

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, NOVEMBER 29, 2018

7:05 p.m.

in

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green, Member

Andrea A. Hickey, Member

Jim Monteverde, Associate Member

Alison Hammer, Associate Member

Sean O'Grady, Zoning Specialist

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(7:05 p.m.)

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

CONSTANTINE ALEXANDER: We are going to call the continued cases. And as is our custom, these are cases that have started at an earlier date but for one reason or another was not decided and deferred until this evening. And then after that we'll go to our regular agenda. Before I call the first continued case, I'd like to read a statement:

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

And I wish to advise one and all that not one but two, at least two recordings being made this evening. Our stenographer records to assist her when she prepares the transcript of the meeting, and a citizen

of the city has left his tape recorder here and he's also recording the meeting.

Is there anyone else here recording the meeting or plans to record the meeting?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. Okay, with that, let's call on to our first continued case.

* * * * *

(7:05 p.m.)

(Sitting Members Case BZA-016211-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: I'm going to call case No.
016211, 12 Arnold Circle.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair,
members of the Board. For the record, attorney Sean Hope. I am the
Appellant here to appeal a decision by the Building Commissioner that the
definition of the inclusionary housing project does not apply to the property
at 12 Arnold Circle.

Just to go over a little bit of housekeeping. Back in

September we were before the Board and we requested a continuance.

At that time we had believed that we were going to re-file to have a fresh set of five board members. One of the board members was ill and has recently regrettably passed away.

As the Board may also know, there was a parallel track to the BZA case. There was a case in federal district court. That hearing -- we believe -- that was a hearing on October 24th. We believe that the federal district court was going to take up the matter, the affordable housing issue, so we're hoping that the need to come back to the Board would be moot and that there would be a decision either way.

Unfortunately, the justice decided to remand the case back to Superior Court, and then when I contacted the Inspectional Services, the date for the 29th had passed. So we are coming forward tonight. And I am mindful of what the Chair had said the last time. I know that the record is complete. There's lots of information in the file. I do believe that although the Chair, in his wisdom did say present all your arguments to the Board so they can review them and the city can respond. I do think that process having -- excuse me. This is the owner Kenneth Krohn.

The stenographer may want the spelling for the record.

KENNETH KROHN: K-R-O-H-N.

CONSTANTINE ALEXANDER: Mr. Krohn, you're a little bit late so you didn't hear my opening remarks. Are you planning to record this meeting? Because I think you recorded the last time.

KENNETH KROHN: Yeah, I'd like to. I'm sorry, I got held up in traffic.

CONSTANTINE ALEXANDER: All right, so just --

KENNETH KROHN: Thank you.

CONSTANTINE ALEXANDER: Everybody should be advised now that we're having two recordings, we have three recordings being made. Okay, I just wanted to go on record.

ATTORNEY SEAN HOPE: So I do think we presented a host of legal arguments and I think it might have diluted what I believe is the central issue, and maybe the issue that's most germane for the Board. I do recognize learned counsel Bobrowski did have some arguments that were based on case law and legislative history, and I do think that given the forum, it wasn't probably the most appropriate. So tonight I want to

focus on one issue, and I am mindful of the time, so I'm going to try to be succinct. But I do think this is an issue that's germane and appropriate for the Board.

CONSTANTINE ALEXANDER: Before you do that, sir.

Your written memorandum, which was very extensive, raised a whole host of issues. Are you withdrawing all of those arguments other than the one you're going to present now?

ATTORNEY SEAN HOPE: I'm not withdrawing any arguments.

CONSTANTINE ALEXANDER: Okay. I wanted make sure we addressed it.

ATTORNEY SEAN HOPE: Yeah, I'm not withdrawing those, but I want to take the time tonight to focus on the issue that I think the Board -- would be appropriate for the Board in the context of what it typically hears about. And the central issue is does the property at 12 Arnold Circle fall legally within the definition of an inclusionary housing project as amended in 2017.

Before I get into the Ordinance text, I'd like to just provide a

little bit of context for the Board because it's been several months since we had our first hearing where we did get into some of the merits.

So at first, at the first hearing there was a slight inference that possibly myself was looking, that we were searching for a legal loophole. That there was an established and clear law, and that we were looking for a way to avoid to circumvent the newly passed Zoning Ordinance. That is farthest from the truth.

The Ordinance is only a year-and-a-half old. And we're really talking about one section of the entire amendment. Really just that one section that references the two-year retroactive nonuse provision.

Two, in my opinion, and I think this is -- this may be supported, there was a lack of clarity from the department on exactly if this property would be regulated by the Affordable Housing Ordinance. It was a new ordinance. I believe that it was not drafted with the most clarity, and I'll go through some of the details later, but again, this was, this was an intent to go to the Building Commissioner to get a response.

Now I will say this is not the first time that it is maybe a nuance in the zoning and you go to the Building Commissioner. There

may be an answer and they often do seek counsel from the legal -- the Law Department. So I'm not saying that because there was lack of clarity, that you should rule in our favor. I'm just giving you the context of how I believe we got here.

And then lastly, this is an extremely rare circumstances. The idea that you would get a building that's either 10,000 square feet or ten units and that it would sit vacant for a period of two years, in today's market would very rarely happen. It would be very rarely circumstances. This is why I believe there wasn't clarity from the departments on exactly if this particular property would be subject to the Affordable Housing Ordinance.

And then lastly, I just -- also, and maybe I don't need to express this point, but the role of the City in terms of using its zoning power to be able to regulate or to promote laudable goals like affordable housing, energy conservation, historic preservations, those are all acceptable forms of enforcement or power by the city. And I think that the City Council does that -- has made our city better.

So this is not a rejection of government. This is not a

rejection of even an affordable housing ordinance. I think the Board knows both personally and professionally I support affordable housing, and I just wanted to clarify that for the record.

But this case is not about how worthy Mr. Krohn might be in terms of having a hundred percent of the value of his property as he sells it to me. It's not about his age or to be sympathetic or empathetic to his situation. This is solely about applying the law, and whether or not this provision could be applied retroactively.

So --

CONSTANTINE ALEXANDER: Of course, I don't intend to interrupt you, but applying it retroactively is your position. It is not necessarily the only position.

ATTORNEY SEAN HOPE: That's right. And I'll clarify it as we go through the text. And then -- so one other point I just want to make, s that the Board should not be concerned that if you did rule in our favor, that this would weaken -- somehow weaken either the affordable housing ordinance as a whole or somehow weaken the city's ability to have another potential case come after this and use this example. And I

want to remind you of some of the pertinent facts of this case. Just to remind you this is a case that had a Variance back in 1961 to allow from eight to twelve units.

There was a Special Permit for parking that was triggered by the traditional units that was also granted.

And thirdly, there was a Building Permit issued that effectuated both the Special Permit and the Variance. So I just want to clarify.

The second distinguishing factor, so there's not some precedential character, is that very rarely do you have a ten-unit building and 10,000 square feet that is owner-occupied. Majority of cases that if ever come before this Board, these would be a rental property or an income property. And I think that's relevant as I get into how this nonresidential use will come up.

But I wanted to then just express to the Board that I don't think you can create these set of facts, again, to come before the Board. So I will say this is unique.

Now to the ordinance text. So the only reason why this

property would be subject to the, to the definition of an inclusionary housing project, is because of the provision of the two years of nonuse.

CONSTANTINE ALEXANDER: Nonresidential use.

ATTORNEY SEAN HOPE: Excuse me, nonresidential use and not use.

So in the definition of inclusionary housing project, there are four criteria, there are four elements. You meet any of these four, you meet the definition of an inclusionary housing project. And I just briefly want to touch on those, because I think the way this draft is relevant.

So the first one is if you construct -- so it's any development that's 10,000 square feet or ten units that constructs a new buildings or additions. That's the first one.

The second one is if you increase the number of dwelling units or the amount of residential GFA.

The third is conversion of nonresidential GFA to residential use.

And the fourth, and I'll read the exact text, occupancy of an existing building not used for any residential purposes for a period of at

least two years.

I think it's important to note that the first three criteria all require an affirmative step. So if you're going to create -- if you're going to construct a new building or a new addition, you have to go to the Building Department, you have to take an affirmative step. If you are going to increase the number of dwelling units, the same way. If you're going to convert nonresidential GFA to residential, you have to take a substantial step. You cannot mistakenly or haphazardly fall into that category. So I would say that the occupancy of an existing building, not used for any residential purposes, that actually is the one provision that requires the most clarity because there's not an affirmative step we necessarily need to take, right? If you were going to occupy a building for a period of not two years, especially in a case in this situation, this -- and this situation, this was not an intentional step. As we noted the city turned off the utilities to the property. And I am not going to make any judgments on whether the city was right or wrong in doing that. That predates me. There's plenty of information in the file for that. But what I'm saying is that this is not a step that the property owner took nor wanted

to take voluntarily. And I think that's important, because the other three criteria you have to opt into. You can choose to construct. You can convert, but this is the one that you can unknowingly be caught into. And I think that leads to the famous argument which we'll get to.

So, the major issue with the two years of nonresidential use is there are no parameters, right? So, for example, when does the two-year -- when does the two-year time clock for no residential use begin? The text is silent on that.

So, for example, if you had a large building in the 1980s, it was ten units and let's say you even had a Building Permit when it was constructed. And then for -- maybe it was a foreclosure, maybe it was rent control, maybe it was family infighting. The building sat vacant for two years. Later it was occupied. The way this is written, the Building Commissioner rightfully could go and say, hey, you meet the definition of not -- no residential use for a period of two years.

Now I would say that would be what I would, in my opinion, would be an observative interpretation because the building had been reoccupied. You would in effect have the people either leave, move out,

sell the condo. So I don't believe that would be the interpretation that I would have. But the way this is drafted, you could actually -- it could fall into that category. And so I think the problem with that is part of Chapter 40-A provides notice to all the citizens that there's a change in the zoning, that their property might be affected, and they have an opportunity to participate in the zoning process. So if you don't know what property's going to be affected, if you don't know the timeline, then how do you have fair notice and an opportunity to be able to petition your City Councillors and say, hey, wait a minute, there may be an unintended consequence. Or, Mr. Krohn was clear, when the two-year provision started, he could have pulled the Building Permit, he could have made several steps, but it was not clear when that period started.

Also, the Ordinance itself has several examples where they use and they specify retroactivity. So, for example, when this Ordinance in 2016 was being discussed at the Planning Board and the Ordinance Committee, I had clients who had received a Special Permit from the Planning Board, and they were concerned because they hadn't had a Building Permit yet. So they hired me and there are other attorneys who

reached out to our City Councillors and said, we need to have some kind of date so that we can know at what point would this -- because it was 15 percent before, when the 20 percent would have applied. There's an applicability session. It references December 1, 2016. And it says that if you, if you don't have a Building Permit on or before that date and you had a Special Permit, but not a Building Permit, it gave you a clear date at which this Ordinance would impact you. It's very clear. The retroactivity was a fairness argument so that people would know when they were caught in this middle ground whether or not they would be impacted by the Ordinance. So it's clear that the drafters understood the need to specify when something would be retroactive and they have done it in the Ordinance.

Now, in the memo response from the city, I believe they actually, they bypass what I believe is the definition. The response in the memo talks about well, you know, that the Ordinance says it applies to all inclusionary housing projects and it gives these dates, but it doesn't address if the definition even applies. And the definition could only apply if you could lawfully relate back passed what I believe the law says the

date -- the effective date of the Ordinance is.

Now, Chapter 40-A is not silent on when an Ordinance is effective. Chapter 40-A, Section 5, Paragraph 8 clearly states that an Ordinance or bylaw is effective on the date it's adopted by the City Council. So that would be April of 2017. There is -- and it also -- the case law also establishes, and I don't think there's any dispute, that if a project requires a Building Permit or a Special Permit, then it's the first advertisement to the Planning Board in Cambridge's case, the first advertisement, which is December 1, 2016. In the city's response memo, I have heard no legal basis for the idea that this would relate back passed what the statute and the law says.

Now, an Ordinance and a bylaw can be retroactive. All it needs to do is state clearly is that it is retroactive. And that is throughout the Ordinance. They will revert back to certain dates all throughout the Ordinance. This definition does not express that it reverts back, it is silent on that. And I think that creates a fairness and a notice issue where under 40-A the whole reason why there were certain requirements for a Zoning Amendment was to give the public notice.

Mr. Krohn had no notice. And I think absent of expressed language in this or a statutory authority, I believe the Board has to go by what the law says. And the law says, in my opinion, and I haven't heard or seen a differing opinion that is in the date of adoption was the first advertised date. I also don't want it to be lost on the Board that, again, this two-year issue ends Saturday. So the cure for what may have been inadvertent, poor drafting -- and I don't actually think it was inadvertent poor drafting. And I will move to legislative intent in a minute. But actually, December 1, 2016, Saturday's December 1, 2018, so if the Board finds that the definition can't be retroactive, there is not another -- I was on a roll.

CONSTANTINE ALEXANDER: What happened? Try again.

BRENDAN SULLIVAN: Hit the mute button, Sean.

(Discussion about fixing the microphone.)

ATTORNEY SEAN HOPE: So...I believe the impact on -- the impact of the lack of clarity in the definition, I think really removes what I would feel is the notice and fair opportunity to be heard. I think that it's

one of the principles of construction of any legislation. You have to know what the legislation is intended to do, who it will impact, and how it will be applied. And I don't see how this one sentence, the only sentence that ties this property to the Affordable Housing Ordinance can be applied passed the date that the law provides.

Lastly, in the memo, the city's memo, they referenced some legislative history, and they reference a committee report where they have some quotations from some of the City Councillors at the time. And they actually quote Councillor Denise Simmons. She was the Mayor at the time, and she is also one of the most ardent supporters of affordable housing in terms of creation of affordable housing and preserving affordable housing. In that they quote her and they talk about the provision, the two-year provision, with the goal of capturing certain buildings that were not used for two years. As we know, the Zoning Ordinance is a blunt tool, it cannot pick up every nuance.

There's a letter in the file specifically from Councillor Simmons and she finds, and you can read the letter for yourself, and she finds that this particular property based on these set of facts and circumstances

should not apply. To her, in the letter, it is relevant that you have a property owner who wanted to remain in his own home, who never desired to leave. The litigation with the city, and I'm not going to say good faith or not, it was active litigation that was ongoing, she felt that was also compelling.

And thirdly, and this is in the letter, that part of the reason for not repairing some of the health code violations had to do with resources. And so the idea that a building would be -- fall subject to this affordable housing ordinance, specifically for the two years of nonuse, and that was caused by the lack of resources, as well as litigation, was troubling. And so I don't want to categorize. I think her letter is there. But I do think in addition to the lack of a legal basis, the lack of any statutory authority, we also now have legislative intent specifically on this property, and I would say to the Board, that if you have these relevant factors, this is such a rare and unique case that I think the Board should find that the definition of an inclusionary housing project cannot be retroactive passed the date of the first advertisement, and so the time of the two years has not yet run.

CONSTANTINE ALEXANDER: Thank you.

Any questions or comments from members of the Board?

ANDREA HICKEY: Not right now.

CONSTANTINE ALEXANDER: Okay. Does the city -- not yet. Does the city want to respond to any of the comments or make a presentation?

(No Response.)

CONSTANTINE ALEXANDER: For the record, they're shaking their heads no. So there will be no response from the city.

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

Ma'am, I know you had your hand up.

ELIZABETH HALL: She wants to go first.

CONSTANTINE ALEXANDER: Whoever. Come a little closer and give your name and address to the stenographer, please.

ELIZABETH HALL: I'm Elizabeth Hall and I live at the condo association of 15-17 Lee Street. Our property abuts 12 Arnold Circle, the back yards abut, and this has been a concern to all of our association for sometime now. Just speaking specifically some of the issues of the

building itself. When -- there was a tree fell down there several months ago and damaged our backyard for which the owner will not pay even though we have approached him about it several times. There's been squatters in there. Just the building, general disrepair. And we've had, you know, the fire brigade is over there regularly every week which seems to make it obvious that it's not a very safe building. And if there were any sort of fire of any description, they said that they would have to use our yards, our side yards to push through with the truck because it's a cul-de-sac on the other side. There's no way to get through there. So I think similarly some other people on Arnold Circle have more specifics on that, but I just think that it's taken a very long time to get to this point, and it shouldn't have because it's a really dangerous hazard --

KENNETH KROHN: I understand.

ELIZABETH HALL: -- to our association and other surrounding buildings as well.

CONSTANTINE ALEXANDER: I don't mean to put words in your mouth or mischaracterize what you're saying, but your point I think is, I want to be clear, is that you have an unsafe condition right now at 12

Arnold Circle.

ELIZABETH HALL: That's correct.

CONSTANTINE ALEXANDER: And you want some resolution.

ELIZABETH HALL: Yes.

CONSTANTINE ALEXANDER: Not necessarily the resolution that's being sought.

ELIZABETH HALL: Right, but I want something done --

CONSTANTINE ALEXANDER: Understood. So does the City, too, as you know from the legal proceedings.

ELIZABETH HALL: Yes.

CONSTANTINE ALEXANDER: Or you should know.

Thank you for taking the time to come down.

RITA LEIB: Hi, my name is Rita Leib and I live at 10 Arnold Circle, which is right next to 12. First, I'm going to read the letter that I have in your files.

I live at 10 Arnold Circle and I've been there for 45 years. I raised my children here. They went to the Cambridge public schools,

graduated from Cambridge Rindge and Latin. After going away to college, they returned but despite fairly good jobs, neither of them were able to afford to live in Cambridge. My daughter and her family live in Somerville and my son and his family live in Framingham. Of course, this is all too common a situation, and the reason why I and many others have campaigned for the inclusionary zoning provision. While I'm very, very happy that the building at 12 Arnold Circle might be cleaned up and made habitable again, I would like to think that some people like my own children would be able to afford at least one of the renovated units, and I urge you to rule in that way.

That was the original letter, and I do want to respond to the issues brought up now.

That building hasn't been unoccupied just for two years, and it hasn't only been unoccupied since the city took the extreme set of turning off the utilities. It's been many years, at least four or five years, that the Krohns have not lived in it and that no one has lived in that building. I think this is an ideal situation for the inclusionary zoning. It's the intent of the law, and I feel kind of conflicted because as a previous speaker said,

we're very concerned and we want that building -- we do hope some sort of sale can go through and can happen. But I also am committed to inclusionary zoning and would like to see that and believe that by law that was the intent for this building.

And just one added thing, part of our concern is because recently after the tree fell on our building, and in the course of the insurance company coming out to look at it, they have now informed us they will not be renewing our insurance in January because of the condition of the building next-door. So I do hope that in saying that there aren't any more continuances and a ruling can be made.

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

Ma'am, you want to speak?

KAREN KROHN: Was there anybody else who wanted to speak?

KENNETH KROHN: I'll speak after you.

KAREN KROHN: I'm Karen Krohn. I'm Ken's wife.

CONSTANTINE ALEXANDER: Right.

KAREN KROHN: He's lived in the building since 1974, and I've only been there for -- well, in Cambridge for 20 years -- 21 now. And I just wanted to say I honestly have not received any request for help to fix the fencing or what -- I know that there was some lifting going on. And as a matter of fact, when -- I have been there when the police came or the fire department came to check on the squatters and the squatter was me. It's -- the police had told me that the person who had called had been informed that it was the owner or the owner's wife, I don't know what they were told, but that's what I was told. So I -- we -- we've considered that home up until the point when we were forced to sell. We still have because of the expense in moving things. We have a great many of my husband's belongings from the mid to early 70s and he's -- he had real roots in terms of his things, and that's been a struggle to clean-up. And it's been really hard on him and me. And I recognize it's hard on the neighbors, but we -- if it hadn't been for the City -- it felt like changing, trying to change the rules on us. We read the law and it looked clear. We were motivated to sell and get it done within the two-year period. So we would have closed on May I think 19th or 14th? We had plans to

close. The only reason it's drug on this extra now probably be a full year till it's really -- I don't know if you can start, but whenever, you know, the reason it's drug on longer than since May is because of this problem with the -- how much do we -- how much is the property worth when it was in between? We relied on the wording of the law and took it quite literally. My husband is a mathematician, PhD mathematician, and he's certainly logical.

CONSTANTINE ALEXANDER: Thank you, thank you for your comments.

KAREN KROHN: And I'm sorry.

JANET GREEN: Somebody else may want to speak.

CAROLEEN VERLY: Hi. My name is Caroleen Verly. That's C-A-R-O-L-E-E-N V-E-R-L-Y, and I live at 10 Arnold Circle which Rita is my downstairs neighbor and I live on the third floor. And I wanted to really urge the Board to make a decision on this case. To echo --

CONSTANTINE ALEXANDER: We plan to this evening so you don't have to work so hard.

CAROLEEN VERLY: But I sent a letter along with some of

the other owners of 10 Arnold Circle and I wanted to read it.

CONSTANTINE ALEXANDER: Okay. If your point is that you want something happening there because you have an unsafe situation in your neighborhood, that doesn't necessarily go to the merits of what Mr. Hope is arguing for.

CAROLEEN VERLY: That is correct.

CONSTANTINE ALEXANDER: We want to move this case along, believe me. We've had some problems -- not "problems", that's the wrong word. We've had unfortunate circumstances that's delayed the case until this evening. But this evening we're going to decide this case if I have anything to say about it and the process will take it from there. We're doing the best we can.

CAROLEEN VERLY: Okay.

JANET GREEN: And you'll be reading the letter that -- are you holding or it's in the file?

CAROLEEN VERLY: We sent it in.

CONSTANTINE ALEXANDER: My only point is that the need for a resolution of this because of the safety issues is not the issue

before us tonight. The issue is the issue of whether this property is subject to the inclusionary -- is an inclusionary housing project and it needs to set aside two affordable units for -- whether -- if the building gets renovated. So how quickly that happens, I don't know. We're going to render a decision. Then the legal process and the economic process will take hold. And whether it will be quick or short, I don't know. But we can't control that. I don't mean to cut you short, but we do have a long night and we got the message. I think we didn't need your message. We realize it ourselves. This is a bad situation. The City has been trying to rectify the unsafe property -- or deal with the safety issues. It's got court orders and the like, and it's trying its best. Hopefully after tonight, or after the decision is rendered in this case, we'll move -- the property will move one way or another, and your safety issues will be addressed. That's all I can say. But I, you know, unless you want to speak to Mr. Hope's arguments or the City's arguments as to why or why not the inclusionary housing provision should apply, I just would ask not to read the letter. We have it in our files and I just like to move on if you don't mind.

CAROLEEN VERLY: Okay. I think it would have taken just as much time for me to read it.

CONSTANTINE ALEXANDER: Fair enough.

CAROLEEN VERLY: I understand. Can I paraphrase in just a few sentences?

CONSTANTINE ALEXANDER: Go ahead, read it.

