

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JANUARY 10, 2013

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Brendan Sullivan, Chair/Member

Constantine Alexander, Vice Chair/Chair

Timothy Hughes, Member/Vice Chair

Thomas Scott, Member

Janet Green, Member

Douglas Myers, Member

Kevin Casey McAvey, Associate Member

Sean O' Grady, Zoning Specialist

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Douglas Myers, Janet Green, Kevin Casey McAvey.)

BRENDAN SULLIVAN: Let me open up the Board of Zoning Appeal hearing for January is 10, 2013. The first order of business will be the election of a Chair and Vice Chair for the ensuing year. I will entertain nominations for both. Let me open up the nomination process. I will nominate Mr. Constantine Alexander to be Chair for the ensuing year.

Are there any other nominations that anybody would like to put forward?

(No Response.)

BRENDAN SULLIVAN: I hear none. I see none. I will then close the nominations. Does anybody like to second that nomination?

CONSTANTINE ALEXANDER: I can't second it. For the ensuing year and until a successor has been elected.

BRENDAN SULLIVAN: Until a

successor has been duly elected.

CONSTANTINE ALEXANDER: Otherwise we have a problem.

DOUGLAS MYERS: I second.

BRENDAN SULLIVAN: Mr. Meyers has seconded the nomination of Mr. Alexander. And I will close nominations.

All those in favor of electing Constantine Alexander for the ensuing year.

(Show of hands.)

BRENDAN SULLIVAN: On a unanimous vote, one abstaining.

(Sullivan, Hughes, Scott, Myers, Green, McAvey, in favor. Alexander Abstaining.)

BRENDAN SULLIVAN: Now for the position of Vice Chair, I will open up the nominations. I would nominate Mr. Tim Hughes to be Vice Chair for the ensuing year. Are there any other?

(No Response.)

CONSTANTINE ALEXANDER: I second the nomination.

BRENDAN SULLIVAN: Mr. Alexander will second that nomination.

Are there any others?

(No Response.)

BRENDAN SULLIVAN: I hear none. I close nominations for Vice Chair.

All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Unanimous. And two good choices. All voted by Tim.

(Sullivan, Alexander, Scott, Myers, Green, McAvey.)

BRENDAN SULLIVAN: Congratulations to both.

* * * * *

(7:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Douglas Meyers.)

BRENDAN SULLIVAN: The case will be heard, case No. 10299, 675 Massachusetts Avenue.

ATTORNEY JAMES RAFFERTY: For the record, James Rafferty on behalf of the applicants. I express my congratulations to the candidates. And unsuccessful ones.

Mr. Chairman, you recall this case involves a provision contained in the Central Square Overlay District that restricted the location of principle entries on establishments that have live entertainment. The application contains two requested forms of relief. The first was a Variance from that requirement, and the second was a Special Permit to reduce the prior amount of parking. Since the matter was last before the Board, the City Council has seen fit to amend the Ordinance such that the section of the Ordinance for which the Variance sought relief is no longer a part of the Ordinance

and thus that portion of the application is mute and we would withdraw it and express my appreciation for the Board for allowing a continuance to permit the legislative process to reach a conclusion.

The second portion of the case does remain active. However, when I met with Mr. Singanayagam at the beginning of the week, he informed me that -- reminded me that this was a case, a continued case involving a now resigned board member, and it would not be possible to go forward, that it would be necessary for the case to be re-advertised. I'm not sure why --

CONSTANTINE ALEXANDER: Why would that be? I think that you can go forward and run the risk of having only four members.

ATTORNEY JAMES RAFFERTY: Oh, no, we made clear, we wish to have the case heard by five members.

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: I'm sorry, I misunderstood your point.

ATTORNEY JAMES RAFFERTY: I questioned whether we simply couldn't add a fifth member and proceed, but he said the Law Department's advice is that, that the case needs to be given a new case number and re-advertised.

BRENDAN SULLIVAN: That was my, I broached that subject with him on a previous many continued cases on Huron Avenue, and their suggestion at that time was to re-advertise it, so I'm just following along in the same bane to re-advertising this.

ATTORNEY JAMES RAFFERTY: Okay.

BRENDAN SULLIVAN: So the petitioner wanting to go forward with four and to have a full Board, we would allow that courtesy and understandable. The other reason why I don't feel it can go forward is

that the record is deficient as far as the parking requirement what is that -- was one of the reasons that it was continued was to fill in that missing blank, and it has not been filled in yet. And we need to do a parking analysis as to what this establishment will require, where it's going to provide it, and whether or not there's sufficient parking at that spot to accommodate this.

ATTORNEY JAMES RAFFERTY: That's true. I did schedule and met with Mr. Singanayagam. The challenge there is understanding what pre-existing parking is included there. It's very easy to do the straight forward analysis based on the seating, but what's not clear is how the overall parking in the building works. But when I learned on Monday that this wasn't going to go forward, we didn't get too deep into that discussion, but we did discuss the

concepts of understanding the relationship -- there's a parking lot on the other side of Bishop Allen Drive that's used for accessory parking in the building.

BRENDAN SULLIVAN: Okay. The thought I keep coming back to is Porter Square Shopping Center where everybody comes down, new businesses, and say we have plenty of parking, we have the Porter Square Shopping Center and I think that's been sold and resold a few times. At some point somebody's going to have to come down with a full analysis of the requirements of all the businesses and what's available.

So, anyhow, I think that's probably the box you're into on this one.

So it appears that we're going to have to continue this case, and there are two avenues. Either to continue it as advertised in its entirety, and then at a full hearing, you can pull out the section not

pertinent. Or in the absence of just asking for relief for the parking, it would have to be I think a new case.

CONSTANTINE ALEXANDER: I don't know why the first half of the case, the Variance, the Use Variance can't be withdrawn tonight.

ATTORNEY JAMES RAFFERTY: We're requesting tonight to withdraw it.

BRENDAN SULLIVAN: Well, I think it's a question of carrying this case forward.

CONSTANTINE ALEXANDER: No, the case is going to go forward, it's going to be a parking case.

BRENDAN SULLIVAN: Correct. It's a question of re-advertising it.

CONSTANTINE ALEXANDER: Yes, but he re-advertised the parking portion.

BRENDAN SULLIVAN: Well, and again I'd let that administratively decide. There

was some feeling, and I'm not sure what the final outcome on that was.

SEAN O'GRADY: Jim, did I understand they wanted a new number on the case?

ATTORNEY JAMES RAFFERTY: I'm only reporting what I was informed so I don't wish to speak for the Law Department. I was told by Ms. Pacheco that it is, that the advice that they received is a new advertisement and a new case number. And I said if she wants a new application, I would do it, but I felt that was unusual because it's the same -- but in this case since the relief is different, I would agree with the Chair, I think we would -- I would arrange with the administration of the Board as to what's needed. If a new cover sheet and the advertisement -- I guess to change the advertisement might make everyone's life easier from the description on the cover sheet no longer referenced in light of the

action of the City Council that the cover sheet of the application should no longer reference the Variance request associated with the overlay district.

CONSTANTINE ALEXANDER: That's my feeling.

BRENDAN SULLIVAN: Again, I would defer to them whatever.

Is there anybody who wants to speak on the continuation?

CONSTANTINE ALEXANDER: I guess we should pick a date that -- when do you think you're going to be -- when do you think you're going to hear for us for the advertisement.

ATTORNEY JAMES RAFFERTY: As soon as I can come back.

CONSTANTINE ALEXANDER: Do you have any idea at this point? We can continue this case to that date, that's what I'm trying to say.

SEAN O'GRADY: If we don't have to

give it a new number, then we can simply continue this as early as February 7th. Continue it to then, and at that time withdraw part and go for just -- I would want you to separate those two.

ATTORNEY JAMES RAFFERTY: I don't think you can advertise in time.

SEAN O'GRADY: Oh, I'm sorry.

ATTORNEY JAMES RAFFERTY: I think the advertisement -- I think we should --

SEAN O'GRADY: 28th?

ATTORNEY JAMES RAFFERTY: Whether it gets a new number or not, I think the more critical thing was the advertisement. So they want it re-advertised. I could check with Ms. Pacheco, but I'm guessing the last time I filed I think they're giving out the 28th now?

SEAN O'GRADY: I think that she probably is on the 28th.

BRENDAN SULLIVAN: Okay. 28th for

a new case.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: Not for this case. I may not be here on the 28th of February so now we're into March. So there's a --

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: This case is never going to go forward even on the 28th. He wants to hold it so he gets a better position. It's never going to go forward.

ATTORNEY JAMES RAFFERTY: This case and the new case is going to be the same case, because this case is a case that has been -- the relief has been modified.

BRENDAN SULLIVAN: All right, so in other words --

ATTORNEY JAMES RAFFERTY: I think it's really semantic at this point.

BRENDAN SULLIVAN: A new case could have five -- could be five different totally

people?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Five different people.

SEAN O'GRADY: Well, I mean --

ATTORNEY JAMES RAFFERTY: I think that's the whole idea.

SEAN O'GRADY: I've got to figure out how to digest these cases. And if there's -- if we have changes -- I mean, I would think it would either be the same, you don't have to -- we have to get new members anyway.

ATTORNEY JAMES RAFFERTY: Right. I suspect that --

SEAN O'GRADY: You may want a new number.

DOUGLAS MYERS: I think this case that we have the pleasure of discussing right now is a case heard.

CONSTANTINE ALEXANDER: Yes.

DOUGLAS MYERS: And I think somehow it should be brought to an end. And if there's going to be a new case, a new case without prejudice, should be brought and filed and go forward. I think the longer --

CONSTANTINE ALEXANDER: The problem is he can't withdraw the case -- if he withdraws the case now, he's got a repetitive petition problem.

DOUGLAS MYERS: I see.

CONSTANTINE ALEXANDER: We've got to continue this case even though we're never going to hear it until he's had his new case.

DOUGLAS MYERS: Pending the filing of a new case -- this is a case heard. That's why I think it should go into suspended animation.

ATTORNEY JAMES RAFFERTY: Agreed. But if we file -- if the conclusion is we file a new application only seeking the parking relief, and it's assigned a new number and

then it's a new case, and at the conclusion of this new case, this case will be withdrawn. Because the new case will be dispositive of this case because it will contain the same relief.

BRENDAN SULLIVAN: All right, so we're going to continue this until February 28th.

SEAN O'GRADY: You have something in relatively quickly.

ATTORNEY JAMES RAFFERTY: I can get it to her tomorrow.

BRENDAN SULLIVAN: So February 28, 2013.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: On the motion to continue this matter until February 28, 2013, on the condition that the Petitioner maintain the posting sign to change it to reflect the new date of February 28, 2013, and at the time of seven p.m. and that it be duly maintained

as per the requirements of the order.

Any submissions be in the file by five p.m. on the Monday prior to the February 28th hearing.

Anything else?

All those in favor of continuing this matter?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

* * * * *

(7:15 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Thomas Scott, Kevin Casey McAvey.)

BRENDAN SULLIVAN: The Board will hear case No. 10321. Case No. 10321, 99 Irving?

Introduce yourself for the record.

PETER MULLANE: Peter Mullane, M-u-l-l-a-n-e. I represent the Petitioner on the properties. And sitting to my right is John Ciccolo who is the manager of that property.

BRENDAN SULLIVAN: Okay, since last we met you were asked to --

PETER MULLANE: Recalculate.

BRENDAN SULLIVAN: -- recalculate.

PETER MULLANE: And we did.

CONSTANTINE ALEXANDER: Is this a consistent dimensional information in our files?

PETER MULLANE: Tonight it's consistent, yes. It wasn't the last time we were here.

CONSTANTINE ALEXANDER: I thought

even tonight. You look at the sheet, he has the file, but the two pages, and it had on in terms of the gross floor area, this is one set of numbers. And then, Brendan, in the file there's like a two sheets architectural which has Zoning analysis. I'll find it.

It says revised floor area 10/05/12 which is after the date of our last hearing.

PETER MULLANE: It was, yeah.

CONSTANTINE ALEXANDER: The information on here is different than the information on here. That's my problem.

PETER MULLANE: In which respect?

CONSTANTINE ALEXANDER: Okay.

This shows existing gross floor area 6,850 square feet, proposed gross floor area 7,043. If you look at the dimensional form, it says existing is 7,250, and requested is 7,443.

PETER MULLANE: All right.

CONSTANTINE ALEXANDER: How do those numbers -- these aren't the same.

PETER MULLANE: Well, unfortunately the architects aren't here to explain that, but it would be nice, and I would agree with you, it would be nice if they were here. I would champion that.

CONSTANTINE ALEXANDER: I just want to know what are the numbers that we're working with. It is a Variance either way, but what are they? A Variance to what?

PETER MULLANE: From the 7250 to 7443.

CONSTANTINE ALEXANDER: So you're saying that other sheet is incorrect?

PETER MULLANE: I have no idea what the basis for that is.

CONSTANTINE ALEXANDER: Okay.

PETER MULLANE: I'm looking at these plans here which I would say as-built plans if the Variance is allowed, that this is accurate. I would say that is inaccurate.

