

BOARD OF ZONING APPEAL

FOR THE

CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, FEBRUARY 7, 2013

7:05 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Timothy Hughes, Acting Chair

Brendan Sullivan, Member

Douglas Myers, Member

Slater Anderson, Member

Andrea A. Hickey, Associate, Member

Sean O' Grady, Zoning Specialist

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P R O C E E D I N G S		
(7:05 p.m.)		

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case No. 10370, 998 Memorial Drive.

Is there anyone here on that? Come forward, please.

RICHARD BURCHILL: How you doing?

TIMOTHY HUGHES: Good. Have a seat. Identify yourself for the record.

RICHARD BURCHILL: Richard Burchill.

TIMOTHY HUGHES: Okay. And you reside at 998 Memorial Drive?

RICHARD BURCHILL: I'm actually the builder, friends of William Borden.

CONSTANTINE ALEXANDER: Can you give an address, too, please.

RICHARD BURCHILL: 105 Flames Road in Marshfield.

TIMOTHY HUGHES: Can you explain what you want us to do here?

RICHARD BURCHILL: The Bordens asked me to come out -- I did a pizza oven for them in a house I built for them in Scituate and they moved to Cambridge and would like to take the pizza oven and bring it up to Cambridge. The house, it's a two-unit condominium complex right on -- I'm not too familiar with the area, off of Memorial Drive. And on the right rear corner of house they just want to bump it out, bump it out two feet, a two-by-three section. If you were standing on Memorial Drive and you're actually looking down the alleyway, you wouldn't see anything. You know, the only thing, because the house is -- it's close quarters in there, and the only -- probably the most inexpensive way to put this pizza oven in the house would be to steal some room from the interior and use this little bump out that they're proposing. So it got signed off by, I think it was the Historical Department.

It didn't have any affect from the street, and it's pretty simple. The only -- I think the only person who would even notice the little bump out would be the neighbor to the right who I believe is perfectly fine with it.

TIMOTHY HUGHES: According to the dimensional form the net increase in gross floor area is eight square feet. Does that mean the two-by-six extension, is that an interior dimension?

RICHARD BURCHILL: Well, it's two foot by three feet coming outside the existing footprint, but on the inside --

TIMOTHY HUGHES: Actually 12 square feet according to this document.

RICHARD BURCHILL: On the inside? Yeah, 12. It would be six feet. Well, it's actually two feet --

TIMOTHY HUGHES: Oh, it goes up two stories?

RICHARD BURCHILL: It goes into the

second floor but actually bounces back in and comes back in and goes through a closet. It's a conventional heating vent.

TIMOTHY HUGHES: That's where the vent is?

RICHARD BURCHILL: Yeah.

TIMOTHY HUGHES: So I see where the 12 comes from if it goes up to the second floor.

RICHARD BURCHILL: Yes.

TIMOTHY HUGHES: Okay.

Are there any questions?

BRENDAN SULLIVAN: What is the pizza oven to be used for other than the obvious?

RICHARD BURCHILL: That's it. Basically it's a -- you know, you go to your local restaurant with a wood burning fire, and it's basically, it looks like a big, like a ladybug. You put the pizza in at the head of the ladybug and the body of the ladybug is an actual fire chamber. It's just like

a -- it's a fireplace. It's the same -- everything as the -- no different than a fireplace, but you put a pizza in it.

BRENDAN SULLIVAN: And the exhaust and the impact of fumes in the neighborhood?

RICHARD BURCHILL: It goes through the roof and, you know, the ventilation will be -- it's a double wall stainless steel vent.

BRENDAN SULLIVAN: Yes, it's a B vent.

RICHARD BURCHILL: And it would conform to the code. The codes required in Massachusetts. It would go through the roof just like, you know, a fireplace vent.

BRENDAN SULLIVAN: I live three blocks away from a pizza place and I can smell theirs all the time. And I think that the --

TIMOTHY HUGHES: Some people would say that's good.

BRENDAN SULLIVAN: Yeah, well, if

you're hungry.

RICHARD BURCHILL: It would be -- actually, it would be wood smell. Exhaust from burning wood.

BRENDAN SULLIVAN: It would be like a Bertucci's?

RICHARD BURCHILL: Yeah. I mean a scaled down Bertucci's. And when the whole thing is done, you're just gonna see -- in the wall you'll see just the little like an orange slice, you know, where you actually put the pizza in.

BRENDAN SULLIVAN: And this is to be used consistently or occasionally?

RICHARD BURCHILL: When I did the one in Scituate, I thought it was going to be a glorified library shelf, but they used it and that's why they asked me to come up and use this one.

TIMOTHY HUGHES: Identify yourself for the stenographer, please.

WILL BORDEN: I'm the homeowner Will Borden, B-o-r-d-e-n.

TIMOTHY HUGHES: I don't know if you heard what his presentation was, but do you have any you want to say?

WILL BORDEN: No, it's just that if there any more questions about the use of the pizza oven. I mean it's wood burning. We tend to make pizzas on Sundays. It was a great family thing. Sometimes neighbors would come over. We're talking about making four or five pizzas in the evening. It wouldn't be like a pizzeria moved into the street, you know, and the smoke is just basic wood.

TIMOTHY HUGHES: Any further questions?

BRENDAN SULLIVAN: Well, no, just that I'm not convinced, but anyhow.

In walking the area and knowing the area very well, and close quarters and the

apartment buildings, I just feel that the odors are not going to dissipate and that the -- I think it would have not a pleasant impact I think on the neighborhood.

RICHARD BURCHILL: Well, I think it would be less of an impact than someone who is heating their house on the fireplace. In this economy people are heating their homes with their fireplaces so you'd have more of an impact on that situation than a Sunday pizza party.

BRENDAN SULLIVAN: I believe that's somewhat of an acceptable scent or odor.

WILL BORDEN: It's the exact same scent. It's wood.

BRENDAN SULLIVAN: Well, yes, but you've also got garlic and tomatoes and yaddah, yaddah, yaddah and on and on and on, food.

WILL BORDEN: It's not at that kind of volume that's going to create that kind of

odor.

RICHARD BURCHILL: It's the same as opening your --

WILL BORDEN: It's -- you know, we're a family of five people. So we make three or four pizzas.

RICHARD BURCHILL: It's the same as cooking dinner on your stove with the windows open and the garlic going out the side window. I mean, it's -- you know.

TIMOTHY HUGHES: Any other questions?

DOUGLAS MYERS: How often are you going to use this on average? How often have you used it in the course of the week?

WILL BORDEN: Once a week typically. It's like pizza Sunday was the family tradition.

RICHARD BURCHILL: I mean, it --

DOUGLAS MYERS: And are there any special measures to check the flow of odor as

opposed to -- obviously smoke is emitted obviously, but is there any special ventilation or exhaust with respect to the cooking?

RICHARD BURCHILL: It's vented just as a fireplace would be vented. Just a flat straight flue that goes up to the top. I mean, I have -- after we installed the one in his house in Scituate ten years ago, and it's just a great thing for the neighborhood. The kids -- everybody gets to come over. It's more of a social thing. The impact, probably running -- kids running down the street hanging out in his kitchen. As far as it's very, there's no different than a fireplace, the impact.

TIMOTHY HUGHES: Slater, any questions?

SLATER ANDERSON: Have you talked to your neighbors about this?

WILL BORDEN: Yes. And they like

the idea of having pizza.

TIMOTHY HUGHES: I don't think there are any letters in the file, but you've spoken to your neighbors?

WILL BORDEN: Yes.

TIMOTHY HUGHES: The ones most affected by this?

DOUGLAS MYERS: What's your neighborhood in Scituate like, a single-family home?

WILL BORDEN: Yes.

TIMOTHY HUGHES: Did you have to bump out the house in Scituate to put in a pizza oven?

RICHARD BURCHILL: It was part of the addition I built for them.

TIMOTHY HUGHES: I'm going to open it up to public testimony.

Is there anyone who wants to speak on case No. 10370, 998 Memorial Drive?

(No Response.)

TIMOTHY HUGHES: Not seeing anyone, I'll close public testimony.

Any further questions or comments from the Board?

SLATER ANDERSON: This can't be accomplished through the interior?

WILL BORDEN: The way the layout of the house was it would be hard. It's the whole dining area.

RICHARD BURCHILL: If you look at the floor plan, the whole kitchen area is to the rear. The fireplace that they have, it's working is to the front of the house. So if you were to retrofit it there, you would be just framing --

SLATER ANDERSON: Yes. No, I'm not thinking that. It's like obviously the chimney on the inside, not the outside. It's hard to tell from the plans where exactly it is.

RICHARD BURCHILL: In his house the

only area to go through to the second floor would be vented, basically soffited in his closet and it goes directly right through the roof. So it's kind of the most, you know, less impacting area in his footprint.

TIMOTHY HUGHES: Any more? No more comments?

Ready for a motion?

Personally I look at the situation not as a pizza oven but whether or not I would grant relief on the 12 square foot, you know, addition. And as far as I'm concerned, that's pretty -- that's a small kind of request for the neighborhood and for the situation that we're talking about. The fact that it's being used for a pizza oven, I have a little trouble establishing hardship in my mind. Can you speak to that? You know, we have a legal standard of hardship in a Variance case.

RICHARD BURCHILL: As far as the

layout of his property, he does have -- the building is adjoined by another family to the left. And if you look at the layout of where the staircases are, where the bedrooms are and bathrooms and the laundry, basically we're just trying to get it near the kitchen area. You know, because it's kind of -- going the other direction is just, it's just a -- as far as cost-wise, too, you know, it would be the least expensive for him, if you will, as far as construction. And in order for him to complete all the renovations that have been done in the past and now and wrap everything up, it's basically this is the last.

SLATER ANDERSON: This part of the house, has it been renovated recently?

WILL BORDEN: No. It was done by the owners before we moved in. Probably four years ago.

RICHARD BURCHILL: If you were to

look at the -- if you were to look at it from the outside, I mean, it's just going to be a continuation of the clapboard, same corner boards as existing. It's just a little mini shed.

SLATER ANDERSON: And you're just soffit on the second floor; is that right?

RICHARD BURCHILL: That's right. When we get from the first to the second, it will bump into the house.

SLATER ANDERSON: How big is this closet that you can't go into, the dimension on that?

RICHARD BURCHILL: The closet? Probably two feet deep by four feet wide. We're stealing maybe a foot by foot just for the actual, it's a six-inch tube.

SLATER ANDERSON: Okay.

TIMOTHY HUGHES: So these plans are accurate and this is what you would tie the future design to?

RICHARD BURCHILL: Yes.

TIMOTHY HUGHES: Because I'm going to initial these plans and tie the Variance relief to this plan.

RICHARD BURCHILL: Yes, that's right.

TIMOTHY HUGHES: And if there was any change, you would have to come back before the Board.

RICHARD BURCHILL: Okay.

TIMOTHY HUGHES: All right. I'm going to frame a motion.

The Board finds that -- the Board would move that a Variance be granted for the addition of 12 square feet and a bump out to house a pizza oven at 998 Memorial Drive.

The Board finds that a literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the Petitioner for the following reason:

The intended upgrade of the kitchen could not be accomplished within the present envelope of the building.

The hardship's owing to the shape of the lot and the location of the building on the lot which is in violation of setback requirements of the Zoning Ordinance which was instituted well after the construction and placement of this building on the lot.

Desirable relief may be granted without substantial detriment to the public good for the following reasons:

It's a modest 12 square foot addition, and it's not visible from any public way.

And relief may be granted without nullifying or substantially derogating from the intent and purpose of this Ordinance for the following reasons:

The addition does not further exacerbate any of the existing non-conforming setbacks of the building, and

the addition of 12 square feet is actually in a footprint of only six square foot and is de minimus in the opinion of the Chair.

All those in favor of granting the relief on this basis and the on the condition that this work be done in compliance with the plans as submitted and initialed by the Chair and dated by the Chair.

I'm going to go with 2/7/13. How does that sound?

All those in favor of granting the relief?

(Show of hands.)

(Hughes, Hickey.)

TIMOTHY HUGHES: All those opposed?

(Sullivan, Myers, Anderson.)

TIMOTHY HUGHES: It's three opposed. The motion doesn't carry. Sorry.

RICHARD BURCHILL: Thank you for your time.

* * * * *

(7:20 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear

case No. 10372, 7 Phillips Place.

Is there anyone here on this matter?
Please identify yourselves for the record.

JONATHAN AUSTIN: My name is
Jonathan Austin. I'm the architect for the
project.

LEVERING WHITE: I'm Levering
White. I'm with the Lincoln Institute of
Land Policy, the owner.

SLATER ANDERSON: Mr. Chair.

TIMOTHY HUGHES: Yes.

SLATER ANDERSON: I'd like to state
that in the past on one occasion in my
professional capacity I've done some work for
the Lincoln Land Institute probably more than
five years ago and have not -- don't currently
and have not worked for them on anything
recently. I have no issues I believe
foreseeing this. I don't know if the
applicant does with me here.

TIMOTHY HUGHES: So noted.

Do you have any problems with Slater sitting on this case?

LEVERING WHITE: No.

TIMOTHY HUGHES: Does anyone on the Board have a problem with that?

(No Response.)

TIMOTHY HUGHES: Okay, we're cool. That's for the record, by the way.

Why don't you present what you want to do.

JONATHAN AUSTIN: First off, I would like to submit an amended dimensional information form that resulted from a conversation we've had with Sean in the last day or so. The amendment is the result of a misunderstanding about what we're representing square footage for here. Specifically this evening we're here to request an addition to the building to accommodate a handicap lift, a wheelchair lift, to get to the front entrance of the

building. And we are considering other square footage elsewhere within the building but that's not the purpose of this application.

So what you see here is that the net increase in square footage that we are adding here is 10 square feet and it changes the FAR from 0.46 to 0.4623 to 0.4637. So we are below the 0.5 maximum FAR.

I also have an e-mail that was forwarded to us. It was sent to Sean. I don't know, Sean, whether you got it this afternoon from the abutters Nancy and Lloyd Aiello (phonetic).

SEAN O'GRADY: I don't think that I did.

TIMOTHY HUGHES: Okay. Well, they copied it to us as well. And that's it.

Thanks.

JONATHAN AUSTIN: So this is the property. The Sheraton Commander is over

here. Former EDS, now Lesley is here, and Phillips Place turns the corner from Berkeley Street and around towards Morton. Not Morton.

LEVERING WHITE: Mason.

JONATHAN AUSTIN: Mason Street on this side. And the Lincoln Land Institute owns two properties, here and here. This is No. 7, this is No. 9. These buildings are within the institutional land use overlay and they've been used and renovated for office use. And for that purpose there the Lincoln Institute would like to make the first floor of each building accessible. And with this building here we are proposing to do that with a new lift that will be inserted to the right-hand side -- to the left-hand side of an existing porch. It is on the back of the building here.

We had considered putting in a rack in here. And in fact, we had what I think in

retrospect was a fortuitous meeting with Larry Braman (phonetic) from Inspectional Services who suggested that rather than having a very long rack here that would circle around the building, that it would be much better for a person in a wheelchair to have a lift that we could locate somewhere within the vicinity of the main entrance. The problem is that this is also in the historical district and so we've been very mindful of making changes to this and empathetic to that.

What we've come up with in consultation with Nancy and Lloyd Aiello who are the neighbors right next to this building and look directly next to this building.

There's a very inconspicuous addition that is here, and presently the existing roof line extends out beyond the columns. The roof line extends out which are the columns. Just to give you the idea. This is the existing condition here, and this is the proposed

conditioning would be -- with the addition of the elevator lift and a small roof overhang to permit some shelter. So the edge of the building is here and the roof extends into the side yard setback in that location.

So that is our proposal. As I say, we don't exceed the FAR limit, but we are working within the side and rear yard setbacks. And it's for that reason that we are requesting a Variance.

The Special Permit request is related to the changes to this porch. This porch is already counted within the FAR of the building. It's already space, but we are changing the -- well, there's no fenestration there now. We're enclosing it to form the vestibule, and I can't remember which section it's in, but under the provisions of the Zoning Code we require a Special Permit for that particular thing. So it's a Special Permit here and Variance in that location.

DOUGLAS MYERS: Could you show us the next page again, please?

JONATHAN AUSTIN: Sure.

SLATER ANDERSON: So there's now an enclosure on that porch?

JONATHAN AUSTIN: Yes, this is present.

SLATER ANDERSON: Are they like windows?

JONATHAN AUSTIN: Yeah. They're glazed windows.

SLATER ANDERSON: Yes. It's on the column, a little bit behind the column?

JONATHAN AUSTIN: Well, behind -- a little behind the column thing, yeah. And then there is this addition and setback with the same plane that extends out. And this is an area that you couldn't possibly see this from the street. It is set way back.

SLATER ANDERSON: That's just a little membrane roof?

JONATHAN AUSTIN: Yes.

TIMOTHY HUGHES: Are there any further questions from the Board?

BRENDAN SULLIVAN: Is access available now or is it not existent?

JONATHAN AUSTIN: There's no handicap access now.

BRENDAN SULLIVAN: There is none?

JONATHAN AUSTIN: That's correct.

BRENDAN SULLIVAN: There's a need for it obviously.

JONATHAN AUSTIN: Yes.

BRENDAN SULLIVAN: And this is the less intrusive.

JONATHAN AUSTIN: Yes.

BRENDAN SULLIVAN: The shortest route.

JONATHAN AUSTIN: Yeah, as I say --

BRENDAN SULLIVAN: And get somebody out of the weather the quickest?

JONATHAN AUSTIN: Yeah. We had a

very -- I mean, I -- as a matter of principle, I like to get to solve these things with sight by raising elevation and grading up to the entrance. And the only way to do that here was to have a fairly long ramp that wrapped around here and which the neighbors were accepting of, but clearly not terribly happy. And it really came out of the conversation with Larry Braman at Inspectional Services, that, hey, a mechanical device here wouldn't be so bad. And when we thought about it more, it was actually a great idea, and I think made everybody happy. But it requires a Variance.

ANDREA HICKEY: Which is the Aiello lot on that plan?

JONATHAN AUSTIN: It's just here. And their -- I think we have their -- no, we don't. They have a house that's an L-shaped house here. It's a former carriage house. And they have a wonderful little garden just

there which we're anxious to preserve the integrity.

ANDREA HICKEY: And is there a fence along that bound?

JONATHAN AUSTIN: Yes. Actually, we were at the Historical Commission two meetings ago to request a change to the design of their fence to allow more screening on that face which we were supporting of. This has been, there's no, that's why Lloyd was able to write this. We had a very good collaborative process here.

TIMOTHY HUGHES: I have something here, a Certificate of Appropriateness from the Cambridge Historical Commission, but it's -- I'm not, I can't tell from reading it whether it refers to the plan for a ramp. Was there an original plan for the ramp that you went before the Historical Commission for? Because it talks about an access ramp.

JONATHAN AUSTIN: Yes, we did.

TIMOTHY HUGHES: Was that access ramp just a small --

JONATHAN AUSTIN: Yes, you're right. We went back and amended it.

TIMOTHY HUGHES: Do you have a copy of the Certificate of Appropriateness? Because I don't seem to have it in the file.

SEAN O'GRADY: Is that from Historical?

TIMOTHY HUGHES: I have two of the same thing.

JONATHAN AUSTIN: It was on December 6th.

SLATER ANDERSON: A question for you. What are you doing -- you mentioned both buildings, making them accessible, do you have a plan for the other building?

JONATHAN AUSTIN: Yeah, the other building has a new porch that's going to go on to the side of the building here with an accessible walkway that just right -- not a

ramp, going up the side here to the porch to the dimensions here.

SLATER ANDERSON: There's no lift on that one?

JONATHAN AUSTIN: There's no lift. We're also -- I mean, one of the things about this site is that there's a specimen quality sugar maple here, a black gum (phonetic) and two, two a hornbeam here and two maple trees that we are trying very hard not to step on their roots. So there are a lot of things going on in this short space.

TIMOTHY HUGHES: Any more questions from the Board?

(No Response.)

TIMOTHY HUGHES: I'll open it up to public testimony.