CAROLEEN VERLY: I just wanted to illustrate the huge impact of this delay on us, which is -- to elaborate on what Rita said, that when the tree fell on our property, it's caused tens of thousands of dollars in damage, not all of which is going to be covered by our insurance. So we're going to be paying thousands of dollars out of pocket, and our insurance has dropped our coverage. And so we are currently looking for new insurance, and we don't know what we're going to have to pay for it, if we're able to secure it. So we are just very concerned that this be resolved.

CONSTANTINE ALEXANDER: And I'm very sorry for your troubles in this regard. But the City has been trying to do something with this for years with court proceedings, trying to get this property

straightened out, and so far it hasn't happened. What can I say? That's not the issue before us tonight.

CAROLEEN VERLY: I understand.

CONSTANTINE ALEXANDER: Thank you again for coming down though.

Is there anyone else wishing to be heard? Mr.
Krohn -- Doctor Krohn.

KENNETH KROHN: Yes, I'd like to be heard.

CONSTANTINE ALEXANDER: Now, you've spoken the last time and you've written many long memorandums so I hope you're not going to repeat what you've already told us, because again, I want to move this case along.

KENNETH KROHN: Well, I certainly won't be as lengthy as some of the other people.

CONSTANTINE ALEXANDER: I'm sorry?

KENNETH KROHN: I certainly won't be as lengthy --

JANET GREEN: You need to be a little bit closer to the microphone.

CONSTANTINE ALEXANDER: Get a little closer.

KENNETH KROHN: Oh, I'm sorry. I did make a submission on -- dated November 25th. I have copies if people haven't received, haven't had a chance to familiarize themselves with it.

ANDREA HICKEY: I have it.

KENNETH KROHN: Everybody has it?

CONSTANTINE ALEXANDER: I certainly have.

BRENDAN SULLIVAN: Yes.

KENNETH KROHN: Well, I'm -- those are my main -- points that I want to make. The bullet points I wish to make are the ones I outlined in that letter, and I'll just state them very quickly.

First of all, it is an absolute lack letter principle of Massachusetts law that any ambiguity in a statute, if there's any ambiguity in the statute not operates prospectively and not retroactively.

There's -- in this particular instance as attorney Hope has just outlined in great length, it's not clear when the two years is supposed to begin. It could begin and it could begin like in 20 years ago. It just, the stack of the Ordinance is silent on when it begins. And in -- under those

precise -- and the Supreme Judicial Court has held on numerous occasions, and I've cited several of them, that a City Zoning Ordinance is to be treated like any other statutes, interpreted on the same principles that apply to treating -- to interpret any legislative statute. And the rule is equally unambiguous by the Supreme Judicial Court is that any ambiguity must, must be interpreted in favor of perspective effectiveness of the statute only. So that resolves the entire problem. That's the end.

In addition, however, even if there were -- and let me just emphasize that as public officials, your first duty is to obey the law and the law is clear. So that I question whether you really have any discretion to say "Well, we're going to ignore the law because of extenuating circumstances." I just don't think that's within the province of the scope of your mandate.

But even if this were not a question that's resolved in advance, as a matter of equity, I've included a copy of the letter from then Mayor, now City Councillor Simmons, and she's very ambiguous. She knows what the statute was intended, what the Ordinance was intended to do as she's one of the main drafters of it, one of the main proponents of it,

and she said it wasn't intended to apply to a case like this. And she request that the Board grant attorney Hope's petition.

Now I suggest that even if you had a choice, it wouldn't, it would be inappropriate for you to second guess City Councillor Simmons' evaluation of the what the statute was intended.

CONSTANTINE ALEXANDER: I'm sorry, sir. I didn't want to delay this. That's not right. That's simply not right. She was the Mayor. She's now a City Councillor. She can have her own views about what the statute is supposed to mean. That does not mean that the whole city has to just accept that. Since -- let me finish.

The city's legal department is in support of -- the building inspector has said that the -- has rejected her arguments, and it's up to us tonight to decide whether we accept or reject them.

KENNETH KROHN: Well, let me just say in response to that if I may, I know you have little patience for me, I can tell that, but let me just interject it anyways as a matter for the record. That the written submission of the City Solicitor does not address this issue in a meaningful way. There's nothing in what they wrote that controverts the

fact that the statute must operate perspectively.

Anyway, you know, I can't -- I know there's a tremendous political component of decisions that are made in this forum, but I think the law is absolutely precise and despise of this matter and I thank you for your attention.

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

Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We have letters in the file. Many of them have been summarized by the speakers this evening, most of which you've summarized Councillor Simmons' comments, and most of the other comments addressed the safety issues and concerns, we've got to get this thing resolved one way or another. That's a fair comment. And I think it's your point as well, too, sir. We've got to move on.

KENNETH KROHN: I would like to just interject in passing that nobody has spoken to me about any damage caused by the fallen

tree that fell over.

CONSTANTINE ALEXANDER: That's not relevant to our proceeding --

KENNETH KROHN: An allegation was made, and I want to controvert or contest it.

CONSTANTINE ALEXANDER: Anyone else? One second. Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one else.

Mr. Hope, you wanted to say something?

ATTORNEY SEAN HOPE: I think we've said everything. I would only ask that if any of the board members hasn't actually read the Councillor Simmons' memo, I do think that the details of it are important. But if you've all read it, there's no need to read it in the file. You make the decision not the audience. But I would also say in terms of moving this case along quickly and getting the property remedied, one, I believe that the law is clear and I think that you should vote in our favor. That said, if you decided to vote in our favor tonight, it would expedite the ability to

renovate and to move this property forward.

CONSTANTINE ALEXANDER: I understand.

ATTORNEY SEAN HOPE: And so that's not a reason enough, but I'm just, you know, in terms of the health and safety issue. I would also say that while we've had this property under agreement, we have assisted in doing things like when the tree fell over, we have continued to work with the owners to try to make the property as safe as we can until we can move forward and fully repair it. I would also say, too, that we have applied for a repair permit. So part of the integrity of the building -- there was a leak, it froze, it damaged portions of the core. We have applied for a permit to repair that. That is far less than a full renovation permit. And I would say that this cloud on the property, the uncertainty, has made financing and other aspects extremely difficult. I would say that the best result in terms of the property being renovated is to rule in our favor for the reasons that we've stated.

CONSTANTINE ALEXANDER: Okay, thank you.

Okay, now public testimony is closed. Time for us to have a discussion.

Anyone want to go first? I have some thoughts, but I'll -- you want to hear me first? Okay.

I have taken sometime about this --

JANE GREEN: The mic.

CONSTANTINE ALEXANDER: We've had as I've said several times already this evening, we've had extensive briefs, arguments, oral presentations over the last several months and it's given me time to think, and I'm sure other members of the Board, time to think about this case and to collect our thoughts. It's not the usual case, frankly, where we often make decisions on the go because the cases are not complicated and we don't have an excessive record like we have here. So I have written my thoughts out. I'm going to read them. These are my views on this case. And what I'm going to do is, because you haven't withdrawn, and no reason why you should, any of the arguments that you've made in your memorandum, I want to address each and every one of them, including the arguments that you made tonight which are included.

So, let me start. I do not agree with the appellant's claim that

Section 11.200 of our Ordinance does not apply to the dwelling at 12 Arnold Circle which was lawfully in existence when Section 11.200 was adopted. Section 6 of Chapter 40-A of our General Laws does state that a Zoning Ordinance which shall not apply to structures lawfully in existence when a Zoning Ordinance adopted. But it also states that in a variety of situations a later adoptive zoning by-law provision can apply to a legal non-conforming structure. Indeed, Section 8 of our Zoning By-Law deals almost entirely with modifications of legal non-conforming structures and prohibits without any zoning relief from our Board various modifications of such structures. Moreover, the issue before us, whether affordable housing units must be set aside, it's not a use regulated by Section 6 of Chapter 40-A. I frankly do not understand the appellant's argument as to the effect of a Variance granted in 1961 regarding this structure. That Variance specifically provided that the residential structure at 12 Arnold Circle could contain 12 dwelling units rather than the eight dwelling units then permitted under our Zoning By-Law. That's it. The Variance did not otherwise affect the residential nature of the structure. It did not deal with setting aside a number of issues for

affordable housing purposes. The Variance does not insulate the dwelling units from the application of the Zoning By-Law no more than the existence of a legal non-conforming structure insulates the structure from say the application of new zoning requirements affecting the dimensions of this legal non-conforming structure. And only modifies the structure, only in compliance with later Zoning By-Law provisions. This is what Section 8 of our Zoning By-Law provides.

Appellant contends that the two-year period of a non-residential use contained in Section 11.200 should not apply to 12 Arnold Circle since two years have not passed since the adoption of 11.200 however measured. He contends that applying 11.200 to 12 Arnold Circle would be retroactive as to the premises and therefore is unfair and legally impermissible. That first rush of arguments seem to have merit, but upon closer analysis, and this is the point, of this two-year provision.

Let me explain. Suppose 11.200 provided, which it most assuredly does not provide, that all residential structures were never built which have at least ten dwelling units must set aside a number of units for

affordable housing purposes. This would be unfair and legally improper.

Why? Because it retroactively changes the rules for owners of residential structures who built or acquired them at a time when there was no affordable housing dwelling unit set aside requirement. On the other hand, suppose someone wishes to build a residential structure after the adoption of Section 11.200, he or she will know what the rules of the game are for affordable housing dwelling units. There is no retroactive effect that causes unfairness. But what about conversion of a structure which has not been used for residential purposes for a period of time? This is a situation with 12 Arnold Circle. And this situation, the first inquiry must be -- how long has this structure not been used for residential purposes. Thirty days? Six months? Section 11.200, through the definition of inclusionary housing project, says the appropriate period is -- the appropriate necessary period is two years. When the two-year period begins to run, doesn't matter because there is no retroactive effect. The person proposing to convert the structure, like the person proposing to build a new residential structure, knows what the rules are at the outset; i.e., whether he or she will have to set aside dwelling units for affordable

living purposes. There is no unfairness here because rules of the game have not changed retroactively. It is for this reason that I think the appellant's argument is incorrect. The at least two-year provision in the definition of inclusionary housing project is simply one of several measuring tests when determining whether a structure will have to set aside affordable housing dwelling units. The appellant claims that there has been some residential use of the property throughout. The support for this position rests on a letter, and then further testimony, from the current owner of the property at 12 Arnold Circle, who by the way has for years identified 700 Huron Avenue as his residence. I find this claim to be unpersuasive.

First, as the owner frankly admits, it is in financial self-interest that the property not be deemed inclusionary housing project since the intent to sell the property and his purchase price will be greater if the property is not deemed an inclusionary housing project since there will be no need for the purchaser to set aside dwelling units for affordable housing. In short, he is not impartial.

Second, the activities he claims to have conducted on the

premises consists of calling and organizing files and papers. These activities are of the nature of an office or library or warehouse use, not residential. The owner does claim that there have been times when the structure was used for sleeping purposes, and hence constituted residential use. No meaningful independent evidence has been given in support of this assertion.

Finally, I would note that pursuant to a court order obtained by the City of Cambridge more than two years ago, all water and other utilities have been turned off in this structure and the structure has been deemed by the city to be unsafe and unfit for habitation leading me to conclude that such claimed residential use, if it occurred, has been in violation of law. The illegal residential use should not count for purposes of the two-year period.

I also fail to understand the appellant's position that since dwelling unit count is square footage of the property at 12 Arnold Circle have not changed since the Variance granted in 1961, there will be no "creation" of at least ten dwelling units. The definition of inclusionary housing project in our Ordinance speaks of a development that "Creates"

at least 10 dwelling units.

The word "creates" refers only to the construction of a new building, while the definition of inclusionary housing project is abundantly clear that this definition includes a conversion of existing buildings as well if they meet specified conditions. Very simply when an existing building is modified to contain at least 10 legally complying dwelling units, which is the expressed goal of the appellant regarding 12 Arnold Circle, and the other provisions of the definition of inclusionary housing project are satisfied, including nonuse for residential purposes for at least two years, at least 10 dwelling units will then be created and the structure will be an inclusionary housing project.

In summary, this case is unlike any this Board has considered since Section 11.200 of our Ordinance was adopted. Given the absence of any clear, legal justification for the appellant's position and given the absolutely clear legislative intent of Section 11.200 to create more affordable housing in Cambridge. In this connection see the most recent city view mailed to Cambridge residents by the City Manager in which he states: "Affordable housing has been a priority in Cambridge since the

end of rent control in the 1990s and has consistently ranked among the top areas of concern in the City's biannual citizens survey."

I conclude include that the Commissioner's decision is correct and that this appeal should be denied.

Does anyone else wish to speak? If not, we can go to a vote.

BRENDAN SULLIVAN: I would agree with your analysis --

JOHN HAWKINSON: Brendan, can you speak up and use the mic?

BRENDAN SULLIVAN: I would agree with your conclusion. The memo to us dated July 24th and on page 3, a legal analysis, I think sums it up for me. And that the issuance of a Building Permit on or after December 1, 2016, is the trigger for, to me for the inclusionary housing. The uptick obviously would be after that December date to June 20th, but that to me is the essence of this case.

CONSTANTINE ALEXANDER: Okay, thank you.

Anyone else want to speak?

ANDREA HICKEY: I have nothing to add, thank you.

JANET GREEN: I have nothing to add.

CONSTANTINE ALEXANDER: Okay. I think it's time then to take a vote.

The Chair moves that we grant the appellant's appeal of the decision of Mr. Singanayagam regarding the issue that's before us.

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

(No Response.)

CONSTANTINE ALEXANDER: No one has said "Aye."

All those opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Four opposed. The appeal is denied.

(Alexander, Sullivan, Green, Hickey.)

CONSTANTINE ALEXANDER: For the record, we have to state our reasons why we reached a decision we just reached. I would suggest that what I read and what you've added should be -- are the reasons. If anybody else has anything they want to add or subtract.

JANET GREEN: I think you covered it.

CONSTANTINE ALEXANDER: Okay. All right.

All those in favor --

ANDREA HICKEY: I would adopt your comments as our --

CONSTANTINE ALEXANDER: As Brendan has modified.

All those in favor?

(Show of hands.)

CONSTANTINE ALEXANDER: Case is concluded.

Thank you.

(Alexander, Sullivan, Green, Hickey.)

* * * * *

(7:55 p.m.)

(Sitting Members Case BZA-017005-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No.
017005, 24 Decatur Street.

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

CHUCK SULLIVAN: Good evening.

CONSTANTINE ALEXANDER: Good evening.

CHUCK SULLIVAN: My name is Chuck Sullivan. And I'm

with the owners Chris and Mary Walsh, the owners of 24 Decatur.

You ready?

CONSTANTINE ALEXANDER: I'm ready.

CHUCK SULLIVAN: Thank you. I'm going to give you some slightly revised drawings.

CONSTANTINE ALEXANDER: Oh, no, wait a minute. These are not in our files?

CHUCK SULLIVAN: I've added a little bit of information to them. That's all. Comparison to the previous proposal. The proposal that was given to you at the first hearing.

CONSTANTINE ALEXANDER: You haven't changed the scale?

CHUCK SULLIVAN: Not since Monday and the new proposal.

CONSTANTINE ALEXANDER: Okay.

CHUCK SULLIVAN: But I overlaid the original proposal because those were public record for a month. So I just wanted to be clear of the changes from the last proposal to this new current proposal.

So the previous proposal is shown in red on this elevation, and the existing structure is highlighted in green. And then there are, again, the -- now I don't have a copy. The existing -- or what would be the current proposal as highlighted in yellow and the existing is in blue. Just so everyone's clear.

So, just to start --

JANET GREEN: Do they have a copy?

JIM MONTEVERDE: I'm going to look at this in a second.

CHUCK SULLIVAN: The proposal is to add a second floor on the rear of the building over an existing one-story structure. It would be to accommodate two new bedrooms and a bathroom in an existing two-bedroom, one-and-a-half bathhouse. Chris and Mary have four children. The current house is a little bit too small, being two bedrooms and one-and-a-half bathrooms for two teenage daughters and two younger kids. So the current proposal is to add two bedrooms and a bathroom to accommodate the family. The -- Chris will get into a little bit or he's written a letter which we probably don't have to reread. They bought the house in 2010, moved in, and children have obviously grown.

The original proposal was built exactly on top of the structure below it. Since the previous hearing and since input from neighbors, we have slid the building to the north. The addition, I should say, the second floor addition, three feet to the north and reduced the overall height. Again, the original proposal is shown in red on that A-4 elevation. This dramatically reduces the scale of the building and moves it further away from the abutter on the south side. That --

CONSTANTINE ALEXANDER: For clarity, because it becomes important -- I'm sorry to interrupt you.

CHUCK SULLIVAN: That's okay.

CONSTANTINE ALEXANDER: The project you're proposing tonight complies with our FAR requirements of our Ordinance?

CHUCK SULLIVAN: It does.

CONSTANTINE ALEXANDER: You're not seeking relief of FAR?

CHUCK SULLIVAN: No, we are not.

CONSTANTINE ALEXANDER: It goes to intensive use of property. It's a key determinant, whether there's too much building on a

property.

Are you going to comply with the open space requirements?

CHUCK SULLIVAN: We are.

CONSTANTINE ALEXANDER: That's another issue.

And the last one is height. You're not increasing the height of the building beyond the 35 feet that's permitted?

CHUCK SULLIVAN: We are not, no.

CONSTANTINE ALEXANDER: Because these are some of the issues that have been raised about the impact on your neighbors. But you are zoning compliant as to these important -- as I understand it, important determinants and I just want you to confirm that.

CHUCK SULLIVAN: That's correct. It's a non-conforming lot. But they do meet the open space requirements. The existing structure, which I'm not sure of the year it was built, turn of the century, it's old house, small old house.

CHRISTOPHER WALSH: 1850s.

CHUCK SULLIVAN: 1850s is three-and-a-half feet from the southern property line. So it's not conforming in that nature. The new

structure, because it's slid over, will be roughly 5.3 feet from the northern property line as opposed to the required 7.5 feet. So that's only on the second floor. But we do meet all the other requirements. It's a fairly low structure, would reduce the height, reduce the headroom inside the structure. It's basically minimal headroom to meet the building code. So that's essentially it.

If there are any questions....

CONSTANTINE ALEXANDER: Okay. Questions from members of the board at this point before I open the matter up to public testimony?

(No Response.)

CONSTANTINE ALEXANDER: Okay. There are none.

I will open the matter up to public testimony. Is there anyone here wishing to be heard on this matter?

I see a hand up. Sir, your name and address for the stenographer, please.

SHAW SMITH: Thank you. My name is Shaw Smith. I'm at 22 Decatur Street, next-door to the Walshes. Our condominium is just

under 900 feet in total square footage and it's on the second floor. We have six windows facing the Walsh's property, as noted quite close. Of those six windows, four of them face into, into the wall of the house. They just face the house. There are two additional windows, they're in the kitchen. They face over the first floor which is to be added on top of. They let in a tremendous amount of light. They add both a level of beauty to the room.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can't hear you.

SHAW SMITH: They add both a level of beauty to the room, but they also certainly add value.

When this is added on, whether it's moved three feet over or not, this will block those windows. We will now have six of six windows blocked. The Variance that's asked for is because they have four children. And respectfully, they had four children when they bought the house. They've had a Variance. The Variance was argued against by other members of our condo association. You have letters from all of us in the condo association. It was argued against because of its size.

Some changes were made to that, and our association agreed and stopped opposition toward that first floor. The first floor was added. And now what we see is a continuation of trying to build up on their property.

I'd like to ask the Board to -- I'm here in opposition to their Variance. And I'd like to ask the Board to consider the fact that their property value increase will be at my expense. The value of my property will go down because of the reduction in view, because of the reduction in overall beauty.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

CHUCK SULLIVAN: Could I address just a couple of those?

CONSTANTINE ALEXANDER: Wait. You'll have your opportunity. Let other people speak and then you'll have an opportunity.

Ma'am, you wanted to speak?

PAT ARCAND: Yes, hi. My name is Pat Arcand. I'm President of the condo association at 140-144 Pearl Street.

CONSTANTINE ALEXANDER: That's a different one than this gentleman's?

PAT ARCAND: Exactly, exactly. And we abut -- our parking lot abuts the Walsh's property. I live in the condo that's facing the property, and it's -- and we have written, let's see, my neighbors -- all of the units that face the parking lot that abut the property have all written in favor of the Walshes putting on their addition. We -- the Walshes have -- when they bought the property, they took down a building that was in very bad disrepair and was very large. Not -- it was larger than the one they put up. So to start with, the people in the building on the other side, you know, what they've got now is only enhancing their property value, not taking it down, trust me.

So the Walshes came by with their plans. We said they look fine to us. They had to make revisions because of the other condo owners which they asked. And those revisions moved their property closer to us. And we're fine with it. We have a very tall building. We're a triple decker. Three triple deckers sort of stuck together, as is the other condo association. We're the ones blocking the sunlight, not this smaller property that, you know, they're not blocking anybody's sunlight. And no disrespect meant to the Commission, but do you do visits? Like, if you

have a chance to look, you'll see.

CONSTANTINE ALEXANDER: Yes, I did look. I don't know if other members. We tend to visit the properties.

PAT ARCAND: Yeah.

And another thing about talking about the issue that came up earlier about inclusive housing and having a variety of people live in Cambridge. I've been living in Cambridge over 35 years now, and I've lived on, in this property for over 22. And it's wonderful to have children in our neighborhood. It's wonderful to have elderly people. One of the problems has been all around us in our neighborhood, there's been lots of really expensive beautiful properties, nothing against them, but in order -- I want to keep families in town. It's, it's better for all of us. So, you have -- we have written two letters, you know, in support of the addition.

CONSTANTINE ALEXANDER: At an appropriate time I'm going to read the letters.

PAT ARCAND: That's all I wanted to say.

CONSTANTINE ALEXANDER: Thank you for coming down.

PAT ARCAND: And so are my other two neighbors. And

they've written letters.

CONSTANTINE ALEXANDER: Thank you again.

PAT ARCAND: You're welcome.

CONSTANTINE ALEXANDER: Anyone else? You're next.

PETER SEIGMIRE: Hi. I'm Peter Seigmire. I live at 22 Decatur Street also, which is right next to 24 Decatur Street. So I think there's a couple of relevant pieces of background information that have been touched on here, but I think I would like to amplify. One is, you know, so 22 Decatur Street, as I'm sure you can see from the maps, it's very close to 24. It's maybe six feet depending on where you are. Maybe six feet away. So among all of the neighbors we would certainly be most affected by the proposed addition to this work. There are, of course, a number of condominiums, you know, across the parking lot from the Walshes, across the street, they would not experience the effects that Shaw Smith just articulated in terms of the effect on the view. In fact, on the sunlight and all of those matters simply because of the proximity of 22 Decatur to 24 Decatur Street. They're very, very close together.

