

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JUNE 28, 2012

7:00 p.m.

in

Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair
Constantine Alexander, Vice Chair
Timothy Hughes, Member
Tad Heuer, Member
Thomas Scott, Member
Douglas Myers, Member
Mahmood Firouzbakht, Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: Let me call to order the Board of Zoning Appeal for June 28, 2012.

The first matter we will hear is case No. 10188, 21-23 Sciarappa Street.

Is there anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence from the Petitioner requesting a withdrawal of the petition. Sitting members: Sullivan, Alexander, Hughes, Mr. Myers, and Heuer.

All those -- any comment on the withdrawal?

(No Response.)

BRENDAN SULLIVAN: I see nobody.

CONSTANTINE ALEXANDER: Go for it.

BRENDAN SULLIVAN: All those in

favor of accepting the withdrawal.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor,
and the matter is withdrawn.

(Sullivan, Alexander, Hughes,
Heuer, Myers.)

(7:00 p.m.)

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

Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case No. 10229, 96 Griswold Street.

Is there anybody here on that matter? Please come forward.

Whoever is going to speak first, please introduce yourself for the record.

CAROLYN CALLENDER CIPOLETTA: My name is Carolyn Callender Cipoletta. I live at 98 Griswold Street.

BRENDAN SULLIVAN: And anybody else going to speak?

RANDY CIPOLETTA: Randy Cipoletta.

BRENDAN SULLIVAN: The issue before us is that there was a failure to post the necessary sign, and so that the Board policy, failure to do so, the Board cannot hear the case.

CAROLYN CALLENDER CIPOLETTA: Can I speak on that for a second?

BRENDAN SULLIVAN: Sure.

CAROLYN CALLENDER CIPOLETTA: Thank you.

We came in March and we had a Special Permit and it was suggested that we get a Variance, and then we still had the sign up and changed the date to April. And then something happened that we thought we were on for April and then May and it didn't happen and we went on to June. And our neighbors, the Griffins, are the only ones opposing it. So once we knew we were on the docket for June, I handwrote out the information, said it's the same plans that I delivered to you in March -- in May and, you know, the location, the time, everything.

BRENDAN SULLIVAN: Right.

RANDY CIPOLETTA: Right. And beyond that it had been up for a couple months. The rain and the weather, it just -- it deteriorated. I mean, I took as much reasonable that I could, taping it back

up, taping the back. But the way our door is and the way the sign is it just kept getting water and it just kept getting deteriorated.

BRENDAN SULLIVAN: The issue before the Board, it's a requirement, No. 1.

There is an interested abutter who may have legal standing. Should the Board decide in your favor and the abutter appeal it, count No. 1, and that appeal would be that we exceeded our authority.

Count No. 2, is that the Petitioner failed to comply with 10.421 which is the posting sign.

The first one we could probably defend. The second one, not having the posting sign up, is totally indefensible.

RANDY CIPOLETTA: But it was up for a few months.

BRENDAN SULLIVAN: But the requirement it has to be up 14 days prior to the hearing.

And at the very last hearing in which a -- on April 26th the Chair at the time, Mr. Alexander, moved that the case be continued until seven p.m. on June 28th on the condition that the Petitioner modify the sign to reflect the new date and time. The Chair would note for the record, that currently the sign has not been updated. So even if the people didn't request a continuance, we would not heard the case on that night. So they should be encouraged to take the sign, get it right this time, or we will not hear it on the 28th.

And the requirement of 10.42 requires that the panels be securely mounted on the subject lot at the street line not more than 20 feet, and wherever located, the panel shall be visible, easily identifiable, and legible to persons passing by on the public street without accepting trespass on the property. And that the sign shall be

installed as required under Section 10.421 not less than 14 days before the date of the public hearing. And, again, it's a requirement. And it's -- it's a legal requirement. You know, we have no discretion.

CONSTANTINE ALEXANDER: Let me just add to it as the Chairman of the case the last time. Let me just address two of the issues you raised.

One, if the sign deteriorates, you go down to the Building Department and get a new sign. I mean, it's not like there's one and that's it.

RANDY CIPOLETTA: It deteriorated about a week and a half ago. I mean, we had the date. It's been up for a couple months. I'm not an attorney. I was just doing what I thought was reasonable.

CONSTANTINE ALEXANDER: The other thing is that the purpose of the sign -- your

neighbor knows about the case. The purpose of posting a sign that's visible to the public way is to allow the citizens of Cambridge who may be going by or whatever to know that there's a case going on and to express an opinion if they have an opinion. So the fact that your neighbor knew about the case is not enough to justify not having the sign up for the period of time that Brendan has pointed out is required by statute. We have no authority.

CAROLYN CALLENDER CIPOLETTA: I understand that, Mr. Alexander. But we had had the sign up for our original day, and the only people that came are here. We made sure we notified them so it wasn't all of the neighbors know. They signed for the curb cut. It's not in any way a secret.

BRENDAN SULLIVAN: I think what you're -- I mean, we have no discretion in it because it's a failure to comply with the

requirement. If this were appealed, it would be -- whatever we do, it would be thrown out. That is a vital -- it would be -- a failure to post is a fatal mistake on your part not to post that sign.

CAROLYN CALLENDER CIPOLETTA: And we weren't here April 26th, and what you read was it mailed to us?

RANDY CIPOLETTA: Yeah, we were only here that one time.

BRENDAN SULLIVAN: It's in the public record. And I also believe -- and I don't want to get into too much of an argument here or a discussion on it because it's posted -- it's written on your sign that it has to be maintained for 14 days. It's quite clear. If part of that you don't understand, then you call and you say what does this all mean. But -- and again, we have no discretion in this any more so than if you failed to fill out the application form. If

you failed to provide some of the other documents.

RANDY CIPOLETTA: When can we continue it to?

BRENDAN SULLIVAN: Sean, when is the....

SEAN O'GRADY: August 9th.

BRENDAN SULLIVAN: August 9th.

CAROLYN CALLENDER CIPOLETTA: My mother is quite ill. That's why we're at this place. This --

RANDY CIPOLETTA: You know, you guys had no problems with the plans the last time. They agreed to this whole thing.

BRENDAN SULLIVAN: Carolyn, this was first set for March 8th.

CAROLYN CALLENDER CIPOLETTA:
Right.

RANDY CIPOLETTA: And we are here.

BRENDAN SULLIVAN: March 8th.

CAROLYN CALLENDER CIPOLETTA:

Exactly. And then you said we had -- we weren't supposed to get a Special Permit, we were supposed to get a Variance. We changed the plans based on the Griffins specifications. We applied for the Variance.

BRENDAN SULLIVAN: I'm sorry, what date did you say, August?

SEAN O'GRADY: 9th.

BRENDAN SULLIVAN: August 9th. Is that date convenient for you?

DAVID GRIFFIN: I mean, I don't care.

BRENDAN SULLIVAN: Just identify yourself, Mr. Griffin.

DAVID GRIFFIN: I'm David Griffin. I'm her son. Mrs. Griffin's son, the person who is next-door. How many more times is this going to be continued?

BRENDAN SULLIVAN: Well, one more time.

DAVID GRIFFIN: I don't know what to say. That means I've got to get out of work again. What day is this?

BRENDAN SULLIVAN: August the 9th.

SEAN O'GRADY: It's a Thursday evening.

DAVID GRIFFIN: It's on a Thursday evening? Whatever.

BRENDAN SULLIVAN: Let me make a motion then to continue this matter until August 9th, on the condition that the Petitioner change the -- first of all, post the required notice sign, change the date to reflect August 9, 2012, at seven p.m. That the sign be clearly legible and maintained for a period of 14 days prior to the August 9th hearing.

That any changes to the Petition that's now in the file, that any changes be submitted by five p.m. on the Monday prior to the August 9th hearing.

DAVID GRIFFIN: Can I also say something?

BRENDAN SULLIVAN: Well, I'm in the middle of a motion, Mr. Griffin, hold on for a minute.

DAVID GRIFFIN: All right.

BRENDAN SULLIVAN: Anything else to add to that?

On the motion then to continue this matter until August 9th.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Now.

DAVID GRIFFIN: This is the plan that was delivered and it's, it's a bit less detailed than the last set of plans. Can we get some sort of a copy that looks like the old plans that kind of details all what's going on? I'm having a hard time

deciphering.

BRENDAN SULLIVAN: Well, there's the file which is a public record which is available to you down at the Building Department. So you can come down and you can get copies of whatever is in here. Or you can request it from the Petitioner. You know, however you get it, but it's in the public file anyhow.

RANDY CIPOLETTA: No, we've given the plans.

CAROLYN CALLENDER CIPOLETTA: We've given them plans.

CONSTANTINE ALEXANDER: You can request more detailed plans from the Petitioner. The Petitioner has no obligation to get you more detailed plans.

DAVID GRIFFIN: Then how do we get detailed plans?

CONSTANTINE ALEXANDER: The Petitioner's problem is they've got to give

us enough detailed plans to satisfy us if we're going to grant relief. If the plans in our judgment are not detailed, we won't grant relief. If we think they're detailed enough and you don't, we're going to go forward with the case. So you can't custom make plans to that you want to have. The Petitioner's burden to give plans to us that will make us -- enough to enable us to make a reasonable decision. If we're happy with the plans, you can only appeal the case in the courts if you think the plans were inadequate.

DAVID GRIFFIN: So at this point are you happy with the plans?

CONSTANTINE ALEXANDER: We've just discontinued the case, sir. We're not going to get into that.

DAVID GRIFFIN: But we have to make the effort to get it again. That's the thing. I have to take time out of work to get them.

BRENDAN SULLIVAN: That's
unfortunately correct.

(7:10 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10241, 171 Allston Street. Mr. Myers, Mr. Sullivan, Mr. Alexander, Mr. Hughes, and one more person, Mr. Heuer.

Edrick, if you could please reintroduce yourself for the record.

EDRICK van BEUZEKOM: Okay. My name is Edrick, E-d-r-i-c-k last name is spelled v-a-n B-e-u-z-e-k-o-m. I'm with the EB Design, the architect for the project. And with me is Kate Regal and James Regal.

BRENDAN SULLIVAN: We sent you back.

EDRICK van BEUZEKOM: Yes.

BRENDAN SULLIVAN: And the result of that was?

EDRICK van BEUZEKOM: We submitted new plans and I have some -- I think those are the old renderings there, but I have three new

views here.

CONSTANTINE ALEXANDER: Are those in the file?

EDRICK van BEUZEKOM: These are not in the file.

CONSTANTINE ALEXANDER: Not in the file?

EDRICK van BEUZEKOM: Right.

BRENDAN SULLIVAN: These are just elaborations of what's in the file?

EDRICK van BEUZEKOM: Yes.

Basically in the previous rounds there were objections to the balcony and spiral stair that we were proposing to put on to the side of the house, you know, in the back, and we've removed that from the new plans. So the new plans now basically just show the addition of a dormer at the third floor to accommodate the new bathroom. And then the addition of a room on the second floor, which is basically to expand the living space to

provide a dining room as we redo the kitchen. We managed to reconfigure the kitchen so we could keep the -- get the laundry up there without taking out the interior stair. So that worked out pretty well actually. And so we've tried to scale it back in that sense and keep it simple.

TAD HEUER: You just provided us --

CONSTANTINE ALEXANDER: With the removal of the stair -- I'm sorry.

TAD HEUER: You just provided us with three renderings, one which show a -- two which show a deck and one that --

EDRICK van BEUZEKOM: You have the old ones.

TAD HEUER: Which ones?

EDRICK van BEUZEKOM: New ones I just passed out here.

CONSTANTINE ALEXANDER: You want those?

TAD HEUER: Sure.

EDRICK van BEUZEKOM: Maybe you have one of the new ones there. Maybe Brendan passed them to you. Let me see them? Yes, this is the other new one.

CONSTANTINE ALEXANDER: With the removal of the stairs which is now in your plans, are you at the exact same footprint that the building has right now?

EDRICK van BEUZEKOM: Yes.

CONSTANTINE ALEXANDER: Is the additional space you're adding is all interior space?

EDRICK van BEUZEKOM: Well, there is a new -- I mean, the dormer is external. The addition on the side here, this right here, this currently is a second floor deck.

CONSTANTINE ALEXANDER: Deck and now it's enclosed?

EDRICK van BEUZEKOM: So now we're just enclosing that basically.

CONSTANTINE ALEXANDER: Your issue

is FAR?

EDRICK van BEUZEKOM: Yes.

CONSTANTINE ALEXANDER: And if my math is correct, you're looking to increase your FAR -- you're non-conforming now by a substantial margin. But you're looking to increase it from what it is now by less than ten percent?

EDRICK van BEUZEKOM: That's right.

CONSTANTINE ALEXANDER: And the reason you have an FAR problem right now, by 175 feet you're going to add?

EDRICK van BEUZEKOM: That's correct.

CONSTANTINE ALEXANDER: The problem you have now is not a grandiose structure, in my opinion, but you have a miniscule lot and the structure you have creates FAR problems?

EDRICK van BEUZEKOM: Exactly.

CONSTANTINE ALEXANDER: Given the size of the structure and the size of the lot?

EDRICK van BEUZEKOM: Right, right. It's a very small lot with a modest size house on it, yeah.

CONSTANTINE ALEXANDER: Okay. I just wanted to make sure I understood the parameters of the case.

Thank you.

BRENDAN SULLIVAN: Has your dimensional form been changed to reflect the new --

EDRICK van BEUZEKOM: I -- seeing how I did not update the dimensional form, but I -- you know, there's probably -- actually, I don't think.

CONSTANTINE ALEXANDER: I don't think --

EDRICK van BEUZEKOM: I don't think it changes. It's still the same. I don't think I counted the spiral stair in the FAR previously. I probably should have.

BRENDAN SULLIVAN: The numbers

don't change?

EDRICK van BEUZEKOM: Yeah, the numbers don't change.

BRENDAN SULLIVAN: So the dimensional form reflects --

EDRICK van BEUZEKOM: Reflects the design as presented.

BRENDAN SULLIVAN: The rendering is somewhat similar to the previous one, but it doesn't reflect the previous one but it does reflect the new submission?

EDRICK van BEUZEKOM: That's correct.

BRENDAN SULLIVAN: Any other questions at this time?

CONSTANTINE ALEXANDER: No questions.

BRENDAN SULLIVAN: Doug?

DOUGLAS MYERS: No questions.

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Is there anybody

here who would like to speak on the matter, 171 Allston Street?

Yes. If you would please come forward and give us your name and your address.

SUSAN REVERBY: Susan Reverby, R-e-v-e-r-b-y 238 Pearl Street. I'm the across the street neighbor and I just came to speak in favor of this. They are wonderful neighbors. They have a baby, they need the space for this child and they've been wonderful. Absolutely fabulous neighbors, and I just think it's a wonderful plan for them, and I'd like to speak to support it. And I only want to say minorly that some of the objections raised by previous neighbors are incorrect, let's put it that way, in terms of their own space. And I have lived in this house for 32 years across the street from this house and its previous owns and the people that were objecting so I know a lot more than was in the letters.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Is there anybody else who would like to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody. There's no other letters of support?

KATE REGAL: Just from the last time. I didn't have people reissue letters of support. There are six other neighbors.

BRENDAN SULLIVAN: And we acknowledged those?

CONSTANTINE ALEXANDER: That's in the public record.

KATE REGAL: Yes, they were there last time.

BRENDAN SULLIVAN: So we'll acknowledge the previous submissions of letters of support.

All right, let me close public comment.

Anything else to add?

KATE REGAL: Just the two other abutters are two of the people who had submitted support previously.

BRENDAN SULLIVAN: Okay. Anything else to add to it?

EDRICK van BEUZEKOM: No, that's it.

TAD HEUER: Do you have abutters who were opposed before who have switched to being supportive now?

EDRICK van BEUZEKOM: I don't think that they've switched. I think that they're choosing to not speak at this point.

TAD HEUER: So the opposition they voiced last time remains the opposition that we would be aware of? There's no reason for us to think otherwise?

EDRICK van BEUZEKOM: I think what this other abutter is saying is disputing some of the allegations that they made in their opposition, but basically which I can go into detail.

KATE REGAL: I can speak to it.

EDRICK van BEUZEKOM: Well, yeah, go ahead.

KATE REGAL: One of the oppositions was the fireworks which you cannot see, actually, from that house. And family gatherings do not actually happen. I've lived there for almost ten years and I think that's what Susan can speak more to from 30 years as a neighbor. And there's no vegetable garden. I think there were tomatoes one year and that's, that's the abutter -- that was the abutting neighbor.

EDRICK van BEUZEKOM: That was on the corner to the left of the house.

KATE REGAL: Yeah.

BRENDAN SULLIVAN: Mr. Ion
(phonetic)?

KATE REGAL: No, I don't know who that is. Ion's down the street. He's not even --

BRENDAN SULLIVAN: 146?

KATE REGAL: Yes. We're 171.

BRENDAN SULLIVAN: Right.

KATE REGAL: So, this is 232 Pearl.
William.

JAMES REGAL: William McNeil.

BRENDAN SULLIVAN: Mr. McNeil.

JAMES REGAL: Yes.

BRENDAN SULLIVAN: He lives at 236
Pearl.

KATE REGAL: 236.

BRENDAN SULLIVAN: 236, okay.

KATE REGAL: And the people who
share a roof with him are the ones that spoke
in support last time who abut the back of our
property --

EDRICK van BEUZEKOM: It's directly
across from where the addition would be.

KATE REGAL: -- from where that
would be. He's the front half of our yard.

BRENDAN SULLIVAN: Okay, let me

close the presentation part and let the Board discuss it among themselves.

Gus, what are your --

CONSTANTINE ALEXANDER: Well, the last time around I had problems with the spiral staircase as you well know. I think I offended you. For me you solved that problem for me. Given that, I'm definitely in support of this project. To me it's sort of like filling in a basement to create additional living space, and that creates more FAR and you need to get relief. The impact is all internal to the neighborhood. The actually living space you're going to have within your four walls is not there. It's not -- it's almost not a Zoning issue but it is. The only real impact external is the filling in of the deck to be a dormer. I don't see that in any way as problematic. And if anything, having an enclosure makes more privacy for the neighborhood because you

don't have people sitting on the deck and making noise or whatever. So I see it as a situation where the relief on the numbers is a little bit severe. You're going to go from a FAR from .94 to 1.01 in a district that's not supposed to be more than 0.6. But it is a less than ten percent increase. As I said, the impact is all internal. And I don't see any impact on the neighborhood. And I see a need, a hardship why you need this. So for all of those reasons I'm in favor and would vote favorably on the motion.

TAD HEUER: Gus, can you clarify when you say all internal, you mean it's all within the footprint of the existing building?

CONSTANTINE ALEXANDER: Yes. I'm sorry, that's a more precise way of saying it, right.

BRENDAN SULLIVAN: So then the net add is 172 square feet; is that correct?

EDRICK van BEUZEKOM: That's correct.

BRENDAN SULLIVAN: Okay.
Mr. Myers.

DOUGLAS MYERS: I think the increase in FAR is understandable under the circumstances for the reasons stated by Mr. Alexander. I went on the record extensively the last time in colloquy with some other Board members, and there's no reason to repeat that at this time. I basically support everything that Mr. Alexander said. The only thing I would add is that I did read carefully the letters of the abutters and those who were in opposition to the application, and I found those letters to be not overly strong concerning the merits of the case and not overly persuasive, so I am very comfortable to vote in favor.

BRENDAN SULLIVAN: Okay.

Mr. Hughes.

TIMOTHY HUGHES: I agree. I'm good with it.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: So I continue to oppose it. That's not going to be a surprise to anyone. This is a small lot. The fact that it's a small lot to my mind is essentially immaterial. You can build the house that you can on the lot that's the size that it is. The fact that it's not a 5,000 square lot to me doesn't matter. There are very few lots in Cambridge that are, and that's why we have a floor to area ratio, not something that deals with the lot size that we wish it were. Everyone wishes they had a 5,000 square foot lot, doesn't mean they have to build a 2800-square foot house.

In my mind the fact that the hardship being cited is that there's a loss of a bedroom is more of an indication that more

bedroom space is needed in another -- I believe it's in the --

KATE REGAL: Loss of the bedroom?

EDRICK van BEUZEKOM: There's no loss of a bedroom.

TAD HEUER: You're essentially moving around so you have a study and you're getting a bedroom; right?

KATE REGAL: No. Nope. We have two bedrooms upstairs and we're adding a dormer and we're still going to have two bedrooms -- two smaller bedrooms to add a bathroom and the study.

TAD HEUER: Right, but then you're going to be pushing it -- you're gaining an extra room.

KATE REGAL: No.

JAMES REGAL: Just over the deck.

TAD HEUER: Just over the deck is a room.

KATE REGAL: Oh, I'm sorry.

JAMES REGAL: Oh. You're saying a study.

KATE REGAL: We're not losing any room.

TAD HEUER: Do you eat somewhere now in the house?

KATE REGAL: Yeah, the problem is -- should I respond?

TAD HEUER: Go ahead.

KATE REGAL: We have about this much counter space next to our sink. So we do have a table, but we have no counter space in our kitchen besides this next to the sink. And so an island doesn't make sense for us with young children. It makes sense and it's beautiful. I mean, islands are great but with a young child and hopefully more children an island....

EDRICK van BEUZEKOM: It's a challenging kitchen --

KATE REGAL: Without a place for a

table. There's a table. Without a place for a table. There's a table....

TAD HEUER: Right. When I look at this, it seems that you've, and I think Mr. Sullivan mentioned this last time, and I tend to agree, that by creating a -- this is -- by creating this new deck space here, creating the new room over the deck, you're gaining space and you're pushing things around and essentially coming up with more space because you've moved things around the house.

KATE REGAL: I don't understand when you say we're moving around. We have a bedroom, a living room, and a study.

EDRICK van BEUZEKOM: We're essentially moving the dining area out of the kitchen which is a very tiny kitchen.

TAD HEUER: Right, right, okay.

EDRICK van BEUZEKOM: That's what we're doing.

KATE REGAL: Right.

TAD HEUER: In general this to me still strikes me as a hardship based not on the house and for the rear. I think the dormer is fine. I think as Mr. Hughes said last time he was in favor of the dormer and not necessarily in favor of the rear addition. I think the dormer makes sense because it's a hardship to be able to be able to have a bathroom and be able to access upstairs. The additional FAR in my mind is simply a desire to have a larger house than s the lot affords. And as I noted the last time, the house is simply large enough that you don't wish to use the downstairs as living space, you wish to use it as a rental. Essentially the argument in my mind is that you're saying that we can't afford a smaller house so we need a bigger one. We can't afford a bigger house not a smaller one. I don't think it's the intent and purpose of the

Ordinance. And I do think this expansion does create a significant impact on the neighbors. It's a very tight lot. You're essentially packed in the rear of that lot. As I said last time, I stood in all the driveways and it comes up very close to the lot line. It's not an expansive neighborhood where the setbacks don't really matter. The setbacks matter a great deal. So for that reason I would be in favor of the dormer, but since the vote is not divided, I would vote against it because I oppose the rear addition.

EDRICK van BEUZEKOM: So I might point out the addition complies with the dimensional side yard setback.

TAD HEUER: Sure. You know, but you're still bulking up and you are, you know, it's a neighborhood of where the setbacks matter as opposed to a place where bulking up within the setbacks is not as much

(inaudible). And, again, as I pointed out in other cases, these things all work together. You know, it's FAR, it's setbacks, it's lot size. And in my mind these are three provisions that are designed to prevent bulking and massing on undersized lots. So the fact that you don't need to invade a setback, but you're here for FAR, suggest that you have an undersized lot, and the reason you need the FAR is adding this additional floor space while not invading a setback is you're bulking the lot in a small lot. I think that's what the Ordinance is intending to prevent. So the fact that you can satisfy one and not another, or two and not another, I still think that review in toto rather than being segmented.

BRENDAN SULLIVAN: I'm somewhat divided, too. I can see a need for the dormer. I have no problem with that. Where I think is a little bit of an overreach is to

extend the house the full width of the deck as opposed to you say you need more kitchen/dining room as to possibly expand into the existing deck but to not go beyond where it is now, not go beyond the wall of the house here. Because I think again, that's pushing it out more than I think I would like to see. And even in the plan, I think it's just a bulking, it's a mass. I'm not sure if it's all that necessary. I think that you could probably do a plan, very nice kitchen/dining area without actually pushing all of that out there. So I think that's part of where you're going with it, too.

I have no problem with the dormer and the wanting to put a bathroom up where the bedrooms are. An 1870 house has challenges in an attic space. I live in a 1885 house and anyhow, but that's beside the point.

So, I think the plan as presented, I could not support. I could support the

dormer, not, not that part of it.

EDRICK van BEUZEKOM: Is it possible to vote on part of it and get a continuance on the other part or is that -- we have to only --

BRENDAN SULLIVAN: No, because the numbers get changed and, you know, it's -- we can't really do a split, a split thing.

EDRICK van BEUZEKOM: Okay, can I confer with my clients?

BRENDAN SULLIVAN: Sure, absolutely.

TAD HEUER: You might not get my vote, but I think you'll get his. I think Brendan's suggestion if you were to make, instead of having the deck here and having this be the dining space, you switch it and have this be straight across and the deck beyond the front which pulls the massing back into the current line, that's a pretty -- if that's something you would be willing to

consider. That's an easy calculation for us to make.

KATE REGAL: Oh, I see.

EDRICK van BEUZEKOM: So instead of pushing it out this far --

TAD HEUER: So your deck would be moved from the rear to the side.

KATE REGAL: Yeah.

BRENDAN SULLIVAN: Let me suggest this so that you don't feel pressured, you know, we are deciding somewhat your future here. If you wanted to go into the back room, sit down, and in a more leisurely way go through this, let us hear another case or two and then come back to us.

EDRICK van BEUZEKOM: Do you want to discuss it or do you feel comfortable saying that we'll pull it back?

KATE REGAL: Oh, we don't have to come back?

EDRICK van BEUZEKOM: Well, can draw

a line and basically say --

TAD HEUER: No, that's what I'm suggesting.

BRENDAN SULLIVAN: And then change some of the numbers.

TAD HEUER: It's an easy fix. You would be able to do it, pretty easy calculations to square up. You can come back with it modified. You can come back in 15 minutes, half an hour with a modified FAR number and a modified plan that indicates to the extent that Mr. O'Grady will be to interpret the plan, you probably want to submit another plan if we were to grant relief to be clean.

BRENDAN SULLIVAN: You need that for the Building Department.

TAD HEUER: Right.

BRENDAN SULLIVAN: Why don't you take a few minutes.

DOUGLAS MYERS: If may I raise one

other point?

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: If other Board members agree, if you feel professionally that bearing in mind what Mr. Sullivan and Mr. Heuer have just said, that you really feel you want to go back to your office and have a further consultation with your clients and you really feel you can accommodate the direction of these comments but you want to work on it more, I mean I have no objection if you come back a third time.

TAD HEUER: Nor do I. But my sense is you'd like to get it done tonight rather than --

KATE REGAL: If that's your decision --

BRENDAN SULLIVAN: Why don't you do that so you do it in a more relaxed way.

EDRICK van BEUZEKOM: We'll go back and we'll markup the drawings and come back.

KATE REGAL: Thank you.

TAD HEUER: Just raise a hand when you're ready to go.

BRENDAN SULLIVAN: Let me recess this case until the Petitioner returns with some modified plans or thoughts.

(Case recessed)

(7:30 p.m.)

(Sitting Members: Brendan Sullivan, Timothy Hughes, Tad Heuer, Douglas Myers, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10258, 31 Crescent Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the Applicants.

The Board may recall this was a case that was continued last time because of a shortcoming in the filing for which I take full responsibility. The Board concluded that they would not be able to act on the portion of the application that sought a Special Permit for the relocation of certain windows and doors because there was not an elevation that reflected either the existing or the proposed. Perhaps existing. Since then we've provided the elevation that shows both. I've also had an opportunity to review

the site plan with Mr. O'Grady and determine that the windows are on a wall that is conforming. You may recall there was some question. There's a door here, and then there are two windows. This is an undersized lot with less than the minimum width. So its setbacks are set at seven and a half feet. The setback with a wall -- the setback -- the portion of the wall where the windows are located are eight feet beyond the setback point. So for a Special Permit -- the portion of the application that deals with the relocated openings involves now just the door because Mr. O'Grady has made a determination that the windows which are going from a single window to a split window are actually occurring on a portion of the wall that's conforming.

The Variance portion of the application had two components: One involved the construction of a bay window at the rear -- at

the side, the rear side of the property. And the property owners also sought to put a covering over the front entry you'll recall. And we had some discussion, and it was my keen sense of perception that there wasn't a widespread support for that portion of the application. So if that continues to be the case, having discussed this with the property owner, we would amend the application not to seek the relief for the covering over those front steps. So the GFA will only be the small amount represented by the bay window. And I want to -- I'm going to take an educated guess, but that number is?

TAD HEUER: Eight maybe?

ATTORNEY JAMES RAFFERTY: Five by three. Maybe not five. But it struck me on the plan, but it's a bay window. I have it here on the dimensional form.

There were two components of the dimensional form, and the bay window was the

smaller of the two. The covering of the front was even more. So I'm struggling to come up with that specific number, but I know it's on the --

BRENDAN SULLIVAN: In the window seat?

ATTORNEY JAMES RAFFERTY: Window seat.

BRENDAN SULLIVAN: Two feet, six inches by a little over seven feet?

ATTORNEY JAMES RAFFERTY: That would be right.

TAD HEUER: 15.

ATTORNEY JAMES RAFFERTY: So 15 square feet by that.

There's also a -- even though it faces in towards on the side of the house, there is a setback issue because that side of the house is within the rear setback which you may recall from the photos, the rear setback is a -- on the rear setback the rear abutter has

a blank wall on a garage, a rather undistinguished cinderblock garage. So it's not as though there's much impact there. They have a zero rear setback than the abutters. So the relief, the relief would be to allow for GFA increase and setback allowance for the bay window and a Special Permit to allow for the introduction of the door into the basement. In the area where the bay window is to be located, there was a bulkhead. So by taking -- by putting in the bay window access to the basement is not, has been lost. So they're coming up with access through a, through a door and it's at a lower level.

BRENDAN SULLIVAN: So the proposed gross floor area goes from 2829 to 18 feet?

ATTORNEY JAMES RAFFERTY: Right. It was originally proposed to go to 2874, but now it will only go to -- because that included the covering of the front entry.

BRENDAN SULLIVAN: Correct. So we're going up 2847?

ATTORNEY JAMES RAFFERTY: Yes. 30 plus 14.

BRENDAN SULLIVAN: 2829 plus 18; is that correct? 2847?

ATTORNEY JAMES RAFFERTY: That math sounds right to me, but I always panic when I'm --

BRENDAN SULLIVAN: It's not Boston College but it seems to --

ATTORNEY JAMES RAFFERTY: No, but I brought someone from Notre Dame tonight.

BRENDAN SULLIVAN: You should verify it if they know.

ATTORNEY JAMES RAFFERTY: And this is the area where there's a window there now and they're proposing to put in a door. You can see it in the proposed elevation. You can see it there. And that neighbor is supportive of the application.

BRENDAN SULLIVAN: And that neighbor being?

ATTORNEY JAMES RAFFERTY: The name of that neighbor?

BRENDAN SULLIVAN: Yes. The most affected?

ATTORNEY JAMES RAFFERTY: Yes, I believe we have a letter of that neighbor.

BRENDAN SULLIVAN: Mr. Cornfeld at 33?

ATTORNEY JAMES RAFFERTY: Yes, 33.

BRENDAN SULLIVAN: All right, so it would be Mr. Cornfeld who wrote in on May 21st that he supported the Zoning change by Jason and Lindsay Politi at 31 Crescent Street. Please contact me if there's anything I can do to expedite the Variance with the changes they have requested.

Any questions by the Board at this time?

Is there anybody here who would like to speak on the matter at 31 Crescent Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody. Again, I reference Mr. Cornfeld's correspondence and I'll close public comment.

Any other words of wisdom?

ATTORNEY JAMES RAFFERTY: None at all. Not a single word.

BRENDAN SULLIVAN: So what we're doing is asking for a Variance for the 18-square foot window seat/bay window.

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: Any comments on that by any member of the Board?