CONSTANTINE ALEXANDER: Okay. I

just want to know what we're working with.

PETER MULLANE: No, no, and I appreciate your astute scholarly work pointing that out.

THOMAS SCOTT: What's the number again? 70 what? 7250.

PETER MULLANE: 7250 is existing.

THOMAS SCOTT: Okay. Is he including this garage, 400? Because that's what the difference is.

PETER MULLANE: That would be the only logical --

CONSTANTINE ALEXANDER: Okay, maybe that's the answer.

PETER MULLANE: If that is a logical explanation, that would be the logical explanation. I can't represent that is a fact.

BRENDAN SULLIVAN: I would go by the dimensional form.

THOMAS SCOTT: The form. I think

so, too.

CONSTANTINE ALEXANDER: The dimensional form.

BRENDAN SULLIVAN: Architects have been made to make minor, minor --

CONSTANTINE ALEXANDER: Not this architect.

THOMAS SCOTT: Careful.

BRENDAN

SULLIVAN: -- indiscrepancies, but also have architectural license to change their mind.

THOMAS SCOTT: There we go.

PETER MULLANE: This may be the large sheet, but I just want to point out that it states the 400 square feet for the garage.

CONSTANTINE ALEXANDER: Okay.

PETER MULLANE: But I agree it's obtuse the way it's presented.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Okay, so we have cleaned up the dimensional form and these are

the numbers that we're working with.

PETER MULLANE: Correct.

BRENDAN SULLIVAN: Okay.

And that was one of the issues in the last time. The other issue I guess was the need for the greenhouse or the structure if you will.

PETER MULLANE: The issue that you tasked us with is to go back to the Historical Society and the Building Department to see what, if anything, we could glean from their records. And I guess the only thing that is definitive we can glean is that this outcropping of the foundation goes back to the 18 --

JOHN CICCULO: Yeah, it goes back to when the house was built.

PETER MULLANE: -- the building in 18-something or other. So, it's always been there. We could not ascertain whether or not there was ever a physical structure that had

been erected on this property. It was brought to us to investigate the last time we were here. So the answer is we couldn't definitively say it was ever a structure that was put over this part of the foundation.

BRENDAN SULLIVAN: Okay.

PETER MULLANE: But the foundation has existed for over 100 years.

BRENDAN SULLIVAN: But there is a cellar underneath it or something?

PETER MULLANE: Yes, which is unusual because you don't normally have a cellar exposed to the weather.

BRENDAN SULLIVAN: Right. Something -- I looked at it and it would appear that logic tells me that there was something there at some point, it fell into disrepair and was taken off and basically not rebuilt because it was not useful anymore or anything or whatever. So....

PETER MULLANE: So that's the

situation we're in.

BRENDAN SULLIVAN: Yes, okay.

PETER MULLANE: And one unique part of the situation for the Variance is that it's less expensive, and we have determined that to put a structure on top of this to make it weather tight. The reason in doing that is that by doing so, we believe, that we would then create a better structure environmentally from energy efficiency. Because if you leave the top of the cellar roof exposed, you're creating cold space in the cellar. So going on top of it would create a more energy efficient house. It would reduce any structural cracks that at some point in the future would happen again, which would more likely create a mold situation. So by building the structure and having the Variance, I think an energy, more energy efficient home would be created, a safer home free of any likely mold from water

penetration in the future. And like I say the situation that we have here is one unique when it's been around for 100 years and we're trying to rectify and it's unique to this lot.

BRENDAN SULLIVAN: Okay. So adding how many, 193 square feet, is that it?

CONSTANTINE ALEXANDER: About 200 square feet according to my calculations.

PETER MULLANE: A little less.

CONSTANTINE ALEXANDER: Around there, approximately.

PETER MULLANE: 198 square feet.

BRENDAN SULLIVAN: Okay.

Well, we're at 7250 now and we're going to 7443.

PETER MULLANE: Correct.

BRENDAN SULLIVAN: 193. Okay.

All right, any --

CONSTANTINE ALEXANDER: No questions.

BRENDAN SULLIVAN: Tom, any?

THOMAS SCOTT: I just saw that you had an altered plan, like a cover sheet. It has a revision. It seems like maybe it's newer than this one. Should that one be in the file?

PETER MULLANE: Yes.

THOMAS SCOTT: Is it in the file?

PETER MULLANE: We can give it to you.

THOMAS SCOTT: Yes, I think we would want to have it. Right? I mean, if that's an altered plan.

CONSTANTINE ALEXANDER: This is a new plan?

PETER MULLANE: No, it's not a new plan. It's more visually depictive.

CONSTANTINE ALEXANDER: Is the information the same?

PETER MULLANE: The information is the same.

THOMAS SCOTT: That cover sheet has

an alteration on it that's not in this set. That box on the bottom that's bubbled, that's been changed and that's not in the set.

JOHN CICCULO: Here. Yeah, that was the new dimensional --

THOMAS SCOTT: That was the change to match the dimensional form?

JOHN CICCULO: Yes.

THOMAS SCOTT: That should be in here is what I'm saying.

JOHN CICCULO: Oh, you want this now?

THOMAS SCOTT: Yes.

That's the difference. You had this and this, and the numbers match.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Tom, anything?

PETER MULLANE: This is a little bit of a -- this is a proposed view of what it would be as built if the Variance were allowed.

BRENDAN SULLIVAN: Kevin, anything?

KEVIN CASEY McAVEY: No.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Anybody in the audience like to speak on the matter at 99 Irving Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance and there's no correspondence in the file at all. So let me close public comment.

Anything else to add?

JOHN CICCULO: My two immediate abutters approve of it. I've spoken to them. Excuse my voice. And so they've said yeah, we're all in favor of it. Both of them came before you at one point. One for something else. And so I don't have any opposition around me for what that's worth.

BRENDAN SULLIVAN: Okay.

Anything else?

PETER MULLANE: That's about it.

BRENDAN SULLIVAN: Okay. Let me close the presentation part of it and the Board will discuss it.

Gus, what are your thoughts?

CONSTANTINE ALEXANDER: I'm not going to support relief. I may be the only one. You have approximately a 7,000 square foot house needs more an addition to it. You know, No. 1.

No. 2, I think the hardship being that cheaper to put a structure over this and to otherwise repair the impact to the foundation, maybe so. I find that I'm skeptical, but maybe so. That's not a hardship that justifies granting a Variance. Whether it is to make the building more energy efficient, there are a lot of ways to make this building more energy efficient. I'm just -- we come down here and people come and

want to put a dormer on and add some square footage to a house of 2,000 square feet and we ring our hands and sometimes turn people down. I have problems allowing someone else to come in with a 7,000 square foot house and adding a whole other room just because. So anyway, I'm opposed.

BRENDAN SULLIVAN: Okay. Tom.

THOMAS SCOTT: I'm kind of on the fence, but the fact that there was a foundation there and some -- it appeared as though there was some structure there previously. I don't really -- it makes me lean more towards approving this only because it seems as though, you know, historically there was something there, and it maybe makes sense to put it back again. But -- and I think what you've done is relatively modest. And if your neighbors don't have any opposition to it and it's a slight increase in the FAR, it's just 0.01, I'd probably vote

for it.

BRENDAN SULLIVAN: Okay. I think it's somewhat tastefully done.

THOMAS SCOTT: Tastefully done.

BRENDAN SULLIVAN: And you can't really see it from Irving Street unless you go down the side.

Tim, your thoughts?

TIMOTHY HUGHES: I think something needs to be done to the foundation area there, and the options besides the building solarium are capping it with something that's just going to look like a slab or a deck or removing it. And then I don't really have a problem with adding 190 square feet to make something nice out of it, the piece of the property that needs a correction.

BRENDAN SULLIVAN: Okay.

KEVIN CASEY McAVEY: I think it's a practical addition and I don't have a problem with it.

BRENDAN SULLIVAN: Let me make a motion to grant, the relief requested as per the application and the drawings.

The Board finds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the Petitioner and it would preclude the Petitioner from adding to this particular section of the house. It appears to be an in-fill. There appears that there was at some point, although the record is not clear, there was some structure there that the foundation is current, and that such structure appears has been removed and the Petitioner wishes to replace, to build the structure where there probably was one previously.

The hardship is owing to the fact that the existing house is non-conforming. Non-conforming regarding to the size of the house which predates the existing Ordinance.

The siting of the house which is deficient in rear yard setback and the height.

And that any addition to the house of even of this small de minimus nature which is 192 square feet which is 0.1 on the FAR ratio, would require some relief from this Board.

The Board feels that the requested relief is fair and reasonable given the siting of the house and the way that this particular structure is positioned and also tastefully done to complement the existing structure.

The Board the finds that desirable relief may be granted without substantial detriment to the public good. Noting that there has not been any opposition and that upon presentation that the abutting neighbors are in favor of it.

And the Board finds that desirable relief may be granted without nullifying or substantially derogating from the intent and

purpose of the Ordinance to preserve the amenities of the city.

All those in favor of granting the Variance on the condition that the work comply with the drawings as presented and initialed and signed by the Chair?

All those in favor of granting?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Hughes, Scott, McAvey.)

BRENDAN SULLIVAN: One opposed.

(Alexander.)

BRENDAN SULLIVAN: Variance granted.

PETER MULLANE: Thank you.

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10350, 28 Jackson Street. I'm

sorry, can I do Walden first before you?

(Case Recessed.)

* * * * *

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10356, 330 Walden Street.

If you would reintroduce yourself for the record.

EDRICK VAN BEUZEKOM: My name is Edrick Van Beuzekom, E-d-r-i-c-k. Last name is V-a-n B-e-u-z-e-k-o-m. I'm the architect for the project with EVB Design.

LINDA CALLAHAN: Linda Callahan, home owner.

LEAH LORTIE: Leah Lortie and Aili.

BRENDAN SULLIVAN: Okay. You were sent away to see if you couldn't change the design and come up with something different. If you could run through what you had before and what you're proposing now.

EDRICK VAN BEUZEKOM: Okay, the existing roof is a hip roof, and we were proposing two dormers, one on each side, and plus there's an existing sort of small gable dormer down the stairs that we had been planning to leave there.

CONSTANTINE ALEXANDER: Just help

me, there's a reference in your plans to a shed roof. What's a shed roof?

EDRICK VAN BEUZEKOM: A shed roof? The roof is just a, is a slope.

CONSTANTINE ALEXANDER: All roofs tend to slope.

EDRICK VAN BEUZEKOM: No, it's a single slope. There are two types of dormers generally, a gable roof dormer and a shed roof dormer.

CONSTANTINE ALEXANDER: Yes, yes, that I know. But your plans say -- I thought it said remove the dormer, replace with a shed roof and that's where I got confused.

EDRICK VAN BEUZEKOM: Oh, I'm sorry. It should say shed roof dormer.

CONSTANTINE ALEXANDER: Oh, okay, now I understand. Thank you.

EDRICK VAN BEUZEKOM: Okay.

So, here's some 3-D views I brought which I think will be more constructive than

the 2-D plans. Basically the approach we took -- here's our third floor plan. The approach we took is we eliminated one of the dormers, and changed -- we're changing the roof from what was a hip roof before. And I can show you to give you some comparison here.

So, yeah, so this is the side where the -- this is what we had proposed before.

CONSTANTINE ALEXANDER: Right.

EDRICK VAN BEUZEKOM: This is what we're proposing now, where we changed the stair dormer to be a shed roof. We've replaced the entire hip roof here, brought the ridge up to line up with this existing addition in the back here, created a gable roof.

JANET GREEN: Right.

EDRICK VAN BEUZEKOM: What that did for us is it gave us a little more headroom in the front here where we could actually squeeze a bedroom into the front area there.

And then we're still proposing to do the dormer on the other side, over here, which is nine-foot, nine in the exterior. It's a small dormer in the setback. But because we've done the gable roof now, I think it looks less like it's taking up a substantial part of the roof area, whereas the previous scheme -- because of the hip roof it's sort of overwhelming.

CONSTANTINE ALEXANDER: So this is what you're asking, this is what it will look like?

EDRICK VAN BEUZEKOM: Right. These two are proposed, yeah. And this is what it looks like from the street. Here are the two views from the street. So this is looking at it from this side of the house, and this is in --

CONSTANTINE ALEXANDER: And these are not here right now?

EDRICK VAN BEUZEKOM: This is here.

This is existing.

CONSTANTINE ALEXANDER: This is new. Okay, now I got it.

EDRICK VAN BEUZEKOM: This is the part that everyone was objecting to how that looks. And again, by raising the roof and getting the ridge line aligned there, it also integrates that existing part a little bit better with the existing roof.

The other thing we've done is we've removed the second floor porch which they don't use. It's a busy street. And this way we'll get more sunlight in the windows and we reduce the FAR additionally with that. So our net change now is substantially less. Basically we're going from having a 3,669 square feet to 3,736 which is a net increase of 67 square feet total. It's probably a more expensive scheme to build, but I think it's much more elegant. It gets us the space we need. Gets the bedrooms up in the air with

the master bedroom for the children, and you know, I think it, it works on the street as well. There's a mix of hip roof and gable roofs along the street there.

