

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, OCTOBER 22, 2015

7:20 p.m.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Acting Chair

Brendan Sullivan, Member

Thomas Scott, Member

George S. Best, Associate Member

Jim Monteverde, Associate Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S*** * * * ***

(7:20 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting -- open session of the October 22nd Board of Appeals meeting to order. Our first order of business is to deal with continued cases. These are cases that we heard earlier in the year, and for one reason or another have been continued until tonight.

But before I get into those cases, Mr. Hawkinson, is that a recording device you've left here?

JOHN HAWKINSON: It is.

CONSTANTINE ALEXANDER: Okay.

Under the Open Meeting Law, I have to advise everyone in the audience that the minutes -- what can happen tonight is being recorded not only by the official

stenographer for the Board but by
Mr. Hawkinson through his recording
device. So you should all be aware of
that.

* * * * *

(7:20 p.m.)

(Sitting Members Case BZA-007170-2015:
Constantine Alexander, Timothy Hughes,
Brendan Sullivan, George S. Best, Jim
Monteverde.)

CONSTANTINE ALEXANDER: Okay, the
Chair will first call case No. 007170, 307
Fresh Pond Parkway.

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

EDDIE LAKKIS: I'd like to request
a continuance.

CONSTANTINE ALEXANDER: Sir, give
your name and address to the stenographer.

EDDIE LAKKIS: Sure. First name
Eddie, last name Lakkis, L-a-k-k-i-s.

CONSTANTINE ALEXANDER: Sit down,
please if you want.

EDDIE LAKKIS: And address 97 New

Haven Street, West Roxbury, Massachusetts,
02132.

CONSTANTINE ALEXANDER: Okay, and
now the -- I trust you've been made aware
is that the posting sign that's required
by law was not maintained.

EDDIE LAKKIS: Correct.

CONSTANTINE ALEXANDER: And that's
the reason the Chair has requested that
you continue this case.

EDDIE LAKKIS: Yes.

CONSTANTINE ALEXANDER: To give
you time to meet the posting requirements.

EDDIE LAKKIS: Yes. Sorry, it's
my first time here.

CONSTANTINE ALEXANDER: No, no,
no, problem, take your time.

EDDIE LAKKIS: If we could request
the meeting at November 5th.

CONSTANTINE ALEXANDER: Do we have enough time? You've got to get the notice up there for 14 days. You need a new sign.

EDDIE LAKKIS: Okay.

SEAN O'GRADY: We don't have any availability.

CONSTANTINE ALEXANDER: We don't have availability anyway.

What's the first available date?

SEAN O'GRADY: The 19th.

CONSTANTINE ALEXANDER: The 19th of November?

This is a case not heard so we don't need to have everyone here that's here now.

The Chair moves that this case be continued as a case not heard until seven p.m. on November 19th on the following

conditions:

The petitioner has already signed a waiver of a time for decision.

That the posting sign that is not been there now, be maintained for the 14 days prior to November 19th.

And that to the extent that any plans or dimensional forms that you've already submitted are going to be modified for whatever reason, you must have them in our files no later than five p.m. on the Monday before November 19th. If you don't do that, then we're going to have to continue the case again.

EDDIE LAKKIS: Understood.

CONSTANTINE ALEXANDER: Just so you understand.

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

(Aye.)

CONSTANTINE ALEXANDER: Case
continued. See you on the 19th.

EDDIE LAKKIS: Thank you very
much.

(Alexander, Hughes, Sullivan,
Best, Monteverde.)

* * * * *

(7:25 p.m.)

(Sitting Members BZA-007258-2015:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, George S. Best, Jim
Monteverde.)

CONSTANTINE ALEXANDER: The Chair
will next call case No. 007258, 69 Rindge
Avenue.

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

BRETT HANSMEIER: Brett Hansmeier,
B-r-e-t-t H-a-n-s-m-e-i-e-r, 69 Rindge
Avenue.

CONSTANTINE ALEXANDER: Yes.

BRETT HANSMEIER: Given some
information that has come to my attention,

we'd like to request a continuance based on the dormers.

CONSTANTINE ALEXANDER: One of the things that you were told is that you didn't file -- you filed new plans but not a new dimensional form.

BRETT HANSMEIER: Yeah.

CONSTANTINE ALEXANDER: That's one of the things, because at five p.m. on the Monday before. I'll get to that in a second.

BRETT HANSMEIER: Sean mentioned that.

CONSTANTINE ALEXANDER: I'm sure Sean has already told you.

What date -- what's the first date that's available?

SEAN O'GRADY: The first date is now December 10th.

CONSTANTINE ALEXANDER: December 10th.

BRETT HANSMEIER: Okay. That was actually the date I was going to ask for.

SEAN O'GRADY: There you go.

CONSTANTINE ALEXANDER: This is a case not heard as well, so we don't have to worry about who's going to be here.

So the Chair moves that this case be continued as a case not heard until seven p.m. on December 10th on the condition that -- the petitioner already has signed a waiver of time for decision.

But on the further condition that the posting sign that's there now be further modified, or maybe want to get a new one, scratch it out, new date, December 10th, and new time, seven p.m.

And that any new plans beyond what

you've already submitted and any dimensional form relating to whatever plans you want us to consider, must be in our files no later than five p.m. on the Monday before December 10th. If you don't do that, then we're going to continue again.

BRETT HANSMEIER: Right.

CONSTANTINE ALEXANDER: You don't want that, and we don't want that.

BRETT HANSMEIER: Right.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Sullivan, Best, Monteverde.)

BRETT HANSMEIER: Other than phone

calls from an informal -- is there any way to get feedback before we actually get to the --

CONSTANTINE ALEXANDER: No. We have to do it in an open meeting as a matter of law, so we don't.

BRETT HANSMEIER: Okay.

CONSTANTINE ALEXANDER: But I think you have been informally advised is that we have dormer guidelines --

BRETT HANSMEIER: I have.

CONSTANTINE ALEXANDER: And the plans that we have in our files are woefully -- and that's my word -- woefully non-compliant with the dormer guidelines. You might want to take that into consideration --

BRETT HANSMEIER: Right.

CONSTANTINE ALEXANDER: -- which

may mean new plans. Which means those plans and the dimensional form have to be in our files by five p.m. -- no later than five p.m. on the Monday before.

BRETT HANSMEIER: Understood.

CONSTANTINE ALEXANDER: See you in December.

(7:30 p.m.)

(Sitting Members BZA-007045-2015:

Constantine Alexander, Timothy Hughes, Brendan Sullivan, George S. Best, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 007045, One Wood Street.

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

ATTORNEY SEAN HOPE: Yes.

Good evening, Mr. Chair, Members of

the Board. For the record, I'm attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight on behalf of the petitioners. We have Ashley and Rob Wood. We also have project architect Maggie Booz from Smart Architecture.

This is an application that was heard back in July of a continued hearing requesting setback relief in the form of a Variance to construct a two-story addition to the rear of a single-family home located in the Res C-1 District. Dimensionally as stated in the application, the additional gross floor area is within the ten percent allowed as of right. Also the setback relief has been shifted to the abutter. The abutter that's most impacted by the setback encroachment has been shifted to the

abutter that has wrote a full letter of support in the file. We'd just like to note that for the record.

Just to refresh the Board, this is an extremely narrow lot. The minimum lot width is 50 feet in the district. So this is 0.8, so it's a little more than half of the minimum that's required. Also the lot is undersized. This is a district that requires 5,000 square feet and we have 3,000 square feet. The home is comprised of approximately 1,000 square feet of living space in the form of a non-conforming two-family dwelling.

I would just like to -- as we have it depicted in the file, this is the smallest single-family house on the street, and it's one of the smallest single-family houses within the City of

Cambridge.

I'd like to just state for the record and go through the specific facts and circumstances and the application that satisfied the three-part test required under the Ordinance and state statute for a Variance. So just bear with me as I walk through this.

So one, the literal enforcement of the Ordinance would cause a substantial hardship to the petitioners. The petitioners bought their home six years ago. At the time it was just two of them. Their family has now grown to four with two small children under the age of six that attend the Cambridge public schools. The design was really driven by the goal of alleviating three major hardships:

One was to add a continuous bedroom,

a third bedroom. They currently have two in the 1,000 square feet.

The second was to add interior stairs to be able to access the basement. That's where the washer and dryer's currently located. As I said at the previous hearing, this past winter, the idea of going outside, oftentimes shoveling out access ways into the basement to do laundry with two children is a pretty self-evident hardship.

And also there was a goal of adding a second bathroom, a second full bathroom. Under the revised plans that second bathroom has now been eliminated in an effort to accommodate the direct abutter at Five Wood Street.

Secondly under the statute, the hardship is owing to the soil conditions,

topography or the shape of the lot. As I mentioned, this is directly correlated to the narrowness of the lot. And I would say because of the narrowness of the lot and the way the house is situated, I would argue that any functional addition that was trying to accommodate additional bedrooms and living space would likely require a Variance. So I think it does hit directly on the standard for that element.

Third, relief can be granted without substantial detriment to the public good. The original application was modified, and as you can see from the file from testimony, I would say that there's overwhelming neighborhood support except for the one abutter who has already stated their opposition. I would also argue that

allowing for a growing family to stay in Cambridge is one of the policy goals for the city, Cambridge City Council, and I also believe that that initiative is something that is a benefit to the public good. Definitely say that there is no detriment that's been asserted to the public good. I mean obviously there are individual hardships that the Board will hear about as well.

Also the application is consistent with the intent and purpose of the Ordinance. As you see, we've designed the addition really narrowly tailored just to meet those three objectives. Also, because it's a narrow lot but it's long, one of the goals was to maintain the integrity of the cottage doll house. It's an historic home and so the addition lends

itself to the rear yard. So that's one of the goals that I think the design achieves, but in no way I think is our application inconsistent. And also the Ordinance calls for the highest and most rational use of land. And I think where we've sited this, given the size of the house, I think we also satisfy the criteria.

At the previous hearing the direct abutters at Five Wood they were represented by attorney Panico. At that time when we requested a continuance, I was hopeful that with his help that we would be able to at least get together with a meeting of the minds and figure out where the sticking points were and hopefully work for a solution. On that -- after that Thursday on Monday I

called attorney Panico and he informed me that he was directed that all communications would be directed directly from the client and he didn't have any direct involvement with that. From July until now he has not been part of any negotiations.

CONSTANTINE ALEXANDER: Have you tried to --

ATTORNEY SEAN HOPE: I have. I have a tried several times, and also as early as this evening. Excuse me, earlier today. I called him again to see if he had been involved, if there was any --

CONSTANTINE ALEXANDER: No, not him. Did you call his client -- former clients?

ATTORNEY SEAN HOPE: Oh, yes.
So after July and attorney Panico

was no longer involved, given that it was August we had trouble getting whatever vacation schedules, getting together with a meeting. We did hold a meeting at the Woods' home. And I would say -- I would characterize it as a very cordial meeting. We sent the plans that you see today in advance of the -- in advance of the meeting, and we went and we kind of walked through the plans. From our perspective, I was hoping for a dialogue, a back and forth. What we perceived was there was a listening. Not all the members of the family were there. But in my experience I tried to give them some contacts, and I said this may be a last opportunity and we're really looking for some feedback on what you would support. From my perspective, and I think this is being

accurate, we didn't actually receive any direction. They said they would consider the plans seriously and they would get back to us. There was a filing deadline for the September 10th hearing. So we did hear back from them that they couldn't support it at that time prior to that. But there was never, "We can't support this, we could support something different." And so I would say that I thought we were negotiating against ourselves which was fine, because we made these changes in hopes that we were mitigating the issues that they had. But I would say that it was challenging trying to figure out -- and the way -- how do we stop negotiating against ourselves? We looked at the three goals that we were trying to achieve by applying for the

Variance, and we had two out of the three. And we eliminated the second floor bathroom as a way to try to get something that was more palatable and to reduce the impact on the neighbors.

So we did submit for the Board a list of design changes. Sometimes it's often hard to tell what those design changes are. We have --

CONSTANTINE ALEXANDER: You did? I didn't see any list. Maybe I just -- did I miss it?

MAGGIE BOOZ: Your letter, right? The letter that lists the design changes.

ATTORNEY SEAN HOPE: Oh, I thought you were submitting that with the cover page.

MAGGIE BOOZ: No.

CONSTANTINE ALEXANDER: You can

describe them to us. I just want to make clear what's not in our files, that's all.

ATTORNEY SEAN HOPE: It was a miscommunication. Do you want to walk through those changes?

MAGGIE BOOZ: Yes, sure.

So changes to the project since the July 16, 2015, Board of Zoning Appeal hearing. We've had discussions with the owners of the abutting property at Five Wood Street -- I'm just reading from the letter obviously. Since the last Zoning Board hearing on July 16th, following is a list of changes and improvements to the project that have occurred as a result of these discussions.

Building design changes. No. 1, lowered the roof height of the addition by another six inches. The minimum to allow

access to the additional bedroom and to the stairway into the basement.

CONSTANTINE ALEXANDER: I think -- I'm sorry to interrupt you. What you're saying essentially you can't lower it anymore without causing code problems?

MAGGIE BOOZ: Correct, exactly. Correct. Headroom issues would ensue.

No. 2, additional lowered roof necessitated steps at the first and second floor from the existing house into the addition. You would see that on the plans there's a step at each floor.

No. 3, reduce the second floor length by four-foot-six inches achieved by eliminating the second bathroom on that floor.

And No. 4, decreased roof and wall plane areas subsequently after the

four-foot-six inches was removed on north and south sides of house by approximately 20 percent.

The previous plan elevation and site plan changes that have taken place, and these were prior to the July 16th hearing, these were, these were made in April of this year after conversations with the neighbors at Wood Street. We had meetings -- I had one meeting and Rob and Ashley had another meeting, I believe.

No. 1, we pushed that north wall of the addition further south by eight inches making the addition out of plane with the existing north wall of the house. So it narrowed the addition by eight inches. And that brought it into compliance with the side yard setback on that side.

Two, added windows on the north side

of the house on both floors. That was -- we had thought, we had designed it without any windows on that side thinking that perhaps there would be a privacy, you know, concern, but it became clear during the conversation that it was not a concern and that maybe windows would be more attractive.

No. 3, we -- at that time we reduced the overall length of the addition by one foot and made four, made the north side of the roof non-coplanar resulting in a ridge height drop of approximately four inches. I think it actually was a little more than that when I started to think about this, but overall we're --

CONSTANTINE ALEXANDER: But this second list of changes were enumerated --

MAGGIE BOOZ: Yes. Those were

prior.

CONSTANTINE ALEXANDER: Those were prior. I don't think they're relevant for tonight. What's more relevant are the changes that you made or proposed -- yes, that you have made in response to the opposition from your neighbor at the --

ATTORNEY SEAN HOPE: July 16th meeting.

CONSTANTINE ALEXANDER: -- July meeting. Those are the ones. So you have made -- but your point is, and you've enumerated them. You have made changes in good faith to try to address the concerns of your neighbor.

MAGGIE BOOZ: We have, yes.

CONSTANTINE ALEXANDER: And to date the neighbors haven't signed -- we'll find out, they haven't signed off on it

yet.

ATTORNEY SEAN HOPE: That's it.

And that's --

CONSTANTINE ALEXANDER: Okay.

That's it?

ATTORNEY SEAN HOPE: That's it for now.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIMOTHY HUGHES: No.

JIM MONTEVERDE: No.

BRENDAN SULLIVAN: Well, just if we go to the sheet 6 of 8, and those are the proposed views, and then you go to 8 of 8 and it would appear that you're filling in basically to block these, 1, 2, 3, 4 -- at least six windows.

MAGGIE BOOZ: No, actually the windows that are affected are the second

two.

BRENDAN SULLIVAN: This is a
bathroom.

MAGGIE BOOZ: On the Five Wood
Street?

BRENDAN SULLIVAN: Correct.
Because this is the back of --

MAGGIE BOOZ: It's hard to tell,
you know, if this is an odd angle. But
the back plane of the house I think --

BRENDAN SULLIVAN: This is the
back corner.

MAGGIE BOOZ: -- I've never been
in this house. But this is the back
corner of One Wood Street.

BRENDAN SULLIVAN: Right.

MAGGIE BOOZ: And it is these two
windows at the rear that are being
affected.

BRENDAN SULLIVAN: So currently if you look out this window --

MAGGIE BOOZ: Those are already affected.

BRENDAN SULLIVAN: You see --

MAGGIE BOOZ: One Wood Street.

BRENDAN SULLIVAN: -- the side of the house.

MAGGIE BOOZ: Yes.

BRENDAN SULLIVAN: Directly on, but obviously if you look, you know, you can see forever. Okay.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

JIM MONTEVERDE: No, thank you.

CONSTANTINE ALEXANDER: Apparently not. I'm going to open the matter up to public testimony.

Is there anyone who wishes to be

heard on this matter?

BRENDAN SULLIVAN: And then this wall of No. 5 obviously faces east.

MAGGIE BOOZ: Southeast.

BRENDAN SULLIVAN: Okay. So morning sun?

MAGGIE BOOZ: Yes.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Ma'am, I think you had -- you wanted to speak?

UNIDENTIFIED FEMALE: Yes, I did.

CONSTANTINE ALEXANDER: Give your name and address.

UNIDENTIFIED MALE: We would like to speak last if possible with regards to any other person who would like to comment.

CONSTANTINE ALEXANDER: You can wait. Yes. What we'll do is anyone who

wants to speak at public testimony can speak. And we'll call on you last. And then we're going to close public testimony and you'll have no further opportunity to speak. You understand?

UNIDENTIFIED MALE: Okay, yes.

CONSTANTINE ALEXANDER: You'll be last and right now.

Ma'am, did you want to go first?
Name and address, please.

SARI BOREN: Hi, my name is Sari, S-a-r-i Boren, B-o-r-e-n. I live at 189 Walden Street which is this corner house. So I'm adjacent the to the Woods' on the corner of Wood and Walden Street. I've been living next to them the entire time they've lived there. I've been in this house for 17 years. And I had sent two letters and I just want to state that I

have an excellent relationship with the Woods. They're incredible neighbors. I am a single woman. It's very important to me in the neighborhood that I have neighbors who are incredibly helpful, who install my air conditioners and move furniture for me, and, you know, this is part of the whole aspect of living in a city and having community. And, you know, we had always had a good relationship with Janise Jackman and felt that it was very neighborly there. And I've sort have been discouraged by this situation because there had been a situation in the neighborhood where the neighbors had to sign off on the Jackman's, as I wrote in the letter, received some land from the city and we agreed to go along with it really in the spirit of neighborliness.

And so sort of now this challenging situation is, it is discouraging because we always felt that we had this neighborhood sort of sense.

I do want to say that I've seen the plans from the Woods, they have been very forthcoming in all of their plans, and I am completely happy with the plans. Not any particular plan that they have, but the ones they've shown I'm perfectly happy with. So both in terms of the plans and in terms of them being neighbors, I fully support the project.

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

Sir.

ARI ADLER: Hi, my name is Ari Adler. I also live at 189 Walden Street

in unit A downstairs. My wife Melissa actually spoke in support of the Woods as well last time, but I also wanted to reiterate my support. The Woods have been very reasonable in sharing their plans with us, talking through any concerns that we had and working through it. As been mentioned, they have one of the smallest houses in Cambridge. I feel that what they're asking to do is a very modest expansion of their home seems like a very reasonable request, so I just would like to offer my support.

CONSTANTINE ALEXANDER: Okay.

Thank you, too.

Sir.

BRUCE IRVING: Hi. Bruce Irving. 32 Cushing Street, Cambridge. I'm a real estate agent and have worked with the

Woods over the last three years or so since they began to notice that their growing family was pushing up against the walls of this small house. And as you probably get a lot of testimony here, it's a very difficult thing to find a home in Cambridge. And I just want to give some context around the statement that was said -- brought in earlier by attorney Hope about the importance of keeping families in town. So to put the Woods's search for a larger home into context, in the last three years, which is how long we've poked around for houses, the selling price of Cambridge single-family home has on average increased by 55 percent. In the same period the supply has dropped by 28 percent. The average single-family home in the city now sells for about \$1.5

million. The average selling price is seven percent over asking indicating ferocious competition. Most winning offers are cash or at the very least are free of inspection and mortgage contingencies.

The last property the Woods bid on, which was several -- quite a while ago, but that went over 14 percent over its asking price. So I put that forward to give context to this young family's attempt to expand their very small house modestly and the kind of thing that has driven them to this request. It is not a capricious undertaking that they've embarked on, nor is it inexpensive to do this kind of work. I should also add that I'm the Vice Chairman of the Cambridge Historical Commission, and to my eye the

expansion that Smart Architecture is putting forward is absolutely sympathetic and appropriate for a house of this age and in this neighborhood.

Thank you.

CONSTANTINE ALEXANDER: Thank you, sir.

JIM MONTEVERDE: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard? You wanted to be last. I want to make sure if anyone else wants to be heard.

(No Response.)

CONSTANTINE ALEXANDER: No. Now is your opportunity, sir. If you want to pull chairs up so you don't have to stand, that's fine.

Name and address for the record.

PHILIP JACKMAN: My name is Phil

or Philip Jackman. My address is 359
Walden Street, Cambridge, 02138.

JANIS JACKMAN: Janis Jackman Five
Wood Street. I am the abutter to the
Woods.

PHILIP JACKMAN: We would like to
qualify some of the information that was
presented today and we'd like to start off
by in essence our understanding that the
addition that was mentioned was said to be
two stories. In essence it's three living
floors; so it is the basement floor is a
living space. So the addition is a
three-story addition versus being
described --

CONSTANTINE ALEXANDER: No, no.
For purposes of visual impact it's two
stories.

PHILIP JACKMAN: Okay.

CONSTANTINE ALEXANDER: I mean, if they choose to use the basement for living space, that has no impact on you, sir.

PHILIP JACKMAN: The second issue is that the house is mentioned to have one bathroom. In essence it has one and a half bathrooms, and the Woods would like to add another bathroom which is, we don't have any objection to that. That's fine. But I just wanted to clarify the total bathrooms previously were three bathrooms, they reduced the number of bathrooms to two, two and a half. Two and a half bathrooms.

One of the things -- we talked about what are our issues? What are our issues? At our last meeting I presented this -- these two photos here and we'll give the Board a copy of those so you

could look at.

CONSTANTINE ALEXANDER: If you're going to give us copies, give a copy to Mr. Hope.

ATTORNEY SEAN HOPE: Thank you.

PHIL JACKMAN: This is the view -- Sean's got the other copy. I have this copy here I could pass around if you'd like to look at.

This is the view that we currently have. And this is a view that we've currently had for over 68 years for the length of time that I've --

CONSTANTINE ALEXANDER: The swimming pool has been there for 68 years?

