

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, OCTOBER 13, 2016
7:00 p.m.

in

Citywide Senior Center
806 Massachusetts Avenue, First Floor
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Brendan Sullivan, Vice Chair
Janet Green, Member
Andrea A. Hickey, Member
Patrick Tedesco, Member
Douglas Myers, Associate Member
Slater W. Anderson, Associate Member
Jim Monteverde, Associate Member
Laura Wernick, Associate Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:00 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And as is our practice, we'll start with the continued cases. These are cases that we started at an earlier session, but for one reason or another have continued until tonight. And before we get into the actual merits of case, I would like to announce that after notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium, subject to reasonable requirements at the Chair may impose at to the number, placement, and operation of equipment used so as to not to interfere with the conduct of the meeting.

At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made. And I wish to inform those of you in the audience that a recording is being made. A citizen has left

his tape recorder there. And in addition, our stenographer also makes a recording to help her when she types up the minutes of this meeting, what happened at this meeting. So be apprized.

With that, I'm going to call the first case.

* * * * *

(7:00 p.m.)

(Sitting Members Case BZA-010755-2016: Constantine Alexander, Brendan Sullivan, Patrick Tedesco, Douglas Myers, Laura Wernick.)

CONSTANTINE ALEXANDER: I'll call case No. 010755,
130 CambridgePark Drive.

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

Sirs. As you know, give your name and address to the stenographer.

KEVIN MURRAY: Hi. My name is Kevin Murray.

DAVID HALL: David Hall from the Hanover Company. He's also from the Hanover Company.

Do you need an address?

KEVIN MURRAY: Good evening, members.

CONSTANTINE ALEXANDER: Good evening.

KEVIN MURRAY: It's good to see you again. I'm a little bit more prepared than I was last time.

CONSTANTINE ALEXANDER: If it's good to see us again, it depends on what we're going to do tonight.

KEVIN MURRAY: I think you have a copy of this.

The last time we spoke we were applying for a signage Variance. We were applying for height, size, and illumination. And we -- after we had the meeting, we had

some recommendations, I believe, it was from you, sir, investigating halo lighting. So we investigated that. We liked the look of that, and proceeded to change the design to have the halo lighting. And the CDD and Planning Board have told me that that is considered external lighting which no longer requires a Variance.

CONSTANTINE ALEXANDER: So that part of your application is being withdrawn.

DAVID HALL: Withdrawn, yes, sir.

KEVIN MURRAY: Yes, sir.

And so we are now seeking to have a Variance in height and size alone.

So on the second page you can see -- perhaps we can have a look at it while we're talking about it. The Variance says -- well, the Ordinance says it can't be more than 13 square feet. The actual size is 59 square feet. And that was calculated from the top to the bottom just using a rectangle, calculate that.

It can't be more than higher than 20 feet. And the bottom of the signage is mounted at 24 feet and extends two feet total up to 56 feet. The building height has an average of 70 feet, and with this fin actually projected a little bit higher than that.

As I mentioned, we removed -- that halo type, the internal illumination, so we have a solid face and it's now halo lit. And some of the dimensions are on that second page talking about the square footage.

So just to recap, our original Special Permit proposed signage had -- on the Special Permit that was approved had -- it was mounted higher on the building and the letters were much larger, and it had that internal illumination aspect to it. And we then met with the different interest groups, the residents, and spoke and had conversations with them. And in doing so, decided to lower the signage, as you can see on the next page, and make the lettering smaller. So we reduced the square footage and we

brought the 130 numbering down lower, instead of having it higher, so that it was more visible from a passing car.

And the next page just shows that halo lighting. And it's a rendering, but it shows how it's softer.

And then the following page, this is just an example of what a halo light -- lit sign looks like so you can understand what that looks like.

Let's talk about the last page which is our location, and I think this is critical to the actual Variance application. And as you can see, 130 is the red block on the map. We are bound off of CambridgePark Drive. We have no frontage or abutting on CambridgePark Drive, which is a public right of way. We're back behind 100 and then a future 88 building which will block any visibility from Alewife Brook Parkway. So in order to have any visibility on CambridgePark Drive, we have this small glimpse of visibility through that drive lane over the Vecna fence.

DAVID SMALL: Mr. Chairman, could I pass this out?

CONSTANTINE ALEXANDER: Sure.

DAVID HALL: This is another....

This is an aerial photograph.

PATRICK TEDESCO: Could I have one?

DAVID HALL: Sure. I didn't mean to interrupt
you.

KEVIN MURRAY: No, it's a good map.

DAVID HALL: I didn't mean to interrupt you,
Kevin.

This is an aerial map superimposed with renderings
of anything that's not built yet. So this is the fully
built out CambridgePark Drive. I think it's kind of a neat
view of things. But for the purposes tonight, you can see
where 130 is labelled and how it is quite boxed in if you
will.

Mr. Chairman.

CONSTANTINE ALEXANDER: That's okay, I can look

on.

DAVID HALL: Okay, fine.

And you can make out the little red fin or, you know, the red fin, the feature on the building. It was architecturally placed there for this soul purpose to give that glimpse out to CambridgePark Drive. There's really no other way unless you're on an MBTA commuter rail train to see the building from any public way. So I thought this was a helpful addition from your perspective.

I'd be happy to answer questions on that.

KEVIN MURRAY: So I think that recaps where we stood last time. We made some revisions and we --

CONSTANTINE ALEXANDER: And we should just go through the requirements of the Variance you're seeking.

Enforcing the sign by-law as it's written, would involve a substantial hardship to you. Such hardship being?

DAVID HALL: Lack of visibility.

CONSTANTINE ALEXANDER: Lack of visibility.

Given your location of the lot and structure of the lot set so far back from the CambridgePark Drive.

DAVID HALL: Correct, sir.

CONSTANTINE ALEXANDER: So that it's very difficult to find 130 without any identification --

DAVID HALL: That's right.

CONSTANTINE ALEXANDER: -- on CambridgePark Drive.

DAVID HALL: That's right.

CONSTANTINE ALEXANDER: That the hardship is owing to basically the location of the lot. We just covered that.

DAVID HALL: Right.

CONSTANTINE ALEXANDER: And it's your view that the relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the Ordinance.

In this regard you have Planning Board approval? You did have for the original plan as I recall. Did you

show these plans -- not that you need to because this is, in my view, better.

DAVID HALL: Yes, Mr. Chairman. I'll testify that they've seen this. They never talked about it in their deliberations. What we were asking for was other changes, minor changes to the massing of the building.

CONSTANTINE ALEXANDER: Right.

DAVID HALL: But the newer renderings before the Planning Board --

CONSTANTINE ALEXANDER: Did you bring it to their attention though?

DAVID HALL: I wouldn't testify that we focused on signage at all. But they saw the new lettering.

CONSTANTINE ALEXANDER: Again, they saw the old ones.

DAVID HALL: And they approved the old ones, yeah. The old ones were originally approved before we bought the building.

KEVIN MURRAY: The Special Permit was obviously approved by the Planning Board. And then we also had a signage meeting with them as well, which they seen the previous application, the same one that you saw, which they had approved by majority.

CONSTANTINE ALEXANDER: Right.

KEVIN MURRAY: And that brought me to your table.

CONSTANTINE ALEXANDER: Okay.

DAVID HALL: And planning and development. CDD was very involved.

CONSTANTINE ALEXANDER: Right.

Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'm going to open the matter up to public testimony.

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

Mr. Brandon.

MICHAEL BRANDON: How you doing, Mr. Chair?

Good evening are members of the Board. My name is Michael Brandon. I live at 27 Seven Pines Avenue in North Cambridge. I'm the clerk for the North Cambridge Stabilization Committee which has discussed this proposal, although we have not been able unfortunately to have a monthly -- one of our monthly forums where the proponents could present and answer questions that we've mailed to them.

I also unfortunately wasn't able to attend the first part of this continued hearing, but I want to join with -- I see that several members of the public thanked the Board and I thank -- I echo that for your ongoing scrutiny of sign variances which, you know, have come before you many times, and especially for your astute questions about this specific proposal. I did, late this afternoon send a list of questions to followup on some of our previous ones, and I don't know if that made it into your file.

CONSTANTINE ALEXANDER: I got a copy tonight. It made it to my file five minutes before the hearing began.

MICHAEL BRANDON: Okay. Here are copies for the Board. If you like, I can run through them.

CONSTANTINE ALEXANDER: Well, let me ask you -- let's cut to the chase, Mr. Brandon. How meaningful are these questions, the answer to these questions? You've seen this revised sign proposal.

MICHAEL BRANDON: Right.

CONSTANTINE ALEXANDER: You saw the original one, which we were very skeptical about. They have come back, they've solved the illumination problem. There's no relief for illumination, which I think was the main concern of this Board at the prior hearing. And they've reduced the size and the height of the sign and they put forth, I think, a cogent reason why they need these reduced signs that go beyond the requirements of the Zoning By-law.

So why should we not grant relief? Let's cut to

the chase.

MICHAEL BRANDON: Well, I mean I could talk about the legal arguments.

CONSTANTINE ALEXANDER: All right, talk about the legal argument. Whatever argument you want to talk about.

MICHAEL BRANDON: Some of our questions are about the actual proposal. For instance, it's not absolutely clear to me that this is just a one-sided sign that faces CambridgePark Drive and won't be visible from say the Alewife overpass, the high rises, the Rindge, so-called Rindge Towers.

CONSTANTINE ALEXANDER: Let's suppose they are. I think this gentleman --

DAVID HALL: It's impossible. I don't see how -- it's blocked out, Mr. Chairman, and Michael, by 88 CambridgePark Drive. And if you saw the edge of the lettering with the halo shining on the edge of the lettering, it's up against the building, Michael. It's

flat.

MICHAEL BRANDON: So it's one -- the lettering is just on one side.

DAVID HALL: Yes, sir, yes, sir.

KEVIN MURRAY: One side facing CambridgePark Drive.

MICHAEL BRANDON: That's helpful.

We also, as board members raised other issues, although you ultimately focused on the illumination issue, and by the way, in our group explained -- because we had requested, also, replace the lettering with so-called halo lighting that conforms with the Ordinance and will be less obtrusive. So that's helpful. And we appreciated that.

DAVID HALL: Thank you.

MICHAEL BRANDON: It's not clear to us still, although David gave me a quick answer about why a sign cannot be posted at the private driveway entrance.

CONSTANTINE ALEXANDER: I think they spoke to

that. Maybe you weren't here. You can speak to it again.

DAVID HALL: Yes, Mr. Chairman.

Mr. Brandon, we have no legal right to any of the property out on CambridgePark Drive. It would be at the will and the whim of another property owner to grant an easement. We have asked. It's been a rather abrupt no for various reasons, but I'm not sure why any property owner would desire to advantage us in any way. You know, and we're not gonna pay a king's ransom for it. And, you know, we've asked and it's been answered. And Mr. Brandon's asked "How hard did you ask?" Well, we asked a couple times, they said no.