MAHMOOD FIROUZBAKHT: I think it's fairly minimal amount of relief and given that there's a blank wall in the back, it seems that the impact on the surrounding neighbors will be not very much so I think it's appropriate amount of relief.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: I'm good with it.

BRENDAN SULLIVAN: You're good with it?

TIMOTHY HUGHES: Yes.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: Okay.

DOUGLAS MYERS: My only concern with respect to the application is the application and the decision of the Board be made clear that the cover over the front porch entry has either been withdrawn or is not part of the application.

BRENDAN SULLIVAN: All right. Let me make a motion then to grant the relief for a Variance for the adding of a window seat and a bay window as the location, type, and dimension as per the plan and reflected in the dimensional form of 18 additional square feet.

The Board finds that provisions of the Ordinance would involve a hardship to the

Petitioner.

The Board finds that the existing house already exceeds the permitted FAR on the lot. The house being built on the lot prior to the current Zoning Ordinance, hence any slight addition de minimus of this type would require some relief from this Board.

The Board finds that the granting of this relief is fair and reasonable.

The Board finds that the hardship is owing to the size and shape of the lot and the location of the house thereon which again predates the current ordinance.

Desired relief may be granted without substantial detriment to the public good.

The Board notes the letter of support from the abutting neighbor most affected, and the Board finds that relief may be granted without nullifying or substantially derogating from the intent and purpose of the ordinance.

The Board notes for the record that the covering over the front entryway request has been withdrawn and is not part of this Variance relief.

All those in favor of granting the Variance.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Hughes, Heuer, Myers, Firouzbakht.)

BRENDAN SULLIVAN: Let me make a motion for a Special Permit to allow the addition of a doorway within a side yard setback.

The Board finds that the requirements of the Ordinance can be met.

The Board finds that Article 8.22.2C permits the enlargement of openings on non-conforming walls when, as in this case, there are no other further violations on the dimensional requirements of Article 5.

The Board finds that traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

The Board finds that the continued operation of and development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

The Board finds that there would not be any nuisance or hazard created to the detriment of the health, safety, and welfare of the occupants of the proposed use or to the citizens of the city. And that the proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

Anything else to add?

All those in favor of granting the

Special Permit for the addition of the door
as per the plan submitted.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Hughes, Heuer, Myers,
Firouzbakht.)

ATTORNEY JAMES RAFFERTY: Thank you
very much.

(7:45 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10214 or in conjunction 10224. All those interested in that case, please come forward.

The proper order may be to hear 10224 first; is that correct, Counsel?

ATTORNEY JAMES RAFFERTY: Yes, I believe that is correct.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board, James Rafferty on behalf of the Applicant. Seated to my right is the Applicant Rishi Reddi. Ms. Reddi spells her last name R-e-d-d-i. To my immediate right is Frank Shirley, he's the project architect. And beyond Ms. Reddi are her parents.

RAGHUNAETH REDDI:

Doctor Raghunaeh, R-a-g-h-u-n-a-e-h
Reddi, R-e-d-d-i and Rekha, R-e-k-h-a.

ATTORNEY JAMES RAFFERTY: This is an application, gentlemen, that seeks some modest GFA increases to allow for a slight addition to a single-family house on Garfield street. The primary purpose of the Zoning relief is to allow for the installation of an elevator. The elevator will facilitate access to the third floor where Ms. Reddi's parents plan on spending a considerable amount of time. Ms. Reddi is a single parent. She's been living in the home for several years with her daughter, and this is a change that will allow them to better use the home.

The dimensional form has been revised because Mr. Shirley has joined the design team after some arduous work in discovering that the dimensions provided by the prior architect didn't seem to be as consistent

with the definitions contained in the Zoning Ordinances as one would expect. So, Mr. Shirley can walk you through those.

The other proposal before the Board involves the construction of an accessory structure, a garage that would accommodate a single car and a bicycle shed. And the relief there is all setback related. As the Board knows, accessory garages, structures of this nature, are permitted to have -- they have certain exceptions from the setback requirements of the Zoning districts, but there are minimum requirements of five feet for the rear and side. Given the size of this lot and the footprint of the home, it is impossible to locate a garage within that five-foot setback. So the relief with regard to the garage is setback related. There's also a setback requirement involving distances between accessory structures and principal structures, a ten-foot minimum

requirement, and there's relief sought for that as well.

The home has a driveway today, and the idea was to extend the driveway to this location. So while there might have been other locations on the property where you could meet the setback on the other side, it would involve a new curb cut and new access and be far more disruptive.

We've included some photographs and an Assessor's plan to alert the Board to the fact that this accessory garages in this location is not that unusual. The property has a -- abuts Sacramento Field -- a portion of Sacramento Field and the other portion of the rear is a parking lot. So if you look at the properties as they rim Sacramento Field, many of them have garages of this nature.

Ms. Reddi went to the Historical Commission and discovered that there had been a carriage house roughly in this area before.

So historically there was a larger structure here.

We were very mindful of the setback requirements, but it simply a question of functionality, to be able to maneuver the car. If the garage was brought further forward, we'd have a further violation of the ten-foot separation. So in Mr. Shirley's professional judgment, there was a decision made to come up with a setback that would allow some maintenance and repair, a foot and a half separation around the property. The abutter who was closest to the proposed garage has sent a letter in support. Her property has a nearly identical condition on her side. The same thing with nearly a zero setback for side and rear for her garage. It's reflected on the Assessor's plan, and I do -- we have these letters here?

RISHI REDDI: Here.

ATTORNEY JAMES RAFFERTY: Have

these been submitted to the file?

RISHI REDDI: No.

ATTORNEY JAMES RAFFERTY: It's the McNerney's that are immediate abutters, right?

RISHI REDDI: On the garage side.

ATTORNEY JAMES RAFFERTY: On the garage side. And then some of the neighbors have voiced some support.

So, again, the GFA which Mr. Shirley can walk you through, really the vast proportion of it is the elevator. There is a new access into the basement. I think that's stairway and entry might account for a few square feet as well, but those are the two principal areas where GFA are being created which necessitates the Variance, but the nature of the house remains a single-family.

CONSTANTINE ALEXANDER: And I do want to get on the record exactly the numbers

in terms of the FAR relief we're talking about the main structure, of course, the accessory.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: You're now a non-conforming structure at .64 in a 0.5/3.5 district?

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: And you want to go to .66?

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: And that's the only -- putting aside the accessory building and setbacks, that's the only relief you're seeking?

ATTORNEY JAMES RAFFERTY: Yes, about is 140, 150 square feet.

FRANK SHIRLEY: It's a net 155 square feet of GFA.

CONSTANTINE ALEXANDER: And why the

need for the elevator?

ATTORNEY JAMES RAFFERTY: Because the desire here is to create a master bedroom suite on the third floor. If you look at the floor plans, it will have a bedroom, a bathroom. And Ms. Reddi's parents are aging. Is that an impolite term? They're very spry.

CONSTANTINE ALEXANDER: They seemed very spry as they walked up to the table.

ATTORNEY JAMES RAFFERTY: I think there's long-term planning here. The thinking is -- I think they will spend increasing more time. This is not their principal residence, but I could have Ms. Reddi speak to the family thinking here. She, she would anticipate that as her parents continue to mature --

CONSTANTINE ALEXANDER: Age.

ATTORNEY JAMES RAFFERTY: -- they will be spending more time at the home. And

I think there's some expectation that at some point they will become full-time residents on the third floor of the house. It's a very generous house. It's a nicely sized house. It isn't a case where we're adding additional rooms or bedrooms. The bedroom count, nothing really changes.

CONSTANTINE ALEXANDER: Let me ask, you don't need the elevator now. The elevator -- I mean, folks seem to be able to climb stairs very adequately. You want to have a master bedroom suite. Just a minute. What's the hardship today to require or to justify us granting you relief?

ATTORNEY JAMES RAFFERTY: Well, I think -- Ms. Reddi's father is a physician so he might be able to give an update on their condition.

CONSTANTINE ALEXANDER: That's what I want to hear.

REKHA REDDI: The family has

osteoarthritis. My mother is suffering right now, and I am in the stage of getting that. And with that, in our view, and right now I already have one of the -- one of my knees is starting to give me problems and I am under the supervision of orthopedic surgeon right now and most probably I might have one knee replacement, total knee replacement in the month of January. Even then I cannot climb three floors at the same time. So where we go in the basement? We need to go, we don't have the elevator convenience over there. Only we would like to have it upstairs where we have the third floor. And that is the requirement for both of ours. And as we are going to -- and she is the only daughter we have. And that is another reason we most probably will be in our aging years will be spending time with her.

RAGHUNAETH REDDI: She already underwent one knee surgery, and there's a

second knee surgery she's scheduled in the next three, four months' time.

BRENDAN SULLIVAN: Is there no internal solution?

FRANK SHIRLEY: No.

BRENDAN SULLIVAN: I mean, it's a very large, grand house.

FRANK SHIRLEY: Yeah, you know, the house isn't actually that large. I think if you look at the formal space, their front area, even for a residential sized elevator, it doesn't --

TAD HEUER: Just for the record, how many square feet?

ATTORNEY JAMES RAFFERTY:
Mr. Shirley is an authority on small houses. He wrote a book entitled --

FRANK SHIRLEY: New Rooms for Old Houses.

ATTORNEY JAMES RAFFERTY: Relative term.

TAD HEUER: Old houses, small houses.

ATTORNEY JAMES RAFFERTY: I noticed, Mr. Heuer, he caught your attention when he said the house isn't that large. We accept that's a relative term. But I understand.

TAD HEUER: Okay. Continue.

TIMOTHY HUGHES: It's not large for Garfield Street.

ATTORNEY JAMES RAFFERTY: There is -- actually, that's -- but there is a geometry in the house in the footprint where they're able to accommodate this elevator very discretely that is not at all disruptive to the architecture or the floor plan of the house.

BRENDAN SULLIVAN: So the access to the elevator is from the ground level?

FRANK SHIRLEY: That's correct.

BRENDAN SULLIVAN: Which could be

considered handicapped access actually from the ground level as in other public buildings and so on and so forth. That that would be a requirement from the ground level and not from a number of steps up into a main level and then elevator thereof. But then again getting back -- so I can understand probably access from the outside, from the exterior because it's easier, but there is no interior solution to it? No closets that can be --

FRANK SHIRLEY: There's almost -- there are almost no closets whatsoever on the first floor. Elevators, again, even residential elevators they're -- you can -- they're only so small. So you're looking at roughly a six-by-eight gross area to get a residential elevator in place. And you can see in the plans, if you look at the entire front wing of the house, there is one little triangular closet which is probably about 20 percent of the size of

what an elevator needs to be. There are actually no other closets in this entire area, because we're not changing this area. And in the back has, you know, a relatively modest kitchen and the back entry and the stair to the basement.

TAD HEUER: So I guess I have a similar question. When I look at your as-built second floor plan against your second floor plans --

FRANK SHIRLEY: Sure.

TAD HEUER: -- so as-built is what it is now; is that correct?

FRANK SHIRLEY: Correct.

TAD HEUER: And the second floor plan is what you want to do.

FRANK SHIRLEY: That's right.

TAD HEUER: That's a fairly major reworking of the area. So you're creating ago a walk-in closet and the master bath and the laundry in an area where right now you've

got two bedrooms and a bathroom -- two bathrooms and an up/down stairway. And part of my question is that's converting the entire rear of the house and rearranging -- I mean, you're moving walls there. Isn't it possible to put the elevator in there somewhere?

And my second question is: I believe the petition says that the parents will be using the third floor and the master bedroom's on the second floor?

FRANK SHIRLEY: That's right.

TAD HEUER: Is it not reasonable to ask why the parents who have mobility issues can't use the second floor and the master bedroom be placed on the third floor? I mean, it seems a full height elevator all the way up, you know, why can't you do an internal, you know, first and second floor lift space tucked in one area since you're already going to be demolishing party

walls -- demolishing demising walls.

ATTORNEY JAMES RAFFERTY: Well, Ms. Reddi's daughter and herself would live on the second floor and the third floor would be devoted to little set aside so I think the -- I mean, the preference would be to have a suite that was akin to an in-law style apartment that there was some separation, if you will, to allow for a certain lifestyle, differences between teenagers and other people. So yes, I mean, I mean if the test as for the relief is it physically impossible for this? I don't think that we're nearing that, but I don't think again that's what a hardship requires here. I think a reasonable type of access, a structure of this size to take advantage of its size, and to allow for an accommodation like this is -- we're hoping the Board will see that as not excessive and consistent with a reasonable use of the house. The access to

the third floor now isn't ideal from a code perspective. This will form a second means of access into that third floor space, and it will allow for an aging, aging and place concept which are becoming more popular about people moving in with their family. I think it seems very consistent with the purpose of this residential district which is to strengthen residential uses. If we were here operating a B&B or putting in a Home Office, and we wanted to facilitate employees moving or product moving through the building, I would think that would not be found as consistent with the intent of the Ordinance. This I would suggest is in fact consistent with the Ordinance.

DOUGLAS MYERS: Are you aware of any comparable external elevators in single-family or two-family houses in this part of Cambridge or east of Massachusetts Avenue between Harvard Square and Porter

Square?

ATTORNEY JAMES RAFFERTY: Am I?

Sure.

DOUGLAS MYERS: There are?

ATTORNEY JAMES RAFFERTY: Do you want me to give you an address?

DOUGLAS MYERS: If you like.

ATTORNEY JAMES RAFFERTY: I can think of one the Board granted not too long ago.

DOUGLAS MYERS: That's my question.

ATTORNEY JAMES RAFFERTY: No, I don't think -- I think, I know of one on Avon Hill.

DOUGLAS MYERS: That is on the other side of Mass. Ave.

ATTORNEY JAMES RAFFERTY: Oh, oh, on this side of Mass. Ave.?

DOUGLAS MYERS: That was the question.

ATTORNEY JAMES RAFFERTY: Oh, I

didn't know. I think if I was limited to this side of Mass. Ave., I --

DOUGLAS MYERS: This is a --

CONSTANTINE ALEXANDER: We're going to have a case later tonight --

TAD HEUER: On Waterhouse.

CONSTANTINE ALEXANDER: -- on Waterhouse Street for an elevator later on tonight.

ATTORNEY JAMES RAFFERTY: Yes, I saw that.

CONSTANTINE ALEXANDER: We haven't granted the relief yet.

ATTORNEY JAMES RAFFERTY: Yes, I understand the question. I don't think it's that uncommon a feature, and I think I understand the question. I don't think it's that uncommon a feature. The question is are we opening up --

DOUGLAS MYERS: Asking about the neighborhood --

ATTORNEY JAMES RAFFERTY: Right.

DOUGLAS MYERS: -- and what's consistent with the neighborhood and residential uses. Is Mr. Shirley familiar? Can he answer the question?

FRANK SHIRLEY: I cannot cite another elevator.

DOUGLAS MYERS: Single-family, two-family houses east of Massachusetts Avenue.

FRANK SHIRLEY: Doesn't mean they don't exist, I just don't have that awareness.

DOUGLAS MYERS: Just trying to establish a comparable --

FRANK SHIRLEY: Sure.

CONSTANTINE ALEXANDER: I know of one on Frances Avenue or east.

DOUGLAS MYERS: That's way east of Massachusetts Avenue. That's on the other side.

ATTORNEY JAMES RAFFERTY: Right.

DOUGLAS MYERS: That's Oxford Street.

ATTORNEY JAMES RAFFERTY: I do think to Mr. Shirley's credit the elevation, this doesn't read in my view as a -- there are certain unattractive appendages on houses that are done as of right. This is one that I think care has been made to make it blend in. It is in the rear. And the vista is from a parking lot. So this street and these streets, as you know, there's close institutional neighbors. Lesley University is a prominent land owner here. They have many elevators. They have a lot of converted wood frame structures that the Board has granted relief. There are some, I would say transient housing, B&B type uses on Prentiss Street and the nearby area. So it's not, it's not a pure, you know, soft residential district. I think it's a blend of

institutional with the commercial activity on Mass. Ave., and even the housing stock here, you've got multi-family buildings on the same street as single-family houses. So I think there's quite an eclectic mix of structures and housing styles here.

BRENDAN SULLIVAN: So the house is built when?

FRANK SHIRLEY: 1886.

BRENDAN SULLIVAN: So if you take an 1886 house, even though it appears large by the number, would I be correct in saying that the layout of the rooms can be somewhat challenging and deceptive if you go by the number that you have this very large house, that the rooms and the geometry, if you will, of the house is sort of make it challenging to try and find this cube that you need to fit into it without being totally disruptive.

FRANK SHIRLEY: Very much true, sir.

BRENDAN SULLIVAN: And so then you

look at the outside --

ATTORNEY JAMES RAFFERTY: Keep going.

BRENDAN SULLIVAN: -- you look at the outside and you say here is this niche, this cube sort of fits into. There is an existing entryway there now. So if you take this elevator up, 1, 2, 3, 4, 5, stairs, you can exit into the house or enter into the house at that point?

FRANK SHIRLEY: Yes.

BRENDAN SULLIVAN: You can also enter into the elevator at that point on the first level.

FRANK SHIRLEY: Yes. First level, second level --

BRENDAN SULLIVAN: First level, second level, and third level. So we're substituting an entryway/exit way for another type of entryway/exit way even though it is sort of a tower, if you will, or

something like that. I'm just trying to get --

FRANK SHIRLEY: And we've kept that the elevator has no visibility from Garfield Street. It is below the existing niche line of the lower portion of the house. Not the -- let alone the main roof line. It will have visibility to one abutter and one abutter only. I mean, I think this house is lovely. I think they are looking to make this house -- bring it up to the level of the other houses on Garfield Street. And the last thing I want to do is put something that would encumber this property architecturally, aesthetically. It was as cunning as I was able to be in terms of this location. I'm not saying it's the most solution, but it's the best I could do.

RISHI REDDI: The one neighbor who does have view of the elevator is in support of the project as well.

BRENDAN SULLIVAN: Okay. And getting back to the garage, there is an as-of-right solution to the location of the garage without relief but again, disruptive by switching the curb cut to another side.

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: But that could be placed here.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: But not desirable.

ATTORNEY JAMES RAFFERTY: That's correct.

BRENDAN SULLIVAN: And be disruptive to all of that amenities along the side of the house there.

ATTORNEY JAMES RAFFERTY: Right. And there is -- there's that. There's also the possibility, and we looked at the open space, of relocating the garage further and to meet that five yards. But at that point

we're gaining a couple of feet. You're losing open space. And the vista from the park is further compromised as opposed to looking in the yard. So it felt like a lose/lose. And the setback relief as you know, a single car garage isn't included in GFA, and a recent amendment allows for bicycle storage which is the attached element to the garage.

CONSTANTINE ALEXANDER: I just have one small question on the garage.

FRANK SHIRLEY: Sure.

CONSTANTINE ALEXANDER: You're replacing a shed which is too close to the lot line now. You've got to be at least five feet.

FRANK SHIRLEY: Right.

CONSTANTINE ALEXANDER: You're going to put the garage even closer to the lot line. Why didn't you at least maintain the setback from the lot line that the shed has

now?

FRANK SHIRLEY: Fair question.

I'll tell you exactly the thought behind it so that you can react accordingly.

Off of the rear property line we have, I think, it's 28.7 feet, something to that effect. Basically we have a limited amount of dimensions from the back of the house to the back property line, and we have obviously a one bay garage as you go there. So we were juggling, trying to get as much dimension out the rear property line, and also not to have this accessory building be too close to the house. I mean, we can't accommodate. If we accommodated the five feet, we would be -- about three feet off the back wall or three and a half feet.

CONSTANTINE ALEXANDER: My, issue though, is on the left side setback.

FRANK SHIRLEY: On the side yard setback?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: The reason I was sharing that with you, it's really the maneuverability into the garage. They looked at a scheme where they met the five yard setback off the center --

CONSTANTINE ALEXANDER: No, no, I don't mean the five. Right now the shed is three point -- three feet, six inches from the lot line.

ATTORNEY JAMES RAFFERTY: Why not hold that dimension?

CONSTANTINE ALEXANDER: Yes, why not hold -- that's my question.

FRANK SHIRLEY: So on the side yard setback, the reason is the navigability of a vehicle getting into a garage, and that's the exclusive reason. The house sits tight to that property line, what is the east property line or what I call the east property line. And although it's conforming, the setbacks to

the back of the house are conforming, we're not changing that. And there's a drive you can see that goes right along the property line. To push the garage any farther to the west or, you know, toward the center of the property, you are creating a path for this car width to actually do a little bit of an S turn to get into the garage. I'm not so worried about that when you're pulling in, but I'm worried about that when you're pulling out. In fact, it was my advice to them, I said, I don't physically think they will do it. I think they're going to hit their house or they'll have, you know, the snow is going to have no place to go. All of the above. But I actually advised them that it was a scenario which could not be navigated by a vehicle.

CONSTANTINE ALEXANDER: Okay. You want this back?

ATTORNEY JAMES RAFFERTY: Sure.

BRENDAN SULLIVAN: Okay. Any

questions?

Doug?

DOUGLAS MYERS: No, no thanks.

BRENDAN SULLIVAN: Tim, any questions at this point?

Mr. Heuer, any questions?

TAD HEUER: Is there proposed to be a fenestrate -- what is the proposed fenestration on the elevator modular? It looks like there's something on the exterior.

FRANK SHIRLEY: You are not looking at my drawings if those are the ones you're looking at presently.

TAD HEUER: You've got a ton of stuff in here.

FRANK SHIRLEY: Yeah, I'm sorry. It was a continued case.

ATTORNEY JAMES RAFFERTY: Is there another elevation?

FRANK SHIRLEY: Here is the package that we submitted.

TAD HEUER: I don't have a proposed elevation. I have as-built and proposed for everything else.

FRANK SHIRLEY: Okay. Sorry about that. Let me show you. Front, here are --

TAD HEUER: Can I get a copy of that?

FRANK SHIRLEY: This is my copy and you may have it. Just so everyone can see, this is the elevator. There is no fenestration of the elevator. You can have fenestration in the elevator.

TAD HEUER: Right, I was kind of confused as to why the plan I was looking at suggested that. I can show you or you can take my word for it.

FRANK SHIRLEY: Yes.

ATTORNEY JAMES RAFFERTY: That might explain one of the reasons why we have a new architect.

TAD HEUER: Perhaps.

FRANK SHIRLEY: I'll withhold those

comments.

TAD HEUER: And on the self-elevation?

FRANK SHIRLEY: Yes, right there. Which you will see it right there.

So that's the edge, edge of the elevator. So you're seeing just an opaque wall. It comes up and it moves across. It's -- it has to be a flat roof structure for that zone there which goes back into that ridge because it has to have an overrun. There's a safety requirement of all elevators. You have the cab height which is fixed. And you have to have a certain amount of dimensions so if it misbehaves, and there's a worker on top of the cab, he doesn't get squished.

DOUGLAS MYERS: Would you trace out the line of the elevator again on this elevation?

FRANK SHIRLEY: Oh, sure. Do you

mind if I draw on the drawing?

TAD HEUER: It's his drawing, too.

DOUGLAS MYERS: That's it.

FRANK SHIRLEY: Yes.

DOUGLAS MYERS: Isn't that
virtually to the ridge line?

FRANK SHIRLEY: It is. The third
floor is all under one roof.

DOUGLAS MYERS: I thought you said
it was not close to the ridge line?

FRANK SHIRLEY: It's -- I said it's
below the lower ridge line of the lower ridge
of the back L. And there's the main ridge of
the house. But it has absolutely no
visibility from Garfield Street whatsoever.
It cannot be seen because it's in that tucked
into the corner below the existing roof
lines. And that is that in that elevation.
And this elevation. It's a flat roof. So
you're actually seeing a roof going back
there.

ATTORNEY JAMES RAFFERTY:

Mr. Shirley has an acute sensitivity to historical structures. He was a citizen volunteer on the Historic Commission for many years, and I think --

CONSTANTINE ALEXANDER: Man of many talents. Small houses, acute sensitivity to historical.

ATTORNEY JAMES RAFFERTY: Well, I just -- sometimes we get these architects coming in from Boston, they don't really appreciate the history of our properties and Mr. Shirley --

FRANK SHIRLEY: I'm from Cambridge.

ATTORNEY JAMES RAFFERTY: -- lives here and served for many years in a thankless position which you may have some empathy for and needs to work extra hard to make up for all the years he wasn't billing clients and volunteering. So here he is.

FRANK SHIRLEY: Anyhow, is that

clear where the elevator is? Pass it around, they're yours.

ATTORNEY JAMES RAFFERTY: You're not free to give away my pen.

FRANK SHIRLEY: Oh, sorry.

BRENDAN SULLIVAN: Any other questions at this time?

Let me open it to public comment.

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

(No Response.)

BRENDAN SULLIVAN: I see nobody. There is correspondence in the file from Elizabeth and Andrew McNerney, M-c-N-e-r-n-e-y, 32 Garfield Street. Who say: A quick note for the record, we have seen the sketches drawn up for the new garage and we as affected abutters, we have no complaints. We understand that the setback from our property line is one and a half feet. Thank you for keeping us informed of this

project as this project develops. Good luck in getting the approval that you need.

There is a form for neighbors to sign. We, the local neighbors on Garfield Street, have seen the proposed plans for 28 Garfield and have no objection to their approval. And it's signed by Paul Korenberg. Is that correct?

RISHI REDDI: Paul Korenberg,
K-o-r-e-n-b-e-r-g.

BRENDAN SULLIVAN: Oh, excuse me.

Okay. 20 Garfield Street. Looks like an absolute improvement. No objection.

Another one signed by the owner at 27 Garfield Street who voices his support.

There is a support from 54 Garfield Street. Helen Donis-Keller,
D-o-n-i-s - K-e-l-l-e-r and Boris
M-a-g-a-s-a-n-i-k who state that the plans look great. They will enhance the property. Very enthusiastic.

There is support from a residence at 76 Garfield Street and Angela Radan, R-a-d-a-n at 76 Garfield Street.

Also from 76 Garfield Street a note saying that it's fantastic. It means that you are staying in the neighborhood. Good luck with the improvements.

There is correspondence from 31-33 Garfield who -- two residents who vote and voice support.

Also from 36 Garfield Street.

There is --

RISHI REDDI: That's my letter.

BRENDAN SULLIVAN: This is your letter?

RISHI REDDI: Yes.

ATTORNEY JAMES RAFFERTY: She's in favor.

BRENDAN SULLIVAN: And said pretty spectacular. Meri Fox, M-e-r-i, 76 Garfield Street.

There is correspondence in the file on the letterhead of Cambridge City Council no less. (Reading) Dear Chair and Members of the Board: I'm writing in support of case No. 10214, 28 Garfield Street to construct a one-car garage and bike shed to replace a storage shed that is presently on the property and an addition of half bathroom, small elevator, and small addition to the kitchen in the rear. The installation for residential lift is to create better accessibility for the senior homeowners. The owners have hired architect Frank Shirley who is well known regionally for his good work in the restoration of all the homes and he is conscientiously keeping true to the parameters of a Queen Ann Victorian home. We continue to seek ways to help aging Cambridge residents to maintain independent living in their homes and this request seems to be in line with that goal. I would like to

expression my strong support for this application and my appreciation of your consideration in this regard. Marjorie Decker, City Councillor.

And that's the sum substance of the correspondence. I'll close public comment.

Anything else to add or delete or --

ATTORNEY JAMES RAFFERTY: No, thank you. That's the nature of the relief. Setbacks for the accessory structures and approximately the 150 square feet to accommodate the elevator and the little bit of additional space on the first floor.

TAD HEUER: You also have a dormer; right?

ATTORNEY JAMES RAFFERTY: No.

FRANK SHIRLEY: Yes, yes. There is one dormer on the east side.

ATTORNEY JAMES RAFFERTY: Oh, right. Yes.

TAD HEUER: And that adds some

small --

FRANK SHIRLEY: That's adds FAR and that's in the GFA.

ATTORNEY JAMES RAFFERTY: There was a dormer on the other side that came out.

FRANK SHIRLEY: Yes, very significant change to the whole back room.

ATTORNEY JAMES RAFFERTY: And this dormer through Mr. Shirley's intervention, is compliant in every way with the dormer guidelines.

FRANK SHIRLEY: Absolutely.

BRENDAN SULLIVAN: So we're going from an 0.64 to a 0.66.

FRANK SHIRLEY: Correct.

BRENDAN SULLIVAN: 4586 square feet to 4741 square feet. Okay.

Let me close the presentation part. Mr. Alexander?

CONSTANTINE ALEXANDER: Well, I don't think the case for relief is

overwhelming. But that being said, the relief is rather modest. The impact on the neighborhood is negligible because of where -- the elevator is going to be located. In other words, you're swapping a shed for a garage. And I think the garage is frankly more appealing aesthetically than the shed. And there are family reasons why you want the relief. So putting all those together, I'm in support.

BRENDAN SULLIVAN: Okay.

Mr. Myers?

DOUGLAS MYERS: No comment at the present time. I expect I'll vote for it but I have no comment.

BRENDAN SULLIVAN: Mr. Hughes.

TIMOTHY HUGHES: I expect that the elevator thing is something that we're going to see more and more in the future, and I think that this approach to problem solving that is pretty well done with the limited amount of

extra FAR so I'm in support.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I have no problem with the garage. First time I saw it I agreed with Mr. Alexander's initial comments that it was confusing why you didn't replicate the footprint, at least the setbacks, but I understand given the parking needs that you don't want to be driving your car around your house to get in the garage more than necessary. And I have no problem with the dormer. The elevator I'm still a little bit stuck on. I understand the desire for it. I understand that you want to essentially create an in-law apartment on the third level and keep it somewhat separate. Still looking -- I'm not entirely convinced that it meets the hardship standard. As you're aware, hardship can't be personal to the owner, it has to be something related to the property. Here it seems that the hardship is

due to the personal circumstances of those who want to use the third floor, and that if it were a young, binding, vibrant set of people going up and down the stairs, they could use the house without the elevator. That being said, I agree with Mr. Alexander that the placement of the elevator is perhaps in the best possible place one could put one to preserve the structure without creating any integrity issues. It's tucked away. It's not visible to most people. So, I'm generally in favor. I'm not sure I'll be able to entirely get there, but it's close and I think as Mr. Alexander says the case for relief is not overwhelming but it's compelling.

BRENDAN SULLIVAN: And then that add is 155 square feet; is that correct?

FRANK SHIRLEY: That's correct.

BRENDAN SULLIVAN: Okay.

Let me make a motion then --

DOUGLAS MYERS: Before we vote I have a question for Mr. Heuer, because this is where we discuss, otherwise we don't discuss cases. Other cases will be coming up so I really am interested in the thoughts of other Board members because I like to be of the benefit of their thinking in deciding other elevator cases. So in terms of the comment you just made, under what circumstance with respect to hardship, under what circumstances could you foresee an elevator being hardship-based in a way that did not relate to personal needs of the occupants such as aging or other personal disability physical limitation?

TAD HEUER: In the sense that it required a Variance?

DOUGLAS MYERS: Yes.

TAD HEUER: In my --

DOUGLAS MYERS: What would be a proper hardship basis, that's my question?

TAD HEUER: I'm not quite sure. It's not something I've thought about, but, you know, that's why I asked a number of questions about whether it's possible to do this within the existing footprint of the structure. Because here it's a very large structure relative to many other structures in Cambridge. You know, we see in front of us, you know, a lot of 1500 square foot, 2,000 square foot houses. You know, here it's a substantial enough structure that it is physically possible to place an elevator within it. It's in more in my mind an aesthetic desire which is admirable to place it in a place that's unobtrusive. So remaining -- able to use the remainder of the full extent of the floor areas that now exist.

Possibly a situation in which there was an very undersized lot, exceptionally steep stairs, no way to put in dormers, and it would be physically difficult for anyone to

traverse those because you had sets of non-compliant -- non code compliant stairs, and in an effort to replace a stairway set with an elevator that would somehow add FAR because your lot size was so small. That might get you there. I'm thinking off the top of my head.

DOUGLAS MYERS: No, that's very helpful.

TAD HEUER: But in general I'm not sure where that -- where an elevator necessarily fully meets the statutory hardship understanding without question when it's a request for FAR. If it were a request for setback, I could also see it. There's no place to put this elevator, but I could do it without increasing my FAR. That might also be a situation where the Variance would be granted, but it would be in slightly different terms because it would be in a setback relief and not a Variance. I mean

not an, excuse me FAR.