PHILIP JACKMAN: No, it has not. No, it has not. But I've been living at this house for over 30 years of those 68 years.

If the addition is added, what's gonna happen is this is a view of what the Woods' house looks like from a number of our windows. And this view will be extended to block specifically the area that I've -- the view that I've showed you here.

CONSTANTINE ALEXANDER: Sir, if this lot were wider --

PHILIP JACKMAN: Yes.

CONSTANTINE ALEXANDER: -- and they did not have to get Zoning relief, you'd have the very same impact, would you not? Any addition is going to -- in any house around Cambridge, is going to affect the views of abutting properties?

PHILIP JACKMAN: That is correct. That is correct.

CONSTANTINE ALEXANDER: I'm trying

to understand why giving them setback relief is so detrimental when in fact, it comes with the territory when people put on additions on houses, property views of abutting properties are altered.

PHILIP JACKMAN: It's sight lines, it's views, it's open space, etcetera.

You were asked the question I believe of Brendan about this particular view here. If the addition is built, it impacts all of these windows. It doesn't just impact this or this or this window. All of these windows, the actual addition will end at this location right here. The halfway down here.

MAGGIE BOOZ: First story.

PHILIP JACKMAN: So it's just an enlargement of something that was part of their package.

So we want to understand -- not only the first floor, it's the second floor. The second floor -- this window on the second floor is impacted which we'll see a roof. This is totally blocked. This is totally blocked. All of these windows. So it's much more than just one or two windows blocked. It's the whole remaining side of the house becomes blocked. And as Brendan had mentioned, the sun comes from this direction. So we're losing a loss of light as well as views and etcetera. And that is very important, particularly a number of people, including my sister, you know, are affected by a loss of sunlight like a lot of other people are.

This is currently one of our rental apartments. The rental apartment is impacted by the addition because there is

a more of a privacy issue right now. The addition will block all of the windows in our current rental apartment which will make it less desirable because it's not as bright and sunny as it has been.

CONSTANTINE ALEXANDER: Excuse me. I forget, on your addition or your side of the house how many windows do you have that would look into the windows of the rental apartment?

ATTORNEY SEAN HOPE: On that side?

CONSTANTINE ALEXANDER: I don't remember.

MAGGIE BOOZ: Right now?

CONSTANTINE ALEXANDER: Right.

PHILIP JACKMAN: Three windows.

CONSTANTINE ALEXANDER: Three windows. Three windows now?

MAGGIE BOOZ: In our -- what are

you -- specifically what is the question?

CONSTANTINE ALEXANDER: Yes. In your proposed plans, yes, how many windows are you going to add?

MAGGIE BOOZ: At the first story?

CONSTANTINE ALEXANDER: Second story, too. Both stories would be able to look into the window of that rental apartment is what I'm told.

JIM MONTEVERDE: Two on the first and one on the second floor.

MAGGIE BOOZ: So looking into the --

CONSTANTINE ALEXANDER: Thank you, thank you.

Jim answered the question.

JIM MONTEVERDE: Three windows.

MAGGIE BOOZ: This, we're using the words affected. And that's, it's a

deceptive word in a way -- not deceptive, but it's a confusing word because, you know, are we talking about things that are right across from each other or are we talking about things, anything that's affected? You know, you could say that any window is affected.

CONSTANTINE ALEXANDER: I guess I would ask, rephrase it. You're going to add three windows on the side of the addition.

MAGGIE BOOZ: Right.

CONSTANTINE ALEXANDER: All three of those windows will have some ability to look into the windows of the rental apartment, maybe not direct on on, but you can look on an angle.

MAGGIE BOOZ: Yes, and you can see the windows of the rental property from

the windows of the addition, yes.

PHILIP JACKMAN: And going on what Brendan had stated, the -- we've talked about how it would be directly in front of the windows, but there are side sight lines that are affected as well as direct on sight lines. We're gonna lose some of those because the length of the building inhibits some of those side sight lines. So it is not just an insignificant impact on our house, it's a significant impact that we had not had to live with before. And I understand that change is part of being in Cambridge, but we want to make clear how important this is to us.

The second thing I would like to address is the level of support for the abutters, that is all well and good, and we would also be a supporter except for

one thing. Our -- the other abutters to Wood Street, their living space is more than 50 feet away from the addition. Our living space is approximately 12 feet or less away from the addition. So the other abutters, I can understand why they would not have any objection, but they are not negatively impacted as we are affected by this addition.

CONSTANTINE ALEXANDER:

Understood.

PHILIP JACKMAN: So, as I said, we would be a supporter, too, if it weren't for that one significant fact.

When it comes down to -- we had worked with the Woods and Maggie and Sean. In actuality we've met with them in total, between our attorneys and our personal meetings with them, seven times. Now, the

issue here is that the Woods had talked to our other abutters all prior to sharing their plans with us. It appeared to us or it seemed like to us that by the time the Woods presented their plans, they were cast in stone. There weren't any room for movement or changes or refinements. The architect, in essence, talked about listening to our concerns, and their response to listening to our concern was to reduce the height of the roof by this much. Six inches approximately. Is that correct, Maggie? Approximately six inches from the standing roof.

MAGGIE BOOZ: From the last time we submitted to this time? Yes.

PHILIP JACKMAN: Six inches, if you're looking at a wall that's 27 feet high or 26 feet high, makes no difference

in terms of views and impact on the house. They also said, and this is a clarification point, they originally presented plans to us where the left side of the house and the right side of the house both were not in compliance with the side setbacks. They kept the non-compliant side on the right side of the house and they moved the wall, this much, another six inches to be in compliance, but effectively that did not address what our primary issue was. So my sense is that although they moved the wall six inches, it was not with regards to consideration for us, but I think it was in regards to consideration for you guys to look at this being in compliance versus not being in compliance.

The third thing that I'd like to

discuss is at our -- at your suggestion we had a meeting after our second Board meeting to try to see if we could work any issues to come up with a reasonable solution. At that time we talked over a number of ideas. And Maggie proposed that the second floor of the addition be shortened by approximately this much which is about four feet. However, when you consider that there's a bay window in that area, that the actual impact on a house was -- so it was shortened by less than four feet. So that really didn't address any of the primary issues that we had concerns about. We did make several meaningful suggestions to Maggie and the Woods as to how they could make an improvement which would be less impactful on us and most likely would be acceptable

to the rest of the neighborhood. I would like to show you, this is a picture of their house as it stands now at the front of the house. This is part of, I believe it's in part of the packages that were distributed.

We suggested that they make better use of their already existing underutilized space. And their underutilized space in that picture is that they have that porch area which could be integrated into their current living area, that is approximately 240 square feet, approximately. And by integrating that into their current living area, that would allow space on their first floor to incorporate a stairway to the basement which would be very helpful, and it's one of the issues that they are concerned

about and wanted to take care of.

The second thing is that we suggested that they could take -- make use of their basement, and they did make use of their basement. In that basement they had installed their second bathroom. So now with that installation of that second bathroom in the basement they have a total of two and one half baths in the house.

The third thing that we suggested is that they wanted to get room away to incorporate another bedroom. We suggested that they could add dormers. We did not suggest that they put another floor on the house. That would, you know, that it would be very difficult, but they could add dormers to their existing house to incorporate a third bedroom so they're utilizing this unused space of the attic.

They're using the unused space of the basement, utilizing the porch space. This is an example of the house in the neighborhood that incorporates all of the suggestions that I recommended for the Woods to pursue.

CONSTANTINE ALEXANDER: Can I ask you just a question at this point? I'm a little confused, which is not unusual. Mr. Hope stated that after the last continuance of this case they tried -- they had a meeting with you and you had the meeting.

PHILIP JACKMAN: Yes.

CONSTANTINE ALEXANDER: And they went over it and they did revise, they showed you revised plans which shortened the back and addition by four feet, etcetera, and they got no response from

you.

PHILIP JACKMAN: That is not --

CONSTANTINE ALEXANDER: You're here tonight and telling us you made all these suggestions to them.

PHILIP JACKMAN: That is correct. These suggestions were actually made at the beginning but they were ignored or deemed unreasonable.

CONSTANTINE ALEXANDER: Okay. But there's no disagreement, you did make suggestions --

PHILIP JACKMAN: Right.

CONSTANTINE ALEXANDER: -- it was earlier in the process is what you're telling us?

PHILIP JACKMAN: Right. I did also make a suggestion. This is a second option that I proposed. I asked Maggie

had she ever considered a low profile single-story conforming addition on the back of the house? And the response was that she did not because her clients did not request her to explore that option. But that was a number of the suggestions that we have made. And I believe because they already had their "set in stone," quote, plans that they put a lot of effort and money and energy to acquire were not as receptive to hearing the other suggestions that we had to make.

CONSTANTINE ALEXANDER: Okay.

PHILIP JACKMAN: So, lastly, I feel that in terms of hardship, it's difficult to say that they have a perceived or factual hardship because they had other options. They chose not to explore the other options. If they had no

options, then I would concur that it's probably a hardship. But to have options and not explore those options, my position is that it's not a hardship but a desire to have more living space.

So finally in summary, I'm saying that we have an issue whether or not it is in fact a hardship. We do have a question of whether or not their lot is narrow. It is absolutely narrow, but it's not totally unique or there are a number of other relatively narrow spaces in Cambridge that are very close to this approximation that suffer or have the same -- similar issues. So this is not a unique position generally speaking.

The last thing we talked about is the side setbacks. That although is true, it's also not unique in Cambridge.

Virtually all of the houses, short of being on Brattle Street, suffer from the same or similar restrictions about having side setbacks that are less than the 7.5 figure that's required. So we're saying that we have issues or concerns about whether or not they have a justified hardship. We're talking about the uniqueness, we're talking about the -- we have demonstrated that there is negative impact, tangible, measurable, visual impact on our property, and that we were recommending that you not grant a Variance for this specific project as proposed. And we're also here to let you know that we would support an addition. And we don't have any problems of not supporting an addition if they more materially addressed some of our concerns.

Thank you.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time and very thoughtful presentation.

Anyone else wishing to, there should be nobody else wishing to be heard because he asked to be last. Just confirming no one else wishes to be heard.

Mr. Hope, would you respond to his presentation regarding his suggestions he made which he said clearly were not --

MAGGIE BOOZ: Sure, I'll take the design pieces on and you take the hardship pieces.

ATTORNEY SEAN HOPE: Sure.

MAGGIE BOOZ: You know, I don't remember the exact sequence of the conversations so I'm not going to get into that.

CONSTANTINE ALEXANDER: Let's talk about the front porch proposal.

MAGGIE BOOZ: The then front porch is on brick piers. It doesn't go to the basement. It isn't a place where you can make a basement stair unless you took it off and dug a foundation and connected to the basement. The basement as it exists right now is about five feet from the dirt floor to the underside or five-four I think from the dirt floor to the underside of the floor joists. So in order to, you know, and in any attaching of our new foundation or a new foundation in the front, there's --you know, there's disruption of the existing foundation. But we don't, we don't literally have a place to dig down right now at the front porch because we don't have a basement

there. I mean, there's just -- it's just ground.

CONSTANTINE ALEXANDER: I know you were going to make the basement area living area. Living room.

MAGGIE BOOZ: That's right.

CONSTANTINE ALEXANDER: How are you doing that? Aren't you going --

MAGGIE BOOZ: We're digging down. We're digging down in the back and that's how we're putting the stair in. And at the same time, we were, we were reaping the benefit of being able to get that third bedroom in because we were --

CONSTANTINE ALEXANDER: Put aside the bedroom. It's going to cost you money to put on the addition.

MAGGIE BOOZ: Yeah.

CONSTANTINE ALEXANDER: How much

money -- not dollars --

MAGGIE BOOZ: It wasn't -- when we were talking, I wasn't comparing like costs. It was just sort of the viability of building a stair inside a space that -- I don't even know if it's wide enough. I think I -- I know I looked at it. And all the many things --

CONSTANTINE ALEXANDER: What's concerning me, and maybe I'm wrong, I'm dead wrong, but usually I'm right, but maybe I'm dead wrong, are we getting into design issues? He's saying, and you can do this as a matter of right if you took a different design approaches.

MAGGIE BOOZ: Yeah.

CONSTANTINE ALEXANDER: And maybe that offends -- I'm not being

cynical -- offends you as an architect, but are they reasonable? I mean, are they doable?

MAGGIE BOOZ: No, they're not -- it doesn't offend me as an architect.

CONSTANTINE ALEXANDER: Because are they doable? Because if they're doable within price ranges that are comparable to the addition, why not?

MAGGIE BOOZ: So, it's so difficult to explain all the iterations of how, you know, of how you design something and how you construct something. But let me try.

In the front porch area, a stair by code has to be three feet wide in each, you know, on each of it's rungs. It would definitely have to double back in

that -- you can't go straight down. There isn't enough length in the width of the house if we maintain a front door to get a stair down to the basement. So I would have to double it back. The depth of that porch isn't such that when you build the foundation wall in -- so, this is so hard to explain. But here, you know, here's a two-by-four or a two-by-six really, because two-by-six is the only thing that meets the energy code, wall of the exterior of the house. And then the foundation. That exterior of the house is flush. That exterior stud is flush with -- or is flush with the exterior of the foundation wall. The foundation wall is eight to ten inches. So you automatically lose four to six inches on the interior of the -- of that porch space

that we have right now if we were suggesting that we put the basement stair there. We don't -- we, therefore, would have to push into the existing living space in order to get a basement stair in. We'd be -- I mean, it would be very, very tricky the way the house is framed to do that, and it would -- so, I could say that no, the stair in the front of the house won't fit. It simply won't. It doesn't dimensionally fit within the existing wall of the basement and the new foundation wall that would have to be constructed underneath the front porch wall. So that wouldn't actually fit I can safely say.

As to the suggestions that were made in the meetings that we had, and I met twice. I don't know about the seven times. I don't know what that is, but I

personally met with my clients and the Jackmans twice. And what was consistently suggested was a third story on the house. And we don't have a foundation that supports a third story.

CONSTANTINE ALEXANDER: I haven't heard him say that.

PHILIP JACKMAN: I've never said that.

ASHLEY WOOD: Well, to us he said --

CONSTANTINE ALEXANDER: But anyway, I don't want to get into a he said, she said. Where I'm going with my questions is, personally I think the hardship case is compelling here in terms of wanting to keep this couple in this community.

MAGGIE BOOZ: Yes.

CONSTANTINE ALEXANDER: But the question is is there more than one way of skinning the cat? He's saying the way you're proposing is detrimental to their property. And if we were to turn, if we were to turn -- deny relief, would you be able to still provide additional living space, maybe not your most preferred way of doing it, but is there an alternative way of doing it at a cost that's relatively comparable to the cost of doing this addition?

BRENDAN SULLIVAN: Let me jump in. What I see is obviously a need for some additional space and they have outgrown the house.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Well, when you outgrow the house, either and, again,

testimony was that you've been looking for an alternative, even though there was an alternative down the street a bit on Walden Street that slipped by your hands. But that's okay.

But what I see here is, okay, a need for additional space and how can we -- I really do feel that it's going to impact the next-door house significantly because something similar to this happened next-door to me, the house I own, and they built an addition and I went along with it, signed off on it, and I regretted it ever since because all of a sudden I look and here's this structure all the time. But anyhow, what I see is living room 1, living room 2, living room 3.

And living room 1 obviously is going to be a formal living room.

Living room 2 is going to be a family room, gathering space, and what have you. Communication with the kitchen somewhat even though there's a refrigerator there.

Living room 3 I guess would be for the lack of a better word, a playroom in the sense that kids go down there and so on and so forth. But, you know, so we have three living rooms.

And upstairs above the living room 2 we have a master bedroom. So you need another bedroom and you need another gathering space.

If a one-story addition would accommodate the other bedroom, and in digging that out, that would accommodate the other living room. I don't know why we need three living rooms when you're

asking for a tremendous amount of relief and not a negative impact.

ATTORNEY SEAN HOPE: So I'm a little -- so you were proposing looking at the floor plan that there was a way to encompass the goals that we were trying to accomplish --

BRENDAN SULLIVAN: Additional gathering space, if you will, and a bedroom.

ATTORNEY SEAN HOPE: Right. So our goal was a continuous bedroom because they have two small children. So the idea wasn't just a bedroom anywhere, but a bedroom that was in close proximity to the other bedroom. That was one.

BRENDAN SULLIVAN: Well, but the children don't always remain small.

ATTORNEY SEAN HOPE: I understand,

but part of it is the nature is they're small now --

BRENDAN SULLIVAN: They grow up very quickly.

ATTORNEY SEAN HOPE: -- I think the hardship is now. It may not be, you know, when they're in --

BRENDAN SULLIVAN: But we're building this forever. That's the problem.

ATTORNEY SEAN HOPE: I understand.

BRENDAN SULLIVAN: If all of a sudden the children are off in college, we don't have the need for all of this, would you agree to take it all down? I go back to where you started when you first married, and the answer is no.

ATTORNEY SEAN HOPE: But I also think when you take a single-family

structure that is de minimus in size, it's a single family that when you're trying to create space for a family, their children may not benefit but there also could be another benefit from an additional occupant that would come and have living space.

But I also want to just make the point in terms of the Variance, the relief we're seeking, we're not seeking relief for extra massing and we're actually below the 0.75. This is not a GFA graph. We're not trying to max this out. We're at 0.59 in a 0.75. We really tried to limit this functionally and the amount of square footage to the minimum necessary. So the idea is that we're asking for setback relief. What I'm hearing is there's a big wall that's being built here. There's a

Special Permit option that we could pursue that would have the same impact. There also is an as-of-right option. Those aren't as functional. We don't want to just to do that. But I think the suggestion --

BRENDAN SULLIVAN: Right. We haven't seen that either.

CONSTANTINE ALEXANDER: Yes, that's exactly my point. I'm trying to find out does this project rise and fall on the plans you put before us or should we deny it because of the problems that your abutter has identified or are there other solutions to allow your clients to stay in the house?

ATTORNEY SEAN HOPE: And I think Ms. Booz is trying to say, the options that he had mentioned -- they weren't at

the meeting that I had attended. But when I had talked to them and they looked at various options, because before you come here there's a logical option, there are architects, and people who know building designs. I said let's really make sure that we can defend what we're trying to produce. And so, you know, when you were explaining about a one-story addition or other additions or he was talking about the sun, that is a way to maybe grab more gross floor area. But I don't think in terms of the three goals that we're trying accomplish, I haven't heard of one way that there's a real feasible way to actually do that. And I think that, you know, when we met, I sat there and I said is there something you could support? What I didn't hear was the list of

things -- and that may have been said previously. I didn't hear that. I didn't hear do a one-story addition and we'll support that. I didn't hear that.

CONSTANTINE ALEXANDER: You didn't hear it but it was made to your client and your client's architect.

ATTORNEY SEAN HOPE: But what I'm saying when we revised the plans --

MAGGIE BOOZ: No, no, actually.

CONSTANTINE ALEXANDER: You didn't hear that either?

MAGGIE BOOZ: No, no. It was certainly not said that I would support this. Nothing -- never was anything said --

ATTORNEY SEAN HOPE: That was my comment when we were negotiating --

MAGGIE BOOZ: -- I will support --

ATTORNEY SEAN HOPE: -- against ourselves.

The idea was what can you support? Because these would require relief either which way. And so we went, I said, what could you support? What I didn't hear was any of those options that were previously presented or even a one-story option. And I would say that we did talk about a one-story option. And the problem with the one-story option is that if you did a one-story and created an additional bedroom, and you have two bedrooms upstairs, it means the parents are farther down. And so the idea is with two young children we wanted continuous bedrooms, not bedrooms that were separated by additional living space, and that was one of the primary reasons why --

BRENDAN SULLIVAN: Well, I raised children and they did not have continuous bedrooms and I don't think they grew up with any deep psychological damage.

CONSTANTINE ALEXANDER: It's not a persuasive argument.

MAGGIE BOOZ: This is an argument that I'm hearing sitting in a Zoning hearing.

BRENDAN SULLIVAN: And I don't encounter to it --

THE STENOGRAPHER: Please, only one person speak at a time.

BRENDAN SULLIVAN: You should realize that this is an argument that you hear all the time, then you should, I think, understand Mr. Sullivan is going to raise this and I need to have a convincing argument to counter that.

CONSTANTINE ALEXANDER: Yes.

MAGGIE BOOZ: The argument is that people raise their children differently than they used to.

CONSTANTINE ALEXANDER: But that doesn't justify Zoning relief, Ms. Booz.

MAGGIE BOOZ: Well, it justifies making a house that makes sense for a person who is living in it now and for the people who are coming.

CONSTANTINE ALEXANDER: Well, it makes sense if they have the same number of bedrooms. The bedrooms are not as close as you like them to be.

MAGGIE BOOZ: It's not me. This isn't a personal --

CONSTANTINE ALEXANDER: I'm talking to the client.

ATTORNEY SEAN HOPE: But I do

think the hardship is based on the petitioners, right? And the petitioner right now, they have two young children under the age of six. And the idea is they're trying to design something that would allow for adjacent bedrooms that have to be side by side because of the challenges of managing two young children. The parents being downstairs and two children being upstairs, that was something we had desired. I go back to the point if we had heard we would support a one-story addition or a proposal that actually worked, we would have taken it under advisement and we would have likely worked that out. Once we reduced the scope of this and went there and said what can you support and we didn't have any feedback. If you could help us today and

say we could support something, then you would have done what we couldn't do in three months.

CONSTANTINE ALEXANDER: I agree with you, Mr. Hope. It's unfortunate that you didn't share your concerns -- let me finish. When Mr. Hope was involved and when you were getting closer to this case. You've done it now. You've heard. You've heard the proposals now. And we have plans here that I think what I'm hearing you say you may want to reconsider, God forbid. Reconsider these plans one more time in view of now the information you've gotten that you didn't get before, you, Mr. Hope. Is that what you're saying?

ATTORNEY SEAN HOPE: If I could hear clearly, and this is not my choice, it's my client's, if I could hear clearly

that they would support --

CONSTANTINE ALEXANDER: They're not going to -- we're not going to go there and get them to commit their support.

ATTORNEY SEAN HOPE: I mean --

CONSTANTINE ALEXANDER: That's not fair.