MICHAEL BRANDON: There was one property owner, I think you said, 100 CambridgePark. And --

DAVID HALL: 100 Cambridge -- we had discussions with 150.

MICHAEL BRANDON: What about 150?

DAVID HALL: They don't have land that's suitable

and that would fit, and what's the name of the company?

Vecna. Vecna, likewise, it just wouldn't be in front of our property. It wouldn't be logical where the sign would go.

And they're not gonna grant it. I didn't ask them specifically. I -- they don't return phone calls. But I, you know, to look at it there's no place on the Vecna property where it would go.

MICHAEL BRANDON: Or the BRE, you know, the other property.

KEVIN MURRAY: That's 100.

DAVID HALL: That's 150.

MICHAEL BRANDON: Who owns that now?

DAVID HALL: That's owned by C.B. Richard Ellis.
And we've asked them.

KEVIN MURRAY: There's no property there.

DAVID HALL: There's just no land it's so narrow.
And I don't think Traffic, Parking and Transportation would think it makes any sense.

MICHAEL BRANDON: I wonder why this wasn't raised before you purchased the property and try to work it out then perhaps with the folks you bought it from.

DAVID HALL: Mr. Chairman, through you, might I just say we didn't quite realize what the Planning Board had approved --

CONSTANTINE ALEXANDER: That would have been my guess, is that you didn't focus on the fact that the sign --

DAVID HALL: We were thrilled with what was on the buildings and the plans the Planning Board approved and we didn't quite realize that we needed a Variance, and here we are. Here we are.

MICHAEL BRANDON: I guess I would ask if you're -- well, another point that I raise was that 88 CambridgePark Drive, which is a large multiuse, primarily residential project, going on immediately across this driveway, it seems to me has the same limitations as far as a view from CambridgePark Drive proper that this does. So

that raises the question of is this indeed a unique situation that would qualify for a Variance, you know.

CONSTANTINE ALEXANDER: It doesn't have to be unique, Mr. Brandon. As you well know, since you're experienced in zoning matters. That property may have a hardship just like these folks do with regard to the location and the structure on the lot. So, I don't, I think that's a false test. It's got to be unique for them.

MICHAEL BRANDON: Well, I'm talking about the second element.

CONSTANTINE ALEXANDER: Right.

MICHAEL BRANDON: I could pull it out and read it, but it talks about that it affects this property as opposed to other properties in the district. And I know last time the Board talked about precedence and there are other properties on the avenue that --

CONSTANTINE ALEXANDER: But our concern that we expressed at that time with regard to precedent related to

illumination. Most, if you go back and read the transcript, most of our commentary, the critical commentary that came from the Board, was with regard -- the original proposal for illumination. That's off the table. The fact all they want now is setback as far as they are from CambridgePark Drive, they want a bigger sign and a higher sign. It's not as big or as high of what they originally came before us with, but that's what they want.

MICHAEL BRANDON: I understand, Mr. Chair, that those issues were discussed. Had I been here, perhaps I could have persuaded you to further address them before now.

But the main concern that we -- well, two other points:

One is that we strongly believe that the city departments should be looking at this range of uses that are off that corner.

CONSTANTINE ALEXANDER: That's not for us. We don't -- talk to the other departments. I mean, that's not

relevant to whether we should grant a Variance tonight.

MICHAEL BRANDON: Well, I think it is if we're talking about setting -- you talked about setting precedence.

CONSTANTINE ALEXANDER: From a Zoning point of view. From a Zoning point of view. If traffic -- by a hypothetical, if Traffic and Parking is not doing their job in your opinion or in your group's opinion, take it up with Traffic and Parking. We're not going to deny relief, assuming we want to do that, simply because we think Traffic and Parking didn't do its job.

MICHAEL BRANDON: Well, I'm not saying it's necessarily Traffic and Parking.

CONSTANTINE ALEXANDER: It's a hypothetical.

MICHAEL BRANDON: The planning failure on the part of the City. Okay?

CONSTANTINE ALEXANDER: Okay, fine. Thank you.

MICHAEL BRANDON: Not to focus on specifically

who, and in fact arguably one of the City's boards, not this one. But, you know, who -- certainly things have been overlooked in terms of details. And I know several of you, I think, and Mr. Sullivan and perhaps other members, did raise the -- make clear your preference was for some sort of a sign, a directional sign on that intersection. And I don't know, maybe the solution or it might help the solution if the Board communicated with the City Manager that this is an issue, because the plan is for a bicycle and pedestrian bridge to be built over the tracks there and so there's gonna at some point gonna have to be some solution.

CONSTANTINE ALEXANDER: I will take your suggestion under advisement. Thank you.

Move on to your next point.

MICHAEL BRANDON: Okay. Just if it were, if that happened, it would be better to work it out now because perhaps it could include directions to this building and adjacent or, you know, 130 through 188, whatever down here.

And the City has even -- the City I know has posted in places directional signs to institutions, and I don't know what that position is.

CONSTANTINE ALEXANDER: Mr. Brandon, you're not listening to me. That's not our job. If you have these suggestions, bring it to the Board.

MICHAEL BRANDON: Last point. Lest I further try your patience.

CONSTANTINE ALEXANDER: You're doing a good job.

MICHAEL BRANDON: I know, I know. I've done that before.

Last point I'll make is: The wording of the sign they want to use, in my opinion, is a branding sign. It's the Hanover. It's a huge outfit. They have another building on CambridgePark Drive, and the sign that was approved, although it wasn't discussed as part of the Planning Board Special Permit, shows something that I would argue is substantially different from what was approved from

them at that time. So I would propose that the wording, if you grant this Variance, be altered to go back to what was shown and which is the actual address, has less chance of creating confusion with the other Hanover building.

Dimension of Alewife could be confused with Alewife Brook Parkway, No. 130 if people are looking on Google and so forth. And that whole area was recently renumbered to try to eliminate the confusion. So I guess that would be our last suggestion was that you explore the idea of going back to 130 CambridgePark Drive or 130 CPD or naming the building something less like a corporate brand.

Thank you very much for your patience.

CONSTANTINE ALEXANDER: You're welcome.

Anyone else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: I see no one else wishes to be heard.

As I mentioned, that we do have, there was a

letter of objection in our files to the previous proposal. Actually, it was in support from Carol O'Hare. I'm not going to read it into the file.

And then there was also the commentary from the Planning Board that was generally supportive, again, including the illumination which has now disappeared. Beyond that, there is no other commentary.

So I'm going to close public testimony.

Any final words you want to say to us?

DAVID HALL: No sir.

DOUGLAS MYERS: Questions from the Board at this point?

CONSTANTINE ALEXANDER: Sure.

DOUGLAS MYERS: May I ask the applicant to answer the question raised by Mr. Brandon? It's repeated in the last bulleted paragraph of Mr. Brandon's handout about why if it's true, as I take that it is, why the writing on the sign was changed from 130 CambridgePark Drive to Hanover?

DAVID HALL: Oh, so the branding question?

DOUGLAS MYERS: If you would respond to that.

DAVID HALL: Well, that's the name of the project.

As a convention nationwide, Hanover fairly recently has taken up the convention of naming our project Hanover-something. The name could change at any time if it were sold to another entity.

All of our competitors have a name. So people directed to the projects, and I'm not talking about just ours, but all of our competing projects have a name. On the street there's Windsor CambridgePark. There is Fuse. There's several others.

KEVIN MURRAY: Vox on 2, Atmark.

DAVID HALL: Vox on 2, Atmark. These are all Cambridge projects all in the vicinity. And when one shows up for the first time unfamiliar to the area, one is generally coming to the name of the project they've either seen on the internet, on the websites, or had an interaction

with a leasing agent on the telephone, come to Hanover Alewife at 130 CambridgePark Drive.

DOUGLAS MYERS: So it's the name of the building?

DAVID HALL: It's the name of the building.

DOUGLAS MYERS: Hanover Alewife.

DAVID HALL: Yes.

But it could be the ABC Apartments, sir. It doesn't have to be Hanover. That's what we choose to name it. I don't think this Board gets into what the name is, right? That wouldn't be your jurisdiction, but -- and I ask you to opine, Mr. Chairman.

CONSTANTINE ALEXANDER: Well, I was going to make an observation. I think I'm right about this. When people often, particularly members of the audience, talk about this sign is wrong because it's branding, it's advertising.

DAVID HALL: Right.

CONSTANTINE ALEXANDER: It's my understanding that Supreme Court said it's un-Constitutional for a community to

prohibit signage that advertises. It's free speech. It's covered by -- this case came up 20, 30 years ago involving billboards, and I think actually Cambridge was trying to ban billboards, and the courts struck it down. So even if they are branding, which I think Mr. Hall answers that they're really not, I don't think we can say that we can't -- your Variance was denied because we're not going to allow branding in the city. You should keep that in mind. Not only for this case but for future signage cases.

DAVID HALL: And likewise, Mr. Chairman and Members, we'd like instruction from you if the name ever changed, so long as we stay with the parameters of what you approved dimensionally, height-wise --

CONSTANTINE ALEXANDER: We're not passing on the lettering or the names --

DAVID HALL: Right.

CONSTANTINE ALEXANDER: -- we're passing on the size --

DAVID HALL: So the name could change so long
as --

CONSTANTINE ALEXANDER: Absolutely.

DAVID HALL: Thank you, sir.

CONSTANTINE ALEXANDER: But if you illuminate the
sign, you have to come back.

DAVID HALL: I think we picked that up.

KEVIN MURRAY: Not.

CONSTANTINE ALEXANDER: We don't get into that.

DOUGLAS MYERS: So my second question.

CONSTANTINE ALEXANDER: Yes.

DOUGLAS MYERS: Is why is -- how did you come to
the actual determination that where the limit of the
Ordinance is a maximum of 20 feet above street level, ground
level, that you would top out at 56 feet? How did you come
to that determination?

DAVID HALL: I'll ask Kevin to answer that. I'm
not sure.

DOUGLAS MYERS: As opposed to some other number that might be adequate for your purses?

KEVIN MURRAY: If I'm understanding the --

DOUGLAS MYERS: If you're not understanding the question, ask me to repeat it because I want my question to be understood.

KEVIN MURRAY: Can you explain it to me?

DOUGLAS MYERS: I said how did you come to that determination?

CONSTANTINE ALEXANDER: Why is it 40 feet and 42 feet?

DOUGLAS MYERS: Why top out at 56 feet?

CONSTANTINE ALEXANDER: What's the magic of 56 feet is the question I think being asked of you.

KEVIN MURRAY: I think the designers used the bottom of the fifth floor, that floor level as the height for the edge to start out.

CONSTANTINE ALEXANDER: It strikes me as a design

feature.

DAVID HALL: I think it's design, yes, sir.

