

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MAY 10, 2012

7:00 p.m.

in

Senior Center  
806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair  
Constantine Alexander, Vice Chair  
Timothy Hughes, Member  
Tad Heuer, Member  
Thomas Scott, Member  
Mahmood Firouzbakht, 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: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: Let me call to order the Board of Zoning Appeal for May 10, 2012. The first case we will hear is case No. 10220, 929 Mass. Avenue/10 Centre Street.

ATTORNEY LOUIS MILLER: Thank you. My name is Louis Miller. I'm with the law firm of Rackemann, Sawyer and Brewster. I'm here with Pete McGee who is the Vice President of construction for Equity Residential for the Northeast. We're here for 929 Mass. Ave./10 Centre Street. We appreciate the opportunity to come back in. If you recall, we were here in March. We're requesting the opportunity to reduce the parking from 115 spaces to 113 spaces. When we were here in March, there was more information that you asked us for and I hope we have what you need tonight.

The issue -- the issue is, and a couple

of the last few years we -- letters from the Inspectional Services Department started telling us that our electrical equipment was not adequate. It had to be replaced. So this is not a voluntary issue. This is something that's been ordered by the city, and I think you have copies of the letter from ISD.

We've -- we have to connect to the vault that's there, the existing vault. There's a plan that's a little bit hard to read, but it's included in the package. We'd be glad to go through it with you if it's not clear. There's an existing Nstar vault that it has to be connected to.

The new equipment requires more space, more room, all the rest of it. And it has to be -- it can't -- the existing panel runs north/south. The new panel has to be attached east/west. It can't be in the same direction as the old panel otherwise service

will be cut off for significant amounts of time to the residents for the whole building. So in order to do that the only physical way to do that is to connect to the vault, connect that way with the code requirements and the specifications for the new equipment that's required, and intrudes out in such a way that there's no way to do it without eliminating two parking spaces. That's where we stand. It's a necessity. We've looked at ways to do it. They don't want to give up the parking spaces. They've looked at ways to do it, but we're required to replace the electrical equipment by the city. With the new equipment and the practicality of installing it, there's no way to do it in a way that doesn't eliminate the parking spaces.

CONSTANTINE ALEXANDER: As I understand from what you submitted in the file is that the original Variance dealing the with number of parking spaces is nowhere

to be found.

ATTORNEY LOUIS MILLER: We actually -- we researched it as best we could. We haven't been able to find any -- we found the original decision, but that doesn't say why they did what they did or anything else.

The Community Development office, they told they didn't have any records of the premises. ISD said that the records were destroyed in a flood. And we actually went every place we could, and that City Clerk said they had the decisions but nothing further on it. So we -- and we have not -- I don't know the developer. It was a long time ago. It was nobody that we could get in touch with to find out why they did -- we tried, but that's the best we could do.

CONSTANTINE ALEXANDER: And a different question, the original Variance is mentioned about you've got a 34, 35 apartments set aside for the elderly. Is

that still the case?

PETER McGEE: Yikes, I'm not totally sure of the count.

ATTORNEY LOUIS MILLER: I can -- I don't know off hand how many are elderly. I'm sure whatever the --

CONSTANTINE ALEXANDER: Well, I don't know, are you in compliance with the terms of the Variance that was granted to you?

ATTORNEY LOUIS MILLER: I would be very, very surprised but as far as -- nobody has mentioned anything from any place to say that we're not. We don't have the property manager here.

PETER McGEE: I'm on the construction side, I'm sorry.

ATTORNEY LOUIS MILLER: We've never been cited for anything by anybody.

CONSTANTINE ALEXANDER: You might not have been cited. There might be complaints filed.

ATTORNEY LOUIS MILLER: There were no complaints filed. There's nothing that I know of.

CONSTANTINE ALEXANDER: I would like some affirmative representation that you are in compliance with the number of elderly units in the building.

ATTORNEY LOUIS MILLER: Okay. Again, I just don't -- I certainly will find it for you. We'll get it for you. We can confirm it for you, but....

CONSTANTINE ALEXANDER:  
Mr. Chairman, I suggest if we grant relief, that we condition it on the fact that they are in compliance with the Variances that were previously granted. Therefore, if there's a problem and that you have evidence that you are --

ATTORNEY LOUIS MILLER: We'll do that.

CONSTANTINE ALEXANDER: -- that we

have evidence in our file that they are in compliance. That seems to be a big issue, not a big issue but an issue when the original Variance was granted, the idea you were going to set aside units for the elderly, and I want to be sure that's still there.

ATTORNEY LOUIS MILLER: Okay, we'll check on it.

BRENDAN SULLIVAN: Any other questions from members of the Board?

(No Response.)

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter 929 Mass Ave./10 Centre Street.

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence from the Cambridge Historical Commission. (Reading)

To the Board: The property is located in the Mid-Cambridge Neighborhood Conservation District where exterior alterations are subject to review and approval. After review of the plans by the staff, a Certificate of Non-Applicability was issued for the scope of work. See the attached. No further review is required.

The Board is in receipt of correspondence submitted by the Petitioner in the file on the letterhead of the City of Cambridge Inspectional Service Department regarding the parking garage electrical equipment. (Reading) I was called by the Cambridge Fire Department for electrical outage at the above-listed address. Upon my inspection of the equipment, I found all rotted panels and switches, water leakage into the electrical room. The electrical equipment should be in a blocked room. That would be a concrete block room, and all new

equipment installed and tested. Nstar will clean their vault and you must build the room up to Nstar code requirements requiring a venting system, emergency power receptacles and lights in the room, five rated cables and a shunt, s-h-u-n-t trip on the main. And the existing equipment violates electrical codes, and there are 1, 2, 3, 4, 5, 6, 7 that are listed, and it's signed by Michael Nicolero (phonetic) who is the Deputy Commissioner and who is the Chief Electrical Inspector.

And also attached is the decision of May 21, 1971, of the Board granting relief from the parking on the condition that 24 of the building units be reserved for housing for the elderly and persons of low income.

CONSTANTINE ALEXANDER: How many was that?

BRENDAN SULLIVAN: 24.

CONSTANTINE ALEXANDER: 24.

BRENDAN SULLIVAN: That's the sum substance of the correspondence, and I'll close public comment.

Any other questions at this time?

MAHMOOD FIROUZBAKHT: Yes, I do have one other question. So has there been any energy audits done on this building to sort of get a sense of energy efficiency of the building overall?

PETER McGEE: I believe so. We're continually doing lighting improvements, lighting efficiency improvements. Offhand I'm not sure where they stand. We've done many improvements.

MAHMOOD FIROUZBAKHT: What about for heating and insulation?

PETER McGEE: Offhand, I'm not sure.

BRENDAN SULLIVAN: Just for the Board's edification, I did have a conversation with Mr. Mike Nicolero regarding his letter, and basically he said

that all that equipment had to be removed that was there regardless of whether it was sufficient or insufficient. Obviously it's somewhat sufficient otherwise the building would be dark now. But he said that all the equipment, because of its age and because of the condition of it, needs to be changed. Hence, the new equipment is going to be larger. But what's really triggering this and the requirement for the relief is that a concrete block building has to be a fireproof building, has to be created in that parking area in order to house all of this. And he's running into two things: Nstar code, electrical code, and building code. And requiring so much area around the block and the equipment for maintenance and all the other stuff. So there's a whole bunch of things that are pulling and tugging and basically blowing up the balloon a lot bigger.

MAHMOOD FIROUZBAKHT: Sure. And I get that. I mean, the reason I asked the question about energy audits, because I'm familiar with the building. I've been in it a bunch of times. I have friends who live in the building, and then I rented units in that building. One thing I do know about the units there, and I don't know if they've been upgraded since I used to do rentals there, the heating and cooling units are incredibly inefficient. And I know that from testimony from residents who live in that building, their heating and utility bills are really high. And so I was just wondering whether as part of this upgrade if there's any consideration by the owner to look at the energy efficiency of the whole building. Because obviously that's a really important movement, and it's important for the city. It's, you know, it's something that I think would be timely, if that was something that

was being looked at kind of wholistically to improve the overall efficiency of the building once you've got this upgrade that may be improved.

PETER McGEE: I know we're looking at doing some re-plumbing of the domestic water system, which is a gas-fired system. This device itself is not -- it sits on like a motor or light bulb, it's a controlled system. Circuit breakers, etcetera.

MAHMOOD FIROUZBAKHT: So basically at this time you don't have any plans of improving or making the building more energy efficient with respect to heating and cooling?

PETER McGEE: Not at this time.

MAHMOOD FIROUZBAKHT: Well, just let it be noted for the record that I think it would be something that would be useful for that building to undergo some energy audits, and I think it would be helpful to do that as

part of this process given that you're getting -- you're doing some considerable upgrades. Let that be noted, please.

BRENDAN SULLIVAN: Okay.

Is there anything else coming?

TAD HEUER: I just have a question about whether this project, in the opinion of the Board, falls within Article 22, specifically 22.20, the green building requirements which suggest that in section 22.22 any construction or substantial rehabilitation of existing building for an existing or new use that totals 25,000 square foot of gross floor area or more and requires a Special Permit, etcetera, under this section. I mean, I would just point out that, you know, to the extent whether that applies or not, there is a significant aspect of what Mr. Firouzbakht has mentioned, which is that the city is looking for large buildings almost by definition, this one,

which is I think well over 25,000, 140,000 square feet, to be looking very significantly at energy efficiency. So, I'm not sure whether this particular provision of the article applies and whether you need relief from it. But even if not, I think the city is pushing in that direction and I think his comments are very well taken.

PETER MCGEE: Okay.

BRENDAN SULLIVAN: Okay, anything else? We'll make a motion to grant the relief requested, which is a Special Permit to expand the electrical room which will reduce the number of parking spaces at the site from 115 to 113.

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

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

character.

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

The Board finds that at the existing site that even though the building is 99 percent occupied, and the other space is 71 percent occupied, only 70 of the 115 parking space as are assigned on a monthly or annual basis. So that the two parking space reduction requested by the applicant will not impact the parking supplied on the site and will not adversely affect adjacent uses.

There would not be any nuisance or hazard created to the detriment of the health, safety, or welfare of the occupant of the proposed use or to the citizens of the city.

And that the proposed use would not

impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

The Board makes special note that there is availability of surplus, off street parking in the vicinity, and that it is the well within the area being served by MBTA transit station. So that the reduction of two spaces will not have any adverse affect. And that the provisions and the requirements of Section 6.23 are then satisfied.

Also the Board makes special note of the letter from Inspectional Services requiring a total upgrade of the electrical system and the creating of a code compliant, fireproof enclosure which then requires the reduction, the capturing of this space and hence the reduction of the two spaces.

Anything else to add to it?

CONSTANTINE ALEXANDER: No, the condition.

BRENDAN SULLIVAN: And also that the work be done in conformity with the plans submitted and initialed by the Chair.

CONSTANTINE ALEXANDER: And the further condition that the Variance will not become effective until and unless you deliver a letter to the ISD affirming that there are at least 24 units set aside, currently set aside for elderly and low income residents as required by previously granted Variances.

MAHMOOD FIROUZBAKHT: And further that we highly recommend that the proponent undergo any of this work with keeping in mind the energy efficiency of the building and hopefully doing it in conjunction with improving the energy efficiency of the entire building.

BRENDAN SULLIVAN: Okay.

ATTORNEY LOUIS MILLER: If I can -- as far as I know, that Variance is the only Variance that's outstanding. Could the

condition be worded such that it's in compliance with whatever legal -- whatever Variance is outstanding at the moment. I don't think there's amendment to it in any way, shape, or form.

CONSTANTINE ALEXANDER: That's a fair point.

It should be the number of units --

ATTORNEY LOUIS MILLER: As required.

CONSTANTINE ALEXANDER: -- as required by previously granted Variances. Fine. That's fine.

ATTORNEY LOUIS MILLER: Thank you.

BRENDAN SULLIVAN: All those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(7:25 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10221, 153 Brattle Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the Applicant. We have filed a request to continue this matter. This application involves a property that's located on Brattle Street in the Old Cambridge Historic District, and the proposed structure has not yet obtained the necessary approval from the Historical Commission so it is not timely for it to come before here. Frankly, given the direction I see it moving in, I suspect it will ultimately be withdrawn because of -- it was only before the Commission because of a second -- the proposed second floor of this garage. It was only before the Board.

So at any rate, it's a request for a continuance to a date in the future that works with your agenda. And I would only offer the

comment that it's likely to be withdrawn at that time, but just want to preserve.

BRENDAN SULLIVAN: When do you have to go back before Historical?

ATTORNEY JAMES RAFFERTY: There was a meeting as recently as today with Mr. Sullivan to explore alternatives. So the size of the garage as proposed was not seen as acceptable and --

BRENDAN SULLIVAN: Are we talking about July?

CONSTANTINE ALEXANDER: Without prejudging it, you're not going to get a lot of pizzaz from our group about that garage either.

ATTORNEY JAMES RAFFERTY: Well, the latest version as I understand it is subterranean which would remove a lot of jurisdictional issues both here and at the Historical Commission.

BRENDAN SULLIVAN: You're talking

July?

ATTORNEY JAMES RAFFERTY: July would be fine.

SEAN O'GRADY: July 12th.

ATTORNEY JAMES RAFFERTY: You're busy in July, right? This could go to August. Whatever you want is fine.

TAD HEUER: Are you expecting to re-file?

ATTORNEY JAMES RAFFERTY: No, I don't think you'll ever see this.

BRENDAN SULLIVAN: If it is -- well, anyhow, July what, 12th?

SEAN O'GRADY: 12th, yes.

BRENDAN SULLIVAN: All right. If it is going to go away, the sooner we know so we can free up that --

ATTORNEY JAMES RAFFERTY: We can file a withdrawal in advance.

BRENDAN SULLIVAN: Correct.

On the motion to continue this matter

until July 12, 2012, on the condition that the Petitioner change the posting sign to reflect the new date and time, and that any submissions, changing from the additional -- from the original petition be in the file by five p.m. on the Monday prior to the July 12th hearing.

All those in favor?

CONSTANTINE ALEXANDER: Change the date on the sign. Did you say that?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Sorry.

BRENDAN SULLIVAN: All those in favor?

(Show of hands).

BRENDAN SULLIVAN: Five in favor of continuing.

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

ATTORNEY JAMES RAFFERTY:  
Procedural question, is withdrawal a

unilateral act? I know often one acts to withdraw and voted upon.

CONSTANTINE ALEXANDER: You would think so.

ATTORNEY JAMES RAFFERTY: If one could withdraw prior to the hearing and be withdrawn. I mean, the consequences flow from a withdrawal as far as a repetitive petition. But I would think --

CONSTANTINE ALEXANDER: I never understood why we vote on withdrawals. It seems to be the practice.

SEAN O'GRADY: You can deny it and see what happens.

TIMOTHY HUGHES: Deny this one and see what happens.

ATTORNEY JAMES RAFFERTY: No, no, no. I'm just saying I could probably -- I would anticipate being able to file a withdrawal in advance -- well in advance of the continued date which to Mr. Sullivan's

point might free up a spot on your agenda. I don't know.

TAD HEUER: Is it possible that it's a relic of Chapter 48, Section 15 and the limitation on time for a decision by the Board, that the Board has to affirmatively act once there's a petition before it otherwise it's deemed constructively approved, and in order to avoid that --

CONSTANTINE ALEXANDER: How can we act on something that's withdrawn though?

TAD HEUER: Because it hasn't been withdrawn until you've acted. It's simply before you and there's a petition to withdraw.

TIMOTHY HUGHES: Petition to withdraw.

BRENDAN SULLIVAN: I think procedurally we would accept the letter of a withdrawal but on the July 12th, it would be on the agenda knowing that it would take all

of six minutes.

ATTORNEY JAMES RAFFERTY: Okay,  
thank you.

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will

hear case No. 10215, 38 Union Street/369 Windsor Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. James Rafferty, again, for the Applicant. There's a successor case to this case which we're asking -- that's on in two weeks which involves a dimensional relief for the parking width. So we would ask that this -- we were able to get that filed and get on in two weeks. If we could have this case heard in tandem with that case in two weeks.

BRENDAN SULLIVAN: Okay. Any comment, questions?

(No Response.)

BRENDAN SULLIVAN: On the, motion then, to continue this matter until May 24, 2012, at -- what time is the other one on, Sean?

SEAN O'GRADY: I don't know. We can put it on at seven.

BRENDAN SULLIVAN: At seven o'clock. At seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date of May 24, 2012, and a date of seven p.m. Any new submissions be in the file by five p.m. on the Monday prior to the May 24th hearing. We already have a waiver in the file?

CONSTANTINE ALEXANDER: Yes, we do.

BRENDAN SULLIVAN: From the previous time. Yes.

SEAN O'GRADY: We're doing Union. Does it say letter of waiver on the outside?

BRENDAN SULLIVAN: Yes.

All those in favor of continuing this matter?

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thank

you.

(7:30 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10247, 175 Huron Avenue.

Okay, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. James Rafferty again on behalf of the Applicant, 175 Huron Avenue, LLC. And seated to my right is Mr. Ben Svenson, S-v-e-n-s-o-n. He's the principal of the LLC. And to Mr. Svenson's right is Diane Lim, L-i-m. Ms. Lim is the architect for the project.

This case may have the distinction of being one of the older matters pending before you. It is the, I'm sure as the Board knows, it's the former Hickey Funeral Home located at 175 Huron Avenue in a Residence B District abutting a business district. The structure itself appears to have been originally constructed as a single-family home. There were two Variances issued; one in the twenties and one in the fifties. One

authorized the use of a funeral home. The second authorized the dimensional additions. There are two additions, prominent additions to the property; one in the front and one in the rear.

The Applicant has been working at great length with his architect in talking with neighbors about how to address the challenge of converting this structure to housing. You might recall in the earliest application before the Board it contemplated having some retail or office on the ground floor. Just because of the manner in which that space really sat out in the sidewalk, it just seen it being difficult to adapt for residential use. That wasn't, that use wasn't particularly well favored. We came in with a second application that didn't contain that use, but it did contain some Variance relief for additional GFA to construct a dormer on the third floor, and I think one of the more

astute Board members wondered why we would need more GFA because part of the hardship is the fact that the building is so large that it doesn't lend itself as a two-family. At that time we proposed it as a three-family and were also seeking a use variance. We went back and working Inspectional Service and Ms. Lim were able to redesign the building to have the units work as townhouses; all three units having separate entrances into the street, and party walls between them. I think I would draw to the Board's attention three significant changes in the plan that Ms. Lim will walk through but --

CONSTANTINE ALEXANDER: It may be useful for the people in the audience if you can explain the difference from a Zoning point of view a three-family and a three townhouse, what makes it a townhouse and not a family unit. It may avoid questions and disputes later on.

ATTORNEY JAMES RAFFERTY: Sure.

The townhouse, townhouse ordinance defines a townhouse, the Section 2 of the Ordinance defines a townhouse in -- I have my -- I couldn't do it from memory, but nonetheless the townhouse, its attributes are that it needs to have direct access to the street, it needs to have party walls between it, and, Diane, I know we've been over this.

DIANE LIM: Semi-detached.

ATTORNEY JAMES RAFFERTY:

Semi-detached. Semi-detached party walls. So in the Residence B District you can -- while there's limit of single and two-family houses, you can have up to five townhouses in the Residence B District before you trigger the Special Permit requirements. So you do not -- the townhouses in the Res B District can result in a project that has more than two dwelling units in it, and it's permitted. In this case we're looking for

dimensional relief associated with the lot area per dwelling unit requirement because even though it does require a use variance, we do have the Res B lot area per dwelling unit requirement. So given the size of the lot, we do need relief for that.

The application, however, does not seek any additional GFA as a result of a couple of moves that I'll have Ms. Lim walk through. One is you'll notice on the facade on Huron Ave. there's actually been a pulling back of the building which I think as much as five feet or so.

DIANE LIM: Five feet.

ATTORNEY JAMES RAFFERTY:

Five feet. And that is a reduction in GFA. And there's also been the reduction of parking, below-grade parking in the basement of the structure which has the effect of turning what was GFA into non-calculated GFA because it accommodates parking.

There is one area in the proposal that does involve some additional GFA, and that is the head house that provides access to the deck for unit two, correct?

DIANE LIM: Yes.

ATTORNEY JAMES RAFFERTY: But what I was saying what Ms. Lim has done, and I think rather effectively, is try to create some context for this as a residential building. It has a masonry front with bow windows and with a zero setback at the front. She has introduced domesticity as been noted into the facade here, replacing bow windows with double hung windows, clapboards, replacing masonry in the use of some decks and balconies to give it a look that's compatible with the surrounding structures and also very sympathetic to the design of the building that's behind it.

The parking as proposed is -- takes advantage of an existing driveway and it

involves a little maneuverability requirements that are not typical under the Ordinance and thus require relief. We have provided what's called a syncro-analysis that parking consultants do and Ms. Lim has worked closely at making the mechanics of this work. And I think maybe this might be the time for her to just kind of walk you through the three changes, because that's, that's the other significant change, the removal of a portion of the building facade, through the use of carrying beams. She's been able to basically take out a good section of the wall that supports the building at the ground floor on the side and open it up. And she has an elevation today that's particularly revealing about how she's achieved that. It's a view that you'll never see because of the -- the elevation you never really see because of the office building next-door, the broker's building. But you

can see the area of the building that's been removed, that's going to allow for the parking to work. That might help you understand what's involved.

The existing property doesn't contain any parking. It had a dwelling unit in it, so I think from a Zoning analysis, that dwelling unit is probably grandfathered from parking requirements. So the two other units required two spaces. This scheme -- this plan does provide for three parking spaces, but Ms. Lim will need to walk you through how that's done.

And then finally there is an elevation change on the far side, the side opposite from this that was placed in the file on Monday because we had a yet another neighborhood meeting a week or two ago, and the response from the abutter on this side was that even though we had changed this elevation, this had much larger windows, to four non-operable

fixed square glass openings to provide light placed at six feet in the unit so that there wouldn't be any privacy impact. That was still seen as objectionable by the abutter. And what Ms. Lim and Mr. Svenson came up with then is a skylight alternative. And those in the revised plan there's a series of skylights to be added to the roof here to allow for sunlight in that area and that facade remains unchanged in response to the concerns of that abutter. It's my understanding that that abutter who has attended these meetings and has been consistent in concern about that no longer objects to this. But I don't want to be accused of speaking, but it's been represented to me that that was the effect of this. Admittedly it was seen as -- there were great efforts made to make it not invasive, not create privacy issues, but at the end of the day out of deference to the fact

that the wall simply doesn't have a setback and it certainly -- the Special Permit that allows openings or non-conforming walls, well, that wall is about as non-conforming as a wall can be. And there was further effort made to see if the units can be made habitable.

I just conclude if you take time to examine the floor plans, it takes a little while to understand the relationships. But actually it is a credit to what Ms. Lim has achieved. Two of the units have direct access into the garage as well as their direct street access. The units in size, two of the units are in excess of 2,000 square feet. They're three-bedroom units. One is -- unit 2 is at 2600 square feet. Unit 1 is at 2150 square feet. And unit three, which essentially is the existing house, is the smallest, but even that's at 1500 square feet and it's two bedrooms with a study and a den.

So these are generously-sized units, and frankly it goes to the issue about what is the hardship related to this because I think it's -- I think the Board will probably agree, the significant element of relief here involves the third dwelling unit if I might be so bold as to predict that given the size of the lot and the dimensional requirements in the Res B District. But if one were to examine the building and see what's been achieved here, 2100, 2600 square foot condominium units, units in excess of 3,000 square feet in this location that mark simply are -- they don't meet the -- even come close to what the market would support in terms of a reasonable dwelling unit where you could expect to have a successful project and have something that would be liveable and appeal to families. Families that would look for houses in excess of 3,000 square feet, I think the history probably suggests that you don't

get families in those situations. I mean, already two of these units have three bedrooms. We have a limitation that you can't have more than three unrelated persons living in a unit. So if you start getting into four-bedroom condominium units, it's not a product that lends itself to families, frankly. I think you could just as likely see grad students or roommates or the like. And there's also as we know, not a linear equation between units and vehicles. You could just as easily find yourself with three and four-bedroom units having more vehicles than a one or a two-bedroom unit. So for those reasons largely related to the challenge of the building itself and the existing structure, we're citing that as a hardship and asking for approval for the plan as proposed.