DOUGLAS MYERS: No further questions.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to allow for the addition of a one car garage and bike shed as per the drawing submitted to replace an existing storage shed, to create a dormer addition to the west rear attic space, the addition of a small elevator at the west rear addition of half bath relocation of one bathroom, and the relocated entryway in the rear and additional work as per the application submitted in the file and the drawings submitted and the dimensional form made a part thereof.

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

The Board notes that this existing home

built in 1886 has inherent challenges for the present occupant and for the other family members to access other third -- the third floor of the living spaces. And that the proposed work will alleviate that situation, make the house far more liveable. And that because the house is existing non-conforming, the size of the house on the lot which predates the existing Ordinance, that any modification of this nature will require some relief from this Board.

The Board finds that the addition of a 155 square feet is de minimus in nature, and that the relief being requested is fair and reasonable.

The hardship is owing to the fact that the house predates the existing Ordinance, and as such any slight addition would require some relief from this Board.

The Board finds that relief may be granted without substantial detriment to the

public good.

The Board notes the letters of support in the file.

The Board also notes that the location of the garage and the shed, though infringing upon setback requirements, is in a more desirable location than an Ordinance compliant location, and that the public good would not be served without granting relief for this present location.

Relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

Anything else to add to the relief?

All those in favor.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I think in the motion there was a reference to the dormer being on the west and it's actually on the east. I think it had originally been proposed on the west, but it's now on the east.

BRENDAN SULLIVAN: All right.

ATTORNEY JAMES RAFFERTY: The plan reflects it on the east.

BRENDAN SULLIVAN: The drawings initialed will control location, size of the structure.

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes, Myers.)

BRENDAN SULLIVAN: Opposed?

(Heuer.)

BRENDAN SULLIVAN: One opposed.

TAD HEUER: Can we clean the file of some of these that are not yours so the Building Department -

FRANK SHIRLEY: Absolutely. These are a good place to go. The set that I gave you is the set that the Board has.

RISHI REDDI: Probably the majority
of the --

BRENDAN SULLIVAN: Mr. Rafferty is
this a surveyor? Brooks.

ATTORNEY JAMES RAFFERTY: Yes,
exactly.

TAD HEUER: Are you going to stick
around to withdraw this one?

ATTORNEY JAMES RAFFERTY: Oh, yes.
Good idea.

(8:25 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case 10224, 28 Garfield Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: The Petitioner requests to withdraw that case.

BRENDAN SULLIVAN: On the motion to withdraw case No. 10224.

(Show of hands).

BRENDAN SULLIVAN: Five in favor of withdrawal.

(Sullivan, Alexander, Hughes, Heuer, Myers.)

(8:25 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers).

BRENDAN SULLIVAN: Back to Allston Street. Let me reopen case No. 10241, 171 Allston Street. Edrick, if you would reintroduce yourself again.

EDRICK van BEUZEKOM: We marked up a set of drawings showing a modification of the plans to reduce the second floor addition in line with the wall of the main part of the house here, leaving a small roof deck over the existing where there's an existing roof deck. I've dated all the drawings.

This is the revised second floor plan. Basically the intent here would be to have some sliding glass doors that open out on to

the deck, continue the windows around. So we're reducing it basically by four feet in dimension here. So the addition now only comes out six feet. The net effect is to reduce the total gross floor area from the original request by 44 square feet. So we're now -- I amended the dimensional plan here. The new requested condition is 2,493 square feet which is a total addition of 128 square feet including the dormer on the third floor, and that brings the proposed new FAR down to 0.99 as opposed to the 1.01 originally requested.

So I've also marked up the other plans. This is the third floor plan just showing the roof only goes out that far to the deck below. This is the -- these are the front and rear elevations. So this is from the front. You would just see the little bit of the balcony sticking out which is close to what you see now. From the rear this is the balcony.

Here's where the wall of the house would be. There would be the windows here. This is from the side. We have the railing for the balcony here. The sliding glass doors and windows there. So that's basically the extent of the changes.

BRENDAN SULLIVAN: Anybody else from the general public involved in those discussions at all?

EDRICK van BEUZEKOM: No.

BRENDAN SULLIVAN: No? Okay, that's fine.

Comments from members of the Board at all? Mr. Heuer.

TAD HEUER: No, I could probably vote for it now.

DOUGLAS MYERS: You're satisfied that what remains the deck and so on is architecturally viable?

EDRICK van BEUZEKOM: It's definitely architecturally viable. You

know, it's not our preference, but obviously....

DOUGLAS MYERS: It's architecturally viable?

EDRICK van BEUZEKOM: It is viable, yes. It makes for a much more compact dining room but, you know, we'll work with it.

BRENDAN SULLIVAN: Let me make a motion then to grant the relief requested to expand the existing house with the addition of a third floor dormer to accommodate a new bathroom and to construct an addition on the second floor which will enclose part of the existing roof deck on the west side of the house as per the revised plans and dimensional form submitted and initialed by the Chair.

You can come down and get copies of these obviously. I'm going to keep these, but they'll be in the file and you can make copies so that you can reflect the drawing.

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

The Board notes that the existing house which was built in 1873 obviously predates the existing Ordinance, would require some relief from this Board for any slight modifications updating for the proposed occupants.

The Board finds that the proposed change of 128 square feet is quite de minimus in nature and is a fair and reasonable request.

The Board finds that the hardship is owing to the size of the lot, the size of the house situated on the lot, and the fact that it predates the existing Ordinance. And is an inherent hardship to do any type of expansion for the existing occupants and very desirable to have bath facilities on the

third floor where the bedrooms, the majority of the bedrooms are located.

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

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes, Heuer, Myers.)

(8:30 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case 10277, 26 Sixth Street.

Is there anyone interested in that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence from a Mr. Chris Matthews. (Reading) To the Cambridge Board of Zoning Appeal: We request a continuance in our hearing scheduled for June 28th for our home at 26 Sixth Street. We are not fully prepared with our architectural plans to come before the Board this week. We understand

there is a meeting of the Board on August 23rd and that request that our case for a Variance and a Special Permit be held then if possible. Chris and Taco Matthews.

On the request to continue the matter, Sean, is that August?

SEAN O'GRADY: Yes, it is.

CONSTANTINE ALEXANDER: Mr. Chairman, in the past we've had a problem getting a group together, a quorum for getting the second meeting in August. And I don't know what the situation would be this year, but maybe we should not continue to that and do it to a later date otherwise we're going to be stuck having to hear the case and having trouble getting the necessary five people together. Just a thought.

SEAN O'GRADY: It's not heard.

CONSTANTINE ALEXANDER: Not heard? Last year we had a problem and we just barely got enough together for a second one in

August. Just a suggestion.

BRENDAN SULLIVAN: I think now we have a plethora of members.

TIMOTHY HUGHES: Where are they?

BRENDAN SULLIVAN: They're waiting until August 23rd.

DOUGLAS MYERS: I'm one of the surplus members.

BRENDAN SULLIVAN: On the motion to continue this matter to August 23rd at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date, August 23rd, and the time of seven p.m. and that the sign be maintained as per the Ordinance requirement and at least 14 days prior to. And any new submissions on this particular case be in the file by the Monday prior to the August 23rd hearing by five p.m.

CONSTANTINE ALEXANDER:

Mr. Chairman, I would also add that the

present location of the sign, which is on the side of the building in the alleyway, is not sufficient. So if they leave the sign there at that place, in my judgment we're not going to hear the case even on August 23rd. They need to put the sign in the front window, front door, but on the street side, not in the alleyway.

BRENDAN SULLIVAN: Okay.

The Board notes and that the Petitioner should be informed of Article 10.42.1 and the requirements contained therein, especially A which is the location and the number of panels shall be clearly visible, easily identifiable, and legible to persons passing by on the public street without the necessity of trespassing on private property. So they will be informed.

All those in favor of continuing the matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of continuing the matter.

(Sullivan, Alexander, Hughes, Heuer, Myers.)

(8:35 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10273, 85 Hamilton Street.

ATTORNEY JAMES RAFFERTY: Mr. Chairman, we're meeting with the neighbors. Would it be possible to go to the next case?

BRENDAN SULLIVAN: It would be. Just as a format, we're going to hear 10273 first and then 10240 which is the continued case, secondly.

ATTORNEY JAMES RAFFERTY: Yes, yes, right.

BRENDAN SULLIVAN: So the scheduled case in the basement will be heard first, and

then the continued matter will be heard second.

ATTORNEY JAMES RAFFERTY: Okay, yes, I think we had contemplated that.

BRENDAN SULLIVAN: Okay. Just so we don't blind-side you.

TAD HEUER: Is more relief being requested in the continued case than the new case? Yes, right?

ATTORNEY JAMES RAFFERTY: In terms of the amount of square footage?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: It might be. They're close. One is in the basement, and the other, of course, is on the third floor.

TAD HEUER: Does the request for third floor also include the basement?

ATTORNEY JAMES RAFFERTY: The newest case is just -- the dimensional form is just the basement.

TAD HEUER: Correct. The old case is basement and third floor?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: Right, so my --

CONSTANTINE ALEXANDER: The old case didn't have the basement at all.

ATTORNEY JAMES RAFFERTY: Well, the old case did have the basement but it wasn't in the narrative.

TAD HEUER: Oh, okay. I understand. It's my fault.

ATTORNEY JAMES RAFFERTY: But it was in the dimensional form.

TAD HEUER: I get it, okay.

ATTORNEY JAMES RAFFERTY: Which case would you be going -- because we probably only need five minutes. Would you then be going to.

BRENDAN SULLIVAN: We're going to hear Crescent Street.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER:

Mr. Rafferty, just when you come back, the dimensional form for the continued case --

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: -- if we were to grant relief on the case that's on the agenda now, will your dimensional form change because you're going to have more FAR by virtue of the relief we grant if we grant the relief for the basement? I don't know, but I think your dimensional form needs to be changed. You can do it on the spot. You're not going any longer from 0.85 to 0.87. I suspect you're going to be going to more than 0.97 because I don't think your dimensional form before took into account the basement and now it will have to. You get my point?

ATTORNEY JAMES RAFFERTY: Right. I suspect based on this conversation we'll probably be asking for a further continuance on the second case if that's acceptable.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: If we could get the basement resolved, and then we would decide. And depending how this goes, you may never see the second case again.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: Okay.

(Case recessed.)

(8:40 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case No. 10274. 7-9 Crescent Street.

BRENDAN SULLIVAN: Okay, if you would please introduce yourself for the record.

DEIDRE DEEGAN: Sure. I'm Deidre Deegan and I'm the homeowner.

BRENDAN SULLIVAN: And the last we spoke we granted relief and now there's been some changes.

DEIDRE DEEGAN: Correct, yes. We are amending to make a couple of very minor changes.

The first being that the west side dormer location is going to move slightly. We are -- we originally had it a little bit more towards the north side of the house, and we're moving it to -- because it's just better situated now that we've kind of looked more closely at the plans upstairs and have met with our builders to figure out where the bathroom would be best located. So the dormer's the same size, and actually it ends up being aligned -- better aligned with the windows on the house on that side. The side is the side that's facing our driveway and really no one is impacted by it.

BRENDAN SULLIVAN: Okay. So on sheet A-73 --

DEIDRE DEEGAN: Exactly.

BRENDAN SULLIVAN: -- the existing shows it there. The proposed is to shift it down here.

DEIDRE DEEGAN: Yep.

BRENDAN SULLIVAN: Okay. There is an addition of -- a realignment somewhat of the skylights --

DEIDRE DEEGAN: What we did is we removed one actually.

BRENDAN SULLIVAN: Oh, that's right. There were three before.

DEIDRE DEEGAN: Yeah, and now we've gotten it down to one.

BRENDAN SULLIVAN: And that's sort of a realignment.

DEIDRE DEEGAN: Yes. That's our first major change.

BRENDAN SULLIVAN: And the other change?

DEIDRE DEEGAN: And then the other change is there are a couple of small windows already. So both the north facing and the south facing sides; the attic level had three windows originally in the approved plans, and we're just adding a small square window to

make it a little nicer looking and to bring in more light.

BRENDAN SULLIVAN: Okay. Sheet A-70 shows the little bit of an addition of a transom I guess up here. That's facing the street though, does it?

DEIDRE DEEGAN: Yep, and there's one on the other side as well.

BRENDAN SULLIVAN: Okay. That's -- you can do as of right, correct, Sean, facing the street?

SEAN O'GRADY: Yes.

DEIDRE DEEGAN: We just wanted to make you aware.

BRENDAN SULLIVAN: Yes.

And sheet A-71 is just putting a little bit of a roof over that --

DEIDRE DEEGAN: Right, and that was the -- the next piece is originally we had -- you had approved a balcony there with one door and we were just making the door a

French door.

BRENDAN SULLIVAN: Yes.

DEIDRE DEEGAN: And then also to -- in order to make the door work we had to do a bump to step over onto the balcony to prevent water from coming into the room.

BRENDAN SULLIVAN: Yes.

DEIDRE DEEGAN: And in order to do that we had to do this little essentially pop up.

BRENDAN SULLIVAN: Yes.

DEIDRE DEEGAN: For the height of the door. So that's what that is.

BRENDAN SULLIVAN: Okay.

DEIDRE DEEGAN: And that won't create any additional FAR.

BRENDAN SULLIVAN: Okay.

Probably a better solution for the -- then the previous scheme anyhow.

Any questions?

(No Response.)

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who wishes to speak on 10274, 7-9 Crescent Street?

(No Response.)

BRENDAN SULLIVAN: Have you spoken to any of your neighbors?

DEIDRE DEEGAN: Yes, we did. We actually talked to the neighbors that face that balcony and neighbors across the street as well, and I have e-mails if you would like to see it. And they're okay with it.

BRENDAN SULLIVAN: Okay.

Let me close the presentation, public comment, and also the presentation part of the hearing.

Mr. Alexander.

CONSTANTINE ALEXANDER: I'm good.

BRENDAN SULLIVAN: Mr. Scott.

THOMAS SCOTT: I'm good.

BRENDAN SULLIVAN: Everybody is

saying they're good. Taking up a line somewhere.

TIMOTHY HUGHES: Indeed.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I find it permissible.

BRENDAN SULLIVAN: Let me make a motion then to amend our original drawings.

There is no change in the FAR at all?

DEIDRE DEEGAN: Right, that's correct.

BRENDAN SULLIVAN: It's just a realignment of some of the deck chairs if you would.

Let me make a motion then to grant the relief for the minor modifications to the original Variance.

The Board finds that the proposed changes are quite de minimus in nature, offer a better plan, and make the proposed residence far more liveable and addresses some structural and some practical problems

at that particular level. Also the addition of the slider with a small roof over for weather protection. The changes in the windows which, again, are quite de minimus in nature.

Anything else to add?

CONSTANTINE ALEXANDER: I would incorporate by reference the findings we made in the earlier case in hardship so they're part of this record as well.

BRENDAN SULLIVAN: The Board finds that the findings as obtained, reached in the previous case which was -- do we have that number, Sean? The previous 7-9?

CONSTANTINE ALEXANDER: It's right here. Hold on.

TIMOTHY HUGHES: 10223.

CONSTANTINE ALEXANDER: 10223.

BRENDAN SULLIVAN: Oh, I'm sorry. I didn't even read this.

That the findings of case No. 10223 also

apply in this particular case. And the Board agrees with them thereof.

Anything else to -- all those in favor of granting the changes.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(8:45 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer.)

BRENDAN SULLIVAN: The Board will hear case No. 10273, 85 Hamilton Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the Applicant Miltenyi Biotic. The project architect, Christopher Chan is present and Stefan --

STEFAN MILTENYI: Stefan Miltenyi.

ATTORNEY JAMES RAFFERTY: The spelling of Stefan's name?

BRENDAN SULLIVAN: Do you have a

business card at all?

STEFAN MILTENYI: Sure.

ATTORNEY JAMES RAFFERTY: Mr.

Chairman, the Board will presumably recall that this case was before you a few months ago. It's a commercial building in Special District 10 on Hamilton Street. We had a request to add additional GFA to accommodate the construction of two residential units on the third floor, and also to create a basement. Currently the building doesn't have a basement. The narrative for the first case did not make a specific reference to the basement, and as such we re-filed this case with an advertisement for the basement. So the hardship related to the basement is that the commercial use of the building is such that there is a limited opportunity for storage. The Petitioner could create basement space that was devoted to mechanical equipment which would not have a GFA

implication. They could also construct a six-foot, eleven space. But if you look at the floor plans, one of the things that they'd like to do is have some showers and bathrooms down in the basement to accommodate employees who might bicycle to work or choose to go to a health club. And it doesn't have any impact on the bulk or mass of the building, but as we know the way basement space is treated, so there are three components to the basement as proposed; the access, the stairway into the basement will be included in GFA, there's a small common area, and then there are a few bathrooms and changing rooms in the basement. And then there are two other rooms; one is a storage room and the other is a mechanical room.

The preference would be in building the basement to simply build it all out at a height higher than seven feet rather than have to put separate floor heights for the

storage room and the mechanical room. Because the question on the mechanical room at this point is how much mechanical is going to actually occupy the room, and the formula that the Building Department applies. So the GFA requested in the application in this case the increase is 1,020 square feet. And that's the GFA.

This case is not dealing with the third floor, and based on some conversation of the neighbors, it's our expectation that in that case we will ask the Board to allow us to continue to have further conversation and we would, we could continue to a far out date and then let you know whether to proceed with that at all.

BRENDAN SULLIVAN: Is there any area presently below the first floor at all? Any crawl space or --

CHRISTOPHER CHAN: Nothing.

BRENDAN SULLIVAN: Nothing?

CHRISTOPHER CHAN: No.

BRENDAN SULLIVAN: I believe you go up the stairs. Anyhow, you come into the first level.

CHRISTOPHER CHAN: Yeah.

BRENDAN SULLIVAN: That's it?

CHRISTOPHER CHAN: That's it.

BRENDAN SULLIVAN: So the facilities that you're wishing to put into the basement, are they currently used in the building? Are they currently there at all?

CHRISTOPHER CHAN: There's a small mechanical room that's, I would say probably 12-by-12 and there are bathrooms on the first floor.

BRENDAN SULLIVAN: Okay. But that's --

CHRISTOPHER CHAN: There are no real I would say storage or large mechanical areas.

TAD HEUER: So there's a building on

a slab now?

CHRISTOPHER CHAN: Yes. Well, I think there's footings around the outside.

TAD HEUER: Right.

CHRISTOPHER CHAN: Part of the reason that we're contemplating doing the basement is because the first floor has to be completely redone because it's settled and the like. So I think it was probably built on fill and it just it has to come out either way. If we didn't get the basement, we're going to have to pour a first floor slab anyway.

BRENDAN SULLIVAN: Toilet facilities basically, is it one or two?

CHRISTOPHER CHAN: We have a men's and women's room and a shower down in that level.

BRENDAN SULLIVAN: No, no.

ATTORNEY JAMES RAFFERTY: What you're proposing current.

BRENDAN SULLIVAN: Existing.

CHRISTOPHER CHAN: Oh, I think on the first floor there are two showers now existing.

STEFAN MILTENYI: Two toilets.
Toilets.

CHRISTOPHER CHAN: Excuse me, two toilets on the first floor.

STEFAN MILTENYI: No shower.

CHRISTOPHER CHAN: And there's a single -- no, there's two toilets on the second floor; is that correct existing? Two on the second floor existing.

BRENDAN SULLIVAN: For your operation now and in the future, that space which is being occupied by mechanical by toilet facilities is far more valuable for your operation than it is to provide these facilities basically. Okay.

TAD HEUER: And just to clarify, I saw three different dimensional forms

floating around. I have one that showed it going to 9338, one going to 9889, and one going to 10,204. So I'm looking at the --

ATTORNEY JAMES RAFFERTY: The third one is in the other case, is in the second case.

TAD HEUER: Okay. They all found their way into this file, possibly not, you know.

ATTORNEY JAMES RAFFERTY: The explanation is the 10,204 includes the basement and the third floor.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: The original filing was -- there has been a -- the decision to add the room -- so the second number, the 9889 is the operative number.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: And that would include the existing 8869 on two floors, and then the addition of this square

footage into the basement.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: So that's where -- so the 9889.

TAD HEUER: That's a 0.85 to a 0.94?

ATTORNEY JAMES RAFFERTY: Correct. But all of the addition being below grade.

TAD HEUER: Okay.

DOUGLAS MYERS: And the other information sheet that was presented for the April 26th hearing, it requested conditions of 9,385 square feet. What did that include?

ATTORNEY JAMES RAFFERTY: A smaller basement.

DOUGLAS MYERS: A smaller basement. Okay.

BRENDAN SULLIVAN: Okay. Any other questions at this time? Gus.

CONSTANTINE ALEXANDER: No questions.

ATTORNEY JAMES RAFFERTY: I

shouldn't say a smaller basement. It was contemplated that the volume of the storage space was going to be at 611. So a lower ceiling height for the storage area, which I guess is what I mean when I say a smaller basement.

BRENDAN SULLIVAN: Tim, any questions?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Tad?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it up to public comment.

Is there anybody here who would like to speak on the matter at 85 Hamilton Street?

Sure, if you would come forward, give us your name, spell your last name, and give us your address.

DONALD GROSSMAN: Donald Grossman, 179 Sidney Street, G-r-o-s-s-m-a-n. I would just say that I would much rather see

mechanicals in the basement up on the roof like is prevalent in the neighborhood at the moment. So I'm thrilled if that would be the result. And additional basement space obviously doesn't affect me, so that's your decision.

Thank you.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody else.

There is correspondence in the file dated June 27th. (Reading) Dear Board Zoning Members: I'm writing to request that the Board deny the FAR Variance required to construct a rooftop addition -- well.

CONSTANTINE ALEXANDER: It goes on to support it. I think that letter goes on

to support the basement.

BRENDAN SULLIVAN: (Reading)

However, I do support the Applicant's request for a FAR Variance to construct a basement in the building. The space will be used to house an information technology room for telecommunication equipment, mechanical room, equipment room and other functions associated with their business. Without the basement it is possible that this equipment could be located on the roof of the building with far greater impact to all abutters. The applicant has assured neighbors that the soil contamination and groundwater impacts associated with the construction of the future basement will be carefully addressed.

It is of course my hope that Miltenyi Biotec will also remain committed to installing a green roof as well using to use thermal energy in their earlier application package. Thank you again for your

consideration as you continue your deliberations, Charles Studen, S-t-u-d-e-n.

There is correspondence from the Planning Board that leaves -- they have reviewed the cases and they leave the cases to the determination of the Board.

And I think that's all the correspondence that you're aware of. That's all that I can see at this time.

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

BRENDAN SULLIVAN: Okay.

All right, close public comment. Anything else to add?

ATTORNEY JAMES RAFFERTY: No, thank you.

DOUGLAS MYERS: Question, so with respect to the changes in the plan that was filed and then presented at the first hearing and the plan that's before us now for the basement, the major change is the presence of

additional storage room at the western end of the building; is that correct?

CHRISTOPHER CHAN: Correct.

This -- especially -- the geothermal is up, we're not sure what's going on with that.

STEFAN MILTENYI: There's no reassurance that the --

ATTORNEY JAMES RAFFERTY: But to be more accurate, isn't it true that it was appearing in the basement floor plan but it was anticipated that it would not have a ceiling height; right? Isn't the basement around the footprint of the building?

CHRISTOPHER CHAN: Yes, this area -- I'm getting -- this --

ATTORNEY JAMES RAFFERTY: You're the architect. I think the question is what's the difference in the basement plan in the continued case and the basement plan as proposed?

CHRISTOPHER CHAN: They're

virtually identical in location to where objects are.

We asked for more FAR by saying that this area was potentially storage area where potentially could have been mechanical.

DOUGLAS MYERS: I'm referring to the western end of the building.

CHRISTOPHER CHAN: Right. When you said where it might have been potentially mechanical space. And if it wasn't mechanical space, would have to have lower ceiling height.

ATTORNEY JAMES RAFFERTY: So the change is not in footprint but in volume, in ceiling height.

CONSTANTINE ALEXANDER: Right.

DOUGLAS MYERS: And that's where the additional 500 plus --

ATTORNEY JAMES RAFFERTY: Exactly.

CHRISTOPHER CHAN: Exactly.

ATTORNEY JAMES RAFFERTY: When we

cross over the seven-foot volume --

DOUGLAS MYERS: Of FAR is to be found.

CHRISTOPHER CHAN: Exactly.

ATTORNEY JAMES RAFFERTY: That's correct.

DOUGLAS MYERS: In that location.

CHRISTOPHER CHAN: Exactly.

ATTORNEY JAMES RAFFERTY: As originally contemplated it did not have a seven-foot high ceiling.

TIMOTHY HUGHES: So the whole basement is going to be at seven feet, which gives you the flexibility to position things wherever you want?

ATTORNEY JAMES RAFFERTY: Exactly. So the variance would allow us to not have to -- if the mechanical equipment however it shakes out, doesn't -- so the mechanical room needs to have a --

TIMOTHY HUGHES: It doesn't take up

as much space as you thought it was going to take up or if it takes up more space.

CHRISTOPHER CHAN: It gives us a little bit more flexibility in terms of how much we'd like to have exactly.

ATTORNEY JAMES RAFFERTY: And allows us to do one slab for the basement floor as opposed to two different basement slabs.

BRENDAN SULLIVAN: It also you allows to install, you know, mechanical, I mean electrical, plumbing, whatever it is, on the first floor level far more easier that you can run along the basement and --

CHRISTOPHER CHAN: And in fact the reason this mechanical room goes to that particular point is purely because there's a chase that lends -- it goes right to there so that's why that -- because that's exactly where it's going up to the rest of the building.

BRENDAN SULLIVAN: Right, okay.
That's it? Close the presentation part.
Mr. Alexander.

CONSTANTINE ALEXANDER: Well, I don't get worked up generally about additional FAR being caused by excavating basements. There's no impact on the neighborhood generally. And this case is -- actually the impact is beneficial. You're going to take ugly appendages on the roof and get them off the roof. So as Tim would say, I'm good.

DOUGLAS MYERS: I agree.

TIMOTHY HUGHES: I agree.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: I agree.

BRENDAN SULLIVAN: Motion then to grant the relief requested to allow for the additional 1,020 square feet in the basement as per the plan submitted and initialed by the Chair and the dimensional form contained

therein.

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 from obtaining a much needed space which would normally be in the basement of the building. Allow them for the mechanical, also facilities for the staff, and taken off the roof as was stated, and also basically subterranean out of view and also free up some much needed production space, office space in the main part of the building.

The hardship is related to the size and footprint of the existing structure and the fact that the building was constructed without a basement. And also there is a practical hardship that the slab currently there need for mediation.

The absence of a basement does create a hardship since the storage would have to be

accommodated in the office part of the building, and this will basically free up some of the much needed viable space.

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

The Board grants the relief subject to the drawing and the dimensional form submitted and initialed by the Chair.

Anything else to add?

All those in favor of granting the Variance for the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes, Heuer, Myers.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

(9:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10240, 85 Hamilton Street.

ATTORNEY JAMES RAFFERTY:
Mr. Chairman, we would request a continuance on that case.

DOUGLAS MYERS: The only date I can't be here all summer is the 23rd of August. However, both hearing dates in July and the first week in August.

BRENDAN SULLIVAN: I'm out July 26th.

CONSTANTINE ALEXANDER: I think we have a pretty full agenda on August 9th.

SEAN O'GRADY: Yes, you're into the September 13th now.

BRENDAN SULLIVAN: Does that work?

ATTORNEY JAMES RAFFERTY: I mean we understand the demands of the Board.

BRENDAN SULLIVAN: Okay. Let me make a motion then to continue this matter until September 13, 2012, on the condition that the Petitioner change the posting sign to reflect the new date, September 13th, and the time of seven p.m. And that the sign be maintained as per the requirements of the Ordinance.

Any changes to the file, any submissions be in the file by five p.m. on the Monday prior to, and that any dimensional changes be reflected with a new dimensional form.

Anything else to add?

All those in favor of continuing this matter until September 13th.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes, Heuer, Myers.)

(9:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10275, 106 Kinnaird Street.

ATTORNEY JAMES RAFFERTY: I apologize. This is Mr. Dimiscio. He's a law student at Villanova University. He's been working diligently on the issues in this case.

May we have 30 seconds? I apologize.

CONSTANTINE ALEXANDER: Okay.

(A short recess was taken.)

BRENDAN SULLIVAN: Okay,

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board, for the record, James Rafferty appearing on behalf of the Applicants. Seated to my right is one of the Petitioner's, Jessica Wenning, W-e-n-n-i-n-g. Mrs. Wenning and her husband Steven Watt own the single-family house where they're raising their twin sons on Kinnaird Street.

The Board might recall that the case was before you a few months ago with a request for a Variance to allow for additions to the home, and the Board found that there was a hardship and in fact granted the Variance. The relief granted was appealed. At the time of the initial application was filed, the Petitioners were not represented by counsel. And as we reviewed the case, you might recall that there was even some discussion that night as to whether or not the case was

necessary -- whether the proposed work required a Variance or whether or not the provisions of the state statute Section 6 of Chapter 40-A would allow for a Special Permit to allow for this work to take place.

And I know the Board has had several conversations. I've participated in some cases. I recall the Percy Place case where we really didn't have a Section 6 application but there was extensive conversation about Section 6, and the reconciliation, if you will, of Section 6 with Article 8. So factually, just to refresh the Board's memory as to what the land use issue is or what the construction issue is, on this single-family house which is set very deep into the lot, there is a non-conforming rear setback. And that non-conforming rear setback really has the effect of extending right through the house. So the vast majority of the house is in the rear setback. The proposal is to

construct to in-fill an area beneath the house, that is already included in the GFA, and to then build an addition on the third story. And this I always found one of the more helpful diagrams because it identifies the area in question that we were talking about. In this case the -- if you've been by the house or have seen the photos of the house, you'll come to understand that the proposed addition is actually an as-of-right addition but for this area in red because it is within the allowable GFA and it does not create any non-conformities in terms of its setback. It's for that reason that we took a further examination of Section 6 and thought that the Section 6 language, the so-called second accept clause that the Board dealt with after many hearings in Foster Street case involving Mr. Greenup's property, there was an acknowledgement in that case, and I would say it's equally

applicable here, that the provision of Section 6 that allows for additions to single-family dwellings with one or two-family houses where there is not any new non-conformities created and where there is no negative adverse impact upon the neighborhood let alone the surrounding properties that a Section 6 finding is warranted. There's been a considerable amount of case law on it. And I know we've talked about the Bjorklund case and how that might apply here.

I think it's fair to say that most of the conversation that I recall about this involved section -- Article 8 which has laid out certain parameters under non-conformity and how that Article is reconciled with Section 6.

As I was reviewing the case as recently as today, I was reminded of the case that I'm not sure that anyone here might have sat on,

but it involved a single-family house on Bates Street, and on Bates Street many years ago in two-thousand -- the case itself was in 2002, they were clients of mine, they looked to construct an addition to a single-family house that exceeded the 25 percent limitation of Article 8. The Board granted the Variance for that. The neighbor appealed the Variance. The property owner hired litigation counsel at Goodwin, Procter. They didn't merely defend the Variance. They filed an action claiming that the Variance wasn't necessary. That Section 6 would allow them to proceed as of right without a Building Permit. That case, that case was heard in the Land Court. It was consolidated with other appeals, and it actually then went on to the Appeals Court which issued an unpublished opinion, but it kind of I think is illustrative to the notion that Section 6, notwithstanding elements of

Article 8, Section 6 is prevailing. And in that case you'll recall Article 8 has this 25 percent limitation. And the Appeals Court wrote that the local zoning enactments may provide more generous protection. The minimum tolerance accorded to lawfully pre-existing non-conforming residential structures is furnished by the second accept clause of the first sentence of Chapter 40-A.

That's a case that unfortunately I did not have an opportunity to include in my filing, but it really, it really drove home the point of Section 8. Because I recall in our conversation about Percy Place, it was suggested that somehow the City Council may have legislatively established certain parameters as to how Section 6 would apply in Cambridge. And I think, and I think that case and the other cases around it really suggest that the question of whether or not a property qualifies for Section 6 is

established by whether it meets that second exception clause. And that tonight we're going to ask the Board to exercise its Special Permit granting authority in the context of the Section 6 standard, and that the Section 6 standard as set forth in the statute and interpreted in a variety of cases, suggests that it is a two-fold test and that the test really, if you were to break it down to simplest language really, is focussed on footprint and new non-conformities. And in this case we are clearly within the footprint of this structure. We are building below it and we are building above it. The area below the structure is already included in anyone's definition of GFA. You've seen the photos. It sits on a couple of most posts, and that's covered. And I think the dimensional form prepared in the prior case and in this case reflects the fact that that GFA is already there. So the first portion of the case

encloses that.

