And it is across the street from the reservoir where people tend to go and run or ride their bikes or walk their dogs. So, I think for those reasons, and the fact that it throws, unlike the current sign with multiple fluorescent eight-foot bulbs behind it, the light emitted is negotiable at best. It's enough to let you know there's a sign

there.

The other thing that works against me, but I think it works to accommodate Jack to have more time illuminated, is the fact that the trees that were planted by the overlay district are pretty large now. And if any of you have driven by there, until you're probably a good 50 feet away, all you see is of course what was designed, the treescape. And with this sign being reduced to the height that it's going to be, even if it is illuminated, you're not going to see it until you pass those two far trees; the one that's near my service department at the corner of Lexington and the highway. And, of course, coming up the highway when you make the final right at the second rotary, you see the line of trees until you're almost up on it. So for those reasons and the fact that my fellow

Honda dealers are illuminated, I would like you to consider those items in your decision.

BRENDAN SULLIVAN: The lighting on the building, what are the hours of that?

ANDREW BELLIZIA: That shuts off at one hour after closing.

BRENDAN SULLIVAN: Okay. So those go dark?

ANDREW BELLIZIA: Yes.

BRENDAN SULLIVAN: Okay.

ATTORNEY VINCENT PANICO: The, you had asked us to bring a copy of the Planning Board decision, which is in the file.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY VINCENT PANICO: And in their decision they complimented my client for removing all the banners and the balloons from the cars because they thought it just wasn't appropriate for the parkway. So

giving him this little extra exposure --

CONSTANTINE ALEXANDER: Well, I think if we grant relief tonight, I'm going to recommend as one of the conditions is that you cannot have, you cannot restore the pendants or the balloons. They're gone. If you have this new sign, the sign will be your sign, your notice.

Yes.

DOUGLAS MYERS: My comment on what you said is I'm generally sympathetic, and my comment is that I -- in the event that anyone should ever object or be of a frame of mind to object, I think the Board would do better to specify exact hours in something as vague and subject to, you know, misunderstanding or various interpretations as dawn to dusk. With regard to dusk, this time of year we've had recent experience about what is dusk and

when the sun sets. And it seems to me that if we adopted your abutter's suggestion of nine o'clock, that would cover the period dawn to dusk in the summertime. In -- on the other hand we've also seen that the dawn is recent, from recent experience, we know dawn can be before five o'clock. And that seems to me early with regard to the fact that there are houses around and there is a wildlife reservation across the street. Maybe something specific along the lines of six o'clock would still give you the vast bulk of the come mutation traffic, it might just seem more reasonable.

Those are my comments.

CONSTANTINE ALEXANDER: Well, following up -- I'm sorry, go ahead, Janet.

JANET GREEN: Well, I was going to say what I though he was suggesting is that

he leave the light on all the time?

ANDREW BELLIZIA: From dusk till dawn.

JANET GREEN: From dusk it till dawn.

ANDREW BELLIZIA: And of course during the day it's off because it doesn't throw enough light to warrant it being on.

CONSTANTINE ALEXANDER: In my view, just one person's view, you need a unanimous vote to get what you want, the sign should not be on all night. There is an aesthetic component to the benefit of the City of Cambridge. I don't think we want to have lights -- I think the idea of Cambridge and I think the idea of restricting illuminating signs is not to have 24/7 lit signs. And I don't really see a compelling need for a sign at two in the morning. I do think there

should be a time in the evening when the lights go off. I think going on, I think dusk is an appropriate time. It will vary from season to season, time to time. But I don't want to see, and I don't know about other members of the Board, I don't want to see the sign on all night.

Brendan?

BRENDAN SULLIVAN: Well, I take a different tact because I think that right now he's shutting off the two signs that are on the building, but I really feel it's going to shackle him quite adversely by limiting this sign. I mean, I do not have a problem with it. I think it is -- it's a nice sign. I think they've gone to great lengths to reduce the impact of it. The lighting that is emitted from it is quite benign that's why I bring up a lot of the other Honda dealerships.

And I think that some advertising, even late at night, is warranted only from personal experience of driving through Burlington and stuff like that. But anyhow, I do not have a problem with it being on.

CONSTANTINE ALEXANDER: All night?

BRENDAN SULLIVAN: All night. I, I really do not have a problem with that.

While I have the floor, the other two little things I have a problem with is the little temporary which is now permanent roll-out thing which says mechanic wanted type of thing. I think if we're trying to clean-up the parkway a bit of some of this extraneous stuff, we've taken down the banners and the balloons and all that other stuff which are so 50 and 60-ish and then now another banner, temporary discount tires has come up. And, you know, it's that type of

stuff that gnaws at me only because I think that stuff could go maybe on your window or something like that. It's some of that other stuff that sort of junks up the place as far as I'm concerned. But anyhow, getting back to the original point. I do not have a problem with it being on all night.

CONSTANTINE ALEXANDER: Janet.

JANET GREEN: I agree, actually, with Brendan. I don't have a problem with it being on all night. I, and I think the sign has been significantly changed. I think the neighbor was, spoke, you know, he didn't say I want it off at such and such a time. He said I don't want to be able to see it.

BRENDAN SULLIVAN: I suspect the Shell Gas Station is on. So we're not introducing -- this is not, you know, we're not crossing the threshold here by having a

lit sign. You know, he's -- as you come down from the parkway, he's the second guy that's going to have a sign on. As you come around from the circle, you hardly see it until you're almost on because of the trees. Now that's half the year. But you've already run the gamut of signage from the Fresh Pond Shopping Center.

ANDREW BELLIZIA: I did not want to bring that up or any of the other signs that are lit all night along the parkway because I didn't want to place one of my fellow businessmen in a negative position to possibly better myself. But there is a host of illuminated signs that are lit all night, and I'm not patting myself on the back, but I think that I've gone well beyond even what I wanted originally in order to try to accommodate you folks because I know you're

responsible to the constituency. And I have a neighbor here who is here on our behalf because I believe we are a good neighbor even though we're a business.

CONSTANTINE ALEXANDER: Even though.

ANDREW BELLIZIA: Even though we're a business.

DOUGLAS MYERS: First of all, I mean, I will just say for myself and other Board members regardless it seems that we still have to discuss this point, we're still not agreed. I have no desire or inclination to vote against what you're proposing tonight. I'm sure the Board will resolve the question of the nighttime timing, and I for one will vote in favor of your proposal.

ANDREW BELLIZIA: Thank you.

DOUGLAS MYERS: But I have to say

without wanting to complicate the issue, I agree with the Chair and that I really don't feel -- I don't know how we'll resolve this, but I'm sure we will, my inclination is that I don't feel that the light should be on or the light should be on all night or should be illuminated. I feel that you're at an end of the parkway that's kind of quiet and dark, and I think that by extending all night illumination toward that end, I think there are deleterious effects to beyond nighttime illumination that we are advancing into a new section of the parkway without denying what goes on in other sections of the parkway. So I'd like to keep talking and try to find a resolution without saying that I'm rigid on that because I would like to find a resolution.

CONSTANTINE ALEXANDER: Okay. Any

other comments from members of the Board before I open it up to public testimony?

(No Response.)

CONSTANTINE ALEXANDER: The Chair will open it up to public testimony.

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

BILL FOSTER: My name is Bill Foster. I live at 244 Lexington Ave. I'm the secretary of the local neighborhood association. We've worked with Mr. Bellizia for many times over the last 25 or 30 years. He's been very helpful in things like in the winter plowing the sewers to keep them open. Allowing us to park in his area when there's a storm if we don't have street parking. He even let us once have a neighborhood garage sale in his parking lot and lent us his dumpster afterward for all the

goods. He's been a good neighbor. He's been the type of person you can approach if you got a problem. I think the new neighbors that are offering concerns are not used to working with Andy. I just go in and I tell him the situation, and most of the time, you know, he's amenable. I think if there's a problem with once the light is up and it's too bright for the neighbors, I imagine he'll do something about it without having to be told. So I just came to support it. And the neighborhood, we voted yesterday to support his position and because we know him to be the type of person who's put in landscaping, who's fought for the parking in the neighborhood, who cleans up his property. If there's noise from the doors being open when the people are working, he fixes that. If the loud speaker is making announcements

that's bothering the neighborhood, he fixes that. And he's somebody who works with us. And we like that. So this is an opportunity to give him something, we'll try it. And that's our feelings.

CONSTANTINE ALEXANDER: Do you have any reaction to the hours of the sign being lit?

BILL FOSTER: I know I can work with him if there's a problem. I will see the sign. I'm on a third floor of a three-family. If it's very, very bright it will probably come into my house. But I'm willing to try it, let it happen. And he's a good neighbor. He's an asset to the neighborhood. So we support him in this.

CONSTANTINE ALEXANDER: Okay.

BILL FOSTER: Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

(No Response.)

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

We do have some letters that I think we should read into the record. First of all, there is a memo to us from the Planning Board dated May 9th. (Reading) The Planning Board reviewed the requested Variance application for the freestanding sign at 275 Fresh Pond Parkway for a car dealership. The proposed sign exceeds the height limit of 15 feet, the area limit of 30 square feet, and is proposed to be internal illuminated. The Board suggests it will be useful for the sign proposal to also illustrate how a conforming sign does not meet the business advertising needs of the car dealership.

And I think you've done that through the before and after arrangements for our benefit anyway, not for the Planning Board's benefit.

Continuing, (Reading) Fresh Pond Parkway has been enhanced for both pedestrians and vehicles for sidewalk and roadway improvements, and the goal is to maintain and protect those connections to the Fresh Pond Reservation. Excessive signage can create visual chaos. Also the Planning Board granted Special Permit 149(B) with a site which conditioned the decision on encouraging compliance with the Sign Ordinance when the freestanding sign was replaced. The Planning Board does commend the business on the decision not to use large display pendants and balloons on the cars.

So there's nothing in here about what seems to be the issue of the night, the hours

of illumination.

We have a letter from Janet S. Lloyd, 235 Lexington Avenue. (Reading) I am a neighbor of the Honda dealership located on Fresh Pond Parkway. I have been shown the future signage being petitioned for and do not disapprove. It seems to be both narrower and shorter. Which it is.

We also have a letter from Mr. -- if I can find it, it's buried in here.

ATTORNEY VINCENT PANICO: What's the gentleman's name?

CONSTANTINE ALEXANDER: It's a woman. Janet Lloyd, 235 Lexington Avenue.

There's a letter from another neighbor Mr. McKernan who we have been talking about which I think should get into the record. Here it is.

This letter was written on June 3rd

before the last hearing that was continued because of the signage posting problem. And it's from John G. McKernan, M-c-K-e-r-n-a-n. (Reading) I was unable to attend the hearing that was in June, because I am out of the country on business at that time. I would appreciate it if it could be read aloud. It being this letter. At the hearing. It is what I would say if I could have attended. To reiterate what I said at the meeting on May 9th, I am in favor of Mr. Bellizia replacing the current sign in front of his car dealership because, as I understand it, the current, unattractive, sign would otherwise remain in place. I presented my dilemma with the current sign at that meeting explaining that it shines in my kitchen window across the street from the dealership at 275 Lakeview Avenue all night long. Mr. Bellizia has my

photograph of how much of the current sign I see from my kitchen window where it shows its two top panels above the roof of the dealership. He said that he would show it to the sign maker and request that it be much shorter. I have attached the photos below. Please refer to the photo when Mr. Bellizia presents his proposed new shorter sign for presentation.

Let me just stop there. That's the photo that you've shown us that's --

ANDREW BELLIZIA: Yes, sir.

CONSTANTINE ALEXANDER: You've responded to that. I want to make that clear.

Okay, continuing with his letter.
(Reading) I have not seen the proposed sign model Photoshopped as the Board requested for this meeting to appear as it would be -- as

it would if installed. Although Mr. Bellizia did tell me he would show it to me before my departure on June 4th.

Did you?

ANDREW BELLIZIA: No, I did not. I didn't have it by then.

CONSTANTINE ALEXANDER: You don't have to apologize. It's a no.

(Reading) I trust the judgment of the BZA to do what is best for my situation. It is supposed to be five feet lower, smaller, that is less in square feet than the current 100 square feet currently allowed and less bright. On the sixth page of the minutes of that meeting Mr. Bellizia used the wording it is very softly lit with LEDs. There was some confusion at the earlier meeting re: LED lighting. There may have been an assumption that LED light is less bright and, therefore,

the proposed sign would not be so bright. LED light can be very bright. Its chief advantage is that it's considerably less expensive than any other light that is not less bright. As the Board pointed out at the meeting, it would be aesthetically desirable for the parkway if the sign could be turned off at nine at night especially if the current sign is to remain, advantageous to me, as well as to the reasons stated above. Currently as stated in the 1999 agreement arranged by the Department of Inspectional Services between the dealership and the neighborhood in 1999/2000 the large tall lights that illuminate the cars for sale in the lot were to be shut off at 9:30 p.m. May I suggest that these two and all other lighting, except for the security lights, be off at nine o'clock a.m. The current one or two lights

that remain on all night above the car display lot are understandable and can be tolerated.

Re: Balloons and pendants referred to in a memorandum sent to the BZA from the Planning Board at the last meeting and read by Mr. Alexander. And he does quote: The Planning Board does commend the business on the decision not to use large display pendants and balloons on the cars. Close quote.

That the Planning Board has commended the dealership for not displaying "large display banners," is fine. However, the dealership often flies many balloons tied to the cars. They are an eyesore and more than that, come loose from time to time get tangled in the electric wires and in my trees. And when they deflate, hang limply out of reach or fall onto my property or drift over to

Fresh Pond to fall in there or catch in those trees. Neighbors up the street find the balloons and ribbons in their yards, too. Perhaps CMC has just recently decided not to use balloons and accommodation follow such a decision? If so I am delighted. If not, please remind Mr. Bellizia that balloons are not to be used for display from now on. And that's it. That's the sum and substance of the written comments we have received.

I'm going to close public testimony.

Mr. Panico and Mr. Bellizia, any further comments?

ATTORNEY VINCENT PANICO: Yes, I think everything that should be said mostly has been said except the, I want to remind the Board that this present sign violates the sign ordinance and it violates it about three times as badly as the new one. And the

present sign is not an attractive sign. And the new one is neat, it's attractive, and I think it's complementary to the parkway. And I think that was the, that is the actual purpose of the sign ordinance; make something more attractive and less obtrusive.

CONSTANTINE ALEXANDER: Okay.

I think it's ready for discussion time among ourselves if we want to discuss it.

Let me just try to put a little bit of a framework on this because we're a little bit over the lot. And people probably can stop me if I'm wrong. I think there's no question that there's support for the Petitioner to grant you relief. The question is what conditions to put on that.

It seems to me the ones that we have, the dimensions of the sign have got to be as shown to us; 19 feet, 10 inches high, 100

square feet in volume. The illumination should be as represented to us in this, what you've handed to us. That there should be no -- the condition that there be no balloons and pendants flying on the property on vehicles or on the structure because they are distracting.

And then lastly, should there be hours of -- should there be a limitation on the hours when the sign can be lit. And we've discussed so far, and seem to have a split opinion. Two members, myself being one of the two, seem to feel some limitation is appropriate. Two don't feel it's necessary.

BRENDAN SULLIVAN: You know, I'm just -- I don't mean to interrupt you, but while I have this thought and can get it out.

CONSTANTINE ALEXANDER: Sure, go ahead.

BRENDAN SULLIVAN: This is the first of the businesses along that strip that are coming down for a sign variation as a probably exceeding the sign ordinance. The Shell, I guess, they're replacing something in kind. They may eventually come down for a variation of that. And now we go down the block and you've got a Tokyo restaurant that's abandoned but something is going to happen there. And then I've got the Mobil Station which I expect is probably going to have to change their sign going forward, and they may very well down before us. And you've got the new development which I suspect will probably be as of right or should they come down before us, we -- I guess the point I'm trying to get is that we probably -- and I know we take each case by itself, but I see a raft of these coming down

and sign changes, sign exceeding the Ordinance. And so if we're going to limit this man to some hours of operation of his, then going forward we'll need to apply the same standard to some of the other businesses. Now, I know they're all individual and they're all on a case-by-case because they're all different, but then are we going to wind up at 12:01 a.m. a whole dark stretch of road down there because we have limited, this man and his business and his sign to a standard?

CONSTANTINE ALEXANDER: What's so terrible if it's at 12:01 all of a sudden there's no lights on the strip?

BRENDAN SULLIVAN: Well, I think it does have an adverse effect for the flow of traffic, for safety, for people walking, for -- I mean it, it lacks life. Now, I think

he has reduced the light or the impact quite a bit. I mean, I just feel that limiting it severely, it's too much of a hardship. And, again, what are we going to do forward? And I see those other businesses coming down.

CONSTANTINE ALEXANDER: Well, let me see on that one if I may, just speaking for myself, I don't want to hog the floor. Clearly if we do put limitations on the hours of you can have your light on, that presumption, that same is going to apply to anybody else that comes down. We're not going to let's say you have to turn them off pick an hour say ten o'clock at night and somebody else comes down and needs a variance for an illuminated sign having them on all night? Not while I'm sitting on this Board.

BRENDAN SULLIVAN: I don't want to go down that road.

CONSTANTINE ALEXANDER: I think it's a different road I'm suggesting. I think we're going to set the standard for the area if we put conditions, whatever conditions, however we treat this is going to set the standard, and not automatic but almost surely where it's going to be happening. I don't -- but I'll be happy to be outvoted. I don't think it's not bad to have a patch of darkness if that's what it's going to be, along the road coming in the early hours of the morning. I could be persuaded that nine o'clock is far too early to shut the lights off, but I don't see the need for lighting on at two in the morning.

BRENDAN SULLIVAN: Could we say dark from one to six?

CONSTANTINE ALEXANDER: I would have said from noon to six.

JANET GREEN: Midnight to six.

CONSTANTINE ALEXANDER: Midnight, yes. I said noon. I meant midnight. Midnight to six. That's where I would go.

Doug, since you're the other person --

DOUGLAS MYERS: I mean, you've stolen my thunder but that's fine. I was -- because I was going to end up suggesting different hours. And actually, I was going to suggest ten to five; off at ten and on at five. And then after listening to you, eleven to six. Something, I think something in that range would be acceptable. And I don't want to, you know, make an extensive reply to Brendan, but here, we do -- I think we've heard in the record, from letters otherwise, that there is an impact on a residential neighborhood here. People notice it from their homes. They notice this

illumination. And that may or may not be the case further down the parkway where the density of commercial populations is greater. But be that as it may, I'm certainly -- I'm very happy to discuss a compromise.