CONSTANTINE ALEXANDER: I have a couple questions for you before Ms. Lim

speaks.

TAD HEUER: I have number, too.

CONSTANTINE ALEXANDER: You want to go first?

TAD HEUER: No, you can go first.

CONSTANTINE ALEXANDER: Nothing heavy. First of all, I want to get into the record exactly the numbers relating to the Variance relief that you're requesting, the lot area per dwelling unit. You want to go, just because they are significant, I think it's worth putting in the record. You're going to have, I see it 1,278 square feet per dwelling unit when you're supposed to have 2,500. Are my numbers right or not?

ATTORNEY JAMES RAFFERTY: Yes, they are.

CONSTANTINE ALEXANDER: Okay. So you're looking for half. You want to reduce substantially what is required by the Zoning Ordinance. Let's get that on the record.

It is a significant amount of relief that you're seeking. I don't want to gloss over that.

Another is just a question of procedure as you're going forward on the parking. I think I understand your approach. I want to make sure I'm right. You're seeking a Variance for dimensional -- dimensional Variance for the parking. If we were to deny that, you're then seeking a Special Permit to reduce the number of parking units required on the site; is that right? I mean --

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: It's the alternative. But your preference is to get a Variance, not to get the Special Permit.

ATTORNEY JAMES RAFFERTY: That's right. I wanted to avoid a scenario where the Board might support the project, not the parking -- the dimensional relief for the parking and then leave the Petitioner in a

position of not having adequate amount of relief to build the project.

CONSTANTINE ALEXANDER: I just want to make sure that's right. And I wanted to make sure your preference is the Variance.

ATTORNEY JAMES RAFFERTY: And just to make clear, one of the challenges from a permitting perspective with the case here, and I admit that the lot area per dwelling unit is one of the more relevant aspects here. But there does exist within the Ordinance, a Section 5.28 which was, which is -- was intended and serves as a method by which structures originally not built for residential use get converted to residential use. The underlying land use policy at work in that section of the Ordinance is that the more relevant determination of the unit count in those situations is not the size of the lot but in fact the size of the building. So we see in school conversions, factory

conversions, we see significant deviation from the lot area per dwelling unit, but it is achieved by Special Permit. In this case there are elements of this building that exist that were never constructed for residential use. And we did explore with ISD whether or not this building was a candidate for that type of Special Permit relief, but we don't have units that are exclusively in those locations. But I offered by way of perspective with regard to this relief that if that building -- if that principle structure there, if this was a full funeral home from Day 1 at the size that it is today, then this could proceed under Special Permit and be well within the three units of what's being sought here. It's the presence of the prior single-family unit and the fact that these two are additions to a residential structure even though I made the case that the use variance changed it from a residential

structure. But I understood it was -- it didn't fit nicely enough into the Special Permit, but I do think it's relevant in the conversation about what is the right determination, because that is the case here, that we have this structure, and we're looking at this structure from a perspective, the unit balance from the perspective of the size of the existing building. And this is even after we take out that portion of the building to accommodate parking. And we're producing dwelling units that are probably in most cases exceed the typical two-family apartment that lines this stretch of Huron Avenue. I think I'll probably stipulate the average two-family somewhere between 12 and 1500 square feet. And the smallest of these three is at 1500 square feet. And maybe Ms. Lim could just quickly, particularly the building changes, the front facade, and the parking and how you achieved it. And if you

could do all you could to eliminate the skepticism on the face of some of these gentlemen about the parking scheme.

TAD HEUER: Can I ask a procedural question? So on the parking on Mr. Alexander's question, if we were not in favor of the underground parking but were in favor of a Special Permit to reduce the amount of parking, presumably you would want to go back and redesign the project to capture the space that we're not allowing you to use under the building? Would that be -- I mean, I just want to know procedurally where we would go if that were the situation we ended up in.

CONSTANTINE ALEXANDER: To answer for you, if all you're going to do is reconfigure what was a parking lot was before into something else but not change the exterior of the building, I'm not sure they -- I think they can do that without our approval or whatever.

TAD HEUER: Well, it's unlikely because they're on a nearly zero lot line on that side, too. So they would need dimensional relief going into that lot line, into that setback.

ATTORNEY JAMES RAFFERTY: No, no, why?

CONSTANTINE ALEXANDER: I don't think they would need relief.

TAD HEUER: Up against the -- on the right side.

ATTORNEY JAMES RAFFERTY: How would we going into? We would be staying within the existing building.

TAD HEUER: Okay. All right.

CONSTANTINE ALEXANDER: What I'm trying to say if we were to say that you -- no Variance for the parking, the dimensional but Special Permit for the less than three units on the property, that we could otherwise approve and you could go forward and you don't

need to come back to us with revised plans I don't believe. But I may be wrong about that.

TAD HEUER: Would you need it for adding additional FAR because you're going up and down on your FAR, you're moving it around?

ATTORNEY JAMES RAFFERTY: Well, as you were asking the question, the thought did come to mind. So then I think it would become a function of what one did with the space.

TAD HEUER: We'll cross that bridge when we get to it. I just wanted to raise it.

ATTORNEY JAMES RAFFERTY: Okay. So maybe Ms. Lim can maybe kind of -- particularly with regard to what's happening on the front and of the corner where you've introduced the parking.

DIANE LIM: Sure, right. Maybe I can just kind of, you know, have the existing floor plan to the upper proposed floor plan. So basically what we have done here is take

the five feet by sixteen and a half feet, sort of a rectangular space out of this corner so that we can create a little bit of a more green space to the street, and also makes a parking a little bit easier. Because this corner is open so that people -- a driver who is coming in and out, have a better access or a visibility to the street. And you can see that the existing right now has this type of condition with the loading steps going up and down. And we are carving into the entire sidewalk this way to get into the building space underneath. So we are taking out all this space that are right now interior as a part of the funeral home to -- and using it as a parking space basically.

On the second floor, and maybe I can give you a little bit clearer idea of that obviously the outline of the building remains the same on the second floor, except the front because we are taking the entire section out,

and the front volume is a two-story volume. And so we're taking it out to feel that the building is a little bit lighter to the street.

But in terms of the elevation, you can see the perspective here and this is obviously we got contents of just the post in the background. And you can see that this feature is pretty common on this street.

You can see a lot of the neighboring buildings have the front porches and that kind of sets up the tone of the residential, and so we wanted to do that in our building, too. And make this a more residential structure than currently exist. And also change the face of the two-story tall front building. I think it also warms up the whole building and makes it a more residential as well.

And then we have obviously a lot of opportunity for introducing greenery to the

street. And the lower area here is actually open to the parking behind, and it would be, you know, plant that. And similar condition gets repeated on all levels front and back.

And on the back -- I mean on the side obviously we no longer have any penetration on to the wall, but in the back we have a support from the abutter from the way, so we kind of came up with a solution that makes him happy in terms of creating a dense wall.

BEN SVENSON: It's this right here.

DIANE LIM: You can see the wall right now. So we are, you know, in addition to the fence, five feet tall fence, we are adding essentially a green wall to these space in the back.

On the top two floors essentially we're not changing anything. I don't know if you guys remember last time we, on our proposed drawings, we had a dormer increase on the side and so on, but we're not doing that anymore.

So on the top portion of that is staying in the middle will be the same all around basically.

BEN SVENSON: We had looked originally to extend the dormer, we're going to keep the dormer as it exists.

DIANE LIM: And then we are just mainly changing those finishes, with the vinyl facing out and then put in better siding in and replacing the existing fence.

CONSTANTINE ALEXANDER: The new head house has been identified as providing access to the deck.

DIANE LIM: To the deck, yes.

CONSTANTINE ALEXANDER: But it looks like to be of a size you could have other uses for.

BEN SVENSON: No, we just using it just for the stairway.

DIANE LIM: It's just a stairway. So it's a seven-foot, five by 12 and

two inches, and the width is just to accommodate the turnaround.

CONSTANTINE ALEXANDER: Okay.

BEN SVENSON: We were essentially stuck with an existing house the Hickey's lived in upstairs that was 1500 square feet. And then below is 5500 square feet of just big open commercial space. So the two units consist of that 5500 square feet cut in half.

DIANE LIM: And the roof deck is also held back from these edges so that it doesn't necessarily -- I mean, these fences are really tall because the existing parapet is 24 inches tall and the fence is a four-foot on top of it, so it's a six-foot tall kind of barrier if you will.

ATTORNEY JAMES RAFFERTY: The deck exists today.

CONSTANTINE ALEXANDER: Yes, okay.

ATTORNEY JAMES RAFFERTY: Part of the elements in the plan do provide some open

space, which as we know is favored in residential, and in fact is a requirement in residential and not -- on residential lots and not on other lots. But it clearly would provide an amenity for the people who live there. So, that's essentially where we've arrived at.

I thought maybe you could just conclude with a little explanation on the parking and the analysis and how you arrived at the dimensions you did.

DIANE LIM: This was mainly by the consultant who gave us the --

BEN SVENSON: He made a lot of changes to make sure that it worked right.

ATTORNEY JAMES RAFFERTY: Right, the layout here, the column changes and everything were informed by the maneuverability requirements, correct.

CONSTANTINE ALEXANDER: This is the consultant whose letterhead says they

provide creative solutions.

DIANE LIM: Yes.

CONSTANTINE ALEXANDER: I hope not too creative.

BEN SVENSON: I mean, I park my car there all the time. It's just the width when you first get in, it's actually that before and after.

TAD HEUER: How do you open your door?

BEN SVENSON: Just open it.

ATTORNEY JAMES RAFFERTY: Oh, yeah.

BEN SVENSON: It's not the kind of thing you can't. I actually drive with my wife.

TAD HEUER: In that existing space?

BEN SVENSON: Yeah.

TAD HEUER: No. I was standing there last night. And there's no way you can open two doors simultaneously.

BEN SVENSON: You don't open

it -- there would be no cars parked here.

DIANE LIM: But no cars are parked there. You're able to pass through. So, you know, as you can see, this is around the midsize cars. And you can see that there's a space between all the doors. And we basically move this, you know, car more into this unit so that it's a free of this car's side.

ATTORNEY JAMES RAFFERTY: That driveway accommodated hearses, flower cars, deliveries. I admit it's tight.

TAD HEUER: Hearses you load them from the back though.

ATTORNEY JAMES RAFFERTY: What?

TAD HEUER: You load them from the back.

ATTORNEY JAMES RAFFERTY: So you get a minivan maybe or --

CONSTANTINE ALEXANDER: To get into this space, you have to drive up here.

DIANE LIM: Up and then back, yes.

CONSTANTINE ALEXANDER: And the space between here, these on your drawings, how much space is that?

DIANE LIM: There's a -- the -- at least two and a half, 30 inches, yeah. And these are six inches worth of basically parking space dimensions.

CONSTANTINE ALEXANDER: How big a car or motor vehicle are you assuming for those parking spaces?

DIANE LIM: These are for the large passenger cars, so --

CONSTANTINE ALEXANDER: SUV?  
Would a regular SUV fit in there?

DIANE LIM: Yes, definitely. It's 17 feet long, this dimension right now. I believe so. We didn't use a mini to come up with this diagram.

BEN SVENSON: The biggest change that we had to make was this wall was merely

18 inches over, and by moving this wall back we were able to accommodate the door swing and bringing the car from here over to here and parked in there made the difference to get this car in here.

ATTORNEY JAMES RAFFERTY: I mean, I would only offer that there are locations in Cambridge and Boston in particular, if this were public parking, one would say that an uneducated or a not a regular practitioner of the space, but there are people, as a necessity, familiarize themselves with less than optimal parking are able to make it work. So I think people who have big vehicles probably don't buy condos here. But people --

CONSTANTINE ALEXANDER: Or they buy it and they use the street anyway. You have an empty parking space.

DIANE LIM: Or they probably end up --

CONSTANTINE ALEXANDER: My real question is, I'm just curious, why -- I think I know the answer, but I'd like to hear your answer. Why do you go through all this trouble to provide parking in the structure when you can get a Special Permit to allow for parking on the street? Which we've granted many times. And this is a neighborhood, I think an area that would readily support the conditions for a Special Permit to reduce the number of on-site parking.

ATTORNEY JAMES RAFFERTY: Well, candidly we tried to make the project as compliant with Zoning as possible. We did hear from neighbors that are concerned about parking. We began to look at it when it became clear that there was actually more space in this building that was actually needed for liveability, and began to think about well, the big question I had was well, how could you do this structurally? And it

was a lot of engineering work figuring out how you can take this down. So, the hard -- the difficulty here is -- and it struck me that if it was found to be too difficult or if someone was coming in for a short-term use of their property, they may not go in there and they may park on the street. But lots of people have, you know, have driveways and garages that you can't park in and they park on the street. So, the thinking was, was there a reasonable way to meet the requirements of the Ordinance? And I don't think this is terribly unconventional, but that's why we explored this. We thought it was appropriate to try to make a good faith effort to see if we could do this.

BRENDAN SULLIVAN: I think I would take a different tact, Gus. That if they were to come down and say, you know, that we cannot provide on-site parking, then I think the neighbors would say that you have so much

volume there that you can provide it and that you should. And so I think that they would have to go through those hurdles and jump those hurdles and go through those hoops to at least make an attempt to provide it.

CONSTANTINE ALEXANDER: Well, an attempt. Obviously because they need a Variance to provide the parking, the dimensional Variance, but you still need a Variance.

BRENDAN SULLIVAN: I welcome the attempt of getting the cars in there anyhow. So that's just my --

TAD HEUER: I think my concern is if I read the consultant's plan correctly, these are front and back out spaces.

BEN SVENSON: That's all of them.

DIANE LIM: Yes.

TAD HEUER: And it's front in and so it's backing out, let's say we've got a large vehicle, and we're not talking about a Mini

Cooper, so you've got 13 feet from the driver to the rear of the car. You're backing out against a blind wall, all the way at the lot line on the adjoining building in a commercial block, and you're backing out on a blind wall that is on a major thoroughfare that is one block from a major intersection, and with three cars doing that, you're tripling the requirement of people backing out into a well trafficked street blind and that really doesn't sit well with me.

CONSTANTINE ALEXANDER: Good point.

ATTORNEY JAMES RAFFERTY: Well, you're not blind once you get beyond the sidewalk. I understand what you're saying. There's actually, by virtue of the fact that there's a crosswalk in front of -- because I park there regularly, I have to tell you. By virtue of the fact there's a crosswalk in the front door, you can see to the left. There's now been a stepping back of the building.

The current condition and the condition that's existed for 40 plus years, are right angles at both edges of the property. So this is an attempt to address that by pulling back here so you create the sight line in that direction. Obviously we can't change that, but I would say that backing onto Huron Avenue is probably the more prevalent form of parking that occurs throughout the district. All those driveways, the vast majority of the homes that have driveways on Huron Avenue, find themselves backing out.

TAD HEUER: But most of them are set back, correct, at least somewhat?

ATTORNEY JAMES RAFFERTY: In some cases.

TAD HEUER: They don't have their neighbor on a 15-foot dead lot line wall; right?

ATTORNEY JAMES RAFFERTY: Right. So that is not, that is something.

TAD HEUER: You can't change it.

ATTORNEY JAMES RAFFERTY: Right, and that's a condition, and some neighborhoods more prevalent than others. You see it in East Cambridge quite regularly frankly. Any time you have buildings that are zero front setback and we have districts where they just were built out that way, you encounter that, but I do think people need to be mindful. And I think through mirrors or sometimes the Traffic Department, who would have to approve the garage, might require a light or something. But, no, I agree that's -- and that's a condition. But I think the attempt to do this -- otherwise, the driveway now, if it wasn't done, the driveway can at least accommodate one car today which is totally blind on both sides. And probably two cars if it was the single unit, there's no real provision against parking two cars there. And we thought -- and that's what the

earlier plan just had. Just use that driveway and said well, you get two cars there. So it's an imperfect solution. I think the compromise is associated with the relief, however, related to that issue. I mean, the relief about the dimension, we find ourselves -- if somehow we were able to create an entire parking garage here that met all the dimensional requirements, you would still find the condition if a car is backing out, correct, the relief isn't related to that.

TAD HEUER: Right. Although if you admitting that you're not going to be able to do it because you have to take out this as well, but the far more preferable approach if you're going to have multiple cars in my mind, is that you'd be fronting out so you don't have 13 feet blind, you have six feet blind, your front hood, so you can see over it so you can control. I mean the big concern to me is coming out onto a main thoroughfare where

you're blind as you're backing out. Your driver is on this location here rather than that location with motion to car exposed.

ATTORNEY JAMES RAFFERTY: I understand. But I'm suggesting that two cars could easily be doing that on a regular basis and have done that historically.

BRENDAN SULLIVAN: Any other questions?

TAD HEUER: For sure.

BRENDAN SULLIVAN: Tim?

TAD HEUER: I have some.

BRENDAN SULLIVAN: Okay.

TAD HEUER: So when you spoke of the hardship being the three-family nature of it, we've gone over the lot area per dwelling unit. I think this is distinct from, and we can go back to 148 Magazine, where there, I believe, the lot area per dwelling unit was satisfied because they had a large lot. Am I remembering correctly? Emmert Grales

Four?

ATTORNEY JAMES RAFFERTY: I don't remember that case. Was that a case of mine?

TAD HEUER: That was being subdivided and he had a very large unit.

SEAN O'GRADY: Moss Keene.

ATTORNEY JAMES RAFFERTY: Moss Keene, yes, yes.

TAD HEUER: So in that situation it was a similar type request, but they had enough lot area per dwelling to support each of the units, and there were other things involved even though it was a five-point -- they were increasing the amount of units but they had enough lot area.

ATTORNEY JAMES RAFFERTY: They did. I think they didn't meet that provision 5.26, because if you're going to increase the number of open space, you have to have compliance, GFA, open space, parking and lot area per dwelling unit. I don't think they

had the parking.

TAD HEUER: Right. So here when we're looking at lot area per dwelling unit and as Gus has mentioned, you're going from 3851 to 1278 and you're required at 2500, I suppose I take the point that, you know, these are large units as they are, you know, 26, 21, and 15, I guess my counter would be there's no reason that you're required to use the entire building; correct? I mean you have a structure that is well over its FAR in the lot. It seems more to be a function of you paid 708,050. You're trying to get out of it something that clear 708 with a profit. But, you know, saying that the building that was purchased can't be used as a three without some relief, means that it has to be three units because those are the only ones you can sell. Because otherwise we have three, thousand square foot units. It seems to me that the counter to that if you, for instance,

if you removed the front or you removed the rear, you would be back down to 4,000 square feet which you can subdivide into two, 2,000 square foot units and off you go. I mean, isn't this more of an issue that you overpaid for the property?

BEN SVENSON: Can I speak to that?

ATTORNEY JAMES RAFFERTY: The short answer is no.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: Okay?

TAD HEUER: Why?

ATTORNEY JAMES RAFFERTY: Because the analysis you described really ignores what the nature of the structure. We're not claiming, nor does the law require us to demonstrate that it can't be used as a two. We're saying the size of the structure, the distances to create air and light, the amount of work that it takes to take these cinder blocked elements and turn them into living

units has taken an awful lot of effort, and there are distances and layouts that lend themselves to certain size and locations. Bedrooms need windows, ceiling heights and the like, egress requirements. In this case the suggestion that you could simply remove building, that's a reality. That's the hardship. We don't want to have to take down structure. And it's a very common and recognized hardship related to the structure. So if the suggestion is well, you could just simply take off some of the structure here, we're not here to suggest that couldn't be done. But I also suggest that isn't the standard of the test that the Board should be applying in a hardship case when an Applicant comes before the Board with a property that is uniquely challenged, given decisions made by your predecessors to allow for Variances to build in this location, and I think it's worth noting where this is

located. This is a Res B District, but across the street is a business district. That wall that we can touch is a business district. This has had a business style use associated with it, so the historical use of the property, and the existing Variance that remains viable should also factor into the Board's determination as to whether this is consistent with the intent of the Ordinance. That Variance, and one could suggest well, we're not here today suggesting if we don't get this we're going to go operate a funeral home, but the reality is that the law permits that. And that's a 5,000 square foot funeral home that in some scenario could be active and going on there. And the impacts of that would be highly more conflicting than the surrounding residential uses. So I'm, in all due respect, not going to head down the road that you're suggesting about telling us about the economics and all that. The

building is the hardship. The size of the building, the shape of the building, creating reasonable access. Turning buildings that were never built for residential purposes into functioning, workable, quality living space is what the hardship is about.

TAD HEUER: Well, but all right, so let me push back a bit. That is what 5.28 is for; right? So 5.28 says you've got a school, we're not using the school anymore as a school. You can't use it as a school. We're going to convert it into housing.

Here we are -- I fully take the point that, you know, in certain circumstances this is a 5.28 like conversion, but it's not a 5.28 version.

ATTORNEY JAMES RAFFERTY: That's why we're not at the Planning Board. So I don't really dispute that at all.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: It's not a

5.28. But I think by analogy and by one of the standards of consistent with the intent of the Ordinance, I think the Board can recognize that embedded in the Ordinance, in a provision of the Ordinance related to conversion to residential, there are provisions that directs the permitting granting authority's perspective onto the size of the structure. And I'm saying it's for that reason, at least here, that the relief here is consistent with the intent of the Ordinance.

TAD HEUER: Right. So my question is: That's true in the case of something that the school that was built as a non-residential use. This structure, regardless of whether it was a century ago or not was constructed as a residential use; right?

ATTORNEY JAMES RAFFERTY:

Mr. Heuer, I have no dispute. That's why I'm

not at the Planning Board. I'm not here claiming that can get relief under 5.28.

TAD HEUER: Oh, I know.

ATTORNEY JAMES RAFFERTY: I don't want to stifle the conversation, but it is a house but it had two sizable additions that exceed the original structure that were built and constructed and used for non-residential purposes.

TAD HEUER: Right, so when we look to go --

ATTORNEY JAMES RAFFERTY: So that's why I say that the Board can look at the intent of the Ordinance, as to when they encounter such structures, and find that the granting of relief here would not be inconsistent because the Ordinance in another section allows for unit count to be established based on the size of the structure as opposed to the size of the lot. We don't qualify for that Special Permit. I'm talking about whether

it's consistent or not with the Ordinance. What I said earlier, if the house -- if the building was a funeral home from Day 1, same size building funeral home from Day 1, we'd be at the Planning Board getting a Special Permit.

TAD HEUER: Right. But we're not for here.

ATTORNEY JAMES RAFFERTY: I'm happy to be here. I didn't want to spend time having you suggest that by analogizing to other provisions of the Ordinance, I'm making a claim that this is something that it wasn't. No factual dispute. It was built as a residence. It was used as a residence. At some point in 1928 it became a funeral home. And that Variance, that use variance remains in effect. And I'm thinking it's -- and I believe it would be appropriate for the Board to conclude, given the legal status of the property, the other as-of-right options that

exist through the relief that is present in those Variances, that this conversion and the approach here is thoughtful and the relief being sought is warranted based on the structures that exist there, the two additions. That's the case.

CONSTANTINE ALEXANDER: Should we open it to public testimony?

BRENDAN SULLIVAN: Anything else to add?

CONSTANTINE ALEXANDER: We can come back to your further comments.

BRENDAN SULLIVAN: Any further comments?

TAD HEUER: Not right now.

BRENDAN SULLIVAN: All right. Just to clarify, there is a net reduction of 768 square feet; is that correct?

ATTORNEY JAMES RAFFERTY: That's correct, from 6900 to 7668.

BRENDAN SULLIVAN: So the small plus

and the minuses add up to a net deduct of 768 square feet?

ATTORNEY JAMES RAFFERTY: That's correct.

BRENDAN SULLIVAN: To the existing structure.

ATTORNEY JAMES RAFFERTY: That's achieved in two ways, by the stepping back in the areas that Ms. Lim notified on the first and second floor of the front piece, and the conversion of a portion of the basement to below grade parking.

CONSTANTINE ALEXANDER: And as a result, the FAR goes down from 1.98 to 1.79.

ATTORNEY JAMES RAFFERTY: Correct.

TAD HEUER: In a 0.5 district.

CONSTANTINE ALEXANDER: I'm sorry?

TAD HEUER: In a 0.5 district.