CONSTANTINE ALEXANDER: It's design. If you did it according to height, the design would be off, the symmetry would be off.

DAVID HALL: It's the relation of the size of the letters, the spacing between letters, and fitting them --

KEVIN MURRAY: The width of the sign.

DAVID HALL: And the width, that's what I was about to say. And fitting on the fin, and getting smaller because you objected to the original size. So there's some arbitrariness about how small and how, you know, I think so it looks good. Sorry to be so crude, but the designers took care of that and we just told them it needed to get smaller.

CONSTANTINE ALEXANDER: Any further questions?

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: I would think that the main consideration on that aspect would be that the further you

get away from the building, albeit standing on CambridgePark Drive, that possibly the higher, you'd have to go up on the building and possibly more stretched it has to be. So it's a visual as well as -- I mean, aesthetics on the building, but its functionality and whether that form at a lower level and smaller sign will have any function.

DOUGLAS MYERS: Would be visible from the --

BRENDAN SULLIVAN: Right. So the form has to have a function. And if it were less, it would probably not have a suitable function.

KEVIN MURRAY: Yeah, I think that's accurate. And I think that, you know, I took some pictures today, you know, as you're driving down CambridgePark Drive, there's fencing and so forth. And if you look at the way they position 130, it's captured right above where that fencing would block.

CONSTANTINE ALEXANDER: Let Mr. Brandon see as well.

DAVID HALL: It's the logic of where it starts.

KEVIN MURRAY: That's where it starts.

DAVID HALL: You can have that.

MICHAEL BRANDON: Thank you.

KEVIN MURRAY: And the spacing and the sizing to
56 feet.

PATRICK TEDESCO: But I think you've shortened the
name as well. There are fewer letters.

DAVID HALL: We should have mentioned that. We
are indeed.

CONSTANTINE ALEXANDER: Thank you for mentioning
that.

BRENDAN SULLIVAN: As I said on the initial
hearing on this, there are three functions to a sign:

One is way finding, the other one is advertising,
and the other one is branding. And in doing some further
research, that's one of the benefits of a continuation where
even though we do prepare the cases and we have initial

questions and concerns and hash those out, that a continuation will allow us to step back and also to walk around the property a little bit more over the intervening couple three weeks and also to do a little research. And, yes, it's that last part where advertising/branding and there's that fine line. When is advertising branding? When is branding advertising or when is it just out and out as you have said corporate testosterone where they just want to throw their name out there ala Trump Tower. If you let that pass. But anyhow, you know, and just glitz and all that other stuff. So, at any rate, you're absolutely correct in that courts have found that advertising/branding is a very, very fine line and cannot be disassociated as one or the other. So -- and but, again, in the intervening couple of weeks to walk around it and actually say, yeah, there's, this probably needs something and I think what you have come back with as far as I'm concerned I think works as opposed to the initial one that did not.

CONSTANTINE ALEXANDER: Thank you.

Anyone else have a comment or ready for a vote?

I think we're ready for a vote.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that given the location of the lot and the structure of the lot, that unless there is a larger than sign permitted by our Zoning Ordinance, signage won't work in so many words. It's necessary to have a sign of this size and this height.

That the hardship is owing to the location of the lot being set back considerable distance from CambridgePark Drive.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially

derogating from the intent and purpose of the Ordinance.

In this regard the Chair would note that there appears to be no real active opposition to what is being proposed.

The Planning Board at least seems to have no problem with the proposal that's being made tonight. And that the proposal tonight is responsive to comments made by our Board at the original hearing.

So on the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans submitted by the petitioner with regard to the revised signage and initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Tedesco, Myers, Wernick.)

CONSTANTINE ALEXANDER: You need one more vote. I

should have done that first.

The Chair moves that we accept the petitioner's proposal that its request for a Variance based on illumination be withdrawn.

All those in favor of that please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Tedesco, Myers, Wernick.)

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-011097-2016: Constantine Alexander, Andrea A. Hickey, Patrick Tedesco, Slater W. Anderson, Jim Monteverde.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011097, 2 Bedford Street.

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

MING-LUN TUNG: Yes.

CONSTANTINE ALEXANDER: Hello.

MING-LUN TUNG: Hi.

ERIN TROY: Hi.

CONSTANTINE ALEXANDER: Before you start, I assume those plans you're bringing up here are the same ones in our file?

MING-LUN TUNG: That's correct.

ERIN TROY: Yes.

CONSTANTINE ALEXANDER: Name and address, all of you, for the stenographer.

CHRISTOPHER GULLY: My name is Christopher Gully.
I live at 65 Chelsea Street, apartment 205, Boston,
Massachusetts.

ERIN TROY: Erin Troy at 12 Alton Place, apartment
6, Brookline, Massachusetts, 02446.

MING-LUN TUNG: Pardon me. Ming Tung, 12 Alton
Place, apartment No. 6, Brookline, Massachusetts, 02446.

CONSTANTINE ALEXANDER: Floor is yours.

CHRISTOPHER GULLY: Well, we came back with
numbers that clarify where we left off.

CONSTANTINE ALEXANDER: Yes.

CHRISTOPHER GULLY: So we'd like to present to you
the numbers.

CONSTANTINE ALEXANDER: Yes, please do.

CHRISTOPHER GULLY: What we have is a new home
that is 1338 square feet. The old home was 1203 square
feet. So it is a little bit larger.

CONSTANTINE ALEXANDER: Your GFA is going to go

from currently 1.07 -- no, 0.06. And if we grant you relief, it will go to 1.17 in a district that's not supposed to be more than 0.75. That's the reason you're here before us tonight.

CHRISTOPHER GULLY: Right.

CONSTANTINE ALEXANDER: That, plus setbacks.

It's my understanding that the location of the structure you're going to build does not intruded into any of the setbacks beyond what's there now.

CHRISTOPHER GULLY: Correct.

CONSTANTINE ALEXANDER: Using the same footprints?

CHRISTOPHER GULLY: On the exact same footprint, right.

SEAN O'GRADY: Can I ask just a question here?

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: There's a deck at the second level?

CHRISTOPHER GULLY: Correct.

SEAN O'GRADY: Did you count the area under the

deck as FAR?

CHRISTOPHER GULLY: We did not count area --

MING-LUN TUNG: It's the carport.

SEAN O'GRADY: It's a carport?

CHRISTOPHER GULLY: It's an existing carport.

MING-LUN TUNG: It's an existing carport. I can
show you.

SEAN O'GRADY: No, no, I just looked and didn't
see any -- didn't see it there, so I wasn't familiar with
it.

CONSTANTINE ALEXANDER: Thank you for the
question. Okay.

And the hardship being?

CHRISTOPHER GULLY: The home that is there is
condemned currently and it's -- we've looked at it with
engineers, myself, a builder in detail and the basement's
literally collapsing in itself and the whole thing's out of
square by many, many inches.

CONSTANTINE ALEXANDER: The big difference between the case tonight and the case last time you were here, was you had miscalculated the gross floor area because you were counting the basement.

CHRISTOPHER GULLY: Correct.

CONSTANTINE ALEXANDER: And under the Brady petition?

PATRICK BARRETT: Barrett.

CONSTANTINE ALEXANDER: Barrett petition, you don't count that and that makes your numbers a lot better than they were before.

CHRISTOPHER GULLY: Right.

CONSTANTINE ALEXANDER: And that structure it's going to have solar panelling?

CHRISTOPHER GULLY: It is. It is going to have solar panels that will provide 12,000 kilowatt hours per year. The home is estimated to use about 9500 kilowatt hours per year. So we'll have a net of about 2500 that can

be, you know, sold back to the City. And that also equates to about 300 gallons of gasoline that will be saved per year and about 45 pounds of CO2 that won't be --

MING-LUN TUNG: Five tons.

CHRISTOPHER GULLY: Tons.

MING-LUN TUNG: So we are planning to have a fast chargers built into the carport.

CONSTANTINE ALEXANDER: Can you show the Board the -- that drawing that shows what the building is going to look like? Because it's going to be higher obviously than the building that is there before.

MING-LUN TUNG: That is correct, yes.

CHRISTOPHER GULLY: It's still less. Still within the --

CONSTANTINE ALEXANDER: Still within the zoning, right.

MING-LUN TUNG: I think we'll start with -- and then we have flat diagrams that would be --

CONSTANTINE ALEXANDER: On that one there which one is yours, the lower right? Yeah, that one there?

MING-LUN TUNG: Yes.

CHRISTOPHER GULLY: And I did solar studies showing the home at the four different times of the year. This is two, but I believe on one of the other sheets shows this. And it shows that in all of the cases, including worst case scenario, that the shadows barely have a different effect than they did before. And it's casting the shadow towards Somerville and a Somerville home really doesn't have to get much shade anyway. So it's a negligible effect the shadows.

CONSTANTINE ALEXANDER: Okay.

CHRISTOPHER GULLY: We've included a large dormer, but it's still with -- it's still 15 feet which was recommended as the size not to exceed within the Cambridge recommendations.

CONSTANTINE ALEXANDER: Right. So it is --

CHRISTOPHER GULLY: And it's a gabled dormer which I know is preferred.

CONSTANTINE ALEXANDER: Preferred.

But otherwise it's set back from the ridge line as I recall the dormer?

CHRISTOPHER GULLY: Sorry.

CONSTANTINE ALEXANDER: The dormer is set back away from the ridge line --

CHRISTOPHER GULLY: Yes.

CONSTANTINE ALEXANDER: -- and away from the face of the --

JIM MONTEVERDE: Yeah.

CONSTANTINE ALEXANDER: Okay. That's my recollection.

JIM MONTEVERDE: The other view is -- yeah.

MING-LUN TUNG: The other view is better, sorry.

CHRISTOPHER GULLY: Again, the geometry maximizing the solar gain.

CONSTANTINE ALEXANDER: So your testimony is is that you're complying with the former guidelines which we take --

CHRISTOPHER GULLY: Yes.

CONSTANTINE ALEXANDER: -- pay a lot of attention to on this Board, although it's not legally required.

Okay.

CHRISTOPHER GULLY: We factored that in this time.

CONSTANTINE ALEXANDER: Anything else?

CHRISTOPHER GULLY: I think that it's a lovely home for this couple.

CONSTANTINE ALEXANDER: You designed it, of course it's a lovely home.

ERIN TROY: We agree that he designed it.

CONSTANTINE ALEXANDER: I'll open the matter up to -- any questions at this point from members of the Board?

JIM MONTEVERDE: No.

CONSTANTINE ALEXANDER: I'll open the matter up to

public testimony.

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

PATRICK BARRETT: Hi. My name is Patrick Barrett, B-A-R-R-E-T-T. I'm only here as backup to support them. I wrote the petition that changed the GFA calculations for basements.

CONSTANTINE ALEXANDER: I'm sorry, I called you Brady. I apologize.

