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PROCEEDINGS

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And as is our custom, we will begin with continued cases. These are cases that have started at an earlier date, for one reason or another have been continued until tonight.

And so, before I call the first of the continued cases, I'd like to read a statement:

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 that the Chair may impose as 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 advise those of you in the audience that a

recording is being made tonight. As is always the case, our stenographer records the session to assist her when she types up the transcript of the meeting.

I assume no one else has got a recording device.

So that's the only recording device as of right now. Maybe a citizen of the city will show up and bring another one.

* * * * *

(7:05 p.m.)

(Sitting Members Case BZA-015619-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The first case I'm going to call is case No. 015619, 14 Hubbard Avenue. This is a case that was continued at an earlier session obviously. The petitioner is seeking expanded relief from what was being sought at the original hearing that was continued. At that point they were needing a Special Permit and now it's a Variance and the same Special Permit. This matter has been separately advertised and will be heard on June 12th.

SEAN O'GRADY: June 14th at 9:15.

CONSTANTINE ALEXANDER: Okay. June 14th at 9:15.

Because of that it makes no sense to hear the old continued case tonight.

And the petitioner and his or her representative agrees with that.

So, the Chair moves that we continue this case, 14 Hubbard Avenue, until 9:15 on June 14th subject to the following conditions:

One condition has already been satisfied, that the petitioner sign a time for waiver of decision.

The second is that the posting sign be modified to reflect the new date for the Special Permit case of June 14th, and the new time of 9:15. And that that sign be maintained for the two-week period before the hearing as required by our Ordinance.

And lastly, to the extent that the petitioner wishes to submit new or modified plans or a dimensional form with regard to this case, those documents must be in our files no later than five p.m. on the Monday before.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case
continued.

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

* * * * *

(7:10 p.m.)

(Sitting Members Case BZA-015890-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will next call case
No. 015890, 605 Mount Auburn Street.

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

(No Response.)

CONSTANTINE ALEXANDER: We are in receipt of a letter from the petitioner or a petitioner's representative. (Reading) Please accept this letter as a request to continue the May 28th -- May 20th, it's a typographical error -- tonight's meeting. One of our principals will be out of state. I understand that the Chair is unavailable for the June 14, 2018 meeting. Would you kindly submit this letter to the Board to see if all of the same members are available on June 28, 2018, and that they would be willing to continue this hearing until that date? We apologize for any inconvenience this may have caused.

I don't know if the petitioner is aware of the fact that one of the five members who sat originally on this case is resigning from the Board. So there will not be five members on June 28th.

JANET GREEN: 28th.

CONSTANTINE ALEXANDER: Or we have to have a whole new hearing -- a new advertisement I think, and with five new members if the petitioner wanted five new members to sit on the case.

SEAN O'GRADY: Yes. I know Maria has discussed this. It's escaping me right now which cases went which way. But they have been told, and I believe that they said that they would proceed with four, but I don't want to put them on the record.

CONSTANTINE ALEXANDER: I'll repeat this when they come, because it's significant to go with four, obviously. It's -- your odds, if it's the appropriate word, are greatly diminished if you only have four rather than five because the vote to grant relief is a vote of four. And so we have five members here, you could have one dissenter and a motion can be passed. But with four, any one of the four can kill it. But that's the petitioner's call, not our call.

So, the Chair moves that we continue this case until seven p.m.

There's no special time am I right?

SEAN O'GRADY: No, that's correct.

CONSTANTINE ALEXANDER: Until seven p.m. on June 28th subject to the following conditions:

One, is that a waiver of time for a decision be signed by the

petitioner. And he has already done that.

The second is that the posting sign needs to be modified to reflect the new date, June 28th, and the new time, seven p.m. And that the sign be maintained for the 14 days required by our Ordinance.

And lastly, to the extent that the petitioner will be submitting new plans, new as compared to what was submitted with the original filing, these new plans and any new or modified dimensional form must be in our files no later than five p.m. on the Monday before June 28th.

Just to be sure, Sean, that they're aware of this. We know there are going to be new plans, that's the reason we continued the case the last time. We were not happy with the plans they had.

Anyway, all those in favor of continuing the case on this basis, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

* * * * *

(7:10 p.m.)

(Sitting Members Case BZA-015930-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will now call case
No. 015930, 66 Antrim Street.

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

ALEX VAN PRAAGH: Yes. I'll bring up my boards.

CONSTANTINE ALEXANDER: While you're doing that, and
for the record, I'll go over what I just mentioned to Mt. Auburn Street.

There are only four members. Mr. Best is sitting here, but he's not going
to be sitting on the case because he wasn't here for the last time.

Mr. Tedesco is resigning from the Board. So that's why he's not here

tonight. There's only four of us. If you want to go forward tonight, you run the risk I identified earlier, but I'll repeat it, the odds are not as great that you're going to get the relief that you're seeking. Because any one of the four of us can vote against. It's all over.

ALEX VAN PRAAGH: Okay.

CONSTANTINE ALEXANDER: The alternative, and it won't get any better on a future date because we're never going to have the same five members that we had the last time given the fact that Mr. Tedesco's resigning. Your other alternative, which is what most people would take, but it's up to you, is to re-advertise the case and we'll have a -- to do that any five members sit on that case will be the, will be the Board and the odds of getting the vote you desire is greater. Not guaranteed, but greater. So do you want to go forward tonight or not?

ALEX VAN PRAAGH: It's a little hard to make the decision. You've explained it clearly. I just want to ask, if the Board -- if it's not an unanimous vote --

CONSTANTINE ALEXANDER: With the four of us.

ALEX VAN PRAAGH: -- can there be a reapplication at that

point to --

CONSTANTINE ALEXANDER: That gets a little bit sensitive.

We have something in the Ordinance called repetitive petition.

If you apply for relief and you're denied, then you cannot come back for two years unless, what you're coming back with is substantially different.

I'm not sure of the exact words. Substantially different than what we turned down. There's a mechanism; you have to go to the Planning Board and you have to come back before us. So it's yes, you can come before us but you might be out for two years. If you don't, if we continue this case again and you re-advertise, none of that to be worried about.

ALEX VAN PRAAGH: Okay. One more point of clarification.

CONSTANTINE ALEXANDER: Yeah, anything you want.

ALEX VAN PRAAGH: Because this is kind of a big deal for me.

Seven months ago it was approved and I'm sitting here now because it was appealed during the 20-day period.

CONSTANTINE ALEXANDER: We're aware of that.

ALEX VAN PRAAGH: Because it was approved, would it be still funneled into the two-year moratorium before --

CONSTANTINE ALEXANDER: Yeah. If you go forward tonight, what you have before us tonight is different than what we approved and -- several months ago, and that was appealed by a neighbor of yours. So it will be -- it's the new, it's a new petition. New -- so if we turn you down, the old one is not at all relevant any longer.

ALEX VAN PRAAGH: Okay.

CONSTANTINE ALEXANDER: Unless you want to go back to that, then you have to get your neighbor to drop his appeal.

ALEX VAN PRAAGH: The neighbor -- so the letter -- okay, I'm not sure how many questions I can ask before getting into it.

CONSTANTINE ALEXANDER: You can ask as many questions as you want. We're not getting into the merits of it.

ALEX VAN PRAAGH: Okay. So this is a letter from the neighbor basically saying that if this revised design is approved, he supports this revised design and he will drop the appeal.

CONSTANTINE ALEXANDER: Okay.

ALEX VAN PRAAGH: So that --

CONSTANTINE ALEXANDER: That's not relevant to us.

It's very relevant to you, but not relevant to us.

ALEX VAN PRAAGH: Sure.

CONSTANTINE ALEXANDER: If we approve the re -- if, and

I'll put a big underline that if --

ALEX VAN PRAAGH: Yes.

CONSTANTINE ALEXANDER: -- if we approve the revised

plans --

ALEX VAN PRAAGH: Yes.

CONSTANTINE ALEXANDER: -- this suggests that your

neighbor is not going to take an appeal. Unless some other neighbor

shows up and we've approved your revised plans --

ALEX VAN PRAAGH: Yes.

CONSTANTINE ALEXANDER: -- it will be going forward.

ALEX VAN PRAAGH: Okay.

CONSTANTINE ALEXANDER: But I've got to say to you,

and I want to get to the merits, and speaking only for myself --

ALEX VAN PRAAGH: Yes.

CONSTANTINE ALEXANDER: -- I have problems with your revised plans. You didn't listen to us, I don't think, to what we told you the last time you came before us with the plans. You still have problems with the dormers and the dormer guidelines. And I think even, in my judgment, worse than -- what you're proposing before us tonight, is worse than what you were proposing before and we sent you back to the drawing board. That's all I can say. I don't want to get into the merits of it, but I think your odds of getting approval of what you have before us tonight are not very good. It's not very good. And I'm going to say no more.

ALEX VAN PRAAGH: Okay.

CONSTANTINE ALEXANDER: I'm just speaking for myself.

ALEX VAN PRAAGH: Okay, I did submit two options. And, okay --

CONSTANTINE ALEXANDER: But you've got to understand, you don't seem to understand. We've gone through this over and over again. We expect you to comply with the dormer guidelines.

ALEX VAN PRAAGH: Yeah.

CONSTANTINE ALEXANDER: And unless you've got a compelling architectural reasons not to. And the fact that you want certain kind of living space arrangements and you want the bigger dormer to allow that, doesn't cut it with this Board. I'm not -- I don't know how else we can say it. We've said it to you several times. You don't seem to listen.

ALEX VAN PRAAGH: Okay. I, I did reduce the dormer size significantly.

CONSTANTINE ALEXANDER: Maybe I misread the plans. When I look at the plans -- I don't want to get into the merits yet.

ALEX VAN PRAAGH: Yeah.

CONSTANTINE ALEXANDER: I don't think you've really reduced it. You're far apart from the dormer guidelines.

ALEX VAN PRAAGH: Okay. Are you -- gosh, I wish I could discuss it. I can't afford to get into a territory where I won't be able to approach the Board for two years.

CONSTANTINE ALEXANDER: You don't have to worry about that -- oh, yeah, if you went forward tonight, and we turned you

down --

ALEX VAN PRAAGH: Can I do a real thumbnail presentation of -- and then you say okay, we'll entertain this --

CONSTANTINE ALEXANDER: No, we don't do that.

ALEX VAN PRAAGH: -- or don't go forward?

CONSTANTINE ALEXANDER: No. Why don't you -- you want my advice? Re-advertise this case, get five members before the Board. Your odds will be greater, you'll have five people. And then you -- I don't know how much it cost to re-advertise. We can pick a date. You can -- whatever date it is, we'll hear the case. That's what you should do in my view. Don't try to go forward tonight. Another month or two is not going to make a big difference frankly. It may mean to you, but in the bigger scheme of things, it's not going to make a big difference.

ALEX VAN PRAAGH: Okay.

CONSTANTINE ALEXANDER: You're running a big risk if you go forward tonight is what I'm trying to tell you. But if you come back, if you re-advertise, don't come back with the same plans. Maybe you'll get four out of five votes with what you've given us tonight.

ALEX VAN PRAAGH: So, at the last meeting I made it very clear what you want addressed is the dormer. I kept the plans the same.

CONSTANTINE ALEXANDER: I know.

ALEX VAN PRAAGH: Expressly because I was trying to work with what was approved, and I modified the dormer significant -- I'm not touching the first dormer.

CONSTANTINE ALEXANDER: No, but you have -- you have -- if you look at this, this dormer extends here, a segment here, a segment here, and a segment here. That's over 30 feet.

ALEX VAN PRAAGH: You're correct, but I was looking at this as a dormer and this as a dormer.

CONSTANTINE ALEXANDER: Not if they're all connected a piece of one architectural element. On what basis is that?

ALEX VAN PRAAGH: Well, I thought architecturally this was the cleanest, best way to resolve it. And this is the view that you get.

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

ALEX VAN PRAAGH: Okay.

CONSTANTINE ALEXANDER: You don't listen. I'm sorry.

You know what you want to do and you close your ears and you go ahead and you come back and come back and come back. We have 15-foot -- look at the dormer guidelines, they're very specific as to what a dormer is and what the requirements are. I think as we've indicated before, we don't necessarily expect every last element of it to be satisfying with the dormer guidelines. We sometimes permit dormers to go to the roof line. Which is you're not supposed to.

ALEX VAN PRAAGH: Yes.

CONSTANTINE ALEXANDER: Sometimes let them go to the face. But we rarely allow dormers to be more than 15 feet, unless as I said earlier, there's compelling architectural reasons. You've got a 30-plus foot dormer here.

ALEX VAN PRAAGH: Okay. I thought by breaking it up, it was making it two smaller, less than 15-foot dormers. And I recognize it's not in my interest to argue with you. I'm, I was looking at the dormer guidelines. I was seeing examples of long, longer shed dormers. I was seeing examples of individual dormers connected by a middle piece.

CONSTANTINE ALEXANDER: But those dormers are 15 feet from one side to the other.

ALEX VAN PRAAGH: 15 feet?

CONSTANTINE ALEXANDER: I believe so. Anyway --

ALEX VAN PRAAGH: I agree with you that it is very good to have the guideline. And I was trying to do something that was architecturally respectful to the building and really make it as nonvisible as possible from the public space. And I did listen. And I also have another proposal in there where there is just this existing little dormer and then the one-bedroom dormer and no connector, which is part of the submission. And it's a less desirable one. It provides some headroom with skylights. So I really --

CONSTANTINE ALEXANDER: Other members of the Board, not you, George. Other members have -- I don't mean to monopolize the discussion, or maybe I'm just way off base. Anybody else have other views or not? I just don't want to, as I said, it's not a one man show here.

ANDREA HICKEY: I think if we all start giving views, we're

into the case frankly.

CONSTANTINE ALEXANDER: Yeah. We can go into the case and continue it again. It's not a matter -- that's not a problem. As long as we don't decide the case.

ALEX VAN PRAAGH: Okay. Can I make one more point? The original decision was four to one, and the one negative seemed to be, you've gone over the allowable FAR, and so that's -- despite the, whatever it is, you're -- it's gonna be a no vote. One thing I don't think I fully explained is that -- and I just sort of wrote up --

CONSTANTINE ALEXANDER: Why don't you save that explanation for when we hear the case.

ALEX VAN PRAAGH: Sure. Well, I used a higher square footage to start. If I used the public records, I would have been able to add over 300 square feet by right and I wouldn't have even have had to apply for a Variance. But I tried to do the right thing and be honest and say this is what the building actually is. And if I want to add 300 feet, it's gonna push me over the allowable square feet.

CONSTANTINE ALEXANDER: Let me just say -- good

points. Again I'm going to suggest to you, re-advertise this case. Get five new members, maybe not all new, but at least you'll have five members of the Board sitting on the case, and statistically if nothing else, your chances of getting approval are improved. Going forward tonight you're running a real serious risk, and you'll be subject to the two-year period that I've identified earlier.

ALEX VAN PRAAGH: All right.

CONSTANTINE ALEXANDER: Sean, if we --

SEAN O'GRADY: Re-advertise?

CONSTANTINE ALEXANDER: I'm sorry?

SEAN O'GRADY: To re-advertise?

CONSTANTINE ALEXANDER: Yeah, re-advertise and when's the earliest we could hear this case so he knows in making his decision.

SEAN O'GRADY: Well, it's up to him to get his stuff in on time to advertise it. He's got to redesign and resubmit.

ANDREA HICKEY: Well, if he elects to redesign.

CONSTANTINE ALEXANDER: Yeah.

ANDREA HICKEY: He may respectfully decide to go forward with a new panel with what he has tonight.

CONSTANTINE ALEXANDER: Exactly.

SEAN O'GRADY: That's true. Yeah.

ALEX VAN PRAAGH: Or, you know, I can redesign in pretty short order. I mean, I tried to present two designs for that reason.

BRENDAN SULLIVAN: You're probably into July. What is it July 18th?

SEAN O'GRADY: July 12th at the earliest.

ALEX VAN PRAAGH: July 12th is when it would be heard?

CONSTANTINE ALEXANDER: Yeah if you get --

SEAN O'GRADY: No.

CONSTANTINE ALEXANDER: As Mr. O'Grady said, if you get the relevant papers in to him so the case can be advertised, yeah.

ALEX VAN PRAAGH: Okay.

CONSTANTINE ALEXANDER: And we'll continue this case until July 12th. Because if we don't continue it, you're going to be subject to the two years. So like the case on Hubbard Avenue, we'll continue this

one, put it on the shelf, re-advertise for July is 12th and we'll hear the re-advertised case. If we grant you the relief, we can dismiss the continued case or not. We'll deal with that. But the fact of the matter is July 12th will be when the time we heard your case and rendered a decision provided you give Mr. O'Grady and ISD the necessary materials they need to advertise the case in time.

ALEX VAN PRAAGH: When would you need the materials by?

SEAN O'GRADY: Well, so there's two things:

One is tonight's continuance. We're going to try to continue it to the night that we hope that you get your materials in. But it is first come first serve. Somebody could walk in tomorrow with seven cases and you would be bumped.

ALEX VAN PRAAGH: Okay.

But in order to be heard in July I need to get my material in by when?

SEAN O'GRADY: You may not make it --

ALEX VAN PRAAGH: You don't know?

CONSTANTINE ALEXANDER: But if you don't, it will be two weeks later. I mean, it's not like you're finished for a year or two years.

ANDREA HICKEY: So get it in before other people fill in those slots. It can't be a date certain.

CONSTANTINE ALEXANDER: Yeah, first come, first served. Right now we have a lot of slots opened for the 18th.

ALEX VAN PRAAGH: Okay. I mean, I'm hearing pretty clearly that I will not be approved.

CONSTANTINE ALEXANDER: Well, that's up to you. You read whatever you want. We're not deciding the case this way. The point is I'm just giving you the odds. The odds of getting approval for what you want are greater if you re-advertise and you get five, whoever the five people are going to be to hear that case. Just a matter of odds. It's not a matter of we're passing on the merits.

ALEX VAN PRAAGH: Okay. Well....

CONSTANTINE ALEXANDER: You want some time to think about it?

ALEX VAN PRAAGH: I can't afford to be put into the

two-year period of --

CONSTANTINE ALEXANDER: I can understand that.

ALEX VAN PRAAGH: -- of not going forward. My son is starting high school next year. I've been working on this for a year. And as I said, if I had used the public records -- I feel like no good deed is going unpunished here. I -- does it -- will it sway the -- is the fact that there's a 300-foot discrepancy --

CONSTANTINE ALEXANDER: Not going to get into that.