BRENDAN SULLIVAN: And the relief on the parking is size of parking space, maneuverability or backup space, width of

driveway; is that correct?

DIANE LIM: Pardon me?

BRENDAN SULLIVAN: Width of driveway?

DIANE LIM: That's existing.

ATTORNEY JAMES RAFFERTY: It's a pre-existing driveway. I don't think we need --

BRENDAN SULLIVAN: Okay. But it's really the size of space, the backup dimension, and also the height.

DIANE LIM: It's a seven-foot, four inches.

BRENDAN SULLIVAN: Right. And seven, six is the --

ATTORNEY JAMES RAFFERTY: Vertical clearance.

BRENDAN SULLIVAN: So the vertical clearance that requires some relief. So that's all encompassing the relief on the parking.

ATTORNEY JAMES RAFFERTY: On the dimensional relief associated with the parking spaces, correct.

BRENDAN SULLIVAN: Okay.

Anything else at this point?

CONSTANTINE ALEXANDER: No.

ATTORNEY JAMES RAFFERTY: But to the points it is true, and the proposal as before the Board, represents greater conformity with the FAR requirements than the structure does in its present condition.

CONSTANTINE ALEXANDER: Yes, clearly.

BRENDAN SULLIVAN: We agree.

ATTORNEY JAMES RAFFERTY: Okay.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to express an opinion on 175 Huron Avenue?

Yes, Ma'am.

PATRICIA NOLAN: After the protocol

stuff -- I'm sorry, my name is Patricia Nolan, at 184 Huron Ave., right across the street. I have a protocol question. I have two letters from neighbors who asked me to bring it because they weren't here. Do I hand that to Sean or to you, Mr. Sullivan?

BRENDAN SULLIVAN: Yes.

PATRICIA NOLAN: And I'm not sure if you all received -- we did talk with -- I talked with -- finally talked to Mr. Svenson yesterday so I waited until that conversation to send a letter. I don't know if you all got the letter that we sent.

BRENDAN SULLIVAN: We have.

PATRICIA NOLAN: And my husband copied me on an e-mail that he sent to Ranjit. I don't know if you all got that.

BRENDAN SULLIVAN: The one we got, is that this one?

PATRICIA NOLAN: Sorry, Sean. Do I submit this or read it?

BRENDAN SULLIVAN: You can submit that also, yes.

PATRICIA NOLAN: I don't have a copy. Shall I read through it a little bit or do you read it?

BRENDAN SULLIVAN: Yes, and then if you want after, sure.

PATRICIA NOLAN: So, I want this to be developed. And I don't know if you've had a chance to read the letter, it really is about wanting the neighborhood to stay liveable. And if we could make it -- parking is a huge issue. And if we could make it so that anyone who lived there didn't have a car, we would, we could support it, but that's not gonna be the case unless that's not what they're asking for and that might not be what you're granting. Both of those letters are from neighbors to our, for whom the main concern is parking. And they feel that in the last couple of years parking's gotten

much worse in the neighborhood already.

This will only exacerbate it. So it's a real concern and it's a concern about liveability. And, you know, you know the BZA guide better than we do. It's just -- we do feel that it would result in substantial detriment and erode the intent of the Zoning Ordinance.

There's a few confusing things that I don't understand is we keep talking about this building that it can't be developed other than a three-family because it's 6,000 or 7,000 square feet. But in the city records it says it has 4571 of living area and 6200 square feet of total area. One thing I noticed in the plans -- and in fact, I have a solution. Make it a two-family. Take that 1500 square feet of the third unit, you could have parking where you go in, take the entire basement level, go in, you park, you back up, and you come out front. You could go in front and front out by just using that

entire first floor, the basement level, as parking.

It's also stunning to me that this property seems to anticipate no basement storage and no attic. Our house, which we use, we have it stuffed full like any basement I've ever been in in Cambridge is stuffed full. And yet this has almost no storage. So to have a 2600 or even a 2100 square foot living space, with very minimal storage, at least from what the plans I saw, that I was given by Mr. Svenson, there are closets here and there. Doesn't make sense to me. That's the perfect use for that back unit. There's a lot of square footage back there. That's what it should be used for. And because that's what I do, I don't want to be a jerk. You know, I don't want to say well, are we just doing this because of, you know, we have our dander up or something. I always do what I usually do is I turn to analysis.

And I looked at every single property on Huron Ave. from this property down to Appleton, and there is no single property without at least some kind of basement in there.

There's also a lot of two families that have 1500. There's a couple with 2,000. The average square foot, Mr. Rafferty asked about it for the two families just in this subset of properties, is actually 1700 square feet. My letter talks a lot about, you know, what it is that we should all bear in mind. Even a two-family requires a Variance. Even for a three-family requires a use variance. That should only be under extraordinary circumstances.

CONSTANTINE ALEXANDER: Mistaken.

TIMOTHY HUGHES: They both need a use variance.

CONSTANTINE ALEXANDER: By going to a, by going -- that's what I had Mr. Rafferty speak at the outside of this. By going to a

townhouse creating what the Zoning Law needs to be vertical walls, there are no longer need of use variance, so to finish.

PATRICIA NOLAN: The whole question is whether it should be three-family or not. In our view it shouldn't. It requires a Variance. Variances should be required only in true hardship. Mr. Svenson and I had a long discussion whether he could develop this as a two-family. I hope he would not use leave it as is. I would prefer the use of a single-family and a funeral home because its episodic use of the parking for the funeral home. It's there, but the parking issue is involved. It's episodically involved.

CONSTANTINE ALEXANDER: Can I ask you a question about the parking issue? Take for a second -- I don't think the Board members are going to disagree with me. I don't think we can force them to have a two-family because the nature of the Zoning

relief that they're seeking for a three-family is such that we could grant it, and it would still be a three-family, but I, I keep hearing about the parking. That's an issue for me, too. They've basically come to us in a sense with alternative propositions; either allow us to have parking in the structure that doesn't comply with the dimensional requirements and it's going to be problematic in terms of its feasibility, and Tad has pointed out backing in and backing out. There's a lot of problems that the alternative is to say, park on the street. We'll give you a Special Permit to allow you not to have three parking spaces on the in the unit for on the property for the three units. Which of the two do you prefer? Allowing them to park on the street or would you rather them have in-building parking that doesn't comply with the Zoning requirements, and unless we give them a Variance and creates

perhaps some safety issues as you come in and out.

PATRICIA NOLAN: I would obviously prefer not -- obviously I would prefer the parking inside, but what I really prefer, you may not -- you can deny them the three-family. If they come back with two-family with three spots of parking, I support it. I would go on record now, I would support it. And I believe the other neighbors who are really worried about parking, the solution, use the entire ground floor for storage and parking. You get out the backing out. I do it everyday. I have a driveway. We do have open space. I even have a fence next to me and it's a little bit worrisome. So I think that solves it. I don't know what -- you obviously can't force it, but you can certainly deny the three-family which is all I'm asking. Because unless you can forbid cars, I'm the first to say it would be

environmentally better if we didn't have cars. But the reality is three large, three-bedroom units are likely to have more than one car per unit. So it's going to stress the neighborhood. Our -- we have a two-family. Liveability matters, parking matters. When we go to rent the apartment that's a big issue. We feel like we can no longer say parking is easy in our neighborhood, which we've been able to say. So it actually affects the value of our property, that's why we don't support this.

The -- I don't know, if you read my letter, then I don't want to repeat it. But if you haven't read it --

BRENDAN SULLIVAN: I believe we all have read it.

PATRICIA NOLAN: I know sometimes you want to read and you don't.

And there's a couple other points, which is my husband's e-mail really gets at

one point that he's heard. I don't know, should I read it?

BRENDAN SULLIVAN: You can, sure.

PATRICIA NOLAN: It's relatively short.

It says: (Reading) Ranjit, I hope you're well. I wanted to share a few thoughts about this particular Variance. There's been a lot of talk in my neighborhood. I live across the street from the proposed renovation about this case. I'm not going to go into most of the details because others have. One point I've heard in favor of the project is that it's a good thing to do from an environmental viewpoint. Basically the argument states that any project that moves people into the city from the suburbs ends up reducing commuting and transportation-related emissions thereby creating environmental benefits. As a member of CPAC, my husband was chair of the

CPAC, that's Climate Protection Action Committee for several years. And someone who is concerned about the environment, I recognize that this argument has some merits. However, one of the central issues we faced on CPAC is how to balance needs related to community standards and big picture environmental benefit when they conflict. We have Zoning regulations for many reasons. An environmental concern, while an increasing important factor for us all, do not trump all other. In this project I see a developer seeking to maximize financial return and not showing maximum concern for neighborhood or environment. While I do think investors deserve a fair shot at financial rewards, I look to our Zoning regulations and the Board of Appeals to make sure these (inaudible) balanced in a reasonable fashion. That preserves the fabric of our (inaudible). Thanks much for

your consideration. I hope you can share these thoughts with the Board. David Rafkind.

Do I hand this to you, sir?

BRENDAN SULLIVAN: Sure.

PATRICIA NOLAN: I will say this idea that the structure pre-ordained, you can only do a three-family, is just not true as some of you have noted. You could choose not to develop every square inch. And really the idea that you don't have abatement and you don't have storage and you don't have usable parking in a neighborhood that's heavily stressed, really concerns me. And I will say, again, I did research. I have all the properties if you want of the neighborhood to just make sure I wasn't off base, but you know, there was a two-family that sold at the -- about a week after this one did for \$775,000. They just sold both units that they developed. And according to this, it

says it was fully renovated to the frame bringing the home back. So some other developer obviously found a way to do it financially. That's not your job to maximize return. I know, however, that section of the argument that's only been used to me is I can't do it as a two-family only because of finances. I can't make the mark. I just believe that with pretty standard development means in our neighborhood, I know our neighborhood, I live there. This could happen easily as a two-family, an incredible two-family. It -- obviously he is the owner, said well, I can just leave it as it is. Sure he has that right. I would hope that he wouldn't do that. It's a great property for development. It just doesn't have to be developed as a three-family.

BRENDAN SULLIVAN: Okay, good.

PATRICIA NOLAN: I don't know if you want any of this. Thanks.

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

TERRENCE SMITH: Terrence, T-e-r-r-e-n-c-e Smith, S-m-i-t-h, 21 Manassas Avenue. I'm a neighbor. I am concerned that this property will not be redeveloped. We have lived over the last few years with several properties that have remained empty and undeveloped for a number of years as various issues have been addressed. We've also seen pretty much every property, every residential property in the general area, including our own, receiving a Variance. And I know it's not your responsibility to determine whether the Zoning Ordinance makes sense, but you have -- you have shown great forethought in correcting where the Zoning Ordinance conflicts with common sense.

I support the three-family. I think that given the size of the property, using

less space, even, you know, Patty mentioned average size is 1700 square feet and 5400 square feet of usable area which kind of gets to three, 1700-square foot units if I did my math pretty much close. The parking issue -- we don't have a parking space. No one on Manassas Avenue has a parking space. I'm less concerned with that than people who live here who have driveways. So I'm -- I find that interesting. People move in to our neighborhood. There's many people in recent years, including my wife and myself, because of the transportation convenience and the ability to live there without having a car. When we purchased our house, we did not have a car. We lived there for a couple of years, my wife's job moved, and the conditions of her job changed, so we needed a car. We have one car. I know it is common for some to have multiple -- a vehicle per person. That is less and less the case in Cambridge. And I

think promoting correct use of existing space, that's also near transit, meets a lot of environmental goals that the city has established. I also sit on the CPAC. I in fact just left the Climate Protection Action Committee meeting and I think that underusing this existing property has huge environmental ramifications. And I do think that at least some of the people who choose to live in our neighborhood would choose to live there without the need for a car. One of the great recent, about last six years advantage of the neighborhood is the gas station at the corner of Concord and Huron Ave. has two Zipcars. And the major issue that I run into is being able to schedule one because they're used a lot. There are about eight other Zipcars within a quarter mile of that corner. So the opportunities are there for people to live in this neighborhood without a vehicle. And as somebody who is

most likely to be greater impacted, well my wife is most likely to be greater impacted by three additional cars in the neighborhood, you know, I think we can live with it. I think the parking plan is interesting. I think any parking on Huron Avenue is going to be a challenge on any property, as Patty mentioned her own house. But I also think that if we correctly built the parking so that it's usable, that also has the added benefit of slowing down traffic, getting people to think about where they're at when they come through the neighborhood. In fact I mean, parking can be a positive as well as a negative. So I support the plan as it is presented.

BRENDAN SULLIVAN: Thank you.

Anybody else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence in the file.

(Reading) Dear Board of Zoning Appeal:

We're writing to express concerns over both the Variance request and the Special Permit request by 175 Huron Avenue. We're glad that the owners of the property, Ben Svenson has worked with some neighbors. It is unfortunate that he took so long to consider any compromise and continues to ignore a central issue for many of us who live here over development and parking. We believe that the current plan for a three-family and three bedrooms each with only three off street parking spots, which are fairly tight, will be a detriment to our neighborhood. We believe that a two-family which still requires a Variance would be a good compromise although not ideal. Please respect our city Zoning and protect our neighborhood's liveability. Signed Jim Hutchinson and Jane Ehrlich at 88 Spark

Street.

Correspondence. (Reading) We are writing to express concern about the Variance request and the Special Permits. The parking in our neighborhood has gotten worse over the last year. We routinely have problems finding a parking spot near the house. Having a young child, the situation is frustrating. Easy parking is an important attribute of liveability. We believe that the current plan for a three-family with three bedrooms each and only three off street parking spaces which are fairly tight would be a detriment to our neighborhood. Signed K. Gaston, G-a-s-t-o-n, 186 Huron Avenue.

There is correspondence in the file. (Reading) To Whom It May Concern: Due to changes made in the project by the Applicant we now support the granting of the Variance and the Special Permit appeal -- the special

appeal permits in case No. 10247. Signed by Antonia Von Gottberg, V-o-n-G-o-t-t-b-e-r-g and Fredrick Von Gottberg at 36 Royal Avenue.

(Reading) To Whom It May Concern: Due to changes made in the property by the Applicant we now support the granting of Variances and the special appeal permits on the case of 10247. Wendy Wornham, W-o-r-n-h-a-m and Howland Shaw Warren, W-a-r-r-e-n, 40 Royal Avenue.

And we have the letters from Ms. Nolan and David Rafkind in the file and the other submission. And that's the sum and substance of the correspondence.

I will close public comment.

HEATHER HOFFMAN: Before you do that may I ask a question?

BRENDAN SULLIVAN: Sure.  
Regarding public comments?

HEATHER HOFFMAN: Actually,  
regarding the project. Is this townhouses

or three-family?

CONSTANTINE ALEXANDER:

Townhouses.

HEATHER HOFFMAN: Then may

I -- could I make a short comment? Because I was waiting until I got a chance to look at the plans.

CONSTANTINE ALEXANDER: You know the drill, Ms. Hoffman.

HEATHER HOFFMAN: I just wanted to ask before I approached.

CONSTANTINE ALEXANDER: I know, but now that you're making comments, you have to come forward.

HEATHER HOFFMAN: Okay. My name is Heather Hoffman. I live at 213 Hurley Street and that is nowhere near this neighborhood. However, I was here for the hearing at which this Board and several people who are on this panel were on that panel made a distinction between townhouses and multi-families and

that was with respect to a very contentious property on River Street. And although I am not an architect, when I looked at these plans, it did not look to me as though they had the double walls required for these to be townhouses. And I remember that the Board was adamant about this. It did not matter what it looked like on the outside. That the only relevant thing in distinguishing between a multi-family with unit, unit, unit and a townhouses unit, unit, unit, was the walls separating them.

CONSTANTINE ALEXANDER: Miss Hoffman, the issue of whether -- if I may --

HEATHER HOFFMAN: No, I'm just --

CONSTANTINE ALEXANDER: No, no, I don't want to interrupt the Chair. The issue whether these are townhouses within the meaning of our Zoning Ordinance is a determination by ISD. They're representing to us tonight that they are going to build

three townhouses as defined by our Zoning Ordinance. I think we accept that. When they go to pull the Building Permit, the building -- if ISD says no, no, you're not, really a townhouse, you didn't meet this requirement, that requirement. They're not going to go forward at least without having to come back to us and getting further relief. That's not an issue before us tonight, that's all.

HEATHER HOFFMAN: Well, I just wanted to point this out because the Board did in fact make the determination in that case that the buildings were townhouses in part of that development and multi-families in another part. I will also add the postscript that --

BRENDAN SULLIVAN: What happened, Heather, on was that it triggered dimensional problems.

HEATHER HOFFMAN: No, actually it

had to do whether they had a multi-family Special Permit.

BRENDAN SULLIVAN: Right. And so that's why we keyed in on it at that point.

HEATHER HOFFMAN: I'm just saying.

BRENDAN SULLIVAN: Yes, and you're correct.

HEATHER HOFFMAN: It does matter because a multi-family is not a use permitted in this district.

BRENDAN SULLIVAN: Right.

HEATHER HOFFMAN: So I want to make sure that it's before you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Okay, thank you. Anybody else on the matter 175 Huron?

(No Response.)

BRENDAN SULLIVAN: Okay, let me close public comment at this time. Back to Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Well,

thank you. I think we have covered the issue. It -- we have reviewed the application. With all due respect to Ms. Hoffman, I don't think her definition accurately states what a townhouse is. There is a definition in Section 2. There's also requirements in Article 11. We have reviewed the -- before this submittal we reviewed them with the Building Commissioner, and we're confident that the building -- Ms. Lim went through a good deal of effort to lay out the units in a way that we could meet that requirement.

Having said that, I think that the issue before the Board does relate to the use of the property, the proposal to have three dwelling units here. It does require relief, but I think -- we contend that the relief is based on the building itself. The parking, any shortcomings associated with the parking by way of relief, frankly, I think are -- get to

be dealt with by the occupants of the building. Even if there was a different compliant parking layout, we might still encounter some of the issues around sight. I think the proposal does improve sight lines over existing conditions and that should be recognized by the Board. So for the reasons set forth in the application and the testimony this evening, we would encourage the Board to approve the relief for this as well as some of the window openings.

The window openings on the rear wall had the support of those abutters. The rear abutters were cited by Mr. Sullivan. I would note that the Board may recall in prior cases and prior hearings, the side abutters who are present this evening, voiced objection. And I would note the absence of any such objection at tonight's hearing.

TAD HEUER: Can I ask a couple of technical questions about the plans? On the

fourth floor, this is comparing the rear elevation to the fourth floor layout. On the plans that I have coming out of this area marked study on A4, there is a mark for existing prior balcony with push down ladder with roof below.

DIANE LIM: That's existing.

TAD HEUER: How is that accessed from the rear of that window and the pediment is removed? Well, shouldn't that be marked on the proposed elevations?

DIANE LIM: Oh, yes.

BEN SVENSON: Yeah, there should be a window there.

TAD HEUER: So there should be a window in the proposed rear elevation that isn't there right now?

DIANE LIM: Right. There is a window --

ATTORNEY JAMES RAFFERTY: I think the window is there. I think the

drawing -- do you have elevation?

DIANE LIM: Yeah, sorry about that.

BEN SVENSON: On the last iteration --

DIANE LIM: Yeah, the last iteration the head house is going to be taller. That's the existing window right there that we are keeping, and the fire balcony comes down that way.

TAD HEUER: Okay. So all right, I have a couple other questions. Can you mark on that plan that there will be a window?

DIANE LIM: Sure.

ATTORNEY JAMES RAFFERTY: Put existing window to remain.

BRENDAN SULLIVAN: Also on sheet, is it five, the west wall? Is that changed now with the what you're taking out those windows? Is it sheet five?

ATTORNEY JAMES RAFFERTY: We submitted that on Monday.

TIMOTHY HUGHES: There is a drawing that has no windows in that west wing.

ATTORNEY JAMES RAFFERTY: I submitted that with the syncro-analysis on Monday.

CONSTANTINE ALEXANDER: Yes, I saw that.

ATTORNEY JAMES RAFFERTY: I think it's just a single sheet. It would be this size sheet, Mr. Chairman. A single sheet of this size showing that elevation.

BRENDAN SULLIVAN: Dated 4/27?

ATTORNEY JAMES RAFFERTY: No.  
Dated 5/7 or 5.

DIANE LIM: April 27th. It was dated April 27th.

BRENDAN SULLIVAN: So that would be --

ATTORNEY JAMES RAFFERTY: That's it.

BRENDAN SULLIVAN: -- April 27th?

DIANE LIM: Yes.

TAD HEUER: And then you're proposing the rear wall, we're now inserting the windows, that is that shingled in the rear?

DIANE LIM: Yes.

TAD HEUER: Is this supposed to be clapboard?

DIANE LIM: They're shingles because the abutters who we share that fence with, they prefer the shingles so we have to change on the side, yes.

TAD HEUER: Okay.

And the railing on the rear deck is currently solid, it's a picket, solid picket?

BEN SVENSON: A solid fence, yeah.

DIANE LIM: Solid fence.

BEN SVENSON: There may be a picture of it on one of the boards.

TAD HEUER: Yes, well, I mean to the extent that the fence is going to go

regardless.

DIANE LIM: We're going to have to replace it but same height.

BEN SVENSON: The neighbors have asked to have the same fence.

TAD HEUER: That was my question. Because, you know, it's not a very welcoming fence on a very unwelcoming wall unless that's what they're asking for. They want a stockade?

DIANE LIM: Yeah.

ATTORNEY JAMES RAFFERTY: They want that fence replaced with that fence.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Fort Apache.

TAD HEUER: On the application for the parking, the Special Permit, Section E, is that a typo suggesting -- I believe -- if I can see the file. The use of the property is a two-family residence with ground floor retail is within the character -- is this

from the old application?

ATTORNEY JAMES RAFFERTY: Yes, I apologize. We must have simply used the same supporting statement.

TAD HEUER: Right. So that should be a strike of just that sentence I presume? The second sentence.

ATTORNEY JAMES RAFFERTY: Yes, our modification is three-unit townhouse. The assertion is equally applicable to both uses. Thank you.

TAD HEUER: So I'm striking from the word "to" through the word "retail."

ATTORNEY JAMES RAFFERTY: Correct.

TAD HEUER: Okay.

Also in terms of the parking, did you explore the townhouse option in 11.16.2 for parking on lots -- I don't know if there are lots in the area, but it provides for off-site parking.

CONSTANTINE ALEXANDER: Good luck.

TAD HEUER: I'm just asking did you explore that?

ATTORNEY JAMES RAFFERTY: Did we explore it? Candidly, no, because I have a pretty strong familiarity with the neighborhood. I'm not aware of any -- now there is a generous landlord, the church has a parking lot.

TAD HEUER: That was kind of my question.

ATTORNEY JAMES RAFFERTY: Well, that gets used even weekends and evenings by nearly everyone. The commercial uses, some of the residents, and as long as you're out of there by eight in the morning, there seems to be a general tolerance for use of that. Historically the funeral home used to lease it for evening activity, not during the day, because the lot is -- provides the parking for the --

TAD HEUER: For the school.

ATTORNEY JAMES RAFFERTY: Well, not the school, the Smithsonian. The former elementary school is actually an office building for the Smithsonian Institution. So they use, they have exclusive use of that parking lot from eight in the morning until five or six in the evening.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Anything else?

TAD HEUER: No, that's it.

BRENDAN SULLIVAN: Okay. Any questions?

CONSTANTINE ALEXANDER: No questions.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: Just the materials on the front the building. They're not indicated.

DIANE LIM: Oh, it's a clapboard on the front.

TAD HEUER: Is that wood or cement

board?

BEN SVENSON: It's wood. You mean is it right now?

TAD HEUER: No, what will it be --

DIANE LIM: Siding.

TIMOTHY HUGHES: Cedar clapboard as opposed to cementitious hardy plank or something to that effect.

BEN SVENSON: Oh, sorry, you said cement I didn't --

TAD HEUER: Yes, there's a cement called hardy plank or various iterations which look like clapboard. It's heavier.

BEN SVENSON: We're trying to contextualize it with the existing clapboard up here.

DIANE LIM: Not vinyl. We do not want to use vinyl.

BEN SVENSON: We said we use --

DIANE LIM: We're going to use Ajax boards. So it's not -- it's composite

material, but it's not, you know, it doesn't get rotted in water.