PATRICK BARRETT: I've been called Brady. I've been called Bartlett. It doesn't matter. It's part of the code. It was their issue I'm an attorney and it really boils down to is added space and position of the roof for solar.

Thank you.

CONSTANTINE ALEXANDER: Thank you for coming down.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt of one letter from Helena Martins, M-A-R-T-I-N-S and Natalia Furtado, F-U-R-T-A-D-O who reside at 33 Porter Street. (Reading) Please accept this letter in favor of the above-named petition. Ming-Lun Tung and Erin Troy have shared their building plans with us as well as requested our permission to allow the temporary usage of square footage for the build of their foundation. They have insured us the necessary -- they have insured us the necessary assurances which we have found to be reasonable and support the construction of their new single-family home. Not only will this new single home bring environmental benefits by using solar panels, it will also bring value to the homes of our neighborhood. As abutting neighbors, we are in favor of the petition. And that's all.

Any final comments you want to make?

ERIN TROY: No.

CONSTANTINE ALEXANDER: Questions from members of the Board or ready for a vote?

ANDREA HICKEY: Ready.

JIM MONTEVERDE: Ready.

CONSTANTINE ALEXANDER: Okay. The Chair moves that we make the following findings with regard to the variances being sought:

Namely, that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that the structure that they now own, through no dereliction on their part is in very bad condition and really needs to be torn down.

The hardship is owing to the fact that this is a very small lot. The shape of the lot and such that any reconstruction of the structure requires zoning relief.

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

In this regard the Chair would note that there is no opposition to the petition.

That among the things that this new structure will bring will be solar power, solar energy that will benefit the City.

And there appears to be, as I said, no neighborhood opposition.

So on the basis of these findings, the Chair moves that we grant the Variance on the condition that, going to tie it to the plans you submitted.

CHRISTOPHER GULLY: Yes, sir.

CONSTANTINE ALEXANDER: Those are the final plans, because if you change them, you're going to have to come back before us.

Okay. On the condition that the work proceed in accordance with the plans prepared by Gully Architecture. There are several pages of them, and all of which -- they are in our file, all of which have been initialed by the

Chair.

All those in favor of granting Variance on this
basis, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Hickey Tedesco, Anderson, Monteverde.)

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(7:45 p.m.)

(Sitting Members Case BZA-011371-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011371, 40 Cottage Street.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair will -- I called the case.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently no one is here and the Chair would report that we are in receipt of an e-mail from Robin Chase whom I believe is on behalf of the

architect Boyes-Watson Architects. (Reading) We would like to continue our request currently slated for tomorrow night, the 13th, to the next available slot. Ideally October 27th when my husband and I are both in town together. My mistake, it's the actual petitioner. Could you please confirm that you got this -- got this e-mail. We did obviously.

So, is October 27th available? I won't be here, but it's a case not heard so it doesn't make a difference.

SEAN O'GRADY: What case are you speaking about now?

CONSTANTINE ALEXANDER: Cottage Street. Do we have any room on our continued agenda or October 27th?

SEAN O'GRADY: Yes, that's the date.

CONSTANTINE ALEXANDER: We have room?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard until October 27th

subject to the following conditions:

One, that the petitioner sign a waiver for a time for decision.

Two, that the sign that's been posted for this hearing be modified to reflect the new date, October 27th, and the new time, seven p.m. And that the modified sign be maintained for the 14 days required under our Ordinance as was required for tonight's hearing.

And lastly, to the extent that the petitioner wishes to submit modified plans, these modified plans must be in our files together with a modified dimensional form no later than five p.m. on the Monday before October 27th. If that is not done, we will not hear the case on October 27th.

On the basis of this motion, all those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

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(7:50 p.m.)

(Sitting Members Case BZA-011301-2016: Constantine
Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,
Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 011301, 93 Windsor Street.

Is there anyone here wishing to be heard on this
matter? Name and address to the stenographer, please.

ATTORNEY RICHARD LYNDS: Good evening,
Mr. Chairman and members of the Board. My name is Richard Lynds, I'm an attorney, 1216 Bennington Street, East Boston, on behalf of the petitioner.

FRANK PEACE: Frank Peace, 72 Reynolds Court, Auburn, Massachusetts, owner and CEO of Craft Restaurant Group and Brew on the Grid.

ATTORNEY RICHARD LYNDS: Mr. Chairman, also with me is Cindy Lee from Landmark Studios. She is the architect of this project, as well as Mike Kearns who is the representative for the principal of Windsor Ninety Three, LLC. Before you, Mr. Chairman and the Board, is a petition to change the occupancy at 93 Windsor Street. Our request is to change it from an existing -- a pre-existing retail use to a cafe with takeout.

CONSTANTINE ALEXANDER: You're seeking a Use Variance for short?

ATTORNEY RICHARD LYNDS: That's correct. Yes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY RICHARD LYNDS: Just by way of the background, the petitioner acquired the premises back in June of this year. It was owned by the Gattierre family (phonetic). It looks like they owned that since 1979. It had been operated as Newtowne Variety up until the time it was acquired. It ceased doing business in June.

The proposal here, and I'll let Mr. Peace go into the details of the programming, but as I indicated, to change the occupancy to a cafe with takeout.

Just a little bit by way of background for the structure, it's a pre-existing non-conforming structure in the Residence B District. It's an existing commercial building approximately 2,000 square feet, sitting on a lot that's about 3,000 square feet.

The relief -- I can go through that if the Board wants now at this time or we can discuss that after we go through the programming.

CONSTANTINE ALEXANDER: That's up to you. You can decide when you want to --

ATTORNEY RICHARD LYNDS: Sure.

CONSTANTINE ALEXANDER: You say that, I think you mean while you're entitled to the relief you're seeking.

ATTORNEY RICHARD LYNDS: Yes, in addition to the relief that we're going to require by way of a Variance, Use Variance, we also were in prior compliance with Article 11, Section 11.30 which concerns takeout.

CONSTANTINE ALEXANDER: Fast order food --

ATTORNEY RICHARD LYNDS: I'm sorry, yes, correct.

CONSTANTINE ALEXANDER: I think if we grant the Variance with allowed to the -- allowing you to run your cafe, that would cover the fast food enterprise. So I think you don't need to cover that.

ATTORNEY RICHARD LYNDS: Understood.

CONSTANTINE ALEXANDER: They're both right now prohibited under our Ordinance because they're in a

residential district and you're looking for relief from that. Don't worry about that.

FRANK PEACE: Okay, thank you.

ATTORNEY RICHARD LYNDS: So at this time I'd like to have Mr. Peace just talk a little bit about the business concept.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY RICHARD LYNDS: And he can answer any questions about that. And then we can have Ms. Lee walk through the programming and the changes for the building.

FRANK PEACE: So the Brew in the Grid is an artisanal craft restaurant that serves coffee and brews coffee in various ways. We have what's called a pour-over method. We also use old-fashioned automated Europic colas (phonetic) and Simonelli machines which are less -- not used quite as often now. And what we do is brew the coffee in various methods.

In addition to that, we have handcrafted

sandwiches that are made fresh on premise, as well as pastries and things like that. And I really -- the really, you know, genesis behind this was to create a really authentic approach towards coffee and create a place where people can connect as families and professionals and students. So I opened up my first one in Worcester, downtown Worcester, in July and we've been, you know, for lack of a better expression, knocking the cover off of the ball. They love us there. And the hours of operation are conducive for the students and it works well.

In addition to that we also serve Kraft beer and wine which is a very small percentage.

CONSTANTINE ALEXANDER: You are going to serve alcoholic beverages?

FRANK PEACE: Yeah, we'll consider that depending upon --

CONSTANTINE ALEXANDER: Well, that's important I think, and I'd like to know because it's a residential

district and alcohol and residential areas don't always mix.

FRANK PEACE: Yeah.

CONSTANTINE ALEXANDER: So, you say you're going to consider it.

FRANK PEACE: Well, I would like to be able to do that, but certainly --

CONSTANTINE ALEXANDER: I assume you're going to do that?

FRANK PEACE: Sure.

CONSTANTINE ALEXANDER: Okay.

FRANK PEACE: And we do that in Worcester now and it seems that -- it would be a very understated part of our business.

CONSTANTINE ALEXANDER: Have you reached out to the community, the neighborhood? I'm sure the residents across the street in particular?

FRANK PEACE: We've started the process, and once we -- we kind of start to connect with the community. I'm

very familiar with Cambridge. I've owned -- I was partner with Wagamama in Harvard Square. I was also regional director of operations for Starbucks where I oversaw all the cafes in Cambridge. So I know how important the community is, and one of core tenants of the brand is to be involved with the community as much as possible.

CONSTANTINE ALEXANDER: It would have been helpful for us tonight frankly, sir, if we knew what the community, the residents think of what you want to do.

FRANK PEACE: Sure.

CONSTANTINE ALEXANDER: Because you're asking us to approve it on the blind. And if we were to grant you relief and then the neighbors said no way, we don't want this kind of place in our neighborhood, we're sort of left with egg on our face if you will.

SEAN O'GRADY: Can I -- I'm sorry, can I interject? I don't think we can properly consider alcohol tonight.

CONSTANTINE ALEXANDER: I'm sorry.

SEAN O'GRADY: It's a prohibited use. It's not advertised. I don't think --

CONSTANTINE ALEXANDER: That's okay. If they want alcohol, we're going to have to continue the case.

SEAN O'GRADY: What I'm saying is I don't think we have the power to grant anything regarding alcohol tonight.

PATRICK TEDESCO: Either continue the case or vote on the change of use and they have to come back if they choose to pursue alcohol, would that be it?

ANDREA HICKEY: Or could they come back? Is that a --

SEAN O'GRADY: No, they could do either one or the other. The Board can decide how time is best used.

CONSTANTINE ALEXANDER: You have to go before the Licensing Board, too?

FRANK PEACE: Yes.

PATRICK TEDESCO: And I'm just curious,

procedurally do we hear alcohol cases before the Licensing Board or is it the other way around?

SEAN O'GRADY: Well, it depends. I mean, if it's as-of-right alcohol use, then we would never see it.

PATRICK TEDESCO: Okay.

SEAN O'GRADY: Only if relief needed to be granted. But, yeah, it's unadvertised and it would not be something that we do.

ATTORNEY RICHARD LYNDS: A different use other than what we've asked for. I apologize for that.

CONSTANTINE ALEXANDER: I think what you're hearing, should we grant you relief tonight, you're not out had woods yet at least in regard to us.

ATTORNEY RICHARD LYNDS: I understand that, and I probably -- I apologize to the Board. My understanding of the programming was not that we were applying for alcohol tonight. I do understand that if we do that, there's a further change to the use of the site as well as the

requirement that we obtain the appropriate alcohol license.

CONSTANTINE ALEXANDER: And I would like you, since we're not going to make a final decision tonight it would appear on what you want to do, I would like you to, before you come back to have some outreach to the neighborhood.