ALEX VAN PRAAGH: Not going to get into it.

CONSTANTINE ALEXANDER: Not going to get into it.

ALEX VAN PRAAGH: Okay. And this view with the fact that it's not visible, that's not --

CONSTANTINE ALEXANDER: That's all for continuing the case, this case, and when you make your new advertisement, that's all rest of the mill in July when we hear the case.

ALEX VAN PRAAGH: Okay. Okay. I'm hearing that I don't have a choice really.

CONSTANTINE ALEXANDER: Well, that's your, you know,

you have a tendency to hear what you want to hear. I want to be very clear, we're not telling you you have no choice. I'm laying out to you the alternatives. You decide what choice you want to do. I'm not telling you what to do.

ALEX VAN PRAAGH: Okay. If I'm heard and I'm denied, then I'm not able to be heard in July? Am I understanding correctly?

JANET GREEN: That is correct.

CONSTANTINE ALEXANDER: Yeah. Unless you had a substantially different project or whatever the words are in the Ordinance, yes. You would be out for two years.

ALEX VAN PRAAGH: That's our house. I can't make it that different. I guess I'll see you in July right now.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued further. This is a -- as a case heard, until -- what's the date, July 18th?

SEAN O'GRADY: 12th.

CONSTANTINE ALEXANDER: July 12th, until seven p.m. on July 12th subject to the following conditions:

One, that a waiver of time for a decision be signed. You've already done that for tonight's hearing.

Two, that you have to modify that new posting sign or your old sign to reflect the new date, July 12th, new time, seven p.m. And you maintain that sign, as you've done so far, for the 14 days required by our Ordinance. And to the extent that you want to submit revised plans from what you've now given us, something new between now and then, those new plans and any related dimensional form, must be in our files no later than five p.m. on the Monday before.

ALEX VAN PRAAGH: Right.

Is there any way to submit plans in advance to avoid this situation --

CONSTANTINE ALEXANDER: No.

ALEX VAN PRAAGH: -- to get feedback on what is acceptable and what is not?

CONSTANTINE ALEXANDER: We consider plans or anything in public testimony with the five member -- with the quorum of the Board to hear. We don't give advisory opinions. You can speak to

Mr. O'Grady or Mr. Singanayagam and see if they want to offer you some advice. They very well may not. But that's, that's your only alternative. We can't do that. It's not -- it's a violation of law frankly.

ALEX VAN PRAAGH: Okay. I've worked with planners in other cities where they make staff recommendations to the Board.

CONSTANTINE ALEXANDER: We don't have a staff. These are the guys that are the staff.

ALEX VAN PRAAGH: Okay. I'm just trying to give you a presentation that can work.

CONSTANTINE ALEXANDER: We're not here to deny you relief you want just because. We have our legal responsibilities and we have an Ordinance we've got to apply. We've got a narrow legal standard that has to be satisfied. And we have things like the dormer guidelines that play a very important role. You've got to take all this stuff, digest it, and come up with a proposal. And I'm going to go back to what I said earlier, it's not -- you can't -- you know the Rolling Stones song, "You can't always get what you want?" That often happens in the case. You may have to make some compromises in what you want to do with your

reconstruction of your house. Maybe.

ALEX VAN PRAAGH: Yes.

CONSTANTINE ALEXANDER: That's what you have to put in the hopper.

ALEX VAN PRAAGH: And I, I hear you and I tried to do that with the second option with the skylights. Is that not -- I guess you can't tell me at this point.

CONSTANTINE ALEXANDER: Well, I will observe that I don't think we've turned a case down because of skylights because there's no impact because it goes up to the sky. Skylights are never an issue.

ALEX VAN PRAAGH: Because that's in front of you right now.

CONSTANTINE ALEXANDER: But you also have a dormer in front of me that's 30 feet long.

ALEX VAN PRAAGH: The option that I gave --

CONSTANTINE ALEXANDER: I don't want to get into this, please, sir.

ALEX VAN PRAAGH: All right.

CONSTANTINE ALEXANDER: I made a motion. All those in favor of continuing the case say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Case continued. See you in July.

ALEX VAN PRAAGH: Thank you.

(Alexander, Sullivan, Green, Hickey.)

* * * * *

(7:30 p.m.)

(Sitting Members Case No. BZA-016207-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call now our regular meeting. Again, let me read at the outset for those who were not here when we started the continued case, agenda.

I wish to make a following statement: 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 that the Chair may impose as 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.

I wish to advise you that a recording is being made. Our stenographer records the meeting to assist her when she does a transcript. So that's one recording at least. I trust that neither of you are not making a recording. If you are, tell us. So be advised that we have a recording being made.

With that, the Chair will call case No. 016207, 16 Kennedy Road.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently there is no one.

The Chair will report that we are in receipt of a letter from

counsel for the petitioners, Timothy Twardowski, T-W-A-R-D-O-W-S-K-I.

(Reading) On behalf of Leonard Braberg and Katherine Peris, petitioners in the above-referenced matter, please accept this request to withdraw the pending appeal of permit such and such.

The Chair moves that we accept this request for withdrawal and the case be withdrawn.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case withdrawn.

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

* * * * *

(7:45 p.m.)

(Sitting Members Case No. BZA-016211-2018: Constantine Alexander

Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016211, 12 Arnold Circle.

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

ATTORNEY MARK BOBROWSKI: Good evening, Mr. Chairman. Mark Bobrowski for the petitioner. My office is in Concord, Massachusetts. And with me is Sean Hope who I'm sure you know.

CONSTANTINE ALEXANDER: I do.

ATTORNEY MARK BOBROWSKI: I've given -- if I can begin. I've given all of you a packet and I propose --

JANET GREEN: Can people hear back there?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: We can't hear at all.

ANDREA HICKEY: Get very close to it and make sure it's turned hold on. Hit the mute and hold it.

CONSTANTINE ALEXANDER: Take the mic off the stand.

ANDREA HICKEY: Hold the mute button down until it turns

on.

BRENDAN SULLIVAN: Should be a green light on.

ATTORNEY MARK BOBROWSKI: I propose to walk you through my path. And as I get long in the tooth here with regard to being a lawyer, I find that the words of the Court work a lot better than my words, so I've given you excerpts from some cases and I've given you some statutory language that I wanted to refer to.

The question here is whether or not the Ordinance that was adopted a year ago or so applies at all to 12 Arnold Circle. And my conclusion after looking at the facts, is that the answer is no for the following reasons:

No. 1 --

CONSTANTINE ALEXANDER: Excuse me, sir, are you here as counsel for Mr. Hope?

ATTORNEY MARK BOBROWSKI: Yes.

CONSTANTINE ALEXANDER: So you're not here as an expert witness?

ATTORNEY MARK BOBROWSKI: No. I'm here as counsel.

CONSTANTINE ALEXANDER: As counsel, okay.

ATTORNEY MARK BOBROWSKI: So, first. Look at Chapter 40A, Section 6 which applies principally to non-conforming structures. And the very first line which I've highlighted for you says: Except as hereinafter provided, a Zoning Ordinance shall not apply to structures or uses lawfully in existence or lawfully begun.

There's no doubt in anyone's mind here I'm sure that this structure was lawfully in existence when the Ordinance in question for affordable housing purposes was passed a year or two ago. Sean tells me that the building dates to 1891. So, the plain language of the statute says that the Ordinance shall not apply. It's one of the simplest provisions in the zoning --

CONSTANTINE ALEXANDER: Sir.

ATTORNEY MARK BOBROWSKI: Yes.

CONSTANTINE ALEXANDER: This says an Ordinance can't basically prohibit a non-conforming structure or a non-conforming use from being used. There's no question that it's an Ordinance -- a city can impose conditions or uses, restrictions or whatever you want, burdens on

a say a structure.

ATTORNEY MARK BOBROWSKI: Not if the structure is lawfully in existence before the adoption of the zoning.

CONSTANTINE ALEXANDER: Well, wait a minute.

ATTORNEY MARK BOBROWSKI: That's why many -- Mr. Chairman, that's why many municipalities have taken the sign section out of their zoning by-law and put it into general by-laws, because there is retroactivity with regard to general by-laws that's not available with regard to zoning. So, only is prospective only. It does not apply to the existing structures. And the language of the statute -- I mean, I've quarrelled with the legislature's work many times in the work in Chapter 40B; shall not apply to structures or uses lawfully in existence. And that's all we need to say. Lawfully -- we don't even need begun. It's lawfully in existence since 1891.

Now, lawfully has a meaning here, and I think it's further buttressed in this case, that by the fact that in 1961 this building was given a Variance, and the Variance allowed it to be a 12-unit building. There was some argument about whether it could be larger, but ultimate the

predecessors on this Board in 1961 said that this is a 12-unit building by virtue of a Variance, there was a building permit issued the same year. The building was converted -- I think it was converted from 8 to 12 units. They wanted to go larger. So there's no question whatsoever that that 1961 Variance, which is on the docket in the record in front of you, is a lawful action of the Board and creates a lawful building. I'll lead you to the next case, and that's the Mendes case.

I had a lot of fun arguing the Mendes case in the recent Cambridge Courthouse decisions because I thought it was the controlling decision in terms of what that building was, but here we are again with Mendes. This is a situation in which a Use Variance was granted for some contractors. They wanted to change their operation, and they came in under Section 6. They didn't try to modify the Variance. They came in under Section 6 and said it's a non-conforming use, please give us a Special Permit to do so. Judge Kass nails it right on the head if you look at page 3 of the decision: For purposes of deciding whether a use is non-conforming within the meaning of Section 6, the question is not merely whether the use is lawful, but how and when it became lawful. It

would be anomalous if a Variance, by its nature sparingly granted, functioned as a launching pad for the expansion as a non-conforming use. Variance procedures pre-suppose the prohibition of the use.

If you look a little bit below that, after Note 9: We do not think the legislature intended Section 6 to authorize the expansion of uses having genesis in a Variance pursuant to the more generous standard applicable to a Special Permit, i.e. Section 6 governing non-conforming uses.

So this is basic 101 case law. A non-conforming use is not a use authorized by a Variance. And to put it a different way, a structure or a use authorized by a Variance is not a non-conforming structure. That's an important thing here. If this Variance did not exist from the 1961 period, and this building dated back to 1891 without the shelter of a Variance from 1961, I have no doubt that it would be a non-conforming structure. That's just pretty certain given the way zoning has evolved over the years. But this structure is governed by the terms of the 1961 Variance. And there's no doubt that that makes it a lawful structure.

If you look at Palitz, which is the next case I have. This is A

Supreme Judicial Court case from a couple of years ago. Just page 2, this is repeated endlessly throughout the case, just that simple line: 87 Main Street was rendered lawful by the 1995 Variance, and consequently --

CONSTANTINE ALEXANDER: Is not lawful. Construct the word not.

ATTORNEY MARK BOBROWSKI: Was rendered lawful.

CONSTANTINE ALEXANDER: 87 Main Street was not rendered lawful.

ATTORNEY MARK BOBROWSKI: Was rendered lawful. The yellow language.

CONSTANTINE ALEXANDER: Am I reading this -- is the word not here.

ATTORNEY MARK BOBROWSKI: No, you're looking at the line above talking about the grandfather protection of Section 6.

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY MARK BOBROWSKI: It's the sentence that starts: Rather 87 Main Street was rendered lawful by the 1995

Variance --

JANET GREEN: His is in yellow in that --

CONSTANTINE ALEXANDER: I have yellow.

ATTORNEY MARK BOBROWSKI: I probably didn't have my glasses on.

So a use that's authorized by a Variance is a lawful use. But this all goes back to Section 6's language which says the Zoning Ordinance shall not apply to structures or uses lawfully in existence. If it's in existence by virtue of a Variance from 1961, it's a lawful use. So that covers some basic groundwork here.

If you look at the statute again, I -- on the second page, I colored in the bottom three lines. The Zoning Ordinance or by-law may define and regulate non-conforming uses and structures abandoned or not used for a period of two years or more.

But note by the very terms of the statute, it only applies to non-conforming uses and structures. It doesn't apply that structures that are authorized or uses that are authorized by a Variance. So I used to tell my students years ago in teaching that a Variance is a lot like a

diamond. It's forever. You could put it a ten year shelf life on a Variance and a sunset clause could end it after ten years. But you're not even allowed as a Board to put a debt on transfer provision on a Variance, the statute says as much. So the Variance rides with the land. It was with Mr. Crone. It's with the bankruptcy receiver. And it will go to Mr. Hope if he finishes the transaction. He has the rights to use that 1961 Variance, as long as he doesn't change the conditions associated with it, to put the building exactly as it was in 1961. The 1961 Variance was not very fancy. I doubt many were. It doesn't have a map or a plan associated with it. But he's not changing the footprint. He's not making it taller. He's not adding the number of units. He's basically reconfiguring the internal space so that he has the benefit of the building that was authorized in 1961.

So putting all of this together, the Zoning Ordinance or by-law shall not apply to structures or uses lawfully in existence:

A, 12 Arnold Circle is lawfully in existence by virtue of the Variance.

B, the Zoning Ordinance shall not apply it to.

And the fact that it may or may not have been used or abandoned over the last two-year period is totally irrelevant because a Variance doesn't die under Section 6 if it's not used or abandoned. That provision that I just read applies only to non-conforming uses and structures. It's not something that applies to variances.

CONSTANTINE ALEXANDER: So it's your position or your client's position that the Section 11.200 does not apply to the structure?

ATTORNEY MARK BOBROWSKI: In its entirety it does not apply to this structure. This is not me speaking this is the Legislature speaking.

And I have one last case I might as well draw your attention to it, it's the Wyman case from Grafton. And in that case the issue was unrelated to tonight's discussion. The building inspector just didn't think he had the obligation to enforce the terms of conditions in a Variance. And I've highlighted the question on the second page of that in yellow. And the punch line is on the third page: Conditions of a Variance or Special Permit are subsumed in the provisions of 40A and Ordinances or by-laws under which they are promulgated; they are part of the Zoning law

to be enforced.

I interpret the Court's words here, the Appeals Court's words to me, that the zoning for this property is the Variance. As long as he lives within the terms and conditions of the 1961 Variance, no by-law or Ordinance, Amendment shall apply, and he's not in need of modification. If he's going to change that building, he doesn't come in for a Section 6 finding, that's the Mendes case. He has to modify the Variance in accordance with Chapter 40A, Section 10. Most importantly, he needs no modification. He's sticking exactly with the terms of the 1961 Variance.

Now, the practical matter here is that while I'm a fan of affordable housing, served on the Governor's task force for Chapter 40B and have argued and written by-laws and many communities adopting Comprehensive Permit rules and regulations. And in fact, have three projects right now that have a thousand units associated with them. This project has a history that cannot support the fiscal impact of the affordable housing provisions that were just adopted. You're coming in the middle of the game here. He's made a deal, and is trying to work this out with the U.S. District Court. So the -- I think in his favor the language that I've

gone through here in terms of the statute, needs to be accounted for. But don't make -- mistake that for an argument that Mr. Hope is in any way opposed to affordable housing. That's just not the case here.

I'm happy to answer any questions that you have.

ANDREA HICKEY: Could I see the file for a minute? Is a copy of the original Variance in this file?

CONSTANTINE ALEXANDER: Yes, it should be.

ANDREA HICKEY: Yeah.

ATTORNEY SEAN HOPE: It's actually an exhibit to the memo.

CONSTANTINE ALEXANDER: Yeah. It's also attached, that's right, Mr. Bobrowski's memo. It won't take you long to read it.

ATTORNEY MARK BOBROWSKI: No, I've got it right here.

ANDREA HICKEY: I saw it today earlier.

ATTORNEY MARK BOBROWSKI: It's pretty cut and dry.

ATTORNEY SEAN HOPE: I would also add, so in addition to the Variance for the 8 to 12 units. So it was a Dimensional Variance, as the Board sees all the time, under Article 5. It was for the lot area per

dwelling unit. So when they received the Variance to increase from 8 to 12 units, there was also parking considerations and other aspect that were triggered by the Variance. So this also received parking relief. So there's a Variance for the number of units and parking relief.

Similar to when you see a dimensional variance, you apply in any other parts of that 1961 Ordinance that needed to -- that would be impacted by the increasing units or by the property would also have to be applied for. So they applied for the Variance and the Special Permit received and there was a Building Permit that was also approved. So as Mr. Bobrowski said, and he said it better than I can, it's -- the Variance is the zoning, but also the 1961 ordinance, all of it, applied with the zoning for the property, and that carries forward. And that was our argument, that it carries forward.

I'd also like to say, I don't take lightly appeal of a Building Commissioner's ruling. I actually in this, and to my opinion, this late arriving information at the affordable housing applied, I retained Mr. Bobrowski to write a letter to the City Solicitor in the hopes of getting a memo back either educating me on why it applied with the legal basis or

also agreeing with me. To date, the only legal response I received was the memo that I guess came in the file to you last night or this morning.

So outside of that --

CONSTANTINE ALEXANDER: Which memo is that?

ATTORNEY SEAN HOPE: There is a memo, I believe it's in the file from the Law Department -- excuse me, from Mr. Singanayagam.

CONSTANTINE ALEXANDER: Oh, I see. Okay, that's not the Law Department, it's from Mr. Singanayagam.

ATTORNEY SEAN HOPE: Yeah, from Mr. Singanayagam, filled with case law research. But that was the only legal response.

So I would only say that to the extent that we didn't resolve this prior to coming to the Board, it really was only that there was the case law and the statute in our opinion was so clear that I needed something from the Law Department to contravene that. As you say in the memo, we do have an owner who owns the property, who this is really his life savings. And so -- and just to the point that to go back to accept 20 percent of the building being affordable, given the stakes that are in play for the property owner, and I'm not the property owner, I needed

something more to be able to go back to the City. And I would say we reviewed the memo, we reviewed the cases, and we can talk about that if you like to. But it's still, the memo doesn't address the central point, which is the Section 6 argument. And, again, to me that is, that is the most compelling piece of the argument that we're making.

Now I would only say Mr. Bobrowski did talk about non-conforming structures, and I think as my experience as an attorney before the Board, most of the cases we see have to do with pre-existing non-conforming structures.

CONSTANTINE ALEXANDER: Which this is by the way.

ATTORNEY SEAN HOPE: It is exactly. And they were built before zoning. And a non-conforming structure, for example, if you have a three-unit building -- if you have a three-family structure and a two-family district, and it was built before zoning, right? It's lawfully, it's lawfully established and it's allowed.