JANET GREEN: Yes, there is.

EDRICK VAN BEUZEKOM: Yeah.

CONSTANTINE ALEXANDER: And on the new work you're doing you're going to add two bedrooms and a bath?

EDRICK VAN BEUZEKOM: That's right. Yeah, and the bath is actually split again because we're noting adding a dormer for it, we're splitting it on each side of the hall. We have shower on one side and toilet and sink on the other side.

CONSTANTINE ALEXANDER: And will there remain a bedroom down on the floor below?

EDRICK VAN BEUZEKOM: Yes, basically a guest room. So four bedrooms total. There's a master bedroom already on

the --

CONSTANTINE ALEXANDER: Oh, that's right. Got it.

EDRICK VAN BEUZEKOM: Okay.

And, yeah, so another part of the work is of course we're redoing the kitchen on the second floor so there's some window changes and door changes involved with that.

JANET GREEN: On the front door change --

EDRICK VAN BEUZEKOM: Yes. In order to also create a better entry for the upper floor --

JANET GREEN: Yes.

EDRICK VAN BEUZEKOM: -- we're moving the front door to the first floor unit over to create a more of an entrance space at the bottom of the stairs there so we have a coat closet, a place to welcome the guests in before they come up the stairs.

BRENDAN SULLIVAN: And how many

people occupy this space?

LINDA CALLAHAN: We have four of us.
Two kids and parents.

BRENDAN SULLIVAN: Four.

LINDA CALLAHAN: Occasionally we
have family members.

BRENDAN SULLIVAN: Last time there
were three and now there are four.

LINDA CALLAHAN: That's right.
After the last meeting we were hoping for a
boy maybe. But we got a girl. It's great
timing though.

BRENDAN SULLIVAN: Okay. Gus, any
questions?

CONSTANTINE ALEXANDER: No, no
questions.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: No. I think it's
much improved. The visual chaos is gone. I
mean, it's just simplified and, you know, you
can kind of accept the dormers now because

they seem to fit in. I think it's a huge improvement.

JANET GREEN: I also think it's a big improvement and I just -- I've gone back to your street several times to look at it to see the other houses, and just about every feature of your house is repeated in at least two or three other houses on the street. It was very, you know, it's very consistent with the neighborhood, and I think this will be an improvement in the neighborhood. You know, you have the neighbor support and it's -- I was thinking a lot about the bedroom, you know, and how parents have traditionally maybe been on different floors. But I notice you have a slightly different situation in that you had to leave the bedroom, the children's bedroom, and come to the front of the house and then go up the stairs and then go all way in the back of the house so it wasn't like it was just top and bottom of the

stairs. And I think you addressed all of the concerns that we had. I'm fine.

DOUGLAS MYERS: With regard to the left-hand side of the house as you look at it from the street, can you walk us through the dormer guidelines with regard to the new dormer?

EDRICK VAN BEUZEKOM: Okay.

DOUGLAS MYERS: Installed on that side? Particularly the setback.

EDRICK VAN BEUZEKOM: Okay. So you're talking about the dormer that's over the stairs, the left-hand side of the house or on the other side where we're adding the bedroom dormer?

DOUGLAS MYERS: Adding the bedroom dormer.

EDRICK VAN BEUZEKOM: Okay, so that's the right-hand side.

DOUGLAS MYERS: Right-hand side. That's my mistake.

EDRICK VAN BEUZEKOM: All right. We are not setting it back from -- again, this is -- because of limitation of space we're not meeting the dormer guidelines from setting it back from the outside of the house. We're basically lining up the exterior wall of this dormer with the exterior wall of the house which is what you see in this view. That is also the situation with this existing addition back here. So, part of the idea is that, you know, I'm trying to get some consistency across there and repetition, but also it's a space limitation, so we're not completely in compliance with the dormer guidelines with that.

DOUGLAS MYERS: The two dormers are symmetrical in that respect?

EDRICK VAN BEUZEKOM: Yes. The rear one is a little bit bigger, it's wider than this one, but in terms of --

DOUGLAS MYERS: It's set back from

the front wall.

EDRICK VAN BEUZEKOM: It's not set back from the front wall at all, that's correct.

There's also a little section in between them that you can see. Again, this was part of getting that bathroom fit in. That's where we have the shower. And basically between the dormers, we've connected that roof. So it's set back so it still looks like two dormers, but there is a connection of the roof there.

DOUGLAS MYERS: What about the setback from the ridge line?

EDRICK VAN BEUZEKOM: Again, we're keeping it consistent with the slope of the other addition, so we're hitting the ridge line. We're not dropping it down from the ridge line.

DOUGLAS MYERS: And it's symmetrical?

EDRICK VAN BEUZEKOM: That's right.

DOUGLAS MYERS: You're basically adding 10 feet of the dormer to what's already there on that side of the house?

EDRICK VAN BEUZEKOM: Yeah.

DOUGLAS MYERS: Nothing further.

BRENDAN SULLIVAN: Let me open it to public comments.

Is there anybody who would like to speak on the matter at 330 Walden Street?

(No Response.)

BRENDAN SULLIVAN: There's nobody in attendance and we have prior letters in the file that were read into the record in support; neighbors, people across the street.

CONSTANTINE ALEXANDER: Have they seen the new plans, by the way, your neighbors?

LINDA CALLAHAN: No, we thought these were better so....

CONSTANTINE ALEXANDER: No, I understand why, but I'm just curious as to whether you've shown them.

LINDA CALLAHAN: They were all thumb's up on the first idea.

EDRICK VAN BEUZEKOM: Then I talked to some of the neighbors. A bunch of the neighbors were offering suggestions.

CONSTANTINE ALEXANDER: All right.

BRENDAN SULLIVAN: If they liked that one, they'll love this one.

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: Okay. Anything else to add?

EDRICK VAN BEUZEKOM: No, I think that's it.

BRENDAN SULLIVAN: Okay, let me close the presentation part and let the Board discuss it among themselves.

CONSTANTINE ALEXANDER: I'm in

support. I mean, the relief is very modest. The roughly 70 square feet which brings your FAR from 0.58 to 0.59 in a 0.47 district. Not significant. The problems last time were aesthetic, and I think as other members of the Board expressed in my view you improved the aesthetics of the structure dramatically. And lastly how can I vote against you when you bring your baby down here?

LEAH LORTIE: That's the strategy.

CONSTANTINE ALEXANDER: It's a very good strategy. I'm in favor of the project.

THOMAS SCOTT: I've already said what I thought. I think it's a huge improvement. I know it was a little torturous us for you guys, but I think you got a better result.

LINDA CALLAHAN: Sorry for torturing you.

THOMAS SCOTT: I'm in favor of it.

BRENDAN SULLIVAN: Okay. Doug?

DOUGLAS MYERS: I think you have definitely solved the problem of the FAR by removing the porch, and that to me really softens the effect basically and not asking for much in terms of FAR. There are a couple of aspects of non-compliance with the former guidelines, but I believe they can be justified or at least excused based on the justification that you've given. So I will support the application.

BRENDAN SULLIVAN: Janet?

JANET GREEN: And I also support it. And I've already said what I thought.

BRENDAN SULLIVAN: All right, let me make a motion then to grant the Variance.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner adding much needed space at the third level floor of the house.

The Petitioner has a growing family, new member, and requires some additional space, some better utilization of the interior space in order to accommodate the growing family in a proper environment, and that the, this particular petition, proposal will accomplish that goal at minimal increase in the floor area to the existing structure.

The Board finds that the existing structure, especially at the third floor level, is quite challenging and hard to accommodate some additional space.

The Board notes that the hardship is owing to the fact that there is a substantive lot and the size and shape of the house sited on that substandard lot which predates the existing Ordinance, and that any addition to the house would require some relief from this Board.

The Board finds that the relief in this particular case has been tastefully done, and

is a fair and reasonable request.

And desirable relief may be granted without substantial detriment to the public good. The Board notes the letters of support from the abutters and neighbors across the street.

And that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance to allow for a long-term homeowner to be able to stay in their home. Also to raise a family, a growing family, and also to provide housing for a senior citizen on the first floor which is an admirable action on the Petitioner's part.

Also the Board finds that the granting of this Variance will not be substantially more detrimental to the neighborhood than the existing non-conforming use and its structure under 8.22.

CONSTANTINE ALEXANDER: Are they

seeking relief?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Then we need that.

BRENDAN SULLIVAN: And only the granting then on the Variance that the work conform to the revised set of drawings as submitted and initialed and signed by the Chair and the dimensional form contained therein.

All those in favor of granting the Variance?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
(Sullivan, Alexander, Scott, Myers, Green.)

(7:45 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes,
Thomas Scott, Janet Green.)

BRENDAN SULLIVAN: The Board will hear case No. 10350, 28 Jackson Street.

Okay, reintroduce yourself for the record.

GENA GOURLEY-STONEHOUSE: Gena Gourley-Stonehouse. G-e-n-a G-o-u-r-l-e-y S-t-o-n-e-h-o-u-s-e.

JASON STONEHOUSE: Jason Stonehouse, J-a-s-o-n S-t-o-n-e-h-o-u-s-e.

DAVID WHITNEY: And David Whitney. Architect. D-a-v-i-d W-h-i-t-n-e-y.

BRENDAN SULLIVAN: So to just run through where you were before and where you are now with the new proposal.

DAVID WHITNEY: Sure. As before, we're seeking to finish the third floor of this house. When we were here last time we presented a scheme that had three bedrooms on the second floor and a dormer that was significantly longer than the dormer guidelines suggest. We revised that, removed one of the bedroom and now we have a two-bedroom scheme where the dormers are

shorter and the guidelines applies with the dormer guidelines.

CONSTANTINE ALEXANDER: Complies as to length. I guess there's still some technical non-compliance.

DAVID WHITNEY: Frankly they comply in every way that the geometry of the house allows. The one way which they don't comply is that they come all the way to the sides of the house. Frankly we need to do that for headroom over the stairs. The existing stairs that go up there, but that's the only way to get up there. And the roof line at the dormer springs from the ridge of the main ridge of the house, but in every other way we've complied; the length complies, the amount of glass on the face complies, the setback from the face of the house complies. Frankly, we're, we're trying to finish it in a respectful and modest way that is in keeping with the spirit and the style of the original

house and then with respect to the guidelines in every way we can.

BRENDAN SULLIVAN: So the numbers, have they changed at all, they have not changed?

DAVID WHITNEY: I believe they have. I believe they -- the new square foot and FAR should be smaller now than on the previous version.

CONSTANTINE ALEXANDER: I thought I saw a new dimensional.

BRENDAN SULLIVAN: I have the new dimensionals. And I'm assuming that this is the original one here in the file.

THOMAS SCOTT: It looks the same.

BRENDAN SULLIVAN: This is October.

DAVID WHITNEY: Forgive me I have the old submittal. I don't know that I have the new submittal. I can't speak -- yeah, so the requested total gross floor area is lower now than it was before.

BRENDAN SULLIVAN: And --

THOMAS SCOTT: What was it before?

DAVID WHITNEY: In the previous scheme it was to go up to 3,579. The revised one only goes up to 3,697. And, again, that's only area with ceiling is too low to count now, but we've covered those proposed dormers. I have them both right here.

BRENDAN SULLIVAN: Well, the original scheme is the same as the -- the one I have is from October which is the original?

JASON STONEHOUSE: That is the original.

BRENDAN SULLIVAN: That was the original? And that shows existing at 3,259 and proposed as 3,497.

JASON STONEHOUSE: That was the update that I submitted last Friday.

BRENDAN SULLIVAN: Well, this is the -- anyhow, as long as this one here is right. I guess there were two of them in here

showing 3,497 from October.

THOMAS SCOTT: Could we see the one that you think is the original?

JASON STONEHOUSE: This is the copy I made before submission of the original packet.

BRENDAN SULLIVAN: I don't know where the discrepancy is. I've got two of them here going back to October which are basically the same as the one --

THOMAS SCOTT: Then the one we have now.

BRENDAN SULLIVAN: -- then the one we have now. Okay. We'll discount the original one anyhow and go by the new one.

The one thought that I had, I don't know, I'm sorry, is there anything else you need to add?

DAVID WHITNEY: No. I would answer any questions.

BRENDAN SULLIVAN: On the dormers.

I just thought if you go to sheet --

DAVID WHITNEY: The elevations start with 2, 2.1.

BRENDAN SULLIVAN: On the very first one it looks very prominent and very heavy at the dormers. So then my thought was what is the ceiling height at the front of the dormers? Say we go to A.22, that front wall on both of them, what would be the floor to ceiling height?

DAVID WHITNEY: Forgive me, can I borrow your scale? I don't remember. We share your concern. We didn't make the height extravagant. 7.6 is interior ceiling height.

BRENDAN SULLIVAN: Okay. And I'm just wondering, I guess what I'm thinking to soften the dormers, if we lowered that front wall to give the roof more of a pitch, No. 1. And then also to -- Tom, you know what I'm saying here?