ATTORNEY RICHARD LYNDY: Sure.

CONSTANTINE ALEXANDER: And I want to hear back from the neighborhood either directly from them or from them through you as to what they think of a place in their area that's going to serve alcohol. I suspect they're not going to have a problem with the rest of what you want to do.

FRANK PEACE: Yeah, and, again, if the community was, you know, against that, then I certainly would respect that without question. So my objective is not to really be predominantly an alcohol sales place. It's just kind of a part of what we do, but it's not a necessity. The coffee is the core.

CONSTANTINE ALEXANDER: It gets a little complicated. Actually, the neighborhood could say we don't want any business there anymore. This is a residentially zoned area. If we grant you relief tonight to run your cafe without alcohol, you're going to have a right to do that.

FRANK PEACE: Well, I think we're just -- what I'm trying to do is add value to the community and that's what we've done --

CONSTANTINE ALEXANDER: We know what you're trying to do, and nobody is being critical of you, sir.

FRANK PEACE: No, I know.

CONSTANTINE ALEXANDER: But, you know, we've got to take into account the City's needs.

FRANK PEACE: Sure.

CONSTANTINE ALEXANDER: And particularly the residents that are most directly affected by what you want to do. The City has made a determination, rightfully or wrongfully, that this address should be residential. And I

think you make a good case or you will make a good case as to why you're entitled to a Use Variance, but the case is -- to cement the case, I would like to know that the neighborhood has no problem with any kind of restaurant use in this area.

ATTORNEY RICHARD LYNDS: And, Mr. Chairman, again, I'm not a practitioner here before Cambridge very often, you know, my experience is mainly in Boston. Is there an applicable community group or a community organization that we would go before or is there some type of outreach or is it direct abutters that the Chair is considering is --

CONSTANTINE ALEXANDER: I don't know, I can't answer.

BRENDAN SULLIVAN: East Cambridge Planning. East Cambridge Planning would have been aware of this before tonight.

CONSTANTINE ALEXANDER: Is this in the jurisdiction of the East Cambridge Planning Team?

BRENDAN SULLIVAN: Their range can be broad.

CONSTANTINE ALEXANDER: You want to say something?

JOHN HAWKINSON: The Area 4. It's Area 4

Coalition would be the neighborhood group.

CONSTANTINE ALEXANDER: Yeah, I don't think of East Cambridge.

I would suggest that you, for one, just direct communication. Get the mailing list for all the abutters and abutters of abutters and write a letter and say we're going to have a meeting at such and such a date, at this place. Here's what we want to do. We want to explain further to you what we want to do. We think you'll agree with us this is an exciting project. That's how I would write the letter if I were you.

I think under the circumstances, given the alcohol, the alcohol use, we're going to have to hear this case again. Why don't we hear it all at one time? Why don't we continue the case, and I think it will have to be a

case heard, until a date, you think you can get for the neighbors and also got to re-advertise. Actually because you've got to put the alcohol with reference in the advertisement. So --

FRANK PEACE: Yeah, yeah, okay.

CONSTANTINE ALEXANDER: So, okay. When do you --

JANET GREEN: Can I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

JANET GREEN: So if their decision is that they'd like to do it as a coffee shop no matter what, but they put the beer and wine, will that sort of get people here to answer the wrong question? I mean, if people are against the beer and wine as opposed to -- do you see what I mean?

CONSTANTINE ALEXANDER: Well, I think there's two answers to that.

One, when you reach out to the community, the neighbors, you'll let them know it's going to be beer and wine.

And two, they have to re-advertise. They have to re-advertise to make reference to the beer and wine.

JANET GREEN: Right.

CONSTANTINE ALEXANDER: I think that's how people will be apprised.

BRENDAN SULLIVAN: I think that the mention of beer and wine probably started this on the wrong track. I think what is before us is what is before us, is a coffee, pastry shop. If the beer and wine comes, it may come later and that will be a total separate entity is the way I'm thinking. I would not want to saddle this application with that beer and wine thing. I think it's getting to be a ball and chain around it. I think probably what the gentleman is wishing is that he could come before us, present his case for what is here, the coffee and pastry shop, and so on and so forth, and I think we can rule on that. What happens later on, happens later on, because I think that once you start mentioning beer and wine, that's really not really

what you want to do. What you want to do is a coffee shop type of thing.

FRANK PEACE: Exactly.

BRENDAN SULLIVAN: And yet that beer and wine becomes the monster. I mean, I'm perfectly prepared -- I could rule on this thing tonight and what comes later comes later. And I think that the public has been advised, Area 4, East Cambridge, whatever it may be if it's Area 4, I don't know if anybody's here, you know, representing that, but at any rate --

CONSTANTINE ALEXANDER: We'll find out.

I think what you're saying is absolutely right, Brendan. The only point being -- the only reason to make the suggestion is we're going to have to hear the case again involving this property why not get everything at one time.

BRENDAN SULLIVAN: Well, maybe they just want to get up and operating.

ANDREA HICKEY: Right, and they may decide not to

go forward with the alcohol after canvassing the neighborhood and they sort of lost time, you know. I agree with Mr. Sullivan. If we can hear the case before us and they're not prejudiced, they're able to come back should they choose to do so.

CONSTANTINE ALEXANDER: Fair enough, good point.

BRENDAN SULLIVAN: And if we were to grant -- if you were to open up and you were to show your validity and your benefit to the neighborhood, then you could probably make a case for whatever else you may want to do.

FRANK PEACE: Sure.

BRENDAN SULLIVAN: It's that fear of the unknown. You have to prove yourself first and anyhow.

CONSTANTINE ALEXANDER: Okay.

All right, so let's move back to the Use Variance.

ATTORNEY RICHARD LYNDY: Sure.

CONSTANTINE ALEXANDER: A Use Variance to operate a cafe that does not serve alcohol.

ATTORNEY RICHARD LYNDS: Sure.

ANDREA HICKEY: Assuming that's how you want to proceed.

FRANK PEACE: Yes.

ATTORNEY RICHARD LYNDS: We do. And I think that makes good sense that the use with alcohol is an entirely different use and it changes sort of the perception I think from the neighborhood's perspective. So perhaps it is better to have that as its own separate hearing because I think we are intending to go forward with the concept anyhow.

FRANK PEACE: Yep.

ATTORNEY RICHARD LYNDS: I guess before I get into that, why don't I introduce Cindy Lee to walk through briefly what the concept and the programming would be for the design and the changes that we're proposing to make.

CONSTANTINE ALEXANDER: Okay.

CINDY LEE: So I think what drew us to this piece

of property was this great existing storefront glass. There's a lot of visibility. And as you can see, this is what we did in Worcester. Very similar. A lot of glass, and it really helped activate between the inside and the outside. And the hours that Frank is proposing on the business really contribute, I think, to getting the activation of this really nice corner between the corner of School and Windsor.

And we have developed a prototype in Worcester of this cafe where, you know, we have the pieces of equipment and we, you know, how we circulate, but I think the key thing is really like taking advantage of this glass. People sit, meet, fireplace, and different types of seating groups to help --you know, some people like to sit alone at a big table so we want to address that. And there's soft seating and then there's the counter seating.

We're not changing anything on the outside. In the rear yard there's space for four parking. We're not

changing that.

We are proposing, you know, having a couple of patio tables outside along Windsor. I think that helps to activate the streets. And, you know, I think it's good for the neighborhood.

In the basement we're really just using about half of it for storage, coolers, and prep.

On the exterior, as I said, there's a great storefront. We've got great branding for this coffee shop. So we've already established graphics that talks about the artisan nature of how we approach coffee, tea, all different kinds of drinks, the pastry.

All we're proposing is to clean-up. The base right now is kind of falling down. It's in disrepair. So we're going to clean-up this base. We're gonna paint the brick. It's already been painted. Re-clad the existing awning. We're using the existing gooseneck, and we're just adding -- replacing the new panel sign here, Variety with

Brew on the Grid and then a blade sign on Windsor.

CONSTANTINE ALEXANDER: So we're not passing on the sign. You realize you have to deal with the neighborhood Zoning Ordinance with regard to signage?

CINDY LEE: Yes.

CONSTANTINE ALEXANDER: What are your proposed hours by the way?

FRANK PEACE: We'll start out at six a.m. and go till ten p.m. and then I'll assess what happens in the community. But I won't go beyond ten, and -- but sometimes some communities are early risers and six is good.

CONSTANTINE ALEXANDER: That's important.

FRANK PEACE: We found that Worcester was a little bit later, so I moved it to eight.

ANDREA HICKEY: Is this parking customer parking or what will that be used for?

FRANK PEACE: Well, right now I don't think we were really planning on -- it would probably be employee

parking most likely. You know, it will be a minimum of two -- a minimum of two employees on per shift just for safety and security and a maximum of four.

ATTORNEY RICHARD LYNDS: Anything else?

JANET GREEN: I just, you know, things like how will you handle the trash and what are your plans for that?

CINDY LEE: There's an existing dumpster right here. These are existing doors, existing high contrast window. So we're really not -- this, you know, has a deli counter. So it was already outfitted as a, you know, food service takeout place. So we're --

JANET GREEN: But people won't go out passed the dumpsters to throw trash in it.

FRANK PEACE: No, we'll have that just inside.

CONSTANTINE ALEXANDER: Will there be trash receptacles? Will there be any on Windsor Street for people who are walking out to throw away their wrappers as they take their takeout?

FRANK PEACE: Yeah, I would like to get permission to do that. I did that in Worcester and it seemed to work out well for us and the community.

CONSTANTINE ALEXANDER: Permission from whom?

FRANK PEACE: I had to get permission from the City of Worcester to add the barrels.

CONSTANTINE ALEXANDER: I don't think you need permission from us.

FRANK PEACE: Then we would absolutely do that. And what we do and what I've done, to be responsive, again, working the community is very important to, me so like we adopted the park across the street, me and my employees clean it up and things like that. So we want to be a positive part of the community.

ATTORNEY RICHARD LYNDS: So you if want to go through sort of the issues?

CONSTANTINE ALEXANDER: That's right.

ATTORNEY RICHARD LYNDS: So with respect to the

reasons for which the Variance should be granted, first and foremost, the premises are pre-existing non-conforming structures located in the Residence B District which as we know restricts the commercial uses.

As a commercial structure, it would -- could not be easily converted to a conforming use in this district. In fact, it's been used and occupied as retail operation, I'm guessing ever since it was built. We're estimating that was sometime prior to more than 50 years going based upon the Historic Commission's assessment.

JANET GREEN: Can you move the microphone a little bit closer to you?

ATTORNEY RICHARD LYNDY: I'm sorry, yeah.

So, you know, with respect to the standard Variance requirements, I don't know that many are going to be applicable in this particular case. If we're looking at questions such as hardship owing to the following circumstances related to soil conditions etcetera, the shape

and size of the lot are non-conforming out of the current dimensional regulations for the Residence B District and conversion to a conforming use would not even be permitted based on the existing shape and size of this particular lot.