ATTORNEY SEAN HOPE: Maybe that's right. But I think the idea is that we were looking for some direction. And if we should be gleaning some direction from the one caveat and we have to talk about it, is that he said a conforming one-story addition. Part of the conforming to the setbacks creates an unfunctional living space. That's why we're here. If we could do an addition that met both setbacks and would allow for an adequate

size dimension room, we would do it as of right or by Special Permit. But because of the size and the shape of the lot, we can't do it that. Whether it's a one-story or a two-story, we still need some setback relief. So the idea is we could come back for another Variance and they could, you know, still oppose. So that's, that's a little bit of the challenge of --

CONSTANTINE ALEXANDER: What I'm saying now is that you've heard finally from your perspective, finally the problems -- the solutions that they think you can do that will solve, solve their problem and will give you or your clients a substantial relief -- the needs, the relief you want. Okay? If you were to go back now with the benefit of that and

consider it. If we had another hearing, God forbid, and they come back with new objections, I for one will not give much credence to them whatsoever. This is your time. Any thoughts you have now, no more dilly-dallying frankly. Get them out, let these people know, so they can come back with their best and final proposal and we as a Board can take action.

BRENDAN SULLIVAN: And we should let other members --

CONSTANTINE ALEXANDER: Yes, only my own personal view. Other members?

TIMOTHY HUGHES: Well, I have some other things to ask about.

CONSTANTINE ALEXANDER: Okay, go ahead.

TIMOTHY HUGHES: You know, if we're going to put the onus on the

petitioner to go away and redesign, then I, I need some reassurance that Mr. Jackman is not going to come back and object to a new design. If you're just going to outright, you know, refuse any kind of addition on this thing, I need to know that now so that we don't waste our time here.

CONSTANTINE ALEXANDER: In my view, you're right. But even if he didn't --

TIMOTHY HUGHES: Any addition is out of the question with the --

CONSTANTINE ALEXANDER: That's what I'm saying. This is it. You give everything you got now --

TIMOTHY HUGHES: What's the point?

CONSTANTINE ALEXANDER: -- and I don't want to hear new objections if we

ask them to redesign.

You understand?

PHILIP JACKMAN: Yes. May I speak?

CONSTANTINE ALEXANDER: Go right ahead.

PHILIP JACKMAN: What Sean was saying -- and may I call you Sean?

ATTORNEY SEAN HOPE: Please. Phil.

PHILIP JACKMAN: Mr. Hope, I feel like --

ATTORNEY SEAN HOPE: Sure.

PHILIP JACKMAN: What Sean is saying is that they're hearing what we've been saying all of the time. They were not receptive -- this is not a new suggestion. It's not we're finally coming. It's not we're finally objecting.

We've been saying this all the time. As I said before, the issue is that they had a design set in stone and they were really not receptive to our suggestions. I gave you a sequence of priorities. My first priority, they could build that second picture that I gave you. Something similar to this. And we'd have no objections to it. That, I could tell you that right now. Because adding an addition to the third floor wouldn't impact our windows in any significant way. It would allow them to have the bedroom, and it would nearly concurrent to their current spaces. But that was just totally discarded because that was not according to the specific plans that they already had.

The second thing, I never said that

they should put a stairway in the front of the house. I said by utilizing the space that they currently have, it opens up space in the rest of the house so they could put a stairway to the basement anywhere they wanted to or chose to. That's what I was inferring. So I want to make it clear how relatively reasonable it is, not totally unreasonable or impractical. That's the point.

TIMOTHY HUGHES: I want to say something. All right, the dormer solution as far as a third floor, does not give them a third -- if they don't add an addition, it doesn't give them a third bedroom on the second floor. That's -- the dormers would give you more headroom on the two existing bedrooms but it would not give them enough room for a

third bedroom. So if you're going to want to -- if they're insisting on a third bedroom on the second floor, they need an addition. That's a given.

As far as making use of the front porch space, and you have to dig a foundation there, that's, you know, so be it. You know, that I can see is practical. But as far as digging down and undermining the foundation on the front half of the house in the basement that is still unfinished, I don't see that as practical. I mean, it's a lot harder to do that than it is to just build a fresh foundation out of the ground.

So I'm still not hearing whether or not any addition out the back is going to be palatable to you. Is there any addition coming out of the back of this

house that would be palatable to you?

PHILIP JACKMAN: I said we would consider and perhaps approve depending upon exactly what they're representing. We couldn't agree to anything unless we knew what was being presented. We would consider a single-story, low profile addition much more palatable than the proposals that they've currently put forth. That's what I've said.

TIMOTHY HUGHES: Okay.

GEORGE BEST: This is a question I have, in this design with the stacked bedrooms, when you go down to the basement couldn't you, since the staircase come down this way, couldn't you turn and go down under the staircase that's already there?

MAGGIE BOOZ: Yeah, we discussed,

we discussed that they have a half bath on the first floor so that you can -- so you don't have to go up or down.

GEORGE BEST: And you can put it under the stair.

MAGGIE BOOZ: That's where the half bath is.

GEORGE BEST: Oh, okay.

MAGGIE BOOZ: It's under the stair.

GEORGE BEST: Okay.

So if you did that and moved the wall back?

MAGGIE BOOZ: Forward you mean?

GEORGE BEST: Forward, yes.

MAGGIE BOOZ: Towards the street.

GEORGE BEST: Towards the street that would still give enough room to do that I would think.

TIMOTHY HUGHES: That staircase brings you down into an unfinished part of the basement. That would require digging down two feet to get the head height, and that two feet basically is underneath the existing foundation so that would mean you would have to build a foundation under the foundation. You'd have to shore up the foundation, as an engineering aspect, is a lot more difficult than just digging a hole and bringing your foundation out of the ground.

GEORGE BEST: So if you got -- if they extended the house or you extended the house on a single level, on the back, took away that bathroom and put it in the back half, would that make a difference?

MAGGIE BOOZ: The one story -- there are many -- perhaps. I'll

say perhaps. There are many, you know, ways of getting more space in the house. We weren't looking to just get some more space. We were trying to make the house more liveable for a family of four. For a couple with two small children.

And, you know, in the 19th century there were no bathrooms in houses, and I'm sure nobody suffered for that psychologically either but we come to --

BRENDAN SULLIVAN: Are you being smart?

MAGGIE BOOZ: We've come --

BRENDAN SULLIVAN: Are you being smart now?

MAGGIE BOOZ: Pardon me? No, I'm not being smart. I'm being truthful. And we've come to a point where now we've put bathrooms in houses because things have

progressed and that's what we all have become accustomed to having. You asked for a good argument and I think it's a good one. And so, you know, so here we are, we're trying to get a bedroom --

BRENDAN SULLIVAN: No, it's not a good one.

MAGGIE BOOZ: Fine.

ATTORNEY SEAN HOPE: So to --

MAGGIE BOOZ: But we're trying to get a bedroom on the same floor as the children are sleeping.

CONSTANTINE ALEXANDER: We understand that. We understand that. And I don't think you understand from us -- we understand why you want to do it, but given the problems that your solution is to the neighbors --

MAGGIE BOOZ: Yes.

CONSTANTINE ALEXANDER: We're wondering maybe you have to take, you have to absorb that.

MAGGIE BOOZ: And I think you're assuming that I've not looked at this.

CONSTANTINE ALEXANDER: No, no, I'm not assuming anything.

MAGGIE BOOZ: Well, I do want to say that I think your --

CONSTANTINE ALEXANDER: My assumption is that you have your design in mind and you're not being very flexible in terms of --

MAGGIE BOOZ: No, that's an incorrect assumption.

CONSTANTINE ALEXANDER: Okay.

MAGGIE BOOZ: Because I'm not an architect who gets a design in mind and then I become inflexible because I love it

so much. I don't do that.

CONSTANTINE ALEXANDER: Okay.

MAGGIE BOOZ: I actually look at all sorts of ideas because it isn't about my ego. This isn't -- architecture for me isn't like that. It's about solving problems. And that's what I try to do. And I listen to my clients. And if it were about my ego, I suppose I would be creating a different kind of architecture.

No, this is about solving problems. And I looked in fact at dividing the house down the center on the second floor to try to subdivide the floor plate in two so that we could get three bedrooms up there. Even looked at pushing it out the front, which personally and histor -- you know, as an appreciator of the history of architecture and the history of

residential architecture, I find somewhat disturbing, the idea of pushing out that front, because actually that would have been -- that was a porch to begin with. I don't even like the fact that it's enclosed. I think it should be an open porch on the front of the house. But it's enclosed now, and I certainly wouldn't exacerbate the problem by destroying the charming 19th century front facade and pushing out some more. I don't think that that's a good thing to do to the house.

It also doesn't solve our problem, because we ended up with about six-foot, nine-inch bedrooms on the interior in width. I don't even -- I can't even meet code with a bedroom that wide. It doesn't work. So no, I can't get three bedrooms out of the existing floor plate on the

second floor. And I have a client who would like to be next to their children when they sleep. It's not my --

CONSTANTINE ALEXANDER: Jim, you haven't had a chance to talk.

JIM MONTEVERDE: I have some comments.

CONSTANTINE ALEXANDER: Please.

JIM MONTEVERDE: So I happen to live in a house that's 900 square feet.

CONSTANTINE ALEXANDER: What did you say?

JIM MONTEVERDE: I happen to live in a house that's 900 square feet with a wife and two kids.

TIMOTHY HUGHES: I beat you by 100 square feet. I live in a house with 1,000 with a wife and -- and raised two kids.

JIM MONTEVERDE: A palace.

TIMOTHY HUGHES: Yes.

JIM MONTEVERDE: A palace.

So I can appreciate how tight things are and the desire to have a configuration like that for your family, bedrooms in a row.

And I think looking at the elevations, looking at the site plan, if I wanted to add on to something like this in the way you've done it, I would wholeheartedly agree with it. It's the way to go, go out the back. I think from -- I just happen to be perusing the Zoning Ordinance last night, and I believe there's a portion that recommended that. If there's an addition that has to happen, don't go to the street, go to the back. Cudos, that's what you did. That's exactly what you did. That seems to meet

the flavor of the Ordinance.

I don't want to diminish impact on your property, and I know we discussed it last time. I think the slight decrease in the roof height in the back is actually very effective in diminishing the scale at the back end of the addition. I understand the views that you currently have out of those couple of windows that will be certainly different. I understand that. And I think we discussed last time, also, that and if I'm reading my cardinal directions right, toward the south, the adjacent lot to you, 21 Wood, there's actually one of the most generous lots I've ever seen. So your views to the opposite direction are at the moment unimpeded. So you're being, this addition that again and from the solar angles I

think you'll still get sun in those windows for almost all of the day. That doesn't, I don't see that that's really an impact. I understand that there's a -- it's some direct across, 90-degree perpendicular to your facade view process, but I seldom look out my window that way. It's typically some other broader direction. So I don't share a lot of my colleagues' concerns and I don't want to diminish your concerns, but I am not seeing from the -- I mean, this one is a very telling elevation when I look at everything in the line and see this little house and realize the addition behind it steps down a little bit, steps in a little bit. The windows facing your property are smaller than the windows facing the opposite side, so there's obviously been

an attempt made to respect one side of the house versus the other. I mean, what else could you do? If you want to diminish those a little more? Okay. You want to put a curtain on it, okay? So that there's no cross view, but I don't have the other concerns that I've heard voiced today, this evening. I think it's absolutely a rather well done scheme to achieve the program that you've talked about, and I would, as it is, support it. If there's a way to accommodate your neighbor's concerns, please. But otherwise I would be ready to support it.

CONSTANTINE ALEXANDER: Okay.

TIMOTHY HUGHES: And I want to add that the reason I'm pushing Mr. Jackman about whether or not there is someplace to compromise it's because if there isn't, I

would in fact agree with Jim and support this project tonight.

CONSTANTINE ALEXANDER: I guess we won't know a final compromise from Mr. Jackman until it's been made. Unfortunately, and I don't think frankly I'm blaming you more than anyone else, we haven't that discussion yet.

Anyway, any further comments? I'll start with you, Mr. Hope. You want to go forward tonight for a vote or do you want to take one more try?

ATTORNEY SEAN HOPE: I know the Woods would like to --

CONSTANTINE ALEXANDER: If you want to take sometime to talk about it with your clients, feel free.

ATTORNEY SEAN HOPE: They haven't had a chance to address the Board on this.

CONSTANTINE ALEXANDER: That's fine.

ATTORNEY SEAN HOPE: And a lot has been said.

ROB WOOD: So thank you for hearing us here. And so attorney Hope and Ms. Booz went over the hardships and our goals very well. You know, we wanted to get, you know, a bedroom for our growing family, an additional bedroom to accommodate our growing family. We wanted to get access to the basement, which and as my wife can tell much more than I, when you're pregnant and, you know, the snow is falling, and going out to shovel and get access to the basement to do laundry is not fun. But, you know, I think one of the things that we want to express is that we are -- we love the neighborhood. You

know, when Mr. Irving spoke and described, you know, our sort of attempts to find a bigger place, this was all in the same, you know, in the same few, you know, blocks away basically. We love the neighborhood. We've been there for six years now. We want to stay there. We love it. We love the house now, too. And in fact in between, in between last hearing and this hearing, you know, our son started kindergarten at Graham and Parks. He loves it. Our daughter started preschool again within walking distance. Loves it. We really want to be in this area. We don't want to move out of Cambridge. We want to stay and grow. And throughout the process, you know, frankly and I apologize, I think Mr. Jackman has been a little bit unfair in representing

our process with this. We've been extremely, extremely fair and open with all the neighbors, all of the abutters. We've had countless discussions with everybody you heard from today and more who couldn't be here today, that we were -- we've been open from the start. There's been nothing set in stone. And that's certainly that's been by all of the rather expensive, sorry, Maggie, changes that we've been doing on the plans to try to meet these, you know, to try to limit the, you know, the impact here. And really we think that this is -- we believe this is a very modest request that would satisfy, you know, what we're trying to do, what we're trying to accomplish, and, you know, we look forward to your input.

CONSTANTINE ALEXANDER: Thank you.

Thank you. I'm sorry you have to be put through all of this, both of you, through all of this stress and what have you, but that's the way Zoning works unfortunately as Mr. Hope can tell you.

ATTORNEY SEAN HOPE: Yeah, you know --

CONSTANTINE ALEXANDER: Could you just -- one question from me, and you've said it several times, but I'm dense. Your clients need a third -- one of the substantial hardship is they need a third bedroom.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: I'm very sympathetic. It's a substantial hardship. Bu I also heard you want the bedrooms, the children's bedrooms close to the parents bedroom.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: That's not a hardship, in my mind. In my opinion that's not a hardship. Can you with -- can you just get a third bedroom without -- and maybe not having the third, the bedrooms located exactly in the house as you want it?

ATTORNEY SEAN HOPE: I think it's not a question of impossibility if we're going out the back. And, again, when we talked about going out the back, and I think I've heard new things now, it wouldn't be to our liking, but there is a solution to do a third bedroom out the back.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: And so, you know, if -- just talking to the Board, if

we came up with a solution that went out the back, that would need setback relief because we needed the width, but we also had enough volume, we could achieve a third bedroom and it wouldn't be our desire. It would, we feel that would still be a hardship. You have a three-year-old that cries in the middle of the night, and you are going downstairs and around, people do it, but it's one of those things when you have a chance to now spend a lot of money on a home, you want to do it in a way that's functional from our perspective. And so I think part of the reason why you didn't see something like that is because we didn't have any assurances, not even that we felt that it was something we could say, hey, we're going to support you on it.

After the hearing from the Board and kind of feeling the flavor, that is something we could pursue. You know, frankly, I'm a little challenged by whether or not we're still going to hear it's not low profile enough or it's --

CONSTANTINE ALEXANDER: What I've heard, maybe I'm wrong, is that one-story addition outback would not be objectionable to your neighbor. And whether it isn't or not, it wouldn't be objectionable to me. The problem is going -- if there is a problem.

ASHLEY WOOD: I think he said conforming, though?

CONSTANTINE ALEXANDER: I'm sorry?

ASHLEY WOOD: I think he said a conforming addition which is different.

ATTORNEY SEAN HOPE: That's where

I had the issues, a conforming addition which I thought was in the setback. But I understand what you're saying. We're talking directly to the Board at this point.

JIM MONTEVERDE: Right. And I think we vote. I think we're asking just potentially, I don't agree -- I'm trying to translate. I think it's, it's just looking for that, is there a possibility there? And if the neighbors object, then frankly it's up to us again to say yay or nay.

CONSTANTINE ALEXANDER: Yeah.

JIM MONTEVERDE: That really doesn't stop anything. And I've told you already and so has my neighbor here, we'd support this one. So I am pretty sure we could support what came back if it was in

a slightly different configuration.

ROB WOOD: I mean what does the rest of the Board feel?

JIM MONTEVERDE: However, if I could add one other. Sorry, I'm on a roll. You pissed me off.

CONSTANTINE ALEXANDER: Go ahead.

JIM MONTEVERDE: I raised a family with kids who were sick and needed medical attention. There's no way I could have been on the floor below. I needed to be there.

ASHLEY WOOD: Yes. Our daughter has asthma. I mean, for example.

JIM MONTEVERDE: To me that's a whole different world. I grew up with kids that I had to -- I really wanted to be on that floor. I had to hear them breathing. I had to know when they rolled

over. I had to be there. So to me a configuration that doesn't allow this in certain circumstances in my life, that would have been a hardship. So I hate to disagree.

CONSTANTINE ALEXANDER: No, that's what makes the world go round.

ATTORNEY SEAN HOPE: I mean, if those sentiments aren't shared by any of the members of the Board just doing the math, you know, we're here to get something approved not to convince someone of a hardship. So unless and, you know, that any of the board members have changed their tune from the comments they've made, I think we would like to take an opportunity to view a potentially --

ROB WOOD: Yeah, I guess I

mean -- thank you. I appreciate all of the comments. And I guess is there a way to get your sense on that?

CONSTANTINE ALEXANDER: You're listening to the debate or the discussion I should say. I think you've heard, if I can summarize. I think you've heard two people who are in favor of the plans as you presented them. I think you're hearing two who are not necessarily in favor of the plans as you presented them. And as you may know, and Sean knows, if two of us vote against it, it's defeated. You need to get four out of the five. I don't know how George feels. And if I mischaracterized Brendan's comments he'll correct me.

I'm on the fence, frankly, personally and given what Mr. Jackman's

presented. And I think you've had a difficult time getting to where you are today. I don't think Mr. Jackman has been as forthcoming as he should have been frankly. But that's, that's how it is. At the end of the day it's not his performance or not, it's what the plans are and the Zoning Code of the City of Cambridge. So I would like for -- to be frank, I would like further consideration of these plans in view of now what you've heard and all the information you now have.

ATTORNEY SEAN HOPE: Okay.

CONSTANTINE ALEXANDER: So I would be in favor of a continuance. I'm not sure I would vote in favor if a vote is forced tonight.

ATTORNEY SEAN HOPE: Understood.

I think given all the comment and the feedback, I think we would like to take a continuance, to take the feedback, and come back with, I think, something that four or five members at least could approve.

CONSTANTINE ALEXANDER: I'm not going to look at this side of the table because I know how they feel. Is that okay with everyone else?

GEORGE BEST: Yes.

BRENDAN SULLIVAN: Sure.

CONSTANTINE ALEXANDER: Okay. We're going to have to continue -- I'm sorry, we're going to have to continue this case one more time as a case heard.

We're into December, right?

SEAN O'GRADY: 10th.

CONSTANTINE ALEXANDER: December

10th.

And so the Chair moves that -- can all members make December 10th?

TIMOTHY HUGHES: I'm pretty sure.

CONSTANTINE ALEXANDER: Jim?

JIM MONTEVERDE: Yes.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued as a case heard until seven p.m. on December 10th subject to the following conditions:

That the petitioner modify the posting sign one more time or get a new one, to reflect the new date and the new time, seven p.m., December 10th.

And that to the extent that you come back with new plans, and it's up to you

whether you do, they have to be in our files by five p.m. on the Monday before. And any, if the dimensional form is changed, I was wrong before, I apologize to you. The new dimensional form has to be in by the same time.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Best, Monteverde.)

* * * * *

(8:45 p.m.)

(Sitting Members BZA-008218-2015:

Constantine Alexander, Timothy Hughes,

Brendan Sullivan, Thomas Scott, George S.

Best.)

CONSTANTINE ALEXANDER: Okay.

The Chair will call case No. 008218,
22 Chatham Street, No. 22/2.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one here wishing to be heard. We have a letter in the file from the petitioner.

(Reading) We would like to request a continuance for our hearing regarding an application for a Special Permit to change the size of our window. As noted by the Board, we need the Mid-Cambridge Neighborhood Conservation District Commission to review and approve our proposed change. The next meeting of the commission we can attend is on December 7, 2015. Pending our -- pending approval from the commission we would like to rescheduled our hearing after December 7,

2015.

And I would just comment, there's also another issue why we're not hearing this case tonight. They haven't posted the sign. And they have to do the posting sign. So make sure they understand, Sean, when we continue the case.

SEAN O'GRADY: Yes, I have.

CONSTANTINE ALEXANDER: I'm sure you have already. They've got to make sure those signs are up for the requisite 14 days.

Okay, what's the first date after December 7th?

SEAN O'GRADY: We have the 10th. I'm just wondering if that's just too quick being just a few days later.

CONSTANTINE ALEXANDER: I think you're right.

SEAN O'GRADY: Okay. The next one after that is January 7, '16.

CONSTANTINE ALEXANDER: January 7th. This is a case not heard so we can, we don't need to poll the members of the board.

The Chair would move that we continue this case as a case not heard until seven p.m. on January?

SEAN O'GRADY: 7th.

CONSTANTINE ALEXANDER: 7th.

Subject to the following conditions:

That the petitioner sign a waiver of time for a decision, and they have. So that's been satisfied.

That the petitioner post a sign as required by our Ordinance, if they haven't done so far, and maintain that sign for the 14 days prior to January 7th. So it

doesn't have to go up right now, but it has to go for 14 days before January 7th. And that sign should reflect the new date, January 7th, and the new time, seven p.m.

And the final condition is that to the extent the petitioner decides to modify those plans that are in our files, that those modified plans must be in our file no later than five p.m. on the Monday before January 7th. And to the extent that these modified plans affect the dimensional requirements form, that a new dimensional requirement form be put in our files by that same time.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Sullivan,

Scott, Best.)

* * * * *

(8:45 p.m.)

(Sitting Members BZA-008315-2015:

Constantine Alexander, Brendan Sullivan,

Thomas Scott, George S. Best.

CONSTANTINE ALEXANDER: The Chair would advise -- I'm going to call case No. 008315, 346 Norfolk Street.

The Chair would advise that the petitioner has decided to withdraw her petition so there is no case to be heard tonight. I'm going to make a motion that we accept the request for a withdrawal.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case with withdrawn.

(Alexander, Sullivan, Scott, Best.)

* * * * *

(8:45 p.m.)

(Sitting Members BZA-008326-2015:

Constantine Alexander, Brendan Sullivan,
Thomas Scott, George S. Best.)

CONSTANTINE ALEXANDER: And then
there's 348 Norfolk Street, 008326. And
that is a companion case. And the
petitioner in that case, the same
petitioner, has requested a withdrawal of
her application as well.