The other piece of relevant information, and I know this was

touched on also, so, again, back in 2010 a Variance was granted, you know. And there was a back and forth at that time on whether or not, you know, this was appropriate. And we did the neighborly thing and said, yeah, you know, that's fine. So I, I kind of want to go now from maybe more of the kind of spirit, to the letter of the law. I mean, you know, as I understand it, the petitioner has to argue for a hardship in order to -- for a Variance to be allowed. I mean, you know, I'm not a lawyer, but I've looked at the definition, I'm not seeing anything that would fall into the category of a hardship here.

CONSTANTINE ALEXANDER: Right. I'm sorry to interrupt you. One thing the petitioner has not done yet, and I'm going to make sure he does before he finishes his remarks, he has to address the legal requirements for a Variance. The first one of which is a substantial hardship.

PETER SEIGMIRE: Right.

CONSTANTINE ALEXANDER: And that hardship, just to let you know, it's not a hardship just to you, it's a hardship that runs with the land and whoever lived in that property would suffer this hardship which

justifies us granting zoning relief.

PETER SEIGMIRE: So I wasn't missing anything. So none of us heard anything about a hardship thus far?

CONSTANTINE ALEXANDER: No. We're going to get to that.

PETER SEIGMIRE: Okay. So yeah, I mean I do have to say there was back and forth. I did hear from the Walshes in the form of a -- you know, in our condo association meeting. I went to the last meeting. I have heard the arguments from them and I have not -- and unless, perhaps we will hear something shortly, but I have not yet heard an argument that qualifies in my mind as a hardship.

So I guess getting back to the kind of the spirit of the law, I mean, I know the --

JANET GREEN: You need to put it a little --

PETER SEIGMIRE: Oh, I'm sorry. I guess getting back to the spirit of the zoning law, I mean, you know, you know, building -- building in Cambridge can affect not only the owners of the law, but the owners of adjacent lots and it could have a negative effect. It

could have substantial negative effect in terms of property values. As I understand it, that's what the zoning law is in place for. To me to violate this, especially since a Variance has already been granted, there would have to be a substantial justification. I mean, this amount -- this construction would amount to the enrichment of one family in the form of an increased property value at the expense of an abutting lot in the form of decreased property value. And as I understand this, the zoning law is designed to prevent that kind of thing. So I am in opposition to this needless to say, and I'm in opposition to this for all of those reasons.

I have nothing else. I don't know if I'll have an opportunity to respond after?

CONSTANTINE ALEXANDER: No, this is your time to speak.

PETER SEIGMIRE: Okay. Okay, very good. I have also submitted a letter. The members of our condominium association have submitted a group letter, and I believe each individual member submitted a letter also in opposition to this. So, I guess I would ask that the Board take it particularly seriously because I don't think it is an exaggeration to

say that we would be the most affected by this work among all the neighbors in the area.

CONSTANTINE ALEXANDER: Okay. Thank you for taking the time to come down. I appreciate that.

PETER SEIGMIRE: Not at all.

Thank you.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard? I thought there were a lot of hands.

Yes, Campbell.

CAMPBELL ELLSWORTH: Good evening. My name is Campbell Ellsworth. I currently live at 267 Norfolk Street in Cambridge, but I am building a house, a two-family house -- or rebuilding a two-family house at 146-148 Pearl Street, therefore, I will be an abutter. I'm an abutter to an abutter of the Walshes. So personally I got to know the Walshes a couple of years ago. I have a young daughter who is also at the Morse School and I just think the world of these guys. In fact, their children help me shovel snow in front of my property. But I did want to address the design. I think the design is reasonable. It's modest.

These are -- and especially learning because I didn't see it before, that the whole thing is in conformance with FAR, open space, and height. I'm impressed with that. We all know that in Cambridge dealing with these narrow lots is extremely difficult. This is a 30-foot wide lot. And, of course, there are provisions for narrow lots, but there's still a minimum of seven-foot, six inches to stay conforming that leaves only 15 feet conforming inside. So I believe it wasn't stated clearly in the presentation, but I believe one of the Variance applications is encroachment upon that one property line; is that correct?

CONSTANTINE ALEXANDER: That's the only base.

CAMPBELL ELLSWORTH: That's the only one. Which of course across that property line is a parking lot. So that's not going -- and I think it's clever that they actually did shift it over. I can't speak to the hardship that well, but -- the difficulty that the condominium owners to the south will experience, but I think that this is a modest proposal. And if there is hardship, it has to do with the lot, the narrowness of the lot, and I think that should be considered. But I'm in full support of this.

CONSTANTINE ALEXANDER: Thank you.

Ma'am.

MARY WALSH: Thanks. Can you hear me?

CONSTANTINE ALEXANDER: Yes.

JANET GREEN: Keep it right up.

MARY WALSH: Sure. My name is Mary Walsh, and we moved into 24 Decatur in 2010.

CONSTANTINE ALEXANDER: You're one of the petitioners?

MARY WALSH: Yes.

CONSTANTINE ALEXANDER: Okay.

MARY WALSH: I'm the owner along with my husband at 24.

CONSTANTINE ALEXANDER: I just want to be clear on that for the record.

MARY WALSH: And when we moved in, our kids were one, four, six, and eight. When we got our addition in 2010, we got what we could afford at the time and what we needed of thanks to my brother who is our architect, because he gives us a pretty good deal. At least I hope he will this time. So we've been here for eight years. And 22 Decatur,

Shaw Smith bought his place in 2013 and has -- he and his wife never, the owners have never actually lived there, although their children do. And the first floor of that condominium there have been three owners already. So I just want to emphasize a lot of young professionals coming through Cambridge where we are a middle class family and we're looking for a modest addition. For eight years we've had four in a room. We have two bedrooms in our house. Our addition is a modest one with two small bedrooms and a bathroom. It's not a McMansion. It's minimal. I grew up with ten brothers and sisters. We're not high maintenance people. Our addition is also far from being too large for the plot, which is one of their complaints. That's simply not true. And I can't see how this addition would devalue the property of our neighbors. Everybody else's rooftops tower over ours on Decatur Street. If you look at the skyline, the roof line of all of those buildings, they're all higher than ours. What's at stake here is another middle class family getting edged out of Cambridge, and that's a big issue in Cambridge right now. I have four children. Tessa is now 16. She goes to CRLS. High honor student. She's a lifeguard at CRLS. She babysits the neighbors along with Cala

(phonetic). They babysit so many of the neighbors, you could get a list.

She's beloved. CC feeds Pat's cats. Malcolm shovels Michael's

sidewalk. These are -- we're part of the fabric of Cambridge is what I'm

saying. I'm a coach for the Cambridge youth soccer. So we're very

much part of Cambridge, the community. And I think that's what we want

to keep in Cambridge more than the professionals that come in. Having

this Variance will allow us, a middle class family, to stay in Cambridge.

And as you can see from all the letters of support that we've gotten from

the neighbors that we see on a daily basis, neighbors that are part of the

community, they're in support of our staying in Cambridge, too.

Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the
time -- well, you have to take the time to come down, you're the petitioner.

Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Going once. Going twice.

Okay. We'll close public testimony.

Sir, you wanted to respond.

CHUCK SULLIVAN: I just wanted to address some of the comments.

CONSTANTINE ALEXANDER: And you need to address why you're legally entitled to a Variance.

CHUCK SULLIVAN: I will.

CONSTANTINE ALEXANDER: Which you have not done.

JANET GREEN: Use the microphone.

CHUCK SULLIVAN: Okay, thank you.

Just a couple of images just so everyone's clear. There's 22 and 24 Decatur street. I would assume 22 was built after 24. So for some reason 22 decided to build three feet from their property line. After that house was there.

This one which you may want to look at a little bit closer is a view looking north and Decatur street. The house is or excuse me, the entire street is three story buildings except for this one house on 24 Decatur Street. They could go up another floor and still meet the 35-foot height limit but they're choosing to do a modest addition on the back which I think is evident in those drawings.

These are the, these are the two windows that were brought up initially. They're by the connector of the addition which is the lowest part which is already somewhat blocked from that building and partially blocked from the existing house on 24 Decatur Street. So I think the change to that is fairly modest.

And just one more point. The addition, there's two buildings on that adjacent lot to the south of 24 Decatur Street. And this addition is for the most part between those two buildings in the open -- the only open space between that you can see -- you can't see the back building in this picture, but you can see this is where it ends. The major part of the addition is beyond that. This is the back building with this rounded roof and it is setback on that lot on the open yard of Decatur Street. There's about 60 feet of green space behind the house of 24. Their backyard is about 60 feet of green space. It's probably the largest green space in that entire block.

The hardship as stated, the lot's 30 feet wide. We could actually meet the addition's 14 feet wide. So we could actually meet seven and a half feet on both sides, but it was decided that to slide it ten

and a half feet to the north away from 22 Decatur Street to address some of the concerns from 22 Decatur Street, so I think again, it's a very narrow lot.

CONSTANTINE ALEXANDER: Are you saying you could have made -- this project could have been done without the need for zoning relief?

CHUCK SULLIVAN: Well, the second -- there's a Variance for the setback.

CONSTANTINE ALEXANDER: Yeah, that's the only Variance that I can see that's required.

CHRISTOPHER WALSH: Well, no, we needed -- we were told we needed a Variance --

UNIDENTIFIED MEMBER OF THE AUDIENCE: We can't hear you.

CHRISTOPHER WALSH: -- for the extent -- sorry. The extent of the project.

JANET GREEN: It has to go right up to your mouth.

CHRISTOPHER WALSH: Sorry.

CONSTANTINE ALEXANDER: The extent might -- you're not going over the FAR. You're not intruding into open space.

CHRISTOPHER WALSH: Right.

CONSTANTINE ALEXANDER: You're not going up. You're not going up beyond what the zoning law permits. So I don't understand, I thought it was just a setback case. But what I'm hearing is that you could comply with the setback requirements but you chose not to.

CHUCK SULLIVAN: That was my understanding, and it's a pre-existing, non --

CONSTANTINE ALEXANDER: Wait a minute. So what is your understanding?

CHUCK SULLIVAN: That the Variance is for the setback.

CONSTANTINE ALEXANDER: Yeah.

CHUCK SULLIVAN: Chris me tonight --

CONSTANTINE ALEXANDER: Didn't you say you could avoid --

CHUCK SULLIVAN: We could. It's still a non-conforming structure on a non-conforming lot.

CONSTANTINE ALEXANDER: Yes.

CHUCK SULLIVAN: Which I assumed we were getting a Special Permit for the extension of that.

CHRISTOPHER WALSH: But it's a Variance because of the size of the addition is -- we had a Variance for the 2010 which was more than 25 percent addition to the size.

CONSTANTINE ALEXANDER: Right.

CHRISTOPHER WALSH: We could not, and I consulted with the people at building inspection. We could not take advantage of -- and I refer to this in my letter, the proviso that we can build a second-story addition above the -- an existing story on a non-conforming lot without, without getting just by I think, just standard kind of --

JANET GREEN: By-right.

CHRISTOPHER WALSH: By-right or by a Special Permit I think. But because we had that previous Variance and we were adding on -- I'm not sure what the percentage of square footage is, but it's more than ten percent, we need to get a Variance. That is our understanding. We are -- with the height and -- the height of the addition is about 21 feet.

The addition, the additional height on the side of 22 and 20 is going to be -- it's going to be a -- you said, Chuck, a foot and nine inches?

CHUCK SULLIVAN: One-foot, nine.

CHRISTOPHER WALSH: Above the existing. And the -- because we are chopping off the --

CHUCK SULLIVAN: The roof of the --

CHRISTOPHER WALSH: The existing roof. So this portion right here. So right now this is what, this is just as close as -- on my roof from the point of view of Shaw, the Smith's windows, this is what they see is this sort of steeply rising -- this is currently our living room. We're essentially chopping that off. This three feet will be deleted, and the whole addition will be pushed over there. And so actually the view of the backyard, of our open space in the backyard and of the neighbor's is -- for the people in 22 is actually going to get better. Mr. Seigmire who lives on the third floor will have considerable better view of the yard and the Shaws as well.

JANET GREEN: You need to hold the microphone up to your mouth.

CHRISTOPHER WALSH: And the Shaws as well. Sorry.

And I'll just say about the hardship, you specify.

CONSTANTINE ALEXANDER: Let's turn to that.

CHRISTOPHER WALSH: Yeah.

CONSTANTINE ALEXANDER: What is it you -- to get a Variance you have to -- we have to find, this Board. That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner. As I said before, because it's not stated in the statute. That statute is not precluded to you --

CHRISTOPHER WALSH: Right.

CONSTANTINE ALEXANDER: -- you need more space. It has to be a hardship that will run with the property, and your successor owners and their successors would have a hardship unless the relief was granted tonight.

CHRISTOPHER WALSH: Right. And I think it's already been noted about the narrowness of the lot which prevents a -- to be able to take advantage of the FAR limits without intruding further on open

space, we need to be going -- we need to go up and we need to cantilever. And the -- and I mean, we're still at 48 percent of the usable open space when the minimum is 36, even after this addition. And we need that. And so in the future, should a family of more than say five want to live there, they would be faced that -- faced with that same hardship. And we are, and so we are solving that problem for the future. And our enrichment from this project was referred to. Of course nobody would deny that adding square footage to the building will be -- will add to its value. Meanwhile, that's gonna take -- we're going to have a long time paying this off, right? I don't need to go into that, but I just thought I'd state that.

CONSTANTINE ALEXANDER: And then the second task for the hardship, and you've addressed, is that the hardship is owing to circumstances relating to the shape of the lot. And you've made the point, of course, the lot is long and narrow. And the shape is such that it makes any kind of building modification requiring a Variance. Okay.

BRENDAN SULLIVAN: Mr. Walsh, how many bedrooms are in the house now?

CHRISTOPHER WALSH: Two.

BRENDAN SULLIVAN: There are two bedrooms for six people?

CHRISTOPHER WALSH: Yes. We've been -- yes.

BRENDAN SULLIVAN: Okay.

And you have one daughter, two daughters? One?

CHRISTOPHER WALSH: We have --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can you use the mic?

CHRISTOPHER WALSH: Oh, yeah.

BRENDAN SULLIVAN: Just trying to get a makeup of the family basically.

CHRISTOPHER WALSH: Sure, yeah.

So three daughters and a son. The daughters are 16, 14, 11. Our son is 9. We practice what is known as the family bed with the younger children -- rather the 11-year-old has a small little tent in our master bedroom where she sleeps. And our son makes do with typically in the king size bed with us. Probably more information than you need.

BRENDAN SULLIVAN: No, no, no, that's fine. It's just that, you know, we sit here Thursday night after Thursday night and are asked to grant additions and enormous modifications to houses which add to luxury housing, and I think these people, Mrs. Walsh probably hit the nail on the head, she saved you tonight. You can thank her by basically saying they just want basic housing for four children and two adults.

CONSTANTINE ALEXANDER: Anything further you want to add?

CHUCK SULLIVAN: Just to say that the bedrooms are very modest. The largest one is eight-by-twelve, plus or minus.

BRENDAN SULLIVAN: They still need a wall between each other.

CHUCK SULLIVAN: Just a wall to separate it.

CHRISTOPHER WALSH: And we're also reducing -- we're adding two bedrooms but we're reducing the size of the second existing bedroom.

CONSTANTINE ALEXANDER: And you're also adding a bathroom. You've got six people in a house with one bathroom and now

you'll have two.

BRENDAN SULLIVAN: As you noted, this will be expensive.

But you can't put a price tag on domestic tranquility.

CHUCK SULLIVAN: We're not promising that either.

BRENDAN SULLIVAN: Or an attempt to it anyway.

CONSTANTINE ALEXANDER: Anything further, sir?

CHUCK SULLIVAN: No, I'm done, thank you.

CONSTANTINE ALEXANDER: I'm going to -- well, we do have a lot of letters. I'm trying to get them into the record as people took the time. I might summarize some of the letters because the night is going along.

We have a letter from Robert Dyer. (Reading) Our neighbors, Mary and Chris Walsh, recently updated us on the modifications to their planned addition which were made in order to help satisfy concerns to the homeowners at 22 and 20 Decatur. As owners of residents of 22 Decatur, we would like to reiterate our support for the proposed addition. Our opinion is that the addition will have no negative impact on abutting or neighboring property values. Mary, Chris, and their

children are incredibly friendly and always seem willing to help their neighbors. For example, shovelling snow for a mutual neighbor with health problems, advising our own younger family on public school options. In contrast as moving to the neighborhood two-and-a-half years ago, we have yet to meet the neighbors at 22 or 20 Decatur. We have also noticed that several other properties in the neighborhood have been recently developed and sold with increased density in height. For example, 9 Decatur, 125 Brookline, 125 Pearl, 78-80 Pearl, 64 Pearl. We hope that the City provides a Variance to longstanding residents for additional scope that reserves a large amount of green space in the neighborhood. Thank you for considering our views.

And that letter was, as I said, I should have said from Robert Dyer and Rachel Fish who resides at 32 Decatur Street.

We have a letter signed by -- I'm not going to get this right, Sucharita, S-U-C-H-A-R-I-T-A and Kishore, K-I-S-H-O-R-E Varanasi, V-A-R-A-N-A-S-I by Parth, P-A-R-T-H Patwari, P-A-T-W-A-R-I and Debbie Chang and by Mark and Andrea Saltzman, S-A-L-T-Z-M-A-N. All of these individuals reside at different units at 15 Valentine Street.

(Reading) We've reviewed the plans provided by the Walsh family at 24 Decatur Street and write to express our strong support for their appeal for a Variance to add capacity for their family which has grown to include their son and their three teenage daughters. We all live two properties over from 24 Decatur and overlook the rear of their property. Their request to add a second floor capacity for their family without changing the footprint of the house and without changing the highest elevation of the home appears modest. For a context we note that the 24 Decatur property is surrounded by higher structures on all sides. In our opinion, this requested Variance will improve the housing stock in the city without adverse impact to the neighborhood and should be granted.

And then what goes on after that is a personal tribute to you folks as neighbors. It doesn't go to zoning issues. So I want to move on.

We have a letter from Elizabeth Smith who resides at 22 Decatur Street, No. 2. (Reading) This letter is to express our objection to the request for Variances by Christopher and Mary Walsh of 24 Decatur Street. As abutting neighbors with a condominium on the second floor of

22 Decatur Street, our property would be the most negatively affected by this proposed major addition. While we see there are some changes in their design have been made in response to the first round of objections, it is clear that any second floor addition will have a hugely negative impact on our property. We have six windows that face the Walsh's home.

We've heard the yard amounts. I don't mean to minimize it, to derogate from it, but we've heard the argument about the six windows and the impact for them that looks straight into the side of their existing house.

And they go on to say, "Beyond our personal plea to save the value of our own property, we also cannot see what real hardship the Walshes are using in their request for Variances. They're proposed addition do not relate to soil conditions or usual topography as required by the zoning regulations nor do Mr. and Mrs. Walsh face other unique challenges on their property that are outside the norm for Cambridge."

And then it goes on. I'm not going to -- nothing is added from the remaining comments.

We have a long letter from Mary and Chris Walsh, those are

the petitioners. You've said that letter already in your presentation.

We have a letter from -- they used both sides of the page, it's difficult to read. I wanted to read this letter because it is relevant, it's from the neighbors at 20-22 Decatur Street, and it's signed by all members of the condominium association there. (Reading) We, the members of 20-22 Decatur Street condominium association, write to oppose the granting of the above Variance. Our condominium association consists of four units which directly adjoin 24 Decatur Street. In 2010 Mr. and Mrs. Walsh applied for Variances from the BZA to construct a second property at 24 Decatur Street which they had recently purchased. Following Variances to extend -- following substantial opposition from several neighbors, they sent in a revised plan for Variances to extend the original property. Despite misgivings on the part of our association because of the impact on our properties, we took a neighborly view and did not object to this revision. The Variances were duly granted. Mr. and Mrs. Walsh now have applied for new Variances to further extend their extension. We wrote to you on 7, October 2018, to object to these variances being granted. Following a continuance, Mr. and Mrs. Walsh

have put forward a revised plan which they have shared with us. We have considered this new plan and feel we must maintain our objections for the following reasons:

One, that the existing property at 24 Decatur Street is already too large for its narrow plot and it is exceptionally close to our properties. The distance from our property at 22 to the boundary line is three feet. The distance from the Walsh property at 24 to the boundary line is three feet at its minimum and only seven feet at its maximum.

Second, the proposed extension would create a second floor on top of the existing extended structure. This would seriously reduce the light and views of the condominiums at No. 22. The consequent reduction of property values would affect all of us. The increase in property value at 24, which would rise if the extension is built, should come at our expense.

And then they go on to cite the need to demonstrate the legal requirements for a Variance including hardship.

(Reading) Mr. and Mrs. Walsh claim hardship because the existing house is not big enough for their family of four children. Their

family was already at this size when they purchased 24 Decatur Street.

They must have been aware at the time that trying to increase the size of a house on a narrow lot so close to neighboring properties would be difficult. As neighbors, we tried to be accommodating to their previous request for Variances on the grounds of personal hardship. To allow further Variances to allow the extension would breach Section 10 -- would breach provisions of our Ordinance. The hardship does not relate to the soil conditions, shape, or topography of the land but only to the fact that the plot is too small for the property to be extended.

I must stop here and editorialize. That's not correct. The point here is that the shape of the lot is a problem, and that is the reason they're citing to satisfy one of the three conditions. Shape, topography -- shape of the land. Shape is a narrow 30-foot lot. 30-foot wide lot.

(Reading) To grant the Variances will substantially detract from the good of the members of our condominium association, it would cause a hardship in terms of their rightful enjoyment as well as the devaluation of their properties. This would nullify the intent of the

Ordinance.

A letter from Kathleen with a K, Corbett, C-O-R-B-E-T-T and Richard Winer who reside at 25 Decatur Street. They simply say: "We have known Chris and Mary and their children for eight years. They are good neighbors. We approve their revised plan."

We have a letter -- most of these letters are now becoming repetitive. I'm just going to identify who wrote the letter and their position.

The letter is from Maria Stalford, S-T-A-L-F-O-R-D who resides at 22 Decatur Street, No. 3. And Ms. Stalford opposes the relief that's being sought.

A letter in support of the Variance from the condo owners at 144 Pearl Street. We've heard from them tonight in an oral presentation.

Another letter from Pat Wary. We've heard from her in a joint letter so I'm not going to read it.

And another simple letter from Patricia Arcand, A-R-C-A-N-D who resides at 144 Pearl Street. Again, we've heard from her. And Ms. Arcand says: "My husband and myself have seen the plans and we support the Walshes' addition."

This letter we've seen already.

Another letter from -- a different form letter from the 22-24 Decatur Street condominium association which of course opposes the relief being sort.

Another letter from residents at 22 Decatur Street, No. 2.

Another one from 22 Decatur Street, No. 3.