As Mr. Sullivan often reminds me, you can actually abandon a non-conforming use by nonuse. So you don't use a third floor or you combine the second and third floor, you abandon that protection. So then

the law that the current Ordinance can apply.

When you have a Variance, like we had in 1961, it went from a pre-existing non-conforming structure to conforming. And specifically because -- conforming because the 12 units was no longer pre-existing non-conforming. The 12 units were conforming by Variance. And that's the point of Mendes. And I think that may be the distinction. You can't abandon a Variance. It runs with the land.

ATTORNEY MARK BOBROWSKI: That's the point.

ATTORNEY SEAN HOPE: And so I think distinguished from the cases that we often see where someone is saying, hey, it was built before zoning, I'm protected. You can lose that protection. And the statute actually identifies that. And they say how you can lose your -- and they talk about enlarging or operating outside the Variance. But in this case we started off in 1891 as a pre-existing non-conforming structure. Zoning was enacted in the 40s, right? So it continued. But then this later Variance, which was a dimensional Variance, allowed and made conforming the 12 units. So the 12 units and the parking went from pre-existing non-conforming, which could be abandoned, to then

conforming at that point when the Variance is granted. And so when the Ordinance says, "Shall not apply," it means later ordinances shall not apply. And the idea is what would be the benefit of a Variance? If you have a Variance that allowed as a legal use 12 units or three-family, and then the City Council changed the Ordinance, right, and says well, this is no longer three families in this district. It would eliminate the purpose of the Variance. It would no longer run with the land. And so I think that's a distinction that to me the -- that Mr. Singanayagam's memo didn't address, and I think that may be something that the Board hasn't encountered. And we tried to keep the memo very short, because we wanted to focus on the Section 6 argument where it said no Ordinance or by-law shall apply to something that's lawfully --

CONSTANTINE ALEXANDER: But your point basically is that given -- and if I'm wrong tell me, given the fact that you got a Variance in 19 -- not you, but the owner of the property, in 1961 to allow a 12-unit building, then there's no way that the affordable housing section inclusionary housing project can apply to this property. Is that your argument?

ATTORNEY MARK BOBROWSKI: That's right.

ATTORNEY SEAN HOPE: And not even just the inclusionary housing section but any section.

CONSTANTINE ALEXANDER: Isn't that a severe, extreme argument? I've never heard that argument being made before this Board.

ATTORNEY MARK BOBROWSKI: Well, if I had a house that was authorized by a Variance in 1961, and I'm just hypothesizing here, it's a 12-unit building, right? So suppose the zoning is amended to make this particular district eight units. It doesn't apply. I have authorization that Variance.

BRENDAN SULLIVAN: You have protection by virtue of that Variance.

ATTORNEY MARK BOBROWSKI: Right.

BRENDAN SULLIVAN: But any new structures or any new applications would be subject to the new Ordinance.

ATTORNEY MARK BOBROWSKI: No. Because my zoning is my 1961 Variance.

BRENDAN SULLIVAN: No, no. I'm saying any new. Not

you. But anything else in the district.

ATTORNEY MARK BOBROWSKI: Right. But as far as I'm concerned, Mr. Hope --

BRENDAN SULLIVAN: And I don't know the setback. Seven foot, seven and a half feet, sum of 20. By virtue of the Variance you're exempt from that. You have protection from that. Now if the, if the City, because of the Variance and your protection against a change that would nibble away at the relief you got or change the relief you got, you're protected from that. You have shelter from it, because by virtue of the Variance. Now, seven and a half feet, sum of 20, if the City were to change the Ordinance and say no, we're going to change it to ten-foot setback. Okay, it doesn't apply to you, but it does apply to any other structures in that district even though they're nonconforming. You're protected.

ATTORNEY MARK BOBROWSKI: It would either make them non-conforming or it might make them more non-conforming, but the structure authorized by the Variance --

BRENDAN SULLIVAN: And so if they wanted to do

something, they would have to come down for relief. Yadda-yadda, so on and so forth. All right, fine. But I don't buy the argument that because you received a Variance to go from eight to twelve, that you are sheltered --

CONSTANTINE ALEXANDER: Yes, that's exactly my point.

BRENDAN SULLIVAN: -- out infinitum into the future from any changes to the Ordinance which applies to any or all structures in the city or that particular district.

CONSTANTINE ALEXANDER: The Variance can't immunize this structure from all kinds of --

ATTORNEY MARK BOBROWSKI: Sure it can. I'm not immunizing it.

CONSTANTINE ALEXANDER: In my judgement.

ATTORNEY MARK BOBROWSKI: I'm not immunizing it.

CONSTANTINE ALEXANDER: I'm not as expert as you, sir, but in my judgement --

ATTORNEY MARK BOBROWSKI: No Ordinance or by-law shall apply to structures lawfully in existence.

We've covered existence. We've covered lawfully, and we've covered the Variance. So this is not me saying this. This is the general court.

BRENDAN SULLIVAN: That is painting it with a very, very broad brush.

CONSTANTINE ALEXANDER: It is. I've never heard that argument made before.

ATTORNEY MARK BOBROWSKI: What could you apply to a structure authorized in 1961? Let's not look at the troubled past history of this building --

BRENDAN SULLIVAN: Let's say they wanted to put an addition on it.

ATTORNEY MARK BOBROWSKI: It's up, it's running, it's 12 units. It's got a planted garden. The parking all functions nicely. And you change the Ordinance. What could apply to this building?

BRENDAN SULLIVAN: Inclusionary ordinance.

CONSTANTINE ALEXANDER: Housing project.

ATTORNEY MARK BOBROWSKI: How do you get beyond

the first sentence that I'm citing here?

CONSTANTINE ALEXANDER: I think the first sentence says that if you were -- if the City of Cambridge was to change the zoning for this district to no more than six residential units in a building --

ATTORNEY MARK BOBROWSKI: Yeah.

CONSTANTINE ALEXANDER: You have a Variance -- you have a non-conforming structure --

ATTORNEY MARK BOBROWSKI: It's not non-conforming. It's a structure authorized by a Variance.

CONSTANTINE ALEXANDER: Let me finish.

ATTORNEY MARK BOBROWSKI: Okay.

CONSTANTINE ALEXANDER: At the outset you had a non-conforming structure for eight units. That's what it was when zoning came into effect.

ATTORNEY MARK BOBROWSKI: That was cured by the 1961 Variance.

CONSTANTINE ALEXANDER: Well, it didn't cure it, it changed it. It changed it to 12.

ATTORNEY MARK BOBROWSKI: But it's not non-conforming at 12. It's authorized by a Variance.

CONSTANTINE ALEXANDER: No, that's exactly right. But that doesn't mean other aspects of zoning can't apply to the statute.

ATTORNEY MARK BOBROWSKI: I don't see how you're going to convince me of that given the first sentence of the statute.

CONSTANTINE ALEXANDER: I think you're reading it very, very broadly.

ATTORNEY MARK BOBROWSKI: I didn't write it.

BRENDAN SULLIVAN: But, Mark, you know, my house, taking it back to its simplest form was built in 1885, woefully outside of the Ordinance, current Ordinance. It is a legal structure. I could go home there, sleep there tonight, get up tomorrow morning, nobody is going to throw me out. It is not a conforming structure.

ATTORNEY MARK BOBROWSKI: Okay.

BRENDAN SULLIVAN: Okay? It is a non-conforming structure.

ATTORNEY MARK BOBROWSKI: Okay.

BRENDAN SULLIVAN: You're saying by virtue of that Variance in 1961, this is now a conforming structure.

ATTORNEY MARK BOBROWSKI: No, I wouldn't use the word conforming, I would use the word lawful.

BRENDAN SULLIVAN: Well, I think I saw someplace where you said that it is not a non-conforming structure.

ATTORNEY MARK BOBROWSKI: But it is a lawful structure --

BRENDAN SULLIVAN: All right.

ATTORNEY MARK BOBROWSKI: -- pursuant to --

BRENDAN SULLIVAN: It is lawful.

ATTORNEY MARK BOBROWSKI: -- pursuant to the Palitz case.

BRENDAN SULLIVAN: It is not conforming.

ATTORNEY MARK BOBROWSKI: Correct.

BRENDAN SULLIVAN: Not conforming.

ATTORNEY MARK BOBROWSKI: Agreed.

BRENDAN SULLIVAN: Okay.

ATTORNEY SEAN HOPE: Possibly another example, and going back to the two and three family, because I think the maybe focus on affordable housing, any provision, they change the setbacks, they change the height. So you have a house and it's 40 feet high, and they change the height in your district to no longer allow 35. So your house is now five feet over the height, right? If you are pre-existing non-conforming structure, you're grandfathered.

CONSTANTINE ALEXANDER: Absolutely.

ATTORNEY SEAN HOPE: Right?

CONSTANTINE ALEXANDER: We all agree with that.

ATTORNEY SEAN HOPE: Exactly.

But if you are now authorized by a Variance, so now you become lawful, then it changes from you being protected by the fact that it existed prior to and that it protected by the Variance. So then later changes in the Ordinance, whether it's anything, we're just focussed on affordable housing, the house is now protected.

ANDREA HICKEY: But it's still non-conforming. It was at the beginning. That doesn't change.

ATTORNEY MARK BOBROWSKI: What doesn't change?

ANDREA HICKEY: The nature of it being non-conforming.

That's where it starts.

ATTORNEY SEAN HOPE: So the twelve units are lawful --

ANDREA HICKEY: Lawful non-conforming. But it's --

ATTORNEY MARK BOBROWSKI: No. You're ignoring the Appeals Court ruling in Mendes that says it's not non-conforming. It's clearly and explicitly. It's an apple and an orange. The only way to become non-conforming is for the use or structure to be in existence rightfully so and the zoning changes. That's not what happened here. This structure was the subject of a petition for a Variance in 1961 and it was up to 12 units. And it is not non-conforming. It's a use or a structure authorized by a Variance. Two different things.

One can be changed by Special Permit. The other can only be changed by modification of the Variance. That's the holding in the Mendes case.

CONSTANTINE ALEXANDER: You've been focusing on and arguing about the issue about the effect of the Variance and whether we

can --

ATTORNEY MARK BOBROWSKI: Well, I --

CONSTANTINE ALEXANDER: Let me finish.

ATTORNEY MARK BOBROWSKI: Go ahead. Finish up.

CONSTANTINE ALEXANDER: We haven't dealt with the other half of the case, and I think that's a more important one. And that is the two year -- the property's not been used for purposes for two years. Let's assume for a second that you're right, we still are -- you still have to satisfy the second half of the requirements of the definition of inclusionary housing project which says that any building -- it says, Article Section 11.200 applies -- if occupancy of existing buildings which have not been used for any residential use for a period of at least two years.

This property has not been used for residential purpose for at least two years.

ATTORNEY MARK BOBROWSKI: Well, now you're cherry picking a sentence out of the Ordinance and using it against me when I'm arguing that it is the entire Ordinance that does not apply for the building. That's what the statute says.

CONSTANTINE ALEXANDER: I hear you on that. To me it's extremely, extreme position to take. And that, I hear you.

ATTORNEY MARK BOBROWSKI: That's the Legislature.

CONSTANTINE ALEXANDER: I'm not sure I buy that. You're citing a very general introductory clause and you've given us cases and you showed it up tonight and handed them to us. It would have been nice if you had submitted those cases to us in advance so we can read them, analyze them, do our own legal research. I can't compete with you on this.

ATTORNEY MARK BOBROWSKI: I did cite them in my brief. They're all cited --

CONSTANTINE ALEXANDER: What brief?

ATTORNEY MARK BOBROWSKI: April 13th.

CONSTANTINE ALEXANDER: The four-page brief?

ATTORNEY SEAN HOPE: To the Chair, let me ask the question, if we get passed the Section 6 argument and you look at the two-year provision, in that same section, and I've highlighted the section, it says: Any development of a detached single-family, two-family, or

multi-family -- and I'm skipping -- that creates at least ten dwelling units or 10,000 square feet. We didn't create ten or more dwelling units. They were already in existence. This -- by the language of this Ordinance it says that creates. We didn't create. We had 12. We had 12 before 1961 and then we lawfully had 12. We didn't create. So the idea that this should apply to this building, this is in existence. We didn't create the number of units. We also didn't create the square footage. It was there. So that's one. Once we get passed Section 6, you look at the argument.

The second piece is the date that this two year applies. This is so vague. It doesn't say the two year is retroactive, which is important, because during the Zoning Amendment process where the City Council has hearings, and someone can say, hey, wait a minute, this is going to affect my property. If this Ordinance said this two-year provision is going to relate back, then Mr. Crone or anyone else could say hey, wait a minute, this is going to impact my property. There's also a letter by Mr. Crone that has case law to support the idea that the zoning by-laws need to be prospective, not retroactive unless it clearly states. In this same Ordinance in the applicability section, they talk about certain

sections with Special Permits relating back to December 1, 2016. So in this particular section, and I have highlighted here in the Board, it actually says, hey, these provisions will relate back to a certain date. So in the absence of saying retroactively this relates back, it has to be the date of the publication. Now zoning by-laws, they are -- they are, they are active from the date of the first publication of the Planning Board hearing. That is December 1, 2016. There are a couple of different dates, but that's the earliest date. Which means the two-year period hasn't run yet. We have until December 2018 to get a building permit for the two years. If the two year rule applies retroactively without any law, how far does it relate back? For example, you say there was a building that was being built. There was a large building. It had no residential use for two years because it took a long time to build. Under this plain reading, you could say, hey, that building was vacant for two years and this new ordinance should apply. It doesn't say that it has to be continually. It doesn't even say presently has to be vacant. It says not used for any residential purpose for two years. So I think there's a big equity argument here. Because it doesn't say it relates back. And I -- that was my first. Before I even

found the Section 6 argument, I raised this argument, I said wait a minute, how do you know when it starts? In absence of any clear definition, it has to start the day, not even the day the Ordinance was passed, because that was later on. But the first advertisement. That is basic language law 101. If once you advertise it, you are potentially subject to it. That's advertised. So the first advertised date. So this section is vague because it wasn't clear when it started. If you even reach for a date, the date, the two years hasn't expired. And so, you know, that's, that's going passed Section 6 but I also think that's important. Another element that's also important is -- so abandonment, as we take this idea about abandonment, let's say we are a non-conforming structure. It requires an intent, right, it's not just you abandoned.

In this case the petitioners, this was their home. They never abandoned the use. They actually were, I believe, constructively evicted because -- for health.

CONSTANTINE ALEXANDER: Not constructively, they were evicted.

ATTORNEY SEAN HOPE: Well, yeah, but they didn't go

through some of your process I guess is what I'm saying.

CONSTANTINE ALEXANDER: Constructively evicted.

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: The Board --

ATTORNEY SEAN HOPE: Excuse me. Well, they turned off the utilities. So my point is they never voluntarily wanted to leave. So the idea is they were in good faith litigation with the City. The City shut off the utilities not allowing them to heat or water to occupy it. Fast forward, they pass an Ordinance without a retroactive date, and then they say hey, oh, by the way, 20 percent of this building applies to affordable housing.

CONSTANTINE ALEXANDER: You're not suggesting that the adoption of the inclusionary housing project definition was intended for this property?

ATTORNEY SEAN HOPE: No, I'm definitely not.

CONSTANTINE ALEXANDER: Okay. I wanted to make it very clear.

ATTORNEY SEAN HOPE: No, no, it's not. But I think the

impact of it, in the plain reading, there was no creation of additional units, that's one.

Two -- and I think this is very important, that there's no retroactive date. And I think if there is not a specific retroactive date, it has to be the date of the first publication, the two-year period has not run.

BRENDAN SULLIVAN: Did you ask that question to Community Development?

ATTORNEY SEAN HOPE: I did. That was one of my first questions.

BRENDAN SULLIVAN: And the answer was?

ATTORNEY SEAN HOPE: You know, the only answer I received from Community Development, because remember Community Development doesn't interpret the law. The only response I received was from that memo. I was asking for a legal response.

BRENDAN SULLIVAN: They're sort of the source of the Ordinance.

ATTORNEY SEAN HOPE: Well, I would quibble that the City Council, as I hear many times, is the source of the Ordinance, not

Community Development.

CONSTANTINE ALEXANDER: Can I take a timeout?

Excuse me, I don't mean to interrupt your argument.

No, no, a second citizens of the city has left a recording device on the front desk. So there are two different people recording this hearing. As a matter of law, I have to advise the audience of that. So people who weren't aware of that, there is two recording devices going on, so be advised.

I'm sorry, Mr. Hope.

ATTORNEY SEAN HOPE: And not to be argumentative, but I do feel that -- and I've highlighted some of the cases, and I don't want to water down the Section 6 argument which I think is strong. But just in terms of the two-year statute, and I think this is patented, that if you don't have a date at which it started and it doesn't say -- it reverts back to any time, then in fairness, the two year hasn't run. So if the two years hasn't run, it hasn't been unoccupied for two years.

BRENDAN SULLIVAN: And what do you think is the effective date of the Ordinance?

ATTORNEY SEAN HOPE: So the first publication of this amendment based on this text was December 1, 2016. Now, it was adopted in March of 2017, right? So I'm more taking the earliest date just because, you know, to -- for clarity, the earliest date that you can relate back is December 1, 2016, and it's in the applicability section that I highlighted.

CONSTANTINE ALEXANDER: I want to test that a little bit because I'm troubled by your argument. Let's assume we had a warehouse somewhere; a legal structure in a business district, mixed use district, whatever. And it's been, it's not been used for years. You come along, we adopt -- the city adopted the article Section 11.200. And someone says well, wait a minute, this building has not been used for two years and now someone wants to convert it to residential. And it's legally zoned from a zoning point of view, assume that you can have residential units in here. Someone says -- well, Community Development, ISD says wait a minute, this building has not been occupied for residential purposes for at least two years, you have to have -- you're an inclusionary housing project and you have to have affordable housing. You're -- under your

argument the city can't do that?

ATTORNEY SEAN HOPE: Well, I would say that the Ordinance does cover change of use. So the amendment to this --

CONSTANTINE ALEXANDER: No, no. This doesn't say change of use. It says very simply: Occupancy of existing buildings, my hypothetical, existing warehouse.

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: Which have not been used for any residential use for a period of at least two years. This building is not -- my hypothetical warehouse, has not been used for at least two years for residential purposes. It wasn't -- but it happened to be from starting in 2010, it has been abandoned or not used, warehouse space. Now someone comes along and wants to put residential units in here, aren't they, -- doesn't that project become an inclusionary housing project?

ATTORNEY SEAN HOPE: I would point you to the next section. No. 4 says conversion of gross floor area in an existing -- in an existing building --

CONSTANTINE ALEXANDER: That's an or, though. Or,

that's an alternative.