TIMOTHY HUGHES: It's not cementitious. It's plastic.

DIANE LIM: Right.

THOMAS SCOTT: Just the roof decks, the size of the roof decks, I understand they're a kind of a function of the amount of flat roof that happens to be there, but is it -- I mean, this plan kind of shows boards or something being laid flat.

DIANE LIM: Yes.

THOMAS SCOTT: Is that, that's the expanse of the available roof deck up in that area?

DIANE LIM: Yes. Obviously we can go to the edge more, but we discuss with the neighbors and they wanted a setback from the edges. So we put -- pull back five feet from each direction.

THOMAS SCOTT: And what about the

use of this one out front?

DIANE LIM: That's all the way up to the edge. The new dimension.

THOMAS SCOTT: To the edge?

DIANE LIM: Yeah. Because we figure, you know, just having the railing there and then probably nice to have some greeneries next to the actual edge of the building.

BEN SVENSON: There's a railing right now that will be replaced.

THOMAS SCOTT: That will be replaced.

DIANE LIM: Yeah.

THOMAS SCOTT: I mean, the decks are just excessive for the units, but they are what they are because of the size of the roof that's there.

BRENDAN SULLIVAN: They're there now actually.

THOMAS SCOTT: Yes, I know. Okay.

ATTORNEY JAMES RAFFERTY: Urban backyard.

THOMAS SCOTT: Okay.

BRENDAN SULLIVAN: Anything else? Any questions?

So any discussion? Should we make a motion?

Gus, what are your thoughts?

CONSTANTINE ALEXANDER: My thoughts? I'll start with my conclusion first and work back. My conclusion is I'm in support of the project. I think it's a good approach. So I intend at the end of the day to vote in favor of a package of relief. I'll get to that in a second that would allow the project to go forward. I think the preference for two-family as opposed to a three-family is beside the point at this point. By going to the townhouse they've taken that issue off the table. The relief that's being sought tonight relates not to

whether forcing it back to a two-family or not. The only way that might force it back might be the parking and you sought alternative relief which I'm going to get to, that would eliminate even that issue. I'm in favor of relief. My problem is still with the parking. I don't believe the parking that's laid out underneath the building is functionally parking. It's nice on paper. In real life it's not going to work. People are going to park on the street anyway. And having what I'm going to call probably incorrectly, phantom parking, is going to increase the likelihood of more cars being there. If there were no parking offered on-site, that might encourage people, buyers who don't have cars. And I frankly think the reason you're putting the parking in the building is to increase the value of the units you're trying to sell. It's a marketing decision. I think the parking is terrible

backing out like that. So I, my point of view, at the end of the day I'm going to vote against the Variance for the dimensional relief for the parking, but I am prepared and will vote for the Special Permit to reduce the amount of parking required so that you will be able to go forward with the project. That's where I'm going to come out.

BRENDAN SULLIVAN: Tom, what are your thoughts?

THOMAS SCOTT: I understand what Gus is saying about the parking. I guess -- I think the parking works, and I'm -- although I think it's definitely a stretch, I think the case could be made for it. For people to actually get in here and possibly even three-point turn and front out, it appears to me that there's some room to be able to do that, especially with the displacement of the columns and things the way they have them laid out. So, I think any parking that's

available in this city, people are going to use. I think if you make it available to them, they'll find a way to use it. So they'll buy a smaller car. They'll do whatever they have to do to make it work. So I like the fact that they've, they've done what they've done to the building to increase the ability to have a parking space for each unit, and I'm in favor of the three-unit townhouse.

BRENDAN SULLIVAN: Okay. Tim?

TIMOTHY HUGHES: I'm -- I'll do the same thing that Gus did. I'm in favor of the project. I do -- and for the same reasons that he suggested. I'm in the middle on this parking thing. I kind of agree with Gus, and I kind of agree with Tom. I was wondering if we granted a Special Permit for relief of one space and they got two spaces under the building, I think they probably could figure out a way to turn them around and not have to

back out onto Huron Avenue. So, an approach like that, I'm -- I'm going to vote for whatever makes this project go forward, but if that was -- that compromise on the parking was a possibility, I think that's where I would come down.

BRENDAN SULLIVAN: Okay.

Mr. Heuer.

TAD HEUER: Can I ask a -- are we here on 5.26 or no? Is 5.26 a vested or is that actually the relief being sought? That's what it's advertised for.

BRENDAN SULLIVAN: It would be an up conversion.

TAD HEUER: So 5.26 does apply?

BRENDAN SULLIVAN: Correct.

TAD HEUER: Regardless of the fact that it's being construed as a townhouse?

BRENDAN SULLIVAN: Well, that's correct. Is that correct, Sean, 5.26 is an up conversion?

SEAN O'GRADY: 5.26 is an up conversion. It's just a unit count whether it be townhouse or multi-family. Yes, 5.26 applies.

TAD HEUER: Is 5.26 considered by the Department as a use variance?

BRENDAN SULLIVAN: Use is permitted.

SEAN O'GRADY: Right.

TAD HEUER: Use is permitted -

SEAN O'GRADY: Because that is the 5.26 won't help you in an A Zone.

TAD HEUER: Correct.

ATTORNEY JAMES RAFFERTY: The requirement of -- the 5.26 required is those four elements.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: So it has nothing to do with use. When you look to increase the dwelling unit count and you don't meet those four requirements, you need

5.26.

TAD HEUER: So it's just is what it is. It's based on its own internal grounds. It's not classified as a use variance or any other type.

ATTORNEY JAMES RAFFERTY: I couldn't define why it would be considered use.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: Yes, yes. My point being you couldn't use 5.26 to do a three-family in a two-family district.

TAD HEUER: Understood.

So I think my main concern does come back to 5.26, and the reason I say that is because in my mind it was a residential use. Many years ago it was given a Variance by this Board to become a funeral home as a use, and attendant variances I presume were granted to allow to expand in order to accommodate that use. But in my mind it's fundamentally

different from a situation where we have a school or a church or some other institutional use that was an institutional use sitting in a residential district where we can convert it because of what it formally was. In my mind it was formally a residential structure added on to in order to provide for what the Board felt was a needed use in that area, a funeral home. And now that the funeral home is gone, certainly a funeral home could go in there and operate as of right. I fully understand that. But now that the funeral home is gone, the vestige of that funeral home, being the additional GFA on the site, I don't necessarily think that should be shoehorned back into saying that it's essentially a need to use that space to its maximum. I think we go back and look at the fact that it was a residential structure and we look at the provisions as to what that lot will allow in terms of residential

structure. And when I'm looking at 5.26 for an up conversion, you know, it does require those four elements, the maximum FAR, the minimum letter of dwelling unit, the open space, and the off street parking. And we've certainly had cases before us in which we've said 5.26 applies, but we've granted a Variance because one of those four wasn't there. If I'm looking at this correctly, at least three, if not four, of those occupants are not there, and that troubles me because essentially it's saying that 5.26 doesn't mean at all what the City Council has told us it means. I can see a relief based on a couple as we did on Magazine Street. It's harder for me to get to the notion that 5.26 should be varied from in its entirety.

Because I --

ATTORNEY JAMES RAFFERTY:

Mr. Heuer, with all due respect, isn't every time you grant a Variance from any provision

here -- I apologize for the interruption  
but --

BRENDAN SULLIVAN: I've closed  
comments.

ATTORNEY JAMES RAFFERTY: Okay, I'm  
sorry.

TAD HEUER: So in my opinion, I don't  
see the hardship for a 5.26 conversion here,  
up conversion where all of the requirements  
therein are inapplicable. I would beg to  
differ I believe that there are extensive,  
easier, and harder Variances to grant. And  
I think that usually Variance is something  
where we come in and say it's a dimensional,  
they need one more inch in order to allow them  
to meet the minimum frontage requirement.  
That in my mind is an easy Variance to grant.  
Looking at something like this where the city  
has set up four standards and none of the four  
are possible on this lot without not only  
relief from 5.26, but in some cases with some

other provisions, I find it to be much more difficult. And I think the hardship really comes to the floor in that respect. And I just don't see the ability to do it. So I'm going to -- I'll be voting against it.

That being said, you know, as I said on a few other occasions, I like what you've done. You've taken a really difficult, hard to use property, you've gone through it a couple of times. And didn't come in once and then walk away frustrated. You came back and tried to -- you know, from what I've seen, work as hard as you could with what you have. And particularly what you've done in this iteration in terms of making the front much more open to the street and pulled back which I think adding the porch element does help you significantly because you get a lot of that massing off the street, you know, when you're done it won't look like, at least from the front, that it was a converted funeral home,

which I think is a huge benefit to the neighborhood. And I do think that you've at least tried to be inventive and gone through great lengths to go to the consultant to see what kinds of parking by right options you can do -- not by right, but options that would allow you to provide parking minimum required by the Ordinance. That being said, I think on the Special Permit side if the Board does choose to grant the Variance for the construction, I would similarly be with Tim in suggesting that instead of an all or nothing Special Permit of three or none, a compromise might be to say two spaces, perhaps the two rear spaces, which would give you that third space as a turn around space and allow you to front out. My big concern is and large volume of cars backing out onto a very busy thoroughfare on a blank wall. And I just think there is a safety and a traffic issue that's involved there, and

being able to turn the cars around, I think, ameliorates that for me to a great extent. I think that kind of a compromise would allow the Petitioners to have a certain amount of parking, would allow the safety concerns to be resolved, and it would not require that all the parking be placed on the street. So, I'd be voting against the main motion for the Variances to the extent that those are granted, and I would support a modification of the request on the Special Permit along the lines that have been proposed to the Board.

BRENDAN SULLIVAN: Okay, let me make a motion --

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, can I offer one observation only because I've been -- picking up on that point. Ms. Lim believes that with some alteration, subject to further engineering confirmation, that she could actually reorient the parking so that all three spaces

would drive out, would have the ability -- we would still need the dimensional relief because we wouldn't have the full business, you know, the 18 and all that. But I just asked her, I said, how confident are you that you could --

DIANE LIM: Well, I'm confident because we did sketch out that option with a consultant. So that basically includes, involves I should say getting rid of this back study here so that cars would park all three this way and all this basically the hallway spaces will be given to the turn around and this would essentially, just from volume here, and the staircase coming down so that would --

ATTORNEY JAMES RAFFERTY: Would the cars then get nosed in here and back out?

DIANE LIM: Yes.

BEN SVENSON: We have to go through with the consultant because I think actually

it went like that.

DIANE LIM: We touched upon that option before.

CONSTANTINE ALEXANDER:

Mr. Chairman, I think as you were about to make a motion for a Variance, I think we've got -- in view of the comments you've heard, I think you got to take the Variance one by one, element by element, not just the Variance for the relief being sought because you're going to get different votes, I think, on different elements. Maybe you were there already.

BRENDAN SULLIVAN: It has to pass the first hurdle before it gets to the --

TAD HEUER: I guess the question is if there is a redesign, what does that mean for you?

ATTORNEY JAMES RAFFERTY: Right. I was going to say if there was a -- depending on the first relief which I guess one might

say is the lot area per dwelling unit relief or the 5.26 relief, if there was, if the Applicant met its burden on that, we -- I wonder if we might then request a deferment until a later date for a revised parking scheme which would involve the same -- we would still need dimensional relief for the parking, but it might be -- it might be that a redesign would allow for a maneuverability that would allow the cars to drive out and then ask the Board to act upon balance.

TAD HEUER: Are you suggesting would a -- the same thing we did on the Union Street and the continuances --

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: We didn't take a vote on any element of Union Street. If I may, I think you got a sense from the Board already, and we can confirm it if you would like, that you're going to get favorable relief on the Variance except for

the parking. And I just tell you from my own point of view, even if you could go out frontwards, which you think you can accomplish, I'm still not going to vote in favor of it just so you know.

ATTORNEY JAMES RAFFERTY: I could live with one such opinion.

CONSTANTINE ALEXANDER: I know you could. I'm very much in favor of Mr. Hugh's suggestion about the Special Permit but not all or nothing. In other words, Special Permit for two spaces on-site although you required three.

ATTORNEY JAMES RAFFERTY: But I suspect you would keep the preverbal open mind until you saw whatever successor plan we might file?

BRENDAN SULLIVAN: Let me bring this to a conclusion. I tend to agree with Mr. Heuer's analysis, that we have an unusual building, never really fit into the

neighborhood prior to -- I mean, after the construction. It still doesn't fit into the neighborhood, not compatible with it, and I think it's just too much building. And I think that two units could work there by taking off the front part of that building. And, you know, I know there was great advocacy on your part of saying, you know, we don't want to take down part of that building, but I think that your point it could be made a viable two-family. And the fact that we have too much building here and we're trying to make this building work. I don't think it's compatible with the neighborhood. It's a use that has become extinct. And I think it can be brought back into a more compatible use and more compatible aesthetic. And so that I would not be in favor of the plan that's before us.

So let me on that note let me make a motion.

ATTORNEY JAMES RAFFERTY: Well, on that note --

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to change the use of the pre-existing, non-conforming structure containing a funeral home and single-family dwelling to a three-unit townhouse.

To construct a head house and a modification of the dimensional requirements of a parking spaces.

The Board finds that a literal enforcement of the provisions of the Ordinance would --

ATTORNEY JAMES RAFFERTY:  
Mr. Chairman, could I make a request at this point to -- that the petition be given -- in light of the helpful comments of the Board, which would indicate that two members are not prepared to support the Variance, if the vote were to go ahead, we'd be looking at that

funeral home in its present condition for conceivably two more years.

BRENDAN SULLIVAN: Unless you came back with something somewhat dramatically different.

ATTORNEY JAMES RAFFERTY: Right. But in the context of the pending application, if the Board were willing to allow a continuance period, we could at least evaluate such a change and then not have to deal with coming here, going to the Planning Board, coming back here. It adds months to the process. Because there would have to be a finding, the Board well knows that there's material changes in the application. Removing the front porch of the building also would eliminate the opportunity for parking on the site. We would then be parking in the front setback which would raise a new thing. So I think in light of the lack of support for the three units, I would ask for a

continuance to allow the Petitioner to evaluate a modification to the plan because I think --

CONSTANTINE ALEXANDER: I think that's entirely appropriate.

THOMAS SCOTT: I would be okay with that.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: Okay.

TAD HEUER: I'm fine with that. I mean, there's no reason you have to take off the front, take off the rear, too. There are all kinds of options.

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: So, a motion to continue the matter to allow the Petitioner to regroup and to consider alternative proposal.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: The Board seems amendable to that, so I would make a motion

to allow that continuance on the condition that the -- well, a date?

SEAN O'GRADY: We've got June 14th still open. Is that too soon?

BRENDAN SULLIVAN: July?

BEN SVENSON: How much changes are we talking about?

BRENDAN SULLIVAN: Now, do you want us to just hold this in recess for a minute, you want to go and huddle and come back?

ATTORNEY JAMES RAFFERTY: That would be helpful.

BRENDAN SULLIVAN: I can get in the next case. Why don't you do that rather than being forced and rushed into anything.

CONSTANTINE ALEXANDER:  
Mr. Rafferty is on the next case. No, you're not.

ATTORNEY JAMES RAFFERTY: Thank you.

(Case recessed)

(9:05 p.m.)

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

BRENDAN SULLIVAN: Can I have case No. 10250, 48 Trowbridge Street. A representative and the petitioner, if you would come forward for a minute.

Before I open up the case and I just -- well, let me do this. The Board is going to consider case No. 10250, 45 Trowbridge Street. The issue that I have before we open it up, Mr. Wright, is that I believe that there was a late filing on the changes.

PETER WRIGHT: Excuse me.

BRENDAN SULLIVAN: Yes or no?

PETER WRIGHT: No.

BRENDAN SULLIVAN: It was not in by five o'clock by Monday.

PETER WRIGHT: The Monday of?

BRENDAN SULLIVAN: This past

Monday.

CONSTANTINE ALEXANDER: This past Monday.

PETER WRIGHT: Oh, the changes --

BRENDAN SULLIVAN: Yes or no? I mean, it's either yes or no.

PETER WRIGHT: I can say no because the changes --

BRENDAN SULLIVAN: No, it was not in?

PETER WRIGHT: No, these changes are actually outside of the setback and it was a compromise. I don't know if that's technically.

CONSTANTINE ALEXANDER: No.

PETER WRIGHT: Okay, no, then.  
Okay.

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: I'm sorry?

CONSTANTINE ALEXANDER: The answer is no, they were not in on time.

BRENDAN SULLIVAN: All right so consequentially it's not going to go forward.

TIMOTHY HUGHES: Wait a minute, the changes are not something that we're voting on?

BRENDAN SULLIVAN: It's a part of the relief.

TIMOTHY HUGHES: It's part of the relief. The changes to the plan are the part of the Special Permit relief that you're looking for?

PETER WRIGHT: Actually not. It was the abutter neighbor, the only one really affected with the privacy issue, is actually here behind me sitting down. He had written this letter. They had not met, the owner of this condo and the owner of the other one, so it was Saturday, last Saturday --

BRENDAN SULLIVAN: Okay. So the changes are not part of the relief being requested?

PETER WRIGHT: Yes, please.

BRENDAN SULLIVAN: Then I'll  
withdraw.

PETER WRIGHT: I'm sorry I was  
confused.

BRENDAN SULLIVAN: What I didn't  
want you to do is sit here for an hour and have  
this conversation, that's all. We'll go  
forward.

PETER WRIGHT: I appreciate that.  
Should we go back?

BRENDAN SULLIVAN: At the  
appropriate time. I was trying to avert a  
problem and I'm glad you cleared it up.

(Case Recessed.)

(9:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10248, 35 Roberts Road.

Okay. If you would introduce yourself.

CAMPBELL ELLSWORTH: Good evening, my name is Campbell Ellsworth. I'm an architect, and I'm here with my client Lou Ferraro, who is the owner of the property at 35 Roberts Road. We are here before you to request a modest Variance for -- or a Variance for a modest increase in FAR. The situation is as follows: 35 Roberts Road is a two-family structure. We were before this Board on October 12, 2011, and we received a Special Permit to add -- it's a non-conforming structure with respect to the

left side. It's on a corner lot. Left side yard as well as height. Being non-conforming, we wanted to add square footage to the structure that was more than 10 percent. We came before you and received a Special Permit to add that GFA.

BRENDAN SULLIVAN: What was that number?

CAMPBELL ELLSWORTH: What was?

BRENDAN SULLIVAN: More than 10 percent.

CAMPBELL ELLSWORTH: It was almost 25. We were very close.

TAD HEUER: Right. And I think I know where the Chairman is going and to avoid making this potentially as a case heard, by adding the additional 56 feet, you're now at 26 percent since the structure became non-conforming. And that would suggest that you would need a Variance because you go over 25 percent from 8.22.3 which you're not

advertised for. Am I right about that?

CAMPBELL ELLSWORTH: I'm not sure. I don't know. I don't know. We were --

TAD HEUER: Okay. And the reason I ask, in the previous case back in November, you were very clear that you had attempted to design this project just to get under that 25 percent limit.

CAMPBELL ELLSWORTH: That's correct.

TAD HEUER: Which is fine. And we granted the Special Permit because of that. The Ordinance establishes a provision that says if you have added 25 percent or more to a conforming addition to a non-conforming structure since the time that the structure became non-conforming, which would be back in the forties when the structure became non-conforming by virtue of the Zoning Ordinance being put into effect, then you would require a Variance, not a Special

Permit which is why you intelligently wanted to stay under the 25 percent. But those elements of additional gross floor area tack on to each other since 1940 onwards. So it, they just happened to have tacked onto each other here, the request is coming up within six months. That it would -- adding where it started from, the forties going forward, until now, including the grant that we gave back in November, puts you over that 25 percent marker which requires a Variance.

CAMPBELL ELLSWORTH: Which is why we're here.

TAD HEUER: But you're not technically here on that. You're here on FAR Variance for Section 5 relief for additional square footage. But what you're not here on is an 8.22.3 Variance for going 25 percent over --

CAMPBELL ELLSWORTH:  
Non-conforming.

CONSTANTINE ALEXANDER: Tad, I'll quarrel with that. The 8.22 point, whatever it is, 3 is just to tell you that -- it says to tell you that if you were outside more than 25 percent, you need your usual Variance. The usual Variance is a 5.31 Variance, and they have advertised for that. I don't think -- there's no substantive provisions in 8.22.3. It just simply says it's a catch all. If you don't meet everything earlier in 8.22, which is Special Permit, then you must go for a Variance. But I don't think you've got the site.

TAD HEUER: Must go for a Variance for what, in what respect?

CONSTANTINE ALEXANDER: For the dimensional relief you're seeking. And they cite five-point -- the Variance would be under 5.31.

TAD HEUER: So you're suggesting that the Variance that they're seeking now

for 30 square feet is the Variance that's required even though they came in by Special Permit to get right up under the line. I mean in that sense the best thing for a candidate to do is exactly what you have frequently counseled against, which is to salami their application, to come in just under for a non-conforming, but under FAR use, instead of making one application, that brings me in just up to the line, and then when I go over, I need a Variance but it's only for something very small and modest.

CONSTANTINE ALEXANDER: Well, we can deal with the salami by hearing the case tonight if we believe it's a salami and turn down the Variance. Nothing will be accomplished for making them go back, re-advertise, add another, to me, non-substantive Section, 8.22.3, and then come back and if we want to it's a salami situation, we're not going to grant you the

Variance. It's not efficient. It doesn't make any sense.

TAD HEUER: Much of what we do is not efficient, but we do it because it's required.

CONSTANTINE ALEXANDER: It's not required.

BRENDAN SULLIVAN: What you're saying we just --

TAD HEUER: Yes. I mean, I think part of that 8.22.3 does is it puts the public on notice, to the extent that the public cares, that this is not merely an addition of 30 square feet. It's something that's much larger. It's an addition that from the time that probably came non-conforming to now, has grown in 25 percent or more of its gross floor area. And I think that that notice provision does have a substantive value. Because people say it's not adding a covering to a porch, it's something really large and the

City Council has asked us to take special note of that. And to roll that into just the last five feet of the request I think is somewhat disingenuous and doesn't quite get it what the City Council is pushing for.

Disingenuous might be too a strong word.

CONSTANTINE ALEXANDER: I hear you.

CAMPBELL ELLSWORTH: Could I add -- I mean, obviously the reason we're here quite frankly is simply an oversight and I sort of take responsibility for that as the designer of this, that we have proceeded now with the Special Permit. And of course we were here for the Special Permit to try to stay under and kind of quite coincidentally, that 25 or just under 25 percent increase put us scratching the surface at the 0.75 C-1 FAR. So, again, coincidentally, I mean, it was a nice coincidence, but again, as the architect, it was an oversight to try to design these homes. And then I want to point

one thing out, to really -- as we've been going through that process of the construction to see wow, this upper unit is missing something. It's, you know, and so that's what we're seeing. And in part it's because I think it's called out in the arguments for the FAR that the -- if I can just point out on the site plan, that because we had these two required, you know, we had two required off street parking spots, 10 feet buffer, 18-foot, you know, it really starts to cut the yard up to the point that the really only usable yard is kind of by default --

CONSTANTINE ALEXANDER: You're getting into the merits of the case. And if we are going to continue the case for what Mr. Heuer wants, is going to be a case heard. I think what he's suggesting is we don't even hear the case tonight so you don't have to deal with the case heard and get the five of

us back.

CAMPBELL ELLSWORTH: The point is I haven't heard your term salami case before.

BRENDAN SULLIVAN: Slice by slice.

CAMPBELL ELLSWORTH: Slice by slice, but, you know, obviously I opened with the fact that we were here before. We got this relief. Had I seen this before and worked it out, you know, what I -- I potentially could have done is to, you know, possibly cut off 30 feet or whatever we needed off of that back tail and it would all would have been washed.

CONSTANTINE ALEXANDER:

Mr. Chairman, I think we should take a vote on whether to continue the case as a case not heard right now.

BRENDAN SULLIVAN: Yes, Sean, the position of Inspectional Services regarding advertising and the issue?

SEAN O'GRADY: I'm right down the

middle. I mean, first of all, I haven't discussed this with Ranjit, so I don't know what the official decision is. I'm right in the middle. I think that technically --

BRENDAN SULLIVAN: Give merit to both?