Just with respect to how the relief can be granted without detriment to the public good. You know, the premises, again, been utilized commercial retail establishment for many years. The proposed change of use is consistent with what we say is intensity and the type of -- very similar type of use what's existed there for many years. So we believe that the relief can be granted in that regard.

And, again, offering this as a cafe concept with food service, notwithstanding our discussion previously about alcohol, that's a separate discussion, we believe the use is quite similar to what's existed there for sometime, and actually would be much more of an improvement to what presently exists there now.

It's certainly within the City's interest to not have vacant storefronts or vacant buildings, and we would hope that the Board would grant our request for relief.

CONSTANTINE ALEXANDER: Actually you haven't appeared before us often, we don't -- this is not a unique kind of case. There are a number of situations that we dealt with over the years when you have a commercial structure in -- that was built before the area was zoned residential and the structure is such that it really can't be converted into a residential use, and so the only way to really make any sense is to continue commercial use in the area which means we grant the Use Variance as well. So although a Use Variances are generally not easily granted, this is the kind of case that we have found in the past justifies to grant relief, in my judgment, justifying granting a Use Variance.

But there are conditions. We talked about alcohol. I'm going to require a condition that the business

not be open later than ten p.m. because of the impact on the residential neighborhood.

FRANK PEACE: Sure.

CONSTANTINE ALEXANDER: And I want to make a third condition that you make through trash receptacles and the like, make every effort to be sure that on Windsor Street that there is adequate place for disposing of waste for your customers.

FRANK PEACE: Sure.

CONSTANTINE ALEXANDER: So we don't litter the streets in this residential district.

SEAN O'GRADY: Gus, I just have another point, sorry for interrupting.

CONSTANTINE ALEXANDER: Sure.

SEAN O'GRADY: You've shown exterior seating on the city sidewalk. The BZA can't grant you that.

ATTORNEY RICHARD LYNDY: Understood.

SEAN O'GRADY: Okay.

ATTORNEY RICHARD LYNDS: Understood. I was going to mention that. We're showing it to illustrate what the concept is. We understand the Board's jurisdiction, not withstanding the public way.

There also -- sorry, Mr. Chairman, is there also a condition that it's limited to a specific user in Cambridge?

CONSTANTINE ALEXANDER: The Variance would --

ATTORNEY RICHARD LYNDS: Run with the land but the Special Permit separately --

CONSTANTINE ALEXANDER: The Variance we don't -- legally we cannot tie the Variance to a specific person.

ATTORNEY RICHARD LYNDS: Understood. Okay.

CONSTANTINE ALEXANDER: Questions from members of the Board?

(No Response.)

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I don't believe, unless anything has come in late, there are no letters or any correspondence from citizens of the city. So I will close public testimony.

Any final remarks you want to make at this point?

ATTORNEY RICHARD LYNDY: That's all I have, Mr. Chair.

Thank you.

CONSTANTINE ALEXANDER: Okay. I'll close all comments.

Discussion or we ready for a vote?

ANDREA HICKEY: Ready.

JANET GREEN: I'm ready.

PATRICK TEDESCO: Ready.

CONSTANTINE ALEXANDER: Okay.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that structure in its current form is only suitable for commercial use, and that it would be prohibitively expensive to try to convert this to residential use.

That the hardship is owing to the fact that this is a legal non-conforming commercial structure. You're changing the nature of the commercial use but it's still a commercial structure.

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

On the basis of these findings the Chair moves that we grant the Use Variance requested subject to the following conditions:

One, that no alcohol may be served on the premises unless you come back before us and seek relief for that. So it will be non-alcoholic beverages can only be provided on the premises.

That the premises will be open for business no later than ten p.m. each night.

And then lastly, is that you will make every effort to provide waste receptacles for customer and employee use so it's not to litter the streets of Cambridge.

On the basis of these findings with these conditions, the Chair moves we grant the Variance requested.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

* * * * *

(8:15 p.m.)

(Sitting Members Case BZA-011070-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011070, 29 Bellis Circle.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair would report that we are in receipt -- this is a continued case, of an e-mail from Nicole Barna, I believe is one of the owners of the property, she is requesting a continuance of this case until January 26th.

As we, I'm reading from her letter or e-mail, (reading) As we discussed, we will likely have modifications to the house plans based on additional discussions my husband and I are having.

So this is a case heard. So members who have to

be here on January 26th, if that's the case we're going to continue to, are -- sir?

PATRICK TEDESCO: I believe so.

CONSTANTINE ALEXANDER: Slater said he could do it. I can do it. JM?

SEAN O'GRADY: Jim left without comment. This is sort of a soft one and I don't have high confidence we're actually going to hear it at this date, and they may well have to re-advertise.

CONSTANTINE ALEXANDER: Well, if they have to re-advertise, that solves all of our problems.

SEAN O'GRADY: Yeah, so I'm just saying I feel sort of like we can schedule this one.

CONSTANTINE ALEXANDER: I just want to make sure Andrea --

ANDREA HICKEY: I'm just checking. What's the date again?

CONSTANTINE ALEXANDER: 26th of January.

ANDREA HICKEY: If I'm alive, I'm free.

CONSTANTINE ALEXANDER: Okay, the Chair moves that this case be continued as a case heard until seven p.m. on January 26th subject to the following conditions:

One, that the petitioner sign a waiver of time for decision. And they've already done that.

Two, that the posting sign be modified to reflect the new date, January 26th, and the time of seven p.m. And that the sign be maintained for the 14 days required under our Ordinance.

And lastly, if there are going to be new plans, and apparently there very well may be according to the petitioner, that these new plans must be in our files together with any new dimensional form no later than five p.m. on the Monday before January 26th. If that's not done, we'll not hear the case.

And before we take the vote, Sean, would you make sure that the petitioner is told this?

SEAN O'GRADY: Yes, we told them.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

* * * * *

(8:15 p.m.)

(Sitting Members Case BZA-011394-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011394, 23 William Street.

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

DOUGLAS OKUN: Good evening.

CONSTANTINE ALEXANDER: For the record, your name and address. All three of you.

DOUGLAS OKUN: I'm Douglas Okun, I'm the architect, O-K-U-N.

JONATHAN MARCUS: I'm Jonathan Marcus. And my address is 23 William Street, Cambridge.

STEVE WAY: And I'm Steve Way, W-A-Y. I work with Doug Okun at 156 Mount Auburn Street.

DOUGLAS OKUN: We're here tonight to resubmit.

CONSTANTINE ALEXANDER: We've seen this case. I don't think I've seen this case.

DOUGLAS OKUN: And we haven't changed anything, but the builder was tied up and Jonathan didn't know there was an expiration.

CONSTANTINE ALEXANDER: So the Variance expired, the one we granted the last time.

DOUGLAS OKUN: Yeah. Everything is the same. Nothing has changed. We've had the notice up, nobody's

complained.

CONSTANTINE ALEXANDER: That's a succinct presentation.

Questions from members of the Board? I would report for the record that the project does comply with our former guidelines, and as well as I recall that we did approve this -- is it the exact same dormer?

DOUGLAS OKUN: Exact same dormer.

CONSTANTINE ALEXANDER: It was bigger last time, wasn't it?

DOUGLAS OKUN: Well, first Jonathan wanted a bigger one.

CONSTANTINE ALEXANDER: Didn't we grant relief for a bigger one?

DOUGLAS OKUN: No. You said get out of here.

JONATHAN MARCUS: We'd asked for one that was a couple feet over the 15-foot maximum and we talked and, you know, decided to modify it so to fit into the guidelines.

And the only relief is the square footage.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

JANET GREEN: I was really glad the dormer was in the back. I have to tell you it's a lovely building from the front. It's just really lovely.

JONATHAN MARCUS: We wouldn't want to change the front.

JANET GREEN: Oh, no, not this dormer. It's so nice, this dormer.

JONATHAN MARCUS: You can't see the back at all.

CONSTANTINE ALEXANDER: And as I recall this case, there's no bath on the third floor, bathroom. And the dormer is to allow people who live or occupy the third floor to have a bathroom on their floor rather than climbing down the stairs.

DOUGLAS OKUN: True.

CONSTANTINE ALEXANDER: I'll open the matter up to

public testimony.

Is there anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Guess not. Questions from members of the Board? Ready for a vote? You want some more time?

PATRICK TEDESCO: No, I'm good.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that the third floor of this structure is used for residential purposes and it does not have a bathroom unless we grant the Variance requested for the dormer.

That the hardship is owing to the fact that this

is a non-conforming structure and, therefore, almost any modification to the exterior which a dormer would involve requires zoning relief.

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

In this regard the Chair would note that this very same relief was granted by this Board in the past but not acted upon by the petitioner.

And further, that the petitioner's proposal complies with our dormer guidelines and has met with no neighborhood opposition or comment. Let me just confirm that.

Therefore, on the basis of these findings the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Douglas Okun and Associates Architects. They're dated September 7, 2016, and the first page of which has

been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(8:25 p.m.)

(Sitting Members Case BZA-011217-2016: Constantine

Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,

Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011217, 170-172 Larch Road.

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

JOHN LaFRENIERE: So I'm John LaFreniere. I'm the new owner of this house at 170-172 Larch Road. And I've -- the request is to put a dormer in on the third floor in order to put a bathroom up there which doesn't exist now. It's a three -- as many of the buildings along there, there are three, they have three bedrooms up on the third floor. Pretty much a dormer on one side, and since then a lot have been put in on the other side. And -- with bathrooms. And so I'm just following the neighborly pattern.

And I've got some illustrations. Shall I run through them quickly?

CONSTANTINE ALEXANDER: They're the same as these?

JOHN LaFRENIERE: They are.

CONSTANTINE ALEXANDER: Okay, just run through them.

JOHN LaFRENIERE: Okay. This is the second time I've come here without an easel. Anyway, so just quickly the, you know, it's a typical two-family with -- the first floor is has one bedroom. The second floor -- actually this is the first floor. The second floor is -- has one bedroom on the first -- on the main, second floor. And then on the third floor there are three bedrooms but no bath and a rather steep stair which I already discovered is a little tough to take at night.

So the idea is to put a bathroom in up on the third floor in this space under the eaves, but we need headroom to achieve that. So we're proposing a dormer about the same size as -- in fact, the same size as the dormer that comes out the other side of the house on the other way.

And so that's the overall proposal and it's a relatively modest --

CONSTANTINE ALEXANDER: For the record, how does that comply with our dormer guidelines?

JOHN LaFRENIERE: It, not exactly.

CONSTANTINE ALEXANDER: Tell us in a way it doesn't.