Is there anyone who wants to be heard on the case 10372, 7 Phillips Place?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I

will close public testimony. But I will enter into the record a letter from Lloyd Aiello? Lloyd and Nancy Aiello. It says: (Reading) We have reviewed the application submitted by the Lincoln Institute of Land Policy to add a 10 square foot addition for the installation of a wheelchair lift and to enclose an existing porch. We supported the same proposed changes at the December 6th hearing of the Cambridge Historical Commission who approved them. We write to express the same support for approval of the proposed Special Permit and Variance applications.

And that's the sum total of that.

There is also a Certificate of Appropriateness from the Cambridge Historical Commission that states that the -- would describe the work as not incongruence to the historical aspects of the architectural character of the building or

the district, and work to be carried out as presented to the Commission on September 6th, and as indicated on the layout and material L1, and elevation drawings A200 to 201A, 202 to 203 by Austin Architects titled Phillips Place Renovations. And I expect that that's the same plans that we have in our file here?

JONATHAN AUSTIN: Yes.

TIMOTHY HUGHES: Although they seemed to be numbered differently.

JONATHAN AUSTIN: They may indicate the ramp.

TIMOTHY HUGHES: What's that?

JONATHAN AUSTIN: That may indicate the ramp.

TIMOTHY HUGHES: Do we have a set of plans for the elevator?

JONATHAN AUSTIN: Yes, they were submitted.

TIMOTHY HUGHES: This is the new one that has the elevator in it so that's why the

numbers don't match up to what they talked about here?

JONATHAN AUSTIN: Yeah.

TIMOTHY HUGHES: You know, I'm still a little confused. It doesn't, it doesn't reference the elevator in this Certificate of Appropriateness.

JONATHAN AUSTIN: Well, it may be because --

TIMOTHY HUGHES: But it does reference the meeting time, the meeting date.

JONATHAN AUSTIN: Yeah. I don't know why the paperwork's not there. Should we have supplied the paperwork or would the Historical Commission?

TIMOTHY HUGHES: I'm sure I don't know how that happens.

SEAN O'GRADY: I mean, ultimately the Petitioner is always responsible for the contents of the file, but usually Historical will forward it to us. But that is what we

have from them.

TIMOTHY HUGHES: But you're representing to us that the original plan was amended and the Historical Commission had the same feeling that it was appropriate?

JONATHAN AUSTIN: Yes.

TIMOTHY HUGHES: Okay.

BRENDAN SULLIVAN: The letter from the abutters references the meeting from Historical.

TIMOTHY HUGHES: Exactly. It does. It does. I mean, the meeting date is contained in here. That's the one consistency that I can cross reference.

BRENDAN SULLIVAN: It's lack of one document from the Historical.

TIMOTHY HUGHES: Right, exactly. That's what I'm seeing.

BRENDAN SULLIVAN: So I think that the -- well, okay, yes.

TIMOTHY HUGHES: If we put two and

two together, we can come up with four on this one.

Okay. Any further comments from the Board?

(No Response.)

TIMOTHY HUGHES: I see none. I'll frame a motion.

BRENDAN SULLIVAN: I think maybe as part of your motion, you might consider that a document come from Historical to be made part of the record which would reference the lift.

TIMOTHY HUGHES: Okay.

BRENDAN SULLIVAN: So that we're on the same page with them.

JONATHAN AUSTIN: Hold on one moment. We may....

Saved by the bell.

TIMOTHY HUGHES: Brilliant. And I wrote that all down for nothing. Scratch that.

All right, let the record show that the Cambridge Historical Commission has amended their Certificate of Appropriateness to include the new plans for a lift in the exact spot that the Petitioner's been describing.

Okay, I'm going to frame a motion now.

The Board would move to grant a Variance for the construction of a small elevator lift in the 10 square feet of space -- the Variance and the permit will be separate in terms of the motion just so you know -- at 7 Phillips Place.

The Board finds that the literal enforcement of the provisions of this Ordinance would involve a substantial hardship financial or otherwise to the Petitioner for the following reasons:

It would not allow for the lift installation as an alternative to an open area ramp which would have a detrimental impact on the building's historical

character.

The hardship's owing to the shape of the lot and the location of the building within the minimum side and rear yard setbacks prior to adoption of the current Zoning Ordinance.

I would note that the addition of 10 square feet does not go over the allowable FAR.

Desirable relief may be granted without further substantial detriment to the public good for the following reasons:

As an alternative to the conforming open to the sky ramp installation it will help to preserve the historic character of the building and the neighborhood concerned with preserving that historic aesthetic.

Relief may being granted without nullifying or substantially derogating from the intent or purposes of the Ordinance for the following reasons:

The addition does not further

statistically exacerbate any of the building's existing non-conformities.

The Variance will be granted on the condition that the work be carried out in substantial compliance with the plans called the Land of the Lincoln Institute of Land Policy, 7-9 Phillips Place, done by -- is this your plan, Jonathan?

JONATHAN AUSTIN: Yes. Austin Architects.

TIMOTHY HUGHES: Austin Architects. And initialed by the Chair on the page called EX1-1 and dated 2/7/13.

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

(Show of hands.)

TIMOTHY HUGHES: That's five in favor.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

TIMOTHY HUGHES: The Variance is

granted.

The Special Permit.

The Board finds that granting the Special Permit requested for 7 Phillips Place would not be a detriment to the public interest because the requirements of the Ordinance can and will be met for the following reasons:

Section 8.22.2.C permits the alteration of non-conforming structure provided such change, extension, or alteration will not substantially -- is not substantially more detrimental to the neighborhood than the existing non-conforming use.

Traffic generated or patterns of access and egress will not change.

The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected because they will not change. And

the nuisance or hazard would not be created to the detriment to the health and safety and the welfare of the occupant of the proposed use of this Ordinance or the citizens of the city for the following reasons:

The proposed addition is in an inconspicuous location on the northwest corner of the building hidden from neighbors from fencing and trees. And I have more to add to that.

The nearest adjoining residential neighbors are supportive of this request and considered the alternative option of a large exterior ramp. And the proposed side porch structure changes are consistent in scale and character of the existing building surrounding district.

All those in favor of granting the Special Permit?

(Show of hands.)

TIMOTHY HUGHES: That's five in

favor. The Special Permit has been granted also. Thank you.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

JONATHAN AUSTIN: Thank you very much.

LEVERING WHITE: Thank you.

TIMOTHY HUGHES: You're welcome.

* * * * *

(7:40 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear

case 10373, 21 Walker Street.

Is there anyone here to be heard on that case? Please identify yourself for the record.

ANCA MAMANIA: Anca Mamania.

ASHISH MAMANIA: And I am Ashish.

ANCA MAMANIA: And we live at 21 Walker Street in Cambridge. And we wanted to apply for a Variance and special permissions. I'm not an architect, but I did some drawings to try to show what we were trying to do.

TIMOTHY HUGHES: Go ahead and just run us through it.

ANCA MAMANIA: So basically we bought this house around six -- a little more than six years ago. And it's a two-family house with an apartment for rent on the third floor, and we -- after renting it out a couple of times, we thought it would make more sense for us to move it to the basement, to move the rental apartment from the third floor to the

basement. I wrote a little list of, you know, some reasons. And right now we have a staircase that gets you to the third floor. You can see it there. And I can give you these drawings, too.

ASHISH MAMANIA: It's a three floor, it's three-story wooden stair that goes in the back to the rental unit.

ANCA MAMANIA: Yeah.

So we thought that it would make more sense to put the rental in the basement because then you would only need to go down a couple of stairs for safety, you know, if it's dark and icy as it is now. And also in terms of fire it seemed to be safer. You don't have to climb down, you know, three stories in order to get out of the fire. For us it would mean more green space. You know, we have a dog and we're trying to have kids, so it would be nice to have a little more green space.

For our neighbors they said it would be nice to have more privacy because they won't have that stair overlooking their windows.

Currently the main entrance to the rental unit isn't very tall. It's not like a full height door. So if we moved to the basement, it could be a full height door. And we got -- I asked my neighbors if they are okay with the idea, if they would be willing to write a letter for us. And so we have 16 of our neighbors, as you can see here, to show you, sort of like most of the neighbors seem to like the idea of moving it to the basement. So that's the Variance. And I think special request.

ASHISH MAMANIA: And, sorry.

ANCA MAMANIA: Okay.

ASHISH MAMANIA: Just to add, so when we bought the apartment, the basement was -- -

ANCA MAMANIA: The house.

ASHISH MAMANIA: Yes. When we bought the house, the basement was already -- had a full bath, and we've been using it, you know, as such as living space. She has a gym there. She has her -- she's a graphic designer. She has a work studio and a little workshop area because she likes to do home projects.

ANCA MAMANIA: Yeah.

ASHISH MAMANIA: So we've already been using that basement. It's almost seven foot. In a lot of area that's seven foot and some areas it's just a half an inch short. So we've been using it, you know, as living space. So our proposal is that we relocate the rental apartment to the basement.

ANCA MAMANIA: Yeah.

And then for special permissions we wanted to add a window to a bathroom that we're going to add. We wanted to add a master bath. So we wanted to add a window. And I

made a mistake with one of the skylights on that one. But we wanted to add two skylights. We had originally been allowed two. We had been given permission to put the skylights at some point. At that point we thought we were going to do a lot smaller renovation job, but now we've decided to do the whole thing. And the whole house had no insulation. The foundation was a little cracked and stuff, and so, we needed to just wait a little bit and save up some money to do like the whole job so that's why we wanted to come back and ask for that.

So we wanted to add a window to the master bathroom. And then we have -- we have a window currently that we want to -- instead of having it long and tall, we wanted to make it more horizontal so that we can put a washer and dryer underneath.

And then the basement, if it's possible, we wanted to add a window,

but -- and shift around very little a couple of the other windows, but if that's not possible, maybe we could take out one window that we don't need in the utility room. Basically we wanted to center some windows and then add a window for the stairwell that's going to go down to the basement. The end. That's basically it.

Oh, yeah. Well one more. So that, so that exterior staircase that goes to the third floor, pretty much we thought that it would look much nicer if we didn't have that mammoth thing going up. It would be better for the neighborhood. That's it.

SLATER ANDERSON: So that comes down?

ANCA MAMANIA: Yeah, that would come down then.

ASHISH MAMANIA: The only purpose it serves is for the rental unit, the entrance for the rental unit.

ANCA MAMANIA: Yeah.

ASHISH MAMANIA: And it's -- we only have like the setback there is only 12 foot, and that stair takes the bulk of the space.

ANCA MAMANIA: It would just be nice to not have it because that would be out my kitchen window.

TIMOTHY HUGHES: So just for the record, the dimensional form suggests that you're adding a thousand square foot by excavating your basement? A little over thousand.

ASHISH MAMANIA: Probably.

TIMOTHY HUGHES: Which would take you to a 1.6 in a 0.5 district.

ANCA MAMANIA: Can I add something to that?

TIMOTHY HUGHES: You better.

ANCA MAMANIA: Okay. So I have like three things -- arguments for that.

One was that -- so if you measure the

basement, some parts of it are seven feet. Some parts of it are six and a half, and --

ASHISH MAMANIA: Six. Half an inch less.

ANCA MAMANIA: I mean half an inch less. And very few parts are half an inch less. I'm not an architect but I thought it might be settling. Because if some parts are already seven feet, then -- so that's one argument that I would like to make.

The other would be --

TIMOTHY HUGHES: Does any part of that basement now figure into your calculations?

ASHISH MAMANIA: I don't think so.

TIMOTHY HUGHES: You didn't use the basement at all?

ANCA MAMANIA: No.

TIMOTHY HUGHES: Even the seven foot parts because they're not really residential at this point?

ASHISH MAMANIA: No.

ANCA MAMANIA: Well, that's where I would also add that I think the fact that we bought it as -- with a full bathroom in there, and we've also used it during this whole time. It seems -- I don't know, it seemed inhabitable to us. I wouldn't imagine that people would put a bathroom in a place where they considered inhabitable.

And then finally I don't know -- we have an architect, though, he didn't do these drawings or anything. I'm here to talk about (inaudible) an item. And at some point even Ranjit was saying that it seemed like it should have always been included in the floor area ratio. Because it's with -- it's less than an inch even from seven feet in a lot of it. So that's my argument.

BRENDAN SULLIVAN: Sean, do we have the original case 5075 with us today?

SEAN O'GRADY: I don't think we do.

TIMOTHY HUGHES: How long ago was that, do you know?

BRENDAN SULLIVAN: Three years ago, four years ago you got the Variance for the third floor.

ANCA MAMANIA: We didn't. We bought the house a little more than six years ago and somebody bought it before that.

BRENDAN SULLIVAN: It was before that.

ANCA MAMANIA: Oh, yes. Can I add that? We bought it as a two-family. So we'd like to keep it as a two-family because financially.

DOUGLAS MYERS: So in your plans the third floor unit is going to be incorporated into the working space that now exists on the first and second floor?

ASHISH MAMANIA: Right.

ANCA MAMANIA: Yeah.

ASHISH MAMANIA: And the entrance

only would be from the inside. We take out the back stair completely.

DOUGLAS MYERS: And do you show a staircase in your plans going up from the proposed basement unit?

ANCA MAMANIA: I have a little glimpse of one.

DOUGLAS MYERS: Where does that go?

ANCA MAMANIA: So basically I could just sort of just -- could I, ask you for that? Sorry.

ASHISH MAMANIA: The stairs going from the first and the second and third, they would just -- the stairs going down to the basement would just follow the same footprint.

ANCA MAMANIA: So we have an entrance to the kitchen which is -- sorry. It's right here. This is our entrance to the kitchen. We were going to do the other entrance right underneath it. And you don't

see it from the street because it's in a fenced-in area, and we would keep it in the character of the neighborhood.

DOUGLAS MYERS: What is the gross floor area of the present third floor unit?

ANCA MAMANIA: It's around 900 square feet.

DOUGLAS MYERS: What would be the gross floor area of the proposed basement unit?

ANCA MAMANIA: It's around a thousand square feet. They're very similar inside I guess.

TIMOTHY HUGHES: Everything is being added is basement. It's 1,014.

ANCA MAMANIA: Okay.

SLATER ANDERSON: Does anyone know what the nature of the prior Variance was for the third floor unit?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: I believe I sat

on it and that's why I was looking for it to sort of refresh my memory, but that it was somewhat finished space and that the previous owner wanted to use it as a rental part because she felt that the house was totally underutilized. I think she may have been there by herself --

ANCA MAMANIA: Yeah, she was.

BRENDAN SULLIVAN: She was a widow or something.

ANCA MAMANIA: Yeah.

BRENDAN SULLIVAN: And she was looking for not necessarily income, but to have another person in the house, you know, and so I think that's what the nature of why we granted it then, was sort of a little bit of peace and comfort to have somebody else just to have somebody else making noise so that she didn't feel totally isolated in the house. I think that was the nature of it. But it was finished space used as bedrooms.

Before that and it was just this big old house. And it was shortly after she got the Variance, not much longer after she got the Variance I believe that then she sold it.

ANCA MAMANIA: Oh, she died.

BRENDAN SULLIVAN: It may have been a period of -- well, what's that?

ANCA MAMANIA: She died.

BRENDAN SULLIVAN: Well, it did get sold. Ownership was transferred.

ANCA MAMANIA: Yeah, sorry. Yes.

BRENDAN SULLIVAN: Ownership was transferred. Anyhow, that was the nature of it.

SLATER ANDERSON: My only concern was if there was any condition put on the basement as a part of that approval.

BRENDAN SULLIVAN: I don't recollect that it was, but --

ANCA MAMANIA: I'm 99 percent -- 99.9 percent sure that it wasn't.

Because at some point Ranjit and I and Sean, yeah, I think we had looked at the older files and there was no prohibition or something like that. But I'm no expert, but there's nothing saying that it was ruled out.

TIMOTHY HUGHES: Any other questions?

ANDREA HICKEY: I have one question. Just looking at all of these approvals which you have, what about this person right across the place?

ANCA MAMANIA: So this is our neighbor Karen, and I just asked her if she would be willing to write a recommendation. She said she's not against it, but she said that she had wanted to see more drawings before she could write a recommendation like, you know, in favor. So I said -- I told her that -- she's really into historical preservation, so I told her that well at some point we wanted to talk to her anyway because

she knows a lot more than we do about how to make the entrance to that -- the basement -- in keeping with the architectural essence of the house. But she said she wasn't opposed to it but she wanted more information.

ANDREA HICKEY: All right. And the outdoor stairway that's there now, where is that relative to her lot?

ANCA MAMANIA: So the outdoor stair?

ANDREA HICKEY: Yes.

ANCA MAMANIA: Is right here.

ANDREA HICKEY: Okay, thank you.

BRENDAN SULLIVAN: The main entrance into the basement will be where?

ANCA MAMANIA: Right underneath our main entrance to the kitchen, which is right --

BRENDAN SULLIVAN: And the second means of egress out of the basement?

ANCA MAMANIA: Oh, yeah, sorry.

For that we wanted to add, I think you can see it in this one.

BRENDAN SULLIVAN: A window in the front?

ANCA MAMANIA: A window well.

BRENDAN SULLIVAN: In the front?

ANCA MAMANIA: Our neighbor two houses down has it. I took a photo and I tried to render how it would look. Like, we would put foliage and bushes in front of it so you can't see it from the street. You can't see our neighbor's from the street unless you -- like, in the first photo you peer in, but if you're just walking on the sidewalk it's not --

ASHISH MAMANIA: And worst case there's another entrance from the main first floor to the basement internally as well for us.

BRENDAN SULLIVAN: Within the unit into the basement, yes, that can't be used as

an exit.

ASHISH MAMANIA: Oh, right.

BRENDAN SULLIVAN: So the exit, emergency exit in the front will be a stealth --

ASHISH MAMANIA: Stealth, yeah.

BRENDAN SULLIVAN: -- installation.

ANCA MAMANIA: Yes, correct.

TIMOTHY HUGHES: Any other questions?

I have a question. I'm having a little trouble wrapping myself around the hardship here.

ANCA MAMANIA: The what?

TIMOTHY HUGHES: The hardship.

ANCA MAMANIA: Okay, I have an answer to that, too.

TIMOTHY HUGHES: Good.

ANCA MAMANIA: I just asked the architect. So basically I think the hardship is liability and safety. It's not

at all -- in all fairness, it's just not the best way to rent the top floor to go to three stories up, so and liability. Liability and safety.

ASHISH MAMANIA: It has real high ceilings.

TIMOTHY HUGHES: That part I get. It's the second part of it.

ANCA MAMANIA: Okay.

TIMOTHY HUGHES: It's the legal standard of hardship that we need to apply. It says that the hardship is owing to the following circumstances relating to the soil conditions, shape or topography of such land or structures, or especially affecting such land or structures but not affecting in general the Zoning District in which it is located for the following reasons. And the reason that I have here that's in the application is the overall proposal and removal of exterior staircase would create

more usable open space within limited lot size.

I'm not sure that addresses the question of hardship. And it's not enough for me to formulate a motion around, and I'm looking for words that would, you know, make this hardship actually pop out so that I could make a motion. You think about that.

We'll open this up to public testimony.

(No Response.)

TIMOTHY HUGHES: Seeing no one, I'll close public testimony. And I will indicate that there is extensive letters of support in the file. There's about 18 on that one.

ANCA MAMANIA: 16.

TIMOTHY HUGHES: 16 on that one. And are these all -- that's just replicating what's in this file here?

ANCA MAMANIA: Yeah.

TIMOTHY HUGHES: And you just consolidated it to --

ANCA MAMANIA: Yeah.

TIMOTHY HUGHES: There's 16 neighbors on Garden and Walker Street that have expressed support. There are no indications of people that are opposed to the petition. And as Andrea pointed out in her questioning that about the one we're not sure of, and your answers to that one don't make it entirely unanimous but pretty close. All your abutters and abutters to abutters.

All right, so now I'm back to formulating a motion for the Variance. And in that motion I have to come up with some words that are comfortable for me that address the hardship with regards to let's, you know, soil conditions, shape or topography of the land or the structure.

ANCA MAMANIA: The structure is ugly.

TIMOTHY HUGHES: I don't think ugliness is a hardship. It can be for some

people in some things but not in this case.