SEAN O'GRADY: Gus is -- I would lean towards Gus saying we could proceed, but I think that the point brought up by Tad's issue can't be dismissed. So I think if it's all on the table, if Tad's comfortable, I would be comfortable but there is something there.

CONSTANTINE ALEXANDER: Yes, I think that's right. I agree with that.

BRENDAN SULLIVAN: So your thought is?

CONSTANTINE ALEXANDER: I would still vote to hear the case tonight.

BRENDAN SULLIVAN: To proceed?

CONSTANTINE ALEXANDER: To proceed, but I acknowledge that Tad makes a good point.

BRENDAN SULLIVAN: Tom?

TAD HEUER: And to make this more complicated, I would agree that this is essentially a procedural legal issue rather than substantive one. The question is, you know, whether that should prevail over having the parties here tonight and being able to dispose of it is a practical matter.

BRENDAN SULLIVAN: Yes, I would proceed I think myself.

Tom, what are your thoughts?

THOMAS SCOTT: But if he had done what he said and he had -- and you included this initially, it would have been a Variance. Or would you have modified the plan to be again under the 25 percent?

CAMPBELL ELLSWORTH: I -- we would have weighed that if cutting that amount of square footage off of what we built was going to be detrimental to the use, we might have in fact gone for a Variance, but that's where

we find ourselves now.

BRENDAN SULLIVAN: Of all the years that I've sat here I still find it my most difficult part is distinguishing between innocence and intentional. And I'll leave it at that. And I'm always dismayed and surprised. Continuing or not?

THOMAS SCOTT: I would be for continuing.

BRENDAN SULLIVAN: Okay.

TIMOTHY HUGHES: I would be in favor of hearing the case. And I think Tad's point is excellent, but I think that if anybody saw notice that something was going on and they were going to do any research into it at all, because they had a concern about it, they would see, you know, the close proximity to the Special Permit and they could at least have the chance to deduce that it's more, if it is a 26 percent increase over time rather than just 30 square feet on the given --

BRENDAN SULLIVAN: I think where it's so fresh also.

TIMOTHY HUGHES: But I don't know, maybe the Inspectional Services Department should be instructed to include that every time because, you know, there's a situation like this.

BRENDAN SULLIVAN: Well, I would be in favor of continuing so we shall continue but make note of the --

TAD HEUER: Continue as in proceed, right?

CAMPBELL ELLSWORTH: Continue or postpone?

BRENDAN SULLIVAN: I'm sorry, to proceed. To continue with the procedure.

Campbell, go ahead. You were into the merits.

CONSTANTINE ALEXANDER: Now we're into the merits.

CAMPBELL ELLSWORTH: Okay, well, so

as I said, this was an oversight on my part as the architect, and as we've proceeded on with construction of what we believe is going to be terrific two homes, we realized that this second floor unit which occupies the second and the third floor does not really have access to an exterior space. In part obviously because there's no, no exterior space on those living levels right now as well as the realization that the site has been quite sort of effectively chopped up.

CONSTANTINE ALEXANDER:

Mr. Ellsworth, the second unit where you're looking to put the deck, is this going to be a rental unit?

CAMPBELL ELLSWORTH: That's my understanding.

LOU FERRARO: That's the point as it is now.

CONSTANTINE ALEXANDER: Right.  
And you're renting the downstairs as well?

LOU FERRARO: Yes.

CONSTANTINE ALEXANDER: What's your hardship? Your hardship is you can't get enough money for the property if you have a deck.

CAMPBELL ELLSWORTH: We're trying to make the best living conditions possible.

CONSTANTINE ALEXANDER: You're asking for a Variance. You have to demonstrate a hardship. What's your hardship?

CAMPBELL ELLSWORTH: The hardship is that that second unit, upper floor unit has no effective access to exterior space.

CONSTANTINE ALEXANDER: Neither does any apartment unit in this city that doesn't have a balcony. It's no different.

BRENDAN SULLIVAN: What is -- I mean, you're developing this property. So what is that open space? Where does it get dedicated?

CAMPBELL ELLSWORTH: Well, this open space, I think, because there's -- a deck that comes right off or sort of a landing and a stairs and a deck that comes right off the first floor by default be used by that first floor unit.

BRENDAN SULLIVAN: Yes.

CAMPBELL ELLSWORTH: And the location.

BRENDAN SULLIVAN: Can it not be common area for the use of both?

CAMPBELL ELLSWORTH: Well, technically it will be common area and they will try to divvy it up.

BRENDAN SULLIVAN: But it's being deeded to one.

LOU FERRARO: No, not deeded to one.

TAD HEUER: You're saying anyone could use it, it's just more likely the first floor people will have access to it and will use it.

CAMPBELL ELLSWORTH: Exactly just because of the nature of the --

BRENDAN SULLIVAN: I have a three-family and all three people come out and use the backyard. I mean, I don't --

CONSTANTINE ALEXANDER: If you were, if this were an owner-occupied unit and you had a growing family and you needed more space, you'd have a backyard to play in, you need the space. That's your hardship. That's not your case. That's not your case before us. It's not like a dormer case. You want to make more money on the property. You want us to increase the value of your property by allowing to have a deck that you can advertise to tenants that you have an outdoor space and a deck in a very dense neighborhood I might add and a small lot. That dog don't fly for me. I just can't buy that frankly. I'll cut to the chase.

BRENDAN SULLIVAN: And I also read,

you know, in the pleadings where it said that you could, as of right, create a deck that would be smaller than the first floor, and your desire would be to make them equal size.

CAMPBELL ELLSWORTH: Correct.

BRENDAN SULLIVAN: You could cut back on the deck on the first floor and make the one on the second floor and still fall within the numbers.

CAMPBELL ELLSWORTH: Well, that would it would essentially --

BRENDAN SULLIVAN: And I'll be honest with you, I mean aside from the fact that I really have a total problem that we granted you relief some few months ago for the entire project, and now you're coming back for another little slice. An oversight, it could very well be. Again, I'm not going to make a value judgment on that other than the fact that I don't see the hardship and I think there is a way around it. And if you want to

provide some space, the size of that deck is 32 square feet is it?

CAMPBELL ELLSWORTH: The size of that deck is 56 square feet.

BRENDAN SULLIVAN: On the first floor. On the second floor.

CAMPBELL ELLSWORTH: What would be available would be 26 square feet?

BRENDAN SULLIVAN: So you make it 26 square feet. I'm not sure if anybody's going to sit out there anyhow. But anyhow, that's --

CAMPBELL ELLSWORTH: Just for what it's worth, we, if you, if this Board recalls, members who were on it, we had to first go before the Mid-Cambridge Neighborhood Conservation District Commission. We had that meeting. They -- there was a report that came from them, we saw you, you sent us back to work with them. We worked extensively with the staff, Sara and Eileen

and so we were very cautious about coming here to -- in thinking about this and we presented that idea saying that we could do a 26-square foot as of right. They, thought from their perspective, from the Mid Cambridge and Historical perspective, that was not a great idea, to stack a smaller deck on top of a larger deck. What we tried to do is simply put one over the other and the drawings reflect that. So I don't want to say -- they, they issued a letter to you today.

BRENDAN SULLIVAN: I've read it.

CAMPBELL ELLSWORTH: Just non-applicability. I can't say that they support our proposal, but we actually did discuss it with them to try to get it and they did not like the idea of a half deck over a full deck from -- you know, they put a lot of effort into this.

BRENDAN SULLIVAN: And if the people on the first floor have, as you say, a natural

flow into that backyard area, then they don't need such a big deck on the first floor and you can take some of that square footage and distribute it to the second floor as far as I'm concerned.

Tim, do you have any thoughts on this at all?

TIMOTHY HUGHES: I like what you're saying. It makes sense to me. I wonder how the first floor is going to feel about having all their light on the deck cut out by being covered by a roof. But I mean, if it's 26 and -- the first floor deck is 56 square feet, and you got 26, just divide it in half and put two forties up. Then you don't have the problem --

CAMPBELL ELLSWORTH: Two forties will kick us over. 26 gets us to the 0.75 FAR.

TIMOTHY HUGHES: Well, no, you take 16 feet off the bottom one and then you put

it to the top. And you've got, you know, you've got 40 -- you've got 82 feet to play with.

CAMPBELL ELLSWORTH: No, no, no, I don't. I really only got 26 feet. This is not FAR until I cover it.

TIMOTHY HUGHES: Oh, right.

CAMPBELL ELLSWORTH: Until I cover it.

TAD HEUER: Well --

BRENDAN SULLIVAN: Well, how many square feet puts you over the --

TIMOTHY HUGHES: So he still only got 20 feet to cover --

BRENDAN SULLIVAN: Right now it's not even included because there's no roof over it.

CAMPBELL ELLSWORTH: That's correct. I can make a deck approximately like that. That's it. That gets me to the FAR.

BRENDAN SULLIVAN: Yes, I just,

again, I take exception to granting relief for an entire project some months ago and then coming back for and just say well this is only a small number. So anyhow. Mr. Heuer, what are your thoughts?

TAD HEUER: That's my thought.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I'm on board.

BRENDAN SULLIVAN: Let me make a motion to --

CONSTANTINE ALEXANDER: Do you want to take public testimony?

BRENDAN SULLIVAN: Oh, I'm sorry.

Is there anybody here who would like to speak on the matter 35 Roberts Road?

BILL ZAMPARELLI: Yes, I would.

BRENDAN SULLIVAN: Please identify yourself for the record.

BILL ZAMPARELLI: My name is Bill Zamparelli, Z-a-m-p-a-r-e-l-l-i. I live at Seven Emmons Place. And I did attend the

October hearing previously and I've been relatively supportive of their project. I think they've done a nice job with what they've done. I am concerned that this is, you know, when they first came to this, this was a Special Permit to do a 25 percent addition and now we're looking at what would have been a Variance and I think, you know, where that would have gone, I'm not sure. But the reason I'm concerned is that this is going to be a rental unit. We have had some history. This is a very congested area. There's -- maybe I should give you some background. In 2001 we renovated our home and we were in front of you to gain a Variance. I had twins and we had to add a bedroom and expand to basically address our family's needs. But we've stayed in Cambridge and we've stayed in this location. This is a very congested area. And we've had situations where we've had kids, you know,

students come in and they've lived in different houses in the area, and the most recent one was right across from their property at 37 Roberts Road. They had a garage that was turned into a basically a sound room where they would play music and party. And this was continual and it was a real problem in the neighborhood for quite a while. Eventually they sold the property and it -- that use terminated, but there's a lot of concern about this. You know, we have three -- we have two, three-bedroom rental units coming in. We expect that they're probably going to be students. If we have a second floor deck, I can see what's going to come out of this, is we're going to have, you know, parties at different times. You know, I guess we're just concerned that this is not appropriate.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Thank you.

BILL ZAMPARELLI: The original plan I support it. I spoke in favor because I thought it was thoughtful and what they did was well done. I don't think this deck is going to add anything, and if anything it's going to be a hindrance to the neighborhood.

BRENDAN SULLIVAN: All right, thank you.

BILL ZAMPARELLI: Thank you.

BRENDAN SULLIVAN: Anybody else who would like to speak on the matter, 35 Roberts Road?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence from the Cambridge Historical regarding 35 Roberts. (Reading) The property is located in the Mid Cambridge Conservation District where exterior alterations visible from a public way are subject to review and approval. The

proposed new deck will not be visible from a public way and we will be approved with a certificate of Non-applicability at the time of the Building Permit application filing.

That's the sum substance of the correspondence.

Let me make a motion to grant the relief requested to add a second floor deck above the existing floor deck as per the plan provided initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from providing some outdoor space for the second floor unit.

The Board finds that the hardship is owing to the size and shape of the lot and the building thereon with a pre-existing non-conforming condition. Hence any addition of this nature would require some

relief from this Board.

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

All those in favor of granting the Variance for the second floor deck.

(No Response.)

BRENDAN SULLIVAN: There is none in favor.

Opposed?

(Show of hands.)

BRENDAN SULLIVAN: Five opposed.

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

BRENDAN SULLIVAN: The Board finds that a literal enforcement of the provisions would not involve a substantial hardship to the Petitioner, and that the -- because the

hardship is not owing to the size, shape, topography, or of the structure affecting this particular structure, that the hardship is not established.

And that desirable relief would possibly be a detriment to the public good, and it would nullify and substantially derogate from the intent and purpose of the Ordinance.

Anything else to add to that?

TAD HEUER: No.

BRENDAN SULLIVAN: Okay.

CAMPBELL ELLSWORTH: Thank you very much.

(9:30 p.m.)

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

BRENDAN SULLIVAN: Let me reopen the matter of case No. 10247, 175 Huron Avenue. Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman, for the opportunity to confer with my client. The Petitioner would request that the Board allow a continuance of this matter until your July hearing to allow them to reevaluate the proposal.

BRENDAN SULLIVAN: Is that July 24th?

SEAN O'GRADY: July 12th.

CONSTANTINE ALEXANDER: This is a case heard. Can everybody make it?

ATTORNEY JAMES RAFFERTY: The second July date would be convenient.

SEAN O'GRADY: 7/26.

TIMOTHY HUGHES: That's not better for me.

ATTORNEY JAMES RAFFERTY:  
July 12th.

BRENDAN SULLIVAN: July 12th at seven p.m. on the condition that the Petitioner change the posting sign for case No. 10247 to reflect the new date of July 12, 2012, and the time of seven p.m. And that any changes to the submission now in the file be in -- any new submissions and related dimensional form be in the file by five p.m. on the Monday prior to the July 12th hearing.

Anything else to add to that?

On the motion to continue till then -- also the Petitioner sign a waiver of decision to be rendered thereof.

(Show of hands.)

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

(9:35 p.m.)

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

BRENDAN SULLIVAN: The other two 175 Huron Avenue cases. What is the pleasure of the Petitioner?

ATTORNEY JAMES RAFFERTY: We request a continuance to July 12th on those two matters with the expectation that they could ultimately be withdrawn.

BRENDAN SULLIVAN: Regarding case No. 10051, 175 Huron Avenue and I'll do it together, and case No. 10114, 175 Huron Avenue, let me make a motion to continue those two cases until July 12, 2012, at seven p.m. Again on the condition that the Petitioner change the posting sign to reflect the new date and time, and any changes, submissions

to those drawings, dimensional forms be in the file by five p.m. on the Monday prior to both those dates.

ATTORNEY JAMES RAFFERTY: Thank you.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(9:35 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10249, 75 Sparks Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. Excuse me, for the record, James Rafferty on behalf of the Applicant Frank and Kelly Panayotou, P-a-n-a-y-o-t-o-u. Mr. and Mrs. Panayotou are seated to my far right. And to my immediate right is John Holland, H-o-l-l-a-n-d. Mr. Holland is the project architect.

This is an application that seeks both a Special Permit and the Variance. The Special Permit is the significant portion of

the application. The Variance deals with the creating a new covered porch at the front entry. Mr. and Mrs. Panayotou have recently purchased this home, and they are eager to move to Cambridge with their three young children and raise their family at this house on Sparks Street in a Residence A-1 District. The house is -- it's a fine house, but it's had many years of deferred maintenance. It's prominent on the streetscape. In it's forested nature one can hardly -- a hard place to find, to put up a sign. I was climbing a tree the day I was out there with my stapler, but I was assured those trees are coming down anyhow. I shouldn't be concerned that stapling it to scrap pine tree would affect its long term health. The Panayotous have been working close with Mr. Holland to coming up with changes to the house. They are proposing a conforming addition, but the house is

non-conforming primarily and I think only because of its front yard setback. I think there might be a small portion of the side yard that doesn't meet the full setback requirement as well. So there are two aspects to the house. The house, the plan is to construct a rear addition, a two-story addition to the rear of the house, and then to -- in one portion of the side walls they're changing some windows. And I think you'll look at the site plan, that's the area where the house actually juts into the driveway a little and doesn't meet the side yard setback.

CONSTANTINE ALEXANDER: I think the house is non-conforming because of height, in fact it is conforming as to front yard and you need a Variance now because you're going to invade the front yard because of the front entrance.

TAD HEUER: Well, I had a similar

thought but a separate question. When I look at the form, it says existing 25.1 which would be conforming in a 25 district, you want to go to 20. But when I look at the plan, it looks like the front porch, unless I'm eyeballing wrong, because of the slant of Sparks Street, isn't the front porch already in the front yard setback?

CONSTANTINE ALEXANDER: I went by the dimensional form.

ATTORNEY JAMES RAFFERTY: I believe it may be.

BRENDAN SULLIVAN: That's to the house.

TAD HEUER: And then if you're going to there that's the covered porch. That's less than 25.

ATTORNEY JAMES RAFFERTY: We have -- if you look at the plan, the C-1 shows that the face of the building is at 25 feet, but the porch, the porch is into the setback.

And because it's covered, it doesn't qualify for the exception. So I think it is -- does have front setback.

CONSTANTINE ALEXANDER: Your dimensional form didn't reflect that.

TAD HEUER: Yes, that's my question. The dimensional form suggest the front yard setback is currently conforming to 25.1 because that's where you get to the house. But I agree with you, Mr. Rafferty, I think that the front porch is already in the setback.

ATTORNEY JAMES RAFFERTY: Yes, it is.

TAD HEUER: Which quite frankly makes the --

CONSTANTINE ALEXANDER: I showed the dimensional form which shows compliance, but you're right, it's not in compliance.

TAD HEUER: Which makes the desired relief potentially easier to grant because

you're already in the setback and you're extending the porch rather than invading a setback that's currently conforming.

CONSTANTINE ALEXANDER: That's absolutely right.

ATTORNEY JAMES RAFFERTY: That is absolutely right. I only wish I had thought of that.

But that's the -- that's right, and you're right, though. I think the height, although the height, when you average it, I think there is a portion of the roof that exceeds the 35 feet. So it is non-conforming. The additions do nothing -- the rear addition, the two-story addition doesn't do anything to create a non-conformity. It's within the allowed GFA. And they are proposing to construct a new garage. Are you still doing the garage? But there's adequate GFA for that -- for the first space being exempted and the second

space will be included. And so for those reasons because of the limitation of 10 percent as of right, 25 percent of Special Permit, we've applied for the Special Permit under Article 8 to allow for the addition on the rear. The front porch is really -- a largely aesthetic issue, but Mr. Holland could speak to it. Given the width of the house, he thinks the present porch is actually undersized, and it's approach from the side, it's kind of more utilitarian than the house might call for, and he's designed in the showing and elevation something a little more prominent and consistent with the overall scale and significance of the house. And I don't -- you want to speak to that briefly?

JOHN HOLLAND: Yes. The front porch, the front porch is offset to the right. And this thing right here basically is the front elevation. So --

TAD HEUER: So the approach is going to be from where those pine trees are right now rather than currently which is up from the driveway; is that right?

JOHN HOLLAND: That is correct. That's correct. It makes it look a little more inviting from the street. Especially when you clear back all those trees in the front, it's going to actually be more of a benefit to the streetscape.

TAD HEUER: So essentially you're taking all of the scrub pines out and leaving everything else?

FRANK PANAYOTOU: At the request of the mailman.

TAD HEUER: And probably your neighbors.

ATTORNEY JAMES RAFFERTY: I don't know if you had a chance to see the landscaping. So yes, the -- so and the relief is needed for the porch because it's

a covered porch, an uncovered porch. But the style of the house, the vintage of the porches and similar structures, putting a roof on the porch seems architecturally the correct thing to do. The house has adequate rear setbacks, so the hardship would be to do the install the porch, we'd have to relocate the house further into the lot and that's a hardship that we would hope to avoid in order to create at porch. So that's the base.

BRENDAN SULLIVAN: It's an inconvenience. An expensive inconvenience.

ATTORNEY JAMES RAFFERTY: Yes. Some cases that's more effective than others. I would say in this case, it's modest and it's replacing a porch that currently is in the front setback as Mr. Heuer noted, and Mr. Holland and the owners will be happy to talk to you about the house and what they're proposing to do. It's a single, really looking forward to getting started and

turning this into a nice home for themselves and their family.

TAD HEUER: And you're -- are you adding dormers on the new two-story or are those already there? In the rear addition.

JOHN HOLLAND: Yeah, there are on the third floor.

TAD HEUER: And those dormers are compliant with the dormer guidelines?

JOHN HOLLAND: Yes.

TAD HEUER: 15 feet or less?

JOHN HOLLAND: Yes.

TAD HEUER: And the garage, is that just a strike and replace -- my question is do you need -- are you fine with setbacks for the garage? You're five feet.

JOHN HOLLAND: Yeah. The existing is within the setback. The new one is going to be at the proper setback.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: In fact,

it exceeds it. It could be as close as five from the rear. It's proposed at 25, so -- and it does exceed the 15 height, 10 feet from the principle structure. So we're not seeking any relief for the garage.

BRENDAN SULLIVAN: Tim, any questions at this point?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Gus?

CONSTANTINE ALEXANDER: No, I'm fine.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I'm good.

BRENDAN SULLIVAN: Let me open to public comment.

Is there anybody here who would like to speak on the matter of 75 Sparks Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance and there is no communications --

ATTORNEY JAMES RAFFERTY: The

Panayotouses did send out some introductory letters to the neighbors and were pleased to receive three letters of support in response from various neighbors.

BRENDAN SULLIVAN: There is correspondence. (Reading) Dear Zoning Board: I'm the owner of Two Hemlock Road, a house just two houses away from 75 Sparks Street. We have been informed of their request to the Zoning and the need for increased volume requiring the required their renovation. We also understand why they're requesting changes to their deck. We know they will do the work in a sensitive way to the neighbors and structure and fully support their request. Sincerely, Rimy N. Erks (phonetic).

There is correspondence from Joanne Scott. (Reading) Thank you, Kelly. The plans look beautiful. It will be a wonderful house to raise your children in. My husband

would love to meet your husband. So anyhow, we need to make date.

You can exclude that from the public record until it goes to divorce court and then you can bring it up.

ATTORNEY JAMES RAFFERTY: There's explicit support of the application.

BRENDAN SULLIVAN: After the date they will be in support. I just wanted to officially let you know that Bob and I like the plans you have drawn for next door, based on the plans you dropped off with me last week. It looks like it will be a nice improvement and we would love to talk to you further. Oh, well, there goes another date. Christine Higgins, H-i-g-g-i-n-s. Not sure where she lives.

Anyway --

FRANK PANAYOTOU: Right next-door.

BRENDAN SULLIVAN: And I will close public comment.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: No thank you.

BRENDAN SULLIVAN: Okay. This used to be the Buddhist center in Cambridge.

ATTORNEY JAMES RAFFERTY: Oh, right.

BRENDAN SULLIVAN: I happen to know the benefactor of it very well.

ATTORNEY JAMES RAFFERTY: I didn't think you were a practitioner.

BRENDAN SULLIVAN: I was not, no, but I know the benefactor at the Buddhist Center.

Let me make a motion to grant a Variance. The Variance is to construct a conforming addition at the rear of the pre-existing non-conforming addition and to construct a front entry with the covered porch as per the plans submitted, initialed by the Chair, and also the dimensional form

being part of the decision.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from building a more appropriately scaled front entry for the existing residence which would be an added benefit to the streetscape. The building of this front entry necessitates some encroachment into the front yard setback.

The hardship is owing to the location of the structure on the lot which predates the existing Ordinance, hence any addition of this nature would require some relief from this Board.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and it would not nullify or substantially derogate from the intent and purpose of the Ordinance.

On the motion to grant the Variance.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of the Variance.

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

BRENDAN SULLIVAN: On the Special Permit. Special Permit is to add windows on a non-conforming side wall as per the plan submitted.

The Board finds that the requirements of the --

TAD HEUER: Can you just point out where the windows are just for the record.

JOHN HOLLAND: It's on the driveway side. It's these right here. Because it's --

ATTORNEY JAMES RAFFERTY: Do you have an elevation?

JOHN HOLLAND: Yep, yep.

ATTORNEY JAMES RAFFERTY: Just in

the area where the projecting bay.

JOHN HOLLAND: It's these right here and this portion.

TAD HEUER: And what's there now?

KELLY PANAYOTOU: I think that's this one.

BRENDAN SULLIVAN: Sometimes what we like to do on an existing and then the proposed maybe pencilled in -- not pencilled in, but highlighted or something like that so it's easily distinguished what exactly is existing and what is proposed as opposed to --

ATTORNEY JAMES RAFFERTY: It's essentially going from two windows to three windows on the first and second floor.