ATTORNEY SEAN HOPE: My point is that the hypothetical you're proposing is already covered in this Ordinance and intentionally tried to cover that. But not going there. If the Ordinance did not say the date that the two-year period would start to run, whether it's a warehouse or not, in fairness and statutory interpretation. Forget about fairness. Statutory interpretation. How would you know when a two-year would run? It has to be the date of the Ordinance, because before the --

CONSTANTINE ALEXANDER: No, it does not, Mr. Hope. It does not. You look at the facts of the matter. When was this built? When was this property not used for residential purposes? When did it start? Let's -- modify my hypothetical. It's not a warehouse, it's an apartment house. But the apartment -- or three-family house. But it stopped -- that's more than 10,000 square feet. It stopped being used for any residential purpose at some point before Article 11 was adopted. You're saying it has to offer it only perspective, that everything that was before, the two years it was going beyond before or part of the two years is before, doesn't apply. I can't buy that. You have -- one thing you have

ignored through this is Legislative purpose. There is no question, as you well know, better than most people in this room, there's no question it's the policy of the city to promote affordable housing.

ATTORNEY SEAN HOPE: A hundred percent.

CONSTANTINE ALEXANDER: And this whole Article 11 was adopted to set ground rules for affordable housing and to require that there be some affordable housing set aside for every project that has at least 10 residential units. We all agree with that.

And you're flying in faith. You want to now give me a technical argument, again, says --

ATTORNEY SEAN HOPE: At first I would want to say and you're right, that I -- you know, the goal of affordable housing is the number one issue of the City Council. I -- you know my work. I have advocated and I continue and I will advocate for that. But I also think that property rights are also important. And property rights are also instilled in the Ordinance. And it says what the property rights are. And the idea that you have something so vague that it would be subject to -- I think it's vague.

CONSTANTINE ALEXANDER: I don't it's vague about this.

You keep saying so vague.

ATTORNEY SEAN HOPE: But here is it. This same section, in the applicability section they have -- and I think you should -- I want to read it for you, because it actually takes -- and so it's -- let me hand it out.

CONSTANTINE ALEXANDER: What are you reading from so I know?

ATTORNEY SEAN HOPE: In the applicability section when they say how does this apply? They -- A, they say for inclusionary housing projects, and that's the definition.

CONSTANTINE ALEXANDER: Let me hand this out. Wait, Sean.

ATTORNEY SEAN HOPE: I'm sorry.

CONSTANTINE ALEXANDER: Let me give it to other members of the Board.

Okay, where are you reading from?

ATTORNEY SEAN HOPE: Okay. I marked it page No. 4 at

the bottom.

CONSTANTINE ALEXANDER: Okay. Let me get there.

Okay. Where you yellowed it. Got it.

ATTORNEY SEAN HOPE: 11.203.2.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY SEAN HOPE: And inclusionary housing requirements. And the section above that, applicability. Those two sections. They specifically talk about, and they grasp -- there are cases where they have a Building Permit or a Special Permit, and you might be in this limbo. So they specifically date back the date of which this Ordinance would be effective. And they say December 1, 2016. So they let you know if you have a Building Permit or a Special Permit, you probably want to know when does this relate back to.

CONSTANTINE ALEXANDER: Put it in context. A and B talk about when one need to have one additional affordable housing unit or two. That's what the relevance of all of this. It's not to whether at all --

ATTORNEY SEAN HOPE: Go up to -- well, no, 11.203.1, the applicability section, under B.

CONSTANTINE ALEXANDER: Yeah.

ATTORNEY SEAN HOPE: The requirement of this section shall apply to include any housing project issued a Special Permit or have no Special Permit and Building Permit on or after December 1, 2016, the date of the first advertisement with the most recent amendment to this section.

This provides the clarity. This provides the acknowledgement that without, without knowing when this applies, they give you a date in the same section they do this. I'm saying this is not -- I'm not parsing words. I think they left that out of this section. And I'm saying in absence of a clear designation, the only fair and equitable date to relate back to was the first advertisement, and that's what I'm saying. So in December -- in December 1, 2018, this issue goes away. The two-year issue, right? It's a new Ordinance. It's only been a year, maybe a year and a half. This issue about the lack of the two year rule goes away. So this is not a --

BRENDAN SULLIVAN: You're saying that from the date of advertisement or the date of adoption that there is a two-year grace

period?

ATTORNEY SEAN HOPE: Not a two-year period. There is a two -- the Ordinance says for -- vacant for two years. So they're prompting you. Part of this is an incentive. Don't allow your building to be vacant. Don't allow your building to be unoccupied. Because if you do, after two years -- there is a, there's a policy behind this. Vacant buildings empty buildings, and you'll hear maybe some testimony are often considered dangerous. People say there might be health and safety hazards which is one of the contentions for the city for the receivership on this property. So this was passed. Staying vacant for two years, then the affordable will apply. Now, I'm not saying affordable housing should be a punishment, but it is 20 percent of your building that would be taken --

BRENDAN SULLIVAN: But the clock runs, you're saying, from 2016?

ATTORNEY SEAN HOPE: Unless it was clearly stated otherwise, and they could have done it.

BRENDAN SULLIVAN: Because right now it's silent on it.

ATTORNEY SEAN HOPE: That's right. And there was case law that was submitted by the owner who is also an attorney, that clearly establishes that statutory interpretation in a by-law needs to be prospective unless it's clearly stated. And I'm saying that counsel clearly stated in this section for clarity, but they did not say the two-year provision. And absent of that, how can you apply it? How can you -- in fairness how could this be applied going back? Because if it did, let's say we go back five years or a year and a half, that would allow Mr. Crone during the amendment process to get a Building Permit, take out a mortgage, and be able to -- because part of the reason why he wasn't in there is he couldn't afford to fix the issues. There were issues with leaks and damages. I mean, this is also about a citizen of the city. This is also about a homeowner who essentially is having a large substantial portion of his property taken, and I think the Ordinance is supposed to be fair to all. And I think without any date referring back, I don't see how you can actually refer it back to whenever. I just feel like it has to be that date. And I only bring up these other dates because it's in the same section that the Council thought it made sense. And, you know, if this was missed, if

this was a mistake, it's clarified in December 1, 2018. But as of right now, the two-year date has not run. This is somebody who can renovate their property, he could have petitioned the City Council and said hey, wait a minute, this is gonna impact me. He might have affected that. But without a date, the case law which he cited in his memo says it's the date of -- it's the date of the first enactment or the first publication by the Planning Board.

CONSTANTINE ALEXANDER: The arguments you make are numerous or technical. Not that they're wrong. I'm just saying they're technical. They're being presented to us for the first time tonight. Mr. Crone's letter that you keep referring to, arrived three o'clock this afternoon. It's a little bit late. Typically if this were a court proceeding, and I'll get to that in a second, you'd submit briefs as you know, sir. And you would lay these arguments out, and we, if we were judges, would be able to study the briefs and to think about the case and come to some conclusions and have a more meaningful hearing. I'm getting overwhelmed by all these technical arguments here. I think the statute on its face is relatively clear. Doesn't mean I'm reading it correctly. We're

not judges. Should we just decide this case in whatever fashion we choose to decide it, and if it's not a decision you like, take it to the courts, take an appeal to the courts. I mean, I'm not prepared to buy these arguments because I heard them tonight for the first time.

I look at the statute much simpler than you, maybe much more simplistic than you. I see a statute that's designed to promote affordable housing. I see a statute that talks about a two-year period that you're referring to. It seems to me that applies -- I think the reading that I'm hearing about the effect of this being a nonconforming structure or the effect of the Variance, don't persuade me. I may be wrong. It doesn't persuade me. I come back to the fact that I don't think we should grant you the relief you want tonight. And if you wish -- if you think we're wrong, and I'm sure you must, and if the other board members agree with me, go to a judge and brief the case to the judge and let the judge decide.

ATTORNEY SEAN HOPE: Well, and so part of the -- to go back to my first point, my intention wasn't to put this before the Board. My intention was -- and part of the reason why the simplicity of the memo was really to the Law Department to get a response. The reason why I

applied for the appeal, we have a federal court judge that had a date certain at which we needed to convey the property and to move forward, and because I know how the system goes, when I didn't get a response, I said if I apply to the Board, at least I can then move it forward and get, you know, a fair reading based on the law. And that's what I thought we were presenting here. But let me just ask you --

CONSTANTINE ALEXANDER: Sorry.

ATTORNEY SEAN HOPE: -- to the extent that we didn't have all this case law in there, we were actually waiting for a response from the City. I wasn't sure what was needed. As you noticed, none of the two-year arguments were in the memo. Because we stuck with the Section 6 argument because to me that was the legal argument that is the genesis of this, and we thought if the City had a cogent response, they had been through this before, if they had -- Mr. Singanayagam, we would have had that, we wouldn't have a need to be before the Board.

CONSTANTINE ALEXANDER: When did you have your first conversations, roughly, with Mr. Singanayagam about this property and the issues we're debating tonight?

ATTORNEY SEAN HOPE: So we -- my recollection is we started talking about this in October 2017.

CONSTANTINE ALEXANDER: So that's, almost a year ago.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: Nine months ago.

ATTORNEY SEAN HOPE: Yeah, nine months ago.

CONSTANTINE ALEXANDER: Eight months ago.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: Why did you not go to the Legal Department then and get an answer? Why -- first of all, you know the Legal Department most likely is not going to give you legal advice as a citizens of the city. They give legal advice to the town officers and boards like ours.

ATTORNEY SEAN HOPE: Yep.

CONSTANTINE ALEXANDER: You didn't do that. You didn't do that. And so now we -- the case dragged on and then you came in and said I need to know right away. And by the way, I know the case is before the federal judge. If there's a good reason, the judge is not

compelled to sell this property, he'll continue the case.

ATTORNEY SEAN HOPE: Well, we've already continued the case to --

CONSTANTINE ALEXANDER: So you have a good reason.

ATTORNEY SEAN HOPE: I think we did. And the goal was that we would have a fair reading based on the law. And I accept the Chair's understanding that you didn't have a time to absorb all of the case law prior to that, and that, that's a fair point. I do feel that if more time for the Board to digest the cases, to understand the points that we're trying to make, that may be a different story. But just to answer your question, so I did meet with Mr. Singanayagam in October. We discussed the building. We did not discuss the affordable. In October is when I actually first met the Crones. And so we -- I didn't have the property under agreement at that point. So we were talking back and forth. And in Mr. Crone's memo he did not want to sell the property. This is something he was forced to do. So, he was not necessarily eager to sign up an agreement. But we got to know each other. We negotiated a price. When I actually had -- in February is when I got the property under agreement and we had a date

certain to close. And that's when for the third time I went back to Mr. Singanayagam. And we had discussed the affordable housing inclusion. I'm not going to put words in his mouth. But at that point he had said my recollection was that he did not believe it did not apply because of the Variance, but rightly so he said, you know, check with other departments, because it's not always one department. And I would say it's my experience that even sometimes especially when it's a case that maybe somewhat nuanced, you sometimes have to check with the Law Department. Because, you know, there are cases, and this is a new ordinance. This is not something that had been around for a while. And when I checked with Mrs. Prosnitz at Cambridge Housing, that's when I found out that from Cambridge Housing and the Law Department they believed it applied. And I --

CONSTANTINE ALEXANDER: Did you ever approach the Legal Department directly with this specific question that we're debating tonight?

ATTORNEY SEAN HOPE: I did.

CONSTANTINE ALEXANDER: When?

ATTORNEY SEAN HOPE: So I -- well, in writing was April 13th. That was in writing.

CONSTANTINE ALEXANDER: So you went from October to April. And you're obviously, we all know, experienced in affordable housing law in the City of Cambridge. Never dawned on you to raise at the outset I want to be sure, Mr. Singanayagam, that this property is not going to be subject to Article 11?

ATTORNEY SEAN HOPE: I thought, I thought I was sure. We did speak about it not in October to begin with, but as January and February we did speak about it. And it was only when I actually had the property under agreement and I was gonna put down hard money, I came back and we met. I also had, and you know, and this is when I asked them and this is -- I was under the impression based on our conversation that it did not apply. And when the rubber met the road and I said, look, I'm about to put hard money down, I was told go check with the other departments. Which is not unusual. Because until you get a Building Permit you don't know even know if affordable applies. They don't do this is upstream. Sometimes it's very obvious. But sometimes you get to the

Building Permit and that's when you have the conversation. There is no inclusionary housing check automatically early on in the process. So to me the deal was struck, and I went back for a third time to say hey, you know, and this is when I got the advice to go seek counsel. And then after that, and not just call up the Law Department and do it informal, let me put my cogent argument together, and this is fine for the record. After I heard the response from the Cambridge Housing, I also went to see the City Manager. And I wanted to make sure because there was a long case history that had nothing to do with me, between the Crohn's, and I said -- I wanted to make sure if I'm going to go pursue this and I think I'm right on the law, I said, I just want to know I'm not going on a fool's error. And the responsive I have is put a memo together, state your position, and if we're right, we'll work it out.

That's what I did. I drafted a memo and I waited for a response. And when the time was ticking and the federal court time was ticking, I said I need to apply because at least at that point I know I'll get a response if I have a hearing because there's -- you know, and I'm not begrudging the Law Department. Maybe they don't always respond when

there's not a case with controversy. So I had to create an opportunity to get a response. And so here we are. It's not that I put my head in the sand. It wasn't that I was ignorant. I believed all along that it didn't apply. And there's also, you know, the Purchase and Sales Agreement, which I had in February had said 12 non-income restricted units. I sent via e-mail to the city as well because the Federal Court had to approve on it. And I'm not saying that they had to opine on it or not. I'm just saying I did these things to put it out there.

CONSTANTINE ALEXANDER: No one's suggesting bad faith. At least I'm not suggesting that. I don't think any members of this Board would suggest bad faith. We've been hit tonight, to my mind, with a very complicated legal, technical argument surrounding a very important issue surrounding a very important issue for the city, i.e. the creation of additional affordable housing. And I personally am reluctant to grant relief tonight based upon what I've heard and have to decide. I'd rather let a court decide it. And we should -- which will happen if we, if the Board decides, turns down your appeal, you obviously have a right to take an appeal to the courts. And that's where it should be for the technical

arguments you're making. Our Board -- I'm a lawyer at least by training, I'm retired. We don't deal generally with technical legal issues like this. We deal with applying variances, Special Permits, applying factual matters in a pretty standard run-of-the-mill legal context. There's argument, to get hit tonight with these memos, these cases with these arguments, some of which have not been raised before, to me is more than I can handle. I'm not going to vote for it. I'm telling you right now, when it comes time for a vote, I'm going to vote against granting the relief you're seeking.

Other members of the Board have comments?

BRENDAN SULLIVAN: Yeah, no, there's point, counterpoint, and you have raised -- I'm trying to give you the benefit of the doubt because you've raised some questions in my mind as to the effective date of it, whether it can be -- go back.

ATTORNEY SEAN HOPE: Yeah.

BRENDAN SULLIVAN: And there's nobody here -- I have your view on it obviously, but I don't have anybody else's on the other side. Community Development.

ATTORNEY SEAN HOPE: Mr. Singanayagam?

BRENDAN SULLIVAN: Well, I suspect I know what his answer would be. But in the absence of having some of these questions answered conclusively, I would either like to continue it, No. 1, to get a better feel for all of this stuff that's been dumped on us in the last hour, five hours, two days. In the absence of that, then I would maybe not support your position until I --

CONSTANTINE ALEXANDER: Well, if I could get --

BRENDAN SULLIVAN: -- buttress exactly what you're saying.

CONSTANTINE ALEXANDER: -- some assurance, we can get some response on the City's side. So we'll have like in a court proceeding, we'll have the Plaintiff's brief and the Defendant's brief.

BRENDAN SULLIVAN: I think what Sean was saying in his trail of woes is that this is how you get somebody's attention is by being here tonight. And I think now that we're here tonight, maybe we could get their attention.

CONSTANTINE ALEXANDER: It certainly doesn't hurt anything if we continue it and we don't get the attention, we can turn it

down, grant the relief, whatever we want to do.

BRENDAN SULLIVAN: It's just that, it's uncomfortable because I'm making a big decision. One that affects you who I have the highest regard for, and as far as -- I applaud you for what you've done before us for the inclusionary housing, without question. And -- but it's still that, it's a little bit uncomfortable with all of this stuff.

CONSTANTINE ALEXANDER: That's what I'm trying to say. You say it better.

BRENDAN SULLIVAN: So in the absence of that, I would --

CONSTANTINE ALEXANDER: What do other members of the Board think?

ANDREA HICKEY: Frankly, I'm not confident we're going to get the guidance that we think we need.

CONSTANTINE ALEXANDER: We have time to think about the arguments and get a little bit better presentation.

BRENDAN SULLIVAN: And you're right, Andrea, we may not. But to say yes or no is --

ATTORNEY SEAN HOPE: Can I just very short.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY SEAN HOPE: In April we submitted the memo. I think there was ample time for the Law Department and I -- through the zoning enforcement agent, I see the memo that's here that's citing case law as the response that you would get. I understand that some of the additional cases you didn't have time to understand, but I think there was, there was an intention to get a legal response, and not just a short e-mail and we received one. Unless Mr. Singanayagam says that they didn't -- he didn't have or the Law Department who informs his department didn't have sufficient time, that the six weeks wasn't sufficient time to prepare a response to a very short memo that was on point, you know --

CONSTANTINE ALEXANDER: Basically I agree with you. But the short memo, four pages, half a page of which has any kind of a legal argument. And the legal arguments that were cited or made, are not what we heard tonight. Some of that. But most of what we heard tonight is when do you measure the two year period? The memo you submitted or your counsel submitted says the two year period doesn't even apply because this is a non-conforming building and the city can't do

it. I'm not saying it's wrong. I'm just simply saying what we got is not enough detail to allow us to really -- this Board, non-lawyers to understand the case to think about it. Not three o'clock in the afternoon or the evening to hand us the decisions. We don't have law books sitting at our home to read the cases.

ATTORNEY MARK BOBROWSKI: He does.

CONSTANTINE ALEXANDER: Maybe he does.

But I'm still -- Mr. Singanayagam, do you have anything you wish to say? Come forward so we can get it.

RANJIT SINGANAYAGAM: The Board request some legal advice they are willing to do so.

CONSTANTINE ALEXANDER: I'm sorry, come a little closer.

RANJIT SINGANAYAGAM: The Law Department that in case the Board requests some legal advice on this case, they are willing to do so.