ASHISH MAMANIA: It doesn't comply with the, you know, with the Zoning laws anyway because they're so close to the neighboring -- our lot line and the neighbors. So taking away it would be better.

TIMOTHY HUGHES: Yes, I understand that. I'm just looking for a way to phrase it, you know, that it ties into this second half of the hardship standard.

ASHISH MAMANIA: More green space.

TIMOTHY HUGHES: More green space. These are all good things, I will admit.

SLATER ANDERSON: Well, I feel that the access to that third floor unit is not, it's a hazardous condition that could lead to hardship for somebody having to navigate that, you know, particularly in this kind of conditions.

ANDREA HICKEY: And is that the only

way?

ASHISH MAMANIA: Yeah, today.

TIMOTHY HUGHES: So you can call it the access to the third floor staircase.

SLATER ANDERSON: The access.

TIMOTHY HUGHES: Wooden staircase as part of the structure is a hardship that's going to be corrected by this Variance.

ANCA MAMANIA: Yeah. And it really is.

TIMOTHY HUGHES: Removal of the staircase.

BRENDAN SULLIVAN: I think the removal of the staircase would be worth it on its own.

ANCA MAMANIA: Also that, too.

SLATER ANDERSON: In the spirit of what we do, I kind of feel like this is, you know, fixing the kind of condition that's not ideal.

ANDREA HICKEY: And it opens up your

tenant pool, too. There must be tenants who couldn't navigate those stairs, you know. An elderly tenant --

ANCA MAMANIA: Oh, sure. We don't go up those stairs.

ASHISH MAMANIA: When it's icy.

SLATER ANDERSON: That's a benefit to the community, I think, of moving a potential rental unit into a broader accessibility class.

ANDREA HICKEY: A wider pool.

ASHISH MAMANIA: And today you can see Garden Street and from Walker Street and of course you take it down and the new entrance will be behind the fence so you won't be able to see it even.

ANCA MAMANIA: It just seems like a win/win.

TIMOTHY HUGHES: Okay.

Are there any more questions or comments from the Board? Are we ready for a

motion?

The Board would move that the Petitioner at 21 Walker Street be allowed to move the rental unit from the third floor to the basement.

The literal enforcement of the provisions of the Ordinance would involve a substantial hardship, financial or otherwise, to the Petitioner for the following reasons:

Relocation of the rental unit from the third floor to the basement will improve the renter's use since they will not be required to climb an external stair two flights to reach their rental unit, especially in the winter.

Relocating the rental unit to the basement would allow for a more comfortable layout. It would also allow the owners to remove an exterior stairway resulting in a larger garden area or green space, and it

would allow the owners to make more effective use of the their habitable part of the structure.

The hardship is owing to the following circumstances: The wooden staircase, two flights of stairs that go to the third floor are in violation of the rear yard setbacks. And in their removal, it would create more open space in a limited lot size.

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

The relocation of the rental unit from the third floor to the basement will not create a detriment to the public good. In fact, it will make it easier for the property to be rented, easier access for any tenant. The removal of the staircase would also cut down on the overall density and look of the structure to the improvement of the neighborhood.

And relief may be granted without

nullifying or substantially derogating from the intent and purpose of this Ordinance for the following reasons:

There is no change to the use and character of the building.

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

(Show of hands.)

TIMOTHY HUGHES: Four in favor.

(Hughes, Sullivan, Anderson, Hickey.)

TIMOTHY HUGHES: One opposed.

(Myers.)

TIMOTHY HUGHES: Do you want to make any remarks?

DOUGLAS MYERS: I would simply state the reason for my vote is I consider an increase in FAR as requested by this application from 1.2 to 1.6 in a 0.5 Zone to be 25 percent increase in FAR for the sole purpose of establishing or relocating this

unit as a basement apartment. I think that's an unfortunate precedent for us to create. I think that's an unduly large increase in the FAR, and I think that for at least the Board should require the scale of the request to be reduced. Therefore but, as the application arises in its present posture before the Board I vote against it.

TIMOTHY HUGHES: So noted.

Where are the plans for the placement of windows? Is it this one here?

ANCA MAMANIA: Yes.

TIMOTHY HUGHES: Which one was the skylight that you said was drawn in wrong? Is it something that I can --

ANCA MAMANIA: Yeah. I drew it incorrectly -- I drew it correctly on this one.

TIMOTHY HUGHES: Oh, okay.

ANCA MAMANIA: Originally we had a bathroom here, but now the bathroom is here.

TIMOTHY HUGHES: This is correct?

ANCA MAMANIA: Yes, this is correct.

TIMOTHY HUGHES: Okay, so I can initial this and tie this to the Special Permit to these plans?

ANCA MAMANIA: Yes.

TIMOTHY HUGHES: The Board will move that a Special Permit to relocate and add windows in the property at 21 Walker Street -- granting the Special Permit requested for the 21 Walker Street would not be a detriment to the public interest because traffic generated and patterns of access and egress would not cause congestion or hazard. In fact, any traffic to and from the property would be enhanced by the removal of the third floor staircase. And the windows don't affect traffic nor congestion at all.

The continued operation of development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected.

The residential use remains same as a two-family.

The nuisance and hazard would not be created to the detriment of the health, safety, and welfare of the occupants of the proposed use or the citizens of the city for the following reason:

The proposal does not change substantially the use of the building and its purpose.

The proposal does not impair the integrity of the district or adjoining districts nor derogate from the intent of the Ordinance in that the buildings -- the changes to the building are only in fenestration, and any other changes are to the positive with the removal.

The Special Permit would be granted on the condition that the windows be placed in conformance with the drawing called the Mamania renovation variance drawings. It's

actually Special Permit drawings, and initialed by the Chair and dated 2/7/13.

All those in favor of granting the Special Permit say "Aye."

(Show of hands.)

TIMOTHY HUGHES: Five in favor.

Thanks. It's granted.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

* * * * *

(8:05 p.m.)

(Sitting Members: Timothy Hughes, Brendan

Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case No. 10351, 700-704 Huron Avenue.

BRYAN WILSON: Good evening, Mr. Chairman, members of the Board. My name is Bryan Wilson representing MetroPCS Communications in a Special Permit request to add five dish-style antennas to its existing wireless communication facility at 700-704 Huron Avenue. The purpose of these antennas is to improve backhaul speed, to be able to provide high speed data to customers in Cambridge and those passing through Cambridge. The service has been demanded by our customer base and is necessary in order for us to remain competitive in the marketplace.

The dishes that we are proposing are four dishes that will be approximately one foot in diameter, and one dish that will be

approximately two feet in diameter. These dishes will be mounted on the facade of the existing penthouse and will be painted to match the existing penthouse to minimize the visibility of the installation. There are already a number of dishes on this penthouse for dish TV. Those are larger than what we are proposing, and those are not painted to match. So we feel that this is an appropriate addition for the location and is less of an impact than what is already there.

In addition to mitigate the impact of our proposed installation, we have agreed with the building owner to remove some of the abandoned antenna mounts that are on the penthouse. There are several rusted pipes that are mounted to this penthouse and with the installation of the proposed dishes should the Board approve our requested Special Permit request, we would remove those rusted unused pipe mounts.

The proposed dishes will not increase the traffic. They will not produce any noise or light or dust or glares or in any other way diminish the existing use on the property. And we respectfully request the Board to grant our Special Permit.

TIMOTHY HUGHES: Questions?

BRENDAN SULLIVAN: The rusted unused mount, is that your equipment now presently?

BRYAN WILSON: No. That is from antennas that have been taken down over the years, and the mountings have just been left attached to the penthouse.

BRENDAN SULLIVAN: It's not your equipment now?

BRYAN WILSON: It is not our equipment now, no.

BRENDAN SULLIVAN: Okay.

BRYAN WILSON: That's other equipment. If -- I would refer the Board,

there are some -- there's a structural analysis that was included in the packet, and there are some photos of the existing penthouse structure. And you can see there are some rusted pipe mounts and abandoned pipe mounts here.

BRENDAN SULLIVAN: So as part of your installation you'll kind of clean-up the facade by the --

BRYAN WILSON: Yes. So again, there's an abandoned pipe here and there's a couple of, you know, abandoned structures here that we're going to take down with our installation. And, again, the dishes that are already up there, are larger than what we're proposing and not painted to match.

As the Board is aware, this is an extremely tall structure for the area making it ideal for the provision of this type of line-of-sight service that we require making this location really one of the few locations

in Cambridge from which we can provide this service.

BRENDAN SULLIVAN: And you're directing it toward Cambridge or in a 360?

BRYAN WILSON: Unlike the panel antennas that are currently installed which have 360-degree coverage, for backhaul purposes these are microwave point-to-point systems. So we are pointing at five other MetroPCS sites to enhance the communication among and between those sites on a point-to-points basis. So instead of spreading transmission across the area to serve people immediately around Parkside Place at 700 Huron Avenue, these are to provide communication point-to-point between existing communication facilities. It's very narrow transmission.

SLATER ANDERSON: But it's high volume, that's the thing?

BRYAN WILSON: High volume, yeah,

and it's point-to-point.

SLATER ANDERSON: You have local transmission antennas on this building as well?

BRYAN WILSON: We do, yes. We currently have a wireless communication facility that provides handset to building communication.

TIMOTHY HUGHES: Yes, I never really understood backhaul. In 25 -- never mind. One of these days.

Any other questions from the Board?

(No Response.)

TIMOTHY HUGHES: I'll open this to public testimony.

DOUGLAS MYERS: One question.

TIMOTHY HUGHES: Yes.

DOUGLAS MYERS: While you're carrying out your good works in removing the unused and rusted antennas and facilities that are there, are you -- do you happen to

know whether you're removing all of such?

BRYAN WILSON: We are only removing those that have clearly been abandoned, that don't have any antennas on them.

DOUGLAS MYERS: And how many are there?

BRYAN WILSON: Three.

DOUGLAS MYERS: Three?

BRYAN WILSON: Yes.

DOUGLAS MYERS: Are those indicated to you by the owner of the building?

BRYAN WILSON: Yes.

DOUGLAS MYERS: He's indicated that to you?

BRYAN WILSON: Yes.

ANDREA HICKEY: I just had a question.

TIMOTHY HUGHES: Sure.

ANDREA HICKEY: The type of equipment that you're installing is different than what you have there at

present?

BRYAN WILSON: That's correct.

ANDREA HICKEY: Are there any sort of health studies about what this new equipment might emit and are there any dangers to people with emissions, health concerns?

BRYAN WILSON: Well, aside from what's already installed, the nature of what we're proposing to add is very narrow beam transmissions. So the exposure to the general public is insignificant as opposed to the panel type antennas where the FCC has made determinations about what the maximum power density is for continuous public exposure, and we transmit within those guidelines. The guidelines for this point-to-point communication is higher power but very narrow beams so that the only way that the public can get exposure to this beam is to be standing directly in front of the dish as opposed to

the panel type antennas where, you know, if you're standing on the ground, then theoretically there is some exposure. With the dish type antenna, point-to-point communication, there's no exposure at all for an individual standing on the ground.

ANDREA HICKEY: Do the residents of this building use the roof or is it really just sort of for infrastructure?

BRYAN WILSON: It's controlled access for maintenance and rooftop tenants only. So no, the tenants of the building do not have access to the building.

ANDREA HICKEY: When you say rooftop tenants, you mean people that have a license or something to be up there?

BRYAN WILSON: Wireless service providers, correct.

ANDREA HICKEY: All right, thank you.

TIMOTHY HUGHES: As you know, along

with everything else that you need to satisfy for a Special Permit, this is a Res C District and so you need to establish that residences don't predominate in this area.

Are you prepared to testify to that?

BRYAN WILSON: Well, as indicated in the photo simulations that are included with the packet there is an overhead map that shows the location where photographs were taken. So this area, while there are residents nearby, predominantly around this residence is characterized by the cemetery, the golf course, and the lake. So the nature of residents in this unit is really only from the Petitioner's landlord.

TIMOTHY HUGHES: Okay. Any other questions from the Board?

(No Response.)

TIMOTHY HUGHES: I'm going to open this up to public testimony.

Is there anyone that wants to speak

about 700-704 Huron Avenue?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I'll close public testimony. There's nothing in the file nor does there necessarily need to be in support of.

BRYAN WILSON: We did meet with the Planning Board on December 4th and they had no objection. I don't know if you received that in your file.

TIMOTHY HUGHES: Oh, yes. I'm not sure that they did. I have your letter that says that you met with the Planning Board. But I'm not sure that I have anything from the Planning Board. I didn't find it on my first go through. Oh, here it is.

(Reading) The Planning Board reviewed the applications for Special Permits -- no, that's for -- oh, for 700 Huron Avenue. A Special Permit includes the removal of unused antenna and associated mounting equipment.

The Planning Board has no comments about this particular installation.

They're neutral.

Any other comments?

DOUGLAS MYERS: Could I just see the photo sims one more time?

TIMOTHY HUGHES: Absolutely.

SLATER ANDERSON: Where do these backhaul antennas receive or -- are they receiving and sending?

BRYAN WILSON: Yes.

SLATER ANDERSON: And so what is the network like? Where does it come from and where is it going to from the site?

BRYAN WILSON: It's going to -- we have a facility at Alewife. We have facilities in, I believe, there's one connecting to this in Somerville with Somerville Housing Authority. There is a facility at 1 Brattle Square, I believe is connecting to this. And two others that I

can't remember, but they're all existing wireless communication facilities.

SLATER ANDERSON: They're in place -- those dishes are in place?

BRYAN WILSON: Well, the wireless communication facilities that they will serve are in place. I've been before this Board on several occasions for requesting approvals for other sites that will connect to this site or other sites both in Cambridge and out of Cambridge.

TIMOTHY HUGHES: Any other comments?

(No Response.)

TIMOTHY HUGHES: Ready for a motion?

BRENDAN SULLIVAN: I didn't know if you wanted to go through the pro forma as far as Section 4.10, footnote 49 which is just again a pro forma as to the findings.

TIMOTHY HUGHES: Which one is that? 49? You're talking about this section here?

BRENDAN SULLIVAN: Yes, 49. That they're licensed --

TIMOTHY HUGHES: Some of them might be answered in their Special Permit application stuff.

All right.

BRENDAN SULLIVAN: Or you could just reference their pleadings.

TIMOTHY HUGHES: Let me reference this Special Permit stuff, and if you think anything in here hasn't been touched on then I'll add it in, okay?

BRENDAN SULLIVAN: Yes.

TIMOTHY HUGHES: The Chair would make a motion to grant the Special Permit for the installation of five antennas at 700-704 Huron Avenue with the following findings:

Requirements for the Ordinance can and will be met for the following reasons:

The applicant meets all requirements for imposed by a governmental authorities

having jurisdiction over the proposed facility, including licensure by the FCC to provide wireless communications in this market area.

The applicant has proposed a lease visually intrusive installation by mounting its antennas and cable runs to the existing building and painting them to match the underlying structure.

All of the components of the installation are not visible from surrounding properties.

The applicant looks forward to providing detailed radio frequency existing network information at a public hearing which would reflect the need for additional service coverage in this area due to call of volume problems, resulting in dropped calls, and inability to make complete calls due to capacity shortfalls.

Traffic generated or patterns of access

and egress would not cause congestion or hazard, substantial change to the established neighborhood character for the following reasons:

The proposed facility is unmanned and upon completion of construction the facility is expected to be visited for routine maintenance on average of one or two times per month by a company trained technician, therefore, the impact on area traffic, parking, and pedestrians will be minimal.

The continued operation or the development of the adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use for the following reasons:

The proposed use will have no adverse affect on the building nor on abutting properties due to its minimal visual impact and location within restricted access roof area of the building. In fact, the applicant

would suggest that the building occupants in surrounding properties would benefit from the potential to enjoy improved wireless telephone and internet access.

Nuisance would not be created to the detriment of the health, safety, and welfare of the occupants of the proposed use or the citizens of the city for the following reasons:

The proposed use will have no detrimental impact -- has been proven to have no detrimental impact on health, safety, or welfare of the building occupants or other citizens of Cambridge.

I don't know if there's anything else I need to add.

The Special Permit will be granted on the condition that the work be carried out in conformance with the plans submitted from MetroPCS starting with the title sheet T1 and initialed by the Chair and dated 2/7/13.

All those in --

DOUGLAS MYERS: Customary
conditions --

BRENDAN SULLIVAN: And one other
thing, in granting the Special Permit the
Board shall set forth in its decision under
which circumstances or procedures, if any, a
permittee shall be allowed to replace and
upgrade its equipment without the necessity
of seeking a new Special Permit.

Might you entertain language that would
say that should the permittee/applicant wish
to upgrade, change any of the equipment, that
it would necessitate a new filing and a new
application.

And, that should the equipment for
which is the subject of this Special Permit,
should it be abandoned otherwise become
useless, that it be replaced, and the facade
to which it is mounted be restored no later
than 60 days after which it has been not in

service.

TIMOTHY HUGHES: All right. Did you add Brendan's remarks to the motion?

THE STENOGRAPHER: Yes.

TIMOTHY HUGHES: Thank you.

Okay, all those in favor of the Special Permit?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor. Granted.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

BRYAN WILSON: Thank you very much.

* * * * *

(8:20 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: This is 10383, 923 Mass. Avenue/77 Hancock Street. We're hearing the appeal case first.

Can you please identify yourselves for the record.

ATTORNEY TERRENCE MORRIS:

Mr. Chairman, members of the Board, my name is Terrence Morris. I'm an attorney with offices at 57 Elm Road in Newton. I'm representing the owner of the property.

STUART ROTHMAN: I'm Stuart Rothman. I am the owner of the property. Offices at 907 Mass. Ave., Cambridge.

DOUGLAS MYERS: Would you spell Stuart, please?

STUART ROTHMAN: S-t-u-a-r-t.

TIMOTHY HUGHES: All right. We're

hearing case No. 10383. That's just the appeal of the Commissioner's and Inspectional Services decision that you needed a Variance to go from the dentist office use to a general office use. So pitch it.

ATTORNEY TERRENCE MORRIS: Well, the factual basis for both cases actually, I'll give you a restatement, and that is this building --the building was built in 1910 as an apartment building. There was nothing in the basement space other than storage. In 1982 the basement space and part of the first floor was converted to office space. At that time the property was Zoned 03 which permitted both of those uses. It's important to point out that consistently since that time and up to now, the basement space in question has been used for office use as a general category. In the mid 1990s, I think it could have been as late at 1997, the

property was rezoned to residential, Res C-2B which doesn't allow office use and, therefore, resulted in the creation of a non-conforming building and a non-conforming use. Non-conforming building because the building didn't apply to the residential controls in that residential zone. And the non-conforming use for the obvious reason, office use is not allowed.

So we're focussed on that provision of the code, Section 822 -- 8.22.1 which talks about alterations reconstruction.

There was a fire in the portion of this basement space that resulted in having a net effect of the medical office. It was basically occupied by, as I said, legal, real estate, and medical offices, each of which is a subcategory of office use. But the fire impacted more the dentist office. As a result, they were -- had to leave the space and my client sought a Building Permit to

renovate the space and was told that the space had to be reoccupied for medical offices, that it could not be occupied for general office, for real estate, for anything other than medical office under this interpretation of the Ordinance.

Our position is, and I understand it's not a comfortable position to be taking on the Commissioner of Inspectional Services, (inaudible) I'm not suggesting he doesn't know what he's doing. And the reason we filed both petitions to give the Board maximum flexibility in dealing with this situation so that my client had a way out.

We basically feel that it's counterintuitive to think that a change in general office is substantially different in character in-kind than medical office.

If you were going the other way from general to medical and you might be able to make that case because the parking

requirements which is one indicia of intensity of use are greater for medical than they are for general office or real estate office. But in this case we're going the other way. We're basically reducing the intensity of the use by seeking to use this for general office space.

And that would bring us within the seminal case for these kinds of things. The thing that complicates this, and I've done practices in Cambridge, but I practice mostly in Somerville and Newton. Both of those Ordinances provide something that Cambridge's Ordinance does not, and that provides that you can get a Special Permit to change one non-conforming use to another non-conforming use. In Cambridge apparently the way you look at it appears to prohibit that and require you to get a Variance which substantially raises the bar as you know. The legal requirements for a

Variance are considerably higher than those of a Special Permit.