The second portion of the case builds on that footprint in addition to what is actually the third floor of the house.

Now the rear setback is already non-conforming, significantly non-conforming. So the addition of the third floor element doesn't create a new non-conformity. And Section 6 is not limited. It's very specific to the case law. It's not limited to conforming structures. You can have non-conforming setbacks, you just can't exceed that footprint. I think there's no factual dispute that we are on that footprint.

In the Variance case we articulated the hardship because that was how the case was prepared and filed with the Board, but there was conversation at that time that proceeding with the Variance shouldn't serve as any waiver of what rights might exist under

Section 6. When cases are appealed, the Variances are appealed, it is a lengthy process. It is a time consuming process. Special Permits follow a different route. The Variance case is now in the Land Court. Litigation will take time and lots of money. Special Permits do not have the same legal standards, and frankly they don't have -- the filing of them does not have the same injunctive quality as Variances. So this is not a legal nicety. This really goes to the heart of what this property owner is attempting to do in terms of making these additions to the single-family house, and we're here tonight because we think the state statute gives them the right to do this. And in some ways it may not be as consistent with the practice that the Board has employed in interpreting Article 8, but the provisions of Article 8, and I think the opinion of the Appeals Court is illustrative. The language

of Article 8 cannot be read inconsistently with the rights set forth in Section 6. So in cases of Article 8 where there are limitations that would otherwise be permitted, those limitations do not apply when we're talking about single and two-family structures. It's not suggesting that Article 8 becomes irrelevant. It's just saying that the exceptions set forth in Section 6 will supersede any of the constraints contained in Article 8.

So in this case we are not creating dimensional violation in terms of FAR. We are not creating any new dimensional violations in terms of setback, and we are not moving off the footprint in a -- we're asking the Board to conclude that the enclosure -- the enclosing of this lower level and the construction of this third floor level will not have a negative impact upon the neighborhood and will not in fact

have a negative impact upon any surrounding properties or structures.

CONSTANTINE ALEXANDER: Actually the standards, you're being too generous.

ATTORNEY JAMES RAFFERTY: Exactly.

CONSTANTINE ALEXANDER:
Substantially more detrimental are the key words.

ATTORNEY JAMES RAFFERTY:
Substantially more detrimental is the key word. And it talks about substantially more detrimental to the neighborhood.

CONSTANTINE ALEXANDER: To the neighborhood.

ATTORNEY JAMES RAFFERTY: So it's not enough for an abutter to say well, I feel a breeze coming this way or I like the fact that I get to see an impact or change in view. Thank you for the precision in your commentary. It is substantially more detrimental. And I would suggest that the

Board should have little difficulty in concluding that the two components of the this construction; the enclosing of the lower level, which is already contained and treated as GFA, and the addition of the third floor element will not be substantially more detrimental.

TAD HEUER: Can I ask on that point, why are we -- you have a Special Permit to fill below, right, that we granted the Special Permit?

ATTORNEY JAMES RAFFERTY: No, the whole case was a Variance.

TAD HEUER: The whole case was a Variance?

ATTORNEY JAMES RAFFERTY: Yes, I'm not sure why it came in that way, but it was. So even that, I never understood why we needed -- because I presumed we didn't even need a Special Permit for that, that we could do that as of right.

TAD HEUER: So was it that the enclosure of everything other than the area on the first floor underneath that already counted as GFA was in the rear setback and that it required a Variance? Or was it -- it couldn't simply have been the enclosure of that space required a Variance?

ATTORNEY JAMES RAFFERTY: I didn't participate in any determination as to what led -- the Petitioner's architect did. I know there was conversations, but I don't know what led to the final determination that a Variance was necessary. But that area we're talking about is entirely located below structure.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: So, that and that's part of the -- and that came into the Board as a Variance application. My understanding -- is the architect with us?

JESSICA WENNING: He is.

ATTORNEY JAMES RAFFERTY: The architect reached that conclusion after conversation with staff. But at any rate that's, that was the posture of the case when I became involved. I immediately raised the question was it necessary? Frankly I felt the hardship was so compelling that it had a reasonable opportunity to success so we proceeded. But we did have a conversation, Board members, and I'm not exactly certain of everyone sat on that case, but that case really involved a case that had already been filed and a determination was made with a Variance.

My understanding is the focus of the Variance involved this small area here, which defined the rear setback line. But under Section 6 that rear setback has already been established. The rear setback in this house is some, I don't know, 13, 15 feet further back from that point with an element that's

already there.

TAD HEUER: Okay. I mean so you understand why I asked the question because I couldn't quite understand why you're receiving a Section 6 Special Permit if you already had a --

ATTORNEY JAMES RAFFERTY: We do not.

TAD HEUER: -- Section 8 Special Permit and you could proceed as of right under the Special Permit provisions notwithstanding the fact that there's a lawsuit pending, but I understand that now.

ATTORNEY JAMES RAFFERTY: Right.

Article 8, as you know, does provide in H, A, and B or 1 and 2, I forget. You know, there is the provision where you can have a second-story addition. And one of the unique features of this is you look at this house and you think for a minute is this, is this a first or a second-story and where's the basement? And what's the lower level? This

has -- the grade drops here as you go into the lot, but the Building Department I think correctly concluded with the architect that what existed out there today was a second-story structure. So under the language of Article 8, the third floor addition doesn't -- isn't called out in Section 8 the way a second floor addition is.

TAD HEUER: And what's your thought about why it isn't? So for instance --

ATTORNEY JAMES RAFFERTY: I don't have a thought as to why that is. I have an opinion as to what the effect of that is.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: And my opinion is that in cases of one and two-family houses it's irrelevant, because the statute is compelling. So the City Council adopting this, as the Court said in the Weiss case, was not free to create a restriction upon a property owner's rights under Section 6.

And I think that's where I had my lengthiest point of engagement in the Percy Place case; the suggestion that the City Council had somehow legislatively narrowed or established parameters around Section 6. So that the Board then was -- couldn't look beyond that. And I think the same question was asked well, why? And I don't know that anyone is in a position to offer anything more than speculation as what the reasoning was behind language that was adopted decades ago.

TAD HEUER: Right. So as I'm sure your aware, Mr. Rafferty, I'm going to ask you a number of questions. These are because I'm working my way through the Ordinance in the question and they're not all either indicative of how I am or not going to vote.

ATTORNEY JAMES RAFFERTY: I hope my responses suggest that I feel that way.

TAD HEUER: Oh, no, no. I'm merely pre-empting any potential responses.

ATTORNEY JAMES RAFFERTY: Okay.

TAD HEUER: As we saw this afternoon, the responses of certain Justices on even our highest courts in oral argument are not indicative on how they will eventually vote in their cases.

If that's true, talk to me about Section 8.22.3 and where that would come into play or does that not come into play with one and two-family homes?

ATTORNEY JAMES RAFFERTY: That's exactly right. 8.22.3 is a valid enactment of the municipality zoning power as it applies to structures with the exceptions created under Section 6. So I read 8.22.3 to apply to nearly everything but a one or two-family house.

TAD HEUER: So in other words, the Variance provisions that exist as to one and two-family homes that are found, you know, in section four, or the extent to which a

Variance are applied for relief that's stated in Section 4 and Section 5, in your view that is not relevant? That no Variance --

ATTORNEY JAMES RAFFERTY: No, absolutely incorrect. No.

If you're looking to build into a rear setback, you need a Variance whether a one or a two-family house. What the Land Court and the Appeals Court said, however, is that when you're putting on certain types of additions within the footprint and not creating any other violations. So 8.22 doesn't say -- the Board shouldn't feel that in applying a Section 6 finding that we're giving cart blanche and Variances don't apply to single-family houses. This is a very narrow exception for one and two-family houses, and it doesn't say that they're not subjected to dimensional constraints, it just says certain, certain types of additions, and we know they cited them in

certain cases, including dormers and others. The Court went so far to say in those cases one could never find that those had a substantial detrimental affect and I think one could argue about that. But

8.22.3 -- excuse me. Your question was to the Variance. That's why I would draw your attention, it's a very short opinion of the Appeals Court because they did that very thing with regard to the 25 percent restriction. That property owner, and I represented them before this Board, we went and got a Variance because it was a single-family home. We were putting on an addition, but we're exceeding by 25 percent. The Land Court and the Appeals Court affirmed that that requirement of getting a Variance was not proper. That the authority, that that limitation didn't apply or that limitation was in contravention of Section 6. Now that's good law. That's Appeals Court

law specifically applying to our Ordinance in this city.

TAD HEUER: Well, but it's an Appeals Court decision that was issued before the 2005 or '06 decision that allows 128 decisions to be binding I mean on the parties, yes, but I would suggest it's parties in the context of that case. It's essentially good for a one ride only ticket, isn't it?

I mean after, after 2006 when the Appeals Court and Justice Raposa -- Chief Justice Raposa said that we're changing our precedent and you can now cite 120 opinions following this stay for their persuasive authority, prior to that largely because the opinions weren't available.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: We can't give as much weight to that as we would to a published Appeals Court opinion.

ATTORNEY JAMES RAFFERTY: Right.

And if I was in the Appeals Court or arguing at the SJC, I think that's the legal standard. We're here before a permit granting authority, and I'm drawing to your attention that both in the Land Court and Appeals Court when this question was presented about restrictions in Article 8 that exceed exceptions in Section 6, that court, the Land Court and the Appeals Court concluded that those restrictions don't apply to one and two-family houses that are afforded, that fit into the exception, that second accepted section of Section 6.

TAD HEUER: Right.

CONSTANTINE ALEXANDER:

Mr. Rafferty, I would go a little farther than you're going. I think Section 6 is -- when you have a one or two-family house, non-conforming and you want to make an addition, Section 6 controls. You go right to Section 6. You don't go to Article 8 of

our Ordinance. And then you look at the two-part test, which is you've got to satisfy both tests. If you satisfy the second part, doesn't make a difference whether you satisfy the first part.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: And the test is frankly, it's a much easier test than a Variance. The test Section 6 is substantially more detrimental. It's not the hardship and the special circumstances. And I frankly believe, I can't tell you why, that that's the intention of the legislature. I think the legislature recognized that Massachusetts as an older community, has many older homes here, there are many non-conforming structures, and to suggest non-conforming one and two-family houses to the very rigorous Variance standards, would mean that too many non-conforming structures would not be able to be modified. So I think

they're deliberately set forth an easier standard, but a meaningful standard, and that's a standard that I think we as a Board should apply, and it's that two-part test. And I don't have a problem with the fact that --

ATTORNEY JAMES RAFFERTY: And I think the Court has provided direction.

CONSTANTINE ALEXANDER: Exactly.

ATTORNEY JAMES RAFFERTY: And the consensus -- the straight forward consensus of the case is a high concentration on footprint. A relevant measurement of -- and that, that to assist the Board in making certain determinations as to substantial detriment. So when you're dealing with one and two-family houses where the footprint is unchanged and there are no other dimensional non-conformities created. Certainly you can't exceed the FAR. Certainly you can't exceed the height. If you fit within that

exception that was intended by the legislature and has been upheld by the courts, you're entitled to proceed and we're here tonight asking the Board to exercise its authority under Section 6. We haven't gone to the Building Commissioner and said we're entitled to a permit as of right, which the Court ruled was in fact the case in the Weiss case. We recognize that the application of this by the city has been that those determinations on substantial detriment are best made or most often made in a public hearing by this Board. So -- and I don't see any of this at all inconsistent with what's set forth in Article 8.

Article 8 identifies certain areas where we go by Special Permit, and I think the dormer and the second-story addition is fine, but that can't be viewed as the exclusive application of Section 6. That provides some guidance and it's spelled out a Special

Permit, but Section 6 exists for cases exactly as --

BRENDAN SULLIVAN: Eight goes further than six.

ATTORNEY JAMES RAFFERTY: In some cases I believe it might. But I think generally --

TAD HEUER: I think 6 goes further than 8.

ATTORNEY JAMES RAFFERTY: Exactly, yes. I think it's generally more restrictive. I mean it goes further than 6 in only the sense that it articulates specific ones that can, that are clearly Special Permit, but I think are more broader view of 6 would suggest that there are elements of 8 as we saw in the Bates Street case that are actually -- there are elements of 8 that are actually attempt to constrain 6.

TAD HEUER: Okay. So now talk to me

about why constructing in the third floor setback is not an intensification of a non-conformity? And to give you context, let's say that the front, the front L, I guess we can call it for lack of a better phrase, weren't there and you just had the rear building which is entirely in the rear setback, and it jutted out up to the rear setback line, up two stories, and you wanted to add a third-story element to that. At least our common practice is that you would go to the Building Department and you would seek a Variance because you'd be building up within the rear yard setback, correct?

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: Why would that be different here?

TIMOTHY HUGHES: Can I ask a clarification question? Are we dealing with language that says an intensification of a non-conformity or a new non-conformity?

ATTORNEY JAMES RAFFERTY: Creation of a new non-conformity.

CONSTANTINE ALEXANDER: Let me if I may --

TIMOTHY HUGHES: And is there a different standard?

CONSTANTINE ALEXANDER: -- the standard of Section 6. It's a, as I said, a two-part test.

The first one: Will the proposed addition increase the non-conforming nature of the single-family residence?

The answer is no, end of story. The answer is yes, then you go to the second test.

Second test: Is the house with the addition substantially more detrimental to the neighborhood than the existing house?

So the key really is the second part of the test. Because even if you meet -- you don't meet the first part of the test, the Petitioner or any Petitioner can fall back on

the second part of the test and say no, even though I'm increasing the non-conforming nature of the house, it is not more substantially more detrimental to the neighborhood than what is exists now. That's how it works.

ATTORNEY JAMES RAFFERTY: I agree. And I think in this case on the facts, the rear setback in this house, the non-conforming rear setback, is established by the location of the rear wall to the rear property line. And that this addition in the front of that doesn't increase that non-conformity. You look at the dimensional form that's filed in the case, what is the rear setback? The rear setback is unchanged here. So it's not merely a case of well, you're now in an area that was set back. In fact, when you have non-conforming walls, you can build additions on top of non-conforming walls even under Article 8. So Section 6 shouldn't be

read to say well, since a portion of this is in an area that falls within the setback then it's increasing the rear setback. That rear setback is established already and is unchanged by the proposed additions here. And certainly in the case of the lower level, that rear setback has already got structure above it.

TAD HEUER: But you're increasing the violation of the rear -- I mean, my view I think is that you're increasing the violation of the rear setback because you're adding something in the rear setback that says nothing should be there at all; right?

ATTORNEY JAMES RAFFERTY: Well, then I would suggest that in the context of a deliberation under Section 6 Special Permit, if we're moving from the applicability of Section 6 here, and then it's a different test as to whether this house, this proposed renovation/addition

meets the Section 6 standard, I think that's, that's the separate conversation.

BRENDAN SULLIVAN: What you're saying is whether or not it changes that number to the rear setback?

CONSTANTINE ALEXANDER: I don't think it's relevant frankly whether the addition on the -- increases the non-conformity. You then get back to the second part of the test. Let's assume it does. Is that addition substantially more detrimental to the neighborhood? That's the only issue we have -- if we can get -- if we want to get there, get there --

TAD HEUER: Right.

CONSTANTINE ALEXANDER: -- and say it is not substantially more detrimental, end of case under Section 6.

ATTORNEY JAMES RAFFERTY: Well, a contrary -- just following up on that. A contrary interpretation would suggest that

Section 6 then would only apply to conforming additions. And it's clearly that is not the limitation of Section 6. This is not a conforming addition admittedly because there is a portion that is in the rear setback. But Section 6 has never -- doesn't limit those additions to conforming additions. It talks about creating new violations.

TAD HEUER: Well, so this is my next question. So as to Mr. Alexander, I agree if we get there, we get there. Part of the reason is because I'm still looking at 8.22.2, which in my mind has to at least be the starting point. We can depart from it because we find it isn't not applicable or it's and overwritten by Section 6. But I think we at least start there and we're the Cambridge Zoning Board and that's the Cambridge Zoning Ordinance. And the reason I raise this is because in 8.22.2C there's a very clear statement that we may do any of the

things by Special Permit not listed in 8.22.1 provided that any enlargement or alteration of a non-conforming structure, and that's any, is not in further in violation of the dimensional requirements of Article 5.

ATTORNEY JAMES RAFFERTY: Correct.

TAD HEUER: That's why I went there.

ATTORNEY JAMES RAFFERTY: Right.

But let's stop right there for a minute. 8.22.2 applies to every class of structure in the city.

TAD HEUER: That's C, that in a residential district.

ATTORNEY JAMES RAFFERTY: Well, any class of structure. It could be multi-family.

TAD HEUER: Correct.

ATTORNEY JAMES RAFFERTY: So my point is you can't do this -- Section 6 doesn't apply to a four-family or a multi-family. So when you begin at 8.22, I

would respectfully suggest that's not where you begin. You begin where Mr. Alexander says. We begin now where the state law grants rights to the property under Section 6. And if they fit that exception, I don't think you can -- I don't think it's appropriate for the Board to go to 8.22.

TAD HEUER: Okay.

So if the Board accepts that reading of Section 6, is it true that taken to its extreme Section 6 grants greater rights to non-conforming uses to become further non-conforming than it would to a conforming use to make the same exact addition and then become non-conforming? And the reason I ask that is because of in 1991 published appeals court case, this is Blasco, B-l-a-s-c-o V Winchendon which is 31 Mass. Ave. 32, and that case says and I'll quote: Moreover whatever hardships might result from a particular towns by-laws, strict regulation changes in

non-conforming uses is justified by policy considerations which generally favor their eventual elimination. If the law were such that any property owner had the right to change the non-conforming use to any other use so long as the new use was not substantially more detrimental to the neighborhood, non-conforming uses would tend to exist in perpetuity.

Now I understand that that's a case in dealing with uses and not structures, but doesn't the same theory somewhat hold that essentially that the second clause that Mr. Alexander is referencing would enable a non-conforming structure to go into greater non-conformity which would seem to be contrary to the desire of the Ordinance, which is to bring the structures into more conformity? And Section 40-A, which also says the goal is to bring structures into the conformity and rational use of land,

etcetera, then it would with a conforming structure that attempted to do the exact same thing? It seems somewhat odd to me that you would allow a non-conforming structure to become even worse so to speak and to hold at a lower standard and hold a conforming structure that wants to do something perhaps much less minor to a higher standard.

ATTORNEY JAMES RAFFERTY: With all due respect, that feels like an editorial comment on Section 6 for which I have no response. The legislators that adopted Section 6 and the courts have interpreted whether or not that -- you could make the case that all of Section 6 doesn't meet that stated objective. That these non-conforming structures are regarded as such stepchildren in land use, that we should look at ways to bring them into conformity. I don't take that view, but with all due respect that's an editorial comment on a statute. I don't have

any response that.

TAD HEUER: Well, it is except to the extent that's an Appeals Court case that if it is relevant to our decision we would at least --

ATTORNEY JAMES RAFFERTY: Well, I don't know that case. But from my careful listening to what you said, it deals with uses.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: And as you know, this doesn't involve a use in Section 6 --

TAD HEUER: It's okay. It's okay.

ATTORNEY JAMES

RAFFERTY: -- doesn't talk about uses. Am I coming across too aggressive?

TAD HEUER: Just a bit.

ATTORNEY JAMES RAFFERTY: All right, I apologize. I apologize, I should listen to my wife more.

TAD HEUER: So the Field case that you provided us, this is the Appeals Court -- the Land Court case, the Field property case. And this case talks about the Bjorklund case, it's applying Bjorklund. The Field seems to suggest to me, and I'm -- I was looking at footnote 12, it says that almost distinguishes the Field facts, which you're saying it's only invading the setback, very similar facts right to here, it's only invading the setback a little bit. The bulk of the structure is not in the setback. It's a roof line. And in that situation the Court says the fact that the extension Special Permit at issue there, the fact that the extension Special Permit does not propose altering the structure's footprint or increasing the number of bedrooms, further distinguishes it from Bjorklund and Bransford because most of their increase in the roof line is not within the

non-conforming setback areas. And that points to note 12. And in note 12 it says: This court notes that both Bransford and Bjorklund concerned an intensification that was completely within the non-conforming area; i.e. the undersized lot.

What I take from that, and it's not clear from the decision of the Land Court, is that that was not a non-conforming lot. Essentially it was a conforming lot as to size but may have had, you know, frontage, I don't know.

ATTORNEY JAMES RAFFERTY: I don't know.

TAD HEUER: But here we do have what Bransford and Bjorklund over a strong descent from Justice Coradine Ireland would deem to be the non-conformity. They said we don't understand why a structure on a conforming lot should be deemed non-conforming or on a non-conforming lot should be deemed

non-conforming if the structure itself is conforming. It's the problem with the lot not with the structure. But the majority of the court in Bjorklund adopted Bransford and said, no, when you have a non-conforming lot, that non-conformity is the structure. So is Field really as applicable as you argue it is, because as distinguished from this case and this case is similar to Bransford, and the non-conformity is that you're entirely within a non-conforming lot. All the changes you want to make are within that non-conformity.

ATTORNEY JAMES RAFFERTY: I think Field has relevant applicability to this case for the reason you've cited.

CONSTANTINE ALEXANDER: But, Tad, I think you're focusing too much, if I may, on the first part of the test and you're not dealing with the substantially more detrimental. Because even if you're right,

and I may agree that you're right, if we conclude that this addition is not substantially more detrimental to the neighborhood, the case is over. Section 6 applies. They've met the standard of Section 6, and that's it. So I think we're getting off on a tangent arguing the first part of the test, which is not the conclusive part of the test. It just determines whether you get to the second part. Let's jump to the second part and I think we should focus on is this more substantially detrimental to the neighborhood. All right?

Obviously you see where I'm going. I can't see how what is being proposed could any way conceived to be substantially more detrimental to the neighborhood. You're bringing the structure out a little bit closer to the street in a way that's not any closer to any of the surrounding structures. The departure --

TAD HEUER: Or the existing structure itself.

CONSTANTINE ALEXANDER: From the point of our Zoning --

TAD HEUER: You're inserting a notch. You're filling a notch rather than extending.

CONSTANTINE ALEXANDER: Right. To me I think we're spinning our wheels a little bit on very interesting legal issues. I think you're right again as to the first part of the test. But let's focus on the second part, because if we conclude it's not substantially more detrimental, as I said, the case is over from my point of view. Because I think Section 6 is the only thing that controls. Section 8 is nice, but it doesn't apply when you have a one or two-familially non-conforming structure. And, again, the state legislature in Section 6 set forth a lesser standard than a Variance.

And I think it did so intentionally -- I'm sure it did it intentionally, but I think you can easily figure out a reason why. The Commonwealth wants to allow non-conforming structures, one and two-family to be modified if necessary to keep them current and don't want to have people to meet the impossible Variance standards that's required generally for departures from the Zoning Ordinance.

TAD HEUER: Impossible is a strong word given our history of granting Variances, but I take your point.

ATTORNEY JAMES RAFFERTY: But, you know, the fact in this case are even more compelling. You'll recall that the vast majority of this addition can be constructed as of right. If we were prepared to crawl out a window, that came out in a Variance case. So when we talk about Section 6 cases, often we're talking about putting additions on non-conforming walls. And in that case it's

permitted. And actually in Section 6 -- in Article 8 we say you can do that on the second floor and you can actually in some cases do it with dormers on the third floor. The vast majority of this, only this little gap that's depicted on the site plan is the subject of the relief. That's what required us to get the Variance, the early determination.

We're here for the Special Permit with the same issue. It's just this piece. If we wanted to build a crazy structure and simply -- because we are within the front setback here. We are within the side setbacks, and we're not exceeding the height, nor are we exceeding the FAR. This case is about that red slot. And frankly that's why we've been so mystified at the reaction of the abutter. That's all we're talking about. There is a lot of comment about shadow and light. You recall at the last case, Board members couldn't fathom what was being talked

about in that case. So I do think the facts in this case, and if that's where we are at this juncture, really reach of the conclusion that quite quickly that Mr. Alexander's been talking about is -- does that represent, is that a -- does that create substantial detriment to the neighborhood or is that within the footprint of this structure and not creating any new non-conformities such as Section 6. And even if it did create a new non-conformity, you can make a conclusion that there's no substantial detriment to the neighborhood. Particularly the portion is at the ground. It has structure above it already.

TAD HEUER: Final question, probably not, but at least for now. What I read as dicta in Bjorklund is the clause about the various miscellaneous types of structures that would not create, you know, non-conformities by law. And I say I read it

as dicta because it wasn't necessarily to reach the holding in that case. And also because in that case you have a situation in which, again, the non-conformity was the lot, and it seemed you had a conforming structure, and in my view, and particularly if you read Justice Coradine's dissent, he interprets what the majority has done as saying making any of those as conforming additions to a conforming house on a non-conforming lot.

So here am I correct in hearing what you're saying, is that you're going towards Mr. Alexander's point that we should be looking at the substantial detriment and we're not looking at -- you're not attempting to argue that this is a Bjorklund type --

ATTORNEY JAMES RAFFERTY: Exactly.

TAD HEUER: -- addition that's by right?

ATTORNEY JAMES RAFFERTY: That you shouldn't even pay any attention to.

TAD HEUER: Correct.

ATTORNEY JAMES RAFFERTY: Not suggesting that at all.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: We are submitting before the Board for your determination whether that portion of construction is substantially more detrimental to the neighborhood in the context of Section 6. Not that it's within your purview that as a matter of law that you shouldn't even be allowed to consider its impact.

TAD HEUER: Right. And of course as you know we're here on the first Variance case I voted for it, and I think it's a very defensible Variance precisely because I don't believe that it has -- it meets the standards of the Variance test under Chapter 40-A.

ATTORNEY JAMES RAFFERTY: Counsel,

my client they should take great solace in the fact one of the members who is very focussed on hardship found it here. So if they had a lot of time and a lot of money, I think they'd be happy to pursue the litigation associated with that.

TAD HEUER: Absolutely.

I'm saying this only by way of pointing out that I think that the relief is warranted. This is more discussion of under what avenue we can and cannot grant. And as you are well aware, although you and everyone else who is a Petitioner can spend unlimited time if they show choose discussing matters amongst themselves and bringing forth the best legal positions, we are foreclosed in having those discussions unless the entire world is eligible to hear them.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: So the fact that these discussions are being had now in front of the

two of you just happens to be because you're the first people who brought it up for a while. And what we talk about here will control other cases when no one else in the room except for us is here again.

JESSICA WENNING: I like that. I'm serious.

TAD HEUER: You may have had to go through a longer discussion than you thought was necessary, but at least from our institutional purposes, I think it's necessary to have discussion through other members of the Board. Through you to the members.

ATTORNEY JAMES RAFFERTY: I think that's helpful and I often find when Mr. Myers comments, that the Board really only does get to discuss cases in public, and I think there might be some thinking that like judicial bodies you can confer in Executive Session we know that doesn't happen but I

understand.

BRENDAN SULLIVAN: Mr. Hughes, any questions at this time?

TIMOTHY HUGHES: No, I can't think of anything to add that Tad hasn't already come up with.

BRENDAN SULLIVAN: And you used up your questions at this point?

TAD HEUER: Yes, pretty much.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I'm all set.

CONSTANTINE ALEXANDER: I said what I'm going to say.

BRENDAN SULLIVAN: Let me open it up to public comment.

Is there anybody here who would like to speak on the matter at 106 Kinnaird Street.

ATTORNEY PETER GOSSELS: We do.

BRENDAN SULLIVAN: Counsel.

ATTORNEY PETER GOSSELS: And we'd like to sit at the table. We have two people

here. We've also had the pleasure of listening to Mr. Rafferty for 45 minutes and we'd like to have an opportunity to be heard.

TAD HEUER: It's not Mr. Rafferty's fault. I asked him a number of questions.

CONSTANTINE ALEXANDER: Plus we've never cut attorneys off so don't be concerned.

ATTORNEY PETER GOSSELS: Let me begin by offering you all -- Peter Gossels. Attorney at law. G-o-s-s-e-l-s.

I'm submitting here a letter to the Board which is designed to address the issues that you've been discussing.

Anyone else like a copy?

SEAN O'GRADY: May I have one?

ATTORNEY PETER GOSSELS: And I offer a copy to Mr. Rafferty whom I haven't had a chance to meet yet.

CONSTANTINE ALEXANDER: Even before you start, I don't think you mention Section

6 in your --

ATTORNEY PETER GOSSELS: That's right, I didn't.

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY PETER GOSSELS: That's right, I didn't.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY PETER GOSSELS: But Section 6 is not a problem. Because it's -- I would invite you -- I hope that you'll read this. It's not very long, but I will stand on this.

CONSTANTINE ALEXANDER: Well, since Mr. Rafferty's making the argument that Section 6 does apply and we should grant relief, he meets the requirements of Section 6, why don't you start by telling us why you disagree with him as to whether Section 6 applies.

ATTORNEY PETER GOSSELS: I will.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Your presentation.

ATTORNEY PETER GOSSELS: Here's my presentation.

Now those who think that a picture is worth how many words? This is a view that now exists from Ms. Pelensky's porch on the side of her building. Ms. Pelensky is the neighbor, the immediate neighbor to the west of this particular parcel, and if you look at this, she's looking east, the source of the morning sun. All right?

If this Board were to grant a Special Permit to the Petitioners, then this structure would effectively block the morning sun and the light for the rest of the day.

CONSTANTINE ALEXANDER: And that makes it substantially more detrimental to the neighborhood?

ATTORNEY PETER GOSSELS: She is a

neighbor.

CONSTANTINE ALEXANDER: Okay. The abutter. To the neighborhood.

ATTORNEY PETER GOSSELS: The statute does not say you need two neighbors or five neighbors. It says the neighborhood.

CONSTANTINE ALEXANDER: Right.

ATTORNEY PETER GOSSELS: And it is more in my view, this is a very serious problem. Now that's the first thing I want to --

TAD HEUER: But if they meant neighbor wouldn't have they have said neighbor or abutter?

ATTORNEY PETER GOSSELS: Could have.

TAD HEUER: But don't we have to take what they said as meaning what they said? I mean neighborhood in my mind would mean something more than just an abutter or

something more than just one neighbor.
Wouldn't it mean a collection?

ATTORNEY PETER GOSSELS: I have no case which says that, and I don't think you do either with all due respect.

TAD HEUER: But isn't it a rational presumption that that's what the word means, it's plain language?

ATTORNEY PETER GOSSELS: I have two other cases that haven't been cited. Mind you, I received notice of this thing about 13 days ago. And I asked Mr. Rafferty to give me a copy of his application. He didn't respond. So I asked Ms. Pelensky to go to City Hall and bring all this in. I got all this material yesterday, and the material the copies of the application.

CONSTANTINE ALEXANDER: Are you representing your client in the appeal of the Variance?

ATTORNEY PETER GOSSELS: I am.

CONSTANTINE ALEXANDER: So you're familiar with the property then. You're generally familiar with everything that's being done.

ATTORNEY PETER GOSSELS: I'm familiar with the property. But we're dealing here with an issue of Special Permit and not a Variance.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY PETER GOSSELS: And as you know, properly pointed out they're two different animals altogether and two different statutes that govern.

But if you look at my letter it cites not Section 6 because Section 6 is in accord with your own --

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY PETER GOSSELS: Section 6 is in accord with your own -- that is the City Ordinance because it also talks more detrimental. And our view is that this is

very detrimental to Ms. Pelensky who is a neighbor and is going to be very seriously affected. Her property value is going to be affected. Her life is going to be affected. I heard a lot of talk today about people with disabilities and you were concerned that you should traps give some relief to an owner of property in part because of a disability. This is a disability. If you owned a house that saw the sky and you then allowed or found that the sky was suddenly blocked off by a neighbor, then you would think you were disabled. Your life would be disabled. Your property would be disabled. And I'm just going to cite a couple of cases that dealt with the question of light because that's right in the preamble to the Zoning Ordinance as you well know. It's the purpose.