JOHN HOLLAND: (Marking up plans).

TAD HEUER: And are you bringing up the grade on the driveway?

JOHN HOLLAND: Yes. Is that clear right there?

TAD HEUER: Yes.

JOHN HOLLAND: And then one is getting closed up.

BRENDAN SULLIVAN: On the Special Permit to allow for the creation of windows in a non-conforming side wall as per the plans submitted, the Board finds that the requirements of the Ordinance can be met. Article 8.22.2C permits the creation of windows on a non-conforming wall when there are no further violations on the dimensional requirements of Article 5.

There would not be any traffic generated or patterns of access or egress which would cause congestion, hazard, or substantial change in the established neighborhood character.

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

of the proposed use and changes.

There would not be any nuisance or hazard created to the detriment to the health, safety, and welfare of the occupants of the proposed use or to the citizens of the city.

And the proposed use would not impair the integrity of the district or adjoining districts, otherwise derogate from the intent and purpose of the Ordinance.

All those in favor of granting the Special Permit to allow for the window modification.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Did the Special Permit involve both aspects of the Special Permit, the addition and --

BRENDAN SULLIVAN: And also for the

addition, as per the plans submitted, yes.

ATTORNEY JAMES RAFFERTY: Right.

The Special Permit was for the windows and for the addition in excess of 10 percent of existing?

BRENDAN SULLIVAN: That's correct.

ATTORNEY JAMES RAFFERTY: Okay, thank you.

(9:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10250, 45 Trowbridge.

SEAN O'GRADY: I just wasn't able to follow what you were saying, Peter.

The western elevation faces the neighbor on the place?

PETER WRIGHT: Yes, it's the Western, yes.

SEAN O'GRADY: And they haven't changed?

PETER WRIGHT: They haven't -- those

windows that was, that were suggested to be shortened from our request, our earlier request, actually are not inside the setback. They are, they are --

SEAN O'GRADY: They violate the setback?

PETER WRIGHT: They do not violate the setback.

SEAN O'GRADY: Which windows do you need relief on then?

PETER WRIGHT: The windows we need relief on are these, C windows, if I -- if I have three drawings which might explain it better. This sketch here is the site showing the building and the penthouse on top of the roof, okay? I worked up the -- I calculated the setbacks and I outlined in red the, you know, the permissible area. These are the setbacks relative to the height and length and so on. The windows, excuse me, let me get oriented here. These windows, which are

those are inside the setback. They're violating, okay.

SEAN O'GRADY: Yes.

PETER WRIGHT: And also the ones on which I --

SEAN O'GRADY: That's the street.

TAD HEUER: Is Trowbridge Street a public way?

PETER WRIGHT: Yes, it is, even though it looks like a driveway. It is a public way, yeah.

And if I may clarify, the abutting neighbor who is most affected, in fact, this penthouse as you've seen from the photographs which I had submitted, is relatively invisible.

SEAN O'GRADY: But is this not the window that you're trying to alter?

PETER WRIGHT: That is the one I just -- there are no windows in this building, in this unit, by the way, just besides the two

bathroom windows.

SEAN O'GRADY: I know, we're just trying to get to the initial question, Peter.

PETER WRIGHT: Yeah.

SEAN O'GRADY: The drawings that changed, are they that window?

PETER WRIGHT: Yes.

SEAN O'GRADY: And is that window --

PETER WRIGHT: And that's inside the permissible area. Not violating. Not in the setback.

SEAN O'GRADY: What do you need relief for then?

PETER WRIGHT: Okay, I need relief on those windows --

SEAN O'GRADY: If you need relief for this, then you'll need it for that and vice versa because they're in the same plane unless that plane is coming at an angle.

TAD HEUER: It's -- well --

PETER WRIGHT: To me it doesn't seem

that way.

TAD HEUER: His point is within that's setback, here, that window.

SEAN O'GRADY: Yes, you never have -- you only have to worry about the setback that you face. So if this window is not in the side setback, it doesn't need relief and it doesn't look like anything you need relief then. But I'm not sure if that's correct.

PETER WRIGHT: To me it looks like it's inside the setback as far as I calculated. So, therefore, I had assumed --

SEAN O'GRADY: Which window invades which setback? That's the question.

PETER WRIGHT: Okay. This window invades the setback.

TAD HEUER: Which one?

SEAN O'GRADY: Which one?

PETER WRIGHT: Okay, that is this one right here.

TAD HEUER: How about on this plan.

SEAN O'GRADY: Is that setback?

PETER WRIGHT: Oh, that one invades the Trowbridge Place setback. The south setback.

TAD HEUER: It can't.

SEAN O'GRADY: Don't worry about it.

PETER WRIGHT: Okay. Then there are these over here.

SEAN O'GRADY: They face Trowbridge Place and they're exempt.

PETER WRIGHT: They're exempt too?

SEAN O'GRADY: Yes.

PETER WRIGHT: Why? I'm sorry, I don't need a lesson and take your time.

SEAN O'GRADY: Right in Article 8 it says it. Yes. Plus this setback is to the central line of the street.

PETER WRIGHT: I did -- okay.

SEAN O'GRADY: Why don't we -- I don't want to take any more of the Board's

time. Why don't we take a minute and we'll think about it maybe go to another case, Brendan.

PETER WRIGHT: If it's moot then, we just wasted -- I wasted my time and your time, too.

SEAN O'GRADY: I understand that, but the worst possible event would be that oh, we don't have to do anything and then we find out on Monday that you were indeed right.

BRENDAN SULLIVAN: Do you want to take a few minutes and huddle with him?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: I think you should.

SEAN O'GRADY: Yes. Sorry, Board members.

CONSTANTINE ALEXANDER: That's good.

(Case recessed.)

(9:55 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10251, 64 Gorham Street.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board, James Rafferty on behalf of the Applicants. Seated to my right Timothy and Amy Rowe, R-o-w-e. This is a single-family home and our project architect, Tim Curtis.

This is a single-family home that Mr. and Mrs. Rowe reside in with their family, and they're looking to add a mudroom

onto the house essentially. It's a unique shaped lot. It shares the unique shapeness with the two abutting lots. They're three pie lots that I believe were developed somewhat in conjunction with each other. So there's a structure on the lot that it's a single structure that borders the two lots. It's a garage. And the property to the right it accommodates the garage, but on the Rowe property it's a shed. It's always been a shed.

TAD HEUER: Was this ever an automobile garage? I'm just wondering about the logistics.

ATTORNEY JAMES RAFFERTY: We're not clear because the garage, the width of the garage is only seven feet wide. It's the width of the shed. The garage on the abutting property has an overhead door and clearly can accommodate a vehicle. The driveway which is on the Rowe's property has

an easement to allow the abutter to drive across it. So the Rowe property can't park in the driveway, never has. The predecessor because that would burden the easement if they were in the driveway and they don't have a corresponding easement on the abutter's property. So they can never get a vehicle to at structure. So Mr. Rowe's research understanding was this was a garage with a shed and that this -- they've always used it as a shed. Their predecessors used it as a shed. This was for this lot purpose, a garage. The property does not have off street parking. It does have a driveway which might lead one to think the driveway provides off street parking, but the presence of the easement on the driveway precludes parking on it. But it does have another unique feature though, however. This stretch of Gorham Street is a private way. So as the owners of properties that abut

private ways control the area along the edge. So if you were out there, you may have noticed the private way and tow signs, do not park. So the Rows enjoy access -- I'm on the wrong side of the property. Three spaces along here are in their control. The neighbor closest to them then has like this space, and then a third neighbor has the first space. Similar situation across the street where abutters on in to the midpoint.

So while it's true that that property is not -- doesn't conform with the off street parking requirements, it predates those requirements, it does have parking there. So --

TAD HEUER: Could you physically fit an automobile between your property and your neighbor?

ATTORNEY JAMES RAFFERTY: Well, the neighbor has on occasion, and could by virtue of the easement, not very easily.

TIMOTHY ROWE: It's not easy when we've delivered something, like a heavy thing. You back up, but you usually don't go through. You stop right there.

TAD HEUER: Right, okay.

ATTORNEY JAMES RAFFERTY: But it's very narrow between the porch of Rowe house and the other property. But more importantly, so the proposal here really seeks to incorporate a portion of the shed into the mudroom. And in doing so, it really reduces the shed, but allows the shed to be continued to be used as bicycle storage and the like. So if you look at A-2 you really get the greatest understanding of the relationship between the existing shed and the proposed mudroom. This small area right here would represents a portion of the existing shed that will now be incorporated into the mudroom.

CONSTANTINE ALEXANDER: But that

part, that shed will be used only for bicycle storage or something to that?

ATTORNEY JAMES RAFFERTY: Yes.

That's the case now. And even more so when they're done because then the opening of the shed is going to be further reduced. And so the width of the shed in that location is going to be less than five feet I'm guessing in that opening, Mr. Curtis?

TIM CURTIS: Yes.

TAD HEUER: So when I look at the new elevation that was provided by the architect, this is A-4, this is the south and east elevation. We had the east, we didn't have a south. So this is a cross section; is that right? So this is a cross section of what I'd see.

TIM CURTIS: Correct. That's like through the shed.

TAD HEUER: And then a garage over here?

TIM CURTIS: Correct.

TAD HEUER: So I guess I'm still having difficulty figuring out where those bicycles -- are those bicycles at grade?

TIM CURTIS: The bicycles are under basically like a mudroom. You'd step up, because the first floor is about three feet above grade. So in the storage you're at full height storage.

TIM ROWE: What would otherwise be crawl space.

TAD HEUER: So is that full all the way all the way through or is that just in this portion of the shed door. So if I have a bike and I want to park it, what do I do?

TIM CURTIS: It's about that wide.

TAD HEUER: Which door do I go in?

TIM CURTIS: You go through the right door.

TAD HEUER: So I go through the existing shed looking door or stable type

door?

TIM CURTIS: Yep.

TAD HEUER: And then I have a three-foot --

TIM CURTIS: If I show you the plan might be a little bit better.

So right now this is the existing shed.

TAD HEUER: Which is? Right.

TIM CURTIS: Right here, the white square. So right now you'd walk into the mudroom, go up a few steps, and then under this section right here is where you do the bikes. So they come in here and they go underneath the mudroom floor basically.

TAD HEUER: Oh, okay.

TIM CURTIS: So just sort of utilizing the space as best we could.

TAD HEUER: I see. All right, so are you making it bicycle storage for the purposes of excluding it from FAR for the bicycle storage provisions?

ATTORNEY JAMES RAFFERTY: No. Because I think it's already GFA today because it's -- I don't know what disqualifies.

TAD HEUER: Okay. I'm just wondering how many bicycles are going in there. Like, if you're going to park three under there and four under there. Do you have a lot of bikes?

TIM ROWE: We have five -- three kids, two adults, and then we have a guest bike when people come to visit us.

TAD HEUER: Because they can't park in the driveway. Okay. I was just having difficulty envisioning how this would work (Inaudible).

ATTORNEY JAMES RAFFERTY: So in addition to the mudroom addition, there's a small 40-foot addition on the other side of the house in this area here that will allow for that in the family room to provide better

sight lines in the yard. The space is very tight. And this is the principle play area for the children. So the area in pink you see right there will allow for a new entry and just a repurposing of that area with better visibility and access to the yard. So it has setback issues which are apparent and it does represent additional 40 square feet. So the relief in both the mudroom and the family room addition involves GFA, modest amounts, 40 square feet there, 85 in the mudroom, and setbacks. Although the setback represents a, what, would be, Tim, a foot or two beyond the existing.

BRENDAN SULLIVAN: On the added square footage is it correct, 139 square feet added?

ATTORNEY JAMES RAFFERTY: The dimensional form would suggest -- yes, 140, 137.

TAD HEUER: I have 139.

CONSTANTINE ALEXANDER: I had 140 roughly, my notes.

BRENDAN SULLIVAN: Which is .04 percent increase?

ATTORNEY JAMES RAFFERTY: Yes, I believe that's true.

CONSTANTINE ALEXANDER: Your FAR is going from 1.05 to 1.09 in a 0.75 district.

TAD HEUER: So you're not adding any height on the lot line, you're adding it into the height of the existing shed stays for the portion that's physically attached to the garage; right? So you're not raising the height of the new bicycle shed any higher than it is now?

TIM CURTIS: Right now there's a flat roof parapet, and this portion we're doing a basically a sloped roof to be sort of in character with the rest of the house.

ATTORNEY JAMES RAFFERTY: The answer is yes to your question. The mudroom

will have the higher roof, but the balance of the shed roof line is unchanged.

CONSTANTINE ALEXANDER: You're also moving closer to the rear lot line. You're very close now from a Zoning point of view, and you're going to get almost a foot closer. Where is that coming from? The shed, you're replacing the -- not the shed, the deck and you're going to enclose that is that why?

TIM CURTIS: You're talking this?

CONSTANTINE ALEXANDER: Yes, the rear lot line.

TIM CURTIS: Oh, right there. Existing right now is half-inch for the shed and we're going seven and a half inches so we're going actually --

CONSTANTINE ALEXANDER: Your dimensional form shows you're going 11 inches closer to the lot line.

TIM ROWE: The house is closer to the lot line the shed is because --

TIMOTHY HUGHES: You square it off towards the angled lot line, right.

ATTORNEY JAMES RAFFERTY: Right. So the setback doesn't reference the shed setback. It references the house setback.

CONSTANTINE ALEXANDER: That's fine.

BRENDAN SULLIVAN: Okay. Anything else?

ATTORNEY JAMES RAFFERTY: And I was impressed with Mr. Curtis's office provided some photographic representations of the rear setback with the willingness of the rear abutters so that you could -- not a perspective you often get but you can actually.

CONSTANTINE ALEXANDER: I saw that.

BRENDAN SULLIVAN: I thought that was a trendsetter, and that's the way they all should be. That should be a model for what you get.

ATTORNEY JAMES RAFFERTY: The abutter has to allow you onto the property to take the photos.

BRENDAN SULLIVAN: That's a minor infraction.

ATTORNEY JAMES RAFFERTY: Oh, I see, you might go on without invitation? I see. Yes, so those are the -- that's the nature of the relief. The hardship is largely related to the small size of the house. It's an irregularly shaped lot, and relatively modest changes. Mr. and Mrs. Rowe have made very efficient use of the home. It accommodates three active and growing children, and these are simple upgrades that will allow them to continue to remain in the city and enjoy the property.

BRENDAN SULLIVAN: Any other questions?

CONSTANTINE ALEXANDER: I'm fine.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I'm fine.

BRENDAN SULLIVAN: Let me open to public comment.

Is there anybody here who would like to speak on the matter 64 Gorham Street?

(No Response.)

BRENDAN SULLIVAN: I see correspondence in the file.

(Reading) To Whom It May Concern: I am writing in regards to the Zoning Appeal application before the Board made by my neighbors Timothy and Amy Rowe who live at 65 Gorham. My property is adjacent to the lot behind 64 Gorham. I have reviewed the proposed renovation plans and have no objection. Bruce Petschek, P-e-t-s-c-h-e-k, 44A Sacramento Street.

Correspondence from Laura Wernick, W-e-r-n-i-c-k and John Hansman, H-a-n-s-m-a-n, 46 Sacramento Street.

(Reading) To Whom It May Concern: I'm

writing in regard to the Zoning Appeal application before the Board made by my neighbors Timothy and Amy Rowe who live at 64. My husband John and I live at 46 Sacramento Street. Our lot is located immediately behind 64 Gorham Street. As an architect, I'm familiar with renovations of this sort, and my husband and I have had the opportunity to review the Rowe's plan. We have no objection to the plans and support the Rowe's application.

And that is the substance of the correspondence. Let me close public comment.

Anything else to add, delete, change, modify?

ATTORNEY JAMES RAFFERTY: No, thank you. There are two other letters of support that did not make their way into the file, but suffice it to say, they are the two other abutters have -- we would represent have

also -- you may want to give their name and address.

TIM ROWE: Yeah, so David Wood and his family have been across the street here for three generations, and he wrote a very warm letter of support. I have a copy electronically here with me which I could show you. And Bruce May and Cynthia Motty (phonetic) also wrote a warm letter of support.

BRENDAN SULLIVAN: Okay.

Anything?

CONSTANTINE ALEXANDER: I'm good.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I'm good.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: I'm good.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: You have no current rear, you have no current rear access except through the fence here; right? Like,

there's no door.

TIM ROWE: There's no access.

There's a door here right now.

TAD HEUER: And that's going to be incorporated into the mudroom?

TIM ROWE: Yeah.

TAD HEUER: And does that currently go down into the fenced no man's land?

TIM ROWE: This dotted line is a current deck which going to be removed, and the door opens to the deck and then there's steps on the deck down to the ground currently.

TAD HEUER: Okay. So that deck area that gets subsumed in the mudroom, this deck area goes.

TIM ROWE: That's right. And also all of this deck goes.

TAD HEUER: Okay. So the dotted is the deck which is now --

TIM ROWE: That's right.

TAD HEUER: And this deck stays.

TIM ROWE: That's right.

TAD HEUER: So what's your access onto, just a step up?

TIM CURTIS: Yeah, this is a small portion of the deck here, and so you go down steps. So all of this like light grey.

ATTORNEY JAMES RAFFERTY: The first floor plan shows.

TIM CURTIS: Right. It's just a small access down to the yard.

TAD HEUER: Okay.

I think it's really inventive. I'm not thrilled by the fact that's overpacking a really tight lot into the lot lines, but given the fact that it's incorporating the existing shed, I think, intelligently and isn't building up to the edge of the lot line in a manner that would invade upon the neighbor's zero lot line, with the garage and also given the support of the rear abutters, I think it's

modest enough that I'm okay with it.

BRENDAN SULLIVAN: Okay, let me make a motion to grant the Variance to construct a one-story addition between existing two and a half story dwelling and the one-story garage and a one-story addition to the northern side of the dwelling, and the reduction of the existing deck as per the plans submitted, initialed by the Chair, and the accompanying dimensional form.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from reconfiguring some aspects of this house to be more aesthetically conforming to the main house, and be a better usage of some of the interior space and access to the rear yard.

The Board finds that the hardship is owing to the existing site and the existing

size of the house and the location thereof and the unusual shape of the lot, which makes any realignment or reconfiguration very difficult and would ultimately probably require some relief from this Board.

The Board finds that desirable relief may be granted without substantial detriment to the public good. We noticed the letters of support from the immediate neighbors.

And relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance to allow a family to continue to live in this house and contribute to the community.

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thank you

very much.

(10:15 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10250, 45 Trowbridge.

Okay. If could you run through it very briefly as to exactly what you're requesting and what we need to consider.

PETER WRIGHT: My name is Peter Wright, W-r-i-g-h-t.

HARRIET SCOTT: And I'm Harriet Scott.

PETER WRIGHT: Continue?

BRENDAN SULLIVAN: Okay.

PETER WRIGHT: After conferring with Sean, the setback area as concerned are those windows facing west. We had initially proposed five windows, a set of three windows which are shorter than the other two. The confusion, concerning the change, if I came about after my client Harriet had met with the abutting neighbor last weekend, and he had said that he will allow what we are proposing, but he asked whether she could shorten the windows to give -- offer him a bit more privacy. She gracefully said that's not a problem, and she asked that those windows be shortened, meaningless window space and less of a visual intrusion to their property which is fairly far away.

TAD HEUER: So what do we need to do? Because the last time we were here moments ago it appeared that no windows are in a setback.

Are there now windows in a setback?

PETER WRIGHT: They are in a setback. I don't have the original. I have the altered one, I'm sorry, on me. But it's similar to this elevation.

TAD HEUER: It's more useful to have the overhead --

CONSTANTINE ALEXANDER: If you're in the setback, we're back to the question whether we can hear the case tonight.

TAD HEUER: Yes, that, too. And I'm still unclear as to which setback.

PETER WRIGHT: The rear setback, correct, Sean?

SEAN O'GRADY: Well, it's what's called the rear setback. It's actually two fronts and two sides.

PETER WRIGHT: Okay.

SEAN O'GRADY: It's the west setback. Left setback from the place, Trowbridge Place.

TAD HEUER: This one?

PETER WRIGHT: Yes. And the drawing is similar.

BRENDAN SULLIVAN: And I think just to be -- have a little critique here, if we can number the sheets, then it's easier for us to reference rather than trying to go back and forth with -- and now it's easier for us to identify.

So which sheet now are we on? It's very difficult to --

TAD HEUER: Mr. Chairman, I'd say my time -- we sit here until cases are done. We sit here very late into the evening. I simply do not understand what is being proposed in this petition and I'm hesitant to spend any more of our time on this until it is more cognizable as to what we're being asked to do.

CONSTANTINE ALEXANDER: I strongly support that. In fact, if we go forward I'm

going to abstain because I don't know what I'm voting on.

PETER WRIGHT: Well, I was actually complimented on how clear it was at one time. Here is the existing elevation, and there is the proposed elevation.

TAD HEUER: But you've marked setbacks in red that appear to put your windows inside them. Is that not true anymore? Is your red setback the setback? Because if it is, then your window doesn't have realm. And if it's not, you've presented us with a plan where the setback isn't where you say it is.

PETER WRIGHT: Okay. It is where it is on this end. The other -- I thought those windows on the south side --

TAD HEUER: Right, that's out. We don't need to discuss this ever again.

PETER WRIGHT: We're talking about the west side.

TAD HEUER: Yes.

BRENDAN SULLIVAN: Okay.

PETER WRIGHT: And the neighbor, the abutting neighbor is over here towards the west, and we -- we -- she, my client had gracefully said I'll make those windows shorter.

TAD HEUER: That's fine. Is it in the set -- you've drawn a red line. The red line is a setback.

PETER WRIGHT: Yes.

TAD HEUER: If it is toward the building side of the setback, it's not in the setback.

PETER WRIGHT: I didn't want to -- I know.

TAD HEUER: If it's to the outside --

PETER WRIGHT: I didn't want to argue with Sean, but they are actually not in the setback, and I just didn't want to make

a big deal of it. We're here. Because 26 points -- it's -- we're eight inches inside actually from what we calculated in the room back there.

SEAN O'GRADY: I thought we....

PETER WRIGHT: I know, I'm sorry, Sean, but I didn't want to muddy things up.

SEAN O'GRADY: Well, if you know what you're doing --

PETER WRIGHT: I didn't want to muddy things up. I said, well we're here --

CONSTANTINE ALEXANDER: I'm going to review my question that --

PETER WRIGHT: It seems like it's a tin can with no windows and we'd like to have windows. We thought it was going to be a shoe win.

CONSTANTINE ALEXANDER: Mr. Chairman, I want to renew my request, we've got four more cases to hear. We're --

PETER WRIGHT: Okay, so can Sean and

I deal with it privately?

CONSTANTINE ALEXANDER: I think we should continue the case and you and Sean can deal with it.

PETER WRIGHT: What if Sean says we're all fine, then we don't need to come back again.

BRENDAN SULLIVAN: All right, but I think you're going to need to do it --

PETER WRIGHT: I know, not this time, not this day.

BRENDAN SULLIVAN: All right. Can we continue this until June, what, Sean?

PETER WRIGHT: Unless Sean finds it's moot.

SEAN O'GRADY: Then no worries.

BRENDAN SULLIVAN: Right. Well, let us continue this matter until June.

SEAN O'GRADY: You've got June 14th.

BRENDAN SULLIVAN: June 14th as a

case not heard I guess.

PETER WRIGHT: This is a first,  
yeah.

CONSTANTINE ALEXANDER: We've heard  
a lot but nothing with merits.

BRENDAN SULLIVAN: I'm not sure what  
I've heard.

Let me make a motion to continue this  
matter until June 14, 2012, at seven p.m. on  
the condition that the Petitioner sign a  
waiver of statutory requirement for a hearing  
and a decision. Also, that if there are any  
changes to the file, to the documents in the  
file, that they be in the file by five p.m.  
on the Monday prior to the June 14th hearing.

That the Petitioner also change the  
posting sign to reflect the new date of  
June 14, 2012, and the time of seven p.m.,  
and that that sign be maintained as per the  
Ordinance which is 14 days prior to the  
June 14th hearing.

Anything else to add?

TAD HEUER: No.