CONSTANTINE ALEXANDER: Right now we have one a.m., midnight, and you're saying eleven.

Janet, where do you come in?

JANET GREEN: I was really, I was influenced by the neighborhood association that spoke and the amount that the business has been part of that neighborhood and has consistently responded to concerns of the neighborhood. So I didn't feel that we were up against an antagonistic situation where we were trying to block something that never had any opportunity for being discussed again.

So I felt the neighborhood was supportive of this. I also sort of think that having some light there does light it up a bit. And that it's an area where a lot of people run, a lot of people run at night, and come off from Fresh Pond, come through there, and onto the street. I think -- I don't think I would find this harmful to that environment. So I would be inclined to go in the direction of sort of a smaller period of -- a shorter period of time without the light.

CONSTANTINE ALEXANDER: So that being one, twelve?

JANET GREEN: That would be around midnight -- midnight, one.

CONSTANTINE ALEXANDER: Sir, you wanted to say something?

ANDREW BELLIZIA: Yes. May I suggest that since the current sign can stay

and be illuminated all night long and since there are other businesses, granted further down the road in a more business atmosphere than myself, that have signs that are illuminated all night, I think the neighborhood committee may have given the answer. If I'm allowed to put up a sign and keep it illuminated, and if a group of neighbors being whatever you decide is a quorum of individuals, that it's not somebody with a personal vendetta, but a group of concerned citizens, if they approach the Board and say that this is truly bothering them at night, then I would agree to something, say, one o'clock it's off, and then it's not gonna be on till dusk again. At that point people are asleep you have to consider, and I don't think it would do any further harm. This way if it's not harming

anybody at my end of Route 16 and they're not approaching the Board with a group that has legitimate concerns, then there's no cause for alarm. On the contrary as I said, if the group does come and you find validity in their complaints about it, then I will tone the hours down accordingly.

CONSTANTINE ALEXANDER: That's a very practical approach. Unfortunately it doesn't work from a legal point of view. If we were not -- if we were not to put some restrictions, if we just let it to be you'll work something out with the neighbors, if, if having it on 24 hours is a problem, they have no leverage. They have no ability to come and protest if you say no, I need to have it on all night. And they say no, it's really distracting. It's over. The idea of putting hours of reference, hours of

illumination in there is that there are standards. There's no give -- within the time frame the lights have to be off. And the idea that, and I know that you're, by all indication, a very good neighbor, and that you'll work with the neighbors to do it. You may not own the dealership a year or two from now. And if there's no restrictions on the hours of illumination and you're successor decides he wants bright lights on all night and it is distracting to the neighborhood, they can't do anything about it. So I think it's important, if we're going to do anything, we can't rely -- I can rely on you. I think you're an honest man and an honorable man.

ANDREW BELLIZIA: Thank you for that.

CONSTANTINE ALEXANDER: But the

fact of the matter is that's -- I learned in law school, laws are those wise restraints that make men free. You have these guide poles so that everybody knows what the rules are. And then if they want to seek modification rules, you come back. If we put no rules, i.e. no limitation on the number of hours, then it's entirely with no, there's no ability to control it. It's a legal matter. It's up to you. You're good nature and your honesty and the neighbors are good faith efforts. That's not where I want to go. I think -- so, it's a long way of saying, I do think we should have hours of operation for the lights. If it's midnight to -- from dusk till midnight, you can have them on, and after that they're turned off. You're not going to have them turned on for the day obviously. I think that's where we should go. The more I

think about it, the more I think it's not a good idea to have lights on especially because of the precedent it sets, on 24 hours a night in that area. So I would still suggest -- I'll take Brendan's suggestion or half-hearted suggestion that the lights go off at midnight, go on at dusk, go off at midnight.

BRENDAN SULLIVAN: Can we say dusk being six a.m.?

CONSTANTINE ALEXANDER: The only question is -- no, I think the lights will go off when it makes no sense to have the lights on. That's when you turn them on not when you turn them off.

BRENDAN SULLIVAN: No, you're saying --

CONSTANTINE ALEXANDER: You turn them on at dusk.

BRENDAN SULLIVAN: I'm sorry, at dawn. It's dawn, if we define dawn at six a.m. rather than being a seasonal thing.

CONSTANTINE ALEXANDER: So 12 months of the year the lights are off from midnight to six a.m.?

BRENDAN SULLIVAN: Correct.

JANET GREEN: It's kind of hard to see a sign like this which is really thoughtful and put together well and have it have the light restrictions when the others which are so egregious us in so many ways don't have the light restrictions. You know what I mean? This is a real effort to meet the neighborhood and to address their concerns. But I mean I can -- I can go along with the midnight to dawn if that's what people -- other people can go along with.

DOUGLAS MYERS: It's a very nice

sign and I find the application completely commendable. And I've said, I really don't want to stand in its way. It's just the light is going to be there. It's going to be illuminated at night. So we should address whether this should be unlimited or whether this should be these restrictions which I don't see as very burdensome for the business.

CONSTANTINE ALEXANDER: Midnight to six going once, going twice.... I think I'm going to make the motion on the basis that the light illumination has to be turned off between the hours of midnight and six a.m.

Okay. So ready for a vote?

BRENDAN SULLIVAN: Sure.

CONSTANTINE ALEXANDER: I think we should be ready.

The Chair moves that this Board make the

following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner operates a car dealership on a strip of road that doesn't have great visibility from a great distance. And, therefore, there is a need to identify his premises with appropriate signage.

That the hardship is owing to circumstances relating to the shape of the lot. And the shape being where it's located, and it's sort of a certainly very irregular lot. And again, lots that requires signage greater than that permitted by our Ordinance.

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. What is intended here is to improve the identification of this site for the business operation, and this does so in a manner -- and subject at the time conditions I'm going to impose. And it does so in a manner that further as a business community while not adversely affecting the surrounding residential community.

So the basis of these findings the Chair moves that we grant a Variance to the Petitioner to proceed with the sign as proposed. Such sign being initialled by the Chair. It's the after photo. And the conditions being that the sign be no higher than 19 feet, 10 inches. That the square footage of the sign be no more than 100 square feet.

That the materials used in the signage

be those materials that were delivered to us by the Petitioner in a plastic envelope that I'm going to initial.

That the sign may be illuminated on the basis of the sheets submitted by the Petitioner, which also has been initialed by the Chair.

And that the illumination of these signs, be -- that the sign may be illuminated at all times except from the hours of midnight until six a.m. of that same day. Midnight, 12:01 to 6:00 a.m. on each day.

And on the further condition, and the last condition, that the Petitioner discontinue, because of the signage that's being proposed, discontinue the use of other types of signage in the form of balloons and pendants being strung from the cars or the structure itself. So as to remove the

clutter that is there today.

All those in favor -- sir.

ATTORNEY VINCENT PANICO: I passed in three of those showing the sign that you just approved. Could you sign another one so I have it for my file?

CONSTANTINE ALEXANDER: Sure. Do you have another one?

ANDREW BELLIZIA: We gave you all the copies.

ATTORNEY VINCENT PANICO: The one with the before/after.

CONSTANTINE ALEXANDER: This is the after I think. Yes, this is the after. Is that okay? You want me to initial this for you?

ATTORNEY VINCENT PANICO: Yes. Would you do that one, please?

CONSTANTINE ALEXANDER: Sure.

ATTORNEY VINCENT PANICO: Thank
you.

CONSTANTINE ALEXANDER: Okay.

All those in favor of granting the
Variance on the conditions I've just outlined
say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in
favor. At long last your sign is approved.

(Alexander, Sullivan, Green,
Myers.)

ATTORNEY VINCENT PANICO: Thank you
very much.

ANDREW BELLIZIA: May I address the
Board for a moment?

CONSTANTINE ALEXANDER: As long as
you don't curse us out.

ANDREW BELLIZIA: No, actually I
wanted to, first of all, I want to thank you.

I'm not sure I want the sign, but I want to thank you for that. But more importantly when we first appeared, there was a couple here that was applying for relief because they had bought a home and a contractor --

CONSTANTINE ALEXANDER: Oh, yes.

ANDREW BELLIZIA: -- had found some rotted materials and it put them in a bad bind. And it was quite obvious in listening that this was not one of those deals where somebody said, okay, what we're going to do is we're going to take down section A first and then we're going to take down section B and then C and make what I call three lefts to make a right. That they were truly in a bad situation. And ultimately the Board found in their favor and gave them relief, although I thought it took a little too long in their circumstance. I think they

petitioned in August or November and it was almost a year or over a year. And Vincent had made the comment to me, and I think he made it to the Board in my case, that something should be considered in the spirit of the law and not just the way the law is written. And I think you folks found in the spirit of the law with that couple and I commend you for it.

CONSTANTINE ALEXANDER: Thank you.

ANDREW BELLIZIA: And God bless you for it. I think it was appropriate.

CONSTANTINE ALEXANDER: We appreciate that. We don't often get endorsements.

ANDREW BELLIZIA: And I told you that afterwards. Pleasant evening to all.

* * * * *

(7:55 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: We have one other continued case, case No. 10457. The Chair would note for the Board members that the Petitioner neglected to change the time on the sign and the old time remains of 8:30 and we cannot hear that case until 8:30 p.m.

* * * * *

(8:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: We will go to our regular agenda now, and the first case on the agenda is 10461, 42 Bay State Road.

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

ATTORNEY NICHOLAS CRAMB: Good evening, Mr. Chairman and members of the Board.

CONSTANTINE ALEXANDER: Please come forward. Good evening.

ATTORNEY NICHOLAS CRAMB: My name is

Nicholas Cramb, C-r-a-m-b and I represent Ling Yi Liu. And it's L-i-n-g Y-i L-i-u and 42 BSR, LLC, which is the owner of 42 Bay State Road.

So we're here tonight because -- to appeal a May 6th determination by the Inspectional Services Department that the five-unit development at 42 Bay State Road and the five-unit development at 54 Bay State Road should be considered one, for the purposes of the inclusionary Zoning Ordinance, and constitute specifically a phased project within the meeting of that Ordinance.

I just want to clarify as a preliminary matter for the record that I don't represent 54 BSR, LLC which was until very recently the owner of 54 Bay State Road, and I don't represent Stewart Lubin, the owner of that

entity. And so, I think that we're actually here today because both of these properties were purchased at exactly the same time in June of 2011 by two separate entities, but they both used Abodes, a Cambridge developer, as their development manager to assist with all of the development aspects of the project and the construction to actually get these two projects up. They, as a result, and as a result of hiring the same builder to do both projects and the same architect and having it done all at the same time, they look a lot a like. And if you walk by them on the street, they seem like one cohesive development. But that doesn't change the fact that from the time the current owners purchased them through to the present they have been held under separate, completely separate and distinct ownership and control.

CONSTANTINE ALEXANDER: Excuse me, I don't mean to interrupt you. I apologize. But I want to make sure of something. Did you get a copy of the letter from --

ATTORNEY NICHOLAS CRAMB: Yes, I did.

CONSTANTINE ALEXANDER: Okay. I wanted to make sure you got that letter. I should have asked you that before you started.

ATTORNEY NICHOLAS CRAMB: Thank you.

And in fact, related to that it's only until today that we understand, you know, why it is that the Department is apparently making its determination. And I still think that the initial reason is probably because of the way these things look, because some of the information that they're relying upon has

only come to their attention as a result of the materials that we filed with the Board. And related to that I think it's important also that you know that there's indication from the Department that my client has been less than fulsome in providing information or misstated facts or something along those lines. And that really isn't the case at all. And we've tried to be as thorough as we could here to address that. But that the parties see this differently than the Inspectional Services Department. And I think we can clarify those issues here tonight.

I assume the Board is very familiar with this provision, and I think, though, that the place to start here is with the language of the phase project which is what Inspectional Services Department is calling this. That

definition is found in Section 11.201 of the Ordinance. And if those of you that have it, I'm going to read it, but a phase project is defined to mean any residential or mixed use development or developments, and this is the key part, at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the date. So within a period of five years from the date of the first application for any Special or Building Permit for construction, or for the 12 months immediately preceding the date of the application for any Special or Building Permit where there's 10 or more units. And as I'll explain when we get to it, there's a crucial distinction in the language that's been used here in that with respect to the four looking, five-year period, the language of the by-law says within, any

common ownership or control within a five-year period. But with respect to the one year lookback period, the Ordinance is very clear, it's different language used. It doesn't say within the 12 months preceding, it says for the 12 months preceding.

CONSTANTINE ALEXANDER: Can we agree the 12-month, the totalling period is -- you filed your building application in November of 2011; is that correct?

ATTORNEY NICHOLAS CRAMB: Well, I think the first date is actually September 13th of 2011 which is when the Special Permits were filed. Applications for Special Permits.

CONSTANTINE ALEXANDER: So we're measuring -- September is the measuring date?

ATTORNEY NICHOLAS CRAMB: That's correct.

CONSTANTINE ALEXANDER: Either one year back or five years forward as you would put it.

ATTORNEY NICHOLAS CRAMB: And crucially it's for the entire year before the Special Permit application was made.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY NICHOLAS CRAMB: Or at any point within the five-year period moving forward.

CONSTANTINE ALEXANDER: Well, that's to be decided yet. But okay.

ATTORNEY NICHOLAS CRAMB: Yes.

CONSTANTINE ALEXANDER: Your position is it's got to be for the entire period not just a portion of the period?

ATTORNEY NICHOLAS CRAMB: Yes.

And that there, you know, there was an intentional choice here to use different language when describing the forward looking period and the backward looking period and for the Department or the Board to ignore that difference in language and that distinction we believe would be in error.

So with respect to the forward-looking provision, since they've been purchased, 42 Bay State Road has been owned by 42 BSR, LLC, which is owned by my client Lin Yi Liu, and it has been since it was purchased in July of 2011. 54 Bay State Road was until very recently owned by 54 BSR, and an individual named Stewart Lubin who is not before us tonight. And I guess within the past few weeks that he and that entity actually sold to another third party which is no relation to any parties here.

Mr. Liu and 42 BSR have absolutely no ownership interest or control or relation to the 54 property or entity or to Mr. Lubin, and on the flip side Mr. Lubin and 54 BSR have no interest, ownership, or control over 42 Bay State Road. So with respect to the notion that if they come into common ownership, control after the Special Permits were filed, the Inspectional Services Department is relying on the notion that both of these entities hired Abodes, the Cambridge developer that my client is also a principal of, to do the development, management, and to serve an independent contractor to both parties and to get these two separate five-unit residential developments built. And they suggest that that agreement somehow gives unfettered control and right to act on behalf of 54 Bay State Road to Abodes, and in

turn, I guess, to one of its principals
Mr. Liu. It would be --

CONSTANTINE ALEXANDER: One second.
There's a lot of noise out there. We're just
shutting the doors so people can hear.

I'm sorry, go ahead.

ATTORNEY NICHOLAS CRAMB: So that
agreement is provided at Exhibit G to our
initial filing. And this agreement is the
development agreement between Abodes and 54
BSR, LLC concerning the development of 54 Bay
State Road. It defines the project pursuant
to which Abodes was engaged as the
independent contractor, with the
construction of, together with related site
evaluations, site work, off-site work
design, engineering, getting governmental
approvals, and paving and landscaping. It
then goes on to specify exactly what rights

and authorities Abodes had as an independent contractor. In Section 2.1 it says it has the authority to act on behalf of and to bind the owner with subject to specific limitations that are set forth throughout the agreement.

There are more limitations than rights in this agreement. Specifically Section -- on 3.1 on page 5, Section E, Subsection E says that Abodes can make recommendations to the owner in connection with the decisions regarding the project that are reserved to the owner including, without limitation, the retention of consultants.

So Abodes can't even retain a consultant. That Abodes may consult -- this is Section M. Abodes may consult with and advise the owner on choosing marketing agents, brokers and property managers, and

other consultants as needed.

So, again, Abodes is just advising the owner as to which consultants need to be hired.

In section 4.1 on page 6 that Abodes can negotiate for the owner's approval of any easements required in connection with the property. So, again, the owner's approval is necessary, the owner in all of these provisions retaining control over all of the key decisions that relate to 54 Bay State Road.

In Section 5.2 it says that Abodes may make recommendations to the owner concerning the feasibility of the construction in accordance within the parameters of the budget. And that the development manager of Abodes in 5.3 may supervise the architects and other consultants, but with respect to

the preparation of the proposed drawings and specifications, but the approval of which is reserved specifically for the owner.

5.4; development manager, Abodes, shall review any and all requests for changes and drawings and specifications but must make recommendations to the owner with respect to any such changes.

And it goes on and on and on. The final selection of the contractor and the approval of the execution of the construction contract is reserved to the owner.

The schedule must be approved by the owner.

Changes must be approved by the owner. These are in Section 6.1, 6.2, 6.4.

On page 10 it's Abodes' job to receive bids and prepare analysis, but to make recommendations to the owner for the owner's

award of construction contracts or rejection of bids.

The loan agreements are addressed in Section 7.1. It states that all loan agreement documents shall be executed by the loaner. That's 54 Bay State Road, 54 BSR, and Stewart Lubin, or all persons which they may authorize. That's not done in this agreement.

That the project budget, including the preparation on behalf of the owner and all drawing requests, the approval of which is reserved to the owner. And it just goes on and on and on.

CONSTANTINE ALEXANDER: Yes, I know that. But, you know, you're not dealing with the -- that's not the basis for Mr. Singanayagam's decision. I don't -- nowhere did I see that he claimed

that because of the development agreements, there was a joint development agreement that caused common control. His issue, as set forth in his letter, is the fact that within a 12-month period prior to the filing of the application for the Special Permit, there was a period of time when the two lots were under common control. And that common control related to a period when a receiver was in control of both properties.

ATTORNEY NICHOLAS CRAMB: Okay.

CONSTANTINE ALEXANDER: That's what you should be addressing.

ATTORNEY NICHOLAS CRAMB: We can actually focus on that. But the new letter does point both to this development agreement and separately to the receivership. So perhaps you would agree, then, that this development agreement does not --

CONSTANTINE ALEXANDER: I'm not agreeing to anything. I would like you to address the issue of 12-month prior and the period of time when the receiver was in common control.