The two cases that I want to call to your attention are McGee versus Board of Appeals

the City of Boston, 62 Mass.

I don't know if anybody's taking this -- you're taking it down; right? Let's try it again. McGee versus the city of -- I'm sorry, the Board of Appeal of the City of Boston, 62 Mass. Ave. Court. I think it's 930. It is 930. And also I'd like to call your attention to Epstein versus the Board of Appeal of the City of Boston, 72 -- 77 Mass. Ave. Court, 752.

Now as you know, in the preamble --

CONSTANTINE ALEXANDER: Are these Variances case? Can you tell us what kind of cases? You cite two cases. Tell us --

ATTORNEY PETER GOSSELS: Right at the moment I can't tell you exactly what the case is. It didn't turn exactly on the issue of light and air, but it was the fact that the one had to do with standing, and the other one had to do with the -- let's see, standing. This one -- I think the McGee had to do with

standing, and I'm not sure at the moment that I can tell you exactly what the Epstein case was. Okay? But it's all there to be read.

Now, I just want to call your attention, I think you all know this. I mean you deal with these by-laws -- this Ordinance everyday. The purpose of the Zoning Ordinance of the City of Cambridge is shall be the purpose of this Ordinance to lessen congestion, to secure safety from fire, to promote adequate light and air. That's what it says.

CONSTANTINE ALEXANDER: I know. I'm not arguing with you.

ATTORNEY PETER GOSSELS: I know you know.

Now, that's what we're bringing to you. And we're saying that the existing structure now, which is non-conforming, there's no dispute about that, is going to be more non-conforming because you're going to raise

the roof and block her air and light. This is a serious matter. It's, it's substantially detrimental. Now, I don't -- we're not here to just be negative. What I am suggesting and what Ms. Pelensky is suggesting is shown on this -- on the next to last page here. We are not, we are not arguing for the moment, all right, we're arguing that the existing proposals failed in our view both Section 6 and your own Zoning Ordinance. And it is not, in my view, if you were to grant a Special Permit, I'd be happy to take it upstairs. I mean, really I think we have a very good case. That's all I'm going to say here. However, I'm not here simply to in effect to threaten you. I'm here to tell you that we're prepared to agree to construction of a partial third floor, maybe even the same footprint, not footprint, but the same area if it is done in such a way that it does not impinge or block the light

and air that Ms. Pelensky needs and is entitled to. That's it. That's our case. And I've taken up I think three minutes of your time, and I hope I've met your concerns.

TAD HEUER: So, we had this discussion in the previous case, if I recall that the maps are accurate and if I recall the case and if I recall what the properties look like having been in front of them, your clients house is set very far forward on her lot?

ATTORNEY PETER GOSSELS: I won't say far forward. It is set forward.

ATTORNEY JAMES RAFFERTY:
Non-conforming front setback.

ATTORNEY PETER GOSSELS: And it's forward. It is where it is. What else can I tell you?

TAD HEUER: And we're in a C-1 district. So your front setback is what?

SEAN O'GRADY: Ten.

TAD HEUER: Ten?

ATTORNEY PETER GOSSELS: Wherever we are, we are. It doesn't really matter except that the -- I'm showing you the picture and you have a copy of it.

ATTORNEY JAMES RAFFERTY: That's a street view of the two properties.

ATTORNEY PETER GOSSELS: This is the -- this is the effect of the proposed construction and to block out this side.

TAD HEUER: Well, it's to block out the sky, but you're showing me -- I mean -- yes, from wherever that picture is taken, the sky will be blocked. My question is is that relevant to where your client's house is? Because if I'm looking at where the house is situated, it's situated on the front of the lot. This house, as we know, is situated oddly for almost any house, entirely or almost entirely in its rear setback. And if I -- the houses don't overlap in their

horizontal -- there's no overlap next -- if I were to, you know, shoot a bullet from the front yard of their house and would not hit your client's house in the back.

ATTORNEY PETER GOSSELS: Precisely. And that bullet hits the morning sun. That's the point.

TAD HEUER: Poetic.

ATTORNEY PETER GOSSELS: Well, no, not just poetic. If they were lined up, there wouldn't be any blockage because the house would already be blocking it.

TAD HEUER: Well, right.

ATTORNEY PETER GOSSELS: Assuming they're more or less the same side, there would be blockage. But that is not the case. We have this house, the non-conforming house is behind in part, as behind the house that my client owns and lives in. And she has a right to be there. No one is challenging her right to be where she is. We're simply

asking this Board not allow her air and light to be blocked. And we say that this is a substantial detriment. Simple as that. And we're prepared to concede all of the other issues here. In other words, we're not, we're not arguing about anything else except if he wants to build it, build it so it doesn't block our air and light.

TAD HEUER: Are you arguing that it's going to block her air and light as to her house or to her property?

ATTORNEY PETER GOSSELS: What? Her property? What do you mean?

TAD HEUER: Well, there's a structure and then there's a backyard. So does it block the air and light to the backyard or to the house?

ATTORNEY PETER GOSSELS: She uses her house to read, to enjoy the sun. There is a porch. You can see the beginnings of her porch here. It's taken from her porch.

She's to sit out there and enjoy the sun.
Actually she can speak for herself.

You want to address them?

OLGA PELENSKY: Yes, I do.

TAD HEUER: Well, but also can I just make one point? If I'm looking at this photograph it looks like this porch is already in shadow and the house is already where it is. So how is that going to be made to be worse?

ATTORNEY PETER GOSSELS: Different time of day. Perhaps you would listen to Ms. Pelensky.

TAD HEUER: Sure.

OLGA PELENSKY: I appreciate everybody's time.

BRENDAN SULLIVAN: Introduce yourself for the record.

OLGA PELENSKY: And I appreciate everybody's time in this matter.

P-e-l-e-n-s-k-y.

And the house that I am in does not face the front of the street. All the windows goes to the side. So when they go to the side, this is the view. So in fact, the light in the kitchen becomes cut. The light in the entryway becomes cut. And the light in the living room becomes cut, and certainly becomes cut on the deck and the kitchen. You can't -- if all the windows were facing as is usual out on the street and the life of the living room, for example, to place with windows going out, but that isn't the case. It's -- the house is faced, even the entrance is on the side facing this way. I did, I don't know if this is the time to raise this as an issue or not, but I notice that at the Variance hearing, the architect mentioned that I -- this is not the time.

ATTORNEY PETER GOSSELS: Let's not talk about the Variance.

OLGA PELENSKY: We won't raise that

as an issue.

ATTORNEY PETER GOSSELS: No.

OLGA PELENSKY: But what happens is that -- I noticed that what is mentioned is third floor construction. There is here a second floor that hasn't been mentioned. And it's really the construction that goes all the way up to meet the third floor construction that becomes a problem. So that if the second floor stays at the highest point of the second floor, and the third floor continues to go up in construction which I am not speaking against, nor am I speaking against the addition of the room to the first floor apartment which is cutting out a substantial amount of greenery and light and air, but if for example, and I don't know if you can see this, but if the second floor is raised like this, third floor like this, it creates an angle. So much less of the sky is blocked. But if the third floor comes out

completely and up here, then everything is blocked.

TAD HEUER: But as we discussed in the previous hearing, much of that they can do by right if they want to and there's nothing you can do about it; right?

OLGA PELENSKY: Well, that's a Variance. That's according to --

TAD HEUER: No.

ATTORNEY JAMES RAFFERTY: Not if we demolish the house and build -- that's the problem here. As the Chairman pointed out at the last hearing, the reduced -- the non-conforming area setback benefits you. The other option is to take the house down and build a conforming structure and that's the rear line and that's the front and your view will change.

ATTORNEY PETER GOSSELS: That isn't the issue before the Board tonight.

ATTORNEY JAMES RAFFERTY: No.

You're alleging a harm -- you're alleging a harm to your client, with all due respect, that can occur as of right if the house were simply removed and a new house were constructed, that view that you're claiming the Board is required to protect of your client would change in ways that are probably even more detrimental than will happen with this. So you can't come in here and introduce a harm and then suggest it's not an issue before the Board.

ATTORNEY PETER GOSSELS: First I have a very interesting problem here. I listened for three-quarters of an hour to his arguments, I come here and I make a presentation and he's arguing with me.

ATTORNEY JAMES RAFFERTY: I apologize.

BRENDAN SULLIVAN: Neither one of you has the floor. Ms. Pelensky does.

OLGA PELENSKY: Thank you. And

I -- there was.

JEFF SNYDER: Our kitchen table is set --

OLGA PELENSKY: Jeff Snyder. Mr. Snyder, my husband is saying that our kitchen table is seven feet from this view. So it is -- the impact is substantial. The light is substantial even though you cannot see here the house. I do want to mention that in 1997 there was an application made where less blockage of sun would have been made, did not touch the third floor, and that was denied. So the Board, in granting the Variance, and I say this -- I don't mean any disrespect in this, overturned that precedent. And this in fact is much worse. It blocks out much more than the '97 would have blocked out because the third floor would not -- there would not have been construction up on the third floor. And that was denied at that time, including the room down on the first

floor attaching to the apartment there. So, I'm not sure if I've answered the question here.

CONSTANTINE ALEXANDER: Thank you.

OLGA PELENSKY: But thank you for your time. I know you're deliberating and I appreciate that.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY PETER GOSSELS: And I want to just -- I've said it before but I just want to just very briefly say that it's true that they could rip down the house, but that's not the issue. We don't know what kind of a house they might want to build in a future day by ripping down the existing one. That's a different issue. We're here only because in our view there's substantial detriment in the proposal before the Board to Ms. Pelensky and her husband.

TAD HEUER: Well I was making a less radical point than Mr. Rafferty, although

Mr. Rafferty's point I think is valid. If they wanted to build the dormer portion above their existing house, and if they want to build the additional room space above the L, both of those components which comprise perhaps 95 percent of the massing and certainly more than 95 percent of the height if we're looking at the ridge line, could be done right now with a Building Permit. The only reason that they need a Variance in my understanding --

ATTORNEY PETER GOSSELS: That's not the issue. The Variance is already up on appeal.

CONSTANTINE ALEXANDER: Special Permit.

ATTORNEY PETER GOSSELS: We're talking Special Permit. I don't mean to interrupt you, but it's not a Variance that we're talking about.

TAD HEUER: Oh, correct.

ATTORNEY JAMES RAFFERTY:

Substitute the word relief.

TAD HEUER: Relief. The relief that's necessary is only for better or for worse this notch of a foot and a half; is that right?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: If they wanted to build a rather ugly looking and marginally less functional house, they could by right put up a structure that has all of the same problems that you are articulating and there's nothing that we could do about it.

Is your argument a segmentation argument?

ATTORNEY PETER GOSSELS: We're not talking about setbacks. We're not talking about massing. We're not talking about anything except the substantial detriment of this particular section of the structure proposed. That's it.

TAD HEUER: You can't talk about the particular section of the structure unless you're talking about that foot and a half. Unless you're making a segmentation argument.

ATTORNEY PETER GOSSELS: It's two and a half or foot and a half issue at all.

TAD HEUER: You're talking about the whole thing?

ATTORNEY PETER GOSSELS: Because it isn't the mass that we're arguing about. It's not the dimensions. It's not the setbacks. We are saying that this proposed section of the construction imposes a detriment on us. And, therefore, because the structure now is non-conforming, it is more non-conforming and detrimental at the same time under Section 6 and under your, under the City of Cambridge Ordinance.

TAD HEUER: So if I have it right, your claim is that the addition, the

conforming addition to the non-conforming structure is what makes the entire structure much more non-conforming and that's what's much more substantially detrimental. Is that right? I think that's right.

ATTORNEY PETER GOSSELS: I'm not saying that the conforming -- what was your word?

TAD HEUER: The conforming addition --

ATTORNEY PETER GOSSELS: No, no, no. It's not a conforming addition. We say it's a non-conforming addition because it increases the non-conformity by being detrimental to us.

TAD HEUER: Yes, but that's --

ATTORNEY PETER GOSSELS: That's what we're saying. You may not agree.

TAD HEUER: Yes, but I don't think the Ordinance reads that way. The Ordinance has provisions that allow for conforming

additions to non-conforming structures, and we've viewed them as conforming and always have. So I think this Board would be constrained to find that the front addition could be done by right, which is why the only Variance relief that was granted in the previous case was for this notch of a foot and a half, because the Board recognized and the Petitioners I think rightly said under our Ordinance that they can build the front portion of the L by right and that doesn't create an additional non-conformity.

ATTORNEY PETER GOSSELS: Right. And we appealed it and it's now in the Land Court.

TAD HEUER: Fine.

ATTORNEY PETER GOSSELS: So it's no longer within your jurisdiction. It's going to be a whole new trial on the issue.

TAD HEUER: No. There's a de nova trial on the facts and they must uphold our

reasoning if it's not (inaudible).

ATTORNEY PETER GOSSELS: I'll grant you that.

BRENDAN SULLIVAN: Okay. Anything else?

ATTORNEY PETER GOSSELS: No.

BRENDAN SULLIVAN: Okay.

ATTORNEY PETER GOSSELS: I hope you'll read my letter carefully. I hope you'll look at the picture, and I hope you'll look at our proposal. All we're asking you to do is not to allow this. If you want to allow additional construction on top of this non-conforming thing as a practical matter, we're not going to object to it. And it's possible that if that's the end of the story, we'll withdraw the appeal. I mean it's that's what it's all about. We want to preserve the light, the morning sun if you like. We want to preserve the air and the ability of people to breathe and to enjoy

their life in Cambridge. What more can we say?

Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Thank you.

Is there anybody else here who would like to speak on the matter at 106 Kinnaird Street?

(No Response.)

BRENDAN SULLIVAN: No.

There is correspondence in the file.
(Reading) To the Board of Zoning Appeal: My wife Jyoti Sen, J-y-o-t-i S-e-n and I own the property at 104 and our house is adjacent to 106. I have seen the plans for renovation that Steve Watt and Jessie Wenning would like to make at 106, and I have no objection to this project. I think the addition would be a great improvement to 106 and will pose no problem for the neighborhood. Signed
Ranjan, R-a-n-j-a-n Sen.

There's correspondence -- we, Steve Nadis, N-a-d-i-s and Melissa Burnes own the property at 500 Franklin Street. We have seen the plans proposed for 106 and we think it would be a great improvement to 106 an improvement to the neighborhood overall.

There is correspondence from Don Baxter and Spence Smith at 76. They have seen, reviewed the plans and the renovation, have expressed -- and they wish to express no objection to the proposed renovation. The proposed project is in keeping with the scale and style of our neighborhood and we believe that the renovation will be an improvement to 106.

ATTORNEY PETER GOSSELS:

Mr. Chairman, I'm sorry I don't mean to interrupt.

BRENDAN SULLIVAN: To the contrary they've approved the appearance of the neighborhood and have contributed to the

property.

ATTORNEY PETER GOSSELS:

Mr. Chairman.

BRENDAN SULLIVAN: Well, let me finish what I'm doing first here.

We, Eleanor Nell Beram, B-e-r-a-m and Joseph Klompus, K-l-o-m-p-u-s own the property at 126 and right next-door to it at 70 Putnam. We have seen the plans that Steve Watt and Jessie Wenning propose, and they have no objection to the project. We happily support the renovation both for the good of their family and we can personally attest needs a more functional living space which is for the good of our neighborhood.

And I believe that is the sum substance of the correspondence.

ATTORNEY PETER GOSSELS:

Mr. Chairman.

BRENDAN SULLIVAN: Yes.

ATTORNEY PETER GOSSELS: I believe,

and please correct me if I'm wrong, that some of these letters were filed in connection with the application for a Variance and not in connection with the application for a Special Permit.

BRENDAN SULLIVAN: These are dated June 26th, June 20th, June 20th.

ATTORNEY PETER GOSSELS: Then they were. You're quite correct in reading them.

BRENDAN SULLIVAN: I'm sorry what?

ATTORNEY PETER GOSSELS: We didn't see those letters.

BRENDAN SULLIVAN: Oh, well, they're in the file.

ATTORNEY PETER GOSSELS: All right.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, it is our understanding that these two letters were also submitted to the file. I don't know, they're from two other abutters and neighbors.

BRENDAN SULLIVAN: Correspondence,

108 and a half Kinnaird Street. Happy to write this letter of support for the Petitioners Steve Watt and Jessie Wenning. As I have previously written regarding this petition, I believe that their addition of improvements will not only benefits them in terms of living conditions, but will also be marked improvements in the appearance of the property and thereby benefit the neighborhood as well. I have no reservations in supporting the petition, Lee Montgomery.

From Diana Goldfarb at 95 Kinnaird Street, and she is a neighbor. And they have shared -- Mr. Watt and Jessie Wenning have shared their plans for the proposed renovation. Have no objection to the project. I think this renovation will be improvement to 106 considering the massive renovation and construction we anticipate in the neighboring King School and the

disruption we face collectively. As a result, it is my belief that the Watts/Wennings are entitled to a relatively unobtrusive work to -- the relatively unobtrusive work involved to improve their lives in our neighborhood. I urge you to approve their plans.

Okay.

ATTORNEY PETER GOSSELS: For the record, Ms. Pelensky went yesterday to the Board, looked at the file, there's only one letter that she was shown and so these are all new. And as I said --

BRENDAN SULLIVAN: As is your letter.

ATTORNEY PETER GOSSELS: As is my letter.

BRENDAN SULLIVAN: Right.

ATTORNEY PETER GOSSELS: But mine is a little different. Mine is in the nature of a brief.

BRENDAN SULLIVAN: But we accept them all.

ATTORNEY PETER GOSSELS: Thank you.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Mr. Rafferty, can I ask a clarifying question? Is it your position that you could have proceeded and we could have granted the same relief you're requesting under 8.22.2C? I mean, I understand that there's a second accepted clause that applies, but given that 8.22.1 speaks to -- or 8.22 speaks to as provided in Section 6, Chapter 40-A, permits may be allowed for the alteration or pre-existing non-conforming structure, and then 8.22.2 has the same language of the pre-existing non-conforming use clause. Is it your argument that Section 6 provides us with greater latitude than this does or are they co-extensive and we could reach the same result through 8.22.2? It's more of a

jurisdictional procedural thing. It may not matter substantively, but I'm curious as to your thought.

ATTORNEY JAMES RAFFERTY: Well, as we've been talking, I think the statute is controlling. I recognize the relief set forth in C which seems to have -- which seems to have some reflection on that. But, again, when we're in 8.22.2, we're not in the one two-family house exception. So when we're at 8.22.2C we're still dealing with all types of structures, whether located in residential districts. So I would not go, I would not suggest the relief of the or the request emanates from C.

BRENDAN SULLIVAN: So, again, you're saying that Section 6 is the controlling language?

ATTORNEY JAMES RAFFERTY: Yes, I believe, I believe -- I think there are elements of Article 8 that are consistent

with Section 6, but I think there is -- I think all the authority, whether there was an Article 8 or not, on Article 8 the property owner has certain rights set forth in Section 6. I think Section 6 in this case --

CONSTANTINE ALEXANDER:

Mr. Rafferty, might you not want to make your argument in the alternative? Section 6 applies, I'm entitled to relief. But if it doesn't apply, I can still meet the requirements of 8.22.

ATTORNEY JAMES RAFFERTY: I think that's definitely the case.

CONSTANTINE ALEXANDER: That's the words I'm trying to get out of you.

ATTORNEY JAMES RAFFERTY: Oh, yes. Understood, right.

I mean, I think 8.22C, while it doesn't call out the one or two-family exception, that's why I went to 6 first. But I think one could get there under C. But I think there's

a specific section under 6 that one can rely upon. But the C exception talks about without -- is as I said, is consistent with the language of 6, and the application is an application under Section 6, but I acknowledge that 8.22.2C I would find myself arguing the alternative in agreement that 8.22C certainly contemplates the relief that's requested here. That we're talking about additions to non-conforming structures.

And I would only conclude by saying that I think the letters are exceptionally relevant in a situation where the statute talks about -- the plain language of the statute talks about detrimental affect upon the neighborhood. The notion that Ms. Pelensky is prejudiced by letters, well, those individuals could have been at the hearing tonight and simply stated in person what they've stated in their letter. The

Board has longstanding practice of accepting letters. Sometimes people arrive at the hearing and they can't stay and they leave a note or whatever. So the fact that abutters have taken the time to write, there's no requirement those letters be in the file ahead of time.

They're more compelling in this case giving the legal standing the Board is required to adopt perhaps in other cases, that the neighborhood, the neighborhood is ample evidence to suggest, and I think the Board could reach that conclusion without the benefit of those letters, but I think those letters are ample evidence to suggest that the neighborhood does not share the view that is being articulated by a single abutter. There's no question that Ms. Pelensky's view will change, but a changed view is not the protection or is not -- the Board isn't here to protect views. There are rights afforded

property owners, and in this case both Section 6 in the Ordinance allows.

BRENDAN SULLIVAN: Okay.

ATTORNEY PETER GOSSELS: May I respond to this? This goes on and on and on. And I don't have -- I did not, by pointing out to you that we did not see those letters, suggest that the Board shouldn't look at them. Of course you should look at them. You should look at everything that's submitted to you. But we're saying that both under Section 6 and under the non-conforming article of your Zoning By-Laws, this is a detrimental and substantially detrimental construction that's being proposed, and it does not have to affect, at least as far as the law is concerned, and I've been practicing law for a while, as far as the law is concerned, the law does not require an effective majority of the neighbors to agree that something is detrimental or otherwise.

BRENDAN SULLIVAN: We understand that. And let me close the presentation part. Let the Board discuss among themselves.

CONSTANTINE ALEXANDER: Well, I wasn't here. I didn't sit on the Variance case, No. 1.

No. 2, if I had, if I were sitting that night, I would made the same arguments that Mr. Rafferty's made tonight. I've long expressed the view that for one or two-family additions, additions to non-conforming one or two families is governed by Section 6 of Chapter 40-A and not by Article 8. And so if that be the case, I then get to the standards of Section 6, which the key one is it substantially more detrimental to the neighborhood. And one, I agree with Mr. Rafferty's points, that the letters speak volumes in terms of whether it's substantially more detrimental to the

neighborhood. The neighborhood, not the neighbor, one neighbor, the neighborhood seems to be unanimously, those at least who commented, in support of the project. That the relief being sought is modest. That we are talking, too, about a neighborhood that's densely populated. I mean, the notion of protecting light and air is very significant, but almost any addition that's done in this area, this area of Cambridge, is going to have an impact on abutting property owners in terms of light and air. And that's a fact of life if you live there. The relief, again, is very, very modest. And but again, I come back to it's certainly not -- this one and a half foot notch is not substantially more detrimental to the neighborhood, and therefore in a long-winded way I would grant relief. I would grant it under Section 6, and I think we should also grant it under 8.22.2C.

BRENDAN SULLIVAN: Okay. Tom, your thoughts.

THOMAS SCOTT: I think, you know, I've listened very carefully. There's no site plan that clearly shows kind of the relationship of the houses, Ms. Pelensky's house in relationship to the, you know, the proposed addition on this lot. And I would have liked to have seen that just to --

ATTORNEY JAMES RAFFERTY: The Assessor's plot shows that.

THOMAS SCOTT: It does show that?

ATTORNEY JAMES RAFFERTY: Yes, it's in the file.

THOMAS SCOTT: Are there dimensions on it?

ATTORNEY JAMES RAFFERTY: No, but it shows the footprints and the relations of structures to the lot.

ATTORNEY PETER GOSSELS: That kind of a plan --

BRENDAN SULLIVAN: I'm sorry, we have closed the comment part. There is going to be a certain form that we're going to adhere to, so thank you.

THOMAS SCOTT: Yes, let me see that. Okay, so that helps me to kind of see the relationship between the two houses, how close they are to one another. I mean, from this plan there's eleven and a half feet to the property line plus there appears to be another eight feet or so to Ms. Pelensky's house. So, you know, there's almost 20 feet between this portion of the house and her house which in a neighborhood like this is a fairly generous amount of space, not to mention that the houses are offset from one another. They're not side by side. So given that, I don't see the -- I don't see the, you know, the photographs can be very deceiving. And this photograph makes it appear as though, you know, the neighbor's

house is literally in her backyard, and it's definitely not that. So I'm having a hard time with kind of this notion that she's going to be so detrimentally affected by the addition that light and air is going to be changed in such a dramatic fashion. I just don't, I don't see it and especially now that I see the plan, I think it's less, less so. So that's just my opinion.

BRENDAN SULLIVAN: Okay.

Mr. Hughes.

TIMOTHY HUGHES: I agree substantially with what Gus had to say.

BRENDAN SULLIVAN: Okay.

Mr. Heuer.

TAD HEUER: So I believe and I continue to believe that the higher standard of the Variance was met in this case and that the relief granted was proper. Obviously my question is more procedural as to whether Section 6 is co-extensive with our Section 8

or is broader than our Section 8. And I appreciate Mr. Rafferty providing the Weiss case. I'm not entirely prepared to rely on the Weiss case I don't think. I also note that in the Weiss case speaks of the Goldhurst case which was one of the first footprint cases, and note that this court entertained the possibility of a vertical expansion in Goldhurst. The Court entertained the possibility that a vertical expansion of an encroaching structure may intensify the non-conforming nature of the structure even if confined to the pre-existing footprint. And that's where I'm trying to figure out where Section 6 interacts with 8.22 or 8.22.2C, and particularly along the lines that Mr. Rafferty identified at the very beginning of this hearing, which is the position of the Petitioner that 8.22.1 provides illustrative reasons. 8.22.2 provides a catch-all but that single-family

homes are essentially not -- don't need to go to either of those because Section 6 should control. And the fact that the city clearly has in my mind, or I believe intended, to articulate what they believed were non-substantially -- were increases that were not substantially more detrimental by articulating in Section 8.22.1. I'm still not sure that doesn't essentially narrowly tailor what the city believes the parameters of Section 6 are. And if that's true, then 8.22.2C suggests that any addition to a non-conforming structure would be a violation and 8.22.3 would therefore require a Variance. And looking at the footnote section in the Weiss case, you know, even that court seems to be suggesting that it's uncertain whether or not that is indeed the case.

To the extent that the remainder of the Board believes that this is a Section 6 case,

I would, looking at the Section 6 standard, suggest that this property does not meet the single and two-family test of whether it -- let me make sure I quote, does not increase the non-conforming nature of the said structure. And the reason I believe it doesn't meet the first prong, the lower standard prong, is largely because of the Bjorklund case. And in Bjorklund I believe is properly read to hold that where the non-conformity is the lot itself in an undersized lot or a non-conforming lot because of frontage, any increase to the non-conformity is by definition an intensification thereof. And so I believe that this addition going up does increase the intensity of the non-conforming nature of the structure, and it wouldn't be the first test. That being said, I believe Mr. Alexander's right, we would go to the second test for pre-existing non-conforming structures, and

then the test is not substantially more detrimental than the existing non-conforming use, and it would also be read to the word structure there. To the neighborhood. And I believe that I, I would be slightly more in favor and could possibly be convinced to vote in favor of that. On these facts it would not be substantially more detrimental to the neighborhood.

So to summarize I believe that I'm not convinced that Section 6 controls here, and I believe that Section 8 is the appropriate route. That being said, if the Board believes that Section 6 is the appropriate route, I believe that the proposed addition would be -- would increase the non-conformity but I would entertain the possibility that that increase in the non-conformity would not be substantially detrimental to the neighborhood and, therefore, a Section 6 Special Permit considered on the second of

those clauses.

BRENDAN SULLIVAN: Okay. I would tend to agree with your analysis of it all as far as Section 6, and yet the application of 8.22, I think is the proper application for me and I'm not sure that Section 6 controls the data for me.

CONSTANTINE ALEXANDER: You want to make two motions, I think, one under Section 6, one under 8.22.2C.

TAD HEUER: Are they advertised?

CONSTANTINE ALEXANDER: Yes, they are advertised. Yes, I checked.

TAD HEUER: Okay.

BRENDAN SULLIVAN: So let me make a motion to grant the Special Permit as per the application, the drawings, and the dimensional form contained therein to construct the addition atop the existing single family dwelling to close the basement area below the front of the house pursuant to

General Law 40-A, Section 6.

ATTORNEY JAMES RAFFERTY: Could I ask one question only because we do have two components to the construction, and I understood Mr. Heuer to be suggesting you were surprised to learn that even the lower level where it's already GFA, that the relief was required. But that may be intellectual distinction not worthy of further -- I've always -- I never understood why that isn't as-of-right construction.

ATTORNEY PETER GOSSELS: We're not disputing the lower level.

BRENDAN SULLIVAN: Anyhow in the middle of a motion here.

ATTORNEY JAMES RAFFERTY: Sorry.

BRENDAN SULLIVAN: So on the motion to grant the Special Permit, the Board finds that the requirements of the Ordinance can be met.

The Board finds that Section 8.22 of the

Ordinance and in reference General Law Chapter 40-A, Section 6 which permits pre-existing non-conforming single and two-family dwellings to be increased in size, by a finding by this Board that the extension is not more detrimental than the existing use or structure to the neighborhood.

CONSTANTINE ALEXANDER:

Substantially more detrimental.

BRENDAN SULLIVAN: Is not more substantially more detrimental than the existing use or structure to the neighborhood.

CONSTANTINE ALEXANDER: I think we should cite reasons why as part of the decision, because and I think we should -- why we're getting to that conclusion. I would suggest that we have almost universal neighborhood support; that the structure or that the work being done will bring this structure more in conformance with the

general layout on lots of other structures in the neighborhood; and that the nature of the work that's being proposed is relatively minor. That it does -- if it does have an impact on light and air on the abutter's property, that it does not rise to the label, to the level of being substantially more detrimental to the neighborhood.

BRENDAN SULLIVAN: Okay.

OLGA PELENSKY: It does provide safety as an issue.

BRENDAN SULLIVAN: The Board finds that traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

And the Board notes the letters of support from neighborhood -- people in the community.

The Board finds that continued operation of or the development of adjacent

uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

That there would not be any nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of the proposed use or to the citizens of the city.

The Board finds that the proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

CONSTANTINE ALEXANDER: 8.22.2 requires us to also make a separate finding about what they want to do will not be substantially more detrimental to the neighborhood than the existing non-conforming use. So what you said before with regard to Section 6 --

BRENDAN SULLIVAN: Right.

CONSTANTINE

ALEXANDER: -- incorporate that with regard to this as well.

BRENDAN SULLIVAN: Right.

Anything else to add to that?

TAD HEUER: No.

Gus, can you articulate the posture of the motion that we're now voting on?

CONSTANTINE ALEXANDER: Say that again.

TAD HEUER: The posture of the motion that we're now voting on.

CONSTANTINE ALEXANDER: I thought what we should do is we should have stopped after you made the Section 6 vote -- motion and take a vote on that.

BRENDAN SULLIVAN: To say that Section 6 applies?

CONSTANTINE ALEXANDER: Applies. And that they meet the standards of Section 6. They applied for relief under Section 6.

We have to deal with it.

BRENDAN SULLIVAN: Well, the motion was to grant the relief under their application which was under Section 6 and also reference 8.22.

CONSTANTINE ALEXANDER: Yes. They came before us seeking relief under alternative grounds. One Section 6 and one 8.22.2. I think we should view it --

BRENDAN SULLIVAN: I think we disagree on that.

CONSTANTINE ALEXANDER: How can we not vote on -- they asked for alternative relief. We can turn them down, but we have to act on it. We can't just ignore it.

TAD HEUER: Is the decision on what grounds they proceed on a supermajority or a majority?

CONSTANTINE ALEXANDER: I think we need to have a -- if they are seeking alternative relief, we have to vote on the

alternative relief. I don't think we have a choice unless they want to withdraw one of the alternative reliefs they're seeking. If they don't, we have to vote and the vote would be a supermajority. I don't think it's our discretion. It's not our call, it's their call as to whether they want to seek alternative relief. Maybe I'm wrong but that's how I see it.

BRENDAN SULLIVAN: I'm not sure if Section 6 controls relief that 8.22 made.

Is that your....

TAD HEUER: 8.22 may. My question then gets to what happens with 8.22.2C? Well, all right. If 8.22.2C controls, it states that the alteration or enlargement of non-conforming use is permitted providing that the alteration of such non-conforming structure is not further in violation of the dimensional requirements of Article 5. Would depend on whether those members who

believe that 8.22 controls, except Mr. Rafferty's articulation that the addition of this notch in the third floor does not intensify, does not, does not create a further violation of dimensional permits of Article 5 for reasons he stated, you may correct me if I'm wrong, that the setback has already been invaded fully and is not an intensification of this the rear setback.