BRENDAN SULLIVAN: On the motion to continue this matter until June 14th as a case not heard.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(10:20 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10252, 1815 Mass. Avenue.

ATTORNEY RICARDO SOUSA: Good evening, Mr. Chairman, members of the Board. For the record, Ricardo Sousa from Prince, Lobel and Tye here on behalf of the applicant Sprint Spectrum LP.

BRENDAN SULLIVAN: Okay. And you want to change out again?

ATTORNEY RICARDO SOUSA: Once again, yes. The nature of this modification, and all three applications before you tonight, is that Sprint is upgrading its antenna installations, in fact, much more efficient antennas together with more efficient cabinets and RRH's what are called remote radio heads. This is called the network vision project. It's going on throughout the country, including here in Cambridge. And in some respects, and you'll see in this first application relative to 1815 Mass. Ave, there's a reduction, a net reduction in the number of antennas. And so what we're proposing here at 1815 Mass. Ave., Lesley College is depicted here, both in the plans and in the photo simulations. The nature of the antenna installations is that they are on the facade within the red areas of the torric (sic).

TAD HEUER: And those are recessed.

ATTORNEY RICARDO SOUSA: Yes, exactly. It can't be too recessed in the sense it can't be interference with the brick. However, they are within the red areas. And so we operate currently nine antennas, and the net result will be that we'll operate six panel antennas. So we're going to actually remove three of the panel antennas from the installation. And so this is a good result. This is once again the efficiencies that we hope to see more and more with carriers as they get better and more efficient technology. The new panel antennas are slightly longer. They're a foot longer, 12 inches longer and so that's why we felt it was necessary to come here before the Board because, in fact, they are longer antennas and any modification of our existing antenna installation requires relief from this Board.

CONSTANTINE ALEXANDER: So in your

application you talk about adding six remote radio heads on the mounts and replacing two equipment cabinets. That's all encompassed within the extra foot of the ones that -- what is it? The panel antennas?

ATTORNEY RICARDO SOUSA: Yes.

Actually, the remote radio heads are going to be going inside the torric. They will not be visible for the public. And so that's depicted on A-1 as you can see from the overhead. And I apologize, if you'd like additional copies of the plans, I'm happy to hand them out. I thought I gave copies of the plans.

TAD HEUER: I would.

ATTORNEY RICARDO SOUSA:

Absolutely.

So if you turn to A- -- during the Planning Board process we improved the quality of our simulations. We went there a couple times, and after the second time we

were able to convince them exactly as to what we were doing on this property.

TAD HEUER: And are all of these being mounted on the center of the three, so where you have two antennas, you're removing the outer most; is that right?

ATTORNEY RICARDO SOUSA: We are removing the outer most, that's right. And so what these new antennas do is they operate two technologies at one time. And so we'll be able to operate both on the 800 megahertz and the 1900 megahertz. The 1900 Megahertz will be our 4G technology.

In addition, there are Clearwire antennas. I was here last year or the year before. Clearwire is a subsidiary of Sprint, and they operate their own 4G network, which sometimes shares some of that spectrum with Sprint's. So the net result is in fact a reduction in the number of antennas with respect to this particular site.

BRENDAN SULLIVAN: Are you the only carrier on the building?

ATTORNEY RICARDO SOUSA: No, we're not. There are actually two other carriers in addition to Sprint and Clearwire. So Sprint and Clearwire are on the same RAD center. So the same height. In addition, T-Mobile has an installation here as does MetroPCS.

BRENDAN SULLIVAN: Now, it's on a Lesley building, but does any of your installation at the behest of Lesley, does it enhance their communication at all or is it just general public?

ATTORNEY RICARDO SOUSA: It's just general public.

BRENDAN SULLIVAN: Okay, so it's not geared to the university at all?

ATTORNEY RICARDO SOUSA: That's correct. Only if they happen to use Sprint phones will it enhance their communications.

BRENDAN SULLIVAN: It's not a special dedicated facility or part of for their communication early warning system or whatever it is. I know Harvard has done something like --

ATTORNEY RICARDO SOUSA: Correct. Not Al all, Mr. Chairman.

BRENDAN SULLIVAN: So it's just basically a facility that happens to be owned by Lesley but it's not --

ATTORNEY RICARDO SOUSA: Right. Just the nature of the facility is such that torric happens to be one of the taller structures in that particular neighborhood, and it is of commercial use. It's a mixed area, as you know, right on Mass. Avenue. It's a perfect host for these wireless antenna installations. And I think the carriers have done a pretty decent job of trying to utilize the architectural elements of those red sections in order to install the

antennas. And at the same time fill the gaps in coverage they have for their networks pursuant to their FCC license.

BRENDAN SULLIVAN: Okay.

TAD HEUER: On your -- and the standards I see your paint to match there, having some -- that tower's always had difficulty with its paints to match. Are you the worst offender of the red with the white painted lines or is that another carrier?

ATTORNEY RICARDO SOUSA: I'm not so sure if I can grade the offenses. However --

TAD HEUER: The one that's the least like brick of the proposed paint to match like brick.

ATTORNEY RICARDO SOUSA: Yes. What in fact the Planning Board suggested was instead of any brick lines, any mortar lines, don't do those at all, but simply paint it a flat red because we just will never match up with the mortar lines. And so the

recommendation as should be in your file, from the Planning Board was simply to paint it red.

TAD HEUER: To match the back.

ATTORNEY RICARDO SOUSA: To match the existing brick, exactly. And I have to say there are different shades of red for each antenna, I have to say for different carriers just because they do them at different times, they fade over time. But I think the best solution is to just paint it red. And I've seen that more and more consistently both with the City of Boston and in other jurisdictions.

TAD HEUER: Yes, I mean I believe they're frequently -- we've talked about this more than once. Tremont Street are my favorites. At the corner of Tremont and Park Street station. Tremont and Park.

ATTORNEY RICARDO SOUSA: Right.

TAD HEUER: There's right above the

7-Eleven there. Those don't have the bright light mortar lines which I think are awful. But they're somewhat variegated because they're simulating brick, but they're not trying to do a mortar line brick which looks terrible.

ATTORNEY RICARDO SOUSA: I do, too.

TAD HEUER: I personally would prefer something with a bit more variation that went from a red rather than to a flat red panel, but I could be persuaded either way. Anything that moves away from that ill-advised painted white border lines is.

BRENDAN SULLIVAN: My thought on that is that's where bad taste is worse than no taste at all when I see a faux finish. It's not so much faux, it's bad.

ATTORNEY RICARDO SOUSA: We'll do either one.

TAD HEUER: Okay.

On the mountings, these are all pipe

mounts. Mr. Cook has come before us frequently with his kind of, you know, swivel mounts where they're mounted on a top and bottom, they can swivel inside that. Is that feasible here?

ATTORNEY RICARDO SOUSA: Exactly, Tad. It's less feasible here. There are what's called low clearance brackets, and so they are -- they're mounted closer to the facade. Here we really need the pipe in order to get passed that exposure, that brick exposure otherwise we get too much interference from the brick exposure. There are situations where we can do those zero clearance mounts. Just like T-Mobile can, Sprint can as well.

TAD HEUER: Are there any coming up in the next two cases?

ATTORNEY RICARDO SOUSA: There may be. At least one.

TAD HEUER: Can we do the standard

length of the pipe less than the antenna?

ATTORNEY RICARDO SOUSA: Yes, absolutely.

TAD HEUER: To the extent that any of the engineering drawings indicate a pipe that is longer than the antenna will be, that should be deemed to be a pipe that is less than or equal to or less than the length of the antenna in order to mask to the extent possible.

ATTORNEY RICARDO SOUSA: That's very acceptable.

TAD HEUER: Okay.

And on the wiring coming out of the bottom, I think we've discussed this before about how to the extent that's possible to cap that in order to minimize the effect of having, you know, paint to match and minimize the pipe and then having a kind of chunk of wires dangling off the bottom as they go into the system.

ATTORNEY RICARDO SOUSA: Yes, into the wall.

TAD HEUER: I think we've -- I think, we've discussed this with some carriers and I'm not sure with those that you've represented, in some way to cap that or encapsulate that so that it's cleaner than having a wire package hang up. Is that doable?

ATTORNEY RICARDO SOUSA: I've not done that. There is a detail in the plans that talks about the wiring. It is bottom fed antenna, so it will come from the bottom of the antenna and it will go towards the back of it and then into the back wall.

TAD HEUER: Right.

ATTORNEY RICARDO SOUSA: And to a certain extent you need to have a radius, a certain acceptable radius at the bottom with this wiring. It can't be at a 45-degree angle otherwise it will cause circuitry

problems. That's right. That's correct, Tad. You do see that, it needs that radius.

BRENDAN SULLIVAN: It doesn't bend well at all.

ATTORNEY RICARDO SOUSA: That's right. I have not seen a cap put on there. If anything I think it's going to add more mass and once again it will be another thing that we have to hinge onto the facade of the building.

TAD HEUER: Right.

And on A-2 there's an existing antenna plan, an intermediate antenna plan, and a final antenna plan. I don't recall seeing these before. Can you just explain what these are and whether we're approving the intermediate for some period or we just approving the final and what that means and what we're doing?

ATTORNEY RICARDO SOUSA: In the end I would say all jurisdictions that I've

worked with are looking at the beginning and the end. But the nature of this installation, in the sense that it's a consolidation, we can't have a situation where our system is down for any period of time. So there will be a temporary period of time where we will have that interim plan in operation, and that will be taken down. And the final plan is the only thing that will exist for any extended period of time.

TAD HEUER: And what's the rough length of time that you would need?

ATTORNEY RICARDO SOUSA: I would say anywhere between two weeks and four weeks depending on when they can get all the work done. Because it has to be integrated into the whole network. So RF engineers, our construction crews are actually building it. RF engineers are optimizing the sites and connecting it to the entire network. And so it's not a specific number of days.

TAD HEUER: So you need to have both sets online for some overlapping period of time?

ATTORNEY RICARDO SOUSA: That's absolutely right.

BRENDAN SULLIVAN: It's a trial period, and once they say we're good, then you can go back up and remove the other.

ATTORNEY RICARDO SOUSA: That's right, and we'll remove the other. And the only thing, you know, there can be a condition on this, the only thing that this Board is approving is the final design that's shown in the final antenna plan. That's exactly what we're looking to get approved.

BRENDAN SULLIVAN: Okay.

TAD HEUER: And as a condition of if we grant, you would be removing all the pipe mounts and other things for the non-used antennas.

ATTORNEY RICARDO SOUSA: We would

agree to do that, absolutely, yeah. Any abandoned pipe mounts, yes. Or brackets.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Gus, any questions?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who wishes to speak on the matter at 1815 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: I see nobody.

There is correspondence in the file from the Planning Board. (Reading) The Planning Board reviewed the revised plans for the antenna installation with the antennas being relocated to be mounted onto the facade of the building, painted to match the wall, and using the existing architectural detail to minimize the visual impact of the antenna as well as reducing the number of antenna.

The previous Planning Board objection is withdrawn and the Planning Board supports the proposal.

And that is the end of the correspondence.

Anything else to add?

ATTORNEY RICARDO SOUSA: I do not, Mr. Chairman.

BRENDAN SULLIVAN: No? Okay. Any problems, concerns?

(No Response.)

BRENDAN SULLIVAN: Let me go through some of the pro forma here. The pertinent section is Article 4, Section 4.32.G.1 footnote 49. The Board finds that the Applicant does comply with the wireless communication provision as set forth in Section 4.32.G.

That the Applicant's proposed use for wireless communication facility in the BZ Zoning District is permitted by a Special

Permit.

The Applicant's proposed facility further complies with the provisions set forth in 4.32.G footnote 45.

The Board shall consider the scope of or limitations proposed by any license secured from any state or federal agency having jurisdiction over such matters.

The Board notices that there are none and that the Applicant's FCC license is part of this application.

The Board shall consider the extent to which the visual impact of the various elements of the proposed facility is minimized, and the Board can attest that with in collaboration with the Planning Board, the Applicant has satisfied this requirement with the proposal.

The Applicant's design minimizing the visual affect of the impact of the proposed facility, the facility will be installed in

the existing rooftop of the building and the proposed replacement antennas will be camouflaged and painted to match the color of the existing building.

The Applicant's Proposal to install the facility within the BC Zoning District does -- consequently the provision of the Ordinance does not apply to the Applicant's proposed modification of its existing facility.

It is not within a residential zoning district. It's in a BC District.

The requirements of the Ordinance can be met. Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

The Board finds that this is basically a change out of existing equipment and a reduction in the amount of equipment.

The continued operation of or

development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use. In fact, would be enhanced with the upgrade of equipment and the enhanced facilities.

There would not be any nuisance or hazard created to the detriment of the health, safety, or welfare of the occupant of the proposed use or the citizens of the city. And that the proposed installation would not impair the integrity of the district or the adjoining districts, otherwise derogate from the intent and purpose of the Ordinance. And the new use is consistent with the urban design objective as set forth in Section 19.30 of the Ordinance.

It's really somewhat not applicable only because it's not a new construction, but that the proposed use does have the approval of the Planning Board.

Okay. I think that's --we have

covered the requirements.

Anything else.

CONSTANTINE ALEXANDER: We need to impose our usual conditions about if they abandon the facility for any period of time, they have to remove it. And further, that they to the extent that they're taking steps to minimize the visual impact, they have to continue to maintain because we have had problems with properties, other properties --

ATTORNEY RICARDO SOUSA: Yes, we understand that.

CONSTANTINE ALEXANDER: You know, if deteriorating keep repainting and the like. So those two conditions.

ATTORNEY RICARDO SOUSA: Sure.

BRENDAN SULLIVAN: Also the Board makes note of the pipe mount that it not extend above or below the proposed antenna. And that the Board does recognize that there

will be a period of time will there will be proposed additional antenna and existing until the new antenna comes online and the Board is accepting the final scheme proposal for relief.

I think that's about it; is that correct?

CONSTANTINE ALEXANDER: Yes, what I just gave you before will be incorporated into your motion.

BRENDAN SULLIVAN: Yes.

All those in favor of granting the relief?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(10:40 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10253, 1100 Mass. Avenue.

ATTORNEY RICARDO SOUSA: Once again for the record, Ricardo Sousa on behalf of the Applicant Sprint Spectrum, LP.

Once again this is another application that involves an upgrade of the existing

antenna installation located on the existing property on 1100 Mass. Ave.

Sprint currently operates three panel antennas, and we're going to be replacing, taking out those three panel antennas and installing them with three new dual pole panel antennas that operate dual technology both 800 megahertz and 1900 megahertz. The antennas themselves are a foot longer than the existing antennas. But they will once again be facade mounted, painted to match, and I have photo sims here. I can hand out some additional copies.

CONSTANTINE ALEXANDER: I've seen this them.

And, again, the six remote radio heads that you're adding is not going to be visible?

TAD HEUER: Three aren't they?  
Sorry. Oh, no, sorry.

ATTORNEY RICARDO SOUSA: There are six. Those are going to be at the base of the

penthouse.

CONSTANTINE ALEXANDER: Right.

ATTORNEY RICARDO SOUSA: So these antennas themselves are actually installed at the top of the penthouse. And so the remote radio heads will be installed as low to the roof as we possibly can get. So that they are -- we minimize the visibility. As you can see from the photos themselves, the installation actually is fairly streamlined already. There are very few locations where you can actually detect them. In this view here coming from City Hall towards the building itself, you can't see the antenna installation at all. Once again here, this is another view from I would say from Harvard Square. Also you cannot see the installation at all.

Once again here, this is a view from Mount Auburn. You can see one antenna right

on the back of the building.

CONSTANTINE ALEXANDER: And the equipment cabinets you're replacing is it the same size as the one that's there before?

ATTORNEY RICARDO SOUSA: They are the same size and configuration. And that's also on the roof adjacent to the penthouse itself. And in fact, in all the photo sims that we took, you cannot see the cabinets themselves. Very well hidden.

TAD HEUER: Are these candidates for low impact mounts?

ATTORNEY RICARDO SOUSA: They are.

TAD HEUER: Because they have nothing that's getting in their plane of vision the way the Lesley ones were.

ATTORNEY RICARDO SOUSA: That's exactly right, Tad. Yes, so we would be amenable to a condition that states that instead of using pole mounts or pipe mounts, that instead we will use what's called zero

clearance brackets or low profile brackets so that they are flush mounted as much as possible up against the facade of the building.

TAD HEUER: Music to my ears.

And, again, the same -- just for the record, there's an interim plan and a final plan presumably the same system as we discussed in the previous case?

ATTORNEY RICARDO SOUSA: That's correct.

TAD HEUER: The interim plan is to allow for a changeover of a reasonable short period to allow this uninterrupted operation of the system, and the final plan will be the final plan indicated in the photo simulations and the drawings that are provided.

ATTORNEY RICARDO SOUSA: That's exactly right. And so there will be a period of time, the interim period of time in which we will be operating six panel antennas.

Once that interim period ends, we will remove three of those panel antennas and turn on the final design.

BRENDAN SULLIVAN: Anything else, Tim?

TIMOTHY HUGHES: No, I'm good.

BRENDAN SULLIVAN: Gus?

Let me open to public comment. Is there anybody here who would like to speak on the matter of 1100 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: I see none in attendance.

The Board is in receipt of correspondence from the Planning Board regarding case No. 10253. (Reading) The Planning Board reviewed the revised plans for the antenna installation with the improved photo simulations of the proposed installation. The Planning Board does not object to the plans to replace equipment and

antennas.

That's the end of correspondence.

Close public comment.

Anything else to add?

Let me make a motion, then, to grant the Special Permit to replace the existing three panel antennas with three updated panel antennas on the same mounts. Together would be adding six remote radio heads on the mounts and replacing one equipment cabinet to the Applicant's existing and previously approved wireless communication facility currently operating on the rooftop of the building.

The Board finds that the Applicant complies with the wireless communication provision set forth in Sections 4.32.G footnote 49 of the Ordinance.

The Board shall consider the scope or limitations imposed by any licensed secured by any state or federal agency having jurisdiction, and the Applicant's FCC

license is included.

The Board shall consider the extent to which the visible impact of the various elements of the proposed facility is minimized.

The Board finds that correspondence from the Planning Board attests to the fact that the effect is minimal. The photo simulations also show that the Petitioner has complied with this requirement in minimizing the impact.

Where it is proposed to erect such a facility in any residential Zoning District, this does not apply. This is in a Business B District.

The Applicant complies with the Special Permit criteria.

The requirements of the Ordinance can be met. Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the

established neighborhood.

The proposed installation will not obstruct existing right of ways.

The proposed installation is a change out from existing equipment and an upgrade and would not change the established neighborhood character in any way.

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

There would not be any nuisance or hazard created to the detriment of the health, safety, and welfare of the occupant of the proposed use or to the citizens of the city.

And the proposed installation would not impair the integrity of the district or adjoining districts otherwise derogate from the intent and purpose of the Ordinance.

And the urban design objective is set

forth in 19.30 is not applicable on this particular application.

All those in favor.

CONSTANTINE ALEXANDER: Wait, you've got to add the condition about replacing the pipe mounts.

BRENDAN SULLIVAN: Oh, sorry.

CONSTANTINE ALEXANDER: And the condition regarding removal for a period -- if you don't use it for a period of time, and that you have to maintain the visual masking that you're doing. Otherwise you lose --

TAD HEUER: And the conditions that they be painted to match, that they be maintained in their painted to match condition. That if they are abandoned for any period of time, that they be removed. And the condition of the site be replaced to that of which before the antenna was installed. And that where the mounting

indicated in the plans attached indicates a pipe mount, that would be replaced in all instances with a low profile bracket.

BRENDAN SULLIVAN: So said.

All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(10:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10254, 840 Memorial Drive.

ATTORNEY RICARDO SOUSA:

Mr. Chairman, once again for the record Ricardo Sousa on behalf of the Applicant Sprint Spectrum, LP. This application, as with the other two, is an upgrade of Sprint's

existing wireless antenna installation on this commercial rooftop. We currently are operating six panel antennas. We want to swap those out for six other panel antennas in the same mounts. The additional three antennas will operate on yet a different spectrum. There are certain sites where Sprint not only wants to utilize a dual pole antenna at the 800, 1900 megahertz, but they'll also have another three antennas operating at 1900 megahertz which is a technology they're hoping to launch sometime soon. And that will operate pure 4G services. So what I'd like to do is just show you some photos of the installation. This is a fairly active, or I should say pretty busy rooftop with a lot of condensers, a lot of vent pipes. In fact, in many of our photo sims it's hard to point out the ballast mount antennas.

TAD HEUER: And these are all

ballast mounts?

ATTORNEY RICARDO SOUSA: They are ballast mounts, that's correct, yes.

As you can see here, there are existing ballast mounts. We are at the ends of those ballast mounts. There are two panel antennas on the end. And we will once again the final design, be in that same configuration. And so there's really a de minimus change to the design of the building altogether. We would be amenable to any and all of the conditions that you have placed on the previous applications as well, including removing any antennas that are abandoned. Secondly, maintaining the existing aesthetics of the antennas. Although in this case they're really not painted to match because there's no background. They're simply, they're natural grey color that they come in.

BRENDAN SULLIVAN: It is busy up

there.

ATTORNEY RICARDO SOUSA: It is, yeah.

BRENDAN SULLIVAN: Any questions by the Board at this time?

Tad, any?

TAD HEUER: No. The only question was on, I guess this is beta sector. It's the more prominent of the one that the ballast mounts that comes off one of the corners of the building at a 45-degree angle of the building. I presume that's just -- that's replacing an existing ballast mount at that location? So that's --

ATTORNEY RICARDO SOUSA: That would be right here.

TAD HEUER: That's just replacing an existing ballast mount.

ATTORNEY RICARDO SOUSA: It is, that's correct.

TAD HEUER: Okay. And is there a

parapet wall there will, do you know, that it's trying to clear?

ATTORNEY RICARDO SOUSA: I don't believe so. I don't believe there is a parapet wall on this rooftop.

TAD HEUER: Okay. I guess my only question is more in consultation with the RF engineer, you know, perhaps a condition be placed that that antenna be placed, you know, either at the current location or to the extent it can be placed further back on the rooftop without diminishing substantially its effectiveness that that be done. I'm not sure how much we'd gain from doing it. But to the extent that we can pull it back into the interior of the building a bit, given the fact that it's a bulkier antenna would be valuable.

BRENDAN SULLIVAN: How does that work, though, if you're going to maintain existing and then add --

TAD HEUER: I think the question would be if it's a ballast mount, so it's a sled. With the ballast sled you'd simply push the ballast sled back to the extent possible. Right now I think it's right up on the roof, it's right up on the edge.

BRENDAN SULLIVAN: They could still get coverage.

TAD HEUER: And if they can't, fine. But to the extent that they can say we don't lose coverage by pushing it back a bit, because frankly, we have a color --

BRENDAN SULLIVAN: Because we have to attempt that.

ATTORNEY RICARDO SOUSA: Yeah, there are certain considerations, you know, the first of which as Tad suggested is if there is a parapet wall, we want to be able to clear that. Because typically the further we move back, very often we have to go higher. We clearly don't want to do that.

In addition to that, we have to look at it from a structural perspective. It may be in a certain point of the roof that is more structurally sound. And then third if there's no other impediment that would prevent us from moving back, like an HVAC unit --

BRENDAN SULLIVAN: A lot of interference up there.

ATTORNEY RICARDO SOUSA: Correct. Like a skylight or something like that. But we'd be happy to take a look at it. It's a reasonable request.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter at 840 Memorial Drive?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

The Board is in receipt of

correspondence from the Planning Board.

(Reading) The Planning Board reviewed the revised plans for the antenna, case No. 10254 with the improved photo simulations of the proposed installation. The Planning Board does not object to the plans to replace equipment and antennas.

Let me make a motion to replace the existing -- to grant the Special Permit to replace the existing six panel antenna with six panel antennas on the same mounts together with adding nine remote radio heads on the mounts and replacing two equipment cabinets to the Applicant's existing and previously approved wireless communication facility currently operating on the rooftop of the building.

The Board finds that the Applicant complies with the Special Permit criteria set forth in section -- I'm sorry. Let me erase that. I'm jumping ahead here.

The Board finds that the Applicant complies with the wireless communication provisions set forth in Section 4.32.G footnote 49 in the Ordinance where the proposed -- the Applicant's proposed use for wireless communication facility in the 02 Zoning District is permitted by Special Permit.