CONSTANTINE ALEXANDER: So we can ask the Legal Department to give us legal advice?

RANJIT SINGANAYAGAM: Yes.

CONSTANTINE ALEXANDER: That's good news. I would still want to hear your arguments even so.

Anything further thoughts from members of the Board?

GEORGE BEST: For me it's a lot to digest. And you know each word means something in a sentence. And it's the way it's interpreted that makes a difference because I was -- I'm still stuck at existing. What was the building at in 1961? Was it 10 units or 12 units? Does that constitute substantial change if you're making it 12 units? That's where my mind was going.

CONSTANTINE ALEXANDER: Let me -- I'm sorry.

ATTORNEY MARK BOBROWSKI: If the Building Commissioner's representation is correct, and I have no reason to think it's not, perhaps we could set a date to --

CONSTANTINE ALEXANDER: That's exactly what I was about to do.

ATTORNEY MARK BOBROWSKI: -- brief on our side so that they could have a comprehensive overview and then they would have a couple of weeks to respond.

CONSTANTINE ALEXANDER: I would like to pick a date --

JANET GREEN: I think that's really an important -- a really important thing to do. I think it's important. This is an important case for the City of Cambridge I think, you know. I mean it's important for us to look now at this case, but it's also important for us to realize that there's been such an important issue for the city. As you know more than most even, Sean. And so I think it's really important to get opinions and information on the table considered by the right group of people.

BRENDAN SULLIVAN: Well, we want to get it right. We don't want to be arbitrary, capricious, or whimsical.

CONSTANTINE ALEXANDER: I think the structure that I have in mind is sort of like in a court proceeding. You've got to file your brief by such and such a date. The other side, the defendant -- we don't call it the defendant, but the other party has so many days to respond to that brief to us and then we, for a period of time after that then we'll hear the case.

ATTORNEY MARK BOBROWSKI: How often do you meet, Mr. Chairman?

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY MARK BOBROWSKI: How often do you meet?

CONSTANTINE ALEXANDER: We meet twice a month.

ATTORNEY SEAN HOPE: The receiver who is the officer of the court who is also in control when we petition for additional time and things is actually here, is Mr. Danielle McCauley. So I would say to the extent that we pick a date, and I think he can support this, that we'd like to have it expedited only because --

CONSTANTINE ALEXANDER: I understand that. There's no question about that. We're not looking about six months here and six months later. I understand.

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: How much -- let's start from -- let's just work our way through it. How much time do you think you need to put together -- I want a brief that's not four pages and citations of cases. If you're going to rely on a case, give us, you know, a legal brief, the time for the case to be decided. I mean....

BRENDAN SULLIVAN: We're on June 28th. We're on July

10th.

CONSTANTINE ALEXANDER: 12th.

BRENDAN SULLIVAN: 12th rather. Maybe Sean can give you our dates and see how that works.

CONSTANTINE ALEXANDER: What date do you need to put together your brief?

ATTORNEY MARK BOBROWSKI: If you can -- I have a trial. That's my biggest problem coming up.

CONSTANTINE ALEXANDER: Okay. We'll work around that.

ATTORNEY MARK BOBROWSKI: So ideally for me it would be the 22nd of June. But I can put my piece together before the trial and then Sean can add his arguments with regard to the --

CONSTANTINE ALEXANDER: June 22nd I think is too quick. Because then, we need to have the Legal Department look at your brief --

ATTORNEY MARK BOBROWSKI: Oh, sure.

CONSTANTINE ALEXANDER: -- you know, and write a brief

back.

ATTORNEY MARK BOBROWSKI: I get it.

CONSTANTINE ALEXANDER: And then we need some time as the Board to digest both briefs.

ATTORNEY MARK BOBROWSKI: But if we had till the 22nd, that's three weeks. If they had three weeks, that'd be roughly the 15th of July. And what's your meeting after that?

SEAN O'GRADY: We have a July 12th and then July 26th.

CONSTANTINE ALEXANDER: 26th?

ATTORNEY MARK BOBROWSKI: Yeah, if we continue it to July 26th, each side has three weeks to write and respond.

CONSTANTINE ALEXANDER: Of course I have to make sure -- can all members of the Board make the --

BRENDAN SULLIVAN: Do you need to opine in on this?

CONSTANTINE ALEXANDER: Oh, yeah, I'm sorry.

DANIEL McCAULEY: Daniel McCauley. I'm the court-appointed receiver. We have a status date the 25th of June. It is what it is. We'll have to deal with it and report it.

CONSTANTINE ALEXANDER: I think you can report back why we're going to July.

DANIEL McCAULEY: Absolutely.

KENNETH CRONE: I'm the owner Kenneth C of the property. And I'm suggesting first of all, that you really have before you from our side pretty much all of the arguments. It's only the city that has not --

CONSTANTINE ALEXANDER: We haven't had time to digest those arguments.

KENNETH CRONE: That's true. That's true and I think that would be a variation of your responsibilities, I would suggest, to decide without having carefully read the cases and thought through the legal implications. So I would suggest that the city be given ample time to respond to what's already been presented to them and that the hearing be held earlier after the city has -- because we've already presented our arguments to you. The brief that you would receive from us would substantially be duplicative of what you've already received.

CONSTANTINE ALEXANDER: I understand, thank you.

But I like the second -- what's the date again in July, I'm sorry?

SEAN O'GRADY: 26th.

CONSTANTINE ALEXANDER: 26th. 26th is going to be the date.

KENNETH CRONE: You're the doctor, it's up to you.

CONSTANTINE ALEXANDER: No, you're the doctor. I'm just an ordinary citizen.

Okay, I have to frame the motion. The Chair moves that this case be continued as a case heard until seven p.m. on July 26th. Is seven p.m. okay with you, Mr. Bobrowski?

ATTORNEY MARK BOBROWSKI: Yes, it is.

CONSTANTINE ALEXANDER: I assume it's okay for you, Mr. Hope?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Subject to the following conditions -- that the petitioner -- one, that the petitioner submit a brief or memorandum, whatever you want to call it, setting forth in reasonable detail, the basis, all of the bases for all of their arguments as to why the

Commissioner's decision was incorrect. I can't -- so that would be three weeks from tonight.

ATTORNEY MARK BOBROWSKI: June 22nd. It's a Friday.

Close of business on Friday.

CONSTANTINE ALEXANDER: Close of business on Friday.

We're going to request that the Legal Department -- I can't control the Legal Department. Request that they submit a brief or their response to what you've submitted no later than -- you have to count it. What's three weeks from July 22nd?

ATTORNEY MARK BOBROWSKI: Well, it's actually the 13th, but I don't see any reason since we're going to the 26th, why they shouldn't get an extra week because I know they're busy.

CONSTANTINE ALEXANDER: Then we need to digest what they say and what you said.

ANDREA HICKEY: If I can make a suggestion, perhaps we tie the City's response date to their submission date. They may not need a full three weeks to present their --

ATTORNEY MARK BOBROWSKI: I have a three-day trial

just before that week.

ANDREA HICKEY: Oh, that was just a recommendation versus just giving the City a date certain to respond.

CONSTANTINE ALEXANDER: The second condition is we're going to request the Legal Department to respond to the documents that you --

ATTORNEY MARK BOBROWSKI: Yeah, if they responded by the 19th, you'd have a week. Is that enough?

CONSTANTINE ALEXANDER: I would think it would be enough.

BRENDAN SULLIVAN: Yeah.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY MARK BOBROWSKI: I'm giving them some extra days, but I know they're busy --

CONSTANTINE ALEXANDER: The 19th's three weeks from the --

ATTORNEY MARK BOBROWSKI: It's three weeks and four days.

CONSTANTINE ALEXANDER: Okay.

The second condition of the continuance is that the Legal Department be requested to submit in a written document in response to your documents and anything else they want to bring to our attention no later than the close of business on July 19th.

So the case is going to be continued until July 26th. We have this framework, your briefs, their briefs.

The further conditions are the one you know by heart, that you sign a waiver for a time of decision.

That the posting sign be modified to reflect the new date, July 26th.

ATTORNEY SEAN HOPE: And this case is an appeal.

CONSTANTINE ALEXANDER: Oh, it's an appeal. I'm sorry, thank you. You're right. There's none of that. And the briefs must be in -- so there's nothing else to do.

ATTORNEY SEAN HOPE: Any additional things in the file prior to --

CONSTANTINE ALEXANDER: Well, there shouldn't be

anything else.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: Because there's usually either documents, drawings, plans or dimensional form. None of that applies here.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: So, okay?

All those in -- sir.

KENNETH CRONE: Excuse me for interrupting again.

Kenneth C again. Would the Board also accept amicus security brief from me?

CONSTANTINE ALEXANDER: Anything. But they've got to be in the files on the dates I've identified.

KENNETH CRONE: Yes.

CONSTANTINE ALEXANDER: So the amicus brief, whatever you want to say --

KENNETH CRONE: The dates --

CONSTANTINE ALEXANDER: Let me finish, sir.

KENNETH CRONE: Sure.

CONSTANTINE ALEXANDER: No later than the close of business on July 19th. So we have a week, this Board, to consider your amicus brief and their documents and the city's documents.

KENNETH CRONE: Thank you.

CONSTANTINE ALEXANDER: I just don't want to get it three o'clock in the afternoon like I got it this time.

KENNETH CRONE: Actually I e-mailed it early this morning. It took that time to get to you.

JANET GREEN: Don't go there.

KENNETH CRONE: And let me just say it was in response to the City's submission which was also today -- dated today. So I didn't have much time to give you further advanced notice.

CONSTANTINE ALEXANDER: And by the way, when you submit your brief, I'm going to call it briefs for lack of a better word, they should go in the public file. So if Mr. Crone wants to see what you have to say, if you didn't share it with him otherwise, or if any other citizen of the city wants to read it, they can come and read it. And similarly, the Legal

Department's response, should they give it, again, I can't guarantee we're going to get it, but that's the legal -- the City's at a disadvantage because they're not going to have their side of the case heard or presented to us and that's their call, not ours. That whatever we get back should go in the public file as well.

SEAN O'GRADY: Can I just ask that you instruct that -- notify either myself or Ranjit and not just give it to a secretary.

CONSTANTINE ALEXANDER: Good point.

JANET GREEN: Good point.

ATTORNEY SEAN HOPE: I will.

CONSTANTINE ALEXANDER: I think I'm ready.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. See you on July 26th.

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

* * * * *

(8:55 p.m.)

(Sitting Members Case No. BZA-016279-2018: Constantine Alexander, Janet Green, Andrea A. Hickey, Slater W. Anderson, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016279, 218-220 Lakeview Avenue.

Is there anyone here wishing to be heard on this matter? I trust you're not going to be overwhelm us with the zoning ordinance.

MICHAEL BRENNAN: That's a safe bet.

CONSTANTINE ALEXANDER: As you might know by now, give your name and address to the stenographer, please.

MICHAEL BRENNAN: Sure. My name is Michael Brennan. The address is 274 Concord Ave., but we are also the owners of 218-220

Lakeview Avenue.

CONSTANTINE ALEXANDER: And you're seeking a
Variance?

MICHAEL BRENNAN: We're seeking a Variance, correct.

CONSTANTINE ALEXANDER: Anyway, the floor is yours.

Oh, give your name. I'm sorry.

ELIZABETH BRENNAN: Is that okay?

CONSTANTINE ALEXANDER: Yes, please.

ELIZABETH BRENNAN: Okay. I'm Elizabeth Brennan of
274 Concord Ave. And also the owner of 218-220 Lakeview Ave.

MICHAEL BRENNAN: Okay.

JANET GREEN: Do you have the microphone --

CONSTANTINE ALEXANDER: Hold it.

MICHAEL BRENNAN: Okay?

JANET GREEN: Yeah.

MICHAEL BRENNAN: So in terms of hardship, the real
practical hardship --

CONSTANTINE ALEXANDER: Before we get to the

hardship, describe just briefly what you want to do.

MICHAEL BRENNAN: Okay. Yeah. So we are -- it's a two-family structure. We have a tenant on the first floor. We are, we have renovated the second floor. And we're looking to renovate the third floor, which is basically a semifinished attic.

CONSTANTINE ALEXANDER: And you're going to raise the roof and construct two dormers?

MICHAEL BRENNAN: Gonna raise the roof, install two dormers --

CONSTANTINE ALEXANDER: Raising the roof is not going to make the structure more than -- the height of the structure more than 35 feet?

MICHAEL BRENNAN: It will not.

CONSTANTINE ALEXANDER: Okay. That's important --

MICHAEL BRENNAN: Yes.

CONSTANTINE ALEXANDER: -- because otherwise you need a Variance for height.

MICHAEL BRENNAN: Right, the new height will be 34 feet,

six inches.

CONSTANTINE ALEXANDER: It could be 34 feet 11 inches if you want.

MICHAEL BRENNAN: Okay.

CONSTANTINE ALEXANDER: Okay.

And the dormers? I want to cut to the chase a little bit.

MICHAEL BRENNAN: Sure.

CONSTANTINE ALEXANDER: We have dormer guidelines as you may or may not know. The dormers as I see the plans seem to comply with the dormer guidelines, which is very positive in your favor.

MICHAEL BRENNAN: Okay.

CONSTANTINE ALEXANDER: Not going to be more than 15 feet in length, and basically meet the setback from the roof ridge and the face of the -- of the roof. That's also very positive.

MICHAEL BRENNAN: Okay.

CONSTANTINE ALEXANDER: I'm taking away your thunder. I want to move the cases along.

MICHAEL BRENNAN: Sure.

SLATER ANDERSON: Can I see the plans?

CONSTANTINE ALEXANDER: Oh, sure.

These are the same plans, there's big and small.

Okay, now you can talk about hardship and the like.

MICHAEL BRENNAN: Sure. So in terms of our hardship, the real practical hardship is in today's Cambridge real estate market. And when you're to buy a house, you typically get into a bidding war most often and way over asking price, and that's what's happened to us. And we've seen that happen to our friends as well. When your bid is accepted, the reality hits you with mixed emotions. The paramount is can I really afford this --

CONSTANTINE ALEXANDER: Let me help you to shape your argument a little bit.

MICHAEL BRENNAN: Sure.

CONSTANTINE ALEXANDER: A substantial hardship, which is an important consideration, has to be a hardship that runs with the land. It's a hardship basically in your case, since you want to use the attic on the third floor, you need additional living space and that would be

not you, anybody who occupies the structure with a family or a growing family, needs additional living space.

MICHAEL BRENNAN: Right.

CONSTANTINE ALEXANDER: And that I think is what your argument.

MICHAEL BRENNAN: Yes.

CONSTANTINE ALEXANDER: I'm trying to find it. How many square feet do you have in the house now? It's on here. I'll find it, but if you know it, tell us. Yeah, that's the dimensional form.

MICHAEL BRENNAN: So the existing conditions total gross floor area, is that what you're asking?

CONSTANTINE ALEXANDER: Yeah.

MICHAEL BRENNAN: Is 3,186.

CONSTANTINE ALEXANDER: So it's a large -- a relatively large living space in the house. And you want to go --

MICHAEL BRENNAN: So the requested conditions are 3,813.

CONSTANTINE ALEXANDER: So you want to add 700 feet

of living space to a house that already has 3100 feet of living space?

MICHAEL BRENNAN: Correct.

CONSTANTINE ALEXANDER: Okay. That's a bit problematical. I mean is the living space, the 3100 that's there now, is it such that it's not easily usable for living? I mean, is it a bad configuration within the --

JANET GREEN: You want to make a third apartment?

MICHAEL BRENNAN: No, no.

JANET GREEN: This is just for you?

MICHAEL BRENNAN: Just for us. And so to answer --

CONSTANTINE ALEXANDER: How much of your -- that's a good point. I forgot it's a two-family house.

How much of the 3100 square feet is your living unit?

MICHAEL BRENNAN: So I'm assuming that it's half, half of this.

CONSTANTINE ALEXANDER: I assume that's -- the 3100 feet is the whole building?

JANET GREEN: Yeah.

MICHAEL BRENNAN: Yes. So it would be half of that space.

CONSTANTINE ALEXANDER: Your apartment or your unit is roughly the same size as the other?

MICHAEL BRENNAN: As the first floor unit, yes. They're identical.

CONSTANTINE ALEXANDER: So you're talking about 1600 square feet of living space?

MICHAEL BRENNAN: Correct.

CONSTANTINE ALEXANDER: That's a lot more justifiable in terms of a hardship than 31. That's good, thank you.

Okay, so that's the hardship. And you've dealt with that.

Now you've got the second argument is the hardship is owing to the soil conditions, shape or topography of the land or structures.

MICHAEL BRENNAN: Right.

CONSTANTINE ALEXANDER: And especially affecting yours and not the district generally.

MICHAEL BRENNAN: Exactly. The lot was created in

1874. It's before the Zoning Ordinance. It's a non-conforming lot. The Ordinance having only 49 feet width in a B zone which has a minimum lot size of 50.

The siting of the house is non-conforming to the right side setback and also having cumulative --

CONSTANTINE ALEXANDER: You have a non-conforming structure. And any modification of the type you want requires zoning relief, you have no choice.

MICHAEL BRENNAN: Right.

Any square footage added would require relief from the Ordinance and this Board.

CONSTANTINE ALEXANDER: Keep going. I'm listening.

MICHAEL BRENNAN: Okay.

In addition, if we were to consider going back with some of the additional housing instead of up, we face the very real issue of the soil conditions.

CONSTANTINE ALEXANDER: The third condition you got to satisfy for a Variance is that we can -- relief can be granted without

substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of this Ordinance. In this regard in your favor is the fact that you're building something in compliance with our dormer guidelines. That's a positive certainly for us.

MICHAEL BRENNAN: Okay.

CONSTANTINE ALEXANDER: We don't -- I don't see any letters in here from neighbors.

Oh, some neighbors just raised their hands. A lot of neighbors. Okay.

MICHAEL BRENNAN: So I have three letters here. One from -- or two from the direct abutters on both sides of the house.

CONSTANTINE ALEXANDER: Good.

MICHAEL BRENNAN: And then one from a neighbor across the street.

CONSTANTINE ALEXANDER: I'll hold these because maybe those people are here and they want to speak.

MICHAEL BRENNAN: The two direct abutters are here.

CONSTANTINE ALEXANDER: Okay.

Anything else you want to say at this point?

MICHAEL BRENNAN: No.

CONSTANTINE ALEXANDER: Good. A man of few words.

Any questions from members of the Board at this point?