ATTORNEY JAMES RAFFERTY: Well, I think the Section 6 uses a different standard than 8.22 in terms of in violation of the dimensional or not creating a new non-conformity.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: And with all due respect, 8.22.2 as the Board acknowledges, applies to a broad range of structures. And the applicant has come before you citing the state statute and seeking relief pursuant to the authority the

Board has under Section 6, and we're saying that while 8.22.2 may have applicability in this case, that section applies to a whole range of structures, and it does exist. And frankly I'm not certain why the Board would choose to ignore the exception and suggest that we cannot proceed simultaneously with the relief that we requested and then make a determination -- I mean, I suppose we clearly are a one or two-family house. So I don't think we can simply say that only 8.22 applies here.

TAD HEUER: Well, I agree. And I think part of the reason I'm raising this, and it's a bit complicated, is if one were to take the position that 8.22 articulates what the city believes constitutes an appropriate grant of a Special Permit pursuant to Section 6, then we would be constrained as the Board to the parameters of 8.22.2. You're arguing that we shouldn't be.

ATTORNEY JAMES RAFFERTY: And right. And because I'm saying the further reading -- one of the reasons we qualify for 8.22, in addition to the other reasons, is the 25 percent requirement. But there may be one or two-family houses that exceed 25 percent. And as we've seen in the Weiss case, the Court has determined that that 25 percent limitation that may be set forth in the Ordinance, doesn't trump the second accept clause of Section 6. So while I don't think it would disqualify us for 8.22C given that we're closer to 10 percent than 25 percent, I think you're setting up a construct that suggests, for which I don't think there's legal support, that the city, through its legislative powers, can narrow the relief under Section 6. That's a four to one two-family structure. In this case they've done that with a 25 percent limitation but that's to all structures.

And so when the city says that, I'm not convinced the city authors were focussed as much on Section 6 as to non-conforming structures and a feeling that 25 percent was an appropriate limitation. I have no evidence to support that in adopting this they were somehow calling that as a defining parameter of Section 6. There's no legislative record to suggest that at all.

CONSTANTINE ALEXANDER: What you're hearing, Mr. Rafferty, I think is the nervousness on certain members of the Board to somehow look at 6 and not look at 8.22. I don't share that nervousness as should be abundantly clear. I think the state statute is quite clear. I think the notion that we could somehow limit Section 6 or tie Section 6 to 8.22, is just is simply not correct. But I think we should go to a vote. If we do it in two steps. If you can't get the supermajority under Section 6 vote, you can't

get it. Then we'll take the vote on 8.22.2. I would hope the Board, you know how I feel about it, I would hope the Board would find relief under both grounds; one under Section 6 and under --

BRENDAN SULLIVAN: Well, that's where I was going with it. Is that I referenced Section 6 and also 8.22.

CONSTANTINE ALEXANDER: I think you do it two separate votes, Brendan. I don't think you can do --

BRENDAN SULLIVAN: So, let me back up then.

TIMOTHY HUGHES: Isn't the fact 8.22 referenced Section 6 and uses the same substantially more detrimental language? Isn't that enough?

TAD HEUER: Well, except for the provision in C which is what we've just been discussing.

ATTORNEY JAMES RAFFERTY: Yes,

right, but 8.22 has applicability to all non-conforming structures. C does. And Section 6 creates a special class of one and two-family structures that get treated differently. And I would say 8.22.2 applies, is the rightful exercise of the city's zoning authority to limit to 25 percent additions to non-conforming structures. But in doing that, I don't think the Board should be able to -- there's any basis for the Board to conclude that in doing that, this was a legislative response to restrict the rights in Section 6. In fact, such a response would be illegal.

CONSTANTINE ALEXANDER: Exactly, exactly.

BRENDAN SULLIVAN: All right. So, Gus, going back to the motion.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: That the requirements of the Ordinance can be met for

the following reason: And you want to throw in Section 6.

CONSTANTINE ALEXANDER: Well, I think you annunciated everything for a vote on Section 6. The conclusion that it's not substantially more detrimental for the reasons we've long since have stated. I think we take a vote, then you go back and then make a motion for 8.22.

BRENDAN SULLIVAN: So on that motion then, that the Board finds that under Section 6 that the relief being requested is --

CONSTANTINE ALEXANDER: Not substantially more detrimental to the neighborhood than the existing structure. And, therefore, under Section 6 the --

BRENDAN SULLIVAN: And the Board notes the special language that pre-existing non-conforming structures or uses may be extended or altered provided that no such extension or alteration shall be permitted

unless there is a finding by the permit granting authority, or by the Special Permit granting authority designated by the Ordinance, that such change, extension, or alteration shall not be substantially more detrimental to the -- shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

So on that motion the Board finds that that section applies.

CONSTANTINE ALEXANDER: Yes. And we have to take a vote on it.

BRENDAN SULLIVAN: So all those in favor of that finding.

ATTORNEY JAMES RAFFERTY: The same vote you made in Greenup.

BRENDAN SULLIVAN: Anyhow.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes,

Scott.)

BRENDAN SULLIVAN: The Board
finds --

CONSTANTINE ALEXANDER: Now you
make a motion of 8.22.

BRENDAN SULLIVAN: That the
requirements of the Ordinance can be met
under Section 8.22.

That traffic generated or patterns of
access or egress would not cause congestion,
hazard or substantial change in the
established neighborhood character.

That the continued operation of or
development of adjacent uses as permitted in
the Zoning Ordinance would not be adversely
affected by the nature of the proposed use.

There would not be any nuisance or
hazard created to the detriment of the
health, safety, or welfare of the occupants
of the proposed use or to the citizens of the
city.

And that the proposed use would not impair the integrity of the district or adjoining districts otherwise derogate from the intent and purpose of the Ordinance.

CONSTANTINE ALEXANDER: And you've got to also under 8.22.2 you also have to incorporate the substantially more detrimental findings that we made under Section 6. So just put that's part of this vote as well. You don't have to repeat them. But what we said.

BRENDAN SULLIVAN: 8.22.

CONSTANTINE ALEXANDER: That's what the statute requires.

BRENDAN SULLIVAN: C. Okay.

ATTORNEY JAMES RAFFERTY: So you adopt the findings on the prior motion in this motion?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Yes.

All those in favor of granting the

relief.

(Show of hands).

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes,
Scott.)

BRENDAN SULLIVAN: Opposed? One.

(Heuer.)

ATTORNEY JAMES RAFFERTY: Thank you
very much.

(10:45 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad
Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10276, 364 Broadway.

ATTORNEY JAY SHETTERLY: Thank you.
Good evening, Mr. Chairman, members of the
Board, Mr. O'Grady if he comes back, Madam

Secretary. My name is Jay, J-a-y Shetterly, S-h-e-t-t-e-r-l-y. I represent the applicant for a Special Permit tonight which is Barismo, B-a-r-i-s-m-o, Inc. Our application has to do with increasing the seating from 20 to 40. Barismo is the owner and operator of a coffee shop at 364 Broadway called Dwelltime. And with me this evening is Israel Fridman who's one of the owners of Barismo and he's one of the creators, the others are in the audience here of the Dwelltime as a restaurant and as a concept.

When Dwelltime received its business license, it's seating limit was 20. Almost from the first day, which was April the 6th, the business was remarkably, pleasingly brisk more than anybody had hoped for. And it quickly became apparent that seating for 20 wasn't going to be enough. There's a lot of open space. There's some pictures in your materials which will show there's adequate

room for seating for 40.

CONSTANTINE ALEXANDER: Excuse me, not to interrupt you, but the brisk, the unexpected brisk business, was that for people driving to the restaurant?

ATTORNEY JAY SHETTERLY: What a fine question. Absolutely not. We can show you with enormous detail if you like.

91 percent of the people who have come in and signed a petition so far came on foot or by bike.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JAY SHETTERLY: And a great many, almost, I don't know, 85 percent, something, are Cambridge residents. And of them the great majority live within walking distance of where they live or work. They're bus routes, the T of course is accessible right here in Central Square.

And so the business was brisk meaning that the place was full right from the

beginning. And the constraint on implementing the concept to the restaurant was that there weren't enough seats, because the concept is that sort of spelled out by somewhat obscurely called Dwelltime. Which is the idea that something, an object or a person normally in rapid motion would pause and dwell for a while in order to have a sandwich, a cup of coffee, a cup of tea, or a delicious pastry. So the idea was that the people would come in with their friends, with their laptops, sit down, take a break, and that's the Dwelltime idea. So it's been quite successful with 40 seats. It would be perfect. And with 20 and it's really not. So I think I've really said not quite in the same order that I had in mind, but the sense that there's room for the seats. The community is very eager to have it. The restaurant's been very popular, and we hope that you will give us the additional seating.

I should say that the constraint here, the relevant constraint is parking. There's no real way to do off street. It's directly across from the Longfellow School. It's all built up. It's commercial and residential. There is no realistic way to produce parking, off street parking. But we feel it's really irrelevant in the case because the people don't come and park anyway. The people coming on a typical day, about 20, 25 would park. The hours of the restaurant are seven to seven so that one could say it's, it wouldn't be exactly accurate, at any given time the number of cars parking would be one or two, two or three, something like that. On the street there are metered spaces. There are unmetered spaces. There are side streets. So we think that the amount of available parking is more than adequate already. We've had no complaints either from people wanting to have more parking or

from people saying there's too much. So it hasn't become an issue. And Mr. Fridman will tell you a little bit more about the data he has, and then we'd welcome in the lateness of the hour we'll try to be as brief as you like.

TAD HEUER: I guess I have one technical question. So obviously you have no parking spaces now.

ATTORNEY JAY SHETTERLY: Correct.

TAD HEUER: You're here for relief because you will continue to have no parking spaces. How many technically should you have and -- how many should you have now and how many technically should you have if you were to get 40 seats? So if you were to try to be compliant with the Ordinance, what would those number be?

ATTORNEY JAY SHETTERLY: Yes. I think we would have to add six.

CONSTANTINE ALEXANDER: Isn't it

eight?

ATTORNEY JAY SHETTERLY: Maybe you're right. Sean knows.

ISRAEL FRIDMAN: Four or five seats.

TAD HEUER: So you would need to have four now and you don't. And you would be required to go to eight which you also don't want to have.

ATTORNEY JAY SHETTERLY: Correct.

TAD HEUER: Okay. And I only ask because the dimensional form suggest zeros in all those boxes, so I want to make sure there's an actual number in there.

ATTORNEY JAY SHETTERLY: Well, we put that because there's no realistic possibility of adding any parking. But you're correct.

TAD HEUER: Right. I was just looking at the element on the column of requested conditions, existing conditions. Ordinance requirements. The Ordinance

would require eight, and that's what you're requesting relief for.

ATTORNEY JAY SHETTERLY: Correct.

CONSTANTINE ALEXANDER: When you opened the shop up originally, you had no parking at all and you should have had four. Was it non-conforming?

SEAN O'GRADY: There's a little exception. It's called a small business exclusion. And it says that if your business requires four spaces or less, and you meet some other requirements, then you don't have to have any.

CONSTANTINE ALEXANDER: Fine. Got it.

Okay, thank you.

ISRAEL FRIDMAN: My name is Israel Fridman. I-s-r-a-e-l F-r-i-d-m-a-n. I'm one of the owners of Barismo. I'm the co-creator of Dwelltime. I'm also shareholder in Barismo. My lawyer Jay

Shetterly stole all the points I wanted to make ahead of you. So I'm going to berate him later on.

I just wanted to update the record. We have some more recent information that augment the picture, they don't change it in any way, they just add to the numbers. If we could distribute this, that would be great. These are the signatures that we've collected since the last time I submitted the records to the BZA.

So we asked our patrons to -- if they support our application for increased seating, to give us their name and address so we would also know where they were coming from. And also more importantly, to specify whether they arrive at Dwelltime by walking, biking, by car. And the numbers are before you. We've got more than 2,200 people supporting us. And the numbers are overwhelming. More than we thought.

91 percent either arrive walking or by bike.

And the other thing I wanted to say is that we have been welcomed by the neighborhood in ways that we thought were really quite wonderful, and I wouldn't say unexpected. We thought we were going to be a success. We did not know to what extent the neighborhood was going to welcome and were waiting for us with open arms. For the business to be stable, for the business to be able to be stable long term, it's very important for us to get the additional seating. It is very frustrating as a proprietor to see groups of three or four patrons coming in, particularly during lunchtime, seeing there is no seating available and then leaving. We can capture those and we can do a lot better than we have so far. So, we ask the Board to grant us this Special Permit.

BRENDAN SULLIVAN: Okay.

Gus, any questions?

Tom?

THOMAS SCOTT: All the parking on Broadway is it all metered parking; is that correct?

ISRAEL FRIDMAN: There are about ten spaces. About four on our side and the remainder on the other side of the street. They are metered.

CONSTANTINE ALEXANDER: On the streets around it, though, is not metered.

THOMAS SCOTT: It's all resident parking.

ISRAEL FRIDMAN: It's all resident parking with the exception of those of ten meters.

ATTORNEY JAY SHETTERLY: And when you start going up that little hill, those are not metered.

THOMAS SCOTT: Had you or would you ever consider outdoor seating?

ISRAEL FRIDMAN: Obviously the idea has been considered internally by our design team. We don't know what to do about that. I think it would be a nice thing to have in the future, but we need to look at how to do it, how to accomplish it. And also what the Ordinance says.

THOMAS SCOTT: Is the sidewalk wide enough? I think it may be.

ISRAEL FRIDMAN: It may be. But we haven't looked at that time.

ATTORNEY JAY SHETTERLY: There are several neighbors who have expressed opinions about it pro and con. Robert Winters for one and we would want to discuss that with the neighbors before we did anything.

TIMOTHY HUGHES: And if the sidewalk is wide enough outside Cambridge Common, it's wide enough on Broadway.

BRENDAN SULLIVAN: Okay. Anything

else at this time? Mr. Hughes, any questions?

TIMOTHY HUGHES: I'm sorry, I was distracted by all the ice cream in the audience. And my only question is: Where's mine?

UNIDENTIFIED FEMALE: It's out there.

CONSTANTINE ALEXANDER: You're only allowed to speak if you offer some ice cream.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I can't wait to see the transcript of this exchange.

No, this is possibly the most thorough and extensive information as to why parking is not required that I think we have ever received, so kudos to you.

BRENDAN SULLIVAN: Okay. Let me open it to public comment, but let me preface with saying that you all don't need to speak. A simple show of hands in support will suffice

because you probably can't eat your ice cream and talk at the same time. But the hour is getting late and we really, you know -- if there's anybody who really would like to speak, obviously I'm not going to preclude you. Is there anybody who would like to speak on the matter?

CONSTANTINE ALEXANDER:

Particularly anybody in opposition. Is there anybody in opposition?

(No Response.)

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: Perfect.

BRENDAN SULLIVAN: Anybody in opposition to it?

A show of hands showing all in support if you will.

(Show of hands).

BRENDAN SULLIVAN: For the record. At least everybody in attendance.

UNIDENTIFIED MALE: They're

obviously bribed with ice cream.

BRENDAN SULLIVAN: There is a number of letters in the file in support. I'm not going to go through them, but Mr. Robert Winters who lives next-door at 366 is in great support and had actually advocated for this particular use and this particular expansion of the use sometime ago. And I think it carries great weight as to what works in the neighborhood and what does not.

So, let me close public comment section.

There is a letter in the file from the Mid-Cambridge Neighborhood Conservation District which states that exterior changes are not part of their purview, and as such, there is a Certificate of Non-Applicability for this particular petition.

The Planning Board leaves the decision, has viewed it, but leaves the decision up to the Board.

Anything else to add?

ATTORNEY JAY SHETTERLY: No, sir.

BRENDAN SULLIVAN: No? Okay, let me close the presentation part, the public comment part except the plethora of letters and also the documentation regarding the people in favor which is quite detailed as part of the record.

Okay.

CONSTANTINE ALEXANDER: Good.

THOMAS SCOTT: Good.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: Make a motion.

BRENDAN SULLIVAN: Let me make a motion to grant the Special Permit and relief from Section 6 and reference of Section 6.35.1, 6.53.52B and 6.36 from the parking requirement.

Under 6.35.1 the Board finds that any and all required amount of parking may be reduced only upon the issuance of a Special

Permit from the Board of Zoning Appeal, a Special Permit shall be granted only if the Board determines and cites evidence in its decision that the lesser amount of parking will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other users or otherwise adversely impact the neighborhood. Or that such lesser amount of parking will provide positive environmental or other benefits to the users of the lot and the neighborhood.

The Board can make a positive finding under that.

The Board finds that in making an affirmative finding, that the availability of surplus off street parking in the vicinity of the use being served and also the proximity of the MBTA bus route, the availability of public or commercial parking in the vicinity, though, somewhat distant is still provided

around the corner.

And that the proposed use will not create a hazard or substantial detriment to the parking or exacerbate the existing parking.

The Board also notes the availability of metered parking in the vicinity.

And also the Board notes the special attention to the letters of overwhelming support from the neighborhood.

The Board finds that the Special Permit can be granted where the requirements of the Ordinance has been met.

Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character. The continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the proposed use.

There would not be any nuisance or hazard created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use.

The proposed use expansion would not impair the integrity of the district or adjoining districts or otherwise derogate. From the intent and purpose of the Ordinance.

Anything else to add to that?

TAD HEUER: I think you may also want to add, because they've gone through the effort of doing it, that the Board accepts and finds credible the extensive evidence of over 2,000 individuals that 91 percent of those who are identified their means of transport to the locust stated that they did not use an automotive means of transporting, it was by walking or by bicycle and, therefore, the traffic concerns have been shown not only by the Petitioner's assertion but also by evidence to not be adversely impact by the

granting of the Special Permit.

BRENDAN SULLIVAN: So said.

All those in favor of granting.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(11:00 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad
Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case No. 10278, 38 Pearl Street.

ATTORNEY ANN SOBOLEWSKI: Ann Sobolewski on behalf of the Applicant. With me is Hirsch Zarchi.

HIRSCH ZARCHI: H-i-r-s-c-h
Z-a-r-c-h-i.

ATTORNEY ANN SOBOLEWSKI: And our architect Morris Schopf.

MORRIS SCHOPF: S-c-h-o-p-f.

BRENDAN SULLIVAN: Okay, what is it you would like to do?

ATTORNEY ANN SOBOLEWSKI: Well, we are here for an application for a Variance. The existing lot is undersized, and the existing structure which has been there for many years, it's a row house, is basically sharing party walls with the properties on either side. Currently the building is three stories for part of the property in the front and only two stories in the back. The

rear wall of the third story ends about 20 feet forward of the rear wall of the second story. And when my client bought the property, it was very delapidated. It had not been maintained for many years. They're in the process of renovating it and rehabilitating it and it was discovered that the roof was in such disrepair, and the actual wall, rear wall of the second floor had become extremely dangerous and hazardous as a result of the fact that it was basically unmaintained and uninhabited. And in order to identify how they were going to repair the roof, they started evaluating what was going on on the third floor, and are requesting an addition to the rear of the third floor so that the roof will extend all the way over to the property and so that the third floor will fill out the building envelope. It would continue to be non-compliant sharing essentially a party wall on the lot line with

respect to one of the abutting properties. With respect to the other abutting property, the back part of the building does jog in a little bit, and there is a bit of a side yard setback there, but it's not the full 15 feet. It's only 13 feet.

CONSTANTINE ALEXANDER: On your abutting properties, do they go -- they go back three stories high as far as you want to go back or are you going to be now farther back and they're going to be not as far back and we're going to have impact on their properties?

ATTORNEY ANN SOBOLEWSKI: The properties that are adjacent, if -- we put in this plan so you can see. This is our property here, and there is this sort of a carve out in between. And currently the property goes back for three stories here and then it's two stories there. This property, if I could find the picture, let me put the

pictures on -- this property has, has a bump out lower down and is further back on the top. The property on the other side -- yeah, it's set back some from this. So our third story would extend further back, whereas these properties either would stop, you know, stop right here and then have an extension.

CONSTANTINE ALEXANDER: My question is aren't you -- two-fold, aren't you going to adversely impact these properties by going farther out? And we've heard enough about light and air, but this is a clear case, No. 1.

And No. 2, if we're going to grant you relief, aren't we going to be faced with these people coming and these people coming and these people coming asking for the same relief?

ATTORNEY ANN SOBOLEWSKI: Well, we don't think so. One of the properties does, according to my client, have the full third

floor build out. In addition there are much taller properties located across the street as well. So to the extent that you're dealing with light and shading coming from this direction, I think some of that is already being blocked by the properties across the street. There is as you can see this sort of light well in here that would continue to exist even if we were built up over the third story.

TAD HEUER: You're saying across Pearl Street? Like where the library is?

HIRSCH ZARCHI: Library garage.

TAD HEUER: So the library and the garage will -- are already impacting light and air as to the rear of this structure? Wouldn't they only hit the front and then....

ATTORNEY ANN SOBOLEWSKI: Well, if you're -- I mean, if you're looking at this picture, you can see the taller buildings. So if the light is coming across, it's already

being sort of blocked by the taller buildings.

CONSTANTINE ALEXANDER: And what's your hardship? Why -- I mean, I can see why you'd want more space. The property becomes more valuable. What's your -- you're seeking a Variance. You've got to demonstrate hardship.

ATTORNEY ANN SOBOLEWSKI:
Absolutely. Well, the hardship involved here, they are intending to utilize the property. Hirsch is the -- what would you term yourself?

HIRSCH ZARCHI: A rabbi is fine.
That's accurate.

ATTORNEY ANN SOBOLEWSKI: For the Chabad at Harvard. This would become a Chabad property for MIT. The rabbi would live there and then they would be able to have students come and have Shabbat meals and services. So in order to do that they wanted

to have, you know, adequate living space, but then the rabbi would need to accommodate his family. And so, having the, having the space available for, you know, an appropriately sized kitchen and dining room and things like that, it reduces the amount available for bedrooms. This would allow the property to be a four-bedroom house so it could accommodate him and his family and his children.

CONSTANTINE ALEXANDER: But it does also mean it's a more intensive use of the property and potentially an impact on the neighborhood, would it not?

ATTORNEY ANN SOBOLEWSKI: But potentially you could consider that an impact on the neighborhood. But it would be a religious use. I mean, the property is primarily going to be a single-family home. That's the goal. It's the rabbi's home. He would have people come to his home to have a

Friday night dinner and things like that. But it's still a single-family residence. And to the extent that people are coming to his home to have a religious meal, we would argue that that's a Section 6 religious use. A Section 3, excuse me.

TAD HEUER: So you're arguing Dover Amendment?

ATTORNEY ANN SOBOLEWSKI: I, I, the nature of the use is a single-family home. However, the necessity for some additional living space one could say is triggered by the religious aspect of the people who will be living there, but I'm not necessarily arguing that it's a Dover Amendment case.

HIRSCH ZARCHI: First of all, thank you for those words. As she was saying, and I was saying, we're looking for another bedroom. I, we come from a cultural community. We have large families. My wife is the oldest of 12 children. I'm from a

small family of six. The family that would be living there can raise and fill the world with lovely children and raise a beautiful family, and we want to be able to house them adequately. Three bedrooms for a large family is kind of small.

CONSTANTINE ALEXANDER: So what you're saying is, and I want to make sure I'm getting this right, is that you need -- forget about having students come in for Shabbat and the meals and the like, just for you and your family you need more space.

HIRSCH ZARCHI: Absolutely. This is what this is about, is we're seeking to build an additional bedroom to accommodate the family in a comfortable fashion that would enable them to live there long term. We're making a big investment in this property. We want it to have long-term usage for the family that lives there. Not after five, ten years after marriage, you know,

we'll have to move elsewhere. We're investing in this because we see this as a lifetime property to house the family that's going to enrich the community and the neighborhood. It's -- I have to emphasize because this could raise flags. The religious aspect is not, you know, there's wonderful space across the street. There's a library and facilities on campus that would be used for large events. The entertainment is family oriented. It's not institutional. It's a family that's going to have Shabbat. We're going to have students and friends of the community we're going to bring them to the table. So, yes, it's a wonderful dining space where you can accommodate more than your family. You can have guests at your Shabbat table comfortably. We're here for a bedroom, to enable this family to house children comfortably.

BRENDAN SULLIVAN: When did you buy

the property?

HIRSCH ZARCHI: I bought the property last December.

BRENDAN SULLIVAN: And so when you bought the property you obviously bought it in its condition. It was priced accordingly I think. But what I'm hearing is that it was inadequate from the sale, from the get-go because even though, okay, it needs a lot of work, I'm willing to put a lot of work into it, but yet it's inadequate. It's not big enough for our needs. So that consequently you've now come down and asked us to allow you to expand it.

CONSTANTINE ALEXANDER: The cases we often have like this usually involve dormers. Is you have someone who bought a house, it's adequate for them and then the family expands, maybe the parents have to move in, and they need more space. This is not that kind of a case is what I'm hearing.

You knew, as Brendan just said, from the get-go you don't have enough space. You could have signed a contract to buy the property subject to getting a Variance from us so you wouldn't be stuck with the property if you --

HIRSCH ZARCHI: Sure. The most honest response I have to you is that living in this neighborhood for 14 years, to find a single-family house today for a competitive price if you can call it such, is at least in my experience, not such a common opportunity particularly if you want to be in a particular location. So, you know, with a little bit of faith and as the world works out, we saw this considering the options, we thought this would be a good opportunity, and we recognize the risk possibilities. What brought this to the table now, and as Ann pointed out earlier, was the fact that we had to do this work unexpectedly. We knew this potential

for maybe to add the bedroom. We don't need it tomorrow. The fact that we have to redo the roof and the whole dormer and basically rebuilding that whole area at the costs of tens of thousands of dollars to address that need now, that's not in the not too distant future now.

BRENDAN SULLIVAN: I appreciate that. I mean I went two different times to the property, and at the back of the property and look at all the row houses at the back end. And they all pretty much line up. And I notice in your pleadings where you're saying that -- and I really disagree with it, because then I went back again, it said other properties in the neighborhood with this type of design -- well, I'm sorry, the design of the house with three stories in the front and two in the back is not common and is not the best structural solution for the residence. I would argue that it is very common. That

row of houses has three stories in the front and two in the back. And if you stand there and you look down, it's a straight line. There's -- none of them that actually extend the third floor back over the second. It would absolutely positively interrupt the sight line, the air, light, blah, blah, so on and so forth.

HIRSCH ZARICHI: Is that true on both sides of the house or just on one side?

BRENDAN SULLIVAN: I'm looking all the way down the alleyway. I went down Franklin Street and I looked back up this way here. And I can see obviously the guys working on the property. And I'm picturing another story up there, and I'm saying it's not common to have that third story added on over the second. And most definitely it would be an interruption on the sight line on the back of that building. Every single one of those row houses are three in the front and

two in the back. There's some porches there and stuff like that, but it's still wide open. So I would disagree with that statement anyhow, and I'm not sure if I really want to start to allow this expansion coming up. And I think where you bought the property, and I understand there's some needed repairs, but the needed repairs can be done. You're saying that the back wall on the second story is in dire need of repair. And now you're going to add another story on top of it. You know, it's even added to the distress of it, if it's the structural problems. And as far as the roof is concerned, you know, you put a roof on. I mean, you don't need to say well, we have a bad roof so let's put another story on so we can put a different type of roof on.

ATTORNEY ANN SOBOLEWSKI: I think part of the distinction here, you know, they are a non-profit and they don't have a large

budget for future repairs. And the discussion occurred, well, if you were able to extend the roof out so that it's flush and have the building envelope meet up, then you would have less of a cost of maintenance and less of a need to, you know, continually repair for this sort of things that can happen when the building stops short and there's, and there's a flat roof and the back wall. I think the issue with respect to the back wall is something that it's not that they're gonna disregard the structural issue, they were able to determine that you could fix that problem and then in the future alleviate some of your repair and maintenance issues and if you closed it off and that was, that was the genesis for sort of this whole concept.

BRENDAN SULLIVAN: Okay.

HIRSCH ZARCHI: Essentially we're here for a bedroom. Another bedroom for the family. That's the --

BRENDAN SULLIVAN: Right. And again, I think as Mr. Alexander said, you know, if it was a dormer, going up and so on and so forth which is somewhat typical, but to add on to that third -- to add on a third level above the second level in that location really interrupts that whole back sight line, but that's my view on it anyhow.

Anything else to add at this point?

HIRSCH ZARCHI: I'm just curious what, how, you know, interrupting that sight line how that would bother someone?

BRENDAN SULLIVAN: If I lived in either one of those row houses and I happen to look, you know, and some of them have porches and they look down and all of a sudden now you have this structure sitting there. It interrupts the sight line.

HIRSCH ZARCHI: Yeah, one side is HVAC is on the roof and on the other side is the roof is set back.

BRENDAN SULLIVAN: Right.

HIRSCH ZARCHI: And it's investment property that people were -- I don't see how -- I certainly hear your point.

BRENDAN SULLIVAN: Right, okay.
Any question by the Board at this point?

CONSTANTINE ALEXANDER: No questions.

BRENDAN SULLIVAN: Tom.

TIMOTHY HUGHES: Not right now.

BRENDAN SULLIVAN: No?

Let me open it to public comment.

Is there anybody here who would like to speak on the matter at 38 Pearl Street? If you would come forward, please give your name and your address. You can sit over there if you wish.

EDEN NADINE FRYE: My name is Eden Nadine Frye. And I co-own the property at 36 Pearl Street which shares a wall and a chimney with the property under discussion.

TAD HEUER: Are you to the -- if I'm facing from the street, are you to the right or the left?

EDEN NADINE FRYE: If you're from the street? 36 is closer to Mass. Ave.

TAD HEUER: Okay, so you have the black outline, the second story room in the rear?

EDEN NADINE FRYE: The only tree on the block is where my house is yes.

TAD HEUER: All right.

EDEN NADINE FRYE: Okay. So we -- my brother and I, my brother is not so directly involved in the management of the property, but we have owned our property since '96. It was in delapidated condition. Not as bad as this property. This property had two trees out of its foundation. So they have made enormous changes that are going to be good for the entire neighborhood. However, as much as I admire the work and the

time and the money that they have put into this property so far, I think that they have not maintained the historical integrity of this neighborhood and that -- of this block and that they may in fact be making an addition destroy the spirit of the fact -- of the history of this neighborhood. This is a property, this whole block since the 1970s has been in the National Register. Now I know the National Register is rather toothless designation, but nonetheless it specifies the importance of this block. It's a block in which a lot of people go back and forth from the subway. It's often remarked about on the fact that there is -- that there are five brick houses built in 1874. This is the one closest to Franklin Street. And there are another five clapboard houses built the following year. They all follow the same pattern as you have said. They are three stories in the front,

two in the back.

We have postage size gardens. I take great pride in my garden, front and back. We have lilacs, all sorts of things. I've spent the last 16 years trimming the tree branches that grew over from that property so I can get enough light for my garden. I think that making another story on this property will first of all, not retain the historical integrity of the neighborhood. It will make, create a precedence that all of us would want to have. We want to, of course we would want to increase our property living space. Why shouldn't we? It's a desirable neighborhood. It's a neighborhood that's become extremely beautiful due to the greening of the area in particular, and the improvements on the property. So of course we would follow suit. But we would be driving away a portion of Cambridge close to Central Square that has historical value.

And I don't think that this is a path that we should follow. Perhaps it's to the detriment, financial detriment of me and my neighbors for us not to allow this because then we can go ahead and do it, too. But nonetheless, as a historian, I speak to the importance of the historical nature of this block.

My other objection is that if they are to put -- eliminate that roof on the second floor, I'm wondering where they're going to put AC units, because clearly they're going to AC their building. I have done mine. I have placed my AC units on that, on that second floor roof. It creates -- it allows me to have a larger green space as would theirs, rather than having them the ground floor. And it also eliminates some of the noise. So that that's another objection if they were to put another story on, another addition on. They would have to go up to the

top floor, and I don't think that would work. People aren't going to service them so easily as they can with that entrance, exit off of the third floor for servicing of these buildings.