I move that we accept the request of
withdrawal.

All those in favor?

TIMOTHY HUGHES: Actually, I
should say that I'm an abutter to an
abutter on this case, so your four votes
would be enough to make this a withdrawal.
I should abstain.

CONSTANTINE ALEXANDER: Yes,
you're not sitting on this case.

The record should reflect that

Mr. Hughes recused himself from this case and the prior case.

TIMOTHY HUGHES: Right.

CONSTANTINE ALEXANDER: All those in favor of a request for withdrawal say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: All in favor. Request withdrawn.

(Alexander, Sullivan, Scott, Best.)

* * * * *

(8:50 p.m.)

(Sitting Members BZA-008216-2015:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, George S.
Best.)

CONSTANTINE ALEXANDER: One case.
The Chair will call case No. 008216, 45
Coolidge Hill Road.

For the record.

KYLE SHEFFIELD: For the record,
my name is Kyle Sheffield. I'm an
architect with LDA Architecture and
Interiors in Cambridge, Massachusetts.

CONSTANTINE ALEXANDER: Sir.

RANDY BERKOWITZ: Randy Berkowitz.
I live at 45 Coolidge Hill Road.

NORA MacDONALD: And I'm Nora

MacDonald. I live at 45 Coolidge Road.
This is Charlotte.

CONSTANTINE ALEXANDER: He does,
too, right?

NORA MacDONALD: She.

CONSTANTINE ALEXANDER: She. I'm
sorry.

NORA MacDONALD: No worries.

KYLE SHEFFIELD: Thank you.

The owners, Nora and Randy, have lived at 45 Coolidge hill for one year. Nora's parents live at 24 Coolidge Hill Road, which is an abutter, right behind them, and they were the previous owners of this property and recently sold it to Randy and Nora. Nora grew up in this neighborhood and her desire is to -- and Randy's, is to come back to this neighborhood and live in the house and

raise their growing family.

Their goal is to live here as long as they possibly can. The proposal that we have before us is to essentially convert a two-family dwelling into a single-family house.

In order to do that, we are removing three porches; two on the front, and one, two-story porch on the back, which actually is totalling around 400 square feet of FAR.

The front porches currently are pre-existing non-conforming to both FAR and setback, FAR and setback. And the proposal is to also add a new front entry porch in order to be able to gain some cover. The front of the house is only 2.2 feet away from the front yard setback. And our hope is to provide some adequate

cover for anybody approaching the house.

CONSTANTINE ALEXANDER: You mean in terms protection from the weather?

KYLE SHEFFIELD: Weather protection, yes. Especially after this winter.

And the other proposal that we have is a dormer that mirrors the same size as the existing dormer on the north side of the property, and this solves a hardship with the existing stair that goes from the second floor to the third floor. The headroom, in order to climb up into that third floor is currently around five-foot, three. The code is six, eight. And their hope is to be able to create that dormer solely over the stair volume.

CONSTANTINE ALEXANDER: And this dormer is going to be 15 feet wide?

KYLE SHEFFIELD: No, it is not.
It's about ten and a half feet wide.

CONSTANTINE ALEXANDER: Okay.

KYLE SHEFFIELD: It's less than
15.

CONSTANTINE ALEXANDER: Which is
our requirement.

KYLE SHEFFIELD: Correct.

CONSTANTINE ALEXANDER: But in
other respects with regard to the dormer
guidelines, which are not, to this Board,
are significant. Are you compliant or
noncompliant?

KYLE SHEFFIELD: We're compliant
to --

CONSTANTINE ALEXANDER: Other
elements, you could be set down from the
ridge line?

KYLE SHEFFIELD: Yes, we are.

CONSTANTINE ALEXANDER: You are sufficient?

KYLE SHEFFIELD: Sufficient.

CONSTANTINE ALEXANDER: And on the side yard --

KYLE SHEFFIELD: And on the side yard we are adding (inaudible) -- dimensionally we are conforming, yes. The only -- we are non-conforming with regard to the --

TIMOTHY HUGHES: The face of the new dormer comes out to the wall, to the plane of the existing building, correct?

KYLE SHEFFIELD: Correct. And that plane is outside the side yard setback.

TIMOTHY HUGHES: Yes, but that is not -- our dormer guidelines like to see that pulled back.

KYLE SHEFFIELD: Okay.

TIMOTHY HUGHES: I personally don't care. If you got a good compelling reason, and I'm going to guess that the compelling reason is the staircase is lining up to the outside wall and you need to continue that plane?

KYLE SHEFFIELD: Yes, yes. That's the hardship. And the problem is just being able to get that adequate headroom within that three-foot wide --

THOMAS SCOTT: And I might add, I think it's more important that the eave line just pass through and not be interrupted and it does.

KYLE SHEFFIELD: Okay.

The other overarching goal of this property is to essentially create a wholistic vision within the house. This

is their house. They plan on living here for a very long time. Coolidge Hill is not known for a tremendous amount of turnaround. I mean, her parents have also lived there for a very long time. Her aunt lives down the street. And so the goal is to actually try and stitch back what has been some cobbled character over time and re-envision it within a historic context.

We've gone in front of the Historical Commission in terms of informal meetings and had proposals and back and forth with them to make sure that we got the details correct. Nora and Randy have always sort of gravitated towards a more Greek revival style of which there are examples in Cambridge of this type. And a volume lends itself to that. And the goal

is to really try and stitch everything
wholistically back together.

I believe that is it.

CONSTANTINE ALEXANDER: Questions
from members of the board?

TIMOTHY HUGHES: I don't have any
questions other than the ones I just
asked.

KYLE SHEFFIELD: Oh, I would want
to add if it's okay. I don't know if the
Board received it, but Randy and Nora did
go out to extend to the neighbors, and we
have received 25 letters of support from
abutters, including all of the abutters as
well as other neighbors in and around the
neighborhood. It was so much that I
actually provided a map for Maria because
it's hard to count.

CONSTANTINE ALEXANDER: I think we

have -- I haven't even counted if there are 25, but we have numerous letters.

KYLE SHEFFIELD: Yeah, we received one additional one today which I forwarded along.

CONSTANTINE ALEXANDER: These letters are the same?

KYLE SHEFFIELD: They are. It's a form letter. They wanted to make it easier. There are additional comments noted, but every one of the neighbors in the area and abutters have actually seen it and reviewed the plans, these exact plans.

CONSTANTINE ALEXANDER: I will quickly and summarily read those letters into the record at appropriate time.

KYLE SHEFFIELD: Sure.

CONSTANTINE ALEXANDER: Any more

questions from the members of the board at this point?

(No Response.)

CONSTANTINE ALEXANDER: None?

We'll open the matter up to public testimony. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one.

The Chair would report as the petitioner has stated -- or the petitioner's representative has stated, that we have numerous letters of support. The letters are all the same, and they read:

(Reading) As a homeowner in the neighborhood in and around the 45 Coolidge Hill Road property, I have met with the

applicant to discuss the proposed plans for the property and have seen the plan which is before the Board of Zoning Appeals for zoning relief. The proposed plan was explained to us, and any questions or concerns have been addressed to our satisfaction. Please consider us in support of the application and plan as submitted by the applicant.

And we have a letter signed by Larry and Beverly Evans, 116 Coolidge Hill.

Signed by Everett Briggs, 148 Coolidge Hill.

Heidi Legg, L-e-g-g, 125 Coolidge Hill.

A Joan Bauer, B-a-u-e-r, 20 Coolidge Hill Road.

Kathy Chi, C-h-i. And I'm not even going to try to pronounce the second name.

It's S-a-j-Nicole Joni, J-o-n-i. My
apologies if I butchered the name.

A letter from Marc van Hulle,
H-u-l-l-e, 126 Coolidge Hill.

From Maureen Strafford,
S-t-r-a-f-f-o-r-d, 29 Coolidge Hill.

From Patricia Tung, T-u-n-g, 44
Coolidge Hill.

From Richard Harrington -- Harriman
(phonetic), 162 Coolidge.

Rick Weirhouser (phonetic) and Annie
Brewster, I guess, 105 Coolidge Hill.

Siha Lilee. S-i-h -- I'm going to
try again. S-i-h-a, or k, I'm not sure.
L-i-l-e-e, 47 Coolidge Hill.

Stacy and Justin Daniels, 115
Coolidge Hill.

Stephanie Beale, 16 Coolidge Avenue.

W. Michael Millner, M-i-l-l-n-e-r?

I'm not sure. And Priscilla Forneg,
F-o-r-n-e-g, 6 Coolidge Hill Road.

We're getting there. Alex
MacDonald, 24 Coolidge Hill Road.

Ann Berman, (phonetic) 144 Coolidge
Hill.

Chris B -- I'm going to just spell
the last name. B-i-e-r it looks like.
G-r-i-e-s, 111 Coolidge Hill.

Chuck and Suzie Longfield, 106
Coolidge Hill.

David -- I'm going to just spell the
last name, D-z-o-n-o-f-f, 27 Coolidge Hill
Road.

I'm not going to -- I can't read the
handwriting, but it's a person who lives
at 19 Coolidge Hill Road.

Ernie Michael Weinstock,
W-e-i-n-s-t-o-c-k, 36 Coolidge Hill Road.

And N.T. Mitropoulos
M-i-t-r-o-p-o-u-l-o-s, 9 Coolidge Hill
Road.

You're putting me through a lot of
misery.

KYLE SHEFFIELD: Sorry.

CONSTANTINE ALEXANDER:
Rebecca -- I'm not going to try to
pronounce the last name, who resides at
102 Coolidge Hill.

Serena Wilke Gifford and Porter
Gifford at 15 Coolidge Hill Road.

And that's all she wrote. So the
neighbors are really sort of divided on
this.

NORA MacDONALD: Some people
weren't home.

CONSTANTINE ALEXANDER: Okay,
that's all the matter of public testimony.

I'm going to close public testimony.

Any final comments you want to make at this point?

KYLE SHEFFIELD: No, all set, thank you.

CONSTANTINE ALEXANDER: No. Discussion or ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote. I think it looks great.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we -- that we make the following findings with regard to the relief being sought:

That the petitioner will suffer a substantial hardship unless relief has been granted. Such hardship being that the work needs to be done to convert this two-family house into a single-family home to make the structure a desirable and

usable single-family home.

That the hardship is owing to the nature of the structure. It is not a non-conforming structure as it is. And for any relief requires Zoning relief.

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

In this regard the Chair would note that the relief being sought is relatively modest in nature. In fact, it reduces the amount of non-conformity in terms of FAR at least. That it has obviously the unanimous support of the neighborhood.

So on the basis of all these findings, the Chair moves that we grant the Variance being requested on the

condition that the work proceed in accordance with the plans submitted by the petitioner, prepared by L.D.A. Architects. There are many, many pages in length. The cover page of which has been initialed by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Variance granted.

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

* * * * *

(9:05 p.m.)

(Sitting Members BZA-008287-2015:

Constantine Alexander, Timothy Hughes,
Brendan Sullivan, Thomas Scott, George S.
Best.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 008287, 269-273 Putnam
Avenue.

Is there anyone here wishing to be
heard on this matter? Please sit down and
identify yourself for the record and I
want to make a statement before you start
your presentation.

ATTORNEY JAMES RAFFERTY: Okay.

Good evening, Mr. Chair, Members of
the Board. For the record, my name is
James Rafferty. I'm an attorney with
offices at 675 Massachusetts Avenue. I'm

here this evening representing the applicant seated to my right, Louis Mastrangelo, M-a-s-t-r-a-n-g-e-l-o. To Mr. Mastrangelo's right is attorney Odin Anderson, A-n-d-e-r-s-o-n. He is co-counsel and represents Mr. Mastrangelo as well.

CONSTANTINE ALEXANDER: Okay. I want to announce is we've been advised -- I've been advised or I also can see, this part of the hearing is being video recorded.

Am I right, sir?

UNIDENTIFIED MALE: (No Response.)

CONSTANTINE ALEXANDER: You're videoing?

UNIDENTIFIED MALE: (No Response.)

CONSTANTINE ALEXANDER: Yes?

UNIDENTIFIED MALE: (No Response.)

CONSTANTINE ALEXANDER: Could you identify who you are for the record, please?

UNIDENTIFIED MALE: (No Response.)

CONSTANTINE ALEXANDER: No?

Well, I don't think we have a right to deny him a right to record despite the fact that I don't understand why you can't tell us your name and address. Is that something to be withheld.

UNIDENTIFIED FEMALE: Because you're not allowed to ask that question.

UNIDENTIFIED MALE: I don't need to answer that question.

CONSTANTINE ALEXANDER: Well, everyone should be aware that this hearing is being videotaped or recorded.

UNIDENTIFIED AUDIENCE MEMBER: Why are you allowing him to --

CONSTANTINE ALEXANDER: I'm sorry?

UNIDENTIFIED AUDIENCE MEMBER: Why are you allowing him to record --

CONSTANTINE ALEXANDER: I don't think I have a choice, that's why, sir.

UNIDENTIFIED AUDIENCE MEMBER: -- without giving his name.

CONSTANTINE ALEXANDER: I don't think I have a choice. I know that. I'm looking for the Open Meeting Law. Which is -- give me a second.

THE STENOGRAPHER: I need one person to speak at a time, please.

CONSTANTINE ALEXANDER: Let me dig out the Open Meeting Law so I can --

JOHN HAWKINSON: It does not speak to this question, Mr. Chair.

CONSTANTINE ALEXANDER: I think that's right, but I want to confirm that,

sir.

UNIDENTIFIED FEMALE: It's the Constitution.

CONSTANTINE ALEXANDER: Under the state's Open Meeting Law, to answer your question, which is a very valid question. It says: After notifying the Chair of the public body, that's us, any person may make a video or audio recording of an open meeting -- a session of a meeting or public body or may transmit the meeting through any medium subject to reasonable requirements of the Chair as to the number, placement, and operation of equipment used so as to not interfere with the conduct of the hearing. At the beginning of the meeting the Chair shall inform other attendees of any such recordings.

I have now notified everybody that there are such recordings being made. I don't find that the one camera that's there is any way going to disrupt the meeting. It would be nice if he could tell us --

JOHN HAWKINSON: That's mine.

ATTORNEY JAMES RAFFERTY: I'm sorry, I thought someone left it behind.

UNIDENTIFIED AUDIENCE MEMBER: We don't have any concern about who he is videoing this?

CONSTANTINE ALEXANDER: I don't think it's relevant. Unfortunately I don't think it's relevant. I mean, the fact of the matter is all you need to know and we need to know is that it's being recorded. I mean unless it's going to put it on You Tube, which I hope not.

ATTORNEY JAMES RAFFERTY: Oh, it does show up, trust me.

CONSTANTINE ALEXANDER: It might.

ATTORNEY JAMES RAFFERTY: Oh, it does.

CONSTANTINE ALEXANDER: Even if he does, it doesn't mean we should -- we I think we have a right to prohibit it.

TIMOTHY HUGHES: Can he move the camera to my good side?

CONSTANTINE ALEXANDER: I saw a hand go up. I'm not sure.

KIM COURTNEY: I just wanted to note -- Kim Courtney. I just wanted to note that the Board itself is actually also recording this hearing.

CONSTANTINE ALEXANDER: Well, we do keep an official transcript.

KIM COURTNEY: So you have to

announce it. It's recorded by the stenographer.

CONSTANTINE ALEXANDER: No. I don't have to announce it. She is our stenographer. All of our hearings we take a complete transcript.

KIM COURTNEY: Yeah, I know I'm just saying she's audio recording. So just so you know --

CONSTANTINE ALEXANDER: Yes, but she's doing it as an officer of --

KIM COURTNEY: I know, but you still have to announce it.

JOHN HAWKINSON: He already did.

CONSTANTINE ALEXANDER: I'm announcing to the world --

KIM COURTNEY: (Inaudible.)

(Audience Members speaking at the same time as the Chair.)

CONSTANTINE ALEXANDER: -- that this woman here is recording what's happening.

Is everybody happy?

MICHAEL BRANDON: What's her name?

CONSTANTINE ALEXANDER: Now, let's get to the merits. Mr. Rafferty. It should be more fun than what we're doing so far.

ATTORNEY JAMES RAFFERTY: So far. Well, good evening, Mr. Chairman. Again, James Rafferty starring in tonight's production. My co-star --

TIMOTHY HUGHES: Who's co-starring?

ATTORNEY JAMES RAFFERTY: My co-star and the man entitled to top billing is Louis Mastrangelo, seated to my right. And Mr. Mastrangelo is one of

those Cambridge gems, a real icon. He grew up in Cambridge a few blocks from the locus that we're here tonight on Putnam Ave. in a neighborhood called Greasy Village. And if you've been around Cambridge awhile, the relators have done away with any mentions of Greasy Village. We have Huron Village, we have other Tony Villages, but Greasy Village was a neighborhood where people like Mr. Mastrangelo and others, because of the predominance of the soap factories in the area, a lot of working class people. He has spent his entire life within a quarter mile of Greasy Village except for the time he served this country in Korea and returned as a wounded veteran.

He has an interesting business occurring at the property that's the

subject of the application tonight.

269-273 Putnam Ave. as the Board I suspect is aware by now, is a lot that contains a two-family home. And next to that two-family home is an adjoining lot. It's actually all contained in the single parcel. But that lot, for years, had a commercial parking lot on it.

Mr. Mastrangelo has lived and owned the property since the mid-1980s. And at the time he bought the property, it was an active licensed commercial parking lot. And he reports to me that there were all types of commercial vehicles associated with some of the industry in the area that we're using and were tenants of his for a while.

Mr. Mastrangelo has been involved in the seafood business since he returned

from the Korean Conflict in one form or another. He has worked and had a variety of businesses in the Cambridgeport neighborhood. But in the mid-80s he became a wholesaler or a jobber in the lobster industry. And he can share with you what that's about, but he essentially was involved in the wholesale distribution of lobsters, a process that involved spending most mornings at the fish pier engaging, coordinating purchases, and arranging for the transport of those -- the primarily lobsters to restaurants and other venues.

In about 19 -- in the early 1990s, 1994 to be specific, he appeared before this Board. Only the first time he was -- he was here a few weeks ago you might remember on another matter. But

he's not a regular attendee at the Board, but he did appear at that time because at that point he was operating his business out of a trailer in the commercial parking lot. It was his understanding that his property was zoned commercial and he operated his -- he turned the commercial parking lot -- he had a couple of trucks associated with the transportation of lobsters, and then he had a trailer, a boxcar in which he would have the lobsters delivered and then arranged and he was essentially in the wholesale business. If you had an opportunity to read the transcript in 1994, he came to this Board and asked for a Variance to construct a new building to replace a garage that was at the rear of this location. The garage had fallen into disrepair. He demolished

the garage and wanted to build a new structure. And he wanted to essentially put it on the same footprint where it had been before, but it didn't comply with the rear setback requirements. So he sought a Variance. It's a rather simple Variance. A short transcript. He identifies himself as a jobber and says he wants to get a Variance to construct a building. And that building was indeed constructed in 1995. And since the time the building opened it has been associated with the operation that Mr. Mastrangelo was involved in, the sale of lobsters.

CONSTANTINE ALEXANDER: Can I just interrupt you? I don't mean to. But my visual inspection of the property, a drive-by, is the business that's in question today, the retail seafood market

and restaurant, is it being conducted not in the structure that was subject to the relief? It's in the building -- it's in the residence itself. It's a garage that has been converted into a seafood market. Am I wrong?

ATTORNEY JAMES RAFFERTY: Well, you're right about where it's going on, but that is the structure that was the subject of the Variance.

CONSTANTINE ALEXANDER: That home which is I mean otherwise is a home?

ATTORNEY JAMES RAFFERTY: No, no. There's a two-family home and Mr. Mastrangelo lives there. And next to the home, and I have it on the map, and next to the home is a parking lot, and at the rear of the parking lot is the garage.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: Now, the aspects of the business are occurring, and we're going to address that tonight. Aspects of the business have begun to occur behind the home. Principally there have been picnic tables, and patrons of the business where it's located in the garage, have been seating -- sitting at those picnic tables. Now those picnic tables are behind the two-family house lots. And as I became more familiar with the particulars of the this -- the history and this use and the concerns of some of the abutters, I sat with Mr. Mastrangelo and said it would be beneficial for him if he could -- if we could narrow the scope of his request, because we recognize the significance of what's before the Board, so that there could be some conditions

offered for the Board's consideration that would allow for some restrictions on this use. So what you, if you saw the property today, what's there today is the two-family house, of which he lives in, and then next to the two-family house is the parking lot and the garage structure in the rear.

CONSTANTINE ALEXANDER: Okay. But you do acknowledge that the business that's operated today is in -- it does not comply with the use requirements of our Zoning Ordinance. It is a commercial operation. The Variance that was granted in 1995 doesn't justify the conduct of the business as being conducted today, because if it were, then you wouldn't file for a Variance.

ATTORNEY JAMES RAFFERTY: I

wouldn't be here if he didn't need a Variance, correct.

CONSTANTINE ALEXANDER: So you agree that some aspect, and maybe we can put conditions if we get there, some aspect of the operation of the, of that business, the restaurant plus the retail seafood business, is not in compliance with the use requirements of our Ordinance?

ATTORNEY JAMES RAFFERTY: Well, I can understand -- that's a legal conclusion that I wouldn't take exception with or I could understand the purpose. I think there is some question, and I would just say for the record as to two things:

One, the extent of the Variance that was applied for. Whether, whether that Variance provided the relief necessary for

the use that goes on here now. Clearly the department doesn't see it that way, and we are here seeking a Variance. And admittedly I can understand, and I would only say that we're here getting -- seeking a Use Variance because the use that's going on there today is certainly not a permitted use under the current Res. C-3 Zone.

CONSTANTINE ALEXANDER: That's what I want to get clear.

ATTORNEY JAMES RAFFERTY: Right. I couldn't agree further.

The history, the fact that the zone was changed from office, what are the rights in the Variance? What are the issues -- we still have a potential issue as to whether there's an enforcement limitation based on other issues, but you

are correct, the property today, that stretch of Putnam Avenue since about 2000 is Zoned Residence C-3 and a retail use is not a permitted use in that district. And we are here today seeking a Variance to allow for such a use in a limited fashion to occur in a residence district. And I couldn't -- I don't want to appear to be --

CONSTANTINE ALEXANDER: Okay. I want to make sure.

ATTORNEY JAMES RAFFERTY: -- cute about or anything. No, that is why we are here, and that's the purpose for which we are seeking the variance.

But like many cases -- the history here is highly relevant, because it is frankly an unusual fact pattern that this use has been occurring quite open and

notoriously for more than 20 years at this location, which I think could lead many people to question, well, how is it that that's been happening? And why is it, then, when the relief was granted in 1994, a review of the transcript doesn't show any discussion, the word lobster or seafood doesn't appear anywhere.