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: You see how prominent they are? And if it were a little bit less of a wall --

THOMAS SCOTT: Yes, it would be less --

BRENDAN SULLIVAN: -- it would soften it. And I'm just wondering if we couldn't pull that down to save seven foot or six-foot, eight at that point with a slope ceiling.

DAVID WHITNEY: It would be possible. If I may, I would note that the elevations in the drawing set are a little abstract in that they're a direct axial view that you won't actually perceive. I think the perspective drawings are more realistic representation of the view you get from the street.

BRENDAN SULLIVAN: Right. And the pitch of the roof is also what I'm sort of

keying in on. And you've got a bathtub there at one and you've got a bedroom on the other one. So if we were to lower the -- Tim, you know what I'm saying?

TIMOTHY HUGHES: I know what you're saying. What is the pitch of the roof now, do you know?

DAVID WHITNEY: It's low. It's between one and two and 12.

TIMOTHY HUGHES: I think it would benefit you to increase that pitch some. The fact that you took it to the ridge line I assumed was so that you could get head height at your outside wall, but I didn't know you were looking to get seven-foot, six at your outside wall. So I think you could take that down some, increase the pitch. It would make it easier for, you know, in terms of maintenance and snow load and stuff if there was more pitch on the shed. And since we're already giving you that to the ridge line, I

think Brendan's making a pretty good point.

DAVID WHITNEY: If it would please the Board, we would be happy to do so.

THOMAS SCOTT: So at what slope could we put on shingles as opposed to a rubber roof? Because a rubber roof is very commercial.

DAVID WHITNEY: Also hard to see unless you're in a helicopter. Shingles you really need to get 4 and 12. It won't be possible.

THOMAS SCOTT: 4 and 12, right? So what would 4 and 12 bring that outside wall to, do you know?

DAVID WHITNEY: (Inaudible).

THOMAS SCOTT: Well, you said it was it's only 2 and 12 now, right?

DAVID WHITNEY: 4 and 12 would result in uninhabitable space.

THOMAS SCOTT: I don't agree with that. I mean, the outside wall would be

lower, but the rest of the room would be reasonable.

BRENDAN SULLIVAN: Under the new international residential code 50 percent of the room with a sloped ceiling has to be at least seven feet. So that the front wall could be pulled down at seven and below seven. And right at that wall you then slope it up.

DAVID WHITNEY: 4 and 12 would bring us down to a height of four-and-a-half feet. I'll say again, too, that the roof will be invisible. Nobody can see the roof of the dormers as is the case with other dormers in the neighborhood.

THOMAS SCOTT: I think Brendan's point, the striking part of the dormer is not the roof but the side of the dormer which, you know, is very prominent because of the pitch of the roof. The roof is so flat.

DAVID WHITNEY: True. Then let us agree to lower the height of those extra walls

to make the roof steeper.

BRENDAN SULLIVAN: Okay. And so that number.

DAVID WHITNEY: The height of the interior ceiling height on the exterior walls, seven feet as you suggested.

BRENDAN SULLIVAN: So from the finished floor to the top of the plate would be at seven feet?

DAVID WHITNEY: Correct.

BRENDAN SULLIVAN: Does that sound about right? Finished floor to the top of the plate.

THOMAS SCOTT: Top plate.

BRENDAN SULLIVAN: Top of the plate which would be the bottom of the rafter we see at that point, and then you could slope it up. And I think that would just sort of soften it --

DAVID WHITNEY: Sure.

BRENDAN SULLIVAN: -- No. 1.

And also mechanically it would look a lot better, too.

THOMAS SCOTT: And it's not going to affect the habitability of the room.

DAVID WHITNEY: No. We understand. We agree. We'd be happy to do so.

BRENDAN SULLIVAN: Okay. All right. Anything else to add to the presentation part?

DAVID WHITNEY: I'm sorry, no.

BRENDAN SULLIVAN: Let me open it to public comments.

Is there anybody here who would like to speak on the matter of 28 Jackson Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance. I'm he not even sure, were there were any letters in support?

JASON STONEHOUSE: There was a petition --

CONSTANTINE ALEXANDER: Last time

you had a --

JASON STONEHOUSE: There was a petition that we submitted from our neighbors last time.

BRENDAN SULLIVAN: I'm sorry, what?

JASON STONEHOUSE: There was a petition that showed renderings of the previous three-bedroom plan which was much more prominent.

BRENDAN SULLIVAN: It was a petition signed by --

JASON STONEHOUSE: By our neighbors.

BRENDAN SULLIVAN: By five people?

JASON STONEHOUSE: Yeah.

BRENDAN SULLIVAN: (Reading) We, the undersigned, neighbors of 28 Jackson express our support for our neighbors. We request the Zoning relief be allowed to construct the two dormers on their house. Signed the residents of 26 Jackson Street, 30

Jackson, 30, 32, and 32. Okay.

All right. Let me close the public comment part.

Anything to add to the presentation?
Any last parting words of wisdom?

JASON STONEHOUSE: No.

DAVID WHITNEY: They don't have any children yet but they would have brought them if they had them.

BRENDAN SULLIVAN: Gus, what are your thoughts?

CONSTANTINE ALEXANDER: I'm fine particularly with the change that you're suggesting.

BRENDAN SULLIVAN: All right.

THOMAS SCOTT: Yes, I think modifications, you know, made an improvement definitely.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: You know what I may have you do is just to mark that up while

I'm going to take a few minutes here anyhow and then it will be a lot easier for me to initial them.

Tim, what are your thoughts?

TIMOTHY HUGHES: I'm good.

JANET GREEN: I'm good.

BRENDAN SULLIVAN: Okay, let me make a motion then to grant the relief requested to construct the dormers as per the drawings submitted.

DAVID WHITNEY: Excuse me, sir, I apologize but it's now three dormers. It used to be two large ones.

BRENDAN SULLIVAN: The construction of dormers as per the revised drawings submitted on January 4th, and filed and initialed and signed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner from capturing

some much needed living space of the attic, existing attic space of the house and the Petitioner to increase the living space.

The hardship is owing to the fact that the existing house and lot are non-conforming with regard to the present Ordinance both predate the existing Ordinance, and any addition would require some relief from this Board.

The Board finds that desirable relief may be granted without substantial detriment to the public good.

The Board notices the letters of support from the immediate abutters and neighbors. And relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Board finds also that relief may be granted for the non-conforming structure and that the proposed use structure would not be

more detrimental to, would not be substantially, would in no way be more detrimental to the neighborhood than the existing non-conforming use our structure.

The Board grants this Variance on the condition that the work conform with the drawings initialed by the Chair. Okay. And also notes the change to the drawings on Sheet A2.2 as signed by the Board.

All those in favor of granting the Variance?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

* * * * *

(8:05 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The new

Chair will call the next case. Before I do so I want to on behalf of the Board thank Mr. Sullivan for his long and excellent service both as Chairman and as a regular member of the Board.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: You're welcome.

Okay, the Chair will call case No. 10369, 21 Notre Dame Avenue.

Is there anyone here wishing to be heard on that matter? As you've probably seen, give your name and address to the stenographer.

SHERLEY BRETOUS-CARRE: Sherley Bretous-Carre, S-h-e-r-l-e-y B-r-e-t-o-u-s-C-a-r-r-e, 21 Notre Dame Avenue, Cambridge, Mass., 02140.

DAVID CHOI: David Choi, 21 Notre Dame Avenue, Cambridge, Massachusetts.

SEAN RAHIME: Sean Rahime,

R-a-h-i-m-e, 21 Notre Dame.

CONSTANTINE ALEXANDER: Okay, why are you here tonight?

SHERLEY BRETOUS-CARRE: We're asking for a Variance so that we can put up a sign with the school's name on it.

CONSTANTINE ALEXANDER: It's just the one sign, the four banners?

SHERLEY BRETOUS-CARRE: Yes, sir.

CONSTANTINE ALEXANDER: The others, there are other signs, like aluminum, that look like signs that say Notre Dame, whatever the school was.

SHERLEY BRETOUS-CARRE: Well, we had to have that removed because of the portico is fixed and --

DAVID CHOI: There was a --

CONSTANTINE ALEXANDER: There's still one sign there now.

SHERLEY BRETOUS-CARRE: Yes.

SEAN RAHIME: There's one sign

there.

SHERLEY BRETOUS-CARRE: The sign by the administration building?

CONSTANTINE ALEXANDER: The sign over the entrance.

SEAN RAHIME: He's talking actually about the sign.

CONSTANTINE ALEXANDER: The Notre Dame.

SHERLEY BRETOUS-CARRE: Yeah.

SEAN RAHIME: That sign is on 21 Notre Dame, yes.

CONSTANTINE ALEXANDER: I'm sorry?

SEAN RAHIME: That sign is actually on 21 Notre Dame.

CONSTANTINE ALEXANDER: Okay.

SEAN RAHIME: It's weird because we use -- our main entrance is actually located in our parking lot. So we don't actually use 21 Notre Dame as our main entrance. We use the front entrance as our access to -- from

the parking lot. So basically that's facing 35 Middlesex, that's where that's facing.

CONSTANTINE ALEXANDER: No. The sign I'm thinking of faces Notre Dame Avenue.

SEAN RAHIME: Notre Dame Avenue.

SHERLEY BRETOUS-CARRE: So that sign is for the administration building. It has the name of the school on it, it's for the administration building and library. Is that the sign you're talking about?

CONSTANTINE ALEXANDER: Well, the reason I was going down this path is I want to know exactly what relief we're going to be granting if we grant relief. As you go down Notre Dame Avenue, I guess if you turn left off Sargent, the very first building, I don't know -- there is a building and there's an entrance and over the entrance it says Notre Dame High School like an aluminum looks like cast. What's going to happen to that sign?

SHERLEY BRETOUS-CARRE: Oh, okay.

It's not aluminum it's in the building.

SEAN RAHIME: There is one.

CONSTANTINE ALEXANDER: No, no, it's not in the building.

DAVID CHOI: We'll do whatever the Board wishes us to do.

CONSTANTINE ALEXANDER: Are you planning to remove it? And if you do, do you need a Variance for that? That's where I'm going.

DAVID CHOI: Our application does not include consideration of that signage. So whatever the Board recommends, we will consider that. But the application --

CONSTANTINE ALEXANDER: Okay. We will act tonight only on the banners, then, and I trust that you're not going to have to come back before us a second time if this, if the ISD says that you need a Variance for that sign as well, because you're only coming before us for the banners. Just so --

DAVID CHOI: Okay, very clear.

JANET GREEN: What's this?

CONSTANTINE ALEXANDER: I don't know that's why I asked.

JANET GREEN: What is the second part of your request though?

CONSTANTINE ALEXANDER: Your advertisement says: Replace existing non-illuminated wall-mounted identification signs at each portico building with new aluminum raised lettering on painted aluminum backdrop board.

And my question is to do that, to do that replacement, do you need Zoning relief from us?

DAVID CHOI: That to replace those --

CONSTANTINE ALEXANDER: Yes.

DAVID CHOI: Yes.

CONSTANTINE ALEXANDER: So you are seeking then a Variance for the banners and

to replace these signs with the new signs?

DAVID CHOI: Well....

CONSTANTINE ALEXANDER: Right?

DAVID CHOI: However, the sign that you originally put in question is not included in that.

CONSTANTINE ALEXANDER: Is not one of those. Okay, thank you.

DAVID CHOI: So --

CONSTANTINE ALEXANDER: And the relief is because the signs, some of it is the banner of sign is too big I assume in terms of what our Zoning By-Law allows?

SHERLEY BRETOUS-CARRE: Yes, sir.

CONSTANTINE ALEXANDER: Number of signs, you have too many signs with all the signs on the building, is that why you need relief?

SEAN RAHIME: Yes.

CONSTANTINE ALEXANDER: And what's the other one? Basically height. I assume

the banner signs are going to go too high on the building. Are they going to be more than 20 feet above? Maybe not.

DAVID CHOI: They're ten feet above grade. They are 20 feet in height.

TIMOTHY HUGHES: So, yes.

DAVID CHOI: And they are 200 feet away from Sargent Street, 200 feet.

CONSTANTINE ALEXANDER: All right. So you need a bunch of relief. I'm going to put it very colloquially, a bunch of Zoning relief with regard to the signing changes you want to make?

SHERLEY BRETOUS-CARRE: Yes, sir.

CONSTANTINE ALEXANDER: Okay. I just want to make sure the record is clear, that's all. And why? Why should we grant you the Variance?

SHERLEY BRETOUS-CARRE: Well, as a charter school in Cambridge we had, we've been here for 17 years. The previous

building was a parochial high school, and then one of the two complaints is we're not identifiable. The name of our school is not predominant. And we wanted to just advertise ourselves and to name ourselves so that people could see who we were.

DAVID CHOI: And also --

CONSTANTINE ALEXANDER: We have that in our files.