At this juncture since we've passed the designated time for the Variance which was 7:45, Mr. Chairman, I'd like to set the appeal aside and go to the Variance and have you act on that first. If you act on that first this becomes moot.

TIMOTHY HUGHES: I understand that.

ATTORNEY TERRENCE MORRIS: What's your pleasure?

TIMOTHY HUGHES: I don't have a problem with that, but do we have to vote to continue this until we hear the other case?

SEAN O'GRADY: I think that was just an opening, the opening of the case.

TIMOTHY HUGHES: If we can consider this as a case not heard, we can move to the -- we can go to the -- do you have a comment on that? Your eyes say yes.

BRENDAN SULLIVAN: I would probably

not do it that way, but the end result may be the same.

ATTORNEY TERRENCE MORRIS: In the interest of time. I know that you've got a heavy agenda so I didn't want to have you engage in a lengthy discussion on the first matter if in fact the second matter would resolve it, but we'll find that out.

TIMOTHY HUGHES: All right. So the Chairman has decided we didn't open this case, and so we're going to go to the next case.

(Case Recessed)

* * * * *

(8:30 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: Case No. 10384 for a Variance at 923 Mass. Ave./77 Hancock Street to change the use to convert an existing dental office to a general office use.

ATTORNEY TERRENCE MORRIS: Thank you very much, Mr. Chairman, members of the Board. Again, my name is Terrence Morris, attorney representing the owner of the property with law offices in Newton, Massachusetts. With me is Mr. Stuart Rothman, the owner of the property.

In this particular case we're looking at some specific statutory requirements that in the Cambridge Zoning Ordinance taken right from the Chapter 40-A. And that is the first

requirement, threshold requirement actually is that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship, financial or otherwise to the Petitioner/owner Mr. Rothman.

We believe that that hardship exists because we say the property was used for office space for going on 30 years now, and when the property was rezoned to residential, it basically -- we think the prohibiting use in this space for the general office use consistent with the use of the balance of the space would create a substantial hardship by arbitrarily limiting the ability to lease the space. Obviously you're talking about a general office market as versus a specialized office market for medical use only.

Now how is the hardship related to one of the statutory criteria? That is soil conditions, shape, or topography? I actually cited in the application a

definition of topography, and I think it's relevant in this case because normally when you think of topography you have a piece of property that has a hill in it and you have a valley and sometimes that impacts the hardship. In this case the topographical change isn't quite so dramatic, but nonetheless it still is related to the topography. And that is the space is below grade space. I did cite the definition of topography as being the practice of graphic delineation of natural and manmade features of a place in a way to show that relative positions and elevations.

In this case the hardship's directly related to the below grade nature of the rental space, and I'll get into the why's and wherefores, within the existing structure. And the relative position and elevation to the land in which it sits.

At a time when commercial space in

Cambridge was at a premium, the below grade basement space, which had previously been used for storage, was converted to office space by right. Due to the economic and other considerations, the below grade space was suitable for non-residential and not residential, that is office use, and that's the one it involves.

The rezoning in 1982 did nothing to alter the underlying considerations for the use of the space as offices. Indeed when they rezoned it to residential, that assured that the conditions found in the property are generally not found throughout the Residence C-2B District in which it's located. So that's the so-called uniqueness requirement. And we have a situation. And I'll get into it, some of these, some of these factors overlap, but it's interesting to note that when you look at the map and this change that occurred back in '82, the area between

Windsor Street and the Far East all the way through Central Square to Harvard Square, except for this four block area between Dana and Bigelow, the rest is zoned, is zoned commercial. So now you have a situation where this parcel is zoned Residence C-2B and you have the uniqueness of having it used as offices.

We come to the third and final consideration about whether desirable relief may be granted without either substantial detriment to the public good or nullifying the intent or purpose of the Zoning Ordinance. Clearly we believe, and I said before, it seems counterintuitive to talk about a change from medical office to general office, that this change has not resulted in the -- a change in the quality, character, or the degree of use. Indeed one standard to measure the intensity of use as I said earlier, is a requirement for accessory

parking. It's noted that every category of office use, every category of office use, has a lesser requirement for parking than medical offices. So we're here in an anomalous situation that if you were not to grant this Variance, which has a lesser parking requirement and arguably a lesser intensive use, a guy could go back to trying to rent it to medical office which is in some respects a higher intensity use.

And I did draw some parallels between even though this property is situated on Massachusetts Avenue, a major thoroughfare running through the city. It's inconceivable that general office use, which is what we're seeking, would create any problems in the neighborhood that's not encountered by the current office use or indeed any problems at all. In fact, two of the most -- when you're looking at the effect of these uses, two of the most common issues

associated with use and property for a given purpose, the external manifestations of traffic and noise. And neither of these, I suggest to you respectfully, that neither of these issues are present in this situation.

Finally to say, given the extent of office use in a non-residential commercial use along the entire length of Mass. Ave. from one end of the city to the other, I would say that even though this property was rezoned in 1982, it may have been done to preserve certainly residential components of that four block area, there's nothing to suggest that there was an intent to eliminate the active commercial uses previously existing on Mass. Ave. which predominate on Mass. Ave. for most of the time.

So in sum, Mr. Chairman, members of the Board, for these reasons we believe that this petition satisfies those statutory requirements for a Variance and respectfully

request that you grant a Variance to allow my client to use. Keep in mind it's one segment of the office space, of the basement space. If you look at a -- if you look at a cited plan, this is the footprint of the building. The basement is -- the basement space is under all of this footprint. We're talking about this subset here which is, it was renovated, formerly used for dental uses and now proposed to be used for general office. As I said, it's a subset for entire space, the rest of which has been used for akin to general office, mostly legal and so forth.

So with that that would conclude our formal remarks. Should you have any questions, I would be most happy to try to answer them. Thank you for your time.

BRENDAN SULLIVAN: And as-of-right solution would be a residential unit?

ATTORNEY TERRENCE MORRIS: Well, for that reason, Mr. Sullivan, we think that

the basement space is not a space -- particularly this space.

BRENDAN SULLIVAN: Well, I mean I guess that's either yes or no. I mean, it's -- can it be converted into a residential unit?

SEAN O'GRADY: No.

BRENDAN SULLIVAN: It cannot be? So that if the existing use which is non-compliant with the Ordinance is abandoned, then for all intents and purposes the space would become vacant?

ATTORNEY TERRENCE MORRIS: That is a draconian result but I can't disagree with that.

TIMOTHY HUGHES: Any other questions?

BRENDAN SULLIVAN: And you're talking about the '82 rezoning, and it was not to disallow or not to recognize the existing use. But then the '97 rezoning when they

rezoned it residential, what that says to me is that it was the intent to slowly have these prior business, if you will, general, very business use be converted to residential uses or to slowly, you know, have those go away and have it be restricted to residential uses.

So, I think your tact as well, we always had it as a dentist which was dentist office, which was protected under a, you know, pre-existing non-conforming use. We would like to go to general office use even though currently neither one of them allowed in the zone.

ATTORNEY TERRENCE MORRIS: Right.

BRENDAN SULLIVAN: Okay, so that -- and so what you're basically asking for is a Use Variance?

ATTORNEY TERRENCE MORRIS: That's correct.

BRENDAN SULLIVAN: And I know you've cited some cases, and I go back to one of the

cases that -- I like to sort of hang my hat on is Mendoza versus Licensing Board of Fall River, where the Court found in that that although all Variances are unusual forms of relief from Zoning requirements, Use Variances should be particularly extraordinary because they inherently undermine the local Zoning Ordinance division of uses.

So basically the legislative part of the city has handed us a document and said, we don't want general business and, you know, all those classifications in this particular zone.

ATTORNEY TERRENCE MORRIS: My response to that would be to come back to the sub -- the below grade nature of the space. It's not suitable -- it's not highly desirable to put people below ground essentially living in cellars, and so --

BRENDAN SULLIVAN: We had a case two

cases ago that wanted to take it from the third floor and put it into the basement.

ATTORNEY TERRENCE MORRIS: I'm just telling you. The -- so, therefore, as a result, what I'm suggesting is that this is truly unique. This is a unique characteristic and that's why I cited the below grade space as a topographical feature that makes this unique. And it's that uniqueness that basically carves out --

BRENDAN SULLIVAN: Well, that's not the intent of that requirement of the topography of the land and you know that. I mean, that's really stretching it.

ATTORNEY TERRENCE MORRIS: No, I'm just telling you -- well, you know.

BRENDAN SULLIVAN: That's not -- that's not -- anyhow. Well, those are my thoughts at the moment.

TIMOTHY HUGHES: Okay. Any other questions?

DOUGLAS MYERS: No questions.

SLATER ANDERSON: Did you say that there was a fire?

ATTORNEY TERRENCE MORRIS: Yes.

SLATER ANDERSON: That affected this space or in this space?

STUART ROTHMAN: A fire in 2009 it affected the residential portion of the building. The substantial water damage that affected the space. Now that being said, the tenant was there and the dental made during the period restoration. However, she was terribly inconvenienced and asked to be able to relocate at some point because of the inconvenience. And she did. She found an alternative space and exited in I believe it was 2011. So, which was understandable because it was an incredible disruptive amount of work that was going on that was affecting her business.

SLATER ANDERSON: So it's been

vacant since then?

STUART ROTHMAN: So it's been vacant since I believe August of 2011.

DOUGLAS MYERS: Of 2011 you said?

STUART ROTHMAN: Yes.

TIMOTHY HUGHES: Further questions? I'm going to open it up to public testimony.

Is there anyone who wants to be heard on the case 10384, 923 Mass. Ave./77 Hancock Street?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I'll close public testimony.

Any further remarks, Mr. Morris?

ATTORNEY TERRENCE MORRIS: No, Mr. Chairman. I appreciate your time and your courtesy. Thank you very much.

TIMOTHY HUGHES: Remarks from the Board members.

DOUGLAS MYERS: Yes, I would just

like to follow up with what Brendan was saying. I would vote to deny the appeal of the Commissioner's ruling, and I think the Commissioner properly left this matter for the discretion of this Board in the form of a Variance proceeding. But it seems to me that when we frame it, as at the end of Brendan's exchange with Mr. Morris, if this is simply the equivalent of a Use Variance, although I have frequently opposed Use Variances and have stated that the Cambridge Ordinance is flawed to the extent that it permits change of use on an almost the spot basis, by a Variance proceeding, nonetheless it seems to me that it is the wisdom of our discretion to permit a Use Variance in this case because it permits the property to be used effectively with a functional impact on the City of Cambridge, minimally bare, and really no violence done to the structure of Zoning or to the policy of non-conforming

uses in the city. So I would vote to deny the appeal, but I would vote to uphold the Variance as a Use Variance.

ATTORNEY TERRENCE MORRIS: Thank you.

TIMOTHY HUGHES: Any comments?

SLATER ANDERSON: So --

TIMOTHY HUGHES: We're going to vote on the Variance.

SLATER ANDERSON: Yes, the appeal is the other thing. I'm not going to speak to the appeal piece of it.

TIMOTHY HUGHES: Okay.

SLATER ANDERSON: But, this hasn't -- I'm assuming this hasn't been advertised for rent since it's been --

STUART ROTHMAN: It has.

SLATER ANDERSON: It has been? As medical space?

STUART ROTHMAN: That's right. We have advertised it since September with the

Dino Company. There's actually been a sign on Mass. Ave. We have spoken to a few people. It is very -- we're having a difficult time reaching that kind of clientele that would be interested in this particular space.

SLATER ANDERSON: What is the reasoning for it?

STUART ROTHMAN: Sublevel space is not preferable to a lot of them. And the fact that in general the space entrance is on Hancock Street and not Mass. Ave., is somewhat of a problem. So, you know, very light sensitive. And there is natural light in the space, but a lot of them prefer more.

SLATER ANDERSON: It's on the north side of the building, right?

STUART ROTHMAN: It's on the north side. So the windows would be --

SLATER ANDERSON: (Inaudible).

THOMAS SCOTT: Yeah, they're ground level windows, but it's blocked by the

building next-door, too.

SLATER ANDERSON: So our denial of the Variance request, though, would result in the likelihood that you would continue to find a medical use tenant? That would be the recourse or I guess it remains vacant.

TIMOTHY HUGHES: That's the only recourse.

SEAN O'GRADY: Storage.

TIMOTHY HUGHES: Right.

SLATER ANDERSON: So the approval of the Variance would result in -- as I tend to agree with you with, frankly, a better outcome for the city from a traffic standpoint. And the denial does -- it does probably better than that because it takes some work, but that is to be determined. That's it.

TIMOTHY HUGHES: Any more comments?
Andrea?

ANDREA HICKEY: No.

TIMOTHY HUGHES: All right. The Chair would make a motion to grant the Variance for a change of use from dental office to general office space at 923 Mass. Ave./77 Hancock Street.

The Board finds that a literal enforcement of the provisions of this Ordinance would involve a substantial hardship financial or otherwise to the Petitioner because it would prohibit the use of space for general office use consistent with the balance of the space in the basement level and create a substantial hardship by limiting the ability to lease this space, turning effectively into something that could only be used for its present use or storage.

The hardship is owing to the circumstances relating to the soil conditions, shape or topography of such land or structures, and especially affecting such

land or structures but not affecting the Zoning District in which it is located.

In this case the hardship is directly related to the below grade nature of the rental space within the existing structure in its relative position and elevation to the land on which the building sits.

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

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

The requested general office space use is assumed to have a less intensive use by virtue of the much less stringent parking requirement.

And relief may be granted without nullifying or substantially derogating from the intent and purpose of this Ordinance for the following reasons:

That although the area has been down zoned to Residence C-2B, there is no strong

indication that the -- it is intended to discourage the current uses that were non-conforming and that have been made non-conforming in the area by the down zoning in this Ordinance. And that the neighboring areas to both the east and west or north or south depending how you want to look at it, have substantial mixed use, commercial and residential all along mass Ave. For practically it's whole life, maybe it's whole life.

Having said all this, the Board makes a motion to approve the Variance. All those in favor say "Aye."

(Show of hands.)

TIMOTHY HUGHES: We have four in favor.

(Hughes, Myers, Anderson, Hickey.)

TIMOTHY HUGHES: Opposed?

BRENDAN SULLIVAN: Opposed.

TIMOTHY HUGHES: Four in favor.

Variance is granted.

ATTORNEY TERRENCE MORRIS: Thank
you for your time and courtesy.

* * * * *

(8:45 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: Do we need to take an action on this appeal? Are you going to verbally withdraw?

ATTORNEY TERRENCE MORRIS:

Withdraw.

TIMOTHY HUGHES: I'm going to vote on appeal.

In the case of 10383 on the appeal of the Commissioner's decision on 923 Mass. Ave./77 Hancock Street, the Petitioner has made a request to withdraw. All those in favor say "Aye."

(Show of hands.)

TIMOTHY HUGHES: Five in favor.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

* * * * *

(8:50 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Chair will call case No. 10385, 16 Francis Avenue.

Anybody to be heard on that?

Please identify yourself for the record, Sean.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices in Cambridge. I'm here tonight on behalf of the Yihe Group. This was an application to add an accessory unit to 16 Francis Ave. As recently as Monday, we met with the neighbors and abutters. This is a situation where the owner does live abroad. He bought two properties on the street, and

after meeting with the neighbors, it was apparent that there were questions that only the owner can answer himself and there was a request from the neighborhood to continue this case. We have scheduled the owner to come into town into March as early as possible to be able to meet with the neighbors. There were questions that didn't necessarily pertain to the relief but in terms of the culture of the neighborhood. There was specific requests that they be able to meet and discuss the relief in how the property would be used. Particularly this is a neighborhood, and this is a section of the Ordinance that allows for the accessory unit for questions about intensity. And so we are requesting a continuance to be able to be heard.

I did submit a letter, but I did want to come tonight. I know how the Board looks carefully at continuances and I didn't want

to just have a continuance date set and a continuance be set. So I would like to see if there is available hearing date, if the Board would permit, we expect by the first week of April that we would have concluded all neighborhood discussions and been able to come here and hopefully move forward with whatever agreement.

So I know that the Board doesn't always like to put dates off, but I wanted to address the Board directly and ask for a continuance and give you the rationale for the request for a continuance.

DOUGLAS MYERS: Case not heard?

TIMOTHY HUGHES: Right, case not heard. What do we have?

SEAN O'GRADY: We've got April 11th.

ATTORNEY SEAN HOPE: April 11th.

TIMOTHY HUGHES: Do I need to open this up to public comment on a continuance?

SEAN O'GRADY: You can ask.

TIMOTHY HUGHES: Is there any public comment on whether or not to continue this case?

(No Response.)

TIMOTHY HUGHES: Seeing none, the Chair will make a motion to continue this case as a case not heard to April 11th on the condition --

SEAN O'GRADY: Did we get a letter of waiver from you?

TIMOTHY HUGHES: -- on the condition that the Petitioner sign a letter of waiver for the statutory time limit, and change the posting sign to reflect the new time and date of the hearing which would be seven p.m., April 11th.

All those in favor --

BRENDAN SULLIVAN: And any new submissions be in the file.

TIMOTHY HUGHES: Oh, right.

And any new submissions or plans or

commentary be in the file by five o'clock on the Monday prior to the hearing date.

All those in favor?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

ATTORNEY SEAN HOPE: Thank you.

* * * * *

(8:50 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case No. 10386, 158 Cushing Street.

Is there anyone here to be heard on that matter?

(No Response.)

TIMOTHY HUGHES: Seeing no one, there is a letter in the file.

(Reading) Dear Mr. O'Grady: Please inform the Board of Zoning Appeals that on behalf of my clients Theresa Borelli and her agent Anthony Borelli of 158 Cushing Street in Cambridge, we would like to be delay being heard for Zoning relief on the project. We were supposed to be heard this evening. Our intention is to redesign the proposed

building for the site and resubmit drawings to the BZA for relief, which we intend to be a request for less relief than our present application represents. We would appreciate being heard on the next possible time with the understanding that the application must be revised and that the neighbors must be shown the new design and that the new building must be advertised appropriately. Thank you. Signed by Maggie Booz.

Do we have a letter in here or is she coming in to sign one, a waiver?

SEAN O'GRADY: No, we don't. This was all very late in the day.

TIMOTHY HUGHES: But you're confident that that will happen?

SEAN O'GRADY: Yes, I trust that that will happen.

TIMOTHY HUGHES: Thank you.

SEAN O'GRADY: We are -- we just have

to change the sign on the site, but I'm not sure it was there. It's three weeks. We can give them February 28th.

TIMOTHY HUGHES: Okay.

The Chair would make a motion that we continue this case to February 28th on the condition that they sign a waiver for the statutory time limit and that the sign on the property be changed to reflect the new date and time, seven p.m. on February 28th. This is a case not heard.

All those in favor --

BRENDAN SULLIVAN: And the new submissions.

TIMOTHY HUGHES: Oh, and any new submissions. I'm talking to an empty chair, Brandon.

Any new submissions be in the file by five p.m. the Monday prior to the meeting date.

BRENDAN SULLIVAN: There will be new

submissions.

TIMOTHY HUGHES: There will be on
this case.

All those in favor.

(Show of hands.)

TIMOTHY HUGHES: That's five in
favor. Thanks.

(Hughes, Sullivan, Myers, Anderson,
Hickey.)

* * * * *

(8:55 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case No. 10387, 6 Hillside Place. We'll call case No. 10387, 6 Hillside Place. We're not going to hear it but we'll call it.

Anyone here to be heard on that matter?

(No Response.)

TIMOTHY HUGHES: They've been informed of the failure to post that's why we're not hearing it tonight?

SEAN O'GRADY: Yes, that's right.

TIMOTHY HUGHES: So this case will be continued to when?

SEAN O'GRADY: Do we have a letter from them?

TIMOTHY HUGHES: Yes. Do I have to read this whole thing?

SEAN O'GRADY: No, I wasn't sure whether it got in yet.

TIMOTHY HUGHES: That's a support letter. I don't know if there's a letter that's requesting the continuance?

BRENDAN SULLIVAN: I'm not sure where they're going to be able to put the posting sign. This is up a private way.

SEAN O'GRADY: We consider that to be a street. So....