JOHN LaFRENIERE: The way it doesn't is that the, you recommend that a dormer in the roof be step back 18 inches from the edge of the roof. Had we done that, it would be, we would be only adding, you know, three-and-a-half feet to the bathroom or to create a bathroom and it's too small for that. So we're taking it out to the face of the wall which you don't particularly like, but you do accept, but we are continuing the eave that exists there to carry through.

CONSTANTINE ALEXANDER: What about the length of the dormer?

JOHN LaFRENIERE: It is 12 feet. It's the same width as the other one.

CONSTANTINE ALEXANDER: Okay.

JOHN LaFRENIERE: Let me just show you a quick illustration of the neighborhood where -- forgive me for turning my back.

JANA ODETTE: Don't be ridiculous.

JOHN LaFRENIERE: This is Larch Road and Fresh Pond Parkway and Huron Avenue and this is my house and this is the neighbors who are here and this has a dormer on that same side with the bathroom. This is a shed roof dormer, come down and skip a few, and these four have the same equivalent dormer for the same reason.

This is some illustrations from -- this is my neighbor's house. This is their dormer. And this, so these originally all had dormers off this on the south side, and this is the subsequent people are adding. This is a, you know, shed dormer which nobody particularly likes I don't think. There's another one here. What I'm proposing is one virtually identical to my neighbor's which is this.

The one thing that has come up since, so this is the elevations, and that's the elevation of the house and this is the elevations of my house. So I just sort of, my first reaction was similar size dormer, similar size window. But their bedroom actually faces it across the way. So we've been trying to think of ways to sort of accommodating both of our privacies.

So one thought is just obscure glass so it's all, you know, it's a bubbled glass so we both have privacy. The other thought which we were just discussing, is perhaps having an awning window at the top and an obscure panel below and so they would be -- but it's not gonna have a double hung look. So we're kind of going back and forth on that. We haven't quite finalized. This is what we proposed.

I think what I would like, if I could, you know, if everybody's amenable, first of all, first of all, to the dormer, without a doubt. But if that was accepted, that we

would have some flexibility on the actual final design of the window, that we could work out between me and the neighbors so that we could come up with something that we both find is suitable and gives the right kind of privacy. So that's I guess the extent.

CONSTANTINE ALEXANDER: It's too bad you couldn't have met with the neighbors and worked this out before. How long have you been talking about this, this window?

JOHN LaFRENIERE: With them? Well, this is the problem. I just moved in. I barely have been living there. I've been travelling a lot. So we've barely spoken. And just as we were sort of getting to this point, and oh, well. And I think their -- I won't speak for them.

So we're trying to come to -- I'm trying to accommodate them in any way that's possible. I am just trying to think of alternative ways of doing it.

CONSTANTINE ALEXANDER: Okay.

JOHN LaFRENIERE: It's not something that -- if I

could just one last.

CONSTANTINE ALEXANDER: Sorry.

JOHN LaFRENIERE: No, no, it's fine. It's not a window that anybody really sees. I mean you have to really work --

CONSTANTINE ALEXANDER: Except them.

JOHN LaFRENIERE: It's equivalent of in terms of neighborhood character and visibility, you know, and it is a neighborhood with this kind of thing, so you can see -- just imagine theirs. If this had a mullion, up a little bit out of square, it really, it would hardly affect the character of the neighborhood. Where I'm in the process of redoing this with mahogany decking and stuff, so it's all getting upgraded, but that's one thing there that I think we can tolerate a little bit of maybe perhaps a little bit out of character.

CONSTANTINE ALEXANDER: I'm going to -- I haven't heard from the neighbors. When I make the motion, the

motion would be that the window that's shown on your plan, double hung window, will not be -- is not approved and that you will, you need to come up with a window design that would maximize the privacy of your abutter. And still hung up, a little bit vague, if you don't reach an agreement with your abutter, we're going to have a problem.

JOHN LaFRENIERE: Yeah.

CONSTANTINE ALEXANDER: So I'm going to hope you are going to be able to come up with something. But the one thing you're not going to be able to do is do that window, the double hung window that you can see into it as proposed. Other members of the --

PATRICK TEDESCO: You might also, Gus, would you also approve it with the condition that the size of the window not change?

CONSTANTINE ALEXANDER: Good thought.

PATRICK TEDESCO: In other words, if they came back with a much bigger picture window that's obscured.

CONSTANTINE ALEXANDER: Good thought. Thank you.

JOHN LaFRENIERE: One thought we discussed was making a smaller window, and even without speaking for them, even they thought it looked a little odd because it was out of character with the size of the dormer. But maybe, you know, I'm --

CONSTANTINE ALEXANDER: Okay.

Any other questions from members of the Board before I ask for the neighbors to speak?

ANDREA HICKEY: I was just going to say regarding the size of the window, maybe we don't want to box him into not changing the size if they did in the end want to make it smaller. Perhaps the condition would be that it be no bigger.

PATRICK TEDESCO: No bigger.

CONSTANTINE ALEXANDER: They want to make it smaller --

PATRICK TEDESCO: Although I agree a smaller

window might look odd proportionally.

CONSTANTINE ALEXANDER: It's only odd looking to the abutter.

JANET GREEN: Neither one of those rooms really wants to look into another room.

CONSTANTINE ALEXANDER: Right. You would hope that would lead to a solution. That's exactly right.

JOHN LaFRENIERE: Yeah. And certainly using obscure glass is definitely my intention. If it's double hung, the whole thing, if it was -- if it had an awning up high above five feet or whatever, I would, I would perhaps propose that the upper light be clear or at least, you know, some visibility above a certain point. Anyway.

CONSTANTINE ALEXANDER: You want -- any comments you want to make to us.

JANA ODETTE: Sure. I just want to say that, that we are not.

BRENDAN SULLIVAN: Identify yourself.

JANA ODETTE: My name is Jana Odette, J-A-N-A
O-D-E-T-T-E.

VAN McGLASSON: Van McGlasson, V-A-N
M-c-G-L-A-S-S-O-N.

JANA ODETTE: We are the immediate abutters at
174-176 Larch Road and we're -- this is going to have an
impact on our privacy and so we're neither for nor against.
I mean, we're delighted to be good neighbors and feel
comfortable that this go ahead pending mutual approval of
the window design. That sounds fair to me. Because it's
hard in realtime when you're not an architect to say oh,
that sounds great. And I think the hard part for me is as a
civilian is because there's a slight grade up between
Mr. LaFreniere's property and ours where that will really be
impacting us on our room. And to the extent we'll be able
to guesstimate the awning type window versus the double
hung.

The other question I have is to have, to make sure

that we feel comfortable with the level of obscuring in the glass, because there's translucent and then there's on its way to opaque. I guess that would be part of it.

CONSTANTINE ALEXANDER: It gets a little messy. We can't -- we'll grant the relief the best we can, and with a view to making sure your privacy is not invaded, but we can't delegate to you folks to make the final decision.

JANA ODETTE: We have aesthetic decision. Of course.

CONSTANTINE ALEXANDER: Just so you understand that.

VAN McGLASSON: Of course.

JANA ODETTE: And also so similarly, I'm sure you have a number of creative ideas. I just, like, I just like the idea that there's -- pending window approval, because you might come up with like a transom, a whole way I don't know. The point is probably not. But --

JANET GREEN: So, but I was just curious about the

frosted glass, that you felt like some of that isn't just as protecting as you would like it to be or you just haven't seen it or you need to see it?

JANA ODETTE: This is it. I don't think I've ever chosen frosted glass ever. So I don't know.

JANET GREEN: Okay. So that could be that's the simple answer.

CONSTANTINE ALEXANDER: I assume if you want to use frosted glass, you would bring a sample to these folks and --

JOHN LaFRENIERE: A sample.

PATRICK TEDESCO: And it's presumably an insulated unit.

JOHN LaFRENIERE: Right.

PATRICK TEDESCO: So you have an opportunity for two layers of glass, so you could get both sides fitted so it, it gives you more privacy than the old single pane with film on it. There's definitely degrees of sample.

BRENDAN SULLIVAN: Or up around the corner to Commonwealth Glass over in Watertown, they'll have plenty there. It's going to be frosted or sandblasted or something.

One scenario would be that if we approve the dormer in its shape, its dimension and what have you, we leave the window element out but that this decision will take a number of weeks to get typed up and then there is that appeal period once it's been filed where they can exercise their right to basically stop it. That between tonight and the time it gets filed and possibly gets signed, that a decision is made on that window so that it is incorporated in the final --

CONSTANTINE ALEXANDER: I'm not sure how that works. But if we approve it without any window, that's the plan. And that if whatever window you end up with, they have to come back before us.

BRENDAN SULLIVAN: I'm just trying to -- we would

approve it with a window of a -- not to exceed the size --

CONSTANTINE ALEXANDER: That's fine.

BRENDAN SULLIVAN: -- and shape with clear glass.

CONSTANTINE ALEXANDER: Yeah, that's exactly how I'm going to make the motion.

BRENDAN SULLIVAN: Okay.

And just taking it one step further that just so that this doesn't go out in infinitum and that they waive their -- that their rights have expired. I would like to see a decision finalized before this thing gets memorialized, that's all.

ANDREA HICKEY: If we approve it with clear glass, how can they do something other than what we specifically approve?

JOHN LaFRENIERE: They could appeal the clear glass ruling and then it would be --

BRENDAN SULLIVAN: Maybe I'm making it more complicated than it is.

CONSTANTINE ALEXANDER: I think the way to do it is to, they would -- the window will be not clear glass, it will be some other form, not any bigger than what you show in the plans. That will maximize the privacy of the abutter. And leave it at that time. And if you don't reach agreement on that, then --

JOHN LaFRENIERE: Then they can appeal.

CONSTANTINE ALEXANDER: Yeah, I think that's where we've got to go.

PATRICK TEDESCO: You think it would be important?

SEAN O'GRADY: We're twisting ourselves into a knot to just jump ahead of something. The soft language of maximizing, that's --

ANDREA HICKEY: I think it's too objective. It's too -- it's not clear.

CONSTANTINE ALEXANDER: The alternative is to continue the case until they work out exactly what they want to do and then we see it.

ANDREA HICKEY: Or to just say sort of privacy glass and leave it at that or whatever sort of the technical terminology is.

CONSTANTINE ALEXANDER: The trouble is we can do that, but the trouble is if they think -- this gentleman thinks it's privacy glass and they're not happy with it, they're stuck because the relief would have been granted.

PATRICK TEDESCO: So the appeal period, the leverage that the abutters have is to appeal what we approve tonight if they don't find it satisfactory.

ANDREA HICKEY: Right, but he wouldn't be bound --

CONSTANTINE ALEXANDER: Maybe he does it before the appeal period runs.

SEAN O'GRADY: I don't think we want to start invoking appellate action for a frosted window. We're here prematurely and that's our problem.

JOHN LaFRENIERE: Well, so, can we, you know, the winter's coming and can we approve everything except the

character of the window and so we could --

CONSTANTINE ALEXANDER: That's what we're talking about.