DAVID CHOI: Just to make clear, if you go to the building now and if you look from the parking lot, which is on the Sargent Street side, you will notice that there is a cross motif in the place where we're proposing to place the banners. The cross motif, especially since it is facing the east side, is very prominent once you come in and it's almost difficult to distinguish what is the religious facility and what is the dedicated Benjamin Banneker facility. It's almost impossible, if you will, to make that

distinction. I've been working with Benjamin Banneker as an architect for about four years, and the first time I went there I couldn't find the Benjamin Banneker site. Because even the address of 21 Notre Dame is very confusing. Because if you go to the Notre Dame side, it's hard to tell whether it's the Christian Vineyard Fellowship Building or Benjamin Banneker. So in terms of the way finding on the campus, it's very hard to distinguish what is what.

CONSTANTINE ALEXANDER: And these banners are going to be mounted on the top and the bottom so they're not going to flap in the breeze?

DAVID CHOI: No.

CONSTANTINE ALEXANDER: Okay.

And I would observe for the record for those members of the Board who haven't been to the site, that they're set back considerably from the street. It's not -- it

doesn't intrude upon the neighbors and across the street.

DAVID CHOI: 200 feet, sir. So in terms of if you're sort of looking at the portion of your vision from 200 feet versus let's say, you know, let's say right of way of even 100 feet of right of way, you'll -- it's diminished from your perspective of the building.

CONSTANTINE ALEXANDER: And the hardship is that with the current signage, as you've identified, confuses the identification of the building, the uses you're using it for?

SHERLEY BRETOUS-CARRE: Yes, sir.

DAVID CHOI: I think just the mere fact that we were confused in what you said in the beginning sort of adds to the hardship of identifying the campus.

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

JANET GREEN: What color are the banners and what do they look like? I mean, is it a bright color or is that the color?

TIMOTHY HUGHES: Is that a representation of what they're going to be?

CONSTANTINE ALEXANDER: This color here?

DAVID CHOI: Yes, sir. Traditional crimson. The Benjamin Banneker, even the uniform is the sort of the traditional crimson more academic color.

CONSTANTINE ALEXANDER: You don't think people are going to be confused this is a Harvard facility?

DAVID CHOI: You want to be talk a little bit about the entrance to --

SHERLEY BRETOUS-CARRE: No, no. We hope not. We think really primarily we want to be separated from the church. Parents who come to visit don't know that we're there. They think we're part of the parochial

school. They think we're not a public school. They can't apply to us. We have tuition. It's very confusing. And so we really just want to be identified. And there's a cross behind it and it just makes it really very confusing.

JANET GREEN: So what's the design on it?

SHERLEY BRETOUS-CARRE: Well, the school's name is Benjamin Banneker Charter School and we are science, technology, and engineering school. And those are the words on it.

DAVID CHOI: So there's an old portrait of Benjamin Banneker, historic figure, but in this portrait is actually from the historic almanac that he's famous for. He's one of the first African-American astronomers and known to historians, he's actually a civil engineer who helped the Washington, D.C., and there's a whole pride

of having someone who is of African-American background kind of be the sort of the focal point of education.

So STEM is -- stands for science, engineer, technology, and in the mathematics. So each of the four banners will have one of the words so it shows what stands -- what STEM actually means and what Benjamin Banneker actually stands for and how that would add to their own identity as a student.

SHERLEY BRETOUS-CARRE: And interestingly enough our school is predominantly African-American. And our biggest concern is that by the third grade students of color generally leave the field of science, math, and technology. And so we take, we take a great deal of pride in ensuring that our students have access, and so we teach them verbiage, we teach them pride, and part of the problem is, you know,

they have to be able to see it and know and be able to proudful of it. And it's just -- there's no, no way to say this is where I go to school and so a sign would help us do that.

CONSTANTINE ALEXANDER: Any other questions?

TIMOTHY HUGHES: No. Well, I'm a little unclear on where the other signs are that over the porticos. The banners make perfect sense to me.

DAVID CHOI: So just to clarify, this is a key plan.

TIMOTHY HUGHES: Oh, okay. I have that.

CONSTANTINE ALEXANDER: Second drawing there.

TIMOTHY HUGHES: Okay.

And they're basically replacing signs in approximately the same size and place that already exist there? And there are three of

them in total?

SHERLEY BRETOUS-CARRE: Yes, sir.

TIMOTHY HUGHES: Okay.

THOMAS SCOTT: Can you explain the light fixture? It looks like it says new exterior wall light pack. Where is that? Is that on the main entrance and how does that work? It doesn't -- are you trying to illuminate the sign with that?

SHERLEY BRETOUS-CARRE: No.

THOMAS SCOTT: Oh, okay.

DAVID CHOI: That's actually --

THOMAS SCOTT: That's just to illuminate the entry underneath the canopy?

SHERLEY BRETOUS-CARRE: Yes.

DAVID CHOI: That's right.

THOMAS SCOTT: Oh, okay. So the signs have no external illumination?

SHERLEY BRETOUS-CARRE: No.

THOMAS SCOTT: Of any kind?

CONSTANTINE ALEXANDER: And no

lighting, spotlight up on the building?

SHERLEY BRETOUS-CARRE: No.

CONSTANTINE ALEXANDER: I'm opening this matter up to public comment.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one wishing to be heard. There don't appear to be any letters in the files.

Have you spoken to neighbors by any chance?

SEAN RAHIME: Yes, we have.

CONSTANTINE ALEXANDER: And?

SEAN RAHIME: And they like the idea. We actually had an employee of ours go door to door and speak to everyone.

CONSTANTINE ALEXANDER: I'm going to close public testimony at this point.

Anything further you want to add from

your perspective? Last chance.

SHERLEY BRETOUS-CARRE: Well, thank you for your time.

CONSTANTINE ALEXANDER: You're welcome.

THOMAS SCOTT: Can I ask a question? If this were a just a painted, like a mural, would it still be subject to the same guideline? If it were just -- if this were just painted on the facade?

CONSTANTINE ALEXANDER: Is it a sign if it's just paint?

THOMAS SCOTT: I'm not trying to change it, I'm just asking the question.

SEAN O'GRADY: I would say that the Benjamin himself may well be viewed just as artwork. It's kind of confusing because if it advertises the thing, then it's signage. So that might go either way. Science, technology, I don't know, yes, it's pretty close.

CONSTANTINE ALEXANDER: The other question, point, too, the cross that's being covered is raised. So if you paint something on there you would still see the outline of the cross.

SEAN O'GRADY: Maybe you're reducing signage.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: Does the cross count as a sign?

CONSTANTINE ALEXANDER: Let's not go there. Let's not go there.

TIMOTHY HUGHES: Or is that branding?

SHERLEY BRETOUS-CARRE: We're already worried about blocking the cross. So we're not going there. Thanks.

CONSTANTINE ALEXANDER: Okay. I've closed public testimony. Other than thank you, you have nothing more to add.

Any comments from members of the Board

or are we ready for a vote?

TIMOTHY HUGHES: I have one quick question, is the STEM acronym related at all to the MIT grammar school engineering program of the same name?

SHERLEY BRETOUS-CARRE: No.

TIMOTHY HUGHES: Oh. Were you aware that there was one at MIT?

SHERLEY BRETOUS-CARRE: Well, STEM is a very common name. We're considered an elementary school in Cambridge, STEM.

TIMOTHY HUGHES: They have a summer program for middle school and grammar school. It's STEM. You might be sending some of your kids there. It's a great program.

CONSTANTINE ALEXANDER: Okay. The Chair moves that a Variance be granted to permit the relief being sought on the basis of the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a

substantial hardship to the Petitioner. Such hardship being that one of our primary purpose of a permitted sign in Cambridge is to allow for identification of the building and the signage is necessary as being proposed to do that given the nature of the construction of the building now with its raised motif on the side of the wall.

That the hardship is owing to the shape of such structure. The structure being one that can't be modified except with a large amount of signage unless you want to tear the wall down and remove the raised motif that's on the building now.

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

In this regard the Chair notes that there appears to be neighborhood support.

That the signage, though larger than is

permitted by our Variance, is set back a good distance from the street and therefore its visual impact is mitigated, and that the school, the charter school, provides a valuable service to this community. And allowing a better identification of facilities will further promote the school's activities.

The Variance will be granted on the condition that the work proceed in accordance with plans submitted by the Petitioner. They're number A204 and A201.1. Both of which have been initialed by the Chair.

You can't change them after this without coming back to see us again.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Hughes, Sullivan,

Scott, Green.)

SHERLEY BRETOUS-CARRE: Isn't it great that your first one is approved? Thank you.

* * * * *

(8:20 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10370, 998 Memorial Drive.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that we are in receipt of a letter. It has been pointed out to the Petitioner that the posting requirements, the signage requirements of our Ordinance have not been complied with. The petitioner acknowledges this, and asked to have the case continued to a further date.

Given that there was not posting of the signage, we have no choice but to continue this case.

Sean, when will be the next time we can hear this case?

SEAN O'GRADY: February 7th.

CONSTANTINE ALEXANDER: February 7th. This will be a case not heard.

So, the Chair moves that this case be continued until February 7th on the condition that the Petitioner, this time, post the sign complying with the requirements of our Ordinance. Such signage should reflect the new date of February 7th, and the time of seven p.m.

And on the further condition that the Petitioner sign a waiver for the time for decision.

Do you have it in the file already?

SEAN O'GRADY: Yes, they're going to sign one tomorrow.

CONSTANTINE ALEXANDER: Okay.

SEAN O'GRADY: Yes.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

SEAN O'GRADY: I'm sorry, I didn't mean to interrupt. Can you make it a condition?

CONSTANTINE ALEXANDER: That's a good thought. Let me phrase it this way: That if the waiver of notice is not -- of time for a decision is not rendered, then the relief will be deemed denied for failure to comply with the requirements of our Ordinance.

SEAN O'GRADY: And Monday.

CONSTANTINE ALEXANDER: By a date?

SEAN O'GRADY: And the new plans by Monday.

CONSTANTINE ALEXANDER: Oh, yes, I should repeat that as well.

And to the extent that the Petitioner will have plans, if there are going to be new plans, any plans that are going to be considered by this Board, must be in our file no later than five p.m. on the Monday

preceding February 7th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

* * * * *

(8:25 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10371, 45 Granville Road.

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

ATTORNEY SEAN HOPE: Good evening. The elections of the new chair and vice chair happened this evening?

CONSTANTINE ALEXANDER: Yes, it happened already.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair.

BRENDAN SULLIVAN: We wanted to catch up with all of your correspondence.

CONSTANTINE ALEXANDER: That's right, you predicted this a while back.

BRENDAN SULLIVAN: So now you're right again.

CONSTANTINE ALEXANDER: Make you an honest man.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman and members of the Board. For

the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight with the owner of 45 Granville Mr. Keith Wang (sic). And also the architect John Altobello, and there are some of the neighbors who are here as well.

This is an application to legalize an altered driveway parking and landscaping. This lot is located in the Res. B District. The property is sited on a corner lot, on the corner of Granville and Vassal Lane. Before we get into the actual dimension, just to give the Board some background, the Petitioner purchased the property in December 2010, and after about six months of doing some interior renovation, they actually started to look at the exterior of the property. They actually hired and worked with the landscape architect who Mr. Wang went to high school with. She's a practicing architect in New York. And so they came up with what we thought was a

design. Part of the design has to do with the location of the driveway, so it has two fronts because the Zoning of one lot has two fronts and two sides. So even though the main front is on Granville, the actual front they use as their primary entrance is on Vassal Lane. Because when you pull up with your car, you go in that exit. So as well as replacing the fence and doing some landscape features, part of the design was to actually erect a fence to create some separation between that entrance on Vassal Lane and the parking area. So I think this is now six months after moving in. So about mid-2011 they started to have these plans and retained a contractor and commenced work.

The work was commenced, and there was a call to Inspectional Services, I believe, and someone came out and they reported that there was some work being done. And just talking to Mr. Wang we were trying to figure

out maybe why there was work being done. There was a fence there. They're replacing the fence. Probably not they were aware of the Zoning violation which is actually the small part of this, but there were some very large posts being placed where the fence is now. And so if you see an eight-foot post being put into the ground, you may think it's going to be an eight-foot fence. That's what we presumed was the reason why.

So Inspectional Services was called. The contractor was told that he would need to pull a permit, because part of the plans outside of the fence was to put a deck, and the deck is compliant but there wasn't a permit pulled. The contractor was told to stop working and didn't stop working. And so I think from what I have been told, there was -- they didn't stop working and they -- the Inspectional Services came out again and told them they had to come down to

Inspectional Services to pull a permit or they would be in even more trouble.

CONSTANTINE ALEXANDER: A sorted history.

ATTORNEY SEAN HOPE: Yes. And, you know, Mr. Wang, you know, he relied on his contractor to do the work. But when they actually went to go pull the permit, they realized there was a Zoning issue. And the Zoning issue was when they put up the fence, they actually shortened a non-conforming driveway. So because the Vassal Lane side is slanted, there's a part of the driveway that probably would have enough feet to have the conforming driveway.

Now part of the depth is 10 feet because you're in a front yard setback so you can't have parking within the first 10, and then for a valid parking space you need another 18 feet. So on the closer side of the driveway you have about 25 feet. So you're about

three to four feet short of what you would need for a compliant driveway as well as parking space.