BRENDAN SULLIVAN: It's just that I think that it should be visible at least from the public way, not more than 20 feet from the public way. Even though that that's a street, I'd almost, because it's an expansion of the existing building --

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: -- that it be right on Avon Hill.

SEAN O'GRADY: Put it on Avon Hill.

BRENDAN SULLIVAN: And there is a telephone pole there. It gets problematical. Possibly they could ask one of the neighbors on either side of that private way if they can put a stake in the ground and a sign on it and maintain it. I would not be one to accept one being on the fence that you don't even see from Avon Hill.

SEAN O'GRADY: I think if you guys say -- I mean, the only thing I would say is telephone pole, yeah, sign in the ground, not gonna work in the next couple of weeks.

BRENDAN SULLIVAN: Right. So I think --

TIMOTHY HUGHES: Unless it's below six feet.

BRENDAN SULLIVAN: It may be one of those things.

SEAN O'GRADY: Tell them to put it on the pole.

BRENDAN SULLIVAN: You may want to go out some day with them and say -- and use your judgment as to where you think it would be acceptable and in compliance with the requirement of the Ordinance.

SEAN O'GRADY: Well, I mean it will violate the Ordinance but I think that -- well, maybe we should do this: One on the fence and one on the telephone pole. That way we get the spirit and the letter of the Ordinance.

BRENDAN SULLIVAN: Yes. It's just that I think that something has to be visible from Avon Hill Street.

SEAN O'GRADY: I agree with you.

BRENDAN SULLIVAN: Because those are the people that are going to be impacted even though some of them will be notified, most of them will not be.

TIMOTHY HUGHES: There is a handwritten note in the file that says 6

Hillside Place, case No. 10387 next available hearing, signed by Mark Hammer, H-a-m-m-e-r Architects.

When is the next available hearing?

SEAN O'GRADY: And he signed a waiver, too?

TIMOTHY HUGHES: There's no indication. I don't see a letter. I see a lot of unqualified support.

SEAN O'GRADY: Let me look through it.

TIMOTHY HUGHES: Okay, because I might have missed it. Did he come in and give you that piece of paper and sign a waiver?

SEAN O'GRADY: Yes. It's just posting sign.

TIMOTHY HUGHES: Okay.

The Board would make a motion to continue this case until when?

SEAN O'GRADY: They want to come as soon as possible, and that would be 675 Mass.

Ave. is not coming any longer. So we can put another one on 2/28.

TIMOTHY HUGHES: Continued to February 28th, at seven p.m. on the condition that they change the postings.

SEAN O'GRADY: Post twice.

TIMOTHY HUGHES: Post twice and have them reflect the new time and date of seven p.m. on February 28th. And that any new submissions be in the file by five p.m. the Monday prior to the meeting date.

All those in favor?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

DOUGLAS MYERS: Is that official about 6:75 Mass. Avenue not coming on February 28th?

SEAN O'GRADY: That's right. Now

that you've asked, I got a blank space. They were granted by the City Council so, yes.

(9:00 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case No. 10388, 2445 Massachusetts Avenue.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight with owner and operator Robert Harris of Season to Taste Caterers.

Good evening. So this is an application to relocate an existing use which is catering in this -- the catering actually currently is located at 2447 Mass. Ave. The existing use is catering with accessory dining. This is an application to transfer the use as an abutting space at 2445 Mass.

Ave. This is located in the Business A-2 district on the north part of Mass. Ave. And the North Mass. Ave. Overlay District.

Just to give the Board a little bit of history. Robert started his business in 2009. As I said, it was a catering business with accessory dining. Part of the benefit for Mr. Harris was that the catering business served his customers off site, and the accessory dining was primarily used for the people who would potentially be customers could come and taste the food. Since 2009 his business has grown. This is a particular difficult stretch of Mass Ave. There's been City Council hearings and movements at Community Development because it's not a very well traveled pedestrian environment.

There is bus service and there are meters, but it's not a place where lots of restaurants have thrived. Mr. Harris does do a lot of his business off site, he has been able to get

the good will and the frequent neighbors in the community who come and they actually do frequent, not everyone who actually comes to his space now currently is just for catering, he does have some people who do try his food. But because he's grown since 2009, he's in need of more space. The catering business has grown so he would like to increase his business.

In terms of Article 4 this is a Use Variance. And I know from the Board's experience, the Board takes Use variances very seriously. This is particularly unique because catering is not specifically defined in Article 4 Table of Uses. So although catering is not allowed, it's not specifically denied.

My conversation with Inspectional Services it fell into a category of wholesale or assembly of food products, although that's not specifically, that's the category that it

falls under. That is a use that is not allowed in the Business A2 District. As I said, though, it's not specifically for catering.

Part of the hardship for this use is the fact that this is a non-conforming structure. It's located on the Mass. Ave. with no front yard setback. It's on a corner lot and it's an existing one-story brick building. The total space is about 4,000 square feet separated into three commercial spaces. The current space right, 2445 was Marco's Pizza Restaurant. It had been a pizza restaurant for over 20 years and had went out of business. There was a change in ownership from father to son, and they had really struggled to maintain the viability of the business. One of the unique things about the catering restaurant is that it doesn't require as much space as a typical restaurant. So as part of the business model

it would be mostly kitchens, there's some prep tables in the middle of the restaurant, so customers could come and they could try the food. Also there's a shortage of parking, there's no off street parking on the site. So it particularly works well and uniquely well for a catering restaurant because the clients don't have to come, that he would go and serve the clients where they are at different events.

Also part of this application requires -- there is a new state license for caterers. They allow caterers to have alcohol. You can bring alcohol to venues as part of the catering package. Previously this was a one day license that was handled by the city. Part of the reason why Mr. Harris couldn't take his existing site is because the License Commission, the Alcohol Beverage Control Commission requires a separation from where alcohol is served on

the premises from the catering location. Currently now he has a beer and wine. So as part of his catering use with accessory dining on site at 2447 Mass. Avenue, he serves a beer and wine. In order to have the expansion of the catering business which he had to find an adjacent site which doesn't serve any alcohol or beverage.

To the hardship, a literal enforcement of the Ordinance would be a substantial hardship to Mr. Harris's business because right now he is at a breaking point in terms of capacity. The catering area takes up a large portion of the kitchen, and he would like to expand to meet the demand that his business is experiencing which in this climate is somewhat successful.

Mr. Harris has since 2009 has done a significant amount of community work, and although his business is off site, and you'll see by the letters of support in the file,

this is something that is seen as a benefit to the community. That's it.

TIMOTHY HUGHES: Anything else?

ATTORNEY SEAN HOPE: I'll stop there.

TIMOTHY HUGHES: It seemed kind of abrupt, no?

ATTORNEY SEAN HOPE: Well, you were looking at the pictures --

TIMOTHY HUGHES: I was waiting for the climax.

DOUGLAS MYERS: It would indicate a lack of interest but it would be helpful to refresh my memory.

TIMOTHY HUGHES: Any time Doug takes the file out of the Chairman's hands it stops them in their tracks.

Any questions at this juncture?

BRENDAN SULLIVAN: You need more square footage.

ROBERT HARRIS: Yes, sir.

BRENDAN SULLIVAN: And more square footage for kitchen --

ROBERT HARRIS: Yes.

BRENDAN SULLIVAN: Storage and also showroom. And I say showroom because going back to the original case, I think you set up a presentation, have people come in and sample --

ROBERT HARRIS: Yes.

BRENDAN SULLIVAN: So is it all three of those components that sort of need more space?

ROBERT HARRIS: Well, essentially as more and more people are coming in to taste the food and enjoy it, it's -- the space is getting small for us so that we can't conduct the catering as we'd like. So this would essentially -- by going in one space over, would allow us to have a larger prep area for the catering and still continue the other services as well.

BRENDAN SULLIVAN: Sort of the presentation area or something like that I guess.

ROBERT HARRIS: Exactly.

BRENDAN SULLIVAN: Yes, okay.

DOUGLAS MYERS: And the, so the accessory restaurant function would be reserved --

ROBERT HARRIS: Yes.

DOUGLAS MYERS: -- would be carried over?

ROBERT HARRIS: Yes.

DOUGLAS MYERS: And you would intend to have a beer and wine license in your new location? No? In connection with the accessory area?

ROBERT HARRIS: It's a little strange because of the disconnect between the catering and the beer and wine. So essentially we would -- at some point we would like to have -- be able to provide beer and

wine for off premise. But on premise in 2445 we would not serve alcohol. That would only happen in the existing space at 2447.

ATTORNEY SEAN HOPE: And more specifically you're not allowed to -- if you're a caterer, under the caterer's licensure you're not allowed to serve any alcohol on that premises.

ROBERT HARRIS: It's a separate license.

ATTORNEY SEAN HOPE: So that's why as opposed to maybe opening a wall and doing some change of that use the state requires that you keep the alcohol separate. So the restaurant wouldn't be able to run the catering license out the back with his alcohol license. So this is why he needed a separate space to run the catering business and the adjacent space afforded both things, afforded more room and eventually applied for him to apply for and receive this catering

license which would allow him to go to events and alcohol establishment as which is also significant markup.

TIMOTHY HUGHES: Any other comments?

BRENDAN SULLIVAN: My only comment would be this is probably one of the most benign businesses on that stretch of Mass. Avenue and that whole demographics is changing dramatically because it's almost in a no man's land. You know, you've got the copy place. And the copy place can sort of operate on its own. Norton's is Norton's and, you know, it's either a destination place or you drive by and you stop in. Marco's, and I frequented Marco's, but he just was really struggling because people just drove by and it's just -- it's like a no man's land up there.

ROBERT HARRIS: Yes, it is.

BRENDAN SULLIVAN: And one of the

fears is that -- and again, this is one of the most benign existence. You go by there and you don't even know that anybody's there doing anything. But I think that where Marco's was could just lay fallow for a long time and just nothing would go in there. And I think, you know, that this is a viable.

ROBERT HARRIS: Thank you.

BRENDAN SULLIVAN: Use of the space and enhances your business. Makes your business more viable.

ROBERT HARRIS: Yes.

BRENDAN SULLIVAN: And so anyhow, that's just my comment.

ROBERT HARRIS: Just as an aside, we care a lot about the area. We have put a lot of resources in to making the front look better, like a green space, not so much of a concrete jungle as it were. And we plan to do the same to make it a very warm and welcoming place. Our hope as the community

grows that this won't be a no man's land. I'd like to be here for 20, 30 years until I retire. I'm vested in the community and it being successful. And we want to be good neighbors at the same time.

TIMOTHY HUGHES: The Chair would open it up to public comments.

Is there anyone who wants to be heard on case No. 10388, 2445 Massachusetts Avenue?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I'll close public comment. But I will introduce into the record letters of support. A petition with approximately 50 names on it and another 10 or 11 letters of support coming to approximately 60 people in the vicinity. There's Gold Star Road, Camp Street. This is all neighbor -- this is all neighborhood support. Church Hill, Cameron, at least most of them. There's a couple across the street, but you know, that's good, too.

And there's also a letter from -- (Reading) The Planning Board has reviewed above case and leaves the case to the determination of the Board of Zoning Appeals. That's nice of them.

(Reading) I write to inform the Board that Mr. Harris made a presentation to the North Cambridge Stabilization Committee on Wednesday evening, February 6th. His performance over the last three years has won him considerable support from his neighbors in the wider community. Several abutters have told us that they support his proposal. No one spoke in opposition, and the neighborhood looks forward to the expansion of his business as he proposes.

Any further comment from members of the Board?

Ready for a motion?

The Chair would move that a Variance be granted in case No. 10388 at 2445

Massachusetts Avenue to operate a catering business in a former restaurant space.

A literal enforcement of the provisions of the Ordinance would involve a substantial hardship financial or otherwise to the Petitioner.

The Petitioner currently operates a catering business and accessory dining for the purpose of introducing his food to potential clients at 2447 Massachusetts Avenue.

The Petitioner's business has grown and he's now seeking to utilize the adjacent space as a catering operation because the current space is no longer sufficient.

A literal enforcement in the permitted use in the Business A2 Zone would prevent the Petitioner from being able to expand the central part of his growing business that is uniquely suited for the location because it services its clients off site and only

includes requires very little parking for its customers.

The Petitioner in 2009 received Zoning relief to allow a portion of the adjacent space at 2447 to be used for catering and now he's looking to expand that.

The hardship is owing to the following circumstances:

The small size of the existing commercial space and the lack of parking such that a catering business that services its customers off site would allow the Petitioner not to be detrimentally affected by the small size and challenging location.

Additionally the sites located on a portion of North Mass. Ave. is not heavily traveled by pedestrians and has been a challenge for other retailers.

The Petitioner has been able to overcome the challenging location through the broad reach of his catering business and

community outreach efforts.

Desirable relief may be granted without either detriment to the public good because the use has been proven successful at the adjacent location and will continue the active ground floor retail along North Massachusetts Avenue. Additionally, there would be no negative impact on the abutting residential neighborhood.

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

The Petitioner's proposed use is not easily defined in the code and has components of the allowed uses of restaurant and food delivery elements that are customary for many restaurants in Cambridge. So use more along that stretch of North Massachusetts Avenue.

All those in favor of granting the Variance?

(Show of hands.)

TIMOTHY HUGHES: That's five in
favor.

(Hughes, Sullivan, Myers, Anderson,
Hickey.)

TIMOTHY HUGHES: Motion carries.

* * * * *

(9:20 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case No. 10389, 190 Hamilton Street.

Identify yourself for the record.

EDRICK VAN BEUZEKOM: My name Edrick Van Beuzekom. Edrick is spelled E-d-r-i-c-k. V-a-n-B-e-u-z-e-k-o-m. I'm the architect for the project. My clients are Ray Ahlberg. Ahlberg is A-h-l-b-e-r-g. And Catherine Wood.

Should I present the project here?

TIMOTHY HUGHES: Sure.

EDRICK VAN BEUZEKOM: Basically Catherine and Ray approached me about doing some renovations to their house. The situation right now is there's an addition on

the rear of the house. And I'll pass around a few photos.

This is the house. These are two shots of the house from the street. It's a two-family which is split down the middle. They own this side of the house with the bay on the front. There are a few views of the rear of the house. As you can see here, there's an existing porch here which is somewhat delapidated. And inside right there is where their kitchen and pantry are currently. And that portion of the house has been basically -- doesn't have a proper foundation under it, so it's sinking. And so basically what we'd like to do is renovate the kitchen, do a small addition to make the kitchen a more reasonable size, and convert the porch into a bathroom, full bathroom. The reason for this is there's no bathroom on the first floor of this house, and my clients' intention is to stay in the house as they age,

and they want to have the option of having an accessible bathroom basically, and a potentially accessible entrance eventually to go at some point in the future to need to possibly put a ramp up to this back porch here. And then in addition to that, Ray -- they have two cars. They got rid of one of them because Ray uses a bicycle to commute around the city, and he basically doesn't have a good place to store it, so we wanted to do a small addition on the back here which would be a bike shed.

The lot is an odd-shaped lot. We have plenty of square footage. We're under the FAR. We meet the side yard setbacks through most of the site. But as you can see, it's sort of an L-shaped lot. The rear portion here based on the formula for the setback, you know, requires much more than what we have currently. And in fact, if we go from both sides, we couldn't plant anything here

essentially.

So, with the existing porch what we're planning -- I'll show you a few views here. Also, let me just show you a few neighborhood views. This is looking out this side of the lot. Just to give you a sense of sort of -- there's a lot of space in this direction to the neighboring houses.

This is a 3-D view of the proposal. And here's another view of it. And this is a 3-D view. It's not to scale, but it's of the existing just to show you the difference. We're taking this existing porch and enclosing it here, and then extending this flat roof here back with this corner basically claiming that for interior space to expand the kitchen. And I'll show you on the floor plan in a moment how that works. And then claiming, it's enclosing this porch. The roof would get raised up just a little bit in order to get adequate headroom toward the

back of it. And so we'll extend this flat roof back, enclose this, and then the bike shed, we're basically plugging that in on the back here. Keeping it low so we can have a window in the bathroom back here.

This portion of the addition is basically right on the property line with the neighbor. And so the proposed bike shed will extend that portion of the house right along the property line there.

So, I just show you in the plans. So here's where the existing kitchen is. The property line runs right here. We are basically claiming -- there's a little corner here which is what we want to -- that flat roof section runs over that part of the kitchen currently. So we want to just extend that back deck. Basically square this off and get a little more room for this to be an eat-in kitchen.

And then the porch here we're basically

fitting a laundry, stacking laundry, and a full bathroom here with a shower. No curve on the shower so that you can roll a wheelchair into it. And then here's the bike shed back here.

So as part of this extending flat roof deck we are doing a covered porch for the entrance back here just to protect the entries into the house back there.

We are also proposing putting in a skylight in the roof here in order to compensate for the light that they'll -- right now there's good light that comes in the back here, and since we're extending it back we're putting the roof on here. We're not getting quite as much sunlight in there so we want to put a skylight to get some light deeper into the space.

Here you can see it from the side. So here's the covered porch here. This is the little corner that we're adding. We're

adding -- this is where an existing window is. We're adding a matching window right next to it. And here you see the roof of the porch and here you see the bike shed and that's short.

This is the view from the rear. So that's basically what we have. I think my clients would like to say a little bit about their reasons for the project.

TIMOTHY HUGHES: Certainly.

RAY AHLBERG: Thank you. I'm Ray Ahlberg. My wife Catherine and I have lived in Cambridge for the better part of the last 40 years. 25 years at this residence. This is was our first and only property that we've owned as residents. And about two and a half years ago we began discussing retirement and where we wanted to live, and the unanimous decision of the family was we're staying in Cambridge. We did look around Cambridge for a place that had facilities where we could

live on one floor, we wouldn't have to go up and down stairs. To be honest with you, we couldn't find anything that really met our needs. And also there was nothing in our neighborhood. We're really tied to the Hamilton Street neighborhood. We've helped organize and run block parties on our street for the last 12 years. We're very close with our neighbors, and enjoy the ability to walk and bicycle throughout the area. And this is where we want to live and this is quite frankly where we want to die. And the motivation for this project is really to provide us with a bathroom so that we can live on the first floor and not have to climb up and down stairs to the second floor.

ANDREA HICKEY: Is there a bedroom on the first floor now?

RAY AHLBERG: We have a living room, a dining room, and kitchen on the first floor. And we expect that the living room would end

up being our bedroom and the dining room would be the living room. And we would stay on the first floor. And that's really the motivation for all this. Plus, the back end of the house is falling off and falling down and it really needs to be shored up.

Our kitchen is not level. There's a five-inch drop from one side of the kitchen to the other side of the kitchen. All the marbles are in the corner on the right and I'd like to be able to have the marbles all over the place.

TIMOTHY HUGHES: That's dangerous.

RAY AHLBERG: We're trying to level that off. And I'm a very avid biker. I've bicycled to work in Boston for most of 30 years. I don't want to give that up. Obviously it's good for my health, and have a shed where I can put my bicycle and not have to drag it up onto the porch would be a real help for me.

ANDREA HICKEY: So right now you store your bike on the back porch?

RAY AHLBERG: On the porch, yeah, which is not really weather tight in the winter.

DOUGLAS MYERS: Not to indicate any disbelief in what you've said, but if you ultimately live mostly on the first floor, what would you expect to become of the upper floors of your house?

RAY AHLBERG: Well, we have two junk room floors now. We probably would have four junk room floors. We can't seem to get rid of some of the things, family heirlooms, and personal items.

CATHERINE WOOD: We also do have a daughter who is 24 right now. I'm 64. Ray is 65. She lives around the corner on Erie Street and so also sort of a die hard Cambridge person, and I hope that at some point we'll be able to share the upstairs with

our family maybe as guests or whatever. So but we really, really love Cambridge. We own a business. After my parents died when the architectural manufacturing firm architectural drafting products and we had the opportunity to actually, you know, live out there, and we could just never give it up and we sold it and we think this is where we want to be. So it's our story.

EDRICK VAN BEUZEKOM: My clients have been in contact with most of the neighbors and they have some e-mail communications from the neighbors, including the neighbor who owns the other half of the house basically.

CATHERINE WOOD: We informed them.