I'm also concerned about the possibility of drainage problems that would occur. They have so far put no gutters on. I have had water in my basement because of the lack of the maintenance of gutters at 38 Pearl Street for all of these years. And I'm hoping that this same thing that applies in our building and the -- my building and the others that the drains go into the city storm system, will occur here as well, and it's going to be a problem if it doesn't because we're gonna get all get water in our basements. This is a very tight neighborhood with very little green space, very little drainage. So I want to make sure that the problem of drainage is addressed,

the problem of the AC units placement is addressed. I know the city has codes on noise. And I also want to make sure that none of the backyard gets paved. If they do pave the backyard, parking or anything like that, which may be a problem because we don't have adequate parking in the area, we're gonna have a drainage problem.

BRENDAN SULLIVAN: Okay, thank you.

EDEN NADINE FRYE: That's my position.

BRENDAN SULLIVAN: Anybody else wish to speak on the matter? Please come forward and just identify yourself.

JON SENESCHAL-BROWN: I'm Jon, J-o-n Seneschal-Brown, S-e-n-e-s-c-h-a-l -Brown. I'm at 34 Pearl Street, which is two units to the left and --

EDEN NADINE FRYE: He's next to me.

JON SENESCHAL-BROWN: Next to her. And from where I am, two units down, I don't,

I don't have any of the direct issues. I don't have any of the direct issues because I'm not directly next to it. Certainly from the street view, from the front you wouldn't see the third story. I don't think you see the third story unless you were looking, unless you're on the top deck of the parking garage which is certainly an anomaly to the neighborhood. But if you're on the top deck of the parking garage and you can look across and you would be able to see the third floor. But beyond that I'm assuming that you're not going above the peak height and it wouldn't show up there.

As to lighting it certainly won't extend as far as me because the east light coming in from the morning comes in and by the time it extends out and over to the other side it would be non-affecting.

I don't think in this case the houses that go, they have a -- they have a second,

they have a structure that goes to the back and then there's a little indent on every other one that comes in. And the other units from 30 to 32 would share a roof line going back to that section, and mine would share with on that second story would share 34 to 36 would share it. So for -- if 36 wanted to go up or if 32 wanted to go up, they'd have to do it in conjunction with the other ones that are sharing. I don't think 38 has that issue. It's the last one of the five so it kind of stands alone.

EDEN NADINE FRYE: No.

JON SENESCHAL-BROWN: But I can't address the other issues of it, you know, as far as drainage and stuff on it. If it would stay green behind, obviously it's a better situation.

CONSTANTINE ALEXANDER: So are you in favor of the relief or not?

JON SENESCHAL-BROWN: For myself

I'm in favor of it. I don't have any issues with it.

BRENDAN SULLIVAN: Okay.

JON SENESCHAL-BROWN: But I'm not the immediate neighbor.

BRENDAN SULLIVAN: Okay, thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Is there anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none. There are no letters in the file.

EDEN NADINE FRYE: I had a letter.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Your letter?

EDEN NADINE FRYE; I sent a letter in. Three and a half pages. Didn't you get it, Sean? It was faxed this morning to you.

CONSTANTINE ALEXANDER: I would assume what you wrote in the letter you made

orally.

EDEN NADINE FRYE: Oh, there's lots more in the letter.

BRENDAN SULLIVAN: It never made it to the file, Ms. Frye.

THOMAS SCOTT: Do you have a copy of it with you?

EDEN NADINE FRYE: I have a copy of it, but the copy is -- my printer didn't print out very well. That was the problem. But I do have a copy and I can give you this for the time being.

BRENDAN SULLIVAN: Sure. We'll submit it to the file. Okay.

Let me close the public comment part.

ATTORNEY ANN SOBOLEWSKI: If we could just respond?

CONSTANTINE ALEXANDER: You'll have a chance.

BRENDAN SULLIVAN: Yes.

ATTORNEY ANN SOBOLEWSKI: Where are

the air conditioning proposed to be located?

MORRIS SCHOPF: The air conditioning units would be on the roof. The addition that we're requesting is a pretty small addition, less than 400 square feet or about 400 square feet. It raises the roof of the kitchen wing to the level of the roof of the rest of the building. On the side adjacent to the common wall unit it has a side yard. There are no plans to put any hardscape in the backyard or the side yard. In fact, there's no access for automobiles or any other vehicles to the rear of the house in any case.

The -- it seems to me that this small addition follows that exhaustive discussion that you all had which we participated in vicariously, but it falls within the FAR that is allowed on the lot. The lot's non-conforming. The building is non-conforming. The addition doesn't

increase or change the footprint of non-conforming building nor the height nor any of those other things. So I would request you to grant this application simply because it represents a good and useful addition, and it certainly isn't to the considerable detriment of the neighborhood. I would submit the parking garage is quite a considerable detriment to the neighborhood.

BRENDAN SULLIVAN: Okay.

ATTORNEY ANN SOBOLEWSKI: And if I could just say with respect to the historic issues, we did obviously go to the Historic Commission before we filed the application. They checked off the box that it was --

EDEN NADINE FRYE: No.

ATTORNEY ANN

SOBOLEWSKI: -- 50 years or more old after looking at the code, but they didn't check off any of the boxes with respect to it being in a designated historic district or a

designated landmark. And while the addition would be constructed onto a building from the 1800s, it would not be visible from the street. You couldn't see it from the street.

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

CONSTANTINE ALEXANDER: Well, I came here wanting to be persuaded to grant relief. I still feel that way after listening to the presentation, but Brendan brought up some very telling points I thought as to why it's not just appropriate, particularly since the fact that you brought the property in its current size. To be sure if you wanted to buy, maybe it's the only property you could afford in the neighborhood, but that's not a justification for us granting Zoning relief. I am troubled by that. I am troubled by the fact that it's going to be a start to a lot of requests to

similar extensions in the backyard. And until that happens I think you're going to adversely impact the neighboring properties with the extension. So I, with a lot of reluctance, seriously I still would have to vote against it.

BRENDAN SULLIVAN: Tom.

THOMAS SCOTT: I think architecturally, you know, the building was designed the way it was, as a row -- as a series of row houses. It's three stories in the front and two in the back I think for a reason. I think intentionally there are two stories in the back to help increase the ability of natural light to get down to the lower levels. And as soon as we add this addition and other neighbors come in and want to do the same thing, I think we're really kind of doing something that's detrimental to, I think, the architectural intent of the building. And in fact, if it is historically

significant, I think it should probably be preserved in some way as opposed to being altered. So it's kind of my opinion that we not approve this.

BRENDAN SULLIVAN: Okay.

Mr. Hughes.

TIMOTHY HUGHES: I also wanted to be able to go along with this, but I'm reluctant to start, you know, the ball rolling to fill in the backs of those buildings. I think -- I agree with Tom in terms of the architectural intensity, that there has to be some relief in the back of the buildings otherwise it will become this, you know, lightless canyon. I can't go along with it.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I agree. I guess I disagree a bit with Mr. Alexander in that -- or I would go a little bit further that it's not necessarily the fact that it was purchased knowing although I think that's the

factor. Even if this were and I think depart from the Board most of the time on this, even if this were a structure that had been owned by the Petitioner and then had sought the addition, I think the addition is too extensive. In either situation regardless whether they just bought it or had knowledge of it or found themselves in situations needing the space, as my position's constantly been, particularly for a house that's in the 3,000 square foot range, if a family desires large structure there are large structures to be purchased, maybe not in Cambridge, but they exist. But to the extent that we say I can't, again, I said this earlier tonight, I can't afford a smaller house, I can only afford a bigger one. I can't afford to have this house. I need a bigger one because otherwise I can't pay for it. That doesn't make any sense. That does go to Mr. Sullivan's point. You know, you

buy what you have -- you purchase what you have for the value that it's worth as it is. And that the grant of additional space, here you're not asking for FAR but essentially you're getting caught up on a side yard setback issue which creates, you know, the same issue, except in the Ordinance is attempted to limit bulking and massing. So while you may have space under the FAR or you don't have anywhere to put it. And I think as Tom has pointed out, and the way that these structures are built, it's intended to allow a step back a bit to allow light in, to prevent it from being built up, you know, almost tenement style and by adding a third story, I think it does substantially derogate from the intent and purpose of the Ordinance because it does start to change the neighborhood. It's not a situation where you can put a small dormer on the roof and everyone else says it's fine, it's not really

an issue. It's an issue where you put a third story on, another third story goes on, and another third story goes on. And it's not common in the neighborhood. One of the things we look at is is this something that every other house has? And to the extent that it violates the Ordinance because every other house in the neighborhood has violated it. Here it would be the first and you could start a trend. And I think that we usually look at those much more skeptically than we do in a place where the Ordinance is being honored almost in a breach because so many houses are pre-existing non-conforming that they made the addition that the Petitioner is requesting or because their relief would be so minor that no one would notice that they're there. You're right, I don't think either of those essentially de minimus standards are met and such as you saw earlier, nor do I believe that Section 6 would apply here even

though it's a single-family residence. And nor do I believe that a Special Permit or 8.221C would be applicable either.

BRENDAN SULLIVAN: Okay, let me make a motion to grant the relief requested for the building of an addition at the third floor level over the existing two-story portion of a building at 38 Pearl Street as per the application. The drawing is contained in the application, and the dimensional form contained therein.

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 from a creation of an additional bedroom and bathroom in the existing residence.

The Board finds that the hardship is owing to the non-conforming -- the existing non-conforming nature of the building being

part of a row house, not having any left to right side setbacks, and as such being non-conforming, and any addition, especially of this nature, would require some relief from the Board.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting the Variance of the relief.

(No Response.)

BRENDAN SULLIVAN: None in favor.

Opposed to the granting.

(Show of hands.)

BRENDAN SULLIVAN: Five opposed.

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

BRENDAN SULLIVAN: The Board finds

that a literal enforcement of the provisions of the Ordinance would not involve a substantial hardship to the Petitioner.

The Board finds that the hardship, even though the building is non-conforming, is not unlike any other in the immediate abutting properties.

That the hardship is not owing to any circumstances relating to the soil conditions, shape or topography of the land or of the structure, and that that does not generally affect the Zoning District in which it is located.

The Board finds that relief would be a substantial detriment to the public good, and that the granting of the relief would in the Board's opinion nullify and substantially derogate from the intent and purpose of the Ordinance to restrict the overcrowding and the imposition of building mass where there is none which would affect in a deleterious

way adjoining properties.

Anything else to add to that?

Okay. Sorry, petition is denied.

(11:35 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case No. 10279, 28 South Normandy.

Okay, if you you'd introduce yourself for the record, give us your address.

SCOTT KENTON: I'm Scott Kenton, 152 Vassal Lane. I'm a designer.

WILLIAM SULLIVAN: Bill Sullivan, 28 South Normandy Ave.

BARBARA SULLIVAN: Barbara Sullivan, 28 South Normandy Avenue.

SCOTT KENTON: The petition is for construction of three dormers. The applicant is -- the family's a long-term owner of the house. They wish to adapt the house to evolving family needs which they will comment on. And the relief is due to the fact that the house is non-conforming on two counts. One is the rear setback makes it

non-conforming, and the FAR is greater than what's allowed in the district. The three dormers are we believe within the dormer guideline dimensional dictates, and they add I believe 168 total square feet to the existing house.

CONSTANTINE ALEXANDER: I have a question. Do the two of you occupy the house right now? I know it's a two-family. I mean your unit. Just the two of you?

WILLIAM SULLIVAN: We do not live it in right now.

CONSTANTINE ALEXANDER: Are you planning -- I'm sorry, you're right, I noticed in the file. Are you planning to move into it?

WILLIAM SULLIVAN: Yes.

CONSTANTINE ALEXANDER: And just the two of you?

WILLIAM SULLIVAN: Right now, yes.

CONSTANTINE ALEXANDER: When you

say right now, what do you mean by that?

WILLIAM SULLIVAN: Well, the reason we want to do it is the bedrooms are real small in the houses, and the bathrooms are real small, too.

CONSTANTINE ALEXANDER: Right.

WILLIAM SULLIVAN: And to have -- our son lives in Kansas.

CONSTANTINE ALEXANDER: Is he going to move in with you?

WILLIAM SULLIVAN: He comes to visit -- we want him to be able to come and visit, and he wouldn't be able to stay with us. There's just not enough room --

CONSTANTINE ALEXANDER: Let me, because the hour is getting late. Let me get to the nub of my problem. I looked at the plans and I saw on the second floor it was very nice space for the two people. Master bedroom, kitchen, living room. And the relief is all relating to the third floor.

You put the dormers and you're going to create a couple of bedrooms up there and I guess a bath as I recall. And you're doing that just for -- usually when we get requests for dormers like this, people have growing families and they need to have more space. Here you're looking to create, what I'm hearing, some guest room space for a son from Kansas who may come to visit you a couple times year.

WILLIAM SULLIVAN: He will come.

CONSTANTINE ALEXANDER: He's going to come but he is not going to live here.

WILLIAM SULLIVAN: No. He's not going to live here.

CONSTANTINE ALEXANDER: I'm a little troubled about why there's a hardship here. It's nice to have space for a visiting child.

WILLIAM SULLIVAN: The rooms are so small. There's no, there's no closet space.

The bathroom doesn't even have a shower, so I mean to -- for our well-being we need to do it -- we need to make it bigger on that floor and then -- you have grandchildren?

CONSTANTINE ALEXANDER: I have grandchildren, yes, I do.

WILLIAM SULLIVAN: You like to see them?

CONSTANTINE ALEXANDER: Yes. But that's not necessarily --

WILLIAM SULLIVAN: That's a hardship. If you don't get to see them, that's a hardship.

CONSTANTINE ALEXANDER: Fair enough.

BRENDAN SULLIVAN: Let me ask, who lives on the first floor? The family owns the house?

WILLIAM SULLIVAN: We own the house.

BRENDAN SULLIVAN: All right. So you own the house. Who lives in the first

floor?

WILLIAM SULLIVAN: We've owned the house for 60 years.

BRENDAN SULLIVAN: Who lives on the first floor?

WILLIAM SULLIVAN: Tenant.

BRENDAN SULLIVAN: And the second floor presently is --

WILLIAM SULLIVAN: Vacant.

BRENDAN SULLIVAN: Is vacant.

So to me it seems like it's a very typical two-family house that the second floor level would be a mirror image of the first floor.

WILLIAM SULLIVAN: Correct.

BRENDAN SULLIVAN: Which seems to have two bedrooms, living room, dining room, kitchen, and, you know, and, again, I think it's something that we all grew up in and survived without too much deep psychological damage.

Now, on the third floor is an attic space.

WILLIAM SULLIVAN: Correct.

BRENDAN SULLIVAN: What is up on the third floor?

WILLIAM SULLIVAN: Empty.

BRENDAN SULLIVAN: It's totally empty. Were there bedrooms up there?

WILLIAM SULLIVAN: No.

SCOTT KENTON: Unfinished, unheated. Just roughly studs. There's no staircase.

WILLIAM SULLIVAN: No staircase up there. That's why we're actually taking away one of the bedrooms to make a staircase. I mean --

BRENDAN SULLIVAN: And how old is the house, 1920?

WILLIAM SULLIVAN: No, 1902 isn't it?

SCOTT KENTON: I think it's a little

over 1920.

BRENDAN SULLIVAN: Are they mostly in the -- maybe '16, '17, 1916 somewhere like that. My thought is people have lived in those houses since all that time, probably raised five or six children and, again, you know, made do and it worked. As far as the dormers are concerned, I guess it may comply with the one of the -- two of the requirements coming up from the front not lining up with the front of the building, but then coming down from the peak. It fails that test. So is there any reason why.

SCOTT KENTON: I thought I may have misread those, and I thought we could be to the peak in terms of structural simplicity if we met the other ones, but I might be wrong on that count.

THOMAS SCOTT: If he meets the setbacks on the side, then he can go to the peak.

BRENDAN SULLIVAN: Then you go to the peak.

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: What the is the floor to ceiling on the third floor?

SCOTT KENTON: I think it's about nine foot, eight over -- eight and a half feet interior at the ridge. And that gives us a little bit of a pitch and then come down to the dormer and then there's a Section 3.0.

TAD HEUER: In your narrative you said I believe you could have a less attractive have dormer by right. How could you do that?

SCOTT KENTON: Well, I -- not that that should be a reason for granting anything. But of course --

TAD HEUER: I don't know how would you do that. You would be over FAR in relief.

SCOTT KENTON: I meant taking the five-foot headroom area only and creating a

long, you know, creating a long dormer at the five-foot headroom which I believe wouldn't increase any FAR. It wouldn't increase the square footage of the house, and it would not be within a setback so it would be conforming. It would be a -- it might not be -- I think the, this is an attractive addition actually to a very monolithic roof line.

TAD HEUER: Also on your plan are you nine-foot, nine or are you eleven-foot on the right side?

SCOTT KENTON: Yeah, good point. That is incorrect. We -- our survey which came in after the drawing shows it a eleven-foot right side yard, and our 9.9 or nine-foot, nine is incorrect. We have an existing of eleven. So we have more than what we've indicated.

BRENDAN SULLIVAN: Okay. Anything else to add at this point?

SCOTT KENTON: No.

BARBARA SULLIVAN: We did have the letters from the neighbors.

WILLIAM SULLIVAN: We have letters from all the abutters and --

BRENDAN SULLIVAN: Are those in the file?

WILLIAM SULLIVAN: Pardon me?

BRENDAN SULLIVAN: I didn't see any in the file. Oh, I'm sorry, there are some, yes.

WILLIAM SULLIVAN: There are a bunch of them.

BRENDAN SULLIVAN: Okay, let me open it to public comment.

Is there anybody here who would like to speak on the matter of 28 South Normandy.

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence. I have reviewed the drawing for the two-family house

28 South Normandy and I support this proposal. I have no objection to the proposed dormer. Bernie Regan, 18 South Normandy.

WILLIAM SULLIVAN: Mr. Regan. The ex-fire chief's wife.

BRENDAN SULLIVAN: Yes. Well, it's Bernice, that's right.

WILLIAM SULLIVAN: Yeah.

BRENDAN SULLIVAN: There is correspondence. I've reviewed the drawings and I support this proposal. Margaret Flaherty at 32 South Normandy.

Correspondence from Rita Quinby at 29 South Normandy in support.

Correspondence from Harris at 23 South Normandy.

There is correspondence -- is this Doug Brennan -- Dan Brennan 45 South Normandy.

Correspondence from 38 South Normandy.

Correspondence in support from Danica

Mara, M-a-r-a 23 South Normandy.

And correspondence from Robert Eddy, E-d-d-y at 17 Normandy Avenue in support of the proposal.

Okay. Let me close the public comment part.

Anything else to add?

SCOTT KENTON: No.

BRENDAN SULLIVAN: All right. Let me close the presentation part.

CONSTANTINE ALEXANDER: Well, I feel like the Grinch who stole Christmas. Just as in the prior case I would like to grant relief. I'm stuck on the fact that this is a seriously non-conforming house. Your FAR is at 0.84 in a 0.5 district. That's only 50 percent more than what's permitted. And what you want to do is to create space for visitors, family visitors to be sure. I don't know how frequently they're going to come and use that space, but the structure

will be left even more non-conforming than it was before. And down the road it will be more heavily used. The property will be more used after you move on with all these extra bedrooms. I have a lot of problems getting to yes. And I feel badly about it, but I'm not sure I can support. I'm willing to be persuaded by my fellow members, but I'm not sure I can support relief.

BRENDAN SULLIVAN: Mr. Scott.

THOMAS SCOTT: So the second floor is being altered and you're adding -- you're basically subtracting a bedroom at the second floor level and you're adding two at the upper level.

WILLIAM SULLIVAN: We're adding one extra bedroom.

THOMAS SCOTT: Net one bedroom.

WILLIAM SULLIVAN: And a bath.

THOMAS SCOTT: And your FAR increase is what?

CONSTANTINE ALEXANDER: It goes to -- they're right now, Tom, at 0.84 and they'll go to 0.875 according to their dimensional form. It's not a great increase in FAR but it is an increase.

SCOTT KENTON: If I may point out it's partially due to the fact that the basement is over seven feet and contributes almost 900 square feet to the FAR. It's an unfinished space there.

TAD HEUER: Without the basement what would your FAR be?

SCOTT KENTON: I think it would be over 0.5 for sure. It might be a 0.64, this sort of thing. It would be a net decrease if it weren't there, and we then added the 180 odd square feet. It would still be over 0.5.

CONSTANTINE ALEXANDER: Did you ever think of converting some of the basement space into a bedroom or two and not -- if it's over seven feet now, using some of that

bedroom space.

BARBARA SULLIVAN: It's wet.

WILLIAM SULLIVAN: It's damp down there.

CONSTANTINE ALEXANDER: What's that?

BARBARA SULLIVAN: There's a sum pump. It's wet.

THOMAS SCOTT: Did the existing house have a front porches at one time, were they enclosed?

WILLIAM SULLIVAN: No.

THOMAS SCOTT: No?

WILLIAM SULLIVAN: No.

THOMAS SCOTT: It was always like that.

WILLIAM SULLIVAN: It was always like that since we bought it in 1950.

THOMAS SCOTT: Oh, okay.

WILLIAM SULLIVAN: And it was like that when grew I grew up there.

THOMAS SCOTT: I guess I'm kind of on the fence, but I'm -- I don't know, I'll wait to hear what the other Board members say.

TIMOTHY HUGHES: I'm not going to help you.

CONSTANTINE ALEXANDER: Sure you will.

BRENDAN SULLIVAN: Mr. Hughes.

TIMOTHY HUGHES: You know, I have to say I'm on the fence, too, but I really think that in the neighborhood it could handle it. So I'd be willing to vote for it.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: Again, it's one of those situations where you look at it objectively and you say what's the big deal in one sense, but in the other sense when you look at the standards that you have to meet in order to make it a Variance, we're not design review, we're not saying this is not so bad for what's being asked and could you live with it?

We're looking at the hardship standard and the hardship has to be the soil, shape, topography of the lot, and it can't be personal to the homeowner. And, you know, we stretch the personal to the homeowner every once in a while as Gus mentioned, and we talk about growing families. I personally don't like to go there because I think that the integrity of the structure is long term and the growth of the family is short term. Family members move and the structure stays the way it is. So, I guess I am somewhat troubled by the increase in the fact that it would be used for certainly making the house more usable and, you know, more enjoyable, but usability, enjoyability aren't necessarily hardships in the law. Maybe they should be. And in a lot of cases I kind of wish they were. But I'm still having a difficult time getting there particularly because the lot is already over FAR. And

even at this point even if you took the basement out of it, you're still over FAR. So --

SCOTT KENTON: May I ask whether it would have any impact if we were to agree to what Zoning or physical changes were necessary to eliminate the basement from gross square footage?

TAD HEUER: If you were to pour the basement or something?

SCOTT KENTON: Or something of that nature. Eliminate it from potentially being future living space might save some of the water issues.

CONSTANTINE ALEXANDER: How much is the basement?

SCOTT KENTON: I think it's almost 900 total.

CONSTANTINE ALEXANDER: And that building itself is how much FAR -- GFA?

BRENDAN SULLIVAN: 4036.

CONSTANTINE ALEXANDER: So it's about 20 percent of the GFA is the basement that's you say not usable because it's damp?

BARBARA SULLIVAN: It's got a sum pump and it's wet. It's not --

WILLIAM SULLIVAN: There's pipes in the ceiling from the, you know --

BARBARA SULLIVAN: It's an old basement.

WILLIAM SULLIVAN: Yeah, that whole area it's just all clay.

THOMAS SCOTT: You know, there are many other buildings in your neighborhood that have three bedrooms. Do you know if there are other apartments or how many other --

WILLIAM SULLIVAN: There's other dormers.

THOMAS SCOTT: Yes. I am saying are there other three-bedroom units like in your neighborhood? Because right now the house

is basically two, two-bedroom units, correct?

WILLIAM SULLIVAN: Correct.

THOMAS SCOTT: So this kind of adds to the stock of Cambridge by having a three-bedroom unit which, you know, could be enticing for a family.

TAD HEUER: A growing family.

WILLIAM SULLIVAN: I just know that there's -- I know there is a just recently as last year a dormer was put on Griswold Street which is the next street over if you're familiar with the area, almost the exact same thing that what we're doing.

BARBARA SULLIVAN: In order to make the bathroom -- in order to put a shower in the bathroom, we're going to probably have to eliminate the second bedroom if we stay within the confines of the second floor.

BRENDAN SULLIVAN: But those are typical two-family homes that you're saying

that in the existing bathroom on the second floor there was no shower?

BARBARA SULLIVAN: There's a tub. Just a tub, no shower. It's an old --

SCOTT KENTON: It's by the window.

WILLIAM SULLIVAN: It's a claw foot tub.

BRENDAN SULLIVAN: So why can't you put a five-foot tub in there?

BARBARA SULLIVAN: You mean take the tub out and put just the shower in.

BRENDAN SULLIVAN: Yes.

BARBARA SULLIVAN: You couldn't have the shower and a bathtub.

BRENDAN SULLIVAN: Why not?

BARBARA SULLIVAN: The bathroom is five by eight.

BRENDAN SULLIVAN: That's normal. That's a normal bathtub.

BARBARA SULLIVAN: To put a tub and -- oh, you mean get rid of the footed tub,

yeah, we could do that.

WILLIAM SULLIVAN: We wanted to kind of keep the footed tub, really.

BRENDAN SULLIVAN: Well, so then you put in an after thought shower. You know, I mean, at some point there's -- but I mean a five by eight bathroom is very typical in those two-family homes. And they're, my bathroom in my house is five by eight. Sometimes it's big enough and other times it's not big enough. But you cope. I mean, it's just, you know.

SCOTT KENTON: I think what we really tried to do here is we tried to essentially add a bedroom and we have to lose a bedroom to add a bedroom. And if it was really a matter of just one more bedroom that we could sort of magically get into without eliminating a bedroom on the second floor, we could situate the middle of the building. So it's, you know, you want to do -- you want to

do the expansion and you want to make it worthwhile in the process and that's what we ended up with. Where you actually compressed everything a fair amount to try to make it work.

BRENDAN SULLIVAN: One of the thoughts that keeps in the back of my mind if granted we've had one, two, three in the past where people were moving back to the family homes, we gave them dormers, we gave them expansions, we gave them decks, and because they were moving back to the family home. And, again, not that your presentation, I'm not calling that into question.

TAD HEUER: We allowed somebody 900 square feet to raise their roof.

BRENDAN SULLIVAN: And then they get the relief and then the next thing they go and do the work and a for sale signs goes up and they condo it. And I'm just not as sure that that's not what's going to happen here.

CONSTANTINE ALEXANDER: Let me just, if I may, one further thought, I mean --

WILLIAM SULLIVAN: I've kept the house for 60 years.

CONSTANTINE ALEXANDER: You're going to move on, though, at some point.

WILLIAM SULLIVAN: At some point, yeah, I mean -- yeah.

BRENDAN SULLIVAN: And then the house remains, that's where we are.

CONSTANTINE ALEXANDER: Part of the big problem they have is they've got a lot of wasted GFA because of the basement that's not usable. And we've taken that into account in the past. And when we've given Variances for -- even though they're, there are FAR problems, if you take out the basement, I think your rough calculation is you're at 0.68.

TIMOTHY HUGHES: It would be 0.65 and it would go to 0.69.

CONSTANTINE ALEXANDER: In a 0.6 district.

TAD HEUER: In a 0.5 district.

CONSTANTINE ALEXANDER: Is it 0.5?

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: I'm wondering whether there is another -- I mean, so I'm a little bit more sympathetic to the relief. Maybe you're asking for too much relief. What about just adding one bedroom on the third floor and that gives you your bedroom for your visiting family. And we're not left with as much of a variation. This is just my thought off the top of my head. And I think to my mind if you cut back the amount of relief, the dormers you want, three dormers is a lot for this structure and you take into account the basement has got a lot of unusable GFA. I think I might, I could get closer to getting favorable relief. That's just me. Other members don't buy that, then

don't waste your time.

WILLIAM SULLIVAN: Okay, could
be --

BARBARA SULLIVAN: We'd be
amendable to that.

WILLIAM SULLIVAN: We'd be
amendable to that.

TIMOTHY HUGHES: How would you do
your staircase if you were going to do that?
Have you figured it out?

WILLIAM SULLIVAN: Don't you think
that one dormer on the one side of the house
would look really strange?

CONSTANTINE ALEXANDER: A lot of
houses --

TIMOTHY HUGHES: We see it all the
time.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: The house on
Griswold Street that you reference has it.

WILLIAM SULLIVAN: They have two,

though. They have two dormers on that side.

TIMOTHY HUGHES: You need headroom for a bathroom. You need headroom for a bedroom, and depending where the staircase comes up, you need headroom for that, too. So I can see where the number three comes from.

SCOTT KENTON: Yeah, the bathroom definitely and then the --

TIMOTHY HUGHES: And it's easier to understand there than it is the Holy Trinity, but what do I know, I'm just a carpenter.

BRENDAN SULLIVAN: I think the three dormers to me is a bit much and quite unsightly.

SCOTT KENTON: Really, it's the two on one side is -- would you say the one on the one side is more unsightly?

BRENDAN SULLIVAN: I think you can get to where you want, which is another bedroom and bathroom upstairs, with one

dormer. And you have sufficient headroom up there to accommodate all of that.

The second bedroom, I don't necessarily see the need for the second bedroom on the third floor. There's already a bedroom down on the second level. And, again, those are very typical two-family units; first floor, second floor are mirror images of each other. And someone lives down on the first floor very nicely. I just think that the -- to me the dormers are a bit of an overkill. So that's my thought on it.

SCOTT KENTON: So if we wanted to just trying to, you know, design something on the fly but not to present it right now, but if we went with the one dormer on one side, I think we would be talking about 12 by roughly six -- basically the bathroom as the dormer, as the additional FAR, and I think it adds roughly 12 by 60 square feet which is less than half of what's being proposed.

BRENDAN SULLIVAN: Right.

TIMOTHY HUGHES: So you need to ask us for a continuance.

CONSTANTINE ALEXANDER: You have to continue the case.

SCOTT KENTON: I'm trying to get a sense of --

TIMOTHY HUGHES: And redesign.

SCOTT KENTON: I think we would probably be agreeable to redefine and redesign and re-present.

BRENDAN SULLIVAN: Okay.

Sean, other than July 26th?

SEAN O'GRADY: You are out to August 23rd.

BRENDAN SULLIVAN: Okay, August 23rd.

CONSTANTINE ALEXANDER: Does that give you enough time to redesign?

WILLIAM SULLIVAN: I mean, we're not going to have any place to go because our

house is for sale right now.

CONSTANTINE ALEXANDER: You mean the house you're living in the suburbs, not the Cambridge house?

WILLIAM SULLIVAN: Right.

CONSTANTINE ALEXANDER: Why can't you move into the house right now without the work being done?

BARBARA SULLIVAN: We'll make it work.

BRENDAN SULLIVAN: All right. Let me make a motion then to continue this matter until August 23, 2012, at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date and time. Also that the sign be maintained as per the requirements of the Ordinance which is at least 14 days prior to the August 23rd hearing, and that any changes to the petition and any new drawings be in the file by five p.m. on the Monday prior to the

August 23rd hearing, and that any changes also be reflective of changes in the dimensional form.

Anything else?

CONSTANTINE ALEXANDER: No, but I want to just reiterate because you heard the people from Griswold Street, make sure you change the sign and keep it up because we won't hear the case on the August 23rd. Take magic marker and change the date and change the time that you have there right now.

BARBARA SULLIVAN: Okay.

WILLIAM SULLIVAN: Okay.

BRENDAN SULLIVAN: All those in favor of granting the continuance.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: And also the Petitioner sign the waiver of the statutory

requirement for the hearing.

(12:05 a.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case No. 10280, 7 Waterhouse Street.

LAURA RUSHFELDT: Hello.

TAD HEUER: We're expecting some really nice designs here.

CONSTANTINE ALEXANDER: Tom more than the rest of us.

LAURA RUSHFELDT: I'm Laura Rushfeldt, R-u-s-h-f-e-l-d-t.

PAUL GROSS: Paul Gross, G-r-o-s-s.

LAURA RUSHFELDT: And we're here representing the owners, Moshe and Michal Safdie from Safdie Architects. Seven Waterhouse was originally build in 1753. It's on Cambridge Common, a very prominent

location. And Michael and Moshe bought the house in 1983 and it had been abandoned essentially. It was owned by Harvard University but no one had lived in it for more than two years. And when they moved in, they did an extensive renovation and addition to the back portion.