ATTORNEY NICHOLAS CRAMB: Yes, okay.

So, just to step back again, the language of the Ordinance is important and it doesn't say that common ownership or control is relevant within, or at any point in time, during that 12 months preceding applications for Special Permits or Building Permits, it says, for the 12 months immediately preceding the date of application for any Special or Building Permit.

It means that it's only triggered if they are held under common ownership or control for that entire year period leading

up to Special Permit applications or Building Permit applications.

BRENDAN SULLIVAN: You're saying for 365 days not any part thereof?

ATTORNEY NICHOLAS CRAMB: Correct. And if --

CONSTANTINE ALEXANDER: That's a stretch.

ATTORNEY NICHOLAS CRAMB: Well, it's a different interpretation --

BRENDAN SULLIVAN: It might be a little bit of semantics.

ATTORNEY NICHOLAS CRAMB: Yes, but we're talking about a very specific Ordinance where with respect to the forward-looking clause, one word is used and that's within the five-year period, and with respect to the backward-looking clause a different word is used.

DOUGLAS MYERS: I'd like to get two thoughts on the table so we don't go over and over and thresh the same old straw.

ATTORNEY NICHOLAS CRAMB: Sure.

DOUGLAS MYERS: First of all, with regard to the "for," you seem to be of a mind that use of the word "for" is absolutely dispositive for your interpretation of the Ordinance. But doesn't the word "for" in every common sense mean the same as the word "during"?

ATTORNEY NICHOLAS CRAMB: We would say no.

DOUGLAS MYERS: You would say no? Let me refer to Random House -- I'll call it Webster's College Dictionary, 2001 Edition, page 512. The word "for," preposition, definition 11 of 34; "for: "; "during the continuation of."

ATTORNEY NICHOLAS CRAMB: I understand your point.

DOUGLAS MYERS: Good.

ATTORNEY NICHOLAS CRAMB: But here --

CONSTANTINE ALEXANDER: There are two points.

DOUGLAS MYERS: The second point is, and this was the point that I think Mr. Sullivan was alluding to, that by failing to appreciate the synonymity between the word "for" and the word "during" you reach a result that is completely unreasonable in your interpretation of this Ordinance, because in effect, I believe, if your understanding is that the common ownership has to persist throughout the 12-month period --

ATTORNEY NICHOLAS CRAMB: That's correct.

DOUGLAS MYERS: -- immediately preceding.

ATTORNEY NICHOLAS CRAMB: Yes.

DOUGLAS MYERS: If the common ownership continued until two weeks before the date of the application, and then the applicant, for whatever reason, decided to separate the properties at that time, you would say that under Section 11.201 there is no common ownership.

ATTORNEY NICHOLAS CRAMB: That's correct. And there's another reason for that, which is the title of this Ordinance. If the title is --

DOUGLAS MYERS: I'm interested in the words at this point not the title.

ANDREA HICKEY: Or the day before.

DOUGLAS MYERS: Or the day before.

ANDREA HICKEY: Or the minute before

the day before.

CONSTANTINE ALEXANDER: And let me give you the five points, you're also ignoring the purpose of Article 11.

ATTORNEY NICHOLAS CRAMB: Well --

CONSTANTINE ALEXANDER: Let me finish.

ATTORNEY NICHOLAS CRAMB: Yes.

CONSTANTINE ALEXANDER: Article 11 is quite clear that it is intended to encourage and increase the number of affordable units, housing units, in our city. And when people develop property and they're going to do 10 units or more, then there's a need for the developer to contribute some affordable housing units. Your definition, which I find very strange, your analysis of this, flies right in the face of the stated specific purpose. The idea here is that we

don't -- the whole purpose of this 12-month look back was to avoid people being cute. I'm going to be very blunt. Being cute, and avoiding through multiple ownership, which I'm not suggesting is the case here, but could be multiple ownership under common control. So you have this 12-month period when if it's under common control, you are one piece of property and you aggregate the number of units on the two properties. And that's the issue here. From February of 2011 a receiver owned or controlled or ran both of these lots, the receiver had complete control over the lots.

ATTORNEY NICHOLAS CRAMB: I respectfully disagree with that point, and I can address that in one second. But there is one other piece that's important for the record with respect to the interpretation of

this specific Ordinance of the two words that we're talking about, and that says: Title of the Ordinance is phased project. And what it was intended to prevent was an owner developing on Day 1 five units, and on six months later just waiting and then beginning development of another six units. And that's not all what happened here. And there's nothing about -- in fact, these two projects were developed at precisely the same time. Everything happened at the same time; Building Permits, Special Permits, construction contracts, everything happened at the same time because they were done together. And so -- and you can't ignore, and the courts have said you can't ignore the title of an Ordinance when you're figuring out what it means. And this is the title of this Ordinance and the title definition is

what it says.

CONSTANTINE ALEXANDER: Yes, you're right. Personally I agree with you. You look at the title to help construe the provisions. But you also look at the purpose of the Ordinance, and particularly when we have the purpose stated very clearly, and the purpose is exactly what you're trying -- you're ignoring the purpose of the Ordinance. You're saying that because, because it was, there's 12-month exactly, all 12 months must have been under common ownership or control, otherwise you're out from under. That flies in the face of what the Ordinance was trying to accomplish.

ATTORNEY NICHOLAS CRAMB: But not when it's applied here because you've got two completely unrelated parties who came to this --

CONSTANTINE ALEXANDER: Talking about before them. During the period of 12 months you had one party, a receiver, who was in control of both properties.

ATTORNEY NICHOLAS CRAMB: No, he was not in control. I can address that point next, and I think that it makes sense to move there. But some history is required to understand exactly how we got there. So, the only thing that we're probably going to agree on at the moment is that the properties were held under common ownership and control in 2008 by a company called Fornac (phonetic) and Sky Publishing. One of them was doing business as the -- one is the technical name. That entity in 2008 sold both of the properties separately. 54 Bay State Road to Califacto Partners (phonetic), and 42 Bay State Road to Geo Build Partners. Those

entities, perhaps even by design, were established with different managers, different owners, and they did not share ownership or control. There is indication that we've learned since this whole thing began, pulling all these documents down from the court system and we've now provided to you, that the individuals that were involved in those partnerships, those two separate partnerships, after 2008, had for some period of time, been carrying on as partners themselves.

BRENDAN SULLIVAN: But the merger had occurred?

ATTORNEY NICHOLAS CRAMB: No. I'm not sure I understand your question.

BRENDAN SULLIVAN: By the previous owner.

ATTORNEY NICHOLAS CRAMB: Yes, yes.

Before they were sold to Califacto and Geo Build separately --

BRENDAN SULLIVAN: A merger for Zoning purposes it's one lot? Merger had occurred.

ATTORNEY NICHOLAS CRAMB: I don't know.

But so they've sold these two properties to these two separate entities. They carry on as partners for a period of time and they had a falling out, and it all falls apart. And the one thing that we know is that there's no formal partnership agreement that was ever executed. And if there was a partnership that could have been applied at law, which can happen, it was dissolved by one of those partners, Robert (inaudible) August 31, 2010, letter to the other partner saying we're done. And it's also clear from the

materials that we provided that they stopped acting as partners long before that time.

What you have as a result is these two separate properties held by two separate and distinct entities as of August 31, 2010, which is more than a year before the Special Permits and Building Permits were applied. So the only thing that can now bring this within the scope of the inclusionary zoning provision is the notion of the receiver, which I know that we're all very interested in.

CONSTANTINE ALEXANDER: Right.

ATTORNEY NICHOLAS CRAMB: Now, what -- just bear with me for a second.

CONSTANTINE ALEXANDER: Take your time.

ATTORNEY NICHOLAS CRAMB: Okay. So, Inspectional Services Department letter,

which I received this afternoon, says that on February 3rd of 2011 a receiver was appointed to sell these, convey, transfer, otherwise dispose of the real property and personal property of the partnerships, including without limitation, the real property located at 42 and 54 Bay State Road. The properties that we're talking about, period.

CONSTANTINE ALEXANDER: There's two parts. You didn't read the whole thing.

ATTORNEY NICHOLAS CRAMB: I apologize.

CONSTANTINE ALEXANDER: The receiver was authorized by the Court to, one, take all actions reasonably necessary to maintain, operate, and preserve the properties in a state during the dependency of the receivership.

And two, sell these conveyed,

transferred, or otherwise dispose of the real and personal property of the partnerships, including without limitation, the real property located at 42 and 54 Bay State Road. And I tell you if that doesn't demonstrate control --

ATTORNEY NICHOLAS CRAMB: Well --

CONSTANTINE ALEXANDER: -- in the hands of the receiver.

ATTORNEY NICHOLAS CRAMB:

Respectfully, it may if that's what the Court had said and it didn't.

CONSTANTINE ALEXANDER: Okay.

What did the Court say?

ATTORNEY NICHOLAS CRAMB: So, key to all of this is you've got these various individuals acting as partners that create these entities that there's no question before this receiver was appointed held these

two properties separately. And because of the disagreements that they had, the Court appoints a receiver to watch over and maintain -- ensure that, ensure that until the Court can sort this all out, these assets aren't dissipated and wasted. The language that Inspection Service Department quoted is incomplete. And what the -- and this is Exhibit R to our materials, and what the order allowing the Plaintiff's motion for an appointment of receiver actually says, is that the receiver's authorized to empower and directed to sell (inaudible), and all that. The language is there.

CONSTANTINE ALEXANDER: Right.

ATTORNEY NICHOLAS CRAMB: On commercially reasonable terms. And this is the point that's left out. Subject to notice of all parties and a hearing by the Court.

The receiver can't do anything. The receiver can recommend to the Court what should happen to these properties. And until the Court actually says, and enters a subsequent order, no right to sell. There's no ownership interest. There's no right to dispose of the properties as he or she --

CONSTANTINE ALEXANDER: Well, doesn't that -- all that's simply saying is that it's under the control of the receiver, but when the receiver wants to take action, then the Court has to approve it. It doesn't mean --

ATTORNEY NICHOLAS CRAMB: No.

CONSTANTINE ALEXANDER: -- that prior to Court approval there's no control by the receiver.

ATTORNEY NICHOLAS CRAMB: That the receiver has a limited bundle of rights.

CONSTANTINE ALEXANDER: Limited?

ATTORNEY NICHOLAS CRAMB: Limited because he cannot --

BRENDAN SULLIVAN: Nobody can do anything if they go through the receiver, and the receiver cannot do anything unless he goes back to the Court.

ATTORNEY NICHOLAS CRAMB: That's correct. And until the Court --

BRENDAN SULLIVAN: And I mean --

DOUGLAS MYERS: And, therefore, and, therefore, you conclude the receiver has no control; right?

ATTORNEY NICHOLAS CRAMB: No. The receiver has a limited bundle of rights that is not equivalent to ownership and control as those terms are used in this by-law. And --

DOUGLAS MYERS: Now, let's take exactly that point. Ownership and control

are used in the by-law in the context of development; correct?

ATTORNEY NICHOLAS CRAMB: No, the site.

CONSTANTINE ALEXANDER: The site. You're right.

DOUGLAS MYERS: Show me any residential or mixed use development or developments at any one or two or more adjoining sites.

ATTORNEY NICHOLAS CRAMB: Sites in common ownership or under common control.

DOUGLAS MYERS: Development of such sites.

ATTORNEY NICHOLAS CRAMB: Yeah. The issue -- respectfully I believe the issue should be whether or not the two specific properties were under the common ownership and control. But so not only is the

receiver's ability to sell or dispose of the assets limited by the very motion that Inspectional Services has pointed to and can't do anything to get rid of these or sell them to the third party or an order of the Court, but also following the sale, once again, the disposition of any proceeds from the sale of all or any of the property of the partnership shall only be made upon notice of the parties a hearing and a further order of the Court. And the hearing, in both of these instances, is crucial. It's taking discretion and control and authority away from the receiver in this case. This is not like an Executor of an estate who's given the rights and a greater bundle of authority to determine what's appropriate and where these things should go, he's there to maintain -- the receiver's there to maintain

these properties and make sure they're not wasted. But he can't do anything without going to the Court, a hearing, where all of the parties that had some sort of interest in this stuff, come and make their case and then the Court decides.

DOUGLAS MYERS: Who else has --

CONSTANTINE ALEXANDER: Sorry, go ahead.

DOUGLAS MYERS: -- if the receiver has no control during the pendency of the receivership, who else has control?

ATTORNEY NICHOLAS CRAMB: The separate owners of these properties.

CONSTANTINE ALEXANDER: No.

DOUGLAS MYERS: No. They are divested.

CONSTANTINE ALEXANDER: Let me give another example. Suppose this was a debtor,

a Chapter 11 Petition. Just talk about one property. Pick up 42 Bay State Road. And the person that owned it went into Chapter 11 and retained the -- there's a debtor in possession. He, it, or whatever, the entity, could not sell that property without getting approval of the bankruptcy court. Would you say that the debtor in possession was not in control?

ATTORNEY NICHOLAS CRAMB: I don't think I'm well-versed enough to respond to specifically to the bankruptcy, but I think the issue here is exactly what rights did this receiver have, and those rights --

DOUGLAS MYERS: We have to proceed by analogy.

BRENDAN SULLIVAN: You said the owners have control.

CONSTANTINE ALEXANDER: Yes. Who

has controlling --

BRENDAN SULLIVAN: That's why they have a receiver.

ATTORNEY NICHOLAS CRAMB: The Court has control but the question was who has the say?

DOUGLAS MYERS: You just said the owner has control.

ANDREA HICKEY: The Court has final approval. The Court isn't going to independently make a recommendation.

ATTORNEY NICHOLAS CRAMB: No, but it's based on a hearing. The receiver -- that's exactly right. The receiver makes a recommendation. And both of the owners of those two respective entities; Califacto Partners and Geo Build partners who separately own these properties, come to that hearing and make

their case for what happens. And then the Court decides --

DOUGLAS MYERS: And the receiver exercises control. The receiver collects the rents. The receiver makes decisions about all -- makes all the decisions the owner would make.

CONSTANTINE ALEXANDER: Repairs.

DOUGLAS MYERS: Repairs, consults with real estate agents if there's desire to sell. All of that. That's what's meant by control, isn't it?

ATTORNEY NICHOLAS CRAMB: No.

DOUGLAS MYERS: No.

ATTORNEY NICHOLAS CRAMB: No.

DOUGLAS MYERS: Well, then what is?

ATTORNEY NICHOLAS CRAMB: Well, ownership and control.

DOUGLAS MYERS: I mean how can those

types of rights, which apply to specific properties held together be compared as a matter of, how can those rights be weakened or asserted to be non-control on the basis of some procedural requirement that the receiver then go to Court to get approval?

ATTORNEY NICHOLAS CRAMB: All --

DOUGLAS MYERS: That procedural requirement has nothing to do with practical control and this Ordinance is all about practical control of parcels controlled in common with respect to development.

BRENDAN SULLIVAN: Can either of the owners do anything on their respective property by themselves without going through the receiver? They have to get receiver permission to do anything to their property.

ATTORNEY NICHOLAS CRAMB: During that period of time that is probably correct.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Okay. I'm sorry we've been peppering you. Keep going.

ATTORNEY NICHOLAS CRAMB: I think that's really that we have on that point.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY NICHOLAS CRAMB: There is an additional point which is that the May 6th letter, the determination that we're appealing today, never actually made a calculation or determination of what would be required --

CONSTANTINE ALEXANDER: Let me stop you there.

ATTORNEY NICHOLAS CRAMB: Yes.

CONSTANTINE ALEXANDER: You made that point in the letter and I think you're exactly right. The issue before us tonight is whether your appeal of the May 6th

letter -- the May 6th letter talks about 15 percent. It doesn't talk about two units. So if we were to deny your appeal and the letter, the May 6th letter stands, then there is -- then you have to go back and decide, or Ranjit decides what 15 percent translates to a number of units. And if you don't like his determination, you can take an appeal from that. But that's not before us tonight. You're absolutely right. Although the advertisement talked about two units, we're only talking about 15 percent and that's how it should be. So you don't need to address that. We agree with your point. I agree with your point certainly.

ATTORNEY NICHOLAS CRAMB: Thank you.

We rest.

CONSTANTINE ALEXANDER: Okay, thank

you.

ATTORNEY NICHOLAS CRAMB: Thank

you.

CONSTANTINE ALEXANDER: Let me open to -- let me start with Mr. Singanayagam. Would you like to speak on this?

PATRICIA SINGER: No, I think you have the letter. So I think the letter, it talks about the statutes.

CONSTANTINE ALEXANDER: Thank you.

Anyone -- I'm not, by the way, I'm not prepared to read this letter to the audience. It's just a -- just for the benefit of the audience, it's an elaboration of the reasons why Mr. Singanayagam in his May 6th letter, which is basically just conclusionary, saying that they're required to have 15 percent of the total number of units affordable. This is his explanation of his

reasons for it. Part of our files, anyone who is entitled to take a look at it, if they like, but I don't want to take time tonight to read the four pages of the letter.

Sir?

LING YI LIU: I'd like to speak.

CONSTANTINE ALEXANDER: You'll have a chance.

Is there anyone else who wishes to be heard on this matter?

COUNCILLOR MINCA VAN BEUZEKOM: My name is Minca Van Beuzekom. I'm a Cambridge City Councillor, and I very rarely come to the BZA, but I have to say it was a delight actually to be here and to hear the exchange between the two. I'm really very pleased that the intent of the inclusionary zoning is being very carefully applied, and I look forward to hearing what you decide.

CONSTANTINE ALEXANDER: You'll find out soon.

COUNCILLOR MINCA VAN BEUZEKOM: I will, yes.

CONSTANTINE ALEXANDER: Anyone else who wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. I didn't see any letters in the file. Do we have anything that was added since I looked?

SEAN O'GRADY: No.

CONSTANTINE ALEXANDER: I'm going close public testimony.

Now you have an opportunity to speak further.

LING YI LIU: Well, I just wanted to add, a lot of this discussion went beyond me and my qualifications of understanding

different definitions. I can tell you what happened from a business perspective.