TIMOTHY HUGHES: This is 192?

RAY AHLBERG: Yes.

TIMOTHY HUGHES: Any questions from the Board?

DOUGLAS MYERS: No questions.

TIMOTHY HUGHES: I'm going to open it up to public comment.

Anyone want to comment on 190 Hamilton Street?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I'm closing public comment. I've just been handed a bunch of e-mail communications in support. I'm going to just leaf through them. It's about eight or nine of them.

The most significant one is the neighbor at 192 Hamilton Street who shares the property line and connected house semi-attached. (Reading) I'm totally fine with it. Amazing to actually get started. Which contractor did you end up with?

We all want to know that.

And that, that's the sum and substance of that. I'm not going to read every single one of them. The public can avail themselves of that at any time.

Any other further comments or questions from the Board?

(No Response.)

TIMOTHY HUGHES: We're ready for a motion?

The Chair would move that a Variance be granted at 190 Hamilton Street to construct a small addition at the rear corner of the existing kitchen and to add a side entry porch and bike shed. We'll do the Special Permit in the second go-round just so you know.

A literal enforcement of the provisions of this Ordinance would prevent the Petitioners from expanding an outdated kitchen to meet contemporary needs, and for making use of an existing enclosed porch that is badly in need of repair.

The proposal that a bathroom in this porch area is important to the homeowners to have an accessible bathroom at the first floor as they age.

The hardship is owing to the shape of the lot. The existing house is an attached single-family set to one side of a 50-foot wide property. The rear portion of the lot where the existing kitchen and porch are located is only 25 feet wide. Based on the formula of $H + L$ over 5, the required side yard setback is over 18 feet so that the rear portion of the house is not compliant with the side yard requirement. In fact, you couldn't build anything. There's overlapping setback requirements, right?

EDRICK VAN BEUZEKOM: That's right.

TIMOTHY HUGHES: Substantial detriment to the public good -- desirable relief may be granted without substantial detriment to the public good for the following reasons:

The proposed additions and renovations are at the rear of the house and not visible from the street. Additions do not impede on

the side yard any further than the existing structure, and the structure complies with FAR.

Relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance because the existing structure complies with most of the requirements of the Ordinance, and the addition is in the rear and not visible from a public way.

The Variance would be granted on the condition that it would be in substantial compliance with the set of plans that were in the file. That's correct?

EDRICK VAN BEUZEKOM: Yes.

TIMOTHY HUGHES: Marked
Ahlberg/Wood residence 191 Hamilton Street,
EVB Design and initialed by the Chair and
dated 2/7/13.

All those in favor of granting the
Variance.

(Show of hands.)

TIMOTHY HUGHES: That's five in favor. Variance is granted.

EDRICK VAN BEUZEKOM: Thank you.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

TIMOTHY HUGHES: Okay. The Special Permit.

The Chair would move that the Special Permit be issued at 190 Hamilton Street to enclose an existing rear porch. Is that it? And add a skylight. But I think do we need -- that's not in the setback. Oh, yes, it would be. It's in the middle of the thing.

All right. That wasn't particularly advertised, the fenestration, was it? I don't have it broad strokes.

SEAN O'GRADY: I'm sorry, the question is what now?

TIMOTHY HUGHES: On the Special Permit to enclose the rear porch --

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: -- there are no window -- no changes to the existing structure in terms of fenestration.

EDRICK VAN BEUZEKOM: Well, enclosing it is all --

TIMOTHY HUGHES: It's all windows, yes, but that's the enclosure part. That goes with the porch.

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: So is the roof for that matter. Because you're taking it off and moving it.

SEAN O'GRADY: Are we saying there's no Special Permit required?

TIMOTHY HUGHES: There's a Special Permit required to enclose the porch. There was a skylight on the porch roof and I wondered if that needed to be advertised for specifically or is that under the umbrella of the enclosing the porch?

SEAN O'GRADY: Oh, yes.

TIMOTHY HUGHES: Okay.

Requirements for the Ordinance can and will be met for the following reasons:

The existing structure and proposed renovations comply with FAR, and all other dimensional requirements of the Ordinance except for the side yard setback requirement.

The proposed renovations will repair an existing sun porch which is in disrepair, and a proposed additions extend but do not increase the non-conforming side.

Traffic generated or patterns of egress and access would not cause congestion. The proposal will have no impact on traffic or access and it improves a delapidated structure.

The continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected. Basically no change in the

adjacent uses.

Nuisance and hazard would not be created by the detriment to the health and safety and the welfare of the occupant of the proposed use or to the citizens of the City of Cambridge.

The proposal will not change the nature of activities nor space in the rear yard area, and as such would not create any nuisance or hazard.

All those in favor of granting the Special Permit?

(Show of hands.)

TIMOTHY HUGHES: That's five in favor. Granted.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

* * * * *

(9:35 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: Yes, 32 Suffolk Street. Case No. 10390. Approach and be recognized.

Would you please identify yourself for the record and spell your name if she doesn't already have them on the piece of paper over there.

YONG-CHENG WANG: My name is Yong-Cheng Wang. Y-o-n-g-C-h-e-n-g. Last name W-a-n-g. I'm the owner for the 32 Suffolk Street.

SAMY KASSIS: Samy, S-a-m-y Kassis, K-a-s-s-i-s. I'm the architect.

TIMOTHY HUGHES: Go ahead. You can let us know what you want to do.

YON-CHENG WANG: Okay, 32 Suffolk Street is a three-family house. I bought it year 2008. Right now the house is very old. I wanted to renovate it, the house. So that the major issue is that internal stairs from the third floor to the basement is too small. The angle is too small, and narrow on the slab and I fall down a couple of times. And so I wanted to build exterior stair in that backyard, and also I wanted to replace the current deck. So that's our first thing that we need the Board to approve to get a Variance.

Second thing, we need to enlarge the basement window. Right now the basement windows are too small. So we wanted to -- here is the deck and the stairs. Right now you can see the, you know, the picture and see that it's currently the stairs are too small. These are the major things.

And also I wanted to finish the basement

in the area. Right now I live in the second floor. So I want to live in the first floor. I have two kids and so then use the basement.

The Building Inspector measured the height and it's seven feet right now. It's seven feet and one inch. And he said someone took out the slab. I don't know why. It's not under my ownership. So that's why we came to the Board for the Variance. You know what I mean?

So that someone took out the slab, so he said, you know, we need to get --

ANDREA HICKEY: Somebody took out the slip?

DOUGLAS MYERS: Slab.

SAMY KASSIS: It's in the basement. Somebody excavated the slab prior to him buying the house.

YONG-CHENG WANG: It's not under my ownership. You know, when I bought the house, it was like that way.

SLATER ANDERSON: So you have a dirt floor down there now?

YONG-CHENG WANG: Right. It's a dirt floor. It's dirt.

TIMOTHY HUGHES: So what has to happen to make it a legally habitable space?

SAMY KASSIS: He wants to have three bedroom in the basement. To do so we need to have three window well on the outside. These three window require a Special Permit. They need to be approved by Special Permit so he can have the basement as living space as three-bedroom basement.

TIMOTHY HUGHES: If you have seven-foot-one now and it's a dirt floor, by the time you finish off the space are you still going to have habitable space in the basement?

SAMY KASSIS: No, that include excavating six inches to make it habitable in the basement.

DOUGLAS MYERS: I have very, very basic question. So without the Variance then you don't have habitable space in the basement, correct?

YONG-CHENG WANG: Right.

DOUGLAS MYERS: And after you renovate the basement floor and do whatever you're going to do to dig it out and put in a slab or a permanent concrete floor, what will then be the height of the ceiling above that floor?

SAMY KASSIS: We propose seven-foot, six. Finish the floor. So we're going to dig down six, seven inches.

ANDREA HICKEY: As finished space?

SAMY KASSIS: Yes.

SLATER ANDERSON: Where are we on the FAR on this?

TIMOTHY HUGHES: I was just going to look.

DOUGLAS MYERS: Well, just for the

record and for the edification of other Board members, as I looked at the dimensional information sheet, the FAR increases from 3429 to 4780. The GFA, excuse me. The FAR increases from 1.39 to 1.94 in a 0.75 zone which is an increase of 40 percent approximately.

TIMOTHY HUGHES: And how much of that FAR increases the basement and how much is the addition to put the stairs on? Or is there any -- is it an open roof, open deck so there's no --

SEAN O'GRADY: The stair itself is just scissor stairs, no decks?

SAMY KASSIS: You're talking it here?

SEAN O'GRADY: Yes.

SAMY KASSIS: He wanted to have a deck and open stairs on the outside.

SEAN O'GRADY: Okay. There's going to be one FAR for the footprint of the deck

but not the stairs. Two FARs for the footprint of the deck but not the stairs, and that will be it. So just two footprints.

TIMOTHY HUGHES: That's minimal compared to what, 900-something increase?

SEAN O'GRADY: Most of it will be in the --

DOUGLAS MYERS: It's 1350 in GFA.

While we're asking questions, one other question, maybe Brendan can help on this since he's reviewed the plan. I couldn't, I just couldn't see -- someone will have to point it out to me, I couldn't see where the porches or deck are replacing former decks. It seemed to me they were new as they're depicted on the plan.

YONG-CHENG WANG: We have one. We have a small one.

TIMOTHY HUGHES: There's just a small one on the first floor?

YONG-CHENG WANG: Right, right.

DOUGLAS MYERS: Oh, that? Okay.

SAMY KASSIS: This is the deck. But that's the only -- the stairs, exit at the bottom. The landing is four steps.

DOUGLAS MYERS: I see.

ANDREA HICKEY: Could I see those, please?

SLATER ANDERSON: The rear structure is all new. All that exterior.

SAMY KASSIS: What's that? That's all the new, right. That's proposed.

DOUGLAS MYERS: Here it shows are going to be 13 feet by nine feet.

SAMY KASSIS: Yes, that's the proposed addition.

DOUGLAS MYERS: That's the proposed addition. There's nothing like that on the building now?

SAMY KASSIS: No, no, it's just a small landing and three steps.

DOUGLAS MYERS: Where it says

replace a deck, I was a little bit misled.

TIMOTHY HUGHES: So there's an internal staircase for the second and third floor that's workable. It's just the one going to the basement that's not workable?

SAMY KASSIS: The one going to the basement definitely not, no.

TIMOTHY HUGHES: Definitely not. I can see that in the picture. But what's the statement status of the staircase from the first floor to the second and the second to the third? Is it code compliant?

SAMY KASSIS: Not really because, unless they comply with the 1920 code but not today's code.

BRENDAN SULLIVAN: But they're very typical of a three-family house. I have a three-family house and the back stairway is narrow. Is it -- do people trip down it? No, because I have a handrail along there. The -- and we've seen this a little bit too

much lately and what it is is that people say that the interior stairway is unsafe, it's a hazard, and so we want to put an outside staircase, code compliant. And really what it is is an attempt to take the space that the stairway, interior stairway now occupies and to capture that as living space by either putting in a bathroom, expanding a kitchen, a bedroom or whatever. And I think that's really what the attempt here is. But then what you're doing is you're taking an interior feature, a staircase, and putting it outside the building which it really doesn't belong. Your testimony is that you need some additional space so that you want to capture the first floor. I'm sorry, you want to capture the basement and move from the first floor so you'll occupy the first floor and part of the basement.

YONG-CHENG WANG: Right.

BRENDAN SULLIVAN: My thought is why

don't you occupy the second floor and the first floor and then you can get all the space that you need. You're going to take two rental units, but you've bought the building, you bought it in the condition that it's in. It was probably priced accordingly, and I don't see the justification for moving a living space into the basement when you can satisfy your needs by taking the first floor and the second floor for your residence and then renting out the third floor.

YONG-CHENG WANG: No, that's a -- we don't have a -- we don't have connection from first floor to second floor, you know, downstairs.

BRENDAN SULLIVAN: You put in a spiral staircase on the inside. You take some space.

YONG-CHENG WANG: Stairs too small. It's we don't have --

BRENDAN SULLIVAN: We've done it.

It can be done. I mean, you're taking a second floor and a first floor and you can connect them with a staircase.

YONG-CHENG WANG: Yeah, but, you know, that's a -- you know right now there's stair.

BRENDAN SULLIVAN: Right now you're taking three floors of living space and making four floors of living space. And I don't think the building is -- was designed for that, and I don't think that the taking of an interior staircase -- yes, it's not code compliant for now, but it is --

YONG-CHENG WANG: And also for the third floor that's a no way to come out. You know, we need, we need a second stair for emergency, right? That's for the third floor.

BRENDAN SULLIVAN: You have a front stairway and a back stairway.

YONG-CHENG WANG: Huh?

BRENDAN SULLIVAN: You have a front stairway and a back stairway.

SAMY KASSIS: They're saying you have the two staircases.

YONG-CHENG WANG: Yeah, so if we build, if I live in the second floor and the first floor, that's no way for the third floor, you know, that's a new stairs can --

SAMY KASSIS: No. He's saying conducive to stairs.

BRENDAN SULLIVAN: I thought this was atypical.

TIMOTHY HUGHES: Isn't there an interior staircase that goes from the third floor all the way to the ground in the back of the house?

YONG-CHENG WANG: Yeah, that's what we propose to do the --

TIMOTHY HUGHES: No, no. Interior. Is there an interior staircase?

YONG-CHENG WANG: There is no space.

TIMOTHY HUGHES: From the third floor to the second floor and likewise all the way down at the back of the house?

YONG-CHENG WANG: That's, you know, that's a no space. You see that stair is too small.

ANDREA HICKEY: No, right now --

TIMOTHY HUGHES: No, is there a staircase? I don't care if it's small or not. Is there one there?

YONG-CHENG WANG: Well, there's one there.

TIMOTHY HUGHES: Yes. From the third floor to the second floor at the back of the house?

YONG-CHENG WANG: Yeah, yeah.

BRENDAN SULLIVAN: There's a front door, there's an interior hallway that you come in -- you go up, you either go into the first floor, you go up to the second floor, from the second floor you go up to the third

floor. There is interior front staircase and a rear staircase. It's a very typical three-family house.

TIMOTHY HUGHES: Yes, it is.

BRENDAN SULLIVAN: That is prevalent throughout the city. It works. It has worked since -- when was it built? 1920, 1918, '20, '21, '22?

YONG-CHENG WANG: 1924.

BRENDAN SULLIVAN: It's worked since then.

YONG-CHENG WANG: Yeah. That is if we -- if I built -- if I leave the second floor and the first floor, there is no way for the third floor. You know what I mean?

BRENDAN SULLIVAN: No, because there is an interior staircase which goes from the front door all the ways up to the third floor.

YONG-CHENG WANG: I need to use that interior stair for -- to connect the first

floor to the second floor.

ANDREA HICKEY: You could use a spiral staircase. You don't have to use that. There are other options. You don't have to capture that --

BRENDAN SULLIVAN: Is it five rooms on each floor?

YONG-CHENG WANG: No. There's two bedroom on each floor.

BRENDAN SULLIVAN: Two bedrooms, living room, dining room, kitchen.

YONG-CHENG WANG: Yeah, five rooms.

BRENDAN SULLIVAN: So now you're going to capture a ten-room unit. I'm sure you can find space to put in an interior circular staircase to connect unit -- first floor to second floor.

ANDREA HICKEY: Or live on the second and third floor and rent out the first floor.

YONG-CHENG WANG: You know, the

stair is still small. That's a no -- the rear stair --

BRENDAN SULLIVAN: It's not uncommon and it has worked since 1894.

YONG-CHENG WANG: 1894. I bought it just 2008.

TIMOTHY HUGHES: For the record, the dimensional form has -- that Doug was pointing out goes from a 1.39 FAR to 1.94 in a 0.75. Also with the building of the stairs, the exterior stairs at the back, it makes the rear yard setback which is presently conforming by 0.4 feet. 0.4 is not a lot, but it is presently conforming to being eight feet into the rear yard setback. So there's a lot of relief being asked for as FAR, and then you're exacerbating the setback problems, too, in the back by ignoring your interior staircase. I, you know, I think what you're hearing here is that nobody likes this plan. I don't know that there's a way

that you can redesign it, but I think you should at the very least continue this case one time and try to see if you can come up with something else. Because I'm just, I'm counting the votes in my head, this isn't going to fly tonight.

YONG-CHENG WANG: I don't know how, how can we redesign?

TIMOTHY HUGHES: I have no idea. I'm not the one suggesting how to redesign. I'm just telling you this design -- I don't see that you have four people on this panel in support of it. And that's what you need to get it granted. If we have a vote tonight, it's going to get voted down and --

YONG-CHENG WANG: Should we reduce the deck? Give me some comments, you know, how we can --

TIMOTHY HUGHES: I think certainly the deck is a problem because it creates a new non-conformity at the back of the house by

imposing on a setback.

YONG-CHENG WANG: The deck, you know, it's also to support the house. You know, it's a --

TIMOTHY HUGHES: That's a long way around.

YONG-CHENG WANG: With a, you know, because the house is pretty old and I don't know we can reduce the deck to small size?

TIMOTHY HUGHES: I couldn't say that even -- that reducing the deck would make this plan any more palatable to the Board. I can't say exactly what's going to happen. All I know now, right now what I know is this isn't going to fly. If we vote on this tonight, it's not going to pass.

YONG-CHENG WANG: How should we redesign?

TIMOTHY HUGHES: I think the suggestions have been made, you know.

YONG-CHENG WANG: Because of the

deck or because of the --

BRENDAN SULLIVAN: With me it's the whole concept of what you're trying to do is to capture living space in the basement where you have available two units that you can -- plenty of space.

TIMOTHY HUGHES: With me it's less, it's less the fact that you're -- you're trying to capture a lot of space in the basement and then you want additional space outside, too, which that doesn't sit well with me, because that creates another non-conformity to this building by adding this stuff on the back end. So this, you know, there's a lot of things for you to be thinking about and looking at here.

SLATER ANDERSON: What's the current ceiling height in the basement?

YONG-CHENG WANG: Seven feet, seven, two. Seven feet, two inches.

TIMOTHY HUGHES: That's with a dirt

floor, though. That's going to change unless you excavate.

SEAN O'GRADY: Maybe I could have a conversation and come back after the next case and they can decide what they want to do.

TIMOTHY HUGHES: Yes, you want to talk to them?

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: Let's continue this case until a little later in the night. We'll hear our last case and then we'll come back and you can make a decision on what you can do. What's the terminology on this?

DOUGLAS MYERS: Recess.

TIMOTHY HUGHES: We'll recess this case and we'll hear the next one.

(Case recessed.)

* * * * *

(9:55 p.m.)

(Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: The Board will hear case No. 9642. Okay, who's presenting? And whoever is, please identify yourself for the record.

ATTORNEY PETER FREEMAN: Thank you, Mr. Chairman. Peter Freeman, Freeman Law Group, the attorney representing the applicant. And you probably know the others, but John Woods from the applicant, Cambridge Affordable Housing Corp. George Metzger and Laura Tau architects and Terry Dumas. You're here if you don't want to sit up here. And Terry Dumas is here for the Cambridge Housing Authority.

As the Chairman just said, and my letter of January 25th recites briefly the history. There are currently is a permit. There have

been some plan changes in the past under the 40B regulations -- and I brought copies of the pertinent parts if anybody wants to see them. Under those regulations if there is a change that could be considered insubstantial, there are some guidelines, what we do is we send in a notice with the description of the changes, we do believe that they are insubstantial under the regulations. And what the regulations say is that within 20 days you're supposed to determine whether or not they're insubstantial and we'll describe them in detail through the drawings that will be submitted. And if they're insubstantial then they're deemed approved as a change to the current permit. If you find that they're substantial, then the regulations state that you must hold a public hearing just as you would with the application within 30 days of tonight presuming you take action tonight.