But -- and I've asked Mr. Mastrangelo tonight to address that. Because I said to him it strikes me that that's important. Because there had been an understanding on Mr. Mastrangelo's part, that he will share with the Board tonight, two-fold:

One is that he had received a Variance for building, but more importantly he knew the property was zoned commercial. When I first met with him, he

said it was commercial. It was zoned commercial. And it is somewhat of an anomaly that in our office districts, particularly the Office 3 districts, retail uses are not permitted uses. And it's for that reason, back in 1994, the Whole Foods Market was granted a Use Variance for a 60,000 square foot grocery store. That is a -- that's somewhat of an anomaly because we have design guidelines that promote ground floor retail in office structures all over the city. They're the preferred active ground floor uses all through the MXD District, the district down at Kendall Square. What's been missing down there, the urban design is and the city's planners say is the fact that the office buildings didn't have active uses. But this is historical, not

particularly present. But nonetheless, there was a time, and it continues to this day, that the particular office district didn't allow retail uses. I would say that distinction was unknown to Mr. Mastrangelo. And that can be borne out by the testimony he's going to provide regarding the rezoning. Because there wasn't rezoning of this stretch of Putnam Ave. in around 2000. I was involved in it because I represented the owner of a building known as the Bio-Rad building. It was then known as the Bio-Rad building. A large brick structure approximately 80,000 square feet, 100 surface parking spaces, four doors from this location. New owners had taken over for that, and there was an attempt to put an addition on there and expand that building. And there

was a rezoning undertaken and the property was rezoned -- excuse me.

CONSTANTINE ALEXANDER: No, no, no. I don't mean to interrupt you. When you finish your thought, I want to ask a question.

Go ahead.

ATTORNEY JAMES RAFFERTY: So at that time and roughly in the year 2000 or a year after, maybe as late as 2005, that stretch of Putnam Avenue was rezoned from office to residential.

CONSTANTINE ALEXANDER: Then why isn't this a legal non-conforming use? If in 1994 you started your business --

LOUIS MASTRANGELO: Right.

CONSTANTINE ALEXANDER: -- and it was made proper under the Zoning in 1994 and then in 2000 the Zoning changed, made

it improper, quote/unquote, why isn't it a legal non-conforming use?

ATTORNEY JAMES RAFFERTY: Well, because I think others would take exception as to whether it was proper in 1994 --

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY JAMES

RAFFERTY: -- because the office use, as I stated, didn't allow the retail use. That's why Whole Foods needed the Variance. So even though it was office, retail wasn't permitted. And what I was pointing out is that's a bit of an anomaly and is not consistent with the City's land use policies, but that happens to be to this day an ongoing situation.

CONSTANTINE ALEXANDER: That's a decision of a prior board and they got it

wrong, they got it wrong. But it doesn't necessarily mean that we should grant relief -- to me it's not persuasive that we should grant relief in this case.

ATTORNEY JAMES RAFFERTY: No, and it's not being offered for that purpose --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: -- to be clear.

What I'm offering is I wanted Mr. Mastrangelo to share with the Board his understanding, and to be able to address the question as to how did this use continue for this period of time and why, why was it that, that it occurred? And the short answer is that when the property was zoned office, Mr. Mastrangelo took that to mean it had commercial zoning. And the relevance is that when

the rezoning came around, he will testify later at the hearing, that he was approached by people to say you should push back on this rezoning, they're going to change this to residential and your business is going to be in trouble. And he said he asked around and he was told by some of the proponents of the rezoning, don't worry, existing businesses will be grandfathered. So when the rezoning from office to residential occurred, and that's the reason I offer this, which again happened quite openly, it occurred with his understanding that he had a commercial use and that his business would be grandfathered.

He didn't seek legal advice at that time regarding that, but the reality is that the, that that Zoning, while it was

commercial in the broadest context, retail was not, was not a permitted use then.

CONSTANTINE ALEXANDER: Let me ask the question. You asked around the neighbors and they gave you this curbside legal advice. Did you ever think to call Inspectional Services Department and get the answer from the people who now?

LOUIS MASTRANGELO: No. I should have got a lawyer, but I --

CONSTANTINE ALEXANDER: You don't need a lawyer. You just need to pick up the phone --

ATTORNEY JAMES RAFFERTY: Well, can I just stop you right there?

CONSTANTINE ALEXANDER: No, go ahead.

ATTORNEY JAMES RAFFERTY: The notion -- when I say he asked, I wouldn't

limit it to curbside legal advice. I think his discussions with me are that he talked to a number of people, including councillors and others involved in the petition --

CONSTANTINE ALEXANDER: Did he ask Inspectional Services Department? They're the ones that enforce the Zoning Code.

ATTORNEY JAMES RAFFERTY: I suspect not. No.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: Right. But it's interesting because -- well, I'll stop there.

Mr. Mastrangelo has a long history of engagement with the Inspectional Services Department. He gets inspected twice a year by health inspectors from Inspectional Services.

CONSTANTINE ALEXANDER: Yes, but you're well aware of this, Mr. Rafferty, as a very well experienced zoning lawyer, that the philosophy of the Inspectional Services Department, is they enforce the Zoning Ordinance by complaint. They don't go out -- let me finish and you can come back --

ATTORNEY JAMES RAFFERTY: Well, I think that's a little unfair. I think they do it more than by complaint.

CONSTANTINE ALEXANDER: I don't -- generally, we had the bee case, the beekeepers' case over on Magazine Street. There are many people who have bees in the city. And Inspectional Services doesn't go around and send violation notices. But in that case, a neighbor or neighbors complained to the

Inspectional Services and they looked into the case and they found, in their opinion, it was a Zoning violation and we upheld that.

Similarly here, if no neighbor or citizen of the city complained to the Inspectional Services and said hey, that guy over there is running an illegal retail business, it's in violation of the Ordinance, they're not going to go out and they -- I think it's to their credit, they're not going to go out and seek problems. They're not Zoning police. And I think that's very good. If people in the city don't like what someone's doing, they'll look into it and make a determination. If people in the city don't complain, they're not going to complain. And I think that -- my guess

is, it's a pretty good guess, that's behind the fact that this business had been operated for all these years without anybody doing anything. Now there's been a complaint, and I don't want to get into who made the complaint and why and whether the complainants have clean hands or not. I'm not going to get into that. That's another day. But that's the fact. That's -- you got to take that -- you have to understand that. You understand it. I think the people in the audience have to understand that. Is that it's not that Inspectional Services are sitting on their hands. They do, they respond to complaints. And there was no complaint, at least up until now, and that's why this business has continued.

ATTORNEY JAMES RAFFERTY: I agree.

I think the only reason, and I apologize for the interruption, I was going to say that their vigilance in enforcing the Zoning Ordinance is a little more aggressive than simply sitting back. I think if an inspector is mindful of something -- but I understand there's a large element of the enforcement division that is complaint-driven and I agree.

And it does have some relevance. When I say it has some relevance, because the history of the Zoning, and as I said, because one of the issues in law and in equity addresses issues associated with clean hands. And if someone has -- is knowingly doing something they shouldn't be doing and then they're later caught and they come in and they ask whether it's administrative relief or other forms of

judicial relief, the doctrine of clean hands, and whether or not someone, you know, we're going to reward bad behavior, as a public policy, I recognize is not favored. But there is some relevance to the history of the use, the length in which it has gone on, the fact that it was previously zoned commercial, and the applicant's understanding that that commercial activity was protected when it was changed to residential. And I offer that not as a dispositive argument associated with tonight's application, but as context for the understanding and thinking of the operator who has lived in that location, continues to live there, and has operated his business there for 20 years.

So that brings us to tonight's case

and the issues associated with it. And it is a case for a Use Variance, and of course we're mindful of the burden applicants for Use Variances face under the law. And there has been some guidance or direction.

First, certain municipalities -- only some municipalities, and the state statute requires it allows, for Use Variances. And in our case, Use Variances in our Zoning Ordinance are permitted as the Board knows.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So the fact that the Ordinance grants the authority for the issuance of Use Variances suggests that the drafters of the Ordinance recognize that there could

be occasions when that would occur.

CONSTANTINE ALEXANDER: Sure.
Agree with that.

ATTORNEY JAMES RAFFERTY: I
similarly raise the issue about what's
happening or what's happened on Western
Ave, not to suggest -- on River Street,
excuse me, with the Whole Foods Variance
and the retail activity there, not to
suggest that that somehow a binding
precedent upon this Board. But what the
case law directs the Board to focus on,
particularly in matters involving
non-residential uses in residential
districts, is whether or not the proposed
use -- and I'm quoting now from a case,
would unquestionably alter the essential
character of an otherwise residential
neighborhood. And tonight, our case

involves evidence that we will submit to you that the Board should be able to take personal knowledge, of I'm sure in most cases with most board members, of the character of the street in which this use is located. And that this use is located within a few hundred feet of a large grocery store, which was granted a variance, but it suggests that it perhaps is not otherwise residential. There are within less than 50 feet from this location, right across from this location on Putnam Avenue, that portion of the street is Zoned Business A. And there are restaurants and retail uses there. And as I noted earlier, there's an office building, four doors down, 80,000 square foot office building, four doors down from here, which obviously all of which, that

in particular, became non-conforming when the Zoning was changed. But the most immediate and adjacent use here is also a non-residential use. It's also a commercial use occurring. It's a bed and breakfast. Now it was said earlier, we're not going to get into that. I would respectfully say the character of the surrounding uses is highly relevant for the Board to be able to reach, as the Court directed boards to do in the Boston Redevelopment case, a finding to take into consideration, whether a Variance should be granted involve consideration of the proper uses in existence in the area in relation to the specific new use proposed.

CONSTANTINE ALEXANDER: You obviously -- I've read your letter and I haven't read the case, but I read your

quote. Let me -- here's my problem with that approach: What that means is that throughout the city if you live in a residential area that's close, in the vicinity of a business area or there happens to be some non-conforming uses in the residential area, you could establish another non-conforming use. We could blur the lines, the use lines. For example, suppose someone across the street from you wants to open up a retail store. They have the same argument you have. They're close to in terms of in the vicinity. You're very close to the Whole Foods and the 80,000 square foot building. What do we do? We grant a Variance and keep walking up Putnam Avenue?

ATTORNEY JAMES RAFFERTY: No, no. With all due respect, Mr. Chairman, I

think that analogy is seriously flawed.

What the Court has directed boards to do is to look at surrounding uses. So under that analysis, it doesn't suggest, again, that that's dispositive. But one would say if the Board looked at a street like Andrew Street which is on the other side of Putnam Avenue, appearing on this map, which contains nothing but residential uses, the Board could very readily find that but for the changed use, this is an otherwise residential area. And that's what the court directs the Board to do. Not to say oh, look it, it's like horseshoes, if you're close, you get the use. That's not what's being argued here. What the courts directs boards to do in Use Variances is, okay, examine, look at the record, and examine what the

other surrounding uses are. And that can be a factor in a determination here because one of the things you need to be able to conclude is the impact that this would have. So, Andrew Street, Fairmont Street, totally unaltered residential uses, one way streets, streets without parking. The characteristics of the this street, this section of Putnam Avenue in particular, the heavy traffic on the street, the history of commercial parking, the adjacent uses, four doors down the office building, the other side of River Street retail uses, those are characteristics that allow the Board to make a determination as to how this use might affect those other uses. And that brings us very quickly to the adjoining use. And the adjoining use in the

abutting property, and it's not a question whether someone's doing anything. I'll put aside for a moment the legality of that situation, but it cannot be disputed that the owner of the adjoining property, and this adjoining property is in very close proximity to this use, is a bed and breakfast. And if you go on the internet, you can learn all about that bed and breakfast. And we have regulations around bed and breakfasts and regulations. But I found it striking, there are 31 reviews on Trip Advisor for that use. And if I was the proponent there, one should take great pride in every review is glowing. About the manner in which the business is conducted, the attentiveness in which the innkeeper maintains her property and is accommodating to her hosts. But nearly

every one of the uses -- the reviews
ironically --

CONSTANTINE ALEXANDER: That's not
relevant.

ATTORNEY JAMES RAFFERTY: It's
highly relevant. With all do respect,
we're establishing a record around the
character of the surrounding uses so I'd
like the opportunity to put that on the
record.

CONSTANTINE ALEXANDER: That's
fine. And that business that you're
piggybacking on may be also be an illegal
use.

ATTORNEY JAMES RAFFERTY: I'm not
piggybacking on the use --

CONSTANTINE ALEXANDER: Yes, you
are.

ATTORNEY JAMES

RAFFERTY: -- that's an unfair characterization. I'm following the direction, but what the point I'm making, and I'll conclude with this aspect of it --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES

RAFFERTY: -- nearly every one of the reviews of the adjoining bed and breakfast. And I'm not suggesting for purposes of this hearing that that is being operated contrary to any Licensing or Zoning law. I'll set that aside, agreeing that that is not a relative point of inquiry.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: But it is relevant as to what those uses are. So it's not within dispute -- if you look at

this map and you'll see -- you go on Google, that bed and breakfast is identified on these maps. That's a use that adjoins this property. And the point that I'm trying to make is that there are some assessments of that use. Of the 31 I could find, very low drama and quiet. Very nice. Quieter than most Cambridge places. Lovely garden to enjoy eating outside. So very quiet. Comfortable and quiet. 31 reviews of people who stay in that bed and breakfast who comment about how quiet it is. So I'm suggesting that there aren't too many use cases that come before the Board where the use is already in existence, and there's a great deal of speculation and concern about well, what will the impact of that use be on other uses? There's less speculation in this

case --

CONSTANTINE ALEXANDER: I hear you.

ATTORNEY JAMES

RAFFERTY: -- because it's there. So understanding that, I did and I knew -- I was very mindful, we won't pretend otherwise, we know where the complaint came from here. There was a 20-year relationship with this abutter. So we began to examine well what is it about this use that maybe we could impose some restrictions that would mitigate its impact on surrounding uses, particularly that -- particularly because we were aware of that use. So I submitted to the Board and sent to counsel for the bed and breakfast four proposed conditions.

CONSTANTINE ALEXANDER: We have it

in our file.

ATTORNEY JAMES RAFFERTY: The relevance of the conditions, if you understand the site, is to take any activity associated with the restaurant and limit it to the area where the garage is, if you will. So to separate the two-family house, the backyard of the two-family house which is most proximate to that use and say, okay, and then let's understand the nature of how you operate. I think the reason people who stay at that bed and breakfast can make the favorable comment that it's quiet is that this use stops operating at six o'clock. It -- there's no nighttime activity. Ironically the office use allowed in the Variance could go much later. It could go well into the evening as many offices do.

It has that the parking for that use. So there are many aspects for that particular use that are highly compatible with the surrounding residential uses. And what you're going to hear tonight from live testimony of neighbors and residents, is the fact that they find this highly compatible. And that this is a resource for the community. And this warrants the granting of the Variance.

So I conclude by asking, if the Board will allow, Mr. Mastrangelo to just give you his personal history.

CONSTANTINE ALEXANDER: I want him to do that. I just have one question for you, though --

ATTORNEY JAMES RAFFERTY:
Certainly.

CONSTANTINE

ALEXANDER: -- different than the ones I've been asking. Why, is it in your opinion or knowledge, why did the city rezone this residential, this area, with all the commercial activities you've identified? Why is it -- obviously the City Council decided they wanted this area to become a residential -- be or become a residential area. So why, and if we were to grant the Variance tonight, we would be going contrary to what the City Council wanted for this area. Do you have any idea why, why didn't they just zone this business with all the other business activities nearby? Why? Do you know? If you don't know, you don't know.

ATTORNEY JAMES RAFFERTY: I know how it came about. I know there was a citizen petition that was filed. I know

that zoning is a legislative exercise.

And I know that when --

CONSTANTINE ALEXANDER: It was a citizen petition to zone it residential?

ATTORNEY JAMES RAFFERTY: Yes. It was not a Planning Board petition. It was not a result of any planning study. It came about as a result of a citizen, a registered voter petition. And it came about and surfaced at the time the building, the Bio-Rad building was sold and the new owners were proposing additions to the building. I represented those owners. There were, there were two efforts undertaken to constrain any expansion there.

There was a petition filed by some of the same people to landmark the building, which the Historical Commission

accepted the petition. And did make this building -- that building a landmark building.

But as to what motivates elected officials to behave in a certain way when faced with citizen petitions, I suspect the opinions are as varied as one's view of government in participatory projects. But I would say -- I would say in my direct involvement in this, I never heard any suggestion, and I would stand up without fear of contradiction, that anyone whoever spoke in favor of rezoning this section of Putnam Ave. cited this use as something that was in conflict with what the goals of that petition --

CONSTANTINE ALEXANDER: No one who wanted to --

ATTORNEY JAMES RAFFERTY: No one who petitioned --

CONSTANTINE ALEXANDER: Got it.

ATTORNEY JAMES

RAFFERTY: -- either at public hearings, and as you know, hearings are held at the Planning Board and at the Ordinance Committee and ultimately the City Council. This was a very hotly debated petition. It was -- it had everything to do with new ownership and the ability to expand. Because when it was also zoned office, it was also dimensional -- there was also dimensional opportunities available that didn't exist. There used to be a member of the Planning Board who used to require before the Planning Board acted on rezoning petitions, Fred Combs who spent many years there, he would ask the staff

to do a land use analysis and determine how many non-conformities would be created. And he had a general rule that if more than 50 percent of the properties became non-conforming, we ought to be very cautious about rezoning it.

So in this case, there was no analysis done I can tell you from personal engagement. There was a desire to prevent an expansion of that building. So that building has come into new ownership. It's been refurbished. It's being used -- it's used as an office. But from a from a financing perspective, from a land use perspective, there's now an 80,000 square foot office that is a non-conforming use. And if you, if you write zoning opinions for lenders, it's not a great place to be. And the owners

of buildings don't like to see that happen. But that, that rezoning did in fact occur. And as a result of it, that's -- but I would say that if the city felt that way, that once the Zoning is in place, Use Variance shouldn't be granted, then Section 10 of the Ordinance would not give this Board the authority to grant Use Variances.

CONSTANTINE ALEXANDER: That's true. But, again, we're looping back. But the fact of the matter is the courts have said that communities can allow Use Variances, however, they're to be sparingly granted. Brendan usually can cite the case. And you said it earlier, in an earlier presentation, it's difficult to get a Use Variance as compared to a Structural Variance and that's --

ATTORNEY JAMES RAFFERTY: I never used the word difficult, but I did acknowledge the burden placed upon the applicant.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: But sparingly indeed. I mean we haven't rushed here. We waited 20 years before we got here. So we're very mindful of the fact that one shouldn't come here too often seeking such relief. So, but here we are and we are so happy to be here.

CONSTANTINE ALEXANDER: And this gentleman is dying to talk and you've been hogging the floor, so let him speak now.

ATTORNEY JAMES RAFFERTY: He doesn't come here that often and I may have to explain that he shouldn't be alarmed by comments of the Chair regarding

my presentations. They are, that doesn't reflect poorly on our position at the moment.

CONSTANTINE ALEXANDER: No, I know. I respect --

ATTORNEY JAMES RAFFERTY: It may later in the evening, but at the time --

CONSTANTINE ALEXANDER: I respect Mr. Rafferty as an attorney.

ATTORNEY JAMES RAFFERTY: I say that teasing. I appreciate that.

CONSTANTINE ALEXANDER: I have to push him.

ATTORNEY JAMES RAFFERTY: He's right.

So Mr. Mastrangelo is -- would like -- and I've asked him to do his best. And he's here to tell you a little bit of his story.

CONSTANTINE ALEXANDER: Please.

LOUIS MASTRANGELO: We took the liberty of writing this down, because I'm not very good at keeping things in my head.

CONSTANTINE ALEXANDER: That's fine.

LOUIS MASTRANGELO: I'm Louis Mastrangelo. I'm a lifelong member -- I'm a lifelong Cambridge resident. The only time I left Cambridge was when I was in the service. I served my country from 1954 to 1957. I am a disabled veteran and I have been in the seafood business most of my life starting as a young man at my uncle's fish market. I was a commercial fisherman in the sixties. And in the seventies I owned and operated a restaurant on Pearl Street in Cambridge,

selling fish and other foods. And I have been at 269 Putnam Avenue since 1986, and purchased the property in 1994. When I bought the home, the parking lot was a -- used as a commercial parking lot. And I've been working out -- I've been working out a trailer there and buying and selling lobsters, brokering them, and doing a lot of that.

In 1994 we applied for a Variance so that we could build a structure that would accommodate my existing and expanding business. I have had a state dealer's permit, a retail store from the Commonwealth of Massachusetts Department of Marine Fisheries since the 80s. I used to have a federal license, too, which I gave it up.

And in 2000 I heard about the

petition going around rezoning in the neighborhood and really didn't pay much attention to it. I hate to say it. But anyway. And didn't pay much attention to it. But I did attend one meeting, and when I inquired about it, I was told that I was grandfathered in because they had -- I had been here so long.

I employed, I employ five full-time employees including a manager who is a Cambridge resident. I feel my business is an asset to the neighborhood providing a local owned and operated business with the unique product many of my customers can walk or bike to us to our establishment. We have two hotels and a multiple business within walking distance including Peabody terrace at 808 Memorial Drive. My attorney and I have come up with four

proposals which we hope will be an olive branch to my neighbors. In my 20 years of operation I was unaware that some of my neighbors had a problem until I -- until they went to an attorney which brought the matter to the city which brought it to me. All I ever wanted was to get along.

Thank you.

CONSTANTINE ALEXANDER: Thank you for your presentation. I mean that.

Anything else you'd like to say at this point?

ATTORNEY JAMES RAFFERTY: No, not at this time.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the board at this point?

(No Response.)

CONSTANTINE ALEXANDER: With great

trepidation, I'm going to open this up to public testimony.

BRENDAN SULLIVAN: Since you raised the issue.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: I thought I had it here.

CONSTANTINE ALEXANDER: Do you have an extra copy of those restrictions? They're in the file, but I don't want to try to find it.

BRENDAN SULLIVAN: Here's what we always tend to somewhat rely on Mendosa versus Licensing Board of Fall River. 444 Mass. 188-208-2005 the court language. (Reading) Although all Variances are unusual forms of relief from Zoning requirements, Use Variances should be particularly extraordinary because they

inherently undermine the local Zoning Ordinance division of uses.

So that's the hurdle --

CONSTANTINE ALEXANDER: That's the hurdle.

BRENDAN SULLIVAN: -- that you really have to get over. This is the previous case.

CONSTANTINE ALEXANDER: Oh, the previous case.