I bid on this property way back in 2008. So I knew about this property. Back in two-thousand -- maybe early 2011 when I met Stu Lubin, he was interested in the fact that we had developed some modular housing successfully. And we were talking. And he said, oh, he has an inside track for a small project. When he mentioned this particular property, it was the first time I had met him. I said oh, let's talk. How can we do something here on this property? Because I already knew it. Well, in our conversations, and I'm not talking about whether there's common control, and these things -- other people better than myself will figure that out. But I do what I -- I do want to put on the record is a

clear -- there was absolutely no play, no collusion, no intent to skirt any affordable housing inclusionary zoning issue. I have been a developer since the late 90s and been -- done nine projects here in Cambridge. More than 50 affordable units generated, so I understand the Zoning Ordinance and have gone through inclusionary zoning many times. I looked, and from my perspective at that time, two entities separate -- and I'm buying just one of them. Why? Because I don't know Mr. Lubin, but I'll do some work for him because I'm going to do my own. That was as simple as it got. We then went ahead and did these two projects and it made sense. It just made sense to have economies of scale and actually have them look similar, because they enhance each other's value. But from each step of the way it made business sense. Now,

whether you determine whether there was common control in all of this, it would certainly be a gross mistake on our part of thinking that inclusionary zoning was not. And I'm not conceding anything here, but certainly I am saying that from our perspective there was no collusion. There was absolutely just application of the law or Zoning Ordinance as well as we could understand. We do this, we're professional developers, Abodes and myself. And when I do see implications that we might have been doing things and hidden things from Inspectional Services, that is where I have to come out and humbly set the record straight.

CONSTANTINE ALEXANDER: Let me be very clear, and only speaking for myself and I think I can speak for the Board, you've

heard no comments today to -- or tonight suggesting that there was collusion here or --

LING YI LIU: Absolutely.

CONSTANTINE ALEXANDER: -- or tricky dealing. That's not the issue. I think you came in, or maybe you and your counsel, came in believing that's what was underlying why we have a case tonight. But we have the reasons why this is a case. We have an Ordinance. It's, you may have misread the Ordinance, that's your problem I suppose. But the Ordinance, the issue is what does the Ordinance say? And we'll get to the merits in a second. Certainly Inspectional Services believes the Ordinance says that you are a phase development and, therefore, subject to inclusionary zoning because of the fact of a point in time within

the 12 months before you filed your application for the Special Permit, this property was under control, both properties, under common control of a receiver. That is the issue that Inspectional Services hung its hat on and require you to come up with 15 percent of the units. And that's the issue before us tonight. So let's put to rest any information or suggestions of collusion --

LING YI LIU: I appreciate that.

CONSTANTINE ALEXANDER: It's not there. It's off the record.

LING YI LIU: I appreciate that.

The other piece is that we got a letter today finally understanding what the thinking behind the determination of the letter, the enforcement letter of May 6th, and it is very difficult for us to essentially respond in an adequate way. So if --

CONSTANTINE ALEXANDER: Again, let me interrupt you. I think that's a fair point, and it's one of the reasons why I asked the question very early on about did you get the letter and did you get it today? If you had come in tonight and you or your counsel, and asked for a continuance for a couple of weeks to study the letter and to come up with your response, I think we might have acted favorably on that --

LING YI LIU: But the reasons --

CONSTANTINE ALEXANDER: -- but you pursued it. You didn't do that.

LING YI LIU: Right, right. Because my wife is in her 37th week of pregnancy and a continuance would just make it worse. This is -- and it's my personal problem I understand.

CONSTANTINE ALEXANDER: No, I

understand.

ATTORNEY NICHOLAS CRAMB: It's not a problem for the record.

LING YI LIU: For the record, it's not a problem. Please put that in.

CONSTANTINE ALEXANDER: I am sympathetic for the record. I am sympathetic that you and your counsel were notified only today of the reasons for the decision. Our Board didn't have much more time than that.

LING YI LIU: Absolutely, I understand. You got the letter today, too.

CONSTANTINE ALEXANDER: And we commend that you got the materials in on the Monday before, as are our rules, and they were very complete. So, again, those are the facts that we have. You've decided to come before us tonight and not seek a continuance.

I still don't hear for a request for a continuance, so I think we're going to go forward. And the issues are not that complicated frankly, that you would need weeks to study and do research I think. But that would be your call, not mine.

Anything further? Anything you want to add at this point or are we all done?

ATTORNEY NICHOLAS CRAMB: No.

CONSTANTINE ALEXANDER: I'm going to close public comments and I think we can go into deliberations.

Let me, I'll start off this time. Usually I let others start off. I am -- I would deny the appeal. I think the language of the Ordinance is clear, particularly when you read it against the purposes of the Ordinance. The idea is that, the whole idea of phase development, and I would agree phase

development is not the most opportune word that's dealing with the context that we're dealing with tonight, it's not dispositive. You look at the title that helps in construing the statute, but more importantly you look at the purpose, and the purpose is laid out here very clearly. You're going to -- when you're going to have a development of any size, there's got to be a number of affordable units -- housing units set aside. And be sure the phase, the development is written, and be sure that people don't play games, and we're not saying you played games, play games to say you've got a 12-month lookback, and at any point in time you put in two parcels that was really in the common control, it's one parcel and you've got to meet the requirements of Article 11. And in your case there was a period of time in that 12-month

period where it was under common control in my view, particularly when I read it against the purpose of the statute. The receiver had control of those properties within that 12-month period. That you didn't appreciate the seriousness of that or the consequences of that, I'm sorry, but particularly since you're an experienced developer, you know, you -- it pays you money and you take your chance and sometimes you get it right and sometimes you don't. And this time, in my judgment, you may not have gotten it right.

LING YI LIU: For sure.

CONSTANTINE ALEXANDER: Anyway, I'm in favor of denying the appeal.

Anyone else want to speak?

BRENDAN SULLIVAN: No, no need to get wordy so I would concur.

CONSTANTINE ALEXANDER: Andrea?

ANDREA HICKEY: I mean, to me it's clear there was common control subject to a receiver's having to go to court and kind of get a stamp at the end. And to me 12 months doesn't mean 365 days. It doesn't. So, I, you know, I agree with you.

CONSTANTINE ALEXANDER: Janet.

JANET GREEN: I'm really glad that you spoke that there's no belief that you had intent of wrongdoing or anything like that, because I hope you realize that that's not the way that we feel with the issues that we have. And I agree strongly with Gus about the language and the intent of the Ordinance, so I'm inclined to vote against the appeal.

CONSTANTINE ALEXANDER: Doug.

DOUGLAS MYERS: I'll say a little bit more, but I hope not too much. I wanted to respond to the comments about title or the

first words of that section of 11.201
"Project, Phased." It's not even a title.
It's a -- these are introductory words that
are bold faced. And they -- there is nothing
in those words or nothing anywhere else in
that paragraph that provides an elaboration
of any phasing procedure or even what a phase
is, if that's what the sole purpose of that
paragraph is to control. In fact, the
operative language of the Ordinance there
speaks for itself. And if the section -- if
the operative language is applied and is
applicable, then the Ordinance speaks of the
development as a "Project, Phased." That's
all. I think that would be a very straight
forward reading of that section.

I agree with what the Chair said about
the intent of the Ordinance, importance of
inclusionary affordable housing. I think

that that very reasonable, and, more than reasonable, important policy is supported by the complete logic and propriety of reading and interpreting the word "for" as meaning at any point during the 12-month period, the existence of common control or common ownership, rather than that there can be no such common ownership throughout the 12-month period to the eleventh hour of the 364th day. That I think is on its face an unreasonable, strained interpretation of the Section 11.201. And even if the circumstances of this case concerning the acquisition of the property give rise to an inference of accident or unintentional unawareness of the application of the Project, Phased paragraph of Section 11.201, for us to adopt or give credence to the interpretation put forth by the Petitioner in

this case would leave the City of Cambridge helpless against possible chicanery and legerdemain in future cases.

Therefore, I would vote to deny the petition.

CONSTANTINE ALEXANDER: Thank you. I think we're ready for a motion, and a very simple one.

The Chair moves that for all of the reasons expressed by the five members of the Board in this last colloquy, that the appeal be denied and that the letter of Inspectional Services dated May 6th be enforced.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY NICHOLAS CRAMB: Thank you very much for your time and your consideration.

* * * * *

(8:40 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10462, 72 Lexington Avenue.

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

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: For the record.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair and members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight on behalf of the Applicant Baker Pond, LLC and representative Duncan MacArthur. This is an application requesting Special Permit relief to allow a driveway within five feet of a side yard setback.

CONSTANTINE ALEXANDER: One second. Are you aware of a letter that we have from your abutter opposing this petition?

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: I'm wondering whether you want to take a second to look at it and whether you may want to continue the case? I don't want to get a case

not heard that's why I stopped you right now.

ATTORNEY SEAN HOPE: No, I appreciate that.

BRENDAN SULLIVAN: Is there a new plan in the file vis-a-vis the garage location?

CONSTANTINE ALEXANDER: I'm going to get to that.

BRENDAN SULLIVAN: Can I see the site plan?

CONSTANTINE ALEXANDER: Sure.

Do you want to take a few minutes with your client to decide what you want to do? Why don't we recess that case. Don't take that letter, that's the only one in the file. You can discuss whether or not you want to go forward tonight or not.

ATTORNEY SEAN HOPE: I think we're -- I think we talked about it and want

to proceed.

CONSTANTINE ALEXANDER: You want to go forward?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Okay, I want to make sure. You're going to get a question from Mr. -- Brendan in a second. Maybe you want to ask your question right now.

BRENDAN SULLIVAN: Well, there was a question of the location of the proposed garage and whether or not on the plan that was in the file was not conforming. And apparently there was some discussion about rearranging it so that it would be conforming. I was wondering if that occurred?

ATTORNEY SEAN HOPE: Yes. So -- so this is not heard yet? Because I do think --

CONSTANTINE ALEXANDER: To answer

your question, it's not heard yet, right.

ATTORNEY SEAN HOPE: Okay.

So, yes, we did show an alternative plan where the 0.2 foot drive aisle was brought up to the Applicant. I wasn't at the meeting of Inspectional Services. Because of the location of the garage, we brought that tonight. And I did emphasize, and I know about the rule for the Zoning Board having all plans in at five o'clock on the Monday before the hearing. So it wasn't clear whether or not, even though I think this is a very de minimus change. I would just like to note that the garage is not part of the relief we're requesting. So even though it is part --

BRENDAN SULLIVAN: But access to it is.

ATTORNEY SEAN HOPE: Yes, it is.

And I'd also say, and maybe this was a conversation for previously, but the idea that there's a drive aisle between the garage and the house, I find a little bit of a precarious interpretation. The way I -- when we had drawn this plan, the driveway went all the way along the house to the garage. The driveway width is required to be ten feet wide. So the idea that there is an aisle width, in my experience when you say an aisle width is when you have either a parking lot with two adjacent cars and there's a drive aisle. Drive aisle specifically is not driveway and it's not a parking space. In this case we are proposing a driveway, and it was a pre-existing driveway, a driveway that runs along the property directly to the parking garage. I know this is not an appeal of a decision, but because this conversation

came up with the Applicant the day before, I feel that we would be able to proceed because one, we can -- our relief is not tied to the garage. We believe we can, we can build a conforming garage. We have an example of a conforming garage that would meet all the requirements and would still, and it would still comply with the 22-foot drive aisle. But I would say if we receive relief tonight and we went for a Building Permit, I would like to talk to Inspectional Services and be able to I guess get some clarity on the issue.

BRENDAN SULLIVAN: What I'm trying to avoid is that if in fact the garage is not conforming and then all of a sudden they say well, okay, you've got the driveway approval but now you've got to come back for the garage and we have a two part.

ATTORNEY SEAN HOPE: I understand.

CONSTANTINE ALEXANDER: That's exactly my problem.

BRENDAN SULLIVAN: And the part B of my concern is that front parking space.

CONSTANTINE ALEXANDER: I think, if we hear the case tonight and unless we grant you relief, I'm not going to hear another case. If you come back for further relief for the garage or anything else on this property, I for one will vote against it. Okay? You get your ducks in order, you come -- and I don't like the salami it.

ATTORNEY SEAN HOPE: I understand.

CONSTANTINE ALEXANDER: I know you don't do that. You've heard my speech before. The salami approach where we get a little here and then two months later a little bit here and a little bit here. I want to see the whole shebang at one time.

ATTORNEY SEAN HOPE: The reason why we didn't write a letter to continue it here tonight, if we decided to not build a garage, we can build a compliant parking space. If the garage was tied to the nature of the relief, then I would say we have to resolve that issue. But if we just remove the garage and just had an eight-and-a-half by 18 parking space, which we can do and comply, then there would be -- that would fix that parking issue. And I do recognize anyone that looks in the file sees a garage, they expect a garage to be there. So I understand even though it's not part of the relief, it is part of the application. And, you know, hearing the Board and hearing the flavor of the Board, you know, we could discuss an extension, but I do feel that it's not tied to the relief. The idea is we can have a

conforming parking lot, and we actually brought a plan showing that we could actually have a conforming garage that would meet that 22-foot drive aisle width if that's the interpretation of Inspectional Services.

CONSTANTINE ALEXANDER: What is the plan then -- we haven't got to the merits yet -- the plan you want to tie relief to? Is it the one in our files or what you have right there? Because if it's what's there, I want to know how it's different than what's in our files.

ATTORNEY SEAN HOPE: To walk you through the 22-foot aisle width has to do with the fact that it's part --

CONSTANTINE ALEXANDER: You're going to have to show me.

ATTORNEY SEAN HOPE: So essentially --

BRENDAN SULLIVAN: Sean, let me have a copy of that if you would.

CONSTANTINE ALEXANDER: Here's tonight. Here's what's in our file. Walk me --

ATTORNEY SEAN HOPE: So it's pretty simple. We put the garage on an angle. Part of the problem was that there was only 13.9 feet from the garage to the house. So that it's a 22-foot rule applies. We didn't have that as the aisle width. That is the aisle width. So by angling the garage, we would have that 22 feet, and this was something that was actually discussed by the Applicant and Inspectional Services, and we would have that 22-foot clearance. That would be necessary to have the compliant garage. So that garage is now angled, is fully conforming, and it does remedy the 22-foot width that you need,

I guess, between a structure and the garage. So that you could enter and access the garage and you'd have a 22-foot aisle width. It's an angle of the, it's angling the garage and it resolves, in our opinion, I haven't personally discussed this with Inspectional Services, but this is what I, what we believe resolves --

CONSTANTINE ALEXANDER: But by doing this it resolves the issue about the garage which is not before us tonight. What you're saying with this plan you think you'll never have to come back before us with respect to the driveway and the parking including the garage in the back?

ATTORNEY SEAN HOPE: Right. I'm saying that if we were granted relief on the driveway tonight, we could come up with a conforming garage and/or parking space.

CONSTANTINE ALEXANDER: Got it.

And I said you're going to have to come up with -- okay?

ATTORNEY SEAN HOPE: Understood.

CONSTANTINE ALEXANDER: Okay. I'm sorry. Now we're ready to go to the merits unless other members have questions at this point.

BRENDAN SULLIVAN: Mr. O'Grady should take a look.

CONSTANTINE ALEXANDER: I think if we get to the point where we're making a motion, the motion would be that there would be no further relief that will be granted with respect to the location of the garage or the parking in the rear of the structure. Approved parking in the front of the structure that's a separate issue. And of course we can always -- later the Board can

always change that. But that would be my view as to how the motion should be made. Subject to everybody else.

You want a recess?

ATTORNEY SEAN HOPE: Yes, I think it makes sense.

CONSTANTINE ALEXANDER: Okay. We're going to take a brief recess and take another case.

SEAN O'GRADY: Do you want to do the continued case?

CONSTANTINE ALEXANDER: Yes. I'm going to do the continued case Market Street. You gave me the file already.

(Case Recessed.)

* * * * *

(8:50 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

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

Is there anyone here wishing to be heard on this matter? For the record, your name and address to the stenographer.

JAMES WILDASH: James Wildash, 59 Market Street.

SONIA KOWAL: Sonia Kowal, 59 Market

Street.

ADAM GRASSI: Adam Grassi,
architect of the project.

CONSTANTINE ALEXANDER: The floor
is yours.

JAMES WILDASH: So, the reason that
we've brought this appeal before you is to
alleviate a severe problem with the -- how
would we say, the funky way in which the third
floor stairs were designed and fabricated
back in 18-something, 1873. I'm hopeful
that you've seen some of these pictures
already, but I wanted to show some.

Do you have them up on the iPad there?

BRENDAN SULLIVAN: You might have to
speak a little bit louder, that's all.

JAMES WILDASH: I'm sorry. What
you can see here --

CONSTANTINE ALEXANDER: If these

photos are in our files, we've seen them.

JAMES WILDASH: Oh, you have seen them? There might be a couple of new ones.

CONSTANTINE ALEXANDER: Okay.

JAMES WILDASH: Let me just show you what I think is one of the more telling ones.

So this is, this is at the top of the stairway, and I can't physically stand up there. What you'll see from that is it's actually a six-inch beam, and to bring the roof up to code, it is literally falling apart right now, and you can't really see it from there. And we do have some more here if you need to see them. They require a 10-inch beam. And what you'll actually see on the point on the stairway, they've actually cut some out. So it's only actually two inches as we're coming up the stairs. So there's literally that much between where my head is

and the top of the, and the outside of the building. So to conform with code and bring the roof up to standard, we need to put in a 10-inch beam which basically means we're going to lose another eight inches of headroom. And right now Sonia is what, 5, 7 she has to duck to get up there. I'm 6, 2. And it's like this right now. With another eight inches going it's going to be --

CONSTANTINE ALEXANDER: Just to get this in context. The reason you're here from a Zoning point of view, I understand and you've made it very clear why you need to do the work you need to do from a practical point of view. To solve the problems that you identified, you have to raise the wall up to create more height.

JAMES WILDASH: Yep.

CONSTANTINE ALEXANDER: And you're

doing that in a proscribed setback. Right now it's non-conforming. You're in the setback. Any modification of that part of the structure in the setback requires zoning relief and that's why you're here tonight.

JAMES WILDASH: That's correct.

CONSTANTINE ALEXANDER: I would point out for the record is that although you're over your FAR now, modestly. You're at 0.83 in a 0.75 zone. Because of the nature of the construction, you're actually going to reduce the amount of your FAR to 0.82.

JAMES WILDASH: Yep.

CONSTANTINE ALEXANDER: So you're still not in conformance but you're getting closer. You're basically reducing 33 feet at the point if you were measuring the floor area of the structure by the various construction you're doing.