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: I'm going to open the matter up to public testimony. Is there anybody here wishing to be heard on this matter.

DIANE GOODWIN: Only if there's an issue with it.

CONSTANTINE ALEXANDER: You got to give your name.

DIANE GOODWIN: Diane Goodwin. Longtime -- lifelong Cambridge resident. Former school teacher. Had half of these people in school. Not Mike, he's from Philly.

We love them. It's almost two years in August since they bought this and they need to move in. They need to do these alterations.

CONSTANTINE ALEXANDER: Where do you live, Ma'am?

DIANE GOODWIN: Next-door. And --

CONSTANTINE ALEXANDER: And you're in favor?

DIANE GOODWIN: Big time. And they need space on the third floor for tall people to walk around. Right now they have to walk around like this.

CONSTANTINE ALEXANDER: Is there anyone else wishes to be heard on this matter.

DIANE GOODWIN: This is the abutter on the other side.

CONSTANTINE ALEXANDER: On the other side, all right.

DIANE GOODWIN: Left and right.

JOELLE FLYNN: We're the Flynns from 216 Lakeview Ave. We're 100 percent.

CONSTANTINE ALEXANDER: And your name?

JOELLE FLYNN: Oh, Joelle Flynn. We're 100 percent in support of their renovations. We did similar work. If you've seen the houses before, you literally, there's like a closet this small. It hasn't been touched in decades and decades. And we want him to move in next-door. So we're a hundred percent for it.

CONSTANTINE ALEXANDER: Thank you. And both of you, thank you for taking the time to come down and put up with all the

nonsense you heard before.

Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I'm going to close public testimony. We do have three letters of support. Three letters from concerned citizens. One is from Joelle Flynn and her husband Tom. I'm not going to read that one because you've already given us your comments.

One from Deb Pruitt (phonetic).

DIANE GOODWIN: Across the street.

CONSTANTINE ALEXANDER: Across the Street. And Lee Eschenheimer, E-S-C-H-E-N-H-E-I-M-E-R. (Reading) To Whom It May Concern, Please know that neither of us has an objection to the building plans our neighbors across the street 218 Lakeview Avenue have in mind to pursue. In fact, we applaud their efforts to turn their home into a more comfortable living space. Best of luck to them.

And last we have a letter from Diane and Edward Goodwin, G-O-O-D-W-I-N, 222-224 Lakeview Avenue. (Reading) We, as life long

residents of Cambridge, are writing to support the appeal and plan presented by the Brennan family. We know what is to be done and are happy to support the proposed work at 218-220 Lakeview Avenue. We are direct abutters.

And you've spoken already to that. I'm not going to read the rest because you've already spoken.

DIANE GOODWIN: Thank you.

CONSTANTINE ALEXANDER: We have only letters of support. We have plans here. Obviously you're required. Let me point out since you're not an experienced architect or a lawyer in this area. What we do, should we grant relief, is we do it on the condition that the work proceed in accordance with these plans. These got to be the final plans. If you decide to change them as you go forward, you're going to have to come back before us. You understand that?

MICHAEL BRENNAN: Understood.

CONSTANTINE ALEXANDER: Ready for a vote?

ANDREA HICKEY: Ready.

JANET GREEN: Ready.

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

JANET GREEN: Did you want to speak?

CONSTANTINE ALEXANDER: Yeah, I didn't mean to cut anybody off.

MICHAEL BRENNAN: This is our architect.

JANET GREEN: Oh, okay, you seemed very interested.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I was here if you had any technical questions.

CONSTANTINE ALEXANDER: 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 living unit in question is rather small in nature, and whether it's this family or any family, family with children, additional living space is necessary.

That the hardship is owing to the fact that this is already a non-conforming structure, and therefore any modification requires zoning relief.

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

In this regard, the Chair would note that the project has apparently unanimous neighborhood support.

That the work that's being proposed complies with our former guidelines, which is always a positive.

And what it does is it allows a young hopefully growing family to have necessary living space in Cambridge these days.

So on the basis of all 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, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted. Good luck.

(Alexander, Green, Hickey, Anderson, Best.)

* * * * *

(9:10 p.m.)

(Sitting Members Case No. BZA-016062-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016062, 157 Hamilton Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair, and members of the Board. For the record, my name is James Rafferty. I'm an attorney with offices at 675 Massachusetts Avenue in Cambridge. I'm appearing this evening on behalf of the applicants. Seated to my

right, Robert Binstock and Maria Maciak, M-A-C-I-A-K. And Mr. Binstock and Ms. Maciak are married and this is their home. They have raised four children here. Home has been owned by Mr. Binstock since 1991. And this is an application that seeks essentially to allow for a portion of the basement -- the house is a very small house, on a very small lot. The lot is so small, unfortunately, that it does not qualify for the as-of-right exemption provided under the so-called Barrett Amendment.

So when Mr. Binstock and Ms. Maciak came to see me, we discussed what the issue was. And it really comes down to the lot area per dwelling unit issue. So we have a lot that does not have adequate size for second dwelling unit.

CONSTANTINE ALEXANDER: As you know, there are Section 5.26 conversion there are four boxes to check off.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: You only identified one.

ATTORNEY JAMES RAFFERTY: Right, that's what prevents us from doing it as-of-right I would suggest. Because if we had the lot area, we could, we could pursue the -- if we met the lot area, we could

pursue the as-of-right conversion in the basement in a single-family house.

CONSTANTINE ALEXANDER: Okay. I get your point.

ATTORNEY JAMES RAFFERTY: So under 5.26, you're right. And that's an Ordinance, by the way, in my spare time I intend to amend because there are irrational components in that. And I know that isn't really the subject for today's hearing. But when you think about it, the house has to be -- one of the criteria is the house has to have conforming FAR. And I think to myself, we're struggling in the city to look at how to create housing opportunities and all of that. So some day, I'm going to suggest to the City Council, but not tonight, that there are elements to that, that you're right. So then you have to go through the elements of 5.26.

And the house is very small. The reality is, though, because of the recent amendments to the Ordinance, that this space is not going to impact the gross floor area. It can -- because it's a single-family house, it can be excluded. It's liveable space now. Meaning that the way it's used now, and it has been used as liveable. There's a bathroom downstairs.

There's an area that's where the children -- they've raised four children here. There's a study/playroom type thing. And there's been a bedroom down there and it's used as a bedroom. And under an Airbnb scenario, they could simply lease out the basement. But what they really would like to do is to be able to stay in an expensive city that's getting increasingly expensive, and actually create a housing option for their children. Two of their children have graduated college, two of their children are still in college. And they see this as an opportunity for one or more of them from time to time to return and have a place to live and be independent. They could do all of this, and I think not have a kitchen. Although I've heard it's stated both ways under the Building Code, can a single-family house have two kitchens? At which point does it create a dwelling unit? And I've heard from people like Michael Grover say you can have two kitchens in a single-family house. So there are so many aspects of this house that come right to the edge of saying well, so much of this could happen either through the Airbnb model or through having borders or having the kids live there, and you could have a kitchenette or you could have a kitchen. The idea is that it's -- the basis and the hardship really has to do with the very

small nature of the house. If you had a chance to look at the dimensional form, they have admirably raised four children in a 1400 square feet home. And they have lived here for a long time in doing so. It's got limited open space. It's set behind other houses. It doesn't have parking. So in many ways, you'd think that the house, the house has accommodated this family. But what they've come to realize, and what I think Cambridge also understands, is that this is about 500 square feet of living space and there is a market for it, and you'll see by the floor plan, a modest one-bedroom house of about 500 square feet, one bedroom apartment.

And you look at the definition of accessory apartment in Article 2, this has all the characteristics of accessory apartments. Now accessory apartments are recognized -- only in single-family houses accessory apartments are allowed. And I often find a bit of a disconnect in the Ordinance, because it defines accessory apartments, and it suggests that an accessory apartment is something less than additional dwelling unit.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: I don't know what that something less is, because I can't find anywhere else in the Ordinance that deals with it. But it says there's a special class of dwelling units that can apply to single-family houses. So I said, you know, this isn't a two looking to add a three. This is the single. It's close to the policy intents of the Barrett Amendment.

It qualifies under the definition of accessory apartment given its size, meaning that it's smaller than the principal apartment. The house, as you know, from the elevations it was a two-story, first and second floor house containing -- two bedrooms did you say? Two bedrooms.

Raising four kids with two bedrooms is a challenge, but they used the lower level.

So this just represents a continued use of the lower level in a slightly different fashion, to allow them to treat it as an accessory apartment. They intend to live in the house for a long time. This would allow them to do it as they contemplate their retirement options.

CONSTANTINE ALEXANDER: I'm sorry to interrupt you.

This apartment you wish to create, is it going to be for your kids or are you going to rent it out to third parties?

ROBERT BINSTOCK: We don't know about the kids, and it's going to cost some money. So, yes. We would rent it out when the kids were not in use. We don't know what they're gonna want to do.

CONSTANTINE ALEXANDER: No, okay. Let me rephrase it. Your priority, I mean in a word, is to rent it to your kids? Or kid?

ROBERT BINSTOCK: Yeah.

CONSTANTINE ALEXANDER: One of your kids.

ANDREA HICKEY: Or to allow them to use it?

ATTORNEY JAMES RAFFERTY: Exactly.

ROBERT BINSTOCK: Well, I think we're going to rent it, we're that type of parent. Not necessarily at market rates.

CONSTANTINE ALEXANDER: Okay. Market rates, well, maybe in Cambridge would be high enough. But market rates for a 500 square foot apartment are not going to be too high.

Anyway....

ATTORNEY JAMES RAFFERTY: It's a housing option that

does create that flexibility, and that is the long-term plan, but we want to be careful and not make a misrepresentation that this would -- I think the thinking is to recover some of the costs associated with creating it. It probably -- early on. But given the fact that the children are in college in a few years -- the other two have stayed in the area. These two are likely to stay in the area. It just gives them a great option. As I said, and it's there, it's in the basement, it's liveable, it's used. And it seemed like it was not that big a move to try to allow for the small accessory apartment to the principal dwelling unit.

CONSTANTINE ALEXANDER: I don't want to keep -- you use the word accessory apartment. I'm going to shy away from that simply because that's defined under our Ordinance, and what's being proposed doesn't meet that definition.

ATTORNEY JAMES RAFFERTY: Oh, do you have Article 2? But if you read the -- because it absolutely --

CONSTANTINE ALEXANDER: I'll take your word for it.

ATTORNEY JAMES RAFFERTY: No, but I -- do you mind? Because that's what I struggle with. And I know when I actually filed this,

I referred to it as an accessory apartment. And my point is the difference between a dwelling unit -- an accessory apartment -- what makes this at least by definition accessory apartment, is that that term applies only to single-family houses.

CONSTANTINE ALEXANDER: I'll read the definition as you requested.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: An accessory use -- an accessory apartment is: An accessory use with one or more rooms with separate kitchen and bathroom facilities, constituting a dwelling unit located within and under the same ownership as a single-family detached dwelling and designed for the occupancy of a single-family.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Maybe those last words "designed for the occupant of a single-family," might be the explanation. You can't have three college students.

ATTORNEY JAMES RAFFERTY: Right. And I don't think you can condo it, because I think you have to be under the same

ownership. So you couldn't sell the accessory apartment. At any rate, I recognize it does incorporate the word dwelling unit. We are adding a dwelling unit and then we are then governed and have cited the provisions of 5.26 in our application recognizing that the -- all of those four dimensional criteria have to be satisfied for us to not be here. We're here for all four.

CONSTANTINE ALEXANDER: Sorry.

You're also seeking a Special Permit for parking. That's a separate. We'll get to that but you're not seeking a Special Permit for parking to -- because parking's one of the four requirements under 5.26. Some people have been using in the past, but it's no longer permitted now by the ISD, get a Special Permit for parking and then don't have to worry about parking for purpose of 5.26. But since you don't meet 5.26 anyway, in the other provisions, it's a standalone, if I can use those words. Standalone Special Permit which just recognizes the fact that the dwelling unit per the Ordinance needs a parking space and you don't have it.

ATTORNEY JAMES RAFFERTY: Right. It was kind of belt and suspenders because if a get a Variance from 5.26 presumably, you

don't have to provide the parking space. I'm not convinced that's the case.

CONSTANTINE ALEXANDER: I'm not convinced either.

ATTORNEY JAMES RAFFERTY: And that's why we applied for the Special Permit as well.

CONSTANTINE ALEXANDER: Questions from members of the Board?

JANET GREEN: No.

CONSTANTINE ALEXANDER: Apparently not. 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'll close public testimony. We do have letters in our file. One from, 170 Erie Street Ventures, LLC. (Reading) I have reviewed the application submitted by Robert Binstock and Maria Maciak, seeking to convert the basement of their Cambridgeport home to an additional dwelling unit. This kind of adaptive change to existing residences is exactly what we

need in Cambridge. As an abutter of the property, I would like to lend my full support to their request.

A letter from Catherine Fazio -- F-A-Z-I-O and Scott Stern.

(Reading) My husband Scott Stern and I live at 204 Pearl Street in Cambridge. We have lived in the neighborhood for six years. Our property abuts the home of Robert Binstock and Maria Maciak. We understand that Mr. Binstock and Ms. Maciak have requested relief from the Board to convert their basement into a dwelling unit. This dwelling unit will enable them to stay in their home after they retire. We have reviewed their plans. We fully support their application. We urge the Board of Zoning Appeals to grant the relief sought.

We have a letter from Craig Kelly who resides at Six St. Gerard Terrace. Not exactly in the neighborhood.

ATTORNEY JAMES RAFFERTY: Well, he has a broader public portfolio.

CONSTANTINE ALEXANDER: He has a what?

ATTORNEY JAMES RAFFERTY: He has a broader portfolio.

CONSTANTINE ALEXANDER: Oh, I know that. (Reading) I write in support of Bob Binstock's application for a Variance and Special Permit for his property at 157 Hamilton Street. Bob hopes to build a basement unit at his house, but because the Council produce a less than perfect Zoning Amendment when allowing such use in theory, he still needs zoning relief to actually get it done.

Parentetical, and this is not part of the letter, propose an amendment. You're a City Councillor. Change the Ordinance. Back to the letter.

(Reading) I am currently reviewing a few possible zoning changes to -- he heard me -- to remove these challenges to this sort of basement housing use. As the City faces who are and more housing pressure, creating safe, additional housing in existing structures is an important policy goal for Cambridge, and I hope to simplify this process for future applicants. In the interim, though, I hope you will support Mr. Binstock's request for zoning relief.

A letter from Nava, N-A-V-A Niv, N-I-V. Maria -- who resides at 159 Hamilton Street I should have said. (Reading) Maria Maciak and

Bob Binstock are neighbors and my home abuts theirs. I reviewed the plans they proposed to convert the basement in their home at 157 Hamilton into an additional dwelling unit. It seems like a great way for them to be able to remain in their home when they retire. They're excellent neighbors and also the City should support people being able to afford to stay in their homes and in the city. I fully support this application and accordingly urge the Board of Zoning Appeal to grant them the relief they seek.

And I think hopefully last but not least -next to last. A letter from Professor John Stone and family, who resides at 151 Hamilton Street. (Reading) This letter is to write in strong support of the proposal submitted by Bob Binstock and Maria Maciak at 157 Hamilton Street to convert part of their basement into a dwelling unit. As next-door neighbors of the Binstocks for almost 20 years we have reviewed their plans and fully support their proposal. They have always been ideal neighbors with a caring attitude toward their surrounding community and their environment. We strongly support their proposal and trust the Board of Zoning Appeal will grant the relief sought.

And now last but not least a letter from Clement Gehring, G-E-H-R-I-N-G, 161 Hamilton Street. (Reading) I would like to express my support of Robert Binstock and Maria Maciak's plans to convert the 157 Hamilton Street basement into an additional dwelling unit. I am an abutter of their property -- Oh, abutters -- and have reviewed their plans. I understand that the plans that would lead to enlarged basement windows and an additional resident. The proposed changes would have little to no negative impact on the neighborhood while allowing Robert and Maria to remain in their home during their retirement thanks to the additional income source. I know Robert and Maria as outstanding neighbors and losing them would be a detriment to the neighborhood and the Cambridgeport community. I hope you read this as a strong endorsement of their application. If at all possible, I urge the Board to grant this appeal.

Very nice letters of support. You should be proud of that.

ROBERT BINSTOCK: We're one of those houses right in the middle of the block, so yes, we do have a lot of abutters. Everyone looks out the back of their house onto ours.

ATTORNEY JAMES RAFFERTY: I always tell clients you find out what your neighbors think of you in a process like this. It's probably worth noting, he is also legendary youth soccer coach in Cambridge.

CONSTANTINE ALEXANDER: Oh, really?

ATTORNEY JAMES RAFFERTY: Responsible for coaching some of the most talented girls in soccer in Cambridge.

CONSTANTINE ALEXANDER: Congratulations.

ROBERT BINSTOCK: Including Mr. Rafferty's daughter.

CONSTANTINE ALEXANDER: He's too modest to tell us that.

ATTORNEY JAMES RAFFERTY: Well, that assessment of her talents is mine, perhaps no one else's.

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

Comments or ready for a vote?

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the Variance being sought, and then we'll take a vote on the Special Permit.

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that the petitioner lives in a, by Cambridge standards at least, an undersized single-family dwelling with usable as a practical matter, basement space that cannot be used because of the way that our Zoning Ordinance has been drafted.

That the hardship is owing basically to the size of the structure, and that it is currently non-conforming.

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

In this regard the relief has a desirable social policy; i.e., it allows aging citizens of the city and their family to continue to occupy the structure.

That this project has unanimous and very enthusiastic

neighborhood support. And there appears to be no negative otherwise.

So on the basis of these findings, the Chair moves that we grant the relief being sought on the condition that the work proceed in accordance with plans submitted by the petitioner and initialled by the Chair. The plans have been prepared by -- I don't see a name by.

JOHN ALTOBELLO: Me.

CONSTANTINE ALEXANDER: I know you. Your name, sir?

JOHN ALTOBELLO: John Altobello.

CONSTANTINE ALEXANDER: John Altobello. Anyway, they've been initialed by the Chair. Mr. Altobello, as Mr. Rafferty will tell you, these have to be the final plans. If you decide to modify them, you have to come back and see us and you don't want to do that.

ATTORNEY JAMES RAFFERTY: Can I just comment on that?

CONSTANTINE ALEXANDER: Go right ahead.

ATTORNEY JAMES RAFFERTY: Only because what's really involved here is a floor plan.