Okay, ready to go. We're going to have public testimony. I'm going to ask those who are in favor of the relief to speak first. May I ask that, we have a very big audience, I suspect a lot of people might want to say things. Please, if someone has made your point before, don't make it again. We get it. We don't need to hear it twice or three times. But

I do want to -- you're citizens of the city and you took the time to come down tonight. So if you do want to say something, say it, say it briefly, and try not to be repetitive. And the same applies for those who are opposed who I will take next. So let's -- we're going to try to get an organized discussion here if we can or at least presentation.

So all -- anyone in favor of the relief, granting the Use Variance, anyone want to speak in favor. I'm going to take you random order. Sir.

DAVID ALBERT: I've been --

CONSTANTINE ALEXANDER: Name and address.

DAVID ALBERT: David Albert, 48 Rindge Avenue in Cambridge. Because of where I work in Cambridgeport, I've been

driving passed the Alive and Kicking for over ten years and always feels like it's part of the business district there. If you know you pass the big corner with all of the stores and you're still in the business district. It never felt like it wasn't. We stopped there, my wife and I have stopped there frequently for the amazing lobster sandwiches. Thank you. They meant a lot to us at various times, including when we had some illness in our family that we were able to stop there on the way back from the hospital district. I'm still in there at least, you know, a few times -- a couple times a month getting the lobster sandwiches. And I think that removing this is what would be the detriment to the neighborhood. I think having it there is a clear asset to

the neighborhood.

CONSTANTINE ALEXANDER: Thank you.
Thank you, sir.

CHARLES HENEBRY: Charles Henebry.
I lived on Columbia Street for many years
and I recently moved about two or three
years ago as you know to Andrew Street
just a few blocks from this.

CONSTANTINE ALEXANDER: How do I
know?

CHARLES HENEBRY: Because we were
in front of you about two years ago.

CONSTANTINE ALEXANDER: How
quickly we forget.

CHARLES HENEBRY: I thought you'd
remember me. I'm actually hurt.

So, but Alive and Kicking has always
struck me as a strange gem as you drive
down Putnam. The area has become much

more retail oriented since the appearance of Whole Foods but I, I love these, the strange curiosities of -- and the wonderful food once I started going there at my wife's insistence. And so I'm an enormous fan. I do not feel that it hurts the fabric of that neighborhood to which I'm now, of which I'm now a loyal member. But rather it's very, very close to a bunch of restaurants right there on River Street, and it's a strange curiosity as I say. And a strange curiosity is what make Cambridge a wonderful place to live.

CONSTANTINE ALEXANDER: Thank you sir.

Sir.

PATRICK BARRETT: Yeah, my name's Patrick Barrett.

CONSTANTINE ALEXANDER: Come a

little closer so the stenographer can hear you.

PATRICK BARRETT: Is this closer?

My name is Patrick Barrett. I live at 234 Broadway and my wife and I are currently building a house at 41 Pleasant Street, a couple blocks down the street. And we are in the BA-3 District which is I think is part of this rezoning and in 2004. When it was done, it was highly contentious. I had to go back and look at the minutes of my own case. And part of the impetus behind the rezoning was to create a neighborhood business district and to protect some of the residential areas. You know, when this was done, you know, one City Councillor who is on the Council now was representing Harvard at the time, called the changes draconian.

And, you know, I think that actually speaks to your point, sir, about the issue of trying to undermine the purpose of the Zoning Ordinance. I think that we have all these mixed uses put together and we have a rezone like that, so wide sweeping, that creates all sorts of problems. And all the businesses along Western Ave. are really non-conforming and when they switch hands you're going to have all kinds of problems.

And just as a side note, me and my wife are building a house in this district because it is mixed use. Because we like to be able to walk to places. And I just kind of discovered this business, like, six months ago and their lobster sandwich is amazing. To me I think my property value goes down when they leave. So

that's all I have to say.

Thank you.

CONSTANTINE ALEXANDER: Thank you, sir.

This woman. Yes, Ma'am.

LORI TAYMORE BERRY: My name is Lori Taymore Berry (phonetic). I live at 164 Pleasant Street. Okay. I live maybe about two and a half blocks from Alive and Kicking. It's a nice walking distance. And I will say it's the best fish. It's fresh. You know it's fresh. It's more affordable than some of the other markets in the neighborhood. So I would be very disappointed because we go there about three times a week. It would be a major, major disappoint and loss to the neighborhood and family.

CONSTANTINE ALEXANDER: Sir, come

forward just to make life easier for everybody. Whichever way, just come a little closer.

DAVE MATT: My name is Dave. I live at 113 Hampshire Street. I've worked for Lou and Alive and Kicking for a few years. And the point was brought up about, you know, exceptional circumstances. I don't know what that means in terms of the law. I'm not like a lawyer or anything, but for a business that was started 20 years ago by a guy who just loves what he does, it's been in the best of Boston, Phoenix Magazine, Chronicle. It's been on nationally syndicated TV shows. Man Versus Food, American Idol. And in terms of the exceptional, the passion that he runs it with is exceptional. And in my two years

there that I worked there I saw people from all over the world who have heard about it and came and wanted a chance to speak with him, and you get a chance to see what an authentic Cambridge business is. And in a time full of chain stores and retail stores that are funded by multi-national corporations we have a local neighborhood guy doing something extraordinary.

THE STENOGRAPHER: Do you want to give us your last name, please. You just said Dave.

DAVE MATT: Yeah, Matt.

CONSTANTINE ALEXANDER: Sir, please come forward.

RICHARD MORALE: My name is Richard Morale. I live at 21 Whitney Ave., Cambridge, Mass. I have known

Mr. Mastrangelo since he was ten-years-old. And that's a long time. He's always had a business mind. When we was kids we went to MIT before it got big. Junk and grabbing bottles, and this man has always had a mind for business. He's a very good businessman. Very good friend. And I hope the petition goes through.

CONSTANTINE ALEXANDER: Thank you, sir.

Ma'am.

SUSAN CHARLESBURG: I'm Susan Charlesburg (phonetic). I live at 431 Putnam Ave. In order for me to get home I have to drive by Alive and Kicking everyday. I'm by it probably three or four times a day. And I find myself looking in every time because Lou as an

entrepreneur is sitting there greeting all of his customers, making sure everybody's happy, and he is, he's a prize for the neighborhood and it would be a great loss to all of us because we walk there. Our kids can walk there. And it's quiet. I mean, you know, I've been there when there's a line out the door and saying I can't wait this long. But it's -- there's never any rowdiness. There's never any noise. Never parking problems on the street. He's a very good entrepreneur and we need him in the neighborhood.

CONSTANTINE ALEXANDER: Thank you. I saw a hand raised over here. Maybe I'm wrong. Anyone else wish to speak in favor? Sir?

ROCCO MASTRANGELO: My name is Rocco Mastrangelo. I'm Louis's nephew. I

live at 850 Avenue D in Beaumont, Texas. I grew up in Cambridge. I'm a Local 40 boy. I've been in front of this Board many times previously with Local 40 petitions. Lou and I kind of grew up together. This is like my brother. And we were in business together on Pearl Street when we had the little shop there. And this is his life blood. And this is a Cambridge resident. This is someone who's been here his whole life, and to take something away that's that meaningful to this man, it will take his life away. I'm telling you that because I know. So, I'm disappointed at what's gone on here so far. We've been here for a long time. I built that building with my license. So I -- when we built it, we brought everything in. People were okay with it.

They were happy, things were good, and now all of a sudden 20 years later this comes up and I think that's a disgrace.

CONSTANTINE ALEXANDER: Thank you, sir.

ROCCO MASTRANGELO: That's all I got.

Thank you.

CONSTANTINE ALEXANDER: I saw a hand there first. Am I wrong? Yes, I am. Ma'am.

KIM CASEY: Hi. I'm Kim Casey. I'm from Medford, Mass. And he's from Texas, I figured I can talk. I started the on-line petition. I don't know if you've had a chance to look at it? Okay.

I can't even tell you how incredible it was to see the amount of support that is out there, not only in Cambridge, not

only on his street, but across the world. And I was very -- I was very upset, you know, finding out that he was going through this because I know how much he cares about -- it's not even for himself. It's for the public and it's for his customers and for his employees. Those are the people he cares about at the end of the day. So I'm -- when that petition went out, I'll never forget we got over a thousand signatures in under 24 hours. And if you read every single one of those comments, they're just amazing. And I wanted him to see that. And at the end of that petition, what it says is that no matter what the end outcome is, that we all say thank you so much for what you've done for the community because you've brought people into Cambridge. People

come to Cambridge for him. Not for, you know, the stores they end up going down the line, you know, later that day, they come there because they see him and they know how fantastic it is. He is, he's an exceptional person. I love you.

CONSTANTINE ALEXANDER: Thank you.

KIM CASEY: Oh, and I'm not -- he's my uncle, not by blood. Not by blood but by choice. There's no blood here.

CONSTANTINE ALEXANDER: Anyone else wishing to speak in favor?

Sir.

JOHN BERRY: My name is John Berry. I live at 164 Pleasant Street. I've been a resident of this community for going on 45 years. This business and this gentleman represents something that's

being lost in a large part of America; the small, independent businessman. This community has been overrun in recent years by big corporations coming in, taking over large sections, and quite often they don't stand with the community. Those -- if they don't make a quick buck, they're gone. This man's been here for us and he serves us. It's a piece of the community that should not be lost.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to speak in favor? Ma'am.

LORI CALLAHAN: Sorry. My name is Lori Callahan. I came all the way from Haverhill for this. So I just wanted to say that not only does Louie help in the neighborhood, but he also buys bread fresh everyday from Central Bakery in Cambridge.

He buys farm fresh eggs. He buys local seafood. So he's helping himself, he's helping other businesses around. It's not just -- it's not just Alive and Kicking that is profiting from here. It's a lot of other businesses as well.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wish to speak in favor?

Going once, going twice. No one else.

Now I'm going to turn to those who wish to speak in opposition to the relief being sought. Anyone wish to speak in opposition?

Sir.

ATTORNEY A. NEIL HARTZELL: I'll move so everybody can hear me.

CONSTANTINE ALEXANDER: Sure. As long as the stenographer can hear you.

I'm sure she can.

ATTORNEY A. NEIL HARTZELL: Good evening. My name is Neil Hartzell. I've been before you gentlemen before. I'm a lawyer in Boston. I hope you don't hold that against me because I'm not from Cambridge, but I come here often.

I represent Ms. Sarah Smith who is one of the abutters and wanted to just address a few points that I don't think have come up in tonight's hearing.

I'm listening to all of the people in support, and I think it's wonderful. Mr. Mastrangelo has developed a good business that's been successful. That's what America's all about. We've all read stories about the businesses that started in the garage and then they got so big and successful they had to move to other

space. It doesn't mean they're going out of business. It means they're so successful they've moved to another place where they can do more business and be more successful. And that's the situation that we have here. Apparently there was only one person who spoke in favor who lives on the street, and I believe that person is not an abutter. We have a letter that's been submitted that's signed by I think 13, I have another signature that I'll hand up to you when I'm finished. And I want to explain what's happened over the years.

It started off as a very small nondescript truck selling some lobsters back in the 90s. When it was zoned not so much -- well, it was zoned for office space. That's what the original zoning

was. Not retail. There's a significant difference. And then there was the rezoning to residential. Perhaps he didn't understand it. So be it. But what happens over time is from the truck starts the business in the garage. And then it starts expanding. And the reason why we're here today, and I know some people are upset about this, is because it's expanded so much and it's become so successful, there's a constant line of people coming in and out of the place. It's going on all year long. It's going on everyday. There's a fan venting out cooking smells in the back that waffs over the neighborhood. There's -- the fan makes a lot of noise. We've -- this isn't scientific, but we had the noise registered and we believe the noise

exceeds the Zoning Ordinance for industrial, not for residential. It far exceeds residential.

CONSTANTINE ALEXANDER: Have you filed a complaint? Not through this board. We don't en -- there's a noise ordinance.

ATTORNEY A. NEIL HARTZELL: Right. Not yet, sir, this came to me within the last couple of days.

We have garbage blowing on to the adjoining property.

We have the loud speaker going on from the time it opens to the time it closes calling out orders. This can be heard through the house with the windows closed.

With the expansion of it on to his house area, there's picnic tables right

outside the dining room window. I mean, literally just feet away.

There's been new structures built that we believe don't have Building Permits.

There's a new roof -- excuse me. There's a new roof area, and we have some pictures that have been submitted right up against one of the abutting property lines and it's been enclosed. They're winterizing it. And there's no -- I think it's in complete violation of the setback. And I've been told, the building inspector is taking some action on that, but I don't know what that is --

CONSTANTINE ALEXANDER: That's not relevant to the Use Variance.

ATTORNEY A. NEIL HARTZELL: No, it's not.

CONSTANTINE ALEXANDER: If there's an issue on that, there's a separate case, that's a separate matter. That's not relevant.

ATTORNEY A. NEIL HARTZELL: But the point is that what's happened over time, it's expanding, it's expanding.

CONSTANTINE ALEXANDER: That's irrelevant.

ATTORNEY A. NEIL HARTZELL: Now, there is nowhere for it to go. There are sheds in the back of the building that also violate the setback ordinance. Same issue as you just said. And my point in telling you that is it's the growth from the small nondescript garage and supposedly office to full retail, multiple employees, customers all the time, noise all the time. Again, a victim, if you

will, and why we're here tonight of his own success.

We don't want the lobster company to go out of business. We believe within walking distance there is alternative sites. There's a site on River Street we're told. There's a site near the Whole Foods. There's some cafe that went out of business that I'm told is unused. I haven't looked at it myself, but that's what I've been told.

And I don't want the Board to have the impression that the abutter wants to, quote, shut it down, and put this hard working guy out of business. We just -- why do you have Zoning laws? They pay their taxes just like everybody else. And because of the success of the business, because of the noise and

disruption, the garbage blowing, it's just become intolerable. That's why we're here tonight. Years ago we didn't have this issue. Social media, yelp, all the reviews, it's great for his business, it's not great for the neighbors.

CONSTANTINE ALEXANDER: Okay, thank you. Anything else further?

ATTORNEY A. NEIL HARTZELL: No, that's it.

CONSTANTINE ALEXANDER: Okay, Ma'am I'll get to you next.

SUSAN CHARLESBURG: Can I address something that he said?

CONSTANTINE ALEXANDER: You can't cross examine him. I don't want to --

SUSAN CHARLESBURG: No, but I just want to make it clear. I'm a relator and finding --

CONSTANTINE ALEXANDER: Yeah, give me your name, too.

SUSAN CHARLESBURG: Susan Charlesburg.

MICHAEL BRANDON: She spoke already.

SUSAN CHARLESBURG: I spoke already. Can I speak again?

CONSTANTINE ALEXANDER: Yes, I think this case --

SUSAN CHARLESBURG: I just want to say that it's very difficult to find any retail space in Cambridge. Okay? The Putnam Ave. Cafe is not available. It's been closed down, probably only six months after it opened. It's not available for any, any retail space. And I have clients who are looking --

CONSTANTINE ALEXANDER: How do you

know that by the way?

ATTORNEY JAMES RAFFERTY: Well, she's correct. I represent Whole Foods. That's used as a training facility. Whole Foods attempted to relocate their alcohol sales into that location and neighbors opposed it. So years ago Whole Foods, they keep the wine and beer sold upstairs, and they use that as a training facility for stores in the area.

CONSTANTINE ALEXANDER: So they have no interest in --

ATTORNEY JAMES RAFFERTY: No interest. It's part of their store. They put it there -- the cafe as an accommodation to the neighbors --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES

RAFFERTY: -- because even though it was

an office district, the neighbors wanted an active --

CONSTANTINE ALEXANDER: I'm aware of that.

ATTORNEY JAMES RAFFERTY: -- use on the street.

CONSTANTINE ALEXANDER: We had a zoning case involving that cafe after they shut it down. I don't remember what --

ATTORNEY JAMES RAFFERTY: It was a case and I was here, just like that guy, you don't remember me. I was there that night. And we needed to -- it was still an office district and we wanted to put a retail liquor store in the cafe and we met with opposition.

CONSTANTINE ALEXANDER: While we're on the subject of other space, what about Western Avenue? There are a number

of storefronts there that are not being used. Driving down I can see them. There's a new structure or a rebuilt structure with residential above and there's retail on the ground floor, and as far as I can see, no retail has ever moved in there.

ATTORNEY JAMES RAFFERTY: There's a carrot over that. I don't know what that carrot means.

GEORGE BEST: That's a high tech place.

ATTORNEY JAMES RAFFERTY: Is that what the carrot is? I didn't know if there's a vegetable store coming or -- seriously, I see this carrot.

GEORGE BEST: They do software development in that space.

CONSTANTINE ALEXANDER: Okay.

GEORGE BEST: The on the corner of Dodge street.

ATTORNEY JAMES RAFFERTY: On Dodge, right.

CONSTANTINE ALEXANDER: Yes. I mean obviously that is a solution that -- maybe not the ideal solution, but that is a solution. And I have a second solution, but that's one solution. I haven't -- if we, if we were to deny, the relief being sought and you have to go out of business, you're not necessarily out of business, you got to move your business first. It's not as convenient as --

LOUIS MASTRANGELO: It has to be a suitable place. You can't just go anywhere.

CONSTANTINE ALEXANDER: To be sure --

LOUIS MASTRANGELO: I'm not talking about the business, you know. You know --

CONSTANTINE ALEXANDER: Okay. Anyway. The second half of my question is have you thought about legislative relief? I mean in the sense of rezoning this area to make it -- this business legal? I mean, it wouldn't be right abutting or near a business district as you pointed out and we are all aware. It would be a big -- I mean, the City of Cambridge the City Council, in their wisdom or lack thereof, have made this a residentially zoned area. Somebody has decided, as a council, they very want to make this area residential. If it's not residential now, we're going to push it into residential except for the extreme cases where we

grant Variances.

ATTORNEY JAMES RAFFERTY:

Mr. Chair, but that analysis ignores the fact that it's approved for non-residential use now.

CONSTANTINE ALEXANDER: But not for the operation of a retail.

ATTORNEY JAMES RAFFERTY: Sure, but if the focus is this is supposed to be residential, the irony is there's a residential dwelling unit on the second floor and that was the subject of a complaint as well by the same complainant in this case. But the issue here is not simply -- I mean, the notion that -- I agree, Use Variances should be given sparingly. But you have a report and a recommendation from an agency that's responsible for the drafting and

commenting of the Zoning Ordinance, the Planning Board. Two of the members of the Planning Board served for many years here. They, I don't think, in making their recommendation, suggesting that the Board act favorably upon this with appropriate conditions were ignoring the admonition of the court to say that it should be done sparingly and under extraordinary circumstances. They are not in the business of ignoring the intention of the Council or the intention of the Ordinance. I think that has an incredible amount of weight worthy of consideration as the Board conducts its deliberation. The fact that the Planning Board statutorily charged under 40-A of our Municipal Ordinance to be the chief planning agency for the City is recommending that this is

a use.

CONSTANTINE ALEXANDER: I will read that recommendation, the memo from the Planning Board, but my comment on that is you're correct in your description of the conclusion, but I don't find it a ringing endorsement for the --

ATTORNEY JAMES RAFFERTY: I was present. I heard the testimony.

CONSTANTINE ALEXANDER: Well, I've seen the letter. We have a conclusion.

ATTORNEY JAMES RAFFERTY: I would respectfully suggest it doesn't capture the enthusiasm, because the -- they had an opportunity to hear not only from me, but from Ms. Smith who told them the reasons that she opposed it. So they had a full hearing on the matter.

CONSTANTINE ALEXANDER: I'm just

simply saying I'm not sure their conclusion is -- more reason.

ATTORNEY JAMES RAFFERTY: Well, on the substantive question as to whether that Board would take a different view of the integrity of the Zoning Ordinance than this Board, I think is somewhat unfair to them to suggest that they would be contravening in making a recommendation, they would be advocating that you contravene land use policy in the city. They reached a different conclusion, that's all I'm offering.

CONSTANTINE ALEXANDER: Anyone else wish to speak in opposition?

Let's see, Mr. Brandon.

MICHAEL BRANDON: Thank you, Mr. Chairman and members of the Board. My name is Michael Brandon. I live at 27

Seven Pines Avenue. And my eyes are kind of watering from all the smoke in the room that's been blowing around. And I hope my friend Mr. Rafferty hasn't thrown his back out trying to put the relevancies before you to distract you from the issues that are actually before you.

The question of how good these sandwiches are --

CONSTANTINE ALEXANDER: That's irrelevant.

MICHAEL BRANDON: My mouth is watering. It's all irrelevant.

The family history. The proponents. That's great. I'm sure some of the homeowners are perhaps veterans and long-term Cambridge residents. None of that is relevant to what's before you.

The things that are relevant,

possibly, I mean I think the arguments are being made before the wrong body. All this about the wonderfulness of the restaurant, and I believe it, and that's why it's so successful and grown so good. But, you know, that's an argument to be made to the Licensing Commission. I assume that there's a Common victualler's license that --

CONSTANTINE ALEXANDER: I don't think the Licensing Commission -- they couldn't -- they grant a license to a business that can legally operate in the space.

MICHAEL BRANDON: So it doesn't have a city license --

CONSTANTINE ALEXANDER: The Licensing Board -- the City Council can -- license body they call it, like the

Zoning Board. I believe that's the only body besides ours that could allow the restaurant to continue.

MICHAEL BRANDON: No, the Licensing Commission.

CONSTANTINE ALEXANDER: I don't believe that's the case.

MICHAEL BRANDON: Mr. Rafferty can explain to you that they grant for sit down --

CONSTANTINE ALEXANDER: Am I wrong, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: Are you wrong, Mr. Chairman? Never in my experience. And certainly when contrasted with the legal analysis of the speaker, I would place all my confidence in your legal accuracy.

MICHAEL BRANDON: So is

Mr. Rafferty saying that --

CONSTANTINE ALEXANDER:

Licensing -- he's saying that in a very flattering way.

MICHAEL BRANDON: That the License Commission does not license Common victuallers --

TIMOTHY HUGHES: Michael, can you get the point, please. This is going on too long. I can't stand this. This is not a dialogue between you and Rafferty.

MICHAEL BRANDON: I'm sorry.

TIMOTHY HUGHES: You're speaking to the Board. You're testifying now. Get to the point. What is your point?

CONSTANTINE ALEXANDER: I think he's making the point.

MICHAEL BRANDON: My point is is that if you want to talk about some of the

things that are being talked about such as clean hands, my question is, is he -- is the proprietor currently licensed for what he's doing? The reasons for those licenses is the fire department comes in and inspects, makes sure there's safe egress. I'm not familiar with the property. I don't know if aisles are wide enough. If the fire suppression equipment -- sanitary inspections are one thing, you know. So I hope he's keeping the food cold and so forth. But there are other things, that's why it's there, to --

UNIDENTIFIED AUDIENCE MEMBER:

You're not familiar with it.