JAMES WILDASH: Correct.

CONSTANTINE ALEXANDER: But you do have a need. You've identified it. I mean, the -- be able to use the third floor and access and egress it requires lifting of the wall. And it's as a result of a structure that's many years old of a non-conforming structure.

JAMES WILDASH: Correct.

CONSTANTINE ALEXANDER: Okay.

JAMES WILDASH: We did explore a number of other option to address this including, you know, increasing the pitch of the roof which ultimately still wouldn't get us there because the gap is so tight as well. We looked at dormers, but this overall was, I think, we believe and we looked at various solutions for the problem, we believe this is the most elegant solution to bring the

structure up to code overall and to, you know, make that space as safe as possible in terms of the stair.

ADAM GRASSI: If I might. As James mentioned, one of the alternatives would be to change the pitch of the roof which would bring us before you for violating a 35-foot height restriction.

CONSTANTINE ALEXANDER: That would not be a good idea.

ADAM GRASSI: Right, exactly. So we were in a position if we were to fix this problem, we either sacrifice some structural integrity of the building or we ask your permission to violate the Zoning which is --

CONSTANTINE ALEXANDER: Which is not violating it if we grant you the Variance.

ADAM GRASSI: Correct.

CONSTANTINE ALEXANDER: Okay.

JAMES WILDASH: Should have received I hope a letter?

CONSTANTINE ALEXANDER: I'm going to get to that in a second. We have received -- we have own one letter that I can see.

JAMES WILDASH: We did, we did make an effort to contact all of our neighbors even prior to the mailings been sent out, I guess six or eight weeks ago now. So we've done our bit to try to engage the neighbors. We did have one comment from Mr. Horace Francis who lives at -- he's got a funny address, like 110 or 112 Elm Street, depending on what your source is. He owns that triple decker, that three-family, and he says, yeah, you have to do whatever you have to do. So it was, quote, unquote. And I think he had a band at the end of the sentence. He was very relaxed about

it.

Anything else we need to say, Sonia?

CONSTANTINE ALEXANDER: Let me open this up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: There is no one wishing to be heard.

We are in receipt of a letter from Eianna, E-i-a-n-n-a. No last name.

(Reading). Hi. I am the owner 61 Market Street and support the petition submitted by James Wildash and Sonia Kowal to increase the height of the third floor walls at their home at 59 Market Street. The house is badly in need of renovations, and I am happy that James and Sonia are investing the time and resources to restore the house. The

headroom for the third floor staircase is very low and raising the roof will help make using the stairs much safer. I am supportive of their petition.

By the way, if we allow you to raise the roof, that's just from a structural point of view not a social point of view.

I'm going to close public testimony. Anything further you wanted to add at this point?

JAMES WILDASH: No. Thank you for your patience over the last few weeks for getting our numbers straight. We appreciate it.

CONSTANTINE ALEXANDER: Comments?
Brendan?

BRENDAN SULLIVAN: No comments.
It's a bit more massing. It's going to change, but the house is in need of something.

CONSTANTINE ALEXANDER: Yes, it certainly is.

BRENDAN SULLIVAN: And if these people are willing to invest blood, sweat, and tears which will come --

JAMES WILDASH: We're already there.

BRENDAN SULLIVAN: -- then I think a -- it's going to be rather expensive and I think in order to justify that we have that expense, some additional living area is worth the price of saving the house and making it a nice place to live.

CONSTANTINE ALEXANDER: Any other comments?

DOUGLAS MYERS: Can you say a little bit more about your intended uses of the new third floor area?

JAMES WILDASH: So, we are in two

minds depending how far our budget stretches as to whether we keep it as sort of an open plan loft area that may or may not become our master suite at some point, or putting in the two bedrooms that were originally up there. So in the original house not just the stairway but the corridor between the two bedrooms, the roof sloped down like this as well. So you had to walk along the far left-hand side to be able to get to either of the two bedrooms. So to answer your question, it will either remain as an open plan loft area or it will be divided up into two bedrooms depending on family stuff.

DOUGLAS MYERS: And on your plans you've shown for now the former of those?

JAMES WILDASH: That's correct.

DOUGLAS MYERS: Nothing further.

CONSTANTINE ALEXANDER: Ready for a

vote?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: 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 is that if the Petitioner needs to renovate and upgrade this very old structure to make it liveable and therefore it needs relief. It's a non-con -- the hardship is owing to the fact that it's a non-conforming structure and, therefore, any modification requires Zoning relief. And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of

this Ordinance.

In fact, granting relief will further the intent of the Ordinance by promoting and improving the housing stock of the City of Cambridge.

That the relief being sought is rather modest in nature. And in fact, in some respects it brings the property more in compliance with our Ordinance; namely, with regard to FAR.

So on the basis of these findings, the Chair moves that we grant a Variance to the Petitioner as requested on the condition that the work proceed in accordance with the plans submitted by the Petitioner. Multi -- many pages in length. The first page of which has been initialled by the Chair.

And let me just stop. If you modify these plans, you're going to have to come back

before us. So these are the final plans.

ADAM GRASSI: May I make a stipulation?

CONSTANTINE ALEXANDER: Go ahead.

ADAM GRASSI: Structural changes? Would that apply as well?

CONSTANTINE ALEXANDER: Structural. Give me -- elaborate.

ADAM GRASSI: I believe we submitted framing plans. With that said, if we modify those framing plans --

CONSTANTINE ALEXANDER: No, not -- I'm talking about --

ADAM GRASSI: You're talking about the envelope and the appearance?

CONSTANTINE ALEXANDER: The plans with respect to the relief being sought, the third floor.

ADAM GRASSI: In appearance only?

That's fine.

CONSTANTINE ALEXANDER: Yes.

ADAM GRASSI: Thank you.

CONSTANTINE ALEXANDER: All those in favor of granting the Variance on the condition I just mentioned say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Good luck.

JAMES WILDASH: Thank you very much.

* * * * *

(9:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: I'm going to call the next case. The Chair will call case No. 10464, 28 Andrew Street.

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

ATTORNEY ANDREW BRAM: Good evening members of the Board. My name is Andrew Bram, attorney. I represent the owners of

the property. To my left Lily Porten and Chuck Henebry. And with me is the Charles Du Mond the project architect and my associate Sarah Rhatigan.

The case before the Board tonight is a request to add two, typically referred to as A-frame dormers on the front of the house of 28 Andrew Street and the full shed dormer on the back of the house.

CONSTANTINE ALEXANDER: Very full.

ATTORNEY ANDREW BRAM: I'm sorry?

CONSTANTINE ALEXANDER: Very full.

ATTORNEY ANDREW BRAM: Very full shed dormer, yes. And we are asking the Board to approve this. We realize that the A-frame dormers in the front are inconsistent with the dormer guidelines. The dormer in the back is about 30 feet wide, double what the Board typically would allow. However,

as the -- Mr. Du Mond can explain to you, the layout of the third floor is such that in order to use the third floor, a bathroom has to be constructed if there's to be a bathroom on the third floor, in the middle, in the middle of the third floor space to line up with the existing plumbing.

CONSTANTINE ALEXANDER: When did your client acquire the property?

ATTORNEY ANDREW BRAM: Within the last year or so.

CONSTANTINE ALEXANDER: Okay. So they bought the property, they knew the situation on the third floor, including if they knew the situation on the interior. And therefore they knew if they were going to modify the structure, they're going to have to get Zoning relief.

ATTORNEY ANDREW BRAM: No, I would

say that they -- they knew the condition of the property. I would say they did not know that they needed Zoning relief.

CONSTANTINE ALEXANDER: Let me rephrase it. They should have known.

ATTORNEY ANDREW BRAM: That's fine.

CONSTANTINE ALEXANDER: Typically in situations like this if they're represented by counsel and they go over the nature of the structure, you might find a P&S agreement that's subject to getting a Variance for whatever relief you want. That wasn't done here.

The structure in its current condition, the price that was paid for the structure probably reflects the condition of the structure and size. So now the structure you've got, you bought the structure, and now you come before the Board and say, well, we've

got all kinds of hardship because we need a 30-plus foot dormer, a dormer by the way, that I don't think we've ever approved at least in my memory, maybe Brendan's got a better memory, a shed dormer this big. This is so far off from our dormer guidelines, and FAR.

Your FAR right now is -- it's in a 0.75 district. You're at 1.21 and you're going to go to 1.31. You're increasing the floor area of the structure by about eight percent. So you're going almost twice of what's permitted by -- even aside from the dormer guidelines, almost twice what's permitted by our Ordinance. And there was something that your client walked into. It's not a situation where you bought a house, the families are grown, you need more room and now you come forward for relief. I don't understand why you think we should grant

relief tonight.

ATTORNEY ANDREW BRAM: Well, because the Board -- because the guidelines are just that. They're guidelines. Okay? They're not hard and fixed. The property, the only practical way of creating this living space is to do this dormer in the back of the house. The house, the hardship is owing to the fact that the house is a long, narrow house on this lot and it's massed to the front. So this is actually being built within a conforming setback. It's more than 28 feet from the back of the house to the rear lot line. All right?

The way the house is laid out, the houses -- and we have some pictures here. The houses on either side of the house are not going to see the dormer. The house that's directly behind us is a rental, six family,

that is unusual in the sense that it is two, three-unit buildings that face each other across the courtyard. So that those people are not going to be looking out directly at this property.

There is case law that says that the Board can look a little more favorably on a hardship required to establish a Variance when it is a dimensional Variance as opposed to a -- through a Use Variance.

CONSTANTINE ALEXANDER: There's no question about that.

ATTORNEY ANDREW BRAM: That's being requested. Okay?

In this case in order for these people, and they have a family, they have two nearly adult children; one college age, one nearly college age who will live at home. And I think one of the things that my client did

give the Board a picture of some perspective of this is that this is a picture of the third floor as it exists now. And that is their six-foot son standing with his head against one of the inclines --

CONSTANTINE ALEXANDER: Do you have more copies for other members of the Board?

ATTORNEY ANDREW BRAM: We do. Pass that down to Mr. Sullivan. Top of the property. These rooms on the top. This is a picture of this roof is pretty steep, and the incline is small and the rooms are fairly unusable now, you know, for a family. This is a -- these are --

CONSTANTINE ALEXANDER: I have a copy of that.

ATTORNEY ANDREW BRAM: Okay.

Let me show you this first. While you've said, Mr. Chairman, what the square

footage is, one of the things is that the reason the square footage appears to be higher than it is by what's being added by this dormer -- if you pass that down to Mr. Sullivan as well.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY ANDREW BRAM: Is that -- the house right now in the back of it has steel fire escape that is not in good shape and is not particularly safe that serves the second or third floor. What we're proposing to do is to build two decks in the back, one above and one below. Because of those decks count against FAR, that's part of the FAR that you're seeing.

CONSTANTINE ALEXANDER: It's still FAR.

ATTORNEY ANDREW BRAM: Well, it is and it isn't.

CONSTANTINE ALEXANDER: FAR is FAR.

CHARLES HENEERY: I was a little confused about your number for FAR because it's different than the one on the city database.

CONSTANTINE ALEXANDER: It's from the dimensional form. I got it right from your dimensional form.

CHARLES HENEERY: Okay. It's different than the one on the city database and also different from the one our architect calculated. I've got it on yellow on that page that you're looking at there. It's in the 80's.

BRENDAN SULLIVAN: Well, you can't go by the city database.

CHARLES HENEERY: Okay. Well, there you go. Yeah, I had it as currently 0.83. You've got it as one point --

CONSTANTINE ALEXANDER: The dimensional form that you submitted --

CHARLES HENEGBRY: That I submitted.

CONSTANTINE ALEXANDER: -- is the current existing conditions 1.21.

BRENDAN SULLIVAN: You can't go by the city database.

ATTORNEY ANDREW BRAM: In any event, the square footage being added to the third floor is -- and you have the form in front of you. I don't have it in front of me.

BRENDAN SULLIVAN: We could probably go through this exercise in 45 minutes --

ATTORNEY ANDREW BRAM:
Mr. Chairman --

BRENDAN SULLIVAN: And, Andy, let me just jump in here. We can go through this exercise in another 45 minutes to an hour.

There is in reading the file, there is absolutely, positively no way that I would ever approve a dormer of that size. So I know we have the discretion, but I would never be that discrete and hide my true feelings and say I would never approve that. And you could never convince me to approve it. I think, again, that the people are very nice, but they bought the house and they must have bought it and said this is fine, but it's not going to work for us. I think that, you know, you could have gone down to the Building Department and said we're thinking about buying this house and we want to put dormers on, can we do it as of right or do we need relief? No, you're going to need relief. Well, you know, what does that entail? So I think there were some steps that could have been should have been taken, were not taken

I assume. But at any rate, there was no way that I would support the plan that's before us.

ATTORNEY SARAH RHATIGAN: But if you don't mind, just one comment on that, Mr. Sullivan, perhaps they should have known or had counsel warned them that, you know, they would need to seek a Variance. But that fact in and of itself is not sufficient to deny a Variance under the case law. So I hear you on that issue, but if there is a hardship and --

BRENDAN SULLIVAN: How is the hardship relating to the soil, shape, or topography of the lot?

ATTORNEY SARAH RHATIGAN: It's the shape of the structure.

ATTORNEY ANDREW BRAM: The structure.

ATTORNEY SARAH RHATIGAN: So you have a 40-foot wide and a 25 deep structure, and that is unique and it's unique to the structure.

CONSTANTINE ALEXANDER: It may be unique, but it's a structure that inhabitable. It may be not inhabitable for your clients and that -- but you knew that or the clients knew that when they were walking in when they brought the property.

ATTORNEY SARAH RHATIGAN: Well, let me put it to you another way.

CONSTANTINE ALEXANDER: Let me -- I agree with Mr. Sullivan. I will never vote in favor of these plans. They're such a far departure from our former guidelines. Yes, they are guidelines.

ATTORNEY SARAH RHATIGAN: Right.

CONSTANTINE ALEXANDER: As Mr. Bram

knows, we very vigilantly try to apply those guidelines and they're almost law. Not quite. We'll listen to extreme circumstances, and we depart from them. But the departures are modest in nature. This is not even close to being modest. It's just -- it doesn't, you know, it's just -- to my mind it's just not a case for relief.

DOUGLAS MYERS: The rear dormer is a leviathan. I mean, it virtually occupies the entire roof area, but for four feet. And it's -- and I have to say it's hardly even a point for opening a discussion. I mean, sometimes people bring in dormers and they're within some near range of the guidelines and it can be discussed, especially if (inaudible). This is dormer is beyond the payout as far as I'm concerned. There's just -- yes, we can discuss it, but....

ATTORNEY ANDREW BRAM: Again, our reason and I'm not gonna beat the dead horse. But our reason for thinking that this is a case where the Board can exceed the guidelines is that this dormer is not one that's going to be, so to speak, in the face of the neighbors. They're not going to see this. It's in the back of the house. And I hear what Mr. Myers is saying about the, you know, about the small amount of depth on either side, but it meets the guidelines. In other words, with the exception of the fact that this is 30 feet long, it is step back from the roof on either side within the guidelines. It is stepped down from the ridge and it is stepped up from the --

DOUGLAS MYERS: What is the distance on the front wall on the side? Not the ridge line but the front wall. It looked to me as

if it was only one foot in the plan. Am I mistaken?

ATTORNEY ANDREW BRAM: I think -- no, I think the guidelines says one and a half feet.

DOUGLAS MYERS: Correct. Is it one and a half foot?

ATTORNEY ANDREW BRAM: We were careful in designing this thing to try to stay within the guidelines as best we could. Coming here and asking for two, 15-foot dormers or two, 10-foot dormers because of the need to have this bathroom in the back of the house, makes it impractical to come up with a design that otherwise makes the space usable. This house is right now rented to students who live in the top floor, okay? Who can put up with the peaked roof and the small space. This is a family that has been

in Cambridge for many years and I would like to be -- would like to be able to use this house. And I understand that if from the Board's perspective this is extreme, but again, what I'm saying is that because it's not a, let's say Mr. Myers says a leviathan, but it's not something that everybody sees. It's basically hidden from the rest of the streetscape. And so, in fact, we've sent letters around to the neighbors. We've talked to neighbors. No one objects to this. The Board may object to it, but the people are going to live with this, not you, the people that are going to live with this there, they don't object to it. In fact, we have letters of support from three immediate neighbors who say welcome to the neighborhood, we're glad to have a family moving in here and add this dormer. So I understand the Board may be

concerned about setting a precedent. And if you allow a 30-foot dormer, then everybody will come in looking for it. But the Board decides cases on a case-by-case basis. And this house is somewhat unique. I think in that neighborhood thing a part from the floor area calculation, which I think it may be more accurate than you think. You said 1.28. I'm seeing that it's -- existing is 1.21 on the dimensional table.

CONSTANTINE ALEXANDER: That's what I said. I said 1.21.

ATTORNEY ANDREW BRAM: It's a eight percent increase.

CHARLES HENEERY: In any event, the comparative numbers here, all of those numbers came off the same city database. So the sense in which this places, this places our current FAR and our proposed FAR to other

houses in the area, the comparative numbers are meaningful. So if we're underestimating ours, we're probably underestimating others. So at least it's a meaningful table.

DOUGLAS MYERS: Nonetheless, I mean the end result of the proposed improvements with regard to gross floor area and FAR, the end result will be 75 percent in excess of the applicable FAR and GFA. I know it's not a numbers game, but it really isn't. I mean, everything should be considered in a reasonable way. But 75 percent. We're approving a non -- an existing non-conforming structure and we're going to approve an increase of 75 percent over the line. This is something that the Board at least has to take very seriously in applying its discretion.

ATTORNEY ANDREW BRAM: I'm not

disputing that. But again, part of this FAR is this is a house that has a basement which is not a finished basement. It's an unused basement, storage and mechanical areas.

(Inaudible). So the square footage is -- in the basement is counted even though it's not living space. And to get living space, the way to do this is to put this dormer in the back of the house. And I think the Board has to look at this in a real world context of how much space does a family of four need, and what does that space look like in the neighborhood? And this is not, you know, again, my client is prepared. This is not excessive for the rest of Andrew Street. All of these houses have this kind of volume. And we're not looking to add, you know, multiple people to the property. It's going to be a family that's going to live there.