So on the description of my letter of January 25th gave the details. In a minute, I'll just turn it over to George or Laurie or both to go over the plan changes which resulted as my letter said, from the fact that as is typical of the evolution of a lot of these apartment developments, when we go to the design stage, not the design stage -- I'm sorry, the construction stage as happened here. In fact, the original design came in over budget. It happened, it was too bad, but there was too much money to build. So it led to reductions. It led to changes in the design that actually fortunately only reduced the number of units from 42 to 40. The various impacts in terms of those dimensional sheet that you have, really the impacts are less. And then the guidelines which I won't go through all five, they're in my letter, if you like me to go through them, they're in the letter. But within the 40B

regulations there are guidelines as to what typically, they're not etched in stone, they're guidelines. But what typically would be considered under the 40B regulations insubstantial changes. And I mentioned them all and they're posted, and basically there are reductions in the number of bedrooms and sizes, roughly a 10 percent standard, they're typically considered insubstantial changes. And I'll read all four of those. And the fifth one -- the three-dimensional things, a fourth category is changes in the color, style of the exterior. And we are making some changes and typically those are substantial.

And unless you have questions about the procedure it makes sense to have George start explaining to you what's going on and certainly answer questions. And, you know, the status of the project is that we'll be ready to go forward now that they've worked

out the budget as you get this plans approved.

Thanks.

ANDREA HICKEY: I just had a quick question. Do I understand that there'd be no underground parking? All the parking now would be surface parking?

ATTORNEY PETER FREEMAN: Yes, that is one of the changes, correct.

GEORGE METZGER: I'm George Metzger. These two plans show the original plan under the comprehensive permit and the proposed plan. This is Bishop Alan Drive. This is Temple Street. Mass. Avenue is down here. This is the Stucco Y building. This is their -- what's it called, Tanner Hall building. Both of which are under some restoration work right now. This building, as you recall perhaps from before, has a pool on it and a classroom building that will be demolished.

The building here was a seven floor

building with parking under. This part of the building was a ramp coming down. And so closest part of the building to abutters' property here was 7.4 feet. And it occupied this rectangular space which is approximately similar to what it still does, but the building up above is now back at this line because with the parking occupying part of the first floor, that part of the building structure that's stuck up above the ground for the basement parking garage is no longer there. And the line to the building is now 17.74 feet back instead of the 7.4 feet. The dimensions changed slightly.

This dimension has gotten slightly longer, but the comprehensive permit refers to the two-foot clearance at the back of this bump of the building. Now it's flush at the back of the building at 3.25 feet. If you look at the dimensional form and Peter has other copies for, all the standard required

dimensional requirements are, this is where there are changes. They are less than the differences that were in the original plan. So everything is actually a little bit smaller in terms of its conventional dimensional conditions.

In terms of the rest of the building.

So here again is the proposed revision. It has instead of parking coming on the corner adjacent to the abutters' parking. We are separated more here. Parking comes in here, it's on the ground floor, it's 18 spaces, mostly covered by the existing building. We now have brought the parking of bicycles in under the building and in an enclosed space as well. This is now the lobby of the building. The entrances are in the same location as it was. And mechanical spaces are back here. As was done before, this is still the open green space that's developed for both the new Y's entrance and this

building's entrance. Because the first floor of this building is now approximately at grade, we've been able to eliminate some of the ramping that was needed in here on this site. So it's simplified the site.

Otherwise everything remains the same.

So the original building was in fact five floors at the street. And then stepping back and up to seven floors at the back. Now it is six floors with a small mechanical penthouse here. The exterior treatment of the building is quite similar, and I would also mention that we have reviewed this as was required by the permit with both Charlie Sullivan and Roger Boothe and we've had consultations with them, and they are pleased with this new rendition of the building.

We've also talked to abutters. The abutter in the back had a concern originally about shadows of the building. This because the building's now one story shorter on this

side. It actually reduces any -- which was pretty minimal already, but any shadow impact on their building, it does not change at all -- well, it -- where it changes the presence of the building to this abutter. It actually removes the ground floor construction here which came over another 10 feet into the side yard which is now eliminated altogether so that is a strip there.

Otherwise it was 42 units and it is now 40 units. It was 19 parking spaces and now 18 parking spaces. I think that's it.

ATTORNEY PETER FREEMAN: So that is pretty much it. And, again, any guidance you'd like on the regulations themselves, if you would like to look at copies, I've made copies to show you. And my letter explains things.

DOUGLAS MYERS: Of the insubstantial changes are the most

substantial the height that we're being asked to act on tonight, the height of the building and the relocation of parking? Or something else?

ATTORNEY PETER FREEMAN: Well, what I would -- my personal view to answer in terms of what the most substantial would be, which I still think is insubstantial I think I would agree. Although I would agree a reduction in height is typically considered an insubstantial change. But in terms of, you know, physically when you look at it, in laymen's terms, yeah, that's probably the biggest change. And likewise the elimination of the garage. But in terms of the aesthetic appearance and all of that because it's not a separate lot surface parking you can certainly see all those cars out there, we still think that it is number one pleasing and aesthetically appropriate and again fits within the guidelines that are

spelled out in the regulations for insubstantial.

DOUGLAS MYERS: And do I understand, because I'm not familiar with this process particularly, but do I infer correctly that there has been no forum for public comment on these, on the -- specifically with regard to the increase in the height of the building facing the street and the elimination of the underground parking?

ATTORNEY PETER FREEMAN: The -- in terms of a formal public hearing process, that would be true. But George wrote up -- the folks both at City Hall and other committees that they have met with and since you simply had those conversations --

JOHN WOODS: So that was me.

ATTORNEY PETER FREEMAN: Oh, did you do it?

JOHN WOODS: Yeah.

ATTORNEY PETER FREEMAN: John

prepared it. To be very clear, not public published announcements of a meeting per se, but in terms of outreach as they had done all along which I think is responsive to your question.

John, tell --

JOHN WOODS: In addition to individually reaching out to the abutters in the back, Saint Mary's and Rink Realty next-door on the left-hand side, we also sent out a letter to 31 of the abutters in the vicinity, including the condominium complex offered an opportunity to talk about the changes that we were making.

DOUGLAS MYERS: What response did you have to that?

JOHN WOODS: I actually got no response. We don't, we know the letters got there, and I didn't get any responses at all to that.

BRENDAN SULLIVAN: Did Ms. Cohen

have any communications with at all on behalf of the family?

JOHN WOODS: Mr. Ginsberg and I had a fairly lengthy conversation about it.

BRENDAN SULLIVAN: Okay.

JOHN WOODS: He called me from Arizona.

BRENDAN SULLIVAN: All right.

JOHN WOODS: And Saint Mary's actually, you know, we've had an ongoing conversation with Saint Mary's as we've been doing some of this investigation work. And the parish president who is also their attorney met with us on Monday, in fact, and we went over a list of sort of -- she asked to reiterate some of the concerns that she had had before, particularly around the construction activity going next-door. But she had no -- and she stated she had no objections to any of the changes that we were making.

BRENDAN SULLIVAN: This would lessen any real or perceived impact on Saint Mary's anyhow.

JOHN WOODS: Yeah.

BRENDAN SULLIVAN: I would think.

JOHN WOODS: Yeah.

BRENDAN SULLIVAN: Because I remember the concerns that they had, actually, I think their main concern was the impact on construction on their building. The glass, you know, and that so on and so forth and their restorations.

JOHN WOODS: The stained glass. They're still obviously very concerned about that. And obviously we're going to continue to work with them. We have an engineer to monitor any concerns that they would have with the stained glass.

BRENDAN SULLIVAN: A shadow study was a concern of theirs, but this will obviously lessen whatever one it may have

had.

JOHN WOODS: Yes.

ATTORNEY PETER FREEMAN: And that's one of the reasons why, you know, although certainly it's your decision guided by what you're hearing and what the regulations say, I've made presentations to Zoning Boards where we're actually increasing by a little bit, and it's the same roughly 10 percent standard. But, you know, I can understand, you know, when units are being added or there's potentially more impact because the building's taller instead of smaller or lower, you know, that I can see naturally might be a little bit more discomfort in this situation because of the fact that they are reducing impacts. That's why we think, you know, aside from the fact that it falls within those guidelines but all the situations put together are still beneficial impact, you know, just to help guide you and, you know,

what it is is it's not the same in terms of making all of the findings in terms of the balancing test that go into 40B in terms of housing need unless you find that it is substantial, then it's the public hearing process and, you know, we would, we would have had to make a full presentation. But having done it this many times and, again, another answer to your question which is certainly a good one, 40B is unique. It is a process that is intended to expedite so that's why there are guidelines as to if something is insubstantial, that it's not to deprive the public of input, but that it's deemed the wisdom of the legislature and the regulations that have been written by the agency, the HCD, that it does streamline the process. And, again, especially the outreach that, you know, folks like these, particular applicants have made a concerted effort to accomplish I think the people affected are

aware of the proposed changes.

SLATER ANDERSON: I have a question. On the north side there along that garage, what is the treatment of that wall?

GEORGE METZGER: On this side here.

SLATER ANDERSON: That wall on the ground floor.

GEORGE METZGER: That's the south side.

SLATER ANDERSON: That's the south side.

GEORGE METZGER: This is east, south, north, west.

SLATER ANDERSON: That side, sorry. The south side then. Treatment of that wall.

GEORGE METZGER: It is similar -- you mean down here?

SLATER ANDERSON: Yes. Is it enclosed?

GEORGE METZGER: There is a green fence coming along here and turn the corner

and then it becomes a -- well, we haven't negotiated with the contractor. We assume a chain link fence. That's a parking lot for them there.

SLATER ANDERSON: Okay. The buildings, the building.

GEORGE METZGER: The building is similar to this on the -- around the corner.

SLATER ANDERSON: On the ground level.

GEORGE METZGER: Open under the building on the ground floor to the south side.

So this is parking. The abutter has narrow parking back the whole length of their building on their side and there will be separated by a buffer here that will be parking under our building as well. Enter through this area here.

SLATER ANDERSON: Okay, thanks.

ANDREA HICKEY: Could I ask a

question about the parking, too? Other than the spaces that are under the building, can you show me on your site plan the spaces, if any, that are not under the building that will be just sort of out in the open?

GEORGE METZGER: These spaces are partially under there. So this is the line of the building up above, and these spaces come out to this line.

ANDREA HICKEY: And how many are there? How many along there of the --

GEORGE METZGER: Well, there are 12.

ANDREA HICKEY: All right, 18 total?

TIMOTHY HUGHES: 18 underneath.

GEORGE METZGER: Six up here and 12 here. Maybe this shown on this plan. And then on their adjacent side, this is all parking along on their adjacent piece of property. So, this is their parking area here. And this is our parking area here separated by a landscaped strip behind the

fence. With the building above, back at the 17-foot line. Did I count right?

ANDREA HICKEY: Yes, I get it.

So 12 that are sort of half in and half out, and then six that are all underneath?

GEORGE METZGER: Correct.

ANDREA HICKEY: Okay.

ATTORNEY PETER FREEMAN: As I said, you do have screening, combination of vegetation and the buffer and the vents.

DOUGLAS MYERS: I certainly understand the amount of effort that's gone into this project and I can understand the desire and the public interest in the project going forward in an expeditious way, I mean I'm not at all insensitive to those concerns. However, I really would appreciate your help, if I understand these regulations right, I can read the one through five, and in a sentence right in front of them, right before it is the following matters generally will

not be substantial changes. Can you tell how is it, though, that by increasing the massing of the building by adding a story, which if you want to express it in percentage terms, is 20 percent on the side of the building fronting the street, how does that fall within any of those five enumerated categories? Reduction in number of housing, decrease in less -- I won't read it through. I mean, that's pedantic. But how does it fall within that? And even under what general principle does it fall within it?

ATTORNEY PETER FREEMAN: Well, the general principle is to look at what is already approved, compare what is being proposed, and I know that's obvious, but if we start there. Then although in this case the one section I guess that's accurate is higher, but total height is less because it had been for seven stories. So if anything, I would say that that balances. So maybe

there's no reduction, but I wouldn't say that the impact is an increase, because again, we had seven stories.

DOUGLAS MYERS: When viewed from the front, it's certainly fair to contend. And I have the utmost respect for Mr. Sullivan. Mr. Sullivan is -- the record can reflect he's a hero of our times as far as I'm concerned. But nonetheless, I mean, the sentence here says the following matters generally will not be substantial change. It doesn't say the following matters are typical of those matter which are not substantial changes. It doesn't say that.

So I mean it seems to me reading this the way it's written, we have two areas which fairly seem to be substantial changes and are not anywhere within the scope of these five that are enumerated.

ATTORNEY PETER FREEMAN: He's getting some specifics to answer your

question and I don't want to misspeak.

DOUGLAS MYERS: I understand. I don't want to be pedantic about this, and I don't want to be applying the ointment.

ATTORNEY PETER FREEMAN: The reason the height had been 56 on that side and now it's 60.

DOUGLAS MYERS: Feet at the front. That's responsive.

ATTORNEY PETER FREEMAN: And let me pass out.

GEORGE METZGER: And that's because the building was about a third of a floor above ground to the first floor and then five floors and that was 56 feet. Now it is --

DOUGLAS MYERS: You've lowered it?

GEORGE METZGER: It is simply six floors but starting at grade. So the change of four feet.

ATTORNEY PETER FREEMAN: So there is guidance specifically responsive to what you

asked of, and I have it for you or anybody else who wants it. The following matters generally will be substantial changes. An increase of more than 10 percent in the height of the building. I just put the arrow there about the middle of the page. So by that standard we also --

SLATER ANDERSON: Can I see it?

ATTORNEY PETER FREEMAN: Sure, absolutely. It's the second page. If anybody else wants it, it's the second page. Thank you.

So by that, you know, again, there are examples of substantial and there are examples of insubstantial, I didn't mean to ignore that.

DOUGLAS MYERS: No, no, no.

ATTORNEY PETER FREEMAN: It's a good question. And, again, even under that standard we actually are not -- even on the one side we're not increasing it by more than

10 percent.

DOUGLAS MYERS: Although not to argue with you, it is interesting that heading, that section, Section C says: The following matters generally will be substantial changes --

ATTORNEY PETER FREEMAN: Correct.

DOUGLAS MYERS: As opposed to other sections which says: The section's here in the regulations -- oh --

ATTORNEY PETER FREEMAN: They do say general, yeah.

DOUGLAS MYERS: Yes, okay. I apologize.

ATTORNEY PETER FREEMAN: We're parsing the way attorneys do. And it's the distinction between a hard and fast regulation and a guideline and that's what this is. It's a guideline.

DOUGLAS MYERS: Right, right. And in other words, I believe I would still be

entitled, as a member of this Board exercising my discretion, to draw the inference that nonetheless increasing the story, one story in height, increasing five stories to six is nonetheless a sufficient alteration in the mass facing the street that even though it's not quite 10 percent, I believe I could draw the -- I'm not asking you to agree with me, that's my responsibility, but I believe I could draw the inference that nonetheless it is a substantial change.

ATTORNEY PETER FREEMAN: Because it is judgment call and there are guidelines, it cuts both ways. You know, the guidelines are generally the insubstantial and also in the general -- so I would be kidding myself and you if I said no, you're stuck with the 10 percent rule. I absolutely agree with you. My argument in terms of why we still think that it would be legitimate and rational and fulfilling your duties to still find that

it's insubstantial is because of a cumulative impact the over all impact is still reducing everything. And I think that's significant. And then you get into the judgment call upon judgment call that, you know, one story --

DOUGLAS MYERS: I understand that.

ATTORNEY PETER FREEMAN: -- on that one side you can't get a way that's --

DOUGLAS MYERS: More significant of what's happening in the front on the street than in the back --

ATTORNEY PETER FREEMAN: Right.

DOUGLAS MYERS: And that's why it was low in the front and high in the back in the beginning. I'm not an architect, but I understand. That's a question of judgment ultimately for this Board.

ATTORNEY PETER FREEMAN: Yes. And, again, I do this all the time, and you know, both my approach, which is respectful of where you're coming from, and you've

expressed it very well, and also because I think, you know, when I interpret the law I try to state it as I believe it is. There is some judgment call. We hope you'll overall find them insubstantial, but I can't gain to say what you've said. If you felt as though they were substantial and you felt they needed to have a more complete look at a public hearing again because of the time and all of that, you know, we'd rather that doesn't happen, but I'm not going to kid you and say you have to, you know, you have to find them insubstantial.

DOUGLAS MYERS: What about the parking with respect to the same types of considerations that we're discussing? Where is that? At least you found the specific language dealing with the height of the building.

ATTORNEY PETER FREEMAN: And there isn't guidance on that. You know, that

clearly --

ANDREA HICKEY: And that's what troubles me, the parking and the community doesn't sort of have an opportunity to sort of look at this again. There's a big difference between parking underneath and having half the car sticking out there. I don't consider that insubstantial. Maybe you could convince me.

ATTORNEY PETER FREEMAN: Well, I think that the change, if you look, it's hard to categorize it or rather to correlate it to those standards like 10 percent. You know, the number hasn't changed. The basic location.

ANDREA HICKEY: Well, the number of spaces has changed by one.

ATTORNEY PETER FREEMAN: But proportional to the units. We're two fewer units, you know, and that -- I mean, that almost is a given, you know. I know you're

not talking about that. But if the Board were to say, no, if the only change were to reduce it by two units, yeah, so that's a given -- so but I put the parking number in that same category. We have actually more proportionally.

In terms of where they are, there's no question, it's not specific guidance in the regulation like this, you know. In part I think that's --

ANDREA HICKEY: So what's the theory that it's insubstantial then?

ATTORNEY PETER FREEMAN: Part of it is that, not conclusively, that one fairly constant aspect of any development, which is parking isn't mentioned indicates to me that it's not a great concern to the Department of Housing and Community Development. The second more relevant to each case, to this case is again the impact. It's true that it was underground, but because it's screened

and also, you know, it's in some ways it may be easier to get in and out and it went down a ramp, that's the argument. You know, again, I hear what you're saying but the argument is cumulative effect. What does it look like? How does it impact the community? Is there any more public safety? Because don't forget, I mean, there is some aesthetics, I grant you that, but in terms of parking and traffic, public safety is a concern and we don't see in any way that there's any change in that impact. So to us, therefore, it's credibly insubstantial.

JOHN WOODS: And I can't speak to the specific substantial or not substantial, but I can tell you specifically with this project that the folks at Community Development were particularly emphasizing the need for the screening process that we did, and I think because of the same concern that you had about the parking being at level. But one of the

other things that I think were a mitigating circumstance that provided some level of comfort was moving the entrance away from the Rink Realty property actually makes it a little bit better in terms of flow of traffic, too. And that obviously was -- we were able to do that because it wasn't a ramp involved at that point.

ATTORNEY PETER FREEMAN: And, you know, in some ways we'll analyze it and think of the different and all that. I think the thought process it takes some analysis and maybe that means it's not insubstantial, but I forgot to mention that, you know, yes, it's now on the surface, but it's also 17 feet away instead of seven. Those are the dimensions, right? On the side line.

GEORGE METZGER: The building, right.

ATTORNEY PETER FREEMAN: The building, yeah. The parking is roughly

where it would have been, but the building itself is a full 10 feet away. Which again to us is lessening the impact on the neighbor who had been most concerned. As you know, they appealed originally.

ANDREA HICKEY: And that Rink Realty property now, that part that you're showing now they're using that for parking?

GEORGE METZGER: They use this alley for basically infinite tandem parking.

ATTORNEY PETER FREEMAN: Yeah. And that is fully their property. But it is used for parking, yes.

DOUGLAS MYERS: With respect to parking, you mentioned something before, maybe again you could just help me understand. Did you mention before, if I heard you right, that some part of the parking is under now -- now going to be underneath the building or that the building would be over it; is that correct?

GEORGE METZGER: Yes. In this larger plan, this shows the paved area of parking. This is the entrance off of Temple Street. Peter was referring to -- or John was referring to the fact that we -- the ramp used to come in here. We separated those more which actually mitigates any conflicts between these two parking entrances and exits. So the parking, six spaces are here, 12 spaces are here, the building above is here. So about two-thirds of the car is outside the building, and one-third of the car in the parking space is under the building.

DOUGLAS MYERS: I see. So the building -- I want to understand what part of the building is going to be above cars.

ATTORNEY PETER FREEMAN: Well, let me show you this.

GEORGE METZGER: (Inaudible).

THE STENOGRAPHER: You have to speak

one at a time, please.

DOUGLAS MYERS: So only on that one side?