JOHN LaFRENIERE: So I could -- right. So I could file for a building permit and all that sort of thing, and the character of the window. I know I've still got, you know, whatever it is, six weeks or eight weeks or whatever it is before we get through all of this.

CONSTANTINE ALEXANDER: Would you grant a building permit on that basis? I mean, I think you would.

SEAN O'GRADY: I'm sorry, I didn't hear.

JOHN LaFRENIERE: So the question was, was -- nobody seems to object to anything except the character of this window. I'm curious if we could, if I could, if the -- on the basis of this sort of authoritative approval, if I could continue with construction drawings and file for a building permit, and while that's being processed -- I know, I can't even do that for six weeks or

something, but I'm trying to avoid another month or whatever it is of postponement.

CONSTANTINE ALEXANDER: I think the point is that if we grant relief on the basis that I'm talking about, and you for some reason don't reach agreement, and some of the people have pointed out, you can take an appeal to tie this project right up. So it's in -- he's got to get it resolved. But I think be careful with the granting of the building permit and go ahead and build and all of a sudden the window is not what they wanted --

JOHN LaFRENIERE: The permit isn't -- I'm not going to get a permit for two months at least or whatever it is by the time I go through the appeal period and everything.

SEAN O'GRADY: We could grant the dormer with no window and you could come back and figure this window out and come back and file another case.

CONSTANTINE ALEXANDER: That's another petition,

another case.

JOHN LaFRENIERE: Yeah, okay.

CONSTANTINE ALEXANDER: You don't want to do that.

JOHN LaFRENIERE: Okay, so I know there's notice.

JANET GREEN: But the permit with the window opening.

CONSTANTINE ALEXANDER: No. The motion I'm going to make he cannot get a building permit with the window that's shown on the plans we have tonight, the clear double hung clear glass. That ain't gonna happen. You'll get a building permit, in my view, the relief would be we'll grant you the relief for the dormer on the -- subject to the fact that you will not have clear glass double hung window --

JOHN LaFRENIERE: Right.

CONSTANTINE ALEXANDER: -- but rather a window, no greater in dimension than the window shown on your plan and which is such that it maximizes the privacy of your abutter, affected neighbor.

I would suggest that if before -- when you get, you try to work this out as quickly as you can. If for some reason that you can't, then you would have the position to take an appeal saying you didn't -- he didn't satisfy the condition about maximizing the privacy for us. And so, but you want to keep -- I got to tell you is that once we grant the relief formally, not tonight, it takes a couple of, as people have said, probably four weeks, then you'll be notified that relief has been granted and then you have 20 days to appeal. If when you get that notice and you have not made your deal with your neighbor, it behooves you then to immediately file an appeal in the courts. It's going to cost you money.

JOHN LaFRENIERE: It's the courts?

SEAN O'GRADY: Yeah.

JOHN LaFRENIERE: That's craziness.

JANA ODETTE: It is? But the nice thing here is we did the same exact thing with our house.

VAN McGLASSON: Twenty years ago.

JANA ODETTE: Twenty years ago. We weren't travelling right beforehand and so forth so we had a little more time, and our neighbors -- actually, the only absentee landlords on the block, they were, like, no problem, wrote a letter of approval. We're delighted to have John on the block. We have no reason to believe that he's not going to be an excellent neighbor and this is going to resolve well. We don't want to hold it up so it doesn't happen for the winter. But I mean I don't want to find a pig in a poke. So I'm happy to -- so what you're saying is that we'll have a month and then they'll have 20 days to appeal. And in the meantime you'll give us one to four ideas.

CONSTANTINE ALEXANDER: Hopefully in that month you've worked things out.

JANA ODETTE: Right.

CONSTANTINE ALEXANDER: If you haven't, I'm advising you that you better be careful that -- because once

the appeal period starts to run, you only got 20 days. And if you still haven't reached an agreement in the 20 days have run, you're going to be out of luck most likely in terms of stopping this which you don't like.

JANA ODETTE: Which would be a terrible way to start a neighbor relationship.

JANET GREEN: Yeah, right.

JANA ODETTE: I'm sure we won't get that way. Is there an indication there's a fee for appeal?

CONSTANTINE ALEXANDER: Well, you've got to file a filing fee, and you have to retain an attorney.

JANA ODETTE: Oh, my. That seems --

CONSTANTINE ALEXANDER: I don't think you're going to get there.

ANDREA HICKEY: Yeah, the appeal wouldn't be an administrative --

CONSTANTINE ALEXANDER: No, it's in the court.

ANDREA HICKEY: -- matter. No, it's not like that.

It's a real live process.

JOHN LaFRENIERE: And that's going to tie everything up for months and years.

CONSTANTINE ALEXANDER: Maybe years.

JOHN HAWKINSON: Mr. Chair. At the risk of intruding, could I suggest perhaps the Board could choose to not exercise its discretion to reconsider unless it receives a request, that is Boards in the past, chosen to reconsider a decision before it was actually signed, that was in one of those 6409 cases. So as long as the neighbors advise staff that they have no objection before the decision is filed, that is the -- in the ensuing month and the everything can get filed and things can move along and the Board can take up the Board' -- court filing fee at their next meeting.

CONSTANTINE ALEXANDER: I don't think we can do that.

ANDREA HICKEY: Yeah, to me it's a lot of gymnastics. If you're not, if you're not prepared to

proceed, we probably need to have the case continued.

BRENDAN SULLIVAN: We'll assume that everybody will act in good faith.

JOHN LaFRENIERE: When will it continue to? Is it like a two-week thing?

CONSTANTINE ALEXANDER: You have to get all five of us here. I'm not going to be here two weeks from now. So that doesn't work. So the earliest we would hear the case again, assuming other members --

JANET GREEN: There's no November 3rd.

SEAN O'GRADY: 17th.

CONSTANTINE ALEXANDER: November 17th.

VAN McGLASSON: That's a month.

JOHN LaFRENIERE: And then it's six or seven weeks after that before I can even file for a permit.

SEAN O'GRADY: Yeah.

JOHN LaFRENIERE: I'm into February or whatever by the time I'm building. Okay.

CONSTANTINE ALEXANDER: That is the best and cleanest solution frankly.

JOHN LaFRENIERE: Well, in truth, it's, it's a month.

CONSTANTINE ALEXANDER: Yeah, an extra month basically. Exactly.

JOHN LaFRENIERE: Okay.

CONSTANTINE ALEXANDER: Continue the case? Can people make the 17th of November?

PATRICK TEDESCO: I believe so.

CONSTANTINE ALEXANDER: Are you available the 17th of November?

JANA ODETTE: No idea.

VAN McGLASSON: Yes.

CONSTANTINE ALEXANDER: You will be?

VAN McGLASSON: Yes.

JANA ODETTE: I mean, yeah, we're here. Do you want to -- there's another case waiting. Do you want to

take two seconds offline?

CONSTANTINE ALEXANDER: That's, you think you can resolve it right now?

JANA ODETTE: No, I feel badly.

VAN McGLASSON: I don't want to hold John up for a whole other month.

JOHN LaFRENIERE: That's all right. Don't worry about it.

CONSTANTINE ALEXANDER: You could have your conversation outside because we want to end this meeting.

JANA ODETTE: Of course, that's --

CONSTANTINE ALEXANDER: The Chair moves that we make -- the Chair makes the following motion:

That this case be continued as a case heard until seven p.m. on November 17th. Continued cases we start at seven. So the earlier in the evening.

JANA ODETTE: That's fine.

CONSTANTINE ALEXANDER: Subject to the following

conditions:

One, that you sign a waiver of time for decision.

That you have to do, otherwise we have to turn you down tonight.

Two, that the posting sign that you have now be modified and maintained for 14 days prior to November 17th, reflecting the new time, date November 17th, and the new time, both, seven p.m.

And lastly, to the extent and there will be, revised plans. That these plans be submitted after you signed that, I want to you hear it. The new plans must be in our files no later than five p.m. on the Monday before November 17th. And if you don't, for some reason he doesn't show you the plans before then, which won't be the case, can you come down to the Building Department and see the plans that are there. If he doesn't do that, we won't hear the case on November 17th.

JANET GREEN: But on November 17th they could

write a letter to us saying we agree and you wouldn't have to come down.

JANA ODETTE: And here's my question: Do you have one more case to hear, sir?

CONSTANTINE ALEXANDER: No.

JANA ODETTE: If we could have 30 seconds, I mean if it ends up being the double hung with obscure glass or the other, then why not just do that now? You know what I mean? If you could give us 30 seconds to confer, would you permit that?

CONSTANTINE ALEXANDER: I wish you had said this earlier.

JANA ODETTE: I said it right now. I mean, this is kind of all happening in realtime.

JANET GREEN: I think that's --

CONSTANTINE ALEXANDER: Five minutes. Please step outside.

JOHN LaFRENIERE: Thank you.

(Case recessed.)

JANA ODETTE: Thank you, may I propose what we just talked about or would you like it to come from --

CONSTANTINE ALEXANDER: I don't care who tells us just tell us what you're going to do.

JOHN LaFRENIERE: Go ahead.

JANA ODETTE: This is all just happening all at the very last moment. We're figuring it out in realtime.

Is there -- in a double hung window, not to exceed the size in the plans, that has opaque glass on top and bottom, we're fine -- we're going to make a leap of faith and that we'll like it and end of story.

CONSTANTINE ALEXANDER: And that's okay with you?

JOHN LaFRENIERE: That's fine.

CONSTANTINE ALEXANDER: Okay with members of the Board?

ANDREA HICKEY: Yes, that's great.

CONSTANTINE ALEXANDER: Good.

JANET GREEN: That's good.

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

The Chair moves that we make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve -- we're talking with regard to the Variance being sought. Would involve a substantial hardship. Such hardship being is that the petitioner has living space on the third floor without any bathroom on that floor and the dormer that is being proposed would allow the construction of a third floor bathroom.

That the hardship is owed to the fact that this is a non-conforming structure. It predates our zoning, and therefore any relief requires -- any modification requires relief.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially

derogating from the intent and purpose of the Ordinance.

On the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans prepared by LaFreniere Architects. They're dated August 11, 2016. The first page of which has been initialled by the Chair. Except that the window shown on the dormer will consist of a window in no greater dimension than the window shown in the plans. And the window will be, top and bottom, opaque or other form of glass that prohibits -- minimizes, if not avoids, the impact on privacy that the neighbors, the abutter would not be able to see -- and you won't be able to see into their property and they won't be able to see into yours. In short, that the window is designed to provide light but not the ability to see what's going on in the room or from the room into the neighbor's property.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(Whereupon, at 8:50 p.m., the

Zoning Board of Appeals Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

INSTRUCTIONS

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

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

That the hearing herein before set forth is a true and
accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand
this 28th day of October, 2016.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 29, 2022

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