And everything else about the design and the dimensions is conforming. And part of the square footage, as I said, we can do the calculation. I don't know these, decks are 10-by-10?

LILLIAN PORTEN: Something like that.

CHARLES HENEBRY: 8-by-12.

DOUGLAS MYERS: 8-by-14.

ATTORNEY ANDREW BRAM: If we took the decks off, which we would be prepared to do, if that would, you know, win favor with the Board, that reduces -- your calculation reduces the square footage increase measurably.

CONSTANTINE ALEXANDER: We're not going to redesign the house for you.

ATTORNEY ANDREW BRAM: We're not asking you to.

CONSTANTINE ALEXANDER: You made your point.

One is you want to bring back a different plan, that's your prerogative. You're hearing from the Board this plan don't fly.

No. 2, I return to the fact that this house is too small for a family of four. The family of four bought this house knowing it was too small. You know, it's not the situation that we usually hear where a family of two has a house, the family has grown to four, and they need more space. Even then, I can tell you this Board would never grant a 30-foot dormer. But we might be a little bit more amenable to allowing greater FAR. That's not your, that's not our situation. You've got plans that so far depart from our dormer guidelines. They're severe in terms

of the departure from our FAR requirements. And you come into a situation, as I said, that was a hardship you knew you were getting into when you bought it. You knew the situation. I have trouble again --

ATTORNEY ANDREW BRAM: I appreciate all that. I say on my client's behalf, you know, this is not a case where they consulted counsel about this before they bought the house.

CONSTANTINE ALEXANDER: I understand.

ATTORNEY ANDREW BRAM: I don't think they knew what -- they bought a house that had four students living in it now and they are a family of four. And I don't think they as lay people looked at this house and looked at this dormer, thought that this would be as much of an increase or as much of a Zoning

issue to pick up the back of the house, particularly where it's not seen by the neighbors. It's, again, as I said, if you take out the, you know, the decks, it gets to be a smaller thing. The increase is 1.21, 1.31. I think someone made the calculation that that's an eight percent increase in the FAR.

CONSTANTINE ALEXANDER: I did.

ATTORNEY ANDREW BRAM: Right. I don't know that eight percent increase is that significant especially where the purpose of the Zoning statute, the Variance statute is to seek the minimum relief that's necessary to use -- to make useful use of the property. And, again, you know, they can come back, you know, they could try to make this thing smaller, but it's, it seems to me that it's -- doing that is trying to have the

Board stay within the guidelines which are really, you know, they're well meaning and they have certain applicability.

DOUGLAS MYERS: We take them seriously.

ATTORNEY ANDREW BRAM: I understand you take them seriously but they --

DOUGLAS MYERS: You should know that they're not guidelines that have historically by this Board have been applied with great flexibility. We take them seriously.

CHARLES DU MOND: Let me just say --

CONSTANTINE ALEXANDER: You'll have a chance. Let Mr. Bram finish and then you can speak.

ATTORNEY ANDREW BRAM: He can make his comments.

CHARLES DU MOND: Okay. I just want

to say that so, I was in -- my name is Charles Du Mond. I want to thank everybody for coming out here and considering this proposal that we're putting forward. I would like to thank you for coming out here and considering this case.

One, I read the guidelines carefully and I understand the guidelines. I think the guidelines are helpful and of value. And when I made these plans with our team, we realized that, you know, we respected the guidelines but we realized that we may have to make an exception here because if we -- if we were to reduce the size of this, I mean, we have -- we have this bathroom core here, we would end up -- I mean, and we reduce the size of this dormer, the 15 feet gives us really no functional space outside of the bathroom. I mean, what we would have is

somewhat of an L-shape room. So in effect what I've -- what appears to be excessive is actually the minimal what I felt would be practical to make this space work for, you know, what is, you know, there's a six-foot, two teenager and another teenager. And the new owners are planning to combine one of the bedrooms. So reducing the amount of bedrooms in the unit. And in fact, I think it's actually of more value to the neighborhood and the neighbors recognize that. To have a family living in there as opposed to a group of students. In the way that it's laid out, the way that the third floor is laid out, it's laid out for, you know, it's like -- I don't know if you ever saw Harry Potter, the first movie, where the kid's living under the stair. So I just want to, you know, so I think that, that it's going

to improve the quality of life for the owners. It's not going to adversely affect the neighborhood. So I think that this has some merit and would deem consideration.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY ANDREW BRAM: Again, the only thing I can ask the Board --

CONSTANTINE ALEXANDER: Don't repeat yourself.

ATTORNEY ANDREW BRAM: I'm not going to repeat myself. I can only -- as I've said, we have letters of support which I'd like to submit.

CONSTANTINE ALEXANDER: I'll read those next.

ATTORNEY ANDREW BRAM: I would just ask the Board if there was a case where the guidelines could be exceeded, this is the case. And that while Mr. Myers' comment

seriously that the guidelines had to be considered, you know, strongly, I'm asking the Board not to exalt, you know, form over substance in a case like this where this is the minimal type of relief or the minimal amount of relief that is needed to make this third floor workable in a modern family situation. And I don't think, you know, if the Board has concern that because if they allow this, they're going to be opening this up to everybody else, I think that's not the case. This house as it's laid out on Andrew Street is unique because of its shape and its proximity to the front of the lot and qualifies for hardship. It does not substantially derogate to the by-law. I think the eight percent increase of floor area is smaller if you take the decks out. You know, again it's only because the upper

deck is roofed over the lower deck that it counts as square footage. You know, there are some anomalies in the Cambridge Zoning law that don't apply in other cities and towns, that, you know, again, it's looking at the real world. Because there's an upper deck that creates a roof and now adds now whatever 8-by-14 square footage is to the calculation. If you take that out of the calculation, it's probably a six percent increase in FAR created by the third floor. So, again, I just ask the Board to --

CONSTANTINE ALEXANDER: I don't want to prolong this any more, but I got the response to the whole thing. You've more than once talked about the real world.

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: I like to think that we as a Board live in the real world

and we try to create a real world for the benefit of the citizens of Cambridge. So I take a little bit of offense that we're looking at this as not from the real world.

DOUGLAS MYERS: I don't take offense but my repost is we live with the real ordinance and the real criteria of our cases and that's all. I mean, I agree that we complete -- we're generally aware of conditions throughout Zoning -- throughout Cambridge. We decide Zoning Variances in many, many neighborhoods. People from all walks of life.

ATTORNEY ANDREW BRAM: I accept that. But what fits on Andrew Street --

DOUGLAS MYERS: We are concerned about the Ordinance.

ATTORNEY ANDREW BRAM: What fits in Andrew Street may not fit in Avon Hill or some

other part of Cambridge.

DOUGLAS MYERS: But also in terms of the --

ATTORNEY ANDREW BRAM: This works in this particular neighborhood.

DOUGLAS MYERS: -- 30 feet do not fit into 15 feet and that's --

CONSTANTINE ALEXANDER: I'm going to open this matter to public testimony.

Anybody wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair there's no one wishes to be heard.

We are in receipt of three letters submitted by the Petitioner. One is from Greg Katz. There's no address given. It's actually addressed to the Petitioners.

(Reading) Deb and I received your letter

about your recent purchase of 28 Andrew Street and the extension you are planning on the back. We live across the street -- here's the address -- at 21 Andrew Street, along with our son Noah and in September a daughter as well. Your extension project seems perfectly reasonable to us, and we're happy to have another family moving in although we have liked having a hive of grad students on the street. I think you will find Andrew Street to be a wonderful place to live. We moved in a couple of years ago and are quite taken with the neighborhood generally and Andrew Street in particular. Good luck with the ZBA hearing and we look forward to meeting with you sometime soon.

We have a letter from John Ward.

(Reading) I'm the landlord/trustee at 33-37 Andrew Street. I'm in favor of your

proposal. I think it's a good idea and believe it will look great once completed. My only concern is the length of the project and its effect on parking. I occupy the handicap spot in front of the house and will probably have to park elsewhere once construction starts. Will you be using the attached driveway and rear of the house for staging or will you block off parts of the street as well as the driveway? Do you have an estimate from your contractor as to how long he thinks the job will take? These are my only concerns. I've been in the same position as yourself, and these were some of the issues I had addressed. It's a small street and parking hard to come by.

And the last one is from Grant Welstead, W-e-l-s-t-e-a-d, and it appears to be also Sarah Lenz, L-e-n-z, 20 Andrew Street.

(Reading) We received your letter in the mail with the outline of your proposed modifications. Thank you for your correspondence and welcome to the neighborhood. It is a great street and we are pleased to have another owner/occupied unit on it. The plans look good to both Sarah, my wife, and me as well as the added dormers are done in a tasteful manner. Some renovations like the one you are proposing can be aesthetically displeasing if done without care. I.e. the additions to the backs of the two houses across the street from you. Based on the plans you mailed to us, it looks as if your thinking is in line with maintaining the architectural integrity of the your new home. This is great. The only question I have is related to the deck/fire escape behind the house. Do you have plans

to expand this? If so, we would want to make sure there is not a major expansion on the second floor level due to privacy concerns. Anything on ground floor, on ground level would not be problematic for us. Then it talks about neighborhood matters. And that's the -- the rest of the letter is not germane to the matter before us tonight.

Those are the letters we have in our files. I'm going to close public testimony.

Anything further you want to add, Mr. Bram?

ATTORNEY ANDREW BRAM: No. I would like to maybe a sense of the Board as to whether or not there are four members that would be willing to --

CONSTANTINE ALEXANDER: I think you heard the dissent of the Board. I think we're ready for a discussion or a vote.

BRENDAN SULLIVAN: Yes, no, I think counsel said that this was the minimal that they needed in order to make the house liveable which tells me that there is no room for diminishing what is proposed, and I would not support what is proposed.

ANDREA HICKEY: Can we ask whether you might want to rethink and --

ATTORNEY ANDREW BRAM: That's what I was going to ask the Chair. If it's clear that this is not going to be approved, then I would rather ask to have the case withdrawn or continued.

CONSTANTINE ALEXANDER: I'm going to oppose that. I'm going to oppose that. And let me explain why, though. It's not as you might think.

If we turn you down tonight, you still can come back -- you have the problem of two

years because of repetitive petition.

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: However, the section dealing with repetitive petitions, 10.51, says you can come back within the two years if there are specific and material changes in the conditions upon which the previous unfavorable action was based, and you describe those changes. I think if you're going to come back to us with new plans they're going to be a lot different than what you've seen tonight. Therefore, I don't think you're going to be foreclosed for the two years. You may have to do the drill of 10.51 for repetitive petition, but I think you can get relief. I am opposed to continuing this case. We've been trying, as you may know, Mr. Bram, to diminish the number of continuances. This case here, you

should have known coming in that you weren't going to be met with resistance from members of this Board yet you've decided to come forward. And I get a sense, probably wrong, a sense that if it's something that we don't like, at least I don't like as member of the Board, let's go before the Board and lob up what we love to have and get their reactions and then we'll come back with the real plans. You had your chance tonight. You came with the plans. You knew the problems. You've heard the comments from the Board. And I think they were entirely predictable at least for a couple members of the Board. So I would not be in favor of continuing this case. But I'm only one of five. So if you want to request a continuance, I will put it to a vote.

ATTORNEY ANDREW BRAM: Yes, I would

request a continuance simply because if we are going to come back with a redesign, rather than have these petitioners go through a time and trouble and expense of re-filing a case, where there's a case open, I would like to ask the -- at least to meet with the architect and see if there's a possibility of a redesign.

CONSTANTINE ALEXANDER: How much time would you want to continue to what date?

ATTORNEY ANDREW BRAM: Well, I think one of the questions is going to be when the five of you -- since there's an alternate sitting tonight, when the five of you can be here again.

CONSTANTINE ALEXANDER: What's the earliest date you can come back? If the motion passes.

ATTORNEY ANDREW BRAM: A month.

CONSTANTINE ALEXANDER: A month?

ATTORNEY ANDREW BRAM: A month, yes.

CONSTANTINE ALEXANDER: For purposes of the motion, what date would we be looking at it, early September?

SEAN O'GRADY: August 29th would be the earliest.

ANDREA HICKEY: I'm not available that day.

SEAN O'GRADY: We're off to September 12th.

CONSTANTINE ALEXANDER: Assuming the motion passes, can everybody make September 12th?

ANDREA HICKEY: I just need one second.

CONSTANTINE ALEXANDER: I can make it.

DOUGLAS MYERS: The answer is yes.

CONSTANTINE ALEXANDER: The answer

is yes?

DOUGLAS MYERS: Yes.

ANDREA HICKEY: I'm available the
12th.

CONSTANTINE ALEXANDER: Good.

I'm going to make the motion. I'm
going to put it out to members of the Board,
this motion requires a simple majority, not
the four out of the five you need for relief.

DOUGLAS MYERS: Can we discuss it?
After you make the motion, we'll discuss it.

CONSTANTINE ALEXANDER: Sure. I'm
going to make the motion and then we'll have
a discussion.

The Chair moves that this case be
continued until seven p.m. on September 12th
on the condition that the Petitioner sign a
waiver of time for decision.

And on the further condition that the

Petitioner modify the posting sign to reflect the new date of September 12th and the new time of seven p.m., both must be done.

That would be the motion.

And now discussion. Doug?

DOUGLAS MYERS: Well, in general I mean, I would find it, I would be inclined to support a continuance in a situation like this. I said earlier that, you know, I felt that this proposal is so far, so far away from our Ordinance that -- and I don't want to get into a situation, I don't like to do that, where we bargain with the Petitioners, the Applicants. And I really, for the reasons that the Chair has said, and I have to say I'm inclined to support a continuance in cases like this. However, I mean I really would feel, unless there were very substantial reductions, and I mean very substantial

reductions, so that we certainly ended up closer to the guidelines at the end of the present proposal, I would feel that the Board has been imposed upon with wasting our time. There have to be substantial reductions that are reflective, not that my views are correct, but at least that I feel are responsive to the views I've stated and to my colleagues whose views I very largely share. Just having said that, and one other thing, an 8-by-14 deck would attract comments and serious questioning from me. I don't prejudge the results depending on your answers, but it's something that I would take a good hard look at under any circumstances. So you may want to bear that in mind. I'm just the one member speaking as you can see.

So having spoken this much, I guess I would say I'm open to -- I'll listen to my

Board members, I'm inclined, weakly inclined to vote for a continuance.

CONSTANTINE ALEXANDER: Anyone else want to comment on the motion to continue or go to a vote?

ANDREA HICKEY: Yes, I would probably support the continuance. I think where the neighbors are all on Board with this larger concept, it's something that we really need to consider. Also the way that they've described that this would not be visible from the street. You know, for it to be paired down, there must be a solution that could work for everyone. And I think you should have the opportunity to come up with that.

CONSTANTINE ALEXANDER: Anyone else wish to comment on the motion to continue or we'll go to the vote?

BRENDAN SULLIVAN: No. Part of

that motion would be that any submissions should be in the file.

CONSTANTINE ALEXANDER: Thank you. I should add that.

Ready for the vote?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: Yes, I'm going to amend the motion to add further that you're going to have to come back with new plans obviously. Those new plans and any revised dimensional form have to be in our files no later than five p.m. on the Monday before September 12th. If not, we're going to continue the case further.

I should have added that. Thank you.

Okay, all those in favor of continuing the case in favor of the motion I just made to continue the case, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. And I'm opposed.

(For: Sullivan, Green, Myers, Hickey.)

BRENDAN SULLIVAN: It says in the application decks on the second and third floor. And --

CHARLES HENEBRY: That's incorrect.

LILLIAN PORTEN: It's the first and second floor.

BRENDAN SULLIVAN: So the plan is -- there's some inconsistencies I found in the drawings. Just if you could go through it and -- anyhow.

CHARLES HENEBRY: Mr. Myers?

DOUGLAS MYERS: Yes.

CHARLES HENEBRY: I know we're way over time, but if you could just -- part of the purpose of the deck was to break up the

stairwell down so that it's not as dangerous, you're not running down a straight run.

DOUGLAS MYERS: I saw that.

CHARLES HENEBRY: And I imagine you understood that. You said 8-by-14 is way too large.

DOUGLAS MYERS: You have -- I understood that's -- I will say this in further explanation. My particular concern runs to the second floor deck. But I'm just concerned about the size of the deck area --

CHARLES HENEBRY: Right.

DOUGLAS MYERS: -- in the rear of the property.

CHARLES HENEBRY: The last thing I want is a monstrosity back there, you know.

DOUGLAS MYERS: But obviously design features are important in terms of the staircase in the proximity of the house.

CHARLES HENEBRY: Thank you for clarifying.

CONSTANTINE ALEXANDER: Thank you. See you in September as the song says.

* * * * *

(9:40 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: Okay. We're going to reconvene 72 Lexington Avenue. Mr. Hope.

ATTORNEY SEAN HOPE: Okay, so we're beginning -- so we actually went back in the room and had a discussion. We feel that we resolved the issue that we want to proceed specifically with the driveway. And, Sean, you can add to this. What we determined is that the garage itself was not tied to the

decision for the driveway. We did look at the plan. We are comfortable that we can build a conforming garage space in that area. So we would not need additional relief. And we recognize from the Chair that there's not going to be another bite of the apple so we're confident that we can build a conforming garage in that space.

CONSTANTINE ALEXANDER: Okay.

It's your call.

One other thing, by the way, and it's not completely different, as I understand it, previously you were granted the approval to park in the front of the structure.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Drive in for the work that's going on. I think if we're going to allow this driveway, my view would be that we're going to prohibit the use

of the front yard parking which is never desirable in the City of Cambridge anyway, since you'll have the ability to get to the rear of the structure.

ATTORNEY SEAN HOPE: And we thought that and that's why on the plans we actually don't show the parking space.

CONSTANTINE ALEXANDER: I know you don't show it. I want to be very clear on that.

ATTORNEY SEAN HOPE: No, definitely. We had discussed that.

As I said, this is a Special Permit application requesting to have a driveway within five feet of the side yard setback. The site is approximately 2500 square feet. And as I said, previously located in the Residence B District. Just a little history of the site. So the site had, and I think the

structure was probably built around the turn of the century, an existing three-family on the site. And it also had a parking garage that was closer on the side yard setback than we, than we show. So there was more density and there was a greater non-conformity in the existing garage that was in the rear. In 1989, the Board granted a Variance to allow a loft space. So they actually increased the height of that existing garage that was within five feet of the side yard setback. Part of our thought process when we designed the driveway and the garage was to actually improve that setback by moving it within the five feet to make it conforming.