ATTORNEY PETER FREEMAN: This is Rink Realty along here and where they park in this alley here, and this is the end of where the parking spaces are. This is the building above. This is one of the buildings above the panels, this dotted line. So this portion which is why he said two-thirds of the space.

DOUGLAS MYERS: Two-thirds of the length of an average car?

ATTORNEY PETER FREEMAN: Exactly because in the space from there to there and this is the building line that goes up.

DOUGLAS MYERS: And the back and the rear were one-third of those cars will be exposed?

ATTORNEY PETER FREEMAN: Correct.

DOUGLAS MYERS: And other cars in

that area will also be fully exposed?

ATTORNEY PETER FREEMAN: No, the other cars are fully under the --

GEORGE METZGER: They're fully under the building.

DOUGLAS MYERS: Under the building.

GEORGE METZGER: Correct.

DOUGLAS MYERS: It's like, they're in a cavern in other words. The building cantilevered over the cars.

GEORGE METZGER: Correct.

DOUGLAS MYERS: Are there columns supporting the building at that point?

GEORGE METZGER: Yes.

DOUGLAS MYERS: I have something in mind. You might not think it has much merit, but I do have something in mind. Is access to the parking restricted in some way?

GEORGE METZGER: Yes.

DOUGLAS MYERS: So there's not public access to the parking area?

GEORGE METZGER: This is a garage door on that side. You can see it on the rendering. It closes that off. It's exclusively for tenants to the property, of the property.

ANDREA HICKEY: So they'll have pass cards or keys or something that will electronically open?

GEORGE METZGER: Yes.

DOUGLAS MYERS: In other words --

GEORGE METZGER: Passersby will not be an open space.

DOUGLAS MYERS: Access to the public will be restricted.

GEORGE METZGER: Correct.

DOUGLAS MYERS: Okay.

ATTORNEY PETER FREEMAN: Which of course is what it would have appeared like previously except that you would have gone down the ramp, but from the street, you know, it's still a door for the garage.

ANDREA HICKEY: So green space, though, is reduced a bit now where we've got the 12 overhang that was all green space before?

GEORGE METZGER: No.

ATTORNEY PETER FREEMAN: Because it was only seven.

ANDREA HICKEY: I misunderstood. I understand. I'm all set, thank you.

GEORGE METZGER: I would just add --

TIMOTHY HUGHES: Go ahead.

GEORGE METZGER: -- with regard to that it's certainly not a technical answer to your question, but in discussing this with Roger Boothe the urban design director who is part of our review panel at CDD and Charles, they both, they both felt that the ability to move this over and to simplify that first floor plan without the building sticking up another three feet was beneficial because it kept the ground plane more simple. There was

another point they were interested -- oh, and also where we had a garage ramp coming down. It's always a bit of a challenge to have I a garage over the ramp that disappears into the ground right adjacent to the sidewalk. So this mitigates that kind of an impact for passersby walking passed an on-grade parking as opposed to an enclosed shoot which they both felt wasn't, while they may prefer underground parking. They felt that for the street level experience that was, that was positive.

DOUGLAS MYERS: I'll just say you've satisfied me. My concerns so that my reasoning does not remain completely opaque is that where they're cantilevered, partially covered spaces under buildings that are accessible to the public, I think there's a tendency to have socially undesirable events occur and that was just part of my thinking.

ATTORNEY PETER FREEMAN: We hadn't articulated that. I'm very glad you asked. That was a good point.

TIMOTHY HUGHES: Any questions from the Board?

SLATER ANDERSON: I come back to what our role is here is to decide if it's insubstantial change, and I'm thinking of somebody who went through the hearing process initially and where this process isn't aware of the change has been requested, and the building goes up and they're saying well, that's substantially different than the building was approved in some ways. I'm thinking the massing of the upper story and the parking emerging from an enclosed sub -- and I don't disagree that in some ways it's a better solution, but it's a substantially different than it was approved in some ways, too. It may be better, but it's a substantial threshold. I'm feeling like

from that viewpoint it seems hard for me to say that the cumulative fact of these changes isn't substantial.

ATTORNEY PETER FREEMAN: Yes, and I understand the train of thought in that you don't have to make that judgment yet if we do have to go to a public hearing, we will certainly come in with a full presentation again, and then I would hope at that point we would convince you and then with the benefit of a public hearing and any input you could decide if under the 40B balancing test it was still good.

And, again, we think there is reduced impact. But I hear you that's part of the problem, and you have a role to play and you're feeling as though I think you articulated it very well. Under the regulations I think it's fairly easy for you to make a responsible decision that you could make that it's insubstantial but we would

think that as you put it, the building goes up and the public didn't have notice, you know, I understand that. I think that you have the right responsibly to grant our request as a insubstantial change. And as I said earlier, I'm not going to sit here and pound the table and say that's wrong. It's a judgment call. I respect that. I've sat on boards myself before.

BRENDAN SULLIVAN: I sat on the original one and I sit here and look, and reviewing the case for the last couple of weeks and I came away with the conclusion that yes, it is substantial. It's substantial dollars that needed to be saved here in order to build a project. And that the end result will be different. There are going to be tugs and pulls in order to save those substantial dollars. And throughout this book there is language where we have to find either insubstantial change or a substantial

change. And yet we always tussle with that. What is substantial to is different than substantial to me. And yet I think we have a yard stick, and it's always been a tussle over the years as what's the yard stick here? And yet I think that those five points are a yard stick. And it sort of does point us in a direction that, you know, meet those thresholds, can we cross those thresholds and find that the change is insubstantial to provide the housing that we started off for, but we needed to save substantial dollars to do it. And I think that's -- this is the end result, the initial project. The initial building was wonderful, it was beautiful, but just too expensive. I guess. So we needed to save substantial dollars, and I think we do have a yard stick. And I think they've met the yard stick and the measuring tool that we need. So that's just my view. But you may want to open it to public comment I guess.

TIMOTHY HUGHES: Well, at least one person I think might want to say something. We'll open it to public comment.

JAMES WILLIAMSON: My name is James Williamson and I live at 1000 Jackson Place, which is public housing in Cambridge. And I know I'm in the interesting position of knowing -- maybe one of the few people who actually knows personally people, a number of different people involved in this including the original litigant on the other side of it. I'm very sympathetic to the idea of expanding affordable housing opportunities for people in the city. I'm also very sensitive to the sort of build environment in the city and in some ways irrespective of some of those other commitments and interests. I guess I just have one question is sort of emerging as I'm listening to everybody which seems to be seems it's coming down to whether there should be a public hearing or not. And my

curiosity, again, and I don't know whether a public hearing is needed or should be required, but it would I think useful to know and I'd certainly be interested to hear what would that, what would that hearing entail? What would be required to meet, you know, to actually conduct such a hearing? What would be the expense involved? How much of a delay might that entail? I'm not -- I don't want to be in the position of advocating it, it's a huge problem, and maybe felt to be unnecessary, but it would be interesting and I think useful to hear what it would entail.

TIMOTHY HUGHES: I'd be curious, too, because basically what our decision is is to whether or not we're going to trigger a public hearing. Now I heard you mention what the time constraints would be. But what does that mean in terms of your overall project? What does that mean in terms of your construction schedule? What does that

mean in terms of money? If you could put that in a dollars and cents way?

JOHN WOODS: Well, there's a couple of factors that are weighing heavy on us. One is the capacity to get the project started before -- or at least attract through the public bidding process as many contractors as possible before the traditional contractor season kicks in. There will be more interest now if I think we can get it out into the public bidding process quicker than later as more work gets picked up.

The other thing I think I would say, too, is that the project itself has traditionally been a bit of a lightning rod for discussions about affordable housing as opposed to the specific site, and that always is a point of concern when we sort of broaden the discussion from -- on the public meeting. So that -- there's a certain unknown about that that could cause some additional delays

that I think you're familiar with in terms of this particular case with some previous litigation. But the -- one of the things that weighs most heavy on my mind is what makes this project work is low income housing tax credits. And the low income housing tax credit market is extremely volatile right now, and our abilities to continue to secure the kind of yield on the low income housing tax credits it's imperative to get into construction as quickly as possible. So we're sort of facing the clock or dealing with some of the realities of the ticking clock at that point.

BRENDAN SULLIVAN: It's a race against time.

JOHN WOODS: It is.

BRENDAN SULLIVAN: I mean, everything and anything from tonight forward until you put a shovel in the ground, there are no givens.

JOHN WOODS: No.

BRENDAN SULLIVAN: And the longer this goes on the less givens there are and it could very well implode.

JOHN WOODS: Right.

BRENDAN SULLIVAN: Is my analysis of the situation.

JOHN WOODS: Yes. Both construction costs are going up. As construction costs go up and then our tax credit yields go down, the budget becomes much more difficult to balance.

TIMOTHY HUGHES: Well, I'm -- my personal opinion is that if we were to, if we were to call this substantial and trigger a public hearing, we're likely as a Board to approve all of the changes anyway and so I don't really see the need for a delay. I can go with the points that Mr. Freeman made and call this insubstantial change.

BRENDAN SULLIVAN: I agree

absolutely.

TIMOTHY HUGHES: Do we have other comments from the Board before we put this to the motion?

DOUGLAS MYERS: I'm not adamant. I mean, I have listened to what other Board members have said. I have listened to what the applicant has said. And I've listened to what Mr. Williamson has said.

And I had the thought in my own mind, not so much the cost, and not even the time constraints, the bidding, the shovel in the ground and all of that, I, I had the thought -- if the issue is a public hearing or not, what happens if we hold a public hearing and nobody comes? And if there really is no public interest or no substantial public interest. I mean you could say on the one hand, hold the hearing and find out, but on the other hand I respect that a considerable amount of solicitation

among those immediately concerned has already taken place. And since I agree with Tim and other Board members that if I were called upon to vote with respect to these two aspects that are troubling me, the change in the front of the building and the parking, I would nonetheless approve what you've done clearly you've considered it well. And undoubtedly it's in the public interest at this point. The question is just a hearing. Are these substantial or insubstantial and should we have the hearing? And despite the fact that I've been persistent in my questioning, I mean, I really have to say that it would be an exercise in futility if we're prepared to approve them. And in fact, there were considerable public interest if I felt there were underlying controversy, I think I would adhere to the feeling that all and all, even if there was a cost, justice be done and let the public be heard. But I'm, I'm

concerned that it would be an exercise, a complete exercise in futility, therefore, I'm prepared to say these changes in light of our action tonight are insubstantial.

TIMOTHY HUGHES: Do you care to make a comment? You don't have to.

ANDREA HICKEY: Yes, I think you're sort of calling the result where it seems like we'd all be in the end, and then working your way back to call it insubstantial and to me that's not what our job is here. We're supposed to look at this one question, not where we wind up, because I support the changes, too, but that's not what we're called to do at this table today. We're called to decide are they substantial or not? It's unfortunate that the answer to that question is going to cost the Petitioner some money if it goes in one direction. But they're the ones that decided to make the changes here. So they pulled that trigger.

Now we're limited to what we're supposed to be looking at, and as much as I hate to say it, I can't say that these changes are insubstantial. I can't.

DOUGLAS MYERS: In view of everything I said before I certainly respect that position.

SLATER ANDERSON: I mean, one of my concerns is the -- I mean I'm, I'm a pragmatist in this process. I'm not one that likes to continue things in general because it penalizes people who haven't come before the Board yet by delaying their opportunities and it extends the process and it's just not a good practice. I don't like it. I'm concerned about the potential damage, and I would think the housing folks might be concerned about the potential damage of short circuiting a process that is built into this to occur in that should there have been a public hearing, why wasn't there a public

hearing? And is there damage beyond this decision if we rule that it's insubstantial to the credibility of the process by us jumping to what I agree is the problem in the practical appropriate outcome. And we've had other applicants come to us and come back for changes, and you know it's hard. It's not our fault that you've -- we're helping to fix something that wasn't our doing. And I feel sort of boxed in by the, this limited scope of what we're supposed to look at tonight, which I agree with Andrea, which is are they substantial or not. And to go to -- it's a good outcome, and there are positive aspects. That's really not the decision tonight. I think we end up in that place. But I worry about the perception of the process that the public hearing was never held. Maybe no one ever comes, but the process was respected as it was designed and that's kind of where I'm stuck.

JAMES WILLIAMSON: Could I ask a question about that?

TIMOTHY HUGHES: Sure.

JAMES WILLIAMSON: If this tonight this meeting tonight was noticed in tonight's agenda, correct? And if there were to be a public hearing, it would be before you all again and there would be an additional, it would just be basically the same thing as is happening tonight with a similar notice to what was happening tonight. So who would -- I mean, I'm sort of like leaning toward you're maybe considering not to require a hearing in that if everybody who would have had an interest in this would have known about tonight's opportunity to say something, they're going to -- it's sort of like you get two shots to come before this body on this matter. Is that what we're talking about? Because that's sort of what I was asking, is that what the public hearing

would be, because if, presumably everybody knew about tonight's opportunity --

TIMOTHY HUGHES: I'm not sure the presumption of whether everybody knew is accurate, because it's quasi public.

SLATER ANDERSON: Was it noticed? A different notice process.

ATTORNEY PETER FREEMAN: It would be in the newspaper if it goes to public hearing.

TIMOTHY HUGHES: And you would have to post the site again, right?

DOUGLAS MYERS: Isn't it by majority vote?

TIMOTHY HUGHES: I don't know, I was going to ask Sean.

ATTORNEY PETER FREEMAN: Three out of five.

TIMOTHY HUGHES: It's three out of five.

BRENDAN SULLIVAN: Simple majority.

TIMOTHY HUGHES: How do you form a

motion?

BRENDAN SULLIVAN: That the Board finds -- accepts the pleadings of the --

ATTORNEY PETER FREEMAN: You can say as stated in the January 25th letter of Mr. Freeman is insubstantial.

BRENDAN SULLIVAN: Yes.

SLATER ANDERSON: Does the applicant have concerns about not having the public process? I'd like to hear some feedback on that.

JOHN WOODS: There was one point that I failed to mention, too, because I think one of the things that the Cambridge Housing Authority which is -- TAX is a subsidiary of the Cambridge Housing Authority actually prides itself on letting people know what's going on. I think it's one of the hallmarks of what we do. And so that again, the outreach to the abutters, there's also been an open discussion about it through the

affordable housing trust fund which is another publicly noticed venue. So I think -- we thought long and hard about this. Because one of the things that we always do wants to say is the Cambridge Housing Authority doesn't hide what they're doing. But, again, I think one of the rationales with this is the forces that required us to make the changes were driven by the economies of a very difficult project in terms of being able to capture as much public resources as possible as quickly as possible. So I think one of the reasons we asked for this, because we do believe that these are insubstantial. It's reduction of number of units. It's a series of reductions, and I think one of our biggest concerns were that of the immediate abutters. I think we had this long-term relationship. So I think we -- I can say that I think we feel like we've let people know.

SLATER ANDERSON: I balance my concern, an equal concern which is obviously this project isn't, it's financially in the balance.

JOHN WOODS: Yes.

SLATER ANDERSON: That's why you're here partially.

JOHN WOODS: Yes.

SLATER ANDERSON: And I do. I've been involved in projects like this, the opening this up again and extending it to revisions and all the possibilities that come with that could make, you know, jeopardize the project the way I don't, but obviously it's -- so, you know, I understand that and I'm, I'm inclined if, you know, I expressed my concern about the process and I can understand that under these definitions that it's good to have guidance, that they could be interpreted as not substantial. So I'm on the fence.

ATTORNEY PETER FREEMAN:

Mr. Chairman, and the only point I was going to make is that I understand everything that everybody has said, but that is the explanation were somebody to ask, we do have guide posts that each and every one were met, and I'm not saying that that means absolutely you don't have -- I've already said that. But I think that as part of your duty and as part of answering your own question, you could totally legitimately support what you did because of those guidelines and the overall impact. And the second thing, the final comment, it is different than the normal process by legislative intent. It's an expeditious process and that's why the guidelines on insubstantial changes which doesn't exist for any other process exists and that's what John said about the need to try to move forward. I appreciate that.

TIMOTHY HUGHES: Are we ready for a

vote?

The Chair would make a motion to -- how do you phrase this?

BRENDAN SULLIVAN: To accept the findings --

TIMOTHY HUGHES: To accept the findings of the Applicant that the changes to the comprehensive permit, No. 9642 are insubstantial in nature and can be allowed.

All those in favor?

BRENDAN SULLIVAN: That's sufficient language for you?

ATTORNEY PETER FREEMAN: Yes, that's it. That's fine. You need a second I think. Second first to the motion.

BRENDAN SULLIVAN: Aye.

TIMOTHY HUGHES: Four in favor.

(Hughes, Sullivan, Myers, Anderson.)

TIMOTHY HUGHES: One opposed.

(Hickey.)

(10:50 p.m.)

Sitting Members: Timothy Hughes, Brendan Sullivan, Douglas Myers, Slater Anderson, Andrea Hickey.)

TIMOTHY HUGHES: So, are we seeing things a little clearer?

YONG-CHENG WANG: So, I heard, you know, the comment from the Board and I like it to keep the case continuation on then come back to redesign.

TIMOTHY HUGHES: Okay.

YONG-CHENG WANG: I don't know how.

DOUGLAS MYERS: As long as you feel you've got some help talking with Sean and with things the Board said so that you'll have an idea of the things that the Board was concerned about.

YONG-CHENG WANG: Yeah, but I just want to note to understand that the currently interior stairs is it's unsafe now. So it's very dangerous and so that's -- we need the

stairs to outside and, you know, to be outside.

DOUGLAS MYERS: Well, the Board members were -- a number of the Board members really had trouble with that argument, so if you're going to come back and say that, you really want to have your architect or have a safety engineer or someone make a strong case, because, you know, a number of Board members really didn't agree with you about that.

YONG-CHENG WANG: Okay.

DOUGLAS MYERS: Just trying to the air so there's no misunderstanding.

YONG-CHENG WANG: That's very helpful. That's very helpful comments.

TIMOTHY HUGHES: Sean, this is a case heard so we all have to be here.

SEAN O'GRADY: March 14th is the first opening.

DOUGLAS MYERS: That's okay.

TIMOTHY HUGHES: I'm good.

Everyone?

ANDREA HICKEY: I'm not sure. I can be here.

TIMOTHY HUGHES: Okay, we're good then, the 14th.

DOUGLAS MYERS: 14th of March.

TIMOTHY HUGHES: The Chair would make a motion to continue this case until seven o'clock on March 14th, case heard. Signed a waiver, right?

SEAN O'GRADY: He's going to.

TIMOTHY HUGHES: Okay.

And on the condition that you change the posting sign, Mr. Wang.

YONG-CHENG WANG: Okay.

TIMOTHY HUGHES: Change the posting time to reflect the new time and new date.

YONG-CHENG WANG: Okay.

TIMOTHY HUGHES: And all your new plans have to be in the file by five p.m. the

Monday before this meeting which would be whatever that date.

YONG-CHENG WANG: March 11th.

TIMOTHY HUGHES: See, you could do the math. I had to go look at it in the calendar. Yes, March 11th. By five p.m. on March 11th.

DOUGLAS MYERS: We're very strict about that. By March 11th. It's got to be there by Monday five o'clock.

YONG-CHENG WANG: Can I talk to you on Monday?

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: All those in favor of the continuance?

(Show of hands.)

TIMOTHY HUGHES: Five in favor.

(Hughes, Sullivan, Myers, Anderson, Hickey.)

YONG-CHENG WANG: Can I talk to you?

DOUGLAS MYERS: If we talk, we have

to talk on the record.

YONG-CHENG WANG: I don't know.

DOUGLAS MYERS: I don't know how either.

YONG-CHENG WANG: But I show you the picture and --

DOUGLAS MYERS: That's fine. I don't mean to say you have to have an engineer, but you have to have a strong case I think.

YONG-CHENG WANG: I can show you my medical record, you know. I got fall down twice and I went to the --

BRENDAN SULLIVAN: Put a railing there so you can grip on to it.

DOUGLAS MYERS: Right. That was the argument. Anyway, it's -- talk to Sean about anything that was said tonight.

(Whereupon, at 10:55 p.m., the
Zoning Board Adjourned.)

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ATTACH TO ZONING BOARD

DATE: 02/07/13

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