The previous history of the owner before Mr. Wang owned it, and you can see in some of the plans, you can actually pull a car in between the side yard and the house and you could probably maybe fit two cars tandem. But once you put the fence up that's been erected, now the car is about four feet within the setback.

So part of the requested relief, and this has already been done, so it's an unusual pattern to this. So obviously this is not the way we go about this, but also -- and Mr. Altobello can talk about when we actually looked at the plans, the actual plans themselves in terms of design and privacy were actually done in -- and I did say that if they came to me with this plan to get Zoning relief, this is one of those things I would

look at and say you know what, this is actually an unusual circumstance because it's a corner lot, because this is actually the entrance, that may be right for a Variance. So I did feel like it was something that did meet the criteria. We could talk a little bit later.

One of the things that part of the change is that there was a five- or three-foot bush buffer along the Granville side next to -- on let's say 41 Granville or 43?

KEVIN WANG: No, it's actually on the Fayerweather.

ATTORNEY SEAN HOPE: The Vassal Lane side, yes.

KEVIN WANG: Yeah.

ATTORNEY SEAN HOPE: So there was a three-foot buffer that was in between the side yard and the driveway. That was erased when they did the renovations and they just made that all paving stone.

So part of what we propose is not just to put back the three-foot buffer, but the code does require for new construction to have a five-foot buffer. So we thought that we would try to bring the driveway into greater compliance into what we would have done if this was a new driveway. So we have shortened the driveway so that there is probably four feet of car within the front yard setback on the Vassal Lane side. But we did gain about a five-foot buffer on the side we thought was a way to try to have an opportunity to change the plans, and I would say as an element of the hardship without relief, we would -- Mr. Wang would be forced to actually take down the landscaping improvements. Primarily it would be the fence. And there's the Granville curb and there are some other features. And I think we said between 30 and 40,000 dollars worth of work, but we still have a non-conforming

driveway to begin with. So we've increased the non-conformity, but I think we've also created some safety issues and created some privacy which was the real purpose for why this work was done.

We also, as part of this application, we reached out to the neighborhood for the large part. The code is the code and also when you don't get the Building Permit and you don't give the Board the opportunity, something is lost. So we went to reach out to the neighbors, not the direct abutters, but also people in the neighborhood to get their feeling on what, you know, how they felt about the changes. And you'll hear from the testimony as well it was very positive, and I think the quality of the workmanship itself can be seen. And if the Board went and viewed the site as well. So....

CONSTANTINE ALEXANDER: And these plans that are in our files right now, there

are two, two pages, this is the driveway as it now is for which you want relief to be granted?

ATTORNEY SEAN HOPE: So the two plans there show the proposed. And what's different between what the driveway is now is the red line shows where the strip was previously.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: And the green area is now what we propose.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: So it's the same driveway, but we propose to add that buffer as a separation between the driveway and the side yard setback.

CONSTANTINE ALEXANDER: But in all other respects, I mean taking away the green, this is the driveway and these are the plans -- if we approve the Variances, this is what it's going to be tied to?

ATTORNEY SEAN HOPE: Yes.

THOMAS SCOTT: Is the buffer installed now or is that something you have to put in?

ATTORNEY SEAN HOPE: That's going to be put in.

THOMAS SCOTT: Okay.

CONSTANTINE ALEXANDER: Questions from the members of the Board?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: No, I just have a little bit of comment, is that I've been keenly watching this evolve over the last couple of years, and one of my thoughts was that there was a great deal of funds being expended on it. The fence obviously is a very nice fence, but what I take exception to is -- and this is a growing trend in Cambridge of people putting up walls around their property. And it's almost like that everybody is sort of getting akin to being a

gated community or a walled-in enclave. And I take great exception to people putting up, especially on corner lots, six-foot fences because, you know, before we would put up fences and it was always to keep small children and dogs in the side yard so they wouldn't go out into the street. And now people are having a tendency to put up fences because they want this privacy. And, you know, I'm sort of wondering are they trying to keep something out or are they trying to keep people in? And I think that they have now taken their private area, which is inside the house and then all of a sudden say, well no, outside is very private, too. And so we are trying to become exclusive. We're trying to not be as neighborhood friendly anymore. This is our domain. So I take great exception to people putting up six-foot fences.

CONSTANTINE ALEXANDER: Let me

endorse what you just said.

BRENDAN SULLIVAN: And then I also noticed that where it was before, there was a car parked there. Right next-door is a car parked with a garage. Across the street people park cars obviously within the front yard setback, and they don't really probably consider it their front yard.

ATTORNEY SEAN HOPE: Yes.

BRENDAN SULLIVAN: But yet those areas are open and you don't focus in on the car. You don't focus in on, you know, because that's sort of very typical. And when you start putting up walls and sort of little enclaves and little boxes and things everything like that, and then you focus more that it's, you know, for a car and I think it has a far more of an adverse impact.

CONSTANTINE ALEXANDER: And let me endorse what you just said. There are a couple streets, I'm trying to think of one in

particular, where if you drive down the street, there are these six-foot fences right on the street level on each side, and it looks like that nobody talks to one another. It's like an armed camp because of these high walls on either side. And I endorse --

BRENDAN SULLIVAN: And it's a growing trend.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And I say are you trying to keep something in or are you trying to keep something out? But I have -- it irks me. It irks me. It really does.

CONSTANTINE ALEXANDER: You know, before us is whether we should allow this driveway. And as a general observation I heartily agree with what you said.

Any other questions or comments?

BRENDAN SULLIVAN: That's my comment.

CONSTANTINE ALEXANDER: I'm going

to open this matter to public testimony at this point. We have a lot of letters in support which I'm going to read into the record. So if you've written a letter and what you're going to say is in the letter, I can save you the bother or you can talk and I won't read your letter. So it's your call. What would you rather do.

UNIDENTIFIED WOMAN: I'd like to add something to the letter that I did write.

CONSTANTINE ALEXANDER: Okay.

UNIDENTIFIED WOMAN: I've been living --

CONSTANTINE ALEXANDER: You have to give your name and address.

BUNNY TILT: I'm sorry. Bunny Tilt. I live at 116 Fayerweather. And our back door and driveway face the Wangs' back door and driveway. So we are directly back door neighbors. We've been living there for 10 years. The property across the street,

the Wangs bought a couple years ago was in disrepair; the building, the fence, the yard. It was shabby. And as soon as the Wangs bought it and started the work, we decided we had the right neighbors. Everything they did was tasteful. Most of the areas in our particular area, our corner, and they do have fences, and I understand your concern about barricades, enclaves, and exclusivity and so forth, but what's happening in this particular area is that Vassal Lane, which is their driveway and our driveway is the corner for the school buses coming from the Tobin. It's also the corner for the cars coming in from Alewife and the burbs coming into the Cambridge. They're using our Vassal Lane as their main thoroughfare. So I totally understand why people are keeping the fences to keep the noise out. They also have in our neighborhood in this particular intersection, they're families with small

children, as do the Wangs have, and dogs. And now, as far as there being exclusive and not being neighborly, I can tell you that's not the case. The Wangs have been very outgoing. They're positive, they interact with all the neighbors, everybody knows them. Knows their daughter, knows him and his wife Katherine, and they're fabulous friendly neighbors. So we feel like we've got a win/win situation right here. The new driveway that's been putting in, the landscaping that's been put in is a pleasure. Every time I walk out my back door, it's something that makes me smile. It's attractive. Plus the Wangs are usually out there. So I rest my case. We're very in favor.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else who wishes to speak?

UNIDENTIFIED MAN: I'm the abutter

on the other side.

CONSTANTINE ALEXANDER: And, again, your name and address for the record.

BRUCE BUCHLAN: Oh, I'm sorry. Bruce Buchlan, 44 Granville Road which is right next-door.

And --

CONSTANTINE ALEXANDER: You're the one with the garage in the driveway?

BRUCE BUCHLAN: I do not have a garage in the driveway. That would be on Vassal you're speaking.

CONSTANTINE ALEXANDER: Oh, I'm sorry.

BRUCE BUCHLAN: I'm the abutter. And the fence on our side is a gorgeous fence, and the quality of the work as Bunny said, is really wonderful. You should see these mitered granite curbs. They're just gorgeous stuff. And there's no exclusivity being created that I've noticed if that's a

key issue here. The improvements make the neighborhood a much better place, and it's an improvement to my property values and I'd like to see it as it is. The previous fence was -- there was also a fence along there, and this looks much, much better.

CONSTANTINE ALEXANDER: Thank you.

BRUCE BUCHLAN: And the Wangs are wonderful neighbors.

CONSTANTINE ALEXANDER: Thank you.

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

(No Response.)

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

We are in receipt of a number of letters which I will read into the record.

We have a letter from Ann Ferraro (phonetic). It says: I have lived at 114 Fayerweather Street for 15 years. My

property abuts Keith Wang at 45 Granville Road. The Wangs have recently completed an extensive amount of work that has made the neighborhood much nicer. The changes to their fence and driveway have made it much safer since they have a little girl and she can no longer run directly from their house to the street. I feel that it will be a waste of resources to have the Wangs reverse the changes they have made to their fence and driveway. I recommend providing the Wangs a Variance to keep the changes to their driveway allowing them to park in the front yard setback.

We have a letter from Bruce and Joanne Buchlan. (Reading) My wife Joanne and I have lived add 44 Granville Road since 2000 -- do I need to read the letter?

BRUCE BUCHLAN: Well, it's well written but you don't have to read the letter. You don't have to read it.

CONSTANTINE ALEXANDER: No, I should read it.

(Reading) We live next-door to Keith Wang and we are writing to support all the work that Keith completed at 45 Granville Road. The changes to the fence, driveway, and deck are all an improvement to the neighborhood. The changes have increased the safety for both Keith's family and the neighbors. The reconfiguration of the driveway provides far greater -- for greater -- typographical error -- for greater visibility of pedestrians as well as prevents Keith's daughter direct access to a very busy street. We fully support a Variance for Keith to park in the front yard setback, especially since the driveway is technically on the side of his house. Furthermore, to require Keith to undo the improvements, would be an unnecessary waste of resources that would provide no benefit to the neighborhood.

We hope that you will consider his application favorably.

A letter from Melissa Wessels, W-e-s-s-e-l-s and Lisa Raffin, R-a-f-f-i-n who reside at 49 Granville Road. We have lived at 49 Granville Road for over two years and met Keith Wang and Katherine Sangwickenstine (phonetic) when they moved to 45 Granville Road a little over a year ago. They have been thoughtful and considerate neighbors and we are glad to have them in our community. The renovations they made to their property are an improvement and in keeping with the aesthetics of the neighborhood. The changes they made to the fence and landscaping near the driveway, which is directly across from our driveway on Vassal Lane, allow for greater visibility for pedestrians and cars and for this we are grateful. We are in full support of a Variance to legalize the existing condition

which would allow for parking within the front yard setback. We feel that requiring Keith and Katherine to undue the improvements they have completed would be a terrible waste of time and resources and provide no benefit to the neighborhood.

There's a letter from Mark Ratner, R-a-t-n-e-r. (Reading) My name is Mark Ratner and I am the owner of the second floor condominium at 116-118 Fayerweather Street my primary residence since purchasing the property in 2005. This letter is in support of the request for a Variance made by Keith Wang of 45 Granville Road diagonally across from my home. I urge the Zoning Board to give every consideration to the Wang request which would allow for parking within the front yard setback of the property facing Vassal Lane. I believe the changes the family has made to their property are an improvement and increase safety for both the Wang family and

passersby. Further, I believe that to undue their landscaping would be a waste of resources and would not benefit the neighborhood.

A letter from Bunny and Dyke Tilt, T-i-l-t. Dyke is spelled D-y-k-e. (Reading) I am writing this letter on behalf of Keith Wang and Katherine Sangwickenstine residing at 45 Granville Road, Cambridge. My husband Dyke Tilt and I live across the street from Keith and Katherine at 116-118 Fayerweather Street (we're right on the corner of Fayerweather and Vassal Lane) and have owned the house for 10 years. From our back deck and garden we look directly at their driveway. We believe that the new landscaping, deck, fence, and reconfiguration of the driveway is beautiful. The work Keith and Katherine completed has enhanced the view from our house and improved the neighborhood.

Previous to completing the improvements the fence was in decay and was a potential safety hazard to passersby. The reconfiguration of the fence and driveway provide much needed safety for Keith and Katherine's daughter as she no longer is able to run directly into the street. Additionally, the manner in which the driveway was widened and the fence installed provides additional visibility to oncoming pedestrians when backing a car from the driveway. Finally, Keith and Katherine spend a great deal of time, effort, and money to make the necessary changes. They discussed the changes with most of the neighbors prior to completing the work. Both my husband and I feel it would be a waste of time and resources. That's a familiar theme by the way, waste of resources.

I suspected -- well, anyway a waste of time and resources have made them further changes -- to have them make further changes.