Additionally, and this existing three-family that I had mentioned, there was a fire, and the fire actually burned off the top two floors. So what you had left was just

one single -- one single structure. This was when Mr. MacArthur bought the property. The fire is significant because it was either abandonment or it was based on ISD ruled that the structure lost its non-conforming status. But ISD ruled that the garage and the driveway no longer -- were no longer protected by the grandfather status. And so when they purchased the property, he, it was determined that he had no longer had a conforming driveway or a conforming parking garage. One of the reasons why he rebuilt that as a single-family, so it went from a three-family to a single-family, he moved it back 15 feet to allow for a parking space as you've seen in the front, in the front of the structure. That's when he also realized that he didn't have the sufficient 10 feet and it was no longer pre-existing. The idea was

not to have a parking space in the front of the lot. If you look on the street, there's almost no parking in the front yard setback. And except for two houses on the block, the adjacent house and there's one other, if you go down Lexington Ave., you see driveways with either parking or garages in the back. Similar to what this house had pre-fire. So the idea and the intent and purpose of the reconstruction was to one, comply with the Zoning. And also to place the parking in the most natural place that would be, which is not in the front yard setback, it's in the rear yard setback. Right now if you go to the site, you see a shell of the former garage. There's three sides of it. The roof is off. Part of losing the non-conforming nature, ISD said you have to take off the second floor. The end result was he can't use the garage so

we're going to build a conforming garage.

In terms of the Special Permit criteria, I think it's fairly straight forward. If you look at the character of the neighborhood and you look at the other parcels, they have their parking in the rear of the lot. And most of them have a driveway along the side. In terms of the continued operation of adjacent uses, as I said, this driveway has been in use, you know, for probably since the house was built. So this is not a new driveway. Maybe new to new members of the neighborhood, but this is not -- this wasn't a different use. It was a driveway. It actually was narrower before he rebuilt this house. It was nine feet before. And when he did his reconstruction of the house, it was widened somewhat but it wasn't widened for the sufficient 10 feet

because he didn't realize that the non-conforming nature was lost of the driveway.

There's no nuisance of hazard. As I said, before this was a three-family. I believe it was a, at one point a two car garage, but at least it was -- it was at least a single car garage.

DUNCAN MACARTHUR: It was a two car garage.

ATTORNEY SEAN HOPE: It was a two car garage.

Now, there were some pictures in the file that the previous owners stopped the use of the garage and they took the loft space and made it into more of a dwelling use. But I think the point is that this is not a new use. It is not going to detrimentally affect the adjacent uses. And it's consistent with the

established character of the neighborhood. If you go up to Lexington Ave., as I said previously, you'll see driveways with garages in the back. And as I said before, I want to emphasize for the Board, we are building a compliant garage. So you had a non-compliant garage, a structure that was much taller and dense to the property line, and now we've improved that. And so I think that's it for now.

CONSTANTINE ALEXANDER: Thank you.

Questions from members of the Board at this point?

I'll open it to public testimony.

Anyone wishing to be heard on this matter?

SHARRIN JAAFIRI: Yes, I do.

CONSTANTINE ALEXANDER: You have to give your name to the stenographer.

SHARRIN JAAFIRI: Sharrin Jaafiri,

S-h-a-r-r-i-n J-a-a-f-i-r-i. We own the unit, first unit, 18 Lexington Ave., and we are against any garage. Right now the car has to go --

CONSTANTINE ALEXANDER: Give me your address again?

SHARRIN JAAFIRI: 18 Lexington Ave., unit 1.

CONSTANTINE ALEXANDER: You're not the person that wrote this letter, are you?

SHARRIN JAAFIRI: No, that's the other unit 1.

CONSTANTINE ALEXANDER: Okay.

SHARRIN JAAFIRI: The car has to go passed my living room window. This is very inconvenient for me. The house was built further into the land so that, you know, it was -- we assumed it was going to be used, the front parking, not the garage. And I don't

understand why now there's a new design. We weren't even told about the new design. And we are totally against any garage being built.

CONSTANTINE ALEXANDER: When did you acquire your unit?

SHARRIN JAAFIRI: In 2011.

CONSTANTINE ALEXANDER: 2011. So when you acquired it, that driveway was not being used?

SHARRIN JAAFIRI: No. The house was burned out.

CONSTANTINE ALEXANDER: It was before the fire. In other words, you acquired your property after the fire?

SHARRIN JAAFIRI: Exactly, yeah.

And it was mentioned that this is not going to be a new use. But I do think this is a totally new use. This is a garage and

somewhere that people live, and a car has to go passed my living room window and it's totally inconvenient for me. Right now, you know, the cars that are used to build the house, they just are exactly in front of our living room window and it's totally inconvenient. And if the car is going to pass that to get into a garage every single day, it's not what I want.

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

KATHERINE JUDGE: Hi. I'm Katherine Judge. I live on the third floor. So Janet Foster is the author of the letter, second floor. And Sharrin and her husband are on the first floor. That's how we fit into the association. And we all support Janet's letter for reasons, the character of the neighborhood. The I think the main thing

was when, and I don't own the unit, my father owns the unit. My sister and I live there. But when he was purchasing the unit, the builder, the realtor, everyone said, next-door can't have that, that's gonna be gone. There's not going to be a garage there. The Zoning blah, blah, blah. And that's not going to be a part of it. And now the rug is swept out, and it's like oh, there is. When we were negotiating the purchase of this property, that wasn't a part of the deal. So we're a little bit miffed I suppose just because of what we were told versus --

ANDREA HICKEY: Do you have parking at your building?

KATHERINE JUDGE: No. We park right in front. And there's ample street parking. And most of the people that have those really long driveways don't seem to

really use them all that much like Janet's letter addressed. Because it's weird, you can't really do a three-point turn or whatever the case may be. So they're not necessarily the first choice. Convenient seems to win out in that battle. But that's it.

Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down. And let me read Janet's letter.

KATHERINE JUDGE: Please do. And she wanted to be here. She had a family medical emergency.

BRENDAN SULLIVAN: Can I see those pictures?

CONSTANTINE ALEXANDER: A letter from Janet C. Foster, 80 Lexington Avenue, apartment 2. (Reading) I am writing to

protest the application for a Special Permit at 72 Lexington Avenue. I own and live in a condo in the abutting house at 80 Lexington Avenue, adjacent to the proposed driveway and garage. My reasons for objecting are the following:

The backyard is very small. Smaller than all other houses on the block because of the footprint of the house is set back on the lot. A garage would create a sense of crowding that is not appropriate to the neighborhood.

It's unlikely that the property owners will actually park in the garage. Very few of the garages on the street are actually used, probably because the narrow driveways are hard to navigate. People park on the street or in the driveway in front of the houses.

The house is set back on the lot with room in front to park. Although front yard parking does not look good, if it's there, people will use it rather than the garage.

I bought my condo in 2011 with the awareness that Zoning would limit construction at 72 Lexington. The real estate agent emphasized that and it factored into the price I was willing to pay for my unit. Failure to enforce Zoning at the site will have an impact on the value of my unit.

The last bullet point, the owner of 72 Lexington Duncan MacArthur of Maccoco Construction knew what the Zoning on the property was when he bought the lot, and he only is concerned with the profit he can realize on the property. He is unable to demonstrate the hardship required to receive a Variance.

I should be clear, by the way, it's not a Variance case, it's a Special Permit case, and that's significant in terms of the burden the Petitioner must establish to get the relief.

Anyway, that's the last letter. That's the sum and substance of what's in our files.

Any final comments, Sean?

ATTORNEY SEAN HOPE: Just a few. One, I failed to mention was parking that shielded from the public view is part of the urban design guidelines under Article 19 and it suggested that where possible, it discourages parking in the front. This is not the front yard setback, but that's part of the urban design guidelines.

Two, they said that the backyard is small. And I would only say with the

proposed garage, we meet the open space requirements. So the idea that the garage is small and we have sufficient open space. There's open space in the front, but there is also a space in the back.

And two, and I fall -- we started talking about the garage and I've also mentioned about the garage and house improvements, but our relief is not about the garage. Our relief is strictly about the driveway within the setback. And as I said earlier, we could have proposed a surface parking lot and we didn't have to propose a garage. So I just feel like the comments are based on being against the garage and not being against our relief which is specifically for the driveway. And the only thing I'd like to add is that there was some outreach. Mr. MacArthur did hold a meeting.

I don't think that -- you can speak to the meeting you had.

DUNCAN MACARTHUR: I think Janet that offered that letter was there. These two women were not there, and some other neighbors were there. And this is the first I've heard of the opposition.

CONSTANTINE ALEXANDER: Well, you're absolutely right, Mr. Hope, the garage is not before us tonight. On the other hand, what is before us tonight and what I've heard, and it gives me quite a bit of pause that I didn't anticipate coming into the hearing. You may not use the garage. You may just drive into the parkway and park in the driveway or in the lane. And that's -- really has an impact on the people next-door if you're too close to the lot line because you're going to have a car sitting

right there, a few feet from the first floor on the ground floor from the window.

ATTORNEY SEAN HOPE: Just a point. I mean, I don't think we've made the assertion that we wouldn't utilize. What I was saying if we didn't have a garage in the place of a parking area, we could actually have a parking space.

CONSTANTINE ALEXANDER: No, I understand that.

ATTORNEY SEAN HOPE: But I do think -- you know, I went by the site again today just because, and because we can't use the garage, there are construction trucks in that middle passageway. I think that the idea is that we're building a garage and because to actually use it or we wouldn't have proposed it. I mean, it is a costly expense. So I don't think -- and it's not like there's

a doorway along long the side. Sometimes there's like a side doorway where it's more natural to park in the middle of the driveway to get out. That's not the case. The entranceway is around the rear of the property where there's a bulkhead and there's also access. So I don't really think it would make sense for someone to park not using the garage as an access way which I do think is a practical consideration.

DUNCAN MACARTHUR: If I could just add one thing. The mudroom and everything in the rear is at the rear of the house. So the entrance to the house that family's gonna use when they come in there. The kitchen is in the rear of the house, too. So you would drive back and you go through those stairs and enter the house that way.

CONSTANTINE ALEXANDER: Thank you.

I'm going to close public testimony.

Discussion by members of the Board?

DOUGLAS MYERS: Can I see the plan, Gus?

CONSTANTINE ALEXANDER: This is the one he brought tonight that shows where the garage could be located but it doesn't require relief.

JANET GREEN: I have a comment about the driveway. You know, I appreciate what the person said who spoke who said the drive -- people were going to be driving passed her living room. But I don't find having cars pass your house is that unusual with any -- almost any driveway in most of Cambridge. And it's not well, the first speaker moved in in 2011, you know, that driveway has existed for a long time. It was just that it wasn't used in her time there

because the fire perhaps had happened and so she got used to the idea that there wasn't going to be a driveway there. But in fact historically there was a driveway there. So, I'm, you know, I'm inclined to just taking the driveway as the issue. I'm inclined to favor the driveway.

CONSTANTINE ALEXANDER: Yes.

Anyone else wish to comment?

ANDREA HICKEY: I'm leaning in that direction as well. And I'm recalling as you read the letter, that the abutter that is not here tonight said most of the people on the street don't use their driveways if they have one. They park on the street anyway. So, I don't really think that the burden of -- kind of having a driveway is an issue. I mean, I'm leaning toward favoring this.

CONSTANTINE ALEXANDER: Brendan or

Doug?

BRENDAN SULLIVAN: Well, the historical nature of the house it's always had a driveway there. It's always had a garage there. I think the usual modus operandi of the occupants of the house has always been oriented as Mr. MacArthur says has been toward the back of the house. I think the orientation is toward the back. And it has always had a driveway. And as far as driving by, being close, I mean, I dare say that very few of the driveways on that street conform to the existing Ordinance and that's the city.

CONSTANTINE ALEXANDER: Doug, anything you want to add?

DOUGLAS MYERS: I think I will vote in favor of it, but I certainly will express the irenic hope that people park in the garage

and don't end up parking their cars in the driveway right next to the other person's living room. I would regard that as an unfortunate outcome probably for everyone concerned, and the neighbors would be justified in complaining to their neighbor at 72 Lexington Avenue if that would be the case. Having said that, I'll vote for it.

CONSTANTINE ALEXANDER: The only thing I would add is I'm going to vote in favor of it. I think we have to focus also on the fact that this is a Special Permit case and not a Variance. For a Variance, I'm not sure you'd meet the standard and I would be very troubled, particularly with the neighborhood opposition. But a Special Permit is such that is basically you start with a presumption that you're entitled to do what you want to do unless, unless there are

problems that are identified in our Zoning Ordinance and I think you addressed and I will address in my motion and I don't think those problems arise. So I, too, would be in favor of granting the relief.

So, unless there's further comments, I'll make a motion.

The Chair moves that this Board make the following findings with regard to this the Special Permit being sought for the driveway.

That the traffic -- patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. I've heard nothing that would suggest congestion or hazard, and there would be no substantial change in neighborhood character. It's not unusual to have these long, as Brendan has said, narrow driveways to the rear of the lot.

That the continued operation of adjacent uses will not be adversely affected by the nature of the proposed use. We've had testimony to the effect that it would be by the immediate abutter, but I propose that this Board find that that effect is not sufficiently adverse that would result in denial of the Special Permit.

And no nuisance or hazard will be created to the detriment of the health, safety, 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 adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

Again, we would note that this type of driveway has been there for a long while until

it became abandoned through the fire, and that is not unusual for the City of Cambridge.

So on the basis of these findings the Chair moves that we grant the Special Permit being sought on the condition that the layout of the driveway be as set forth in this plan initialled by the Chair. This plan has proposed layout for the garage. That's not part of the relief we're granting. It's been represented to us that you will not be seeking relief in the future with regard to the construction or location of the garage and we're going to hold you to that.

And on the further condition that the front yard parking that is now permitted be abandoned and returned for allowing you to use the driveway to park in the rear of the structure.

All those in favor of granting --

BRENDAN SULLIVAN: And vote in the affirmative, is contingent upon that there be no parking in front of that house.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: That's my understanding.

CONSTANTINE ALEXANDER: And that's part of the relief that we're --

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: We're going to deny it. So it's a tradeoff for the Special Permit.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: You're not going to be able to park in the front.

BRENDAN SULLIVAN: Right.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

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

(10:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: Let me get rid of some continued cases so it won't take very long. People in the audience don't mind.

The Chair will call case No. 10463, 17 Royal Avenue.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one.

The Chair also would note we are in receipt of a letter from the Petitioner addressed to this Board. (Reading) We request to continue our case because we need to re-file.

Just elaborate, Sean. Are they going to re-file a new application?

SEAN O'GRADY: They have re-filed a new application. They will be heard on August 15th. So if you continue this to that August date.

CONSTANTINE ALEXANDER: Do we have room on our August 15th calendar?

SEAN O'GRADY: We don't.

CONSTANTINE ALEXANDER: Anyway, we're not going to hear it.

SEAN O'GRADY: Right.

CONSTANTINE ALEXANDER: Got it. I understand.

Okay, the Chair moves that this -- have they signed a waiver of notice for time of decision?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on August 15th as a case not heard on the condition that -- and on the fact that we have in our file a waiver of time for a decision. On the condition that -- conditions that one, the sign posting be maintained in accordance with our Ordinance for the 14 days prior. And except that the sign should be modified to reflect the new date, August 15th, and the time of seven p.m.

And further, that to the extent that the Petitioner, with regard to this case at least, has new plans or dimensional forms, that these plans must be in our files no later

than five p.m. on the Monday before August 15th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(10:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: Let's take Memorial Drive, case No. 10466, 640 Memorial Drive.

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

DAN WINNY: Dan Winny, W-i-n-n-y. Representing Sanofi.

DOUGLAS MYERS: Representing?

DAN WINNY: Sanofi.

CONSTANTINE ALEXANDER: Sanofi is the owner of the premises at 640 Memorial

Drive?

DAN WINNY: They are the tenant of the premises owned by MIT Investment Management Company.

CONSTANTINE ALEXANDER: All right. We have a letter from you requesting a continuance. Anything more you want to add?

DAN WINNY: We'd like you to continue the case, please, until October the 24th due to the high volume of interesting correspondence that's been generated.

CONSTANTINE ALEXANDER: I would acknowledge that.

DAN WINNY: There have been a number of comments and statements regarding the timing of the case, about the visibility of the sign, and so forth, and we think it might be a good idea to take the opportunity to make sure everybody understands what can and

cannot be seen.

CONSTANTINE ALEXANDER: October 24th is the date you request?

DAN WINNY: Please.

CONSTANTINE ALEXANDER: I assume there's no problem with that.

The Chair moves to make the following motion -- have you signed a waiver of time for decision?

DAN WINNY: No, but I'm happy to do so.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued until seven p.m. on October 24th on the condition that -- I'm going to assume that a waiver of notice has been signed. On the condition that the -- and this is a case not heard. On the condition that the sign, advertising, be modified to reflect the new

date and time. Don't forget the time. And you can just do that or your client can do that, by taking the existing signs, and with a magic marker, crossing out tonight's date, putting in October 24th, and crossing out 8:45 p.m. and writing in seven p.m.

DAN WINNY: We'll certainly do that.

CONSTANTINE ALEXANDER: If you don't do that, we won't hear the case on October 24th.

DAN WINNY: We already adjusted the signs that we asked for a continuance and will now install the date as well.

CONSTANTINE ALEXANDER: Date and time.

DAN WINNY: Correct.

CONSTANTINE ALEXANDER: Seven p.m. unless you want to be heard later in the night.

DAN WINNY: We also keep replacing the signs as many times as they get taken down.

CONSTANTINE ALEXANDER: You have to do that. I would wait until 14 days before October 24th to worry about the signage. That's all you're required as a matter of law.

And further that -- to the extent that -- if you are going to propose revised signage or revised specs, dimensional forms, they have to be in our files by no later than five p.m. on the Monday before October 24th. And we would expect, by the way, when we hear on October 24th, that you would have gone before Community Development, you will have gotten a recommendation from them and we would have heard from the Planning Board. If we haven't, we will continue the case further.

DAN WINNY: Understood.

CONSTANTINE ALEXANDER: You can't control that, but I want to make sure you understood that.