A letter from Michael J. Steinkrauss, S-T-E-I-N-K-R-A-U-S-S who resides at 30 Decatur Street. (Reading) Hello, I am writing you as a resident of Decatur Street in Cambridge. My name is Michael Steinkrauss and I have lived at 30 Decatur Street for 51 years. Chris and Mary, Malcolm, Tessa, Cassie, and Khali (phonetic) have been my neighbors for more than six years and they are quite simply wonderful neighbors and friends.

Mostly this letter is appears to you as good neighbors. It doesn't necessarily address the zoning issues.

A letter of support. I've read this letter before. We have duplicate letters for some reason in our file.

And that, thank God, is all the letters in the file. So, with that,

I am going to close public testimony. Time for a decision, folks.

Anyone want to speak first? Or I would be happy to go.

JIM MONTEVERDE: I have one question.

CONSTANTINE ALEXANDER: Go right ahead.

JIM MONTEVERDE: Just tell me again is there a plan option that you can do the addition with the work you want to do but be in compliance with the zoning code? You can do it as of right; is that correct?

CONSTANTINE ALEXANDER: He has said yes, and he has said no.

JIM MONTEVERDE: I know. You two want to step in the other room for a moment?

CHRISTOPHER WALSH: That's my brother-in-law.

JIM MONTEVERDE: That's fine.

CHUCK SULLIVAN: As far as addressing the setback?

JIM MONTEVERDE: Yeah.

CHUCK SULLIVAN: The addition's 14 feet wide, and we could be --

JIM MONTEVERDE: 16 feet?

CHUCK SULLIVAN: Eight feet on each side. It would be closer to the southern property line. Further away than the existing house or the -- but still, the reason it was done was to --

JIM MONTEVERDE: And is that compliant?

CHUCK SULLIVAN: That would be compliant. It was to satisfy the concerns with the neighbors at 22 Decatur was to slide it over further.

JIM MONTEVERDE: Okay.

CHUCK SULLIVAN: It's still less than the three-foot setback on the southern property line.

CONSTANTINE ALEXANDER: So you still would need zoning relief?

CHUCK SULLIVAN: Pardon me?

CONSTANTINE ALEXANDER: Three feet --

CHRISTOPHER WALSH: No, no, no. The addition we're requesting -- even in the original proposal was -- the original proposal needed no -- it was well under height, open space, not an issue.

Setbacks not an issue. The -- we still need a Variance because the size of the addition we were putting.

JIM MONTEVERDE: I get that.

CHRISTOPHER WALSH: Right. But the only violation where -- that exists in the current proposal is because the cantilevering which moves us to 5.3 away.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Can you use the microphone?

JIM MONTEVERDE: Okay, thanks.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: We couldn't hear any of that.

CONSTANTINE ALEXANDER: Okay.

CHRISTOPHER WALSH: Sorry.

CONSTANTINE ALEXANDER: Anyone wish to comment on the relief?

JOHN HAWKINSON: Mr. Chair, I think the person in the back wanted him to repeat his comment because she couldn't hear it.

CONSTANTINE ALEXANDER: Okay, thank you.

JANET GREEN: You've got to use the microphone.

CHRISTOPHER WALSH: Sorry. Sorry about that.

So the question was could we have made the addition without, as I understand it, without --

JIM MONTEVERDE: Side yard relief.

CHRISTOPHER WALSH: Without side yard relief. And the answer is yes, we've been -- I went on to say that we didn't need any relief for, height, open space, setbacks of any kind. We did need the Variance because of the extent of the addition. The -- now because we cantilevered it over, we do need the setback relief on the north side, north side of the property. So, sorry about that.

JIM MONTEVERDE: Thank you.

CONSTANTINE ALEXANDER: Well, I guess I'll open it up on comments on the case. This is not a unique case for Cambridge, believe it or not. We have, this is a common recurrent theme where you have families needing more space. And Cambridge property values being what they are, the only way they can get them to is build. And given the fact that the housing stock of the city is old, building usually

requires a Variance and has an impact on neighboring properties. So we sit here Thursday after Thursday trying to juggle or balance the competing concerns of the neighborhood and the city. Having some sort of housing scheme that is uniform or at least abides by certain rules as opposed to the needs of the current owners.

I for one am impressed by the fact that, one, the relief being sought is rather modest. It is setback, yes. But we don't see very many cases where people don't need FAR relief, where they don't need open space relief. So you are 90 plus percent compliant with your proposal.

I think there is something to be said, too, you've been -- you're good neighbors. Not necessarily this is relevant from a zoning point of view, but it certainly has to impress us as board members or impresses me at least. And I just don't see the impact on the neighbors as being that great. So on balance I would grant -- I would say there is a hardship. The hardship being basically the shape of the lot, which prevents any kind of modification to the structure without zoning relief. And this hardship is owing to the fact that it's a narrow lot, unusually narrow lot usually. A 30-foot wide lot. And benefit to the community or to the city is that we'll

keep in the neighborhood in place obviously a very valuable citizens of the city. So I would vote in favor.

Anyone else wish to speak?

JANET GREEN: I agree with what you've said, Gus, and I'll vote in favor of this. I feel like it's a very small request relative to the property. I think the property is obviously very much smaller than the rest of the properties on the street, and that the width of the property that the house is on is a hardship to put what you need to do in place.

CONSTANTINE ALEXANDER: Ready for a vote?

ANDREA HICKEY: Ready.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the relief being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being this is an unusually narrow lot which really restricts the ability to modify structures on the lot or occupy the lot. And this would be true not only for you folks but any successor owners.

That the hardship is owing, as I said many times already tonight, the shape of the lot. It is unusually narrow. A 30-foot wide lot.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially -- note the word substantially -- derogating from the intent and purpose of the Ordinance. As I've indicated, and it's my opinion, the relief being sought is rather modest. When balanced against the hardship and the unusual nature of the lot, it seems to me that a Variance would be warranted.

So on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Sullivan and Associates Architects. Date of issue is November 28, 2018, each page of which has been initialled by the Chair.

And let me, before we take a vote. This is it. If you modify these plans, you're going to have to come back before us. I don't think you want that.

CHUCK SULLIVAN: Correct.

CONSTANTINE ALEXANDER: All those in favor please say

"Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(8:50 p.m.)

(Sitting Members Case No. 017022-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair is going to call
case No. 017022, 72 Frost Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair and
members of the board. For the record, Sean Hope, Hope Legal Offices in
Cambridge. I'm here tonight with the owner of 72 Frost Street, Mr. Bruce
Scott. So this is an application requesting Variance relief. This is an
existing single-family home with a garage at the rear. And Mr. Scott is an
architect by trade. And as the pictures indicate, this was a flat roof. And
because this was a flat roof, water was collecting on the roof. Mr. Scott,
because he's an architect, and he can explain in detail, got a set of plans

and created a pitched roof to effect the draining. So the roof was flat and it was pitched.

CONSTANTINE ALEXANDER: I'm just curious about that. I own a garage. At my house I have a garage, it's got a flat roof. It looks just like your garage. I never had a water problem on the roof.

BRUCE SCOTT: Oh, yes. The problem is it was a concrete roof --

CONSTANTINE ALEXANDER: Right.

BRUCE SCOTT: -- probably built in 1926 when the house was built.

CONSTANTINE ALEXANDER: Right.

BRUCE SCOTT: And it sagged. And I have a picture right here, which I'm happy to share.

ATTORNEY SEAN HOPE: I think it's in the file.

BRUCE SCOTT: It shows, it's in your files, but it shows the puddles on the top of the roof.

CONSTANTINE ALEXANDER: Yeah, I know. I saw that picture. But I don't have puddles so I wondered why you have puddles.

BRUCE SCOTT: I have puddles because it's only a quarter inch to the foot. And so I wanted to solve that problem.

CONSTANTINE ALEXANDER: Okay.

BRUCE SCOTT: And all the water, the important part is that all the water as it was designed, dumped on to the neighbor of 34R, which is the coach house you see next-door. It all went away from my property onto the neighboring property as it was built in 1926.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: And so the structure was in the rear yard setback. So the proper procedure would come to the Board, request relief, because you would be building within the setback, and they would have been forward. Unfortunately, the structure was built without coming to the Board. There was a summons from the city. And so we -- he hired counsel. We have made an application, reached out to the abutters. And so now what we have is the pitched roof and what we're seeking is approval of what has been built. Mr. Scott understands the process that he should have taken. He can explain for you the rationale, but there was no malintent.

CONSTANTINE ALEXANDER: As you know, there is a letter of opposition. Is that person still in opposition as far as you know?

ATTORNEY SEAN HOPE: I believe that there was a recent letter from that one person.

HARRY GARVEY: Excuse me, I'm here. I wrote the letter.

BRUCE SCOTT: Oh, good. I didn't see you come. All right.

CONSTANTINE ALEXANDER: You'll have a chance to speak, not right this second. I just thought I would get it out of the way quickly, but maybe not. So go ahead, keep going.

ATTORNEY SEAN HOPE: I think that's it. We would like to make legal what has been done. We think that the pitched roof practically makes sense and alleviates a problem that Mr. Scott has been dealing with. And we understand that the Board doesn't like to approve structures that have been built after the fact, but we think this is the only way to remedy it to move forward.

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

(No Response.)

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

Sir, you wanted to speak?

HARRY GARVEY: Sure. Do I need a mic?

CONSTANTINE ALEXANDER: Whichever one you want.

HARRY GARVEY: Hello. My name is Harry Garvey, and we own the property at 34R Prentiss Street. And I previously wrote a letter in opposition before the last hearing of Mr. Scott's roof which had already taken place, the work had already been done. My only real opposition was the fact there's an encroachment. The overhang, the eave overhangs onto our property by approximately a foot. I'm not exactly sure. But I said to Mr. Scott in the meeting that we had, correct the encroachment and I have no other problem with it. Mr. Scott has done a redesign of the already existing where he'll modify that roof and he'll correct the encroachment.

CONSTANTINE ALEXANDER: Do we have a plans for the revised roof?

ATTORNEY SEAN HOPE: So I think that --

ANDREA HICKEY: Get the microphone back.

ATTORNEY SEAN HOPE: So the structure is going to remain the same. From my perspective, the zoning relief doesn't change because we're still in the setback, but there was an agreement. And I think if the Board would want to add the condition to the record, I mean, it's the same structure except they're going to be pulling off a piece.

CONSTANTINE ALEXANDER: I'm not sure how to phrase that. I mean, we need the -- the Inspectional Services when you come back for your new Building Permit or revised or whatever, they're going to want to know what you're doing is what Mr. -- this gentleman wants.

ATTORNEY SEAN HOPE: So this is the revised drawing.

BRUCE SCOTT: If you make this part of profit of the grant, subject to revising the eave over 34R as shown in this drawing, then --

HARRY GARVEY: Yeah, I'm fine with it.

CONSTANTINE ALEXANDER: And you've seen this, sir?

HARRY GARVEY: Yes.

CONSTANTINE ALEXANDER: Okay. And you have no

objection.

HARRY GARVEY: No, I'm fine with that.

CONSTANTINE ALEXANDER: Thank you.

I'm sorry, anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We have a letter of -- original letter of opposition which we've talked about already. We do have some letters of support. I'm not going to read the letters other than just identify who wrote them.

A letter from Dianne Sullivan who resides at 49 Garfield Street.

From Jeff Peterson and Jenny Payette, P-A-Y-E-T-T-E who resides at 28 Prentiss Street.

And I think that's it. That's what we have. I'm going to close public testimony.

Any comments or discussion from members of the board or we ready for a vote?

JANET GREEN: Ready.

JIM MONTEVERDE: Ready.

CONSTANTINE ALEXANDER: Ready? Okay.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that the roof of this garage has not been well designed and creates water problems for whoever resides on the property and wants to have use of that garage.

That the hardship is owing to the fact that the shape of the lot and where the garage is located, it being too close to the lot line, not too close, but very close which means that setback relief is required which is what's being sought here.

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

What is being proposed here is to just rectify a building problem, a construction problem without any other adverse impact on the city. As a matter of fact, a beneficial impact on the city in terms of not

having the structure, this garage roof collapse with water accumulating.

So the Chair moves on the basis of these findings we grant the Variance requested on the condition that the work proceed in accordance with the plans given to us by the petitioner and which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Variance granted. Good luck.

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

* * * * *

(9:00 p.m.)

(Sitting Members Case BZA-017031-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: Now at this late hour we're going to turn to our regular agenda. And I want to announce that there are two cases that are on our agenda that are going to be continued. So at the request of the petitioner continue. So if you're here, you don't have to stick around for the continuance.

One of them is going to be is case No. 017031, 57 J.F.K. Street.

Do we have a letter, Sean, from the petitioner and a date to continue this case to?

SEAN O'GRADY: Yes. 57 J.F.K.?

CONSTANTINE ALEXANDER: Yes.

The letter is from the Chin, C-H-I-N Law Firm. I believe they're counsel for the petitioner. And this office represents Ganko Group Cambridge, LLC. This is a request for postponement of the hearing rather than a continuance.

What date do we have on the agenda?

SEAN O'GRADY: January 10th.

CONSTANTINE ALEXANDER: January 10th.

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

That the petitioner sign a waiver of time for decision.

Has the petitioner done that yet?

SEAN O'GRADY: Look on the corner.

CONSTANTINE ALEXANDER: Yes, we do have one.

Okay.

That the petitioner sign a waiver of time for decision. And the petitioner has in fact done that.

That the posting sign be modified, or a new one be obtained

to reflect the new date. January 10th you said?

SEAN O'GRADY: Yes, January 10th.

CONSTANTINE ALEXANDER: At seven p.m. So that this case will be heard at seven p.m. on January 10th.

That modified side sign must be maintained for the 14 days required by our Ordinance just as a sign for tonight's hearing was maintained.

And lastly, and I don't think this will apply, to the extent that the petitioner is going to submit new plans, specifications, or the like, they must be in our files no later than five p.m. on the Monday before January 10th.

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

(Aye.)

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(9:05 p.m.)

(Sitting Members Case BZA-017026-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hickey.)

CONSTANTINE ALEXANDER: The chair will now call case
No. 017026, 36 Follen Street.

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

ATTORNEY SHIPPEN PAGE: Good evening, Mr. Chairman.

Thank you. My name is Shippen Page. For the record, I'm representing

the petitioner Mark Lanza who is the trustee of the 36 Follen Street Realty Trust. His -- the beneficial owners are here. They would prefer to remain somewhat anonymous, but they are here for various reasons. I'd like them to present themselves at the appropriate time. Mr. Lanza's going to produce some procedural stuff, and then we'll go on to the subject.

CONSTANTINE ALEXANDER: Well, let me -- a procedural matter, maybe you're going to cover it anyway.

ATTORNEY SHIPPEN PAGE: Yeah.

CONSTANTINE ALEXANDER: Your application -- your advertisement I should say, says you're seeking a Variance and/or Special Permit. And you identify nine different items that for you're seeking zoning relief.

JANET GREEN: Gus, it has to go a little bit closer.

JOHN HAWKINSON: It's actually been the angle that's been the problem, not the distance.

CONSTANTINE ALEXANDER: Okay?

JOHN HAWKINSON: Keep talking and we'll see.

JANET GREEN: Higher.

CONSTANTINE ALEXANDER: I was doing well until somebody corrected me.

Is that any better? No. I wonder if the mic has gone dead.

As I was saying before the mic interrupted me, there are nine items you're seeking relief for.

ATTORNEY SHIPPEN PAGE: Correct.

CONSTANTINE ALEXANDER: Either a Variance or a Special Permit according to your advertisement. The standard for relief, for Special Permits and Variances, as you well know, are dramatically different.

ATTORNEY SHIPPEN PAGE: Correct.

CONSTANTINE ALEXANDER: We need to know which items you're seeking a Variance for and which items you're seeking a Special Permit for.

MARK LANZA: I'll respond if I can.

CONSTANTINE ALEXANDER: Yeah.

MARK LANZA: The Ordinance, as you know, requires a

Variance under the circumstances where you're increasing a currently non-conforming aspect of the property. The only aspect of the property that's currently not --

JANET GREEN: They're raising their hand.

MARK LANZA: The only aspect of the property that we're changing that is currently non-conforming by increasing the non-conformity is the FAR.

JANET GREEN: They still -- you have to hold it up to your mouth.

MARK LANZA: About there?

JANET GREEN: Yes. You can hear it when you've got it.

MARK LANZA: Okay. Practically touching it.

ANDREA HICKEY: Yes.

MARK LANZA: As I was saying, the only attribute of the property that's non-conforming where we're increasing the non-conformity is that there are others that we're changing but not increasing the non-conformity. The only thing that's being increased is the FAR. And it's for that that we're required by the Ordinance to seek a Variance.

CONSTANTINE ALEXANDER: So what relief are you seeking with regard to raising the height of the house 18 inches or etcetera, etcetera?

MARK LANZA: That's currently conforming. And the height increase will still be conforming.

CONSTANTINE ALEXANDER: So why are you speaking relief?

MARK LANZA: Special Permit. Because the front of the house where some of the height increase will occur and the right side of the house are in the side yard --

JANET GREEN: You have to hold the microphone.

MARK LANZA: -- in the front yard. So in other words, you're creating more mass. Even though you're not increasing the non-conformity, you're creating more mass, building mass in an area that's currently non-conforming.

CONSTANTINE ALEXANDER: Under our Ordinance that requires Variance.

SEAN O'GRADY: Yeah, we would consider that a Variance.

MARK LANZA: I wouldn't, but if the Board says that has to be within the scope of the Variance, then I guess it has to be within the scope of the Variance. It's not increasing the non-conformity. That's why I say it's not.

CONSTANTINE ALEXANDER: The construction of new front step?

MARK LANZA: Front steps, as I understand it, are exempt from the -- unless they're enclosed, there's an enclosure.

CONSTANTINE ALEXANDER: Are you intruding into the front yard? Is that the problem?

MARK LANZA: Not further.

CONSTANTINE ALEXANDER: I'm sorry?

MARK LANZA: Not further.

CONSTANTINE ALEXANDER: One more time.

MARK LANZA: Not further.

CONSTANTINE ALEXANDER: Then why do you need zoning relief?

MARK LANZA: We just -- we're including that in the

description of all the changes --

JANET GREEN: You've got to hold the microphone.

MARK LANZA: We were including to be overinclusive including the description of all the changes that we're making.

CONSTANTINE ALEXANDER: I know that. Sir, the trouble is as you can tell, it confuses the Board. You're supposed to identify specifically what relief you need, and if it's just a matter of the FAR relief, so be it.

If it's other reasons why you need a Variance, then you have to identify it. And then similarly you have to tell us what you need a Special Permit for. But you leave us confused and it makes it entirely difficult to draft a motion for relief when we get to the time of making a vote. So I'm just sort of --

MARK LANZA: Have I clarified it?

CONSTANTINE ALEXANDER: Yeah, please.

MARK LANZA: Are there additional issues that the Board needs clarification?

CONSTANTINE ALEXANDER: I can't hear you, I'm sorry.

They can't hear you in the back.

MARK LANZA: Are there additional issues that the Board needs --

JANET GREEN: They can't hear you in the back.

MARK LANZA: -- clarification on?

ATTORNEY SHIPPEN PAGE: Mark, Mark, in each one of these areas, tell the Chairman and the board members what relief you're seeking, we are seeking for each individual, whether it's a Special Permit --

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SHIPPEN PAGE: -- and variance and why. Just go through them one by one and hold the thing right to your mouth.

MARK LANZA: I already answered No. 1. The Board said really you need a Variance for that. My position is it's really a Special Permit because we're not increasing the non-conformity. We are changing a non-conformity attribute of the property. We're not increasing that non-conformity. So that's a Special Permit. But if the Board says include that in the Variance, so be it.

CONSTANTINE ALEXANDER: Okay.

Well, you realize, of course, by including in the Variance you got to meet a tougher legal standard than you would for a Special Permit?

MARK LANZA: I do. But, again, we don't think we need a Variance to do that.

CONSTANTINE ALEXANDER: Okay. But you're asking for a Variance.

MARK LANZA: Right, because you're making me.

ATTORNEY SHIPPEN PAGE: That's all right, Mark. Let's keep going.

MARK LANZA: Construct new front steps.

JANET GREEN: Okay.

CONSTANTINE ALEXANDER: Okay.

JANET GREEN: Microphone.

MARK LANZA: Again, again, the front of the property is two close to the front lot line. That means it's non-conforming. We are not increasing the non-conformity. We're putting something there, we're changing it. Again, in my opinion that's a Special Permit.

SEAN O'GRADY: Again, we would call that a Variance.

SAM KACHMIRER: We're going to a Variance.

MARK LANZA: Enclose the Southern portion of the front porch. Again, the front of the house is too close.

CONSTANTINE ALEXANDER: Why do you need relief for -- to enclose a --

MARK LANZA: Because we're changing, we're making a changes to an existing, non-conforming attribute to the property. That's a Special Permit.

CONSTANTINE ALEXANDER: It doesn't say that. It says enclose the southern portion. It doesn't say modify the southern portion.

MARK LANZA: That's certainly a modification for the enclosure.

CONSTANTINE ALEXANDER: No, but -- sir, if you just enclose a porch, you do not need zoning relief. You may think of it as a modification, but that's not the way our Zoning Ordinance works.

ATTORNEY SHIPPEN PAGE: So strike that.

MARK LANZA: So the Board could find that there's no need

for zoning relief?

CONSTANTINE ALEXANDER: Yes. If all you're doing is enclosing the porch.

MARK LANZA: Okay, good.

CONSTANTINE ALEXANDER: No need for -- restore the windows. Are you using the same window shape?

SAM KACHMIRER: No, we're not. Which is why we're seeking a Special Permit for where we are within zoning setbacks.

JANET GREEN: Okay, you're going to need a microphone.

MARK LANZA: So that's Special Permit category.

CONSTANTINE ALEXANDER: Right.

MARK LANZA: The dormer on the north side, excuse me, the rear addition clearly we're increasing, that's part of the FAR.

CONSTANTINE ALEXANDER: That says a Variance, no question.

MARK LANZA: Construct a dormer on the north side.

Again, I would say that's a Special Permit. We're not, we're not going above the height limit, but we are creating more building space in an area

that's currently non-conforming. It's too close. The right side is too close.

CONSTANTINE ALEXANDER: A Variance under our Ordinance.

And let me -- we're going to come back to this, you're familiar with our dormer guidelines?

SAM KACHMIRER: I am familiar with the dormer guidelines. And we worked extensively with the Historical Commission regarding what would be appropriate in this case, which is why some of the dormers are slightly outside of the dormer guidelines, which are obviously not Building Code. But we wanted to conform within that.

CONSTANTINE ALEXANDER: These dormers you said you worked with the Historical Commission?

SAM KACHMIRER: We worked with Sarah Burks and Charlie Sullivan, meeting after meeting after meeting. When we got approval from the Historical Commission --

JANET GREEN: Microphone.

SAM KACHMIRER: Sorry, it's just so close.

JANET GREEN: I understand that. We need to hear you.

SAM KACHMIRER: Of course.