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: So if the closet in the bedroom were to be moved, I don't imagine you'd want us to come back.

CONSTANTINE ALEXANDER: No. That's internal. We're not going to change it.

ATTORNEY JAMES RAFFERTY: Right, that's what I thought. But the operative plan here is really the internal floor plan.

CONSTANTINE ALEXANDER: I understand that, but I was too tired to parse my way through it.

ATTORNEY JAMES RAFFERTY: No, I understand. Sometimes words can be interpreted very literally. I'm not faulting anyone, but if it says that, but I just wanted to -- thank you.

CONSTANTINE ALEXANDER: Anyway, thank you.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: All those in favor of granting the Variance, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance

granted.

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

CONSTANTINE ALEXANDER: Let's turn to the Special Permit.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: As noted, the Special Permit request is pursuant to the authority of the Board has under Article 6 to make determinations based upon existing conditions. The truth of the matter is that the lot has very little opportunity for parking. Many of the structures on the street don't benefit from off-street parking, but notwithstanding that fact, it is a neighborhood within reasonably close proximity to transit both in terms of what's offered in Central Square and bus lines that go up and down Brookline and Magazine Street. And would suggest as we set forth in the supporting statements, that the criteria exists for the reduction of required parking.

CONSTANTINE ALEXANDER: The thing that always gets this Board concerned about reducing parking is that puts a strain on the on-street parking for the neighbors and abutters. But I've got to assume

that all of your abutters who are enthusiastically in support are aware of the fact that you're going to have another car on the street or cars perhaps, by the occupants of the new basement apartment and no one seems to object. So that's fine.

SEAN O'GRADY: Could I just interject for a second?

CONSTANTINE ALEXANDER: Yeah.

SEAN O'GRADY: I have no problem what you do with the Special Permit as a belt and suspenders. I just don't want it on the record that if parking were the only element of 5.26 that wasn't being met, that you could somehow meet the Special Permit.

CONSTANTINE ALEXANDER: Well taken. But this is not being -- the Special Permit is not being brought pursuant to 5.26. As Mr. Rafferty said, belt and suspenders. I'm looking at it as a standalone Special Permit under Article 6.

ATTORNEY JAMES RAFFERTY: It's cited as such in the application.

SEAN O'GRADY: Well, what I'm saying you're already done. You don't have to clear Article 6. You only have to clear 5.26.

CONSTANTINE ALEXANDER: But then I don't want to give -- I guess we have granted a Variance under 5.26.

SEAN O'GRADY: Yeah. And I don't mind you going farther. I just, for the record, I don't want to put it -- because we fought long and hard to get ourselves out of this mess.

CONSTANTINE ALEXANDER: No, and I made it clear earlier my comments, and Mr. Rafferty acknowledged, that we're not -- the Special Permit for parking is not an attempt to sort of run around the parking requirements under 5.26.

ATTORNEY JAMES RAFFERTY: Right, to attempt to get by Special Permit what is required through a Variance.

CONSTANTINE ALEXANDER: Okay.

Let's take all the requirements for a Special Permit and take a vote.

The Chair moves we make the following findings with regard to the Special Permit being sought:

That the requirements of the Ordinance cannot be met without the Special Permit because there will be no on-street parking. The lot

doesn't support any on-lot off-street parking.

That traffic generated or patterns of access or egress resulting from the Special Permit being sought will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses will not be adversely affected by the nature of the proposed use.

No nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city.

And generally what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this district.

All of these findings are based upon the fact that this is already a crowded neighborhood in terms of parking and otherwise, but in terms of parking, and yet the neighborhood has no objection to one more -- potentially one or more automobiles on the street belonging to the occupants of the new dwelling unit that we've already approved. And that there's a policy of the city these days to downplay the need to have one

off-street parking space for every dwelling unit. The view diminishing the amount of automobile traffic in the city, and also the fact that there is ample public transportation within reasonable distance of the lot in question.

So on the basis of all of these findings, the Chair moves we grant the Special Permit with regard to parking. And that's what we need to do.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

* * * * *

(9:35 p.m.)

(Sitting Members Case No. BZA-016108-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 016108, 143 Columbia Street.

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

(No Response.)

CONSTANTINE ALEXANDER: I'm calling this case now because we're in receipt of a letter from counsel for the petitioner. It's from Mr. Hope, Sean Hope. (Reading) Please accept this request on behalf of the petitioner to withdraw the aforementioned zoning application.

The petitioner has now abandoned plans to utilize the Variance.

All those in favor of accepting the proposed withdrawal?

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case
withdrawn.

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

* * * * *

(9:35 p.m.)

(Sitting Members Case No. BZA-016110-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016110, 224 Pearl Street.

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

RICHARD CURL: I'm Richard Curl, the architect. And this is my client Tim Nicolette, N-I-C-O-L-E-T-T-E.

So Tim and his family currently have a permit to do work on their existing two-family house. And what we're here for are some additional items.

CONSTANTINE ALEXANDER: A deck in the rear and a staircase.

RICHARD CURL: Correct.

ANDREA HICKEY: I'm having a hard time hearing you.

RICHARD CURL: All right. So what we're looking for is permission to do -- so the current building is in the side setback and just ever so slightly in the rear setback. It's about four inches into the rear

setback and five or six feet into the side setback. What we're asking permission for, a Special Permit for windows and doors in the side and rear facades, and an additional egress stair on the -- in the side yard, and a deck in the rear yard.

CONSTANTINE ALEXANDER: Let's talk about the Variance first. We're going to take two votes.

TIM NICOLETTE: Okay.

CONSTANTINE ALEXANDER: One for the Variance and one for the Special Permit.

RICHARD CURL: Yeah.

CONSTANTINE ALEXANDER: Why don't you review the requirements for a Variance and why you meet them.

RICHARD CURL: All right. So we believe that for the side stair, we have a hardship based on safety and light and air. So the downstairs unit consists of a living space and two bedrooms. We're currently --

CONSTANTINE ALEXANDER: Is this part of your living unit?

TIM NICOLETTE: So, no.

RICHARD CURL: The basement will be the rental unit.

CONSTANTINE ALEXANDER: Okay.

RICHARD CURL: And Tim and his family will occupy the upper stories. We have a permit for this main stair and a secondary stair. But we would like to have this stair, because it's more accessible from the hallway in the rear and both bedrooms could egress more safely that way. It also allows us additional light and air to this back hallway.

CONSTANTINE ALEXANDER: And the deck?

RICHARD CURL: And the deck? We have, because the house is, as I said, four inches into the rear yard, we have no access or ability to get out to the back at all. Tim and his family would like to use the sunny part of the yard as green space, lawn and garden. And so we'd like our hardscape to be in the darker part. There's currently a garage that's in the back and the wall of the house and the wall of the trees of the neighbor here, so it seems like a better place to have a hard scape.

CONSTANTINE ALEXANDER: Questions from members the Board?

BRENDAN SULLIVAN: Now, turn the board over so we can see that area where the deck is going.

RICHARD CURL: Sure. This is the area where the deck was. So currently there's a blank facade here.

CONSTANTINE ALEXANDER: That's the garage you're referring to?

RICHARD CURL: Garage, yeah.

BRENDAN SULLIVAN: And it seems like the sun never shines on that area.

RICHARD CURL: Not so much, no. It's really right here.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Any other 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. We are in receipt of letters. I'm not going to read them given the hour of the night. I will summarize them.

We have a letter from Kate and James Regal, R-E-G-A-L who reside at 171 Allston Street. They say they're abutting neighbors. And they are in support.

A letter from Alex Krutsky, K-R-U-T-S-K-Y and Maggie McNally, who reside at 232 Pearl Street. So they're neighbors abutting on the south side and have lived there for more than two decades. They point out as the prior parties pointed out, you did something very wise. You hosted a time for neighbors to come to the house and review and discuss what you're proposing. Which is always a good idea.

And they say we have reviewed the drawings what would be done and had an opportunity to ask questions and see if we had any concerns. We appreciated this opportunity to learn about the proposed Variance, Special Permits in advance of the hearing and are supportive. We ask that you approve the requests.

A letter, I can't read the handwriting. It looks like Wisebrode

(phonetic) is the last name at 203 Allston Street. And they say they have no objection. They, again, cite the fact that you had a, you hosted neighbors and went over the plans.

And there's a letter from Adam Day at 219 Pearl Street.

(Reading) We have lived at 219 Pearl Street, No. 1 since 2005, and are writing to express our support of the Variance requested. They mention that you reached out to them. We are grateful that he shared this in advance. This being the plans, and ask that you approve these requests. That's all we have.

I'm going to close public testimony. Questions or comments or discussion from members of the Board at this point or ready for a vote?

JANET GREEN: I'm ready.

ANDREA HICKEY: Ready.

CONSTANTINE ALEXANDER: Again, we're going to vote first on the Variance and then we'll turn to the Special Permit.

The Chair moves that we make the following findings with regard to the relief being requested:

That a literal enforcement of the provisions of the Ordinance

would involve a substantial hardship. Substantial hardship being is that the configuration of the rear yard with a blank wall of a garage on the abutting property and how the house extends into the backyard such that there is not sufficient backyard living space for you folks or anybody else who would occupy the property.

That the hardship is owing to -- this is already a non-conforming structure, and any relief, any modification 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 we have apparently a strong neighborhood support.

That the relief being sought is modest in nature, and it facilitates the ability to -- the liveability, if you will, of the structure on the property whether you folks or any successors to you.

So on the basis of all of these findings the Chair moves we grant the Variance requested on the condition that the work proceed in

accordance with the plans prepared by Curl, C-U-R-L Simitis, S-I-M-I-T-I-S

A plus D, the first page of which has been initialled by the Chair.

Let me just point out, sir, if these plans are the final plans?

RICHARD CURL: Yes.

CONSTANTINE ALEXANDER: Because if you modify them or you want to modify them, you have to come back before us. So make sure you're comfortable this is it.

RICHARD CURL: They're good.

CONSTANTINE ALEXANDER: All those in favor -- so anyway, on the condition that the work proceed in accordance with these plans.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Variance granted.

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

CONSTANTINE ALEXANDER: Let's turn to the Special Permit. Just one more time the Special Permit? What are you seeking?

Why are you seeking a Special Permit?

RICHARD CURL: We're seeking a Special Permit because the existing side facade is in the side yard and the rear facade is in the rear yard and we're proposing to make changes to the windows in both.

CONSTANTINE ALEXANDER: And so you're doing that to increase the liveability or the inhabitability of the structure itself?

RICHARD CURL: Yes, pretty much. So currently on the rear facade there are --

CONSTANTINE ALEXANDER: And increase also the safety for those people who occupy the basement?

RICHARD CURL: Absolutely.

CONSTANTINE ALEXANDER: This way you'll have a better stairway for egress?

RICHARD CURL: Absolutely.

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

That the requirements of the Ordinance cannot be met unless we grant the Special Permit.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character. In fact, what is being proposed is simply to improve access to the structure itself in a non-obtrusive way in a manner that will increase the safety for those people occupying the basement of the structure.

That the continued operation or development of adjacent uses will not be adversely affected by what is being proposed. Again, this is pretty much self-contained in terms of its impact, and it's got the support of the neighbors as identified in connection with the Variance we granted.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city. In fact, the safety of the occupant of the proposed use will be increased by the stairs that are being proposed as part of this project.

And that generally what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

So on the basis of these findings, the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with those same plans we identified in connection with the Variance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

* * * * *

(9:45 p.m.)

(Sitting Members Case No. BZA-016185-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 1100-1108 Cambridge Street.

I'm sorry, O16185.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board. For the record, attorney Sean Hope, Hope Legal Law Offices here on behalf of the petitioners. We have Mrs. Kimberly Levine and Laura Widman.

Do you want to spell your names for the record..

LAURA WIDMAN: L-A-U-R-A W-I-D-M-A-N.

KIMBERLY LEVINE: K-I-M-B-E-R-L-Y L-E-V-I-N-E.

ATTORNEY SEAN HOPE: This is an application requesting a Special Permit to operate a cat veterinary clinic.

CONSTANTINE ALEXANDER: Will it be restricted to cats?

ATTORNEY SEAN HOPE: So that is the program now and that's -- we're fine with that designation. That is what their principal use is.

CONSTANTINE ALEXANDER: I'm not going to difficult. What if we want to condition the Special Permit only for cats?

ATTORNEY SEAN HOPE: I had the same question we discussed.

CONSTANTINE ALEXANDER: I raise that. A matter of full disclosure. My daughter is a veterinarian but not in an urban area. And I think there are some special issues with regard to veterinary practices in an urban area, particularly densely occupied East Cambridge. Doesn't mean we're going to turn it down. I think we have to deal with.

So having cats there is one thing. He had dogs and other animals, a lot of barking, a lot of noise. More likely to have more vermin

or rodents or what have you. So if we were to condition this to a -- if we were to grant the Special Permit on the condition that cats only, how would you react to that?

KIMBERLY LEVINE: That's our specialty. So, you know, we don't have any other intention of practicing with any other species.

LAURA WIDMAN: And we've been doing cats only for almost 20 years and I intend to continue to do so.

CONSTANTINE ALEXANDER: There's a market for cats only?

KIMBERLY LEVINE: Yes.

CONSTANTINE ALEXANDER: In East Cambridge?

I'm going to put a condition should we grant the Special Permit, which we will, that the practice being limited to cats only.

Next question, you going to board?

LAURA WIDMAN: We're going to do limited medical boarding. We have no intention of being a --

CONSTANTINE ALEXANDER: Hotel?

LAURA WIDMAN: -- a hotel, thank you. Yeah, so in cases

where cats have medical needs, where they need to have --

CONSTANTINE ALEXANDER: If they need to be overnight?

LAURA WIDMAN: -- yeah. They need to have medication administered while the owners are out of town for short periods of time, then we will be able to accommodate those individuals. But that would be the only boarding we would be interested in doing.

CONSTANTINE ALEXANDER: That could be another condition.

LAURA WIDMAN: Yeah.

CONSTANTINE ALEXANDER: You could always come back and seek modification should you need it.

Let me ask you, the building you're going to be in, it's basically a residential structure. There are apartments above. Are there going to be cats, probably not, but are there going to be any concerns about noise or vermin or the like that will affect the residential -- the ability of the people above you to use their residences?

LAURA WIDMAN: We don't anticipate noise being a problem. As you noted earlier, dogs, it's much, it's a much bigger

problem with dogs. They're louder in general. Moreover the motivation for barking is, you know, I want to get somebody's attention. But with cats they generally will only meow or make noise if they're trying to communicate with humans. So we don't anticipate having issues with, you know, nuisance meowing per se. They're a very quiet species in that regard so we don't anticipate any problems at all with that regard.

And in terms of vermin, basic medical hygiene is sufficient I think to control those kinds of issues.

CONSTANTINE ALEXANDER: Do you do anything in terms of when you prepare the premises you're going to occupy, to deal with things like noise or soundproofing?

LAURA WIDMAN: Absolutely. Those are considerations that we take in -- that are important to us. Cats not only from a standpoint of minimizing impact on the abutters and the residences above, but also are the cats that are there, we want to minimize stress to cats. So, therefore, they're very sound sensitive, and so we do plan on taking measures such as doors that mitigate sound transmission.

KIMBERLY LEVINE: And ceiling panels, you know, as well.

Materials that we use to be able to kind of attenuate the sounds that are emitting from one room to the next.

CONSTANTINE ALEXANDER: I'm not trying to be intrusive.

But how long is your lease for this property?

LAURA WIDMAN: Ten years.

CONSTANTINE ALEXANDER: You have a lease for ten years?

LAURA WIDMAN: With two options for five year renewal.

CONSTANTINE ALEXANDER: Your option?

LAURA WIDMAN: Yeah.

CONSTANTINE ALEXANDER: The reason I ask this, and I don't think we would get there, but sometimes in cases like this, we grant a Special Permit we put a time limit on to take a second look to see how it works out in the neighborhood. But ten years is a very long time. And if it's going to be there for a two-year lease, we might say at the end of two years you got to come back and reapply. On the basis that if we were to turn you down when you reapplied, there weren't going to be any financial difficulties because your lease is expiring anyway. But ten years is an

awful long time. So I don't -- I'll ask my fellow board members --

JANET GREEN: I don't think we need it for cats.

CONSTANTINE ALEXANDER: I don't think we need to put a time limit on a Special Permit.

Thank you.

ATTORNEY SEAN HOPE: I would only add that this is a District, Business A that allows for a myriad of commercial uses. There are two spaces 1100 and 1108 that are adjacent. I believe it's 1108 has been unoccupied with family uses for several times. So part of the benefit is that they would be fulfilling a need that is not necessarily existing in East Cambridge, also Cambridge in general. Cambridge is gentrified and maybe cats and dogs weren't as prevalent at one time, but now they've done their marketing research. I'd also say they are very seasoned in this profession, and so they have looked long and hard at the different locations and feel this is going to be consistent.

We did discuss internally potential nuisance, the Acousti-Mat. And being able to handle trash. We talked about that. There is a trash opportunity back alleyway that they could handle trash. We did discuss

making sure that the operation of the clinic is not going to create any hazardous materials. But also their industry is very regulated in terms of the different ways they have to operate, and so they're going to have all the appropriate licenses. I do think this is going to be -- add to the variety of different commercial uses. You have a lot of restaurants, a lot of travel agencies. So this is a newer use, but I do think it does add to the diversity. In terms of the Special Permit criteria, it's not -- and we talked about the nuisance or hazard. There is a series of mixed use buildings. So I think it's not going to negatively affect any operation of adjacent uses. And I also think that it's consistent with the intent and purposes of the Ordinances in terms of providing compatible, commercial, and retail uses. So I think for all of those reasons, as well as the letters in the file, I think they're going to be a welcome add to the Cambridge Street diversity mix of retail uses.

CONSTANTINE ALEXANDER: Where are you practicing your cat clinic now?

LAURA WIDMAN: I'm currently employed at the Boston Cat Hospital, formerly of Kenmore Square. We relocated to Jamaica Plain.

KIMBERLY LEVINE: And I work there as well.

CONSTANTINE ALEXANDER: Oh, okay.

KIMBERLY LEVINE: Yes.

CONSTANTINE ALEXANDER: So you have some familiarity with operating in an urban environment?

LAURA WIDMAN: Absolutely.

CONSTANTINE ALEXANDER: That's what I was getting it. There is a veterinary clinic on Mass. Ave. in Porter Square right near Chang Cho Restaurant. So, which -- but I think it's a full facility.

KIMBERLY LEVINE: That is, yes.

LAURA WIDMAN: It is dog and cat, yeah.