The Board shall consider the scope of limitations of or limitations imposed by any license secured from the state.

The Board is in receipt of the Applicant's FCC license to provide wireless communications.

The Board shall consider the extent to which the visible impact on the various elements of the proposed facility is minimized.

The Board finds that references of the Planning Board acceptance of the proposal and also the photo simulations show that the

Applicant has minimized the amount of visual impact to the greatest extent.

The Applicant's design minimizes the visual aspect.

The Board finds that because of this particular installation, the Board finds that the proposed replacement will be camouflaged and painted to match the color of the existing building or left in its natural mill color I guess where applicable.

ATTORNEY RICARDO SOUSA: That's true.

BRENDAN SULLIVAN: The Board finds that the proposal is not being erected in a residential district, hence this requirement is not applicable.

The Board finds that the Applicant complies with the Special Permit criteria set forth in Section 10.43.

That the requirements of the Ordinance can be met. Traffic generated or patterns of

access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

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

There would not be any nuisance or hazard, created to the detriment of the health, safety, and welfare of the occupant of the proposed use or to the citizens of the city.

And that the proposed installation will not impair the integrity of the district or adjoining districts otherwise derogate from the intent and purpose of the Ordinance.

The Board grants a Special Permit on the condition that the Petitioner try to relocate the antenna.

TAD HEUER: To the extent possible

the antenna located in the beta sector ballast mounted antenna be relocated if possible in a way that minimizes its visibility from the public way to the extent that doing so will not impede the Petitioner's ability to provide the coverage for which the antenna upgrade is being sought.

BRENDAN SULLIVAN: Second of all, should the proposed equipment be rendered not workable, useless, and abandoned, that the Petitioner agrees to remove said equipment promptly from the building.

That any facade affected by the installation be restored to its natural state prior to the installation of any equipment.

CONSTANTINE ALEXANDER: The visual impact?

BRENDAN SULLIVAN: No, no, I'm just saying about the -- actually, there's nothing being mounted to the building, but should

continue removing anything from the building.

CONSTANTINE ALEXANDER: No, no, in terms of maintaining -- recognizing it's not going to be painted. But maintaining the visual -- the visual appearance of the new equipment, if it becomes discolored, for example, it could become very noticeable.

ATTORNEY RICARDO SOUSA: Sure.

CONSTANTINE ALEXANDER: So maintain it to the state in which it's in when you first installed it.

ATTORNEY RICARDO SOUSA: First installed it, sure.

CONSTANTINE ALEXANDER: And we know that's not going to have a great impact if we stay at that level.

BRENDAN SULLIVAN: Anything else to add?

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(11:00 p.m.)

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

BRENDAN SULLIVAN: The Board will  
now hear case No. 10255, 22 Water Street.

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

CHRISTOPHER KANEB: My name is Chris

Kaneb, 7 Lincoln Lane, Cambridge, and also principal at Catamount Holdings, LLC owner of 22 Water Street in East Cambridge. And I am here with Brian Lawlor from SMMA Engineers and architects for our project, and Louis Miller from Rackemann, Sawyer, and Brewster, our counsel, and also in the audience is David Delaney who is construction manager with the Gutierrez Company who is our development partner on this project.

I know that the Board is -- some Board members have heard this case in the past so we are prepared to discuss it at length, but we also realize that we want to be respectful of your time. I'll give a brief introduction by describing a little bit of the history which is that we've owned the site for several years. We permitted the site originally in 2007 for redevelopment into 392 residential units. It's a multi-family project. We were granted Special Permit from the Planning

Board and also granted a Variance for height as well as a Variance for above-grade parking from this Board in 2007 and then again in 2009. We went back to the Planning Board in 2010 basically with the same proposal with some minor updates to the plans, and Brian will talk about some of those in detail. We got knew Special Permits at that time, and since then we have advanced the drawings significantly. We are now in the final phases of due diligence for our construction loan which we hope to close within a few weeks, and then begin construction very shortly thereafter.

The request tonight is effectively to update the plans that were referenced in our finding in 2009 from this Board. So with that I'd like to turn it over to Brian to discuss the modifications that have been made to those plans.

TAD HEUER: And when you're doing

that, could you particularly focus on the changes to the parking? And the reason I ask is because in the earlier iterations of getting to this hearing tonight representations that were made to the Board were that there was an issue about height and that we had granted the height variance earlier, but that because the height was not changing in the project, other things were changing, that there would be a possibility not to have to move to the formal notice in hearing. In my mind, I'm not quite sure that was accurate because as you point out, Mr. Kaneb, there were two Variances granted. There was one granted for height, now which indeed isn't changing, and I might concede is not relevant to the changes being made below, but then we do have a Variance that was granted for parking. And what you're appearing to suggest that there are changes to our parking changes. It seems to me that

this is the right forum to be discussing a change in use or a change to the Variance because there's a parking question that's coming up. So I'm a bit uncomfortable about the previous representations that it was only about height. I'm glad that you've noted that it is -- corrected that it is about height and parking. But to that point I would like to hear about the parking and how it is or isn't effected by the changes to -- the changes to parking are not affected by the Variance that we granted.

CHRISTOPHER KANEB: Actually, I'm sorry, that was an oversight of mine. You're correct about the parking. In the 2010 Special Permit the Planning Board granted relief for the parking at that time. And so the only relief that we're now seeking from this Board is related to height. It is not for parking.

TAD HEUER: Well, that's

potentially true, but you were granted a Variance in a single case for parking and height. And then you have to come back before us for that Variance. To the extent that parking element may have been superseded by the Planning Board. I'm not quite sure how that would work, but I suppose it could happen. The request is still as to the Variance itself. And the Variance is a package of relief being granted in elements including height and parking, but in the same way that we have other cases that come up, which you've seen this evening, people say I have dimensional relief and I need floor to area ratio, we wouldn't necessarily say you need to come back, you know, and the changes that you've made are just to floor to area ratio. So don't look at your dimensional. As you've heard several times this evening, we look at the whole. To the extent that we granted a Variance as a whole that included

parking, I do think it's relevant that when the changes are being characterized as minor and only relating to parking and not to height, that it really is a change to the project that touches on things that were pointed out in the Variance. So I don't need to go any further on it, but, you know, I would like the focus to be on parking because I do think it's relevant to what we granted previously.

ATTORNEY LOUIS MILLER: The thing is we absolutely never intended to mislead anybody or misrepresent anything we're doing. We're here to mend the Variance. We were told that we didn't need further relief on that, and that's the only reason we didn't bring that up. We're here for amendment to the Variance in any event, and we're glad to discuss with you in any detail you would like all the changes that we're making.

CONSTANTINE ALEXANDER: I think the

key is to focus on the changes that you're looking for tonight. We should know about the prior Variances. We can make our own assessment comparing what we granted before with what you want to do now.

ATTORNEY LOUIS MILLER: I just want to make sure nobody feels we're trying to misrepresent or mislead anybody at any time.

CONSTANTINE ALEXANDER: We understand that.

CHRISTOPHER KANEB: Thank you.

BRIAN LAWLOR: Again, it's Brian Lawlor. I'm with SMMA Architects and Engineers in Cambridge. So, just for initial image of the building, what I'd like to just do is just remind ourselves of the perspective of the project that we reviewed with this Board in 2009, and I'll just show you the current perspective just to show that in fact in terms of the major materials, the major layout of the project, certainly from

this perspective, the project is extremely similar. So the project that was approved, the Variances that were approved by this Board in 2009, the project was 392 units and that is unchanged from the current project. It was a stacked building of 15, 14, and 13 stories. That is unchanged in the current project. And it essentially had these three tower elements and a smaller bar along Water Street itself. And that bar it still exists although dimension of that has changed slightly. And then there is a single level of parking which I'll show you in other plans, but it's essentially -- it's a single above-ground level that is screened by the building, so you do not see it from this perspective. It's essentially in behind the building. So just in terms of visual, I think you can see that there's -- the projects are very -- the project is very similar. In fact, it has foreshortened, and you'll see it

in detail on the plan, but the building in this long dimension here has been reduced by about 36 feet. And the bar here has been extended by about 25 feet. So I'll show you that on plans it's a little easier to read.

So just to look at the -- again, I have some slightly what looks like a larger scale version of this, but hopefully, hopefully this is legible from your seats.

Again, this is the site plan from 2009, and this is the current site plan that we are in front in here which was, again, also approved by the Planning Board with the second Minor Amendment in November 2011.

So looking at again if this represents the residential tower elements, you can see that the overall length is reduced by this 36 feet from here back to here. So there's still the same basic geometry by the building is foreshortened this wing along Water Street again has been extended by 25 feet. So they

are the major changes to the geometry.

We included in our application package a plan that essentially lists all of the changes that have occurred between the original and the current plan. And they are, again, the building, the reduction in the length, the extension in this length here. There's also a change in the access to the site. When the plan -- when this plan was -- when the Variance was approved by the Board of Appeals in 2009, the access was from the North Point site itself. So the concept was that as part of the North Point development, the access to the parking garage would be at this location. When we came back in 2011, it was clear that the North Point development was not going to be ready to provide us access. The Planning Board approved access into our garage in this location. I should point out that the geometry of the garage itself, which is

essentially a single-story structure like so. You're seeing a terrace above. That geometry is essentially unchanged. It's still a single level of parking, but instead of accessing from this end, we're now going to access from Water Street. And, again, that received full review by the Planning Board.

The other changes relate to some very minor changes in the geometry along the edge of the building that respond to the advance of the Green Line extension plans. The other change relative to parking which was, which we talked about a little bit earlier, was there were two levels, two levels of parking in the project. There was one basement level which originally extended below grade or under full extents of the parking garage, and then one level above which was ground floor. So essentially one level above grade. As part of the Minor Amendment to the Planning

Board, we reduced the level of the basement parking. So instead of parking under the full extent, in order to reduce soil excavation, we want to reduce the excavation of urban soils in this end. We were able to reduce it by approximately 7,000 cubic yards by placing 104 spaces that were at the basement level by placing that on the same level as the terrace. So it's essentially on the first floor roof. So you can see the striping and layout on this area here.

So, picture that as being setback again on this single-story above-grade approximately 200 feet from Water Street. So we have the bar that extends. We have the rooftop terrace on the first floor roof. And then behind that, so approximately 200 feet back we have this 104 spaces that are now placed on that first floor roof. And they are below the level of the viaduct. Approximately eight feet below the viaduct.

So I have some layouts of the parking we can go through. But in section -- and I should say in elevation, again, these are the elevations that were reviewed by the Board in 2009. These are the current elevations.

Looking at it from Water Street, we see this bar that is extended, this six-story bar along Water Street. But essentially beyond that they're -- they really are unchanged. You can see the height is completely unchanged. The viaduct is now the design has advanced on the Green Line extension. And we're about -- it's about eight feet above our first floor roof. So we have, again, this parking at this level, the viaduct is above, and all of that parking is essentially screened.

CONSTANTINE ALEXANDER: And what's going on the viaduct, the Green Line extension?

BRIAN LAWLOR: That's Green Line

extension, yeah. So it's up about 32 feet. Well, approximately 32 feet above grade.

CHRISTOPHER KANEB: Excuse me, Brian.

BRIAN LAWLOR: The parking then is then screened -- sorry, Chris, by the building on this side, by the terrace, and by the Green Line extension.

CHRISTOPHER KANEB: I just wanted to point out actually to that question, the one thing that did occur as we were, you know, in the intervening years from the time that we originally secured our permits, was that the Green Line extension advanced their drawings as Brian mentioned, and that had two effects on our property.

One was that the viaduct was actually going to be higher than it had been originally planned. And it's now at the elevation that Brian is describing which is when we had first permitted the project. The viaduct had

planned to be going down to grade by the end of our site, and now it's raised entirely by I think 32 feet.

BRIAN LAWLOR: Yeah. And it's essentially level as it runs passed our site. Instead of -- the original idea was that it would clear Water Street and then it would start to come back to grade. But now it's essentially a horizontally a level run along the extent of our property which is actually better for our project.

CONSTANTINE ALEXANDER: In 50 years from now someone will have the bright idea to put it underground and we'll have another a Big Dig, of course. The Cambridge version of the Big Dig.

CHRISTOPHER KANEB: So that was one change, the viaduct.

The other was also that it will now be encroaching over our property line which had the effect of -- a couple of effects, one of

which was changing the geometry of the garage.

CONSTANTINE ALEXANDER: What's the effect of just basically the desirability of having a unit in there with a train line running outside your window?

CHRISTOPHER KANEB: I mean, we designed the building to accommodate the Green Line being there, and that's one of the main reasons why the living space is a line that side of the lot. The other thing is that, you know, it's being designed -- the units are being designed to accommodate it, so that the installation, the windows are sufficient to mitigate any noise impacts but it is there. And like I said, it's, it's there in a way beyond what we had originally planned for. Didn't mean to interrupt.

BRIAN LAWLOR: Well, I think that's it. In summary we can certainly go through any detail on the parking numbers or parking

layout on each of the floors if that's at all helpful. I can bring this over more closely. But essentially if this is the basement level, I can see that instead of parking over the full basement, we're now limited to this area here. The first floor we have parking throughout, and then on the second floor -- this is a terrace, this is the parking layout, and then floors three and above, you know, we just see the tower elements. We just see the residential elements. I can go through that in more detail.

TAD HEUER: So do you need the GFA, the additional GFA that was granted for parking still?

BRIAN LAWLOR: The -- well, I mean the -- we certainly need it.

TAD HEUER: Right.

BRIAN LAWLOR: Yes.

TAD HEUER: And so what the Planning

Board did was they approved the -- essentially the movement of where the cars would be placed which reduced your need for the, I guess, that's the western portion of the site, GFA basement?

BRIAN LAWLOR: Yes.

TAD HEUER: So you didn't need that space under there because you were using -- your (inaudible) space, is that approximately what happened?

BRIAN LAWLOR: Well, below grade -- so, yes, meaning that that did not count towards GFA when you're below grade. It does count towards GFA when it is above grade. Correct.

TAD HEUER: Right.

BRIAN LAWLOR: And the Planning Board, yes.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Okay. Any questions at this time?

CONSTANTINE ALEXANDER: No, I'm  
fine.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: No.

BRENDAN SULLIVAN: Tim, any?

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Let me open it to  
public comment.

Is there anybody here, Heather, that  
wants to speak on the matter?

HEATHER HOFFMAN: I just have a  
question. Did you get the letter from the  
East Cambridge Planning Team?

BRENDAN SULLIVAN: No. And I was  
sort of looking through for this stuff. Do  
you have it?

HEATHER HOFFMAN: I do not.

CHRISTOPHER KANEB: I have a copy of  
all the correspondence that was submitted.

BRENDAN SULLIVAN: Oh, okay.

HEATHER HOFFMAN: And I'm not here

to represent the planning team. I just wanted to make sure you got the letter.

BRENDAN SULLIVAN: We have the letter.

HEATHER HOFFMAN: Okay then. That says everything that I could possibly want to say.

BRENDAN SULLIVAN: Okay.

We are in receipt of correspondence from the East Cambridge Planning Team. (Reading) Mr. Chris Kaneb attended the April 25th meeting of the East Cambridge Planning Team to discuss with us further the plans for 22 Water Street. He explained that no changes have been made since last year when we discussed the project with him, and his architect and contractor, but that BZA records needed to be updated. The Variance requested in BZA 9762 was apparently granted before the Planning Board approved the above-ground parking and a relocation of some

residential units. These changes were necessitated by the decision of the MBTA to keep the Green Line tracks high, the length of his property. Mr. Kaneb has come to ECPT many times in the course of planning this project and has always worked cooperatively with all of the abutters and with the East Cambridge Planning. We all remain in support the decisions and design changes to the 22 Water Street project which have always seemed reasonable in view of the MBTA's altered plans. With good wishes, Barbara Broussard.

I'm going to enter this into the file anyhow.

There is correspondence from the HYM Investment Group. (Reading) The HYM Investment Group, LLC, owner/developer of the adjacent 45-acre North Point development site has been working closely with Chris Kaneb of Catamount Holdings given the

interaction and proximity of our two sites. Chris has also walked us through the proposed minor changes of the 22 Water Street project. HYM supports and is in favor of the design changes requested by 22 Water Street in this BZA case. This is an important project for the entire North Point PUD District and HYM looks forward to 22 Water Street moving forward with his project. Sincerely,  
Douglas Manz, M-a-n-z, Director of Development.

Okay, that's -- do you have something there?

CHRISTOPHER KANEB: This was submitted on behalf of another abutter.

BRENDAN SULLIVAN: There is correspondence from Rich McKinnon of the McKinnon Company. (Reading) I'm writing to you on behalf of Archstone North Point, a neighboring PUD to your 22 Water Street project. We enthusiastically support your

reapplication to the BZA this month. Please feel forward to forward this letter to the BZA as party of your application package. I will do the same in the morning. Best wishes. It's a beautiful project. Signed Rich McKinnon.

And I think that is it.

CHRISTOPHER KANEB: You have the Planning Board letter?

BRENDAN SULLIVAN: Well, yes. On the letterhead of Planning Board. (Reading) The Planning Board recommends the granting of the height variance as outlined in this application. The Planning Board has reviewed the residential proposal in North Point and finds that the changes to the plans to be improvements and refinements that occurred during the development of a project this size. The Planning Board PB No. 247 and the accompanying Minor Amendment unanimously and continues to support the development.

The copy of the Planning Board's comments is attached.

There is a quite a lengthy letter which the Board will incorporate as part of its decision. (Reading) During the public review process the Planning Board concluded that the request for the addition height was acceptable and reasonable and acknowledge that the permittee would need to seek relief for the additional height from the Board of Zoning Appeal. The oddly shaped lot abuts the future rail viaduct embankment which is likely to be on the order of 14 feet in some parts, a difficult neighboring use for a residential project to overcome lowering the height and spreading the building out. Over more the site brings more of the living space in closer proximity to the negative feature. The Planning Board supports the applicant's request for relief from the height limitations based on the quality of the

design that has been developed. Its faithfulness to the objectives of the North Point District and the minimal impact the additional height will have on abutting properties and more distant East Cambridge Community.

And we will incorporate that correspondence as part of our findings.

Anything else?

Anything else to add, delete?

ATTORNEY LOUIS MILLER: Only one question just to deal with the same issues that we're dealing with now. We're very far along in our plans. We're hoping to close within the next couple weeks. We certainly don't anticipate any major changes. There are a few minor changes, that for example, the Planning Board has delegated to the Traffic Department. I'm just wondering how this Board -- if any minor changes that we make in the plans that we've submitted to you today,

how you want to deal with that? Do you allow us any flexibility? At one point do we have to come back? At what point don't we have to come back?

BRENDAN SULLIVAN: You don't want to have to come back.

ATTORNEY LOUIS MILLER: We're just trying to deal with it now. As I said, we don't -- there's nothing that we anticipate. We're very far down along the line.

BRENDAN SULLIVAN: Once you read must be in conformities.

ATTORNEY LOUIS MILLER: We ran into the issue, we went back and forth, as you well know and we're here and we fully accept it and all the rest of it, but --

CONSTANTINE ALEXANDER: But, Mr. Chairman, in view of this is a more complicated project than a typical residential structure. I think we can talk about substantial compliance with the plans

they submitted to us tonight. And if we're talking about minor things, you won't have to come back before us. I think to be absolutely precise, they have to be exactly these plans for a project of this scale, and what we're looking at in my mind is not realistic. I would suggest that as the approach that would solve the problem.

BRENDAN SULLIVAN: Fine.

Anybody have any problem?

TIMOTHY HUGHES: I've always thought substantial compliance was the way we should go on all projects not just the big ones.

BRENDAN SULLIVAN: Now, who shall be arbiter of substantial?

TIMOTHY HUGHES: Yes, you know.

CONSTANTINE ALEXANDER: That's their problem frankly.

TIMOTHY HUGHES: Good question.

ATTORNEY LOUIS MILLER: I don't have

to write the opinion.

TAD HEUER: Well, I mean, it's not really their problem, right, because Legal comes back and asks us.

CONSTANTINE ALEXANDER: No, no. When they get to pull the Building Permits, the Inspectional Service can say these plans are not within substantial compliance. And they'll have to come back before us and convince us that they are.

BRENDAN SULLIVAN: Shall we throw it into the Commissioner's lap and let him be the final arbiter as to --

SEAN O'GRADY: I would argue against those terms in any other case, but --

BRENDAN SULLIVAN: Yes, yes, I know. This is a work in progress.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: I think it's a difficult site, and it's a nice building, and I think that the tweaking and the engineering

and everything poses problems.

So, Tom, what are your -- being an architect?

THOMAS SCOTT: Well, I was just noticing that --

BRENDAN SULLIVAN: Knowing that architects like license. Require license.

TIMOTHY HUGHES: That's what the eraser is for, right?

THOMAS SCOTT: The two renderings, the balconies seem to disappear from one to the other, that seem to be kind of a major change. And I was just --

BRIAN LAWLOR: There's a change in the.

DAVID DELANEY: I think the amount of them. There's definitely a change. And one of the reasons it's so noticeable is the desire to keep this as a clean curtain wall look and leave it from any of the balconies which, as far as contractibility is concerned

were challenged anyway, and the design, the cleaner look is what the architect wanted to.

CONSTANTINE ALEXANDER: You've got a good eye. I didn't notice that.

BRENDAN SULLIVAN: Okay, anything else? Are we still talking about 392 units? Are we still talking about a small cafe, is that still in the works?

CONSTANTINE ALEXANDER: You're talking about smaller height, too. You're reducing the height is from what we looked at originally?

CHRISTOPHER KANEB: The height is unchanged.

CONSTANTINE ALEXANDER: I thought I saw in one of your submissions? No?

BRIAN LAWLOR: The length.

BRENDAN SULLIVAN: And 351 parking spaces? Is that the right number?

CHRISTOPHER KANEB: Yes.

BRENDAN SULLIVAN: Okay. Let me

make a motion to grant the Variance for the relief sought in order to construct the multi-story residential condominium building above the height allowed with 392 units and 351 parking spaces. Two level parking garage?

BRIAN LAWLOR: I think we should say --

BRENDAN SULLIVAN: And a parking garage with significant open space as previously granted in BZA case No. 9530. Based on the finding that the current project is identical or should we say substantial compliant? In substantial.

CONSTANTINE ALEXANDER: It's not identical.

BRENDAN SULLIVAN: No. In substantial compliance to the previous case project where extensive findings were made and supported the granting of that Variance.

The Board also notes the revised

Planning Board findings as incorporated in the application, and their determination that there was Minor Amendments -- that the Minor Amendments are changes that do not alter the concept of the PUD in terms of density, floor area ratio, land usage, height, provision of open space, or the physical relationship of elements of the development.

The Board finds that there is substantial financial hardship that flows from the unusual aspects of this project; namely, the soil conditions, the shape of the lot, and the need to comply with various requirements of the Planning Board and the Transportation Department.

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

The Chair will move that the Board finds that the project has been extremely well

vetted in the community, and has the support of both the city and the neighboring.

Let me make a motion that the Board finds that the project is consistent with the North Point development overall.

The Chair will move that the Board will grant the Variance on following condition:

That the work proceed in substantial compliance with the revised drawings as submitted in this application, initialed by the Chair.

And that all of the findings of the earlier case in No. 9530 be incorporated verbatim into this decision with the minor exceptions as noted, and so that those findings will apply to this case as well.

Anything else?

CONSTANTINE ALEXANDER: I think it's good.

CHRISTOPHER KANEB: Can I just note one thing? That it is going to be apartments

not condominiums.

BRENDAN SULLIVAN: Sorry, change  
condos to apartments.

Anything else?

ATTORNEY LOUIS MILLER: Thank you  
very much.

(Show of hands.)

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

BRENDAN SULLIVAN: Five in favor.

ATTORNEY LOUIS MILLER: Thank you  
very much.

(Whereupon, at 11:30 p.m., the  
Board of Zoning Appeals  
Adjourned.)

## **ERRATA SHEET AND SIGNATURE INSTRUCTIONS**

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**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

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

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

this matter.

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

**IN WITNESS WHEREOF**, I have hereunto set my hand this 23rd day of May 2012.

---

Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
License No. 147703

My Commission Expires:  
April 23, 2015

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