We worked with the Historical Commission, three, four, five meetings with Sarah Burks and Charlie Sullivan. Went in front of the Historical Commission multiple times to get approval of this design, which is why I think we may be we're a little bit oversensitive to describing exactly what we're planning to do. I'm sure as everyone knows, this is in a non-contested situation. So I think we're trying to describe in full transparency exactly what it is we're going to do to the house.

CONSTANTINE ALEXANDER: Okay.

SAM KACHMIRER: So forgive us if we're in error on that.

CONSTANTINE ALEXANDER: But you are aware of the dormer guidelines?

SAM KACHMIRER: I am completely aware of the dormer guidelines as I was here a few years ago to put them on my own house and went through this process many a time. Yes. I have a copy in my office.

CONSTANTINE ALEXANDER: I don't want to interrupt the

flow of where we're going with these. But I want to know at some point do you not comply with the dormer guidelines.

SAM KACHMIRER: Of course. Glad to review that.

CONSTANTINE ALEXANDER: Okay.

Keep going.

MARK LANZA: No. 7 is also relation to the dormer.

Extending the dormer --

CONSTANTINE ALEXANDER: Right.

MARK LANZA: -- on the west or rear side.

CONSTANTINE ALEXANDER: Right, to attach to the --

MARK LANZA: Attached at the gable.

Now on the rear side we're conforming.

CONSTANTINE ALEXANDER: I'm sorry?

MARK LANZA: On the rear side we're conforming, but we are changing -- making a change to a structure that's on a property that's non-conforming. So I would say that's a Special Permit. But, again, in the rear, we comply with setback.

CONSTANTINE ALEXANDER: Is it the view of the Building

Department Special Permit? I don't think so.

SEAN O'GRADY: Are you adding FAR there?

ATTORNEY SHIPPEN PAGE: You are slightly.

MARK LANZA: Yes.

SEAN O'GRADY: Sure.

MARK LANZA: So it can be comprehended within the FAR.

See, sometimes it's hard to distinguish between what --

CONSTANTINE ALEXANDER: And how long will this
dormer be?

SAM KACHMIRER: The dormer along the back?

CONSTANTINE ALEXANDER: The one where you're going
to connect. What will the resulting length of the -- the length of the
resulting dormer.

SAM KACHMIRER: The resulting length of the entire dormer
will be over 15 feet if that's what you're alluding to.

CONSTANTINE ALEXANDER: How much over?

SAM KACHMIRER: It will be 21 feet I believe total. It is
much bigger but it also is multiple structures. It's not really one dormer.

It's actually a gable end, but then has a dormer tied at the side of it. So you can certainly could make the argument that it's not a dormer at all and that would get it under the 15 feet.

CONSTANTINE ALEXANDER: Okay.

SAM KACHMIRER: And we worked -- again, we worked with the Historical Commission; we worked with Bruce Irving. We worked with Sarah Burks. We worked with Charlie Sullivan to find what would be appropriate historically for the idiosyncratic house that we are dealing with.

CONSTANTINE ALEXANDER: Okay.

MARK LANZA: And the last is -- well, No. 8, install skylights.

CONSTANTINE ALEXANDER: That's clearly a Special Permit.

And there's actually a nine. Construct a trash enclosure --

MARK LANZA: Trash enclosure at the end of the driveway.

CONSTANTINE ALEXANDER: Say it again?

JANET GREEN: We can't even hear you right here.

MARK LANZA: A trash enclosure at the end of the driveway.

CONSTANTINE ALEXANDER: Yes. And what's the relief

for that?

MARK LANZA: Special Permit.

SAM KACHMIRER: We're within the setbacks on the side yard. We just want to make sure we're conforming.

CONSTANTINE ALEXANDER: It seems to me that's a Variance, too.

MARK LANZA: No, we're not too close to the lot line.

ATTORNEY SHIPPEN PAGE: You're too close to the front aren't you?

SAM KACHMIRER: We're right up against the lot line.

CONSTANTINE ALEXANDER: So it's a Variance.

MARK LANZA: Okay.

CONSTANTINE ALEXANDER: Okay.

So you're seeking mostly Variances with the couple of Special Permits as we've identified.

MARK LANZA: And one as the Board has determined as of right.

CONSTANTINE ALEXANDER: I'm sorry?

MARK LANZA: In one the enclosure of the porch, the Board has determined that's as of right.

CONSTANTINE ALEXANDER: Yeah. That's all you're doing is enclosing the porch without modifying it, you do not need zoning relief. So that's off the table for the purpose of this hearing tonight. Which means as you go forward, assuming we grant relief, and you do decide to change the porch, change the shape of it or what have you, the plans -- well, you have to come back with plans showing that to us just so you understand.

SAM KACHMIRER: Understood.

MARK LANZA: Okay. There's another procedural issue.

The application filed on October 11th, says the increase in FAR, depending on which page you look at, plans have changed many times, is either 175 square feet or it's 210 square feet. It's neither. It's, again, not huge, but it's 197. So we'd like to amend the application as to the gross area floor increase from 175 and/or 210 to 197 in all instances.

CONSTANTINE ALEXANDER: Well, I mean you need -- you're adding space obviously, 197 feet obviously.

MARK LANZA: Right.

CONSTANTINE ALEXANDER: That's all we need to know for purposes of tonight.

MARK LANZA: Okay.

CONSTANTINE ALEXANDER: As long as what you're saying is reflected on the plans if we approve the Variance --

MARK LANZA: It is.

SAM KACHMIRER: From a 0.58 to a 0.62 in terms of FAR. A 0.04 increase.

MARK LANZA: Under all of those circumstances.

SAM KACHMIRER: Under 97 --

MARK LANZA: Whether it's 175, 197, or 210. It's a four percent --

SAM KACHMIRER: And if I could note, a lot of that FAR square footage, approximately 100 square feet of it, is because we're trying to be overly honest in terms of as we raise the house, we're lowering that third floor internally which we could sort of fudge and say we're not doing -- but to say that's going to increase the FAR, it's not

exterior FAR that's being added in there.

MARK LANZA: And the other procedural matter is the plans that were filed on October 11th have been superseded and replaced with new plans that are dated November 26th.

CONSTANTINE ALEXANDER: Are they --

SAM KACHMIRER: They were lodged on Monday.

CONSTANTINE ALEXANDER: I'm sorry?

MARK LANZA: Yeah, we brought them in on Monday.

CONSTANTINE ALEXANDER: You have to have new revised plans in our files by --

SAM KACHMIRER: By Monday.

MARK LANZA: Monday. We did it. We made it maybe by an hour.

CONSTANTINE ALEXANDER: These are the plans?

SAM KACHMIRER: Yeah, those are all of them.

CONSTANTINE ALEXANDER: Okay.

SAM KACHMIRER: Yeah.

CONSTANTINE ALEXANDER: Just want to make sure.

SAM KACHMIRER: They say 11/26? Yeah.

CONSTANTINE ALEXANDER: Like pulling teeth.

MARK LANZA: A lot of sheets here for 197 square feet.

CONSTANTINE ALEXANDER: Alison, you have something?

ALISON HAMMER: I'm not sure, Gus, if the trash enclosure needs relief.

CONSTANTINE ALEXANDER: I don't know either. I mean I thought it was a setback issue.

ALISON HAMMER: Is it -- how tall is the trash shed?

SAM KACHMIRER: Under 60.

ALISON HAMMER: So does that need relief?

SEAN O'GRADY: I don't make judgment calls at the table like that.

ALISON HAMMER: Okay, all right. I don't think ordinarily it does.

CONSTANTINE ALEXANDER: Well, they're requesting it, so we'll hear it. And assume they do need it.

MARK LANZA: We'd prefer to be overinclusive rather than

under inclusive.

CONSTANTINE ALEXANDER: No, I appreciate that.

All right, Mr. Page, you're sitting there quietly all this time.

ATTORNEY SHIPPEN PAGE: Thank you, Mr. Chairman.

Now, I am not as familiar with this case as my, as Mr. Lanza or Mr. Kachmirer. So what I'd like to present to the Board is the context of this property and the profile of the people who actually own the property who are going to live there. This is a property that was built in the 1840s. Mr. Sullivan has opined I gather that a hand of an architect has not seen this house since it was built. The south side of the property is 1.38 feet from the property line, and it's extremely close and it's too close to the street. It was I think a cobbler's house originally in the 1840s, and it was the house that Jack built.

The third floor has two separate staircases leading to it.

They are not connected. My clients would like to basically bring the property up to modern standards for a family. Kit Reed and Jane Reed bought the house in 1965. To my knowledge no changes were made in the years since. She died in 2013. He died in 2016. Their neighbor to

the south, Sheila Cook, lived in that house since -- in her house since 1975 which was essentially bought by Mr. Yoffe who is an abutter and has clearly got some concerns which my clients have taken great pains to understand and try to meet.

My clients have sent out over 120 letters to abutters and the residents of 50 Follen Street to get their ideas of how this would affect them and to solicit their input as to how their needs could be met. They've received relatively few comments about the design particularly of the dormer on the south side -- on the north side of my client's house, on the south side of the Mr. Yoffe's house. And out of all of the elements that are at play here from raising the house because the sill of the house sits on grade and the way that Follen Street has been repaved over the years has meant that water overflow actually hits the bottom sill of the house. And there are photographs that we have that indicate the rotting that takes place. They want to raise that 18 inches, which is consistent with the abutting properties; 44, formerly Lincoln's Inn, and 34 which is Mr. Yoffe's house. They want it enclosed and the front porch to make a bathroom, and various other things that Mr. Kachmirer is more equipped

to handle than I am. But I wanted to address the dormer issue in particular because Mr. Yoffe and we met prior to the meeting to get a sense of what might be acceptable. And his concern is, and I appreciate it, that it's right there. These houses are very close. It's about 11 feet. They're very close. And yet if you look at the third floor of the house, if you go up there, it's about five feet, eight inches unless you get to the centerpiece of the third floor rooms which makes them virtually unusable for this family. It's a young family. They've got a three-year-old son and they teach at Harvard -- he teaches at Harvard. And they want to be there. They want to be on Follen Street, but they can't use the third floor without constructing some sort of a dormer on the northern side of their property. What kind of dormer and what's slant it is and what shape it is, has been discussed at great length. Most recently two hours ago with Mr. Yoffe. And what I want to signal to the Board is that we want to accommodate within reason Mr. Yoffe's concerns because he has a two-floor house, this is a three-story house and there's no way you can use the third floor without some relief, but it's not gonna look into his windows. It looks over his ridge line as you face north on his south side

of the house, facing north. So I wanted to address that question straight on because I think it's the one, if I were in your shoes, I'd be thinking "How am I going to protect the privacy of the abutter?" And these houses are built in -- I don't know when Mrs. Cook's house, Mr. Yoffe's house was built, but the petitioner's house was built in the 1840s.

CONSTANTINE ALEXANDER: But the purpose of the dormer guidelines is not to protect the privacy of neighbors, it's aesthetic. In the opinion of Community Development --

ATTORNEY SHIPPEN PAGE: Exactly.

CONSTANTINE ALEXANDER: -- they don't want dormers too big. They want them set back from the ridge line --

ATTORNEY SHIPPEN PAGE: I understand.

CONSTANTINE ALEXANDER: -- etcetera, etcetera, etcetera.

ATTORNEY SHIPPEN PAGE: I understand.

CONSTANTINE ALEXANDER: And, you know, we -- we just had a case last month --

ATTORNEY SHIPPEN PAGE: I read it.

CONSTANTINE ALEXANDER: -- on Crescent Street where someone wanted to build a large -- and they had good reasons, a third floor. They wanted to build a large dormer. They wanted to connect two dormers as I recall.

ATTORNEY SHIPPEN PAGE: Correct.

CONSTANTINE ALEXANDER: And it was 30 plus foot dormer. We said no.

ATTORNEY SHIPPEN PAGE: This is much, much, much -- Sam, how long is this?

CONSTANTINE ALEXANDER: Sometimes it requires you to redesign the interior of the floor where the dormers are going to be.

ATTORNEY SHIPPEN PAGE: Correct.

CONSTANTINE ALEXANDER: It may not be as ideal as you would like, but it does from, at least the point of view of the Community Development, is more aesthetically in tune with what our city should have.

SAM KACHMIRER: I think the place that we feel like we're stuck on a little bit of a paradox is where the Historical Commission is telling us this is what would be most historically accurate, and what we

worked with them on continuously, seems to be in a little bit of conflict of what the dormer guidelines would be. We've had that discussion, because, you know, we deal with the dormer guidelines all the time. They're applied almost as law or code around, here completely understood. However, we're, you know, within an historical district, and sometimes within a historical district exceptions have to be made, even with the dormer guidelines, to accommodate the historical nature of the neighborhood and of the specific properties.

CONSTANTINE ALEXANDER: Do we have a letter or a certificate from the Historical Commission in our files?

MARK LANZA: You do.

ATTORNEY SHIPPEN PAGE: You should.

MARK LANZA: It was submitted with the application. May 22nd this year and has not been appealed. I don't have a microphone.

ATTORNEY SHIPPEN PAGE: That's okay, you can be heard. Can you be heard?

MARK LANZA: What I said was there is a Certificate of Appropriateness from the Historic District Commission -- the Historical

Commission (inaudible). It's part of the application package.

CONSTANTINE ALEXANDER: I'm looking for it. I don't remember seeing it.

MARK LANZA: It was issued on May 22, 2018, and has not been challenged or appealed.

ATTORNEY SHIPPEN PAGE: Do you have a copy of it?

MARK LANZA: I do.

ATTORNEY SHIPPEN PAGE: Mr. Chairman, I'd like provide you with a copy that.

CONSTANTINE ALEXANDER: You have a copy of that?

ATTORNEY SHIPPEN PAGE: We do.

CONSTANTINE ALEXANDER: I think we just found it in the back. No, this is dated October 22nd. This is different than what we have in our files.

MARK LANZA: I haven't seen this, Mr. Chairman.

CONSTANTINE ALEXANDER: This is different than what we have in our files.

MARK LANZA: That's the certificate.

CONSTANTINE ALEXANDER: Okay.

Okay, continue.

ATTORNEY SHIPPEN PAGE: Mr. Chairman, I will turn this over to my colleague, Mr. Lanza and also Mr. Kachmirer. But I wanted to submit two letters of support to supplement the letters of support that are already in the file.

One is from Mr. Thomas Shapiro who owns four units at 50 Follen Street, who lives at 47 Raymond. He's in support. And Clark and Wendy Apt who live at 19 Follen Street are also in support.

So thank you for your consideration of that. And I'll close my remarks now.

And, Mark, do you want to add anything?

MARK LANZA: No.

ATTORNEY SHIPPEN PAGE: Sam?

MARK LANZA: If I may proceed, Mr. Chairman, with the criteria for the Variance and for the Special Permit. How this project meets this them.

CONSTANTINE ALEXANDER: Let's do the Variance.

Identify the areas again that you're seeking a Variance for and why you meet the standards for a Variance.

MARK LANZA: Okay.

At the Board's direction and under the Ordinance we're seeking them for the FAR increase.

We're seeking them for the additional mass in the front yard.

The additional mass in the side yard.

And if I understood the Board correctly, also for the trash enclosure. So for those -- attributes of the property.

CONSTANTINE ALEXANDER: And now, let's see, why would a literal enforcement of the provisions of the Ordinance involve a substantial hardship that justifies us granting you the Variance you're seeking?

MARK LANZA: It sounds like deja vu from an application you recently heard tonight.

You have a family that's moved in, that's growing, and they need more building space for the growing family.

CONSTANTINE ALEXANDER: Well, they had a very tiny

house with two bedrooms and one bathroom. That's not the case, I don't think, with your house.

ATTORNEY SHIPPEN PAGE: No, no.

CONSTANTINE ALEXANDER: You have a large house.

You want it to be larger. Okay. That's nice.

MARK LANZA: But not much larger.

CONSTANTINE ALEXANDER: I'm sorry?

MARK LANZA: Not much larger. But to make the space --

CONSTANTINE ALEXANDER: Larger, larger. You're going to make it larger.

MARK LANZA: Yes.

CONSTANTINE ALEXANDER: Whether it's much larger or little, it's larger. And why is there a hardship?

ATTORNEY SHIPPEN PAGE: Mr. Chairman, this is an addition of 197 square feet --

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY SHIPPEN PAGE: -- on a house which is clearly a non-conforming lot. By the nature of the house and the way it was

designed and built over many years without the benefit of an architect, much of the space in the house, and particularly on the third floor, cannot be properly used without a relief. Whether it's a substantial hardship is a matter -- is up for discussion. But our position is that it's a very modest relief. It brings a young family into Cambridge and it's by the nature of where the house sits on the lot that creates non-conformity as well as the small size of the lot as well as the small size of the lot.

MARK LANZA: Yes. Well said by attorney Page. Again, without the Variance, that's the hardship that will not happen for the family. They would not be able to use the existing space because of the way it's constructed, configured, and the heights of the ceilings.

CONSTANTINE ALEXANDER: How is it the space used before your clients bought the building? Who lived there?

ATTORNEY SHIPPEN PAGE: Kit Reed and Jane Reed lived there -- Christopher, known as Kit Reed and his wife Jane. I don't know if they had children. They were quite elderly when I met them.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: They did. Jennifer.

ATTORNEY SHIPPEN PAGE: Jennifer, they did.

I never visited them in their house and so --

CONSTANTINE ALEXANDER: But at least the house was liveable. The house was usable.

ATTORNEY SHIPPEN PAGE: The house was liveable to be sure. And the third floor perhaps they used as an attic, perhaps they used it as storage space, Mr. Chairman, I just don't know.

JIM MONTEVERDE: It says bedrooms. They're labelled as bedrooms. Three bedrooms.

ATTORNEY SHIPPEN PAGE: They may have used them as bedrooms. I did not do the -- I don't know, I don't know how the predecessors used them quite frankly.

JIM MONTEVERDE: No, I'm just saying. And the plans -- if I'm reading the correct plans submitted, this plan reading the existing third floor has got three bedrooms, and then the proposed plan there are no bedrooms. It's a studio or two studios and an office space. Is that correct?

ATTORNEY SHIPPEN PAGE: Correct.

CONSTANTINE ALEXANDER: And that's what a family needs with children, two offices? I don't understand. I don't see a comprehensive presentation here as to what, as we did Decatur Street, for example.

ATTORNEY SHIPPEN PAGE: All right.

CONSTANTINE ALEXANDER: The issues were identified. Need more house. They were a small house, blah, blah, blah.

ATTORNEY SHIPPEN PAGE: Right.

CONSTANTINE ALEXANDER: Here you got a large house. Yes, it's an older house. Yes, it's got odd configurations. But there's a lot of living space in that house. But you want even more. A little bit more is your comment. Even more.

ATTORNEY SHIPPEN PAGE: That's correct, Mr. Chairman. That's correct.

SAM KACHMIRER: Well, what we're looking to do is bring this house --

CONSTANTINE ALEXANDER: I'm sorry?

SAM KACHMIRER: What we're looking to do, and the

hardship that we're facing here is that literally the foundation is crumbling, it's unsafe. It was built in 1847. The mortar has seen its day. The house needs to be repaired. It needs a new foundation.

CONSTANTINE ALEXANDER: Understood.

SAM KACHMIRER: The street around it has literally been built up around it over the last 150 years. The wood frame of the house is literally rotting into the ground currently.

CONSTANTINE ALEXANDER: But you've got to repair that. But you also not only want to do a repair, you want to extend, you want to increase the --

SAM KACHMIRER: Certainly.

CONSTANTINE ALEXANDER: That's the issue.

SAM KACHMIRER: A minimal extension while doing a repair, of course. You want to do it once and you want to do it right. And these clients want to be a part of this fabric and this community for a long time. You don't want to try to be doing renovations every five years. You want to do it once and be part of the community.

ATTORNEY SHIPPEN PAGE: Mr. Chairman, I don't wish to

be argumentative. Now, I think what's at stake here is that they want to reconfigure the house. They have a one time opportunity to reconfigure the house. This has now changed ownership for the first time since 1965. By reconfiguring it if they're going to add 197 square feet to make it more rational, it's already a big house. I'm not arguing for another three or four or five hundred square feet. It's 197 square feet tacked on in various parts of the plan.

CONSTANTINE ALEXANDER: How many square feet does the house have now?

SAM KACHMIRER: It's 2497 square feet.

CONSTANTINE ALEXANDER: 2500 square feet roughly.

ATTORNEY SHIPPEN PAGE: Yeah, 2500 square feet, and they're going to add -- and they're going to go to 197 square feet more.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SHIPPEN PAGE: So I don't want to push my luck. Perhaps it's too late. But I want to say that this is simply an opportunity to modernize and conform this house as I've known many houses in Cambridge to have been so conformed and so modernized over

the years. I think the relief we seek is very modest. But I am certainly picking up your reservations.

SAM KACHMIRER: One other item in regards to the additional FAR is the two bump outs along the back of the house. Assuming you guys have seen the plans, there's an area that's only three feet wide between them. If we build down by right, which we can, because they're covered porches in there, the area between them is not maintainable. There's no way to get in there to do repair work, to do painting, to do anything, which is why we've designed it to unify that and bring that together as one singular bump out. We think that that's a pragmatic and reasonable solution to this challenging issue that was presented with this. That's our goal.

CONSTANTINE ALEXANDER: Okay. I appreciate that explanation. It's rational and I understandable.

MARK LANZA: Now, as to the hardship owing to the circumstances related to soil conditions, shape, and topography of the land, which affect the land to structures but not land to structures in the district generally. The problem we have -- you heard them already

concerning topography, is that.

CONSTANTINE ALEXANDER: You identified that. It's water, the water.

MARK LANZA: Actually, the street -- the street has been built up by the city multiple pavings over the years --

CONSTANTINE ALEXANDER: Right.

MARK LANZA: -- so that now the level of the walk is below. Call it, whatever you want to call it, the water, running water, when it rains, guess where it goes? On the property, up against the foundation. With the heavy rains we've had recently are a perfect example. Now that is clearly a soil condition that's resulted.

The topography is the relationship between the lot and the street. That's unusual.

CONSTANTINE ALEXANDER: We get it.

MARK LANZA: Okay.

Substantial relief to the public good. So substantial detriment to the public good for the following reasons:

There is no substantial detriment to the public good. This is

197 square foot building. How could -- and most of it's inside. How could that possibly affect the public good in the City of Cambridge.

Relief can be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance for the following reasons:

Again, if you look at all the purposes in Section 1.3 of the Ordinance, there's none that is nullified or derogated from by this little addition. So there's simply no evidence of that. So for those reasons we feel the changes that require a Variance under the Ordinance and by the Board's determination are entitled to those findings should be granted.

Now, turning to a Special Permit. Again, you heard that the property is non-conforming. It's non-conforming in several attributes:

The lot is too small, it's undersized. About 4300 square feet in a district that requires 6,000.

Use is conforming because it's single-family before, single-family after.