Prior owners had done a large garage addition which added 40 percent to the FAR which meant that, you know, now that they need a Variance to do basically anything.

TAD HEUER: Is that garage addition to what's referred to as the 1952 Variance carport.

LAURA RUSHFELDT: No. The 1952 was just a carport, like a roof with kind of poles.

TAD HEUER: Right.

LAURA RUSHFELDT: And the garage was added just a few years before they bought the house by previous owners. It was added in

1980.

TAD HEUER: And it must have required Zoning relief but there's --

LAURA RUSHFELDT: There's no record.

TAD HEUER: -- no record.

LAURA RUSHFELDT: It seems to have been done as of right from anything we can tell in the history, the Zoning history.

TAD HEUER: On to a zero lot --

LAURA RUSHFELDT: This used to be in a C District, and the garage was a setback of three-foot, six. So there's a possibility that there might have been some way that they did the garage as of right, but there's no records.

TAD HEUER: Is there a Building Permit? It couldn't have really been as of right if there's no Building Permit.

LAURA RUSHFELDT: Harvard owned the house then so we don't really know. So we

don't ask too many questions.

The nature of the proposal now is that they've lived in the house for over 30 years and, again, it's in need of a kind of a facelift and renovation work to be done to the historic portion or to keep up the historic character of the house. And also the 1983 renovation is in need of some repair and not performing very well environmentally.

So this is a basic schematic of the proposal. So we have here the historic portion of the house. The garage since 1980 and the historic carriage house which was relocated numerous times on the property, but has been maintained also by the Sadfies. The current proposal is one, is to add the elevator, which we've located into the rear inner corner of the historic portion. Since the house is over 200 years old -- or my math is fuzzy this late at night, but since the house is quite old, it's pretty infusible to

go in and insert the elevator anywhere in the interior structure. The head heights are seven feet on all the floors, and all the structures very old. The basement, actually part of the basement is supported by a tree which was cut and the bark was shorn off and it was used as a support in the basement. So some of the portions, the whole basement is fieldstone, just dry stacked, and we're dealing with some very, very historic rudimentary construction in some portions of the house. And because of that there's not really any feasible way to add an elevator which is needed by the Safdies. One, because their mother is now going to be living in the house part time. And two, looking to the future for them to be able to stay in the house that they've lived in for 30 years as they --

TAD HEUER: There's no way to put it on the our side?

LAURA RUSHFELDT: The other side is

visible from the public way, and actually doesn't have the same exterior L which would shield it from the public way and it would -- it would be more difficult to connect it to all the floors. Because the third floor dormer doesn't come all the way to the other side.

CONSTANTINE ALEXANDER: Is there a third floor?

LAURA RUSHFELDT: There is. The third floor is the master bedroom and bathroom. It's -- it has an existing gable dormer right now. So the proposal just replaces that gable dormer with a shed dormer in order to reach it out to engage with the elevator. So the minor additions in area are the footprint of the elevator which I think is 29 square feet. The addition of the dormer in order to engage at that elevator so it's not this awkward piece sticking out unattached. And then a slight realignment

in the living room which is just about a foot and a half that -- because we'll be taking out the existing crawl space and putting in a full foundation so they kind of want a clean slate to get away from all of that old.

TAD HEUER: Unclean slate.

LAURA RUSHFELDT: Unclean slate exactly.

TAD HEUER: Literally.

LAURA RUSHFELDT: You can see the roof plan. The new structure's going to be glass and aluminum with some steel reinforcing engineered stone with insulated panels in the middle portion. The idea is that we want to get more light into the space since the house opens up -- this is north. The house opens up to the north, and it's on the edge of its Zoning district. This is a very tall six or seven-story brick apartment building that abuts the property that has basically has a zero setback lines similar to

us, and it means that the property gets essentially no sun into the house for much of the year in the afternoon since so much of it is opening up to the north. And we can't make any changes on the east, west, or south facade because of historic protections and because of our setback violations.

CONSTANTINE ALEXANDER: So from the point of view on the street no one will know that any of this stuff is going on?

LAURA RUSHFELDT: Correct. We already have a Certificate of Non-Applicability from the Historical Commission.

CONSTANTINE ALEXANDER: On that basis that it would not be visible from the public way.

LAURA RUSHFELDT: Exactly.

So this volume, where this volume sits currently is the living room. The idea is that we will tear it down. And when we

rebuild it, we're actually going to lower the profile of it. Right now it comes up to a double height space with a skylight that kind of cuts back and we're going to lower it up so that it just meets in plain and it actually reduces the volume of this living room.

CONSTANTINE ALEXANDER: I have to say the idea of adding an elevator to a building that was built in 1753 is jarring to me. But if you're telling me --

LAURA RUSHFELDT: Our structural engineers agreed.

CONSTANTINE ALEXANDER: What we're doing to wonderful building, it will not be at all observable from the street.

LAURA RUSHFELDT: That's correct. And we're going to clad it to match the existing cladding which is the nice ship grey, clapboard siding.

We have some elevations that show that. So this is the existing historic south

facade. And part of the work is going to be to renovate all of the existing shutters, shingles, siding, and full paint and updating all of the, all of the parts that are visible.

Here you can see the profile of the new piece. So the current -- the current design comes up and then comes up about to here and then back down. And there's skylights in there, so it actually comes up higher, there's almost a more visible. Neither are visible from the public way, but if you stood on the side, you could see the current condition more than you can see the new condition.

So here you can see that the new profile, and this is the glass facade that's coming up and over.

TAD HEUER: And what's your cladding on the addition?

LAURA RUSHFELDT: Here?

TAD HEUER: There or --

LAURA RUSHFELDT: All of the solid portions are the grey clapboard siding to match the existing house.

TAD HEUER: Okay.

LAURA RUSHFELDT: All the parts that aren't glazed. And then that one part that I pointed out, that's the insulated panels, will be just a grey metal panel.

TAD HEUER: Okay.

LAURA RUSHFELDT: Simple kind of greenhouse glass. The glass is all laminated, high performing glass, and we're going to be doing --

PAUL GROSS: (Inaudible).

LAURA RUSHFELDT: -- and also radiant heating and all like new energy systems throughout so it will kind of replace the poor performance of the existing living room. And that's basically -- we have all of our numbers.

So the previous additions added over

40 percent area. Our current addition will add only four percent, which is mostly in the dormer and in the actual footprints of the elevator itself. And we're going from 0.45 point FAR to 0.47. So we're still under the allowable site FAR because we're in a 0.5 district, but because of that 25 percent addition is the reason that we need to seek the FAR relief.

CONSTANTINE ALEXANDER: Your issues are only setbacks in other words? Zoning issues, right?

LAURA RUSHFELDT: Yeah, because we're doing an addition to a non-conforming structure, we would need to get relief in any case. But because that addition involves a structure that's had more than 25 percent of its GFA added over its history since it first became non-conforming, we need a Variance. And it first became non-conforming the minute Zoning law was invented because it doesn't

have any setbacks.

TAD HEUER: Is there an issue with the dormer guidelines because you're non-conforming?

LAURA RUSHFELDT: Sorry?

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: So the city has dormer guidelines and usually they come into effect when you're adding FAR because, as you heard in the previous case, their FAR was going up because they wanted to add some dormers. And to the extent that that's true, the dormer guidelines come into effect and the dormer guidelines talk about no more than 15 feet worth of dormer on any given roof. My question is more for inspectional perhaps is, does that provision also come into play; i.e., do we have jurisdiction over dormers if the dormer itself is not going over FAR, but they're here on a 25 percent provision of 8.22?

SEAN O'GRADY: In order to get within the 25 percent you have to have a conforming addition and the dormer itself if I'm not mistaken is in the side setback?

LAURA RUSHFELDT: Only the portion that's covering the elevator, which is what we're here seeking for.

SEAN O'GRADY: So, yes, there's the two issues. There's the invasion of the setback, and there's the over the 25 percent. So they go to three.

TAD HEUER: Right. And I guess my question is does that trigger the dormer guidelines of the 15 feet requirement you would have to make a conclusion that we're varying from the requirement?

SEAN O'GRADY: Yes, you would.

LAURA RUSHFELDT: Here's the portion of the dormer that's within the side yard setback. So this was the extent of the elevator. And we're just capturing the

elevator within the form to create a cleaner aesthetic so we don't have multiple new volumes since we already have the dormer in the Zoning in any case we figured.

TAD HEUER: You have the dormer in the zone, but are you expanding your massing?

LAURA RUSHFELDT: We are.

TAD HEUER: By going up or out or both?

LAURA RUSHFELDT: We're going a little bit longer in this direction and slightly out.

BRENDAN SULLIVAN: Any other questions?

THOMAS SCOTT: It's a shed dormer?

LAURA RUSHFELDT: Uh-huh.

THOMAS SCOTT: As opposed to what was there before?

LAURA RUSHFELDT: It was a gable dormer previously.

THOMAS SCOTT: A gable dormer?

So go back to the elevations. So with the elevator -- show where's the elevator.

LAURA RUSHFELDT: This is the extent the elevator right here. We're doing the minimal size elevator to minimize the impact which is three-foot by four-foot. And the elevator is on the side that abuts the driveway of the abutter. And the abutter is a non-profit organization.

CONSTANTINE ALEXANDER: You're going from a gable dormer to a shed dormer because you need the space?

LAURA RUSHFELDT: Then we can incorporate the elevator within the volume of the dormer.

CONSTANTINE ALEXANDER: Got it.

PAUL GROSS: I don't know if this helps explain it.

LAURA RUSHFELDT: Here you can see the existing dormer, right here. So then the dormer will be here.

PAUL GROSS: The elevator will be tucked back in that corner.

LAURA RUSHFELDT: This is the volume that we're removing and replacing with the glass, and so the facade will come up and that will create the front face of the dormer, opening it up to the garden.

TAD HEUER: And is the reason you can't see if from the street so if you're standing in front of Mercy Corps. and looking through their driveway, is that because there's an eight-foot fence there?

LAURA RUSHFELDT: If you're standing here you're on private property.

TAD HEUER: No, no, no. I'm talking about standing in front of Mercy Corps. on the street and looking across the hedges that run in front of Mercy Corps. in over this driveway and into this. The only reason I can't see it is because that fence is here. If that fence weren't there, there's an angle I think

where I'd be able to see the rear.

LAURA RUSHFELDT: This structure here? You can see a little bit of the trellis.

TAD HEUER: Where's your site plan?

LAURA RUSHFELDT: Right here. Standing here, this is Mercy Corps.

TAD HEUER: Right. And I'm saying --

LAURA RUSHFELDT: This is the demolition site plan.

TAD HEUER: Right. So there's no line that -- and this is that corner and that corner that let's me see anything that's constructed here?

LAURA RUSHFELDT: No.

TAD HEUER: Isn't that your line of demo there? Can't I see some of it?

LAURA RUSHFELDT: Yes, but this part's just a single story.

CONSTANTINE ALEXANDER: That's what

the Historical Commission found obviously.

TAD HEUER: Right, I'm just curious.

CONSTANTINE ALEXANDER: No, no, no, I agree with you.

TAD HEUER: I think it's because there's a fence there and you can't see it from the street because the fence blocks it.

LAURA RUSHFELDT: This is the highest point of the ridge here so it gets obscured.

TAD HEUER: But there's an infinite point at which I can see across on straight lines if nothing is obstructing me. It's a lesser question than what I think you're answering.

LAURA RUSHFELDT: Yeah, there's probably a theoretical point where you can see it if you cut down every tree and took the fence down.

TAD HEUER: That's my question.

PAUL GROSS: That's on top of the

elevator, the original existing line.

LAURA RUSHFELDT: It's within the depth of the existing structure by over ten feet, so it's just a very technical projection.

BRENDAN SULLIVAN: Anything else, Tom?

Gus?

Is there anybody here who would like to speak on the matter of 7 Waterhouse Street?

LAURA RUSHFELDT: We sent out a mailer to all of our abutters and abutters to abutters, and we received a couple of responses. This is the mailer that was sent if you're curious, and we received a couple phone calls from abutters and also this letter of support from Susan Ragon. It doesn't list her address. She lists a PO Box, but she was one of the people that received it. So she was either an abutter or an abutter of an abutter.

BRENDAN SULLIVAN: Okay. There is correspondence from Susan Ragon, R-a-g-o-n. (Reading) Dear Michal and Moshe: I am writing in response to your letter of May 23rd. Dear Neighbors: Regarding your renovation plans and application for a Variance, my husband Terry and I wanted you to know that we support your project and appreciate your thoughtfulness in reaching out to the community to let people know of your plans. The project looks like a wonderful addition to your home. So please let us know if we can be of any help. Any way of writing a letter or otherwise to express our support for your project. Kind personal regards, Susan Ragon, R-a-g-o-n.

TAD HEUER: And they're at 8 Follen Street which is one of the rear abutters.

LAURA RUSHFELDT: We contacted them to see if -- to make sure it was okay that was presented at the hearing today and they said

they would be happy to let us submit it.

BRENDAN SULLIVAN: Okay. And the Board also acknowledges the letter which went out from the Petitioner to the immediate neighborhood describing the project, and also wishing to provide any further information or explanation with their contact name and number.

So, and there's correspondence from the Cambridge Historical Commission. (Reading) Regarding case No. 10280, 7 Waterhouse Street. The property is located in the old Cambridge Historic District where exterior alterations visible from the public way are subject to review and approval. A Certificate of Non-Applicability was issued by the Historic Commission because the proposed elevator addition and dormer will not be visible from the public way.

LAURA RUSHFELDT: Can I just add we're going to be working with the Historic

Commission in the selection of shutter replacements and all the repairs to the siding and all of the things that will be visible.

BRENDAN SULLIVAN: Okay.

LAURA RUSHFELDT: They're well aware of the project at this point.

BRENDAN SULLIVAN: Let me close the public comment point.

Anything else to add to your presentation? Let me close that part.

LAURA RUSHFELDT: Oh, only one thing. Moshe wanted to apologize that he couldn't be here. He just boarded a flight an hour and a half ago, an international flight to go to a workshop that couldn't be rescheduled. So he asked please to for forgive him.

BRENDAN SULLIVAN: Okay.

Any questions?

CONSTANTINE ALEXANDER: No

questions.

THOMAS SCOTT: I'm good.

TAD HEUER: Can you speak to the hardship?

LAURA RUSHFELDT: The hardship is in part due that their mother will be moving in. Michal's mother will be moving in part time and she's currently physically handicapped and bound mostly to a walker or wheelchair. And also the fact that Mr. Safdie is 75 and not getting any younger, and they're trying to plan for the future regarding this. They can't place the elevator anywhere within the existing structure, although the GFA number appears high, a lot of that is due to the large three-car garage and separate unit that's above the studio. So the house itself actually quite modest once you're in the space with the low ceilings and the historic structure it's difficult to work with. So the only additions really are to accommodate

this elevator on each level, again, elevator as hardship.

TAD HEUER: You've heard the discussion we had five hours ago.

LAURA RUSHFELDT: Right, four or five hours ago.

PAUL GROSS: If we remember.

LAURA RUSHFELDT: Rings a bell.

BRENDAN SULLIVAN: There is violation of left side and right side setback; is that correct?

LAURA RUSHFELDT: Yeah, those are pre-existing.

BRENDAN SULLIVAN: And could the house physically, is it possible to pick up the house, reposition it on the lot, do the work without any relief from the Board?

LAURA RUSHFELDT: Sorry? What's the question? You mean is the lot wide enough to accommodate the house without --

BRENDAN SULLIVAN: Well, is the lot

of such a size that you could, if the house were situated differently --

LAURA RUSHFELDT: If the garage didn't exist, potentially but it would be a tight squeeze.

TAD HEUER: You could be doing it without moving the garage.

LAURA RUSHFELDT: We have a three-inch setback on this side and three-foot, six-inch setback from that side and solidly it's built through between those two sides.

CONSTANTINE ALEXANDER: What's the need for a three-car garage due to the circumstances?

LAURA RUSHFELDT: I have no idea. We can't take it down. Because we're in the historic district and the exterior changes are subject to review.

TAD HEUER: I bet Historic would love it if you take it down.

CONSTANTINE ALEXANDER: Yes, I don't think you would get opposition.

BRENDAN SULLIVAN: Well, I guess it's siting of the house on the light, too, which is -- makes it non-conforming which is an inherent hardship, because any expansion, addition would require some relief from the Board. You're citing section Article 8, Section 8.22C.

LAURA RUSHFELDT: Which is the 25 percent addition because the garage was already 40 percent over the original structure, the 1941 structure.

BRENDAN SULLIVAN: Okay. All right. Okay.

All right. Let me close the presentation part and Mr. Alexander your thoughts.

CONSTANTINE ALEXANDER: Well, I got a gulp a couple times to allow an elevator on a building of this age and to allow dormers

they don't comply with our dormer guidelines. That said, however, it won't -- the elevator won't be observable from the street nor will the dormer for that matter. I guess to make sure this building continues to live as a living place for people to live in, I guess we have to grant relief or should grant relief as requested. So with a lot of reluctance, but I'll vote in favor.

BRENDAN SULLIVAN: Okay, Mr. Scott.

THOMAS SCOTT: I have the same feelings as Gus. You know, I would vote in favor of the relief. You know, the dormer in the back is a little troublesome but, you know, I understand what's happening and you're trying to create some liveable space. I think the solarium in the back is interesting, but again you since you can't see any of these modifications from the street, I think it's all certainly acceptable.

BRENDAN SULLIVAN: Okay.

Mr. Hughes.

TIMOTHY HUGHES: Yes, I could go along with it.

BRENDAN SULLIVAN: All right.

Mr. Heuer.

TAD HEUER: I can't.

BRENDAN SULLIVAN: You what?

TAD HEUER: I can't.

BRENDAN SULLIVAN: Cannot. Okay.

Let me make a motion then to grant the relief requested to build the elevator in the setback and living room addition, expand the dormer as per the plans submitted, initialed by the Chair, and also the dimensional form which was submitted and made part of the relief being granted.

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

The Board finds that the existing house is non-conforming regarding the left side and right side setback, hence making the non-conforming nature of the house as one of a hardship to the Petitioner, and that it precludes any addition, modification, expansion of the building because of its non-conforming nature would require some relief from this Board.

The Board finds that in residence districts the Board may grant relief -- well, let's see. Is this correct now? Otherwise permitted in section, but not to the alteration (reading) provided any enlargement or alteration of a non-conforming structure is not in further violation of the dimensional requirements of Article 5. And it will not increase an area of volume by more than 25 percent.

The Board finds that the existing structure has been increased to by more than

25 since it first became non-conforming. So needs relief under 8.22.2.

SEAN O'GRADY: Three.

BRENDAN SULLIVAN: I'm sorry?
Three. Three, right.

CONSTANTINE ALEXANDER: It's a Variance.

BRENDAN SULLIVAN: Because it's a Variance.

The Board finds that the hardship is owing to the existing non-conforming nature of the house as previously stated.

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

Anything else to add to that? Anything to add?

All those in favor of granting the

Variance as per the application.

(Show of hands).

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes,
Scott.)

BRENDAN SULLIVAN: Dissenting
opinion?

TAD HEUER: For reasons stated in previous cases, the elevator being requested is as conceded by the applicant for a hardship personal to the applicant and not owing to the size, shape, topography, or soil conditions of the lot. The addition of the dormer exceeds the dormer guidelines and does not conform with the dormer guidelines as would be required for any grants for a Variance. There's no substantial hardship that meets the conditions set forth in Chapter 40-A for the granting of a Variance under Section 10 thereof. For those reasons I do not believe that the applicant has met the standards for

substantial hardship which would allow the Board to grant relief.

BRENDAN SULLIVAN: Okay. Granted.

LAURA RUSHFELDT: Thank you.

(12:30 a.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case No. 10281, 500R Green Street.

PATRICK BRITTON: Patrick Britton, owner of 500R Green Street. And I'm here because I'm looking to put a 15-foot dormer on my condo.

TAD HEUER: Have you spoken with your other condo owners?

PATRICK BRITTON: I have. I got their signatures on that paperwork there.

TAD HEUER: I wasn't clear. What side of the roof is it on? Is it on the side facing to the right if I'm facing the property?

PATRICK BRITTON: If you're on Green Street trying to look at the property through that building, it's to the right.

TAD HEUER: So it's overlooking the vacant lot next to the hexagonal?

PATRICK BRITTON: Yes. Which how did those buildings ever get put up there?

TAD HEUER: Good question.

CONSTANTINE ALEXANDER: Is the dormer visible -- it's not visible from Green Street certainly?

PATRICK BRITTON: It's not visible from any street.

TAD HEUER: And how close are you to your -- what's called that rear abutter?

PATRICK BRITTON: The Franklin Street neighbor?

TAD HEUER: Yes.

PATRICK BRITTON: Pretty close/ it's ten feet maybe, eight feet.

TAD HEUER: Okay.

PATRICK BRITTON: I didn't speak with them. And they're owned by Chiccarelli Real Estate.

CONSTANTINE ALEXANDER: And your dormer does not comply with the Dormer guidelines.

PATRICK BRITTON: Does not.

CONSTANTINE ALEXANDER: And why can't you comply with the dormer guidelines?

PATRICK BRITTON: So I can't bring it down from the ridge because the bottom of the ridge is seven-foot, four inches. So as far as ceiling height in that room, if I brought it over any further from the end wall, it would dramatically reduce the usefulness of that bedroom.

TAD HEUER: So the dormer is only to get benefits or to also get stair height?

PATRICK BRITTON: Stairwell as well. It's going to span the stairwell. I don't know if you guys have -- it expands the stairwell and one, most of one bedroom. And so it -- it currently has five-foot, six or five-foot five-inch headroom. And so this

dormer will -- and that's a full.

TAD HEUER: And your dormer is here?

PATRICK BRITTON: Correct.

TAD HEUER: And so how does this dormer help you get headroom, help to get there?

PATRICK BRITTON: Yeah.

TAD HEUER: What's your headroom is that the base of that stair trying to make your way up through the --

PATRICK BRITTON: Six, eight at the base, but at the low point of a few steps down is like five-five, five-six.

TAD HEUER: Okay.

PATRICK BRITTON: Literally it's --

TAD HEUER: Right.

BRENDAN SULLIVAN: So it's -- the chances are there's no CO.

TAD HEUER: Are we asking the question that I asked is how is this possibly a three-family?

BRENDAN SULLIVAN: Correct.

TAD HEUER: Sean?

SEAN O'GRADY: This is possibly a three-family. I actually went down and looked it up. I forget the particulars. There was a case on it by --

TAD HEUER: We subdivided the property in 1980s.

SEAN O'GRADY: Right.

TAD HEUER: From 500 front. And in doing so apparently made some conclusion that were implied conclusion that the structure in the rear was either being used as or was permissibly used as a three-family. And at that point the Variance legalized -- presuming -- I presume it was intended really to be legalizing the front building and the rear building was an after thought and it was trying to give its own lot.

SEAN O'GRADY: Yes, I wasn't relying on that, because we always say no.

TAD HEUER: Right.

SEAN O'GRADY: You have to ask for it and get granted just because it was there. But I used that as evidence for the fact that it had been a three-family at that time. It's in a zone that would allow a three-family so after ten years be gone it's cured.

BRENDAN SULLIVAN: Correct. But if there are code violations, I mean they could be grandfathered in I guess.

SEAN O'GRADY: Well, yes, you have a point there. Are there code violations?

BRENDAN SULLIVAN: Well, floor to ceiling height is six-foot, ten.

SEAN O'GRADY: We would only worry about egresses.

BRENDAN SULLIVAN: The egress is substandard. The whole thing is.

SEAN O'GRADY: That would be okay, too, as long as it existed and was liveable space. We would only test it -- it would

have to have kitchens, baths, and two means of egress that were acceptable at that time.

BRENDAN SULLIVAN: So basically you have two floors to your condo?

PATRICK BRITTON: Three.

BRENDAN SULLIVAN: You have three floors? So in your first floor --

PATRICK BRITTON: The first floor is a kitchen, living room area.

BRENDAN SULLIVAN: Okay, second floor is?

PATRICK BRITTON: A bathroom. I'm going to be using it as an office space. It's, it's eight-by-eight open room. It doesn't have like a wall or a --

BRENDAN SULLIVAN: This says unit one, unit two. So you occupy --

PATRICK BRITTON: Oh, no.

BRENDAN SULLIVAN: Right. That's what I'm saying. The unit that you live in --

PATRICK BRITTON: Has three floors but it starts on the second floor.

BRENDAN SULLIVAN: Right. Okay. And you're in unit three?

PATRICK BRITTON: Correct.

BRENDAN SULLIVAN: Okay. So basically you come up. You have a living room, dining room, kitchen.

PATRICK BRITTON: Uh-huh.

BRENDAN SULLIVAN: There's your party wall. And then on the third floor you have got a --

PATRICK BRITTON: It's that open space I was talking to.

BRENDAN SULLIVAN: And then the fourth floor you have two bedrooms.

PATRICK BRITTON: Correct.

BRENDAN SULLIVAN: And typical is this on one side and that on the other.

PATRICK BRITTON: Correct.

BRENDAN SULLIVAN: What you're

looking for now is a dormer.

THOMAS SCOTT: What's this setback, only about a foot or so?

PATRICK BRITTON: Yeah, just over a foot. It's really being driven by the 15-foot dimension of the stairwell.

BRENDAN SULLIVAN: And that's just to give headroom there. And the reason why the dormer guidelines calls for 1.1 foot six coming up the ridge and also coming in from the outside wall, and the reason why you can't do that is?

PATRICK BRITTON: I wouldn't be able to have closet space.

BRENDAN SULLIVAN: Which would be here?

PATRICK BRITTON: No, not that one, on the other side. Sorry. This space right here is driven by the headroom for the stairs. So any amount that would bring this back --

BRENDAN SULLIVAN: Okay, all right.

PATRICK BRITTON: Crunches that down to nothing.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Isn't that a worthy tradeoff for being around to walk around up there and you can't now. Wouldn't you rather be able to walk around and not have the space?

PATRICK BRITTON: If it turns out that's what the requirement is. I'm hoping for my fiancée and I to be able continue to share that room so we would hopefully could have two closets.

TIMOTHY HUGHES: You didn't promise her a closet, did you?

PATRICK BRITTON: I'll get a basket under the bed.

TIMOTHY HUGHES: Yes, you will.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter 500R Green Street.

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is no correspondence in the file.

You've spoken to your fellow condo owners? Obviously they received notice.

PATRICK BRITTON: I didn't get letters, but I spoke to five of the neighbors the immediate abutters just to make sure they were not going to show up here and say don't do that.

BRENDAN SULLIVAN: And the violation is front yard rear height.

CONSTANTINE ALEXANDER: FAR.

BRENDAN SULLIVAN: Well, the existing building is non-conforming.

TAD HEUER: Oh.

BRENDAN SULLIVAN: Ratio of usable open space. The building is sort of what it is. And it complies to the left side and the right side and that's just about it. So, and

also lot area for each dwelling unit is substandard. But again, it is what it is.

Okay, Mr. Alexander, your thoughts.

CONSTANTINE ALEXANDER: No thoughts.

BRENDAN SULLIVAN: Okay.

Tom.

THOMAS SCOTT: I mean, it doesn't comply to the dormer guidelines, but we just had another case before us that that one didn't comply either. Although that was a little different. Architecturally speaking that was a much larger addition. It was --

TAD HEUER: On a massive lot that actually has frontage.

THOMAS SCOTT: Yes. I can't see this dormer being any smaller to accomplish what you're trying to do. So we noticed that the headroom in those particular rooms at the peak was only six, ten which is really substandard for liveable space.

PATRICK BRITTON: My hope is that there's a flat part in the middle there about two feet wide, and so I believe up to the ridge is gonna be seven, four and so my hope is to take that out and provide better headroom in that area.

BRENDAN SULLIVAN: Okay.

THOMAS SCOTT: Okay.

BRENDAN SULLIVAN: Mr. Hughes.

TIMOTHY HUGHES: I don't see any other way.

BRENDAN SULLIVAN: Okay.

Mr. Heuer.

TAD HEUER: I don't think I've ever seen a case that's violated every single provision of the Ordinance, and when you --

TIMOTHY HUGHES: Well, no it's under 15 feet.

TAD HEUER: What?

TIMOTHY HUGHES: The dormer's 15 feet. It's not too long. That's the

guidelines.

TAD HEUER: That's not the Ordinance. I'm looking at the dimensional form. I don't think I've ever seen where every single dimension is being violated further. And I'm not sure I've ever seen the case, plus we're going over height which occurred several times. This Board is sacrosanct. They're all sacrosanct and need to be treated equally. I mean, I understand what you want to do. And except for width the dormer guidelines are being violated. It's a house that shouldn't exist on that piece of property, you know. There's no reason for that house to be there. The fact that it is there, yes, we live with it. It's also a four-story house and carved into condos. I still don't understand how it's a three family. The violations are so vast already that the thought of violating every single provision of the Ordinance to make it even

more non-conforming is very difficult for me. I mean, I guess where I'm coming down is that slanted roofs on New England houses have a function. That function is to prevent snow from accumulating on your roof and creating an ice dam. If that creates space underneath is really the byproduct, the farther that you don't want to have to shovel off your roof. The space leads people to want to use that space, but it wasn't designed to be usable space necessarily. It was designed for a function of that as a byproduct space that might be nearly usable. To make it fully usable you would need to enter what I think are proportions of the Zoning. You kind of get there. So yes, while it looks like two bedrooms and they're so close to being two bedroom-ish, kind of, my sense is that given the number of violations here, building should stay where it stands.

BRENDAN SULLIVAN: Okay. Let me

make a motion to grant the relief requested to create a dormer as per the plan submitted, initialed by the Chair, and the dimensional form which is part of the relief being granted and the submission.

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 from creating some much needed head space in an existing bedroom.

The Board finds that there is a five-foot existing, 58-inch clearance in the stairwell and that the presentation is at 50 percent of the current floor area is under five-foot ceiling heights.

The Board finds that the hardship is owing to the inherent nature, unusual nature of this particular house, and that the sloped roof combined and the unusually low ceilings

create a low ceiling condition which is code violation, and that this particular work will alleviate that situation to some extent.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance. And will allow the Petitioner to be able to use the property, the residence in a more practical manner.

All those in favor of granting the relief requested.

(Show of hands.)

BRENDAN SULLIVAN: Two in favor.

(Sullivan, Hughes.)

BRENDAN SULLIVAN: Those opposed?

(Show of hands.)

BRENDAN SULLIVAN: Three opposed.

Denied.

(Alexander, Heuer, Scott.)

CONSTANTINE ALEXANDER: For the record, Tad's reasons should be the reason we voted against it.

BRENDAN SULLIVAN: The dissenting will be incorporated as part of the dissenting comments would be incorporated as part of the vote.

PATRICK BRITTON: Is there any feedback or any?

TAD HEUER: You just got a really tough property to deal with. I mean, we see that stuff all the time. I don't think I've every seen it in three or four years that violates every single thing we've got something to work with. It's already over in everything, it makes it more over.

PATRICK BRITTON: Do you foresee any changes to that which would allow any changes to that design that would allow to reconsider it?

TAD HEUER: If you're going to

reconsider, you want to do it now. You can't under the rules --

CONSTANTINE ALEXANDER: This sounds harsh, but your problem is you need more space. You've got to move to a different place. This property just can't get increased with more space for the reasons Tad enumerated before. It's just too much. Our Zoning Law gets changed to make it more lenient, which is not going to happen, it's just doesn't. It's just the way that the law works.

PATRICK BRITTON: If the FAR were to change would that --

TAD HEUER: I don't think there's a way you can do it without the FAR unless you're doing just over the stairway.

PATRICK BRITTON: Or boxing in something on the second floor to eliminate floor area in order to have bedroom area.

TAD HEUER: I mean, it's possible.

I think you're still looking at going into your ridge to get it there. I still think you're going into the side wall.

PATRICK BRITTON: I mean, pull back from the side wall if that's --

TAD HEUER: I mean, to the extent that it literally came up, I don't know to the extent that it was simply stairs and that was it, maybe. But even then....

PATRICK BRITTON: It doesn't really get me where I need to be anyway.

(Whereupon, at 12:50 a.m., the
Board of Zoning Appeal
Adjourned.)

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C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
 BRISTOL, SS.**

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

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 9th day of July 2012.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
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