CONSTANTINE ALEXANDER: Anything else, Sean?

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: Questions from members of the Board?

ANDREA HICKEY: I just had a question relative to health and safety. Can you talk a little bit about your procedure for disposal of medical waste and cat waste?

LAURA WIDMAN: As Mr. Hope described, it as a highly regulated facet of our industry, and so we have, in terms of disposal of sharps and medical waste, that is -- there are very specific disposal mechanisms that we must comply with. And so, therefore, there's absolutely zero exposure to the public to anything of that nature.

In terms of any other -- we would be dealing with, you know, pet waste and things like that. And that's just basic good hygiene, making sure that everything is bagged appropriately, kept in closed receptacles. I can't think of any other potential hazardous exposures that we might --

CONSTANTINE ALEXANDER: Do I understand that disposal of waste is regulated by the state presumably?

KIMBERLY LEVINE: Yes, we fall under the same regulations as any medical waste does.

CONSTANTINE ALEXANDER: So we don't have to as a Board worry about that because someone else is worrying about it.

LAURA WIDMAN: Someone else is watching us very closely, yeah.

CONSTANTINE ALEXANDER: Does that answer your

question?

ANDREA HICKEY: It does, yes.

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

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

Ma'am. Thank you for sticking around till this late hour. You must really like cats. I hope. Maybe you're against it, I don't know. Give your name and address to the stenographer.

LAURA DONOHUE: Laura Donohue, 90 Putnam Ave., also the owner of Bob Slate Stationer of Harvard Square. I would like to voice my enthusiastic support for this business and these entrepreneurs founding the Cambridge Cat Clinic. The need for an animal clinic in Cambridge is definitely been proven by some preliminary research that they did. There are a few in fact located here in Cambridge, and there are a lot of animals owned now. It is particularly beneficial to have a cat only clinic from the perspective of the customers and the patients making this an attractive business model. It is very nice to have a cat specialist. You know these people have spent 20, 30 years searching, helping cats

so they know, they've seen it. It is also helpful to have only cats in the waiting room. Sick animals don't get along with each other very well, and it's nice when there's smaller cats altogether. These entrepreneurs are thorough, thoughtful professionals who will operate a first rate medical clinic subject to all regulations. I have known Doctor Levine for 28 years. We worked together as management consultants prior to her career as a veterinarian. So she has business as well as veterinarian background.

I have known Doctor Widman for eight years professionally. Both of them cared for my cats. I wouldn't want any others caring for my cats since they took care of them the way I would. Therefore, I strongly recommend issuing any permits that would allow them to move forward.

Thank you.

CONSTANTINE ALEXANDER: Thank you for taking the time to come down.

Anyone else wishes to be heard? Sir.

ALEX STEINBERG: Alex Steinberg. I'm also the owner of the building and the space.

CONSTANTINE ALEXANDER: I'm sure you're in favor.

ALEX STEINBERG: I'm in favor. Not surprising. But we manage many mixed use buildings both in Cambridge and elsewhere, and we specialize in management that looks at both the residential owners and their problems and commercial, and we have always been able to find a way to make it work.

Thank you for your consideration.

CONSTANTINE ALEXANDER: Thank you. You have a pocketbook interest in this but anyway, thank you for coming down.

Is there anyone who else wishes to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I'm going to close public testimony.

We are in receipt of -- I'm not going to read the text of the letters. Receipt of a letter from Timothy J. Toomey, Jr., City Councillor, who writes in support.

A letter from the East Cambridge Business Association who are in support.

And a letter from Cambridge Local First, which is

a -- Cambridge Local First has more than 300 members across the city that work together to promote and advocate for our local independent businesses because they are essential to creating the unique, vibrant community we love.

I never heard of Cambridge Local First, but they're here.

And that's it.

Close public testimony. We ready for a vote?

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: I guess we are.

The Chair moves that we make the following findings with regard to the Special Permit being sought to operate a cat clinic at 1100-1108 Cambridge Street:

That the requirements of the Ordinance cannot be met unless we grant the Special Permit. Our Ordinance requires Special Permits for veterinary clinics in this district.

That traffic generated or patterns of access or egress will not cause congestion, hazard, or substantial change in established neighborhood character.

Of course, presumably and hopefully there will be a lot of traffic generated because you want customers. But this is a commercial area, and there's no reason why this -- your traffic will cause undo problems for the remaining, for the adjoining area. It's just part and parcel of being in a commercial neighborhood.

That the continued operation of or development of adjacent uses will not be adversely affected by the nature of the proposed use. This is one I think we should give it a lot of thought. If there were dogs or other animals, I would be a little bit concerned whether you could meet this requirement, but cats, I don't think there's a problem. In any event, your abutters have not emerged. So if there was a problem, we would have heard from them I think.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city.

And in this regard, disposal of medical waste or other waste is governed by the state and so it's not -- you don't have the luxury or the ability to throw stuff out in the street.

And that otherwise you've represented you're going to take steps with regard to how you outfit your offices in terms of impact on adjoining uses.

And that generally what is being proposed will not impair the integrity the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

So on the basis of all of these findings, the Chair moves that we grant the Special Permit requested on the condition that the work, that the nature of the business being conducted there is cats only, and that there will be no boarding of patients other than for medical reasons; i.e. that there will be no hoteling so that you would be taking in boarders for periods of time while owners are away or not available to take care of their cats.

I think those are the only conditions we need. Anybody else want to add any others?

(No Response.)

CONSTANTINE ALEXANDER: So the Chair moves that on the basis of these findings and subject to the conditions I just recited, we

grant you the Special Permit you requested.

All those in favor?

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

* * * * *

(10:00 p.m.)

(Sitting Members Case No. BZA-016152-2018: Constantine Alexander,

Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016152, 65 Griswold Street.

Is there anyone here wishing to be heard on this matter? Since the hour is late let me cut to the chase. Why aren't you complying with the dormer guidelines?

MICHAEL KIM: The dormer guidelines state that dormers above 15 feet need to be approved by the ZBA, so here we are.

CONSTANTINE ALEXANDER: That's not what they say. Dormer guidelines say that we should -- we as a Board should not approve a construction project that has dormers that are greater in length than 15 feet.

MICHAEL KIM: And with all due respect I can read the guidelines.

CONSTANTINE ALEXANDER: Why should we --

MICHAEL KIM: In general dormers should not exceed 15 feet, but additions that extend beyond 15 feet must be approved by the ZBA.

CONSTANTINE ALEXANDER: Yeah, and we don't approve

them generally unless we are given good, sufficient, architectural reasons.

MICHAEL KIM: Fine.

CONSTANTINE ALEXANDER: SO why should we approve them?

MICHAEL KIM: To cut to the chase. Michael Kim architect. Myung-Hee Vabulas, owner. They have a -- they have a standard six over six two-family which they are converting into a single-family for their family of four including two young children. The square footage is 27 -- the proposed square footage is 27.69 which exceeds the FAR. So the plan is to do an inverted plan with the bedrooms on the ground floor and the kitchen and main living spaces on the upper floor. This arrangement, the kitchen and a powder room and an office assumes a pavilion-like arrangement inside the space.

Cutting to the chase makes me a little bit off here, but the section shows the relationship of that pavilion to the dormer. We have some initial studies that's been modified since, but a depiction of the pavilion in the space. And one side why that space would not work if the dormer face is retracted a foot and a half from the inside.

CONSTANTINE ALEXANDER: But that assumes the building should be -- it's going to be modified like you want to do it, but sometimes you have to -- you modify a structure, take into account the dormer guidelines. For example, many people would like to have 20, 25 foot dormers, but we say -- they want the additional space. And we say no, dormer guidelines are the dormer guidelines. This is a variation of that.

MICHAEL KIM: Dormer guidelines are just that, they're guidelines.

CONSTANTINE ALEXANDER: Not to this Board they're not. You're right, they are guidelines. You're absolutely right. But we take them very seriously.

MICHAEL KIM: As do we.

It is significant that because of the angled viewpoint and because that this neighbor has already increased the height of their roof, that the length of the dormer is visible only to this neighbor. And we have two letters of support.

CONSTANTINE ALEXANDER: You have one letter

opposing on the grounds on part because of noncompliance with dormer guidelines.

MICHAEL KIM: I will point out that the owners met with that neighbor and by his request we have taken these windows up to the transoms. We've extended the eave line and reconfigured the window. With that -- and he would be here except his plane was delayed. We have a letter of support from him. We have a letter of support also from the neighbor. So the only people who can see this, and I would argue the only people who are affected, are in support of the project. No one else can really see this. No one else can perceive the length. And that is why we are requesting that the BZA permit the full authority in the guidelines to grant this waiver.

BRENDAN SULLIVAN: Is that the drawing there?

CONSTANTINE ALEXANDER: Sure.

MICHAEL KIM: The drawings submitted were before the meeting with the neighbor. So the change is as a result are reflected on these boards.

BRENDAN SULLIVAN: When was the meeting with the

neighbor?

CONSTANTINE ALEXANDER: Wait a minute, timeout. We need to see the plans we're going to approve no later than last Monday. If you have different plans than what's in our files, we're not going to take action tonight. You can't come down here with a board and say, nice we gave you plans but we changed the plans.

MICHAEL KIM: The only change is the height of the window. And it's difficult, it's difficult to amend the on-line application. We had to come down in person to actually enter it on-line.

JANET GREEN: So what are the -- so that, what you're holding up now is different from what Mr. Sullivan is looking at now?

MICHAEL KIM: Only to the respect that these windows have changed and this -- these windows have moved up. And that was per a meeting with the neighbor who is now in support of the project. So this is the result of the neighbors talking to each other. We were not able to enter that on the on-line system. It's slower than the old system prior to this meeting.

One other aside was that a small other change to a rear porch

actually brings the proposed FAR below the existing FAR. And in fact we would have qualified for 8.21.h had the building not been existing non-conforming per FAR.

SEAN O'GRADY: I'm sorry, can I interject?

CONSTANTINE ALEXANDER: Sure.

SEAN O'GRADY: Did I understand that you said that you're altering the windows below the dormer?

MICHAEL KIM: Yes.

SEAN O'GRADY: You need a Special Permit to do that.

MICHAEL KIM: From the design that's --

CONSTANTINE ALEXANDER: No, no. If those windows are in the setback.

MICHAEL KIM: (Inaudible).

CONSTANTINE ALEXANDER: Right? Those windows are in the setback.

SEAN O'GRADY: You say you're in the setback and you're trying to alter windows in the setback, you need a Special Permit to do that.

ANDREA HICKEY: Not because you're changing them from the original plans, just because you're changing them period. Because it's a change within the setback.

MICHAEL KIM: But it's not increasing the non-conformance.

SEAN O'GRADY: Are you altering -- are you making any new window cuts?

MICHAEL KIM: We are, yes, we are shifting locations.

SEAN O'GRADY: You need a Special Permit.

CONSTANTINE ALEXANDER: That's the practice in Cambridge. When you change, alter, change the windows or doors in a prescribed setback, you need to get a Special Permit.

MICHAEL KIM: I was not aware of that. And on the basis of furthering the non-conformance or just any alteration to a building setback?

CONSTANTINE ALEXANDER: No, if this were on a side setback that was conforming, you wouldn't need it. But if you're changing -- if you're making changes within a proscribed setback, which you will be here.

MICHAEL KIM: Existing non-conforming.

CONSTANTINE ALEXANDER: The practice of Cambridge is that you need a Special Permit.

MICHAEL KIM: Citing what chapter?

CONSTANTINE ALEXANDER: Say again?

MICHAEL KIM: Citing what chapter?

SEAN O'GRADY: Setbacks, 5.31.

MICHAEL KIM: As an alteration within the setback?

Okay.

CONSTANTINE ALEXANDER: I think where we're at is we need to continue this case. You need to --

SEAN O'GRADY: Re-advertise.

CONSTANTINE ALEXANDER: You've got to re-advertise. You're seeking relief, you're seeking now a Special Permit as well.

MICHAEL KIM: Okay.

CONSTANTINE ALEXANDER: Submit plans that reflect what's on your board, but not what's on there, no later than -- I'll get into this later -- no later than five p.m. on the Monday before the day we're

going to continue this case to. So we have to continue this case to a period of time and then re-advertise.

SEAN O'GRADY: Yeah. So --

ANDREA HICKEY: He's got to apply for the Special Permit, right?

SEAN O'GRADY: Well, you --

CONSTANTINE ALEXANDER: Apply for it, exactly.

SEAN O'GRADY: You want to apply for the full pull in your next case and then we'll dismiss this case and have it all under one case.

CONSTANTINE ALEXANDER: And the next question is --

SEAN O'GRADY: We can do the same thing we did for Antrim. Which is you have a short window to get an application in in order to make the July 12th hearing. I don't know how big that window is. First come and first serve.

MICHAEL KIM: Everything is ready.

CONSTANTINE ALEXANDER: You reapply you have to submit plans, though, right?

SEAN O'GRADY: You're going to have to give us the plans.

CONSTANTINE ALEXANDER: Okay.

We've got to pick a time to continue this case.

SEAN O'GRADY: I think we can go to 7/12. July 12th.

CONSTANTINE ALEXANDER: July 12th?

SEAN O'GRADY: Yeah.

CONSTANTINE ALEXANDER: If they don't get their
paperwork in time --

MICHAEL KIM: The paperwork will be in tomorrow.

SEAN O'GRADY: Yeah, no, I only chose that date because
this is sort of same circumstance as 66 Antrim is in.

CONSTANTINE ALEXANDER: Can everybody make July
12th?

SEAN O'GRADY: We can do it later.

JANET GREEN: We've already got something continued for
July 12th, so we're going to be here.

ANDREA HICKEY: Yeah, we're all here anyway.

CONSTANTINE ALEXANDER: You follow. Just make sure
there's no misunderstandings here. You need to file a new application for

the Special Permit that you need and you must submit the plans in our files no later than five p.m. on the Monday before July 12th. You got to re-advertise. You got to post signs and the like.

Those plans should also take into account the changes that you've talked to us about the dormer and the windows.

MICHAEL KIM: Those will be submitted.

CONSTANTINE ALEXANDER: And I think you should really rethink whether you need -- why you cannot comply with the 15-foot length of dormers. Because that is -- there's got to be a compelling reason, because we don't generally grant dormer guideline relief. We explain -- even though it might not be visible to the world at large, we expect people to comply with them. We treat it almost, not quite, but almost as mandatory. You don't practice before us, you may not be aware of that.

MICHAEL KIM: I have in fact practiced.

CONSTANTINE ALEXANDER: Oh, you have? Okay.

MICHAEL KIM: And succeeded. Three times.

BRENDAN SULLIVAN: You're proposing two schemes?

MICHAEL KIM: We brought in an alternate scheme which is a 15-foot length, that is in fact here.

BRENDAN SULLIVAN: Well, A.100. You have a 14-foot one and a half dormer.

MICHAEL KIM: That's the alternate.

BRENDAN SULLIVAN: And then A.101 you're proposing a 20-foot dormer?

MICHAEL KIM: That's the original scheme. The first scheme. We did that in order that we could achieve approval on one.

BRENDAN SULLIVAN: So the alternate one would be acceptable to you?

MICHAEL KIM: It is, it is not as favorable, but --

JANET GREEN: Well, you would need just to bring in as part of your case why you think it isn't. But, yeah, I think you've heard the concerns of the people on the Board.

CONSTANTINE ALEXANDER: Typically if you have plans for a 14-plus foot dormer, it's going to be a big case for you to get over why we shouldn't adopt those plans. And I know it may not be what you

want, but that's always the issue with the dormer guidelines.

MICHAEL KIM: Because there is no damage to our relation to the public.

CONSTANTINE ALEXANDER: Say it again.

MICHAEL KIM: Because in our opinion there is no, I forgot the term, abrogation of the intent of the zoning to the public at large, particularly with the support of the effected neighbor. That's -- that was why --

CONSTANTINE ALEXANDER: Brendan, do you have any questions or I can make a motion?

MICHAEL KIM: Can I ask the Board a question? I discussed with Mr. O'Grady the issue of the project as a whole not reducing the FAR. His reading was that he could only take the separate parts of the project and therefore it would not qualify for 8.22.h. I think either interpretation's valid, but could the Board interpret that with the overall reduction of the FAR?

CONSTANTINE ALEXANDER: I think in the first instance it's the call of the ISD.

MICHAEL KIM: Fair enough.

CONSTANTINE ALEXANDER: And we won't get into that unless you have a formal legal challenge to it as we did earlier tonight.

MICHAEL KIM: They are both up for interpretation.

CONSTANTINE ALEXANDER: Which we don't give advisory opinions like that. That's not our function. It's a fair question to ask, but that's why we don't do it.

Okay, the Chair moves that we continue this case as a case heard until seven p.m. on July 12th subject to the following conditions:

That the petitioner sign a waiver for a time for decision.

That's just to allow us to continue the case, otherwise the state law would require us to decide the case tonight and we would decide adversely.

That the posting sign that's up there now be modified to reflect -- you can do it with a magic marker -- reflect the new date, July 12th, new time, seven p.m. And the sign be maintained for the 14 days that you would maintain at time.

And lastly and most importantly, any revised plans, and there will be revised plans, must be in our files no later than five p.m. on the

Monday before July 12th. That's to allow us and members of the community to review them in advance of the hearing and have a more informed hearing.

BRENDAN SULLIVAN: Wait a minute. You're here on this case. You have an interest in this case.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I am the neighbor to the south, south-ish.

BRENDAN SULLIVAN: Okay. You have an opinion on it?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I'm in support of it.

BRENDAN SULLIVAN: What?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I'm in support.

BRENDAN SULLIVAN: Oh, okay. I was just wondering if July 12th was a problem if you needed to come back, opine an opinion one way or another.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I haven't checked my calendar.

JANET GREEN: But --

CONSTANTINE ALEXANDER: You can always write a letter. It's nice of you to come down. I don't mean to persuade you, but some reason it doesn't work, it doesn't work.

BRENDAN SULLIVAN: Yeah, I mean sometimes if somebody's opposed to it for whatever reason we would like to hear from that. And I didn't want to exclude any comment that you had if the 12th was not convenient for you to come back. That's all.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I appreciate that. I'm supportive of the project.

BRENDAN SULLIVAN: Okay.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I was also interested in seeing how these proceedings happen for my own self-interest.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: I made the motion take a vote.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. We'll see you
on the 12th of July.

(Whereupon, at 10:20 p.m., the

Board of Zoning 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
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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 11th day of June, 2018.

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

My Commission Expires:
April 29, 2022

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