On the width is too narrow. Again, the lot was created many, many years ago long before zoning was adopted in the City of Cambridge.

The front setback, too close. It's about 5.3 feet. Much too close. On the right side it's even closer. About 1.3 feet.

And as you know, FAR -- doesn't comply with FAR. The increase in FAR is a modest four percent. Under any of those that we mentioned before.

So what we're doing is we're complying with the Ordinance to the greatest extent possible. We're not increasing any non-conformity except FAR. And it's a very, very modest increase.

Traffic impacts. It's single-family now. It's going to be a single-family later. There's no new traffic be being generated.

Impact -- adverse impact on adjacent uses. Again, there's a single-family residence there now. A 197 square foot addition is not going to adversely affect any adjacent use. The building that's at issue on the right side is lower, so it's already -- we're already above it.

No creation of the nuisance or hazard to be a detriment to the public health, safety, or welfare of the occupant of the proposed house or the citizens of the city. Again, there's no change in use here. There's no additional traffic. There's no -- nothing that would really impact the public

health or create a health hazard.

And then it says other reasons that the proposed use would not impair the integrity of the district or adjoining district or derogate from the intent or the purpose of the Ordinance. I already addressed derogation from the intent or purpose of the Ordinance. There is really no change which is in use which is changing here. It's a conforming use.

As far as the aesthetics go, as you know zoning cannot regulate aesthetics. That's already been addressed by the Historic Commission thoroughly and completely. The certificate has been issued. You have a copy. It is final and binding.

All of these changes are not more detrimental than the existing non-conforming to date. We request a finding in that regard, too.

So it is our view that the changes meet -- the need of a Variance in view of the Ordinance and the BZA, meet the criteria, the statutory criteria. The change is in need of a Special Permit and the findings meet the criteria for the finding and Special Permit.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SHIPPEN PAGE: Thank you, Mr. Chairman, I

think that concludes our presentation.

Thank you very much.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

I'll open the matter up to public testimony. Yes. Chomping at the bit. Okay, name and address to the stenographer.

JANET GREEN: And the microphone.

CONSTANTINE ALEXANDER: And the microphone more importantly.

ATTORNEY ADAM COSTA: Thank you Mr. Chairman.

JANET GREEN: Can I say one thing? If you're sitting in the back, and even with the microphone, there are some chairs up here, you could move forward as well. You might be able to hear it better.

ATTORNEY ADAM COSTA: Thank you. Thank you, Mr. Chairman, members of the board. For the record, my name is Adam Costa. I'm an attorney with the firm of Mead, Talerman, and Costa

Newburyport. I represent a number of different neighbors. In fact, neighbors on all three sides of the subject property.

Doug Yoffe, you've heard him referenced already. He owns the properties at 34 and 44 on either side of the subject property. I also represent David and Hungwah Eliot, they own the property to the rear which is at 22 Follen Street, and that runs the entire rear of the subject property. I have and I'm going to provide a copy in a moment, in fact, I have multiple copies of a letter that just sort of summarizes some of my comments. It's a lengthy letter. I don't expect you to read it now. I don't expect you to read it into the record.

CONSTANTINE ALEXANDER: We're going to decide tonight, but I also don't want to read it tonight.

ATTORNEY ADAM COSTA: No, and I'm going to address the points in the letter. I'll provide a copy so you can follow along if you like.

CONSTANTINE ALEXANDER: And I take it -- you didn't say it, but I take it you're here in opposition to the relief being sought?

ATTORNEY ADAM COSTA: That's correct.

CONSTANTINE ALEXANDER: Are you aware of the opposition?

ATTORNEY SHIPPEN PAGE: I am not, Mr. Chairman. This is the first time I've seen this. And I'm grateful for the opportunity to see it.

ATTORNEY ADAM COSTA: And as I said, Mr. Chairman, the letter is dated today and I intend to address the issues in the letter so there will be no surprises.

CONSTANTINE ALEXANDER: Yeah. I don't know, maybe it's the late hour. But we're getting new arguments tonight.

ATTORNEY ADAM COSTA: Sure.

CONSTANTINE ALEXANDER: We had a lot of time trying to understand exactly the relief being -- I'm going to reverse it. The relief being sought. We teased it out after a long process. Now we have a number of neighbors coming in with arguments in opposition. That's fine. I don't know whether -- we can't react so quickly to this. I'm just wondering, and my wonderment is going toward the other board members. Is this a matter for a continuance?

BRENDAN SULLIVAN: I think that dialogue is probably in order, No. 1, so that we're not doing this on the fly. We could waste two hours --

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: -- and continue it after two hours and really gain nothing.

CONSTANTINE ALEXANDER: Thank you. I think we should continue this case to allow you and you and Mr. Page, I'm sorry, to have a dialogue and see if you can come to sort of closer -- to some kind of agreement on something. And also I would like, frankly, a better presentation of what exactly you're asking a Variance for. What you're asking for a Special Permit. What we got tonight has been very, very painful to try to tease out of you.

ATTORNEY SHIPPEN PAGE: I apologize to the Board, Mr. Chairman.

CONSTANTINE ALEXANDER: No apologies necessary.

But if we want to continue this case to what time? What date I should say? This would be a case heard so the five of us have got to be

present.

SEAN O'GRADY: January 10th.

ATTORNEY ADAM COSTA: Mr. Chairman --

CONSTANTINE ALEXANDER: Everybody available January 10th?

ATTORNEY ADAM COSTA: Mr. Chairman, would there be an opportunity to present some of our argument? We've heard from the applicant.

CONSTANTINE ALEXANDER: Give us your letter.

ATTORNEY ADAM COSTA: You have it.

CONSTANTINE ALEXANDER: We'll have a chance. The hope is that you would have discussions with Mr. Page or others regarding your client's problems, and see if you can come to some agreement, some modifications. And that, again, that before we meet again on January 10th, if necessary, new plans will be presented which will address some of the issues that you've resolved in your dialogue with Mr. Page. So do you agree with that?

ATTORNEY SHIPPEN PAGE: Sure, that's fine.

ATTORNEY ADAM COSTA: So I appreciate the opportunity, and certainly I'll speak to Mr. Page. I will say that I've had an opportunity to speak to Mr. Lanza after the appearance in -- when was it? October maybe? When we were before you or they were before you with a slightly different application. I think that some of our concerns, some of my client's concerns of the project goes to the heart of what's proposed. I think that may make it difficult when we're talking about these sort of full scale changes.

CONSTANTINE ALEXANDER: I don't expect you to solve every issue --

ATTORNEY ADAM COSTA: Yes.

CONSTANTINE ALEXANDER: -- but at least we can maybe reduce the number of issues and sharpen the focus on these issues. That's what I want to hear. And we will have a time to think about these issues and not try to react to a letter that's being handed to us tonight. Which is not a criticism of you.

ATTORNEY ADAM COSTA: Sure.

CONSTANTINE ALEXANDER: It's just how it's going to

work.

ALISON HAMMER: I can't do January 10th. I'm sorry.

CONSTANTINE ALEXANDER: What can you do?

SEAN O'GRADY: Next one is the 31st.

CONSTANTINE ALEXANDER: Other members of the Board
make the 31st.

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: No?

JIM MONTEVERDE: December?

CONSTANTINE ALEXANDER: No, January.

JIM MONTEVERDE: January, yes.

BRENDAN SULLIVAN: I am not.

CONSTANTINE ALEXANDER: Oh, no, you're out.

SEAN O'GRADY: Now you're into February 14th.

JANET GREEN: I'm out, too.

CONSTANTINE ALEXANDER: And then you're going to be
out in March, too, aren't you?

JANET GREEN: I'm out in March, I know.

SEAN O'GRADY: I'm now looking at February 14th.

CONSTANTINE ALEXANDER: Valentine's Day.

JANET GREEN: I do think I'm here on Valentine's Day.

ALISON HAMMER: I can't be -- I'm not in town January 10th.

SEAN O'GRADY: Only one in December.

CONSTANTINE ALEXANDER: December 13th or something
like that.

BRENDAN SULLIVAN: Can we squeeze it in?

CONSTANTINE ALEXANDER: Let me ask you a question,
Mr. Page, put you on the spot a little bit maybe.

ATTORNEY SHIPPEN PAGE: All right.

CONSTANTINE ALEXANDER: We could hear this case on
January 10th with only four members because Alison can't make it.

JANET GREEN: I can't make it.

CONSTANTINE ALEXANDER: You can't make the 10th?

SEAN O'GRADY: We had a full case. One of the cases is
36 Follen Street.

SAM KACHMIRER: Oh, yeah, we double booked in case

something --

MARK LANZA: We have a slot open.

CONSTANTINE ALEXANDER: I didn't even know you
double booked.

JANET GREEN: I can be here on the 10th, yes.

SEAN O'GRADY: Alison can't.

ALISON HAMMER: Right.

SEAN O'GRADY: How about December 13th?

CONSTANTINE ALEXANDER: I'm going to ask if the
petitioner was willing to go forward with four members.

ATTORNEY SHIPPEN PAGE: The option being did they
have a second date that they reserved?

MARK LANZA: Well, we're on the agenda for December
13th for the prior application which may be withdrawn. So we already
have a slot.

CONSTANTINE ALEXANDER: We have a slot?

MARK LANZA: Same property.

SEAN O'GRADY: Yeah, I think that's --

CONSTANTINE ALEXANDER: All right. You already have a slot? That's fine.

ATTORNEY ADAM COSTA: And Mr. Chairman --

ATTORNEY SHIPPEN PAGE: Can you be there?

ATTORNEY ADAM COSTA: -- I'm neither the applicant nor a board member, but I have a commitment on the 13th I know for certain I cannot change.

CONSTANTINE ALEXANDER: You can't change. Life's difficult. Life is difficult.

ATTORNEY SHIPPEN PAGE: Life is difficult. I wonder, Mr. Chairman, if I can suggest that I can speak to Mr. Costa briefly and perhaps come back at some point if I know there's not a second call but some -- so I can try to figure out if there's any grounds that we can have --

CONSTANTINE ALEXANDER: You mean do it tonight?

ATTORNEY SHIPPEN PAGE: Yeah, tonight. So that we can come back and see if we can meet on January 10th with four members present, understanding the risks that are involved.

CONSTANTINE ALEXANDER: That's fine.

ATTORNEY SHIPPEN PAGE: I mean then if
we --

CONSTANTINE ALEXANDER: We have other cases we're
going to hear.

SAM KACHMIRER: Is December 13th off the table?

BRENDAN SULLIVAN: I'm sorry?

SAM KACHMIRER: I don't know.

BRENDAN SULLIVAN: Not for me.

JIM MONTEVERDE: I can't be here.

CONSTANTINE ALEXANDER: That's a fair question. I'm
going to recess.

BRENDAN SULLIVAN: Council here.

CONSTANTINE ALEXANDER: We have a room back here.
Have some discussions and we can come back and decide when we're
going to reconvene this case.

ATTORNEY SHIPPEN PAGE: Thank you very much.
That's great. I appreciate the consideration. Thank you.

(Case recessed)

* * * * *

(9:45 p.m.)

(Sitting Members Case BZA-017037-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will case No.
017037, 120 Magazine Street.

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

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yeah.

CONSTANTINE ALEXANDER: I guess not.

JANET GREEN: Wait.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Wait,
Mr. Rafferty --

CONSTANTINE ALEXANDER: Yeah, you're going to
continue this case, right?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yeah.

CONSTANTINE ALEXANDER: Okay, do you have a date
you want to continue it to? We're doing Magazine Street.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I would
love for him to speak because I feel ill equipped.

SEAN O'GRADY: January 10th.

CONSTANTINE ALEXANDER: And Mr. Rafferty is okay with
January 10th?

SEAN O'GRADY: Mr. Rafferty?

CONSTANTINE ALEXANDER: Yeah.

JANET GREEN: We were hoping for --

CONSTANTINE ALEXANDER: 120 Magazine Street. Isn't
he representing the petitioners?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yes.

Here he comes.

CONSTANTINE ALEXANDER: Is January 10th okay with you?

ATTORNEY JAMES RAFFERTY: Actually, no.

CONSTANTINE ALEXANDER: Okay. I've called the case. For the record, give your name and address, please.

ATTORNEY JAMES RAFFERTY: You go so I can catch my breath.

LINDSAY MACINDOE: Lindsay MacIndoe,
M-A-C-I-N-D-O-E. I currently live at 11 Salem Street.

ATTORNEY JAMES RAFFERTY: So I'm James Rafferty. I represent Ms. MacIndoe and her wife Wendy Holdings. They own the property. They are not the petitioners in the case. The contractor filed the application --

CONSTANTINE ALEXANDER: Yeah, I see that.

ATTORNEY JAMES RAFFERTY: So we may need to address that later. But this case has been a nightmare for Ms. Holdings and Ms. MacIndoe and we were going to ask the Board if they would

consider to place the case on the December agenda. And I talked to Mr. O'Grady and Maria, and I know it's full, but they said they would perhaps try.

CONSTANTINE ALEXANDER: The only question I have on that, Mr. Rafferty, is we have a full agenda and it sounds like what I've heard -- I'm not going to sit on this case by the way. I'm going to -- but when we go to the merits, but I understand there's opposition. Or there are complaints about the conduct of that -- and there's going to be -- your case is going to be a prolonged case on top of a full agenda and it may make for a very late night. That's what I'm trying to get at.

ATTORNEY JAMES RAFFERTY: I understand that. And, first of all, I just say two things: I don't believe there will be opposition. And I'm aware of the communication that's in the file.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: And I spoke to the author tonight, and the communication does not contain an opinion about -- and I'm not speaking for that person.

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: But to make a long story short, the case is being continued principally because as you're aware, the Board of Zoning Appeal sent a communication asking that the BZA not act upon the case until the Historical Commission does next week. They're hearing the case next Thursday. That case involves an unauthorized demolition. There's a sanction that accompanies the unauthorized demolition under the demolition delay ordinance that places a moratorium on construction for two years. That's a tremendous hardship. And, frankly, that's the bigger challenge that we're facing.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: This case from a zoning perspective, frankly, had I filed it, might have considered, and I still think it has applicability under Section 6 as a two-family house where the footprint is unchanged and the standard is whether or not the impact of the replacement structure is any greater upon the surrounding properties. And in this case I don't think you can make that argument. It hasn't been advised for that, so we are in for a Variance. But they have -- the applicants have been in close communication with all of the abutters.

There's a tremendous amount of support. They are essentially victims in the case.

CONSTANTINE ALEXANDER: I don't want to go any further.

ATTORNEY JAMES RAFFERTY: Yeah, I know.

CONSTANTINE ALEXANDER: All right, we'll continue the case to the December hearing. You have a problem with that? I mean, do you see a problem for us? Add this case.

SEAN O'GRADY: Did we decide we couldn't hear Follen, right?

JANET GREEN: We can't --

SEAN O'GRADY: Jim, you're not here?

JIM MONTEVERDE: I'm not here.

SEAN O'GRADY: Okay, so then we can't hear Follen anyway. I think I'm okay with it, because one of them was Follen.

CONSTANTINE ALEXANDER: So, it's seven p.m. on December 13th. Right? We all in agreement with that?

ATTORNEY JAMES RAFFERTY: Oh, so you continued Follen? That explains why when I was at 7-Eleven, I said there's now

way --

JOHN HAWKINSON: It's recessed.

ANDREA HICKEY: Yeah, it's not necessarily continued.

CONSTANTINE ALEXANDER: We don't know yet.

ATTORNEY JAMES RAFFERTY: Oh, I see. All right.

JIM MONTEVERDE: To be determined.

ATTORNEY JAMES RAFFERTY: Understood.

CONSTANTINE ALEXANDER: We're having trouble finding
a time to get a date working with five people.

ATTORNEY JAMES RAFFERTY: So, this being a case not
heard, right?

CONSTANTINE ALEXANDER: It's a case not heard so we
no problem.

ATTORNEY JAMES RAFFERTY: And it would be a
tremendous appreciation on the part of the applicants if this could be
heard in December. There are so many issues.

CONSTANTINE ALEXANDER: The Chair moves that we
continue this case as a case not heard until seven p.m. on December 13th

subject to the following conditions:

That the petitioner sign a waiver of time for decision. And maybe you've done it already.

ATTORNEY JAMES RAFFERTY: It has been done.

CONSTANTINE ALEXANDER: Okay.

Second, that the posting sign that's on there now be modified to reflect -- a new one obtained, to reflect the new date, December 13th. The new time, seven p.m. And that the sign be maintained for the 14 days required by our Ordinance and which has been done for the 14 days coming up to tonight.

And the last thing, I'm not sure if it will apply to you, but to the extent the new plans or modified plans or dimensional forms that are in our files now, if you're going to modify them, change them, supplement them, they must be -- those changes must be in our files no later than five p.m. on the Monday before December 13th. That's to allow us and members of the city to go to the office and read them and think about them in advance of the hearing. So, but it's no changes, then you don't have to worry about that.

Got it?

LINDSAY MACINDOE: Yes, thank you very much.

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

(Aye.)

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(9:55 p.m.)

(Sitting Members Case BZA-017030-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 017030, 245-255 Bent Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I'm here on behalf of the petitioner. We have the Community Charter School of Cambridge. We also have the head of schools.

State and spell your name for the record.

CALEB HURST-HILLER: Yeah, of course. And hopefully I can get this microphone thing right. It's been tricky.

My name is Caleb Hurst-Hiller, C-A-L-E-B H-U-R-S-T-H-I-L-L-E-R, and my address as well; is that right? 77 Pearl Street here in Cambridge.

ATTORNEY SEAN HOPE: So this is an application

requesting a Variance, and before we get into the case there have been some questions. So the Variance request were having two elements.

There were a series of projecting signs which is one element.

CONSTANTINE ALEXANDER: Banners.

ATTORNEY SEAN HOPE: Banners.

CONSTANTINE ALEXANDER: So-called.

ATTORNEY SEAN HOPE: That exceed the number. Then there was also a sign that required a height variance. I would like to formally withdraw the height variance for the sign.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: So we are no longer asking for relief for the sign.

CONSTANTINE ALEXANDER: You're just asking for 15 more banners?

ATTORNEY SEAN HOPE: Yes, just the banners.

CONSTANTINE ALEXANDER: You really want to do that?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Okay. I mean, I'm going to

be very frank because it's late. I can't see a basis of any sort for granting you zoning relief for 15 more banners. Come on now, guys. This is all community spirit? That was your argument in here?

ATTORNEY SEAN HOPE: And I think we can fine tune the argument and understanding the quantity, but I think it's understanding. So, and please feel free to add to the narrative. So initially when the school moved into to Bent Street, they had one building, the main building on 245 Bent Street. And we may want to focus in on the drawing.

CALEB HURST-HILLER: I'm happy to take --

ATTORNEY SEAN HOPE: Okay.

CALEB HURST-HILLER: So I appreciate the concern. And we're certainly not here to do anything that feels excessive and so I appreciate that. That's not the intent. So, but I think the history is relevant. And the history is this:

The school was founded in 2005. At the time it was only three grades, and at the time it was in a single building. So 245 Bent Street serving about 180 students.

Two years later we were renting from Charlie Lavender and

Paul Oats. Two years later we were growing, adding a grade and growing. And so we moved into the 247R Bent Street building, which is a second building that makes up the campus. And then in 2012 as we continued to grow, we took over the top floor at 255 Bent Street. And then about two years ago or a year ago we started renting the rest of 255. So it's been an evolution.

When we got there in 2005, you know, I think it's important to provide some context that these buildings were not built to be a school. They're industrial buildings. They're essentially office space. And 255 Newton Scientific was there. I don't even know actually who was there at 245 prior. The 247R building in the back was a Verizon, a Verizon warehouse data center. And prior to that they fixed the duck boats. So none of the buildings are intended to be a school. And when we moved in to 245 Bent Street in 2005, the only identifying marker that we had, that we can do as renters was to use the existing hardware and we put up the banners that have the name of the school.

CONSTANTINE ALEXANDER: There are five now?

CALEB HURST-HILLER: And there are five of them.

CONSTANTINE ALEXANDER: Five?

CALEB HURST-HILLER: Exactly. That have essentially -- I don't know anything about the law or the precedent, but essentially were there, and it was our only ability to essentially brand a building that we were renting and put something up that showed that it was a school.

The other thing that I think is relevant is as we've expanded, there haven't been any attempts to unify the campus and actually signal that it's a school because we have been renting the facility. This past April we purchased the three buildings from our landlord and hence the timing of this request. So I think I want to provide some context on the timing of this request, which is now we own, we have three buildings in a neighborhood that is fairly industrial at least on one side, and it -- there's very little way for the community, for visitors, for parents who are trying to find the school to identify three buildings as a school. And part of what we're looking to do, and happy to get your feedback on whether or not this is the right way to go about it, but what we're attempting to do is use the current design on 245, which is the series of banners, and then replicate that in the three buildings in a way that would unify the campus.

CONSTANTINE ALEXANDER: Unification of the campus is not a justification for a Variance for sign requirements.

CALEB HURST-HILLER: I understand.

So I think there are a few other things that feel relevant:

One is just that at least twice a day there's significant student traffic, and I think there's an argument to be made whether it's a compelling one for this group, that the schools -- the three buildings, that it's in everyone's interest for them to be more easily identified as a school, especially on Sixth Street that's heavily trafficked, and there's a lot cars, frankly, going faster than they should on Sixth. And part of my belief is that if we can successfully put up some signs and signal that this is a school, it will slow some people down. So I have no idea if that qualifies, but that's also factoring in this decision is thinking about student safety for my families and the students that attend. I'm happy to also talk about some of the other positive effects, but I have no idea if they would constitute, you know, relevance in front of this Board. But that's our rationale, that's the history as it feels relevant to me.

CONSTANTINE ALEXANDER: Okay, thank you.

ATTORNEY SEAN HOPE: I would also add that the way the Ordinance is drafted, you can only do one projecting sign per ground floor use. So it wasn't like the Ordinance would allow us to -- remember, we're on a corner lot. So we have long facades with almost no markers on them. So because the Ordinance says you can only have one projecting sign, there wasn't a way to accomplish even the basic marking for safety, for access. And this is not just way finding. It's more than way finding. But there wasn't a way to even achieve the appropriate branding for the school, for the entrance, to let the community know there's a school here under the Ordinance. So there wasn't a way to keep within the Ordinance to achieve the basics of what the needs were. And as Mr. Hurst-Miller has said, they actually took the existing banners and wanted to replicate that really for continuity. So that's where the concept of the banners came from. And there wasn't another way to achieve that under the Ordinance.

Now is the number the right number? The only thing I'd like to mention, although they're still regulated, 6 of the 13 -- so the other clarification is the application, the plans that we are showing are

requesting 13 banners. It's not a huge drop, but there's 13 on these renderings.

CONSTANTINE ALEXANDER: You're requesting 15 banners I thought?