DAN WINNY: But the Planning Board has sent its recommendation to the Board, but if the sign gets modified, maybe we'll need to ask them to look at it again.

CONSTANTINE ALEXANDER: Yes, you will. And if you want to go the with current sign, you're going to deal with the letters that are in this file. So I think you're going to be modifying your sign before you do anything at all.

Go to the Planning Board and we're not going to hear the case until we've heard from the Planning Board. So you understand?

DAN WINNY: Right.

CONSTANTINE ALEXANDER: All those

in favor of continuing that basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

DAN WINNY: Thank you.

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

CONSTANTINE ALEXANDER: See you in October.

* * * * *

(10:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10467, 113 Hamilton Street.

Is there anyone here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one wishing to be heard.

There's letter in the file. (Reading)
We are requesting a continuance in our case to reevaluate the file. Signed by Thomas Rose. They don't have a requested date.

Do you have any sense of what date they want to -- this is a case not heard.

SEAN O'GRADY: No, I have no memory of them asking for a specific date. I think they probably want the next available one so that would be August 29th.

CONSTANTINE ALEXANDER: That's today's early. So that's six weeks at least. That should give them enough time to do anything.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: They should be told, Sean, that it's a hard date. I don't expect them to come back at the end of August and say we need more time.

SEAN O'GRADY: Do we know why we continued them?

CONSTANTINE ALEXANDER: This case?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: I thought there was some problems with the fact that Brendan I think spotted some problems with regard to the --

SEAN O'GRADY: Refresh me.

CONSTANTINE ALEXANDER: The district?

SEAN O'GRADY: You told me. This is a bunch of inaccuracies and the architect has to look at it. Yes, I've got nothing.

BRENDAN SULLIVAN: The dimensional form is a mess.

CONSTANTINE ALEXANDER: I haven't looked at the file.

SEAN O'GRADY: We'll tell them.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case -- and do we have a waiver for a time of decision?

SEAN O'GRADY: Should be a waiver in

there, yes.

CONSTANTINE ALEXANDER: Let me make sure. Yes.

The Chair moves that this case be continued as a case not heard until August 29th at seven p.m. on the condition that the Petitioner modify the posting sign, maintain it in accordance with our Ordinance for the 14 days prior to the continued dated of the hearing, but that the date be changed to the August date and the time be changed to seven p.m. Both must be done.

On the further condition that apparently there's a need to revise plans and/or dimensional form, and that these revised plans and our dimensional form must be in our files no later than five p.m. on the Monday before.

All those in favor of continuing the

case on this basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Case
continued. Done.

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

* * * * *

(10:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10465, 12 Gerry's Landing Road.

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

CAROLYN EDELL-VETTER: Carolyn Edsell-Vetter of A yard and a Half Landscaping representing the owner Elena Koundourakis. So 12 Gerry's Landing is located on the fast moving section of the road which is divided. To enter the drive, one must take a sharp right and pull head in into

the garage. To exit one must back straight out of the garage. The site line is obstructed by a six-foot fence, and so it creates both a traffic and a pedestrian hazard since you're also crossing the sidewalk.

We're proposing a semi-circular drive which would allow the owner to pull through, back into the garage and exit forward facing. This would require a Special Permit for an additional curb cut.

CONSTANTINE ALEXANDER: I want to be very clear your client is not planning to park on the circular driveway?

CAROLYN EDSSELL-VETTER: Correct. So there's one driver in the house. There's one car. There's a two car garage. So this is just to be able to get in and out safely without doing the crazy wait for three

minutes for traffic to pass and then back out and pray.

CONSTANTINE ALEXANDER: Why do you need a second curb cut to do that? You could just expand -- right now you have a driveway that goes into the garage.

CAROLYN EDSSELL-VETTER: Correct.

CONSTANTINE ALEXANDER: You can cut a notch out, you can back out and go out like this. The circular driveway puzzles me. Why you go through all this trouble unless you were looking to park.

CAROLYN EDSSELL-VETTER: No, no. Just -- no, I mean mainly just because design-wise --

CONSTANTINE ALEXANDER: That's what you want?

CAROLYN EDSSELL-VETTER: Yeah.

CONSTANTINE ALEXANDER: Okay.

CAROLYN EDSSELL-VETTER: And yeah.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Is the fence the problem? The sight problem?

Well, let me go back.

CAROLYN EDSSELL-VETTER: Yeah.

BRENDAN SULLIVAN: I have a scenario of events there. How long have they lived there?

CAROLYN EDSSELL-VETTER: I think two years.

BRENDAN SULLIVAN: Two years.

CAROLYN EDSSELL-VETTER: And recently divorced which has opened up changes to the property and to use.

BRENDAN SULLIVAN: Okay. I'm just wondering, you know, I was there yesterday. I have a big truck. I was able to pull in. There was a car facing with -- you back to the

Mount Auburn Hospital. There's a car in the right bay, right now, a white Mercedes. So anyhow, so I pictured myself, okay, I'm pulling into the garage. Now I'm backing out, and it's going to take a couple maneuvers, but I was able to go this way because there is a road to goes up to the left, and then you can back down this way and that's how I got out. Never exited on to the parkway.

CAROLYN EDSELL-VETTER: Yeah.

I'll be honest, I have a little Honda Fit and I do the same thing, but she's got a big Range-Rover thing.

BRENDAN SULLIVAN: And the other thought is if it's a sight problem, you just take the fence and move the fence forward and eliminate that sight problem.

CAROLYN EDSELL-VETTER: Which would

happen regardless.

BRENDAN SULLIVAN: The other issue that I had is from the sidewalk to the circular drive, what is that dimension?

CONSTANTINE ALEXANDER: The circular driveway goes right to the sidewalk. Here's the plan.

CAROLYN EDELL-VETTER: The garage is all of 15 or 20 feet from the street.

BRENDAN SULLIVAN: It shows 23 feet. 23 feet to the garage.

CAROLYN EDELL-VETTER: Uh-huh.

BRENDAN SULLIVAN: Okay.

So the arc is in align with the garage?

CAROLYN EDELL-VETTER: Uh-huh.

BRENDAN SULLIVAN: Should a car be parked there, which somehow it tells me that it will be parked there, that's within the front yard setback.

CONSTANTINE ALEXANDER: That's exactly the question I've asked. That's why -- I think this doesn't hang together for me. I don't know why you need a circular driveway unless you -- not you, your client.

CAROLYN EDSSELL-VETTER: Right.

CONSTANTINE ALEXANDER: If you plan to drive in the circular driveway, you need a Variance for front yard parking. I don't want to grant -- I'm going to give me speech on Lexington Avenue. I don't want to grant relief tonight, the salami approach and then find out we have a problem two months from now, oh, we need a Variance to park in the front yard.

CAROLYN EDSSELL-VETTER: There's no reason to park in the front yard.

CONSTANTINE ALEXANDER: Yes, there is. So you don't bother parking in the

garage.

ANDREA HICKEY: Yes, it's convenient.

CONSTANTINE ALEXANDER: It's convenient. That's the reason, it's convenient.

JANET GREEN: Do the neighbors have a circular drive or does anybody have --

CAROLYN EDELL-VETTER: No. The neighbors have -- the neighbors -- first of all, this is a section of Gerry's Landing that's all. It's all six to eight foot fence all the way along.

JANET GREEN: Right.

CAROLYN EDELL-VETTER: So, no, the majority of the neighbors either have, you know, a long drive up into the back or, you know, sort of a courtyard inside of this fenced enclave. And so they go in and do

whatever maneuvers they do and then they come back out.

JANET GREEN: So they're coming out straight forward?

CAROLYN EDELL-VETTER: Correct.

DOUGLAS MYERS: Briefly, I'm just kind of chiming in, that's all I'm doing is I'm troubled. It seems to me the answer to this situation is to pull out front face first into traffic. And to facilitate that in kind of the simplest manner, which is a notch or something like Gus has suggested.

CAROLYN EDELL-VETTER: Correct.

DOUGLAS MYERS: I'm troubled by the obvious tendency to misuse of this, and because the alternatives are so easy and appealing. Plus I don't understand the curb cut in this situation.

CAROLYN EDELL-VETTER: And that's,

I mean, my intent also is really just to deal with the safety issue and speaking --

DOUGLAS MYERS: Isn't the safety issue dealt with if you pull out face first?

CAROLYN EDSSELL-VETTER: It is. No, that's what I'm saying. I would certainly be open to exploring that with her. I mean, I think it's -- it's partly just the ease of being a mother with two garbling children in the car and being able to just pull in and have as few maneuvers as possible. Doing this thing, even in a small car with two children garbling at you is pretty hard doing that --

CONSTANTINE ALEXANDER: The more I hear, the more I hear parking in the front driveway. It's two small children. The convenient thing to do, and I understand it.

DOUGLAS MYERS: Just dump the car.

CONSTANTINE ALEXANDER: Just dump

the car. You drive in, dump the car, and walk up. You're not going to maneuver into the garage.

BRENDAN SULLIVAN: Well, the interesting thing on this garage is that it has doors facing the parkway and there's also garage doors facing the house.

JANET GREEN: I wanted to ask what that was.

CONSTANTINE ALEXANDER: I didn't appreciate that.

BRENDAN SULLIVAN: And the car that's there, which is again a white Mercedes is actually facing out. So somebody maneuvered it back in.

CAROLYN EDELL-VETTER: Yeah.
That's --

BRENDAN SULLIVAN: Very easily.

CAROLYN EDELL-VETTER: -- that's

apparently the Ex's car that's apparently supposed to be gone. So it's beyond my --

BRENDAN SULLIVAN: It's been the modis operandi for years and year and years. And, again, I think the streetscape of the parkway is -- would be adversely affected by having the circular driveway there which, again, is within the front yard setback. And even though she has no intentions, the next owner probably will. So that would be my --

JANET GREEN: It's -- I didn't have as much difficulty with that just given that there was a fence there and the front yard setback wasn't -- I mean, like on Lexington Avenue the front yard setback was visible to everybody who went passed. I didn't see this as really something that was going to be visible. And it just -- it does seem easier to me to come around the circle and back into

the driveway. I mean, it just does seem easier than doing one of those little things. And as someone who backed out of that driveway today on to Gerry's Landing, I definitely think something needs to be done.

CONSTANTINE ALEXANDER: Well, I think we, you know, my observation is I share the concerns of others and I expressed them initially myself. This is not -- we're going so have a problem here. And we can do two things it seems to me. We can deny the Special Permit and let your client come back in for the Variance which we think is going to come. Or we can grant the Special Permit but be very clear that if Inspectional Services says they're parking in that front driveway, come back for a Variance, you're not going to get it.

CAROLYN EDSSELL-VETTER: Right.

CONSTANTINE ALEXANDER: And if that's the case, then we're left with the curb cuts I guess that your client will either be forced to use the garage, will have no choice but to use the garage. My view would be, I would prefer not to allow the circular driveway frankly, but that's just my view.

Anyway let me open it public testimony.

Anybody wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: No? No one wishes to be heard.

I didn't see any letters in the file one way or another. So I'll close public testimony.

Anything you want to add additional at this point?

CAROLYN EDSSELL-VETTER: No.

CONSTANTINE ALEXANDER: Comments? Vote? There's been a lot of comments already, but what's the pleasure?

ANDREA HICKEY: If there was no second curb cut and just the circular driveway that you couldn't get out the other end, what would you think about that?

CONSTANTINE ALEXANDER: Well, then they still have the same problem, of course. If they park anywhere in this driveway, they park in the front yard.

BRENDAN SULLIVAN: The thing is, Andrea, that the access to that is basically coming with your back to Watertown. I mean, you know, because that's the flow of traffic. So that's where the curb cut has to be in order to get on the -- in front of the garage all the way because it's a huge curb cut because there's a road to the left of the garage.

Which, again, I had an F-150 I pulled, and as you can imagine, I backed up and I went and away I went.

JANET GREEN: That's hard to argue with that.

BRENDAN SULLIVAN: And I said, I don't know really what the problem is. I mean, it's not as convenient.

ANDREA HICKEY: It's a busy street and with those fences it's hard to see.

BRENDAN SULLIVAN: And I think if it's a sight problem, you know, even, even if you had a clear view and there's a lot of traffic -- and there's a lot of traffic probably a couple times a day, in the morning and in the afternoon. But the impact I think is detrimental.

CONSTANTINE ALEXANDER: Should we go to the vote or people want to talk about

it?

DOUGLAS MYERS: I mean, I realize the threshold for a Special Permit is lower, but this probably is the first case in my experience on the Board where I don't think it's been met. So I'm prepared to vote against it.

CONSTANTINE ALEXANDER: Okay. So am I.

Okay, again I don't mean to cut off discussion.

ANDREA HICKEY: I'm fine.

JANET GREEN: I'm good.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings with regard to the Special Permit being sought:

That traffic generated or patterns of access or egress will not cause congestion,

hazard, or substantial change in the established neighborhood character.

That the continued operation of the adjacent uses will not be adversely affected by the proposal.

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 proposed use will not impair the integrity of the district or other adjoining district or other derogate from the intent and purpose of this Ordinance.

On the basis of these findings the Chair moves that the Special Permit Special Permit be granted on the condition that the work proceed in accordance with the plans submitted by the Petitioner and initialled by the Chair. This is the one you've given us.

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

(No Response.)

CONSTANTINE ALEXANDER: None in favor. Five opposed. So Special Permit is not granted.

I think I we need to make further findings.

The Board further finds that patterns of access and egress and traffic generated will be -- there could be hazard as a result from these curb cuts which would cause hazard to the established neighborhood character. That hazard will be created to the detriment of the health, safety, and welfare of the citizens of the city if we have this circular driveway, and that the proposed use will impair the integrity of the district or otherwise derogate from the intent and

purpose of this Ordinance.

This Ordinance does -- looks in favor upon curb cuts as close as these are, and we haven't found a compelling case for the need of these curb cuts. There are ways of solving the parking issue and getting on and off the street as we've discussed at the hearing tonight.

So I move that we make these findings for purposes of our decision. Any other findings people want to add to it?

(No Response.)

CONSTANTINE ALEXANDER: All those in favor of adding to these findings say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Green, Myers,

Hickey.)

* * * * *

(10:20 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Andrea Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10468, 338 Norfolk Street, No. 2.

Is there anyone here wishing to be heard in this matter? Good evening, you're here for egregious relief.

DANIEL MADRI: What's that?

CONSTANTINE ALEXANDER: Six feet, right?

DANIEL MADRI: Yes, exactly.

CONSTANTINE ALEXANDER: For the record.

DANIEL MADRI: So basically --

CONSTANTINE ALEXANDER: No, no.
You have to give us your name and address.

DANIEL MADRI: Oh. My name is
Daniel Madri. My address is 311 Washington
Street, No. 1, in Somerville, Massachusetts.

I'm speaking for the owner Ernest Kim
of 338 Norfolk Street, No. 2, in Cambridge,
Massachusetts.

CONSTANTINE ALEXANDER: Okay.

DANIEL MADRI: Okay. So basically
the relief we're seeking, they had a deck and
a set of stairs that were removed -- the deck
was removed as an emergency repair. The deck
was framed into the existing vestibule and
mudroom at the back of the house. There was
a leak, the roof leaked, they needed to
reroof. In order to reroof, they removed the
deck. They left the stairs which are

non-conforming. The risers were not up to code, and they run up to the lot line of the adjacent building. Our proposal would mitigate the design flaw in the original deck by floating it above the roof so we don't have to cut into the roof thereby invalidating the current warranty on the roof. And the stairs have a landing and a 90 degree turn on them so they can be brought to current codes.

CONSTANTINE ALEXANDER: And the reason you're here before us is because you have a setback issue?

DANIEL MADRI: Yes.

CONSTANTINE ALEXANDER: That's the only issue?

DANIEL MADRI: Yes.

CONSTANTINE ALEXANDER: And the purpose, just to repeat, the purpose is safety and compliance with the state Building

Code.

DANIEL MADRI: That's correct.

CONSTANTINE ALEXANDER: You're improving to complying with the law which is always desirable, and you're improving the condition of the house --

DANIEL MADRI: Yes, sir.

CONSTANTINE ALEXANDER: -- and safety for the occupant of the house.

DANIEL MADRI: Yes, sir.

CONSTANTINE ALEXANDER: Okay.

Comments from members of the Board?

DOUGLAS MYERS: One quick question. Will the deck size of the replacement deck be exactly the same as the existing deck or if not to what?

DANIEL MADRI: It would be slightly larger. It's a total addition of six square feet.

CONSTANTINE ALEXANDER: They're going to add six square feet to the size of the deck. That's the six feet I was referring to.

DOUGLAS MYERS: I see.

CONSTANTINE ALEXANDER: Anybody here wishing to be heard in this matter?

CHAD HART: My name is Chad Hart. I own the unit in the first floor that's probably most affected by this. I'm totally in favor of it.

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

Sir?

CHRIS NEWART: I'm a neighbor --

CONSTANTINE ALEXANDER: Name.

CHRIS NEWART: Chris Newart at 336 Norfolk Street. And my wife and I live immediately adjacent, and we have approved

the site -- I mean, the plans. They look fine to us. And we wrote a letter in support.

CONSTANTINE ALEXANDER: This is a letter of support. I won't read it, but I'll put it in our file since you've already given us the substance of the letter, that's sufficient.

I'm going to close public testimony. Anything else you want to add?

DANIEL MADRI: Not at all.

CONSTANTINE ALEXANDER: Wise man.

Any comments from members of the Board? Ready for a vote?

Okay. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions would involve a substantial hardship to the Petitioner. Such hardship being that unable to have a code compliant set

of egress stairs -- access and egress stairs.

That the hardship is owing to circumstances relating to the shape or the nature of the structure. It's non-conforming. And any modification, even the small modification of six feet would require a 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 what's being done is improve the safety of the structure, would bring the structure more in compliant with current legal requirements. And that the nature, the work has got the support of the most affected neighbors. And that generally the nature of the relief is very modest, very modest.

So on the basis of these findings the Chair moves that a Variance be granted to the Petitioner as requested on the condition that the work proceed in accordance with these plans. You're not going to change them.

DANIEL MADRI: Yes, sir.

CONSTANTINE ALEXANDER: The plans, the first page of which have been initialled by the Chair.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

DANIEL MADRI: Thank you very much.

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

(Whereupon, at 10:25 p.m., the

Board of Zoning Appeals

Adjourned.)

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