To make Keith and Katherine make changes would not benefit the neighborhood, and in fact, would be nuisance as it would require significant machinery that would increase traffic congestion. Furthermore, any further changes would be harmful to the environment as much as the curbing and fencing would be discarded and new building materials would have to be used. That said, we fully support providing a Zoning Variance to Keith and Katherine to legalize the wonderful work they have completed.

And lastly we have a letter from David Maher, City Councillor. (Reading) I am writing to express my support for the Variance to allow the authorization of the driveway layout, landscape features, and parking at 45 Granville Road to remain. As a resident in this neighborhood, I am familiar with the property and had an opportunity to hear the owner's concerns on

maintaining the current design of the landscaping and driveway. The Wang family purchased the prominent two-family property just over two years ago and converted the property into a single-family to meet their needs. These renovations included the new fencing, landscaping features and altered driveway. I'm aware of the unusual process by which these alterations were constructed. I've been encouraged by the high quality of the workmanship, the materials, and the aesthetic improvements. Without relief the Wang family will be forced a considerable cost to undue the landscaping improvements and would suffer a severe hardship with no benefit to the neighborhood. I am very satisfied with the proponent's thoughtful plans and I encourage you to vote in favor of their Board of Zoning Appeals request.

And that's the letters that are in the file right now.

I'm going to close public testimony.
Before we deliberate, any last comments?
Please, beg, what would you like to do?

ATTORNEY SEAN HOPE: No, I think the correspondence in the file really says it all. I would just say, though, that I think the hardship is there and it's really the size and the shape of the lot, sited on the corner. And really the fact that the primary entrance is located on the heavily travelled road which I didn't mention previously. I do think the safety issues are legitimate, and I do think this proposed plan would be the type of proposal that I think would be a Variance if we had come in prior to doing the work. And I do think the Wangs, you know, they came in -- when they came in, they actually did see several different attorneys and I don't know why they didn't come here first, but, you know, people do understand that when you do work before you go and get

a Building Permit, there are serious repercussions. And so that was a very serious part of my analysis with Keith and that's why we really did go and do all the work we did in the neighborhood to really understand that if you don't give the Board the opportunity, often times what may have been passed is also looked at as in a different way. So I just wanted to let the Board know that the Wangs were made clear, that even though it was their contractor, you know, as the owner sometimes that you bear that responsibility. And I think that's why when we retained Mr. Altobello, we really said what else can we do to try to make the property in greater conformance? And I think we tried to achieve some of that.

CONSTANTINE ALEXANDER: Thank you.

Okay, now it's time for us to deliberate.

Anybody have any comments? Brendan?

BRENDAN SULLIVAN: I had mine.

CONSTANTINE ALEXANDER: Nothing further.

Tom, anything you wish to say?

THOMAS SCOTT: I'm overwhelmed by the support.

CONSTANTINE ALEXANDER: You mean you don't want to waste resources and preserve the environment?

THOMAS SCOTT: Right.

CONSTANTINE ALEXANDER: Janet?

JANET GREEN: I'm fine.

CONSTANTINE ALEXANDER: Tim?

TIMOTHY HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

Time for a motion. This is the part where become an ancient Greece and I mumble some magical incantations the result of which you'll get the relief you want.

The Chair moves that the Variance be granted for the relief being sought on the

grounds of the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship would force them to remove -- waste resources -- to remove work that was done in good faith, though inadvertently not in compliance with all the legal requirements of the city.

That the hardship is owing to the circumstances relating to the lot as pointed out by the Petitioner. This is a corner lot with two front yards, and makes it an unusual lot in terms of providing off street parking. And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of this Ordinance.

The Chair would note that although the non-conformance of the front yard parking will be increased by the relief being sought,

it is not -- given the overall nature of the improvements, that the impact on the neighborhood is not increased, adverse impact to the neighborhood is not increased.

That the work that was done was done to satisfy an existing problem in terms of providing safety to the occupants of the house, providing a means of keeping small children from inadvertently going into the street. And that the work, in any event, has been done very tastefully as testified to by the neighbors. And as I've also indicated we have unanimously neighborhood support.

So on the basis of all of the foregoing I move that we grant the Variance on the basis that the driveway, the alteration is in conformance with the plans submitted by the Petitioner, two pages which I've initialed and are part of the record.

THOMAS SCOTT: And that this landscape buffer will be installed?

CONSTANTINE ALEXANDER: By virtue of that.

ATTORNEY SEAN HOPE: Those plans.

CONSTANTINE ALEXANDER: Make it explicit, that you will install the buffering in accordance with the plans that are before us. Same dimensions, same nature of the landscape.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Scott, Green.)

BRENDAN SULLIVAN: Opposed.

CONSTANTINE ALEXANDER: One opposed.

Good luck. No good luck. You had your good luck already.

ATTORNEY SEAN HOPE:
Congratulations.

* * * * *

(8:50 p.m.)

(Sitting Members: Constantine Alexander,
Timothy Hughes, Brendan Sullivan, Thomas

Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10372, Seven Phillips Place.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one here. The Chair is also in receipt of a letter from Austin Architect. John Gately, G-a-t-e-l-y. It's addressed to Mr. O'Grady. (Reading) From our telephone conversation on today we understand that the posting notice for the above project has not yet been posted. This will be done immediately and we request a continuance of hearing for the next earliest possible date. The posting notice will also be updated to reflect the revised hearing date and time.

The Chair would confirm that there was

no posting of the sign on this property as required by our Zoning Ordinance.

Sean, when's the next time?

SEAN O'GRADY: February 7th.

CONSTANTINE ALEXANDER: February 7th. Okay.

The Chair moves that this case be continued until February 7th at seven p.m. on the condition that the sign be posted in compliance with the requirements of our Ordinance reflecting the new date, February 7th, and the new time, seven p.m.

That any plans or revised plans with regard to the relief being sought must be in our files no later than Monday prior to February 7th at five p.m. On Monday prior to February 7th.

And the last condition that the Petitioner sign a waiver of notice for time of decision.

SEAN O'GRADY: That should be in

there.

CONSTANTINE ALEXANDER: Is it in here? Yes, it is. So we don't need that condition.

So continue the case until seven p.m. on February 7th.

All in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Case continued.

* * * *

(8:50 p.m.)

(Sitting Members: Constantine Alexander,

Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10373. 21 Walker Street.

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one here to be heard on this matter.

The Chair will also note that there is a letter in the file from, it would appear to be Anca, A-n-c-a and Ashish, A-s-h-i-s-h Mamania, M-a-m-a-n-i-a. (Reading) Dear Board: Regarding this case I inadvertently failed to post my sign (was away for two months) and request a continuance to the next available. I would really, underscored really, really appreciate the very next appointment available.

SEAN O'GRADY: 7th still.

CONSTANTINE ALEXANDER: 7th, okay.
The Chair would also confirm that the

sign was not posted as required by our Zoning Ordinance and therefore we have no choice but to continue the case or deny relief.

The Chair would move that this case be continued until seven p.m. on February 7th on the grounds that the Petitioner this time around post the sign with the right date and the right time as required by our Zoning Ordinance in all respects.

That to the extent that there are plans or new plans regarding the relief being sought, that they be in our files no later than five p.m. on the Monday before February 7th.

You have a time for a waiver for a decision?

SEAN O'GRADY: There should be a waiver there also, yes.

CONSTANTINE ALEXANDER: I guess that's all we need.

All those in favor of continuing the

case on this basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

* * * * *

(8:55 p.m.)

(Sitting Members: Constantine Alexander,

Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The last but not least, the Chair will case No. 10374, 2044-2046 Mass. Ave.

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

CHRISTOPHER FITZSIMONS: Good evening.

CONSTANTINE ALEXANDER: Good evening. For the record, your name and address.

CHRISTOPHER FITZSIMONS:
Christopher Fitzsimons.

CONSTANTINE ALEXANDER: And you're here, sir, because.

CHRISTOPHER FITZSIMONS: I own 2046 Massachusetts Avenue and I would like a Variance to allow live entertainment in my restaurant.

CONSTANTINE ALEXANDER: Excuse me.

BRENDAN SULLIVAN: You may want to use the microphone.

CONSTANTINE ALEXANDER: If you can't hear from the back, feel free to come to the back and move to the side if you like. Why don't you continue. Go ahead.

CHRISTOPHER FITZSIMONS: I own 2046 Mass Ave. in Cambridge in Porter Square, and I have a restaurant and I want the Variance from the Board to allow me to add live music to my entertainment license.

CONSTANTINE ALEXANDER: Okay. You understand the requirements for a Variance? Let me be clear.

You're seeking what we call a use variance. The use you want is not permitted in the district that you're located in so you have to get a Variance. But to get a Variance, you've got to demonstrate a number of things. For us to grant, be in a position for us to grant you a Variance.

You have to show a substantial hardship if we don't grant you a Variance, and the fact that you can't increase your business is not a substantial hardship, which is why you want to do it presumably, within the legal meaning of the Variance requirements.

More importantly you've got to show that the hardship is owing to -- I'm going to read statute -- soil conditions, shape or topography of your land and structures, and especially affecting such land or structures, but not effecting generally the Zoning District in which it is located.

And obviously it seems hard to conceive that you can meet this requirement.

And then last is you can't derogate from the intent and purpose of our Zoning Ordinance.

In here you're in a district the north -- an overlay district, business district on Massachusetts Avenue which is an

area of special concern from a Zoning and Planning points of view. And so, for us to grant a Variance is not just within our authority quite frankly in my judgment. Maybe other members of the Board feel otherwise. We don't have the authority to do that. You're asking us to rewrite the Zoning Ordinance and change the map to allow you to do something that the City Council says you can't do. And the only people that can do that is the City Council. You're going to have to go back to the City Council and get them to redraw the map in some fashion or to change the use requirements for this district. There's where your relief is. We don't have that relief. We don't have the right to rewrite the Zoning Ordinance as a Zoning Board. And this is not an unusual case in the sense. We've had a case not too long ago, actually, the first continued case tonight, involving a facility in Central

Square. They want to have a restaurant and live music. And it was not permitted for slightly different reasons. And when they came before us, we told them we can't give you relief. We don't have the authority. And they went back to the City Council and got the Zoning changed for them, and they're going to be able to go forward presumably. I don't know whether that is in cards for or not, but that's not our concern.

The fact of the matter is is that we don't have the authority to grant you the relief you're seeking. You don't meet the requirements for a Variance. It's just the way it is. At least that's my point of view. Perhaps other members of the Board might feel otherwise. But you haven't addressed and you can't address the requirements for a Variance for the use you want.

Go ahead.

CHRISTOPHER FITZSIMONS: So what

you're saying is I'm at the wrong board meeting?

CONSTANTINE ALEXANDER: In a sense, yes. City Council is where you have to go.

CHRISTOPHER FITZSIMONS: Well, okay.

CONSTANTINE ALEXANDER: And they've got to change the Zoning. I mean, you've got to persuade them to change the Zoning in some fashion that would allow you to do what you want to do, in which case you would never have to see us again presumably.

But right now the Ordinance does not allow what you want to do to be done in this part of Cambridge. And you don't meet the requirements for a Variance. The Variance requirements are generally for structural types of relief. You want to build an addition, you're too close to the lot line. Or like some of the cases we heard this evening, they're too big for the permitted

floor area for the lot. That's the area where -- you can show the hardship I need more space. Special circumstances, it's an odd lot, corner lot like the case before or soil conditions. And that there's substantial neighborhood support and, therefore, you don't derogate from the intent and purpose. I haven't gotten to the fact that you're probably aware that there's an overwhelming opposition from the neighbor to what you want to do. But that's not why I'm saying we can't grant relief tonight. It's not a matter of the neighbors being opposed therefore we're not going to grant relief. We just don't have the ability to grant you the relief you want. You knocked at the wrong door.

BRENDAN SULLIVAN: Well, I might take a little bit different --

CONSTANTINE ALEXANDER: Go ahead.

BRENDAN SULLIVAN: I'm going to wind up in the same place, but just a different

route.

To answer your question whether or not you're before the wrong board? No, you're -- we actually, I would say that we do have the power to waive the requirement of -- the requirement now is that you not have. So we could set aside to allow you to have it. So the courts have, yes, have given us the power to do that. Somewhat of the authority to do it. However, with that authority and with that power comes a responsibility, and the courts are also found that any decision of the Board cannot be arbitrary, capricious or whimsical. If they were to grant it, they may decide, if this was under review, that this decision to grant the relief was somewhat arbitrary. Would not be capricious but would also probably be very whimsical. Whimsical meaning they granted it with really no good basis to grant it. And whenever it comes down for a use variance, I

always sort of go back to, and if you were represented by counsel, I would throw this out to counsel, is Mendoza versus the Licensing Board of Fall River, which is sort of somewhat of a landmark case years ago. Well, 2005. Where the Court found in that particular, and it's sort of been the standard, that although all Variances, as he alluded to dimensional ones, are unusual forms of relief from Zoning requirements. Use Variances should be particularly extraordinary because they inherently undermine the local Zoning Ordinance division of uses. So that's what the Court's basically found then, is that to set aside and to grant a Use Variance has got to be the most extraordinary type of relief. Because the Use Variance and the separation of uses different categories, different sections of the city, that's the primary function of Zoning. All the dimensional stuff was sort

of all fill in afterwards. But the division of uses, whether something should be allowed in a particular district or not, that's the No. 1 primary purpose of Zoning. And that started with the City Council. Started with Planning Board, community input, City Council votes that in. City Council then gives us this book and says this is what you should allow and this is what you should not allow. And under the Table of Uses basically what they're saying is this should not be allowed. And only under the most extraordinary of circumstances should you allow it. So, I think I've come to the same conclusion, maybe somewhat of a different route. So, yes, you're before the proper Board, but unfortunately it really as I said, it's the most extraordinary form of relief that we could ever grant.