ATTORNEY SEAN HOPE: So the -- from the application when it was filed to what was in the file, the renderings was reduced. So we're only applying for 13 banners and that's what we're asking for.

Six of those banners are interior focusing onto a parking lot. They're still visible from the public way so it doesn't change the regulation because they're still signs. But I think it might be relevant if on the exterior, on the public street there are only seven projecting signs and we're allowed one. So we are in excess of those. But six of those are interior facing the parking lot.

CONSTANTINE ALEXANDER: And why do you need the interior signs facing the parking lot?

ATTORNEY SEAN HOPE: You might answer.

CALEB HURST-HILLER: Sure. I mean, again, I think it's an attempt to just aesthetically unify the campus. So it's three fairly big

buildings, there's a big parking lot in between. We don't have a main green or anything like that. Kids all day are traversing the three buildings, and all of it is in service of identifying this as a school for our families and also for the community. So, yeah, just to build on that, the -- I think the -- there are seven banners requested on 255 which is a fairly large building. And I don't know if the renderings do this justice, but there's considerable space between them. Again, we're trying to replicate what was existing on 245.

CONSTANTINE ALEXANDER: That's it?

ATTORNEY SEAN HOPE: That's it.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: Well, maybe not question, but going through your pleadings, the literal enforcement of the Ordinance would involve a substantial hardship, and it says, basically without relief the aesthetic environment and the school spirit will be severely limited.

Then, desirable relief may be granted, you say that the Cambridge Community Charter School has operated at its Bent Street

location since 2005 and has thrived as a community asset. And, again, I applaud you for your mission.

CALEB HURST-HILLER: Thank you.

BRENDAN SULLIVAN: In life. Well needed.

But then I go to the Ordinance and the Sign Ordinance and what is the basis for the sign? Basically you're saying about the purpose of the intent and purpose of the Ordinance isn't that you feel that this is consistent with it, because it will support the diversity of uses and the most rational use of land throughout the city. The intent and purpose of the Sign Ordinance is to improve the aesthetics and the physical appearance of the city by means including the regulation of signs. The regulation of signs is necessary in order to preserve the natural scenic, historic cultural, and aesthetic quality. Regulating signs will improve the city's appearance, make the city's commercial, residential, and industrial areas more attractive. The regulation is enacted to minimize the intrusiveness of sign structures.

And then it says the purpose of the article are to reserve, to control, and reduce visual clutter and blight and to carry out the authority

conferred under Chapter 40-A. So I think that's the purpose of what the sign ordinance is, and I think the proposal really flies in the face of that and is really way in excess of what the intent and purpose of the Ordinance is.

When I first glanced at it, read it, reread it, I said it's really throwing as much possible in here. Not saying that some signage may not be warranted, but not what's before us.

CONSTANTINE ALEXANDER: I think that's the point. I mean, I understand where you're coming from. It's not a zoning -- you're not -- zoning goes here and you're going here. And you can't get there with what you want to do. If you want to come back with a more modest sign proposal than what you have right now, we'll listen. And with the benefit of Mr. Hope and understanding the legal requirements for why you should get a Variance for what this modified sign request, that's fine. But not this -- what you've got before us tonight, I'm sorry.

ATTORNEY SEAN HOPE: And we discussed this and we knew this would be a challenge.

CONSTANTINE ALEXANDER: I'm sure you did.

ATTORNEY SEAN HOPE: I think one of the challenges is the fact because the building is built directly to the property line, oftentimes schools are set back and they have these like lawn signs in different ways to describe the fact that they're a school. And I think the challenge is that we have this existing building. But to I think the Chair's and Mr. Sullivan's point, there probably are ways to achieve some of the same goals and not fly in the face of the intent of the sign ordinance, but because the ordinance was so limiting, I think they did start off to say what do we want? You know, what do we think would achieve our goal? But I think we're hearing you loud and clear. We do want to make sure -- we did frankly get some opposition that we -- I mean, there's certain opposition we knew we would get, but out of the neighborhood we were surprised at some of the direct abutters who kind of wrote in last minute. And so, you know, we can work with our sign fabricator and try to come up with something --

CONSTANTINE ALEXANDER: I think we need to obviously continue this case and get you to rethink and come back with a proposal that's much closer to complying with our ordinance than what you --

ATTORNEY SEAN HOPE: Could we just maybe get a little bit of guidance on what portions? I mean, we're only allowed one sign, right? That's where the Ordinance starts. And I think one sign would not do for the corner lot.

CAROL O'HARE: How about --

CONSTANTINE ALEXANDER: There are people in the audience that want to speak and you can't see.

Ms. O'Hare.

JIM MONTEVERDE: Do you want to finish? Can he just finish?

ATTORNEY SEAN HOPE: Yeah, and this may be after public comment. It would just be helpful as we go if there's any kind of feedback that you can give the applicants.

CONSTANTINE ALEXANDER: I don't want to get into the merits. Are you amenable to some signage?

CAROL O'HARE: No, I'm not actually. I'm not.

JOHN HAWKINSON: Can you use the microphone, please?

CAROL O'HARE: Sorry, I will.

JIM MONTEVERDE: Very close.

JANET GREEN: Very close.

CAROL O'HARE: Pardon me?

JIM MONTEVERDE: Uncomfortably close.

CAROL O'HARE: My name is Carol O'Hare.

JOHN HAWKINSON: Angled.

JANET GREEN: No. Can't hear it. When it's transmitting,
you'll be able to hear it.

CAROL O'HARE: Okay.

JANET GREEN: There you go.

CONSTANTINE ALEXANDER: There you go.

JANET GREEN: Hear that?

CAROL O'HARE: You have to hold it this way.

JANET GREEN: You do.

CAROL O'HARE: Okay. Carol O'Hare, 172 Magazine
Street. Okay.

All these -- I'm glad you have lowered the sign, the wall sign,
because that was the application that you actually submitted to CDD and I

hoped you would do that, because there was no need for it.

ATTORNEY SEAN HOPE: Do we get any benefit for that?

CAROL O'HARE: Credit? Just like there's no need for banners in the public way. The reason that only one --

CONSTANTINE ALEXANDER: Okay, that's not going -- they hear you loud and clear, you're not going to support banners.

CAROL O'HARE: No, wait a second.

CONSTANTINE ALEXANDER: Ms. O'Hare, we have a long, tiring, contentious night. We've got more cases going. We're not going to decide this case tonight.

CAROL O'HARE: I want to make a point about the banners. There are already five.

CONSTANTINE ALEXANDER: Yes, there are.

CAROL O'HARE: If we allow all schools and all hospitals, etcetera, to have banners -- there's a reason that there's only one banner, and that is because banners project into the public way. That is our air. That is our street. That is outside the property line. It is not right that private entities and a charities and wonderful schools put their proprietary

signage in the public way. I haven't ever written that before, but this is such an outrage. And they already have five banners in the public way, that this is just -- it's -- it simply doesn't satisfy any hardship requirement and it's our street.

CONSTANTINE ALEXANDER: Okay, thank you.

Ms. Hoffman, do you want to speak? We're going to continue the case.

HEATHER HOFFMAN: I actually have a suggestion to offer them.

CONSTANTINE ALEXANDER: Do you want to give it to them privately afterwards?

HEATHER HOFFMAN: Happy to do that.

CONSTANTINE ALEXANDER: Okay, why don't you do that.

HEATHER HOFFMAN: Absolutely.

CONSTANTINE ALEXANDER: This is a case heard. You've heard loud and clear the problems you have. I think my suggestion is that you've got to rethink this whole issue about signage and maybe something other than banner signs. Another, another approach

that's not as obtrusive as 15 or so banners.

ATTORNEY SEAN HOPE: Just a question from the Board from Ms. O'Hare's comment. So a majority of our banners are actually not on the private way. So all --

CONSTANTINE ALEXANDER: Okay, let's not go there.

JANET GREEN: Okay.

ATTORNEY SEAN HOPE: Okay. I just want to make sure that wasn't your point. I wouldn't want to come back with that.

CONSTANTINE ALEXANDER: You know you have to come back with something different and new. You know you're going to have opposition. Just think about how many banners you need. Maybe there's a completely different approach. Maybe Ms. Hoffman has a suggestion for you that will work.

We have to continue this case as a case heard. The question is when do we continue it to, because we have problems getting the schedule together. Although --

SEAN O'GRADY: Can we do 1/10?

CONSTANTINE ALEXANDER: January 10th? I'm

wondering because Alison.

SEAN O'GRADY: I'm going to sell January 10th to somebody tonight.

CONSTANTINE ALEXANDER: You can make January 10th?

BRENDAN SULLIVAN: Yes, that's my last --

JANET GREEN: Yeah.

ANDREA HICKEY: I can.

JIM MONTEVERDE: Yeah.

CONSTANTINE ALEXANDER: Okay. We'll continue the case to January 10th.

The Chair moves that we continue this case as a case heard until seven p.m. on January 10th subject to the following conditions:

That the petitioner sign a waiver of time for decision. They'll do that right now.

Two, that the posting sign be modified. You know this, but I've got to say it.

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: Be modified to -- or a new one obtained to reflect the new date, January 10th, the new time, seven p.m.

And that this new sign be maintained for the 14 days prior to January 10th just as you've done for tonight's hearing.

And lastly, this will be relevant, to the extent that you're going to come back with some different proposal with regard to your signage, those proposed new signs that you're looking for relief must be in our file no later than five p.m. on the Monday before January 10th.

All those in favor please say "Aye:

(Aye.)

CONSTANTINE ALEXANDER: See you on January 10th.

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

* * * * *

(10:15 p.m.)

(Sitting Members Case No. BZA-017026-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, Alison Hammer.)

CONSTANTINE ALEXANDER: Follen Street.

ATTORNEY SHIPPEN PAGE: My report, having spoken to Mr. Yoffe and David who's last name I can't remember.

MARK LANZA: David Eliot.

ATTORNEY SHIPPEN PAGE: They have made their concerns very well known to us. We would like to continue this to January 10th and we would like to continue the Special Permit issues and --

CONSTANTINE ALEXANDER: All the issues?

ATTORNEY SHIPPEN PAGE: All the issues. We'll hear that on January 10th knowing that there are four board members present.

SEAN O'GRADY: Gus.

ATTORNEY SHIPPEN PAGE: And we will be working with --

SEAN O'GRADY: We already sold out.

CONSTANTINE ALEXANDER: Yeah, we just did that to the

case before.

ATTORNEY SHIPPEN PAGE: Have we been bumped from the 10th?

BRENDAN SULLIVAN: If we can squeeze it in.

CONSTANTINE ALEXANDER: Yeah, exactly right. We're going to squeeze it in. January 10th works for you?

ATTORNEY SHIPPEN PAGE: January 10th.

CONSTANTINE ALEXANDER: And it does --

SEAN O'GRADY: Are you sure you want to do that? You've got a full night already.

CONSTANTINE ALEXANDER: Full night could be a lot of non-controversial cases.

SEAN O'GRADY: Or like tonight.

CONSTANTINE ALEXANDER: Or it could be like tonight. Bite your tongue.

ATTORNEY SHIPPEN PAGE: Well, the alternative, Mr. Chairman, is the 14th of February which is Valentine's Day which I have some --

BRENDAN SULLIVAN: I'm not here.

CONSTANTINE ALEXANDER: You're not going to be here, okay.

ATTORNEY SHIPPEN PAGE: We have to take our chances on January 10th and I'll be working with the neighbors in the meantime to figure stuff out.

CONSTANTINE ALEXANDER: Okay?

ATTORNEY SHIPPEN PAGE: Thank you very much.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we continue this case as a case heard until seven p.m. on January 10th subject to the following conditions:

That the petitioner sign a waiver of time for decision. And maybe you've already done that. And if not --

ATTORNEY SHIPPEN PAGE: If we haven't we will.

CONSTANTINE ALEXANDER: Second, that the posting sign be modified, or a new one obtained to reflect the new date, January 10th, the new time, seven p.m., hopefully we'll do it at seven but maybe not. And that that sign be maintained for the 14 days required under our

Ordinance just as you've maintained the sign up until now.

And lastly, and I guess importantly, to the extent that you're going to submit revised plans, specifications, dimensional forms, they must be in our files no later than five p.m. on the Monday before January 10th. And you understand that that's -- that will -- you'll have access to those to the extent they haven't given them to you directly.

ATTORNEY DAVID COSTA: Yes, thank you.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. We'll see you in January.

(Alexander, Sullivan, Green, Monteverde, Hammer.)

* * * * *

(10:20 p.m.)

(Sitting Members Case BZA-017034-2018: Constantine Alexander,

Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 017034, 11 Hutchinson Street.

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

Floor is yours.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chair and members of the Board. For the record, my name is James Rafferty. I'm an attorney with the law offices of Adams and Rafferty located at 907 Massachusetts Avenue.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: I'm appearing this evening on behalf of the applicant Charlene Jue, J-U-E. Ms. Jue is seated to my right. And to Ms. Jue's right is her significant other, partner Colin Hill, H-I-L-L. And this is the family home of Ms. Jue and Mr. Hill. It's a single-family house on Hutchinson Street, which is a quiet little street located between Walden and Appleton. It's in the -- just outside of the Huron Village neighborhood. And Ms. Jue arrived in Cambridge a few years ago from South Dakota. She came here because she couldn't take

the winters any longer in South Dakota, she said. But she went about trying to find a house. And for two or three years she competed in a very hot market, and was finally able by paying over the asking price to get this house on Hutchinson Street. And the house is a very nice house, it's a quaint house, but it is distinguished by its size. It is a rather small house. But of even more significance is the lot that it's on. It's on a lot of only 2500 square feet. So Ms. Jue purchased this house because of her desire to have her family live here with her. She has three children, and she and Mr. Hill are considering having additional children. But in addition, her parents who are in South Dakota, are elderly and wish to relocate with her. So she hired Mr. Fiore who is seated to my right. And we didn't introduce Mr. Fiore, did we?

JANET GREEN: No, you didn't.

ATTORNEY JAMES RAFFERTY: I apologize.

CONSTANTINE ALEXANDER: We've seen him before.

ATTORNEY JAMES RAFFERTY: I know. A man who needs no introduction. Mr. Fiore, a Cambridge based but world renowned architect from East Cambridge. And I will say I think one of the

distinctions about Mr. Fiore is the scale and size of these houses. I've had the good fortune to work with him several times and we always begin this exercise with clients about, okay, here's what you're going to be facing. So what you should be considering by way of an addition should really be something that's self-contained and doesn't change the scale of the house or in its context. So this house and the proposed additions have three elements to it. One is the creation of additional space on the second floor over an existing garage. That replicates what took place at the house across the street which is the identical feature. There's a lot of similarities in style on this block.

And then there's also two dormers proposed here. The dormers in one case will provide for egress into the attic space. And then a living space and a master suite would go on the third floor.

CONSTANTINE ALEXANDER: You know the next question. Does the dormer comply with the dormer guidelines?

ATTORNEY JAMES RAFFERTY: The dormers? One complies completely. And the second dormer, and Mr. Fiore can go through it. Because we acknowledge that the one aspect of the dormer

that does not is that the face of the dormer is flush with the face of the house on the left, it's the left side dormer.

CONSTANTINE ALEXANDER: What's the length of the dormer?

PAUL FIORE: It's less than 15.

ATTORNEY JAMES RAFFERTY: Yes, I should say the dimensional --

PAUL FIORE: That's the only dimension that doesn't correspond.

ATTORNEY JAMES RAFFERTY: So the length, the setback off the gables are compliant, but the face of the dormer, and we can show that to you in the plan, I know we have the plans here. So that's the only deviation.

There is, on the second floor then, with this third floor bedroom there is an opportunity, there's a door and there's a deck on top of this second floor addition. And I cautioned Ms. Jue and Mr. Hill about sometimes the Board feels decks can be invasive and would be very critical for her to have the support of her abutter on this, which she does.

She spoke to them and there are letters in the file. She sees the deck as an opportunity to do some gardening. There's very little in the way of a backyard with almost zero sun. So her intention is to have container gardening where she does true to her roots, she does farming on this deck she tells me.

CONSTANTINE ALEXANDER: Now the access to the deck from the house, it would be through what room?

ATTORNEY JAMES RAFFERTY: Through this third floor bedroom.

CONSTANTINE ALEXANDER: That would be a bedroom and not a living room?

ATTORNEY JAMES RAFFERTY: No. So it's not -- and I asked her if she was an avid entertainer, whether there would be lots of people up there carrying on. And in fact she said no. And she doesn't allow Mr. Hill to do that either. So it's not expected that this will be an entertainment --

CONSTANTINE ALEXANDER: I noticed on the plans that this deck is going to have fencing around it or whatever you want to call it.

JIM MONTEVERDE: Railing.

CONSTANTINE ALEXANDER: I'm sorry?

PAUL FIORE: A hand railing.

CONSTANTINE ALEXANDER: Is it going to be solid? And how high is it going to be? Again, I'm looking at -- Mr. Rafferty's anticipated.

PAUL FIORE: Three feet off the surface and it's not solid. It's an open railing.

JANET GREEN: Here you go.

PAUL FIORE: Pardon me.

CONSTANTINE ALEXANDER: Any reason why it's not going to be solid and not be higher?

PAUL FIORE: I think, I think aesthetically it would create sort of a tall blank wall if it were solid. And it looks -- it just sort of fits with the house better if we didn't have that big tall wall with railings on it.

CONSTANTINE ALEXANDER: How big would that deck be in terms of dimensions?

PAUL FIORE: The size of that addition -- sorry, this is my

associate Patrick who knows all the dimensions. From --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Is 18 feet by 10 feet approximately.

PAUL FIORE: 18 feet by 10 feet which is the size of the garage.

CONSTANTINE ALEXANDER: That's a big deck.

ATTORNEY JAMES RAFFERTY: It is.

CONSTANTINE ALEXANDER: And so we're relying on the -- thank you. We have -- Jim has got the plans.

So we're relying on the fact that you said you're going to use it for gardening and not for partying is what it comes down to?

ATTORNEY JAMES RAFFERTY: That's true. But I will candidly acknowledge that I said to Ms. Jue that given its size, it may be seen, you know, there may be a suggestion that it be stepped back a little, and I think she's prepared to live with such a modification if the Board felt it was necessary. But that's why I emphasized for her to get the ascent of her neighbor who was on that side.

CONSTANTINE ALEXANDER: And the only problem with

that, and it was wise for you to suggest that, but that neighbor will move on and the next neighbor will come in and be very -- have a real privacy issues if you're using the deck for something other than plants. That's what you -- this is forever. Not quite forever, but it's for longer than what's going on right now. So I'm gratified that your neighbor seems to have no problem with the deck up there. But that doesn't end the discussion it seems to me.

JANET GREEN: Can I make a comment?

CONSTANTINE ALEXANDER: Sure.

JANET GREEN: About the deck. The fact that it's off of the bedroom, I think it makes a difference to how it will be ultimately used.

CONSTANTINE ALEXANDER: That's the reason I asked that question. You're absolutely right.

ATTORNEY JAMES RAFFERTY: There is, if you see the plan, there is a rear deck.

CONSTANTINE ALEXANDER: Ground level.

ATTORNEY JAMES RAFFERTY: Yeah, it's actually defined as a platform, exactly. Just above. So it's there that you'd expect, you

know, some gathering for dinner. So that activity will take place on the ground not up off the bedroom.

CONSTANTINE ALEXANDER: Yeah. It could take place on the ground if there's no deck there. You could have a big party in the backyard. You don't need a deck.

ATTORNEY JAMES RAFFERTY: Well, you're talking about that --

CONSTANTINE ALEXANDER: Yeah, that deck.

ATTORNEY JAMES RAFFERTY: That's a very close call on that thing. Because I went around and around with Mr. Fiore on it. So it's not a deck in the sense it's four feet. It's a platform. It could be a stone patio and they chose to have it wooden. And so it does have setback implication, so we did acknowledge it. But it is nearly flush to the ground. It's one step off the ground. So similarly we felt that if that was seen as objectionable, and the abutter they spoken to in the rear condominium, doesn't have an objection to it. But that is, I was pointing that out that that's the likely location for the type of outdoor entertaining that a single-family home would have and it wouldn't, unless the pressure

to be oftentimes when these are off third flats two or three unit buildings, that that's the only way to get to it. It's off the living area. This is off a bedroom.

CONSTANTINE ALEXANDER: Okay.

Anything further?

ATTORNEY JAMES RAFFERTY: Well, essentially so the hardship is directly related to the size of the lot. The lot at 2500 square feet is exceptionally small. The current space is 1500 square feet. The house today if you look at the floor plan, there is a single bath and it's located on the second floor. There are three small bedrooms upstairs. So this doesn't represent an increase in bedroom space, but it's just everything is so cramped and tight. The layout is intended to accommodate Ms. Jue and her family, multi-generational living here. And enjoys the support of her neighbors. And I think it's consistent with some of the land use policy goals that were articulated by the Chair in an earlier case this evening. So for those reasons we would ask the Board to grant the request.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I'll open the matter to public --

JIM MONTEVERDE: Can I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

JIM MONTEVERDE: Can you just talk about the dormers?

And I don't know if you asked this question before. Do the dormers fit within the dormer guidelines? You're adding dormers, correct?

ATTORNEY JAMES RAFFERTY: Yes. And the answer is they do. And the dormer on the right fits entirely. The dormer on the left, while it meets the length restriction and the setback.

JIM MONTEVERDE: Right. That's right. It's flush with the base of the wall. I'm sorry, you said that.

Thank you.

CONSTANTINE ALEXANDER: Sure.

I'll go back. I'll open the matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We are in receipt of some letters which I'll read into the record.

We have a letter from Britt, B-R-I-T-T Carlson, C-A-R-L-S-O-N Emerton, E-M-E-R-T-O-N and Nate Emerton. They live -- these folks live at Four Hutchinson Street. So they're not the abutters directly affected by your deck.

ATTORNEY JAMES RAFFERTY: They are across the street.

CONSTANTINE ALEXANDER: Across the street, that's right.
(Reading) Please accept this letter as notification of our support for the plans of the proposed Variance at 11 Hutchinson Street. We own and live at Four Hutchinson Street, across the street from 11, and have discussed the renovation with the owner of 11 Hutchinson. We have no objections to the proposed plans and support the project.

And then there's an e-mail from Andrea Simpson, S-I-M-P-S-O-N who resides at Two Hutchinson Street. And she and her companion Jonathan Schindelheim, S-C-H-I-N-D-L-E-H-E-I-M, they reside

at Two Hutchinson Street. (Reading) We are writing to let you know that we approve of the proposed plans and Variance for 11 Hutchinson.

This is the same from Britt and Nate Emerton. Where's the letter from -- and I assumed there would be a letter from the people --

ATTORNEY JAMES RAFFERTY: There is not.

CONSTANTINE ALEXANDER: There is not?

ATTORNEY JAMES RAFFERTY: No. So what Ms. Jue did was send out a letter to all of her abutters, including a set of her plans and asking if they had any reaction. So the neighbors -- so she followed up with all of the neighbors, and the reaction was they didn't have any objection but they weren't coming to the hearing.