CONSTANTINE ALEXANDER: Please, sir. Let him speak. I don't want anybody speaking out of turn.

MICHAEL BRANDON: Thank you,

Mr. Chairman. And I'm sorry, if I've upsetting some --

CONSTANTINE ALEXANDER: Just get to the -- as Mr. Hughes -- get to the point, please.

MICHAEL BRANDON: All right. So that's one board that the arguments you've heard might be relevant.

The other is the City Council. They're the ones who established the Zoning. The Zoning is quite clear. If -- and I've seen this Board wisely, in my opinion, deny Variances that weren't appropriate, especially Use Variances. You've told other applicants to go and try to change the Zoning and they've done it. The Council has up-zoned properties, several in Porter Square that I've know of.

The other thing is the precedent is if you allow this, than why not indeed for the neighborhood to open a hotel as some people have disingenuously described it, you know, by getting a Variance.

It's -- you're not here to rezone by Variance. That's the Council's and the Planning Board. And I understand if it was just two members, that's a minority of the Planning Board who may have said, you know, put some conditions on it. And the Council often doesn't listen to them. They just Monday night completely ignore the recommendation from the Planning Board. So I hope you'll follow your past approach.

The other thing that Mr. Rafferty has not gone through is there are, as you know, very strict requirements before you

can issue a Variance, especially a Use Variance. But any, even a Dimensional Variance. And you work very hard at this. I saw you earlier tonight struggling with it, and those in my view have not been said. There's no hardship here because the hardship, although I believe it was innocent, and you know he may not have known, but it was of his own making. You know, he failed to call Inspectional Services. He failed to get an attorney. But that's -- the courts are clear, you know, we can look at the case law, that a hardship of of your own making is not the legal hardship.

The fact that the second criterion is the structure. And as I understand, he's saying the structure is inconducive (sic) to his business. Well, his business

is not legal in that spot. So that makes no sense to me.

And then finally does it derogate from the intent of the Ordinance? The broad intent of the Ordinance is to make businesses thrive and make residences thrive, and that's why we have zones. And they have light and air for neighbors and not fumes from -- that's why it's divided that way. And in Cambridge we're so compact that it's hard. You know, well, should it be here? You know, or the rest of the district is business, fine, go argue that to the City Council, put a, you know, petition in. Are you gonna spot zone this property or you gonna do the whole street? I don't know. But it's -- that's where the decision needs to be made.

As far as the public good, yeah, the public's good is served by a really good restaurant and by entrepreneurs succeeding, but not at the expense of other people and that's not good. And what's really detrimental to the public good in my opinion is not abiding by the laws, you know, the laws says this then, you know, that's it. You know, you change the law, but you obey and you don't continue to operate when you have an order to shut down that's been upheld by this Board and it's still operating.

So, thank you.

CONSTANTINE ALEXANDER: Thank you, Mr. Brandon.

Okay, anyone else wish to speak in opposition?

RAY FAULKNER: Hi. My name is Ray

Faulkner and I live at 11 Blackstone Street in Cambridge. And I've been here -- I've had the sandwiches. They're great. I have nothing against the lobster sandwiches. I don't think anybody does. But I live on the backside of him and his vent comes out to our parking lot and into our windows. Okay? So if his diners were sitting in our parking lot, they would leave immediately and they wouldn't sit there and eat that. And in the middle of summer when it runs all day long, and that smell permeates into our building and anybody that lives there has to keep their windows closed. Okay?

So it's a definite nuisance in terms of the way it's vented. It vents out the side of the building. It doesn't even go to the roof. I thought there was a

requirement that vents go to the roof.
But apparently not in this case.

CONSTANTINE ALEXANDER: Okay.

RAY FAULKNER: Okay?

CONSTANTINE ALEXANDER: Thank you.

RAY FAULKNER: And there are other residents that live on Blackstone that have the same problem.

CONSTANTINE ALEXANDER: You have a question.

BRENDAN SULLIVAN: How long have you been behind?

RAY FAULKNER: Since 1999.

BRENDAN SULLIVAN: Okay.

And when did the impact start? I guess what I'm trying to do is find a timeline. You know, back as to when it became a full-fledged restaurant with the blowers, with the --

RAY FAULKNER: I don't know when he started serving sandwiches, I don't know exactly when that date was or anything else. The lobsters have been there --

BRENDAN SULLIVAN: Yes, but I mean like the blower and stuff like that, when did you notice that it was starting to become a nuisance if you --

RAY FAULKNER: I've noticed all along. But the assumption was that people get permits to do things. And now I understand there's no permits. There's sheds that have been built that are right up against our property. No permits.

BRENDAN SULLIVAN: All right. So we're going back 15 years. Is that what you're saying?

RAY FAULKNER: No, I don't know if

it goes back 15 years. I'm just saying it goes back a ways. I don't know how far it goes back. But it's always been a nuisance. Okay? But there's an assumption that people follow rules and regulations and get permits for things. Now that I know that there's no permits for anything, okay, including the sheds, including the business, including anything, it's -- this is a joke. It's ridiculous.

CONSTANTINE ALEXANDER: Thank you.

RAY FAULKNER: Most people have to abide by rules and regulations.

CONSTANTINE ALEXANDER: Does anyone else wish to speak in opposition?

Ms. Hoffman.

HEATHER HOFFMAN: Hi, my name is Heather Hoffman. I live at 213 Hurley Street and I just want to repeat one thing

that I said in the hearing in the other case that involved this, and that is that the laws -- you know, the Ordinances of this city are for the benefit of the public. And if the City, for whatever reason, doesn't enforce them, it is -- it is still the public's interest that has to be served. And so while I can say I'm sorry that someone innocently or otherwise fell afoul of them, it is not this Board's problem and it's not the city government's problem that the rules were not followed because it's the public's interest that is to be served.

Thank you.

CONSTANTINE ALEXANDER: Thank you, Ms. Hoffman.

Anyone else? Ma'am.

KIM COURTNEY: Hi, I'm Kim

Courtney. I'm a Cambridge resident and attorney and I'm also the founder of the food business association, and we have around 450 members who are local food entrepreneurs. Many of them are trying to open businesses right now in Cambridge. In order to open a business in -- a restaurant in Cambridge, and he does have a -- sit down tables. You need to get a commercial lease which is expensive. You need to get a Common Victualler License from the License Commission. You need to hire architects. You need to get permits. Um, hire contractors. You need to abide by accessibility standards and fire standards and bathroom standards. That's all very expensive. So for 20 years he's operated an illegal restaurant with an unfair market advantage, and that harms

all of Cambridge businesses.

So as much as I sympathize with his, you know, if he would be required to shut down and move, I think that that's a fair result for him to move. There are plenty of commercial real estate spaces. I'm aware of one at 1001 Mass. Ave., so -- that is available and he can move there if he wants to. And, yeah, my main question has been asked many times tonight is why do we have Zoning laws at all? Because if we pass this tonight, then I'm not sure why we have the Zoning laws.

I also haven't heard any discussion about hardship, and that's a primary requirement. Mr. Rafferty hasn't pointed out any hardship. Operating an illegal restaurant for 20 years is not a hardship.

CONSTANTINE ALEXANDER: To that

point, Mr. Rafferty did deal with that in his written submission. He has chose maybe to -- maybe it's an oversight.

KIM COURTNEY: I haven't read that. But I also --

CONSTANTINE ALEXANDER: And hardship, as Mr. Brandon characterized, and correct me if I'm wrong, if we don't grant relief, he'll have to shut down a substantial business. Or not substantial. A business --

KIM COURTNEY: Right.

CONSTANTINE ALEXANDER: -- that he's been running for 20 years.

KIM COURTNEY: Right. Okay.

CONSTANTINE ALEXANDER: Whether that's a sufficient hardship is another questions, but he has to address the question of hardship.

KIM COURTNEY: Okay, yeah. Well from my perspective as an attorney, I don't consider that to be a hardship.

CONSTANTINE ALEXANDER: Fair enough.

KIM COURTNEY: And the supporters, you know, that's great that he has a lot of support for his restaurant. That's wonderful. So when he moves it and opens up somewhere else, he'll have a lot of followers. And, you know, he'll have to comply with all of the requirements that the rest of us have to comply with in order to compete in a fair market economy and that's the way it should be.

Thank you.

CONSTANTINE ALEXANDER: Thank you.
Anyone else? Sir?

XAVIER DIETRICH: Yeah, Xavier

Dietrich --

CONSTANTINE ALEXANDER: You're now going to tell us your name.

XAVIER DIETRICH: X-a-v-i-e-r
D-i-e-t-r-i-c-h. And I also oppose --

UNIDENTIFIED AUDIENCE MEMBER:
Cambridge resident?

XAVIER DIETRICH: Cambridge
resident.

TIMOTHY HUGHES: Address, please?

KIM COURTNEY: Nope, not required.

TIMOTHY HUGHES: Yes, it is in
open meeting law.

KIM COURTNEY: (Inaudible).

TIMOTHY HUGHES: Everybody else
has given their address.

CONSTANTINE ALEXANDER: You can
give us your address.

ATTORNEY JAMES RAFFERTY: He's

running for City Council. You can look it up.

CONSTANTINE ALEXANDER: One at a time. What?

KIM COURTNEY: Respectfully, Chairman, it's not a legal requirement.

CONSTANTINE ALEXANDER: It's not a legal requirement, but as Chair of the meeting I can impose these requirements and I'm not going to allow you to speak unless you give us the address, your address. If you don't want to give us your address, you're not going to speak.

UNIDENTIFIED AUDIENCE MEMBER:
Just make one up.

KIM COURTNEY: We'll file a complaint.

CONSTANTINE ALEXANDER: He's not speaking.

Anyone else wish to speak in opposition?

KIM COURTNEY: Okay, then.

CONSTANTINE ALEXANDER: Going once. Going twice. Okay, I'm going to close oral public testimony.

I've asked you some questions already, Mr. Rafferty. Anyway, do you have any final comments? You've addressed my questions about moving to another location or getting -- seeking legislative relief. So that's in the record. But anything else you want to add?

ATTORNEY JAMES RAFFERTY: Well, two things. One is there are four additional individuals, two of whom who live on Putnam Avenue that were here this evening and were unable to remain and asked that their support be entered into

the record. There was some comment earlier.

Just in summary, I think the Board is appropriate in its high level of scrutiny when evaluating Use Variances, but if the case were that every time a Use Variance is given, then the legislative intent of the Council is ignored or rezoning occurs, then it would not exist within the Ordinance the authority for Use Variances to be given. And it is clearly within the authority of the Board to grant Use Variances, and there are Use Variances in very close proximity to this use for retail operations. And I think that the direction the Board should follow is what the Court said in the Boston Edison Company case versus the Boston Redevelopment Authority; that the Board in

Use Variances, particularly in Use Variances in residential districts should examine the surrounding uses. As I said, it is not a case of if this use were not there, this would be a residential use. There's all types of options here. It's a highly desirable location. One could build condos. One could put up multi-family. It's a Residence C-3 District. I don't think that's the place the Board needs to apply its analysis. I think the Board needs to examine what is before them in the form of the application and what the variance seeks to do.

The Variance seeks to allow for a use to continue that's been there for some period of time, and the relevance of that is, has everything to do with the Board's ability to assess the impact of this use

on surrounding uses. Mr. Mastrangelo could speak for a minute or two to what I think was a very relevant question by Mr. Sullivan, because I had the same question. How is it that over such a period of time this business seemingly peacefully coexisted with its principal critic this evening? And I've done my best to understand that. And I've attempted to engage with counsel for the abutter to try to understand, well, what is it about this that we could return to a level of peaceful coexistence here? And I haven't been successful in figuring that out. But it came to me through third parties that the picnic tables are a more recent phenomenon. And I discussed with Mr. Mastrangelo -- that's what I want to close with asking the Board focus on the

conditions, that the restrictions are in place. And I explained to Mr. Mastrangelo that the Board has challenged tonight because they understand that a Use Variance in this location would run with the land. So that it would be appropriate to limit the impact of this to the experience he has now. He doesn't serve breakfast. He doesn't open before eleven. He closes at six. Those are all conditions that you should offer to the Board by way of consideration. Those are mitigating factors that the Board ought to be able to evaluate, because at the end of the day, the hardship does exist. The hardship is essentially related to the structure that is there today. The use of the parking -- it was a commercial parking lot. There has been commercial activity

on that lot and in the premises for nearly decades, 50, 60 years. The odors that waff through the property are not from this use. Mr. Mastrangelo will tell you, the ventilation -- he boils lobsters. There's no Fryolator, there's no cooking. He -- his testimony, his experience is right across the street on Putnam Avenue. There is a restaurant, popular restaurant. And like many restaurants, fumes, odors, aromas, not necessarily noxious, do waff across the property. It's not his aroma --

LOUIS MASTRANGELO: There's a northeast wind.

ATTORNEY JAMES RAFFERTY: You might -- can he just conclude with his own -- because this, you know, this isn't a, this isn't a speculative venture here

in the sense of well, he's got all of these other options. What you heard tonight was genuine testimony from people in the neighborhood speaking to the value of this. And that's what the commentary of the Planning Board was. I was there and the Planning Board was also mindful. So if this were -- and the law would suggest that understanding the difference, the impact the use has on a community, is highly relevant for a Use Variance. So if this was Panera wanting to have another outlet or as we talked about earlier, if this was a purely residential street without any mixed uses on it, I think it would fail under the analysis that the court directs you to do. Look at the surrounding uses and understand its impacts. This is a very different

situation. But as far as compatibility with other neighbors, I just like Mr. Mastrangelo to conclude by sharing with the Board the conditions that you experienced across the street. And this isn't critical of that business, but that's where the --

LOUIS MASTRANGELO: No. It's just that they cook fish and clams, and any time there's a northeast wind with a breeze, it comes right through. It comes right through and goes right passed Mrs. Smith's and in the back there. Any other wind, any other -- and all I cook is lobsters. We don't cook anything. Just the smell of lobsters. That's all that comes out, and it dissipates almost completely. That odor comes from -- they've had problems with it

before and they moved their ventilators so the people next to them wouldn't smell that odor. And they fry a lot of fish all the time. I know, I supply them with the fish. And it's all good stuff. But when you fry it, you know, yeah.

CONSTANTINE ALEXANDER: Okay.

Well since you -- I closed public testimony but you want to respond to the --

RAY FAULKNER: Yes, I do. The odors that I'm talking about are directly from his vent. They're not from across the street.

CONSTANTINE ALEXANDER: Okay.

RAY FAULKNER: They're from his vent.

CONSTANTINE ALEXANDER: Okay. I don't want to get into a debate. Thank

you.

We'll give you a chance to express your views.

ATTORNEY A. NEIL HARTZELL: I just want to hand up this letter that I referred just a signature that you had.

CONSTANTINE ALEXANDER: Two things: One, I want to turn to the conditions that you proposed and which would be if we grant relief, these would be imposed on Mr. Mastrangelo and see if the board members, before we take a vote, whether to grant the Variance, are satisfied with these or want further ones.

But I do want to make comment. We have granted Use Variances before and generally in the area, but it's only because of structures and for retail use, you're absolutely right, but that's only

half the story. We've granted them because there are retail structures -- there are structures that are only usable for business, and they happen to be in a business -- in a residential area and that's why we granted relief.

ATTORNEY JAMES RAFFERTY: Well, I'm not sure who the we refers to, but that wasn't the case in the Variance that was granted for the Whole Foods.

CONSTANTINE ALEXANDER: That's many years ago. I'm talking about the current practice of this Board. And just to be clear, we had a case on Western Avenue where -- in an area just like this, where a petitioner bought a residential home, wanted to convert it to an office, many businesses around, but there are also

a lot of residences around and we said no. Because that's not -- that doesn't justify a Use Variance. That's not your case. You've made a different compelling personal story, but in point of fact, we're not -- we don't grant Use Variances that easily and if we do, it's generally because there's no other alternative for the use of the structure other than to grant the Use Variance.

Anyway, I don't want to debate this further.

The restrictions being proposed by the petitioner are volunteered by the petitioner, should we grant relief, and which would be subject, make the property subject to are four in number.

First restriction would be the use of the property as a restaurant with

retail sales shall be limited to the ground floor of the accessory structure and the paved area surrounding it.

Two, the rear yard of 269 Putnam Avenue shall not be used as part of the restaurant/retail use. Picnic tables will be removed, and access will be restricted by a fence with a gate.

Three, the business shall not be open to customers prior to eleven o'clock a.m. and shall close at six o'clock p.m. with the exception of Sunday when the business will close at four o'clock p.m.

And four, deliveries to the business will not occur before seven o'clock a.m.

So that is what Mr. Rafferty has been referring to. I'm not sure members of the audience saw these, but that's what would be imposed should we grant relief.

Okay. We do have tons of written commentary. I'm not going to read it. I'm certainly not going to read it. As Mr. Rafferty -- let me start with the Planning Board. The Planning Board has written a brief memo to us, which I will read into the record.

(Reading) The Planning Board discussed the Variance request to allow the retail sales and restaurant at the October 6th meeting. The majority of the Board expressed the view that the retail is an asset to the community and supported favorable consideration of the requested Use Variance with reasonable restrictions to protect the neighboring residents from impacts from the restaurant use. Some board members expressed the view that without knowing more about the history and

specifics of the case, they would leave the decision to the Board of Zoning Appeal without comment.

That's the Planning Board's views on in case. As Mr. Rafferty has submitted, a petition signed by someone said a thousand names in support. And we've got --

ATTORNEY JAMES RAFFERTY:

Mr. Chair, can I ask that you enter the -- on the cover letter of accompaniment that I've identified that, because my cover letter identifies the number of residents on the petition and there are three categories --

CONSTANTINE ALEXANDER: Yes, there is.

ATTORNEY JAMES RAFFERTY: I'd like the record to reflect that if it might.

CONSTANTINE ALEXANDER: Sure, I

would be happy to do that. I should have done it anyway.

The petition contains the signatures of 554 citizens who reside outside of Cambridge. Also included herein are the names of 2,040 individuals who expressed their support for this use on-line.

ATTORNEY JAMES RAFFERTY: I'm sorry, you missed the first part of the letter.

CONSTANTINE ALEXANDER: The petitioners support of Alive and Kicking Lobsters?

ATTORNEY JAMES RAFFERTY: You started with the 500 outside of Cambridge.

CONSTANTINE ALEXANDER: You're right. Thank you.

Please note that the petition has been signed by 1,264 residents of

Cambridge. Thank you. I missed that.

We also have letters in opposition or petitions in opposition. I'm trying to find the petition so I have an idea how many people have signed up. I think about roughly 15 people who have signed a petition in opposition. And they say they are strongly -- I'm going to just summarize the letter. Strongly opposed to the request for a Variance. And I'm not going to go beyond that. I mean, the point being is that there is neighborhood opposition to the relief being sought tonight.

And I think that's it in terms of what I'm going to put into the public record. Anything that's in our files right now is deemed to be part of the record. So I'm just -- because I've not

read it into the record, it doesn't mean it's not being considered by the Board. I certainly have read the file and I'm familiar with the views expressed pro and con, and I'm sure other board members have as well. So with that, I'm going to close public testimony at last. And I think we're ready for discussion.

TIMOTHY HUGHES: A couple of people that have spoken up in opposition alluded to the fact that you're operating without proper licensing or inspections. Can you address that, please?

ATTORNEY JAMES RAFFERTY: The premises are inspected semi-annually or annually?

LOUIS MASTRANGELO: I think twice a year.

ATTORNEY JAMES RAFFERTY: And they

have a food handlers license and they
have --

LOUIS MASTRANGELO: And
Serve -- SafeServe.

ATTORNEY JAMES RAFFERTY: And the
food handler's is issued by the health
inspectors of Inspectional Services.

The property does not operate with
the Common Victualler's license from the
Licensing Commission.

CONSTANTINE ALEXANDER: So that's
another element of which you're not
complying with the law of the city?

ATTORNEY JAMES RAFFERTY: Well, I
wouldn't go that far. That's a
conclusion -- Common Victualler's licenses
have a variety of applications. If the
food consumed on the premises is typically
the standard as to when a Common

Victualler's license is required, and it's never been clear to me what the role of these picnic tables are. If someone were to simply operate a seafood market, even one that sold a lobster sandwich to the public, that would be a retail use which would not require a CV license.

CONSTANTINE ALEXANDER: But the picnic tables are there presumably for people who buy the food. I'm sure people from the other side of East Cambridge don't bring their lunch over and eat their lunch, lunchbox at the picnic tables.

ATTORNEY JAMES RAFFERTY: Not that we're aware of. But when I inquired about the picnic tables, I learned that the picnic tables were placed there and people tend to avail themselves of it. And I, so it's for that reason, frankly,

Mr. Chairman, that I suggested that the picnic tables in that location be removed because I do think that introduces a whole other aspect. And we were provided photographs of people at the tables and in proximity. And, frankly, it was an attempt to say, okay, how can we limit this? What is the core nature of this business? And the picnic tables, and I think the activity around the picnic tables, perhaps has increased in the past few years than had historically been the case. I think the number of tables has probably increased. So it was my recommendation, which Mr. Mastrangelo accepted, is that that area no longer be associated with the operation.

CONSTANTINE ALEXANDER: And removing those tables will avoid any

problems for a Common Victualler's license, too, I would assume.

ATTORNEY JAMES RAFFERTY: I believe so. We would definitely explore there. It's the same department that licenses tourist houses and lodging houses. They're very familiar with the area. So we will, we will -- I know there's been inquiries about them. And so I think they'll be looking at a lot of the uses here, both with this property and the adjoining property because -- so suffice it say that I wouldn't want to say definitively, but yes --

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: It's that aspect of the use that does trip over the CV.

TIMOTHY HUGHES: In your petition

you are asking for limited retail food sales and a restaurant.

ATTORNEY JAMES RAFFERTY: Correct, yeah.

CONSTANTINE ALEXANDER: The business, you want to continue the existing business which is retail and seafood.

ATTORNEY JAMES RAFFERTY: Right. So I suspect that, but just not in the backyard --

TIMOTHY HUGHES: If we granted a Variance and it became obvious to Inspectional Services, that you need a Common Victualler's license, that you would get it?

ATTORNEY JAMES RAFFERTY: We would need to apply for that, correct.

CONSTANTINE ALEXANDER: Okay?

TIMOTHY HUGHES: Yes. Well, I suppose we should -- if the restaurant aspect of this is being pursued with or without picnic tables, then, that I think we should make that clear in the motion, also? We don't have to.

CONSTANTINE ALEXANDER: The Common Victualler license, isn't that the Licensing Board or am I wrong?