CONSTANTINE ALEXANDER: The only Board that can grant you the relief in short

is another board other than ours. We have a legal standard we have to apply, it's a very tough one. And you don't -- the reasons are obvious, you don't come to close to satisfying them. So therefore unless you get the Zoning changed, the City Council can do that, we can't grant you relief. We would not be fulfilling our legal responsibilities.

BRENDAN SULLIVAN: And all of North Avenue from Waterhouse Street all the way up to the Arlington line has been going through a review going back the last three or four years, and even though it has not been fully enacted yet, that the section from Porter Square to the center of Creighton Street, right to the center the Creighton, has been designated a certain area to allow this particular use from the center of Creighton Street onward which would be the North Mass. Avenue Overlay District Subsection. They

specifically have said not to allow this use. So it has been really quite vented and reviewed quite extensively. So in light of that, too, for us, I think for me, I think to sort of set that aside or to not be cognizant of that would be a dereliction of duty and again arbitrary and whimsical decision. But anyhow that's....

CONSTANTINE ALEXANDER: Any other members of the Board wish to express any views at this point?

(No Response.)

CONSTANTINE ALEXANDER: I could open this up to public testimony. A lot of you people came down here and it may be a shame not to give you a chance to speak. So I think you see how this case is going to come out. So do you want to go home earlier or do you want to sit around and talk?

BRENDAN SULLIVAN: I would open it to the public.

CONSTANTINE ALEXANDER: I'm sorry, I'll open it to public testimony, and if you want to say something, which by all means, just give your name and address to the stenographer, please.

JANET MALENFONT: My name is Janet Malenfont and I live at 16 Blake Street. I think given what you've discussed here the only thing I want to do is submit in person the petition that neighbors signed.

CONSTANTINE ALEXANDER: We don't have that already? There's one in the file.

JANET MALENFONT: You have a copy there. I was going to give you the original. But also -- I think there are a couple of extra, maybe a couple of extra signatures.

CONSTANTINE ALEXANDER: Fine. That's okay, we'll keep it in the file.

JANET MALENFONT: And then this one I said I would drop off. It was put in the senior center by Linda Macintosh. She was a

direct abutter on Creighton Street and she had submitted that to the senior center.

CONSTANTINE ALEXANDER: There's one other letter from a resident of the senior citizens center also opposing the relief. Just for the record.

JANET MALENFONT: Yep.

CONSTANTINE ALEXANDER: I think we're ready for a vote.

CHRISTOPHER FITZSIMONS: Just for the record --

CONSTANTINE ALEXANDER: I'm sorry. Just one moment.

Yes, Ma'am, you want to speak?

RUTH RYALS: Just so you know there are some people in favor of --

CONSTANTINE ALEXANDER: We need your name and address, please.

RUTH RYALS: Ruth Ryals, R-y-a-l-s, 115 Upland Road.

CONSTANTINE ALEXANDER: Upland Road

you said?

RUTH RYALS: Yes. And primarily because I think Mass. Avenue, that section as well, would very much benefit from live music and a more lively nighttime scene with new consideration for noise abatement for the neighbors.

CONSTANTINE ALEXANDER: Thank you.

JOHN HOWARD: John Howard. I live at 8 Cogswell Avenue which is about two blocks north of where the Spirit Bar is located. I also feel that the presence of Spirit on that stretch of Mass. Ave. brings eyes and people to the area at night and, therefore, makes it more desirable and safer. But I'm quite sympathetic to the concerns of the neighbors on Blake Street who feel there's noise. I think that there probably something could be worked out, abate noise, maybe ceiling (inaudible). But nonetheless that is beyond what this group has said. I would like to

support, express my general support for Spirit.

CONSTANTINE ALEXANDER: Let me just suggest that the support is, as you can tell, better directed to another body than ours. I appreciate you coming here and expressing your views on that. It maybe gives you some hope for getting a different group to allow you what you want to do.

Go ahead.

CHRISTOPHER FITZSIMONS: Well, with all the objections that were into the record, I would like to put into the record some people who are for the idea.

CONSTANTINE ALEXANDER: Oh, sure.

CHRISTOPHER FITZSIMONS: Playing some live music during a brunch or a lazy afternoon.

CONSTANTINE ALEXANDER: Good.

Again, as I said before, and I won't repeat myself too much, is that this is not --

CHRISTOPHER FITZSIMONS: Are you going to read those into the record or just put them in there?

CONSTANTINE ALEXANDER: You know, if I did we'll be here for another hour. And at the end of the day we're going to come to the conclusion we can't grant you the relief.

Zoning is not, unfortunately maybe, Democratic. It's not because of a majority of the neighbors want something or not want something is not how we decide the case. We take that into consideration. But at the end of the day we've got to apply what the law. We've got to apply what the law variances are. It's a very tough law to get a Variance. I mean, the legal requirements are very strict. And with a Use Variance, as Brendan has quoted a case, it's very, very difficult. And you don't get there. You don't have special -- unless you're going to talk to me about do you have a special -- the soil

conditions, shape, or topography of your land or structures require that you have -- you need to have live music entertainment? You know, you're not going to get there. So you can't meet the requirements for a Variance. That's why we're saying it's not worth taking the time reading the letters for things we can't do anyway.

CHRISTOPHER FITZSIMONS: Well, why was it worth taking my check today?

CONSTANTINE ALEXANDER: You made the decision to apply. Nobody told put a gun to your head and said write a check. You decided --

CHRISTOPHER FITZSIMONS: No, nobody did. But nobody told me that I was barking up the wrong tree and this was never going to happen.

CONSTANTINE ALEXANDER: Sir, you made the -- the city has no obligation to prejudge a case. When you write your -- you

write your check and you did make your application, you and every body else, comes down here and they get the relief sought and may not. I'm giving you the reasons why you're not going to get the relief you seek.

THOMAS SCOTT: Most people that come before our Board seek legal counsel, and if you had done that --

CHRISTOPHER FITZSIMONS: I did seek legal counsel.

THOMAS SCOTT: They probably would have told you the same things.

CHRISTOPHER FITZSIMONS:
(Inaudible), he's the one who filed the application for me, and this was -- none of this was ever said to him.

THOMAS SCOTT: Maybe you should go back to him.

CONSTANTINE ALEXANDER: Maybe you should talk to your lawyer.

CHRISTOPHER FITZSIMONS: It's

hilarious, isn't it?

THOMAS SCOTT: No, it's not.

CONSTANTINE ALEXANDER: No.

CHRISTOPHER FITZSIMONS: No. I built that bar ten years ago, okay? With -- I saved every penny I had to buy that building and built the bar. When I say built the bar, I don't mean I hired contractors to go in and build it. I did it. I did all the demolition. I did all the framing and all the finished work in that. I spent 70 to 80 hours a week in there working. Okay? I pay \$22,000 a year to the city in taxes just to own that place. That's all. I don't get -- they don't pick up my rubbish. They don't do anything else. I don't use their schools. Nothing else. Just to have it. And for the last eight to ten years I did nothing but everything the city has asked me to do. Okay? I complied with all -- when I made my initial application, I was going to

make the whole place, excuse me, the whole place a restaurant. There was some objections from some of the neighbors. I met with them, agreed to scale it all back again. Outdoor seating, I was entitled to do it, I said no, I won't do it because the people in the senior center said they might have a problem getting passed. So I took that away. I've done everything I could do. And at least the city could have done when I filed this application, and said you're not going to get this, it's a waste of time. There's restaurants and bars that I see when I walk out my front door across the street, down the street, each side of me that all have this, they're all licensed to have live music and live entertainment. I don't. And now you're telling me that it stops right in the center of Creighton Street 10 feet from the edge of my building?

CONSTANTINE ALEXANDER: Again, I

can't speak to the other places like Toad that have music --

CHRISTOPHER FITZSIMONS: I'm not talking about Toad. I'm talking about The Elephant Walk across the street. Frank's Steakhouse down the street. They all have, they all are zoned and have live entertainment on their entertainment licenses.

CONSTANTINE ALEXANDER: Either they are a legal -- grandfathered because they did it before the Zoning was changed or they are in a different -- the map is, the Zoning map is such that they're in a different district, or they're doing it illegally. One of the three. But the fact of the matter is no one here is questioning your dedication to what you do. The fact that you're a good citizen of the city. We're just telling you that we don't have the ability to do that. And to say that well, you should have been told that

before you filed, it's not the role of the Inspectional Services Department to filter out, to censor cases. If people want to file a case, I think they're informally getting advice from Sean O'Grady about -- if they seek it out, the likelihood of getting relief or not. But he's not going to make the decision for us. We have to make the decision. And you make the decision by paying your fee and filing your application and hoping you can persuade us. But what I'm telling you tonight is you can't persuade -- you're not going to persuade us because of the nature of the relief you want and what the legal requirements of our Variance are. Again, it's not a personal on you --

CHRISTOPHER FITZSIMONS: I didn't say -- I don't think it's personal.

CONSTANTINE ALEXANDER: All right. I want to make sure that you understand that.

The fact the matter is that the City Council has drawn the Zoning map and set the requirements for this district in a way that does not allow the relief you want. We can't change that because you can't meet the standards of our Zoning Ordinance, therefore, like I said before you came to the wrong body, therefore, the only way to get what you want is to get the City, if you can, get the City Council to change the Zoning for your area so that you can do this without even having to come before us. You can do it as a matter of right. But that's what you'd have to do. We can't grant you the relief. We just don't have the authority. Sorry.

We ready for a motion?

SEAN O'GRADY: Gus, I'm sorry to speak out of turn.

CONSTANTINE ALEXANDER: Go ahead.

SEAN O'GRADY: Of course my ability to tell you this stuff in advance really is

where I didn't try to pre-empt the Board. It's just something that I've been told I could do as much as I can.

CONSTANTINE ALEXANDER: You shouldn't. I mean, you should not be -- you shouldn't filter the cases out. It's up to the Petitioner with advice of whatever legal counsel, architectural counsel, whatever counsel to help out to make the decision whether to file the application to pay the fee.

SEAN O'GRADY: And that was just the other thing. He paid us an initial fee. We have been sharpening our pencil recently on how we collect fees. He was hit with a kicker today. I think that the if the Board were okay with waiving his second fee, that the ISD, I'm probably speaking out of school here, that would be okay with me and I would hope it would be okay with the Department.

CONSTANTINE ALEXANDER: How much is

the second fee that we would be waiving?
Just out of curiosity.

SEAN O'GRADY: About \$400, the
second fee.

CONSTANTINE ALEXANDER: Well, I,
this is -- we'll take a vote on this after we
take the vote on the Variance. So I think
that's a fair -- thank you, Sean, I think we
should take a vote on it.

BRENDAN SULLIVAN: Can I see the
folder?

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: Continue what
you're doing.

CONSTANTINE ALEXANDER: I'll make
the motion.

The Chair moves that the Petitioner be
granted a Variance he seeks, the use variance
to allow live entertainment at his facility
on the grounds that a literal enforcement of
the provisions of this Ordinance would

involve a substantial hardship to the Petitioner.

That hardship is owing to circumstances leading to the soil conditions, shape or topography of the land or structures. And especially affecting such land or structure but not affecting generally the Zoning District in which it is located. And that desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance.

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

(No Response.)

CONSTANTINE ALEXANDER: No one votes in favor.

I propose to make the following findings, and that the Petitioner is unable to satisfy the requirements for a use

variance.

That it does not involve a substantial hardship, the denial of the relief.

Substantial hardship as by our Zoning Laws. That there is no special soil conditions, shape or topography of the land or structures that would justify the granting of the relief.

And that it is well known and that the courts have made it quite clear that a use variance is what you're seeking is to be granted only on unusual and extreme circumstances, none of which have been satisfied.

So these are the findings we'll add to the record.

Brendan, do you want to give you a chance to read or I'll make the second motion?

BRENDAN SULLIVAN: That's fine, go ahead.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that the second filing fee that would otherwise be required of the Petitioner be waived under the circumstances of this case.

All those in favor of such waiver, say "Aye."

"Aye."

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: The second fee will be waived.

Thank you very much.

CHRISTOPHER FITZSIMONS: Thank you.

* * * * *

(Whereupon, at 9:20 p.m., the
Zoning Board of Appeals
Adjourned.)

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I, Catherine Lawson Zelinski, a Certified Shorthand Reporter, the undersigned Notary Public, certify that:

I am not related to any of the parties in this matter by blood or marriage and that I am in no way interested in the outcome of

this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of January 2013.

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