CONSTANTINE ALEXANDER: And they didn't want to express their lack of objection in writing?

ATTORNEY JAMES RAFFERTY: Right. I think in the case of one of the abutters you said she's rather elderly and she just said, okay, thank you for sharing with me.

CONSTANTINE ALEXANDER: Okay.

That's it. I'm going to close public testimony.

Any discussion or we ready for a vote?

JANET GREEN: Ready.

JIM MONTEVERDE: Ready.

CONSTANTINE ALEXANDER: The Chair moves that we make the following findings with regard to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that this is a house in an undersized lot, and a rather small house because of the size of the lot. And so additional living space is necessary whether for you folks who are in there right now or any successors that you may have to this property.

The hardship is owing to the shape of the lot. The shape of the lot. Basically the shape is too small.

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

What is proposed is modest in nature. It will improve the housing stock of the City of Cambridge. It has apparently unanimous

neighborhood support. And those are all the reasons why that condition is satisfied.

So on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Foley, Fiore Architecture, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thank you. I know it was discovered, and maybe that could be added, it was discovered yesterday that the designations have been misidentified; the south and the north and all of that. So there's no change to the plan, but you can see it. So when we knew we were beyond the Monday filing to do it, so --

CONSTANTINE ALEXANDER: This is not material, though.

ATTORNEY JAMES RAFFERTY: I didn't think so. I just didn't know if it was worth noting in the record.

CONSTANTINE ALEXANDER: There won't be a problem with that.

ATTORNEY JAMES RAFFERTY: Okay.

* * * * *

(10:35 p.m.)

(Sitting Members Case BZA-017035-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 017035, 320 Broadway.

ATTORNEY JAMES RAFFERTY: So good evening again. James Rafferty. I'm sure you remember me from the prior case. 907 Massachusetts Avenue. I'm appearing this evening with the petitioner seated to my right Nick -- is it Nicholas or Nick.

NICK ELIAS: Nick.

ATTORNEY JAMES RAFFERTY: Nick Elias, E-L-I-A-S.

Mr. Elias is the owner/operator of the Broadway Gas Station. And seated to Mr. Elias's right. Is Sammy?

SAMMY NASSIF: Nassif.

ATTORNEY JAMES RAFFERTY: And Ms. Nassif is Mr. Elias's fiancée, and they're scheduled to get married. And as I explained to the Mid Cambridge --

CONSTANTINE ALEXANDER: Only if we grant relief, right?

ATTORNEY JAMES RAFFERTY: Well, it's funny you say that, that's exactly what I told them at the Mid Cambridge Conservation District. I didn't want to put any pressure on them, but, yeah, Ms. Nassif had many options. So when she, during the courtship Mr. Elias promised her that he was going to run a successful business. He knows a lot about the business because it's been his father's business since 1994. And it's a family run gas station. And about two or three years ago Nick took it over. I mentioned the other night when I was at the Planning Board, they were commenting on the case, that the Mid Cambridge Neighborhood

Conservation District hearing was really quite remarkable. The number of people that came out to speak in support of this application. It's an application for a Special Permit because a few years ago the base underlying zoning would allow a gas station, but a few years ago something called a Prospect Street Overlay District was created. Really intended to deal with design and other issues along Prospect Street. In this use then -- a Special Permit became necessary for this use.

We reviewed this before we filed the application with Mr. Roberts and the staff at CDD as to well, where should we get this Planning Board? Is it appropriate for the BZA or is it -- where should we get the Special Permit at the Planning Board or here? And I know after that meeting he conferred with Mr. Singanayagam and the conclusion was that the Special Permit granting authority for this should be the BZA. Because we weren't making any design modifications. We weren't looking for relief in other elements of this Prospect Street Overlay District.

So because the project is located in the Mid Cambridge Neighborhood District right on the conservation district, right on the cusp of Prospect Street, we did appear before them and received a Certificate

of Appropriateness and that I know is contained in the file.

There was also the discussion there about signage and the colors of the station. And Mr. Elias expressed a willingness to -- his intention was to, when he puts this addition on to kind of refurbish the facades. And we had an interesting discussion about if you've been by, you've seen the photos, they have these Indianapolis 500 flags all over the facade which I mistakenly said might be called garish. And I was corrected by the Chair, Mr. Chow, Anthony Chow who's an architect and he thought it gave it a rather authentic look. So he encouraged us to, you know, work with that.

So the conclusion on that was Mr. Elias has hired a graphic designer. And the Planning Board, when it made its recommendation, I don't know if members have had the chance to read it, said that they supported it because it was a public service needed in the neighborhood and also recommended that if the Board were to grant relief, that the condition include a review.

CONSTANTINE ALEXANDER: Well, we do have a letter and it says if the Special Permit is granted, the Planning Board represents that

the BZA encourage design review for the site, for signage and landscaping plans to mitigate the negative impacts of the use as much as possible.

So I take it you're going to take the encouragement should we grant you relief tonight and work with the Planning Board and --

ATTORNEY JAMES RAFFERTY: Not with the Planning Board. With the Mid Cambridge Conservation Commission.

CONSTANTINE ALEXANDER: It doesn't say that in here, but okay.

ATTORNEY JAMES RAFFERTY: That's what was intended. Only because in the -- because that commitment was made and is contained in the minutes of the Mid Cambridge Conservation District's approval.

CONSTANTINE ALEXANDER: Okay. I stand corrected.

ATTORNEY JAMES RAFFERTY: Yes. So it's one of the reasons I attended -- I don't always go to the Planning Board when they're doing a BZA review. But I knew they were looking at this. And I should point out that we did put a landscape plan in here, because landscaping

was an issue of concern. So we would anticipate that that landscape plan would also were the Board to grant relief, also be part of the relief.

CONSTANTINE ALEXANDER: Yeah, we have it. I see it here now, the landscape plan. My view, I welcome different views from members of the Board, is grant the Special Permit and rely upon the petitioner to work with the landscaping plan and with the Mid Cambridge group.

ATTORNEY JAMES RAFFERTY: Well, they have to because it's a condition of that certificate.

CONSTANTINE ALEXANDER: And we don't need to add another condition on top of a condition in my view anyway.

ATTORNEY JAMES RAFFERTY: So the other thing I forgot to tell you which was relevant, but it feels like we're wrapping up. One of the reasons for the bay is to accommodate a state inspection. The equipment for that has gotten bigger and there has been the closure of three gas stations within a few blocks of here in the last year and a half. So this is one of only two gas stations in the area that does state inspections. And his busiest week of the month is this week. And he

said to me, I gotta get out of here 'cause I gotta be there at five in the morning because people wait until the end of the month to get their state inspection. This bay will allow to facilitate that. And a lot of the stacking and queuing that occurs in this busy location occurs in the last week of the month when people arrive for the state inspection sticker and they got to idle and wait to get in there. So getting this additional bay will principally facilitate that.

CONSTANTINE ALEXANDER: How long will it take you before you got that additional bay up and running?

ATTORNEY JAMES RAFFERTY: Depending what time we end tonight --

JANET GREEN: Five tomorrow morning.

ATTORNEY JAMES RAFFERTY: Yeah. I think we estimate between the appeal period and construction time, probably not until -- probably can't begin construction until March.

CONSTANTINE ALEXANDER: You're probably right.

JANET GREEN: Do you pump gas at that station, don't you?

NICK ELIAS: I help out with the gas.

JANET GREEN: No, I mean they --

ATTORNEY JAMES RAFFERTY: Oh, the gas station itself?

Yeah, it's not a self-serve.

NICK ELIAS: It's a full service gas station.

JANET GREEN: I love that. I drive all the way across that.

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We do have letters of support. I'm not going to read them.

And a long petition or petitions all in support of the relief being sought.

ATTORNEY JAMES RAFFERTY: I think Councillor Toomey also sent a letter.

CONSTANTINE ALEXANDER: Yes, a letter from Councillor Toomey.

ATTORNEY JAMES RAFFERTY: I just wanted to acknowledge his interest. I didn't mean to interrupt.

CONSTANTINE ALEXANDER: I don't need to read them.

The night's getting late.

The Chair moves we make the following findings with the Special Permit being requested:

That the requirements of the Ordinance cannot be met without the Special Permit.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. In fact, what is happening is just adding in another service bay. So there's not going to be a major -- as a matter of fact, it might reduce congestion for people at the end of the month lining up to have their car inspected.

That the continued operation or development of adjacent uses will not be adversely affected with what you're proposing.

Again, we're talking about just one more service bay and not a whole new service to be offered by the service station.

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

the citizens of the city. And generally what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

So on the basis of all of these findings, the Chair moves that we grant the Special Permit requested.

All those in favor say "Aye."

(Aye.

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

* * * * *

(10:45 p.m.)

(Sitting Members Case BZA-016961-2018: Constantine Alexander,

Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016961, 400 Main Street.

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

While you're setting up, I've got a question for members of the board.

There are no photo simulations in the file. We're supposed to have photo simulations. There's also a form that's supposed to be filled out -- I guess it has been filled out, okay. Anyway, no photo simulations. Do you want to hear the case or not?

BRENDAN SULLIVAN: My understanding that it is really swapping out equipment for equipment.

CONSTANTINE ALEXANDER: They don't quite say that, though. They say some changes, but they don't say what it is.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: I don't know. I'm just frustrated. We have this issue all the time with just your -- with you folks. You don't give us -- you don't give us photo simulations. What's the problem?

ATTORNEY SIMON BRIGHENTI: We've done it one other time when we didn't have the photo simulations so we did fill those in. What we've provided this time, and again, we did provide this with our application which shows what the current situation looks like. And what's going to happen is that there are antennas inside of those flues. And what we're going to do is put new antennas inside of the flues so there's going to be no visual change there. And then we're looking to put one more similar antenna right next to it. So, if you needed us to show one more antenna --

JIM MONTEVERDE: One more flue.

ATTORNEY SIMON BRIGHENTI: One more flue. It would like just like this. I don't know, it would be the same size and the same location. It would be like, it would be right next to it.

JANET GREEN: I don't have any trouble hearing that case. But I would, I would just tell you I don't think you should take from my point of view that I wouldn't in almost any other circumstance want to see more than what you've presented.

ATTORNEY SIMON BRIGHENTI: Okay.

JIM MONTEVERDE: Right. I would agree.

JANET GREEN: So I mean but others might feel --

JIM MONTEVERDE: Oh, I agree. We've had some other cases where the photo simulations were actually rather important, rather telling. And it puts us at a disadvantage without that basic info. It may not apply in this particular case, but in general they're necessary.

ATTORNEY SIMON BRIGHENTI: Okay. We do have two more that are coming up, so I'll make sure that we do get the simulations in.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SIMON BRIGHENTI: Okay. So I'm attorney Simon Brighenti with Sprint. And what we're looking at is an existing facility at 400 Main Street. Both this one and the next property are both owned by MIT. So they're the landlord, and we've gotten the permission in their from them.

And, again, what we've got here is we've got existing facility which consists of an equipment shelter and three antennas on each side. Those existing antennas are going to be, again -- the ones there are in

these shrouds, as we call them RF transparent shrouds. And we would be replacing what's inside those with other antennas that are more efficient and of a different more upgraded technology. And then the one additional would be proposed to be put next to it. The ones on the other end are, there are some up against the facade over there, it would be the same thing where they would be -- the existing ones would be replaced, and the one new one would be replaced in there. The Planning Board did review this file and they've submitted a statement saying that they have no comments.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY SIMON BRIGHENTI: And that is what we're proposing to do. And, again, as far as the Special Permit goes, it's very similar to all facilities of this nature and that there's no additional traffic that's going to be caused other than during installation for a brief period of time.

There's no additional noise, no additional smoke, no additional affluent. No additional strain on municipal resources. And there's no detrimental effect to surrounding buildings or structures. In

fact, we look at it as enhancing the ability both within the building and within the neighborhood to provide additional and enhanced telecommunications service.

So that's what we're proposing. And, again, there was no comment from the Planning Board and we did post, again, we posted the signs. And, again, I had attorney Hoffman go out every other day to take pictures to make sure the signs were still there, because we had some issues previously. And, again, we appreciate what she's doing, her and her husband. And I provided an Affidavit as we got the last photos in saying that seven or eight days, whatever it worked out to be, where she did take the pictures just to verify that in fact they're still there.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SIMON BRIGHENTI: So that's what that was.

CONSTANTINE ALEXANDER: This property is located in a residentially zoned district.

ATTORNEY SIMON BRIGHENTI: Yes.

CONSTANTINE ALEXANDER: Under our ordinance you have to make specific findings --

ATTORNEY SIMON BRIGHENTI: I understand.

CONSTANTINE ALEXANDER: -- which you haven't addressed yet.

Let me just touch on them. The Board of Zoning Appeal shall grant a Special Permit to erect this kind of a facility in a residential zoned district only upon a finding that nonresidential uses predominate in the vicinity of the proposed facility's location, and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

I just want to speak a little bit to that?

ATTORNEY SIMON BRIGHENTI: Well, again, this is a building that's owned by, you know, the institution MIT, and it's used primarily as nonresidence. And it is surrounded in that area by other -- I mean, it is a residential district but there are mixed uses in that neighborhood. It has been a host for that facility for sometime.

CONSTANTINE ALEXANDER: Okay.

Any other comments or questions from the members of the Board?

ATTORNEY SIMON BRIGHENTI: I did have one other item to add. I believe this was the one where the building is more than 50 years old, so the Historic Commission did weigh in. Is that this one or is that the other one? I'm sorry, was there a letter from the Historic Commission saying that there would be a possibility of demolition permit being sought, they would have to go through the Historic Commission and we're not looking for that. So that is just something that was in the record.

CONSTANTINE ALEXANDER: That doesn't affect our decision tonight.

ATTORNEY SIMON BRIGHENTI: Well, again, I just wanted to let you know that.

CONSTANTINE ALEXANDER: We appreciate that.

ATTORNEY SIMON BRIGHENTI: It did come back because your Board had sent out --

CONSTANTINE ALEXANDER: We do have something from the Historic Commission which says no demolition permit application anticipated.

ATTORNEY SIMON BRIGHENTI: Right. So we're not going to be doing anything to the structure itself.

CONSTANTINE ALEXANDER: Okay.

There's no one here unless Ms. Hoffman's still here.

Anyone wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: No?

Comments from member of the Board or should we go for a vote.

JIM MONTEVERDE: Vote.

JANET GREEN: Vote.

ATTORNEY SIMON BRIGHENTI: Okay.

CONSTANTINE ALEXANDER: The Chair moves that -- we have to make a whole host of findings here. The Chair moves that we make the following findings:

First of all, the findings with regard to Special Permits generally, that the requirements of the Ordinance cannot be met unless we grant you the Special Permit you're applying for this evening.

That traffic generated or patterns of access or egress resulting from what you're proposing will not cause congestion, hazard, or substantial change in established neighborhood character. As you've pointed out, all you're doing is basically substituting antennas within a flue with one more flue being added. So there's no real -- there's no impact on congestion or hazard or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what is being proposed. And, again, we -- same points apply. That this is, again, all you're doing is swapping out antennas within a flue, with new flue being added.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city. And generally what you're proposing will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

Further, the Chair moves that as we found once before with

regard to this property and the location of antenna, that nonresidential uses predominate in the vicinity of the structure involved here. And that what you're proposing is not inconsistent with the character that does prevail in the surrounding neighborhood. In fact, it's just consistent with what's been there before; namely, the flues.

And then lastly, we also find that this modification of the telecommunication facility at the site proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meanings of Section 6409(a) of The Middle Class Job Creation Act of 2012, also known as The Spectrum Act.

Based upon these findings, the Chair moves that the petitioner be granted the Special Permit it is seeking subject to the following conditions:

That the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair.

That upon completion of the work, the physical appearance and visual impact of the proposed work will be essentially the same as

they are right now, because all you're doing is adding -- putting antennas within a flue.

That the petitioner shall at all time maintain the proposed work so that its physical appearance continues to be as it is today, and the visual impact will be consistent with that as well.

That should be cease to utilize the equipment approved tonight for a continuous period of six months or more, you shall promptly remove such equipment and restore the building on which it is located to its prior condition and appearance to the extent reasonably practicable.

And lastly, that the petitioner is in compliance with and will continue to comply with in all respects the conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And then lastly, we have a long rider which I'm not going to read tonight. I'm just going to pass on this one. It's too late.

ATTORNEY SIMON BRIGHENTI: I was looking forward to that.

CONSTANTINE ALEXANDER: Can you agree that we can

incorporate that.

ATTORNEY SIMON BRIGHENTI: I'll waive the reading.

(Inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

One, the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

Two, in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to the equipment permitted by the Special Permit granted tonight, fails to comply with requirements of law or governmental regulation, whether with regard

to the emissions of electromagnetic energy waves or otherwise, the petitioner within ten business days of receipt of notification of such failure shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure, and sixty calendar days after receipt by the petitioner of such notification of failure, the Special Permit granted tonight shall ipso facto terminate.

Three, to the extent that a Special Permit has terminated pursuant to the foregoing paragraphs 1 and 2, the petitioner may apply to this Board for a new Special Permit, provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special permit pursuant to paragraphs 1 and 2 above.)

CONSTANTINE ALEXANDER: We'll incorporate the usual.

On basis of all of these findings the Chair moves we grant the Special Permit requested.

All those in favor please say "Aye."

(Aye.)

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

CONSTANTINE ALEXANDER: Special Permit granted.

* * * * *

(11:00 p.m.)

(Sitting Members Case BZA-016980-2018: Constantine Alexander,

Brendan Sullivan, Janet Green, Andrea A. Hickey, Jim Monteverde.)

CONSTANTINE ALEXANDER: Vassar Street. Same story, right?

ATTORNEY SIMON BRIGHENTI: Yes. I'm the same attorney and I'm representing the same people. And Ms. Hoffman did the same job for us.

And the difference here is the Planning Board -- I do have an e-mail from Ms. Paden?

CONSTANTINE ALEXANDER: Paden, yes.

ATTORNEY SIMON BRIGHENTI: This one said that the staff, and I don't know if I forwarded it, but I can. It said that staff reviewed the case finds that the one for 120 Vassar Street will not be visible from a public way and won't need to be reviewed by the Planning Board.

CONSTANTINE ALEXANDER: Yes, we got that.

ATTORNEY SIMON BRIGHENTI: Okay.

So, again, the same thing. It's owned by MIT. This one has the antennas on the facade of the building here. And as I say, it doesn't go over the roof line. It is where they are now. And what we're looking

at is replacing existing ones and putting one other next to those as well.

CONSTANTINE ALEXANDER: So it's again is it antennas, no new antennas within the flue, plus one new flue, is that it?

ATTORNEY SIMON BRIGHENTI: No. The flues -- these are mounted right up to the building --

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY SIMON BRIGHENTI: -- because they're flush mounted and they're painted the red color to match. So we would do the same thing. But -- so the ones that are existing there are being replaced, and then there would be one additional. Same thing, there's going to be additional equipment within the cabinet, that is all within the building itself.

CONSTANTINE ALEXANDER: The replacements are going to be the same dimensions --

ATTORNEY SIMON BRIGHENTI: Yes.

CONSTANTINE ALEXANDER: -- same appearance?

ATTORNEY SIMON BRIGHENTI: Yes.

CONSTANTINE ALEXANDER: There's not going to be a change?

ATTORNEY SIMON BRIGHENTI: No.

CONSTANTINE ALEXANDER: We don't have photo simulations to answer that question.

ATTORNEY SIMON BRIGHENTI: Yes, okay.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SIMON BRIGHENTI: And, again, it's the same thing. It's a predominantly educational commercial area. No additional traffic, no congestion, no affect on neighboring properties and enhancement of the ability to communicate in emergency/non-emergency situations. This one we also find it to be or submitted as being an eligible facility under The Spectrum Act.

And, again, the Historical looked at that and said their jurisdiction does not apply because the age of the building and their parameters.

CONSTANTINE ALEXANDER: I'm going to suggest that we grant the Special Permit using the very same language we used. I'm not going to try to repeat it so we can get out of here.

ATTORNEY SIMON BRIGHENTI: Understand.

CONSTANTINE ALEXANDER: As we did in the prior case.

Is that agreeable to everybody?

ANDREA HICKEY: Yes, fine.

(CONSTANTINE ALEXANDER: The Chair moves that we make the following findings:

First of all, the findings with regard to Special Permits generally, that the requirements of the Ordinance cannot be met unless we grant you the Special Permit you're applying for this evening.

That traffic generated or patterns of access or egress resulting from what you're proposing will not cause congestion, hazard, or substantial change in established neighborhood character.

As you've pointed out, all you're doing is basically substituting antenna so there's no impact on congestion or hazard or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what is being proposed. And, again, same points apply, that no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare

of the occupant of the proposed use or the citizens of the city.

And generally what you're proposing will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of the Ordinance.

Further, the Chair moves that as we found once before with regard to this property and the location of antenna, that nonresidential uses predominate in the vicinity of the structure involved here. And that what you're proposing is not inconsistent with the character that does prevail in the surrounding neighborhood. In fact, it's just consistent with what's been there before.

And then lastly, we also find that this modification of the telecommunication facility at the site proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of Section 6409(a) of The Middle Class Job Creation Act of 2012, also known as The Spectrum Act.

Based upon these findings, the Chair moves that the petitioner be granted the Special Permit it is seeking subject to the

following conditions:

That the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair.

That upon completion of the work, the physical appearance and visual impact of the proposed work will be essentially the same as they are right now, because all you're doing is adding antennas.

That the petitioner shall at all times maintain the proposed work so that its physical appearance continues to be as it is today, and the visual impact will be consistent with that as well.

That should you cease to utilize the equipment approved tonight for a continuous period of six months or more, you shall promptly remove such equipment and restore the building on which it is located to its prior condition and appearance to the extent reasonably practicable.

And lastly, that the petitioner is in compliance with and will continue to comply with, in all respects, the conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

And then lastly, inasmuch as the health effects of the

transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

One, the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

Two, in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to the equipment permitted by the Special Permit granted tonight, fails to comply with requirements of law or governmental regulation, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner within ten business days of receipt of notification of such failure shall file with the Inspectional Services Department a report disclosing in

reasonable detail that such failure has occurred and the basis for such claimed failure, and sixty calendar days after receipt by the petitioner of such notification of failure, the Special Permit granted tonight shall ipso facto terminate.

Three, to the extent that a Special Permit has terminated pursuant to the foregoing paragraphs 1 and 2, the petitioner may apply to this Board for a new Special Permit, provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special permit pursuant to paragraphs 1 and 2 above.)

CONSTANTINE ALEXANDER: On basis of all of these findings the Chair moves we grant the Special Permit requested.

All those in favor, please say "Aye."

(Aye.)

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

* * * * *

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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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 14th day of December, 2018.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 29, 2022

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