ATTORNEY JAMES RAFFERTY: It is. But if the relief isn't provided, the applicant couldn't -- there's a Zoning sign-off required of the license application. So to apply for a CV, the restaurant has to be an allowed use. So at the moment it would appear the restaurant is not an allowed use, so that's why the relief speaks to retail and restaurant. It would then be a

determination by the License Commission around the CV. So that's correct.

CONSTANTINE ALEXANDER: Okay.

Anything further you want to say at this point?

TIMOTHY HUGHES: Yeah. Would you be amenable to altering or beefing up your venting system?

LOUIS MASTRANGELO: Well, I'll have it checked out and see what's -- if there's anything wrong with the vent system. The -- I just cook lobsters. There's nothing else that comes out of it.

TIMOTHY HUGHES: I, you know, I didn't examine the property. I don't know where it comes out in relation to the neighbors.

LOUIS MASTRANGELO: Do we have -- I could have Inspectional Services

come out and inspect it.

TIMOTHY HUGHES: Can it be raised up, you know?

ATTORNEY JAMES RAFFERTY: I think we can agree to it.

THOMAS SCOTT: Is it vented through a hood system?

ATTORNEY JAMES RAFFERTY: That's a good question. Mr. Scott's asking is it vented through a hood system? How does the --

LOUIS MASTRANGELO: It's vented through an acorn ventilation system.

ATTORNEY JAMES RAFFERTY: What does that mean? So, what do you --

LOUIS MASTRANGELO: It's a commercial --

CONSTANTINE ALEXANDER: Do you have a fan that blows it out?

LOUIS MASTRANGELO: No, I have a hood in there. And all the hood picks up is the steam that comes off of the lobster tank. I mean, the kettle that we cook the lobsters in. We open the kettle, the steam goes up, and we put the switch on and suck the steam out. That's all there is. There's no cooking oil.

CONSTANTINE ALEXANDER: Anything further?

UNIDENTIFIED AUDIENCE MEMBER:
(Inaudible).

CONSTANTINE ALEXANDER: Sir, please. Enough.

TIMOTHY HUGHES: No.

GEORGE BEST: I have a few questions.

CONSTANTINE ALEXANDER: George?

GEORGE BEST: So first of all,

what are your hours of operation?

LOUIS MASTRANGELO: From eleven o'clock in the morning until six o'clock at night.

GEORGE BEST: Okay.

CONSTANTINE ALEXANDER: Except for Sunday.

ATTORNEY JAMES RAFFERTY: Except for Sundays.

LOUIS MASTRANGELO: Sundays is four o'clock.

GEORGE BEST: And right now I guess you don't make tons of money to move. Would it be a hardship for you to move somewhere else in Cambridge and establish the same business?

LOUIS MASTRANGELO: It would be a big hardship to do that because you have to have the right place and you have to

have the right facility, and it's just -- you have to install tanks, and it's got to be a big place. It can't be a small place. I got a small place right now which is, which complies with Hasson (phonetic), and --

CONSTANTINE ALEXANDER: But you have a small place now. Why if you move, why do you have to get a much bigger place? I don't understand that.

LOUIS MASTRANGELO: You have to get equipment. The way the equipment fits in there. I guess I probably have to get new equipment and --

CONSTANTINE ALEXANDER: Yeah, so? You get new equipment. You may, it may be -- obviously there's a cost associated with that. But you don't necessarily --

LOUIS MASTRANGELO: Well, first of

all I want to own the new place. I don't want to pay anybody rent.

CONSTANTINE ALEXANDER: I understand that. But the point is if we don't grant you relief tonight, your only alternative is to move your business, other than closing it down, move your business to a rented place and that's a consideration for us to --

LOUIS MASTRANGELO: It wouldn't be profitable not the way I operate.

CONSTANTINE ALEXANDER: It wouldn't be profitable?

LOUIS MASTRANGELO: It wouldn't be profitable. Lobsters are very expensive and I hold it down to a minimum for the public.

CONSTANTINE ALEXANDER: Okay. That's your answer.

LOUIS MASTRANGELO: Sorry.

GEORGE BEST: Okay.

And the other question I have for you, you own the property that you're in now?

LOUIS MASTRANGELO: Yeah.

GEORGE BEST: So the economics of this that are bothering me that's what I'm thinking about. Because for you to move someplace and just maintain the business as status quo, it would cost you a ton of money --

LOUIS MASTRANGELO: Yeah.

GEORGE BEST: -- in Cambridge?

So the other question I had, and you mentioned you were handicapped. You mentioned that you were handicapped also?

LOUIS MASTRANGELO: Yes. I'm blind in one eye. Yeah. And deaf in one

ear.

GEORGE BEST: Okay. All right, thanks.

CONSTANTINE ALEXANDER: Anything else? Are we ready on the discussion for the merits or any other questions?

BRENDAN SULLIVAN: Well, just I really hate to prolong this thing.

Ms. Smith, how long have you owned the house next to the establishment.

CONSTANTINE ALEXANDER: The question to you, Ma'am.

BRENDAN SULLIVAN: Yes, how long have you owned the house? Or counsel or whoever wants to answer.

SARAH SMITH: I bought my house three months before Mr. Mastrangelo bought his. I bought mine in February of 1994.

BRENDAN SULLIVAN: Okay.

SARAH SMITH: No, '93.

BRENDAN SULLIVAN: Okay.

And how long have you been operating it B&B out of it?

SARAH SMITH: Since I started.

BRENDAN SULLIVAN: Since the beginning?

SARAH SMITH: Yeah.

BRENDAN SULLIVAN: So, again, I'm sort of troubled as to from 1993 up to 2015 apparently you have coexisted there and yet I guess what we're finding is that the intensity isn't just a new phenomenon within the last year or two, it's been going on for a number of years. So I'm just trying to get an idea of where the tipping point was here.

ATTORNEY A. NEIL HARTZELL: If I can address that, I'm sorry. What's

happened in recent years, now -- I can't say exactly when. Things are just expanding: There's more people, there's more noise, more orders being called out on the microphone. There's more smells coming from the vent and, you know, the customers are milling about and pressing up and these new structures have been built.

BRENDAN SULLIVAN: Okay, has the client gone over and addressed these issues with him?

CONSTANTINE ALEXANDER: Have you spoken to Mr. Mastrangelo about this?

ATTORNEY A. NEIL HARTZELL: I can't speak to that.

BRENDAN SULLIVAN: Well, she can obviously.

ATTORNEY A. NEIL HARTZELL: I

think there were some discussions early on to try to resolve it different ways, but nothing seemed to work.

BRENDAN SULLIVAN: Ms. Smith, have you gone over to him and mentioned to him, the problems, the impact?

SARAH SMITH: I discussed with him when he put a roof over three of the picnic tables that I did not like it and that it was not legal, and he said I know, but the previous one wasn't either.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman. Mr. Sullivan, to your point attorney Anderson informs me that he's had a series of conversations with Ms. Smith around mutual issues, including parking, potential easements, and I don't know if he wanted to add any perspective.

BRENDAN SULLIVAN: Well, I guess

where I'm going with this is if we were to take a draconian view of this and an establishment was coming down before us, a new establishment at this locus and we were to say it's in a C-1 Zone, and we are being asked to grant a Variance. The question is what is the impact of this new establishment at this locus outside of the Ordinance? And we look at that and so on and so forth.

And this is an establishment that has been here for many, many, many years.

CONSTANTINE ALEXANDER: 20 years.

BRENDAN SULLIVAN: And has coexisted and it seems to not have a problem or possibly it has expanded. This is what I'm trying to get my hands around, as to what the tipping point was, a year ago, five years ago, ten years ago, or

whenever? Never been to the establishment. Drove by it a million times and has seen it somewhat creep a little bit, but I haven't really paid too much attention to it. So we look at the impact of what it is. And yet, and, again, Counsel unless you want to refute some of the reviews, and that sort of resonated with me, some of the reviews of the B&B.

ATTORNEY A. NEIL HARTZELL: I can speak --

BRENDAN SULLIVAN: Now, you may come back with ten reviews saying just the opposite. I don't know that. But I'm just trying to figure out if it really has seriously impacted the neighborhood to the point where we should not allow it to continue. And that's the question that I

have right now.

ATTORNEY A. NEIL HARTZELL: Well, I can briefly respond. I think some of the reviews that attorney Rafferty was discussing were from two or three years ago, and that's when the ramp up started of the increase in business, and it does impact it. She has to keep the windows closed. Some of the guests are complaining.

BRENDAN SULLIVAN: Okay.

ATTORNEY A. NEIL HARTZELL: It doesn't impact it.

CONSTANTINE ALEXANDER: I only make an observation, too, that it's just not Ms. Smith who are opposed to it, there are a lot of other neighbors that are opposed to it, too.

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Ready for a discussion? I would be happy to go first, but if anyone else wants to go first, feel free.

TIMOTHY HUGHES: No, go ahead, Gus.

CONSTANTINE ALEXANDER: Thanks a lot, Tim.

Frankly a case like this is a case where I wonder why I sit on the Zoning Board. If I were -- if I ran the zoo like Gerald McGrew from Doctor Seuss, I would allow this business to go ahead. It's a business that's been here for 20 years. It's a business that's somewhat iconic. It does have an identity. There's obviously a lot of people inside the city and outside the city that wants the business to continue. But I also have to

deal with the fact that I'm a member of the Zoning Board of Appeals and I'm charged with enforcing the Zoning laws of the City of Cambridge. And I'm afraid to say I don't think from a Zoning point of view I can vote in favor of relief. The fact of the matter is that you have to meet two things:

You have to meet the standard for a Variance. You need to have a substantial hardship. The hardship has been identified by Mr. Rafferty, you would be forced to close down a thriving business. But the fact of the matter is, rightfully or wrongfully, and I accept your testimony as to you're innocent about it, this business was not supposed to be here when you started it under our Zoning laws. And you did it. And, yes, the neighbors

didn't complain, but you did it. And so it's -- I have a lot of problems with saying it's a substantial hardship that you have to close down a business that you should have never started in the first place.

Your second standard is the hardship is owing to circumstances related to the soil condition, shape, or topography of such land or structures. And especially affecting such land or structure but not affecting generally the Zoning district in which it is located. You don't meet that standard. There's nothing -- this is a standard property. It's got a two-family house. It's got commercial activities which exist as a legal -- I take it's a legal non-conforming use, but it doesn't, you don't meet the standard for the rest

of what you want to do; namely, the seafood restaurant and the retail operation.

So, I look at all of this and with a great deal of regret, but I have to say as a matter of just integrity, I have to vote against this. I do believe that you should seek to go to the City Council. They're the ones that said this area is to be zoned residential, is to be used for residential purposes. And if they want to change it, that's their prerogative and that's where the buck lies.

And to your point, Mr. Rafferty, you cite the case correctly, but I think you mischaracterized it to some extent. The Court said is that in making a decision on a Use Variance, the Zoning Board can look into the basically the general area, the

other non-conforming uses, but it doesn't say you have to grant relief because of those. And I'm very much worried about what I'm going to call zoning creep. If we allow this non-conforming business, what about some business in a residential district near another business area or it has a number of non-conforming uses. We're going to undermine the zoning classification that the City of Cambridge wants. They want certain areas to be used for certain purposes, and we're supposed to vary that only if we meet the very rigid standard that I've identified earlier. And as I said earlier, we have given that relief, but it's only because there is no alternative. The fact of the matter is that someone has got a garage that's been used for years as a -- in a

residential area, and it's been used for businesses purposes and it can't be converted to residential except by tearing it down, and we've allowed the business -- a new business to come in and use that. But we haven't granted relief beyond that in my memory and my judgment.

So, I, I come down with -- regretfully and probably in the minority but I come down on the basis that I could not support a grant of a Variance as requested even with the conditions that have been suggested by the petitioner.

ATTORNEY JAMES RAFFERTY: I understand, but I would only offer my --

CONSTANTINE ALEXANDER: You're not supposed to debate my comment.

ATTORNEY JAMES RAFFERTY: No, but the notion of precedent I'm very

respectful of and I understand the Board. But it cuts both ways. The notion of we don't do that so we can't do that here, and other Variances don't apply. I would only say that the authority rests within the Ordinance of the Board to grant Use Variances. There have been Use Variances granted. They are not on their face something that is in contravention of the integrity of the Ordinance. And I would say that every case, and I know the Board believes that every case is judged on its merits, and the uniqueness is a very relative criteria in Zoning. I don't disagree that the Court doesn't say that that's a dispositive finding. I'm just saying that's a factor assessing this. And this case would be a very different case if this was on a different street in

a different location. And I think the Board would have a much easier time in being able to conclude that the incompatibility of a use like this in a purely residential setting would be so detrimental that it would be, it would contravene the Ordinance.

CONSTANTINE ALEXANDER: I thought you were going to -- I've been very patient, but you're not supposed to debate my conclusions.

ATTORNEY JAMES RAFFERTY: I agree, okay.

CONSTANTINE ALEXANDER: You had your time to make your presentation. You've made it. And I'm giving you my reaction to that.

ATTORNEY JAMES RAFFERTY:
Understood.

CONSTANTINE ALEXANDER: That's where we are.

Anyone else want to speak or we can go to a vote?

TIMOTHY HUGHES: No, I want to speak. I think it was a little unfair to characterize this situation as Mr. Mastrangelo as doing an illegal business. I think when he first started as a wholesaler and he converted his garage as a wholesaler, that that was legal in the district at the time. I think that the business has grown into the retail and restaurant business, and I think he has been given tacit understanding that he was allowed to do that all through the process by licensing, you know, boards all through the -- all along the way for the last 20 years. And

there may be at some point where he realized that these -- this was, you know, a problem and he didn't do anything about it, but he's been getting the, you know, the stamp from the city to continue his process. You know, to continue his --

CONSTANTINE ALEXANDER: Tim, I don't want to argue with you, but I think --

TIMOTHY HUGHES: But you're going to.

CONSTANTINE ALEXANDER: You're right. But the stamp is -- he gets inspection -- the people don't inspect for health reasons.

TIMOTHY HUGHES: I know it's not an Ordinance.

CONSTANTINE ALEXANDER: It's not a zoning issue.

And the only stamp of approval that he's gotten is from Inspectional --

TIMOTHY HUGHES: No, I said all that just to make sure that he's not characterized as being 20-some years of wrongdoing, you know, because I don't think that's the case here. I think the case here is some confusion over Zoning issues on his part. Some confusion on the City's part over Zoning issues until just recently, you know, about -- and, you know, if I look at this map and the way it was rezoned, I'd say there was confusion over the Zoning issues at that point in time, too. I mean, he's butted up against by a BA and a B3, and open space and all around him. I mean this C-1 that extends down into that block between Putnam and Blackstone is mostly not residential.

There's a tiny little tip of residential in which his house happens to stand, you know. And if you look at Western Avenue all the way up with the exception of one block on either side of the street, he would need the same kind of relief, a use relief that he's asking for in the spot where he is now. There's only one spot where you have a BA along Western Avenue. BA-3 along business and along Western Avenue.

I think that Heather Hoffman raised the issue of benefit to the public, and I think that overwhelmingly the testimony is that this is a benefit to the public. And because of that, because of where it sits, where it's situated, because he seems to have been, you know, been given the go ahead, and because we are empowered to

make those Variance decisions in spite of an Ordinance which is, which is foreboding and confusing -- look at this map, you wouldn't even be able to read this, most of these people in here. That we're well within our power to grant a Variance in this situation, and I'd be in favor of it.

CONSTANTINE ALEXANDER: Anyone else wish to speak or go to a vote?

THOMAS SCOTT: I mean, I think, you know, he's been coexisting for 20 years. I think what I heard tonight is that the resistance came about as his business started to expand. And I think we can control that with the conditions that are being imposed self-imposed, but we can add conditions to that as well. So if the PA system is a problem to the neighbor, let's say there's no PA system

allowed. You know, if the structures that are built within the setbacks, complain to the Inspectional Services and those structures will be taken down. So there are, you know, there are things in place that I think can control what he's doing. I think what he's been doing for 20 years has been a great service to the community and I'd hate to see that disappear.

CONSTANTINE ALEXANDER: Excuse me, before you comment. You made a suggestion, Tom, about maybe we need to more conditions in here to make it work. Are we ready to do that tonight or do we, on the basis of all the testimony we've heard do we want to think about it and come back? Just in your view. I mean otherwise we got to sit there and puzzle through before I make my motion to grant

the Variance.

THOMAS SCOTT: Well, I mean the only other two things that I heard was the PA and the structures that are built within the setbacks. And of course the smell. But the smell, again, we can put a restriction in there that it be evaluated. There are charcoal filter systems that can be installed on his exhaust system that can control the smell. There are things that, you know, we can do to I think control the expansion of this business and keep it so that it is a small business within a residential district. Those businesses occur throughout the city.

CONSTANTINE ALEXANDER: Okay, thank you.

George, I'm sorry to cut you off.

GEORGE BEST: That's all right.

The thing that I'm looking at also is the integrity of the individual that comes to us. Okay? And I can believe from things that have gone on in the City of Cambridge that he has heard that he has been grandfathered in. I can believe that. So, therefore, you know, from where I sit, if you feel that you're grandfathered in, why would you go any further you know? So I mean that's just my common sense and my logic about that. If somebody says -- an official says to me that you'll be grandfathered in, don't worry about it, they're changing everything around you, then I'll trust that public servant. So that's, that's where I sit and you would certainly get my vote.

BRENDAN SULLIVAN: Well, I can

almost answer your question to Tom, I would be leaning towards granting this. Now, getting as far as conditions, because I've heard some adverse impact that this has had. But I don't know the extent of that. And, again, we're sort of pushing and pulling and so on and so forth. Not to delay the egg any further, but what I would like is almost a laundry list, if you will, of what the actual violations are and how we could possibly, not maybe all of them, possibly clean-up some of those.

Maybe the tables, so on and so forth. Obviously the exhaust, the noise, and the fumes are the big items. And how those can be ameliorated would go a long way to getting my absolute yes vote and to find out what are these other things that

have impacted the abutters. And until you get a sort of definitive, this is a violation, you know, does it make sense to keep it or to eliminate it or whatever it may be? Obviously the exhaust, the noise, the fan are the big items. And what steps would the petitioner, if we were to grant them, and if we were to make a positive motion, to insert that as conditions.

CONSTANTINE ALEXANDER: And that also goes to my question to Tom --

BRENDAN SULLIVAN: That's right.

CONSTANTINE ALEXANDER: -- to continue the case for a further and more detailed presentation on these.

BRENDAN SULLIVAN: Correct. Correct. In order to do it intelligently I think.

CONSTANTINE ALEXANDER: I think

that's right. We can't do these conditions if we're going to pass this --

BRENDAN SULLIVAN: I don't know, and I would not be comfortable pulling and grasping because I don't know the extent of it. And I would want to know the extent. And some of the things could possibly stay there, so that if we were to make a motion in the affirmative, that it would be with these conditions but also then leave the rest of the package intact.

CONSTANTINE ALEXANDER: What do you mean by the rest of the package? I'm sorry.

BRENDAN SULLIVAN: Building, you know, activities --

CONSTANTINE ALEXANDER: Oh.

BRENDAN SULLIVAN: -- or whatever it may be or something like that, and

maybe not require enforcement. So that when the petitioner did leave here, it was not just then to set off a whole other chain of events and reactions. I think I would like to, if we're going to vote in the affirmative, that once he leaves here and it goes through, that's another whole issue, that then he's able to operate in the clear and not have some of these other issues hanging over it.

CONSTANTINE ALEXANDER: Okay, then I'm going to --

ATTORNEY JAMES RAFFERTY:
Mr. Chair, can I -- and I apologize --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: -- but there's a model that has proven successful, these issues often arise at License Commission hearings. And abutters

have concerns. And the applicants are then told the matter is continued, meet with the abutters, identify the impact issues. Particularly I had a case recently about acoustical issues, ventilation issues, have someone get out there, bring in an engineer. We had a recent restaurant, very popular restaurant The Dumpling Room House.

CONSTANTINE ALEXANDER: At 950 Mass. Ave.?

ATTORNEY JAMES RAFFERTY: Yeah. And a condo building and the condo owners, and we met and, you know, with good engineering, some money spent by the applicant, there are systems as described by Mr. Scott that can be employed that mitigate this. And not to say that we reached complete agreement on every issue,

but a list of impacts is compiled, a proposed mitigation is addressed, and then the Board can be the ultimate decider as to whether the proposed mitigation is adequate.

BRENDAN SULLIVAN: No, we would be the final arbiter on that.

CONSTANTINE ALEXANDER: Well, again, that argues for -- not argues, demands that we adjourn this case -- continue this case, I'm sorry. Continue the case. The burden will be on you to come back to us with proposed additional restrictions beyond this based upon what you described what they do at the Licensing Board. I would urge other board members to think long and hard about what they heard tonight and see if in their own minds what restrictions they

might want, and so they can be better evaluate what you're going to propose to us.

So, on this basis --

BRENDAN SULLIVAN: Does that make sense, Tom, and, Tim?

THOMAS SCOTT: Yes, I agree.

TIMOTHY HUGHES: Yes, I wouldn't argue with that. I would advise you to air on the side of over licensing or over inspection or over thinking this, you know, to the point where we covered every possible contingency.

ATTORNEY JAMES RAFFERTY: I think we've got a great incentive at the moment to try to be as thorough as possible in addressing these issues.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that -- first of

all, what's the next available
case -- date?

SEAN O'GRADY: December 10th.

CONSTANTINE ALEXANDER: December
10th.

Does that give you -- let me ask you
first. Is that enough time for you?

ATTORNEY JAMES RAFFERTY: Oh, I'm
sure.

CONSTANTINE ALEXANDER: Can all
the members of the board be here on
December 10th?

TIMOTHY HUGHES: Yes, I can.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be
continued as a case heard until seven p.m.
on December 10th on the following
conditions:

That the petitioner sign a waiver of

time for a decision. Mr. Rafferty is very familiar with.

That the posting sign that you have up there now, modify it, magic marker, change the date to December 10th, the time to seven p.m.

And that these -- there's no plans. These restrictions that you're going to make -- propose to us in addition to this, make a comprehensive list, be in our files no later than five p.m. on the Monday before December 10th.

And I will tell those in the audience, any time after five p.m. on December 10th you can go down to Inspectional Services and view what the petitioner is proposing. And I'll give you the opportunity at our hearing on December 10th to comment on them, you want

more or less or whatever. But that will be the jumping-off point.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued to December 10th.

(Whereupon, at 11:00 p.m., the

Zoning Board of Appeals

Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

INSTRUCTIONS

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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REASON:

I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a Certified Shorthand Reporter, the undersigned Notary Public, certify:

That the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of November, 2015.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 29, 2022

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